



May 11, 2021

VIA E-FILE

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Re: Working Group on medical certificate, other court order and privacy guidelines relating to the Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket No. L-2015-2508421

Dear Secretary Chiavetta:

Attached for filing, please find the **Joint Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), the Tenant Union Representative Network (TURN), the Pennsylvania Coalition Against Domestic Violence (PCADV), and the Health, Education, and Legal assistance Project: A Medical Legal Partnership at Widener (HELP: MLP)** which are respectfully submitted for consideration in the above referenced docket pursuant to the Tentative Order issued on February 25, 2021 and published in the *Pennsylvania Bulletin* on March 27, 2021.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Working Group on medical certificate, other court : Docket No. L-2015-2508421
order and privacy guidelines relating to the Rulemaking :
to Amend the Provisions of 52 Pa. Code, Chapter 56 :
to Comply with the Amended Provisions of :
66 Pa. C.S. Chapter 14 :

JOINT COMMENTS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY
IN PENNSYLVANIA (CAUSE-PA),
TENANT UNION REPRESENTATIVE NETWORK (TURN),
THE PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE (PCADV)
AND
THE HEALTH, EDUCATION, AND LEGAL ASSISTANCE PROJECT: A MEDICAL
LEGAL PARTNERSHIP AT WIDENER (HELP: MLP)

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I. INTRODUCTION

The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA),¹ together with the Health, Education, and Legal assistance Project: A Medical Legal Partnership at Widener (HELP: MLP),² the Pennsylvania Coalition Against Domestic Violence (PCADV)³ and the Tenant Union Representative Network (TURN)⁴ (collectively, the Joint Commenters), respectfully submit the following Comments in response to the Tentative Order (TO) issued by the Pennsylvania Public Utility Commission (Commission) on February 25, 2021 and published in the Pennsylvania Bulletin on March 27, 2021, which invited interested parties to submit written comments to the TO. (TO at 17). The forgoing Comments address three complex

¹ **CAUSE-PA** is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

² **The Health, Education and Legal assistance Project: A Medical-Legal Partnership at Widener University (HELP: MLP)** provides free civil legal services to individuals and families. HELP:MLP's mission is to increase access to economic, housing and utility justice, to support personal and family stability, and to improve overall health and well-being through legal intervention. HELP: MLP serves the southeastern Pennsylvania region through its health care partners, The Foundation for Delaware County's Healthy Start and Nurse-Family Partnership programs, and Philadelphia Nurse-Family Partnership and Mabel Morris Family Home Visit Program.

³ **The Pennsylvania Coalition Against Domestic Violence (PCADV)** is a nonprofit organization working at the state and national levels to eliminate domestic violence, secure justice for victims, enhance safety for families and communities, and create lasting systems and social change. PCADV was established in 1976 as the nation's first domestic violence coalition and is now comprised of 60 funded community-based domestic violence programs across Pennsylvania, providing a range of life-saving services, including shelters, hotlines, counseling programs, safe home networks, medical advocacy projects, transitional housing, and civil legal services for victims of abuse and their children. Current PCADV initiatives provide training and support to further advocacy on behalf of victims of domestic violence and their children.

⁴ **TURN** is a not-for-profit corporation with many low and lower income members. TURN's mission is to advance and defend the rights and interests of tenants and homeless people. TURN's goal is to guarantee to all Philadelphians equal access to safe, decent, accessible, and affordable housing.

issues raised in the TO: (1) the form of medical certificates; (2) protections for victims of domestic violence; and (3) customer privacy guidelines.⁵

The Joint Commenters appreciate the opportunity to provide comment on these critically important and complex issues as the Commission works to finalize recommendations into formal Commission policy.

II. BACKGROUND

On December 22, 2014, Act 155 of 2014 reauthorized and amended Chapter 14 of the Public Utility Code. As a result, the Commission revised Chapter 56 of the Pennsylvania Code (52 Pa. Code §§ 56.1-56.461, relating to the standards and billing practices for residential utility service) setting forth regulations for implementation and enforcement of the Chapter 14 amendments. (TO at 2).⁶ In relevant part, Chapters 14 and 56 include important consumer safeguards for households with medical needs and survivors of domestic violence, and allow for electronic notice of a pending termination provided utilities obtain clear consent and enhance consumer data privacy.⁷

On February 28, 2019, the Commission adopted a Final Rulemaking Order revising the Chapter 56 regulations, which became effective on June 1, 2019 upon publication in the Pennsylvania Bulletin.⁸ In its Final Rulemaking Order, the Commission delineated three issues for

⁵ 66 Pa. C.S. §§ 1403, 1406, 1417.

⁶ See Consumer Standards and Billing Practices for Residential Service, Order, Docket No. 76 P.R.M.D. 10 (April 21, 1978).

⁷ See id.

⁸ Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. § 14, Docket No. L-2015-2508421, Final Rulemaking Order (order entered Feb. 28, 2019). CAUSE-PA and TURN filed comments in response to the proposed rulemaking jointly as part of the Low Income and Consumer Rights Group (LICRG) on April 19, 2017. Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket No. L-2015-2508421, Joint

a working group to discuss in more detail and generate recommendations: (1) Form of Medical Certification (Section 1403); (2) Other Court Order (Section 1417); and (3) Privacy Guidelines (Section 1406(b)(1)(ii)(C)).

