

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Copy Service Price Schedule

California Code of Regulations, Title 8, Subchapter 1, Article 12

Sections 9980-9990

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (DWC) pursuant to the authority vested in him by Labor Code sections 111, 133, 138.2(b), 139.48, 139.5, 4061, 4616, 4658, 4658.5, 4660, 5300, 5307.3, and 5307.4, proposes to amend, and add the proposed regulations described below relating to the Copy Service Price Schedule.

Labor Code section 5307.9 mandates the Copy Service Price Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for services.

PROPOSED REGULATORY ACTION

The Division of Workers' Compensation proposes to modify existing regulations, related to the Copy Service Fee Schedule by amending Article 12 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations. The following regulations are proposed for amendment or adoption:

- Amend section 9980 Definitions
- Amend section 9981 Bills for Copy Services
- Amend section 9982 Allowable Services
- Amend section 9983 Prices for Dates of Service Prior to January 1, 2022
- Adopt section 9984 Prices for Dates of Service on and after January 1, 2022
- Adopt section 9985 Disputes
- Amend 9990 Division Prices for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

AN IMPORTANT PROCEDURAL NOTE ABOUT THIS RULEMAKING:

The Copy Service Price Schedule establishes or fixes “rates, prices, or tariffs” within the meaning of Government Code section 11340.9(g) and is therefore not subject to Chapter 3.5 of the Administrative Procedure Act (commencing at Government Code section 11340) relating to administrative regulations and rulemaking.

This rulemaking is being conducted under the Administrative Director’s rulemaking power under Labor Code sections 111, 133, 138.2(b), 139.48, 139.5, 4061, 4616, 4658, 4658.5, 4660, 5300, 5307.3, 5307.4 and 5307.9. This regulatory proceeding is subject to the procedural requirements of Labor Code section 5307.4.

This Notice and the accompanying Initial Statement of Reasons are being prepared to comply with the procedural requirements of Labor Code section 5307.4 and for the convenience of the regulated public to assist the regulated public in analyzing and commenting on this non-APA rulemaking proceeding.

TIME AND PLACE OF VIRTUAL PUBLIC HEARING

In light of the COVID-19 public health emergency, a public hearing via the ZOOM meeting platform has been scheduled to permit all interested persons the opportunity to present oral statements or arguments with respect to the proposed Copy Service Fee Schedule on the following date:

Date: August 30, 2021

Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business

[Access Information](https://dir-ca.gov.zoom.us/j/85032322357) - Join from PC, Mac, Linux, iOS or Android: <https://dir-ca.gov.zoom.us/j/85032322357>

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Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Maureen Gray, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation or 5:00 P.M., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the ZOOM format public hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed amendment to modify existing regulations, related to the Copy Service Price Schedule to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes on August 30, 2021. The Division of Workers' Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers' Compensation by that date. Again, equal weight will be accorded to oral comments presented at the ZOOM public hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 70823
Oakland, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent via e-mail to: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, all written comments must be received no later than August 30, 2021.

CONTACT PERSON

Inquiries concerning this proposed action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed amendments to the regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 70823
Oakland, CA 94612
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Carol N. Finuliar
Industrial Relations Counsel
Division of Workers' Compensation
P.O. Box 70823
Oakland, CA 94612
Email: cfinuliar@dir.ca.gov
Telephone: (510) 286-7100

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in them by Labor Code sections 59, 111, 127, 133, 138.7, 5307.3, 5307.9.

Reference is to Labor Code sections 127, 138.7, 138.2(b), 5307.3, and 5307.9; Business and Professions Code sections 22450 and 22462; Code of Civil Procedure section 2019.030; and Evidence Code sections 1561, 1562 and 1563.

INFORMATIVE DIGEST/POLICY OVERVIEW

Labor Code section 5307.9 mandates the Copy Service Price Schedule for copy and related services in the workers' compensation system, and provides that the schedule shall specify the services allowed and shall require specificity in billing for these services.

The proposed changes provide for a maximum flat price of \$225 up from \$180 for records up to 500 pages, and includes all associated services such as pagination, witness fees for delivery of records, and subpoena preparation.

