



CONSUMER CONCERNS

Information for Advocates
Representing Older Adults

National Consumer Law Center®

How to Help Older Americans Avoid Loss of Utility Service

Maintaining continuous utility service is a crucial health and safety issue as well as a housing issue for older Americans. For older and/or retired and disabled consumers, it may be particularly difficult to cut back on their use of basic electric, gas, water, and telephone services because they may spend more time at home and are already using these services minimally. It is especially a challenge to conserve energy during the winter or summer months, because of the serious threat that extreme temperatures can pose to their health. Significant savings in utility bills can require major investments in insulation, home repairs, and energy-efficient appliances, which may be beyond the reach of financially limited consumers. Meanwhile, while rates tend to increase over time, many seniors remain on fixed incomes that do not keep pace with rate increases.

Unable to reduce utility consumption and to cover the cost of utility bills, many older Americans accrue substantial debts to their utility companies. Unpaid utility bills can mean loss of water, telephone, electric, or gas service, which can have dire consequences for seniors. Moreover, for seniors who are tenants, loss of utility service may result in eviction since landlords view such loss of service as a potential hazard for the rental unit (for example, frozen pipes may burst and cause extensive damage, use of alternative sources of heat or light can cause fires). Some subsidized housing leases require the tenant to maintain utility service or risk both eviction from the rental unit and loss of the housing subsidy.

This issue of Consumer Concerns for Older Americans offers practical advice to advocates of elder issues on how to prevent a utility termination and how to challenge a pending utility termination.

Key Sources of Assistance

Seniors with utility problems should try to find someone with experience helping customers deal with utility problems. This might be a lawyer or paralegal at the local legal services office or a staff member at the local agency that makes fuel assistance payments (usually but not always the local community action program, or CAP). Area Agencies on Aging (AAAs) or other state, local, or nonprofit advocacy groups that work with seniors may also be able to offer suggestions.

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Some aspects of utility law can vary from state to state due to state-specific legislation and regulation. However, general principles in utility regulation are shared and the National Consumer Law Center (NCLC) has published a book, entitled "Guide to the Rights of Utility Consumers," which is written to be useful for utility consumers around the country. The book can be purchased at <http://shop.consumerlaw.org/>.

At least one state – Massachusetts – has a guide book specific to issues that utility consumers face in the state, entitled "Utilities Advocacy for Low-income Households in Massachusetts." A free copy of the book can be viewed or printed at <http://www.masslegalservices.org/cat/1430>.

Strategies for Keeping Up with Utility Bills

The strategies below range from ways to spread the payments over time to finding sources that will help make payments on the bills:

1. **An Appropriate Service Plan.** Changing telephone, gas, or electric service plans may help lower monthly bills. First, monthly telephone bills can be reduced by switching to a different calling plan that most appropriately fits the household's utility service needs. Depending on a household's usage pattern, the most economical service may be bundled services (optional and multiple services for one price), measured service, 10-10 dial around access numbers, prepaid calling plans or cards, or some combination of cellular with local landline service that generally maintains more accurate 911 call-locating capability. There are also free voice-over internet services that can also be investigated. Second, in states where energy has been "deregulated" and shopping around for the best rates in electric generation and gas supply is available, monthly electric and/or gas bills may be reduced by switching to a lower-cost supplier. There have been problems with some door-to-door marketing by energy suppliers in deregulated states, so it is best to check with the state public utility commission for information on whether shopping is available and how to shop. Third, consumers may soon benefit from "smart-meters" that allow consumers to see how electric rates change depending upon time of day. These are controversial and expensive technologies and rate designs. While some customers on time-based rates may be able to change their pattern of heaviest electric usage (for example, washing laundry) to a more economical time of day, other customers have no such flexibility in their electric use patterns and time-based rates would be inappropriate for them.

2. **Budget Plans.** Budget plans, also called "level payment plans," may help customers who are current on their utility bills but may have trouble paying their utility bills at certain times of the year. For example, in the winter, heating bills are high and in the summer, air conditioning can drive up electric bills. To avoid running up debts during these months, customers can establish budget plans with utility companies. Many states require utilities to provide these plans. In a budget plan, a customer's projected yearly bill is divided into equal monthly installments; monthly bills reflect this average amount rather than each month's actual costs. For example, a customer whose total gas bill for a year is \$1200 would pay \$100 each month instead of \$200 to \$300 a month in the winter and \$30 to \$40 a month in the summer. At some point during the year, the average bill and the actual usage are reconciled, and the customer either receives a "catch-up" bill (if ac-

tual usage was higher than estimated) or a credit (if the actual bills were lower than estimated).

