



California Workers' Compensation Institute
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VIA E-MAIL to dwcrules@dir.ca.gov

July 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: Written Testimony – Copy Service Fee Schedule

Dear Ms. Gray:

This written testimony on proposed regulations regarding copy service fees is 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*.

§ 9980 Definitions

Recommendation

(b) “Claims administrator” means the person or entity responsible for the payment of compensation for any of the following: a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, the administrator of the Uninsured Employers Benefits Trust Fund (UEBTF), the administrator of the Subsequent Injuries Benefits Trust Fund (SIBTF), a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, joint powers authority, the Self-Insurers’ Security Fund, or the California Insurance Guarantee Association (CIGA).

A claims administrator, which includes, but is not limited to, a self-administered workers' compensation 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.

Discussion

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. Greater uniformity in terms and definitions provides greater clarity when cross referencing various statutes and regulations.

§ 9981 Bills for Copy Services

Recommendation

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

(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. 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).

Discussion

The Institute recommends replacing “incurred” with “provided” in order to differentiate a provided service versus an incurred expense.

A typographical error requires correction by removing the second “H” in “HCPHCS.”

The Institute recommends adding language that will assist in the appropriate use of HCPC S9981.

§ 9982 Allowable Services

Recommendation

(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.

(d) If the claims administrator fails to provide written notice to the injured worker of records that are being sought by subpoena or authorization, this fee schedule applies to obtaining those records.

(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.

(e)(2) For multiple billings arising from a single retrieval of records for a single claim from one custodian of records.

(e)(3) 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,

(f)(1) 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.

Discussion

The recommended additional language will serve to clarify the start date for the 30-day period to produce records for copying. 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. 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.

The 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. The Institute recommends deletion of section (d) since the fee schedule applies irrespective of injured worker notification by the claims administrator.

The Institute recommends revising the 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. This revision should provide a disincentive to provide partial records.

The word "Rating" was omitted from the correct title for the Workers' Compensation Insurance Bureau and needs to be inserted.

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.

§ 9983 Fees for Copy and Related Services

Recommendation

(a) The reasonable maximum fees payable for copy and related services are as follows:

(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.**

~~(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.~~

(4) In addition to the flat fee, the following fees are also reimbursable:

(A) Ten cents (\$.10) per page for copies above ~~500-1,000~~ pages.

(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.**

Discussion

Flat Fee: *The Institute believes 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.*

The Institute is supportive of the concept of a flat fee schedule where copy services and all related fees are bundled. 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."

The Institute 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 analysis that the DIR commissioned.

We support the description of allowable services in section 9982, and recommend clarifying that the bundled services include, but are not limited to these services.

Multiple Requests for Records: *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.*

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. Perceptions of job splitting could lead to a continuation of disputes that these regulations seek to curtail. The Division should clarify that the fee structure applies to past, present, and future records from the same custodian of records. The Division should establish penalties or an automatic denial of the additional fees when any copy service requests duplicative records or additional records from the same custodian.

\$75.00 Cancellation Fee: *If this fee represents reimbursement for subpoena preparation and service, it should be stated as such. 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.*

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 re-served, or the authorization is resubmitted, for the associated record collection. 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.

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). 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.

Page Limit: *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) we believe that a flat rate in the range recommended by BRG is appropriate for up to 1,000 pages, rather than 500 pages. The Institute believes that the flat fee rate should be no more than is allowed under California Evidence Code sections 1560-1567 for 1,000 pages, 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:*

- *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.*

X-Rays: *The proposed regulation correctly states that their already exists a fee associated with copies of x-rays and scans. 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.*

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

Recommendation

(1) Listing of WCAB new case filings:

(B) \$85.00 per **complete** download for WCAB new case opening records transmitted to the requester by direct electronic download.

Discussion

Adding "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.

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. The correct reference to the remedy for late payment is defined under Labor Code section 4603.2(b)(1), which provides for self-executing penalties and interest for delayed payments that were not subject to a valid objection.

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