

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:

Latino Issues Forum, a California Corporation,

Applicant.

Application Received Date: April 9, 2007

Proceeding Control No. 2004-0115
For 28 CCR § 1300.67.04
and 28 CCR § 1300.67.8(f)
(Re: Language Assistance Programs)

**OPINION GRANTING AWARD OF ADVOCACY AND WITNESS FEES
TO LATINO ISSUES FORUM FOR
SUBSTANTIAL CONTRIBUTION TO PROCEEDING NO. 2004-0115**

1. SUMMARY

This decision awards Latino Issues Forum , a California corporation (“LIF” or “APPLICANT”) , Advocacy and Witness Fees for its substantial contribution to Proceeding No. 2004-0115 of the Department of Managed Health Care (Department) regarding Language Assistance Programs (“proposed regulation”), which became final as set forth at 28 CCR §1300.67.04 and deleted subsection (f) of 28 CCR § 1300.68.8. The award represents a decrease from the amount requested in order to not exceed Market Rate, for the reasons stated herein.

2. BACKGROUND OF CONSUMER PARTICIPATION PROGRAM

The Consumer Participation Program, enacted in Health and Safety Code § 1348.9 (the Statute), required the Director (the Director) of the Department of Managed Health Care (the Department) to adopt regulations to establish the Consumer Participation 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 specified that the regulations shall require that the person or organization demonstrate 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, Consumer Participation Program (the Program) regulations were adopted as section 1010 of Title 28 of the California Code of Regulations (the Regulations). The Regulations specified:

- 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)).
- c. Procedure for Petition to Participate. (§ 1010, subsection (d)).
- 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 & Safety Code § 1348.9(a); 28 CCR § 1010(b)(8)).

d. The claimed fees and costs must be reasonable (Health & Safety Code § 1348.9(a)) and not exceed market rates as defined in 28 CCR § 1010.

3.2. APPLICANT’S APPLICATION TO PARTICIPATE

On September 23, 2004, APPLICANT 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.

On October 22, 2004, the Department Director (Director) ruled that APPLICANT was eligible to participate and to seek an award of compensation.

On November 18, 2004, APPLICANT submitted its Petition to Participate (Petition) with the Department in the Language Assistance Programs rulemaking proceeding. In its Petition, APPLICANT estimated its fees to be \$125,000.

In its Petition, APPLICANT stated that, with respect to language assistance issues that:

Latino Issues Forum is committed to helping achieve cultural and linguistic equity in managed care.... Latino Issues Forum (LIF) has been involved in the development of SB 853 since its inception. LIF wants to ensure that the regulations effectively address the goals of SB 853. LIF believes that it has unique contributions to make in this proceeding, especially in terms of protecting the interests of language and ethnic minorities.... LIF has been instrumental in leading an effort to develop enforceable cultural and linguistic standards for the DMHC.... LIF, in conjunction with other advocates, has been preparing draft standards and meeting with DMHC to begin the process or promulgating the regulations that would establish the standards.

On December 17, 2004, the Director approved APPLICANT's Petition to participate in the Language Assistance Programs rulemaking proceeding.

3.3. APPLICATION FOR AWARD OF ADVOCACY AND WITNESS FEES

The regulation (28 CCR § 1300.67.04) became final and effective on February 23, 2007. Within 60 days thereafter (on April 9, 2007), APPLICANT timely submitted its Application for an Award of Advocacy and Witness Fees (Application). 28 CCR § 1010(e)(1).

After the Application was publicly noticed, no objections to the Application were received.

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 spent¹ on each specific task²; and

¹ "...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).

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

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 request for fees, APPLICANT submitted a billing specifying the dates of services, a description of each specific task or each activity of advocacy and witness service, identification by initials 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 and in 0.5 hour or 30 minute increments for non-attorney advocates, the hourly rate requested,³ and the total dollar amount billed for each task. The total fees requested for work performed by APPLICANT is \$31,610.00.

