

Protecting Older Adults from Utility Disconnection

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National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Introduction

Access to affordable utility service is essential to protect the health and safety of older adults and is critical to promoting aging in place with dignity. This Issue Brief provides an overview of utility consumer protections and programs to help keep older adults connected to essential utility service.

Key Lessons

- 1. Special disconnection rules can protect eligible households from involuntary termination of electricity or gas service.** Although every state is different, most states have laws that provide some protection from having utilities shut off during extreme weather, when a household member is seriously ill or has a disability, or when household members are older adults. Check with your state's utility commission or utility consumer advocate for information about state laws and also any special exceptions or rules for customers of municipal or co-op utilities.
- 2. Federal utility assistance programs can help eligible consumers afford their bills.** The Low-Income Home Energy Assistance Program (LIHEAP), also known as Fuel Assistance, can help eligible families to pay for heating or cooling expenses, and the federal Weatherization Assistance Program (WAP) provides free energy efficiency services to eligible families and can help reduce a household's utility bills.
- 3. Local programs and utility assistance programs may be available.** Depending on state laws, utility companies may offer a discounted rate to customers who receive public assistance benefits or have a financial hardship. Crisis funds and other programs to reduce bills may be available. States may also offer other assistance, such as homelessness prevention funds.
- 4. Carefully investigate offers from competitive energy supply companies before signing up.** These companies may use deceptive sales practices and offer low introductory rates for utility service, but consumers usually end up paying more for electricity from these companies.

Special Disconnection Protections Can Protect Eligible Households from Involuntary Termination of Electricity or Gas Service

Many states have enacted laws to protect certain vulnerable consumers from utility disconnection. The health and safety consequences of these terminations can be severe and even deadly¹ for older adults.

¹ New York Times, *New Jersey Woman on Oxygen Dies After Electric Company Shuts Off Her Power* (July 9, 2018).

However, laws protecting customers from having utilities shut off differ in each state, and there are several important limitations to keep in mind:

- These protections apply to regulated utilities, which provide electricity service and natural gas. Disconnection protections do not apply to so-called deliverable fuels such as oil or propane.
- Among states that have protections from disconnection, each state's law is different.
- Protections from disconnection usually require some sort of proof that the customer suffers from financial hardship, is part of a vulnerable group identified in the state's law, or both.
- Depending on the state's laws, protections may only apply to utility companies but may not protect customers with municipal or co-op utility service.

PRACTICE TIP

Some utilities offer third-party notification programs which allow older adult customers to request that a copy of disconnection notices be sent to a third party, such as a relative, in addition to the customer. The third party would not be responsible for the bill but could use the information to help the older customer.

Extreme weather protections

Most states limit disconnections of electricity and natural gas service during periods of extreme cold, and sometimes extreme heat.² During the period when disconnections are not allowed, customers who fall behind on their bills cannot have their utilities shut off, but the customers remain responsible for the amount due on the bills. If a customer's unpaid balance grows during the protected period, the customer is at risk for utility disconnection for non-payment once the protected period ends.

- Some states have laws that prevent disconnections for eligible customers during the winter months, often starting around November 1st and ending in mid-April.³
- In some states, disconnections protections are triggered by a forecast of temperatures either below 32 degrees Fahrenheit or above 95 degrees Fahrenheit, or if the National Weather Service has issued a severe heat advisory.⁴
- Many states limit winter shut-off protections to special classes of customers: households experiencing financial hardship,⁵ low-income households,⁶ older consumers, and households with very young children or seriously ill individuals.⁷
- Some states require households that already owe money to the utility company to enter into payment plans in order to be covered by the extreme weather protection.⁸

2 For an in-depth discussion about seasonal and extreme weather termination protections, see National Consumer Law Center, *Access to Utility Service*, 6th ed., Section 6.3.2 (weather and temperature protections) and Appendix A 5(Summary of State Extreme Temperature Protections) (2018).

3 See e.g., Minn. Stat. §§216B.096 through .098.

4 See e.g., Nev. Admin. Code §704.375 (no termination for a forecasted 24-hour period of extreme temperatures during which the temperature is forecasted to be at or below 15 degrees Fahrenheit or at or above 105 degrees Fahrenheit).

