

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9981(b)(1)	<p>Commenter notes that the proposed Regulation 9983(a)(6)(B) provides for a \$5 charge for an additional set of electronic records when ordered within 30 days of the subpoena, and a \$30 charge if the request is made more than 30 days after the subpoena. Proposed Regulation 9981 (b)(1), however, only establishes a billing code - WC 026 - for a set ordered within 30 days. It does not establish a second code for a request made more than 30 days after the subpoena. Commenter recommends an amendment to Regulation 9981 to create the currently-missing billing code.</p>	<p>Carlyle R. Brakensiek Legislative Advocate California Workers' Compensation Services Association November 7, 2014 Written Comments</p>	<p>Agree. An additional code for an additional electronic set has been added.</p>	<p>9981(b)(1) provides:</p> <p><u>Bills for records may include billing codes. WC 020 is for Flat Fee of \$180, WC 021 is for Cancelled Service of \$75, WC 022 is for and Certificate of No Record of \$75, WC 0223 is for Per Page Fee of .10 per page, WC 023 is for Additional Paper Set of \$50, WC 024 is for records from the Employment Development Department (EDD) of \$20, WC 025 is for records from the Workers' Compensation Insurance Rating Bureau of \$30, WC 026 is for an Additional Electronic Set of \$5, WC 02567 is for an Additional Electronic Set of \$30, WC 028 is for Duplication of X-Ray of \$10, and WC 026 is for Duplication of Scan of \$15 or scan of \$10.26, WC 0289 is for CD of X-rays</u></p>

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				<u>and scans of \$3.</u>
9983	Commenter states that as drafted, California sales taxes will be imposed on, and added to, the entire \$180 flat fee even though some of the services covered by the fee are usually not subject to sales tax. Commenter has raised this issue in face-to-face meetings with DWC personnel, but feels compelled to comment here that the proposed regulations do not contain any provisions to address or ameliorate this new cost on payors.	Carlyle R. Brakensiek Legislative Advocate California Workers' Compensation Services Association November 7, 2014 Written Comments	Taxes are not under the authority of the Administrative Director. Tax laws change and it is not clear the Administrative Director could dictate how much of the flat fee would be taxed.	No action.
9981(a) Effective date of Fee Schedule	Commenter's members have numerous examples of payors who are attempting to apply the proposed Fee Schedule to services provided months ago. Commenter has examples of judges who are also applying the proposed fee schedule as if it were currently in place. Commenter considers such an application of the proposed fee schedule to be an underground regulation that is impermissible as a reimbursement standard at this time.	Carlyle R. Brakensiek Legislative Advocate California Workers' Compensation Services Association November 7, 2014 Written Comments	Regulatory changes would not solve the problem of impermissible practices. An effective date is already part of the schedule.	No action.

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	Although Proposed Regulation 9981(a) provides that the fee schedule "applies to services provided on and after the effective date of this article regardless of date of injury," commenter urges that the Regulations, when adopted, contain stronger language to indicate that the fee schedule is not retroactive.			
General Comment	Commenter notes that there is still no provision in the proposed regulations that compels the insurance carriers to pay timely, so he opines that they will delay their payments as long as they can.	Dan R. Jakle Associated Reproduction Services, Inc. ARS Legal November 7, 2014 Written Comments	Disagree. The fee schedule resolves questions of reasonableness and will motivate carriers to make timely payments.	No action.
9981(a) Effective date of Fee Schedule	Commenter states that with regard to past bills (pre fee schedule), most of the judges are taking the position that the \$180 flat fee is the reasonable amount that we should have charged years ago when we did the work and invoiced the carrier instead of the higher amount we actually invoiced. Commenter states that the judges are taking this position irrespective of the fact that the copy services have filed and paid a lien fee. Commenter notes that the provision within Regulation 9981(a) stipulates that the fee schedule applies to copy services on or after the	Dan R. Jakle Associated Reproduction Services, Inc. ARS Legal November 7, 2014 Written Comment	An effective date is part of the schedule.	No action.

