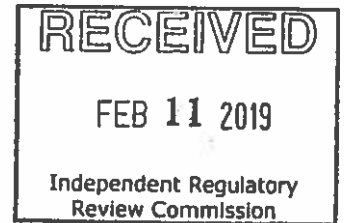


3161

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**



**Rulemaking to Amend the Provisions of :
52 Pa. Code, Chapter 56 to Comply : Docket No. L-2015-2508421
with the Amended Provisions of 66 Pa. :
C.S. Chapter 14**

COMMENTS OF

ACTION-Housing, Inc.

Bringing Hope Home

Health, Education and Legal assistance Project:
A Medical-Legal Partnership (HELP: MLP)

Living Beyond Breast Cancer

Medha D. Makhoulf (in her individual capacity), Assistant Professor of Law; Director, Medical-Legal Partnership Clinic; Dickinson Law, The Pennsylvania State University

Philadelphia Association of Community Development Corporations

Project HOME

Regional Housing Legal Services

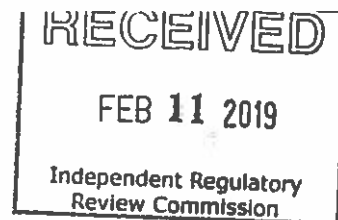
Sisters R Us Circle of Survivors

The Self-Determination Housing Project of Pennsylvania

Rachel Blake
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Dated: September 11, 2017

3161



INTRODUCTION

These comments are submitted by an informal coalition of health care, legal, and affordable housing providers and advocates (the "Health & Housing Coalition") as interested stakeholders pursuant to the Pennsylvania Public Utility Commission's (the "Commission") invitation for interested parties to comment upon issues related 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 14.¹

The Health & Housing Coalition's interest in this proceeding derives from the impact the medical certificates has on these organizations, their clients, and members. The Health & Housing Coalition includes affordable housing owners, lawyers working on medical-legal partnerships, an association of community development organizations, an organization focused on housing issues for persons with disabilities, and support organizations for people dealing with cancer.

The Health & Housing Coalition thanks the Commission for the opportunity to provide these comments.

COMMENTS

The Health & Housing Coalition applauds the Commission for inviting comments on the use of medical certificates to avoid utility termination. Medical certificates provide a vital service to households experiencing serious medical issues co-occurring with financial difficulties. The Health & Housing Coalition notes that loss of utilities during a serious illness can impair both the person's quality of life and ability to recover from their illness, as well as increase the risk of displacement.

¹ See Order Seeking Additional Comments, Docket No. L-2015-2508421, entered July 21, 2016.

While some displaced households may be able to find alternate housing, there are very real risks that members of this population -- especially persons who are elderly or disabled will be displaced into an institutional setting. In addition, households with children with medical conditions and who lose utilities may risk involvement from the child welfare system. A situation that results in a worsening of a medical condition, the loss of housing, or termination of parental rights, would almost undoubtedly cause the local and state governments to incur expenses far beyond the required utility payment amounts.

I. The Need for Medical Certificates

PUC regulations recognize that the loss of utilities can cause a seriously ill person to get sicker. There are conditions for which customers need equipment that requires electricity to run - such as dialysis machines, hospital beds, oxygen concentrator, stair lifts, CPAP machines, breathing tubes, nebulizers, and more. Other people, like diabetics, rely on medicine that should be refrigerated. There are also conditions that are exacerbated by cold or heat (e.g. asthma, congenital heart failure, multiple sclerosis, lupus, fibromyalgia, arthritis, and sarcoidosis). The PUC's regulations rightly give medical professionals discretion about which conditions qualify for a medical certificate.²

The medical certificate process³ provides a safety net for households with sick members who are also struggling with the ability to pay a past-due balance. However, there is evidence that the current system would significantly benefit from some adjustments. As with any system, there may be people who attempt to abuse it. However, it seems that in this case, the system suffers

² 52 Pa. Code § 56.111.

³ 52 Pa. Code § 56.111 et seq.

much more from underutilization due to misinformation and unnecessary barriers that it does from fraud/overuse.

