

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	<p>Commenter requests that the Division of Workers Compensation not only put a cost limit on obtaining records but also establish protocols that the Applicant Attorney must follow when requesting records.</p> <p>Commenter has experienced much abuse in obtaining records where costs of records have exceeded her legal or medical cost on the file. Commenter finds this most disturbing and wonders why no one has brought this up for discussion regarding the schedule for copy service.</p> <p>Commenter provides the following examples:</p> <p>Records that were obtained by AA and there were no records? This occurs a lot so why did the AA request them? Are they going though hospital and clinics just picking places out of a hat? Where did the information come from that the attorney requested the records? They should call first to see if the facilities even had records?</p> <p>A/A use more than one company to obtain records causing duplication of records and cost to the file. Records subpoena prior to the</p>	<p>Fia Kyono May 18, 2014 Written Comment</p>	<p>Disagree. Protocols are already in place for attorneys to subpoena records. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules. The fee schedule provides that there will be no payment for services that are provided within 30 days of a request for records that are in the employer's possession that are relevant to the claim or that were not obtained by a registered professional photocopier, or for records previously obtained.</p>	<p>No action.</p> <p>No action.</p> <p>No action.</p>

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	<p>case being opened by claims company. Applicant attorney is subbed out and the new attorney obtains records from either the same places from the prior attorney and also requests more records using another firm.</p> <p>Commenter recommends the following solution:</p> <ol style="list-style-type: none"> 1) AA must submit list of records they wish to obtain, evidence that there are records. 2) No records should be obtained without proper notice to the carrier to assure there is no duplication in obtaining records. 3) Statement attached to the subpoena that there is no income interest in obtaining records with the company. (Own, stocks, etc.) 4) Any records obtained at the defendants' cost by the applicant attorney when permission was not established, then listing of records required must be paid by the applicants' attorney for wasted cost. 5) Confirmation that records being obtained are viable and required for 		<p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	

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	<p>the case.</p> <p>6) If there is any duplication in cost because the AA used more than one company for obtaining records the AA should be responsible for the cost of the duplication of records and not the carrier.</p> <p>Commenter requests that the Division of Workers' Compensation consider these problems in the system as well beside the fee schedule.</p> <p>7) If an AA is sub-out the old firm should forward all records to the new attorney, which will prevent cost to the carrier.</p> <p>8) If the AA wants to obtain records not previously obtained by defendant, they AA must show good caused why records are being obtained.</p> <p>9) Records for personnel should not be obtained by AA since the Carrier can obtain records without cost. A request to the carrier should be made instead so the employer will release records without cost to the file.</p>		<p>Agree. 9982(e)(1) provides that the claims administrator is not liable for payment of records previously obtained by the same party and served from the same source unless the request is accompanied by a declaration setting forth good cause to seek duplicate records.</p> <p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	<p>993(e)(1) provides: <u>The claims administrator is not liable for payment of: (1) Duplicative Records previously obtained by subpoena or authorization by the same party and served from the same source, unless the subpoena 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>
General Comment	Commenter fully supports the	Steven P. Hale, Esq.	No response necessary.	No action.

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	proposed regulations as written and opines that they have been needed for a very long time and should be implemented as soon as possible.	June 13, 2014 Written Comment		
General Comment	Commenter states that the Initial Statement of Reasons refers to Labor Code section 5814 as the remedy for copy service providers incurring higher expenses related to late payment by the claims administrator. Commenter states that the correct reference to the remedy for late payment is defined under Labor Code section 4603.2(b)(1), which provide for self-executing penalties and interest for delayed payment that were not subject to a valid objection.	Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment	The Initial Statement of Reasons refers to Labor Code section 5814 as a provision for penalties for delayed payments which may have conflicted with a reasonable alternative to the proposed regulations recommended by a study.	No action.
9980 - Request to add additional definition for "records"	<p>Commenter recognizes a number of terms used within Labor Code Section 5703.9 that he opines must be defined in order to bill, collect and adjudicate reimbursement disputes under this Section.</p> <p><u>Commenter states that the term "Records" must be defined by referencing Sections 1560 (a) (2) and 1270 through 1272 of the California Evidence Code. Commenter recommends the following language:</u></p>	<p>Daniel Lopez, President – California Workers' Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules. Commenter acknowledges that relevancy is up to the trier of fact rather than the AD.	No action.

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	<p><u>“Records that are relevant to the employee’s claim”</u> shall mean the business records (as defined in Sections 1560(a)(2) and related Sections 1270 – 1272 of the Evidence Code) of the employer, claims administrator and workers’ compensation insurance carrier that pertain to the injured worker, including, but not limited to, all employment files maintained regarding the injured worker, all claims files maintained regarding the injured worker, all employee handbooks that were made available to the injured worker during the course of employment, all business postings actually posted in the offices where the injured worker may have worked, all correspondence sent to or received from the injured worker and his or her representative, all correspondence from or to any physician in regard to the injured worker, and any and all notices sent to the injured worker from any source.</p> <p>Commenter holds that the relevance of a record “to the employee’s claim” is a matter for the trier of fact to decide.</p>			
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	<p>Relevance cannot be judged before the conclusion of the proceedings for which the record is being discovered. Commenter opines that without a practical, working definition for use in the billing and reimbursement process for obtaining “relevant records,” the Division is inviting a potential dispute of virtually every bill submitted under this Section to the effect that, “the copied files were not relevant and thus the services will not be paid.” Such disputes will not be eligible for Independent Bill Review (IBR). As a result, the work load of every WCAB district office will go up, not down.</p>			
<p>9980 - Request to add additional definition for “Bills for Copy Services”</p>	<p>As used in proposed Section 9981 of this Article, commenter opines that “Bills for Copy Services” should be well defined in a manner similar to, and for the same purpose as, medical provider bills are defined elsewhere in the Labor Code and California Code of Regulations. The following alternative was provided by the commenter to the Division in its earlier proposal to the Division. Commenter strongly urges the Division to avoid improper objections to bills that are submitted for reimbursement for otherwise</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Disagree. Bills are well defined in 9980.</p>	<p>No action.</p>

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	<p>qualifying copy and related services by adopted the following definition:</p> <p><i>“Bill for copy and related services” means an itemized invoice for copy and related services presented to the employer for reimbursement pursuant to Section 5307.9 of the Labor Code and this Article. A bill for services may be presented in any form or format on paper or electronically and shall include the injured workers’ name, claim number and/or Workers’ Compensation Appeals Board case number, the name and address of the person who ordered the copy(ies) or related service(s), a brief description of the record(s) or document(s) copied or the service that was delivered. Each bill for services shall include a statement that there was no violation of Section 139.32 of the Labor Code with respect to the services described therein.</i></p>			
9980 - Request to add additional definition for “Services Provided” and “Service Incurred”	Commenter recommends that in order to clarify the relationship between “services provided” and “services incurred” (as used in the Division’s proposed subsection 9981 (a)), the following two definitions be added to	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)	Disagree. Defining “services provided” as having the same meaning as “services incurred” is unnecessary.	No action.

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	<p>Section 9980, Definitions:</p> <p><i>“Services provided” shall have the same meaning as “services incurred” as used in Sections 4620 and 4621 of the Labor Code.¹</i></p> <p><i>The “date services are incurred” shall be the date that all documents and information required by or incidental to the services ordered are served upon the claims administrator together with the bill for services pursuant to this Article.</i></p>	<p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Defining “date services are incurred” is unnecessary.</p>	<p>No action.</p>
<p>General Comment</p>	<p>Commenter states that the copy service proposed regulations place a burden on the applicant and applicant's counsel. In order to provide the best representation an attorney must be able to obtain records in an expeditious manner in order to provide due process rights.</p> <p>Commenter opines that the applicant's counsel cannot be at the mercy of the adjuster to receive records at its whim.</p>	<p>Thomas J. Homen, Esq. June 28, 2014 Written Comment</p>	<p>Disagree. The copy service fee schedule does not create any discovery burdens on injured workers. Discovery processes have not been changed. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	<p>No action.</p>

¹ This definition makes the Article consistent with Sections 4620 and 4621 of the Labor Code and consistent with the WCAB En Banc decision in *Martinez v Terrazas*. **NOTE:** CWCSA does not propose that this footnote be amended into the regulations. It is included only to substantiate the inclusion of our amended definition for “Services Provided.”

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	<p>Glenfed Dev. Corp v Superior Court 53 CA4th 1113, 62 Cr2d 90 (1997) specifically provides that the purpose of discovery is to avoid surprise and fabrication. Commenter states that this proposed regulation places the applicant at a disadvantage.</p> <p>Commenter notes that the insurance company has the resources to obtain records and proceed with discovery. The applicant does not have the resources as the applicant's attorney does not receive payment till after the case is settled or adjudicated. Those fees are at 15% of the applicant's recovery. The defense is paid by the insurance company who has the money to litigate.</p> <p>Commenter opposes this proposed regulations because they are one sided and deny the applicant his due process rights.</p>			
General Comment	<p>Commenter states that the Division has found a reasonable balance for the values prescribed – probably finding values above those communicated as reasonable by the payers and values below those communicated as reasonable by the providers.</p> <p>Commenter opines that by 'bundling'</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment July 1, 2014 Oral Comment</p>	No response necessary.	No action.

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	<p>the majority of activities therein, the sources of/for dispute and gamesmanship are minimized. Commenter states that one area of (likely) dispute is the bundling of the release of information fees. Commenter opines that the Division is wise in bundling such fees. Commenter states that this will make the providers will be deeply (and economically) motivated to best manage, limit, and control such fees (within the bounds of their statutory and regulatory control).</p> <p>Commenter strongly supports the Divisions determination of a single, (mostly) bundled, fixed value of \$180. Commenter states that in the experience of his company, the overall average of such fees (as valued within the \$180 bundled value) currently is (approximately) \$6; and that any legislative, regulatory, or statutory movement impactful to the current limits, controls, and provisions available to his company to best control such fees (for the good of the overall ecosystem) should require the Division to revisit and appropriately adjust the bundled fixed fee value.</p>			
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	<p>Commenter states that any adjustments thereof, whether presently or in the future course of Division activity, should be fully informed, market specific, and appropriately responsive to the overall averages active thereon.</p>			
General Comment	<p>Commenter opines that the task assigned to the Department of Industrial Relations and the Division of Workers' Compensation to establish a <i>schedule of reasonable maximum fees</i> as mandated by the legislature in SB863 has been a failure to date.</p> <p>Commenter states that the proposed DEFINITIONS simply fail in clarity and substance. Commenter notes that the copy and related services fee schedule mandate, specifically state "SHALL" specify services allowed and "REQUIRE" specificity in billing. Commenter opines that a "Flat-Fee" fails the required specificity in billing for services provided. The fee schedule must identify and outline billable services, and establish a "maximum" billable rate for each stated service.</p> <p>Commenter states that the</p>	Blind Justice June 30, 2014 Written Comment	<p>Disagree. Specificity in billing does not preclude use of a flat fee. The fee schedule covers billable services and establishes maximum rates for service.</p> <p>Disagree. The fee schedule</p>	<p>No action.</p> <p>No action.</p>

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	<p>PURPOSE of the proposed regulations is to "REDUCE" lien filings reducing the burden and costs on the Workers' Compensation Appeals Board (WCAB). The proposed flat-fee will result in prompt and accurate payments. Commenter states that this purpose is SIMPLY NOT HAPPENING as claim examiners and defense attorney continue to burden WCAB offices by forcing the issue of a lien being filed upon the WCAB prior to any "Good Faith Negotiations" that can take place. This only adds costs, friction, delay. Commenter states that the proposed fee schedule must include reimbursement language if a settlement is reached and filing fees paid without the requirement of going to TRIAL.</p> <p>Commenter opines that the proposed fee schedule places additional burdens on injured workers by forcing non-contracted registered copy services to absorb fees from unregulated third-party companies on their behalf in order to secure discoverable evidence and fails to address those employers who simply fail to provide workers'</p>		<p>will reduce litigation over the reasonable value of copy services; it is not yet finalized.</p> <p>Disagree. The fee schedule does not change the discovery process and does not place additional burdens on injured workers. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery</p>	<p>No action.</p>

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	<p>compensation insurance coverage placing the burden on the Uninsured Employers Benefits Trust Fund (UEBTF).</p> <p>The fee schedule places responsibility on the "ordering party" for any additional set of records which would require an injured worker to be paying for discovery costs eliminating a level playing field by the workers' compensation system.</p> <p>Commenter opines that the flat-fee fee schedule as proposed by the Berkeley Research Group (BRG) fails to conform to the legislative requirements as required for copy and related services. Commenter opines that the flat-fee is inequitable for employers and small businesses who maintain a low number of claims and is also inequitable for non-contracted registered professional photocopy services who will be forced to absorb unregulated third-party fees and fees currently being charged by those who have no right as a party to a case as defined under California Evidence Code (EC) 1563(b):</p>		<p>rules.</p> <p>Agree. The fee schedule has been changed so that injured workers do not have to pay for one additional set of records in electronic form.</p> <p>Disagree. The fee schedule applies across the board and does not provide additional fees for small businesses. Release of information fees are regulated by the Evidence Code and disputes can be handled by the WCAB or in superior court.</p>	<p>9983(f)(3) provides: (C3) \$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 by the party</p>

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	<p>(b) All reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.</p> <p>Commenter states that the BRG report clearly dismissed substantial Kunz evidence in their efforts to provide guidelines to the Commission on Health and Safety and Workers' Compensation (CHSWC).</p> <p>Commenter states this it also failed to establish that the STATES evidence for the production of records averaged \$ 0.99 cents per page which did not include the cost in generating a legal and binding subpoena duces tecum, the cost in the service of process, the cost of mileage or travel one or multiple times to secure service and the records, direct cost of fees paid in compliance with EC 1563 or any third-party fees being charged, and the future value of the aforementioned cost as payment is continually delayed, denied and litigated against</p>		<p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules. 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>The comment addresses the BRG report rather than the proposed regulations.</p>	<p><u>ordering the additional set.</u></p> <p>No action.</p>

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	<p>non-contracted copy services.</p> <p>Commenter notes that the proposed fee schedule requires an affidavit or declaration signed under penalty of perjury and an itemization in detail of all the records produced with an explanation of any records withheld. An Index of records clearly identifies all documents produced with dates of services, and description of said document with a clear page number reference. Commenter states that this service is a requirement under Section 9984 by authorization and should be a requirement under subpoena eliminating any dispute of duplicity and clearly identifying what documents have been produced.</p> <p>Commenter opines that medical records are critical in providing substantial evidence to an injured worker's case establishing a history under apportionment issues as well as identifying a current state of health. Commenter states that the administration must not eliminate an injured worker's ability, whether represented or not, to obtain independent discovery through a</p>		<p>9984 has been deleted.</p>	<p>No action.</p> <p>9984 has been deleted.</p>

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	non-contracted registered photocopy service or must not put limits or restrictions through an inequitable fee schedule.		The fee schedule does not make any changes to the existing discovery process.	
Economic Impact	Commenter is in agreement with the conclusion of the acting director that it is unlikely the proposal will create jobs within the state of California; however, he disagrees with the findings of the acting administrative director that it is unlikely the proposal will eliminate any jobs within the state of California. Commenter opines that although some of the benefits of the proposal will greatly help the Workers' compensations system, it is his belief that it will be at the cost of many small businesses shutting down and a significant loss of jobs of the employees in the copy service industry.	Matthew Vatandoust Scandoc Imaging, Inc. June 30, 2014 Written Comment	Disagree. The fee schedule will reduce litigation over the reasonableness of copy service fees. Copy service providers should reap faster payments from the fee schedule and incur less litigation costs.	No action.
General Comment	<p>Commenter opines that the proposed copy service regulations are an attempt to circumvent an injured worker's rights to independent discovery and should not be adopted as proposed.</p> <p>Commenter states that if costs savings is really the issue, then it would be</p>	Kimberley J. Pryor, Esq. June 30, 2014 Written Comment	The copy service fee schedule does not change the existing discovery process or curtail any discovery rights.	No action.

