

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

**Chapter 14 Implementation**

**Docket No. M-2014-2448824**

---

**COMMENTS OF THE  
COALITION FOR AFFORDABLE UTILITY SERVICE AND ENERGY EFFICIENCY  
IN PENNSYLVANIA (CAUSE-PA)**

---

**March 2, 2015**

Submitted By:

The Pennsylvania Utility Law Project  
*Counsel for CAUSE-PA*

Harry S. Geller  
Elizabeth R. Marx  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101-1414  
(717) 236-9486  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

## Table of Contents

I. INTRODUCTION AND BACKGROUND.....	2
II. MEDICAL CERTIFICATES: SECTION 1403.....	3
a. The Standard for Issuing a Medical Certificate is Unchanged by Act 155 .....	3
b. No Single “Form” Should Be <i>Required</i> for Medical Certificates, But a Model Form – Based on the Requirements Specified in section 56.113 of the Pennsylvania Code – Should be Made Widely Available for Use on a <i>Voluntary</i> Basis .....	5
i. <i>The Requirements in 52 Pa. Code § 56.113 are Sufficient to Comply with Act 155, and            Likely Exceed the Requirements of the Act</i> .....	6
ii. <i>The Commission Should Develop and Widely Distribute a Voluntary, Model Medical            Certification Form</i> .....	8
c. Oral Certification by Physician / Physician Assistant / Nurse Practitioner Should Continue to Be Accepted Pending Written Follow-Up.....	9
d. The Equitable Payment Required During Pendency of Certificate Must be Clarified.....	13
III. ACCOUNTS EXCEEDING \$10,000 IN ARREARS: SECTION 1410.1(3) .....	18
a. Accounts with Frozen Pre-Program CAP Arrears Should Not Be Included in Arrearage Reporting Requirements in section 1410.1(3) .....	20
b. Accounts Which Fall Within the Domestic Violence Exemption in Section 1417 Should Not Be Included in Arrearage Reporting Requirements .....	21
IV. MEDICAL CERTIFICATE REPORTING REQUIREMENTS: SECTION 1410.1(4).....	21
V. OTHER ISSUES .....	22
a. Prohibition on Requiring Security Deposits for CAP-eligible Customers .....	23
b. Exemption for Court Orders of Protection .....	25
VI. CONCLUSION .....	27

## I. INTRODUCTION AND BACKGROUND

These comments are submitted by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its attorneys at the Pennsylvania Utility Law Project, in response to the Commission’s Tentative Order issued January 15, 2015, and published in the Pennsylvania Bulletin on January 31, 2015.

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.

Effective implementation of Act 155 of 2014 is critical to ensure that vulnerable Pennsylvanians are provided reasonable billing, collection, and termination practices, and in turn that the physical and economic safety and wellbeing of Pennsylvania’s most vulnerable populations is protected.

CAUSE-PA respectfully requests that the Commission bear in mind that the goal of Chapter 14 is to improve payment activities by those *able and responsible* for payment. It is not intended to provide undue burdens on disadvantaged populations. The Declaration of Policy of Act 201 states that the General Assembly “seeks to achieve greater equity by eliminating opportunities for *customers capable of paying* to avoid timely payment of public utility bills.”<sup>1</sup>

---

<sup>1</sup> 66 Pa. C.S. § 1402(2).

At the same time, the General Assembly “seeks to ensure that service remains available to all customers on reasonable terms and conditions.”<sup>2</sup>

Chapter 14 provides protections or specific exemptions for those who are impoverished, victims of domestic violence, and/or diagnosed with medical conditions. Each of these protections have been maintained at the same level or extended as a result of Act 155. It is up to the Commission to affirmatively assure that these protected customers are actively identified by utilities, actively apprised of their rights, and protected.

In the following comments, CAUSE-PA addresses the Commission’s specific requests for comment with respect to medical certificates and reporting requirements for accounts with large arrears. In addition, CAUSE-PA discusses the need for additional interim guidance with respect to the prohibition on security deposits for customers and/or applicants who are eligible for CAP assistance and the expanded exemption for victims of domestic violence.

## **II. MEDICAL CERTIFICATES: SECTION 1403**

### **a. The Standard for Issuing a Medical Certificate is Unchanged by Act 155**

From the outset, it is important to explain that, while Act 155 of 2014 added the definition of “medical certificate,” the underlying standard for issuing a medical certificate to a customer and/or household member remains unchanged.

Prior to the effective date of Act 155, medical certificates were available to customers or household members “*afflicted* with a medical condition that will be *aggravated* by cessation of service.”<sup>3</sup> Under Act 155, medical certificates are available to customers or household members

---

<sup>2</sup> *Id.* § 1402(3).

<sup>3</sup> 66 Pa. C.S. § 1403 (prior to Act 155 amendment) (emphasis added).

who are seriously ill or have been “*diagnosed* with a medical condition which requires the continuation of service to *treat* the medical condition.”<sup>4</sup> These language clarifications, however, did not change the underlying substantive protection from termination for ill customers and household members.