II. Challenges Related to Utility Implementation

Despite regulatory provisions that state: "Certifications may be renewed in the same manner and for the same time period as provided in §§ 56.112 and 56.113 (relating to postponement of termination pending receipt of certificate; and medical certifications) and this section if the customer has met the obligation under § 56.116" relating to duty of customer to pay bills.⁴ Customers and social service providers find that utilities have a range of policies in place with regard to medical certificates. To determine how much variability there is among utilities, the PUC should collect and share additional information from utilities about how they are implementing medical certificates.

a. Inconsistent Implementation

There are widespread reports of utilities failing to tell customers that they can pay the new monthly balance and continue to get a new medical certificate. In fact, many tell customers they are limited to three months (original certificate plus two renewals) as provided for in 52 Pa. Code § 56.114 specifically for when "a customer has not met the obligation in § 56.116 to equitably make payment on all bills."⁵ Customers are often told this is the limit to the medical certificates whether they pay monthly or not. For example, see the letter attached as Exhibit A from Bringing Hope Home (BHH), a service provider for families with cancer. BHH reports that it works with a utility limits medical certificates to one per year for a period of 60 days. Similarly, at least one social worker from central Pennsylvania has been told that Met Ed has a

⁴ 52 Pa. Code § 56.114.

⁵ *Id.*

lifetime limit for medical certificates (Heather Welch, MSW, Harrisburg). In Philadelphia, PGW has told some customers that they are limited to three medical certificates *for the life of their accounts* (HELP: MLP). Similarly, HELP: MLP, which provides legal services to Nurse-Family Partnership and Mabel Morris Home Visiting Program clients in Philadelphia and to Nurse-Family Partnership and Healthy Start clients in Chester, PA, reports recurring issues with utilities providing incorrect information to their clients, including limits on medical certificate utilization that do not exist and failing to tell them that they can pay their current monthly amount and renew the certificate for another month. The misinformation that clients receive has resulted in clients who *could have paid* the monthly bill choosing to use the money for another purpose because they thought they had no hope of keeping their utilities connected. In addition, HELP: MLP reports an ongoing issue of faxes "going missing." HELP: MLP staff ask medical providers to give the medical certificate to them so they can send it in and deal with the nearly inevitable need to resend the certificate multiple times -- even when they possess multiple confirmations that the fax was sent.

We urge the PUC to ensure that medical certificates are consistently implemented across utilities. To make sure this is happening, we suggest that the PUC review utility policies and statements to consumers regarding medical certificates. In addition, we strongly recommend that the PUC gather and share additional data relating to medical certificates so all stakeholders can get a better sense of how they are being utilized.

b. Additional Data Needed

The data provided on page 6 of the Order Seeking Additional Comments does not give advocates, utilities, or policy makers enough information to make fully informed policy

recommendations.⁶ The PUC should collect and share additional data to help all parties better understand how medical certificates are being utilized, and how that may vary based on geography, utility, and medical system.

The PUC should collect and share data about not just the number of medical certificates submitted and accepted, but also the number of residential *customers* that submitted certificates and the number of residential *customers* that had certificates accepted. This data should be provided for the state, by utility, and also with either county or, ideally, zip code basis. This information would significantly improve our ability to understand where medical certificates are being used and to spot locations where they may be underutilized. In addition, having data on the types of conditions that they are being written for and which health care systems are writing them would also give us a better sense of how differences in implementation on the medical side.

III. Challenges Related to Medical Providers

As there is variation among how utilities implement medical certificates, there is also significant variance among medical providers. They each have different criteria for when they will provide medical certificates.

a. Significant Variance in Policies for Completing Medical Certificates

In some instances, medical providers have defaulted to very strict interpretations of medical need -- such as only writing certificates for a person who needs help keeping electric service when that person has a piece of equipment that requires electricity to work. There are also reports from across the state that several medical systems either prohibit or discourage staff from issuing any medical certificates. For example, the Penn State Dickinson Law School MLP is aware of an informal, but regularly observed, policy against writing medical certificates at the

⁶ Order Seeking Additional Comments, Docket No. L-2015-2508421, entered July 21, 2016.