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	<p>reasonable to create a fee schedule that curtails abuse, not one that curtails an injured worker's rights to obtain his or her own evidence. Commenter opines that to allow any one party to control the chain of evidence is begging for evidence fabrication.</p> <p>Commenter opines that if these proposed regulations are adopted, injured workers would be forced to rely solely on insurance carrier's hired copy service. Commenter likens this to the fox guarding the hen house. Commenter states that no one with a monetary interest in the outcome of litigation should be allowed to control how evidence is obtained.</p> <p>Commenter states that the carrier may argue that it should not have to pay for multiple subpoenaed records from a single custodian; however, that is the nature of workers compensation. Commenter notes that in the very beginning, back in the early 1900s, insurance carriers and employers gave up certain rights and carried certain burdens so as to avoid being sued in tort. Those burdens included, and still</p>		<p>Disagree. Injured workers can still obtain records from applicant copy services.</p> <p>The copy service fee schedule does not change the existing discovery process.</p>	<p>No action.</p> <p>No action.</p>

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	<p>include, paying for the costs associated with the injured worker's prosecution of the claim. Commenter states that the injured worker, in turn, gave up the right to punitive damages so as to obtain benefits quickly, and to be able to pursue their cases without cost to them.</p> <p>Commenter states that in workers compensation, the injured worker's attorneys are not allowed to charge costs to the injured worker, as they are in other areas of law. As such, they cannot ask the injured worker pay for subpoenaed records necessary to help the injured worker prosecute the claim.</p> <p>Commenter opines that the proposed regulations, if adopted, would greatly prejudice both represented and unrepresented workers as they would not be able to obtain their own evidence for trial, unless they could pay for it, which is diametrically opposed to the reasoning behind the creation of the workers' compensation system in California in the first place.</p> <p>Commenter states that injured</p>		<p>Disagree. Pursuant to Labor Code section 5811, costs are discretionary between parties.</p> <p>The copy service fee schedule does not change the existing discovery process.</p> <p>The copy service fee schedule does not change the existing discovery process or curtail any discovery rights.</p>	<p>No action.</p> <p>No action.</p> <p>No action.</p>

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	<p>worker's attorneys have always counted on the freedom of subpoena to obtain records that were not controlled by the insurance carrier, so as to provide an unbiased record to the courts and to the medical legal evaluators.</p> <p>Commenter opines that nearly every California workers compensation attorney who represents the injured has a story to tell of how they subpoenaed records through an independent copy service and those records differed from the records from the same custodian obtained by the carrier's chosen hired gun.</p> <p>Commenter states the "independent discovery" right under California law should continue to be provided to the injured workers in California.</p> <p>Commenter opines that the proposed regulations should not be adopted.</p>			
General Comment	<p>Commenter opines that there are far too many issues which need to be addressed which she feels that DWC still needs better understanding. Commenter states that trying to push through something which obviously</p>	Edna July 1, 2014 Written Comment	Disagree. CHSWC commissioned a study with BRG and the Administrative Director has met with numerous stakeholder groups on these issues.	No action.

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	<p>needs significantly more work will only hurt the injured works' rights to obtain records in order to get proper treatment.</p> <p>Commenter opines that these proposed regulations will also put thousands of employees out of work and companies will be forced to cut the salaries of employees that they may be able to retain to minimum wage just to be able to survive.</p> <p>Commenter states that the following are a few of the numerous issues which should be considered by the Division:</p> <ol style="list-style-type: none"> 1. DWC can charge \$1.00 a page with no minimum flat fee but Registered copy services are required to do it at almost cost. DWC only has to print where we have 20 other steps we must follow just to copy. 2. It is not the responsibility of copy services to be held responsible and forced to police ROI fees. Copy services have no control over it. This is where the State needs to be 		<p>The flat fee is not almost at cost; one copy service provider (Med-Legal) commented that the overall average of release of information fees average is \$6.</p> <p>Release of information fees are</p>	<p>9983(a)(5) has been amended to include, "Disputes over witness costs may be resolved by filing a petition with the Workers'</p>

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	<p>involved to regulate.</p> <p>3. No guarantee's are put into place to insure copy services will get payments timely.</p> <p>4. Nothing is put in place for cost of living increases.</p> <p>5. The proposed Regs should apply to both Applicant and Defense copy services. It is currently once sided. If defense copy services are unable to do it then how can the applicant copy service be held to a high expectation and requirement.</p> <p>6. Duplicative records: Applicants have the right to their own discovery. The whole reasoning behind it is because there is no guarantee that the applicant will receive all records if they are dependent on what is provided from defense.</p> <p>7. The proposed cost of second set of records, X-rays, MRI's etc. are unbearable requiring copy services to do it at such low cost which could put companies at loss.</p>		<p>controlled by Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior court.</p> <p>These regulations address reasonable copy service fees pursuant to the authority granted under Labor Code section 5307.9, not penalties.</p> <p>The fee schedule can be later adjusted to account of cost of living increases.</p> <p>Disagree. Labor Code section 5307.9 allows the employer and the copy service provider to contract for costs outside the fee schedule.</p> <p>The fee schedule has not made any changes to the existing discovery scheme.</p> <p>Agree in part. DWC conducted a survey which found that fees for X-rays and</p>	<p>Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132.</p> <p>No action.</p> <p><u>9983(f)(3) X-rays and scans are to be paid at the rates contained in the Official Medical Fee Schedule \$10.26 per sheet, and \$3 per CD of X-rays and scans.</u></p>

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	<p>Commenter opines that there has been no true analysis of what copy services have to do from beginning to end. Commenter states that some copy services have welcomed their offices to BRG to getting a true understanding of what is entailed; however, the invitation was never accepted by BRG.</p>		<p>scans were more in line with the higher amount provided in the Official Medical Fee Schedule of \$10.26.</p> <p>Disagree. Several copy service providers and their representatives have extensively explained their processes.</p>	No action.
General Comment	<p>Commenter commends the DWC for meeting the goal of SB 863 by designing a fair and straightforward schedule that provides certainty to both employers and providers. This schedule:</p> <ol style="list-style-type: none"> 1. Reduces dispute points by utilizing a single flat fee model for all copy services which will result in decreased litigation costs for employers and ensure providers are paid in a timely manner; 2. Bars payment for concierge and unrelated services – ensuring that employers will only be required to pay for legitimate copy service needs; 3. Limits duplicative production and cost by providing employers 30 days 	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	No response necessary.	No action.

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	to produce requested documents.			
General Comment	<p>Commenter has four areas of concern with these regulations:</p> <p>1. Timely payments – Commenter states that there’s nothing in the proposed regulations to motivate carriers to pay copy services. Commenter opines that if the copy service does everything correctly they should be paid in full in less than 30 days and there should be penalties for non-payment. Commenter states that even the BRG Report identified this need so he requests that the Division add something to instruct carriers to pay and penalize them for non-payment!</p> <p>2. COLA – commenter opines that there needs to be an automatic Cost Of Living Adjustment tied to fee schedule rates otherwise we’ll be back again to get the increase.</p> <p>3. ROI – Commenter opines that this is a contentious issue because what organizations charge for ROI is unpredictable, will likely increase every year, is unregulated out of state</p>	<p>Rob Huston Northern California Sales Manager ARS Legal July 1, 2014 Written Comment</p>	<p>Disagree. The fee schedule addresses reasonableness of fees and will motivate carriers to make timely payments.</p> <p>Disagree. The fee schedule can be revised to make adjustments.</p> <p>Disagree. Release of information fees are regulated by the Evidence Code section 1563 and disputes may be resolved by filing a petition with the WCAB or the superior</p>	<p>No action.</p> <p>No action.</p> <p>9983(a)(5) has been amended to include, “Disputes over witness costs may be resolved by filing a</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>and it seems unregulated in California because some providers are ignoring the law and charging whatever they want, holding records hostage unless their ROI fee is paid! Commenter opines that copy services should not bear the burden of ROI charges and they certainly should not have to police vendors that don't charge correctly. Commenter states that if ROI is going to be included in the fee schedule there must be strict regulations that hold California providers to the Evidence Code and there must be an allowance to pass through charges for unregulated, out-of-state providers.</p> <p>4. Authorizations – Commenter opines that only subpoenas should be allowed. Commenter states that the California Evidence Code, section 1158 indicates authorizations are only applicable prior to filing an action but the copy service gets the discovery request after an action has be filed so it's not an appropriate method and all instances of authorizations should be removed from the fee schedule.</p>		<p>court.</p> <p>Disagree. Authorizations are used in the workers' compensation system and removing their use from the schedule could lead to litigation over the reasonableness of charges.</p>	<p>petition with the workers' Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132.</p> <p>Records obtained via authorization are covered in the fee schedule.</p>
General	Commenter would like to congratulate the Division for all the effort and work	Carl Brakensiek CWCSA	Disagree. The fee schedule will reduce litigation over the	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that was put into these proposed regulations; however, commenter opines that this is not quite ready for prime time since it requires more work.</p> <p>Commenter states that both the California Constitution and the Federal Constitution mandate due process for all parties.</p> <p>Commenter states that in this instance the applicant copy services work for the injured worker, and they participate in the process, to make sure that injured workers received due process of law. Commenter states that these applicants have the burden of proof and if they are not entitled to get all the evidence they need to prove their case, they lose. Commenter requests that the Division keep this in mind while revising these draft regulations.</p> <p>Commenter acknowledges that there is currently a very high incidence of dispute regarding bills. Commenter states that most of the bills the copy services submit for reimbursement are objected to – there is a big incidence</p>	<p>July 1, 2014 Oral Comment</p>	<p>reasonableness of copy service fees. The existing discovery process has not been changed by the fee schedule.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>of friction that exists and commenter opines that these proposed regulations will do little to reduce this friction.</p> <p>Commenter is concerned about the structure of these proposed regulations. Commenter opines that the structure should be revisited in light of the comments that have been made – to promote independent discovery.</p>			
General Comment	<p>Commenter states that absent a party’s ability afforded to them under the regulations that are supported in code and case law, to conduct independent discovery, a party’s case will not be litigated based upon a complete and accurate record, which is a violation of the due process of law.</p> <p>NOTE: Commenter submitted a chart entitled “Copy Service Discovery Process Decrypted, 7/1/2014.” Commenter also submitted a paper citing case law and various codes entitled “What discovery rights do case parties have in California Workers’ Compensation contested claim?” Both are available upon request.</p>	Dan Mora Gemini Duplication July 1, 2014 Written and Oral Comment	The fee schedule does not make any changes to the existing discovery scheme.	No action.
General Comment	Commenter states that ROI fee are	Robert Santoyo	Disagree. Release of	9983(a)(5) has been