5 See e.g., Idaho Admin. Code r.31.21.01.306.

6 See e.g., 170 Ind. Admin. Code 4-1-16.6, 5-1-16.6; Ind. Code §8-1-2-121.

7 See e.g., N.Y. Comp. Codes R. & Regs. Tit.16, §11.5(c)(2).

8 See e.g., Wash. Admin. Code §§480-90-143, 480-100-143.

- In California, special temporary rules have been put in place after natural disasters to give customers extra time to recover and pay their utility bills, before service can be disconnected.⁹

Serious illness or disability disconnection protections

Disconnection of utility service can be life-threatening for those who are particularly susceptible to heat or cold temperatures—frail older individuals, the very young, and those with certain chronic health conditions. Loss of utility service is also dangerous for those who need electricity or water for medical equipment or refrigeration of medication. Persons with disabilities risk losing their in-home personal care aid services because agencies will not send staff to homes without electricity and other working utilities. Utilities will typically postpone a disconnection if it would endanger the health or safety of an occupant, but this protection varies depending on who is covered by the protection, how the protection is triggered, and how long the protection lasts.¹⁰

- The certification of the serious illness often needs to be signed by the medical professional and contain certain information (such as a description of the health condition that would be worsened by the loss of utility service).
- The duration of the protection can vary as well as the ability to renew the protection.
- Consumers will remain responsible for their current and past due bills.

The National Association of State Utility Consumer Advocates (NASUCA) recently passed a resolution recommending that more states adopt strong serious illness protection rules.¹¹

PRACTICE TIP

Some states that provide serious illness protections or age-related protections may have additional provisions protecting customers with life-threatening illnesses or disabilities. Examine all options and consider whether one type of protection may be preferable to another.

Age-related disconnection protections

Some states have age-related termination protections that apply to older adults.

- These age-related disconnection protections are sometimes a part of weather-related termination prohibition.¹²
- Sometimes the termination protection is in the form of an additional procedural step the utility must perform before disconnection of service.¹³

9 California Public Utilities Commission, Order Instituting Rulemaking Regarding Emergency Disaster Relief Program (No. 18-03-011), [Proposed Decision Affirming the Provisions of Resolutions M-4833 and M-4835 as Interim Disaster Relief Emergency Customer Protections](#) (Aug. 9, 2018).

10 See e.g., Or. Admin. R.860-021-041.

11 See NASUCA Resolution 2018-03 available at nasuca.org/nwp/wp-content/uploads/2017/08/2018-03-Protections-from-Shutoff-for-Customers-with-Serious-Illnesses-Final-6-24-18-002.pdf.

12 See e.g., Mich. Admin. Code, r/ 460.149 (customers over 65 shall not have service terminated due to non-payment in the winter months if they sign up and remain current on a payment plan).

13 See e.g., 220 Mass. Code Regs. §25.05 (a utility must devise procedures to determine which households are comprised only of adults over the age 65. Before shutting off service to one of these homes, the utility must gain approval from the Dept. of Public Utilities (DPU). Elder residents have a right to a hearing before the DPU prior to service termination.). See also, Okla. Admin. Code §§ 165:35-21-11, 65:45-11-13 (Oklahoma protection based on combination of age, disability and inability to pay: If a customer is over the age of 65 or has a disability, he or she may sign up for the Commission notification procedure. Under the procedure, a utility must notify the Corporation Commission at least 10 days prior to terminating service to an enrolled customer. The Commission may require a 5 day delay of termination.)

PRACTICE TIP

To find out which protections from utility termination are available in your state, contact your state's public utility commission, utility consumer advocate office, or office of the attorney general. See the Additional Resources section for more information.

Federal Utility Assistance Programs Can Help Eligible Consumers Pay Their Bills

The Low-Income Home Energy Assistance Program (LIHEAP)

The Low-Income Home Energy Assistance Program (LIHEAP)¹⁴ helps low-income households pay for home heating bills in the winter and cooling bills in the summer. LIHEAP also helps eligible households¹⁵ resolve energy crises, for example, by providing funds to repair a broken furnace or making an emergency payment to avert an imminent disconnection of services during frigid winters or hot summers.¹⁶ LIHEAP is administered by the U.S. Department of Health and Human Services, Administration for Children and Families. States receive an annual block grant¹⁷ from the federal government to administer the LIHEAP program and have flexibility in setting eligibility criteria, benefit amounts, how much to direct to energy crisis situations where the health of the household is at risk, and other program components.