Penn State Medical Group Harrisburg. We also have reports of similar policies at Geisinger and UPMC.

There are also models where medical providers proactively and carefully decide when to issue medical certificates. For example, as part of a pilot project in a pediatric practice (the “St. Chris Study”), the medical team created joint criteria for granting medical certificates, including:

“All asthmatics, All children under 2 years of age (temperature instability and risk of serious long- term adverse effects of utility insecurity), other chronic medical conditions such as: Heart disease on cardiac medications, Diabetics, Immunodeficiency/ and or on chronic immunosuppressive, Oncology Conditions, Sickle Cell Disease, Failure to Thrive (due to the documented decrease in weight during colder months of children in utility insecure homes), Special needs patients, and Acute conditions that lead to temporary disabilities (for example pneumonia).”⁷

In the St. Chris Study, the researchers focused on one resident continuity clinic, which is about half of their practice. At that clinic they administered the screening survey to about 10% of the families who were there for health maintenance visits. The results were that 294 of the 2,573 families (11%) they surveyed also reported having received a notice of utility termination in the previous 30 days.⁸ The pilot coupled this screening tool with the shared criteria for issuing medical certificates, which resulted in a significant increase in the number of medical certificates issued.

In the year prior to the pilot, 450 medical certificates were requested, but only 52% of those were approved and signed by the health care provider.⁹ During the pilot, there were 846 requests

⁷ Daniel R. Taylor, Bruce A. Bernstein, Eileen Carroll, Elizabeth Oquendo, Linda Peyton, Lee M. Pachter, *Keeping the Heat on for Children's Health: A Successful Medical-Legal Partnership Initiative to Prevent Utility Shutoffs in Vulnerable Children*, *Journal of Health Care for the Poor and Underserved*, Volume 26, Number 3, August 2015, pp. 676-685, p. 680.

⁸ *Id.*

⁹ *Id.*

for medical certifications and 86% were approved.¹⁰ If anything, this shows that medical certificates are likely to be underutilized -- rather than over utilized.

b. Current Regulations Create Undue Burden on Medical Providers

The current system of requiring medical certificates every 30 days is a significant administrative burden for medical providers. A 2017 American College of Physicians (ACP) position paper addresses the need to reduce externally imposed administrative burdens:

The most numerous and well-known tasks faced by physician practices and other organizations that provide health care are imposed by outside forces. These external sources include, but are not limited to, public and private payers; governments and policymakers; private certification, accreditation, and recognition organizations; vendors and suppliers; health care consumers; and other clinician practices and health care provider organizations.¹¹

The recommendations from the ACP position paper calls on stakeholders external to the physical practice or health care clinician environment to seriously consider the financial, time, and quality-of-care implications of the administrative tasks that they are requiring of the medical system.¹²

There is evidence that medical certificates designed to prevent utility termination, can, if not carefully designed and implemented, create the kinds of burdens that the ACP position paper advocates against. In a report from Boston's Medical Legal Partnership about medical certifications to prevent utility terminations, they identified a significant burden on medical professionals. "[B]usy health care staff were burdened by administrative work related to the frequent requests for recertification letters, contributing to the sense of overwhelm that pervades

¹⁰ *Id.*

¹¹ Shari M. Erickson, MPH; Brooke Rockwern, MPH; Michelle Koltov, MPH; Robert M. McLean, MD; for the Medical Practice and Quality Committee of the American College of Physicians, *Putting Patients First by Reducing Administrative Tasks in Health Care: A Position Paper of the American College of Physicians*, May 2, 2017, (available at <http://annals.org/aim/article/2614079/putting-patients-first-reducing-administrative-tasks-health-care-position-paper>).

¹² *Id.*

healthcare providers serving low-income populations."¹³ The burden was especially clear when repeated certifications were required for chronically ill persons. Additional evidence of the burden of this process on medical providers in Pennsylvania comes from reports that at least one provider in the Philadelphia area is charging patients \$25 per certificate, which, for many, undoubtedly affects the household's ability to pay its utility bill.

