

COMMENTS OF
The Pennsylvania Utility Law Project

Submitted July 19, 2013

FISCAL YEAR 2014
LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM
PROPOSED STATE PLAN



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I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”), as the designated statewide specialized project of the nonprofit Pennsylvania Legal Aid Network, provides representation, advice, and support in energy and utility matters on behalf of low-income, residential utility customers. These comments are presented on behalf of our low-income clients. For more than three decades PULP has worked alongside the Department of Public Welfare (“DPW” or “the Department”) in an effort to further our mutual goal of protecting and serving Pennsylvania’s most vulnerable households through the effective management of Low-Income Home Energy Assistance Program (“LIHEAP”) resources.

II. GENERAL STATEMENT

LIHEAP is an essential program. The Cash and Crisis grant programs as well as the weatherization Crisis Interface component are critical to assisting Pennsylvania households get safely through the winter. Unfortunately, some of the major program design features implemented during the past number of years—such as a separate calendar for the Cash and Crisis components; a late Crisis program start scheduled for January; a reduction in the amount of grants which are provided to tenants who pay for heat indirectly through their rent; and, a ceiling on the maximum cash grant amount—have had negative consequences for many households in need of LIHEAP. Furthermore, these policies have resulted in the failure to allocate all available funding during the program year, and a substantial under spending for grants which would have aided tens of thousands of low-income households. These policies are unnecessary, unwise and should be revisited.

Additionally, DPW has again proposed a potential application of LIHEAP grants to the accounts of Customer Assistance Program (CAP) program participants that may conflict with federal law and, at the very least, poses significant logistical concerns regarding inter-agency cooperation. PULP addresses Appendix B, section 601.45 within these comments and requests that the Department provide necessary safeguards, clarification and policy development in conjunction with any potential adoption.

III. PULP RECOMMENDATIONS IN BRIEF

PULP respectfully recommends that DPW make the following changes to its Fiscal Year 2014 State Plan DPW. These recommendations are made to protect and serve Pennsylvania's most vulnerable citizens and assist DPW to effectively manage its resources.

- 1.** Open both Cash and Crisis concurrently on November 4, 2013, and close both on or after April 4, 2014 or until all available funds are expended.
- 2.** If LIHEAP Crisis Exception is maintained, eliminate the requirement that individuals must be eligible for a LIHEAP Cash grant in order to get a Crisis Exception grant to restore their heat.
- 3.** Correct discrepancies within the Plan to make it clear that renters whose heat is either a designated or an undesignated portion of their rent qualify for a LIHEAP grant.
- 4.** Remove the requirement that life-threatening emergencies requiring Crisis assistance within 18 hours be a "documented medical emergency" or clarify what documentation is required.
- 5.** Prior to implementation of proposed § 601.45:
 - Respond to the concerns outlined in a April 11, 2013 Letter from the Division of Energy Assistance, Administration for Children and Families, United States Department of Health of Human Services to DPW concerning § 601.45 ;
 - Specify which utility Customer Assistance Programs ("CAPs") fall within the designation of a Percentage of Income Payment Program ("PIPP") ;

- Define what constitutes a permissible means of integrating LIHEAP and CAP for those CAP programs that are not PIPPs;
 - Specify how DPW will ensure that application of § 601.45 will provide CAP customer protection from shut-offs;
 - Specify how excess LIHEAP grants greater than the annual CAP credit are to be applied;
 - Define the energy burden levels required to ensure that § 601.45 will result in a coordination of LIHEAP and CAP programs which achieves affordable utility bills and results in affordable energy burdens for CAP customers who apply their LIHEAP Cash grants to their CAP bill.
- 6.** Specify that implementation of vendor plans such as CAP-Plus, which deem LIHEAP as an available resource or adversely treat LIHEAP recipients, is in violation of federal law and regulations and will jeopardize an entity's LIHEAP status as an approved vendor.
 - 7.** Increase the maximum Crisis Grant for fuel oil delivery to \$1000.
 - 8.** Reinstate and make permanent the fuel oil discount program.
 - 9.** Ensure that the Crisis Interface Program with DCED, which enables repair and replacement of heating systems, receives funding sufficient to ensure that it opens on November 1, 2012 and remains open until all available LIHEAP funds are expended.
 - 10.** Ensure that LIHEAP crisis is available to the homebound ill and disabled.
 - 11.** Develop and implement a robust communication plan to inform the public, local LIHEAP offices and sub-grantees in a timely manner of all program parameters and changes.
 - 12.** Utilize all available LIHEAP 2013-2014 funding and resources by April 4, 2014.
 - 13.** Actively advocate for stable and continuous supplemental LIHEAP funding.

IV. COMMENTS IN SUPPORT OF SPECIFIC RECOMMENDATIONS

A. Cash and Crisis components should open concurrently on November 4, 2013 and remain open until on or after April 4, 2014 or until all available funds are expended.

Despite almost universal opposition from all commenters, DPW has again proposed to separate the LIHEAP Cash and Crisis programs. PULP opposes the bifurcated opening of the LIHEAP Cash and Crisis programs. The Crisis Program should open on November 4, 2013 concurrently with the Cash Program.

The proposed opening of the Crisis Exception Program on November 4, 2013 is an inadequate substitute for an actual Crisis grant program. First, the Crisis Exception program is neither structured nor intended to prevent shut-offs. This is major failing. In Pennsylvania, the financial and legal requirements to gain restoration of service are far more burdensome than the requirements to prevent termination of service. After a service shut-off occurs, security deposits and reconnection fees may be required, thus making restoration of service more expensive. Since LIHEAP funds may not be used to pay for a security deposit, in some cases waiting until the service has been shut-off will make restoration of service virtually impossible. In addition, Public Utility Commission (PUC) rules are more restrictive after a shut-off, reducing the potential assistance available through the PUC.

