

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

INITIAL STATEMENT OF REASONS

Subject Matter of Regulations: Copy Service Price Schedule

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

Sections 9980-9990

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 section 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 “establish(es) or fix(es) 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 Procedures Act (commencing at Government Code section 11340) relating to administrative regulations in rulemaking.

This rulemaking is being conducted under the Administrative Director’s rulemaking power under Labor Code sections 59, 111, 127, 133, 138.7, 138.2(b), 5307.3, 5307.4 ,and 5307.9 This regulatory proceeding is subject to the procedural requirements of Labor Code sections 5307.3 and 5307.4

This Initial Statement of Reasons, and the accompanying Notice of Rulemaking 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-Administrative Procedure Act (“APA”) proceeding.

BACKGROUND TO REGULATORY PROCEEDING

In passing Senate Bill 863 (Statutes of 2012, Chapter 363), the Administrative Director to was directed to adopt a schedule of reasonable maximum prices payable for copy and related services. Labor Code section 5307.9 mandated the copy service price schedule for copy and related services.

The copy service price schedule went into effect on July 1, 2015, after consultation with the Commission on Health and Safety and Workers' Compensation. The schedule specifies the services allowed and specifies billing for these services.

The schedule was based on recommendations made by the Berkeley Research Group's (BRG) report, "Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation" (October 2013).

BRG found that the fair market value of a copy event was \$251.20 in 2012 and recommended that additional paper copy sets be priced at ten cents a page and a flat \$5 price for electronic copies. Fraud prevention recommendations were made to require that each subpoena be supported by a declaration signed under penalty of perjury from the attorney seeking documents that subpoenas were issued in good faith, were not duplicative and sought documents necessary to the claim.

The current flat price of \$180 for records is lower than BRG's finding of fair market value. The schedule has not been updated since it went into effect on July 1, 2015. The Division of Workers' Compensation (DWC) proposes to increase the flat price from \$180 to \$225. The increase would be more in line with the fair market value of copy services.

These proposed changes also seek to address costs to the system for cancellations. Although expressly excluded by statute, records are ordered prior to the expiration of the 30-day period which is provided to claims administrators to serve copies of records. Labor Code section 5307.9 disallows payment for copy services provided within 30 days of a request by an injured worker to an employer, claims administrator or workers' compensation insurer for copies of records in the employers, claims administrators or workers' compensation insurers possession that are relevant to the claim. Copy services send invoices for cancellations to the claims administrator after employer records are received. Records are also sometimes subpoenaed from a location that is unlikely to be related to the case. Upon receipt of an objection, a cancellation charge is issued.

To prevent unnecessary cancellation charges, a meet-and-confer process is proposed. A waiting period is triggered when the copy service issues notice of intent to copy specific records in relation to a specific dispute. The parties would then have 30 days to object. Once an objection is raised, the parties would meet and confer to resolve the objection. If a dispute remains, it can be resolved by filing a petition with the WCAB. If records are obtained after a valid objection, the bill would be disallowed by regulation.

A limitation of four certificates of no record has also been proposed after it was reported that there were abuses in this area. It was reported to DWC that there were occasions

which records were sought from medical providers without any indication that an injured worker had received medical treatment from a particular facility.

Another area of emerging concern is release of information (ROI) services charged by third parties or medical offices for electronic records. The Evidence Code does not adequately address charges for retrieval of electronic records. The Evidence Code governs retrieval of paper records traditionally held off-site in storage facilities. Third parties and medical providers have charged excessive release of information fees to copy services before allowing copy services to copy records. Evidence Code section 1563 allows for charges for “the actual cost... charged to the witness by a third person for the retrieval and return of records held offsite by that third person.” The term “ROI” is not used in the Evidence Code, and the proposed changes include conforming the copy service price schedule to the terms used in the Evidence Code.

Currently, ROI fees are included in the flat price and copy services have asked that ROI fees be paid separately as there are times that ROI fees exceed the flat price and injured workers end up not receiving records as copy service providers are not given access to the records without up-front payment of ROI fees. As this price schedule was intended to reduce costs, ROI fees were not a pass-through cost as it was anticipated they would continue to unnecessarily increase costs of administering claims. A maximum witness fee for third party ROI services has been proposed.

The BRG report also recommended a tiered payment system for bills paid within 30 days with an increase for bills not paid within 30 days of billing. This was not originally part of the price schedule as it was anticipated that the flat price would be easily paid without delay. Currently there is no incentive to pay bills in a timely manner and copy services often must file for assistance from the Workers’ Compensation Appeals Board to receive payment. The proposed changes include an increased price for unpaid bills after 30 days.

DWC will charge and collect actual retrieval costs for records requested under the Public Records Act which are maintained by the State Records Center.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

DWC relied upon the Berkeley Research Group’s “Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation” (October 2013) (“BRG study”).

SPECIFIC TECHNOLOGY OR EQUIPMENT REQUIRED

No specific technologies or equipment are required by these proposed regulations.

BASES ON WHICH THE ADMINISTRATIVE DIRECTOR RELIES IN SUPPORT OF THE INITIAL DETERMINATION THAT THE PROPOSED REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS.

Increasing the flat price should have no appreciable adverse impact on business. The proposed regulations should stabilize costs of copy services while providing an increase in the amount payable in line with a rise in cost-of-living expenses and wages in California. The meet-and-confer process should reduce costs. Increased prices for untimely payments should reduce frictional costs.

