

**IN THIS ISSUE**

**A Model State Regulation for  
Medical Certificates Limiting Service  
Shutoffs**

**NOTE TO READERS**

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**Care Must be Taken to Avoid Adverse  
Health Outcomes of Service Terminations  
when Facing Medical Emergencies**

Fisher, Sheehan and Colton (FSC) was recently asked to prepare an annotated model state utility commission regulation governing the use of service disconnections when the nonpaying residential customer is facing a medical emergency. FSC's resulting regulation is not unique to low-income customers. It would apply to all residential utility customers. Its model medical emergency shutoff regulation is presented below:

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**MEDICAL EMERGENCY SERVICE SHUTOFF  
PROTECTIONS  
FOR RESIDENTIAL CUSTOMERS:  
A MODEL STATE COMMISSION REGULATION**

**December 2013**  
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**SECTION 1. STATEMENT OF POLICY<sup>1</sup>**

If a utility chooses to disconnect,<sup>2</sup> or refuse to restore, service to a customer, it must follow the procedures below, or modify them in ways that are more generous to the customer. Each utility is encouraged to develop specific policies for service disconnection that treat its customers with dignity and respect its customers' or mem-

<sup>1</sup> This Statement of Policy is based on Texas Administrative Code, Title 16, Part 2, section 25.29(a) (2012).

<sup>2</sup> This Model Regulation uses the term "disconnection of service." Different states use different terminology: shutoff of service; termination of service, suspension of service, discontinuance of service. Unless the context clearly demonstrates otherwise, these terms should be considered *sui generis*.

bers' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Disconnection is an option allowed by the Commission, not a requirement placed upon the utility by the Commission.<sup>3</sup>

## SECTION 2. DEFINITIONS

Qualified medical professional: means a licensed physician, physician's assistant, osteopathic physician, osteopathic physician's assistant, certified nurse practitioner, or public health official with medical training.

## SECTION 3. CONTINUATION OR RESTORATION OF SERVICE UPON CERTIFICATION OF MEDICAL CONDITION.

1. A public utility may not disconnect service, or refuse to restore service, to a premises when a qualified medical professional has certified that the customer or an applicant seeking restoration of service or a member permanently residing<sup>4</sup> in the customer's or applicant's household is<sup>5</sup> seriously ill or<sup>6</sup> afflicted with a medical condition or disability<sup>7</sup>

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<sup>3</sup> This section makes clear in two ways that a service disconnection for nonpayment is a discretionary action on the part of the utility. First, the section refers to "if a utility *chooses* to disconnect service. . ." Second, the language specifically provides that service disconnection is "an option allowed by the Commission" rather than an obligation imposed by the Commission.

<sup>4</sup> Tex. Admin. Code tit. 16, § 7.45(4)(H) (2014).

<sup>5</sup> The use of the present tense ("is") denotes that the illness, medical condition or disability is existing at the time of the medical certification, rather than being a future expectation caused by the denial of service.

<sup>6</sup> The term "or" is intentionally used to denote the disjunctive. A "serious illness" *or* a "medical condition or disability" are separate tests. A customer may qualify for a medical certification, in other words, without having a serious illness.

<sup>7</sup> The existence of a disability also gives rise, of

that will be aggravated by cessation or denial of service,<sup>8</sup> or will become<sup>9</sup> seriously ill or have a medical emergency because<sup>10</sup> of the cessation or denial of service, and that the denial<sup>11</sup> of utility service would adversely affect the health of that customer or resident of the household.<sup>12</sup>

2. If service has already been terminated when the medical certificate is received, service shall be restored as soon as possible, but no later than twenty-four (24) hours after receipt.<sup>13</sup>

## SECTION 4. PERIOD OF CERTIFICATION

An emergency medical certificate shall be valid only for the length of time the health endangerment is certified to exist, but no longer than six months without renewal for certificates not specifying chronic illnesses and no longer than twelve months for certificates specifying illnesses identified as chronic by a qualified medical professional. At least 15 days before the certificate's expiration date, the utility shall give the customer written notice of the date the certificate

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course, to the possibility that the utility might be required to make a "reasonable accommodation" in the application of the otherwise applicable regulations to account for the disability.

<sup>8</sup> 52 Pa. Code § 56.111 (2014).

<sup>9</sup> Note the second set of circumstances does not require a pre-existing illness, medical condition or disability. The "will become" denotes that the shutoff of service will lead to the medical circumstances to which the medical professional is certifying.

<sup>10</sup> Note that in both sets of circumstances ("is" and "will become") the regulation requires a causal connection between the cessation or denial of service and the medical conditions ("will be aggravated by"; "will become. . .because").