The LIHEAP experience during the past three years has clearly confirmed that a limited Crisis program, such as the one again presently proposed by DPW, provides insufficient time to meet the needs of applicant households or of local grant processing agencies. Based on historic spending patterns of the past three years, the anticipated federal block grant amount expected this year is adequate to support a Crisis program longer than the one currently being proposed by DPW. Even in the current political and economic environment, DPW currently expects to

receive a \$162.93 million LIHEAP block grant and to carry over \$19.2 million from the 2012-13 LIHEAP season. Despite the significant amount of LIHEAP funds it expects to receive, DPW has proposed a short LIHEAP season and proposes a LIHEAP Crisis season that will be open for just 3 months. This is inadequate to the need and the resources available and should be modified.

The actual time it takes to process a LIHEAP Cash grant is simply too long. It often significantly exceeds even the 30-day anticipated time frame. Because the Cash grant processing time period is neither designed nor capable to assist a household in an actual crisis, the bifurcation of the two grant programs and the slow Cash grant processing time results in a failure to assist households in need of immediate help. By opening the Crisis and Cash grant components at the same time, DPW would ensure that the protective benefits of the grants are received within Crisis grant time frames. A Crisis grant, which must be processed within 48 hours, ensures an expeditious result which is responsive to the actual need. A LIHEAP Cash grant processed alone may not achieve that same result.

Furthermore, while utility companies may refuse to accept either a Cash grant or a Crisis grant alone to prevent termination or to reconnect service, the effect of combining the two grants often achieves better results. LIHEAP applicants must have the opportunity to use both the Cash and Crisis components in combination and at the same time, in order to have the best opportunity to maintain and restore essential heat service during the cold weather months.

Additionally, the proposed program dates provide too narrow a time frame for orderly program administration. LIHEAP applicants, even during longer program years, have often been subject to long waiting lines at processing sites, and processing and payment delays in those counties having inadequate staffing. DPW regularly hires, employs and trains temporary energy assistance personnel. The curtailed program year which DPW proposes will result in these

temporary and sub-contracted workers being overwhelmed by an onslaught of applications submitted over an extremely condensed period of time. With a curtailed program year, it is highly unlikely that this critical program will be able to function in an orderly manner and efficiently process and provide Crisis grants within 48 hours or less or Cash grants within the mandated 30 day time period.

Finally, having such a short Crisis program as proposed by DPW will significantly reduce the effectiveness of the Crisis Interface component which refers crisis eligible candidates to the weatherization program for emergency heating system repairs and replacement, because the period of referral and operation will be dramatically curtailed. It should be clearly stated within the Plan that this essential program component is intended to run from November 4, 2013 until the actual LIHEAP program end date.

B. If LIHEAP Crisis Exception is retained, DPW should eliminate the requirement that individuals apply for and receive LIHEAP Cash grant in order to get a Crisis Exception grant to restore their heat.

Section 601.32 provides that Crisis Exception grants will only be issued if the amount of the household's Cash grant is insufficient to restore heat to the residence. Since the LIHEAP Crisis Exception grant is available only for households that have entered the cold weather months without heat (i.e. they are already in a crisis), restricting eligibility for this grant only to those situations when the applicant's Cash grant is insufficient to cure the crisis creates an unwarranted exclusion from eligibility of those households in a crisis situation.

Additionally, this application of LIHEAP households' Cash grant arguably conflicts with the intent of the LIHEAP program because it re-characterizes the recipient's Cash grant as a Crisis grant. This is problematic because the purpose of the LIHEAP Cash grant differs from the Crisis grant in that former is meant to assist the household in supplementing the costs of home

heating over the winter and the latter is designed to assist the household resolve an energy crisis. By requiring a Cash grant to be used to resolve the home energy crisis, DPW is potentially depriving the household of essential resources that it may need to pay for ongoing heating costs once the energy crisis is resolved. It is by far preferable to permit eligible households to apply their Crisis grant first to resolve the home energy crisis and then, only if that grant is insufficient, to apply the Cash grant to the remaining balance.

C. DPW should correct the language within the Plan to align with its Policy Clarification and to make it clear that renters whose heat is either a designated or an undesignated portion of their rent qualify for a LIHEAP grant.

A discrepancy exists between the Policy Clarification and Alignments contained at the beginning of the State Plan and the language of the Plan itself as related to the eligibility of renters who pay for their heat as a part of rent. In its Policy Clarification, DPW clarifies that those households who “are renting with heat included and have a specific portion of their rent use for their heating costs are considered to have a heating responsibility and are therefore eligible for benefits.” (FY 2014 Proposed State Plan, Policy Clarifications and Alignments ¶ 1.) PULP supports this clarification. Despite this clarification, however, § 601.31 of the Proposed State Plan continues to contain the outdated and inconsistent language of prior plans which states that only renters who pay for their heat as an “undesignated part of rent” are considered to have responsibility for heating costs. This discrepancy should be corrected. There is no rational basis to distinguish between those renters who pay for heat as a designated portion of rent and those who pay for heat as an undesignated portion of rent. As such DPW should clarify this section by either removing the word “undesignated” or by inserting the word “designated”. In other words, the section should clearly state that households who pay for heat as a part of their rent (whether it

is a designated part of rent or an undesignated part of rent) are considered to have home heating responsibility.