The Application contained biographies or resumes of the persons who provided the services for which the fee award is sought but contained only a partial description of how Market Rate was determined for the fees claimed .

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 September of 2005, the Department invited parties who would be the subject of the proposed regulation to public discussions ("stakeholder meetings") in order to increase public participation and improve the quality of the proposed regulation. Gov't Code § 11346.45.

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- 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
 - 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.

³ 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.

On December 23, 2005, the Department issued a Notice of Proposed Rulemaking (Notice) proposing to adopt 28 CCR section 1300.67.04 and to delete subsection (f) of 28 CCR § 1300.67.8, and establishing a 60-day comment period from December 23, 2005 to February 21, 2006.

In the Informative Digest/Policy Statement Overview contained within the Notice, the Department stated that:

Proposed adoption of section 1300.67.04

SB 853 (2004) added Chapter 2.2, section 1367.04 of the Health and Safety Code (section 1367.04) expressly instructing the Department to develop and adopt regulations by January 1, 2006. The statute also contained specific requirements for the content of the regulations, including requirements that the regulations establish the standards and requirements for plans' provision of translation and interpretation services. Accordingly, the regulation establishes standards and requirements related to: assessing the linguistic needs of enrollees; arranging for and providing translation and interpretation services; training plan staff; and monitoring compliance with the regulation.

Proposed deletion of subsection (f) of section 1300.67.8

The Department has determined that it is necessary to rescind subsection (f) of Rule 1300.67.8. Subsection (f) has been suspended since it was promulgated in November 2003, in response to additional information obtained by the Department regarding unintended consequences that may result from application of subsection (f), and the identified potential for a more workable approach through the language assistance regulation. The Department has determined that the workable aspects of subsection (f) can be appropriately incorporated into the proposed language assistance program regulation, rendering the existing suspended subsection (f) unnecessary.

Two Public Hearings on the proposed regulation were scheduled and noticed for February 14, 2006, in Los Angeles, and February 16, 2006, in Oakland, California. The notice of public hearings extended the written comment period to March 3, 2006.

On July 26, 2006, the Department issued a notice of a second public comment period for 30 days from July 26, 2006 through August 25, 2006. By notice dated August 15, 2006, the Department extended the second comment period for 30 days ending September 25, 2006.

On November 17, 2006, the Department issued a notice of a third public comment period for 16 days from November 17, 2006 through December 3, 2006.

On December 22, 2006, 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 on January 24, 2007. The regulation was effective on February 23, 2007.

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...”
(Emphasis added).

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.”

The definition of “Substantial Contribution” provides the criteria for evaluating whether the consumer participant has made a substantial contribution.⁴

⁴ Further guidance is provided in PUC Decisions awarding intervenor compensation – for example:

“In evaluating whether ... [an intervenor] made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the ... [intervenor]? ... Second, if the ... [intervenor’s] contentions or recommendations paralleled those of another party, did the ... [intervenor’s] participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? ... [T]he assessment of whether the ... [intervenor] made a substantial contribution requires the exercise of judgment.

“In assessing whether the ... [intervenor] meets this standard, the Commission typically reviews the record, ... and compares it to the findings, conclusions, and orders in the decision to which the ... [intervenor] asserts it contributed. It is then a matter of judgment as to whether the ... [intervenor’s] presentation substantially assisted the Commission. [citing D.98-04-

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 proceeding⁵..., 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 described the following documents and testimony in support of its substantial contribution to proposed adoption of 28 CCR § 1300.67.24:

- a. APPLICANT’s Associate Director and Staff Attorney prepared and presented preliminary comments and proposed regulations to the Department in efforts to seek initiation of the regulation-making process. Beginning in September 2005, APPLICANT’s Senior Program Manager participated in a series of stakeholder discussions regarding the development of the Language Assistance Programs regulation and submitted written comments on the draft regulation. APPLICANT’s comments focused on: collection of demographic information, training and certification of interpreters and translators, and other national and state standards.
- b. Testimony of APPLICANT’s Senior Program Manager at the February 16, 2006, Public Hearing. In addition APPLICANT’s Senior Program Manager worked with other

059, 79 CPUC2d 628, 653 (1998)].