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>running rampant. Commenter states that these fees are not regulated. Commenter states that his company subpoenaed records from an MRI Imaging center, waiting 30 days, and received an invoice in the amount of \$150 with no explanation of charges. The MRI center said if the commenter wanted the records that they would have to pay that amount and ended by stating to file a motion if you want.</p> <p>Commenter states that even entities that are not entitled to ROI fees are not requesting them. Commenter states that that he had a copy service send him the bill from a carrier. Carriers are party to the case and it is clear in 1158 that they are not entitled to fees.</p> <p>Commenter states that his company is small and unless the ROI fees are addressed, that these proposed regulations are a job killer. He opines that small copy service business will have to shut down. Commenter requests that the regulations place the cost where it belongs, on the provider. Commenter opines that business have no recourse but to wait till the end of</p>	<p>United Document Imaging July 1, 2014 Oral Comment</p>	<p>information fees are regulated by the Evidence Code. Disputes can be resolved by either filing with the WCAB or in superior court.</p>	<p>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.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the case to become a party, turn around and file a \$150 lien to try to get a \$180 bill paid, which makes no sense.</p> <p>Commenter states that ROI fees should not be included in a bundled amount.</p>			
General Comment	<p>Commenter notes that the study identified the problem with the cost of copy services as being billed without getting paid -- the copy service having to wait for payment. Commenter opines that he doesn't see this being identified or addressed by providing the copy service with a way to be paid. Commenter states that instead he is seeing more regulations – more reasons to say no.</p> <p>Commenter opines that if these regulations become final that the industry will see letters from insurance companies that list all the reasons to say no in their denials for paying these bills and that the copy services will continue to have to wait to be paid. Commenter states that these regulations need to provide a way for the insurance companies to say yes – if the copy services follow procedure,</p>	Richard Meecham, Esq. – Applicant's Attorney July 1, 2014 Oral Comment	<p>Agree in part. The fee schedule resolves issues of reasonableness of fees; it does not make any changes to the existing discovery process or provide guarantees of payment of penalty.</p> <p>Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	<p>No action.</p> <p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	then they need to get paid.			
9983(a)(4)(B) and (a)(4)(C)	<p>Commenter notes that the proposed § 9983 (a)(4)(C) sets out fees for additional sets of electronic records if ordered within 30 days and after 30 days of subpoena. Commenter notes that § 9983 (a)(4)(B) lists a fee of \$50.00 for additional sets of paper records ordered within 30 days of subpoena; however, it does not indicate the cost for additional sets of paper records ordered after 30 days of subpoena. Commenter states this section does not clarify the form of electronic records (i.e. CD or file attachment).</p> <p>Commenter recommends that the DWC elaborate on § 9983 (a)(4)(B) regarding additional sets of paper records ordered after 30 days of subpoena, to clarify the costs and the ability of the parties to obtain additional sets of paper records after 30 days.</p> <p>Commenter opines that final clarification is needed regarding what is considered electronic. If this section refers to records on an attached file, file encryption will be necessary to ensure compliance with privacy laws.</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Disagree. Additional paper copies after 30 days are problematic because copy services do not store such copies and may require another copy job.</p> <p>Disagree. This is unnecessary as the fee schedule does not change existing privacy laws.</p>	<p>No action.</p> <p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends that the DWC further define electronic records in § 9980.</p>			
9983(a)(1) – (4)	<p>Commenter recommends the following revised language:</p> <p>(a) The reasonable maximum fees payable for copy and related services are as follows:</p> <p>(1) A \$180 <u>\$103.55</u> flat fee for a set of records, from a single custodian of records, which includes, <u>but is not limited to</u>, 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, and subpoena preparation, <u>and any subsequent request for records from the same custodian of records.</u></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</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment</p>	<p>Disagree. After receiving stakeholder input following the release of the BRG study, the flat fee was changed from the BRG recommendation to the current fee of \$180. The words "but is not limited to" are redundant. The flat fee includes the list of services; if the list was meant to be exhaustive, "means" would have been used instead of "includes."</p>	<p>No action.</p> <p>The provision has not been deleted.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>no records.</p> <p>(4) In addition to the flat fee, the following fees are also reimbursable:</p> <p>(A) Ten cents (\$.10) per page for copies above 500 1,000 pages.</p> <p>(D) Copies of x-rays and scans are to be paid at the rates contained in the Official Medical Fee Schedule for the applicable dates of service. California-Specific codes WC010 and WC011 shall be used when submitting billing.</p> <p>Commenter opines that the recommendation in the October 2, 2013 Berkeley Research Group (BRG) report on copy service fees titled “Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation” should be accepted. The recommendation from that report was a flat fee of \$103.55.</p> <p>Commenter is supportive of the</p>		<p>Disagree. Cancellations after a subpoena has issued involve services which should be compensated.</p> <p>Disagree. Copies up to 500 pages constitutes the majority of copy jobs. According to the BRG study, 90% of copy jobs are less than 250 pages.</p> <p>Agree. California-specific codes are now used in the fee schedule.</p> <p>After receiving stakeholder input following the release of the BRG study, the flat fee was changed from the BRG recommendation to the current fee of \$180.</p>	<p>No change.</p> <p>9981(b)(1) uses codes WC020-WC029 which are California-specific.</p> <p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>concept of a flat fee schedule where copy services and all related fees are bundled. Commenter notes that the Department of Industrial Relations hired the Berkeley Research Group (BRG) to determine the most cost effective and fair method for paying copy costs. The BRG reported that the most efficient and equitable approach is “a single price for copy sets, regardless of the number of pages involved (up to 1,000 pages) or the difficulty in retrieval of documents.” BRG recommended, based on its review and analysis of copy service payment data and other information, that “the cost of each initial copy set should be \$103.55 and that additional copy sets should be made available at \$.10 per page if paper and for a nominal lump sum fee of \$5.00 if electronic.”</p> <p>Commenter sees no reasonable rationale for increasing this recommendation by almost 75%. In the Initial Statement of Reasons, the DWC notes that it relied on this BRG analysis and a 2011 Lien Report prepared by CHSWC, but it provides no basis for deviating from the</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>analysis that the DIR commissioned.</p> <p>Commenter supports the description of allowable services in section 9982, and recommends clarifying that the bundled services include, but are not limited to these services.</p> <p>Commenter opines that the recommended rate for a set of records should extend to all of the records possessed by, or produced by, a single custodian of records, including subsequent production of relevant records. Commenter states that there is a concern that multiple requests or subpoenas for related records from the same custodian of records may be made in order to collect multiple fees. Commenter opines that perceptions of job splitting could lead to a continuation of disputes that these regulations seek to curtail. Commenter recommends that the Division clarify that the fee structure applies to past, present, and future records from the same custodian of records. Commenter opines that the Division should establish penalties or an automatic denial of the additional fees when any copy service requests</p>		<p>Disagree. A subsequent production of relevant records would incur further cost.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>duplicative records or additional records from the same custodian.</p> <p>Commenter opines that if the \$75.00 fee represents reimbursement for subpoena preparation and service, it should be stated as such. Commenter states that since cancelled services don't typically warrant reimbursement, as is the case under the physician's Official Medical Fee Schedule, stipulating a fee associated with a cancellation sets a confusing precedent.</p> <p>Commenter states that if the Division decides to retain a cancellation fee, then the amount paid should be deducted from the flat fee in the event that the subpoena is subsequently reserved, or the authorization is resubmitted, for the associated record collection. Commenter opines that deduction of the cancellation fee from any subsequent payment of the defined flat fee for the records would limit duplication of payment and provide a disincentive for cancelling and then re-serving document requests.</p>		<p>Disagree. The fee is for cancelled services.</p>	<p>No action.</p> <p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that the proposal for a \$75.00 cancellation fee and for a certificate of no records suggests that \$75.00 represents the base rate for services associated with production of the records. This suggests that the remaining \$105.00 of the proposed \$180.00 flat rate is for 1,000 pages (at \$0.10 per page). Commenter states that without clear information in the Statement of Reasons documenting the rationale for adoption of an increased flat rate and a lower page count included in the increased flat rate it is impossible to support a rate that differs substantially from the flat rate documented in the BRG study.</p> <p>Since most requests for records are for considerably less than the proposed limit (the BRG study found that 90% of copy jobs have fewer than 250 pages) commenter opines that a flat rate in the range recommended by BRG is appropriate for up to 1,000 pages, rather than 500 pages. Commenter states that the flat fee rate should be no more than is allowed under California Evidence Code sections 1560-1567 for 1,000 pages,</p>		<p>Agree in part. 9982(3)(1) provides that the claims administrator is not liable for payment of records previously obtained by the same party and served from the same source unless there is good cause.</p> <p>Disagree. Services are provided after a subpoena has been served. There are no stipulated fees and no precedents set by the cancellation fee.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>and any per-page fee should not exceed \$.10 per page for copies in excess of 1,000 pages, and \$.20 per page for microfilm copies. According to California Evidence Code sections 1560-1567 (copies are attached for ease of reference), reasonable cost is:</p> <ul style="list-style-type: none"> ▪ not more than \$.10 per page for 8.5 x 14 inches or less ▪ \$.20 per page for microfilm copies ▪ actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena ▪ reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars (\$24) per hour per person, computed on the basis of six dollars (\$6) per quarter hour or fraction thereof ▪ actual postage charges. <p>Commenter notes that the proposed regulation correctly states that their already exists a fee associated with</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>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>copies of x-rays and scans. Commenter opines that adding the suggested verbiage will clarify the fee amount in the event that the reimbursement value in the Official Medical Fee Schedule changes over time. Reiterating use of the California-Specific codes will eliminate any disputes based on coding errors.</p>			
9982(e)(1) and (e)(2)	<p>Commenter recommends the following revised language:</p> <p>(e)(1) Provided by the claims administrator within 30 days of receipt of a written a request by from an injured worker or his or her authorized representative to an employer, or 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> <p>(e)(2) For multiple billings arising from a single retrieval of records for a single claim from one custodian of records.</p> <p>Commenter recommends revising the</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment</p>	<p>Disagree. The language comes from Labor Code section 5307.9.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	description for multiple bills that are not subject to separate payment to identify records associated with a single claim held by the custodian of records, rather than a single retrieval event. Commenter opines that this revision should provide a disincentive to provide partial records.			
9982(e)(3)	<p>Commenter recommends the following revised language:</p> <p>For records obtainable from the Workers' Compensation Insurance Rating Bureau, the Electronic Data Exchange System, and the Employment Development Department that can be obtained without a subpoena at lower cost,</p> <p>Commenter notes that the word "Rating" was omitted from the correct title for the Workers' Compensation Insurance Bureau and needs to be inserted.</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment</p>	Agree.	The typo has been corrected.
9982(e)(3)	<p>Commenter is in support of this section which provides that no payment will be made for "copy and related services that are ... [f]or records obtainable from the WCIRB ... that can be obtained without a subpoena at a lower cost." Commenter</p>	<p>Kirsten Marsh, Lead Attorney WCIRB June 11, 2014 Written Comment</p>	Agree.	9982(e)(3) includes the words "at lower cost."

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>states that her organization, the WCIRB, offers two options for obtaining coverage information at a lower cost than a subpoena. The WCIRB maintains a public website at www.caworkcompcoverage.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. This information is available to the public for free and immediate search results are provided online. In addition, the WCIRB provides coverage information for free to injured workers and at a modest cost to insurers, employers, health care providers and attorneys involved in a pending workers' compensation claim. The Coverage Research Request form is available online at www.wcirb.com.</p> <p>Commenter states that in 2013, 90% of the subpoenas that the WCIRB received were merely to determine the identity of insurer for a specific employer as of a specific date, and that information is already available to the public no cost.</p>			
9981(b)(2)	Commenter states that to comply with	Daniel Lopez,	Agree.	9981(b)(2) has been

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>this requirement is nearly impossible for any copy service. When records are produced by authorization, since authorizations apply only “prior to the filing of any action,” there is no requirement that the custodian sign any declaration, and the copy service has no authority to compel a signature. Commenter states that the copy service itself cannot sign such a declaration because it is not producing the records. It is simply copying records provided by the custodian. Commenter states that deleting of the term “authorization” will cure this defect by eliminating the need for this requirement.</p>	<p>President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>		deleted.
9982(e)(3)	<p>Commenter recommends the following revised language:</p> <p><u>For records obtainable from the Workers’ Compensation Insurance Rating Bureau, the Electronic Data Exchange System, and the Employment Development Department that can be obtained without a subpoena at lower cost.</u></p> <p>Commenter notes that this subparagraph uses the term “Electronic Exchange System</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Agree.</p> <p>Agree in part. Electronic Data Exchange System (EDEX) records are not subpoenaed.</p>	<p>The typo has been corrected.</p> <p>EDEX records have been deleted from this provision.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	(EDEX). Commenter believes that this system no longer exists. The EAMS system replaced the paper-based case management system for the WCAB a number of years ago. In doing so, EDEX was eliminated.			
9983(a)(4)(D)	<p>Commenter recommends the following revised language:</p> <p><u>Duplication of X-rays and scans are to be paid at the rates pursuant to Section 9789.19 of Article 5.3 of Chapter 4.5 of Division 1 of the California Code of Regulations.</u></p> <p>Commenter recommends adding the specific regulatory reference for clarity, to eliminate guess work and any chance of miscommunication between the copy service and claims administrator.</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Agree in part. 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>
9983(a)(4)(A)	<p>Commenter opines that the intent was that the \$0.10 per page applies ABOVE 500 pages. Commenter states that this provision is unclear and could be interpreted to mean that the 'extra' \$0.10 per page applies for EVERY page for any record set above 500 pages. Commenter requests that this be clarified as to intent and application.</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment</p>	<p>Disagree. The regulation is sufficiently clear to reflect ten cents per page above 500 pages.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9983(a)(4)(B)	<p>Commenter states that this section, unlike Section 9983(a)(4)(C), there is no pricing (or provision) for sets of paper copies ordered after 30 days. Commenter opines that this was an oversight.</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment</p>	<p>Disagree. This was not an oversight.</p>	<p>No action.</p>
9981(b)(2)	<p>Commenter notes that the proposed regulations suggest that bills for records produced by authorization include a 'declaration' of the 'completion of the records'. Commenter recommends that this reference be eliminated. Commenter states that this section (overall) is in reference to 'process for billing' whereas the suggested provision has more do with the 'process for retrieving records'. Commenter opines that the whole of the provisions regarding 'producing records under authorization' should be eliminated as it is inappropriate (in almost all cases, under Evidence Code Section 1158) to produce records under authorization.</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment</p>	<p>Agree.</p>	<p>The reference has been deleted.</p>
9983(a)(4)(A)	<p>Commenter notes that this section allows an additional \$0.10 per page for orders over 500 pages in the flat fee model originally proposed. If commenter's recommendation for 9983(a)(1) is accepted, then there will already be a variable per page</p>	<p>Rob Shatsnider Vice President, Claims CompWest Insurance June 30, 2014 Written Comment</p>	<p>Disagree. Copies up to 500 pages constitutes the majority of copy jobs. According to the BRG study, 90% of copy jobs are less than 250 pages.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>component built into the fee schedule and this section would not be required. Commenter is not opposed to a tiered schedule where pages above 500 are paid at a lower rate; however, he opines that such a system would add unnecessary complexity to the schedule and therefore, he recommends a single per page rate regardless of the number of pages copied. Commenter recommends that this section be removed if his prior recommendation for section 9983 (a)(1) is implemented</p>			
9983(a)(4)(B)	<p>Commenter notes that this section allows a flat fee of \$50 for each additional set of records in paper form if ordered within 30 days of the subpoena or authorization, payable by the party ordering the additional set. Commenter opines that this portion of the schedule is problematic because there is no variable component to account for the amount of work and resources required for a given order. Commenter states that the schedule does not account for the possibility that a request for an additional set of records may be required beyond 30 days from the original request.</p>	<p>Rob Shatsnider Vice President, Claims CompWest Insurance June 30, 2014 Written Comment</p>	<p>Disagree. The BRG study explained that the amount of work involved generally is not reflected by a larger number of pages. Each request requires significant staff time to set up while the actual copying of pages is not as time-consuming as the other steps involved.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends a flat administrative fee of \$25 plus \$0.10 per page. Commenter also recommends elimination of the 30 day component of this section. Commenter recommends the following revised language:</p> <p>\$50.00 for <u>A \$25.00 per set flat administrative fee, which includes postage, set-up, phone calls, and page numbering. In addition, \$0.10 per page is reimbursable for each additional set of records in paper form ordered within 30 days of the subpoena or authorization. Fees are payable by the party ordering the additional set.</u></p>			
9981(b)(2)	<p>Commenter recommends that the DWC enumerate the items each bill for copy services must contain. Commenter states that bills for copy services should include the following: provider tax identification number, date of billing, case information including employee name and claim/case number, source information including type of records, date of service, a description of services (file set up, scanning, pagination, etc.), and the number of</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Agree.</p>	<p>9981(b) provides: <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),</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>pages printed. Commenter states that the inclusion of this information will allow the claims administrator to issue the proper payment and/or explanation of review to the provider.</p> <p>Commenter states that Labor Code § 5307.9 mandates the establishment of a copy service fee schedule that requires specificity in billing. Commenter opines that the lack of detailed information in the proposed section regarding the billing statement is, therefore, inconsistent with the labor code. Commenter recommends that the DWC expand on this section to ensure cohesion with the labor code and avoid the billing polemic that SB 863 reform legislation intended to correct.</p> <p>Commenter recommends that in order to streamline the payment process the DWC elaborate on the payment of other functions that copy service companies handle, such as the subpoena of non-medical records. Commenter opines that this is especially important since the preceding § 9980 (a) provides a definition of copy and related services</p>		<p>Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	<p><u>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. Bills must be submitted to the claims administrator for payment.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>as:</p> <p>“...all services and expenses that are necessary for 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>Commenter recommends that the DWC go one step further and require a declaration under penalty of perjury that records were requested by the requesting party. Commenter opines that adding this additional requirement may avoid frivolous requests for records.</p>		<p>Disagree. This is unnecessary. Subpoenas already are signed.</p>	<p>No action.</p>
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				No action.
9982(e)(3)	<p>Commenter states that there is a cost for records from the WCIRB for injured workers' attorneys. There is also a charge for EDD records after the first 100 pages, at 10 cents per page. Commenter opines that the injured worker and their attorney should not be expected to bear this cost. Commenter states that the language prohibiting payment for records that "can be obtained without a subpoena at lower cost" is extremely ambiguous and would allow defendants to raise this objection to virtually every subpoena, if they so wish. Commenter opines that delays and frictional costs in the system would continue, which is exactly what the Legislature wanted to avoid with the creation of a fee schedule. Commenter recommends that this section be deleted in its' entirety, as the costs for obtaining these records should be included in the fee schedule.</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) June 30, 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>
9983(a)(4)(B)(C)	<p>Commenter opines that the costs for additional sets of records under these</p>	<p>Diane Worley Director of Policy</p>	<p>Agree.</p>	<p>The regulations have been changed and</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	subsections should be paid for by the claims administrator. Commenter states that the injured worker or their attorney should not have to bear the costs of discovery. Commenter states that this section violates Labor Code section 4600 plus unfairly encumbers the injured worker from getting discovery in violation of the protections of the California Constitution.	Implementation California Applicants' Attorneys Association (CAAA) June 30, 2014 Written Comment		injured workers are not responsible for the costs of discovery.
9981(b)(2)	<p>Commenter recommends that this subsection be deleted.</p> <p>Commenter opines that this subsection should be struck as it is both unclear and duplicative. It is unclear whether the declaration of completeness must be provided by the custodian of records or the person retrieving the records. Commenter states that the requirements in this subsection are duplicative of the requirements in section 9984(a).</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	Agree.	This section has been deleted.
9980(b)	<p>Commenter recommends striking the existing definition and replacing it with the following:</p> <p><u>A claims administrator, which includes, but is not limited to, a self-administered workers' compensation</u></p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014</p>	Disagree. The suggested language fails to include several entities including the California Insurance Guarantee Association, the Uninsured Employers Benefits Trust Fund, and the Subsequent	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>insurer, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured employer, a third-party claims administrator for an insurer, a self-insured employer, a joint powers authority, or a legally uninsured employer or a subsidiary of a claims administrator.</u></p> <p>Commenter states that since Labor Code section 139.32 is included in §9981 by reference, the definition for “claims administrator” should conform to that provided under Labor Code section 139.32. Commenter opines that greater uniformity in terms and definitions provides greater clarity when cross referencing various statutes and regulations.</p>	Written Comment	Injuries Benefits Trust Fund.	
9980(a)	<p>Commenter recommends the following revised language:</p> <p><u>“Copy and related services” means all services and expenses that are necessary for the retrieval and copying of documents and that are responsive to a duly issued subpoena or authorization to release documents for</u></p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA</p>	Disagree. Changing “and” to “that” is unnecessary. Authorizations were reinstated into the fee schedule.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>a workers' compensation claim.</u></p> <p>Commenter opines that substituting the word "that" for the word "and," better clarifies the type of document to which the definition applies.</p> <p>Commenter states that the term "authorization" must be deleted here and everywhere else it appears within this proposal.</p> <p>Commenter opines that authorizations are not a proper method for discovery once a non-contracted copy service is engaged. Section 1158 of the California Evidence Code state that authorizations are only applicable "prior to the filing of any action." The copy service to which this fee schedule applies are acting upon the request for independent discovery <u>after</u> an action has been filed.</p> <p>Commenter states that references to authorization are made out of context to their definition as cited in the California Evidence Code.</p> <p>Commenter notes that the term "authorizations" are referenced throughout this Article. Commenter</p>	<p>June 23, 2014 Written Comment</p>		