D. Remove the requirement that life-threatening emergencies requiring Crisis assistance within 18 hours be a “documented medical emergency” or clarify what documentation is required.

One of the requirements imposed by the Federal LIHEAP statute is that DPW, as the state block grant recipient, must ensure that “not later than 18 hours after a household applies for crisis benefits, [that it] provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation.” 42 U.S.C. § 2604(c) (2). As in past years, DPW has inserted this provision into its plan, but for the first time added the qualification that the life-threatening situation “must be a documented medical emergency.” Proposed State Plan § 601.4. This additional qualification should be eliminated.

First, no such limitation appears in the statute and thus PULP submits that it is an improper limitation on the Crisis Program. This requirement for prior medical documentation places an unwarranted administrative barrier in the way of receiving expedited life-sustaining assistance that is contrary to the intent and letter of the statute. The statute clearly intends that emergency, crisis assistance be provided as quickly as possible in life threatening situations. This requirement to provide prior documentation virtually nullifies the intent of the statute.

Second, such a requirement limits the life-threatening emergency to only those situations that are medical emergencies. While without a doubt this is a subset of life-threatening emergencies it is not the universe of such emergencies. For example, a household may not be experiencing a medical emergency, but the outside temperature may be such that without prompt intervention within 18 hours the household could suffer severe consequences that are characterized as life-threatening. Finally, the term “documented medical emergency” is not

defined and begs the question: documented by whom? A household facing a life threatening home energy crisis should not be required to spend time, energy, and money (on co-pays, deductibles or the like) to have their doctor “document” their medical emergency prior to receiving assistance.

The receipt of expedited life-sustaining intervention is perhaps the most important crisis intervention to be provided, yet DPW has not publicly highlighted this change in any manner. It is neither noted as a Proposed Change or as a Policy Clarification or Alignment. It appears only in the body of Appendix B. The Department has provided no explanation in its State Plan as to why this language has been added as a requirement. There is no indication that this provision has been abused or that this additional requirement is necessary. As such, it should be removed prior to the submission of the Final State Plan. In the alternative, if DPW insists that this provision remain, it should accept a self-certification from the household that the situation is life-threatening in the absence of prompt crisis intervention.

E. DPW must clarify proposed section 601.45 Application of Benefits.

In § 601.45 of its Plan, DPW has proposed a method of applying LIHEAP Cash grants to the accounts of customers enrolled in utility Customer Assistance Programs. Section 601.45 refers to both a Percentage of Income Payment Program (“PIPP”) and a Rate Discount Model and specifies alternate methods for application of benefits according to the model a public utility operates. However, in Pennsylvania there is not a clear demarcation concerning whether a public utility is operating a PIPP or a Rate Discount model or a variation of the two. Of the more than 14 CAP programs run by EDCs and NGDCs within the Commonwealth each is unique. Very few are pure PIPPs or Rate Discount Models; most are hybrid models of some kind.

The DPW Policy enunciated in proposed § 601.45 must be capable of actual application. This point was driven home by a recent letter sent by the Department of Health and Human Services to DPW which expressed concerns with § 601.45. To achieve a correlation of policy and application, there needs to exist from the outset, a clear, consistent, statewide policy as to which of the two proposed ‘application of benefits’ policies would apply to each CAP program. There must be clarity as to which CAP programs would be subject to the 601.45 requirements of the Rate Discount Model, and which to the policy that is appropriate to the PIPP Model. That is not presently found in the Proposed State Plan and must be addressed. Furthermore, prior to implementation, DPW must fully address each of the concerns articulated by HHS in its April 11, 2013 letter, and must specify an appropriate energy burden applicable to CAP programs operating as a PIIPP prior to permitting LIHEAP funds to be applied to a customer’s CAP credit rather than the asked to pay amount.

- 1. DPW must ensure that the application of benefits as proposed in § 601.45 must result in a coordination of LIHEAP and CAP programs which achieves affordable utility bills and results in affordable energy burdens for CAP customers who apply their LIHEAP Cash grants to their CAP bill.**

The type of integration of LIHEAP with utility company CAPs as proposed by DPW in § 601.45 requires DPW to assess the resulting affordability of CAP payments. The federal LIHEAP statute specifically states that LIHEAP should be “furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income.”¹ PULP agrees with the Comments submitted by Community Legal Services, Inc (“CLS”) to the FY 2014 Proposed LIHEAP State Plan that the purpose of this provision was to ensure that LIHEAP grants are used to reduce the amount those with the lowest incomes spend on energy.²

¹ 42 U.S.C. § 8624(b) (5).

² The section of the Act later codified at 42 U.S.C. § 8624(b) (5) was amended in 1994 to specify that LIHEAP benefits should be used to decrease the energy expenditures of those with the lowest incomes. The legislative history

DPW, as a result of the assurances which it provides to the federal government as part of its application for leveraging incentive funds in accordance with Pub. L. 97-35, Section 2607 (a), 42 U.S.C. §8626, as amended under the leveraging incentive program, has indicated that CAP programs are leveraged resources under Criterion iii D. See Proposed Plan pages 11-18. Pennsylvania has provided assurance to the federal government that Pennsylvania's LIHEAP and the benefits provided with leveraged resources are coordinated and provided in cooperation and conjunction with each other. However, this has not been the case. There is nothing in the State Plan or in DPW's actions to suggest that the use of LIHEAP grants to pay for PIPP programs have been coordinated or analyzed to produce a result which will reduce the current energy burdens of Pennsylvania CAP customers or bring those energy burdens to affordable levels.

