

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 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 **November 8, 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

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~~~~.

Proposed Text Noticed for 2nd 15-Day Comment Period on Modified Text:

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

SUMMARY OF PROPOSED CHANGES

The Article number is being changed from 11 to 12 to allow for insertion of an interpreter fee schedule which will be part of a separate future rulemaking.

1. Section 9980 - Definitions

“Authorization” has been defined with parameters of its usage to obtain records which state the specific uses and limitations on the types of information to be disclosed and a specific date after which the provider is no longer authorized to disclose the information.

The words “or Authorization” were previously deleted from this section and the entire copy service fee schedule because they are only applicable prior to the filing of any action pursuant to California Evidence Code section 1158 and reportedly were not used by non-contracted copy services. Authorizations are commonly used in workers' compensation cases and have been reinstated into the fee schedule to avoid a loophole which would have allowed for billing outside

of the schedule.

2. Section 9981 Bill for Copy Services

The word “requested” was replaced with “provided” to correct a typo. Services are provided while costs are incurred or requested.

Subdivision (b) was amended to require professional photocopier registration numbers to avoid liability for non-professional photocopiers; bills no longer must include a copy of the professional photocopier certificate as registration numbers are unique and providing them serves the same purpose. Case numbers are also only to be included if applicable as case numbers are generally not assigned until a case is filed with the Workers’ Compensation Appeals Board (WCAB).

A separate billing code for certificates of no record was added because cancelled services and certificates of no record involve different tasks. Codes for records from the Employment Development Department (EDD) and the Workers’ Compensation Insurance Rating Bureau (WCIRB) were added to conform with additions for these fees in the schedule. A new code for CDs of X-rays and scans was also added because a separate fee for them is included in the fee schedule. The code for additional paper sets was deleted to conform with a previous change to the fee schedule while the code for scans and X-rays was corrected.

3. Section 9982 Allowable Services

Subdivision (b) was clarified to directly refer to parameters in Labor Code section 5307.9 and section 10608 for clarity.

9982(e)(1) reinstates authorizations and claims administrators are not liable for 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.

Records from the WCIRB and EDD are not available by way of a public records request so references to the Public Records Act has been deleted and subdivision (e)(3) has been clarified.

4. Section 9983 Fees for Copy and Related Services

Maximum fees for records from the WCIRB are \$30 and for records from EDD, the maximum fee is \$20. These records can be obtained free-of-charge upon request from the injured worker.

The public can also access WCIRB coverage information for employers for the past five years for free online. For coverage information beyond the past five years, the WCIRB charges \$10 per year of coverage requested by way of a Coverage Research Service request. Over the last several years, the WCIRB has seen a marked increase in the number of subpoenas received

requesting coverage information for cases before the WCAB. The number jumped from a low of approximately 1,300 in 2010 to a record high of 4,000 in 2013, 90% of which were to determine the identity of the insurer for a specific employer as of a specific date and which is readily available to the public at no cost on the WCIRB's coverage website. The impact of the cost of these subpoenas on the system is a concern, particularly in view of the comment in Martinez v. Terrazas (2013) 78 Cal. Comp. Cases 444, 447, fn. 3 (Appeals Board en banc) that "in the context of a subpoena to recover costs associated with a subpoena to the WCIRB, the copy service would need to establish the expenses were incurred to prove or disprove a contested claim and that they were reasonable and necessary at the time incurred." In that case, the parties participated in an agreed medical evaluation before the subpoena was served on the WCIRB requesting coverage information. Consequently, it appeared to the court that the identity of the employer's insurer had been identified prior to the subpoena for coverage information being requested and was therefore not necessary.

In regards to EDD records, Unemployment Insurance Code section 2111 provides that EDD is only authorized to provide EDD records only if EDD has an existing lien in the WCAB case. If EDD does not have a lien, then no records can be provided, even if EDD receives a subpoena. If EDD has a lien, the records can be obtained for free upon request from the injured worker's attorney. Attorneys can also request records with an Authorization signed by the injured worker for \$15.

The words "or request for records by authorization" were added to subdivision (a)(2) because authorizations have been reinstated into the fee schedule.

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

Subdivision (e)(1) was clarified by eliminating a colon to conform to a previous deletion.