3. Payment Plans and Arrearage Programs. Households in financial distress can quickly get so far into the hole with their utility bills that a budget plan is not enough. Such households cannot catch up on back-due payments (called arrears) and still keep up on current utility bills. One solution is for the consumer and utility to negotiate a payment plan by which the consumer makes a fixed monthly payment and the utility promises not to shut off service. State utility commissions often require utilities to offer such a plan. The plan may be designed so that the customer pays current usage but only slowly catches up on the amount in arrears. To make a successful payment plan, the customer – preferably with the help of an advocate or caseworker – must develop a simple budget that the household can reasonably meet and must not be hesitant to advocate for that plan with the utility company employee who negotiates the agreement. Payment plans need not require payments to be made in equal monthly installments. The utility company is likely to want a payment plan that requires larger payments than the customer can afford. Large payments are in the company's short-term interest, because they recover past debts more quickly. Too many customers, believing they have no choice, agree to these payments. Unrealistic plans, however, harm both customers and utility companies in the long run – the customer is unable to make the payments, and may lose the service, and the company does not collect its debt. In some states, utilities are not required to enter into a second payment plan with consumers who have defaulted on a first payment plan. If a company should refuse to agree to a reasonable payment plan, help may be obtained from the consumer division of the public utility commission. (For your state's utility commission contact information, go to www.naruc.org; click on the "State Commissions" link, then click on your state.) Some utilities also are more willing to negotiate with consumer counselors than with consumers themselves. Sometimes utilities will forgive a portion of the arrearage if customers continue to meet their payments under such agreed plans,

4. Percentage of Payment Plans. A growing number of utilities and state utility commissions are experimenting with plans in which individuals or families pay only a certain percentage of their income instead of the amount listed on their regular utility bills. Typically, if a low-income household regularly pays according to this percentage-of-income payment schedule, the household is rewarded with a gradual forgiveness of its back bills or arrears. These plans are sometimes called Percentage of Income Payment Plans (PIPPs) or Energy Assurance Plans (EAPs), but each utility seems to have its own unique name for the program. The best way to determine if a utility has such a program is to contact that utility or the public utility commission and ask whether there are special payment programs for low-income customers.

5. Discounted Rates. Some telephone, electric, gas, and water utilities have special discounted rates for low-income, elderly, and/or disabled households. For example, many states provide discounts on new telephone service installation charges under the Link-up program and/or a discount on monthly charges under the Lifeline program. Electric, gas, and water utilities additionally may have company-specific offers of discounts to eligible customers. Ask your utility company or the state public utilities commission if there are any special lower rates.

6. Federal Energy Assistance. The federal Low Income Home Energy Assistance Program (LIHEAP), commonly called "fuel assistance," is administered by the states. It helps low-income households (families or individuals) pay their winter heating bills. Some states also use LIHEAP funds to assist with summer cooling expenses. LIHEAP benefits can also go to renters and even to some public- and subsidized-housing tenants, with the energy assistance payments sometimes paid directly to the landlord's fuel supplier and credited against the family or individual's rent. Guidelines for LIHEAP eligibility vary by state, but about half of the states require that family income over the past three to twelve months be at or below 150% of the federal poverty guidelines. States can set their income limits as low as 110% of the poverty guideline or as high as around 200% of the guideline. The size of a household's LIHEAP grant generally depends on its income and the number of household members and may also depend on housing type, fuel type, fuel prices, weather conditions, or actual energy consumption. To apply for LIHEAP benefits, the individual or family should contact the local agency that administers the program. This is usually a nonprofit agency, such as the local community action program (CAP), or a state welfare office. (To find out the local fuel assistance agency in your area, go to: <http://liheap.ncat.org/referral.htm> or call toll-free 1-866-674-6327.) LIHEAP requires special outreach to senior households, so many AAAs or other local agencies working with older consumers may be able to provide information about LIHEAP and how to apply for it. Benefits are usually paid directly to the utility company or fuel vendor, and the household's obligation to the utility or fuel supplier is reduced accordingly.

7. Utility Fuel Funds. Many utility companies utilize special funds, sometimes directly subsidized by other customer contributions, to provide funds to those who cannot pay their utility bills. To determine the availability of these funds, contact the utility company or the local agency that administers the LIHEAP program. Many of these fuel funds focus specifically on helping seniors or low-income consumers.

8. Weatherization and Conservation Programs. Some states run energy programs that provide homeowners and tenants with energy audits and/or weatherize their homes, tune up/repair/replace old or inoperative heating systems, or replace inefficient appliances like old refrigerators. Many companies also provide assistance for weatherization of homes and replacement of old appliances in the form of low-cost loans or outright grants. To find out where to apply for weatherization programs in your area, contact your local fuel assistance office. (See #6, above, for how to find the local fuel assistance office.) It is also worth asking your local Area Agency on Aging or other local government or private agencies if there are weatherization or appliance programs specific to your area. Most agencies maintain waiting lists for weatherization assistance and usually give priority to seniors. Separate from such programs, individuals and families in many states can obtain assistance from utility companies to save on energy bills in other ways, such as by replacing light bulbs with energy-efficient bulbs, insulating hot water tanks, and providing "low-flow" efficient faucets or shower heads. Water utilities may offer conservation assistance programs, provide leak detection or minor maintenance, repairs, and equipment such as aerators to the customers to improve water use efficiency. Again, many of these programs give special attention to seniors and/or to low-income households.

9. Charities and Other Private Sources. Many charities, churches, and other private organizations help people pay their utility bills. These groups provide assistance only when they have funds available and sometimes only at certain times of the year. In some areas, AAAs, community action programs, or agencies or organizations that work with seniors maintain referral lists of such private energy assistance programs.