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	fee schedule goes into effect.			
9981(b)	<p>Commenter notes that the DWC has revised § 9981(b) by adding the requirement that a professional photocopier registration number be included on bills for copy services. Additionally, the requirement that a copy of the professional photocopier certificate be included with the billing was removed from § 9981(b)(2).</p> <p>Commenter opines that replacing the need for a photocopier certificate with the need for a photocopier registration number will place undue burden on the claims administrator. The DWC indicates that a photocopier registration number is sufficient and serves the same purpose as a certificate; however, while the registration numbers may be unique, it is the county clerks who maintain the register of professional photocopiers, in accordance with BPC § 22457(a). Commenter states that rather than placing the responsibility on the copy service to show they are, in fact, a valid provider, the burden now shifts to the claims administrator to verify with each county whether or not the photocopier is legitimate.</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) November 7, 2014 Written Comment</p>	<p>Agree. County of registration information must also be included on the bill.</p>	<p>9981(b) provides: <u>Bills for copy services must specify services provided and include the provider tax identification number and professional photocopier registration number, county of registration, date of billing, case information including employee name, claim number, case number (if applicable), source information including type of records, date of service, description of services, and the number of pages produced. Billing code S9981 is for medical records copy fee, administrative and S9982 is for medical records copy fee, per page HCPCS level 2 codes. Bills must be submitted to the claims administrator for payment.</u></p>

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	<p>Commenter states that this is an unrealistic approach since there are 58 counties in the state of California. Tasking the claims administrator with this additional duty is inconsistent with BPC § 22458 which aids in ensuring that the photocopier maintains confidentiality of an individual's records. Commenter opines that transferring this obligation from the photocopier to the claims administrator may result in an increase in privacy breaches and cause a delay in processing payments which would further burden the courts.</p> <p>Additionally, it could stifle the claims administrator's ability to send timely objection to inappropriate billing which would place the claims administrator at an unfair disadvantage. Commenter states that it places no responsibility on the provider of services to prove they are in compliance with the law.</p> <p>Commenter states that the DWC's exchange of a registration number for a photocopier certificate in the revised regulations offers no security in ensuring that the provider is a valid</p>			

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	<p>copy service. In addition, BPC § 22462 indicates that records distributed by a photocopier shall be accompanied by a photocopier certificate. Therefore, since the copy service is producing the certificate already, it would not be burdensome on the provider to also submit it with the bill for copy services. Commenter recommends that the previous language in § 9981(b)(2) be retained to require the photocopier certificate be submitted with the bill.</p> <p>Commenter states that this would maintain the responsibility be appropriately placed on the photocopier, in accordance with California Business and Professions Code, without causing any undue hardship.</p>			
9981(b)(1)	<p>Commenter states that it is unclear why the DWC is allowing copy service providers \$10.26 for Duplication of X-Ray when RBRVS allowance is \$5.13, especially since the DWC acknowledges in its Notice that “A new code for CD’s of X-rays and scans was also added because a separate fee for them is included in the fee schedule”.</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) November 7, 2014 Written Comment</p>	<p>The Official Medical Fee Schedule (OMFS) at Section 9789.19 has not been updated for several years. A survey of fees revealed that the OMFS for X-rays was under what most offices charge while the fees for scans was more in line with what most offices charge for both X-rays and scans.</p>	<p>The fee schedule for X-rays and scans has been changed to allow for \$10.26 which is what the OMFS provides for scans rather than the lower amount of \$5 for X-rays.</p>

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	<p>Commenter recommends that the DWC further amend this section to allow the RBRVS allowance of \$5.13 for Duplication of X-Ray.</p>			
9982(e)(3)	<p>Commenter notes that the DWC's revised § 9981(b)(1) allows for a fee of \$20 for records from the Employment Development Department (EDD) and a fee of \$30 for records from the Workers' Compensation Insurance Rating Bureau (WCIRB). Revised § 9982(e)(3) now indicates that the claims administrator is not liable for payment when records from EDD and WCIRB can be obtained at a lower cost. Commenter states that these proposed changes to § 9982(e)(3) conflict with § 9981(b)(1) since records from EDD and WCIRB are readily available for no cost via the EAMS-Public Search Tool.</p> <p>WCIRB records are available online as described on page 3 of the DWC's Notice of Modification to Text of Proposed Regulations: "The public can also access WCIRB coverage information for employers for the past five years for free online". Additionally, EDD will only release</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) November 7, 2014 Written Comment</p>	<p>Disagree. § 9982(e)(3) is not in conflict with § 9981(b)(1).</p>	<p>No action.</p>

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	<p>records if EDD has filed a lien as described on page 4 of the DWC's Notice of Modification to Text of Proposed Regulations: "If EDD does not have a lien, then no records can be provided, even if EDD receives a subpoena". Commenter opines that due diligence should be placed upon copy service providers to verify if EDD has filed a lien.</p> <p>Commenter recommends that proposed § 9982(e)(3) be eliminated because the claims administrator would be liable for subpoenaed records that are available at no cost and the payment would be reimbursable according to the fee schedule rates established in § 9981(b)(1).</p>			
9983(a)(3) and (4)	<p>Commenter notes that the modification to this subsection establishes a maximum fee of \$30 for records obtained from the WCIRB which are free via the WCIRB's website, for the last five years. By imposing a fee, the request for records via subpoena will continue to escalate as noted on page 4 of the DWC's Notice of Modification to Text of Proposed regulations. Commenter</p>	<p>Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI) November 7, 2014 Written Comment</p>	<p>Disagree. Requiring proof of payment would complicate a system that is designed to simplify the process.</p>	<p>No action.</p>