Section 601.45 proposes a process of integration of LIHEAP with utility company CAPs which has only been done in states that have reasonable maximum energy burdens. Colorado, for example, has a maximum energy burden of just 6% of annual income.³ The energy burden of Colorado's low-income customers is significantly lower than Pennsylvania's which has a maximum energy burden of 17% of annual income—almost three times Colorado's.⁴

of the 1994 amendments makes it clear that LIHEAP is intended to reduce energy expenditures of those with the lowest incomes and recognizes that energy burdens of 15% of annual income are high and should be addressed:

This section also adds the concept of “highest home energy needs” to the current provision of the LIHEAP Act that **requires States to target their assistance in a way that provides varying levels of assistance for households depending on their incomes and energy burden (energy expenditures in relation to income)**. For example, according to HHS, over 7 million eligible **households have energy bills that exceed 15 percent of their annual income. There is a need to focus on those households with the lowest incomes which are most drastically burdened** and on those at highest health risk.

* * * * *

Looking at energy burden alone may not assure that LIHEAP assistance is truly targeted to households most in need. For example, two households may have energy burdens of 10 percent, but one household has an income of \$2,000 and the other has an income of \$10,000. **Clearly the household with the lowest income, as well as the 10 percent energy burden, will have the harder time meeting its immediate energy needs.**

S. Rep. No. 103-251, at 67 (1994) (emphasis added).

³ See <http://www.dora.state.co.us/puc/rules/723-3.pdf> and <http://www.dora.state.co.us/puc/rules/723-4.pdf>.

⁴ 52 Pa. Code §§ 69.261-69.267.

Our view is that the integration of LIHEAP with utility CAPs as proposed by § 601.45 works only when coordinated with **affordable energy burdens** for CAP customers. The determination of what constitutes affordable utility bills and affordable energy burdens is essential to any plan which attempts to integrate and coordinate LIHEAP and CAP.

If, as is the case here, DPW proposes to apply a LIHEAP recipient's funds in a manner intended to integrate and coordinate LIHEAP with CAP, then we submit that it is within the purview and responsibility of DPW to determine and designate the required affordable energy burden to be achieved through such integration. Accordingly, DPW must actively make such a determination when, as in Pennsylvania's Proposed Plan, it has provided leveraging incentive assurances that CAPs and LIHEAP have been actively developed and coordinated with each other. This issue must be addressed by DPW now, prior to the application of proposed § 601.45. This is particularly so since Pennsylvania's energy burden levels, which were set some time ago and have not been updated, are dramatically higher than other states, such as Colorado, which have adopted the proposed DPW approach. This scrutiny is doubly important because the Pennsylvania Public Utility Commission is no longer pursuing its CAP Rulemaking or Policy Statement review of the appropriate energy burden level in Pennsylvania and there is no other forum currently available to adopt a state-wide approach. PULP respectfully submits that DPW address the issue of an appropriate energy burden for its LIHEAP/CAP recipients **prior** to adoption of § 601.45 in its Final Plan.

2. Section 601.45 must be amended to clarify that for clients facing termination of service, LIHEAP Cash grants must first be applied to stop termination before being applied to the customer's CAP credit.

Section 601.45 should be amended to require that all utility companies, regardless of whether they operate a PIPP or a Rate Discount Model, first apply LIHEAP funds to past-due

balances that have resulted in a termination notice. If DPW receives permission from the U.S. Department of Health and Human Services to implement § 601.45 as described in its proposed state plan, CAP customers of utility companies who operate a PIPPs and who are facing termination of service would be treated adversely as compared to those CAP customers of utilities who do not operate PIPPs and who are facing termination of service for non-payment. Those enrolled in PIPPs would not be able to use the combination of their Crisis and Cash grants to avoid termination of service because their Cash grants would be applied not to their past-due CAP balances, but rather to their CAP credits. This inequitable and adverse treatment must be rectified.

Specifically, a utility (whether it operates a PIPP or some other CAP model) should not be permitted to receive a LIHEAP grant in an amount sufficient to cure a delinquent balance and apply that grant to a customer's CAP credit and then terminate the customer's service. Therefore, prior to any application of § 601.45, it must be clarified that in cases where a CAP customer is facing termination of service for past-due CAP payments the utility should first apply the customer's Crisis grant to that balance, and, if insufficient to cure the arrears should apply the Cash grant to the customer's past-due CAP balance. Only after the balance is cured and termination cancelled should any remaining Cash grant be applied to a customer's CAP credits and then only in the manner specified in § 601.45 after it has been approved by HHS.

3. DPW must specify in greater detail how LIHEAP grants greater than the annual CAP credit are to be applied.

The Proposed State Plan, section 601.45, states the following 'application of benefits' policy for a PIPP:

If the LIHEAP benefit is greater than the annual CAP Credit, the remaining LIHEAP balance will be first applied to the customer's pre-existing bill arrearages and second to the customer's utility account.

In light of this proposal, additional clarity is needed in the form of **a statewide policy directing how LIHEAP grants greater than the annual CAP credit are to be applied.**

We propose the following application: First, to the customer's CAP arrears, if any; and second, carried forward as a credit to the customer's CAP asked to pay amount. Given that LIHEAP Cash grants are designed to assist households in meeting their home energy needs, it is our view that these grants should not be applied to the household's pre-program arrears that are frozen and eligible to be forgiven as a part of the household's participation in CAP. This provision will likely affect few households but we believe will provide necessary clarification and uniformity.

