

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 Access of California, a California  
corporation

Applicant.

**DMHC Decision 12-01-01 January 10, 2012**

Proceeding Control No. 2010-2894  
(Re: Director's Letter 4-K – Implementation of AB 2244)

**DECISION GRANTING AWARD OF ADVOCACY AND WITNESS FEES  
TO HEALTH ACCESS OF CALIFORNIA, A CALIFORNIA CORPORATION,  
FOR SUBSTANTIAL CONTRIBUTION TO  
PROCEEDING CONTROL NO. 2010-2894**

**1. SUMMARY**

This decision awards Health Access of California, a California corporation (“Health Access” or “APPLICANT”), Advocacy and Witness Fees for its substantial contribution to Proceeding No. 2010-2894 of the Department of Managed Health Care (“Department”) regarding Director’s Letter 4-K – Implementation of AB 2244 (“Letter 4-K”).

**2. BACKGROUND OF CONSUMER PARTICIPATION PROGRAM**

The Consumer Participation Program (“Program” or “CPP”), enacted in Health and Safety Code § 1348.9 (“Statute”), required the Director (“Director”) of the Department to adopt regulations to establish the Program to allow for the award of reasonable advocacy and witness fees to any person or organization that (1) demonstrates that 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 if the order or decision has the potential to impact a significant number of enrollees.

The Statute requires the regulations adopted by the Director to include specifications for: (1) eligibility of participation, (2) rates of compensation, and (3) procedures for seeking compensation. The Statute specifies that the regulations shall require that the person or organization demonstrates a record of advocacy on behalf of health care consumers in administrative or legislative proceedings in order to determine whether the person or organization represents the interests of consumers.

Pursuant to the Statute, the Program regulations were adopted as section 1010 of Title 28 of the California Code of Regulations (the “Regulations”). The Regulations specify:

- a. Definitions for the Program, including: “Advocacy Fee,” “Compensation,” “Market Rate,” “Represents the Interests of Consumers,” “Substantial Contribution,” and “Witness Fees.” (§ 1010, subsection (b)).
- b. Procedure for a Request for Finding of Eligibility to Participate and Seek Compensation (§ 1010, subsection (c)), which is required to be eligible to participate in the Program.
- c. Procedure for Petition to Participate (§ 1010, subsection (d)), which is required to participate in each specific proceeding.
- d. Procedure for Applying for an Award of Fees. (§ 1010, subsection (e)).

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

#### **3.1. PROCEDURAL REQUIREMENTS**

All of the following procedures must be followed and criteria satisfied for a person or organization that represents the interests of consumers to obtain a compensation award:

- a. To become a “Participant,” the person or organization must satisfy the requirements of either or both of the following by:

- (1) Submitting to the Director a Request for Finding of Eligibility to Participate and Seek Compensation in accordance with 28 CCR § 1010(c), at any time independent of the pendency of a proceeding in which the person seeks to participate, or by having such a finding in effect by having a prior finding of eligibility in effect for the two-year period specified in 28 CCR § 1010(c)(3).

- (2) Submitting to the Director a Petition to Participate in accordance with 28 CCR § 1010(d), no later than the end of the public comment period or the date of the first public hearing in the proceeding in which the proposed Participant seeks to become involved, whichever is later. For orders or decisions, the request must be submitted within ten working days after the order or decision becomes final.

- b. The Participant must submit an “application for an award of advocacy and witness fees” in accordance with 28 CCR § 1010(e), within 60 days after the issuance of a final regulation, order or decision in the proceeding.

- c. The Participant must have made a Substantial Contribution to the proceeding. (Health & Saf. Code § 1348.9(a); 28 CCR § 1010(b)(8)).

- d. The claimed fees and costs must be reasonable (Health & Saf. Code § 1348.9(a)) and not exceed Market Rate as defined in 28 CCR § 1010.

### **3.2. APPLICANT'S APPLICATION FOR FINDING OF ELIGIBILITY TO PARTICIPATE**

On November 24, 2010, APPLICANT submitted its Request for Renewal of Finding of Eligibility to Participate and Seek Compensation in the CPP, giving notice that it represents the interests of consumers and of its intent to claim compensation.

