

§ 1008. Availability of Department Forms, Publications and Notices; Fees.

(a) Department forms required by the Act or regulations, releases, notice of regulatory changes, and other publications are available free of charge on the Department's web page.

(b) Department forms required by the Act or regulations, releases, notice of regulatory changes, and other publications are available at either the Department's Sacramento or Los Angeles office, or via the mail. The Department will charge thirty cents (\$0.30) per page for any document picked up at the Department's offices. Documents requested by mail should be directed to the Department of Managed Health Care, 980 9th Street, Suite 500, Sacramento, CA 95814-2724. The fee for any document mailed will be thirty cents (\$0.30) per page, plus postage. The minimum charge for any single order by mail will be \$5.00. No charges will be incurred for providing a single copy of the Department's consumer complaint form.

NOTE: Authority cited: Sections 1344 and 1346.4, Health and Safety Code. Reference: Sections 1344 and 1346, Health and Safety Code.

HISTORY:

1. New section filed 8-12-2002; operative 9-11-2002 (Register 2002, No. 33).

§ 1009. Retention of Department Records.

(a) The Department shall maintain records and files necessary to accomplish the Department's regulatory function according to subdivision (b) and the approved Record Retention Schedule by the Department of General Services. Records and files may be maintained by the Department using either paper, electronic or other alternative storage technologies, including but not limited to, photography, microphotography, electronically recorded video images on magnetic surfaces, electronic data processing systems, optical disk storage, or any other trusted medium that does not permit additions, deletions, or changes to the original document. Unless specifically superseded by another legal obligation, Department records and files shall be destroyed pursuant to the schedule in subsection (b).

(b) Department records and files shall be destroyed as follows:

(1) Plan license applications, amendments, and material modifications:

(A) A plan's license, original application and execution pages A through D, as described in section 1300.51, shall be retained by the Department until a plan's license is surrendered or revoked. Records and files pertaining to the plan's license will be maintained by the Department for a minimum of two years following the plan's surrender or revocation of the license. Thereafter, the records and files shall be destroyed.

(B) Exhibits to a plan's license application, as described in section 1300.51 subsections E through FF, amendments, and material modifications shall be retained by the Department for a minimum of five years from the date of filing. Thereafter, the records and files shall be destroyed.

(C) Records and files regarding a plan's financial status and fiscal arrangements, as described in section 1300.51, shall be retained for a minimum of five years from the date of filing. Thereafter, the records and files shall be destroyed.

(2) Correspondence between a plan and Department counsel or staff may be retained by the Department if it is determined that the correspondence is of material value in the continued regulation of the plan. Such correspondence shall be maintained for a minimum of five years. Thereafter, the correspondence shall be destroyed.

(3) Final financial and medical survey plan reports shall be maintained by the Department for a minimum of five years from the date of the final report's release or until release of the next final report, whichever is later. Examiner and surveyor working documents used in preparing the report shall also be

maintained for a minimum of five years from the date of the final report's release. Thereafter, the report and all working documents shall be destroyed.

(4) Records and files pertaining to Department enforcement investigations and actions, and Department litigation shall be retained for a minimum of five years from the date the matter is closed. Thereafter, the records and files shall be destroyed.

(5) Records and files pertaining to enrollee and consumer complaints, and the Independent Medical Review process, shall be retained for a minimum of two years from the date the Department closes the matter except any medical x-rays may be destroyed immediately following the closure of the matter. Thereafter, the records and files shall be destroyed. Records and files that are determined to be outside of the Department's jurisdiction pertaining to enrollee and consumer complaints, and the Independent Medical Review process may be destroyed immediately following the closure of the matter.

(c) Notwithstanding this section the Department may retain a record, file, or document at the Director's discretion.

(d) The record retention schedule outlined in subsection (b) shall apply to all records and files maintained by the Department after January 1, 1998. Documents filed with the Department, or its predecessor Department of Corporations before January 1, 1998, may be destroyed at the Director's discretion.

NOTE: Authority cited: Section 14750, Government Code; and Section 1344, Health and Safety Code. Reference: Sections 14741, 14745, 14750, 14755 and 14756, Government Code; and Section 1344, Health and Safety Code.

HISTORY:

1. New section filed 10-29-2003; operative 11-28-2003 (Register 2003, No. 44).

§ 1010. Consumer Participation Program.

(a) Intent and Regulatory Purpose.

This regulation, in accordance with section 1348.9 of the Health & Safety Code, establishes the Department's procedure and criteria, for determining discretionary awards of reasonable Advocacy and Witness Fees on the basis that a Participant Represent the Interests of Consumers in a Proceeding and has made a Substantial Contribution to the Department in its deliberations. Nothing in this article shall be construed to require any person or organization to seek compensation pursuant to this article.

(b) Definitions.

