

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	Commenter would like to know if the mileage can be capped, if the provider is required to note how many miles were traveled and if the mileage reimbursement rate is commensurate with Labor Code section 4600.	Michelle Thomas Sr. Claims Representative York Risk Services September 17, 2014 Written Comment	No response necessary. There are no regulations covering mileage.	No action.
9981(b)(2)	<p>Commenter recommends the following revised language:</p> <p>Each bill for services must include a statement that there was no violation of Labor Code section 139.32 with respect to the services described and a copy of the professional photocopier certificate required by Business and Professions Code section 22462. <u>and include the Professional Photocopier registration number and county of issue.</u></p> <p>Commenter states that the Business and Professional Code is confusing because it uses “application of registration” and “certificate of registration” interchangeably for the identical document- the application for a license filled out by the professional photocopier and given to the county clerk.</p>	Patty Waldeck President Macro-Pro, Inc. September 17, 2014 Written Comment	Agree.	<p>9981(b)provides:</p> <p><u>Bills for copy services must specify services provided and include the provider tax identification number and professional photocopier registration number, county of registration, date of billing, case information including employee name, claim number, case number (if applicable), source information including type of records, date of service, description of services, and the number of pages produced. Billing code S9981 is for medical records copy fee, administrative and S9982 is for medical records copy fee, per page HCPHCS level 2 codes.</u></p>

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	<p>Commenter states that it is an <u>application before</u> it is approved and a <u>certificate after</u> it is approved and filed. The application, now a certificate, is retained by the county clerk. It is not returned to the professional photocopier.</p> <p>The county clerk only issues an identification card. There is no “certificate” or other documentation given to a professional photocopier from the county other than the 3 ¼ by 2 inch identification card. See BP §22457 below.</p> <p>Commenter states that her company’s <u>identification card</u> is issued by county clerk to the corporate officer. It has the company name, the officer’s name, signature, the business address and the registration number. This number is unique to her company and is the number that appears on all subpoenas we prepare. Commenter states that it would be a simple matter to include it on all invoices.</p> <p>§22457. (a) The county clerk shall <u>maintain a register</u> of professional photocopiers, <u>assign a number</u> to each</p>			<p>Bills must be submitted to the claims administrator for payment.</p> <p>...</p> <p><u>(±)(2)Each bill for services must include a statement that there was no violation of Labor Code section 139.32 with respect to the services described and a copy of the professional photocopier certificate required by Business and Professions Code section 22462.</u></p>

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	<p>professional photocopier, and <u>issue an identification card</u> to each one. (...)</p> <p>Upon renewal of registration, the same number shall be assigned, provided there is no lapse in the period of registration.</p> <p>(b) The identification card shall be a card not less than 3 ¼ inches by 2 inches, and shall contain at the top the title, "Professional Photocopier" followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner. The identification card for a partnership or corporation registration shall be issued in the name of the partnership or corporation, and shall not contain a photograph.</p> <p>All of her company's California subpoenas, Workers' Compensation and Civil, include their Registration Number and the name of the issuing county. The inclusion of the Registration Number and county is valid as an identifier for a licensed Professional Photocopier. Confirmation of the registration of a Professional Photocopier is easily</p>			
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	<p>accomplished by calling the appropriate county clerk and giving them the registration number on the subpoena. Any county clerk's office can also verify that <u>certificates are not issued</u> to registered professional photocopiers.</p>			
9982(e)(3)	<p>Commenter objects to the deletion of this subsection.</p> <p>The revised regulations provide that a claims administrator is not liable for payment of WCIRB subpoenaed records that can be obtained without a subpoena through the Public Records Act and that the reasonable maximum fees payable for copy and related services are the actual costs incurred as a result of a Public Records Act request for records from the WCIRB. Commenter states that the WCIRB, is a private, non-profit association and is not subject to a Public Records Act request.</p> <p>The commenter was in support of the prior draft regulation which provided that no payment would be made for copy or related services for WCIRB records that can be obtained without a subpoena at a lower cost.</p>	<p>Kristen Marsh Lead Attorney WCIRB September 19, 2014 Written Comment</p> <p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>October 1, 2014 Written Comment</p> <p>Mark E. Webb Vice President & General Counsel PacificComp Insurance Company September 29, 2014 Written Comment</p>	Agree.	<p>9982(e)(3) provides: <u>There will be no additional payment for</u> <u>The claims administrator is not liable for payment of:</u> ... <u>Subpoenaed records obtainable from the Workers' Compensation Insurance Rating Bureau, and the Employment Development Department that can be obtained without a subpoena through the Public Records Act, at lower cost.</u></p>

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	<p>It is the commenters understanding that the California Applicant Attorneys Association was concerned with injured workers having to pay to request records from the WCIRB and that is why the regulations were revised. Although the WCIRB is not subject to a Public Records Act request, the WCIRB does offer two options for obtaining coverage information. The WCIRB maintains a public website at www.cacompcoverage.com that provides the identity of the insurer that wrote a California workers' compensation insurance policy for a specific employer on a specific date within the last five years. The information is available to the public for free and immediate results are provided online. In addition, the WCIRB provides coverage information free to injured workers and at a modest cost to insurers, employers, health care providers and attorneys involved in a pending workers' compensation claim. Information about the WCIRB's Coverage Research Service can be found on our website under Products and Services/Coverage Research</p>			
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	<p>(http://www.wcirb.com/products-and-services/coverage-research-service) along with the Coverage Research Service Request Form. With either option, there would be no copy or related services incurred in using the public coverage website or in submitting a Coverage Research Service Request form to the WCIRB. Commenter states that there is a fee for the service for insurers, employers, health care providers and attorneys of \$10 per year of coverage requested, the WCIRB does not charge a fee if the request is made by the injured worker directly.</p> <p>Commenter is in support of reducing the number of subpoenas requesting coverage records as it is a drain on the WCIRB's resources and costly to the workers' compensation system. Over the last several years, the WCIRB has seen a marked increase in the number of subpoenas received requesting coverage information for cases before the Workers' Compensation Appeals Board (WCAB). The number of subpoenas received has jumped from a low of approximately 1,300 subpoenas process in 2010 to a record high of</p>			
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	<p>nearly 4,000 subpoenas in 2013. Commenter estimates that more than 90% of the subpoenas we received in 2013 were merely to determine the identity of the insurer for a specific employer as of a specific date and that information is already available to the public at no cost on the coverage website. Commenter is concerned about the impact of the cost of these subpoenas on the system, particularly in view of the comment in <u>Martinez v. Terrazas</u> (2013) 78 Cal. Comp. Cases 444, 447, fn. 3 (Appeals Board En Banc) that “in the context of a subpoena to recover costs associated with a subpoena to the WCIRB, the copy service would need to establish the expenses were incurred.” In that case, the parties participated in an agreed medical evaluation before the subpoena was served on the WCIRB request coverage information. Consequently, it appeared to the court that the identity of the employer’s insurer had been identified prior to the subpoena for coverage information being requested and was therefore not necessary.</p> <p>The commenter respectfully requests</p>			

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	<p>that the Division of Workers' Compensation amend the proposed regulations related to WCIRB records to return to the language in the prior version of the regulations that were posted for comment on May 16, 2014 which provided that no payment would be made for copy or related services for WCIRB records that can be obtained without a subpoena at a lower cost. Commenter states that the lower cost options include obtain the name of the insurer from the public coverage website (www.cacompcoverage.com) for free or, for entities involved in a pending workers' compensation claim, coverage information can be obtained through the WCIRB Coverage Research Service. Commenter states that there is no copy or related services associated with the Coverage Research Service as the request must be made directly by the entity involved in the WCAB matter.</p>			
9983(a)(1)	<p>Commenter is the president of a defense copy service and states that he was amazed that the applicant attorney copy services companies feel that they have a higher cost burden than defense firms do. Commenters states that all</p>	<p>James (Jim) Naley President RSP & Associates September 19, 2014 Written Comment</p>		

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	<p>copy firms have expenses and he is concerned about the following three that the proposed regulations fail to consider:</p> <ol style="list-style-type: none"> Charges from locations that exceed these regulations. Commenter has submitted copies of invoices from various record holders that he has subpoenaed records from which total \$153.50, \$187.80, \$179.00 and \$350.50 (after subtracting the \$15.00 check that is sent with the subpoena). Commenter is wondering how he is supposed to make any profit, especially after copying and mailing out sets to the parties and covering his office expense overhead. Distribution costs. Commenter has a longstanding relationship with a certain reliable courier and every February he receives notice of rates increases based on weight and zones. Commenter states that this is yet another expense that he has to cover under the \$180.00 allowance. COLA. Commenter is concerned that this amount will not be increased to keep up with inflation. 		<p>Disagree. Release of information fees were considered and are already regulated by the Evidence Code and remedies are available.</p> <p>Agree in part. “shipping and handling” have been added to the list of included services within the flat fee.</p> <p>Disagree. The fee schedule can be revised to make future adjustments.</p>	<p>9983(a)(5) has been amended to include, “Disputes over witness costs may be resolved by filing a petition with the Workers’ Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132. <u>9983(a)(1) provides: A \$180 flat fee for a set of records, from a single custodian of records, which includes mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, fees for release of information services, service of the subpoena.</u></p>