By letter dated November 29, 2010, APPLICANT was given notice of ruling and finding that APPLICANT's Request for Renewal of Finding of Eligibility to Participate and Seek Compensation was approved.

### **3.3. APPLICANT'S PETITION TO PARTICIPATE IN THE LETTER 4-K PROCEEDING**

On May 24, 2011, APPLICANT submitted its Petition to Participate (Petition) with the Department in the Letter 4-K proceeding. In its Petition, APPLICANT estimated its fees to be \$1,500.00.

In its Petition, APPLICANT stated, with respect to Letter 4-K issues:

“As an original sponsor of AB 2244, Health Access California has a keen Interest in assuring that children benefit immediately from protections in the Affordable Care Act (ACA) against pre-existing condition exclusions and do not permit health plans to price children's coverage out of the market. Health Access played a key role in ensuring that there was a uniform interpretation of the implementation of this law between the state's two regulators, the Department of Managed Health Care (DMHC) and the Department of Insurance (CDI) by bringing to their attention several examples of apparent noncompliance and pointing out evident discrepancies between draft guidance documents between the two agencies. We participated in several discussions and written exchanges with DMHC regarding their regulatory language, the effective date enforcement begins, the types of coverage subject to these provisions, the scope of the Department's oversight, and appropriateness of their enforcement mechanisms. The resultant guidance led to greater compliance with the federal ACA statute, greater consistency in the regulatory guidance between the regulatory agencies, and a clearer understanding of the new law by the regulators, consumers, and the industry. Health Access played a meaningful role as part of a national coalition to help to secure passage of ACA, and thus has detailed knowledge of what changes were needed at the state level, such as AB 2244. Our role was to help ensure conformance with the federal statute, to facilitate state implementation of federal health care reform, and to implement clear regulatory guidance in California. We believe our participation will provide informed insight, ensure that the interests of health care consumer[s] are represented, and encourage timely and accurate implementation of the law.”

By letter dated May 26, 2011, APPLICANT was given notice of approval of APPLICANT's Petition to Participate in the Letter 4-K proceeding.

On May 24, 2011, APPLICANT submitted its Petition to Participate (Petition) in the Director's Letter 9-K, Guidance on AB 2244 proceeding ("Letter 9-K"). In its Petition, APPLICANT estimated its fees to be \$1,500.00. In its Petition, APPLICANT restated the same statement of interest stated by APPLICANT in its Letter 4-K Petition.

By letter dated May 26, 2011, APPLICANT was given notice of approval of APPLICANT's Petition to Participate in the Letter 9-K proceeding.

### **3.4. APPLICATION FOR AWARD OF ADVOCACY AND WITNESS FEES**

The Letter 4-K became effective on May 12, 2011. APPLICANT timely submitted its Application for an Award of Advocacy and Witness Fees (Application) in the Letter 4-K proceeding. 28 CCR § 1010(e)(1).

The application for an award of compensation must include (as required by 28 CCR § 1010(e)(2) and (3)):

- a. A detailed, itemized description of the advocacy and witness services for which the Participant seeks compensation;
- b. Legible time and/or billing records, created contemporaneously when the work was performed, which show the date and the exact amount of time spent<sup>1</sup> on each specific task;<sup>2</sup> and
- c. A description of the ways in which the Participant's involvement made a Substantial Contribution to the proceeding as defined in subpart (b)(8), supported by specific citations to the record, Participant's testimony, cross-examination, arguments, briefs, letters, motions, discovery, or any other appropriate evidence." 28 CCR § 1010 (e)(2).

With its Application, APPLICANT submitted a billing specifying the dates of services, a description of each specific task or each activity of advocacy and witness service, identification of the person providing each service, the elapsed time (exact amount of time spent) for each service in quarters (15 minutes) of an hour for attorney advocates (however, the application did not include billing for attorney advocates) and in 0.5 hour or 30 minute increments for non-attorney advocates,

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<sup>1</sup> "...the phrase 'exact amount of time spent' refers either to quarters (15 minutes) of an hour for attorneys, or to thirty (30) minute increments for non-attorney advocates." 22 CCR § 1010(e)(3).