The term *afflicted* in the former law, an adjective used to describe the condition, was replaced with the term *diagnosed*, a verb used to describe the method in which a physician identifies the individual’s condition. The latter necessarily encompasses the former, as both require that a physician identify the individual’s condition...or, in other words, provide a diagnosis of the individual’s affliction. The second part of the change in language similarly does not alter the previous standard for issuing medical certificates. The need for utility service to *treat* a medical condition (under Act 155) is functionally equivalent to the need for service to *prevent aggravation* of a medical condition (under the former law). Part of treating an illness necessarily includes preventing aggravation of the condition. For example, *treating* diabetes may require refrigeration to store insulin products and, in turn, the lack of refrigeration could *aggravate* the condition of a person with diabetes if insulin is not safely stored and, thus, is unavailable to the individual who relies on insulin.

Given the lack of substantive change to the standard for issuing a medical certificate, as well as the need to ensure that the process operates simply and expeditiously, CAUSE-PA respectfully submits that the criteria necessary to obtain a medical certificate remain consistent with existing regulations. Further clarification should be provided only to the extent necessary to

---

<sup>4</sup> 66 Pa. C.S. § 1403 (emphasis added).

ensure that the same level of protection continues without impediment for seriously ill Pennsylvanians.

**b. No Single “Form” Should Be *Required* for Medical Certificates, But a Model Form – Based on the Requirements Specified in section 56.113 of the Pennsylvania Code – Should be Made Widely Available for Use on a *Voluntary* Basis**

Act 155 did clarify the medical certification process by defining a medical certificate as “[a] written document, *in a form approved by the commission.*”<sup>5</sup> This clarification leaves the Commission with several open questions that require additional guidance to ensure that the resulting implementation fulfills the legislature’s intent. To help assess its responsibilities, the Commission sought specific comment:

We invite parties to comment on what “form” should be sufficient for a medical certificate.

...

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.<sup>6</sup>

In response to this specific request for comment, CAUSE-PA asserts that a medical certificate should contain only the information required in section 56.113 of the Pennsylvania Code, as this information meets and exceeds the requirements of Act 155. Moreover, CAUSE-PA supports the creation of a widely accessible Commission-sponsored model form for medical certification, provided that the use of such a form is *voluntary*.

---

<sup>5</sup> 66 Pa. C.S. § 1403 (emphasis added).

<sup>6</sup> TO at 4 (emphasis in original).

*i. The Requirements in 52 Pa. Code § 56.113 are Sufficient to Comply with Act 155, and Likely Exceed the Requirements of the Act*

CAUSE-PA asserts that the information required by section 56.113 of the Pennsylvania Code both meets and exceeds the requirements for medical certification in Act 155.

The express purpose of the medical certificate in both the current and former version of Chapter 14 is to “verif[y] the condition” of the ill applicant, customer, or household member.<sup>7</sup>

It is important to be clear that the party responsible for verifying the ill individual’s condition is the physician, physician assistant, or nurse practitioner who is treating the individual. And, in so doing, she or he must verify that the ill applicant, customer, or household member – in the medical professional’s opinion – falls within the parameters of the medical certification protection by making an oath or affirmation as such. The utility’s role in the medical certification process, however, is limited to confirming the authenticity of the certification and applying the certification to the appropriate account to prevent service interruption or termination. Thus CAUSE-PA asserts that the only information which should be included on a medical certification is that which is necessary for the utility to authenticate the certifying professional’s verification of the customer or household member’s illness or condition, and to identify the appropriate customer account.

Currently, section 56.113 requires that certifications include:

- (1) The name and address of the customer or applicant in whose name the account is registered

---

<sup>7</sup> 66 Pa. C.S. § 1406(f).

- (2) The name and address of the afflicted person and the 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.<sup>8</sup>

The information presently requested in section 56.113 provides more than enough information for the utility to confirm the authenticity of the certification and to apply the certification to the appropriate account to stop termination. For example, the information requested in subsections (3) and (4) of section 56.113 – to the extent that it requires disclosure of the nature of the illness and the reason why service is required – exceeds what is necessary for the medical certification process. First, these additional information requirements exposes sensitive medical history data to disclosure. Second, information about the nature of the illness or condition is irrelevant to the utility’s ability to authenticate the medical professional’s verification that the customer or household member has an illness or condition which requires utility service for treatment. CAUSE-PA believes that the inclusion of this additional data about the individual’s condition or illness has led to utility staff either questioning or engaging in independent assessments of the need for continued service, rather than relying on the certification of the physician, physician’s assistant, or nurse practitioner. Such a result is contrary to section 56.111, which explicitly states that “the determination of whether a medical condition qualifies for the purposes of this section *resides entirely with the physician or nurse practitioner and not with the public utility.*”<sup>9</sup>

---

<sup>8</sup> 52 Pa. Code § 56.113.

<sup>9</sup> 52 Pa. Code § 56.111 (emphasis added).

For these reasons, CAUSE-PA urges the Commission to limit the information required for a medical certificate to the information currently requested in section 56.113, as this information is more than sufficient to fulfill the verification requirement for medical certification in of Act 155. Moreover, CAUSE-PA requests that the Commission consider amending section 56.113 in its future rulemaking proceeding to remove the additional information requirements which are unnecessary to fulfill the medical certification requirements of Act 155. Doing so would prevent utilities from substituting its independent judgment regarding the need for the certification for that of a medical professional, and would better protect sensitive health record information from unnecessary disclosure.

