

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Chapter 14 Implementation

Docket No. M-2014-2448824

**COMMENTS OF THE CONSUMER ADVISORY COUNCIL
TO THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

March 2, 2015

I. INTRODUCTION

On October 22, 2014, Governor Corbett signed into law HB 939, or Act 155 of 2014. This law became effective on December 22, 2014. The Act reauthorized and amended Chapter 14 of the Public Utility Code (66 Pa. C.S. §§ 1401-1419.)

As the initial step of the implementation process, on December 10, 2014, the Commission issued a Secretarial Letter alerting all affected utilities to some of the more significant provisions of Chapter 56 that have been superseded by Act 155.¹ On January 15, 2015, the Commission issued a Tentative Order (TO) which was then published in the Pennsylvania Bulletin on January 31, 2015. The Commission's Tentative Order noted that a rulemaking is a lengthy process and that, in its review, it had become aware of some issues in Act 155 that may be in need of more immediate Commission guidance as to their implementation and interpretation. The Commission proposed to start the review of two issues that it determined to be in the most need of immediate attention. These are: Section 1403, Definition of *Medical Certificate*, in which the Commission is to approve the "form" that a medical certificate must take, and Section 1410.1(3) and (4), the utility reporting requirements concerning accounts with arrearages in excess of \$10,000.00 and annual reporting of medical certificate usage.

The Consumer Advisory Council ("CAC" or "Council") to the Pennsylvania Public Utility Commission,, acting pursuant to the regulatory authority granted to it², respectfully submits these comments³ to the Commission regarding the Tentative Order in the above captioned matter.

¹ See Secretarial Letter re: *Act 155 of 2014 Implementation and 52 Pa. Code Chapter 56*. Docket No. M-2014-2448824 (December 10, 2014).

² The CAC is created and functions pursuant to 52 Pa Code sections 91.1-91.5.

³ Reviewed and approved by the CAC for filing on March 2, 2015.

II. Comments

Statement of Consumer Advisory Council Position

In these comments, the CAC addresses the Commission's specific requests for comment with respect to medical certificates. At the outset, we note that this is not the first time that the CAC has expressed its opinions in regard to the implementation of rules regarding the medical certification process. Among our prior comments⁴ to the Commission, subsequent to the initial enactment of Chapter 14, the CAC supported and strongly recommended:

- Leaving the medical determinations to medical professionals. Emergency medical determinations are important safeguards intended to protect the health and welfare of a household's occupants. Neither the Commission nor a utility is in a position to substitute its judgment for that of a medical practitioner.
- The elimination from the definition of physician at § 56.2 the requirement that a physician must be licensed by the Commonwealth of Pennsylvania. Many individuals are treated by out-of-state physicians. Those individuals who live in communities bordering other states or require specialists or treatments located in other states should not be precluded from the intended protection of the statute.
- The attempt to clarify the requirements of § 56.116 by specifying that payment of current bills be considered an equitable effort at payment.

The Commission responded favorably to the Council's comments on these matters and stated:

We disagree with the parties that ask us to specify what kinds of illnesses and conditions qualify for emergency medical procedures. This would place this agency into the position of making medical judgments and distinctions, something we are clearly not qualified to do.....Again, these determinations are best left to medical professionals (at p.51).

⁴ Comments Of The Consumer Advisory Council to the Pennsylvania Public Utility Commission, Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 PA.C.S., Chapter 14; General Review of Regulations, Docket No. L-00060182, submitted April 20,2009.

We also propose eliminating from the definition of physician at § 56.2 the requirement that a physician must be licensed by the Commonwealth of Pennsylvania. This is to reflect the reality that many Pennsylvanians who live in border communities or have serious conditions that require specialists rely on out-of-state physicians (at 51.) and

again note that restrictions on medical certificate usage only apply if the customer is not making an equitable effort to pay utility bills per § 56.116. To make this requirement less vague, we propose to specify that at least current bills should be paid in order to be considered an equitable effort at payment. The current language in § 56.116, in addition to being vague when it refers to "...equitably arrange to make payment..." is also problematic in that Chapter 14 specifies that the Commission cannot require a utility, absent a significant change in circumstances, to enter into more than one payment agreement. By requiring the payment of at least current bills or budget amounts, the customer's account balance will not accrue additional charges while protected by a medical certificate. (at 52.)

In regard to the matter of how best to implement the definitional requirement regarding the form a medical certificate should take, CAC respectfully submits that the Commission should stay the course and adopt a process regarding the form which is simple, streamlined, and easily implemented by those who are ill and by the physicians, physician assistants, and nurse practitioners ("medical professionals") treating them. It continues to be of paramount importance that the criteria necessary to obtain a medical certificate remain consistent with past practice, existing regulations, and that issues regarding "form" be considered as a means to ensure that the same level of protection continues without impediment for those who are ill. The CAC believes existing medical certification procedures as stated in regulations should continue. Those regulations, are practical, realistic, and represent common sense. They embody a balance between the need for expedited action to protect individuals who are ill and the requirement for certification by a medical professional.

1. Medical professionals should be permitted to use the most effective means available to them. No single or specific “medical certificate form” should be mandated by the Commission or by a utility.

In the TO, the Commission states:

We also note that while the regulation uses the word “form” – this does not necessarily mean literally a “form.” The phrase the statute uses is “*in* a form approved by the commission”; not “*on* a form approved by the commission.” 66 Pa. C.S. § 1403 (emphasis added). For example, the form may be a letter from a licensed physician or nurse practitioner. (TO at 4, *emphasis* in original..)