F. DPW should specify that implementation of vendor plans such as CAP-Plus, which deem LIHEAP as an available resource or adversely treat LIHEAP recipients, is in violation of federal law and regulations and will jeopardize an entity's LIHEAP status as an approved vendor.

Two utility companies in Pennsylvania have implemented CAP-Plus programs.⁵ Others have proposals for CAP-Plus pending.⁶ DPW should specify in its final state plan that implementation of vendor plans such as CAP-Plus, which deem LIHEAP as an available resource or adversely treat LIHEAP recipients, is in violation of federal law and regulations and will jeopardize an entity's LIHEAP status as an approved vendor. This is particularly needed in light of the possibility that, even with the inclusion of section 601.45 into the state plan, some utilities may continue to implement CAP-Plus.

On July 21, 2010, the Department of Health and Human Services (HHS) released Low-Income Home Energy Assistance Information Memorandum 2010-13 ("LIHEAP IM 2010-13"), to advise states as to the allowable uses of LIHEAP funds in coordination with vendor energy

⁵ PPL and Columbia Gas.

⁶ Duquesne, Peoples Natural Gas.

assistance programs, like the Customer Assistance Programs, or CAPs, that many Pennsylvania utility companies offer. In LIHEAP IM 2010-13, HHS states that the IM is “guidance . . . for any LIHEAP program that is presently coordinating or plans to coordinate vendor energy assistance programs, such as [Percentage of Income Payment Plans].” LIHEAP IM 2010-13 clearly articulates that “any LIHEAP funds provided to low-income households to meet their home energy needs must be expended in accordance with the LIHEAP statute, HHS block grant regulations, State plan, and plan amendments.” (Id.) The IM lists a series of examples of how LIHEAP funds may be inappropriately coordinated with energy vendor assistance programs. These inappropriate uses of LIHEAP funds include the use of one individual’s LIHEAP grant for the use of any other individual’s energy bill and the subtraction of a LIHEAP grant amount from an individual’s bill in order to calculate the amount the individual will be billed. In relevant part, the IM states:

When LIHEAP funds are provided to a utility on behalf of a client to pay his energy bill, the utility does not have the independent authority to use those funds for any other customer or for any other purpose.

...

When LIHEAP funds are applied to a LIHEAP client’s utility arrearage amount under the PIPP program, this use of LIHEAP funds must be described in the LIHEAP plan.

HHS has determined that the process of subtracting the LIHEAP benefit from the client’s energy bill and to then calculate the PIPP discount and/or the client’s payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the PIPP. Such use of LIHEAP funds appears to be out of compliance with Sections 2605(b)(7) of the LIHEAP statute, which in part states: “...no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements...” and Section 2605(f) which states “...home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law...” HHS will

question any such practice and ask for a grantee's legal opinion supporting this practice and its compliance with the LIHEAP statute.

In accordance with Section 2605(b) (10) of the LIHEAP statute, States must monitor the use of LIHEAP funds coordinated with PIPP programs to ensure the proper disbursement of and accounting for LIHEAP funds.

(LIHEAP IM 2010-13 at 3-5.)

CAP-Plus programs are in conflict with HHS Guidance in at least two ways. First, within CAP-Plus, LIHEAP funds meant for the benefit of a LIHEAP recipient who is also enrolled in the CAP program are being used for the benefit of other non-LIHEAP recipients. The CAP-Plus model circumvents the guidance provided in this IM by increasing the CAP LIHEAP recipient's asked-to-pay amount to which the LIHEAP grant is applied. The dollar increase – the “plus” amount – while not based on any one customer's individual LIHEAP Cash Grant, is based on the aggregate of all LIHEAP Cash Grants received by CAP customers in the prior heating season.

Second, CAP-Plus programs use LIHEAP grants as resources available to a customer. LIHEAP IM 2010-13 recognized that “the process of subtracting the LIHEAP benefit amount from the client's energy bill to then calculate . . . the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the [vendor energy assistance program].” (LIHEAP IM 2010-13 at 4.) CAP-Plus is mathematically equivalent to the prohibition outlined in the IM.

In CAP-Plus, a utility determines a CAP participant's required CAP payment amount. Once the appropriate amount is chosen, then the utility adds a LIHEAP adjustment or “plus” amount of to the customer's bill. The effect of this “plus” amount is to add to the customer's CAP payment a portion of the LIHEAP grant that the customer will receive or is deemed to be eligible to receive. For those CAP participants who do in fact receive LIHEAP, the adding of this amount to his or her CAP payment *after* the CAP payment is calculated is functionally

equivalent to the prohibition outlined by HHS in LIHEAP IM 2010-13. It acts to reduce or 'subtract' the benefit of LIHEAP to the individual recipient. In both cases, a CAP participant who received LIHEAP has his or her LIHEAP grant treated as an available resource. Furthermore, because this "plus" amount is not assessed for *all* of the company's customers, CAP customers who receive LIHEAP are treated adversely; the type of treatment which is unequivocally prohibited by the LIHEAP statute and the guidance contained in LIHEAP IM 2010-13.

Thus, HHS' guidance in LIHEAP IM 2010-13 confirms that CAP-Plus violates the LIHEAP statute because it treats CAP participants who receive LIHEAP adversely from other utility customers, it uses the LIHEAP benefit to assist other non-LIHEAP eligible customers, and it treats as an available resource the LIHEAP grants that these customers receive. Such impermissible acts will endanger the LIHEAP approved status of the vendor. In order to avoid this situation, the LIHEAP State Plan and the vendor contract should specifically prohibit these CAP plus formulations and advise all vendors that their use will endanger their status as approved vendors.