<sup>2</sup> "The phrase 'each specific task,' refers to activities including, but not limited to:

- a. Telephone calls or meetings/conferences, identifying the parties participating in the telephone call, meeting or conference and the subject matter discussed;
- b. Legal pleadings or research, or other research, identifying the pleading or research and the subject matter;
- c. Letters, correspondence or memoranda, identifying the parties and the subject matter; and

the hourly rate requested,<sup>3</sup> and the total dollar amount billed for each task. The total fees requested for work performed by APPLICANT is \$2,100.00.

The Hearing Officer finds that the Application of APPLICANT substantially complies with the technical requirements of 28 CCR § 1010(e)(2) and (3).

#### **4. PROCEDURAL HISTORY**

Beginning in January 2011, the Department invited parties who would be the subject of the proposed director's decision to submit written comments regarding the draft Letter 4-K. Comments were also invited upon the signed Letter 4-K that was posted on the Department's website on or about May 12, 2011.

#### **5. SUBSTANTIAL CONTRIBUTION**

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 or to an order or decision made by the director if the order or decision has the potential to impact a significant number of enrollees.” (Emphasis added).

The definition of “Substantial Contribution” provides the criteria for evaluating whether the Participant has made a Substantial Contribution.<sup>4</sup> 28 CCR § 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.”

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d. Attendance at hearings, specifying when the hearing occurred, subject matter of the hearing and the names of witnesses who appeared at the hearing, if any.” 28 CCR § 1010(e)(3)a, b, c, and d.

<sup>3</sup> Under the PUC Intervenor Compensation Program, the intervenors submit time logs to support the hours claimed by their professionals. Those logs typically note the dates, the number of hours charged, and the issues and/or activities in which each was engaged. D.06-11-009 (November 9, 2006), p. 26.

<sup>4</sup> Further guidance is provided in PUC Decisions awarding intervenor compensation – for example:

Should the Commission not adopt any of the ...[intervenor’s] recommendations, compensation may be awarded if, in the judgment of the Commission, the ...[intervenor’s] participation substantially contributed to the decision or order. For example, if ...[an intervenor] provided a unique perspective that enriched the Commission’s deliberations and the record, the Commission could find that the ...[intervenor] made a substantial contribution.” PUC Decision D.06-11-031 (November 30, 2006), PP. 5 - 6; similarly, D.06-11-009 (November 9, 2006), pp. 7 - 8.

### **5.1 APPLICATION MUST INCLUDE DESCRIPTION OF CONTRIBUTION**

The application for an award of compensation must include “a description of the ways in which the Participant’s involvement made a Substantial Contribution to the proceeding . . . , supported by specific citations to the record, Participant’s testimony, cross-examination, arguments, briefs, letters, motions, discovery, or any other appropriate evidence.” 28 CCR § 1010(e)(2)c.

### **5.2. APPLICANT’S DESCRIPTION OF ITS CONTRIBUTION**

APPLICANT submitted the following information and documents in support of its position regarding the adoption of the proposed Letter 4-K:

“Supplied written comments on Draft Guidance Letter 4-K on AB 2244.  
See attached documentation.”

APPLICANT provided written comments dated January 13, 2011, in regard to the draft Letter 4-K, by a Policy Consultant-Health Care Policy Expert representing APPLICANT.

### **5.3 PROCEDURAL VERIFICATION OF SUBSTANTIAL CONTRIBUTION**

By memorandum dated January 13, 2011 (from APPLICANT, and representatives of Children Now, Children’s Defense Fund California, and Children’s Partnership), APPLICANT’s staff presented written comments on the proposed Letter 4-K. That submission contained approximately six comments, including recommendations requesting changes to the proposed letter. APPLICANT stated in summary:

(1) The Letter 4-K guidance should spell out the requirements for open enrollment, to include not only the current sixty-day period, but also the child’s birth month, as well as changes in circumstances that could trigger an open enrollment period (e.g., divorce). In addition, health plans’ marketing materials and websites should specify when open enrollment periods occur so that families have the greatest clarity about when to apply for coverage.