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 Decisions under the PUC’s Intervenor Compensation Program go further and require intervenor’s to assign a reasonable dollar value to the benefits of the intervenor’s participation.

“D.98-04-059 directed ...[intervenor’s] to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of ...[an intervenor’s] participation should bear a reasonable relationship to the benefits realized through their participation. This showing

consumer advocates to identify limited English speaking enrollees and to arrange for their testimony at the Public Hearings held in Oakland and Los Angeles.

c. Written comments by APPLICANT's Senior Program Manager in response to the first comment period that closed on March 3, 2006.

d. Written comments by APPLICANT's staff in response to the second comment period that closed on September 25, 2006. APPLICANT's comments focused on: inclusion of the demographic profile, requirement that plans use trained and competent translators and interpreters, and that limited English speaking enrollees be notified about the availability of the grievance processes.

e. Written comments by APPLICANT's Senior Program Manager in response to the third comment period that closed on December 3, 2006.

f. APPLICANT's Associate Director reviewed and supervised all of APPLICANT's submissions.

5.3. PROCEDURAL VERIFICATION OF SUBSTANTIAL CONTRIBUTION

At the February 16, 2006, Public Hearing on the proposed adoption of the regulation, a Senior Program Manager representing the APPLICANT presented oral comments on the record.

On March 3, 2006, a Senior Program Manager representing APPLICANT presented written comments signed by the Executive Director of APPLICANT on the proposed regulation. That submission contained eight comments and recommendations, all of which requested changes, requesting:

(1) that the regulation clarify the requirements of health plans that choose to use the Medi-Cal standards to provide language access services to their enrollees and such plans must be stringently monitored for compliance;

assists us in determining the overall reasonableness of the request." D.06-11-031 (November 30, 2006), p. 11; D.06-11-009 (November 9, 2006), pp. 31 - 32.

- (2) that health plans should be required to collect directly from enrollees the race, ethnicity, spoken and written language preference of enrollees and be collected in the needs assessment;
- (3) that the regulations should specify that health plans must provide qualified, trained interpreters and translators;
- (4) that the regulation prohibit the use of family, friends and providers as interpreters and translators;
- (5) that the regulation establish minimum standards for health plans to determine the proficiency of interpreters and translators;
- (6) that the regulations should require that contracting hospitals be held to the standards established by the Statute and the proposed regulations (instead of Section 1259 of the Knox-Keene Act);
- (7) that the regulations require that all health plan staff be trained on the health plan's language access program; and
- (8) that the regulations include enforcement an accountability mechanisms.

One of the eight March 3, 2006, comments requesting changes was accepted by the Department, seven of the eight were accepted in part, and seven of the eight were rejected in part.

On September 25, 2006, the APPLICANT presented written comments on the proposed regulation. That submission contained three comments and recommendations requesting changes:

- (1) that the regulation includes language that prohibits the use of minors for as interpreters and translators, except in the case of an emergency, and discourages the use of unqualified interpreters such as adult family members and friends;
- (2) that the regulation includes a requirement that all health plan staff be trained on the health plan's language access program; and
- (3) that the Department establish clear guidelines as to how Department staff will monitor and report on health plans' compliance with the regulation and that such compliance should not be

solely based on self-reporting by health plans, but should include criteria by which the Department can evaluate health plans' compliance; and that information on health plans' compliance should be made available to the public.

Three of the three September 25, 2006, comments requesting changes were rejected with explanation.

