

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:

HEALTH RIGHTS HOTLINE,

Applicant.

Application No. 2005-0478

**DECISION RE: AWARD OF  
ADVOCACY AND WITNESS FEES**

(Re: Block Transfer Filings – Control No. 2003-0298)

**DECISION**

This matter was decided by written record by designated Hearing Officer STEPHEN A. HANSEN, State of California, Department of Managed Health Care.

Shelley Rouillard, Program Director, Health Rights Hotline, represented the Health Rights Hotline.

**SUMMARY OF DECISION**

The Health Rights Hotline (HRH) requests an Award of Advocacy and Witness Fees pursuant to Health and Safety Code section 1348.9 and Title 28, California Code of Regulations (CCR), section 1010 for its participation in the Department of Managed Health Care's (Department) rulemaking proceeding regarding block transfer filings set forth in CCR section 1300.67.1.3. The Department has determined that HRH has made a substantial contribution to the block transfer filings rulemaking proceeding. HRH's request is granted in the amount of \$7,268.75.

## PROCEDURAL HISTORY

1. On January 8, 2004, HRH submitted its Request for Finding of Eligibility to Participate and Seek Compensation with the Department giving notice that it represents the interests of consumers and of its intent to claim compensation.
2. On January 30, 2004, the Department Director (Director) ruled that HRH was eligible to participate and to seek an award of compensation.
3. On May 13, 2004, HRH submitted its Petition to Participate (Petition) with the Department for their participation in the block transfer filings rulemaking proceeding. In its Petition, HRH estimated its fees to be \$2,500.
4. In its Petition, HRH stated that, with respect to block transfer filings that:

As an independent health care consumer assistance program, the Health Rights Hotline hears from consumers about a variety of problems they experience in navigating the health care system. One area that has come up relates to a consumer's ability to continue a course of treatment with a provider when a consumer changes jobs and therefore health care coverage, changes health plans, or if a provider organization goes bankrupt or discontinues contracting with a specific health plan. Particularly for consumers who are in the middle of a course of treatment for an acute or chronic condition, continuity of care is critical to their ability to maintain or improve their health status. The Health Rights Hotline has data on these types of problems and we are interested in ensuring that consumers are able to maintain established relationships with their doctors.

5. On June 10, 2004, the Director approved HRH's Petition to participate in the block transfer filings rulemaking proceeding.
6. On July 31, 2004, the Department issued a Notice of Proposed Rulemaking (Notice) proposing to adopt CCR section 1300.67.1.3, and establishing a 45-day comment period from July 31 to September 30, 2004.
7. In the Informative Digest/Policy Statement Overview contained within the Notice, the Department stated that:

AB 1286 added Chapter 2.2, section 1373.65 of the Health and Safety Code (section 1373.65) requiring plans to submit a block transfer filing to the Department at least 75 days prior to the termination of its contract with a provider group or a general acute care hospital. This section further requires 60-days notice of the contract's termination to enrollees assigned to the terminated provider. Section 1373.65 specifies the requirements for plan covered services, including surgery, by the terminated provider. The proposed regulation clarifies and makes specific the requirements of section 1373.65 to ensure continuity of care to enrollees.

8. On October 8, 2004, the Department issued an Amended Notice of Proposed Rulemaking, Notice of Public Hearing and extension of the 45-day comment period to December 1, 2004. The Public Hearing was scheduled for November 30, 2004.
9. At the November 30, 2004 hearing on the proposed adoption of the block transfer filings regulation, a HRH staff attorney and policy analyst presented oral and written comments on the record. The HRH staff attorney's oral comments at the hearing and written comments were jointly prepared with a representative of the Western Center on Law and Poverty. Included with the written comments was a "model" enrollee transfer notice.
10. Five of HRH's nine comments referred to its "model" enrollee transfer notice. Each of the five comments relating to the "model" enrollee transfer notice were rejected by the Department in stating, "The legislature requires the plan to submit their own notice templates, including the mandated language, to the Department." The Department did not adopt HRH's remaining written comments as proposed, but the ideas in the comments presented relevant issues and arguments that were helpful and seriously considered in the development of the regulation; and HRH's participation resulted in more relevant, credible, and non-frivolous information being available to the Department.
11. On May 23, 2005, the Department noticed a second comment period for 30 days to end on June 23, 2005.

12. In a letter dated June 23, 2005, the supervising attorney for HRH submitted written comments to the second comment period and again included a “model” enrollee transfer notice.
13. The Department rejected each of HRH’s comments. Of the seven comments submitted, six were duplicative of comments submitted during the first comment period and the remaining comment was rejected.
14. On July 11, 2005, the final regulation package was submitted to the Office of Administrative Law (OAL). The regulation was approved by OAL and filed with the Secretary of State’s Office on August 22, 2005. The regulation was effective on September 21, 2005.
15. On November 17, 2005, HRH submitted an Application for an Award of Advocacy and Witness Fees (Application). Contained in HRH’s Application was a request to amend its original estimate of fees from \$2,500 to \$7,300.
16. No objections to the Application were received.
17. On January 5, 2006, the Department requested additional information from HRH regarding their Application.
18. On January 23, 2006, HRH submitted the additional information requested by the Department.