On August 29, 2019, the Commission issued a Secretarial Letter (August Secretarial Letter) announcing the formal creation of the Chapter 56 working group and inviting written comment in advance of the first meeting of the working group.⁹ On October 3, 2019, CAUSE-PA, TURN, and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) submitted joint written Comments addressing medical certificates, other court orders evidencing domestic violence, and privacy guidelines as they relate to the provision of a 72-hour electronic notice of termination. (October 3, 2019 Comments; hereinafter Joint Comments). Representatives from CAUSE-PA, TURN, Action Alliance, PCADV, and HELP: MLP participated in the Chapter 56 working group convened on October 29, 2019. Stakeholders discussed, in a collaborative forum, the issues as directed by the August Secretarial Letter.

The Joint Commenters appreciate the Commission's careful consideration of stakeholder comments and input throughout this process to amend Chapter 56. The Joint Commenters are supportive of many aspects of the proposals included in this TO, and respectfully submit the following recommendations to further strengthen protections for medically vulnerable households, survivors of domestic violence, and data privacy.

Comments of TURN, Action Alliance, and CAUSE-PA (LICRG) (filed April 18, 2017). LICRG filed Additional Comments on September 11, 2017. See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket No. L-2015-2508421, Joint Additional Comments of LICRG (filed Sept. 11, 2017); see also Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket No. L-2015-2508421, Notice of Proposed Rulemaking Order (notice filed July 21, 2016).

⁹ Chapter 56 Working Group; Form of Medical Certificate, Other Court Order, Privacy Guidelines, Secretarial Letter, Docket No. L-2015-2508421 (August 28, 2019)

III. COMMENTS

A. FORM OF MEDICAL CERTIFICATE

In its TO, the Commission proposed a standard medical certificate form for use by applicants, customers, and medical professionals. (TO at 6-7). The Commission also proposed draft guidance related to the standard medical certificate form for both consumers and medical professionals, contained in Appendix B of the TO. (Id.) The TO proposes to place the form and written guidance on the Commission's website. (Id.) Importantly, the Commission was careful to ensure that the proposed standardized form does not request unnecessary information or protected information, such as information related to the nature of the consumer's medical condition or a certifying professional's license number, which would require disclosure of protected medical information or may otherwise serve to deter medical professionals from exercising their professional judgement. (Id.)

The Joint Commenters are generally supportive of the Commission's standardization of the medical certificate form and its proposed guidance regarding medical certificates, and commend the Commission's decision to provide the standardized medical certificate form and information about the medical certificate process on its website. As noted in prior comments, these reforms will help to ensure that the process for medically vulnerable consumers to prevent the imminent loss of utility service is straightforward and easily accessible. This is important for both the consumer and the medical professional making the determination that the consumer's condition requires uninterrupted utility service. This is especially true given consumers have just three days to obtain a medical certificate to prevent imminent termination of service to their home.

The medical certificate process is intended to provide a basic level of protection to ensure consumers with medical conditions or chronic illness remain connected to service. Both the form

and process for submission of a medical certificate must be carefully crafted to ensure that there is no impingement on vulnerable consumers' ability to obtain medical certificates and to halt pending termination. (Joint Comments at 5). Thus, and notwithstanding our general support for the Commission's decisions regarding the medical certificate, the Joint Commenters recommend several additional adjustments to the Commission's proposed standardized form and accompanying guidance to further improve upon the accessibility of the medical certificate process for Pennsylvania's most vulnerable households.

i. Improve Access to the Standardized Medical Certificate Form

Again, the Joint Commenters commend the Commission for creating a standardized medical certificate form, and for ensuring the form is available on the Commission's website. Nevertheless, the Joint Commenters recommend the Commission take additional steps to improve the accessibility of the standardized medical certificate form. Specifically, we recommend the Commission (1) require utilities to link to the Commission's standardized medical certificate form and associated guidance on the utility's website, and (2) clarify that utilities must continue to accept both the standardized form and any other written documents that include the required elements of a medical certificate enumerated in Section 56.113.

First, in prior comments, CAUSE-PA and TURN recommended that the standard medical certificate form be made available on both the Commission's and the utilities' websites. (Joint Comments at 5-6). However, the Commission's TO is silent on whether utilities will be required to post the form on their respective websites. With the availability of the standard medical certificate form and related guidance on the Commission's website, utilities will easily be able to make the form and guidance accessible on their respective websites. This is important because customers, when seeking to avoid disconnection of service, are most likely to access the utility's

website *first* for assistance. In our experience, many consumers are unaware of the Commission as a resource, and are more likely to turn to the utility's website when searching for information. Indeed, the dispute resolution process requires consumers first turn to their utility to attempt to resolve any issues before turning to the Commission for assistance.

For these reasons, we recommend the Commission direct utilities to make the standard medical certificate form and the associated guidance available on their respective websites. In addition to providing a link to the standardized medical certificate form and guidance, utilities should also include clear and simple directions on their website which explains to consumers and medical professionals how to submit a medical certificate form to the utility. If the utility does not have an existing webpage that houses information about medical certificates, a webpage should be created and added to the utility's website.