*ii. The Commission Should Develop and Widely Distribute a Voluntary, Model Medical Certification Form*

The Commission highlighted in its Tentative Order that, while section 1403 defines a medical certification as “in a form approved by the commission”, it does not necessarily mean that the Commission must adopt and require use of a model form for all utility companies. The Commission explained:

[W]hile 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. For example, the form may be a letter from a licensed physician or nurse practitioner.

CAUSE-PA urges the Commission to adopt its plain reading of the “medical certification” definition set forth in its Tentative Order, and refrain from *requiring* the use of a specific form for medical certification. Not only is such a reading consistent with the rules of statutory interpretation, the Commission’s interpretation is also consistent with

sound public policy. *Requiring* a specific form could further complicate the process and create additional barriers for individuals in need of immediate protection from termination.

That said, CAUSE-PA supports the collaborative development and electronic availability of a *voluntary* model medical certification form, which – in the long term, after a concerted effort to educate the medical field about its availability – could streamline the process of medical certification.

**c. Oral Certification by Physician / Physician Assistant / Nurse Practitioner Should Continue to Be Accepted Pending Written Follow-Up**

A significant issue with respect to medical certification, upon which the Commission did not directly seek comment, is whether sections 56.112 and .113 – to the extent that those provisions allow for interim process of oral certification – continues to be applicable under the revised law. CAUSE-PA asserts that the emergency need for immediate interim protection, provided to the utility in oral form, continues to remain. The regulation provides a reasonable and expeditious process to provide immediate relief while at the same time setting forth the expeditious manner in which a written document is required. Section 56.112 and .113 retain full applicability and continue to be an appropriate exercise of Commission authority.

The Commission’s current regulations implementing the unrevised medical certification provision provide for an emergency three-day stay of termination in cases where the public utility is informed that a customer will procure a certificate.

**§ 56.112. Postponement of termination pending receipt of certificate.**

If, prior to termination of service, the public utility employee is informed that an occupant is seriously ill or is affected with a medical condition which will be aggravated by a cessation of service and that a medical certification will be procured, termination may not occur for at least 3 days. If certification is not produced within that 3-day period,

the public utility may resume the termination process at the point where it was suspended.<sup>10</sup>

To further stay a termination beyond this initial 3 day period, an authorized person (formerly a physician or nurse practitioner) must provide the utility with either written *or* oral certification. If oral certification is provided, the utility may require the authorized person to follow-up with a written certification within 7 days.

### **§ 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.<sup>11</sup>

Under the former Chapter 14 provision, medical certification required customers to “obtain a *letter* from a licensed physician verifying the condition” and to “promptly forward it to the public utility.”<sup>12</sup> The revised statute similarly requires customers to “obtain a *medical certificate* verifying the condition” and to “promptly forward it to the public utility,” changing only the word “letter” for “medical certificate.”<sup>13</sup> But unlike the former statute, the revised statute defines a medical certificate as “a written document.”<sup>14</sup> No such definition was included in the prior version of Chapter 14. In other words, the Commission interpreted the former medical certification provision, which defined a medical certificate as a “letter,” as allowing oral certification, and gave the public utility the *option* of requiring a subsequent written verification. This process should continue.

---

<sup>10</sup> 52 Pa. Code § 56.112.

<sup>11</sup> 52 Pa. Code § 56.113 (“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.”).

<sup>12</sup> 66 Pa. C.S. § 1406(f) (prior to 2014 revision).

<sup>13</sup> 66 Pa. C.S. § 1403.

<sup>14</sup> 66 Pa. C.S. § 1403.

CAUSE-PA is concerned that absent specific guidance from the Commission, there may be uncertainty regarding the continuation of the 3-day emergency stay and the interim 7-day oral certification process. Such uncertainty could increase the level of avoidable terminations for ailing customers who cannot immediately obtain a written document, and should not be permitted to occur.

A look at the practical obstacles to obtaining a medical certificate illuminate the extent of hardship that such uncertainty or incorrect interpretation could impose on vulnerable Pennsylvanians. First, the costs associated with obtaining a medical certificate often include an in-office visit requiring transportation, child-care, and/or co-pays or full office visit fees. For economically vulnerable customers with an illness or condition, these costs can delay or foreclose the ability to immediately obtain written certification. But even without these associated costs, the lengthy wait times at medical providers and clinics may further delay the ability for individuals to obtain the necessary written certification. A recent survey of health care provider wait times in major metropolitan areas revealed that in 2013 in Philadelphia, the shortest wait-time for a medical appointment with a family practice physician was 1 day, the longest wait time was 98 days, and the average was 21 days.<sup>15</sup> The study concluded that in suburban and/or rural areas where the per capita physician rates are much lower, the wait times are likely much higher.<sup>16</sup> It is reasonable to conclude that the General Assembly was attempting to address some of these barriers by expanding the class of individuals qualified to provide a certification to include physician assistants. Indeed, according to the American Academy of Physician Assistants, the primary role of a physician assistant is to increase healthcare efficiency

---

<sup>15</sup> Merritt Hawkins, Physician Appointment Wait Times and Medicaid and Medicare Acceptance Rates: 2014 Survey, at 11 (2014), available at <http://www.merrithawkins.com/uploadedFiles/MerrittHawkings/Surveys/mha2014waitsurvPDF.pdf>.