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>states that the Division offers no guidance regarding the content, form and format for a qualifying “authorization” as used within these regulations. Commenter states that the proposed regulations omit guidance on how to obtain an authorization and from whom, as well as whether a wet signature, an electronic signature or no signature will be required. Commenter opines that without guidance, the existence and bona fide nature of authorization has the potential to be challenged 100% of the time. Commenter does not believe that a question of validity is one that will fall within the purview of Independent Bill Review. Commenter opines that this will result in additional work for the court system. Commenter states that appropriate references may exist within the California Code of Civil Procedure Section 56.11 or Health and Safety Code Section 123100, et seq.</p> <p>Alternatively, commenter recommends the following new language for this subsection:</p> <p><u>“Copy and related services” means</u></p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>any and all services provided by a Professional Photocopier related to obtaining, reproducing or copying records whether in electronic or physical form produced under Section 2016.010 of the Code of Civil Procedure, Section 1158 of the Evidence Code, Section 5710 of the Labor Code, or Section 10530 of these regulations. All copy and related services ordered by the applicant or the applicant’s representative or provided by an employer, claims administrator, or workers’ compensation insurer pursuant to Section 5307.9 of the Labor Code, shall be considered a benefit to the injured worker pursuant to Labor Code 4620.”²</u></p> <p>Commenter states that this new definition utilizes existing definitions and avoids imprecise phrases such as, “...documents for a workers’ compensation claim.”</p>			
9980(c)	Commenter recommends the following revised language:	Daniel Lopez, President – California	Disagree. The suggestion is unnecessary. Including “or that	No action.

² The WCAB En Banc decision in *Martinez v. Terrazas* introduced the concept that all types of copying (not just medical records) incurred by the injured worker shall be a medical-legal expense, and specifically not a Labor Code Section 5811 litigation expense. **NOTE:** CWCSA does not propose that this footnote be amended into the regulations. It is included only to substantiate the inclusion of our amended definition for “Copy and Related Services.”