LIHEAP benefits cover all forms of residential heating or cooling fuels. This includes a range of fuels from natural gas and electricity for heating or cooling, to home heating oil, propane, kerosene, and wood. LIHEAP is usually administered by community action agencies and other state agencies.¹⁸ For more information about a particular state's LIHEAP program, check with the state's LIHEAP office.¹⁹

Weatherization Assistance Program (WAP)

The federal low-income Weatherization Assistance Program (WAP)²⁰ funds measures that lower utility bills by making the walls, roof, and basement tighter to keep more heat in the home in the winter and outside in the summer. WAP services may also include installation of energy efficient appliances, lighting and other measures to decrease energy consumption through greater energy efficiency. States²¹ often contract with community action agencies to deliver WAP services to eligible low-income households. Services are free to financially eligible households, and a household is eligible for WAP if their income is at or below 200 percent of the federal poverty level.²²

Local Programs and Utility Assistance Programs May Be Available

Many regulated electric, natural gas, and water companies offer low-income discount rates, credits,²³ and low-income energy efficiency programs.²⁴ Low-income discount programs can be designed in different ways.

14 42 U.S.C. §§8621-8630.

15 States have the flexibility to set LIHEAP eligibility criteria within certain parameters: income-eligibility criteria must be set between 110% of FPL and 150% of FPL or 60% of SMI and participation in certain federal low-income programs such as SNAP and SSI can automatically confer eligibility (42 U.S.C. §8624).

16 LIHEAP is discussed in greater detail for practitioners in National Consumer Law Center, *Access to Utility Service*, 6th Ed, Ch. 8 and Appx. C (2018).

17 liheapch.acf.hhs.gov/Funding/funding.htm.

18 liheapch.acf.hhs.gov/admin/heatadmin.htm.

19 neada.org/state-tribal-programs/state-energy-assistance-directors.

20 42 U.S.C. §§ 6861 – 6873.

21 For a list of state weatherization offices visit nascsp.org/about/state-contacts.

22 42 U.S.C. §6862(7); 10 C.F.R. § 440.22.

23 liheapch.acf.hhs.gov/snapshots.htm (state-by-state snapshots of LIHEAP, utility-based and charitable assistance programs).

24 See ACEEE resources on utility low-income energy efficiency programs in the states at aceee.org/topics/low-income-programs.

Sometimes the entire bill is reduced by a set percentage,²⁵ sometimes the rate is set lower for low-income consumers, sometimes set charges and fees are waived for low-income consumers.²⁶ The eligibility criteria will also vary, but there are two main designs for determining who qualifies for the low-income discount rate: participation in another low-income program such as LIHEAP, or demonstration that household income is at or below a certain percentage of poverty or state median income (e.g., 200% of poverty or 60% of state median income).²⁷

EXAMPLE

Ohio offers customers the option of a [Percentage of Income Payment Plan \(PIPP\)](#) to reduce electricity bills for households with limited income. While a customer is in a PIPP, the household is protected from disconnection.

Arrearage Management Programs (AMP) are a newer type of protection, which helps households with large overdue balances to become current on their bills by forgiving a portion of the overdue balance when a customer stays current on new utility bills. While making payments under this plan, the household is protected from disconnection. Regulated energy utilities in Massachusetts are required by law to have AMPs.²⁸ The District of Columbia Public Service Commission recently approved an AMP for PEPCO customers.²⁹

PRACTICE TIP

If a consumer is not able to get help from their utility company, or if the customer should be eligible for assistance but has been turned down by the utility company, contact the state utility consumer advocate or the state utility commission.

Many utilities and charitable organizations have limited crisis funds to help consumers avoid disconnections.³⁰

Carefully Investigate Offers from Competitive Energy Supply Companies Before Signing Up

In many states, some consumers are paying too much for electricity because they have signed up for overpriced contracts with competitive electric supply companies (also called energy service companies or ESCOs). These companies are allowed to sell electricity directly to consumers in certain states that have chosen to deregulate their electric utilities. Unfortunately, these customers often end up worse off, paying the competitive supply company more for the same electricity service that their utility company would have provided for a lower price. Often, competitive energy suppliers engage in unfair and deceptive sales practices,

25 See e.g., California CARE provides a 30-35% discount off the electric bill. More information is available at cpuc.ca.gov/General.aspx?id=976.