Second, the Joint Commenters request that the Commission clarify that use of the standard medical certificate form is not *required* in order to satisfy the requirements of a medical certificate. The Commission's standard medical certificate form should not be viewed as the *only* acceptable means to transmit a medical certificate by a medical professional, as long as the certificate is provided in writing and contains the required elements included in 52 Pa. Code § 56.113. The timeframe provided for consumers to obtain a medical certificate is very short, and must be sufficiently flexible to allow busy medical professionals to easily provide certification. While a standardized form will undoubtedly be helpful for many medical professionals, others may prefer to use an established process. As such, the Joint Commenters recommend that the Commission clarify that the standard medical certificate form, while a helpful tool, is not *required* for consumers to receive the protections pursuant to medical certificate.

ii. Clarify the Standardized Medical Certificate Form and Guidelines

A copy of the Commission's proposed standard medical certificate form is included in Appendix A to the TO, and additional guidance for consumers and practitioners is included in Appendix B. The Joint Commenters recommend that the Commission make minor revisions to the proposed form and guidance. Attached in Appendices A and B to these Comments, we provide recommended amendments (highlighted) to the medical certificate form and guidance for the Commission's consideration, respectively, consistent with these recommendations.

a. Recommended Amendments to the Standardized Form

The Joint Commenters generally support the language set forth in the proposed standard medical certificate form, as it adheres to the requirements in Section 56.113 without requesting extraneous information which may disclose sensitive information about the consumer. Requesting additional information, such as the nature of an illness or a medical professional's license number, could have a chilling effect on the ability of medically vulnerable consumers to prevent an imminent termination that could exacerbate their health condition or cause a utility to substitute its judgment for the judgment of a medical professional. (Joint Comments at 6). Nevertheless, the Joint Commenters recommend four improvements to the proposed form that will improve clarity for certifying professionals and ensure the language used in the form reflects regulatory language and language commonly used by medical professionals.

First, we recommend replacing the word "affliction" with the words "medical condition" in the space in the form "Anticipated length of the affliction." Medical condition is the term used

in the definition of *Medical Certificate* in the regulations and more commonly used by medical professionals.¹⁰

Second, the Joint Commenters suggest adding the word “utility” in front of each instance of the word “account.” Given this is a form for medical professionals to fill out, presumably a patient will have a separate patient account number for each medical practice. Specifying that the form requires the utility account number, rather than the medical practice account number, will help medical practices and practitioners avoid inadvertently providing incorrect or unnecessary and potentially sensitive information to the patient’s utility. Ensuring accuracy will help streamline the process, thereby improving the accessibility of critical medical protections for medically vulnerable households.

Third, the Joint Commenters recommend the Commission amend the form to include check boxes with regard to the length of the medical condition or illness. Currently, the proposed standard medical certificate form includes a blank, fillable section, asking a medical provider to provide the anticipated length of the customer’s medical condition. The Joint Commenters recommend the Commission format this section using check boxes, asking medical providers if the anticipated length of the medical condition is either shorter or longer than 30 days. The certifying medical professional should only be asked to provide the estimated duration of the medical condition if the condition is determined to be shorter than 30 days, which is the maximum duration of a medical certificate.

¹⁰ See 52 Pa. Code § 56.2

As many medical conditions or illnesses might not have a definite time frame, medical providers may be unwilling to estimate or unsure about the specific length of the medical condition. A check box option would eliminate the need for medical practitioners to widely speculate about the length of the condition. It would also more closely curtail information solicited about the customer's medical condition – better protecting sensitive medical information from unnecessary disclosure. Indeed, the only information the utility needs to know about the length of a condition or illness is whether the condition or illness is expected to last more or less than 30 days. The Joint Commenters believe this slight amendment to the medical certificate form will improve protection of sensitive medical information and will remove uncertainty for medical professionals attempting to complete the form when the length of a condition or illness is unknown.

Finally, the Joint Commenters recommend that the Commission include the PUC logo and “Medical Certificate” heading on the form to help ensure that consumers and medical professionals are confident in their use and reliance on the form.

b. Recommended Amendments to the Medical Certificate Guidance

In addition to amendments to the standardized medical certificate form, the Joint Commenters also recommend that the Commission clarify the proposed guidance accompanying the standardized form, contained in Appendix B of the TO. In Joint Comments filed on October 3, 2019, the Low Income Advocates recommended that the Commission delineate clear guidance and directions for how consumers and medical professionals could submit medical certificates. (Joint Comments at 6-7). While the proposed guidance contained in Appendix B of the TO provides clear explanation regarding the *reasons* for obtaining a medical certificate, it does not describe the *process* for obtaining and submitting a medical certificate. The proposed guidance

also fails to reference the availability of the newly created standard medical certificate form – or how to use it.

The Joint Commenters recommend the proposed guidance included in Appendix B of the TO be revised as follows:

- Include a description to explain that utility customers should contact their physician, nurse practitioner, or physician’s assistant to complete the medical certificate form;
- Provide clear instructions for how utility customers and medical practitioners may submit the necessary information to the utility, including information directing consumers to the correct email, fax, or alternative method of submission for each utility. At a minimum, the form should instruct consumers to contact their utility to identify where and how to submit a medical certificate.
- Revise the guidance to both consumers and medical practitioners to note the availability of a standard medical certificate form and how to access the form.
- Clarify that consumers and medical practitioners are permitted, but not required, to use the standard medical certificate form, as long as they submit a written document with the required elements under Section 56.113.
- Clarify guidance to consumers regarding the applicable payment requirements while under the protection of a medical certificate.
- Clarify the rules governing medical certificate renewals and explain the process for obtaining renewals.
- Provide succinct information to consumers and certifying medical professionals regarding the rights and responsibilities of consumers subject to medical protections.

Proposed language incorporating these recommendations is included in Appendix B to these Comments.

Finally, it is essential that the Commission’s standard medical certificate form and associated guidance and instructions are provided in multiple languages that would allow these important documents to be accessible to consumers with limited English proficiency.¹¹ In order to ensure that medically vulnerable households can uniformly retain access to essential utility services, it is critical that medical professional and customers have ready access to the standard medical certificate form. As such, and in order to ensure that vulnerable customers are able to uniformly and equitable access protections under Chapter 56, it is important that the Commission provide multilingual translations of the standard medical certificate form and associated guidance.

B. PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

i. Clarify Guidance Regarding the Definition of “Domestic Violence”

Chapter 14 specifically exempts “victims under a protection from abuse order or as provided by 23 Pa. C.S. Ch. 61 (relating to protection from abuse) or a court order issued by a court of competent jurisdiction in this Commonwealth, which provides clear evidence of domestic violence against the applicant or customer.”¹² In providing this exemption, the General Assembly recognized that victims of domestic violence are often uniquely vulnerable to physical and financial harm – especially during the period of separation from an abuser or violent intimate partner – and should not be subject to harsh collections rules that could interfere with their ability

¹¹ As an example of language translations offered statewide, the Department of Human Services provides paper applications in English, Spanish, Chinese, Arabic, Cambodian, Russian, and Vietnamese.
<https://www.dhs.pa.gov/coronavirus/Pages/Emergency-Rental-Assistance-Program.aspx>

¹² 66 Pa. C.S. § 1417.

to connect to utility service in a new home.¹³ The domestic violence exemption is intentionally broad, in recognition of the fact that not all victims of domestic violence are able to obtain a Protection from Abuse Order (PFA Order).

In its TO, the Commission declined to provide a definition of domestic violence, instead asserting its expectation that public utilities will operate in good faith when presented with cases of domestic violence and will defer to groups with expertise in this area, such as PCADV. (TO at 12). The Commission further requested that public utilities consult with PCADV, or a local domestic violence program in the utility service territory, for guidance and assistance. (Id.) The Joint Commenters commend the Commission for its continuing recognition of the inherent complexities associated with understanding and identifying domestic violence. As PCADV articulated in comments to the August 29 Secretarial Letter, domestic violence “can include a plethora of conduct such as financial and psychological abuse, which is sometimes more damaging to a victim’s financial capability than physical acts of violence.” (PCADV Comments to the Secretarial Letter at 2). The Joint Commenters support the Commission’s decision to not provide a formal definition of domestic violence, and to instead refer utilities to seek technical assistance from a domestic violence expert. Indeed, utilities are not in a position to make judgments about whether or not specific conduct constitutes domestic violence, and should consult with a professional in the field of domestic violence if there are any questions around the dynamics of domestic violence and domestic violence victimization.

¹³ See Nat’l Resource Ctr. on Domestic Violence, Intimate Partner Homicide Prevention, <https://vawnet.org/sc/intimate-partner-homicide-prevention> (explaining that separation is a “predominant risk factor” for intimate partner homicide).

Nevertheless, we note that the Commission’s guidance to contact PCADV for technical assistance is not sufficiently explicit to prevent utilities from inserting their own judgment or otherwise adopting internal policies that set parameters on the types of orders the utility will accept. The Joint Commenters recommend the Commission explicitly clarify that the definition of domestic violence under Chapter 56 may not be limited to the definition of “abuse” in the PFA Act, as it would inappropriately restrict the applicability of the Chapter 14 exemption to those who are able to obtain a PFA. As the Low Income Advocates explained in the October 3, 2019 Comments, “domestic violence comes in many forms, including physical, emotional, sexual, mental, and economic abuse.” (Joint Comments at 12). By delineating the difference between the Chapter 56 definition of domestic violence, and the definition of abuse under the PFA Act – the Commission will better ensure that victims of domestic violence are able to access critical assistance necessary to better ensure that survivors are safe in their homes.

ii. Accept Court Orders Formally Recognized by Pennsylvania Courts

With regard to other court orders issued outside of the Commonwealth containing clear evidence of domestic violence, the Commission reasons that while these court orders are valid and enforceable (pursuant to the Full Faith and Credit Laws of the Constitution), they are not afforded the protections of the exemption included in Chapter 56. (TO at 13).

The Joint Commenters disagree that all other court orders, aside from PFA Orders, issued in other states should be categorically excluded from the Chapter 56 protections for victims of domestic violence. In the TO, the Commission summarizes the discussion stating, “PCADV advised that court orders from other states can be authenticated by the Court of Common Pleas by filing them with the Court, and that the PFA Act specifically outlines the requirements to certify a PFA from another state. The Court of Common Pleas would then provide a Pennsylvania docket

number after it is certified.” (TO at 10). If a court order has a Pennsylvania docket number assigned to it, and the order is recognized as effective and enforceable by a court of this Commonwealth, it becomes an order issued by a court of competent jurisdiction in this Commonwealth and is therefore *not* prohibited from inclusion as an order that provides clear evidence of domestic violence. The domestic violence exemption from Chapter 14 should therefore apply. The Joint Commenters recommend the Commission clarify its guidance, refrain from issuing a blanket prohibition on other court orders that originate outside the Commonwealth, and explicitly recognize that orders outside of the Commonwealth may gain effect through Pennsylvania courts and therefore qualify for the exemption.

iii. Improve Consumer Education Regarding Domestic Violence Protections

In October 3, 2019 Comments, CAUSE-PA and TURN recommended specific processes for outreach to customers who may be experiencing domestic violence and provided ideas for how utilities may handle outreach, education, and training measures. In its TO, the Commission encourages utilities to contact their local domestic violence agency and participate in “a training session” focusing on domestic violence. (TO at 14). However, the Commission does not include any additional recommended processes for consumer outreach in the TO. As discussed in prior comments, the following additional processes should be established by utilities to ensure that victims can learn about and receive the applicable protections (Joint Comments at 13):

- If an applicant or customers is unable to connect to service, seeks a payment arrangement, or is attempting to resolve a termination, utilities should screen consumers to identify whether they are a victim of domestic violence with a qualifying

court order that would exempt the consumer from occupant liability and would otherwise entitle the consumer to additional protections;¹⁴

- Consumers who indicate that they are a victim of domestic violence with a qualifying court order should be transferred to a smaller, dedicated team – such as a CARES team – within the utility that is sensitive and highly trained in issues related to domestic violence and who can review documentation, apply protections, and connect the victim with other appropriate resources;
- The Commission should specifically encourage utilities to invite staff from local domestic violence programs to participate in the utility’s universal service advisory groups in order to better “engage in a dialogue with the community organizations that deal with domestic violence issues.” (TO at 14).