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	<p>opines that this the change could create disputes since records may be available at no cost via the WCIRB's website; this could ultimately result in increased costs on the Workers' Compensation system.</p> <p>Commenter states that while the DWC has added the maximum fee payable for records obtained from EDD and WCIRB, those costs are due prior to submission of billing. Commenter states that there needs to be a way for the claims administrator to verify that the payments were made and the photocopier should be held responsible for providing that information.</p> <p>Commenter recommends that the DWC clarify in § 9983(a)(4) that payments will only be made for WCIRB records that are not available for free (i.e. for coverage information over five years).</p> <p>Commenter recommends that the DWC include additional language requiring the copy service provider to submit an invoice from EDD and WCIRB when records are obtained</p>			

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	from those agencies and reimbursement for fees is included in the bill for copy services. Commenter states that this will ensure that the claims administrator retains a proper accounting of payments made and eliminate the need to return bills to the provider requesting proof of cost.			
General Comment	<p>Commenter opines that as with any scheduled service, there are bound to be disputes. Commenter states that the proposed copy service fee schedule does not clarify how disputes regarding the schedule will be handled. There is no indication of whether billing disputes will be governed by Independent Bill Review (IBR) or whether providers will have to file a lien. Additionally, there is no information included in the schedule regarding who has jurisdiction over disputes.</p> <p>Commenter states that SB 863 legislation amended the Official Medical Fee Schedule to include “medical services other than physician services” and Labor Code § 5307.9 directs the administrative director to adopt a fee schedule for copy and related services. Commenter</p>	<p>Stacy L. Jones Senior Research Associate California Workers’ Compensation Institute (CWCI) November 7, 2014 Written Comment</p>	<p>Disagree. These regulations address copy service fees pursuant to the authority granted under Labor Code section 5307.9, not discovery rules, or lien processes.</p>	<p>No action.</p>

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	recommends that the DWC expressly indicate the proper dispute resolution process implemented with this copy service fee schedule. Commenter opines that creating regulation on this issue now, rather than later, will guide parties in handling disputes and help eliminate erroneous interpretation and reduce litigation at the Workers' Compensation Appeals Board (WCAB).			
9981(b)(1)	<p>Commenter notes that the billing code WC 023 for an additional paper set of records has been deleted from this version of the regulations. Now only an additional electronic set of records may be obtained for a fee of five dollars, with billing code WC 026. In previous comments, commenter noted that the revised version of §9983(a) (6) (B)(formerly (a) (5) (B)) deleted language concerning paper copies as "unnecessary." Commenter recommended that the option of obtaining an additional set of records in paper form should still be made available and paid for by the carrier. In support of this she emphasized that while copy services and insurance carriers may be uniquely situated to provide and receive records in</p>	<p>Diane Worley, Director of Policy Implementation California Applicants' Attorneys Association (CAAA) November 8, 2014 Written Comment</p>	<p>Disagree. Additional paper copies after 30 days are problematic because copy services do not store such copies and may require another copy job. If electronic records are kept, they can be ordered and printed.</p>	<p>No action.</p>

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	<p>electronic form, many injured workers and the doctors' offices to which they must send the records are not. By eliminating the ability to obtain a paper set of records, commenter opined that this fee schedule is transferring the burden and costs of printing records to injured workers, their attorneys, as well as other parties. Commenter states that this will in some cases make it prohibitive for an injured worker to produce evidence necessary for their case. Commenter opines that the result is an encumbrance upon an injured worker's rights to conduct independent discovery.</p> <p>Commenter states that often records produced in an electronic format, such as a CD ROM, are incompatible with the software on a computer, or may be damaged and a computer drive can't recognize the disk. Commenter states that this occurs frequently enough that this may not be a suitable alternative to production of a paper set of records in many instances.</p> <p>For these reasons, commenter recommends that the fee schedule be</p>			

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	<p>revised to allow for an additional paper set of records, by reinstating billing code WC023 in §9981(b) (1), and reinstating the language in §9983(a) (6) (B), allowing for a separate fee of \$50 for an additional set of records ordered by the injured worker, and payable by the claims administrator.</p> <p>Commenter recommends that the regulations be amended to specify that any electronic form of the records must be produced in the same format for all parties. In particular, if records are produced in a searchable file format for the claim adjuster, the same format should be provided to all parties. Commenter opines that to provide a different format to other parties would create mistrust and would add unnecessary cost to the process.</p>		Disagree. DWC is not aware that this is a problem within the system.	No action.
9982(b)	<p>Commenter agrees with the revisions to this subdivision which provide direct reference to the parameters in Labor Code section 5307.9 and section 10608 for clarity.</p> <p>Commenter is appreciative of the Division's continued efforts to</p>	<p>Diane Worley, Director of Policy Implementation California Applicants' Attorneys Association (CAAA) November 8, 2014</p>	No response necessary.	No action.