SUMMARY OF PROPOSED CHANGES

The term “fees” has been replaced by “prices” in this schedule. “Fee” is defined as a “charge fixed by law for services of public officers or for use of a privilege under control of government.” See Black’s Law Dictionary at page 614. “Price” connotes a commercial transaction.

Section 9980 – Definitions

Specific Purpose and Necessity:

- 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. Clarity is needed to reduce disputes over the meaning of these terms and the application of the regulations.
- The word “physical” has been deleted to include custody of electronic records in subsection (e). This change is needed because records are increasingly kept through electronic means.
- Subsections (b) and (f) have been amended for clarity.
- 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.

Section 9981 - Bills for Copy Services

Specific Purpose and Necessity:

- Subsection (a) has been amended to reflect the effective date of the copy service price schedule for clarity.
- Changes were made for clarity in subsections (b), (c), and (d). These changes are needed to ensure that the regulated public understands the specific information

that must be included in bills, and to enable claims adjusters to have the information needed to determine whether bills can be accepted for payment.

- 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 sales tax.) The new codes are needed to correspond with changes that added new prices to the schedule.
- Subsection (e) was added to address the problem of untimely-paid bills. DWC is aware of collection issues when claims administrators fail to pay and/or object to bills. Currently there is no incentive to pay bills in a timely manner and copy services often must file for assistance from the Workers' Compensation Appeals Board to receive payment. This new subsection is needed to provide a financial incentive for claims administrators to pay bills timely, thereby reducing frictional costs.

Section 9982 - Allowable Services

Specific Purpose and Necessity:

- Changes were made for clarity in subsection (a), in part to reflect that claims administrators, not employers typically contract with copy service providers.
- Subsection (d)(1) was changed to make effective Labor Code section 5307.9's specific disallowance for "payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claim administrator, or workers' compensation insurer for copies of records in the employer's claim administrator's or workers' compensation insurer's possession that are relevant to the employee' 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.
- The change is necessary to avoid concerns that billing disputes filed with the Workers' Compensation Appeals Board are costly and inefficient. Although expressly excluded by statute, records are ordered prior to the expiration of the 30-day period which is provided to claims administrators to serve copies of records. Copy services send invoices for cancellations to the claims administrator after employer records are received. Records are also sometimes subpoenaed

from a location that is unlikely to be related to the case. Upon receipt of an objection, a cancellation charge is issued.

- Consideration of Alternatives: During informal rulemaking, DWC proposed that each request for records be accompanied by a statement from the requesting party that the request was issued in good faith, was not duplicative, and that the records were necessary to the litigation of the claim as recommended in the BRG Study. The proposal would have burdened the regulated community by requiring statements on every request for records. The meet and confer procedure would apply only when an objection remains unresolved.
- Subsection (d)(3) was added to prevent medical providers from improperly charging for inspection of records and ROI services. Evidence Code section 1158(c) provides, “Copying of medical records shall not be performed by a medical provider, or by an agent thereof, when the requesting attorney has employed a professional photocopier.” The change is necessary to prevent improper charges for copying and related services.
- Subsection (e) was added to address concerns that the price schedule was being applied inequitably against injured workers. Employers and carriers 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 currently 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 duplication of records requests. The change is necessary as bills submitted for records previously obtained by the same party from the same source.
- Subsection (f)(3) was amended to disallow charges for records from the WCIRB and EDD which can be obtained upon request.
- Subsection (f)(4) was added to prevent improper charges for Certificates of No Records (CNRs). It was reported to DWC that copy services independently pursued records from clinics without evidence that any treatment was provided at the clinic resulting in multiple improper charges for certificates of no records. This new provision is needed to cap the number of certificates of no records that must be paid.

Section 9983 - Prices for Dates of Service Prior to January 1, 2022

Specific Purpose and Necessity:

- The first sentence of section 9983 deletes “not including sales tax” and moves the sales tax provision to subsection (e)(4) for clarity.
- “Initial” was added to subsection (a) to conform to the definition at section 9990(h).
- “For dates of service prior to January 1, 2022” was added to the first sentence of subsection (a) because new section 9984 will cover dates of service after January 1, 2022.
- “Fees for release of information services” was replaced with “costs charged by a third party for the retrieval and return of records held offsite by the third party” to conform with Evidence Code section 1563. This change is needed to specify which costs are included in the flat price.
- Subsection (e) was deleted as duplicative of Labor Code section 132 and Evidence Code section 1563.
- Subsection (e)(1) added “for paper copies” to clarify that additional costs are not incurred with large amounts of electronic pages.
- Subsection (e)(3) was changed from “per CD” to “for electronic storage media” as compact discs are no longer commonly used for electronic storage media. This change is needed to ensure a variety of methods of storing electronic data is allowed and qualify for payment.
- Subsection (e)(5) was added to provide maximum witness prices from third party release of information services to prevent improper charges which are demanded prior to the release of records. The Division has received reports that improper charges have prevented copy services from copying records for litigated cases.

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

Specific Purpose and Necessity:

- New section 9984 mirrors 9983 except that it raises the flat price 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 an additional electronic set is requested. These changes are necessary to account for general cost of living increases and increased fair market value of services since the price schedule went into effect in 2015.

- 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.

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.

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

Specific Purpose and Necessity:

- Changes to subsection (d) and the addition of subsection (g) provide that the DWC can charge and collect fees incurred for retrieval costs for records. These changes are necessary to cover costs incurred for release of records.
- "Physical" was deleted from the first sentence to include electronic records. This change is needed because records are increasingly kept through electronic means.