Utilities should further ensure that there are appropriately trained front-line and CARES team staff who are able to communicate with victims of domestic violence in an appropriate, trauma-informed manner. At a minimum, this dedicated team should be capable of directly communicating with consumers in English, Spanish, and other languages spoken in a utility service territory.

iv. Provide Additional Guidance Regarding Training for Utility Staff

In its TO, the Commission encouraged utilities to participate in training sessions related to domestic violence, and noted that the Bureau of Consumer Services (BCS) continues to offer

¹⁴ Scripted language for customer service representatives (CSRs) could include having CSRs ask if the customer is aware there are protections available for victims of domestic violence. Then CSRs could ask if the customer wishes to explore such options at this time – letting the customer know, should they wish to do that, they will be transferred to another representative with detailed knowledge of how to assist them. This is similar to the standardized domestic violence screening conducted in medical and judicial settings.

trainings in coordination with PCADV. (TO at 14). The Joint Commenters agree that utilities should seek training related to domestic violence and encourages the Commission to strengthen training recommendations for utilities and utility staff – especially those who interface directly with consumers. As discussed in the October 3, 2019 Comments of the Low Income Advocates, training and education should be a dynamic, ongoing process that includes advocates, utilities, Commission staff, and domestic violence experts. (Joint Comments at 13-14). Utility call center and other front-line staff should receive training to appropriately screen for and identify domestic violence, to explain basic utility protections that apply, and then transfer customers to a smaller, dedicated team, who receives intensive and specialized training related to domestic violence issues and who can manage the case holistically, helping the customer receive the benefits and assistance needed. The Low Income Advocates suggested that utilities’ CARES program may be a helpful option for handling these sensitive cases. (Id. at 13).

The Joint Commenters maintain that training utility staff related to issues of domestic violence should be cyclical and occur, at a minimum, on an annual basis. (Joint Comments at 14). A single training, while helpful, will not ultimately be sufficient to maintain the level of sensitivity, care, and service required for handling these cases, especially given the rate of call center turnover and the complexity of the issue. Counsel for CAUSE-PA, TURN, and for PCADV and its member programs regularly assist victims of domestic violence who report being told by a customer service representative that being a survivor of domestic violence is irrelevant to resolve a pending termination or to address utility debt – revealing a critical issue that could be resolved through training. Regular training is of the utmost importance to ensure utilities are complying with the exemption included in Chapter 14 and that victims are provided critical protections necessary for survival.

Finally, in the TO, the Commission encourages utilities “to contact their local PCADV and participate in training sessions about domestic violence.” (TO at 14). The Joint Commenters agree that PCADV is an excellent resource throughout the Commonwealth. However, local domestic violence agencies vary substantially in terms of size and capacity, and may not have the resources to assist. The Joint Commenters therefore encourage the Commission to request that utilities reach out to PCADV as a first step. This would allow PCADV to either assist utilities directly or triage to local agencies which have adequate resources to assist.

One missing piece in the Commission’s guidance on this issue is a requirement that utilities provide cross-training and information to local domestic violence programs about available universal service programming that could help survivors of domestic violence to maintain service to their home – or establish service in a new home after escaping violence at a former residence. Domestic violence programs provide services to survivors who are often in transition from one home to another – or are otherwise experiencing an acute hardship. We recommend that the Commission require utilities to not only seek training on domestic violence from PCADV, but also to offer reciprocal training and technical assistance to local domestic violence program staff to help connect survivors with available assistance programs.

v. *Improve Confidentiality for Victims of Domestic Violence*

In its TO, the Commission does not address additional protections related to the handling and retention of sensitive documentation and information from victims of domestic violence. As described in the Low Income Advocates’ October 3, 2019 Comments, the Joint Commenters recommend the Commission provide the following direction:

- Once a utility has noted that a customer is exempt from Chapter 14, the utility should make a note in the customer’s file, apply the appropriate protections, treat the

documents received as confidential, and appropriately destroy any copies of the document;

- Require the utilities to identify dedicated staff who will have specialized training and expertise related to domestic violence who will work with customers and applicants claiming the domestic violence exemption; and
- Require utilities to establish and maintain a dedicated email address and fax line for victims of domestic violence to submit supporting documentation, which is accessible only to a dedicated team who works on domestic violence matters within the utility.

Again, utilities should ensure that dedicated staff – as well as front line staff – understand the domestic violence exemption and can communicate with victims of domestic violence in multiple languages, including, at minimum, Spanish and English.

vi. Ensure Victims with a PFA or Other Court Order are Exempt from Third Party Liability Consistent with Public Utility Code

The Joint Commenters recommend the Commission reinforce the third party liability standards that apply to victims of domestic violence with a qualifying court order.