<sup>16</sup> *Id.* at 15.

and accessibility, thereby decreasing wait times for important, but routinized healthcare matters, such as completing a medical certification.<sup>17</sup> However, it is essential to note that wait times, while potentially decreased, are not eliminated.

CAUSE-PA recognizes that section 56.113 may need to be addressed in a future rulemaking based on the definition of “medical certificate” as a “written document” in the revised law. However, CAUSE-PA asserts that any potential modification does not impact the continued applicability of sections 56.113 and 56.114 to the extent that these provisions allow for an emergency stay and an *interim* oral certification pending submission of written verification by an authorized party (now including physicians, physician assistants, and nurse practitioners). Such a practice is a reasonable and just implementation procedure to allow sufficient time for individuals to obtain a written certification.<sup>18</sup>

Under both the former statute and the revised statute, the legislature was clear that the *procedure* for medical certification was to be determined by the Commission through regulation: “The medical certification procedure shall be implemented in accordance with commission regulations.”<sup>19</sup> And, while the statute now defines a medical certificate as a written document, it clearly leaves the procedures to the discretion of the Commission and does not preclude the use of oral certification as an interim procedure. Thus, CAUSE-PA asserts that the Commission’s existing procedure, to the extent that it accepts an oral certification pending a written follow-up,

---

<sup>17</sup> American Academy of Physician Assistants, General Information, [www.aapa.org](http://www.aapa.org); see also A Patient’s Guide to the Physician Assistant, <http://www.pg2pa.org/WhatIsPA.html>.

<sup>18</sup> It bears noting here that CAUSE-PA believes that oral certification should be accepted for an interim period *longer* than 7 days, and reserves the right to raise the length of interim oral certification as an issue in a future rulemaking proceeding. CAUSE-PA continues to evaluate the sufficiency of the current statute and, at this time, is proposing only that the current time-frame for an emergency stay and an interim oral certification be preserved.

<sup>19</sup> 66 Pa. C.S. §§ 1403; 1406(f).

must be preserved, and urges the Commission to clarify that its policy continues, without modification, in its Final Order.

**d. The Equitable Payment Required During the Pendency of a Medical Certificate Must be Clarified**

In its Tentative Order, the Commission included a reminder to stakeholders 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.”<sup>20</sup> The Commission explained, “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.”

CAUSE-PA urges the Commission to take this opportunity to resolve an ongoing interpretive conflict with respect to the payment requirements associated with a medical certificate renewal. As the Commission highlighted in its Tentative Order, the *Emergency Provisions* contained in Chapter 56, Title 52 of the Pennsylvania Code provide that a customer who “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).<sup>21</sup> Some utility companies have interpreted this restriction as requiring customers with a medical certificate to pay all current bills *and* any outstanding arrears before they are allowed to renew a medical certificate beyond an initial 90 days.

---

<sup>20</sup> TO at 4 (quoting 52 Pa. Code § 56.116).

<sup>21</sup> TO at 4 (citing 52 Pa. Code § 56.114).

At the outset, we note that the statutory medical certificate provisions of Chapter 14 do not set forth any specific payment requirements for medical certification renewal.<sup>22</sup> To the contrary, the statute provides an “absolute prohibition” on termination for accounts with a medical certificate, and provides no limit on the ability for a customer to stop termination by submitting a medical certificate to the utility. That said, the Commission previously found that the “absolute prohibition” did not affect the continued application of “the length of postponement and renewal standards” in section 56.114 of the Pennsylvania Code because the legislature was explicit that “the medical certification shall be implemented *in accordance with commission regulations*.”<sup>23</sup>

Therefore, to fully assess the parameters of payment required, we must now turn to the regulation in section 56.114, which in turn relies on section 56.116. These regulations provide:

**§ 56.114. Length of Postponement; Renewals.**

Certifications may be renewed in the same manner and for [30 days] ... if the customer has met the obligation under § 56.116 (relating to duty of customer to pay bills). In instances when a customer has not met the obligation in § 56.116 to *equitably make payments* on all bills, the number of renewals for the customer’s household is limited to two 30-day certifications filed for the same set of arrearages.<sup>24</sup>

**§ 56.116. Duty of Customer to Pay Bills.**

Whenever service is restored or termination postponed under the medical emergency procedures, the customer shall retain a duty to make payment on *all current undisputed bills* or budget billing amount as determined under § 56.12 (relating to meter reading; estimated billing; customer readings).<sup>25</sup>

---

<sup>22</sup> 66 Pa. C.S. §§ 1403 (definitions), 1406(f) (medical certifications).

<sup>23</sup> *Chapter 14 Implementation*, Second Implementation Order, Pa PUC Docket No. M-0004180F0002, at 27-28 (Sept. 12, 2005) (citing 66 Pa. C.S. § 1406(f)).