(2) The Letter 4-K should require 60-days’ notice of higher risk rate and the opportunity to apply to reduce the higher risk rate sixty days prior to renewal. In addition, the notice should include a statement that lower rates are available during the open enrollment period that occurs in the month of the child’s birthday.

(3) The Letter 4-K guidance should clarify that the 20% surcharge is applied to the rate for a similarly situated child, that is, a child of the same age, geographic region, family composition and benefit plan. In addition, the Department should exempt from the surcharge those children just applying for coverage during this first 60 days of open enrollment because until January 1, 2011, these children had no option to purchase insurance because of pre-existing condition exclusions. Without exemption, those previously denied coverage will face a surcharge when no options existed

prior to January 1, 2011. In addition, the Letter 4-K guidance would require that the notice required by section 1389.25(b)(1) be provided in a timely fashion.

(4) APPLICANT urged that the Department require health plans to disclose in their marketing materials that coverage for children under 19 years of age in the individual market must be sold regardless of any pre-existing condition the child may have, as an important way of assuring that every child in California has health coverage.

(5) The Letter 4-K should make explicit that the five-year bar on selling in the individual market for insurers that cease offering either family or child-only coverage applies to every individual policy.

(6) Rate review guidance should separate out rates for coverage for children under age 19, to facilitate the opportunity to scrutinize both the rates and the justification for those rates to assure that the rates have a sound basis.

Of the January 13, 2011, comments requesting changes, all were reviewed, some were accepted, some were declined.

#### **5.4. FINDING OF SUBSTANTIAL CONTRIBUTION**

The Hearing Officer finds that participation by APPLICANT: (1) significantly assisted the Department in its deliberations by presenting relevant issues, evidence, and arguments that were helpful and seriously considered, and (2) resulted in more relevant, credible, and non-frivolous information being available to the Director to decide the proposed adoption of Letter 4-K than would have been available to the Director had APPLICANT not participated.

The Hearing Officer hereby determines that by its participation APPLICANT made a substantial contribution on behalf of consumers to the proceedings, to the Department in its deliberations, and as a whole, to the adoption of Letter 4-K.

The Hearing Officer finds that APPLICANT has made a Substantial Contribution, pursuant to 28 CCR § 1010(b)(8), to the Letter 4-K proceeding.

### **6. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE**

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 proceeding.

#### **6.1. FEES REQUESTED**

APPLICANT billed the following time, hourly rates, and fees for its representative.

Staff / Title	Hours	Rates	Fees
Policy Consultant Health Care Policy Expert	6.0	\$350.00	\$2,100.00
<b>TOTAL FEES</b>	<b>→6.0</b>		<b>\$2,100.00</b>

APPLICANT did not claim or bill for any expenses or recoverable costs.

## 6.2. REASONABLENESS OF TIME BILLED

We must assess whether the hours claimed for the consumers' efforts that resulted in Substantial Contributions to the proceedings are reasonable by determining to what degree the hours and costs (if any costs are claimed) are related to the work performed and are necessary for the Substantial Contribution.<sup>5</sup>

a. Billed Activities. APPLICANT billed for two activities summarized as follows:

(1) Analysis of the text of the proposed Letter 4-K.

(2) Preparation of written comments submitted in the first written comment period ending in January, 2011, for a total of 6.0 hours.

b. Adjustments. The time billed appears reasonable.

c. Finding. The Hearing Officer hereby finds that the time billed is related to the work performed, necessary for the substantial contributions made, and reasonable for the advocacy and witness services performed and work product produced.

## 6.3. MARKET RATE

Public interest attorneys are entitled to request the prevailing market rates of private attorneys of comparable skill, qualifications and experience. (*Serrano v. Unruh* (“*Serrano IV*”) (1982) 32 Cal.3d 621.). APPLICANT is entitled to be compensated for Advocacy Fees and Witness Fees at hourly rates that reflect Market Rate for services. Advocacy Fees and Witness Fees cannot exceed Market Rate, as defined in the Regulation. 28 CCR §§ 1010(b)(1), (3) and (10). “Market Rate” is defined at 28 CCR section 1010(b)(3) 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.”

