



California Workers' Compensation Institute  
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VIA E-MAIL to [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

October 1, 2014

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation, Legal Unit  
Post Office Box 420603  
San Francisco, CA 94142

**RE: 15-Day Comments – Copy Service Fee Schedule**

Dear Ms. Gray:

These written comments on modifications to proposed regulations regarding copy service fees are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Fireman's Fund Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

Recommended revisions to the draft Copy Service Fee Schedule regulations are indicated by highlighted **underscore** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

## Introductory Comment to Proposed Regulations

The statutory language of section 5307.9 and the analysis by the Legislative Counsel contained in the preamble to SB 863 make it clear that the administrative director must adopt a comprehensive schedule of “reasonable maximum fees” payable for copy and related services.

Section 5307.9 is very specific and inclusive: the Administrative Director shall adopt a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services. The schedule shall be controlling regardless of whether payments of copy service costs are claimed under Section 4600, 4620, or 5811, **or any other authority except a contract between the employer and the copy service provider.** [emphasis added]

The schedule must not allow payment for any services provided within 30 days of a request by an injured worker or his attorney to an employer or claims administrator for copies of relevant records in their possession. The fee schedule must, therefore, establish procedures which will avoid duplicate record requests. The employee may subpoena the records only if they are not provided by the employer.

Labor Code section 4603.2(b)(1) requires copy services to submit requests for payment with an itemization of services provided and the charge for each service. The copy service must also establish that the services were actually performed.

The proposed regulations fail to meet the dictates of the statutes in several respects. The regulatory process must be applied whether the medical records or related documents are requested by subpoena or authorization.

## § 9980 Definitions

### Recommendation

As used in this article:

- (a) “Copy and related services” means all services and expenses that are related to the retrieval and copying of documents and are responsive to a duly issued subpoena **or authorization** to release documents for a workers’ compensation claim.
- (d) “Set of records means a reproduction, either in paper form or in electronic form, of all records copied from one custodian of records under one subpoena **or authorization.**”

### Discussion

*The Institute recommends “or authorization” be reinstated in the definition of “Copy and related services” so that there is a single fee schedule addressing copy services. Whether a copy service provider is providing services based on a subpoena or an authorization should not dictate different payment requirements.*

*The rationale for deleting “or Authorization”, provided in the Notice of Modification to Text of Proposed Regulations, stated that authorizations are not used by non-contracted services. This is contradicted by information presented in public comments by non-contracting (i.e. applicant) copy service providers.*

*Excerpts from public comments submitted by copy service companies:*

*“...we then serve an authorization and/or a subpoena to all parties of our intent to obtain the records...”*

*“On a daily basis, our staff handles authorizations and subpoenas delivered to medical facilities by Legal Copy Services....for both Applicant Copy Services and Defense Copy Services.”*

*“Who do I charge the extra fee’s to for not complying with an authorization ON TIME from the facilities regarding an authorization?”*

*In order to mitigate disputes concerning payment of copy services the Copy Service Fee Schedule should apply to record reproduction without regard to whether the request is submitted via a subpoena or an Authorization.*

## **§ 9981 Bills for Copy Services**

### **Recommendation**

- (a) This article applies to services **requested provided** on and after the effective date of this article regardless of date of injury.

**(3) Bills for records obtained by authorization must include a declaration of completion of records pursuant to section 9984(a).**

### **Discussion**

*The Institute recommends replacing “requested” with “provided” in order to enable correct application of the fee schedule for payment calculation. There is no requirement for the copy service provider to include the service request date on their bill, so the payor would not know whether or not the fee schedule would apply to a particular bill.*

*The Notice of Modifications to Text of Proposed Regulations states “the word ‘incurred’ was replaced with ‘provided,’” so “requested” may be an error.*

*If the Administrative Director is in agreement with our recommendation to reinstate services provided in response to an Authorization then the language requiring a declaration of completion of records must also be reinstated.*

## **§ 9982 Allowable Services**

### **Recommendation**

- (a) This fee schedule covers copy and related services for records relevant to an injured worker’s claim, except services under a contract between the claims administrator and the copy service provider.

**(e1)** If the claims administrator fails to serve records in the employer’s or insurer’s possession requested by an injured worker or his or her representative within 35 calendar days or fails to serve a copy of any subsequently received medical report or medical-legal report within 15 calendar days of receipt pursuant to section 10608, this fee schedule applies to obtaining those records.

(e) If the claims administrator fails to provide written notice, pursuant to Labor Code section 4055.2, to the injured worker of records which they are seeking by subpoena, this fee schedule applies to obtaining those records.

(db) There will be no payment for copy and related services that are:

- (1) Provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim.
- (2) Provided by any person or entity which is not a registered professional photocopier.

(ec) The claims administrator is not liable for payment of:

- (1) Records previously obtained by subpoena 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 setting forth good cause to seek duplicate records...

## Discussion

*The language under (a) defines allowable services and subsections (b) and (c) serve to refine the information in (a), therefore it would be more accurate to identify the subsections as such. The services for which no payment is warranted would then be identified as section (b) with subsections as currently identified.*

*The Institute recommends deleting subsection (c) since the fee schedule or a contract would apply to record reproduction regardless of whether notification of the request for records, either by subpoena or authorization, was provided to the injured worker.*

*Based on the renumbering of sections and subsections, section (e) would become section (c). Reinstating services provided on the basis of an authorization requires rewording to address duplicate records associated with either a subpoena or authorization.*

## § 9983 Fees for Copy and Related Services

### Recommendation

(a) The reasonable maximum fees, **not including sales tax**, payable for copy and related services are as follows:

(1) A \$180 flat fee for a set of records, from a single custodian of records, which includes mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, fees for release of information services, service of the subpoena, shipping and handling, and subpoena preparation.

(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.

(3) Actual ~~costs incurred fees paid as a result of a Public Records Act request~~ for records from the Workers' Compensation Insurance Rating Bureau, and the Employment Development Department.

(4) Release of information services of witness costs for the retrieval and return of physical records held offsite by a third party are controlled by Evidence Code section 1563 and are included in the flat fee. ~~Disputes over witness costs may be resolved by filing a petition with the Workers' Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132.~~

## **Discussion**

*The Institute recommends striking "not including sales tax" since taxes paid in the course of doing business are an overhead expense and should not be separately paid.*

*The Institute recommends reinstating "or authorization" based on the rationale presented earlier.*

*The Institute recommends deleting "costs incurred" and replacing with "fees paid". The phrase "as a result of a Public Records Act request" should be deleted since the Workers' Compensation Insurance Rating Bureau is not a public agency and the Public Records Act does not apply. Records may be requested from the Employment Development Department without the necessity of filing a Public Records Act request. In both instances, lower costs are achieved by the requestor availing themselves of records without the necessity of incurring higher costs associated with subpoena requests.*

*The Institute recommends striking the language related to dispute resolution. CCR section 9792.5.7 mandates the use of the Independent Bill Review process for dispute resolution for services provided pursuant to Labor Code sections 4603.2, 4603.4 or 4622. Stating that disputes over witness costs that are included in the flat fee defined in the Copy Service Fee Schedule are to be handled by either the Workers' Compensation Appeals Board or the superior court is in conflict with section 9792.5.7.*

Thank you for considering these recommendations and comments. Please contact me if additional clarification would be helpful.

Sincerely,

Stacy L. Jones  
Senior Research Associate

SLJ/pm

cc: Christine Baker, DIR Director  
Destie Overpeck, DWC Acting Administrative Director  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members