With respect to [the] assertion that Section 56.114 has been superseded as inconsistent with the absolute prohibition in Chapter 14 §§ 1406(f) and 1407(b)(1), we disagree. As specifically stated at § 1406(f), “The medical certification procedures shall be implemented in accordance with Commission regulations.” Section 56.114 is one of those regulations and, therefore, the length of postponement and renewal standards remain in effect.

*Id.*

<sup>24</sup> 52 Pa. Code § 56.114.

<sup>25</sup> 52 Pa. Code § 56.116 (emphasis added).

Section 56.114 requires “equitable payment on all bills”, but then refers to section 56.116 for further guidance on the customer’s duty to pay. Section 56.116, in turn, requires payment of all *current* undisputed bills, not all bills. Indeed, the Commission’s use of the word “*current*” is plain and unambiguous, and undeniably indicates that customers with a medical certification must pay only those charges accrued during the pendency of the medical certificate.

The Commission made it clear in its last rulemaking proceeding that inclusion of the word “current” was deliberate, and was intended to limit the payment requirement for medical certifications to current charges accumulated during the pendency of the medical certificate. In promulgating its most recent amendments to section 56.116, the Commission rejected requests by commenters to include past-due arrears in the requirement for payment because such a requirement would create unnecessary added hardship on a household which is already struggling with “the disruptive nature of serious illness.”<sup>26</sup> In relevant part, the Commission explained:

*[I]f the customer is paying their current bills as required by this section, the outstanding balance will not be increasing, meaning that the customer’s and the utility’s problems with the account balance will not be aggravated. We expect that once the medical certificate expires, the utility would address the outstanding balance with the customer. We also point to the petition process at § 56.118 that a utility may use to possibly void a medical certificate that a utility believes is being used to avoid the payment of the account balance.*

...

*[T]he proposed language requiring payment on all current bills or budget bills brings much needed clarity to this section, and recognizes the disruptive nature of serious illness on customers. At the same time, we believe this proposal will aid both consumers and utilities in preventing the accumulation of additional arrearages while a customer is under the protection of a medical certificate.<sup>27</sup>*

---

<sup>26</sup> Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*, Docket No. L-00060182, at 148-49 (Mar. 22, 2011).

<sup>27</sup> *Id.* (emphasis added); *see also* Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with

The Commission could not have been more explicit in its acknowledgement that section 56.116 only applies to *current* bills, and does not require payment of outstanding arrears to qualify for continued renewal of their medical certification.

Despite this explicit directive from the Commission in its implementation of section 56.116, some question may still remain as to the applicability of section 56.97(b), which the Commission has previously upheld as the applicable standard for negotiating an equitable payment for current bills under 56.116.

[W]e agree that application of the good faith negotiation process at §56.97(b) is the appropriate method for fulfillment of the customer’s duty at §56.116 to equitably arrange to make payment on all bills.

In turning to section 56.97(b), it is clear that the payment requirements for medical certification renewal must be fair and equitable. However, it in no way requires customers with a medical certificate to pay all current bills *and* all existing arrears in order to renew their certification, nor does it limit equitable arrangements. To the contrary, section 56.97(b) lays out a fair and equitable approach to determine an affordable amount for the customer to pay each month, based on numerous factors:

**§ 56.97. Procedures Upon Customer or Occupant Contact Prior to Termination**

...

(b) The public utility, through its employees, shall exercise good faith and fair judgment in attempting to enter a reasonable payment agreement or otherwise equitably resolve the matter. Factors to be taken into account when attempting to enter into a reasonable payment agreement include the size of the unpaid balance, the ability of the customer to

---

the Provisions of 66 Pa. C.S., Chapter 14, *Comments of OCA*, at 46-47 (“Given the prohibition against termination of a customer with a medical certificate, *the OCA would question whether a termination could proceed on the outstanding arrearages that are subject to the medical certificate as long as the customer is meeting their duty to pay their current bills.* The OCA supports reaching equitable payment arrangements with the customer for the arrearages, but it must be recognized that the medical certificate is to protect against termination during the course of the illness for the accrued arrearages or other reason for termination. *As long as the current bills are being paid in full, service should remain available for the customer until the medical certificate is removed.*”).

pay, the payment history of the customer and the length of time over which the bill accumulated. ...

As the Commission has explained, the negotiation requirements in section 56.97 “are general and flexible in nature and do not impose strict formulas or payment term requirements.”<sup>28</sup>

While the negotiation process outlined in section 56.97(b) applies to determine an equitable payment under 56.116 – as well as general payment arrangements authorized in other sections of the law and regulation – the dual applicability does not bootstrap the Chapter 14 restrictions on payment agreements – such as the limit of one arrangement and/or the time limitations – to apply to payments under section 56.116. The Commission recognized this fact when, in its Chapter 56 rulemaking, it rejected PPL’s suggestion to require an equitable payment arrangement on overdue balances:

We must also reject PPL’s advice because their suggestion that we require an arrangement on all current and overdue balances might be considered a payment agreement.<sup>29</sup>

As such, the restrictions on the number and length of payment arrangements contained in section 1405 and 1407 of Chapter 14 are inapplicable in medical certification cases, and are not bootstrapped into the medical certification process through section 56.97 of the Pennsylvania Code.