Reference to the Intervenor Compensation Program of the California Public Utilities Commission (“PUC”) seems appropriate because it is similar to the Department’s Consumer

<sup>5</sup> See, e.g., PUC D.06-11-031 (November 30, 2006), p. 10; D.06-11-032 (November 30, 2006), p. 9; D.06-11-009 (November 9, 2006), p. 26.



Participation Program<sup>6</sup> and has an extensive history of awarding intervenor compensation and updating hourly rates used in computing awards of compensation to intervenors who make substantial contributions to PUC decisions.

In each proceeding before the PUC in which intervenors participate, the PUC issues a written opinion setting forth the decision regarding award of intervenor compensation. Therefore, the many PUC written decisions granting intervenor compensation provide a valuable source of guidelines to determine reasonableness and market value.

#### **6.4. HOURLY RATES THAT REFLECT “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 proceedings of the PUC, 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 28 CCR § 1010, subsection (b)(3).

Accordingly, we must take into consideration whether the claimed fees and costs (if any) are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.<sup>7</sup> In order to determine Market Rate, we must look to available data inside and outside the Department.

#### **6.5. APPLICANT’S JUSTIFICATION FOR RATES BILLED**

In support of the hourly fee rates requested, APPLICANT did not submit any justification other than the experience and biographical information regarding the person providing services.

#### **6.6. HOURLY RATE DETERMINATIONS UNDER THE PUC PROGRAM**

Until PUC Decision R.04-10-010 in 2004, the PUC “set hourly rates piecemeal”<sup>8</sup> for intervenors – i.e., “... for each proceeding, each intervenor, and indeed, each appearance by a particular representative of an intervenor, ... [the PUC] might revisit the reasonableness of that representative’s hourly rate.”<sup>9</sup> The PUC recognized the need for coordination by establishing, through periodic rulemakings, the rates to be paid to all intervenors’ representatives for work done in specified time periods.<sup>10</sup> The first such rulemaking was R.04-10-010, D.05-11-031, which set certain

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<sup>6</sup> The Legislative history behind the Department’s Consumer Participation Program 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).

<sup>7</sup> See, e.g., PUC D.06-11-031 (November 30, 2006), p. 10; D.06-11-032 (November 30, 2006), p. 10.

<sup>8</sup> PUC Order Instituting Rulemaking R.06-08-019 (August 24, 2006), p. 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

guidelines, recognized that hourly rates had stabilized, and determined that the PUC would not authorize a general increase to intervenor hourly rates for work performed in 2005.<sup>11</sup>

In an Interim Opinion on Updating Hourly Rates,<sup>12</sup> the PUC adopted a three percent (3%) cost-of-living adjustment (“COLA”) for work performed in calendar year 2006, adopted an additional 3% COLA for work performed in 2007, and established, effective for 2007 work, three rate ranges for non-attorney experts based on levels of experience, similar to the five levels already established for attorneys.<sup>13</sup> The three levels for non-attorney experts are: 0-6 years; 7-12 years; and 13-plus years. In so doing, the PUC found that:

“...basing expert rates on levels of experience, similar to the levels established for attorneys, will better ensure that an expert’s given rate is within the market rates paid to persons of comparable training and experience. However, in no event should the rate requested by an intervenor exceed the rate billed to that intervenor by any outside consultant it hires, even if the consultant’s billed rate is below the floor for a given experience level. ...[I]ntervenors must disclose the credentials of their representatives in order to justify the requested rates.<sup>14</sup> (Emphasis added).

The following table shows the PUC’s adopted ranges for work performed by intervenor representatives in 2006, 2007, 2008, 2009, 2010 and 2011. The rate ranges for attorneys and non-attorney experts are based on levels of applicable experience.

### **Hourly Intervenor Rate Ranges for 2006, 2007, 2008,<sup>15</sup> 2009,<sup>16</sup> 2010<sup>17</sup> and 2011<sup>18</sup>**

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<sup>11</sup> *Id.* at pp. 2-3.

<sup>12</sup> D.07-01-009 (January 11, 2007) (part of Rulemaking R.06-08-019).