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>“Custodian of records” means the person <i>or that person’s agent</i> who has physical custody and control of books, records, documents or physical evidence requested and maintains them in the ordinary course of business.</u></p> <p>Commenter states that when a contractual relationship exists between the owner of records (the custodian) and a person who controls distribution of the owner’s records, regardless of where or in what form the owner’s records are stored, all the rules for the fees that may be charged by custodians must continue to apply. In its “Introduction” to the ISOR, the Division refers to this issue by stating, “The maximum fee for release of information is controlled by Evidence Code section 1563.” Commenter opines that an agent of the custodian, or any person contracted to act on the custodian’s behalf, should have no right to greater reimbursement than is provided the custodian itself. Otherwise, each agent would be free to charge any amount it chooses. Such pricing freedom is directly</p>	<p>Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>person’s agent” complicates the fee schedule.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>contradictory to the Division’s desire to create predictability and eliminate disputes.</p> <p>Section 1563(b) of the California Evidence Code states that all reasonable costs incurred in a civil proceeding by any witness which is not a party with respect to the production of all or any part of business records the production of which is requested pursuant to a subpoena duces tecum may be charged against the party serving the subpoena duces tecum.</p>			
9980(d)	<p>Commenter recommends the following revised language:</p> <p><u>“Set of records” means a reproduction, either in paper form or in electronic form, of all records copied from one custodian of records <i>at one physical location</i> under one subpoena</u></p> <p>Commenter opines that if reimbursement will be predicated on obtaining one “set of records,” then this definition is inadequate to fairly describe what is involved when one custodian houses records in more than</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Disagree. “Duplicate records” was deleted from 9982(e) and now claims administrators are not liable for payment of records previously obtained by the same party and served from the same source.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>one location. Commenter states that the alternative language added above acknowledges and clarifies that a custodian may have records available only by traveling to disparate locations and perhaps over more than one day. Authorizations, as a method of discovery, are defined in Section 1158 of the California Evidence Code as only applicable only “prior to the filing of any action”.</p>			
9980(e)	<p>Commenter recommends the following revised language:</p> <p>“Professional photocopier” is defined by section 22450 of the Business and Professions Code <i>means a person or company that is registered in a county in this state pursuant to Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter pursuant to Section 22451 of the Business and Professions Code.</i></p> <p>Commenter states that this alternative definition is identical to that previously provided by commenter and it more fully describes persons</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Disagree. The fee schedule only allows payment from claims administrators to professional photocopiers who have a registration number. If an attorney makes copies, the costs would be part of their overhead. The Business and Professions Code does not regulate what claims administrators must pay for and is not in conflict with these regulations.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>who are eligible by law to provide “copy and related services.”</p>			
9981(a)(1)	<p>Commenter recommends the following revised language:</p> <p><u>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 must be accompanied by a copy of the professional photocopier certificate required by Business and Professions Code section 22462.</u></p> <p>Commenter states that the requirement to attest there has been no violation of Labor Code Section 139.32 is appropriate and that the wording of this section is awkward. Commenter opines that the second half of the sentence is perhaps missing a phrase as indicated by the amended language shown above.</p> <p>Commenter opines that the certificate defined in Section 22462 of the Business and Professions code, may or may not be obtainable by the copy service depending upon several factors completely out of the copy service’s control. Therefore, as a requirement</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Agree in part. Instead of certificates, only the professional photocopier registration number and county of registration is required.</p>	<p>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></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>for being paid, commenter states that this represents an impractical, undue and costly burden that will create disputes. Commenter opines that because this requirement cannot always be met and because this requirement does not apply to contracted copy services, it represents a further restriction to the ability for the injured worker to exercise his/her right to independent discovery.</p> <p>Commenter states that an alternative to the proposed statement is a declaration by the copy service pursuant to Business and Professions Code Section 22463(a) (2) or deleting the requirement for a certificate in its entirety.</p> <p>Commenter states that attaching supporting documentation to a bill is always problematic. Commenter opines that Division's extensive experience with audit complaints based on the attachment of written reports or other documentation to bills, should lead to the conclusion that any document appended to a bill for services is subject to being separated upon arrival at the claims</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>administrator’s mail room. Commenter states that even if the copy service obtains the required certificate, if it is separated from the bill, the bill reviewer will not process the bill without the appended document. The result will be a needless dispute and costly friction. Commenter states that the alternative to delete this requirement is practical and does not jeopardize the validity of the subject billed services.</p>			
9982(e)(2)	<p>Commenter recommends the following revised language:</p> <p><u>For multiple billings arising from a single retrieval of records from one custodian of records, <i>except those bills resubmitted pursuant to Section 4603.2 (e) Article 2, Chapter 2, Part 2, of Division 4 of the California Labor Code.</i></u></p> <p>Commenter opines that while it may be implied that such “duplicate” or “multiple” billings” should be permitted, he recommends that the Division adopt the alternative of an explicit reference, as indicated by the amended language, in order to assure there is no doubt between claims</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Agree. 9982(e)(2) has been deleted and now claims administrators are not liable for payment of records previously obtained by the same party and served from the same source.</p>	<p>9982(e)(2) has been deleted.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	administrators and copy services as to when a duplicate bill can be submitted properly.			
9982(f)(2)	<p>Commenter notes that subsection 9984 (a) stipulates that, “All records copied, produced, or served by a custodian under this Article shall be accompanied by an affidavit or declaration, signed under penalty of perjury, itemizing in detail the category or description of all records produced.....” Although not making direct reference to the term “indexing”, this subsection requires indexing of the copied records in order to comply with proper service of those records. Since subsection 9982 (f) (2) does not allow reimbursement for this required indexing, commenter requests that the DWC provide guidance within this Article as to what entity is responsible for paying for the indexing of the records pursuant to subsection 9984 (a).</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	Disagree. 9984 has been deleted. The BRG studied and recommended against “indexing.”	No action.
9980(a)	<p>Commenter states that more clarity is in order and is necessary to reduce disputes. Commenter recommends the following revised language:</p> <p><i>"Copy and related services" means any and all services provided by a</i></p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment</p> <p>July 1, 2014 Oral Comment</p>	Disagree. Adopting the suggestion will not reduce litigation. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><i>Professional Photocopier related to accessing, reproducing, or copying records whether in electronic or physical form produced under Section 2016. 010 of the Code of Civil Procedure, Section 1158 or 1563 of the Evidence Code, Section 5710 of the Labor Code, or Section 10530 of these Regulations. All copy and related services ordered by the applicant or the applicant's representative or provided by an employer, claims administrator, or workers' compensation insurer pursuant to Section 5307.9 of the Labor Code, shall be considered a benefit to the injured worker pursuant to Labor Code 4620.</i></p>		rules.	
9982(e)(2)	<p>Commenter opines that this section is confusing, unclear, and likely a source of friction and dispute. Commenter opines that while it was likely formed for good cause it is NOT the 'act of billing' that is the offending (multiple) action here, but rather (it is believed) the (potentially) offending multiple action would be the 'act of performing' (and then billing a second time) a (multiple/repeat) action. There are many circumstances that multiple billings will arise from a single</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment</p>	<p>Agree. 9982(e)(2) has been deleted and claims administrators are not liable for payment of records previously obtained by the same party and served from the same source.</p>	<p>9982(e)(2) has been deleted.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	retrieval of records - such as submitting a second (or copy) invoice, submitting a (recurring) statement (when an unpaid balance, full or partial remains, etc.). In the most ridiculous of scenarios, it would be possible for a payer to ignore the first bill, leading to the production of a second bill (e.g. 'multiple billings') and then refuse to pay for the service claiming that no payment is due because 'multiple billings' were produced.			
9981(b)(1)	Commenter notes that the proposed regulations require that a 'certification' (no violation of Labor Code Section 139.32) has taken place, and that each bill be submitted with a copy of the 'professional photocopier certificate' required by Business and Professions Code Section 22462. Commenter opines that it would be helpful to have the specific form of the 'certification ' (e.g. 'attestation') specifically prescribed herein (relative to Labor Code Section 139.32). Commenter opines that there is no value in attaching a copy of the BPC Section 22462 certificate to each bill - but rather an 'attestation' that all records were produced under a valid	Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment	Agree in part. Instead of certificates, professional photocopier registration numbers 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>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	certificate in accordance with BPC Section 22462 seems more appropriate. Commenter states that providing the specific form of the 'attestation ' would also reduce the potential for dispute.			
9980	Commenter notes that the term “authorization” is used several times in the proposed fee schedule yet there is not definition. Commenter opines that this leaves the term open to interpretation.	Matthew Vatandoust Scandoc Imaging, Inc. June 30, 2014 Written Comment	Agree. A definition has been added.	9980(a) <u>“Authorization” means a release signed and dated by the injured worker, or the injured</u>
9980	<p>Commenter notes that the word authorization, while used throughout the proposed regulations, is not defined in the section. In § 9982 (d), the word is used to reference records being sought by subpoena or authorization; in § 9984 (a), the word is used to describe records copied and served by authorization. Commenter is concerned that the meaning of the word authorization may be misconstrued.</p> <p>Commenter opines that the DWC should define the word authorization in this section to ensure clarity regarding what is required to retrieve records being sought. Commenter recommends that “Authorization” be</p>	Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment	Agree. Authorization is now defined.	<u>worker’s representative if the injured worker is a minor or an incompetent or is deceased, to obtain records which states the specific uses and limitations on the types of information to be disclosed, the name of the person or entity that may disclose the information, the</u>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	defined as an authorization to release medical information or other information signed by the injured worker.			<u>name of the person or entity authorized to receive the information, a specific date after which the provider is no longer authorized to disclose the information, and advises the person signing the authorization of the right to receive a copy of the authorization.</u>
9982(f)(2)	Commenter states that summaries, tabulations, and indexing, is a necessary component of document production , expected by trial judges when reviewing exhibits, and useful to attorneys on both the applicant’s and defense side when conducting depositions, preparing letters to evaluating doctors, and for trial preparation. As this is an additional expense that a copy service must incur while preparing records, and a cost saving tool in the industry for	Diane Worley Director of Policy Implementation California Applicants’ Attorneys Association (CAAA) June 30, 2014 Written Comment	Disagree. The BRG report recommended against indexing.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employers, and insurance carriers, commenter states that the regulations should allow for this as an additional allowable service on the schedule. Commenter opines that as an employer may contract for these services at a discounted rate with the copy service provider, then the injured worker should be given equal access to the same services at the same discounted rate that the employer has. Commenter recommends that subdivision (f)(2) be deleted in its' entirety from these regulations and that a new subdivision (g) be added as follows:</p> <p>If a an employer or insurance carrier, contracts for services which are not allowable and not covered by this fee schedule, the injured worker shall be allowed to obtain the same services with their copy service provider, including summaries, tabulations, and indexing, at the rate paid by the employer or insurance carrier to their copy service provider.</p>			
9983(a)(1) and (a)(2)	Commenter recommends the following revised language:	Steven Suchil American Insurance Association	Disagree. After receiving stakeholder input following the release of the BRG study, the	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(1) A \$180 \$103.55 flat fee for a set of records, from a single custodian of records, which includes, but is not limited to, 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, and subpoena preparation, and any subsequent request for records from the same custodian of records.</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>Regarding (a)(1), the commenter recommends that the Division follow the copy fee service recommendations set forth in the Berkeley Research Group (BRG) report, dated October 2, 2013, wherein BRG put forth a flat fee of \$103.55. The BRG report provides that a single price for copy sets, notwithstanding the number of pages involved or the difficulty in retrieving documents. Commenter states that the phrase “but not limited to” is intended</p>	<p>July 1, 2014 Written Comment</p>	<p>flat fee was changed from the BRG recommendation to the current fee of \$180.</p> <p>Disagree. Cancellations after a subpoena has issued involve services which should be compensated.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>to clarify that bundled services are not restricted to those mentioned in the proposed rule. This will serve to control the practice charging for services unrelated to document production.</p> <p>Commenter states that the last phrase in subdivision (a)(1) is intended to apply the flat fee to all records in the possession of or produced by a single custodian of records – and this includes the subsequent production of records. This is intended to avoid multiple requests or subpoenas to the same custodian of records that are intended to collect multiple fees – and limit costly disputes over such requests.</p> <p>Commenter recommends deletion of subdivision (a)(2) - removal of the cancellation fee. Commenter states that it is unclear why a canceled service requires a fee. Further, at times a number of subpoenas may be issued without good cause, and orders may be canceled after subpoena issuance. A payor would be liable for the cancellation fee, and this fee may result in abuse.</p>		<p>Disagree. It is not contemplated that future requests for subsequent records be included in the flat fee. Such a request would require additional work which should be compensated.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9980(a)	<p>Commenter recommends the following revised language:</p> <p>“Copy and related services” means all services and expenses that are necessary for <u>relevant to</u> 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>Commenter stats that the term “necessary for” should be struck and replaced with “relevant to.” Commenter opines that this change will ensure that services are appropriately defined and include only legitimate copy service needs.</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	Agree. “necessary” has been deleted.	“necessary for” has been deleted from 9980(b)
9983(a)(3)	<p>Commenter notes that this section indicates that ROI fees are subject to Evidence Code Section 1563. Commenter opines that this is not adequate. Commenter states that ROI fees are often out of hand and that this evidence code is widely ignored. Commenter states that this proposed regulations\ has no way of addressing this common issue. Commenter opines that if there is a situation where a custodian of records it trying to extort more than the statutory fees</p>	<p>Carl Brakensiek CWCSA July 1, 2014 Oral Comment</p>	Agree in part. 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.	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.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	permitted by the Evidence Code, there ought to be a mechanism to address this and regulate those fees. Without this, commenter states that there will be a larger workload at the DWC Courts due to expedited hearings, requests for orders to compel production, et cetera.			
9981(a) and (b)	<p>Commenter recommends the following revised language:</p> <p>(a) This article applies to services incurred <u>provided</u> on and after the effective date of this article, regardless of date of injury.</p> <p>(b) Bills for copy services must specify services provided. Billing code S9981 is for medical records copy fee, administrative and S9982 is for medical records copy fee, per page HCPHCS level 2 codes. Bills must be submitted to the claims administrator for payment. <u>S9981 is to be used to capture the flat fee for inclusive services identified under §9983. S9982 is to be used to capture the per page fee for pages in excess of the maximum page count defined under §9983(4)(A).</u> Commenter notes that a typographical error requires correction</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment</p>	<p>Agree.</p> <p>Agree in part. References to general use HCPHCS codes were replaced with California-only workers' compensation codes to avoid miscoding.</p>	<p>“incurred” has been changed to “provided”</p> <p>9981(b)(1) uses codes WC020-WC029 which are California-specific.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>by removing the second “H” in “HCPCS.” Commenter recommends adding language that will assist in the appropriate use of HCPC S9981.</p> <p>Commenter recommends replacing “incurred” with “provided” in order to differentiate a provided service versus an incurred expense</p>		Agree.	“incurred” has been changed to “provided”
9982(f)(1)	<p>Commenter recommends the following revised language:</p> <p>Duplicative records previously obtained from the same source. unless the subpoena or authorization is accompanied by a declaration from the party requesting the records that there is good cause to seek duplicate records.</p> <p>Commenter opines that if a requesting party requires a set of duplicative records, the expense burden should not be passed to the party who previously provided the records.</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) July 1, 2014 Written Comment</p>	Disagree. There are times when duplicative records are necessary. Good cause examples were included for clarification.	9983(e) has been changed, “ <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> ”
9981(a)	<p>Commenter recommends the following revised language:</p>	<p>Daniel Lopez, President – California Workers’</p>	Disagree. These regulations address copy service fees pursuant to the authority	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>This article applies to services incurred on and after the effective date of this article regardless of date of injury. <i>Any properly submitted but unpaid bill for copy and related services incurred prior the effective date of this article is eligible for penalties and interest pursuant to Section 4603.2 (b)(2) of Article 2, Chapter 2, Part 2, of the California Labor Code, if it can be shown that the objection to such reimbursement was based upon either of the following: (1) the proposal of a copy service fee schedule pursuant to Labor Code Section 5307.9 or (2) the enactment of Senate Bill 863 (Statutes of 2012, Chapter 363).</i></u></p> <p>Commenter applauds the Division's acknowledgement that this fee schedule should only apply to services incurred on or after the effective date of this article.</p> <p>Commenter states that payers have been using the BRG report and other improper objections to justify not paying copy service bills for many, many months. Commenter opines that the Division has no authority to set</p>	<p>Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>granted under Labor Code section 5307.9, not penalties and interest.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>limits on the end point of lien negotiations, but the Division <u>can</u> refer to the penalties and interest pursuant to Labor Code 4603.2 and audit penalties for bad faith due to improper delays in the delivery of the benefit of independent discovery as a result of such improper reimbursement objections.</p> <p>Commenter requests that the Division adopt the amendment to sub-section 9981 (a) as suggested above to assure there are no misinterpretations as payors apply this fee schedule.</p>			
9981(b)	<p>Commenter opines that this section is unclear and provides no usable guidance to either claims administrators or copy services. The suggested HCPHCS codes are general use codes for many, many provider types. Specific guidance as to their use by non-contracted copy services must be provided as well as a description of the form or format of a copy service bill subject to this fee schedule. This fee schedule describes six possible charges, yet only two codes are given.</p> <p>Commenter states that the Division</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Agree in part. References to general use HCPHCS codes were replaced with California Only workers’ compensation codes to avoid miscoding.</p>	<p>9981(b)(1) uses codes WC020-WC029 which are California-specific.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>must provide a clearer description of the code(s) to be used for each of the following, the flat fee; a certificate of no record; the per page fee; the fee for each additional set of records in paper form; the fee for each additional set of records in electronic form; and a more explicit reference to the fees allowed in the Official Medical Fee Schedule for copies of X-rays and scans. Rather than using HCPHCS codes that will likely be confused with coding submitted directly by a physician or other medical provider office, commenter recommends that the Division create “copy service only” codes in the same manner as it prescribed and implemented “California Only” codes within the new physician’s fee schedule. For example:</p> <p><u>CS 001 – Flat Fee (§9983(a)(1))</u> <u>CS 002 – Cancelled service and Certificate of no record (§9983(a)(2))</u> <u>CS 003 – Per page fee (§9983(a)(4)(A))</u> <u>CS 004 – Additional set – paper (§9983(a)(4)(B))</u> <u>CS 005 – Additional set – electronic (§9983(a)(4)(C))</u></p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p><u>WC 010 – Duplication of X-Ray</u> <u>(§9983(a)(4)(D))</u></p> <p><u>WC 011 – Duplication of Scan</u> <u>(§9983(a)(4)(D))</u></p> <p>Years of direct experience with the bill review industry leads the commenter to request that the DWC implement this alternative coding system. Commenter notes that the suggested HCPHCS codes are for general use by many, many different provider types. Commenter opines that leaves one to guess how to apply these two codes specifically. Commenter notes that only one code, S9981 will be used to bill for four of the seven separate and distinct services covered by this fee schedule. Commenter states that the bill review process depends on preloaded data. Commenter opines that the Division’s suggestion to use HCPHCs codes, especially code S9981, will lead to many mistaken reviews and result in an equal number of improper objections. Commenter states that this is not an efficient process or outcome for the employer and the copy service – especially when there is an alternative available that is</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>specific and would virtually eliminate miscoded and improperly reviewed bills. Commenter opines that since there is no direct penalty for improper payments or objections proposed in this fee schedule, there is little incentive for bill review software to be customized and workflows created to review these general use codes for so many different provider types and specific services.</p> <p>Commenter states that it is unclear whether the Division intends for copy services bills to be submitted on a CMS Form 1500. It is the commenter's understanding that copy and related services are considered medical-legal expenses and thus there is no requirement to use a specific form.</p> <p>Commenter opines that while it may be possible to use the CMS Form 1500, there are a number of fields on the Form CMS 1500 that do not apply. Since Section 9792.5.2 et seq. of Title 8 of the California Code of Regulations only applies to medical treatment bills, use of the CMS 1500 form must be optional. Commenter</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	states that it is apparent that if a copy service chooses to utilize a CMS Form 1500, the Division’s <i>Billing and Payment Guide</i> must be revised prior to implementation of this article to indicate clearly which fields are required, which are optional and which are to be filled in only if the copy services has the correct information to do so. Commenter opines that without such revisions, use of the CMS 1500 will cause disputes rather than avoid them.			
9982(e)(1)	Commenter states that this subsection lacks specificity. Commenter opines that the lack of specificity will cause new disputes resulting in higher frictional costs. Commenter opines that with this provision, the Division intends to eliminate reimbursement for duplicate records. Commenter agrees with that goal. Commenter opines that without a specific definition for the term “duplicate record(s),” this provision will be the cornerstone for the majority of reimbursement disputes - valid or not - each of which will not be subject to Independent Bill Review (IBR) until any alleged duplication is confirmed. Commenter states that the duplicative nature of	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA) Steve Cattolica CWCSA June 23, 2014 Written Comment	Agree. 9982(e)(2) has been deleted and now claims administrators are not liable for payment of records previously obtained by the same party and served from the same source.	9982(e)(2) has been deleted.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>records will not be a question the IBR Organization (IBRO) can decide. Commenter opines that the task of providing the records to the IBRO, will be extremely impractical, costly and time consuming. As a result, these disputes will add to the caseload of each WCAB District Office. Commenter notes that the language of this provision requires only that <u>some</u> records be delivered from <u>any</u> employer, claims administrator or insurer location. Based on this provision, upon partial delivery, the claims administrator can claim compliance and avoid reimbursement for <u>any</u> subsequent copy or related services.</p> <p>Commenter states that the Division must provide a practical and workable definition for duplicate records and that it must be a definition that does not, in any way, impinge on the right of an injured worker to independent discovery.</p>			
9982(f)(1)	Commenter opines that the Division must specifically define what constitutes a duplicate record. This subparagraph seems to imply a definition when it states, “records	Daniel Lopez, President – California Workers’ Compensation Services Association	Agree in part. Claims administrators are not liable for payment of records previously obtained by the same party and served from the	9982(e)(2) has been deleted.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>previously obtaining from a single retrieval from on custodian of record...” Commenter states that the subparagraph then refers directly to the term “duplicate record(s)” which clearly indicates that there is a separate, different definition to which a reader can refer.</p>	<p>(CWCSA) Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>same source.</p>	
<p>9981(b)</p>	<p>Commenter states that more clarity is necessary to reduce disputes and provide clarity as to value (and the proper form to bill (invoice) that value). Commenter notes that the Division is proposing the use of two (2) 'general use' HCPHCS Level 2 Codes, but does not relate them to each of the six (6) allowable charges within the fee schedule regulations.</p> <p>Commenter recommends that at a minimum, if a specific billing code is to be used, the Division must relate each of the allowable categories (and charge thereon) to its required (and specific) billing code. Commenter opines that the suggestion to use HCPHCS Level 2 Codes is unnecessary and may increase confusion, error, friction, and dispute. Commenter recommends that the Division implement (limited)</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment July 1, 2014 Oral Comment</p>	<p>Agree in part. References to general use HCPHCS codes were replaced with California Only workers' compensation codes to avoid miscoding.</p>	<p>9981(b)(1) uses codes WC020-WC029 which are California-specific.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	California Workers Compensation (Only) codes for copy services only for each of the allowable charges, specific for each allowable charge.			
9982(e)(1)	Commenter states that this section is (mostly) a repeat of limitations and requirements within Section 9982(c) and is unnecessary.	Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment	Disagree. This provision comes from Labor Code section 5307.9.	No action.
9981(a)	<p>Commenter states that the proposed regulations specify that the fee schedule only apply for services AFTER the effective date of this article. Commenter states that it would be helpful to add a definition to give meaning to the term 'date of service'. Commenter recommends the following language:</p> <p>(a) This article applies only to copy and related services with a date of service on or after the effective date of this article, regardless of date of injury. Further, date of service shall mean, in the case of copy and related services; the date that all documents, records, and information required by or incidental to the specific, unique, and single copy and related services ordered are delivered to the requesting party and served to other parties as</p>	Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment	Agree in part. 9981(a) provides that the fee schedule applies to services provided on and after the effective date regardless of date of injury.	<p>9981(a) provides:</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 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	then required.			
9981	Commenter opines that the billing codes, HCPHS, are very confusing and vague and states that without clarification will lead to mistrust and confusion in the industry resulting in an increase in litigation.	Matthew Vatandoust Scandoc Imaging, Inc. June 30, 2014 Written Comment	Agree in part. See above.	See above.
9983(a)(2)	<p>Commenter notes that this section allows reimbursement at \$75 for a cancelled copy order. Commenter proposes that this be reduced to a \$50 charge plus any unrecoverable witness fees and postage be reimbursed at the actual amounts paid by the copy service. Commenter recommends the following revised language:</p> <p><u>\$75-\$50 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. Any unrecoverable witness fees and postage costs shall be reimbursed at the actual costs incurred by the professional photocopier.</u></p>	Rob Shatsnider Vice President, Claims CompWest Insurance June 30, 2014 Written Comment	Disagree. The suggestion would complicate the fee schedule. Flat fees are designed for simplicity.	No action.
9982(f)(1)	Commenter opines that this subsection would limit or preclude the applicant attorney from the rights he/she has in California Code of Regulations Section 10626 wherein it states:	Dan R. Jackle Vice President, Sales and Client Services ARS Legal June 30, 2014	Disagree. The copy service fee schedule does not preclude discovery. Discovery processes have not been changed by the fee schedule.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><i>“...all parties, their attorneys, agents and physicians shall be entitled to examine and make copies of all or any part of physician, hospital, or dispensary records that are relevant to the claims made and the issues pending in a proceeding before the Workers' Compensation Appeals Board.”</i></p> <p>Commenter opines that limiting when and what evidence the applicant attorney can obtain, while leaving the defendant free to conduct whatever discovery they desire (and charge the employer) is not fair.</p>	<p>Written Comment July 1, 2014 Oral Comment</p>	<p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	
9981(b)	<p>Commenter states that there are only two HCPHCS level 2 codes billing codes right now that would apply - S9981 is for medical records copy fee, administrative and S9982 is for medical records copy fee, per page HCPHCS level 2 codes. Commenter opines that if copy services are to use the CMS Form 1500, the Division will need to introduce several new codes to accommodate the additional items they are able to charge for under this proposed fee schedule as recommended in the CWCSA</p>	<p>Dan R. Jackle Vice President, Sales and Client Services ARS Legal June 30, 2014 Written Comment July 1, 2014 Oral Comment</p>	<p>Agree in part. References to general use HCPHCS codes were replaced with California Only workers' compensation codes to avoid miscoding.</p>	<p>9981(b)(1) uses codes WC020-WC029 which are California-specific.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	proposal.			
9982(e)(1)	<p>Commenter opines that this subsection needs to be more specific. Commenter states that if applicant copy services allow 35 days (30 plus 5 for mailing from the date of the letter of rep) and then subpoena those records on the 36th day, then applicant copy services should be entitled to be paid for those services.</p>	<p>Dan R. Jackle Vice President, Sales and Client Services ARS Legal June 30, 2014 Written Comment July 1, 2014 Oral Comment</p>	<p>Disagree. 9982(d)(1) comes directly from Labor Code section 5307.9. Copy services are not entitled to payment for services 36 days after the date of a letter of representation.</p>	<p>No action.</p>
9981(b)	<p>Commenter notes that this section indicates that copy work bills must specify the services furnished. Commenter is concerned that this section does not delineate what the bill for copy services must contain. Commenter opines that this lack of explanation will likely cause conflict amongst providers and payers.</p> <p>Commenter states that this section distinguishes the use of Centers for Medicare & Medicaid Services' Healthcare Common Procedure Coding System (HCPCS) billing code; however, there is no mention of billing codes for the subpoena of non-medical records. Commenter opines that it is likely that this exclusion will lead to disputes regarding the claims administrator's pricing of bills</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Disagree. 9981(b) delineates what bills must contain.</p>	<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.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	received.			administrative and 9982 is for medical records copy fee, per page HCPHCS level 2 codes. Bills must be submitted to the claims administrator for payment.
9982(e)(1)	<p>Commenter notes that this section refers to a request for records made by the parties. Commenter states that this section does not clarify what signifies a valid request. Left undefined, commenter opines that this could be a source of contention amongst parties and may lead to dissidence regarding the validity of copy service fees.</p> <p>Commenter recommends that the DWC clarify what is deemed a valid request. Commenter states that a request should stand alone in written form and be signed by the requesting party. Commenter recommends that the DWC create a new form, similar to</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Disagree These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the Request for Authorization used for Utilization Review. Commenter opines that the creation and use of a new form, entitled Request for Records, would help ensure that the requesting party has adequately determined whether or not there is a need to request records. Commenter opines that requiring the use of a DWC form would benefit the parties by providing a source of documentation which could be used to prove that the copy service was required and that the request for records was made in compliance with this section.</p>			
9982(f)(1)	<p>Commenter notes that this section allows a requesting party to obtain duplicate records when a declaration that there is good cause to seek duplicate records is attached to the subpoena or authorization. Commenter opines that the addition of this language almost negates the fact that there should be no payment made for duplicate records, as described at the beginning of § 9982 (f). Commenter states that there is no explanation of how the declaration must look, its format or what it should contain.</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Agree in part. There are times when duplicative records are necessary. Good cause examples were included for clarification.</p>	<p>9983(e) has been changed, <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>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>Commenter states that there is also no indication of what constitutes good cause, which is generally determined by a workers' compensation judge and not the parties to a case. Commenter opines that this section transfers the ability to determine good cause to either party, who by nature would likely argue that there is good cause to obtain duplicate records in nearly every situation. Commenter states that this transference will likely generate more disputes than there are currently, as it is highly probable that parties will take this section out of context for their own benefit.</p> <p>Commenter recommends the following revised language:</p> <p>Duplicative records previously obtained from the same source, unless the subpoena or authorization is accompanied by a declaration from the party requesting the records an order from a Workers' Compensation Judge indicating that there is good cause to seek duplicate records.</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Alternatively, commenter recommends that the DWC specify which situations would exhibit good cause to obtain duplicate records. Commenter recommends that the DWC provide a mandated form for parties requesting duplicate records when there is good cause, as defined in the regulations, to do so.</p>		Disagree. A form for this is unnecessary.	No action.
9981	<p>Commenter states that there is no provision anywhere in the draft regulations with regard to time limits for the claims administrator to pay bills for copy and related services. Additionally there is no provision for penalties if bills are not paid timely. Commenter recommends that this section be amended to add the following subdivision (c):</p> <p>(c) Bills must be paid within thirty days of receipt by the claims administrator. If bills are not paid within this period, then that portion of the billed sum which remains unpaid shall be increased by 25 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill by the claims</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) June 30, 2014 Written Comment</p>	Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not penalties.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	administrator.			
9982(f)(1)	<p>As commenter discussed in her comments regarding 9982(a), commenter recommends that this section be amended to read as follows:</p> <p>Duplicative records previously obtained and timely served on the opposing party from the same source” as too often records are not served, and the injured worker or their attorney should not be charged with having to complete a declaration to accompany the subpoena when they have no knowledge that there are any records in the possession of the defendant.</p>	<p>Diane Worley Director of Policy Implementation California Applicants’ Attorneys Association (CAAA) June 30, 2014 Written Comment</p>	<p>Agree. “By the same party and served” has been added to 9982(e)(1)</p>	<p>9982(e)(1) provides: Duplicative Records previously obtained by subpoena <i>or</i> authorization by the same party and served from the same source, unless the subpoena or authorization <i>or authorization</i> is accompanied by a declaration from the party requesting the records that there is setting forth good cause to seek duplicate records.</p>
9982(e)(1)	<p>Commenter recommends the following revised language:</p> <p>Provided within 30 days of a written 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>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	<p>Agree.</p>	<p>“written” has been added to 9982(e)(1).</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>are relevant to the employee's claim,</p> <p>Commenter opines that the thirty-day clock to produce records should not start until a written request for records is received. Commenter states that memorializing the record request creates certainty regarding when the request was made and which records are being sought – reducing disputes, costs and unnecessary copy services.</p>			
9982(f)(1)	<p>Commenter recommends that this subsection be amended to read:</p> <p>“...duplicative records are previously obtained and timely served on the opposing party from the same source.”</p> <p>Commenter opines that too often records are not served, and the injured worker and his/her attorney should not be charge with having to complete a declaration to accompany the subpoena when they have no knowledge that there are any records in the possession of the defendant.</p>	<p>Jim Butler CAAA July 1, 2014 Oral Comment</p>	<p>Agree. “By the same party and served” has been added to 9982(e)(1)</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)(2)	<p>Commenter recommends that the fee for unnecessary subpoenas also be shared with the people introducing the</p>	<p>Mark Sektnan Association of California Insurance</p>	<p>Disagree. These regulations address copy service fees pursuant to the authority</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	subpoena.	Companies; California Chamber of Commerce; California Coalition on Workers' Compensation July 1, 2014 Oral Comment	granted under Labor Code section 5307.9, not discovery rules.	
9982(c)	<p>Commenter recommends the following revised language:</p> <p>(c) 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 30 days of receipt of a written request for records, this fee schedule applies to obtaining those records.</p> <p>Commenter states that the recommended additional language will serve to clarify the start date for the 30-day period to produce records for copying. Commenter opines that establishing a clear start date will assist in mitigating disputes related to the timeliness of record production and requiring a written request will avoid disputes regarding whether or not a request was submitted.</p>	Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment	Agree in part. For clarity, specific timeframes were inserted in.	"calendar days" and "receipt" were later replaced with "the timeframes set forth in Labor Code section 5307.9" and "15 calendar days of receipt" was replaced with "the timeframes set forth in section 10608"