Based on the varying interpretations that persist regarding the appropriate payment requirements for medical certification renewal, despite clear guidance from the Commission in its promulgation of amendments to the payment standards for medical certifications, CAUSE-PA urges the Commission to take this opportunity to reassert that medical certification protection

---

<sup>28</sup> Chapter 14 Implementation, *Implementation Order*, Pa PUC Docket No. M-00041802F0002, at 15 (Mar. 4, 2005).

<sup>29</sup> Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*, Docket No. L-00060182, at 148-49 (Mar. 22, 2011).

will continue to exist for so long as submission of the medical certificate and payment of all current undisputed bills are timely provided to the utility.

### **III. ACCOUNTS EXCEEDING \$10,000 IN ARREARS: SECTION 1410.1(3)**

In reauthorizing Chapter 14, the General Assembly required public utilities to “attempt to collect payment on an overdue account” and to annually report to the Commission on “accounts which have accumulated \$10,000 or more in arrearages” and the efforts the utility undertook to collect those arrearages.<sup>30</sup>

In its TO, the Commission explained that, in requiring annual reports of accounts with \$10,000 or more in arrearages, “it appears that the General Assembly envisioned the reporting of specific accounts in lieu of ‘number of accounts’ or ‘averages’.”<sup>31</sup> The Commission sought comment on this interpretation, and asked parties to discuss how reporting should be conducted “without compromising the customers’ privacy.”<sup>32</sup> To assist parties in framing their comments, the Commission set forth possible interim guidelines for compliance with the reporting requirement, and specifically requested comment on the sufficiency of this interim direction.

CAUSE-PA supports the Commission’s interim guidelines, as it sets forth an appropriately balanced reporting procedure that provides information necessary to assess the extent of accounts with large arrearages while protecting against disclosure of personally identifying information. In particular, CAUSE-PA supports the Commission’s requirement that utilities identify accounts with a unique label, while redacting any and all personally identifying

---

<sup>30</sup> 66 Pa. C.S. § 1410.1(3).

<sup>31</sup> TO at 6.

<sup>32</sup> *Id.*

information. Exposure of personally identifying information is not only dangerous, in that it exposes customers to identity theft and may negatively impact the customer's employment, housing, and reputation in the community. But in addition to serving these important policy goals, redaction of personally identifying information is also critical to ensure compliance with the Pennsylvania Fair Debt Collections Practices Act (Pa. Fair Credit Act). In relevant part, the Pa. Fair Credit Act provides:

A creditor may not engage in any conduct, the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of debt. Without limiting the general application of the forgoing, the following conduct is a violation of this paragraph:

...

(iii) The publication of a list of consumers who allegedly refuse to pay debts.<sup>33</sup>

Indeed, the natural consequence of an EDC releasing a list of customer accounts – without redaction of all personally identifying information, could cause incalculable harm to the debtor. As such, CAUSE-PA urges the Commission to uphold its initial guidance requiring full redaction of any and all personally identifying information.

Despite its general support for the Commission's interim guidelines, CAUSE-PA urges the Commission to explicitly clarify that there are at least two situations that should be excluded from the arrearage reporting requirements: (1) accounts of customers enrolled in an arrearage forgiveness program through the public utility's Customer Assistance Program, and (2) accounts of customers with a Protection From Abuse Order (PFA) or other protective order that would exempt the account from Chapter 14 billing and collections standards.

---

<sup>33</sup> 18 Pa. C.S. § 7311(b)(4).

**a. Accounts with Frozen Pre-Program CAP Arrears Should Not Be Included in Arrearage Reporting Requirements in section 1410.1(3)**

CAP accounts with pre-program arrearages should be exempt from the reporting requirement in section 1410.1(3) because the arrears in these accounts are frozen, and are not subject to the same billing, collection, and termination provisions as accounts with un-frozen arrears.

Moreover, frozen CAP arrears are not subject to the same rate recovery process and, therefore, should not be considered when weighing the ability of Chapter 14 to protect ratepayers who make timely payment. In Chapter 56, Appendix D (Definitions), the Commission recognized that CAP credits and CAP arrearage forgiveness is not to be included in the gross residential write-offs by explicitly excluding those figures from the definition of “total dollar amount of gross residential write-offs”. As such, including the amount of these frozen, pre-program arrears towards determining “accounts which have accumulated \$10,000 or more in arrearages” would not further the goal of the reporting requirement.

Finally, the requirement in Act 155 that a utility must report on the efforts the it undertook to collect those arrears is further evidence that inclusion of pre-program arrears in determining the \$10,000 arrears level is not appropriate. Pre-program arrears are frozen, subject to potential forgiveness, and, as long as the customer remains in CAP, the utility is prohibited to take action to collect them.

For these reasons, CAUSE-PA asks that the Commission issue clear guidance excluding accounts with frozen pre-program CAP arrears from the Act 155 arrearage reporting requirement.

