

CONCURRENCE IN SENATE AMENDMENTS  
AB 326 (Luz Rivas)  
As Amended September 3, 2021  
Majority vote

## SUMMARY

Makes permanent in existing law the authority of the Department of Managed Health Care (DMHC) Director to establish the Consumer Participation Program (program), which allows the DMHC Director to award reasonable advocacy and witness fees to a person or organization that represents consumers and has made a substantial contribution on behalf of consumers to the adoption of a regulation or with regard to an order or decision impacting a significant number of enrollees. Makes other technical and conforming changes.

### Senate Amendments

Delete the requirement in existing law that the DMHC annually report specified information to the appropriate policy and fiscal committees of the Legislature to instead require the DMHC to annually post that information by March 1, 2022, on its website.

## COMMENTS

*DMHC Consumer Participation Program.* According to the DMHC, the DMHC Director is authorized to award reasonable advocacy and witness fees to any person or organization that has a record of advocacy on behalf of health care consumers if the person or organization makes a substantial contribution to a DMHC administrative or legislative proceeding resulting in the adoption of a regulation, or in an order or decision of the DMHC Director that has the potential to impact a significant number of consumers.

A proceeding may be an administrative decision-making process relating to legislatively authorized guidance (which is guidance issued by the DMHC and is exempt from the Administrative Procedure Act), the adoption of a regulation, or the issuance of an order or decision by the DMHC Director.

The market rate, which is the hourly rate used to determine the advocacy and witness fees, is defined as the prevailing rate for comparable services in the private sector in the Los Angeles or the San Francisco Bay Area.

Since the program became effective on July 1, 2003, the DMHC approved 57 Petitions to Participate and 38 Applications for an Advocacy Award. During the reporting period of fiscal year 2019-20, the DMHC approved three Applications for an Advocacy Award. The total amount of compensation awarded during the reporting period was \$14,092.50, and allocated as follows:

- 1) October 18, 2019: Health Access of California (HAC) was awarded \$3,360 for its substantial contribution to the DMHC's adoption of the "Cancellations, Recessions and Non-renewals of Health Care Service Plan Enrollment, Subscription or Contract" regulation;
- 2) October 18, 2019: HAC was awarded \$6,162.50 for its substantial contribution to the DMHC's adoption of the "Financial Solvency of Risk Bearing Organizations" regulation;  
and,

October 18, 2019: HAC was awarded \$4,570 for its substantial contribution to the DMHC's adoption of the "Standard Prescription Drug Formulary Template" regulation.

### **According to the Author**

Every year, the Legislature introduces, on average, 50 bills or more that affect the DMHC. Each bill could affect the 26 million Californians that DMHC serves. As DMHC implements important health care policies, Californians deserve to have an advocate looking out for their best interest. This bill will ensure consumers have a say in their health care insurance, medical records, and medical decisions by permanently establishing the program within DMHC

### **Arguments in Support**

Western Center on Law & Poverty, California Pan-Ethnic Health Network, and HAC, cosponsors of this bill, write that the program's participating organizations often have demonstrated a track record of serving vulnerable, low-income consumers, immigrants, and communities of color that benefit from representation in the process. Participating organizations have previously been awarded for their contributions on topics ranging from premium rate review, unfair billing patterns, timely access, and acquisition of various health plans. The co-sponsors state that this program has been in existence for more than 15 years and is no longer new and experimental, and this bill would extend the program indefinitely.

### **Arguments in Opposition**

There is no known opposition.

## **FISCAL COMMENTS**

According to the Senate Appropriations Committee, likely minor to moderate annual costs to reimburse persons or organizations who make substantial contributions to DMHC proceedings on behalf of consumers (Managed Care Fund). The total amount of fees awarded through the program in a given year is capped in statute at \$350,000. Since fiscal year 2011-12, the total amount of fees awarded through the program annually has ranged from under \$10,000 to nearly \$100,000.

## **VOTES:**

### **ASM HEALTH: 13-1-1**

**YES:** Wood, Mayes, Aguiar-Curry, Bonta, Burke, Carrillo, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Waldron

**NO:** Bigelow

**ABS, ABST OR NV:** Flora

### **ASM APPROPRIATIONS: 12-4-0**

**YES:** Lorena Gonzalez, Bonta, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, McCarty, Reyes

**NO:** Bigelow, Megan Dahle, Davies, Fong

**ASSEMBLY FLOOR: 56-13-9**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooper, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

**NO:** Bigelow, Choi, Cunningham, Megan Dahle, Davies, Fong, Gallagher, Kiley, Lackey, Mathis, Seyarto, Smith, Voepel

**ABS, ABST OR NV:** Chen, Cooley, Flora, Eduardo Garcia, Gray, Nguyen, Patterson, Valladares, Waldron

**SENATE FLOOR: 29-9-2**

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

**NO:** Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Eggman, Stern

**UPDATED**

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