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that simplifying the provision to apply to the claims administrator conforms to the definition recommended in §9980(b) and should minimize disputes related to service on the wrong party.</p>			
9982(d)	<p>Commenter recommends striking this subsection.</p> <p>Commenter opines that the proposed language in section (d) implies that the fee schedule would not apply to records copied when an injured worker was notified that the records were being sought. Commenter recommends deletion of section (d) since the fee schedule applies irrespective of injured worker notification by the claims administrator.</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) July 1, 2014 Written Comment</p>	<p>Disagree. If the claims administrator fails to provide written notice to the injured worker of records that are being sought, the fee schedule applies to obtaining those records because the injured worker would be unaware of what records were previously sought and would not have had an opportunity to request copies.</p>	No action.
9983(a)(1)	<p>Commenter supports the proposed regulations except for this section. Commenter is an attorney representing employers and insurance carriers. Commenter does not believe it is fair to pass on specific fees for obtaining records, such as the witness fee or any special fee associated with obtaining documents from certain agencies, i.e. if a government agency regarding a fee of \$45 for accessing records,</p>	<p>Randal C. McClendon, Esq. Cuneo, Black, Ward & Missler May 20, 2014 Written Comment</p>	<p>Disagree. Witness fees are regulated by the Evidence Code. Witness fees are included in the flat fee and injured workers should not have to separate out this fee and pay for them.</p>	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>commenter opines that it is fair and reasonable for that cost to be passed on to the requesting party. Commenter states that the requesting party should have to pay the special fees and not the copy service.</p> <p>Commenter notes that Dan Mora of Gemini Duplication stated that pagination fees should be allowed. Commenter disagrees. Commenter states that nearly every copy service uses a scanning program that allow for automatic pagination and the no one person has to individually bates stamp each page any longer.</p>		<p>Agree. Pagination fees are not reimbursable in this fee schedule.</p>	<p>No action.</p>
<p>9982(b) and (c)</p>	<p>Commenter opines that these subsections appear to redefine “evidence.” “Evidence” is already defined in Section 140 of Division 2 of the Evidence Code as, “testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” Commenter states that any attempt to narrow that definition or restrict access to evidence within this Article is beyond the scope of the Administrative Director’s authority.</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not rules of evidence. Evidence has not been redefined in this fee schedule.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that this subsection is ambiguous with respect to when this fee schedule applies. Commenter opines that ambiguity surrounding any provision of this Article will become a magnet for new disputes and frictional costs. Specifically, this ambiguity will challenge substantiation of discovery benefits incurred. Subsection 9982(a) and 9982(f) (1) provides adequate explanation. Commenter recommends deleting subsections (b) and (c).</p>		<p>Disagree. 9981(a) specifies when the fee schedule applies.</p>	<p>9981(a) provides “<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>
<p>9982(d) & 9982(e)(1)</p>	<p>Commenter states that this subsection leaves a large gap between what records are sought and what records may be actually delivered to the injured worker. If the records sought do not match the records delivered and a copy service obtains copies of the “missing records,” it appears that service is not reimbursable. Commenter states that this provision is thus unworkable. Commenter recommends that the alternative is to delete this provision from the proposed fee schedule.</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>Agree in part. 9982(e)(2) has been changed to bar payment only to records previously obtained by subpoena or authorization and served from the same source. However, there is no authority which entitles copy services to be paid to obtain “missing records” within 30 days of a request by an injured worker. Labor Code section 5307.9 excludes payment for services provided within 30 days of a request by an injured worker and 9982(d) has not been deleted.</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 is accompanied by a declaration from the party requesting the records that there is setting forth good cause to seek duplicate records.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9983(a)(1)	<p>Commenter opines that it is important to clarify that the bundled fixed fee value was calculated 'on overall average' - meaning that it applies (in full, and at full value) to and for every production of records, no matter the form, content, size, source, or other parameter; and especially whether 1 page or 500 pages. Commenter states that to do otherwise runs the risk of 'dispute' or 'interpretation' that this is a 'maximum value' and copy and related services 'judged' of lessor complexity, content, or size could be reimbursed at a / lessor value leading to dispute (and the added costs of dispute).</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment July 1, 2014 Oral Comment</p>	<p>Disagree. 9983(a)(1) provides for a “flat fee” for a set of records and is not open to dispute over complexity.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9982 9982(a)	<p>Commenter opines that this section is fraught with opportunity for dispute - specifically because it limits the terms, forms, and reasonableness of providing copy services. Commenter opines that this section purports to define what is 'allowable'; however, most of this section references just the opposite (what is not allowable) - by defining (sometimes opaquely and/or in a conflicting/unaligned manner) conditions that must be met before a service is allowable.</p> <p>Commenter recommends that this section be divided into two (2) sections, one defining 'Allowable Services ', and another defining 'Limitations and Requirements '. Commenter recommends that the Division craft a clear statement of Allowable Services - more simply than is represented currently, perhaps by simply expanding (only) upon Section 9982 (a) in relatively modest form. With the (revised) definition of 'Copy and Related Services' prescribed for Section 9980(a) - this section should reference that and expand. Commenter recommends the following revised language:</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment July 1, 2014 Oral comment</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 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> <p>(f e) There will be no additional payment for The claims administrator is not liable for payment of:</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>This fee schedule covers all copy and related services as defined in Section 9980(a) relevant to an injured workers claim, excluding only; 1) those services performed under separate contract between the employer (or claims administrator or workers compensation insurer) and the copy service provider, 2) those services otherwise allowable (or required) under the Labor Code, but not specifically defined and valued herein. Certain limitations and requirements apply to such copy and related services, and such limitations are specified in Section 9982 (b). [See Following]</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9982(b), (c) and (d)	<p>Commenter opines that these sections conflict with each other and are ambiguous (often speaking in reverse) as to what is allowable, and also (seemingly) serve to limit (independent) discovery by redefining 'evidence'. Commenter states that evidence is broadly defined in Section 140 Division 2 of the Evidence Code and he opines that any attempt to narrow that definition or otherwise restrict access to evidence (as defined in Section 140 Division 2 of the Evidence Code) is beyond the scope of the Divisions authority.</p> <p>Commenter recommends that sections 9982 (b), (c), (d) and (e) be eliminated.</p> <p>Commenter states that, in general, it is understood that the 'intent' herein is to comply with (and further define) the provisions of Labor Code 5307.9 which generally seek to give the employer and/or claims administrator and/or workers compensation insurer thirty (30) days to provide 'copies' of records already in their possession in such a manner as to prevent subsequent copy and related</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment</p>	<p>Disagree. The fee schedule makes no changes to the definition of "evidence."</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>services that are the subject of those (then existing) and exact same records. Commenter states that the 'Limitations and Requirements' could be better defined as follows:</p> <p>(b) As provided in Labor Code Section 5307.9, there shall be no reimbursement for Copy and Related Services where the date of service is within thirty (30) days of a request by an injured worker or an authorized representative of the injured worker to an employer, claims administrator, or workers compensation insurer for copies of records then in the employer, claims administrator, or workers compensation insurer possession that are relevant to the injured workers claim and copies of such records then in the employer, claims administrator, or workers compensation insurer files are delivered and served to the injured worker or the injured workers authorized representative, fully in accordance with this section and other requirements, within thirty (30) days of such request It shall be the responsibility of the employer to forward such records, notices, or materials promptly to the insurance</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>carrier or claims administrator when the insurance carrier or claims administrator is not yet listed in the official case address records in EAMS. Any such forwarding shall not delay the start of the thirty (30) day period specified above. In all cases, copies produced and served by an employer, claims administrator, or workers compensation insurer in response to the injured workers request above, shall be accompanied by an affidavit or declaration, signed under penalty of perjury, itemizing in the detail the category or description of all records produced, together with an explanation of any withheld records which were not produced and served for any reason. Records provided whether voluntarily or in response to a request; with or without notice, before or after notice; that lack this certification, declaration, and description of production or are otherwise served or delivered after thirty (30) days of the request by an injured worker or an authorized representative of the injured worker shall be considered a failure to serve the requested records within the meaning of Section 5307.9.</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9982	<p>Commenter would like to know if this section indicates that services are allowed if any of these situations arise, or only if all of the situations arise.</p> <p>Commenter would like to know if the services are allowable if no records were produced under regulation 10608 within 10 days, or if the copy service needs to wait an additional 30 days.</p>	<p>Matthew Vatandoust Scandoc Imaging, Inc. June 30, 2014 Written Comment</p>	<p>Agree in part. Former subsection (b) and (c) have been combined.</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>
9983(a)(1)	<p>Commenter notes that the proposed regulations allow for a flat \$180 fee for a set of records from a single custodian of records as long as the records are less than 500 pages. Commenter opines that such a flat fee</p>	<p>Rob Shatsnider Vice President, Claims CompWest Insurance June 30, 2014 Written Comment</p>	<p>Disagree. The BRG study concluded that the major costs of providing documents where the costs of retrieving documents rather than the actual per page copy costs</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>is arbitrary and not necessarily representative of the amount of work performed to complete an order. Commenter states that payers should not be charged more for smaller orders and copy services should not be required to accept the same rate for a larger order that requires more work. Commenter recommends a flat administrative fee of \$50.00 plus a per page rate of \$0.10, similar to the allowance in California Evidence Code sections 1560-1567. Commenter also recommends that in addition, postage and witness fees be reimbursed on a dollar for dollar basis.</p> <p>Commenter recommends the following revised language:</p> <p>A \$180 <u>\$50.00 flat administrative fee</u> for a set of records, from a single custodian of records, which includes mileage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, check fees, fees for release of information services, and subpoena preparation. <u>In addition to the administrative fee, \$0.10 per page is reimbursable for each page of records</u></p>		<p>which is one of the reasons behind the flat fee.</p>	