G. PULP supports the increase in the Crisis Grant maximum to \$500 and recommends that the maximum be increased to \$1,000 for those households who heat with home heating oil.

PULP fully supports the decision to increase the maximum Crisis grant to \$500. This is a much needed increase, especially for those who heat with deliverable fuels. While the cost of natural gas has come down in recent years, the cost of home heating oil continues to climb. The United States Energy Information Agency estimates that the average cost to heat a home with

heating oil for the winter of 2012-2013 was approximately \$2400.⁷ There is no indication that these costs will go down. Thus, even if a household received a \$500 Crisis grant and the maximum Cash grant of a \$1,000, LIHEAP households who heat with oil will have to come up with almost \$1,000 over and above of the maximum they could receive. Cruelly, this \$1,000 that a household would have to come up with from other resources represents approximately the *total* that a household would have to pay to heat their home with natural gas.⁸ This inequity can be alleviated by increasing the maximum crisis grant that is available for households who heat with home heating oil to \$1,000. Even this amount is insufficient to bring any parity between the costs of heating with oil and other sources, but it would partially correct the fact that currently low-income households who heat with oil receive less of a LIHEAP benefit in terms of their energy burden than those who heat with other sources. Given the significant underspending by DPW over the past number of years, PULP submits that this increased maximum Crisis grant for those heating with home heating oil is both justified and feasible.

H. Reinstate and make permanent the Discount Oil Program

PULP calls upon DPW to reinstate and make permanent the Discount Oil Program or an enhanced version of that program. In 2008, DPW, to its credit, initiated a much needed Discount Oil Program Pilot. It was successfully piloted for a number of years and DPW intended for the program to be implemented statewide in this upcoming program year. As DPW stated in the Proposed LIHEAP State Plan for FY 2011:

DPW is continuing the expansion of the Oil Discount Program. During the 2009-2010 LIHEAP season ... DPW successfully administered the program in nine counties. The program increases the purchasing power of LIHEAP recipients who use fuel oil or kerosene by requiring vendors to provide fuel to LIHEAP

⁷ See U.S. Energy Information Administration, Table WF01. Average Consumer Prices and Expenditures for Heating Fuels during the winter (March 2013). Available at: <http://www.eia.gov/forecasts/steo/tables/pdf/wf-table.pdf>

⁸ *Ibid.*

recipients at a discounted price....DPW plans to implement the program statewide by the 2013-2014 heating season.This program is similar to various fuel discount programs currently being offered by Pennsylvania's neighboring states, including Maryland, New York, New Hampshire, Connecticut, Vermont and Massachusetts.⁹

The Final LIHEAP State Plan for FY 2011 indicated that the Oil Discount Program would continue.¹⁰ However, subsequent to publication of the Final State Plan, DPW abruptly suspended implementation.

The Department of Public Welfare (DPW) has decided to suspend implementation of the Discount Oil Program for the 2010-2011 heating season. DPW will instead focus its attention on researching fuel discounting program options to determine whether enhancements can be made to Pennsylvania's program.¹¹

No public information has been presented about the results of the research mentioned above or whether DPW will seek to make "enhancements" to its program; instead, the program has remained dormant since its abrupt suspension. In our view, DPW has established and implemented the structure for a successful discount program. It learned a great deal in the several years it piloted its successful Oil Discount Program, and undoubtedly has come to some additional conclusions during the past three years in which it has been studying potential enhancements. The Department's intent to have a statewide roll-out in the 2013-2014 program year should be incorporated into the 2014 Final Plan.

Additionally, the ability of the state to continue its program of direct vendor payments may be contingent on its success to comply with federal statutory requirements to ensure that unregulated vendors take appropriate measures to alleviate the energy burdens of eligible

⁹ Commonwealth Of Pennsylvania, Low-Income Home Energy Assistance Program Fiscal Year 2011 Proposed State Plan, iii.

¹⁰ Commonwealth Of Pennsylvania, Low-Income Home Energy Assistance Program Fiscal Year 2011 Final State Plan, vii.

¹¹ Letter dated October 4, 2010 from Linda T. Blanchette, DPW Deputy Secretary, Income Maintenance to Harry Geller, Executive Director, Pennsylvania Utility Law Project.

households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs.¹²

DPW has a dual obligation: on the one hand to provide meaningful and sufficient LIHEAP assistance to those households in greatest need while at the same time administering federal LIHEAP funds in an equitable, efficient and economical manner. As previously noted, compared to other sources of energy, the cost of oil and kerosene continues to be disproportionately high. Because of these disproportionately high costs and the significant economic burden placed on LIHEAP eligible participants who heat with oil, PULP has recommended that DPW provide a meaningful and sufficient LIHEAP Crisis Grant by increasing the maximum Crisis Grant to \$1,000 for households heating with oil. Similarly, the reinstatement of the Oil Discount Program or an enhanced version of that program will enable DPW to efficiently and economically administer LIHEAP and expand the purchasing power of those who heat with oil.

I. Remove the maximum \$1000 LIHEAP Cash grant to ensure that the greatest LIHEAP benefits go to those with the greatest need.