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				<u>shipping and handling, and subpoena preparation.</u>
9982(e)(3)	<p>Commenter states that public records are court records, including WCAB records, and some public entity records that don't identify specific individuals (consumers). They can be obtained without a subpoena.</p> <p>The examples that are given in §9982(e)(3), EDD and WCIRB, do not have public records that would be requested in a Workers' Compensation case.</p> <p>Commenter states that the records that are subpoenaed from the EDD are records of individuals and are <u>not</u> public records. The EDD requires an authorization or subpoena to obtain consumer records of an individual.</p> <p>The WCIRB records must be subpoenaed by anyone who is not a member. Only insurance companies are members. So TPA's, employers, their attorneys and others are not members. They must subpoena WCIRB records.</p>	Patty Waldeck President Macro-Pro, Inc. September 25, 2014 Written Comment	Agree in part. 9982(e)(3) has been modified. Defendants are not liable for subpoenaed records from the WCIRB or EDD that can be obtained without a subpoena at lower cost.	9982(e)(3) provides: There will be no additional payment for <u>The claims administrator is not liable for payment of:</u> ... <u>Subpoenaed records obtainable from the Workers' Compensation Insurance Rating Bureau, and the Employment Development Department that can be obtained without a subpoena through the Public Records Act, at lower cost.</u>

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	This information was verified by contacting the EDD custodian and the WCIRB.			
9983(5)(C)	<p>Commenter questions if the DIR and DWC proposing to regulate the facility custodians with this subsection. Commenter states that the facilities management determines what their charges will be. Commenter states that the copy services have no authority to mandate these fee amounts so she opines that it falls on the DIR or DWC to do this.</p> <p>Commenter states that most facilities charge \$12.00 to \$15.00 per film and \$5.00 to \$25.00 per CD of films.</p> <p>Commenter would like to know what data or rationale was used to determine the amount to be paid.</p>	<p>Patty Waldeck President Macro-Pro, Inc. September 26, 2014 Written Comment</p>	<p>9983(5)(C) fees are for copy service providers and not facilities.</p>	<p>No action.</p>
9981	<p><u>Commenter states that there is still no penalty or guideline for the carrier to respond timely with payment.</u></p> <p>Commenter states that there is plenty of information as to how copy services should bill, but nothing about how copy services to be paid timely.</p> <p><u>Commenter opines that this is what needs to be added:</u></p> <ul style="list-style-type: none"> • If Defense objects that they 	<p>Dan R. Jakle ARS Legal September 30, 2014 Written Comment</p>	<p>The fee schedule does not change the scheme already in place for late penalties These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not penalties.</p>	<p>No action.</p>

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	<p>have the records, then defense must object to ANY subpoena notice given by the applicant copy service within 10 days from mailing of the notice of Subpoena and five additional days for the mail time. Total 15 days</p> <ul style="list-style-type: none"> • If defense does not object within that time by fax or email then they are precluded from raising any future objections and are required to pay the bill. • If records are not provided by the defense timely (within the five days of their objection) the fee will be the full \$180. If they do not pay in full bill within 30 days, the cost will raise to \$250 plus 7% interest and costs incurred by the applicant copy service. • The fee for providing the defense with a set of records shall be zero if the defense accepts them electronically from the copy services website. If defense wishes the records electronically via CD then the price will be \$15 plus 			

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	mailing cost, the cost of the media and labor; if records are requested buy paper the costs will be \$.10 per page plus the cost of mailing and labor.			
9981(b)(1)	Commenter states that there are codes for duplication of x-ray (WC025) of \$10. Commenter opines that this is insufficient and should be reimbursing the COST INCURRED (usually \$15, but sometimes higher – reimbursement upon providing evidence of payment).	Dan R. Jakle ARS Legal September 30, 2014 Written Comment	Disagree. A survey of fees revealed that the OMFS for X-rays was under what most offices charge while the fees for scans was more in line with what most offices charge for both X-rays and scans.	The fee schedule for X-rays and scans has been changed to allow for \$10.26 which is what the OMFS provides for scans rather than the lower amount of \$5 for X-rays.
9981(b)(2)	Commenter states that it is over burdensome to have to provide both the statement about LC139.32 and the Professional Photocopier Certificate for each invoice. Commenter recommends that it should be sufficient to provide it one time and then not be required to recopy it and send it with every invoice to that carrier.	Dan R. Jakle ARS Legal September 30, 2014 Written Comment	Agree in part. Instead of certificates, only the professional photocopier registration number and county of registration is required.	9981(b) has been changed to: <u>“Bills for copy services must specify services provided and include the provider tax identification number and professional photocopier registration number, county of registration,...”</u>
9981(b)	Commenter states that many times the applicant attorney does not have the claim file number and getting the claim file number from the carrier / administrator is next to impossible as they NEVER return phone calls or letters requesting it.	John Antonelli ARS Legal October 1, 2014 Written Comment	Disagree. Without a claim number, invoices would not be matched up to a claim and payment would be complicated.	Bills must include claim numbers.

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	<p>Commenter states that the description of services is on the subpoena and there should be no reason for copy services to have to reprogram their computers to put information on the invoice as this is extremely evident. Example, copied medical records of 26 pages; that very obvious.</p> <p>Commenter states that if service was made and the reply was a certification of no records that would be very evident as well.</p> <p>Commenter opines that if the copy service is putting the billing code on the invoice that should suffice as to the type of service provided.</p>		<p>Agree. Billing codes specify types of services provided.</p>	<p>No action.</p>
9982(d)(1)	<p>Commenter opines that payment should be allowed when a subpoena is issued and the defense does NOT object to the copying of records. Commenter agrees with waiting 35 days for employment and claims records, but not with making the applicant attorney wait for medical records that the defense may not have, or most likely does not have because it is denying timely treatment to the applicant.</p>	<p>John Antonelli ARS Legal October 1, 2014 Written Comment</p>	<p>9982(d)(1) comes directly from Labor Code section 5307.9.</p> <p>Disagree. There is no authority to entitle copy services to be paid for these services.</p>	<p>No action.</p>

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	<p>Commenter states that the applicant copy service should be allowed to give notice to defense that medical records are being subpoenaed and if the defense does not object within 15 days of the day of notice then the copy service should be allow to proceed to obtain the medical records.</p>		<p>Disagree. The fee schedule does not make any changes to the discovery process.</p>	<p>No action.</p>
9982(e)(1)	<p>Commenter questions what is to be done about ADDITIONAL records, when the applicant attorney wants records because of additional treatment specified in the stipulated award, but not forthcoming by the carrier. Commenter states that this should be clearly addressed.</p>	<p>John Antonelli ARS Legal October 1, 2014 Written Comment</p>	<p>Agree in part. “by the same party and served from the same source” was added.</p>	<p>9982(e)(1) provides: Duplicative <u>Records previously obtained by subpoena or authorization by the same party and served from the same source, unless the subpoena or authorization or authorization is accompanied by a declaration from the party requesting the records that there is setting forth good cause to seek duplicate records.</u></p>
9983(a)(5)(C)	<p>Commenter states that 95% of the time copy services pay much more than the DWC is allowing for x-rays. Commenter states that his company does not mark-up the cost of x-rays that is a straight passed through cost and is they are paying \$15 or \$20 per</p>	<p>John Antonelli ARS Legal October 1, 2014 Written Comment</p>	<p>Disagree. A survey of fees revealed that the OMFS for X-rays was under what most offices charge while the fees for scans was more in line with what most offices charge for both X-rays and scans.</p>	<p>The fee schedule for X-rays and scans has been changed to allow for \$10.26 which is what the OMFS provides for scans rather than the</p>

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	film or \$30 for a computer disc and that the DWC expects the copy service to eat the cost of that. Commenter asks why the defense copy services will not have to charge a reduced rate yet the applicant service will.			lower amount of \$5 for X-rays.
9983(a)(5)(B)	Commenter states that the \$5.00 you are allowing copy services to provide a duplicate electronic copy does not even cover the cost of making a duplicate copy. Simply, mailing the disc will cost \$5.00 in labor and postage let alone the time to fine the file and cost of computer systems and time to make the disc. Commenter states that if the defense orders the file after the original order has been billed but before 30 days past then the copy service will need to generate another invoice and mail it out. The cost of that is \$15.00. Commenter opines that this charge for the duplicate set of records should be a minimum of \$15.00 at time of first invoice and \$30 if ordered after it has been billed. Commenter opines that it is interesting that the DWC will charge \$1.00 per page for copying records and they do not have to drive anywhere, wait for someone to deal with them, carry heavy scanning equipment, download	John Antonelli ARS Legal October 1, 2014 Written Comment	Disagree. Costs of electronic duplicates are minimal.	No action.