Chapter 14 exempts victims of domestic violence with a qualifying court order from the entirety of the Chapter – including the Chapter’s imposition of third party liability, prescriptive payment arrangements, and other collections and termination standards that could interfere with the ability of a survivor to establish and maintain utility service. Instead, victims of domestic violence are subject to subsections L through V of Chapter 56 – which explicitly prohibit termination or collection of debts from an applicant or customer that was accrued in the name of any third party. Pursuant to section 56.285, a victim cannot be held responsible for utility debt accrued by a third party: “[a] public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the

name of a person other than the applicant unless a court, district justice or administrative agency has determined that the applicant is legally obligated to pay for the service previously furnished. Examples of situations include a separated spouse or a cotenant.”¹⁵

While the current regulatory structure offers significant protection for victims, and can effectively address many of the barriers that utility debt poses for victims of domestic violence, these protections have been inconsistently implemented by utilities since the original exemption to Chapter 14 was adopted in 2004. Specifically, some utilities only exempt victims of domestic violence from third party liability only when debt was accrued by the defendant listed on the court order. But this is not what the statute or regulations require. Again, victims of domestic violence are exempt from third party liability, which includes debt accrued by any third party.

The Joint Commenters recommend that the Commission reinforce through guidance that victims of domestic violence are exempt from third party liability – including any debt accrued in a third party’s name pursuant to Section 56.285.

C. PRIVACY GUIDELINES & ELECTRONIC NOTICE OF TERMINATION

In its Final Rulemaking Order, the Commission amended sections 56.93 and 56.333 to permit 72-hour notice of termination to be provided electronically, provided the consumer consents to electronic notification of termination. (TO at 14). The amended sections referenced “the Commission’s privacy guidelines” with regard to a disclosure of a consumer’s electronic contact information, but further privacy guidelines were not promulgated at the time. (Id.) Rather, the Commission deferred the issue for consideration as part of the work group process.

¹⁵ 52 Pa. Code § 56.285.

In its TO, the Commission noted that it “agrees that telephone numbers and email addresses should not be shared with third parties absent express and clearly defined permission from the customer to share.” (TO at 15). The Commission proposed that there be a “separate, distinct notice for customers choosing to enroll in receiving electronic notification [of termination pursuant to sections 56.93 and 56.333].” (TO at 16). The Commission explained that notice to consumers regarding consent for electronic notice of termination “should explain and inform the customer that this is voluntary and that the purpose is to receive notification of a pending termination electronically.” (Id.) The Commission was explicit: “consent should not be a check box” and consumers should be empowered “to revoke their consent at any time and by any clear means.” (Id.)

The Commission asked for comment on whether customers should have to renew their consent to receive electronic notice of termination and, if so, how often they should renew that consent. The Commission proposed that utilities send a reminder notice once a year to remind consumers to review their account information and the various notices the customer may have opted to receive electronically.

The Joint Commenters are supportive of the Commission’s proposals, generally, but note that additional clarity is necessary to (1) safeguard personally identifying information from disclosure to third parties, and (2) ensure that consumers consent to receiving electronic notice of termination. Indeed, these are two separate issues, each of which require further guidance. The Joint Commenters will address each issue in turn.

i. Personally Identifiable Information Must Be Protected

First, with regard to disclosure of personally identifiable information to third parties, the Joint Commenters recommend that the Commission institute a separate, statewide proceeding to develop more detailed data privacy guidelines. The Joint Commenters support the Commission’s

general statement that phone numbers and electronic contact information should not be subject to third party disclosure “absent express and clearly defined permission from customers to share.” (TO at 15). However, we are concerned that this general guidance is not sufficiently explicit to protect sensitive consumer information from unintended types of disclosure. This issue warrants additional examination and guidance to further define the circumstances in which a utility may seek permission from a consumer to disclose their information to a third party – and the manner in which they may seek such permission.

The Joint Commenters note that the Commission’s TO leaves key questions regarding third party disclosure of personally identifiable information unasked and unanswered. For example, for what purpose may a utility seek permission from a consumer to disclose consumer data and information to a third party? Could a utility seek permission from a consumer to disclose information to third party marketers or private data companies for any purpose? What parameters, if any, must a utility place on the third party once information is disclosed? May a utility earn a profit from disclosure of consumer data if they otherwise have consent from the consumer to disclose their information? Would a utility have to disclose to the consumer if they will earn a profit from disclosure of their information to a third party? If a utility cannot earn a profit from disclosure of consumer data, must they also restrict the third party from selling personally identifying information once disclosed? May a utility disclose personally identifiable information to a government agency if they obtain general permission to share personally identifiable information with a third party?

Given the proliferation of “big data” firms, and the substantial financial value of consumer data and information maintained by utilities, it is critical that the Commission develop strong and

transparent guidelines safeguarding consumer information from disclosure that may place the consumer at risk of identity theft, financial harm, or other safety risks.

The need for additional Commission guidance to safeguard customers' personally identifiable information is of particular concern given recent reports related to the use of utility account information by government agencies. In February of this year, it was reported that that U.S. Immigration and Customs Enforcement (ICE) officers accessed a private database holding phone, water, electricity, and other utility records of hundreds of millions of utility consumers across the country.¹⁶ It is unclear from the reports whether Pennsylvania utilities shared personally identifying information with government agencies – or otherwise disclosed data *to* a third party that was later disclosed *by* that third party. But the reports do make it clear that disclosure of personally identifiable information to a third party can have profound and far-ranging impacts on consumers that are not foreseeable.

The Joint Commenters further note that safeguarding personal identifiable information is critically important for customers who are victims of domestic violence, whose physical safety may be endangered if their personally identifiable information or whereabouts become known to their abusers. Protection of all forms of communication is critically important for these customers' safety.