DPW's \$1000 cap on LIHEAP Cash grants contradicts the federal Low Income Home Energy Assistance Act, which mandates that those with the lowest incomes and biggest energy burdens get the highest level of energy assistance.¹³ Under DPW's Cash Grant formula, DPW attempts to satisfy federal law by giving the biggest LIHEAP Cash grants to those who live in the coldest areas of the state, have the highest fuel costs and the lowest household incomes. Only the most vulnerable households living in the most extreme poverty are eligible for the maximum LIHEAP Cash grants. It is precisely these households who should not have their Cash grants artificially capped. Capping the grant amounts of those with the greatest need for energy

¹² 42 U.S.C. § 8624 (7) D

¹³ 42 U.S.C. § 8621(a); 42 U.S.C. § 8624 (b)(1)(A)

assistance unduly precipitates the need for Crisis grants and places these most vulnerable households at even greater risk of losing heat in the winter. This is contrary to the purpose of the LIHEAP program and should be changed.

J. Make LIHEAP Crisis fully accessible to those too sick or disabled to leave their homes.

PULP endorses the Comments of CLS that DPW must make LIHEAP Crisis fully accessible to those too sick or disabled to leave their homes. Disabled, sick, and elderly individuals are among those who have the most crucial need for LIHEAP Crisis benefits. They are more susceptible to illness or death when left in a cold house and are often unable to leave their homes to seek help or find warm shelter. Federal law recognizes the vulnerability of this population and requires that agencies administering LIHEAP crisis benefits accommodate disabled LIHEAP applicants and provide homebound applicants with a way to access LIHEAP benefits without leaving their homes.¹⁴ Federal law also requires that LIHEAP Crisis applications be processed in 48 hours.¹⁵ DPW currently provides no accommodations to disabled or physically infirm individuals so that they may be able submit a Crisis application and receive benefits in the same 48 hour time period as those who are physically able to leave their homes and apply in person at the LIHEAP administering agency. Currently, disabled applicants who are experiencing a home heating emergency and need Crisis benefits have the following inadequate options for applying for LIHEAP Crisis: 1) submit a paper or electronic application and wait for 30 days to get the application processed, 2) submit a paper or electronic application and then call the LIHEAP administering agency to report the home heating emergency, or 3) find a non-disabled person they can trust to walk into the LIHEAP administering agency's office to submit an application for them. None of these options works to consistently give disabled applicants equal access to the

¹⁴ 42 U.S.C. § 8623(c)(3)(B)

¹⁵ 42 U.S.C. § 8623(c)(1)

Crisis program. However, a few simple changes can be made that would significantly alleviate these concerns.

First, the LIHEAP application should be modified so that an applicant can use it to get LIHEAP Cash and Crisis benefits. Currently, paper and internet LIHEAP applications provide no space for an applicant to indicate that they are experiencing a home heating emergency, so when the LIHEAP administering agency receives a disabled applicant's paper application in the mail, they have no information about whether the applicant is in need of Crisis benefits. The LIHEAP administering agency takes no steps to contact the applicant to determine if they are experiencing a home heating emergency and processes all paper and internet applications as applications for LIHEAP Cash. LIHEAP Cash applications are processed in 30 days. As a result, all paper and internet applications for disabled individuals with home heating emergencies are being processed in 30 days, not 48 hours. If the disabled applicant calls the LIHEAP administering agency to report the crisis, the application may be processed more quickly than 30 days, but it can only be processed once the agency receives the LIHEAP application, which will almost always take more than 48 hours.

Second, DPW should facilitate home visits. When disabled and homebound individuals who had not yet submitted a LIHEAP application call their local County Assistance Office and reported a need for LIHEAP benefits they are sometimes referred to a social service agencies. These agencies were sometimes able to make a home visit for LIHEAP applications. When the agency could not make the home visit, the entire burden was then placed on the disabled individual to find a way to get their application submitted. When DPW tells disabled applicants to find a trustworthy person who is able to travel to the LIHEAP administering agency to submit a Crisis application for them, DPW is providing no accommodation for the disabled applicant.

DPW must implement these changes to reach out to these vulnerable applicants in their own homes so that they are able to use the Crisis program just as all non-disabled applicants are able to utilize it.

K. DPW should ensure that the Crisis Interface Program with DCED receives funding sufficient to ensure that it opens on November 4, 2013 and remains open until all available LIHEAP funds are expended and is enabled to replace inoperable heating systems with more energy and cost efficient systems.

Several times during the past several LIHEAP years, DCED weatherization contractors have been uncertain regarding the availability of funding as well as the dates of program operation. DPW is strongly urged to coordinate with DCED to ensure that all weatherization contractors receive sufficient funding to operate the Interface program during the LIHEAP program operating dates.

Furthermore, DPW should specifically designate that LIHEAP funds dedicated to DCED may be used to replace *de facto* electric space heating or irreparable fuel oil heaters with natural gas heaters. Crisis Interface permits an inoperable heating system to be replaced. It should enable that replacement to be accomplished with the most energy and cost efficient system. DPW should make the most use of Crisis Interface dollars by allowing households who need a heater replacement to get, when economically feasible the added benefits of natural gas heaters. The State Plan should include a clear statement of DPW's policy in this area, especially if DCED's plan is silent or is applicable only in limited circumstances.

DPW can and should authorize a policy which permits conversion of one fuel source to another. A request to convert from one fuel source to another should automatically be approved when the applicant is utilizing *de facto* electric space heating or the furnace cannot be repaired, when the infrastructure for the conversion is present at the property, and when the applicant cannot afford to pay the high heating costs of remaining with the original fuel source because he

or she is low income. When some or all of these factors are not present, a request to convert from one fuel source to another should be granted on a case by case basis. This analysis could include the comparative costs and benefits of converting, whether a conversion is necessary for the health of a household member, or consideration of other equities that would make fuel conversion a better choice for the household. PULP supports the inclusion of this policy regarding heater replacement within the Final State Plan.