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	<p>data to computer systems, mail invoices, do collections or anything else that copy services must incur. Commenter states that this is a total slap in the face to the personnel of copy services and their worth. Commenter states that everyone in the workers' comp. system is allowed to make a living wage except the copy services.</p>			
General Comment	<p>Commenter states that there are absolutely no provisions for the copy services to be assured of being timely payment. The defense will raise all types of objections that have not been addressed. Commenter states that there must be a meeting to address objections the defense will pretend that exist.</p>	<p>John Antonelli ARS Legal October 1, 2014 Written Comment</p>	<p>These regulations address reasonable copy service fees pursuant to the authority granted under Labor Code section 5307.9, not penalties.</p>	<p>No action.</p>
General Comment	<p>Commenter would like to remind the Division to always consider the impact on injured workers as they navigate through the complicated adversarial system. Commenter has three areas of concern with the proposed regulations.</p> <p>First, it was the commenter's understanding that the whole point of a fee schedule was to eliminate disputes over payment to in exchange for prompt payment thereby</p>	<p>Jesse Cenicerros President Voters Injured at Work October 1, 2014 Written Comment</p>	<p>The fee schedule will reduce litigation over the reasonable value of copy services.</p>	<p>No action.</p>

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	<p>eliminating numerous lien hearings. Commenter is not aware of anything in these regulations that provides a mechanism to require payment of undisputed copy service billings/liens.</p> <p>Second, commenter states that the \$180.00 "flat fee" is far below what the Berkley Research Group found to be the average fee for independent copy services where there was no prompt payment. Commenter opines that given the \$150.00 lien filing fee and (as above) no enforcement mechanism forcing payment of undisputed copy service fees, he states that it would be financial suicide for the copy services to continue to perform services for the flat fee which is only \$30.00 above what they will assuredly have to pay to have their bill/lien enforced at the WCAB.</p> <p>Third, commenter opines that the combination of regulations seems to make it impossible for an unrepresented injured worker to get records except through the employer. There is no provision for payment where records are done through an authorization. Similarly, as an ADJ</p>		<p>The proposed flat fee of \$180 is much higher than BRG's recommendation. In compliance with a preliminary injunction by the U.S. District Court for the Central District of California in the matter of Angelotti Chiropractic, Inc., et al. v. Baker, et al., the Division of Workers' Compensation no longer collects lien activation fees as of Nov. 19, 2013. Additionally, lien filing fees are reimbursable with lien awards equal to the amount demanded.</p> <p>The fee schedule does not make any changes to the existing discovery scheme and does not disallow any discovery by the injured worker.</p>	

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	<p>case number now is required for billing for the copy services, it also means that the unrepresented injured worker must also litigate the case in order to get records except through the employer. Commenter states that SB 863 's purpose was to lower the amount of litigation; however, these regulations would seem to do the opposite.</p> <p>Commenter's overarching concern is that the effect of these regulations is to tip the balance against the injured worker's being able to get records needed to prove eligibility for medical treatment and other benefits except through the employer - the same entity that is disputing the need to provide those very same benefits to begin with.</p>			
9981	<p>Commenter states that the DWC's modifications to the regulations indicate that the use of billing codes is optional and it is anticipated that the Division's <i>Billing and Payment Guide</i> will be updated to allow copy services to use standardized billing forms and e-billing in a future, separate rulemaking package.</p> <p>Commenter opines that although the HCPHCS codes are eliminated, more</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund October 1, 2014 Written Comment</p>	<p>A future, separate rulemaking will be required to mandate the use of billing codes.</p>	<p>9981(b)(1)_ provides: <u>Bills for records may include billing codes.</u> <u>WC 020 is for Flat Fee of \$180, WC 021 is for Cancelled Service of \$75.</u> <u>WC 022 is for and Certificate of No Record of \$75, WC 0223 is for</u></p>

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	<p>discussion is warranted on California-Only workers' compensation codes in order to avoid miscoding. Commenter states that since billing codes are optional it may lead to an increase in disputes regarding reimbursement. Commenter recommends that in order for copy service bills to be paid efficiently, these codes need to be standardized and eventually become mandatory.</p>			<p><u>Per Page Fee of .10 per page, WC 023 is for Additional Paper Set of \$50, WC 024 is for records from the Employment Development Department (EDD) of \$20, WC 025 is for records from the Workers' Compensation Insurance Rating Bureau of \$30, WC 026 is for an Additional Electronic Set of \$5, WC 02567 is for an Additional Electronic Set of \$30, WC 028 is for Duplication of X-Ray of \$10, and WC 026 is for Duplication of Scan of \$15 or scan of \$10.26, WC 0289 is for CD of X-rays and scans of \$3.</u></p>
9982(e)(1)(A)	<p>Commenter notes that this section provides that the claims administrator is liable for payment if there is good cause for duplicate records. Examples of good cause were added to provide guidance as to when a declaration could be used.</p> <p>Commenter recommends that the term</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund October 1, 2014 Written Comment</p>	<p>Agree. Good cause has been clarified to include new counsel and loss or destruction of records due to a natural disaster.</p>	<p>9982(e)(1)(A) provides: (f e) There will be no additional payment for <u>The claims administrator is not liable for payment of:</u> (1) Duplicative rRecords previously obtained by subpoena or</p>

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	<p>“Good Cause” be defined by the DWC or she opines that the industry may experience more litigation with copy service companies seeking duplicative records for “good cause” according to their opinion. Commenter opines that if it is not further defined, it may cause more litigation regarding who should bear the cost for services.</p>			<p><u>authorization by the same party and served from the same source, unless the subpoena or authorization or authorization is accompanied by a declaration from the party requesting the records that there is setting forth good cause to seek duplicate records.</u></p> <p>A. <u>If there is good cause, the claims administrator is liable for payment. Good cause includes new counsel seeking duplicate records for review, and loss or destruction of records due to natural disaster.</u></p>
9983(a)(3)	<p>Commenter notes that this section requires that the claims administrator pay for costs incurred for records obtained by Public Records Act request. Commenter opines that</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund</p>	<p>Agree in part. The fee schedule has been changed so that injured workers are not responsible for the costs of obtaining records from the</p>	<p>9983(c) and (d) allows \$20 for EDD records and \$30 for WCIRB records.</p>

