

BEFORE THE
DEPARTMENT OF MANAGED HEALTH CARE
STATE OF CALIFORNIA

In the Matter of the Application for an
Award of Advocacy and Witness Fees of:

Consumers Union of United States, Inc.

Applicant.

**DECISION GRANTING AWARD OF
ADVOCACY AND WITNESS FEES TO
CONSUMERS UNION OF UNITED
STATES, INC., FOR SUBSTANTIAL
CONTRIBUTION TO APPROVAL OF
MATERIAL MODIFICATIONS NUMBERS
20151955, 20151958, 20151959, AND
20151945**

I. SUMMARY

Consumers Union of United States, Inc. (“APPLICANT”) submitted an application for an award of advocacy and witness fees for its substantial contribution to the Department of Managed Health Care’s (“Department”) consideration and approval of Material Modifications numbers 20151955, 20151958, 20151959, and 20151945 (“Decision”) regarding Centene Corporation’s (“Centene”) acquisition of Health Net of California, Inc. (“Health Net”). The Department designated Joy Han as the Hearing Officer. The Department awards APPLICANT \$12,200.00 for its contribution to the Decision.

II. BACKGROUND OF CONSUMER PARTICIPATION PROGRAM

The Consumer Participation Program (“CPP”) allows for the award of reasonable advocacy and witness fees to any person or organization that (1) demonstrates the person or organization represents the interests of consumers, and (2) has made a substantial contribution on behalf of consumers to the adoption of any regulation or to an order or

decision made by the Director of the Department if the order or decision has the potential to impact a significant number of enrollees.¹

III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES

A. Petition to Participate in the Decision

On December 15, 2015, APPLICANT submitted to the Department its Petition to Participate (“Petition”) in the Decision. In its Petition, APPLICANT estimated its fees to be \$20,000.00. Applicants may revise fee estimates based on actual services performed.

By letter dated January 13, 2016, the Department notified APPLICANT that the Department approved its Petition to Participate in the Decision.

B. Application for Award of Advocacy and Witness Fees

On March 22, 2016, the Department publicly announced that the Director of the Department signed the order approving Centene’s \$6.8 billion acquisition of Health Net. The Department held a public meeting on December 7, 2015, regarding the transaction. On March 22, 2016, the Department issued an order approving Centene’s acquisition of Health Net.

APPLICANT submitted its Application for an Award of Advocacy and Witness Fees in the Decision on April 20, 2016. The total fee requested for work performed by the APPLICANT is \$12,412.50.

IV. SUBSTANTIAL CONTRIBUTION

Throughout the Department’s consideration of Centene’s proposed purchase of Health Net, APPLICANT raised concerns regarding, among other things, how Centene will maintain local control, and the benefits of the transaction to consumers. Specifically, APPLICANT presented written comments regarding the matter in a letter dated December 14, 2015, by testimony at a public meeting on December 7, 2015, and by a written statement dated December 14, 2015.

¹ Health and Safety Code section 1348.9.

The December 14, 2015, letter, submitted jointly with Health Access of California and The Western Center on Law and Poverty, Inc., included questions about how Centene will maintain local control and how the transaction will benefit consumers, questions about value-based products, and questions posed to Centene regarding its current and projected operations. The December 14, 2015, written statement raised concerns about the impact of the merger on the California health insurance market and on the incentive to improve quality, and recommended seven undertakings.

The Hearing Officer finds APPLICANT's participation: (1) significantly assisted the Department in its deliberations by presenting relevant issues, evidence, and arguments the Department investigated and seriously considered, and (2) resulted in more relevant, credible, and non-frivolous information being available to the Department, which helped inform the Department in making the Decision. The Hearing Officer finds APPLICANT made a substantial contribution, pursuant to California Code of Regulations, title 28, section 1010, subdivision (b)(14), to the Decision. The award for advocacy fees is based on the time spent for the activities and work that substantially contributed to the Decision.

V. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE

A. Fees Requested

APPLICANT billed the following time, hourly rates, and fees for its representatives:

DENA MENDELSON
STAFF ATTORNEY
TIME: 30 hours
RATE: \$350/hour
TOTAL: \$10,500.00

ELIZABETH IMHOLZ
SPECIAL PROJECTS DIRECTOR
TIME: 4.5 hours
RATE: \$425/hour
TOTAL: \$1,912.50

B. Market Rate

APPLICANT is entitled to be compensated for Advocacy Fees and Witness Fees at hourly rates reflecting the market rates for services. The “Market Rate” is “the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas.” (Cal. Code Regs., tit. 28, §1010(b)(8).) Advocacy Fees and Witness Fees cannot exceed the market rate, as defined in the California Code of Regulations, title 28, section 1010, subdivision (b)(8).

To determine the appropriate Market Rate, the Department relies on the market rates used by the California Public Utilities Commission’s (“PUC”) Intervenor Compensation Program. Reference to the PUC’s rates is appropriate because the Intervenor Compensation Program is similar to the Department’s CPP² and has an extensive history of awarding intervenor compensation and updating hourly rates used in computing awards of compensation to intervenors. Therefore, the many PUC written decisions granting intervenor compensation provide valuable guidelines for determining reasonableness and market value.