**b. Accounts Which Fall Within the Domestic Violence Exemption in Section 1417 Should Not Be Included in Arrearage Reporting Requirements**

Chapter 14 clearly and unambiguously exempts victims of domestic violence “under a protection from abuse order ... or a court order ... which provides clear evidence of domestic violence against the applicant or customer.” Thus, pursuant to the plain language of the statute, accounts which are subject to the domestic violence exemption should not be included in the Chapter 14 arrearage reporting requirements. *See below, section V.b., for more information about the domestic violence exception.*

**IV. MEDICAL CERTIFICATE REPORTING REQUIREMENTS: SECTION 1410.1(4)**

Act 155 requires utilities to annually report to the Commission on “the number of medical certificates and renewals submitted and accepted.”<sup>34</sup> In furtherance of this aggregate reporting requirement, the Commission set forth a proposal in its TO to address any questions “as to what is intended by ‘renewals submitted and accepted’ and as to when this annual reporting requirement should start.”<sup>35</sup>

CAUSE-PA supports the proposal set forth in the Commission’s TO for this reporting requirement,<sup>36</sup> but requests that the Commission also require utilities to track and report on the length of time that medical certificate protection, including renewals, remains in place, irrespective of the calendar year reporting date.

---

<sup>34</sup> 66 Pa. C.S. § 1401.1(4).

<sup>35</sup> TO at 9.

<sup>36</sup> *Id.*

Collection of data specifically identifying the number of renewals would enable the Commission and the General Assembly to determine whether a 30-day renewal time-frame is appropriate, or whether a more expanded time-frame for renewal may be appropriate for certain chronic and/or seriously ill individuals.

The burden associated with frequent renewals –for both the ill individual and the certifying professional - has been a consistent concern. As the OCA previously explained, a longer timeframe for renewals in certain cases “would reduce the burden on seriously ill individuals as well as avoid the wasteful use of medical resources when an individual’s condition is unlikely to improve.”<sup>37</sup> In Massachusetts, for example, “medical certificates for serious illness are renewed on a quarterly basis and for chronic illnesses every six months.”<sup>38</sup> Collection of data about the length of time a medical certificate remains in place – irrespective of the calendar year reporting cycle – would enable the Commission and the General Assembly to determine whether the 30 day renewal period presents an administrative burden on the utility, the patient, and/or the medical provider, and would allow for the adoption of future policies and procedures consistent with such a determination.

## **V. OTHER ISSUES**

In addition to specific comment on the medical certification process and arrearage reporting requirements, the Commission invited parties to submit comments on “other issues that need immediate attention.” To that end, CAUSE-PA requests that the Commission address and

---

<sup>37</sup> Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*, Docket No. L-00060182, at 144 (Mar. 22, 2011).

<sup>38</sup> *Id.*

provide guidance with respect to (1) the prohibition on security deposits for CAP-eligible customers<sup>39</sup> and (2) the expanded Chapter 14 exemption for victims of domestic violence.<sup>40</sup>

**a. Prohibition on Requiring Security Deposits for CAP-eligible Customers**

The legislature made a critical change to existing law by prohibiting security deposits for CAP-eligible customers. The implementation of this change was not specifically identified by the Commission in its Tentative Order as an area in need of immediate guidance. However, CAUSE-PA believes that guidance is necessary to ensure proper implementation of the statute pending a more expansive rulemaking procedure, and urges the Commission to clarify the duty and responsibility of utilities when dealing with account initiation and/or restoration for CAP eligible customers.

CAP-eligible customers have a household income that is at or below 150% of federal poverty guidelines – just \$23,895 for a family of 2, or \$36,375 for a family of 4. The average energy burden for households with this income level ranges between 17-22%, versus an average of just 4% for households with higher incomes.<sup>41</sup> For low-income households, the additional burden of paying a security deposit can act as a complete bar to accessing utility service. By exempting CAP-eligible customers from security deposit requirements, the legislature was further calibrating the provisions in Chapter 14 to “provide public utilities with an equitable means to reduce their uncollectible accounts ... [while] ensur[ing] that service remains available to all customers on reasonable terms and conditions.”<sup>42</sup>

---

<sup>39</sup> 66 Pa. C.S. § 1404.1 (Cash deposit prohibition).

<sup>40</sup> 66 Pa. C.S. § 1417 (Nonapplicability).

<sup>41</sup> Meg Power, Economic Opportunity Studies, *The Burden of FY 2008 Residential Energy Bills on Low-Income Consumers*, at 3-4 (2008), [http://www.opportunitystudies.org/repository/File/energy\\_affordability/Forecast\\_Burdens\\_08.pdf](http://www.opportunitystudies.org/repository/File/energy_affordability/Forecast_Burdens_08.pdf).

<sup>42</sup> 66 Pa. C.S. § 1402(3).

To ensure that the prohibition against requesting security deposits from CAP eligible customers is fully honored, CAUSE-PA believes that the utility should be required to make a good faith attempt to verify a household size and income before imposing a security deposit requirement. In doing so, CAUSE-PA recommends that the Commission require public utilities to inform applicants and customers of the security deposit exemption and to request income information to determine eligibility. The applicant and/or customer should then be given the opportunity to then apply for CAP – or other appropriate universal service program – in accord with the newly-enacted universal service program referral obligations of utilities in section 1410.1 of Chapter 14.<sup>43</sup>

CAUSE-PA’s recommendation is in line with the Commission’s approach to income verification for the winter termination moratorium.<sup>44</sup> In its Second Implementation Order, issued September 12, 2005, the Commission issued the following guidance:

[A] utility must not complete the process and physically terminate service to a delinquent account for which the company doesn’t know household size and income *unless it makes a diligent, good faith attempt to verify that the household does not fall into the protected income category.*<sup>45</sup>

CAUSE-PA urges the Commission to issue guidance clarifying the security deposit exemption, and placing the onus squarely on the utility to ensure that low income customers are informed of the prohibition and are therefore able to provide the requisite income information. Doing so would ensure that low income individuals will have equitable access to utility services, as intended by the General Assembly.