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	<p>further specificity is needed in this section to avoid misinterpretation of this section.</p> <p>Commenter recommends that the DWC add language requiring the copy service provider to submit an official receipt from the service provider to document the actual costs in obtaining records from the Workers' Compensation Insurance Rating Bureau and the Employment Development Department. Commenter states that this will discourage manufactured receipts, ensure that the correct reimbursements are made and avoid lien disputes, Independent Bill Review and potential litigation.</p>	<p>October 1, 2014 Written Comment</p>	<p>WCIRB or EDD.</p> <p>Disagree. Requiring receipts would complicate the process.</p>	
9983(a)(5)(C)	<p>Commenter notes that the allowable cost for X-rays and scans was raised from \$5.13 to \$10.26. Commenter states that fees for X-rays and scans are to be paid at the rates contained in the Official Medical Fee Schedule already in place. Commenter states that in the past, the industry standard was \$15 but in 2014, the RBRVS schedule had already taken this into account for a cost of \$5.13. Commenter opines that by increasing</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund October 1, 2014 Written Comment</p>	<p>The Official Medical Fee Schedule (OMFS) at Section 9789.19 has not been updated for several years. A survey of fees revealed that the OMFS for X-rays was under what most offices charge while the fees for scans was more in line with what most offices charge for both X-rays and scans.</p>	<p>The fee schedule for X-rays and scans has been changed to allow for \$10.26 which is what the OMFS provides for scans rather than the lower amount of \$5 for X-rays.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that amount by 100 percent this goes against the intent of the Official Medical Fee Schedule.</p> <p>9789.12.14 California Specific Codes</p> <p>Physicians and non-physician practitioners shall use the “California Specific Codes” listed below. Maximum reasonable fees for services performed by physicians and non-physician practitioners within their scope of practice shall be no more than the fee listed in section 9789.19, by date of service. The fees shall be updated annually in accordance with the Medicare Economic Index.</p> <p>California-Specific Codes:</p> <p>WC010 - \$5.13 per x-ray- duplication of X-ray WC011 - \$10.26 per scan-duplication of Scan</p>			
9984	<p>Commenter notes that the section has been deleted from the proposed modifications to the fee schedule for Copy Services.</p> <p>Commenter opines that even though</p>	<p>Peggy Thill Claims Operations Manager State Compensation Insurance Fund October 1, 2014</p>	<p>Disagree. The fee schedule does not make any changes to the existing discovery process.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>this section has been slated for deletion, it may require going one step further than this and requiring a declaration under penalty of perjury for records that were requested by the requesting party. Commenter states that taking this measure will likely avoid frivolous requests for records. Commenter opines that it should be some sort of responsibility by the attorney requesting records not to run up costs.</p>	<p>Written Comment</p>		
<p>General Comment</p>	<p>Commenter requests that the Division keep in mind that the injured worker's independent rights to complete discovery, and due process, must be protected as mandated in the California Constitution (Article XIV, Sec. 4). An appropriate copy service fee schedule should promote substantial justice for injured workers in all cases expeditiously, inexpensively, and without encumbrance of any character. Commenter opines that the goal of this fee schedule should be to provide the injured worker and their attorney the same access to independent discovery as the defendant in any given case. The challenge is to do this while promoting predictability and reducing</p>	<p>Diane Worley CAAA October 1, 2014 Written Comment</p>	<p>The fee schedule does not make any changes to the existing discovery process.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	frictional costs in the production of those records.			
9982(b)	<p>Commenter states that this section is poorly worded and will cause much confusion. Commenter states that in order to avoid unnecessary litigation the time for service of records should be consistent with what is set forth in Labor Code section 5307.9 and regulation section 10608. Section 10608 states that copies of medical reports and medical legal reports relating to the claim shall be served upon the requesting party within 10 calendar days of the request, if not previously served. Any subsequently received medical report and medical report must be served within 10 calendar days of receipt. Labor Code section 5307.9 provides that payment for copy and related services shall not be allowed for services provided within 30 days of a request by an injured worker or their authorized representative for copies of records related to their claim.</p> <p>Commenter states that there is an inconsistency between the 30 day requirement of Labor Code section 5307.9 and the 10 calendar day</p>	<p>Diane Worley CAAA October 1, 2014 Written Comment</p>	<p>Agree in part. Former subsection (b) and (c) were combined and “the timeframes set forth in [Labor Code section 5307.9 and] section 10608” are now used.</p>	<p>9982 provides: (b) This fee schedule applies to obtaining records which were not timely served pursuant to section 10608.</p> <p>(e) If the claims administrator fails to provide serve records in the employer’s or insurer’s possession requested by an injured worker or his or her representative within 35 calendar days the time frames set forth in Labor Code section 5307.9 or fails to serve a copy of any subsequently-received medical report or medical-legal report within 15 calendar days of receipt pursuant to the timeframes set forth in section 10608, this fee schedule applies to obtaining those records.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>requirement of section 10608. Commenter opines that this can only be reconciled by interpreting Labor Code section 5307.9 to require that all requested records be in the hands of the injured worker within 30 days of their request, particularly when the term “provided”, not “service” is used in the statute. Section 10608 would qualify this for medical reports and medical legal reports which must be served within 10 calendar days of the request. Commenter states that as medical records are becoming increasingly important in the UR and IMR process, a stricter timeline approach for medical reports is more in line with the timeframes set out in SB 863 for UR and IMR to be completed.</p> <p>Commenter states that the addition of 5 days in this section will conflict with the timelines set forth in Labor Code section 5307.9 and rule 10608 above. It will also create ambiguity as to when the fee schedule applies to a subpoena for records. As "time is of the essence" when it comes to providing medical care to injured workers, delays even of 5 additional</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>days, would defeat the goal of SB 863 to expedite the delivery of medical treatment to the injured worker.</p> <p>In order to bring clarity to this section, the commenter recommends that §9982(b) be amended to read:</p> <p>"If the claims administrator fails to provide records in the employer's or insurer's possession requested by an injured worker or his or her representative within <i>the time frames set forth in Labor Code 5307.9</i> or fails to serve a copy of any medical report, medical legal report, or subsequently-received medical report or medical-legal report within <i>the time frames set forth in section 10608</i>, this fee schedule applies to obtaining those records."</p>			
9982(e)(3)	<p>Commenter opines that this section would be objectionable if not for the addition of this subsection which was added to make claims administrators liable for the costs of obtaining records by way of a request pursuant to the Public Records Act. Commenter states that the costs of obtaining these records should never be borne by the injured worker or their attorney. To do</p>	<p>Diane Worley CAAA October 1, 2014 Written Comment</p>	<p>Agree in part. Injured workers should not be expected to bear the costs of obtaining records from the WCIRB or EDD.</p>	<p>The fee schedule has been changed so that injured workers are not responsible for the costs of obtaining records from the WCIRB or EDD.</p> <p>9982(e)(3) provides: There will be no</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>otherwise, would unfairly encumber the injured worker from getting discovery in violation of the protections of the California Constitution.</p> <p>Commenter is concerned that there may still be times when records may be more readily obtained from the WCIRB and EDD at lower cost by a subpoena. Additionally, if the WCIRB and EDD are inundated with Public Records Act requests this may increase the delay in getting these records. The commenter recommends that “at lower cost” be added back into the language in §9982(e) (3) after “without a subpoena” to continue to allow using a subpoena as an alternative means of completing this discovery if it proves less costly.</p>			<p>additional payment for <u>The claims administrator is not liable for payment of:</u> ... <u>Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau, and the Employment Development Department that can be obtained without a subpoena through the Public Records Act, at lower cost.</u></p>
9983(a)(1)	<p>Commenter continues to believe that a flat fee that includes widely varying factors such as mileage, postage, pickup and delivery, repeat visits, witness fees, and release of information (ROI) services may prove inadequate over time. Commenter points out that in this current draft, the cost for service of the subpoena and shipping and handling has now been</p>	<p>Diane Worley CAAA October 1, 2014 Written Comment</p>	<p>Release of information fees are controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court.</p>	<p>9983(a)(5) has been amended to include, “Disputes over witness costs may be resolved by filing a petition with the workers’ Compensation Appeals Board or by filing a petition with</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>added to the flat fee. It is the commenters understanding that release of information (ROI) fees are becoming a growing problem to the copy service industry. The commenter has been advised that some ROI fees are as much as \$500, although the average fee is much lower. Commenter states that no copy service will be able to stay in business if they have to absorb that cost. Commenter opines that if these fees continue to be unregulated the impact is that injured workers will not be able to get records, and therefore the evidence to prove their case. Commenter states that an \$180 flat fee which includes ROI fees will make it prohibitive to obtain records in many instances.</p> <p>Commenter states that one solution to this problem would be to include within the flat fee only the average ROI fee charged which would need to be identified by the copy services. Any charge above this agreed average fee by a ROI company could then be billed above the flat fee by the copy service.</p>			<p>the superior court pursuant to Labor Code section 132.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that providing for this in the regulation will accomplish two things. It will insure the copy service will obtain the requested records without being barred from doing so by excessive ROI fees. These fees are extremely variable and at times will limit the Applicant's access to records. Secondly, it will require a shared accountability with the payor to do something about unregulated ROI fees by highlighting this problem. Commenter states that copy services have no control over what ROI service providers charge. ROI companies are becoming the gatekeeper for many medical facilities which is going to prevent the injured worker from obtaining records where excessive fees are being charged. Commenter opines that the copy service should not be solely liable for abuses by ROI companies.</p> <p>Commenter recommends that there be an automatic Cost of Living Adjustment (COLA) added to this regulation. Commenter opines that the copy services may suggest a flat fee that is adequate for their costs of doing business in 2014, or even 2015, but</p>		<p>Disagree. Changes to the fee schedule can be made later if it proves to be problematic.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that fee will become inadequate over time with inflation, and the costs of doing business increasing. Commenter states that it is common practice for fixed payment regulations to contain an automatic COLA adjustment, either annually or every two years. This avoids the expense and time of the public rulemaking process to make modifications to the regulations every year. Commenter recommends that the COLA for the Copy Service Fee Schedule be indexed to the Consumer Price Index (CPI), in the same manner as other fixed payments, such as Social Security and CalPers retirement payments. The annual percentage change in a CPI is used as a measure of inflation. The CPI is published annually by the Bureau of Labor Statistics and is the best index for the effect of inflation on the real value of wages, salaries, pensions, and for regulating prices. Commenter recommends that it should be applied annually to both the base flat rate of \$180 in § 9983 (a) (1) (a) (1), and the \$.10 cents per page charge in § 9983 (a) (5) (A).</p>			