We urge the PUC to create a strategy for reaching out to medical providers and patient advocates to determine how to improve medical providers' understanding of the medical certificate system and to devise less onerous methods for submitting medical certificates.

IV. The Current System is Punitive for Persons with Serious, Chronic Conditions

Medical certificates are difficult to get logistically. The primary mechanism for transmitting them is by fax. Most households do not have fax machines and must go to third parties to help them receive and transmit faxes. Many rely upon medical professionals to send the faxes. It is not uncommon for a utility to report that they did not receive a fax, but for the customer/patient to be told by the medical professional that they did send it.¹⁴ Managing the process in a perfect set of circumstances would be difficult for most households. For those struggling with serious medical issues, which can often include significant pain and fatigue, the process can be impossible to navigate.

For example, see the testimonials attached at Exhibit B from cancer patients, many of whom had to try to obtain medical certificates to keep their utilities on. They speak to the stress of trying to navigate the process while undergoing treatment. One reported having requested a

¹³ Medical Legal Partnership Boston, *Utility Access and Health, A Medical-Legal Partnership Patients-to-Policy Case Study*, June 2010, p. 7, (available at <http://cca-ct.org/Utility%20Access%20and%20Health%20An%20MLPPatients-to-Policy%20Case%20Study.pdf>).

¹⁴ See also, *id.*

certificate, but the utility said it was not received while the doctor's office said it was sent. She was forced to deal with this issue and the termination of her utilities while dealing with debilitating side-effects from her treatment. Another of the testimonials speaks to submitting the medical certificate, but not being aware that it needed to be sent monthly and also being unsure whether it had actually been received.

Finally, we expect that for a small, but significant portion of the population with significant medical issues and challenges paying their utility bills, that utility termination will push them into either an institutional living arrangement or into a situation that will involve child welfare services. Given the state's current strong interest in avoiding institutional settings and the anticipated increase in the number of elderly persons moving to nursing homes in the upcoming years, involving other state agencies who serve these populations in conversations about regulations concerning medical certificates may help uncover mutually beneficial solutions that avoid additional costs to the state, negatively impact the health of Pennsylvanians, and avoid the damaging stress of displacement.

V. Models Exist for Longer Lasting Certificates; Increased Customer Information

Multiple states provide for medical certificates that last significantly longer than 30 days for persons with serious, chronic conditions. For example, Montana and Massachusetts offer 180 days; New Hampshire, and Oregon up to 12 months.¹⁵ Other states, like Connecticut and Rhode Island, give more discretion to the medical provider about the length of the certificate.¹⁶ Serious,

¹⁵ See ARM 38.5.1411 (available at <http://www.mtrules.org/gateway/RuleNo.asp?RN=38%2E5%2E1411>), 220 CMR 25.03 (available at <http://www.mass.gov/courts/docs/lawlib/220-229cmr/220cmr25.pdf>); N.H. Code Admin. Rules Puc 1205 (available at <https://www.puc.nh.gov/Regulatory/Rules/PUC1200.PDF>), OAR 860-021-0410 (available at http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_021.html).

¹⁶ See Conn. Agencies Regs. § 16-3-100(e)(1) (available at <http://www.eregulations.ct.gov/eRegsPortal/Browse/getDocument?guid=%7B72801989-45DC-4F8D-B0AA-C253FB2B4D59%7D>) and R.I. Gen. Laws § 39-1.1 (available at

chronic conditions by definition are not going to resolve in 30 days, so requesting a new certificate from a medical professional every 30 days is a burden without a benefit. For example, and as described in the letter from Bringing Hope Home, there are persons with metastatic cancer who need to utilize medical certificates. It cannot add any value to the system to have them provide new evidence of that fact every 30 days. In addition to increasing the time period for medical certificates, Pennsylvania would benefit from additional notice to customers. This would ensure that the people medical certificates were designed to help were aware of the option. It could also, if standardized language was used, reduce the confusion among customers and their advocates. Some states, including Connecticut and Rhode Island, require that customers facing termination are notified about the option of getting a medical certificate.¹⁷

We urge the PUC to extend the duration of medical certificates for persons with serious, chronic conditions. We also urge the PUC to take steps to make sure that consumers are better informed about the medical certificate process.