---

<sup>43</sup> 66 Pa. C.S. § 1410.1(1)-(2) (requiring that “[w]hen a customer or applicant contacts a public utility to make a payment agreement,” public utilities must (1) “[p]rovide information about the public utility’s universal service programs, including a customer assistance program” and (2) “[r]efer the customer or applicant to the universal service program administrator of the public utility to determine eligibility for a program and to apply for enrollment in a program” when a customer or applicant contacts the public).

<sup>44</sup> Chapter 14 Implementation, *Second Implementation Order*, Docket No. M-00041802F0002, at 10 (2005) (implementing 66 Pa. C.S. § 1406(e)(1)-(2)).

<sup>45</sup> Chapter 14 Implementation, *Second Implementation Order*, Docket No. M-00041802F0002, at 10 (2005).

## **b. Exemption for Court Orders of Protection**

When passing the initial iteration of Chapter 14, the legislature was explicit in exempting victims of domestic violence with a protection from abuse order. This exemption was passed in clear recognition of the fact that victims of domestic violence are in need of unique protections from certain collection and billing practices, such as the imposition of arrearages in another person's name as a condition to service initiation or restoration, which may place them at an increased risk of physical or financial harm. As the Pennsylvania Coalition Against Domestic Violence has explained, the Chapter 14 exemption is "designed to prevent further harassment, physical harm, and mental anguish for the service recipient."<sup>46</sup> Victims who qualify for the exemption are able to access additional protections which are critical to ensuring the safety and economic stability of victims of domestic violence:

- No liability for debts and arrearages accrued by an abuser;
- Additional flexibility to make up-front payment of arrearages and security deposits;
- Additional payment agreements and/or longer repayment period for arrearages;
- Increased notice of termination.<sup>47</sup>

These protections provide essential help for victims struggling to establish a safe, violence-free home. However, to date the exemption has not been fully implemented to protect victims of domestic violence from the more stringent collection and billing requirements in Chapter 14. In prior comments before the Commission, PCADV has explained that "currently, the seven regulated EDCs are not properly implementing the domestic violence protections in Chapter 56 of the Pa. Code."<sup>48</sup> PCADV went on to provide anecdotal information from its 60 domestic

---

<sup>46</sup> Retail Markets Investigation, *Comments of the Pennsylvania Coalition Against Domestic Violence Regarding the March 21, 2012 En Banc Hearing*, PUC Docket No. I-2011-2237952, at 4 (2012).

<sup>47</sup> 52 Pa. Code, Ch. 56, Subsections L-V.

<sup>48</sup> Investigation of Pennsylvania's Retail Electricity Market End State of Default Service, *Comments of the Pennsylvania Coalition Against Domestic Violence in Regard to the Public Utility Commission's Tentative Order*, PUC Docket No. I-2011-2237952, at 5-6 (Dec. 20, 2012).

violence programs about the lack of full compliance with the domestic violence exemption, and the impact that lax compliance has on victims.<sup>49</sup>

In reauthorizing Chapter 14, the legislature expanded the domestic violence exemption to include victims with either a protection from abuse order or “a court order ... which provides clear evidence of domestic violence against the applicant or customer.” Orders that may contain “clear evidence of domestic violence” include a broad range of civil and criminal orders, such as divorce, custody, child protection, criminal convictions, and sentencing.

CAUSE-PA urges the Commission to provide further guidance to utilities regarding the interpretation and implementation of the expanded domestic violence exemption, but recognizes that neither the Commission nor the public utilities have the expertise necessary to determine whether there is “clear evidence of domestic violence” in a given court order. As such, CAUSE-PA recommends that the Commission reach out to subject-matter experts in the Legal Department at the Pennsylvania Coalition Against Domestic Violence for assistance in determining an appropriate method for utilities to implement the expanded domestic violence exemption.

---

<sup>49</sup> *Id.* (citing statements from domestic violence programs in Schuylkill, Columbia, Montour, Allegheny, Lancaster, Centre, and Clinton counties).

## VI. CONCLUSION

CAUSE-PA requests that the Commission provide guidance to public utilities which adopts the recommendations set forth above. Doing so will strike an appropriate balance between reducing uncollectible accounts and maintaining service availability to all customers on reasonable terms and conditions.

Respectfully Submitted,

THE PENNSYLVANIA UTILITY LAW PROJECT

*Counsel for CAUSE-PA*



---

Elizabeth R. Marx, Esq.  
PA ID 309014  
Harry S. Geller, Esq.  
PA ID 22415

Dated: March 2, 2015

118 Locust Street  
Harrisburg, PA 17101  
717-236-9486  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)