On December 1, 2006, APPLICANT presented written comments on the proposed regulation. That submission contained four comments and recommendations requesting changes:

- (1) that language be removed from the proposed regulation regarding limitation to threshold languages of plans' obligation to notify LEP enrollees of the availability of interpreter services;
- (2) that language be deleted that limits the plans' survey requirements to distributing to subscribers a disclosure explaining the availability of free language assistance services, and instead include language that requires survey of enrollees in a manner designed to identify the language needs of each enrollee and record that information;
- (3) that requires the plan to survey enrollees to identify language needs and record that information for use at identified points of contact, instead of placing the burden on enrollees to proactively contact the plan or provider to inform of their preferred written and spoken language needs;
- (4) that requires plans to make grievance forms and procedures available in threshold languages in contracting providers offices and not simply make them available upon an enrollee's request;
- (5) that language be added to specify how a health plan would be in compliance with the regulation; and
- (6) that, instead of allowing health plans to incorporate a hospital's language assistance program, the regulation should require the Department to review a contacting hospital's language assistance program to ensure that it meets the requirements of the regulation before a plan is deemed in compliance with the regulation.

Six of the six December 1, 2006, comments requesting changes were rejected with explanation in the record.

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 make her decision regarding the proposed adoption of 28 CCR §1300.67.24 than would have been available to the Director had APPLICANT not participated.

The Hearing Officer hereby determines and finds that by its participation APPLICANT made a substantial contribution pursuant to 28 CCR § 1010(b)(8) on behalf of consumers to the Language Assistance Program rulemaking proceedings, to the Department in its deliberations, and as a whole, to the adoption of 28 CCR §1300.67.24.

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 adoption of a regulation. “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).

6.1. FEES REQUESTED

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

Staff / Title	Hours	Rates	Fees
Associate Director & Health Care Policy Expert -- Work in 2004, 2005, & 2006	18.0	\$350.00	\$6,300.00
Senior Program Manager & Health Care Policy Expert -- Work in 2006	65.0	\$250.00	\$16,250.00
Work in 2005	29.0	\$225.00	\$6,525.00
Staff Attorney -- Work in 2005 & 2004	5.00	\$275.00	\$1,375.00
Work in 2003	3.00	\$265.00	\$795.00
TOTAL FEES	→		\$31,245.00

6.2. CONSIDERATIONS USED IN PUC’S INTERVENOR COMPENSATION PROGRAM

Reference to the intervenor compensation program of the California Public Utility Commission (“PUC”) seems appropriate because it is similar to the Department’s Consumer Participation Program⁶ 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. Some of the common threads of the PUC decisions are summarized as follows.

In considering an intervenor organization’s request for compensation, the PUC opinions:

⁶ 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).

a. Separately consider and approve the individual hourly rate of compensation for each of the intervenor's experts and advocates.⁷

b. Have awarded the same rate for an individual expert that was approved in a prior proceeding in the same year,⁸ and have declined to approve a requested increase in hourly rate for an expert over the rate approved in a prior proceeding in the same year.⁹

c. Have awarded increases of three percent (3%) rounded to the nearest \$5 over the prior year when increase in hourly rates is requested by the intervenor organization or where the hourly rate for an individual expert or advocate was approved in the prior year and an increase is considered warranted for the current year.¹⁰ The PUC has consistently rejected requests for increase over 3%.¹¹

d. Have stated that documentation of claimed hours by presenting a daily breakdown of hours accompanied by a brief description of each activity, reasonably supported the claim for total hours.¹²

e. Have approved compensation for travel time at one-half the normal hourly rate.¹³

f. Have approved compensation for preparation of the intervenor organization's compensation request or compensation claim at one-half the normal hourly rate.¹⁴ However, administrative costs are considered non-compensable overheads, and therefore, the PUC has disallowed time charged by an intervenor's office manager for gathering expense data for the compensation claim.¹⁵

⁷ PUC Decision (D.) 06-11-031 (November 30, 2006).

⁸ D.06-11-031 (November 30, 2006).