<sup>13</sup> *Id.* at pp. 1, 3-4.

<sup>14</sup> *Id.* at p. 5.

<sup>15</sup> D.08-04-010 (April 10, 2008) (part of Rulemaking 06-08-019) at p. 5 (2008 rates = 2007 rates + 3%).

<sup>16</sup> PUC Resolution ALJ-235 (March 12, 2009) (2009 rates = 2008 rates adopted for 2009).

<sup>17</sup> PUC Resolution ALJ-247 (April 8, 2010) (2010 rates = 2008 rates adopted for 2010).

<sup>18</sup> PUC Resolution ALJ-267 (March 24, 2011) (2011 rates = 2008 rates adopted for 2011).

Years of Experience	2006 Range	2007 Range	2008, 2009, <sup>19</sup> 2010 & 2011 Range
<b>Attorneys:</b>			
0 - 2	\$140 - \$195	\$145 - \$200	\$150 - \$205
3 - 4	\$190 - \$225	\$195 - \$230	\$200 - \$235
5 - 7	\$260 - \$280	\$270 - \$290	\$280 - \$300
8 - 12	\$280 - \$335	\$290 - \$345	\$300 - \$355
13+	\$280 - \$505	\$290 - \$520	\$300 - \$535
<b>Experts:</b>			
0 - 6		\$120 - \$180	\$125 - \$185
7 - 12		\$150 - \$260	\$155 - \$270
13+		\$150 - \$380	\$155 - \$390
All years	\$115 - \$370		

Note: The rates intervenors request for the use of outside consultants may not exceed the rates billed to the intervenors by the consultants, even if the consultants' rates are below the floor for any given experience level.

The PUC decided to continue to update hourly rates annually on a calendar year basis.<sup>20</sup> The PUC based its 3% COLA adjustments on the Social Security Administration's COLA, which is released annually in late fall, and upon which reliance would be consistent with a calendar year adjustment of hourly rates.<sup>21</sup>

In 2008, the PUC found it reasonable to adopt another 3% COLA for intervenor rates for work performed in 2008.<sup>22</sup> That increase is primarily based on various federal inflation indexes, such as the Social Security Administration's COLA and Bureau of Labor Statistics data for consumer prices and wages.<sup>23</sup> In its 2008 Decision and for future reference, the PUC found that a COLA adjustment should be authorized, by future PUC Resolution, for work performed in 2009, and in subsequent years in the absence of a market rate study, to be effective on January 1 of each year.<sup>24</sup> However, a COLA would not necessarily be authorized. By Resolution ALJ-235 (March 12, 2009), the PUC ordered that intervenors are not authorized an hourly rate COLA for work performed in

<sup>19</sup> For work performed in 2009, the PUC ordered that intervenors are not authorized an hourly rate COLA, and hourly rate ranges adopted for 2008 remain in effect. Resolution ALJ-235 (March 12, 2009) at pp. 2-4.

<sup>20</sup> D.07-01-009 (January 11, 2007) at p. 9.

<sup>21</sup> *Id.* at pp. 4 and 11.

<sup>22</sup> D.08-04-010 (April 10, 2008) at pp. 4 and 24.

<sup>23</sup> *Id.* In reviewing available data, the PUC found no index that specifically targets rates for services by regulatory professionals (attorneys, engineers, economists, scientists, etc.), and the PUC's "findings are weighted heavily to SSA COLA and similar data." *Id.* at p. 4.

<sup>24</sup> D.08-04-010 (April 10, 2008) at pp. 24 -25.

2009, and hourly rate ranges adopted for 2008 would remain in effect. By Resolutions ALJ-247 (April 8, 2010) and ALJ-267 (March 24, 2011), the PUC ordered that intervenors are not authorized an hourly rate COLA for work performed in 2010 and 2011, and hourly rate ranges adopted for 2008 would remain in effect.

#### **6.7. DETERMINATION OF MARKET VALUE HOURLY RATE**

Fees claimed may be adjusted to reflect Market Rate. “The hearing officer shall issue a written decision that ... shall determine the amount of compensation to be paid, which may be all or part of the amount claimed.” 28 CCR § 1010(e)(7). APPLICANT claims Advocacy and Witness Fees for: one Policy Expert (a non-attorney expert).