9983(a)(3)	<p>Commenter opines that as there are other agencies besides the Workers'</p>	<p>Diane Worley CAAA</p>	<p>Agree in part. Injured workers should not be expected to bear</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Compensation Insurance Rating Bureau, and the Employment Development Department from which records can be obtained pursuant to a Public Records Act request, this section should be amended to add “or other appropriate agencies” after the “Employment Development Department”. Commenter states that this would be consistent with the statement of reasons for §9983(a)(3) which was added to make claims administrators liable for the costs of obtaining records by way of a request pursuant to the Public Records Act. Commenter states that the costs of obtaining records pursuant to a Public Records Act Request should never be borne by the injured worker or their attorney.</p>	<p>October 1, 2014 Written Comment</p>	<p>the costs of obtaining records from the WCIRB or EDD.</p>	
9983(a)(4)	<p>Commenter opines that while well intentioned the addition of language in this section allowing disputes over witness fees to be resolved by filing a petition with the WCAB or Superior Court will not work well. Commenter states that the delay in obtaining a decision on these disputes will harm injured workers as it will prevent them from obtaining records on a timely basis needed to prove their claim,</p>	<p>Diane Worley CAAA October 1, 2014 Written Comment</p>	<p>The fee schedule does not seek to improve the existing discovery process. Release of information fees are controlled by the Evidence Code and disputes over them can be resolved by filing a petition with the WCAB or the superior court.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>including the need for necessary medical treatment to heal and return to work.</p> <p>At best, commenter states that a decision from the WCAB to determine if an outside third party should get its' fee could take 60 days or more. A superior court action would take even longer. Commenter opines that with the short timeframe to respond to utilization review denials, including requests for additional information, and independent medical review this provision will cost injured workers their medical treatment rights.</p> <p>To avoid these unnecessary delays, commenter request that the Division address the growing problems with ROI fees in these regulations. As a start, allowing copy services to bill for ROI fees above the \$180 flat fee if the fee exceeds an agreed average would avoid unnecessary litigation, and insure that injured workers can conduct independent discovery expeditiously, and without encumbrance.</p>			
9983(a)(5)(B)	Commenter opines that deleting the proposed language concerning paper	Diane Worley CAAA	Disagree. Additional paper copies after 30 days are	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>copies in this subsection is "unnecessary." Commenter notes that the remainder of the section only refers to records in electronic form. Commenter supports the change in this section deleting the words "payable by the party ordering an additional set" to avoid liability for costs falling on injured workers, the option of obtaining an additional set of records in paper form should still be made available and paid for by the carrier. Commenter opines that while copy services and insurance carriers may be uniquely situated to provide and receive records in electronic form, many injured workers and the doctors' offices to which they must send the records are not. Commenter recommends that the language deleted from §9983(a)(5)(B) be reinstated, and the remaining two paragraphs in §9983(a)(5) be re-lettered to (C) and (D).</p>	<p>October 1, 2014 Written Comment</p>	<p>problematic because copy services do not store such copies and may require another copy job. If electronic records are kept, they can be ordered and printed.</p>	
<p>9982(b) and (c) 9980(f) and (g) General comment</p>	<p>Commenter opines that these sections directly contradict DWC goals, and limit the applicant's due process discovery rights. Commenter states that the function, scope and enforceability of section 9982 (b) and (c) are unclear and unworkable. These</p>	<p>Dan Mora Founder & CEO Gemini Duplications October 1, 2014 Written Comment</p>	<p>Disagree. Former subsection (b) and (c) were combined and "the timeframes set forth in [Labor Code section 5307.9 and] section 10608" are now used.</p>	<p>9982 provides: <u>(b) This fee schedule applies to obtaining records which were not timely served pursuant to section 10608.</u> (e) If the claims</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>sections: establish new, divergent and unsupported waiting periods, establish burdensome processes, and provide loop-holes to charge outside of fee schedule and Labor Code section 5307.9 30-day waiting period.</p> <p>Commenter opines that the solutions outlined are comprehensive and simple. Commenter states that they aim to make these copy service fee schedule regulations cohesive with Labor Code section 5307.9 and active within his industry. To close unintended loop-holes, commenter opines that it is necessary to clarify “request” as used in Labor Code section 5307.9, to include the two active discovery types: section 10608 and 10530. These solutions point to established discovery rules and definitions that section 9982 (b) and (c) attempt to redefined in this regulation. In order to fully accomplish the DWC’s goals, commenter opines that all of the following changes should be adopted:</p> <ol style="list-style-type: none"> 1. Section 9982 (b) and (c) should be deleted. 2. <u>9980 (g) “Records in the</u> 			<p><u>administrator fails to provide serve records in the employer’s or insurer’s possession requested by an injured worker or his or her representative within 35 calendar days the time frames set forth in Labor Code section 5307.9 or fails to serve a copy of any subsequently-received medical report or medical-legal report within 15 calendar days of receipt pursuant to the timeframes set forth in section 10608, this fee schedule applies to obtaining those records.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>employer’s, claims administrator’s, or workers’ compensation insurer’s possession” means records as defined in section 10101.1. Claim File--Contents.</u></p> <p>3. <u>9980 (f) “Request” for copy and related services means discovery pursuant to section 10608 and section 10530.</u></p>			
9982(b)	<p>Commenter recommends that this section be deleted.</p> <p>Commenter opines that this section attempts to establish divergent and unsupported waiting periods. Labor Code section 5307.9., section 10608 and Code of Civil Procedure outline adequate waiting periods.</p> <p>Labor Code section 5307.9 established a 30-day waiting period to provide copy and related services, encouraging the applicant’s attorney not to discover records during this period; as such, copy and related services provided during this period are not payable by the claims administrator.</p> <p>Commenter states that this section places an additional, unnecessary and</p>	<p>Dan Mora Founder & CEO Gemini Duplications October 1, 2014 Written Comment</p>	<p>Former subsection (b) and (c) were combined and “the timeframes set forth in [Labor Code section 5307.9 and] section 10608” are now used.</p>	<p>See above.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>simultaneous waiting period of 35-days from section 10608 request for claims file, to independent discovery by the applicant payable via this fee schedule.</p> <p>Commenter states that this section requires a new 15-day waiting period upon the generation of “subsequently-received medical report or medical-legal reports”. Adherence to this provision is unworkable, causing undue burden on the applicant.</p> <p><i>Example 1:</i> After the applicant makes a section 10608 request for claims file, the applicant must wait 30 days before requesting records independently. Pursuant to this section 9982 (b) the applicant is additionally required to:</p> <ol style="list-style-type: none"> 1. Determine whether the record is a “medical report or medical-legal report”. 2. Discover the date that report was generated. 3. Calculate 15 day waiting period. 4. Determine whether section 9982 (b) 35-day waiting period has been satisfied. 			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(See Item 1 under General Comment.)</p> <p>Commenter states that this section infringes the injured workers’ due process right to independent discovery and provides an unintended “loop-hole” for applicant copy services to charge for discovery services outside of this regulated fee schedule.</p> <p><i>‘This fee schedule applies to obtaining those records; records requested by the injured worker that the claims administrator fails to serve’.</i></p> <p>Records in the possession of the claims administrator are defined as part of the existing “claim file” (section 10101.1.). Section 9982 (b) attempts to partition the records of the claim file causing applicant’s independent discovery to be deemed allowable or not allowable per this section.</p> <p><u>Example 2:</u> When the applicant makes a section 10608 request for claims file, if the claims administrator provides “Medical Report A” and the applicant requests “Medical Report A”</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>independently the services are defined by this section as unallowable. (See Item 1 & 3 under General Comment.)</p> <p>In the attempt to partition “those” records that are payable, the DWC has allowed a logical path to charge for copy and related services outside of this copy service fee schedule regulation.</p> <p><i>Example 3:</i> As written, if the applicant or his or her representative does not make a section 10608 request for claims file, subsequent charges for copy and related services would not apply to this fee schedule.) (See Item 1 under General Comment.)</p> <p><i>Example 4:</i> After the applicant makes a section 10608 request for claims file, if the claims administrator provides “Medical Report B” and the applicant requests “Medical Report B” independently, subsequent requests for copy and related services would not apply to this fee schedule. (See Items 1, 2 and 3 under General Comment.)</p>			