⁹ D.06-11-032 (November 30, 2006), pp. 10 – 11.

¹⁰ D.06-11-031 (November 30, 2006), p. 11.

¹¹ D.06-11-031 (November 30, 2006), p. 11.

¹² D.06-11-031 (November 30, 2006), p. 10.

¹³ D.06-11-031 (November 30, 2006); D.06-11-032 (November 30, 2006), p. 8, fn. 4.

¹⁴ D.06-11-031 (November 30, 2006), p. 9, fn. 2; D.06-11-032 (November 30, 2006), p. 8, fn. 4.

¹⁵ D.06-11-009 (November 9, 2006), p. 27.

g. Have approved compensation for efforts that made a substantial contribution even where the PUC did not wholly adopt the intervenor's recommendations.¹⁶

h. Have approved payment of itemized direct expenses where the request shows "the miscellaneous expenses to be commensurate with the work performed," including costs for photocopying, FAX, Lexis research, postage, courier, overnight delivery, travel, and parking.¹⁷

i. Have reminded intervenors of the requirements for records and claim support, and that PUC staff may audit the records – for example:

"We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. [Intervenor's]... records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed."¹⁸

j. Have disallowed time where the "hours seem excessive" or the "proposal is not persuasive,"¹⁹ and have changed or disallowed compensation amounts requested for the following reasons:²⁰ "Excessive hourly rate; arithmetic errors; failure to discount comp prep time [and travel time]; hours claimed after decision issued; ... administrative time not compensable; unproductive effort."

6.3. 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 necessary for the substantial contribution.²¹

¹⁶ D.06-11-031 (November 30, 2006), p. 10.

¹⁷ D.06-11-031 (November 30, 2006), p. 12; D.06-11-032 (November 30, 2006), pp. 14 – 15; D.06-11-009 (November 9, 2006), p. 32.

¹⁸ D.06-11-031 (November 30, 2006), pp. 14 -15.

¹⁹ D.06-11-032 (November 30, 2006), pp. 9 - 10.

²⁰ D.06-11-009 (November 9, 2006), Appendix p. 1.

²¹ 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.

APPLICANT billed for five activities summarized as follows:

1. Review of informal drafts of the proposed regulation and provision of informal input prior to formal regulatory proceedings and preparation for and participation at informal stakeholder discussions in September of 2005 for a total of 32.0 hours, including 7.0 hours of supervision and work product review by APPLICANT's Associate Director and 8.0 hours of staff attorney time.
2. Preparation for and attendance and providing testimony at the Public Hearing held on February 16, 2006, for a total of 20.0 hours, including 3.0 hours of supervision and work product review by APPLICANT's Associate Director.
3. Preparation of written comments submitted in the first written comment period ending March 3, 2006, for a total of 38.0 hours, including 2.5 hours of supervision and work product review by APPLICANT's Associate Director.
4. Preparation of written comments submitted in the second written comment period ending September 25, 2006, for a total of 15.5 hours, including 2.5 hours of supervision and work product review by APPLICANT's Associate Director.
5. Preparation of written comments submitted in the third written comment period ending December 3, 2006, including preparation for and conference call with the Department regarding possible delay of regulations due to ongoing concerns, for a total of 14.5 hours, including 3.0 hours of supervision and work product review by APPLICANT's Associate Director.

The time billed appears reasonable except for one item billed by APPLICANT's staff attorney: Staff Attorney billed time is reduced 3.0 hours billed for "Research statutory requirements against discriminatory impact in auto insurance industry, housing; delivered research to ... [APPLICANT's Senior Program Manager]," which appears by the wording to be unrelated to the proposed regulation or the Language Assistance Programs. In addition, the

amount billed for November 3, 2003, is adjusted to correct for a computation error because the hourly rate multiplied by the time is less than the amount billed.

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

6.4. 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.”

