

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 APPROVAL OF
FILING NUMBER KHPI-130516678**

I. SUMMARY

Health Access of California (“APPLICANT”) submitted an application for an award of advocacy fees regarding the Department of Managed Health Care’s (“Department”) consideration and approval of Filing Number KHPI-130516678 (“Decision”) regarding Kaiser Foundation Health Plan, Inc.’s (“Kaiser”) rate filing in the individual market for 2017. The Department designated Anna Pifer-Foote as the Hearing Officer. The Department awards APPLICANT \$850.00 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

¹ Health and Safety Code section 1348.9.

III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES

A. Petition to Participate in the Decision

On March 7, 2016, APPLICANT submitted to the Department its Petition to Participate ("Petition"). By letter dated March 22, 2016, the Department notified APPLICANT that the Department approved its Petition. The Petition approved on March 22, 2016 relates to a different proceeding. However, effective April 1, 2016, participants with an approved Petition are not required to submit another Petition in future proceedings, as long as the information in the approved Petition remains true and accurate.

B. Application for Award of Advocacy Fees

On July 14, 2016, Kaiser filed its proposed rate adjustment regarding health care coverage in the individual market offered through the California Health Benefit Exchange. In October 2016, the Department found the proposed rate adjustment, effective January 1, 2017, to be not unreasonable.

APPLICANT submitted its Application for an Award of Advocacy Fees in the Decision on December 3, 2016. The total fee requested for work APPLICANT performed is \$850.00.

IV. SUBSTANTIAL CONTRIBUTION

During the Department's consideration of Kaiser's proposed rate adjustment, APPLICANT raised concerns regarding, among other things, Kaiser's justification for its proposed rates.

Specifically, APPLICANT submitted written comments on September 22, 2016. The written comments included concerns about changes in enrollee cost sharing, cost containment and quality improvements, and claims costs and rate changes over time.

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

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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 rate, and fees for its representative:

BETH CAPELL
POLICY ADVOCATE
TIME: 2 hours
RATE: \$425/hour
TOTAL: \$850.00

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.

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).

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 2016.³

Years of Experience	2016 Range
Attorneys	
0 - 2	\$165-\$225
3 - 4	\$220-\$255
5 - 7	\$305-\$325
8 - 12	\$325-\$380
13+	\$325-\$575
Experts	
0 - 6	\$140-\$205
7 - 12	\$170-\$290
13+	\$170-\$425

D. DETERMINATION OF THE MARKET VALUE HOURLY RATE FOR APPLICANT

The Hearing Officer finds that the hourly rate APPLICANT claimed is consistent with the applicable “market rates.” Specifically, for work Beth Capell performed, APPLICANT claims advocacy and witness fees at the hourly rate of \$425.00. APPLICANT justified this rate by

³ PUC Resolution ALJ-329 (May 12, 2016).

reference to Ms. Capell’s biographical information and number of years of experience. Ms. Capell has a Ph.D. in Political Science from the University of California, Berkeley and more than 13 years of experience relating to policy analysis, legislative advocacy, and providing strategic input on various healthcare issues. The PUC’s adopted hourly rate range for experts of 13 or more years of experience is \$170-\$425. 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 APPLICANT is as follows:

Staff / Title	Hours	Rates	Fees
Policy Advocate	2	\$425.00	\$850.00
TOTAL FEES			\$850.00
TOTAL DIRECT EXPENSES			\$00.00
TOTAL AWARD			\$850.00

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 Filing Number KHPI-130516678 as described herein.
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 \$850.00.

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 regarding the Department's consideration and approval of Filing Number KHPI-130516678.
2. APPLICANT should be awarded \$850.00 for its contribution.

AWARD ORDER

1. Health Access of California is hereby awarded \$850.00 as compensation for its substantial contribution regarding the Department's consideration and approval of Filing Number KHPI-130516678.
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 1, 2017

Original Signed by:



ANNA PIFER-FOOTE
Hearing Officer
Department of Managed Health Care