Labor Code section 5307.9 provides that the schedule must not allow payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator or workers' compensation insurer for copies of records in the employer's, claims administrators', or workers' compensation insurer's possession that are relevant to the employee's claim. It is not uncommon for an employee's attorney to subpoena records even though they have been subpoenaed by defendant. To address this, a procedure to object is included in the changes. The 30-day waiting period is triggered when the copy service advises the claims administrator of an intent to copy records from a specific location for a specific dispute. The parties would then have an opportunity to object within the waiting period. Once an objection is raised, the parties must meet and confer to resolve the objection.

Several provisions were added to address improper payments, such as a preclusion for medical providers to improperly charge for inspection of records, maximum witness fees from third party release of information services, and an increase for bills not paid within 30 days of billing.

The Division of Workers' Compensation will also charge and collect retrieval costs for records requested under the Public Records Act.

Objective and Anticipated Benefits of the Proposed Amendments to the Regulations:

The objective of the rulemaking action is to amend the Copy Service Price Schedule to increase the flat price for copy and related services, and implement a procedure to object to requests for duplicate records.

Several provisions were added to address improper payments, such as a preclusion for medical providers to improperly charge for inspection of records, maximum witness fees from third party release of information services, and an increase for bills not paid within 30 days of billing.

The Division of Workers' Compensation will also charge and collect retrieval costs for records requested under the Public Records Act.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Administrative Director has determined that these proposed amendments to the regulations are not inconsistent or incompatible with existing regulations. The proposed regulation and amendments to the regulations are intended to implement, interpret or make specific Labor Code section 5307.9 as follows:

Amend Section 9980 - Definitions

This section defines key terms used in the copy service fee schedule.

- Definitions for “Additional set of records,” “contracted services,” and “date of service” have been added to ensure that their meanings will be clear to the regulated public.
- “Written” was added to subsection (b) to require that authorizations are in writing. Subsection (b) was slightly reworded and re-organized for the benefit of the regulated public.
- The word “physical” has been deleted to include custody of electronic records in subsection (f).
- Subsection (h) “Initial” was added to describe the term “set of records” to differentiate between initial sets and additional sets. The change is needed for clarity.

Amend Section 9981 - Bill for Copy Services

This section makes billing for copy services specific.

- Subsection (a) has been amended to reflect the actual effective date of the copy service fee schedule.
- Billing codes must be used for administrative and copy prices. New codes have been added: WC010 Flat Price of \$225, WC 030 Requested Services, WC 031 Contracted Services, WC 033 Additional Set of \$10, and S9999 Sales Tax (which is the same code utilized in the Official Medical Fee Schedule for taxes.)
- Subsection (e) was added to provide that bills must be paid within 30 days of receipt. If bills are not paid on time, unpaid sums will be increased by 25%.

Amend Section 9982 - Allowable Services

This section covers what services are included in the copy service price schedule.

- Subsection (d)(1) was changed to clarify Labor Code section 5307.9’s specific disallowance for payment for services provided within 30 days of a request for copies of records in the employer’s, claim administrator’s, or workers’ compensation insurer’s possession that are relevant to claim. The 30-day waiting period is triggered when the copy service advises the claims administrator of an intent to copy records from a specific location for a specific dispute. The parties would then have an opportunity to object within the waiting period. Once an objection is raised, the parties must meet and confer to resolve the objection.

- Subsection (d)(3) was added to prevent medical providers from improperly charging for inspection of records and release of information services.
- Subsection (e) was added to address concerns that the price schedule was being applied inequitably against injured workers. Defendants have entered into contracts with copy service providers which provide for services such as indexing, tabulating, and summarizing. Injured workers cannot enter into such contracts and are not provided with similar services. Additional services would only be available to injured workers if they are provided to claims administrators.
- Subsection (f)(1) was amended to prevent fraud and curb unnecessary costs.
- Subsection (f)(3) was amended to disallow charges for records from the WCIRB and EDD which can be obtained upon request. Prices for records from Workers' Compensation Insurance Rating Bureau (WCIRB) and the Employment Development Department (EDD) are no longer provided because WCIRB records are available to injured workers at less cost than \$225 upon request and EDD records are available to injured workers at no cost upon request.
- Subsection (f)(4) was added to prevent improper charges. It was reported to DWC that copy services pursued records from clinics without evidence that any treatment was provided resulting in multiple improper charges for certificates of no records.