CONCLUSION


In conclusion, the Health & Housing Coalition thanks the Commission for the opportunity to submit these comments and encourages the Commission to look more closely at medical certificate implementation and to convene working groups, as needed, to address the variance in utility and medical provider understanding and implementation of medical certificates and to extend the time period for medical certificates for persons with serious, chronic conditions. These changes will improve outcomes for utilities, medical providers, and

<http://webserver.rilin.state.ri.us/Statutes/TITLE39/39-1.1/39-1.1-2.HTM>).

¹⁷ *Id.*

customers/patients, in addition to ensuring that utility loss during serious illness is not a precursor to housing displacement, institutionalization, or child welfare system involvement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rachel Blake". The signature is written in dark ink and is positioned to the right of the typed name.

Rachel Blake
Associate Director
Regional Housing Legal Services
2 S Easton Road
Glenside, PA 19038
Phone: 215.572.7300
Fax: 215.572.0262

Dated: September 11, 2017

Exhibit A

[See attached letter from Bringing Hope Home]



641 Swedesford Road
Malvern, PA 19355
www.BringingHopeHome.org

P: 484-580-8395
F: 484-580-8595
EIN: 26-1222985

@BHHP Philly
 @BHHP Philly
 @bringinghopehome

August 31, 2017

Dear Rachel,

Bringing Hope Home is a nonprofit organization based out of Malvern, PA that financially and emotionally supports families with cancer living in PA, NJ and DE. Through our one-time grant, we assist families with essential household bills such as their rent, mortgage and household utility bills. The family does not receive any money directly from our grant. Rather, all money is paid directly to the utility vendors. Since our inception in 2008, we have assisted over 4,100 local families in need.

We work with most utility vendors in PA, NJ and DE for payments we send on behalf of our families. It has been our experience that most companies do not have adequate programs and systems in place to assist families with a long-term, chronic illness. These families are struggling with their health, undergoing intense chemotherapy and radiation treatments, while having to make decisions about whether to pay their utility bills or their co-pays so that can receive treatment.

One major vendor we work with in the Philadelphia area offers families the option to put a medical certificate on their account. The family is not responsible to pay anything towards their bill while the certificate is on the account. What they fail to tell families up front is that they are only allowed one medical certificate per year and that certificate is only valid for 60 days. After those 60 days pass, the family is now responsible for the full balance, which has increased with 60 days of usage. They cannot put an additional medical certificate on their account for another year. This process is not helping solve the problem for the family and is only offering a temporary solution to prolong the problem. This is common practice with most utility vendors we work with.

We see that this is a significant issue for the families we serve who are battling cancer. We believe that it is negatively effecting families in our area, especially families with metastatic disease who will live with cancer for the rest of their lives. There needs to be a better solution for these families with more helpful options available to them that makes managing their bills successfully possible as they struggle with their illness.

Thank you for your time.

Sincerely,

A handwritten signature in black ink that reads "Paul Isenberg".

Paul Isenberg
Founder & CEO
Bringing Hope Home

Exhibit B

I personally have found myself in that situation on more than one occasion. It made me feel violated having to disclose personal health information to utility parties that I would have rather keep in confidence. I had my electrical service terminated as I was informed the form was not received however, when I checked with my doctor's office they said it was sent.

I believe it caused more undue stress especially when one is already battling illnesses as I was, being diagnosed with breast cancer and debilitating side effects.

Sharla Glenn, Philadelphia

As an individual living with a chronic illness, due to a job layoff, I found myself in a position of needing assistance with my utility bills. Knowing, I could not be without electric or gas when I received the shut-off notice from the utility company I tried to get it resolved. When I reached out PECO to try and get a payment plan I was surprised to hear that unless I could get a medical statement from my doctor indicating the nature of my illness and how not having utility services would exasperate my condition, unfortunately there could be no payment plan and the utilities would be shut off unless I paid the amount in full. Fortunate for me, I was able to get a medical statement from my physician in a timely manner outlining my condition. I paid the reduced amount and the utilities remained in service.