9982(c)	Commenter states that this section infringes the injured workers’ due process right to independent discovery	Dan Mora Founder & CEO Gemini Duplications	Former subsection (b) and (c) were combined and “the timeframes set forth in [Labor	See above.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>and provides an unintended “loop-hole” for applicant copy services to charge for discovery services outside of this regulated fee schedule.</p> <p><i>‘This fee schedule applies to obtaining those records; records which they (claims administrators) are seeking by subpoena but fails to provide notice to the injured worker.’</i></p> <p>Records sought by subpoena by the claims administrator are defined as part of the existing “claim file” (section 10101.1.). This section attempts to partition the claims file from records sought by subpoena and where written notice was served from the claim file causing applicant’s independent discovery to be deemed allowable or not allowable per this section.</p> <p><i>Example 5:</i> After the applicant makes a section 10608 request for claims file, if the claims administrator successfully notices the applicant of the request for “Medical Report C” and the applicant requests “Medical Report C” independently, the services are defined by this section as</p>	<p>October 1, 2014 Written Comment</p>	<p>Code section 5307.9 and] section 10608” are now used.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>unallowable. (See Items 2 & 3 under General Comment.)</p> <p>Likewise as in section 9982 (b), in the attempt to partition “those” records that are payable, section 9982 (c) outlines a logical path to allow for copy and related services to be billed outside of this copy service fee schedule regulation.</p> <p><i>Example 6:</i> If the injured worker or his or her representative do not requests records from the claims administrator or the claims administrator complies with the request, as written, the fee schedule does not apply. (See Item 3 under General Comment.)</p>			
General Comment	<p>Commenter recommends that the DWC reinstate the “or Authorization” language.</p> <p>Commenter notes that the modifications to the schedule remove the term “or authorization” from the entirety of the regulations. Commenter opines that as a result, only record requests made pursuant to a subpoena will fall under the jurisdiction of the schedule and all other requests will be</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>October 1, 2014 Written Comment</p>	<p>Agree in part. Authorizations were reinstated into the fee schedule.</p>	<p>Authorizations were reinstated into the fee schedule.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>open to the overpricing, gamesmanship and inefficiency that have plagued the copy service industry for years. Commenter states that these non-subpoenaed requests will be ineligible for Independent Bill Review as they will no longer be subjected to a fee schedule – thwarting a goal and intent of SB 863.</p> <p>Commenter notes that the DWC cites Evidence Code § 1158 as the basis for removing “or authorization” from the regulation stating:</p> <p>“The words ‘or authorization’ were deleted from this section and the entire copy service fee schedule as authorization are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and are not used by non-contracted copy services.”</p> <p>Commenter states that this reliance on Evidence Code § 1158 is misplaced. First, the Evidence Code defines the term “action” as “a civil and a criminal action” and does not include a workers’ compensation proceeding within its definition. (Evidence Code §</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>105) Second, Labor Code § 5708 expressly states that workers' compensation proceedings are not constrained by the Evidence Code. (Labor Code § 5708).</p> <p>Commenter opines that the statute granting DWC's authority to create a fee schedule does not limit applicability of the schedule only to requests made pursuant to a subpoena after an action has been filed. (Labor Code § 5307.9) Rather, the statute directs the DWC to create a schedule for reimbursement based on services performed, not based on how documents are requested.</p> <p>Commenter states that as a matter of practice in the system, requests for copy services are made without a subpoena including record requests performed before an action is filed and records released by authorization. Commenter opines that by limiting the schedule's applicability only to requests made pursuant to a subpoena, the modified regulations expose all other copy services to the unregulated pricing and services and to the lien process SB 863 sought to limit.</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9981(b)	<p>Commenter notes that this modified subsection now enumerates the specific information that must be provided on each copy service bill. Commenter supports this amendment and he opines that it will increase consistency in billing practices within copy service industry.</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>October 1, 2014 Written Comment</p>		
9982(g)	<p>Commenter recommends the addition of the following new subsection:</p> <p>(g) If a subpoena has been issued by the Board and, upon cancellation pursuant to Section 9983(a)(2), it is determined that there was no good cause for the issuance of the subpoena, the requesting party may be subject to sanctions pursuant to Section 5813 of the Labor Code including, but not limited to, reimbursement to the claims administrator of the cancellation fee.</p> <p>Commenter opines that the cancellation fee contained in the proposed fee schedule represents a potential area for gamesmanship and abuse. This fee is triggered, in part, if a copy service order is cancelled after a subpoena has been issued. Commenter states that it is not</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>October 1, 2014 Written Comment</p>	Disagree. Good cause issues should be determined by the WCAB. This fee schedule does not change the existing discovery scheme.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>uncommon for a flurry of template subpoenas to be issued as a matter of practice without good cause. In these situations many of the orders are cancelled but only after the subpoenas have been issued. Commenter notes that under the proposed fee schedule, employers would be responsible for each cancellation fee.</p> <p>Commenter recommends the suggested language in order to discourage this abuse. Commenter states that if the requesting party lacks cause to issue a subpoena then they should bear the cancellation fee cost along with any other appropriate penalties.</p>		<p>Release of information fees are regulated by the Evidence Code and disputes can be handled by the WCAB or in superior court</p>	<p>No action.</p>
<p>9983(a)(4)</p>	<p>Commenter recommends the following revised language:</p> <p>Release of information services of witness costs for the retrieval and return of physical records held offsite by a third party are controlled by Evidence Code section 1563 and are included in the flat fee. Disputes over witness costs may be resolved by filing a petition with the Workers' Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132.</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>October 1, 2014 Written Comment</p>	<p>Disagree. Release of information fees are regulated by the Evidence Code and disputes can be handled by the WCAB or in superior court</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that as the release of information services are included within the fee schedule under the flat fee, all disputes over these services are resolved through the Independent Bill Review process. Commenter states that the modified language should be struck.</p>			
9983(a)(5)(B)	<p>Commenter recommends that following revised language:</p> <p>\$5.00 for each additional set of records in electronic form ordered within 30 days of the subpoena or authorization, payable by the party ordering the additional set, or \$30 if ordered after 30 days and the copy is retained by the registered photocopier. If the injured worker requests an additional set of records in electronic form ordered within 30 days of the subpoena, the claims administrator is liable for one additional set of records in electronic form for no more than \$5.00 for the additional set of records if ordered within 30 days and for no more than \$30 if ordered after 30 days and the copy is retained by the registered photocopier. All other additional sets of records are payable</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>October 1, 2014 Written Comment</p>	Disagree. There are costs to produce additional electronic sets.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>by the party ordering the additional set.</p> <p>Commenter states that reproduction of electronic records already acquired by a copy service provider will have little or no cost and should be included within the flat fee. Commenter recommends striking the revisions to this section.</p>			
General Comment	<p>Commenter states that the statutory language of section 5307.9 and the analysis by the Legislative Counsel contained in the preamble to SB 863 make it clear that the administrative director must adopt a comprehensive schedule of “reasonable maximum fees” payable for copy and related services.</p> <p>Section 5307.9 is very specific and inclusive: the Administrative Director shall adopt a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services.</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) October 1, 2014 Written Comments</p>	<p>Authorizations have been reinstated into the fee schedule.</p>	<p>Authorizations have been reinstated into the fee schedule.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>The schedule shall be controlling regardless of whether payments of copy service costs are claimed under Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider. [emphasis added]</p> <p>The schedule must not allow payment for any services provided within 30 days of a request by an injured worker or his attorney to an employer or claims administrator for copies of relevant records in their possession. The fee schedule must, therefore, establish procedures which will avoid duplicate record requests. The employee may subpoena the records only if they are not provided by the employer.</p> <p>Labor Code section 4603.2(b)(1) requires copy services to submit requests for payment with an itemization of services provided and the charge for each service. The copy service must also establish that the services were actually performed.</p> <p>Commenter states that the proposed</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>regulations fail to meet the dictates of the statutes in several respects. The regulatory process must be applied whether the medical records or related documents are requested by subpoena or authorization.</p>			
9980(a) and (d)	<p>Commenter recommends the following revised language:</p> <p>(a) “Copy and related services” means all services and expenses that are related to the retrieval and copying of documents and are responsive to a duly issued subpoena or authorization to release documents for a workers’ compensation claim.</p> <p>(d) “Set of records means a reproduction, either in paper form or in electronic form, of all records copied from one custodian of records under one subpoena or authorization.</p> <p>Commenter recommends “or authorization” be reinstated in the definition of “Copy and related services” so that there is a single fee schedule addressing copy services. Commenter states that whether a copy service provider is providing services based on a subpoena or an</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) October 1, 2014 Written Comments</p>	<p>“Authorization” has been defined in 9980.</p>	<p>9980 includes a definition for Authorization.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>authorization should not dictate different payment requirements.</p> <p>Commenter notes that the rationale for deleting “or Authorization”, provided in the Notice of Modification to Text of Proposed Regulations, stated that authorizations are not used by non-contracted services. Commenter states that this is contradicted by information presented in public comments by non-contracting (i.e. applicant) copy service providers.</p> <p>Excerpts from public comments submitted by copy service companies:</p> <p>“...we then serve an authorization and/or a subpoena to all parties of our intent to obtain the records...”</p> <p>“On a daily basis, our staff handles authorizations and subpoenas delivered to medical facilities by Legal Copy Services...for both Applicant Copy Services and Defense Copy Services.”</p> <p>“Who do I charge the extra fee’s to for not complying with an authorization ON TIME from the facilities regarding</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>an authorization?”</p> <p>Commenter opines that in order to mitigate disputes concerning payment of copy services the Copy Service Fee Schedule should apply to record reproduction without regard to whether the request is submitted via a subpoena or an Authorization.</p>			