6.5. HOURLY RATES THAT REFLECT “MARKET RATE”

In order to award compensation pursuant to the Statute and 28 CCR § 1010, it is necessary to determine whether the claimed advocacy fees and witness fees are consistent with and do not exceed Market Rate as defined. 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.²² In order to determine Market Rate, we must look to available data inside and outside the Department.

The Hearing Officer finds that hourly rates for services provided in a statewide proceeding

²² See, e.g., PUC D.06-11-031 (November 30, 2006), p. 10; D.06-11-032 (November 30, 2006), p. 10.

or proceeding of a state agency having statewide jurisdiction and effect (such as proceedings of the California Public Utilities Commission, see *infra*) are essentially equivalent to “comparable services in the private sector in the Los Angeles and San Francisco Bay Areas,” as required by 28 CCR § 1010, subsection (b)(3).

6.6. HOURLY RATE DETERMINATIONS UNDER THE PUC PROGRAM

A recent PUC Decision²³ approved and adopted hourly rates within the following ranges for 2006:

For attorneys: \$170, \$175, \$190, \$210, \$250, \$260, \$285, \$310, \$325, \$335, \$360, \$375, \$400, \$405, \$425, \$435, and \$505.

For non-attorney, policy experts: \$110, \$150, \$340, and \$360.

Another PUC Decision²⁴ provided the following examples of “recently adopted non-attorney rates and years of professional experience (as provided by an expert seeking a rate increase).

<u>Experience (years)</u>	<u>Non-attorney Hourly Rates</u>	
	<u>Year Work Performed</u>	<u>Hourly Rate</u>
16	2003	\$215
12	2005	\$130
12	2003-2005	\$180
5	2005	\$120
7	2005	\$120
12	2005	\$150
8	2005-2006	\$150

Until PUC Decision R.04-10-010 in 2004, the PUC set hourly rates for intervenors in a piecemeal manner –i.e., for each proceeding, the PUC might revisit the reasonableness of the hourly rate for each intervenor and each appearance by a particular representative of an intervenor. 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.²⁵ The

²³ Id. at pp. 30-31.

²⁴ D.06-11-032 (November 30, 2006), pp. 11 -- 12.

²⁵ PUC Order Instituting Rulemaking R.06-08-019 (August 24, 2006), p. 2.

first such rulemaking was R.04-10-010, D.05-11-031, which set certain 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 2005.²⁶

In an Interim Opinion on Updating Hourly Rates,²⁷ 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 with 2007 work three rate ranges for non-attorney experts based on levels of experience, similar to the five levels already established for attorneys.²⁸ 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.”²⁹ (Emphasis added).

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

²⁶ Id. at pp. 2-3.

²⁷ D.07-01-009 (January 11, 2007)(part of Rulemaking R.06-08-019).

²⁸ Id. at pp. 1, 3-4.

²⁹ Id. at p. 5.

Hourly Intervenor Rate Ranges for 2006 and 2007³⁰

(For 2006, rates adopted in D.05-11-031 x 3%, rounded to nearest \$5)

(For 2007, rates adopted for 2006 x 3%, rounded to nearest \$5)

Years of Experience	2006 Range	2007 Range
Attorneys:		
0 - 2	\$140 - \$195	\$145 - \$200
3 - 4	\$190 - \$225	\$195 - \$230
5 - 7	\$260 - \$280	\$270 - \$290
8 - 12	\$280 - \$335	\$290 - \$345
13+	\$280 - \$505	\$290 - \$520
Experts:		
All	\$115 - \$370	
0 - 6		\$120 - \$180
7 - 12		\$150 - \$260
13+		\$150 - \$380

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.³¹

The PUC based its 3% COLA adjustments on the Social Security Administration's COLA, which is released annually in late fall, and reliance thereon would be consistent with a calendar year adjustment of hourly rates.³²

³⁰ Id. at pp. 8 - 9.

³¹ Id. at p. 9.

³² Id. at pp. 4 and 11.