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	improve this Fee Schedule with each successive draft.	Written Comment		
9983(a)(3) and (4)	<p>Commenter notes that the fees for obtaining records from EDD have been limited to a maximum of twenty dollars in revisions to §9983(a) (3). The fees for obtaining records from the WCIRB have been limited to a maximum of thirty dollars in revisions to §9983(a) (4).</p> <p>Commenter opines that this cap on fees is unnecessary in view of the new language in §9982(e) (3) that the claims administrator is not liable for payment for subpoenaed records that are obtainable from the WCIRB and EDD without a subpoena <i>at lower cost</i>. Commenter states that new language means that in almost all situations only records requests under the respective rules of either the WCIRB or EDD will be reimbursed under this fee schedule. Commenter agrees that in most instances the proposed maximum fees would be adequate to cover such records requests. Commenter notes that there are some cases in which coverage or earnings records are needed for a prolonged period and the proposed</p>	<p>Diane Worley, Director of Policy Implementation California Applicants' Attorneys Association (CAAA) November 8, 2014 Written Comment</p>	Disagree. Records from WCIRB are \$10 per year of requested coverage and records from EDD are \$15.	No action.

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	<p>caps could result in some workers either forgoing necessary records or being responsible for the added fees. In order to make certain that injured workers are able to obtain necessary evidence in all cases without encumbrance, commenter recommends that §9983(a) (3) and (4) be deleted from the fee schedule.</p> <p>In the alternative, if this recommendation is not adopted, commenter recommends that an automatic Cost of Living Adjustment (COLA) be added to this regulation, as the costs of obtaining WCIRB and EDD records will inevitably increase over time.</p>			
General Comment	<p>Commenter notes that her previous recommendations for a COLA to be incorporated into this fee schedule have not been considered. Commenter has asserted that the copy services may suggest a flat fee that is adequate for their costs of doing business in 2014, or 2015, but that fee will become inadequate over time with inflation, and the increasing costs of doing business. Commenter states that it is a common practice for fixed payment regulations to contain an</p>	<p>Diane Worley, Director of Policy Implementation California Applicants' Attorneys Association (CAAA) November 8, 2014 Written Comment</p>	<p>Disagree. COLAs have been considered however if the fee schedule proves to need updating, changes can be made later.</p>	<p>No action.</p>

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	<p>automatic COLA adjustment, either annually or every two years. This avoids the expense and time of the public rulemaking process to make modifications to the regulations every year. Commenter recommends that the COLA for the Copy Service Fee Schedule be indexed to the Consumer Price Index (CPI), in the same manner as other fixed payments, such as Social Security and CalPers retirement payments. Commenter notes that the annual percentage change in a CPI is used as a measure of inflation. The CPI is published annually by the Bureau of Labor Statistics and is the best index for the effect of inflation on the real value of wages, salaries, pensions, and for regulating prices.</p> <p>Commenter strongly recommends that the Division make additional revisions to these regulations to include a COLA in order to serve as a safeguard against this fee schedule becoming obsolete in a few years.</p>			
9982(a); 9982(d)(3); 9980(f)	Commenter states that there is concern among the California Lien Professionals Association members as to the modified proposed regulations being promulgated to give effect to the	Veronica Allard Legislative Committee Administrative Assistant	Agree.	9982(a) “claims administrator” has been replaced with “employer”

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	<p>enactment of Labor Code section 5307.9.</p> <p>Commenter notes that section § 9982 entitled Allowable Services in its current proposed modification deletes from application of the regulation contracts between employers and copy services providers. In the modified version of the proposed regulation the term “claims administrator” is inserted in subsection (a) to replace the term “employer”. Commenter states that by its definition in Section § 9980 an illegally uninsured employer is not included in the persons or entities defined as a “claims administrator”. Commenter opines that the legal nexus can be created that services between an employer and the copy service provider are not covered by the proposed fee schedule. Commenter opines that this ambiguity will leave uncertainty in the market and undoubtedly lead to fee disputes and litigation in the future.</p> <p>Commenter notes that subsection (d)(3) in the modified version of the proposed section § 9982 it is defined that, “There will be no payment for</p>	<p>California Lien Professional Assn. November 8, 2014 Written Comment</p>	<p>Disagree. The fee schedule only allows payment from claims administrators to professional photocopiers who have a registration number. If an attorney makes copies, the costs would be part of their overhead. The Business and Professions Code does not regulate what claims</p>	