### **FINDINGS AND DETERMINATIONS**

Having reviewed HRH’s Application, the Hearing Officer makes the following findings and determinations and awards compensation to HRH as set forth herein.

## SUBSTANTIAL CONTRIBUTION

19. Health and Safety Code section 1348.9, subdivision (a) provides that:

“[T]he director shall adopt regulations to establish the Consumer Participation Program, which shall allow for the director to award reasonable advocacy and witness fees to any person or organization that demonstrates that the person or organization represents the interests of consumers and has made a substantial contribution on behalf of consumers to the adoption of any regulation....”

20. CCR section 1010(b)(8) defines “Substantial Contribution” as follows:

“‘Substantial Contribution’ means that the Participant significantly assisted the Department in its deliberations by presenting relevant issues, evidence, or arguments which were helpful, and seriously considered, and the Participant’s involvement resulted in more relevant, credible, and non-frivolous information being available to the Director.”

21. HRH submitted the following documents and testimony in support of its position regarding the proposed adoption of CCR section 1300.67.1.3:

- a) Testimony of the HRH staff attorney at the November 30, 2004 hearing.
- b) Written comments by the HRH staff attorney in response to comment period that closed on December 1, 2004.
- c) Written comments by the supervising attorney for HRH in response to comment period that closed on June 23, 2005.

22. The Hearing Officer finds that HRH’s participation significantly assisted the Department in its deliberations by presenting relevant issues and arguments that were helpful and seriously considered, and resulted in more relevant, credible, and non-frivolous information being available to the Director to make her decision regarding the proposed adoption of CCR section 1300.67.1.3 than would have been available to the Director had HRH not participated.

23. The Hearing Officer hereby determines that HRH's participation substantially contributed to the proceedings, to the Department in its deliberations, and as a whole, to the adoption of CCR section 1300.67.1.3.

**ATTORNEY FEES AND EXPENSES**

24. Health and Safety Code section 1348.9 allows the Director to award reasonable advocacy and witness fees to any person or organization that demonstrates that the person or organization represents the interests of consumers and has made a substantial contribution on behalf of consumers to the adoption of a regulation.

**Fees Requested**

25. HRH lists the following hourly rates and fees for its attorneys and non-attorneys.

<b>Staff / Title</b>	<b>Hours</b>	<b>Rates</b>	<b>Fees</b>
HRH Supervising Attorney	4.25	\$325.00	\$1,381.25
HRH Staff Attorney	21.50	\$250.00	\$5,375.00
HRH Program Director (non-attorney)	2.00	\$200.00	\$400.00
HRH Law School Graduate/Policy Analyst (non-attorney)	0.75	\$150.00	\$112.50
<b>TOTAL FEES</b>	<b>28.50</b>		<b>\$7,268.75</b>

*Attorney Fees*

26. Billing rates shall not exceed the Market Rate, pursuant to CCR section 1010(b)(3), which defines "Market Rate" as follows:

"Market Rate" means, with respect to advocacy and witness fees, the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Director's decision awarding compensation for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability."

### *Reasonableness of Fees*

27. HRH submitted a detailed summary of the activities conducted and fees requested. The summary included information itemizing and describing each task performed, including, but not limited to, the date the task was performed and the time expended.
28. The Hearing Officer has reviewed the fees requested by HRH and has determined that the fees submitted by HRH reflect, and are consistent with, the proceedings and supporting documents filed in connection with this rulemaking proceeding.

### *Market Rate*

29. As public interest attorneys, HRH's attorneys request the prevailing market rates of private attorneys of comparable skill, qualifications and experience. (*Serrano v. Unruh* ("Serrano IV") (1982) 32 Cal.3d 621.) HRH's attorneys are entitled to be compensated at hourly rates that reflect the reasonable Market Rate of their services.
30. The Hearing Officer finds that HRH's requested hourly rates are consistent with Market Rates and reasonable. The total fees requested for work performed by Applicant Health Rights Hotline is \$7,268.75

### *Amended Estimate of Fees*

31. CCR section 1010(d)(5) states, "An amended estimate shall be submitted as soon as possible when the Participant learns that the total estimated amount substantially increases. The Director may approve or disapprove of an amended amount."
32. Contained in HRH's Application dated November 16, 2005, was a request to amend its original estimate of \$2,500 to \$7,300.
33. According to HRH's records, HRH knew on or about November 16, 2005, that the total estimated amount substantially increased.

### **AWARD**

34. The Hearing Officer finds and has determined that HRH has made a Substantial Contribution, pursuant to CCR section 1010(b)(8), to the block transfer filings

proceeding.

35. The Health Rights Hotline is hereby awarded \$7,268.75 for its contribution to the block transfer filings regulatory proceeding.

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

37. This Decision is effective thirty (30) days after posting of this decision on the Department's website.

Dated: March 10, 2006

Original Signed by:

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STEPHEN A. HANSEN  
Hearing Officer  
Department of Managed Health Care