C. Hourly Rates that Reflect the “Market Rate”

The Hearing Officer finds that hourly rates for services provided in a statewide proceeding or proceeding of a state agency having statewide jurisdiction and effect (such as PUC proceedings, see *infra*) are essentially equivalent to hourly rates for “comparable services in the private sector in the Los Angeles and San Francisco Bay Areas,” as required by the California Code of Regulations, title 28, section 1010, subdivision (b)(8). The following table shows the PUC’s adopted ranges for work intervenor representatives performed in 2015.³

² The Legislative history behind the Department’s CPP specifically referred to the PUC’s program: “The Legislature finds and declares that consumer participation programs at the Public Utilities Commission and the Department of Insurance have been a cost-effective and successful means of encouraging consumer protection, expertise, and participation....” Stats 2002 C. 792 §1 (SB 1092).

³ PUC Resolution ALJ-280 (March 30, 2015).

Years of Experience	2015 Range
Attorneys	
0 - 2	\$165-\$220
3 - 4	\$215-\$250
5 - 7	\$300-\$320
8 - 12	\$320-\$375
13+	\$320-\$570
Experts	
0 - 6	\$140-\$200
7 - 12	\$170-\$285
13+	\$170-\$420

D. DETERMINATION OF THE MARKET VALUE HOURLY RATE FOR APPLICANT

The Hearing Officer finds that the hourly rates claimed by APPLICANT are consistent with the applicable “market rates.” Specifically, for work Dena Mendelsohn performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$350.00. APPLICANT justified this rate by reference to Ms. Mendelsohn’s biographical information and her number of years of experience. Ms. Mendelsohn has a B.A. in English/Writing from Emory University, a J.D. from Washington University School of Law, an M.P.H. in Health Policy from Saint Louis University School of Public Health, and approximately 11 years of experience relating to consumer advocacy, legal analysis and research, and other work on healthcare issues. The PUC’s adopted hourly rate range for attorneys with eight to 12 years of experience is \$320-\$375. The Hearing Officer finds that the hourly rate of \$350.00 is consistent with the “market rate.”

For work Elizabeth Imholz performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$425. APPLICANT justified this rate by reference to Ms. Imholz’s biographical

information and her number of years of experience. Ms. Imholz has a B.A. in Political Science and Urban Studies from Columbia University, a J.D. from Rutgers University School of Law, and more than 13 years of experience with legal research and writing, consumer advocacy, and health policy work. The PUC’s adopted hourly rate range for attorneys of 13 or more years of experience is \$320-\$570. The Hearing Officer finds that the hourly rate of \$425.00 is consistent with the “market rate.”

VI. AWARD

APPLICANT is awarded Advocacy and Witness Fees based on the comments APPLICANT submitted that significantly assisted the Department in its deliberations. The award to the APPLICANT is as follows:

Staff / Title	Hours	Rates	Fees
Staff Attorney	30	\$350.00	\$10,500.00
Special Projects Director	4	\$425.00	\$1700.00
TOTAL FEES			\$12,200.00
TOTAL DIRECT EXPENSES			\$00.00
TOTAL AWARD			\$12,200.00

The award to APPLICANT does not include APPLICANT’S requested fee for “review follow-up questions,” with no further description of the subject or any indication of how this activity contributed to the Decision.

FINDINGS OF FACT

1. APPLICANT satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. APPLICANT made substantial contributions to the approval of Material Modifications numbers 20151955, 20151958, 20151959, and 20151945 as described

herein.

3. APPLICANT requested hourly rates that are reasonable when compared to market rates for persons with similar training and experience.

4. The total reasonable compensation for APPLICANT is \$12,200.00.

CONCLUSIONS OF LAW

1. APPLICANT fulfilled the requirements of Health and Safety Code section 1348.9 and California Code of Regulations, title 28, section 1010, and is entitled to compensation for making substantial contributions regarding the Department's consideration and approval of Material Modifications numbers 20151955, 20151958, 20151959, and 20151945.

2. APPLICANT should be awarded \$12,200.00 for its contribution.

AWARD ORDER

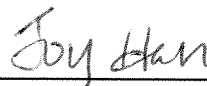
1. Consumers Union of United States, Inc. is hereby awarded \$12,200.00 as compensation for its substantial contribution regarding the Department's consideration and approval of Material Modifications numbers 20151955, 20151958, 20151959, and 20151945.

2. Payment shall be made within thirty (30) days of the effective date of this decision.

3. This decision is effective thirty (30) days after posting this decision on the Department's website. (Cal. Code Regs., tit. 28, § 1010(e)(5) and (6).)

Dated: December 16, 2016

Original Signed by:



JOY HAN
Hearing Officer
Department of Managed Health Care

Decision No. 12-16-16a