As a cancer survivor and patient advocate, I cannot help but think about the countless individuals who are diagnosed and living with chronic diseases and disorders every day; like cancer. For these individuals, being sick is already overwhelming and burdensome. Due to the current PUC policy in place, unfortunately, having to get a medical statement from a physician to keep utilities service has also become an extra added burden.

I believe individuals dealing with a life threatening or chronic illness should receive a medical waiver because it would give them the freedom to focus on getting well and not worry about their utilities being shut off.

Yvonne McLean Florence, Yeadon

My thoughts on medical waivers for cancer patients is this, not too long ago I found myself not getting one but two letters from my Dr's. Being on disability and paying full market rent is a struggle. Deciding on whether to pay your utilities or get personal items or household needs is an experience I do not wish on anyone. June and July of this year I had to get a medical hold on both utilities. Then when I thought it was straightened out, I then had to turn around and get yet another. Fortunately for me PECO was very understanding and the representative was very helpful. Not so much with PGW both customer service representatives were extremely rude as if

I decided I just wasn't going to pay. I thank God for my Church family who in fact paid my PGW bill so that I could be caught up, otherwise honestly my gas service would be off. Not being able to pay ones bills is heart breaking and then when you encounter rude customer service you get a feeling of anger along with feeling like less than because you cannot afford to pay with out having to sacrifice on another end. A medical waiver for me would bring a peace of mind knowing that utilities are one less thing to add to the plate of dealing with trying to have a semblance of a normal life while fighting to survive. Focusing on healing and the aftermath of chemotherapy, radiation and numerous other appointments should be the only concern of ANY person with Cancer of any type. I pray that you will consider this as something that is feasible to do in assisting Cancer patients with easing our minds on how we will juggle between bills and life.

Cheryl Chupp, Philadelphia

I'm coming to you on behalf of women with breast cancer. I have been on both sides -- having breast cancer and also working on the utility side. I worked with an electric company for over 10 years and also worked for a gas company. I have dealt with people that were trying to get over. I have also dealt with people who have had legitimate reasons and I always felt like my hands were tied. Hopefully there could be another solution for this problem in this issue.

Kenya Jackson, Philadelphia

My mom and dad have had electric for 50 years. They had their bill electronically debited from their bank account. When she had her brain tumor removed last year, she couldn't think clearly and wasn't feeling well. She didn't move her monthly SSI check into the "bills" bank account. Her automatic withdrawal was returned for nonsufficient funds. She didn't even realize it. She was having a lot of radiation and chemo. Dad was trying to keep up with the bills but he can't even write out a check. So, a few months go by and dad gets a shut off notice. Now, he is concerned and only now am I allowed to help them. That is when we find out it wasn't paid for several months. Every time they would get a bill, she would tell my dad not to worry about it because it comes out automatically. We now know that was wrong, so we spend several months paying down the balance. They are on a fixed income so as you can imagine, it was difficult but we did it. The very next month, West Penn Power tacks on a large security deposit. When I called it was because she had a past due balance for more than three months in a row. Even after 50 years of being a good customer. My parents don't have the money for that so now, even though they paid up their bill in full and it is current, they continue to get a shut off notice every month. The security deposit now shows as past due balance all over again. I sent in the doctor paperwork but they still get the notices. I didn't realize I had to send it every month but coincidentally I did because I thought maybe they didn't get it the first time. I will check again but do not remember reading that it needed sent every month.

Amy Auman, St. Marys PA

I found that was hard to concentrate on my health when I was worried about if my gas and electric would be turn off so I have experience that where they would send a form to your Doctor and all that does is stop it from shutting off but next month it's the same way. So if there's a way where cancer patients show not have to pay Utilities for at least 6 month to a year.

Earlene Council, Philadelphia