26 See e.g., DC Pepco Residential Aid Credit (a credit on the distribution charge which could translate to around 25% off the bill, and a credit on the RAD, Sustain Energy Trust Fund and Energy Assistance Trust Fund surcharges). More information is available at pepco.com/MyAccount/CustomSupport/Pages/DC/ResidentialAidDiscountProgram.aspx.

27 See e.g., California CARE program at cpuc.ca.gov/General.aspx?id=976.

28 See Charlie Harak, *Helping Low-Income Utility Customers Manage Overdue Bills Through Arrearage Management Programs (AMP)*, National Consumer Law Center (Sept. 2013).

29 See DC PSC, Order Number 18799, FC1119-1780, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction (March 23, 2016)(Order approving Pepco's Arrearage Management Program).

30 liheapch.acf.hhs.gov/snapshots.htm (state-by-state snapshots of LIHEAP, utility-based and charitable assistance programs).

particularly in low-income communities as well as among older adults and those with limited English language skills.

Competitive supply companies may approach customers with deceptive door-to-door marketing pitches or telemarketing. Sometimes, the salesperson will state that he or she is working with the utility company and will ask to see the customer's bill. The salesperson will usually offer a low introductory "teaser" rate for electricity, but after the teaser rate expires, customers may find that their electric bills have skyrocketed. The contracts may also include high cancellation fees, and contracts may automatically renew unless cancelled by the customer. Some customers report being switched to a competitive supply company contract without their consent.

Consumers should be aware that utility company representatives will never come to their door and ask to see an electric bill. All consumers should carefully consider any offer from a competitive supply company before signing up. If a consumer has signed up for competitive electric supply and wants to end the contract, contact the competitive supply company and utility company. If the companies cannot help or if the consumer wishes to file a complaint, contact the state utility consumer advocate and the state utility commission.

Conclusion

Utility service is a basic human need, and involuntary utility terminations can harm the health and safety of older adults. Many states have laws that provide some protection to older adults, those with serious illnesses or disabilities, or during extreme weather. Since each state has different laws, advocates can contact the state's utility commission or utility consumer advocate for information about protections in their state. There are also several programs to help older adults lower their utility bills, including the Low Income Home Energy Assistance Program (LIHEAP), the federal Weatherization Assistance Program (WAP), utility company programs and other state or local programs or crisis funds. In addition, older adults who are considering a contract with competitive energy supply company should carefully evaluate the contract terms, and be aware that most residential electricity customers end up paying more under these competitive supply contracts than they would have paid to their utility company for the same service.

Additional Resources

- Resources for paying bills or restoring utility service:
 - » Low-Income Home Energy Assistance Program (LIHEAP) is a federally funded program which is administered by states and can help pay for heating and cooling costs. For assistance with applying, contact the National Energy Assistance Referral (NEAR) at 1-866-674-6327 (TTY at 1-866-367-6228) or energyassistance@ncat.org.
 - » Utility programs. The LIHEAP Clearinghouse maintains a [list of utility programs and other assistance programs](#).
 - » State or local homelessness prevention funds. Some states may offer assistance. For example, a Massachusetts program to prevent homelessness, [Residential Assistance for Families in Transition](#), provides funds to eligible families including older adults and can be used for utility arrears or payments.
 - » Municipal programs. Check with municipal or town bylaws to find out if discounts or other protections are available for older adults who are customers of municipal utilities or municipal water department.
- Resources for learning more about utility consumer rights and the rules in your state:
 - » [State utility consumer advocates](#)

» [State utility commissions](#)

- Resources for reducing energy bills:

» U.S. Federal Trade Commission, [Saving Energy at Home](#)

» U.S. Department of Energy, [Weatherization Assistance Program \(WAP\)](#)

- For more information, contact:

» Jenifer Bosco, Staff Attorney, National Consumer Law Center, jbosco@nclc.org

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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