The Joint Commenters assert that personally identifying information should be protected from disclosure to any third parties – including government or law enforcement agencies and third-party marketers. *While consent for disclosure may be warranted in certain narrow circumstances,*

¹⁶ Harwell, Drew; February 26, 2021; ICE Investigators used a private utility database covering millions to pursue immigration violations. <https://www.washingtonpost.com/technology/2021/02/26/ice-private-utility-data/>

such as to allow for enrollment in utility-run programs, to resolve a consumer billing dispute, or to enable consumers to select a competitive supplier, such consent should always be specific and time-limited, should fully apprise the customer of the nature and purpose of the disclosure and the entities that could access information, and should require the customer to “opt in” to the disclosure – rather than “opt out.” Utilities should be expressly prohibited from selling customer data to any third party – even with consent of a consumer to disclose their information. When disclosure to a third party is warranted, and the utility has obtained consent from the consumer, the utility should nevertheless be required to restrict the third party from selling or disclosing that information to another third party.

Ultimately, the Joint Commenters support the Commission’s proposal that telephone numbers and email addresses not be shared with third parties “absent express and clearly defined permission from the customer to share.” (TO at 14-15). However, we are concerned that this guidance is not sufficiently specific to ensure that consumers fully understand the ways in which their information could be shared – and to put reasonable restrictions on the manner in which information may be disclosed to third parties. Thus, we recommend that the Commission institute a further proceeding to establish clear and detailed guidelines regarding the disclosure of consumer data and information to third parties.

ii. Consent to Electronic Notice of Termination Must be Explicit

The Joint Commenters strongly support the Commission’s proposal that customer consent to electronic notice of termination, pursuant to sections 56.93 and 56.333, be obtained through a separate and distinct notice to consumers that clearly explains the purpose and intent of the notice – and the implications associated with the consumer’s consent. (TO at 16). Specifically, the Commission proposes that this separate and distinct notice clearly convey that consent is voluntary and that the consumer is consenting to receive notification of a pending termination through

electronic means. (Id.) The Commission explicitly states that this notification “should not be a check box.” (Id.)

The Joint Commenters strongly agree with the Commission’s proposal that utilities obtain consent for electronic notice of termination through a separate and distinct notification to ensure customers fully understand the implications of what they are agreeing to when they provide consent to receive electronic notice. While many consumers may consent to receive electronic bills or program offers, there is a different level of urgency associated with a three-day notice of termination – as well as far-ranging consequences to the health and safety of the household. As such, the Joint Commenters submit that it is not reasonable for utilities to rely on a consumer’s general approval to receive electronic communications as grounds to also provide a notice of termination electronically.

The Joint Commenters further recommend that the Commission establish a clear signatory process for customers to affirmatively consent to receiving electronic notice of termination.¹⁷ The Commission notes that consent “should not be a check box.” (TO at 16). However, the Commission stops short of establishing a clear process for customers and applicants to provide consent. The Joint Commenters submit that utilities should be required to obtain consent in writing, and submit that customers and/or applicants should be required to “opt in” by signing and returning a consent form indicating explicitly that they consent to receiving 72-hour notice of termination electronically, and noting the email address(es) or mobile phone number where the

¹⁷ Act 155 authorized customers to agree to obtain electronic notification of proposed termination, under specific terms and conditions to be established by the Commission. As set forth in 66 Pa. C.S. § 1406(b)(1)(ii)(C), attempted contact for purposes of delivering termination notice may be “by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.” However, 66 Pa. C.S. § 1406(b)(1)(ii)(D) requires that the customer “affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.”

notice should be sent. We recommend that the Commission develop a standard consent form for use by utilities.

Moreover, the Joint Commenters urge the Commission to impose a two-step authorization process. Once customers affirmatively consent to receiving electronic notification for service termination, they should receive confirmation of that consent from the utility to the listed email address or mobile phone number to ensure that the contact information is accurate. This type of two-step authorization is standard for all kinds of electronic-based enrollment and account set-up. Certainly, the critical importance of an electronic notice of termination should be afforded at least the same level of safeguards provided for a conference registration or retail store account.

Finally, the Joint Commenters request that the Commission provide guidance to the utilities related to what personal information can be shared by electronic communication. As the Low Income Advocates explained in their October 3, 2019 Comments, a utility that provides a 72-hour notice of termination by telephone or personal contact can confirm they are speaking to the account holder or authorized user. (Joint Comments at 18). By contrast, electronic communication is not secure, and utilities have no way of verifying whether the message reached the intended recipient. As such, the Joint Commenters request that the Commission provide guidance about what information should be included in electronic 72-hour notices of termination. Specifically, utilities should be required to limit the information provided through electronic communication to only what is necessary under statute and regulation to inform a customer of their pending termination and associated rights and responsibilities.

iii. Consent to Electronic Notice of Termination Must be Time Limited

In the TO, the Commission proposes that customers should be able to revoke consent to receive electronic notification at any time and “by any clear means.” (TO at 16). The Joint Commenters support customers having the express ability to revoke consent at any time. However,

the concept of what constitutes “clear means” may be interpreted in a variety of ways by different utilities. Moreover, there is no affirmative obligation placed on the utility to verify and update information.

The Joint Commenters recommend the Commission clarify what may be considered by the utility to constitute “clear means” of revoking consent, and require utilities to affirmatively verify the consumer’s ongoing consent to receive electronic notifications and update the consumer’s email address during any non-emergency point of contact with a consumer.