L. DPW must ensure that DCED does not delay Emergency Crisis Interface Assistance

Appendix C-IV of the FY 2014 State Plan, regarding Crisis Interface Program Responsibilities (page C-3), appropriately states that a crisis application is required to be addressed within 48 hours of the application and within 18 hours if the situation is life threatening. In addition, C-VI (page C-4), appropriately points out that DHHS regulations require that owners and renters receive equitable treatment under the LIHEAP program. However, C-VI also indicates that on the basis of the implied warranty of habitability prior to referral the appropriate action should be taken by the CAO to have the furnace repair/replacement completed by the landlord.

PULP submits that attempting to hold the landlord responsible for its implied warranty to tenants is only appropriate *so long as the action by the CAO does not delay addressing the crisis beyond the 48 or 18 hour period.* The landlord may ultimately be responsible for the costs, however, the household should not suffer harm or be delayed its required crisis assistance while the CAO is pursuing habitability claims. PULP requests clarification that the 18 or 48 hour crisis period still applies in tenant situations and that the CAO should initiate an immediate attempt to contact and resolve the matter with the landlord, but pursue the issue of responsibility and payment for the repair or replacement only after remedying the crisis.

M. Do not punish LIHEAP eligible individuals who live with ineligible LIHEAP individuals by giving them less than their fair share of a LIHEAP grant.

There are some households that include individuals who are eligible for LIHEAP as well as individuals who are ineligible for LIHEAP. Ineligible household members are excluded from household number but not household income. This penalizes the eligible members of the household by creating a smaller household with a larger income, falsely increasing the household's percentage of poverty, unfairly decreasing the household's chances of being LIHEAP eligible and reducing the size of the LIHEAP Cash grant the household may receive. If a LIHEAP household's size is reduced by the number of ineligible members who live in the household, the LIHEAP household's total countable income should also be reduced by the ineligible household member's share of the household's income. The resulting LIHEAP grant will be smaller than it would have been if the ineligible member was included fully, but the amount of the reduction would be fairly proportionate to the household's size and income.

The SNAP (food stamps) program does this. SNAP rules exclude ineligible household members from the household size and prorate the ineligible household members' income. So, if there are three people in a household and one person is ineligible, just 2/3 of the ineligible household member's income is counted as available to the two eligible household members. The ineligible household member's 1/3 share of the income is not counted because the ineligible household member is not counted as part of the household. Only the amount of income that can be fairly attributed to the two eligible household members is counted and SNAP benefits are issued for a household of two. The State Plan should be revised to exclude a prorated share of ineligible LIHEAP household members' income when determining a household's LIHEAP eligibility and grant amount. This rule will ensure that eligible members of the LIHEAP

household will receive the LIHEAP they need. Using this SNAP rule in the LIHEAP program will also contribute to uniformity in CAO administration, reducing program errors.

N. Request State Supplemental LIHEAP Funding.

Pennsylvania does not currently provide state supplemental funding for LIHEAP. State supplemental funding would stabilize the program from year to year by providing a consistent, controllable, and reliable funding stream not dependent on the political determinations of officials outside the Commonwealth. This kind of stability would improve the ability of DPW to administer the program and could enable longer program duration with higher benefit levels. Rather than depriving potentially eligible households from receiving the LIHEAP Assistance they need now. Rather than consistently under-spending each year in order to retain a carry-over of funding from one year to the next; thereby depriving potentially eligible households from receiving the LIHEAP Assistance they critically need.

PULP encourages DPW to formally and informally work with the Governor's Office and the General Assembly to supplemental funding for the 2013-1014 LIHEAP program. PULP is fully cognizant of the current national economic condition and how it has affected the Commonwealth and its budget. However, LIHEAP funding for program stability requires long term advocacy and planning beyond this current year. That advocacy and planning must start now. An appropriation in this amount would enable the program to stabilize, while ensuring that the maximum available levels of benefits are provided to those who require it each winter.

O. The Plan should be amended to specifically articulate policy for public notification when Plan changes are proposed by DPW.

The Plan fails to address how the public will be notified of changes to the program during the course of the program year. This omission must be corrected with specificity in the Final Plan.

DPW reserves the right to change any number of facets of the program during the course of the program year, not the least of which are the program end date and the level of benefits. These kinds of changes affect substantive rights of the low-income clients DPW serves and for whom LIHEAP is essential. Program changes have serious repercussions for the low-income households who are eligible for the program. Program changes not publicized may result in a household not receiving a benefit for which it might otherwise qualify simply because the family is ignorant of the change in eligibility, benefit amount, or program application dates. Basic fairness and transparency of program administration dictate that DPW should provide to the public in a timely manner meaningful communication of each change made to the LIHEAP program.

PULP notes the failure of the Proposed Plan to include a specific strategy for how to communicate program changes during the course of the program year. PULP recommends that DPW should include in the Final Plan a clear description of the tools it will use to communicate in a timely and meaningful manner each change in the LIHEAP program. At a minimum, PULP recommends that DPW specifically state in the Final Plan its intent to use the following methods to communicate each change to the LIHEAP program prior or concurrently to that change being implemented: state and local press releases; notices made to the LIHEAP Advisory Committee; notices posted in all County Assistance Offices; and mailed notices to all potentially affected LIHEAP recipients.

VI. CONCLUSION

PULP thanks DPW for this opportunity to submit these comments on the Fiscal Year 2014 Proposed State Plan. If any further information about these comments is necessary, PULP is pleased to provide clarification as required.

Respectfully submitted,

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