CAC strongly supports the ability of the medical professional to determine the most convenient and expeditious manner to convey the necessary information to a utility. Once the Commission has determined the information required to be included in the written certification, the medical professional, should be able to choose how to convey that information to the utility. A communication that is placed on letter, prescription tablet, note pad, electronic, or fax, among other potential forms of communications should be permitted and accepted.

2. The information presently required in section 52 Pa Code § 56.113 meets and exceeds the requirements of the medical certification definition in section 1406 (f) and should continue to be contained in the medical certification communication.

In its’ TO, the Commission stated:

We invite parties to comment on what information a medical certificate should contain. We further invite parties to comment on the adequacy of the information requirements standards contained in the current regulation at 52 Pa. Code § 56.113:

§ 56.113. Medical certifications.

Certifications initially may be written or oral, subject to the right of the public utility to verify the certification by calling the physician or nurse practitioner or to require written verification within 7 days. Certifications, whether written or oral, must include the following:

- (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 relationship to the customer or applicant.
- (3) The nature and anticipated length of the affliction.
- (4) The specific reason for which the service is required.
- (5) The name, office address and telephone number of the certifying physician or nurse practitioner.
(TO at 4-5.)

The CAC submits that a medical certificate should contain only the information presently required in section 56.113 of the Pennsylvania Code, as this information meets and exceeds the medical certificate definitional requirements of Act 155.⁵

The purpose of requiring a written medical certificate in both the current and former version of Chapter 14 is to “verify the condition” of the ill applicant, customer, or household member.⁶ It is the medical professional who has the responsibility to make the medical finding and attest that an ill applicant, customer, or household member should be afforded the protections provided. The utility’s role in the medical certification process is limited to confirming the authenticity of the certification and applying the certification to the appropriate account to stop termination. Thus, the CAC respectfully submits that the only information which should be included on a medical certification is the information needed to satisfy the statutory definition of medical certificate and is necessary for the utility to confirm that a medical professional has rendered a determination that the medical condition exists, and to identify the appropriate account. 52 Pa Code § 56.113

⁵ Section 1403 defines “Medical Certificate”:
“*Medical Certificate.*” A written document, in a form approved by the commission:
(1) certifying that a customer or member of the customer's household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition; and
(2) signed by a licensed physician, nurse practitioner or physician's assistant.

⁶ 66 Pa. C.S. § 1406(f).

3. A simple, easily accessible form conforming to the present requirements in 52 Pa Code §56.113 should be made available for medical professionals to voluntarily use.

As previously noted in these comments, while §1403 defines a medical certification as “in a form approved by the commission”, it does not mean that the Commission must adopt and *require* use of a universal form. While the CAC urges the Commission to refrain from creating a required form for medical certification, it does support the development and electronic availability of a *voluntary* medical certification form which is simple, easily accessible, and conforms to the present requirements in 52 Pa Code §56.113. This form could be placed on the Commission’s and the utility’s websites for downloading as well as on the termination notices which are provided to customers. In this way, the required information would be readily available and would greatly streamline the process. The Council supports making available each of the methods of providing the medical certification to a utility including, but not limited to email, fax, and US post mailing addresses.

4. Clarify the payments required to continue the protections of a medical certificate.

In its Tentative Order, the Commission noted that “consumers have the responsibility to ‘make payment on all current undisputed bills or budget billing amount’ while under the protection of a medical certificate.” And that “Failure of a customer to comply with this requirement can result in the utility restricting the customer to an original medical certificate and two renewals.”⁷

The Commission highlighted in its TO, that the *Emergency Provisions* contained in Chapter 56, Title 52 of the Pennsylvania Code provides that a customer who

⁷ TO at 4 (quoting 52 Pa. Code § 56.116).

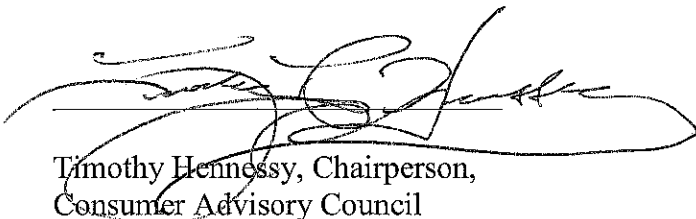
equitably makes payment” on “all current bills” may renew their certification every 30 days, without restriction; however, a customer who fails to make equitable payment is limited to two 30-day certification renewals (for a total of 90 days).⁸

The Council respectfully urges the Commission to provide specific clarification in its Final Order that medical certification protection will continue to be provided for so long as the medical certificates continue to be timely renewed and submitted to the utility and the customer continues to make payment on all **current** undisputed bills or budget billing amount. The CAC submits that customers, who are medically in need of utility service, should not have their medical protections curtailed or limited as a result of past bills or debts accumulated prior to issuance of the certificate. The statute makes no such requirement and utilities should not be enabled to provide such limitations on an ad hoc basis. In any situation in which a utility feels that the medical certification protection should be denied or limited it has the express ability to petition the commission to do so.

5. CONCLUSION

CAC requests that the Commission provide guidance to public utilities which adopts the recommendations set forth above.

Respectfully submitted,



Timothy Hennessy, Chairperson,
Consumer Advisory Council

Dated: March 2, 2015

⁸ TO at 4 (citing 52 Pa. Code § 56.114).