10. Other Government Programs. Other state and local agencies, such as those providing welfare, social service, or mental health services, may also have access to funds that help with utility bill payments. In particular, state welfare departments may be able to make payments on utility bills under an Emergency Assistance program through the Temporary Assistance for Needy Families (TANF), a block grant created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States may restrict the emergencies for which aid is provided (requiring, for example, that the emergency be unforeseen or out of the household's control). The federal legislation specifies that TANF can be applied to heating and energy assistance, and while states have broad discretion in implementing TANF, utility shut-offs should be among the emergencies covered by general relief. This assistance could be helpful to seniors whose grandchildren or other young children may be living with them. You should check to see if your state has chosen to provide emergency utility service assistance under its block grant.

Fighting a Termination of Service

The threat of immediate termination of service, and the need to restore service that has been terminated, are the two most urgent problems faced by utility customers. In many states, statutes and public utility commission regulations provide a variety of significant protection against utility terminations. These protections include:

1. Financial Hardship. Public utility commission regulations in some states prohibit or restrict termination of service for households with incomes falling below certain levels, households with incomes limited to certain government benefits, or households that can otherwise demonstrate financial hardship.

2. Serious Illness. Similarly, state law or public utility commission regulations often restrict termination of service for households with members who are facing or are threatened with a serious illness or who depend on life-support systems. Often, a doctor must certify the illness and the family must certify that it is experiencing financial hardship and is unable to pay its bills. A household with very young children may also cite the health risk to the children as grounds to stop utility termination –again, this issue may be helpful for seniors who are caregivers for their young grandchildren or other young children.

3. Winter/Summer Protection Rules. Many states and cities have enacted legislation that prevents termination of utility service during certain times of the year, chiefly heat - related services during the heating months. A few states also limit terminations when temperatures exceed a certain level in the summer. To qualify for the protection, financial hardship may have to be demonstrated.

4. Special Rules for Senior Households. Some states offer general protection for older customers, while others protect them against termination if a winter storm is forecast or if the

temperature is expected to drop below a certain level. Similar protection may be offered to households with children.

5. **Tenant Protection.** Sometimes a landlord fails to pay for utility service, putting tenants at risk of losing the utility service. Tenants in this situation may have special protections. In some states, tenants must receive a special shutoff notice if the landlord is delinquent (behind on his or her payment). In such cases, tenants may be able to make utility payments directly to the utility and deduct those payments from their rent.

6. **Advance Notice of Utility Termination.** All customers are protected against surprise termination of service. Utility companies cannot legally terminate service without first providing customers with requests for payment and notices of termination. Many utilities must also provide customers with an opportunity to dispute or contest the reasons for the shutoff.

7. **Contesting the Termination.** A state's utility commission's consumer division responds to phone calls, letters, and visits by residential customers. Many customer complaints are resolved informally, through consultation between the consumer division and the utility. The utility commission also holds formal hearings on complaints that cannot be resolved informally. Within a given amount of time, consumers generally have a legal right to a hearing whenever they have grounds to dispute a utility termination. You can ask about any time constraints and request that the utility commission provide a hearing before service is terminated. Individual consumers need not have a lawyer represent them at the hearing. However, it may be helpful to have a paralegal or experienced utility counselor assist with the hearing. It is important for consumers to bring all relevant documentary evidence, such as a physician's affidavit or past bills, to support their claim. It may also be helpful to have witnesses, such as friends and neighbors, present.

8. **Bankruptcy Protection.** The mere filing of a bankruptcy petition automatically requires the utility to restore service or cease a threatened termination. The bankruptcy filing creates a twenty-day period during which the consumer has a right to service from all applicable utilities. The utility can only terminate service after that twenty-day period if the consumer fails to pay future bills, even if the consumer never pays another penny on past-due bills. However, the utility can require that the consumer provide adequate assurance that future bills will be paid, for example, by providing a new deposit or requiring a co-signer to such an agreement.



About NCLC

Since 1992, NCLC has received funding from the Administration on Aging to conduct the National Legal Resource Initiative for Financially Distressed Older Americans, intended to improve access to and the quality of consumer representation for older Americans. Founded in 1969, NCLC provides legal advocates with technical and expert assistance, training, and publications that cover all major topics in consumer law. NCLC has established itself as the nation's consumer law specialist, making its legal expertise available to the attorneys for low-income clients. These services are now available to advocates representing older Americans.

A publication of NCLC's National Legal Resource Initiative for Financially Distressed Older Americans

Useful Information and Websites

The National Consumer Law Center (NCLC) publishes a manual, entitled **Access to Utility Service** (4th ed. 2008) which provides detailed discussions of customer service and utility termination issues, special utility payment plans and rates for low-income consumers, and federal LIHEAP and weatherization developments.

For more information about the book, go to <http://shop.consumerlaw.org/accesstoutilityservice.aspx>

For additional information on where to turn with questions on utility problems, contact Charlie Harak, John Howat, or Darlene Wong at NCLC's Boston office (617 542-8010) or Olivia Wein at NCLC's Washington, D.C., office (202 452-6252).

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