

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

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Copy Service Fee Schedule

**TITLE 8, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 9980-9984, 9990, 9992, 9994, and 10208.7**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation pursuant to the authority vested in her by Labor Code Sections 59, 133, 4616, 5307.3, and 5307.9 proposes to modify the text of the following proposed regulations:

Section 9980	Definitions
Section 9981	Bill for Copy Services
Section 9982	Allowable Services
Section 9983	Fees for Copy and Related Services
Section 9984	Declaration of Completion of Records Obtained by Authorization
Section 9990	Division Fees for Transcripts; Copies of Documents; Certification; Case File Inspection; Electronic Transactions

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94612

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on **October 1, 2014**. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using

the following e-mail address: dwcrules@dir.ca.gov.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday.

DOCUMENTS SUPPORTING THE RULEMAKING FILE

A memo to the rulemaking file dated August 21, 2014, memorializing a web search for fees charged for duplication of X-rays and scans, and printouts of emails and correspondence to and from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by underlining, thus: added language. Deletions are indicated by strikeout, thus: ~~deleted language~~.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

The proposed text was indicated by double underlining, thus: added language. Deletions are indicated by double strikeout, thus: ~~~~deleted language~~~~.

SUMMARY OF PROPOSED CHANGES

1. Section 9980 - Definitions

The words "necessary for" were replaced with "related to," to clarify the definition of "copy and related services."

The words "or Authorization" were deleted from this section and the entire copy service fee schedule as authorizations are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and are not used by non-contracted copy services.

2. Section 9981 Bill for Copy Services

The word "incurred" was replaced with "provided" for clarification. Services are provided while costs are incurred.

Subdivision (b) was amended to require billing information to ease the billing process. Specifically, the billing information required is as follows: “and include the provider tax identification number, date of billing, case information including employee name, claim number, case number, source information including type of records, date of service, description of services, and the number of pages produced.”

References to general use HCPHCS codes were replaced with California Only workers’ compensation codes to avoid miscoding.

The use of billing codes is optional and it is anticipated that the Division’s *Billing and Payment Guide* will be updated to allow copy services to use standardized billing forms and e-billing in a future, separate rulemaking package.

Subdivision (b)(2) was deleted to conform with proposed deleted section 9984.

3. Section 9982 Allowable Services

Subdivision (b) was deleted and incorporated into subdivision (c) to clarify that the fee schedule applies if the claims administrator fails to provide records pursuant to section 10608.

The words “that are being sought” were replaced with “which they are seeking” for clarity.

The words “or Authorization” were deleted from this section and the entire copy service fee schedule as authorizations are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and are not used by non-contracted copy services.

The words “There will be no payment for” were replaced with “This fee schedule does not apply to” for clarification.

Subdivision(d)(2) is deleted as unnecessary after proposed revision to 9983(a)(1) as all available records are included in the flat fee for a set of records. Liability for duplicate records is covered in subdivision (e)(1).

Subdivision (d)(3) was moved to subdivision (e)(3) to clarify that the claims administrator is not liable for payment of records subpoenaed from the Workers’ Compensation Insurance Rating Bureau and the Employment Development Department that can be obtained without a subpoena through the Public Records Act. The “Electronic Data Exchange System” was stricken because that system is no longer used. The word “Rating” was added to correct a typographical error. The words “at lower cost” were replaced with “through the Public Records Act” to clarify exclusions.

The word “duplicative” was stricken to avoid confusion. The words “duplicate records” are later used to describe when good cause should be set forth.

9982(e)(1)(A) was added to provide that the claims administrator is liable for payment if there is good cause for duplicate records. Examples of good cause were added to provide guidance as to when a declaration could be used.

4. Section 9983 Fees for Copy and Related Services

The words “or Authorization” were deleted from this section and the entire copy service fee schedule as authorizations are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and are not used by non-contracted copy services.

Subdivision (a)(3) was added to make claims administrators liable for the costs of obtaining records by way of a request pursuant to the Public Records Act.

The words “are also reimbursable” were replaced with “apply” for clarification.

Subdivision (a)(5)(B) was deleted as unnecessary.

The words “payable by the party ordering the additional set” were deleted in subdivision (a)(5)(B) to avoid liability for costs falling on injured workers. After the injured worker’s one additional set of records, further additional sets are payable by the party ordering them.

Fees for X-rays and scans were modified after a survey of copy fees for X-rays and scans was taken. The Official Medical Fee Schedule has not been updated in many years and the survey showed that costs for X-rays often exceed the Official Medical Fee Schedule’s provision of \$5.13 and was more in line with the provision for scans of \$10.26. There did not appear to be a significant difference in costs between X-rays and scans.

5. Section 9984 Declaration of Completion of Records Obtained by Authorization

This section has been deleted as Authorizations are not used to obtain documents by non-contracted copy services. 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. As authorizations are not used to obtain documents by non-contracted copy services, this section is not necessary.

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

Subdivision (e)(1)(A) was deleted because tape is no longer used for new case opening records.