The Joint Commenters also support the Commission’s proposal that utilities send periodic notices to all customers reminding them to review their account information and other electronic notifications for which they previously provided consent to receive. (TO at 16). The Joint Commenters assert that the reminder notices should be provided at least on an annual basis, and should include explicit information about the consequences of inaction. The Joint Commenters recommend timing these notices to be sent in March each year - coincidental with the end of the winter moratorium on utility terminations. As more fully explained in the Low Income Advocates’ October 3, 2019 Comments, economically vulnerable households often lack access to reliable electronic or other communication tools and may change email addresses or phone numbers multiple times, as circumstances require, over the course of a year. (Joint Comments at 16). Requiring utilities to obtain annual consent will help ensure communications are timely received, giving customers the opportunity to work with their utility to prevent service termination.

IV. CONCLUSION

The Joint Commenters thank the Commission for the thoughtful consideration of the above Comments. The Joint Commenters are grateful for the opportunity to offer recommendations for improvements to medical certificates, protections to survivors of domestic violence, and privacy guidelines to protect utility consumers. We urge the Commission to act in accordance with the recommendations raised in these Comments to ensure robust consumer protections are available pursuant to Chapter 56 of the Pennsylvania Code.

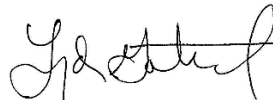
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Appendix A

REQUEST FOR MEDICAL CERTIFICATION

Name of the customer or applicant in whose name the utility account is or will be registered:
Utility Account number:
Address of the customer or applicant in whose name the utility account is or will be registered: Name and address of patient if different from the customer or applicant above: Relationship of patient to customer or applicant if patient is different from the customer or applicant above:
Anticipated length of the affliction-medical condition: 30 days or fewer <input type="checkbox"/> Please specify anticipated length if less than 30 days: _____ More than 30 days <input type="checkbox"/>
Printed name of the Physician, Nurse Practitioner, or Physician's Assistant:
Office address and Office Phone number of the Physician, Nurse Practitioner, or Physician's Assistant:
Signature (or E-signature) of the Physician, Nurse Practitioner, or Physician's Assistant and the Date signed:

To Be Completed By The Physician, Nurse Practitioner, or Physician's Assistant

Appendix B

Medical Certificates

Guidance for consumers:

If you are behind on your bills, you may be able to avoid shutoff or obtain restoration of public utility service if there is a medical emergency in your household. A medical emergency exists if you or a member of your household are seriously ill or have a medical condition that will be worsened if you do not have public utility service.

To use a medical certificate to avoid termination or restore service, **someone in the household must** be a customer of the public utility. After your service is terminated or discontinued, you remain a customer of a public utility for 30 days. After 30 days have passed, the public utility considers you to be an applicant for new services. Once you revert to applicant status you are no longer a customer, and your medical certificate may not be enough to restore service. A payment may be required with the medical certificate in that case.

How to use a Medical Certificate:

1. **Contact the utility and tell them you have a medical emergency, and that you are seeking a medical certificate.**
2. **Contact your medical provider and ask them to complete the medical certificate form. You can use the Public Utility Commission's standard medical certificate form, but it is not required. You can use a form provided by the utility or your medical provider can simply provide the required information (listed below) in writing.**
3. **You or your medical provider should fax or email the form directly to the utility. Contact your utility to ask where the form should be sent.**

Information required on a medical certificate:

1. The name and address of the customer or applicant in whose name the account is registered.
2. The name and address of the afflicted person and the relationship to the customer or applicant.
3. The anticipated length of the **medical condition**.
4. The name, office address, and telephone number of the certifying physician, physician assistant, or nurse practitioner.
5. Signature of the certifying physician, physician assistant, or nurse practitioner.

Once a medical certificate is accepted by a public utility, a pending shutoff must be postponed for a maximum of 30 days. **You can renew your medical certificate twice regardless of payment, for a total of 90 days of protection from termination. If you pay your current charges or budget bill amount while protected from termination by a medical certificate, you may obtain additional medical certificates without limitation.**

If your service has already been shut off, you may provide a medical certificate to the public utility to have service restored within 24 hours. If your service has been terminated for more than 30 days, you will revert to applicant status. A payment may be required with the medical certificate if you are an applicant seeking restoration and you still have an outstanding balance due.

A single medical certification will result in postponement or restoration of service for a maximum of 30 days. However, you still have the responsibility to pay your current bills or your budget billing amount during the postponement and any renewal thereof. If you do not pay your current bill **or budget bill amount**, the utility is not required to accept more than **three** medical certificates **(an initial certificate and two renewals)**.

Medical Certificates

Guidance for Medical Professionals:

Consumers may be able to avoid shutoff or obtain restoration of public utility service if there is a medical emergency in the household. A medical emergency exists if the consumer or a member of the **consumer's** household is seriously ill or has a medical condition that will be worsened if the consumer does not have utility service.

The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician, nurse practitioner, or physician assistant and not with the public utility.

A single medical certificate will result in the postponement or restoration of service for a maximum of 30 days. Consumers have the responsibility to pay current bills or the budget billing amount during the postponement. The medical certificate can be renewed for additional 30-day periods.

For a medical certificate to be accepted by the public utility, a physician, physician assistant, or a nurse practitioner must call or write the public utility with:

1. The name and address of the customer or applicant in whose name the account is registered.
2. The name and address of the afflicted person and the relationship to the customer or applicant.
3. The anticipated length of the affliction.
4. The name, office address, and telephone number of the certifying physician, physician assistant, or nurse practitioner.
5. Signature of the certifying physician, physician assistant, or nurse practitioner.

This information can be provided to a utility in any written format. The Public Utility Commission has a standard form (link form). However, no particular form is required. Any writing containing this information should be accepted.

If the certifying information is first provided verbally, it must be also submitted in writing as a follow up.