6.7. APPLICANT'S JUSTIFICATION FOR RATES BILLED

APPLICANT claims advocacy and witness fees for two non-attorney health care policy experts and one staff attorney. In support of the hourly fee rates requested, APPLICANT submitted justification that included the following biographical, experience and other information regarding the persons providing services.

The first non-attorney health care policy expert is identified as the Senior Program Manager for Health at LIF with responsibility for overseeing program planning and development, fundraising, and policy advocacy efforts to expand quality, affordable health care for Latinos in California. The resume provided with APPLICANT's application indicates a Bachelor of Arts degree in Ethnic Studies with a minor in Public Policy from the University of California at Berkeley and approximately seven years of relevant experience. APPLICANT claims advocacy and witness fees for this health care policy expert at the hourly rates of \$250.00 for 2006 and \$225.00 for 2005. However, APPLICANT did not submit evidence of rates for comparable services nor any justification for the rates claimed other than experience and biographical information regarding the person providing services.

The second non-attorney health care policy expert is identified as the Associate Director of LIF with experience in authoring three reports on environmental and reproductive health issues facing the Latino community in California, directing campaigns to improve access to health care for families, improving the environmental health conditions for communities throughout the state, and increasing civic participation in the Latino community. The resume provided with APPLICANT's application indicates a Bachelor of Arts degree in Anthropology and Chicano Studies, a Masters Degree in Public Health, both from the University of California in Los Angeles, and approximately ten years of relevant experience. APPLICANT claims advocacy and witness fees for this health care policy expert at the hourly rate of \$350.00 for 2004, 2005 and 2006. However, APPLICANT did not submit evidence of rates for comparable services nor any

justification for the rate claimed other than experience and biographical information regarding the person providing services.

The Staff Attorney is identified as having experience in advocating for consumers, especially low-income and non-English speaking consumers, in regulatory proceedings before the California Public Utilities Commission, advocating legislation advancing consumer interests, and working on environmental justice issues. The resume provided with APPLICANT's application indicates a Bachelor of Arts degree in Sociology from the University of California at Berkeley, a Juris Doctor degree from Boalt Hall School of Law, a member of the State Bar of California, and approximately eleven years of relevant experience. APPLICANT claims advocacy and witness fees for this health care policy expert at the hourly rates of \$275.00 for 2005 and 2004 and \$265.00 for 2003. APPLICANT submitted justification for those rates by reference and citation to Decisions of the PUC in which the claimed hourly rates were awarded for work by the Staff Attorney.

6.8. 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 two non-attorney policy analyst/experts and one staff attorney.

For work performed by APPLICANT's Senior Program Manager, APPLICANT claims advocacy and witness fees at the hourly rates of \$250.00 (for 2006) and \$225.00 (for 2005). The PUC's adopted non-attorney rate for 2005 relative to 5 – 7 years of experience is \$120 (see ¶ 6.6, supra). The PUC's adopted hourly intervenor rate range for 2006 is \$115 - \$370 without breakdown by years of experience. For 2007, the PUC's adopted hourly intervenor rate ranges for non-attorney policy analyst/experts are: \$120 - \$180 for 0 – 6 years of experience; and \$150 - \$260 for 7 – 12 years of experience. At the time of the work for which claim is made,

APPLICANT's Senior Program Manager had approximately 6 years of experience and a BA degree. The highest of the PUC's rates for 2007 for non-attorney policy analyst/experts with 6 years of experience is \$180. Therefore, it appears that the \$225.00 hourly rate claimed for 2005 and the \$250.00 hourly rate claimed for 2006 by APPLICANT exceed "Market Rate" as defined in 28 CCR § 1010(b). The Hearing Officer finds that the hourly rates requested by APPLICANT exceed Market Rates and therefore will be adjusted. Regarding services provided by APPLICANT's Senior Program Manager, the Hearing Officer finds that \$180.00 per hour is consistent with Market Rate for the services provided in 2005 and \$210.00 per hour is consistent with Market Rate for the services provided in 2006.