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	<p>copy and related services that are: Provided by any person or entity which is not a registered professional photocopier.”</p> <p>Commenter notes that proposed modified section § 9980(f) sets forth that, “Professional photocopier” is defined by section 22450 of the Business and Professions Code.</p> <p>Commenter states that chapter 20 of the business and professions code entitled “Professional Photocopiers” contains section 22450 but continues in section 22451 and sets forth that said chapter does not apply to an identified group of individuals otherwise deemed by statute as qualified to provide professional photocopier services.</p> <p>Commenter notes that Business and Professions Code Section 22451 qualifies that, “This chapter does not apply to any of the following:</p> <p>(a) Any government employee who is acting in the course of his or her employment.</p>		<p>administrators must pay for and is not in conflict with these regulations.</p>	<p>No action.</p>

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	<p>(b) A member of the State Bar or his or her employees, agents, or independent contractors.</p> <p>(c) Any person who is specially appointed by the court to obtain or reproduce in order to transmit or distribute those records.</p> <p>(d) An employee or agent of a person who is registered under this chapter.</p> <p>(e) Any custodian of records who makes his or her own copies.</p> <p>(f) Any certified shorthand reporter, official court reporter, or stenotype operator who makes his or her own copies.</p> <p>(g) Any person licensed under Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code or this or her employees.</p> <p>(h) The Office of the Secretary of State.</p>			

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	<p>Commenter opines that the logical legal nexus can be formed that Subsection (d)(3) in the modified version of the proposed section § 9982 would be no payment for copies obtained from any of the eight identified classes of copy providers that are authorized by the business and professions code statutory authority from which proposed modified section § 9980(f) sets forth that, “Professional photocopier” is defined for the purposes of the proposed copy fee schedule regulations.</p> <p>Commenter opines that this over regulation of persons or entities who will be paid for copy services under the copy service fee schedule is in conflict with the existing business and professions code statutory authority. Commenter states that this conflict in the proposed regulation with existing statutory authority will leave uncertainty in the market and undoubtedly lead to fee disputes and litigation in the future.</p> <p>Commenter states that with the current limiting provision in the proposed</p>		<p>Disagree. Registered professional photocopiers are to be paid.</p>	

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	<p>modified regulations by logical extension it can and will be argued to avoid payment by a claims administrator that “Any custodian of records who makes his or her own copies.” and is otherwise entitled to payment for the production of record as authorized by Evidence Code section 1563 would not be entitled to payment in a workers’ compensation case under the proposed fee schedule.</p> <p>Commenter opines that this illogical conclusion most certainly will be extended to the actual individual obtaining the copies of documents. As excluded from being further registered a professional photocopier under the business and professions code statutory authority set forth in 22450, et seq is, “An employee or agent of a person who is registered under this chapter.” Thus each individual on a registered a professional photocopier company is not required to be registered as an individual</p> <p>Commenter states that subsection (d)(3) in the modified version of the proposed section § 9982 that seeks to define that, “There will be no payment</p>		<p>Agree. Duplicate copies of records obtained from any of the eight identified classes of copy providers that are authorized by the business and professions code statutory authority would not be subject to the proposed copy service fee schedule. Only registered photocopiers are to be paid by the schedule.</p>	<p>No action.</p> <p>No action.</p>

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	<p>for copy and related services that are: Provided by <u>any person</u> or entity which is not a registered professional photocopier.” Commenter opines that this will be argued by overzealous legal representative of claims administrators who are seeking to escape liability for payment of copy service charges that the currently proposed modified regulatory promulgation asserting “any person” would include the person making the copies that is otherwise employed by a registered a professional photocopier.</p> <p>With the current limiting provision in the proposed modified regulations by logical extension it can be argued that “A member of the State Bar or his or her employees, agents, or independent contractors.” otherwise entitled to payment for the production of record as authorized by the business and professions code statutory authority set forth in 22450, et seq would not be entitled to payment in a workers’ compensation case under the proposed fee schedule. This would unreasonably restrict a member of the State Bar from the statutory rights for payment to obtain records that is currently</p>			