<sup>11</sup> The "denial" of service is intended to capture both the disconnection of service and the refusal to restore service.

<sup>12</sup> IDAPA 31.21.01.308 (2014).

<sup>13</sup> IDAPA 31.21.01.308.02 (2014).

expires unless it is renewed<sup>14</sup> with the utility before that day arrives.<sup>15</sup>

## SECTION 5. METHOD OF CERTIFICATION

1. The certification to the utility must be in writing<sup>16</sup> by the qualified medical professional. Written certifications must include:<sup>17</sup>
  - A. The name of the person to whom the certificate applies and relationship to the customer;
  - B. A complete description of the health condition underlying the certification;
  - C. An explanation of how the person's health will be affected by disconnecting or failing to restore the service;<sup>18</sup>
  - D. A statement indicating how long the health condition is expected to last;<sup>19</sup>

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<sup>14</sup> This regulation makes explicit that a medical certification may be renewed.

<sup>15</sup> OAR 860-021-0410 (2014).

<sup>16</sup> While there must be a written medical certification, there is provision in the regulation for instances in which a utility employee is orally made aware of the likelihood that such a certification is forthcoming. See, Section 5(2), *infra*.

<sup>17</sup> This regulation does not allow a utility to prescribe use of a uniform form, so long as the required elements of the certification are included in the certification.

<sup>18</sup> While the regulation provides that the medical professional must describe the medical condition, and how it will be affected, the utility does not have the discretion to review that medical finding. See, Section 6(1), *infra*. The description of the medical condition need not be sufficiently specific as to reveal confidential personal medical information and a utility may not require disclosure of such confidential medical information.

<sup>19</sup> This requirement is to indicate that the medical

E. The signature of the qualified medical professional.<sup>20</sup>

2. Each utility employee who personally contacts a residential customer, and any utility employee sent to disconnect utility service, shall note any information from the residential customer that a person living in the residential customer's residence is seriously or chronically ill. Such information shall immediately be reported to a utility employee authorized to prevent discontinuance. That employee shall either delay the discontinuance if it is apparent that the forms required by this rule will be received, or state in writing why discontinuance of service will not be delayed. The utility and utility employee shall be held harmless for errors made in good faith in noting, acting upon, or failing to act upon the information provided by the residential customer.<sup>21</sup>

3.

## SECTION 6. VERIFICATION OF CERTIFICATION

1. The customer shall obtain, as per Section 5, a certification from a qualified medical professional verifying the condition and shall promptly forward that certification to the public utility. The determination of whether a medical condition qualifies for the purposes of this regulation resides exclusively with the qualified medical professional and not with the public utility. A public utility may not impose any qualification stand-

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professional has given thought to the duration of the circumstances giving rise to the medical certification.

The expected duration of those circumstances can lead to a limitation of the duration of the medical certificate as set forth in Section 4, *supra*.

<sup>20</sup> OAR 860-021-0410 (2014).

<sup>21</sup> N.M. Admin. Code 17.5.410.33(2) – (3) (2014).

ards for medical certificates other than those specified in this regulation.<sup>22</sup>

2. The utility may verify the authenticity of the certificate<sup>23</sup> and may refuse to delay termination of service, or refuse to restore service, if it is determined that the certificate is a forgery or is otherwise fraudulent.<sup>24</sup>

## SECTION 7. OBLIGATION TO PAY

1. Nothing in this rule relieves the customer of the obligation to pay an undisputed bill.<sup>25</sup>

## SECTION 8. DEFERRED PAYMENT PLAN<sup>26</sup>

### [BEGIN OPTION 1]

1. The utility may require the customer to do the following:<sup>27</sup>

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<sup>22</sup> 52 Pa. Code § 56.111 (2014).

<sup>23</sup> Verifying the “authenticity” of the certificate does not provide the utility with the authority to review the findings of the certificate, merely the authority to determine whether the certificate is, in fact, from a qualified medical professional.

<sup>24</sup> IDAPA 31.21.01.308.04 (2014); see also, N.M. Admin. Code 17.5.410.33(4) (2014) (“A utility may use reasonable means to verify the accuracy of information on a medical or financial certification form.”)

<sup>25</sup> IDAPA 31.21.01.308.05 (2014); see also, OAR 860-021-0410 (2014) (“A customer submitting a medical certificate is not excused from paying for electric or gas service.”). See also, RI ADC 90 060 003(B)(4) (2014). (“Non-termination for any reason does not in any way relieve the customer of liability incurred for utility services.”)