9981(a) and (b)(3)	<p>Commenter recommends the following revised language:</p> <p>(a) This article applies to services requested provided on and after the effective date of this article regardless of date of injury.</p> <p>(3) Bills for records obtained by authorization must include a declaration of completion of records pursuant to section 9984(a).</p> <p>Commenter recommends replacing “requested” with “provided” in order to enable correct application of the fee schedule for payment calculation. There is no requirement for the copy service provider to include the service request date on their bill, so the payor</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) October 1, 2014 Written Comments</p>	<p>Agree.</p>	<p><u>9981(a) provides:</u></p> <p><u>This article applies to services incurred requested provided on and after the effective date of this article regardless of date of injury.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>would not know whether or not the fee schedule would apply to a particular bill.</p> <p>The Notice of Modifications to Text of Proposed Regulations states “the word ‘incurred’ was replaced with ‘provided,’” so “requested” may be an error.</p> <p>Commenter states that if the Administrative Director is in agreement with our recommendation to reinstate services provided in response to an Authorization then the language requiring a declaration of completion of records must also be reinstated.</p>			
9982	<p>Commenter recommends the following revised language and lettering:</p> <p>(a) This fee schedule covers copy and related services for records relevant to an injured worker’s claim, except services under a contract between the claims administrator and the copy service provider.</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) October 1, 2014 Written Comments</p>	<p>Agree in part. 9982 has been clarified. Former subsection (b) and (c) have been combined and subsection (e) now provides that “the claims administrator is not liable for payment” rather than “there will be no additional payment for:”</p>	<p>9982 provides:</p> <p>(b) This fee schedule applies to obtaining records which were not timely served pursuant to section 10608.</p> <p>(e) If the claims administrator fails to provide <u>serve</u> records in the employer’s or insurer’s possession requested by an injured worker or his or her</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>(e1)</u> If the claims administrator fails to serve records in the employer’s or insurer’s possession requested by an injured worker or his or her representative within 35 calendar days or fails to serve a copy of any subsequently received medical report or medical-legal report within 15 calendar days of receipt pursuant to section 10608, this fee schedule applies to obtaining those records.</p> <p>(c) If the claims administrator fails to provide written notice, pursuant to Labor Code section 4055.2, to the injured worker of records which they are seeking by subpoena, this fee schedule applies to obtaining those records.</p> <p><u>(db) There will be no payment for copy and related services that are:</u></p> <ul style="list-style-type: none"> • Provided within 30 			<p>representative within 35 calendar days the time frames set forth in Labor Code section 5307.9 or fails to serve a copy of any subsequently- received medical report or medical-legal report within 15 calendar days of receipt pursuant to the timeframes set forth in section 10608, this fee schedule applies to obtaining those records.</p> <p>(f e) There will be no additional payment for <u>The claims administrator is not liable for payment of:</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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 administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim.</p> <ul style="list-style-type: none"> • Provided by any person or entity which is not a registered professional photocopier. <p><u>(ec) The claims administrator is not liable for payment of:</u></p> <p>(1) Records previously obtained by subpoena by the same party and served from the same source, unless the subpoena <u>or authorization</u> is</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>accompanied by a declaration from the party requesting the records setting forth good cause to seek duplicate records...</p> <p>Commenter states that the language under (a) defines allowable services and subsections (b) and (c) serve to refine the information in (a), therefore it would be more accurate to identify the subsections as such. The services for which no payment is warranted would then be identified as section (b) with subsections as currently identified.</p> <p>Commenter recommends deleting subsection (c) since the fee schedule or a contract would apply to record reproduction regardless of whether notification of the request for records, either by subpoena or authorization, was provided to the injured worker.</p> <p>Based on the renumbering of sections and subsections, section (e) would become section (c). Reinstating services provided on the basis of an authorization requires rewording to</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	address duplicate records associated with either a subpoena or authorization.			
9983(a)	<p>Commenter recommends the following revised language:</p> <p>(a)The reasonable maximum fees, not including sales tax, payable for copy and related services are as follows:</p> <p>(1) A \$180 flat fee for a set of records, from a single custodian of records, which includes mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, fees for release of information services, service of the subpoena, shipping and handling, and subpoena preparation.</p> <p>(2) \$75 in the event of cancellation after a subpoena or authorization has been issued but before records are produced, or for a certificate of no records.</p> <p>(3) Actual costs incurred fees paid as a result of a Public Records Act</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) October 1, 2014 Written Comments</p>	<p>Disagree. Sales tax is not included.</p> <p>Agree. Authorizations have been reinstated back into the fee schedule.</p>	<p>No action.</p> <p><u>9983(b) provides:</u> <u>(2b) \$75 in the event of cancellation after a subpoena or authorization or request for records by authorization has been issued but before records are produced, or for a certificate of no records.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>request for records from the Workers' Compensation Insurance Rating Bureau, and the Employment Development Department.</p> <p>(4) Release of information services of witness costs for the retrieval and return of physical records held offsite by a third party are controlled by Evidence Code section 1563 and are included in the flat fee. Disputes over witness costs may be resolved by filing a petition with the Workers' Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132.</p> <p>Commenter recommends striking "not including sales tax" since taxes paid in the course of doing business are an overhead expense and should not be separately paid.</p> <p>Commenter recommends reinstating "or authorization" based on the rationale presented earlier.</p> <p>Commenter recommends deleting</p>		<p>Disagree. Release of information fees are regulated by the Evidence Code and disputes can be handled by the WCAB or in superior court</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>“costs incurred” and replacing with “fees paid”. Commenter opines that the phrase “as a result of a Public Records Act request” should be deleted since the Workers’ Compensation Insurance Rating Bureau is not a public agency and the Public Records Act does not apply. Records may be requested from the Employment Development Department without the necessity of filing a Public Records Act request. In both instances, lower costs are achieved by the requestor availing themselves of records without the necessity of incurring higher costs associated with subpoena requests.</p> <p>Commenter recommends striking the language related to dispute resolution. CCR section 9792.5.7 mandates the use of the Independent Bill Review process for dispute resolution for services provided pursuant to Labor Code sections 4603.2, 4603.4 or 4622. Commenter opines that stating that disputes over witness costs that are included in the flat fee defined in the Copy Service Fee Schedule are to be handled by either the Workers’ Compensation Appeals Board or the</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	superior court is in conflict with section 9792.5.7.			
9981(b)(1)	<p>Commenter opines that the bill for records is convoluted. Commenter provides the following examples:</p> <p>(1) WC020 - A Flat fee is PROBLEMATIC and is inconsistent with the legislative intent of establishing “Reasonable Maximums” and “Specificity” as it pertains to billing items and chargeable sales tax.</p> <p>(2) WC021 – Charges for Cancelled Services is not equivalent to a Certificate of No Record (CNR) and should be defined separately as the obtaining of a CNR usually requires an additional trip, incurring increased labor, mileage and overhead costs.</p> <p>(3) WC022 - A “Reasonable Maximum” must be established per page above par with the California Evidence Code 1563 which is defined for non-party witnesses. A “Reasonable Maximum” should fall on the upper end as a MAXIMUM of .25 cents to .45 cents per page as currently supported and allowed by Third Party Administrator’s (TPA) Explanation of Reviews (EOR).</p> <p>(4) WC023 - Additional paper set of \$50</p>	Daniel Lopez President Lopez & Associates October 1, 2014 Written Comment	<p>Disagree. A flat fee is a reasonable maximum fee.</p> <p>Agree in part. Separate codes are in place for CNRs and cancelled services.</p> <p>Disagree. Reasonable maximums do not have be higher than per page fees provided in the Evidence Code.</p> <p>Agree in part. The code for</p>	<p>No action.</p> <p><u>9981(b)(1) provides:</u></p> <p><u>Bills for records may include billing codes. WC 020 is for Flat Fee of \$180, WC 021 is for Cancelled Service of \$75, WC 022 is for and Certificate of No Record of \$75, WC 0223 is for Per Page Fee of .10 per page, WC 023 is for Additional Paper Set of \$50, WC 024 is for records from the Employment Development Department (EDD) of \$20, WC 025 is for records from the Workers’ Compensation</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>dollars reflect a maximum paper set of 500 pages without shipping or handling charges. <i>(note: This charge exceeds current market rates for and average set of 100 pages supporting contracted services over and above a fair market value).</i></p> <p>(5) WC024 – Additional Electronic set that is transmitted electronically through a secure FTP server (<i>FTP Servers require maintenance and administrative costs</i>), without necessity of the creation of media like a CD-Rom is inadequate and doesn't reflect a "Reasonable Maximum"; additionally, shipping & handling should be allowed.</p> <p>(6) WC025 – X-Ray Duplication of \$10 as a "Reasonable Maximum" over and above actual charges by Non-Party Medical Providers. Evidence submitted to the DIR reflects actual direct charges from non-party medical providers ranging from \$7.50 to \$35.00 for the production of one (1) single film.</p> <p>(7) WC026 – Duplication of Scans on digital media should reflect a "Reasonable Maximum" over and above non-party medical providers. Evidence submitted to the DIR reflects actual direct charges from non-party medical providers ranging from \$10.00 to \$100.00 dollars per</p>		<p>additional paper sets of \$50 has been deleted.</p> <p>Disagree. Additional electronic sets can be produced at minimal expense.</p> <p>Disagree. DWC conducted a survey which found that fees for X-rays and scans were more in line with the higher amount provided in the Official Medical Fee Schedule of \$10.26.</p>	<p><u><i>Insurance Rating Bureau of \$30, WC 026 is for an Additional Electronic Set of \$5, WC 02567 is for an Additional Electronic Set of \$30, WC 028 is for Duplication of X-Ray of \$10, and WC 026 is for Duplication of Scan of \$15 or scan of \$10.26, WC 0289 is for CD of X-rays and scans of \$3.</i></u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>CD/Study.</p> <p>Commenter opines that this section fails to adequately support “Reasonable Maximums” as specified by the legislation in SB863.</p>			