For purposes of this section, the following definitions shall apply:

(1) "Advocacy and Witness Fees" means the amount of compensation a Participant requests for expenses incurred through representing the interests of consumers in any proceeding relating to legislatively authorized guidance, the adoption of any regulation, or the issuance of an order or decision by the Director, including a decision not to adopt a regulation or take an action. The rate used to determine Advocacy and Witness Fees shall not exceed the Market Rate as defined in this section.

(2) "Advocacy Award" means the amount awarded to a Participant, which may be all or part of the Advocacy and Witness Fees requested. The Advocacy Award shall be the amount the Designated Hearing Officer determines to be reasonably incurred by the Participant while representing the interests of consumers during a Proceeding. An approved Participant may request

an Interim Advocacy Award and/or final payment of the Advocacy Award consistent with the provisions below.

(3) "Application for an Advocacy Award" is the request for Advocacy and Witness Fees filed by a Participant whose Petition to Participate has been granted. The information that must be included in the Application for an Advocacy Award is outlined in subsection (d).

(4) "Designated Hearing Officer" will be the Director of the Department or his or her designee. The Designated Hearing Officer shall determine the Advocacy Award to be awarded to a Participant for a particular Proceeding. An appeal of an Advocacy Award or denial of an Application for an Advocacy Award will be submitted to the Director.

(5) "Interim Advocacy Award" is the amount the Designated Hearing Officer awards as a result of a request for Interim Compensation. An Interim Advocacy Award does not require or preclude the Designated Hearing Officer from granting an Advocacy Award at a later stage of the Proceeding.

(6) "Interim Compensation" is a one-time request for Advocacy and Witness Fees made by a Participant. The purpose of Interim Compensation is to allow a Participant to request compensation although a Proceeding is ongoing and the Participant may incur future costs. The Participant requesting Interim Compensation must still file a Petition to Participate and an Application for an Advocacy Award. A request for Interim Compensation does not require or preclude a Participant from requesting additional Advocacy and Witness Fees at a later stage of the Proceeding.

(7) "Legislatively Authorized Guidance" means guidance issued by the Department that has been exempted from the processes mandated by the Administrative Procedures Act.

(8) "Market Rate" is the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas. The rate a Participant uses to determine the Advocacy and Witness Fees shall not exceed the Market Rate.

(9) "Participant" means a person or organization whose Petition to Participate, filed under subsection (c) has been granted by the Designated Hearing Officer.

(10) "Petition to Participate" is the request by a person or organization to participate in a Proceeding and seek an award of Advocacy and Witness Fees that is submitted to the Director. The information that must be included in the Petition to Participate is outlined in subsection (c).

(11) "Proceeding" mean an administrative decision-making process relating to legislatively authorized guidance, the adoption of any regulation, or the issuance of an order or decision by the Director, including a decision not to adopt a regulation or take an action. For purposes of this article, an order or decision shall not include the resolution of individual grievances, complaints, or cases.

(12) "Represents the Interests of Consumers" means the Participant has a record of advocacy on behalf of health care consumers in administrative or legislative proceedings. A Participant that represents, in whole or in part, any entity regulated by the Department shall not be eligible for compensation.

(13) "Submit to the Director" means to send material to The Director electronically at dmhc.ca.gov or via regular mail addressed to The Director, Department of Managed Health Care, 980 9th Street, Suite 500, Sacramento, CA 95814.

(14) "Substantial Contribution" means the Participant significantly assisted the Department during a Proceeding 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.

(c) Procedure for Petition to Participate.

(1) The Petition to Participate shall be Submitted to the Director no later than the end of the final public comment period of the rulemaking proceeding in which the person or organization seeks to become involved. For legislatively authorized guidance, orders, or decisions, the Petition to Participate shall be submitted within ten (10) working days after the legislatively authorized guidance, order, or decision, or decision not to issue an order or decision, becomes final. If the Petition to Participate is granted, as long as the information contained in the Petition to Participate remains true and accurate, the Participant will be deemed eligible to seek Advocacy Awards in all future Proceedings and will not be required to submit another Petition to Participate.

(2) The Petition to Participate shall contain the following, as applicable:

(A) The name of the person or representative, organization name, mailing address, telephone number, and e-mail address.

(B) A showing that the person or organization Represents the Interests of Consumers, including a description of the person or organization's experience advocating on behalf of consumers in administrative or legislative proceedings.

(C) Names and titles of the members of the organization's governing body.

(D) A description of the organization's general purpose, size, and structure.

(E) Under what statute the organization is formed or incorporated, including whether it is a non-profit corporation.

(F) An identification of the Proceeding in which the person or organization seeks to participate.

(G) A clear and concise statement of the person or organization's interest in the Proceeding, which explains why participation is needed to represent the interest of consumers.

(H) An estimate of the Advocacy and Witness Fees that may be sought.

(I) The Petition to Participate shall include a statement that the facts contained therein are true and correct to the best of the knowledge of the person verifying the information.