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	<p>authorized by statute.</p> <p>Further use of the term “registered photocopier” defined by proposed modified section § 9980(f) can be found in proposed modified section § 9983 “Fees for Copy and Related Services” where subsection (a)(6)(B) makes reference to “copy is retained by the registered photocopier”. Therefore, duplicate copies of records obtained from any of the eight identified classes of copy providers that are authorized by the business and professions code statutory authority would not be subject to the proposed copy service fee schedule.</p> <p>In interpreting the validity of proposed regulatory promulgation that is in conflict with existing statutory authority the Courts have repeatedly opined that,”... we are guided by two of the central provisions of the administrative rule-making provisions of the Administrative Procedures Act [APA] (<u>Gov. Code, § 11340 et seq.</u>), to which the AD is subject. <u>Government Code section 11342.2</u> provides that “no regulation adopted is valid or effective unless</p>		<p>Disagree. Section 9982 is not in conflict with existing statutory authority and is not inconsistent with governing statutes.</p>	<p>No action.</p>

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	<p>consistent and not in conflict with the statute.” Hence, it has been said that “[w]hen a statute confers upon a state agency the authority to adopt regulations ... , the agency's regulations must be consistent, not in conflict with the statute” (<i>Mooney v. Pickett</i> (1971) 4 Cal. 3d 669, 679, 94 Cal. Rptr. 279, 483 P.2d 1231) and that “[a] regulation that is inconsistent with the statute it seeks to implement is invalid.” (<i>Esberg v. Union Oil Co.</i> (2002) 28 Cal. 4th 262, 269, 121 Cal. Rptr. 2d 203, 47 P.3d 1069.) “No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes.” (<i>Mendoza, supra</i>, 75 Cal. Comp. Cases at p. 640; see <i>Agric. Labor Relations Bd., supra</i>, 16 Cal. 3d at p. 419.) Government Code section 11342.1 provides that “[e]ach regulation adopted, to be effective, shall be within the scope of authority conferred.” Thus, it has been said that “administrative regulations which exceed the scope of the enabling statute are invalid and have no force or life” (<i>Woods v. Superior Court</i> (1981) 28 Cal. 3d 668, 680, 170 Cal. Rptr.</p>			

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	<p>484, 620 P.2d 1032) and that “[a]dministrative regulations that ... enlarge [a statute's] scope are void and courts not only may, but it is their obligation to strike down such regulations.” (<i>Cal. Assn. of Psychology Providers, supra</i>, 51 Cal. 3d at p. 11 [quoting from <i>Morris, supra</i>, 67 Cal. 2d at p. 748</p>			
9990	<p>Commenter states that the proposed amendment to proposed section §9990 lacks clarity, as required by 1 CCR 16 which sets forth in pertinent part that, “A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists: (1) the regulation can, on its face, be reasonably and logically INTERPRETED to have more than one meaning; or (2) the language of the regulation conflicts with the agency's description of the effect of the regulation;...”</p> <p>Commenter opines that it could logically be interpreted that the reference in subsection (d) that, “...except when requested by an injured employee or his or her attorney or his or her representative of record.” applies to the entire</p>	<p>Veronica Allard Legislative Committee Administrative Assistant California Lien Professional Assn. November 8, 2014 Written Comment</p>	<p>Disagree. There has been no cost shifting to the injured worker with the changes to transcript requests. There has been no changes to the person that would be charged for a transcript request.</p> <p>Even the costs for transcripts are the same. Instead of an estimate and later additional payment or refund based on the overage of the estimate, the fee is an up-front fee equivalent to a fee for an estimated 33-page transcript.</p>	No action.

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	<p>regulation and not just subsection (d). Otherwise this would lead to the illogical conclusion that all injured workers would be forced to pay the sum of \$150 to obtain a transcript of a proceeding of adjudication of their application for benefits. This fee increase from the prior fee of \$3 per page with no such astronomical minimum cost of \$150 present in the proposed regulation could be reasonably and logically interpreted to apply to the injured worker and his representative of record.</p> <p>Commenter opines that such a cost shifting burden on to the injured worker is without fiscal analysis as to a logical basis for the need of such an amendment to the proposed modified regulation.</p> <p>Commenter notes that in the Copy Service Fee Schedule Initial Statement of Reasons (Hereinafter, ISOR.) dated May 16, 2014 the Subject Matter of the Regulations to be promulgated and amended was identified as “Copy Service Fee Schedule”. Existing regulation section §9990, enacted as long ago as 1978 and last amended in</p>		<p>Disagree. The title of the regulation was changed to reflect that the regulation covers Division fees.</p>	<p>No action.</p>