9982(a)	<p>Commenter states that all records are relevant at time of request until further review and analysis is done by a PTP, AME, QME or other qualified physician and should be eliminated as it potentially eliminates the freedom of independent discovery and equal access under the Constitution, Article 14, Section 4.</p>	<p>Daniel Lopez President Lopez & Associates October 1, 2014 Written Comment</p>	<p>Disagree. The fee schedule does not and will not change the existing discovery scheme.</p>	<p>No action.</p>
9982(d)(1)	<p>Commenter states that this should include as defined under Regulation 10101.1.</p>	<p>Daniel Lopez President Lopez & Associates October 1, 2014 Written Comment</p>	<p>Disagree. Those items are required to be in the claim file and this section refers to the claims administrator’s records.</p>	<p>No action.</p>
9982(e)(2)	<p>Commenter states that the indexing of documents/records provides “Specificity” and is both a time and cost saving element for both applicant and defendant that supports the legislative intent of reducing overall costs to the employer.</p>	<p>Daniel Lopez President Lopez & Associates October 1, 2014 Written Comment</p>	<p>Disagree. Attorneys have commented that when they review records, they don’t use indices or request these services.</p>	<p>No action.</p>
9982(e)(3)	<p>Commenter states that WCIRB public requests records require proper name and address verification to obtain proper information in a timely</p>	<p>Daniel Lopez President Lopez & Associates October 1, 2014</p>	<p>Disagree. The WCIRB has been inundated with requests for records which are often not needed because claims have</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	manner. If a CT claim exists over several years, the fees can and do exceed charges obtained via a subpoena. Commenter opines that a bit of “common sense” is needed, not regulation.	Written Comment	been accepted and carrier information is not needed. The WCIRB has asked for regulation of copy services.	
9990	Commenter makes note that the DWC Administration is regulating their own fees in the form of an increase whereas the foregoing proposed copy and related fee schedule is decreased. Commenter opines that the DWC administration through this code realizes the high cost of capturing and maintaining digital files.	Daniel Lopez President Lopez & Associates October 1, 2014 Written Comment	Disagree. The fee schedule is created within this rulemaking package and copy service fees have not been decreased.	No action.
General Comment	Commenter notes that the term authorizations were removed from these proposed regulations. Commenter would like to know why. He opines that this does not make sense. Commenter states that it only opens the door for copy services to charge more in those instances. Commenter states that it is very easy for an applicant copy service to obtain a signed release and say that the medical facility will not release without a signed authorization. Then they go back to billing \$300+ for a record. Commenter recommends that authorizations be included and viewed	Jason Chapanar General Manager CD Photocopy Service, Inc. October 1, 2014 Written Comment	Agree. Authorizations have been reinstated. The words “or Authorization” were previously deleted from this section and the entire copy service fee schedule because they are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and reportedly were not used by non-contracted copy services. Authorizations are commonly used in workers’ compensation cases and have been reinstated into the fee	Authorizations have been reinstated into the fee schedule.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the same as a Subpoena with regard to copy service charges.		schedule to avoid a loophole which would have allowed for billing outside of the schedule.	
9983(a)	<p>Commenter opines that it is insane to think a Copy Service should pay outrageous fees from companies like [REDACTED] and [REDACTED] to obtain records and NOT get reimbursed for them. Common sense here is completely lacking.</p> <p>Commenter states that copy services have no control over what a location or their representative charges.</p> <p>Commenter states that he has personally fought many locations over their charges and cited Evidence Code 1563. The facilities do not care.</p> <p>Commenter opines that they don't care because no one on a higher level like the WC Judges holds them in contempt. Commenter states that these organizations do not suffer any consequences and can charge what they want all while the Division tries to now pin the amount onto a copy service. Commenter states that no Copy Service will pay \$300 for a record only to get paid \$180.</p> <p>Commenter would like to know how</p>	<p>Jason Chapanar General Manager CD Photocopy Service, Inc. October 1, 2014 Written Comment</p>	<p>Release of information fees are controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the DWC, in the same regulations, require a copy service to only charge .10 cents a page AFTER 500 pages but yet the Division plans to charge .10 cents a page for their paper copies in their entirety. So if a copy service subpoenas records from the division, and the records are 499 pages, not only will the copy service have to pay the division \$49.90 for the records, but since they are on the hook for ROI fees, then the copy service only gets paid \$130 instead of the \$180. Commenter states that this doesn't make sense.</p> <p>Commenter is unaware of what online service the DWC performed to get the cost of films but the DWC is mistaken. Commenter states that there are few facilities that charge \$10 a film.....most are between \$20 - \$30.</p>			
General Comment	<p>Commenter would like to make the Division aware of doctors overcharging on ROI (extra location) fees. Commenter has experienced a lot of facilities doing their own copying and billing wrong hours for records. Commenter opines that this will become a big problem if it is not addressed now.</p>	<p>Mitch Alvarez October 1, 2014 Written Comment</p>	<p>Release of information fees are controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>Commenter recommends instituting some sort of a penalty on any facility over billing, and billing incorrectly as one way to stop this, keep it regulated, and generate revenue for the state.</p> <p>Commenter has copied records for about 5 years now. Commenter recommends that another way to keep these doctors and facilities honest is to have a statewide labor/fee breakdown for all facilities copying their own records. They have to abide by this fee breakdown which can be very easy to follow. If it's abused, you act accordingly. Commenter states that there is great information on this breakdown from the copy service industry on both sides.</p> <p>Commenter recommends having a "go to" person or liaison in your organization. Commenter states that this could be necessary to make sure the Division is aware of who is doing it and how often. Commenter states having a dedicated email or 800# or both would be good for people to report who the players are in these situations.</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that having facilities overcharge on already high fees could put his company of business. Commenter state that his is a 4th generation Californian and a 5 year old business owner. Commenter would hate to tell his staff of 10 that he is closing his doors. Commenter states that keeping the ROI fees in the copy service bill will put me in a not so favorable position. Commenter requests that the Division keep this out.</p> <p>Commenter states that what will happen is that small copy services will be eaten up by the bigger ones because cause they can afford these costs. Commenter opines that crucial discovery could be withheld because of these high costs. Commenter states that's not fair to the injured worker.</p>			
General Comment	Commenter notes that these proposed revisions to the initial draft of this fee schedule have removed the term "authorization" throughout the regulation. Instead, the Division has determined that the fee schedule applies only where there is a subpoena. In the Notice of	Mark E. Webb Vice President & General Counsel PacificComp Insurance Company September 29, 2014 Written Comment	Authorizations have been reinstated into the fee schedule.	Authorizations have been reinstated into the fee schedule.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Modification to Text of Proposed Regulations, the Division cites the following rationale for this change: "The words 'or Authorization' were deleted from this section and the entire copy service fee schedule as authorizations are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and are not used by non-contracted copy services."</p> <p>Commenter states that the reference to Evidence Code§ 1158 is misplaced. Its provisions are not applicable to workers' compensation proceedings. An "action" to which the Evidence Code formally applies, "... includes a civil action and a criminal action." (Evidence Code § 105)</p> <p>As stated in Labor Code § 5708:</p> <p>"All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board In the conduct thereof they shall not be bound by the common law or <i>statutory rules of</i></p>		<p>Release of information fees are controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p><i>evidence</i> and procedure but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony objections and rulings shall be taken down in shorthand by a competent phonographic reporter. (Emphasis added)</p> <p>This provision was recently reviewed in <u>The Regents of the University of California v. Workers' Comp. Appeals Bd.</u> (2014), Cal.App.4th as applied to the question of the applicability of Evidence Code§ 915 , regarding disclosure of privileged information in proceedings before the Appeals Board. The Court of Appeal noted that the privilege provisions of the Evidence Code apply to any "Proceeding", which: " ... means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given." As such,</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Sec. 915 applied.</p> <p>This is a far wider applicability than to an "action" in Evidence Code § 1158.</p> <p>Furthermore, Labor Code § 5307.9 states:</p> <p>"On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and shall not allow for 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 administrator's, or workers' compensation insurer's possession that</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>are relevant to the employee's claim. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 581 l, or any other authority except a contract between the employer and the copy service provider.”</p> <p>Commenter states that there is nothing in the statute that limits the applicability of the fee schedule to document reproduction where the documents are disclosed pursuant to a subpoena. Regardless of what the actual practice might be today, the authorizing statute for this schedule requires the setting of fees payable for the <i>service</i> and not payable based on the method of production of the documents. Given that one of the major benefits of Senate Bill 863 (De Leon) was the significant reduction in the number of liens in the system, it is also inconsistent to exempt a service from a fee schedule when to do so means that it would still be eligible for the filing and adjudication of liens. [See: 8 CCR§ 9792.5.4(a)(1)] Also, notwithstanding the statement made in the Notice, authorizations <i>are</i> used by</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>copy service firms. An example is attached. [Available by Request.]</p> <p>Commenter recommends that the Division return the authorization language to the regulations.</p>			
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