For work performed by APPLICANT's Associate Director, APPLICANT claims advocacy and witness fees at an hourly rate of \$350.00 (for 2004, 2005, and 2006). The PUC's adopted non-attorney rates for 2005 relative to 8 – 16 years of experience range from \$130 to \$215 (see ¶ 6.6, supra). The PUC's adopted hourly non-attorney intervenor rate range for 2006 is \$115 - \$370 without breakdown by years of experience. For 2007, the PUC's adopted hourly intervenor rate ranges for non-attorney policy analyst/experts are: \$150 - \$260 for 7 – 12 years of experience; and \$150 - \$380 for 13 or more years of experience. At the time of the work for which claim is made, APPLICANT's Associate Director had approximately 9 – 10 years of experience and a BA as well as a masters degree. The highest of the PUC's rates for 2007 for non-attorney policy analyst/experts with 7 – 12 years of experience is \$260. Therefore, it appears that the \$350.00 hourly rate claimed by APPLICANT exceeds "Market Rate" as defined in 28 CCR § 1010(b). The Hearing Officer finds that the hourly rate claimed for APPLICANT's Associate Director exceeds Market Rate and therefore will be adjusted. Regarding services provided by APPLICANT's Associate Director, the Hearing Officer finds that \$230.00 per hour is consistent with Market Rate for the services provided in 2005 and \$250.00 per hour is consistent with Market Rate for the services provided in 2006.

For work performed by APPLICANT's Staff Attorney, APPLICANT claims advocacy and witness fees at the hourly rates of \$275.00 (for 2005 and 2004) and \$265.00 (for 2003). The PUC's adopted attorney rate for 2005 ranges from \$170 - \$505 (see ¶ 6.6, supra). The PUC's adopted hourly intervenor rate range for 2006 for attorneys with 8 – 12 years of experience is \$280 - \$335. For 2007, the PUC's adopted hourly intervenor rate range for attorneys with 8 – 12 years of experience is \$290 - \$345. At the time of the work for which claim is made, APPLICANT's Staff Attorney had approximately 9 -10 years of experience. APPLICANT submitted justification for the rates claimed by reference and citation to Decisions of the PUC in which the claimed hourly rates were awarded by the PUC for work by the Staff Attorney. The Hearing Officer finds that the hourly rates claimed by APPLICANT for its Staff Attorney do not exceed Market Rate.

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:

Staff / Title	Hours	Rates	Fees
Associate Director & Health Care Policy Expert -- Work in 2006	9.0	\$250.00	\$2,250.00
-- Work in 2004 & 2005	9.0	\$230.00	\$2,070.00
Senior Program Manager & Health Care Policy Expert -- Work in 2006	65.0	\$210.00	\$13,650.00
Work in 2005	29.0	\$180.00	\$5,220.00
Staff Attorney -- Work in 2004	2.00	\$275.00	\$550.00
Work in 2003	3.00	\$265.00	\$795.00
TOTAL FEES	→		\$24,535.00

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 No.2004-0115 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 \$24,535.00.

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 [, as adjusted herein,] incurred in making substantial contributions to Proceeding No. 2004-0115 and 28 CCR § 1300.67.04.
2. APPLICANT should be awarded \$24,535.00 for its contribution to Proceeding No. 2004-0115 and 28 CCR § 1300.67.04.

AWARD ORDER

1. Latino Issues Forum, a California corporation, is hereby awarded \$24,535.00 as compensation for its substantial contribution to the Language Assistance Programs regulatory Proceeding No. 2004-0115, 28 CCR § 1300.67.04.
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: June 5, 2007.

Original Signed by:

A handwritten signature in black ink, appearing to read 'Stephen A. Hansen', written over a horizontal line.

STEPHEN A. HANSEN
Hearing Officer
Department of Managed Health Care