

BEFORE THE  
DEPARTMENT OF MANAGED HEALTH CARE  
STATE OF CALIFORNIA

In the Matter of the Application for an  
Advocacy Award of:

Health Access of California,  
Applicant.

**DECISION GRANTING AWARD OF  
ADVOCACY FEES TO HEALTH  
ACCESS OF CALIFORNIA, FOR  
SUBSTANTIAL CONTRIBUTION TO  
STANDARD PRESCRIPTION DRUG  
FORMULARY TEMPLATE (CONTROL  
NO. 2017-5229).**

**I. SUMMARY**

Health Access of California (“APPLICANT”) submitted an Application for an Advocacy Award for its participation in the Department of Managed Health Care’s (“Department”) adoption of “Standard Prescription Drug Formulary Template (Control No. 2017-5229)” (“the regulation”). The Department designated Anna Pifer-Foote as the Hearing Officer. The Department finds that APPLICANT made a substantial contribution to the adoption of the regulation and awards APPLICANT \$4,570.00.

**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) represents the interests of consumers in a proceeding and (2) makes a substantial contribution to the Department in its deliberations regarding the proceeding.<sup>1</sup>

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<sup>1</sup> Cal. Code Regs., tit. 28, § 1010, subd. (a).

### **III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES**

#### **A. Petition to Participate**

On March 7, 2016, APPLICANT submitted to the Department its Petition to Participate (“Petition”). On March 22, 2016, the Department approved APPLICANT’s Petition. APPLICANT certified that the information in its approved Petition remains true and accurate and it is therefore not required to submit an additional Petition for this Proceeding.<sup>2</sup>

#### **B. Application for Award of Advocacy Fees**

An Application for an Advocacy Award must be submitted no later than sixty (60) days following the effective date of a regulation.<sup>3</sup> On June 25, 2019, the Office of Administrative Law issued its Notice of Approval of the regulation. Pursuant to the Notice of Approval, the regulation becomes effective on October 1, 2019. APPLICANT submitted its Application for an Award of Advocacy Fees on August 28, 2019, which was before the regulation became effective, well before the filing deadline. APPLICANT requested \$4,570.00 for work performed.

### **IV. SUBSTANTIAL CONTRIBUTION**

On November 13, 2018, APPLICANT submitted a comment letter during the 45-day comment period. The written comments recommended changes pursuant to newly enacted state legislation, and recommended areas where the regulation could be clarified to better inform consumers of their rights to prescription drug coverage.

The Hearing Officer finds APPLICANT’s participation: (1) significantly assisted

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<sup>2</sup> See Cal. Code Regs., tit. 28, § 1010, subd. (c)(1).

<sup>3</sup> Cal. Code Regs., tit. 28, § 1010, subd. (d)(1).

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 times, hourly rates, and fees for its representatives:

MYRIAM VALDEZ  
POLICY & LEGISLATIVE ADVOCATE  
TIME: 12.5 hours  
RATE: \$220.00/hour  
TOTAL: \$2,750.00

ANTHONY WRIGHT  
EXECUTIVE DIRECTOR  
TIME: 2 hours  
RATE: \$455.00/hour  
TOTAL: \$910.00

BETH CAPELL  
POLICY ADVOCATE  
TIME: 2 hours  
RATE: \$455.00/hour  
TOTAL: \$910.00

## **B. Market Rate**

APPLICANT is entitled to compensation for Advocacy 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.”<sup>4</sup>

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 CPP<sup>5</sup> 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 (such as PUC proceedings) are essentially equivalent to hourly rates for “comparable services in the private sector in the Los Angeles and San Francisco Bay Areas.” Therefore, in determining whether Advocacy and Witness fees are consistent with the Market Rate, the Hearing Officer relies on the PUC’s adopted ranges for work intervenor representatives performed in 2019.<sup>6</sup>

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<sup>4</sup> Cal. Code Regs., tit. 28, § 1010, subd. (b)(8).

<sup>5</sup> The Legislative history behind the Department’s CPP specifically referred to the PUC’s program. See Stats 2002 C. 792 §1 (SB 1092).

<sup>6</sup> PUC Resolution ALJ-357 (Mar. 28, 2019).

#### **D. Determination of the Hourly Market Rate for APPLICANT**

The Hearing Officer finds that the hourly rates APPLICANT claimed are consistent with the applicable Market Rate. For work Myriam Valdez performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$220.00. APPLICANT justified this rate by reference to Ms. Valdez's background and experience. Ms. Valdez earned a bachelor's degree from the California State University, Bakersfield, and has approximately six years of legislative and health policy experience. The PUC's adopted hourly rate range for experts with under six years of experience is \$155-\$220. The Hearing Officer finds that the hourly rate of \$220.00 is consistent with the Market Rate.

For work Anthony Wright performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$455.00. Mr. Wright earned bachelor's degrees from Amherst College, and has served as the Executive Director for Health Access for 17 years. The PUC's adopted hourly rate range for experts with 13 or more years of experience is \$185-\$455. The Hearing Officer finds that the hourly rate of \$455.00 is consistent with the Market Rate.

For work Beth Capell performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$455.00. Ms. Capell has a doctoral degree in Political Science from the University of California, Berkeley. She has served as a legislative advocate working on health care issues since 1984, and has represented Health Access since 1996. The PUC's adopted hourly rate range for experts with 13 or more years of experience is \$185-\$455. The Hearing Officer finds that the hourly rate of \$455.00 is consistent with the Market Rate.

## **VI. AWARD**

APPLICANT is awarded Advocacy and Witness Fees for work related to preparing written comments that significantly assisted the Department in its deliberations. The total award to APPLICANT is \$4,570.00 as follows:

### **POLICY & LEGISLATIVE ADVOCATE**

Hours: 12.50  
Rate: \$220.00  
Fee: \$2,750.00

### **EXECUTIVE DIRECTOR:**

Hours: 2.00  
Rate: \$455.00  
Fee: \$910.00

### **POLICY ADVOCATE**

Hours: 2.00  
Rate: \$455.00  
Fee: \$910.00

**Total Fees: \$4,570.00**

## **FINDINGS OF FACT**

1. APPLICANT satisfied all the procedural requirements necessary to claim compensation in this Proceeding.
2. APPLICANT made a substantial contribution to the Department's adoption of "Standard Prescription Drug Formulary Template."
3. APPLICANT requested an hourly rate that is reasonable when compared to market rates for persons with similar training and experience.
4. The total reasonable compensation for APPLICANT is \$4,570.00.

## **CONCLUSIONS OF LAW**

1. APPLICANT fulfilled the requirements of California Code of Regulations, title

28, section 1010, and is entitled to compensation regarding the Department's adoption of "Standard Prescription Drug Formulary Template (Control No. 2017-5229)."

2. APPLICANT should be awarded \$4,570.00.

### AWARD ORDER

1. Health Access is hereby awarded \$4,570.00 as compensation for its Substantial Contribution regarding the Department's adoption of "Standard Prescription Drug Formulary Template (Control No. 2017-5229)."

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.<sup>7</sup>

Dated: October 18, 2019

Original Signed By:



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ANNA C. PIFER-FOOTE  
Hearing Officer  
Department of Managed Health Care

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<sup>7</sup> Cal. Code Regs., tit. 28, § 1010 subd. (e)(5), (6).