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>copied. Witness fees and postage shall be reimbursed at the actual amounts paid by the professional photocopier. Any witness fees greater than \$15 shall require submission of proof of the amount paid by the professional photocopier.</u></p>			
9982(a)	<p>Commenter notes that when the proposed copy service fee schedule regulations were released on the DWC forum in February 2014, the new § 9982 (a) indicated the fee schedule would cover records obtained for the purpose of proving or disproving a claim. This subsequent revision removes that language and now states that the schedule applies to those records obtained which are relevant to an injured employee’s claim.</p> <p>Commenter states that due to this change the meaning of “records” necessitates a definition. Commenter notes that the prior release of the proposed forum draft regulations did include “records” in its definitions which has now been deleted. Commenter recommends that the DWC define the term “records” in 9980 to ensure clarity regarding which records the fee schedule applies to.</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Disagree. “Set of records” is defined.</p>	<p>9982 (e) provides: (d)“Set of records” <u>means a reproduction,</u> <u>either in paper form or in</u> <u>electronic form, of all</u> <u>records copied from one</u> <u>custodian of records</u> <u>under one subpoena or</u> <u>authorization or</u> <u>authorization.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9982(b) and (c)	<p>Commenter notes that proposed § 9982 (b) states that the Copy Service Fee Schedule will apply to records not timely served in accordance with § 10608. 8 CCR § 10608 (b) provides that records must be served within 10 calendar days of request after the filing of an application for adjudication. Therefore, the total time allowed for service of medical reports indicated in the referenced section is 15 days (10 calendar days plus 5 days for mailing per <i>Messelle v. Pitco Foods, Inc; California Insurance Company (2011) 76 CCC 956</i>).</p> <p>Commenter notes that under proposed § 9982 (b) it appears that the copy service may seek payment under the fee schedule for obtaining records served more than 15 days after receipt. Contrastingly, § 9982 (c) allows the claims administrator 30 days to serve requested medical records before the fee schedule applies.</p> <p>Commenter opines that the intent of the DWC is to demonstrate this section’s compliance with § 10608 by reference; however, the disparity in timelines indicated in § 9982 (b) and</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 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 <u>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 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(c) bears further scrutiny. Commenter states that left as it is, the ambiguity could lead to an increase in lien filings and disputes raised at the WCAB. Commenter requests that the DWC clarify the timeframes applicable to a request for records in order to avoid misinterpretation.</p> <p>Commenter recommends that Section 9982 (b) be revised to provide:</p> <p>“This fee schedule applies to records which were not previously served.”</p> <p>In order to ensure the proper interpretation of the language in section 9982 (c), commenter recommends adding the following language (highlighted in yellow):</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 30 days of receipt of the request, this fee schedule applies to obtaining those records.”</p>			
9982(d)	Commenter opines that it is unclear in this section whether the DWC’s requirement for the claims	Peggy Thill Claims Operations Manager – State	Agree. “pursuant to Labor Code section 4055.2” , which provides that any party who	9982 (d) provides: <u>If the claims administrator fails to</u>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>administrator to advise the injured worker of records being sought applies to all instances in which subpoena is requested or only when the moving party is the claims administrator.</p> <p>Commenter requests that the DWC clarify that § 9982 (d) applies when the moving party is the claims administrator and not when the moving party is the applicant or the applicant’s attorney.</p>	<p>Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>subpoenas records shall send a copy to all parties of record, has been added.</p>	<p><u>provide written notice, pursuant to Labor Code section 4055.2, to the injured worker of records that are being sought which they are seeking by subpoena or authorization this fee schedule applies to obtaining those records.</u></p>
9982	<p>Commenter states that the responsibility of the claims administrator is noted throughout § 9982, (b) through (d); however, there is no onus placed on the requesting party (most often applicant attorneys) or copy service companies.</p> <p>Commenter notes that what is absent from this section is the requirement of a declaration made by the requesting party that the records requested are necessary and not duplicative; this recommendation was made in the October 2, 2013 report by the Berkeley Research Group, LLC for the Commission on Health and Safety and Workers’ Compensation (CHSWC). The report <i>Formulating a Copy Services Fee Schedule</i>, (p. 11 -</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Disagree. These regulations address the reasonableness of copy service fees and does not make any changes to the discovery process.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>12), made the following observation:</p> <p>“To ensure that copy services are not issuing subpoenas without attorney knowledge, we recommend consideration of a requirement that each attorney who requests the issuance of a subpoena file a declaration that the subpoena is issued in good faith, is not duplicative and the records sought are necessary to the litigation of the applicant’s claim. That declaration would become part of the documentation submitted for payment.”</p> <p>Commenter encourages the DWC to take into account the recommendations submitted to the DWC by the Berkeley Research Group in its study, <i>Formulating a Copy Services Fee Schedule</i>. Commenter opines that requiring the requesting party to submit a declaration that the request for records is being made in good faith and is not duplicative, would promote compliance with the copy service fee schedule and ensure that applicant attorneys are actually requesting the</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	records indicated in the subpoena. Omission of the declaration is likely to perpetuate the level of distrust amongst copy service providers, applicant attorneys and claims administrators as described in the Berkeley Research Group's report.			
9983(a)(1)	<p>Commenter notes that this section describes many of the charges associated with copy work billing but that it does not include additional common charges. Commenter states there is no indication that charges generally included in the base rate are included in the flat fee of \$180. Commenter opines that this ambiguity may cause an increase in litigation if they are not listed in § 9983 even though the intent of the law is to include all charges.</p> <p>Commenter recommends that the language in this section include additional common charges and charges generally included in charges for copy works, such as: CD, Bates Stamping, sales tax, clerical, field labor, and base rate.</p>	<p>Peggy Thill Claims Operations Manager – State Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>Agree in part. The flat rate lists services included but the list is not exhaustive.</p> <p>“Not including sales tax” was added.</p>	<p>§ 9983 provides: <u>(a) The reasonable maximum fees, not including sales tax, payable for copy and related services are as follows:</u></p>
9982(a)	Commenter opines that this section creates an unequal playing field by allowing services under a contract	Diane Worley Director of Policy Implementation	Disagree. Labor Code section 5307.9 excludes services under a contract between the	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>between the employer and the copy service provider to be excluded from the fee schedule. Commenter states that this exclusion makes it questionable whether this schedule is truly intended to be applied evenly to both defense and applicant's copy service firms. Under this proposed fee schedule the injured worker's rights to pursue discovery are severely limited by what services will get paid under the fee schedule. By contrast, the defendant can enter into contracts with copy service vendors where they can obtain services outside of the regulations at a lower cost. The injured worker cannot do this. Commenter states that a different fee schedule is being applied to defendants by these regulations. To address this inequity, commenter recommends amended language to 998 (f).</p>	<p>California Applicants' Attorneys Association (CAAA) June 30, 2014 Written Comment</p>	<p>employer and the copy service provider from the fee schedule.</p> <p>The fee schedule does not change the existing discovery scheme and does not limit discovery.</p>	
9982(c)	<p>Commenter opines that this section will only work in those cases where the employer, claims administrator, or workers compensation insurer fails to provide any records within 30 days from the employee's request. In that case a subpoena may issue and the copy service should be paid.</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) June 30, 2014</p>	<p>Agree in part. 9982 was amended to narrow the definition of duplicative to records previously obtained by the same party and served from the same source so that injured workers can obtain their own copies of records.</p>	<p>9982 (e) provides: (f e) There will be no additional payment for <u>The claims administrator is not liable for payment of:</u> (1) Duplicative Records <u>previously</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter wonders what happens if only partial records are produced. The injured worker or their attorney believes there are additional records but are unable to prove who is in possession of the “missing” records. If a subpoena issues for the additional records, and “duplicative” records are sent, then the injured worker and their attorney must pay for them under this schedule. Depositions of “custodian of records” will need to be taken to get testimony under penalty of perjury as to where records are kept, what they have in their possession, and when it was received, and the costs will be greater than what would have occurred with a subpoena. Commenter recognizes that Labor Code section 5307.9 provides that the copy service fee schedule will not allow for payment for records that are produced within 30 days from an employee’s request to an employer, claims administrator, or workers’ compensation insurer, but the regulations must address the situation where partial records are sent. Commenter states that the injured worker and their attorney should not bear the cost. Commenter</p>	Written Comment		<p><u>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 good cause to seek duplicate records.</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>recommends that the following language be added to subdivision (c):</p> <p><u>If only partial records are provided within 30 days, this fee schedule applies to obtaining the additional records in the employer's or insurer's possession which were requested by the injured worker. If duplicative records are included in the records requested after 30 days, this fee schedule shall also apply to those records as the employer, claims administrator, or workers' compensation insurer, should bear the burden of identifying what was previously produced within 30 days of the initial request.</u></p>			
9983(a)(1)	<p>Commenter opines 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 makes no sense. Commenter states that a \$180 flat fee to cover all these services in many instances may be inadequate. Commenter states that the copy services will undoubtedly have written comments on what an adequate flat fee should be, but she recommends that the page count for</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) June 30, 2014 Written Comment</p>	<p>Disagree. The BRG study concluded that the major costs of providing documents where the costs of retrieving documents rather than the actual per page copy costs which is one of the reasons behind the flat fee.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that flat fee be much lower. The BRG report finds the average copy service job is around 100 pages. Commenter recommends that the flat fee only apply to the first 100 pages of records. Commenter states that mileage, witness fees and release of information (ROI) service fees should be allowed to be billed as itemized additional charges above the flat fee on the billing invoice as these charges vary widely by job. Commenter has been advised that some ROI fees are as much as \$500. Commenter states that no copy service will be able to stay in business if they have to absorb that cost. Commenter states that employers and insurance carriers can enter into contracts to reduce those charges, but injured workers and their copy service firms cannot. Commenter opines that the impact is that injured workers will not be able to get the evidence needed to prove their case because of these unregulated ROI fees. Commenter urges the Acting Administrative Director to consider if she has the authority to create a fee schedule for the ROI fees under Labor Code section 5307.9 as they fall under “related services”. Commenter states</p>			

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that these fees are becoming a growing problem in the copy service industry. Commenter recommends that there be a Cost of Living Adjustment (COLA) added to this regulation. Commenter opines that copy services may suggest a flat fee that is adequate for their costs of doing business in 2014, or even 2015, but that fee will become inadequate over time with inflation, and the costs of doing business increasing.</p>		<p>Disagree. If the fee schedule later proves to be inadequate, it can be changed.</p>	<p>No action.</p>
9983(a)(1)	<p>Commenter opines that the recommended pricing is too high and exceeds the market rate for copy services. Commenter notes that the Berkeley Research Group (BRG) study commissioned by the California Commission on Health Safety and Workers' Compensation found that the market rate for low dispute copy services was \$103.55 – nearly 43% lower than the proposed rate of \$180. Commenter states that DWC's proposed flat fee model should have little dispute and, as such, the pricing for services should veer much closer to the \$103.55 proposed by BRG. The commenter acknowledges that the price proposed in the BRG report did not include "pass through" costs, such</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	<p>Disagree. After receiving stakeholder input following the release of the BRG study, the flat fee was changed from the BRG recommendation to the current fee of \$180.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>as release of information fees, which are included in the DWC's proposed flat fee. Commenter opines that even allowing some augmentation for these costs that the proposed rate should be much lower than the proposed \$180.</p>			
9982	<p>Commenter recommends the addition of a new subsection g and recommends the following language:</p> <p><u>(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.</u></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 uncommon for a flurry of template</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	<p>Disagree. Good cause issues should be determined by the WCAB. This fee schedule does not change the existing discovery scheme.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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 this new language to discourage this abuse. Commenter opines 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>			
9983(a)(1)	<p>Commenter recommends the following revised language:</p> <p>A \$180 flat fee for a set of records, from a single custodian of records, which includes, but is not limited to, 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, and subpoena preparation.</p> <p>Commenter states that a common</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	Disagree. Concierge services do not have a billing code assigned to them.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>issue with the copy service industry is that providers routinely charge for concierge and unrelated services outside the scope of record acquisition and production. To stem the continuance of this practice, recommends that the Division include explicit language underscoring that the list of enumerated services covered by the flat fee is not exhaustive.</p>			
9982(c)	<p>Commenter opines that this section should be amended as it does not address situations in which partial or no records are produced and additional records are believed to exist. Commenter gives to examples of his recent experience:</p> <p>In the first, commenter subpoenaed the records of a physician and got back a certificate stating “no records.” His client insisted that he had been to this physician so he sent out another subpoena and received the medical report. Commenter’s client claimed that there were more medical records, so the commenter he set the doctor’s deposition under a notice of subpoena and requested production of records. Commenter states that this was not only beneficial to the applicant but</p>	<p>Robert McLaughlin July 1, 2014 Oral Comment</p>	<p>Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>also the defendant who was trying to prove apportionment. Commenter states that they knew the records were there but did not understand why they were not receiving them. When commenter took the doctor's deposition, it was determined that his staff had confused his client with another person with the same surname. Commenter states that this is not uncommon in workers' compensation. If his client was unable to obtain these records his due process rights would have been violated.</p> <p>In the second instance, commenter subpoenaed a personnel file on a case where the issue was good faith termination defense. Again, commenter received a certificate of no records. At the time the hearing commenced the defendant arrived with a personnel file that was about two inches thick. Commenter wondered where it all came from and why there was no statement under penalty of perjury that these are all the records. Commenter asked for and got another subpoena of records and this time even more records showed up.</p>			
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COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter is concerned that if copy services are not reimbursed there will be an impact on the due process rights of all parties.</p>			
9982(f)	<p>Commenter acknowledges that certain attorneys abuse the system by sending out subpoenas every 45 days, whether they need anything or not. Commenter opines that the Federal Rules of Civil Procedure or Federal Rules of Conduct should be enforced so that they can sign a subpoena indicating that they have a good faith belief that there are additional records. Commenter states that the injured worker should not be denied due process but that the attorneys should be held responsible for willingly sending out documents without good faith. Commenter opines that attorneys that are in violation would possibly be open to a BAR review. For these reasons, commenter recommends that this section be amended.</p>	<p>Robert McLaughlin July 1, 2014 Oral Comment</p>	<p>Disagree. Claims administrators would not be liable for payment of records previously obtained- this should prevent attorneys from abusing the system with repeat subpoenas every 45 days. The fee schedule would not give rise to this practice and does not make any changes to the existing discovery process.</p>	<p>No action.</p>
9983(a)(1)	<p>Commenter recommends that the Division add a COLA increase to the \$180 flat rate so that periodically the amount automatically increases.</p>	<p>Robert McLaughlin July 1, 2014 Oral Comment</p>	<p>Disagree. If the fee schedule proves to be inadequate, it can be later changed.</p>	<p>No action.</p>
9982(a)	<p>Commenter is concerned that this subsection creates an unequal playing</p>	<p>Jim Butler CAAA</p>	<p>Disagree. The fee schedule does not make any changes to</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	field. Commenter opines that the injured workers' right to pursue discovery is severely limited by the payment fee schedule. Commenter states that the defendant can enter into a contract outside of the regulations and pay a lower cost. Commenter is concerned that a different fee schedule is being applied to the defendant under this proposed regulation.	July 1, 2014 Oral Comment	the existing discovery process. The exclusion of contracts with employers is in Labor Code section 5307.9.	
9982(c)	<p>Commenter opines that this section will work only in cases where the defendant claims the Administration or workers' compensation insurer failed to provide any records within 30 days from the employee's request. Commenter questions what will happen if only partial records are produced. Commenter is concerned that that injured worker or their attorney will believe that there are additional records but be unable to prove who is in possession of the missing records. Commenter states that if a subpoena issues for the additional records and duplicative records are sent, then the injured worker and his/her attorney must pay for the cost of the records.</p> <p>Commenter notes that Labor Code</p>	Jim Butler CAAA July 1, 2014 Oral Comment	Agree in part. 9982(e) has been restricted to records previously obtained by the same party and served from the same source so that injured workers can obtain their own copy of records.	<p>9982(e) provides: There will be no additional payment for <u>The claims administrator is not liable for payment of: (1) (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.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Section 53 – 5307.9 provides that the Copy Service Fee Schedule will not allow for payment for records that are produced within 30 days from an employee’s request through an employer, but the regulations must address the situation where partial records are produced. Commenter recommends the following language be added to this subsection:</p> <p>“If only partial records are provided within 30 days, this fee schedule applies to obtaining the additional records in the employer’s or insurer’s possession which were requested by the injured worker. If duplicative records are included in the records requested after 30 days, this fee schedule shall also apply to those records as the employer, claims administrator or workers’ compensation insurer should bear the burden of identifying what was previously produced within 30 days of the initial request.”</p>			
9983(a)(1)	Commenter states that she has been a proponent of reform and appreciates the predictability and simplicity in reducing the issues that cause liens in the reforms; however, she opines that	Diann Cohen MacroPro July 1, 2014 Oral Comment	Agree in part. The Official Medical Fee Schedule (OMFS) at Section 9789.19 has not been updated for several years. A survey of fees revealed that	The fee schedule for X-rays and scans has been changed to allow for \$10.26 which is what the