<sup>26</sup> The phraseology here is not in limitation of the protections provided. Different states use different references to payment plans: payment agreements, deferred payment agreements, time-agreements, and the like. Such references are considered to be *sui generis*.

<sup>27</sup> OAR 860-021-0410 (2014). The Oregon regulation does not require the utility to seek Commission permission prior to a disconnection, but does provide for the hearing process.

- A. Pay a minimum of ten percent of the delinquent balance;
- B. Enter into an agreement to pay the remaining delinquent balance consistent with the customer’s ability to pay;<sup>28</sup> and
- C. Agree to pay subsequent bills when due.

2. Nothing in this section precludes the utility from agreeing to an alternate payment plan, but the utility may not require the customer to pay more than this subsection prescribes. The utility must send a notice to the customer confirming the payment arrangement within two business days of having reached the agreement.<sup>29</sup>

3. If a medical certificate customer fails to enter into a payment agreement within 20 days of filing the certificate, or to abide by its terms, the utility shall notify the Commission’s Consumer Services Division<sup>30</sup> and request permission to disconnect service,<sup>31</sup> stating the reason for the disconnection. A hearing may thereafter be held<sup>32</sup> to determine whether the utility should be permitted to disconnect service to the customer.

### [END OPTION 1]

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<sup>28</sup> The language regarding “consistent with ability to pay” is taken from Montana. Mont.Admin.R. 38.5.1411(2) (2014).

<sup>29</sup> Wash. Admin. Code 480-90-128(5)(b) – (c) (2014).

<sup>30</sup> Or comparable state commission position or bureau.

<sup>31</sup> The fact that the utility is required to request permission necessarily implies that the utility must obtain that permission prior to effecting a disconnection or refusal to restore service.

<sup>32</sup> This regulation does not specify the trigger for a required hearing.

**[BEGIN OPTION 2]**<sup>33</sup>

1. To avoid the accumulation of a substantial arrearage during the term of the medical certificate, the utility and the customer, or an authorized representative of the customer, shall negotiate an equitable payment arrangement that is reasonable and consistent with the customer's ability to pay. If the customer fails to make payments as established, resulting in an arrearage of \$500 or more, the customer is required to enter into and comply with a monthly payment arrangement equal to the average of the last 12 months billing plus 1/12 of the arrearage. Failure to enter into a monthly payment arrangement and make payments will result in disconnection proceedings being initiated.<sup>34</sup>
2. The utility must notify the commission in writing of the fact of the proposed termination at the beginning of the disconnection process and the circumstances surrounding the proposed termination. The commission may intervene and require a different payment arrangement or delay termination of service if the circumstances warrant. Before the commission will consider approving an alternate payment arrangement, the customer must apply, if eligible, for financial aid through organizations providing utility bill payment assistance and must respond to commission requests for information. The payment arrangement set by the commission is binding upon both the customer and the utility. Failure to comply with the pay-

<sup>33</sup> The difference between “Option 1” and “Option 2” is that in Option 1, the Commission *must* take action (by granting or withholding permission). In “Option 2,” the Commission *may* take action (“may intervene”).

<sup>34</sup> Mont.Admin.R. 38.5.1411(2) (2014).

ment arrangement may result in disconnection proceedings being initiated.<sup>35</sup>

**END OPTION 2]**

**SECTION 9. CONTINUATION OF DEFERRED PAYMENT PLAN UPON EXPIRATION OF MEDICAL CERTIFICATE.**

A deferred payment arrangement in effect when a medical certificate terminates remains in effect<sup>36</sup> for the balance then owing.<sup>37</sup>

**SECTION 10. NO LIMITATION ON CONTINUING SERVICE**

Nothing in this rule prevents a utility from continuing service<sup>38</sup> to a delinquent medically protected account.<sup>39</sup>

**Summary**

For more information regarding the regulation of utility service disconnections for nonpayment, regarding consumer protections regarding utility service disconnections, and regarding utility residential collection practices generally, please contact:

roger [at] fsconline.com

<sup>35</sup> Mont.Admin.R. 38.5.1411(4) (2014).

<sup>36</sup> The termination of the medical certification, in other words, results in no acceleration of arrearage payment obligations.

<sup>37</sup> OAR 860-021-0410 (2014).

<sup>38</sup> As indicated in the Statement of Policy,” Section 1 *supra*, a utility is allowed to disconnect service, not required to disconnect service. The utility always has the authority to provide continuing service beyond that required in this regulation.

<sup>39</sup> Mont.Admin.R. 38.5.1411(3) (2014).

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.