(3) After the Petition to Participate is submitted, the person or organization shall promptly disclose to the Department any material changes in the information submitted in the Petition to Participate. The Department may require the Participant to submit an updated Petition to Participate even if a previous Petition to Participate had been granted.

(4) Upon receipt, the Director will refer the Petition to Participate to the Designated Hearing Officer who will review the information.

(5) Within thirty (30) days of the Director's receipt of a completed Petition to Participate, the Designated Hearing Officer shall rule on whether the Petition to Participate shall be granted. The Petition to Participate may be denied if the Designated Hearing Officer elects not to award compensation related to the Proceeding, determines that the person or organization does not meet eligibility requirements, or determines that the Petition to Participate does not meet the requirements of this regulation or the governing statute.

(6) If a Petition to Participate has been granted, the Participant is eligible to submit an Application for an Advocacy Award. The granting of a Petition to Participate neither guarantees an Advocacy Award nor requires a Participant to submit an Application for an Advocacy Award.

(d) Application for an Advocacy Award.

(1) The Participant shall Submit to the Director an Application for an Advocacy Award no later than sixty (60) days following the effective date of a regulation; the effective date of an order or decision by the Director, or the

decision not to issue an order or decision; or the date of issuance of legislatively authorized guidance. An Application for an Advocacy Award may be submitted during the pendency of a Proceeding.

(2) An Application for an Advocacy Award shall include:

(A) A detailed and itemized description of the Advocacy and Witness Fees 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 on each specific task in thirty (30) minute increments. If the Participant submits a request for Interim Compensation during the pendency of a proceeding, the Application shall include the specific time period for which the Interim Compensation is sought;

(C) The hourly rate of compensation for each witness or advocate acting on behalf of the Participant; a short justification for each hourly rate, which may include copies of or citations to previously approved hourly rates; each witness or advocate's resume or curriculum vitae;

(D) A description of the ways in which the Participant has made a Substantial Contribution to the Proceeding, supported by specific citations to each specific task as necessary;

(E) A clear and concise statement of the Participant's interest in the Proceeding, which explains why participation is needed to represent the interest of consumers; and

(F) A copy of the Participant's Petition to Participate and a statement that the facts contained therein remain true and correct to the best of the knowledge of the person verifying the information.

(3) As used in this subdivision, 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/conference and the subject matter(s) discussed;

(B) Legal pleadings or research, identifying the pleading or research and the subject matter(s);

(C) Letters, correspondence, emails, or memoranda, identifying the parties and the subject matter(s);

(D) Attendance at hearings, specifying when the hearing occurred, subject matter of the hearing, and the names of the Participant's witnesses or advocates who appeared and provided testimony at the hearing, if any; and

(E) Written comments submitted during a defined comment period.

(e) Processing an Application for an Advocacy Award.

(1) Upon receipt, the Participant's Application for an Advocacy Award shall be posted on the Department's website be referred to the Designated Hearing Officer for the Proceeding within a reasonable time.

(2) Within thirty (30) days of posting an Application for an Advocacy Award on the Department's website, any person participating in the Proceeding who questions or objects to anything included in the Participant's Application for an Advocacy Award, including the rate the Participant used to calculate the Advocacy or Witness Fees, shall Submit to the Director an objection to the Application for an Advocacy Award. The Director will refer the objection to the Designated Hearing Officer.

(3) The Designated Hearing Officer may request additional information or documentation from the Participant to clarify or substantiate the Application for an Advocacy Award and may audit the records and books of the Participant to verify the basis for the amount of Advocacy and Witness Fees requested.

(4) Except for situations in which Interim Compensation was awarded, the Designated Hearing Officer will not grant more than one Advocacy Award to the same Participant for the same Proceeding.

(5) Within sixty (60) days following the posting of an Application for an Advocacy Award on the Department's website, the Designated Hearing Officer shall issue a written decision which states whether the Participant has made a Substantial Contribution to the Proceeding and, if so, the Advocacy Award to be granted. The decision will be posted on the Department's website and will be sent, electronically or via regular mail, to all Participants in the Proceeding within a reasonable time.

(6) Within thirty (30) days of posting and sending the Designated Hearing Officer's decision, a Participant who is dissatisfied with the decision may Submit to the Director an appeal of the decision. The appeal should state the relief the Participant seeks and the reasons why the decision should be modified or changed. The Director, or his or her designee, may request additional information if he or she deems it would be helpful in reaching a decision. The review shall be of the written record and limited to whether the Designated Hearing Officer's initial decision constituted an abuse of discretion. The Director or his or her designee's decision will be final and no further administrative remedy will be available to the Participant.

NOTE: Authority cited: Sections 1341 and 1344, Health and Safety Code. Reference: Section 1348.9, Health and Safety Code.

HISTORY:

1. New section filed 6-20-2003; operative 7-20-2003 (Register 2003, No. 25).
2. Amendment filed 3-28-2016; operative 4-1-2016 pursuant to Government Code section 11343.4(b)
- (3) (Register 2016, No. 14).