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the pendulum has swung a little too far.</p> <p>It is commenter’s concern that no data based on the type of business/services that her company provides was considered before developing these regulations. Commenter states that data from other states and the federal government was used for medical, interpreting and court reporting for their reforms but none was considered for the document retrieval service that her company provides. Commenter states that the amount they are allowed to retrieve x-rays or films from the custodian in \$5.26 which is unrealistic since the industry standard is \$15.00. Commenter states that if they don’t pay the full amount they will not be able to obtain the records but they will lose the price difference of \$9.74 for every x-ray they produce on behalf of the injured worker.</p> <p>Commenter is concerned that there is no cost of living increase incorporated in these regulations.</p> <p>Commenter states that during pre-rulemaking discussions these</p>		<p>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>If the fee schedule proves to need an adjustment, that adjustment can be made through additional rulemaking.</p> <p>Disagree. Release of</p>	<p>OMFS provides for scans rather than the lower amount of \$5 for X-rays.</p> <p>No action.</p> <p>9983(a)(5) has been amended to include, “Disputes over witness costs may be</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>regulations were to address billing practices, not the fees of the custodians. Commenter opines that the Division is unwilling or refuses to figure out how to control the cost from records custodians and to regulate them. Commenter states that the Division is merely transferring the responsibility of who is going to pay these retrieval fees.</p>		<p>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>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>
9983(a)(1)	<p>Commenter opines that these proposed regulations prevent the injured worker from getting the evidence that they need to prove their case. Commenter states that the charges for films and the ROI's are not the responsibility of the copy service because the copy service is not a party to the case. Commenter is concerned that the injured worker is not going to be able to get their records because it won't be paid for if there is an ROI.</p> <p>Commenter that there are no regulations that prevents an out of state ROI from charging copy services a \$1.00 per page plus other charges.</p> <p>Commenter states that the \$180 fee may not cover to cost of retrieving documents. In commenter's</p>	<p>Patty Waldeck MacroPro July 1, 2014 Oral Comment</p>	<p>Disagree These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules.</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> <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 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>experience the custodians of records, medical offices, can charge whatever they want and are unconcerned with the Civil Code of Procedure that states that they can only charge \$0.10 per pages and \$24 per hour. Commenter states that there is no one to enforce this and that the copy service cannot do anything about this because they are not a party to the claim, but a neutral party.</p> <p>Commenter also would like to see a cost of living provision included in these regulations.</p>		<p>If the fee schedule proves to need an adjustment, that adjustment can be made through additional rulemaking.</p>	<p>the superior court pursuant to Labor Code section 132.</p> <p>No action.</p>
9982	<p>Commenter states that the applicant attorney’s demand letter pursuant to Section 10608 is optional. Commenter states that this section, because of the way in which it is worded, can be bypassed. Commenter requests that the regulations clarify this section in order to prevent disputes. If not, the alternative process of deposition is likely.</p> <p>Commenter state that Labor Code section 5307.9 requires specificity in billing for these services.</p> <p>Commenter requests that the Division</p>	<p>Dan Mora Gemini Duplication July 1, 2014 Written and Oral Comment</p>	<p>Agree in part. 9982(b) was changed, deleting “this fee schedule applies to obtaining records which were not timely served pursuant to section 10608” and inserting “the timeframes set forth in section 10608” to former subsection (c).</p>	<p>9982 provides: (b) This fee schedule applies to obtaining records which were not timely served pursuant to section 10608. (e) If the claims administrator fails to <u>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</u></p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	consider subject matter expert input when completing these proposed regulations.			<u>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>
9983(a)(1)	<p>Commenter thanks to the Division for the work that went into these regulations. Commenter has some concern about the \$180.00 bundled amount as it is higher than the study done by CHSWC, but appreciates the effort to find the sweet spot between a reasonable return for the payment for services and a reasonable and predictable cost for payers.</p> <p>Commenter recommends that the term “but not limited to” be added to this subsection. Commenter opines that if the statute is not specific that there will be those who try to find a way outside of the fee schedule.</p>	<p>Mark Sektnan Association of California Insurance Companies; California Chamber of Commerce; California Coalition on Workers’ Compensation July 1, 2014 Oral Comment</p>	Agree.	9983(a)(1) the words “but not limited to” have been added.
9983	<p>Commenter offers the following suggestions:</p> <ol style="list-style-type: none"> 1. Flat fee of \$180.00 for up to 	<p>Matthew Vatandoust Scandoc Imaging, Inc. June 30, 2014 Written Comment</p>	Disagree. The flat fee for up to 500 pages is actually down from BRG’s recommendation of up to 1,000 pages.	<u>§ 9983 Fees for Copy and Related Services</u> (a) <u>The reasonable maximum fees, not including sales tax, payable for copy and</u>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>100 pages from each physical address at which records are requested to be obtained.</p> <ol style="list-style-type: none"> 2. Page rate of \$.25 per page 3. Service of Process fee of \$55.00 for researching the locations or witnesses for service at the correct address; preparation and service of subpoenas or other documents and party notices; mileage; and, preparation of proof of service. 4. The actual amount of any fee charged by any third party custodian of records or other person in the course of providing services pursuant to this Article shall be separately reimbursed to the person who paid the fee (ROI fees). The person who paid the fee may add an administrative surcharge of 20% of the fee up to a maximum of \$15.00 for each fee paid. 5. For certificate of no records or cancellations, \$100 fee should be allowed. 		<p>Disagree. The rate of \$.10 per page over 500 pages is reasonable.</p> <p>Disagree. Service of the subpoena is included in the flat fee. It has been added to 9983(a).</p> <p>Disagree. 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>Disagree. \$75 for CNRs is reasonable.</p>	<p><u>related services are as follows:</u></p> <p>(1a) 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>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9983(a) and General Comment	<p>Commenter states that there are two types of copy services that practice in the workers compensation business – applicant and defense. Commenter notes that the defense has made comments that they endorse certain tradeoffs in the fee schedule that the applicant copy services do not.</p> <p>By the terms of the fee schedule (§9982 Allowable Services (a) <i>This fee schedule covers copy and related services for records relevant to an injured worker’s claim, except services under a contract between the employer and the copy service provider.</i> Commenter opines that defense copy services are by definition “contract copy services” and therefore their comments do not apply.</p> <p>Commenter states that his firm is an APPLICANT copy service for whom the fee schedule DOES apply. Commenter appreciates the time that the Division has taken with both the payers and applicant copy services to come to a fee schedule whose purpose is to avoid conflict and dispute. Commenter endorses the \$180 flat fee proposed.</p>	<p>Dan R. Jackle Vice President, Sales and Client Services ARS Legal June 30, 2014 Written Comment</p>	<p>No response necessary.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9984	<p>Commenter recommends the following revised language:</p> <p><u>§ 9984 Certification and Declaration of Completion of Records by a Custodian</u></p> <p>Commenter requests that <u>any</u> delivery of records by a custodian be accompanied by a statement under penalty of perjury, signed by the custodian producing the records, containing a list of what was delivered, what requested records were withheld, and that the delivered records have not been tampered with during the delivery.</p> <p>Commenter recommends the alternative title to this subsection that he opines will better describe “Certification and Declaration of Completion of Records”</p>	<p>Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA)</p> <p>Steve Cattolica CWCSA June 23, 2014 Written Comment</p>	<p>These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9. This section has been deleted. Authorizations apply prior to the filing of any action and there is no requirement that the custodian sign any declaration and the copy service has no authority to compel a signature. The copy service itself cannot sign a declaration because it is not producing the records; it would have simply copied records provided by the custodian.</p>	9984 has been deleted.
9984(a)(b)	<p>Commenter notes that in this subsection that there is some effort (seemingly) to allow (or at least specify the terms under which) copy and related services could be performed using 'authorization' (instead of 'subpoena'). Commenter opines that (at least in the case of the</p>	<p>Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment July 1, 2014 Oral Comment</p>	See above.	See above.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>injured worker and their authorized representative (the applicant attorney)) it is inappropriate to request records under 'authorization'. Evidence Code Section 1158 is clear in its prescription that such services can be done 'under authorization' only BEFORE the filing of any action. Commenter states that these provisions should be eliminated.</p>			
9984(a)	<p>Commenter opines that this section should not be limited only to records produced by authorization. Commenter states that all records produced or served by the parties and lien claimants, regardless if under Regulation §10608, by subpoena, by notice of deposition, or authorization should be accompanied by a Declaration under penalty of perjury attesting to what records were produced and withheld, and in compliance with Evidence Code §1561.</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA) June 30, 2014 Written Comment</p>	9984 has been deleted.	9984 has been deleted.
9984(b)	<p>Commenter notes that this section would allow the defendant to consider anything they copy, produce, or serve as certified, which is in direct conflict with Evidence Code section 1561.</p> <p>Commenters states that to comply</p>	<p>Diane Worley Director of Policy Implementation California Applicants' Attorneys Association (CAAA)</p>	See above.	See above.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>with the evidence code, at a minimum all records copied, produced, or served by authorization should be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following: (1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records. (2) The copy is a true copy of all the records described in the request for records, (3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.(4) The identity of the records. (5) A description of the mode of preparation of the records.</p> <p>If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and those records that are available.</p> <p>Where the records described in the request were delivered to an attorney or his or her representative or deposition officer for copying at the</p>	<p>June 30, 2014 Written Comment</p>		

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>custodian's or witness' place of business, in addition to the affidavit above, the records shall be accompanied by an affidavit by the attorney or his or her representative or deposition officer stating that the copy is a true copy of all the records delivered to the attorney or his or her representative or deposition officer for copying.</p>			
9984(a) and (b)	<p>Commenter recommends the following revised language:</p> <p>(a) All records copied, produced, or served by authorization <u>and/or subpoena</u> shall be accompanied by an affidavit or declaration, signed under penalty of perjury, itemizing in detail the category or description of all records produced, together with an explanation of any records that were withheld and not produced and served for any reason.</p> <p>(b) All records copied, produced, or served by authorization <u>and/or subpoena</u> shall be considered certified.</p> <p>Commenter notes that this section currently only applies to declarations when records are copied, produced, or</p>	<p>Jeremy Merz CalChamber</p> <p>Jason Schmelzer CCWC</p> <p>Julianne Broyles CAJPA July 1, 2014 Written Comment</p>	9984 has been deleted.	9984 has been deleted.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	served by authorization. However, this only reflects record production prior to an action being filed. After litigation commences, subpoenas - not authorizations - are used to acquire records. Commenter states that this section should be expanded to include subpoenas.			
9984(a) and (b)	Commenter opines that these subsections be amended to include not just records produced by an authorization, but all records produced, whether under Section 10608 or by subpoena.	Robert McLaughlin July 1, 2014 Oral Comment	Disagree. 9984 has been deleted.	9984 has been deleted.
9990(e)(1)(B)	<p>Commenter recommends the following revised language:</p> <p>(B) \$85.00 per complete download for WCAB new case opening records transmitted to the requester by direct electronic download.</p> <p>Commenter states that adding the term “complete” ensures that the \$85.00 fee includes transmittal of the record set rather than a separate fee for each downloaded document in the record set.</p>	Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) July 1, 2014 Written Comment	Agree. “complete” has been added.	9980(e)(1) provides: (B) \$85.00 per <u>complete</u> download for WCAB new case opening records transmitted to the requester by direct electronic download.
9990(c)(1)	Commenter notes that this section combines the description of fees for both paper transcripts (up to and over	Peggy Thill Claims Operations Manager – State	Disagree. DWC has not encountered public confusion with the existing language	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>50 pages) with the fees for additional copies of transcripts which may be confusing when trying to determine fees that need to be paid prior to document release.</p> <p>Commenter notes that the subsequent description of sales tax and the cost of transcripts delivered on a medium other than paper are noted as (1) and (2) which is also confusing.</p> <p>In order to ensure that the division fees for transcripts are understood, commenter recommends that the DWC separate the information regarding fees for transcripts over 50 pages and additional copies of transcripts. Commenter also recommends that the DWC renumber or rename the subsequent sections.</p>	<p>Compensation Insurance Fund (SCIF) June 30, 2014 Written Comment</p>	<p>which combines fees for paper transcripts with fees for additional copies of transcripts.</p>	
9990	<p>Commenter notes that the Division is increasing their own fees for copying records. Commenter questions if it is reasonable that the Division is charging \$1.00 per page for records; however, they object to other companies charging the same amount. Commenter opines that obtaining records from the Division is a one step process. Commenter states that copy</p>	<p>Diann Cohen MacroPro July 1, 2014 Oral Comment</p>	<p>Disagree. The flat fee is not based on a per page fee.</p>	<p>No action.</p>

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	services have a 19-step process and are being asked to provide records for ten times less than the amount that the DWC is now charging for records.			
9990, 9991 and 10208.7	Commenter states that he is puzzled by the inclusion of such provisions within the context of the Copy Service Fee Schedule. Commenter requests that there be language included in any subsequent Statement of Reasons accompanying this rulemaking, explaining why there should be language included that indicates the changes to Section 9990 (and onward) of the Code of Regulations, that are not considered to be part of, or of any effect with respect to, the fee schedule requirements.	Gregory S. Webber CEO Med-Legal LLC June 30, 2014 Written Comment	The Initial Statement of Reasons explains that related changes were made to 9990, 9992 and 10208.7 to allow DWC to make a change to the billing rate for electronic requests made under the Public Records Act and to make changes to deposits for transcript fees, and to allow DEC to dispose of paper adjudication documents after 20 years.	No action.
9990, 9991, 9994 and 10208.7	Commenter requests, that in subsequent versions of the Statement of Reasons accompanying this rulemaking, there be language included that clearly indicates that proposed changes to Sections 9990, 9991, 9994 and 10208.7 of this Article, are not considered to be part of, or of any effect with respect to, the non-contracted copy service fee schedule required pursuant to Labor Code Section 5307.9	Daniel Lopez, President – California Workers’ Compensation Services Association (CWCSA) Steve Cattolica CWCSA June 23, 2014 Written Comment	The Initial Statement of Reasons explained that sections 9990, 9991, and 9994 are not part of the copy service fee schedule	No action.