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	<p>2000 is unrelated to the promulgation of the “Copy Service Fee Schedule”. Commenter states that the rationale for the agency’s determination that the amendment of section §9990 is reasonably necessary to carry out the purposes of labor Code section 5307.9 and to address the problem for which it is proposed is not present in the proposed regulatory promulgation as modified.</p> <p>In support of this analysis in the specific purpose set forth for Section 9990, in the same proposed regulatory promulgation it is set forth in the ISOR that, “This amendment is necessary to clarify that it is <u>not part of the copy service fee schedule and that it covers fees charged by DWC.</u> (Emphasis added.) The method for collecting fees has changed while the actual charges remain the same at \$3.00 a page for those transcripts that are 50 pages or more. An up-front fee replaces an estimate which is later adjusted upon pickup. DWC’s average number of pages for ordered transcripts is 77 pages. Therefore, most transcript requests will have a total cost of \$216, comprising of \$150</p>			

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	<p>(the up-front flat fee for the first 50 pages) plus \$66 (22 pages times \$3.00). ¶ DWC staff has encountered difficulties with issuing reimbursements for over-estimates of transcript costs, especially with those fees paid by credit card. To improve efficiency, the deposits have been replaced by an up-front fee. Transcripts which are less than 50 pages would be more expensive to obtain at \$150 rather than \$3.00 per page.”</p> <p>Commenter states that it is unknown where the Division obtained the assertion of fact that, “DWC’s average number of pages for ordered transcripts is 77 pages.” As there is no reference to any supporting documents contained in the rulemaking record. Commenter states that mere speculative belief is not sufficient to support an agency declaration of its initial determination about economic impact. Rather, the agency must provide in the record any facts, evidence, documents, testimony, or other evidence upon which it relies for its initial determination. Gov. Code, §§ 11346.5, subd. (a)(8), 11347.3,</p>		<p>Disagree. The Division collects fees for transcripts and has this information. A survey of transcript fees has however been added to the record.</p>	<p>A survey of division transcript fees has been added to the rulemaking record.</p>

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	<p>subd. (b)(4)</p> <p>While candidly acknowledging that, “Transcripts which are less than 50 pages would be more expensive to obtain at \$150 rather than \$3.00 per page.” Thus, extending the excluding language in subsection (d) , “...except when requested by an injured employee or his or her attorney or his or her representative of record.” to the entire proposed regulation would not impose this astronomical costs increase upon any injured workers seeking transcripts of fewer than 50 pages to further pursue their claims of industrial injury.</p> <p>The Notice of Proposed Rulemaking set forth that it was intended to , “...implement the provisions of Labor Code section 5307.9, of Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). Labor Code section 5307.9 mandates this Copy Service Fee Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for these services.”</p>		<p>Disagree. The change to the process ordering transcripts will not impose astronomical costs upon either injured workers or upon the system.</p> <p>Disagree. There has not been an increase in fees. \$100 reflects \$3 per page of a 33-page transcript.</p>	No action.

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	<p>Further the Notice of Proposed Rulemaking set forth that, “ Cost impacts on a representative private person or business: The Acting Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”</p> <p>California's Administrative Procedures Act (APA), Gov. Code, § 11346 et seq., does not shift the analytical task entirely onto affected parties. Instead, the statutes require the agency to meet an initial, nonconclusive, nonexhaustive evidentiary burden. Gov. Code, §§ 11346.2, subd. (b)(6)(A); 11346.5, subd. (a)(8). Here the agency has not met said burden in increasing the transcript fee from \$3 per page to a \$150 minimum charge.</p> <p>Commenter states it is unclear what relation that the existing regulation section 9990 has to the implementation of the “Copy Service Fee Schedule”</p> <p>Commenter states that the proposed</p>		<p>Section 9990 reflects division fees.</p>	<p>No action.</p>

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	<p>amendment of Section 10208.7 entitled, “Retention, Return and Destruction of Records and Exhibits” whose specific purpose is stated as, “This section has been amended to allow DWC to dispose of paper adjudication documents after 20 years.” Is unrelated to the promulgation of a “Copy Service Fee Schedule”.</p> <p>The Courts have repeatedly opined that “In considering the validity of a regulation, “our task is to inquire into the legality of the ... regulation, not its wisdom.” (<i>Moore v. Cal. State Bd. of Accountancy</i> (1992) 2 Cal. 4th 999, 1014, 9 Cal. Rptr. 2d 358, 831 P.2d 798; accord, <i>State Farm Mutual Automobile Ins. Co. v. Garamendi</i> (2004) 32 Cal. 4th 1029, 1040, 12 Cal. Rptr. 3d 343, 88 P.3d 71 (<i>State Farm</i>).) Thus, we are “limited to determining whether the regulation (1) is within the scope of the authority conferred (Gov. Code, § 11373) and (2) is reasonably necessary to effectuate the purpose of the statute.” (<i>State Farm</i>, 32 Cal. 4th at p. 1040 [quoting from <i>Agric. Labor Relations Bd. v. Superior Court</i> (1976)</p>		<p>Disagree. Regulation 10208.7 covers retention, return, and destruction of records and exhibits.</p> <p>Disagree. The Administrative Director has authority to regulate DWC’s fees and records.</p>	No action.

