



California Workers' Compensation Institute

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VIA E-MAIL to dwcrules@dir.ca.gov

February 13, 2015

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

RE: 3rd 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 the members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 74% 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, Republic Indemnity Company of America, Sentry Insurance, 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, 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 Alameda, 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 **underline** and **strikeout**. Comments and discussion by the Institute are indented and identified by *italicized text*.

§ 9984 Declaration of Completion of Records Obtained by Authorization

(a) All records copied, produced, or served by authorization 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.

(b) All records copied, produced, or served by authorization shall be considered certified.

Authority: Sections 127, 133, 5703 and 5307.9, Labor Code; sections 1271, 1561, and 1562, Evidence Code.

Reference: Section 5307.9, Labor Code.

Discussion

Services provided in response to an authorization have been restored to the proposed regulations, but the Division has apparently overlooked the need to also restore the language that would ensure a declaration of completion for these records. The Institute believes it is essential to do so. Labor Code section 5307.9 mandates a Copy Service Fee Schedule for copy and related services and provides that the schedule specify the services allowed and require specificity in billing for these services. Restoring the language will ensure the entity completing the copy order is required to provide the services appropriately.

As is the case for subpoenaed records, it is important that records provided pursuant to an authorization are affirmed under penalty of perjury to be complete, accurately described, and accompanied by an explanation of any records withheld so that such records can be considered certified. Some have complained that different sets of records are provided from the same location to different requesting parties. Restoring the language will help ensure the same complete set of records is provided, regardless of the requesting party.

In the absence of a Declaration of Completion of Records, the requesting party has no way of ensuring that all relevant records have been produced. This will unnecessarily cause delay and increase costs, as the requesting party will then have to subpoena records from the same custodian once a case is litigated to ensure that all records were produced.

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
Carol Finuliar, DIR Counsel
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
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