Amend Section 9983 - Prices for Copy and Related Services Prior to January 1, 2022

This section is the original copy service price schedule for copy and related services for dates of service prior to January 1, 2022. The \$180 flat price covers a set of records up to 500 pages and is inclusive of all associated services such as pagination, witness fees, subpoena preparation, and release of information services.

- “For dates of service prior to January 1, 2022” was added to the first sentence because new section 9984 will cover dates of service after January 1, 2022.
- “Initial” was added to subsection (a) to conform with definitions in section 9990.
- Subsection (e) was deleted as duplicative of Labor Code section 132 and Evidence Code section 1563.
- Subsection (e)(1) added “for paper copies” as additional costs are not incurred with large amounts of electronic pages.

- Subsection (e)(3) was changed from “per CD” to “for electronic storage media” to include CDs as well as other electronic storage such as thumb drives.
- Subsection (e)(5) was added to provide maximum witness fees from third party release of information services.

Adopt Section 9984 - Prices for Dates of Service on and after January 1, 2022

New section 9984 mirrors 9983 except that the flat price is raised from \$180 to \$225 for dates of service on and after January 1, 2022 and proposes \$10 for each additional set of records instead of a tiered system of \$5 or \$30 based on when the set was requested.

Fees for records from Workers’ Compensation Insurance Rating Bureau (WCIRB) and the Employment Development Department (EDD) are no longer provided under section 9984 because WCIRB records are available to injured workers at less cost than \$225 upon request and EDD records are available to injured workers at no cost upon request.

Adopt Section 9985 Disputes

Section 9985 was moved from former 9983(e) as it covers disputes rather than prices. A provision was added to address disputes following an objection; if a dispute remains following an objection to a notice of intent, it can be resolved by filing a petition with the WCAB.

Amend Section 9990 Division Fees for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

Costs incurred by the division for retrieval of records was added to the costs which the division can charge to those requesting division records.

“Physical” was deleted from the first sentence to include electronic records.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.

- The Division of Workers' Compensation is unaware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Claims administrators may need to modify copy service bill payment systems to accommodate the changes in the schedule that imposes a higher flat fee. Copy services should experience an increase in income based upon the increase in the flat fee from \$180 to \$225.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will affect small business, primarily providers of copy services. Copy services should experience an increase in their income as a result of the increases in the flat price payment under the new Copy Service Price Schedule. Employers and insurance carriers will experience an increase in the amounts paid for copy services. However, this increase in costs should be manageable with the adoption of a price schedule that will provide certainty as to amounts payable and thereby reduce frictional costs.

FISCAL IMPACTS

- Costs or savings to state agencies: The state will experience the same costs and savings as other employers.
- Costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed amendments to the regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed amendments, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Other nondiscretionary costs/savings imposed upon local agencies: None. To the extent that local agencies and school districts are self-insured employers who must pay for copy services, they will be subject to the same cost impacts as all other employers in the state. These impacts are discussed in more detail elsewhere in this Notice.

CONSIDERATION OF ALTERNATIVES

The Administrative Director considered an alternative to section 9982(d)(1). During informal rulemaking, DWC proposed a requirement that each request for records be accompanied by a statement from the requesting party that the request was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim as recommended in the Berkeley Research Group's Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation, ("BRG study") October 2, 2013, as a fraud-prevention measure. The alternative would have burdened the regulated community by requiring statements on every request for records and was not included in this proposal.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below. However, documents subject to copyright may be inspected but not copied.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, and the documents incorporated by reference.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the [Division's website](#) at:

http://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday, unless the state office is closed for a state holiday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person

FORMAT OF REGULATORY TEXT

Text proposed to be added is displayed in underscore type.

Text proposed to be deleted is displayed in strikethrough type.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the [Division's website](#):

http://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html

AUTOMATIC MAILING

A copy of this Notice will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as adopted will appear in Article 12, Chapter 4.5, Subchapter 1, title 8, California Code of Regulations commencing sections 9980-8884 and 9990.