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	<p><u>16 Cal. 3d 392, 411, 128 Cal. Rptr. 183, 546 P.2d 687 (Agric. Labor Relations Bd.) (internal citations and quotation marks omitted)].) “[a] regulation that is inconsistent with the statute it seeks to implement is invalid.” (<i>Esberg v. Union Oil Co.</i> (2002) 28 Cal. 4th 262, 269, 121 Cal. Rptr. 2d 203, 47 P.3d 1069.) “No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes.” (<i>Mendoza, supra</i>, 75 Cal. Comp. Cases at p. 640; see <i>Agric. Labor Relations Bd., supra</i>, 16 Cal. 3d at p. 419.)</u>Government Code section 11342.1 provides that “[e]ach regulation adopted, to be effective, shall be within the scope of authority conferred.”</p> <p>For the purposes of 1 CCR 14 , commenter respectfully challenges the agency's “authority” and respectfully submits that the proposed amendment to section 9990 is not reasonably necessary to effectuate the purpose of the authorizing statute Labor Code section 5307.9</p>			
General comment	Commenter states that she has been a	Kathryn Greve	No response necessary.	No action.

COPY SERVICE FEE SCHEDULE	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>hearing representative since 1992 and has represented doctors, copy services, and applicants (on behalf of applicants' attorneys) at the WCAB and in depositions; for the purpose of securing the rights of these parties. Commenter has appeared before the WCAB in over 3000 cases representing the interest of physicians and physician related services. Commenter states that there are many hearing representatives who she can call on to litigate any physician services for her clients at the WCAB; however, when it comes to finding someone to appear on behalf of one of her legal copy service clients- there is not one hearing representative which knows what the services entail.</p> <p>Commenter opines that the problem with codifying a fee schedule began with the way in which the BRG report (2013) conducted its survey. The BRG report based its recommendations upon "fair market value" which is only for competing entities in a free market. Commenter states that on the web, the examples of how a business would compete where the payor was not the 'client' of the</p>	<p>Hearing Representative WCAB Advocate November 8, 2014 Written Comment</p>	<p>This comment is directed at the BRG study rather than to the regulations. The BRG study was considered along with comments and discussions with stakeholders.</p>	

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	<p>entity, even the fact that they did a better job for the price would not be enough to get the entity paid. Commenter notes that the defendants copy service invoices were used to value services and now the defendants copy services are not subject to the schedule.</p> <p>Commenter notes that on the BRG report at Page 4 it states– “ We provide the rationale for our conclusion in Section IV. However, we must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer caveat for prompt payment”. Commenter states that the current proposed schedule does not allow additional penalties and/or costs for amounts not promptly paid and the method for recovering those costs.</p> <p>Commenter notes that the BRG Report Page 6 states:</p> <p>“S.B. 863 amends the California Labor Code to add Section 5307.9, which provides that the administrative</p>		<p>These regulations address reasonable copy service fees pursuant to the authority granted under Labor Code section 5307.9, not penalties.</p>	

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	<p>director shall adopt a schedule of reasonable maximum fees for “copy and related services.”</p> <p>Commenter notes that the BRG Page 7 states:</p> <p>“As discussed above, we did not believe that applicant data (i.e., the 598,342 transactions) was applicable to settings where payment is prompt and undisputed.”</p> <p>Commenter notes that discussion on pages 12 & 13-BRG of the “Ease of electronic records” and allowance for repayment of witness fees- which need to be reimbursed as a matter of applicants constitutional rights to these record. It states”:</p> <p>“Our recommended fee for uncontested payments includes the retrieval and copying, but does not include the preparation and service of the subpoena and associated documents nor reimbursement for witness fees advanced. An additional allowance for document preparation and service may be added to our recommended fee for uncontested</p>		<p>References to reimbursement do not generally apply to copy service fees because injured workers generally do not seek reimbursement of these costs after incurring them. Generally, there is no reimbursement of costs as copy service providers in practice send their bills</p>	

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	<p>nothing. And now must dispute these in civil court?</p> <p>Commenter submitted a document entitled: Medical Records Copying Charges by State, P.J. West & Associates, Inc. [Document provided upon request.]</p>			