For work performed by APPLICANT’s Policy Expert, APPLICANT claims Advocacy and Witness Fees at the hourly rate of \$350.00 for 2011. APPLICANT submitted justification for the rate claimed by reference to biographical information and the number of years of experience for the staff member for whom fees are claimed (see ¶ 6.5, *supra*). At the time of the work for which the claim is made and according to the biographical information submitted, APPLICANT’s Policy Expert had: a Ph.D. in political science from the University of California at Berkeley; approximately 30 years of experience working at the California Legislature, California Administrations, and for various interest groups, including APPLICANT and a collaborative of consumer groups. The PUC’s adopted hourly non-attorney intervenor rate range for 2008 and 2009 is \$155 - \$390 for 13 or more years of experience. Therefore, it appears that the \$350.00 hourly rate claimed by APPLICANT for services provided by APPLICANT’s Policy Expert for 2011 does not exceed “Market Rate” as defined in 28 CCR § 1010(b) and as construed and found herein in accordance with the PUC rate ranges. The Hearing Officer finds that the hourly rate of \$350.00 is consistent with Market Rate. That finding is consistent with an award in a previous Decision in 2009 in which APPLICANT was awarded advocacy and witness fees at the hourly rate of \$350.00 for this expert.

Based on the information and documentation provided by APPLICANT, the Hearing Officer did not consider it necessary to audit the records and books of the APPLICANT to verify the basis for the amounts claimed in seeking the award. 28 CCR § 1010(e)(6).

## 7. AWARD

APPLICANT is awarded Advocacy and Witness Fees as follows:

<b>Staff / Title</b>	<b>Hours</b>	<b>Rates</b>	<b>Fees</b>
Health Care Policy Expert -- Work in 2011	6.0	\$350.00	\$2,100.00
<b>TOTAL FEES</b>	<b>→</b>		<b>\$2,100.00</b>
<b>TOTAL DIRECT EXPENSES</b>	<b>--</b>		<b>\$00.00</b>
<b>TOTAL AWARD</b>			<b>\$2,100.00</b>

## 8. ASSIGNMENT OF PROCEEDING

This proceeding was and is assigned to Stephen A. Hansen, Staff Counsel III, as Hearing Officer.

### FINDINGS OF FACT

1. APPLICANT has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. APPLICANT made substantial contributions to Proceeding Control No. 2010-2894 as described herein.
3. APPLICANT requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to Market Rates for persons with similar training and experience.
4. The total reasonable compensation for APPLICANT is \$2,100.00.

### CONCLUSIONS OF LAW

1. APPLICANT has fulfilled the requirements of Health and Safety Code § 1348.9 and 28 CCR § 1010, which govern awards of Advocacy and Witness compensation, and is entitled to such compensation incurred in making Substantial Contributions to Proceeding Control No. 2010-2894.
2. APPLICANT should be awarded \$2,100.00 for its contribution to Proceeding Control No. 2010-2894.

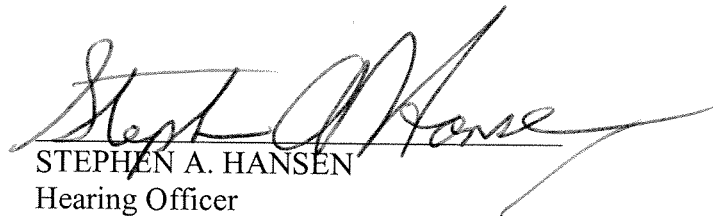
### AWARD ORDER

1. Health Access of California, a California corporation, is hereby awarded \$2,100.00 as compensation for its Substantial Contribution to the Letter 4-K regulatory Proceeding Control No. 2010-2894.
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 of this decision on the Department's website. 28 CCR § 1010(e)(7) and (8).

Dated: January 10, 2012

Original Signed by:

A handwritten signature in black ink, appearing to read "Steph A. Hansen", is written over a horizontal line.

STEPHEN A. HANSEN  
Hearing Officer  
Department of Managed Health Care