

**State of California
Office of Administrative Law**

In re:
Division of Workers' Compensation

Regulatory Action:

Title 8, California Code of Regulations

Adopt sections: 9984, 9985
Amend sections: 9980, 9981, 9982, 9983

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

OAL Matter Number: 2022-0503-01

OAL Matter Type: File and Print Only (FP)

This action updates the schedule of maximum rates payable for copy and related services. This action is exempt from the Administrative Procedure Act under Government Code section 11340.9(g).

OAL filed this regulation with the Secretary of State and will publish the regulation in the California Code of Regulations.

Date: June 15, 2022



**Eric Partington
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: George Parisotto, Administrative
Director**

Copy: Carol Finuliar

NOTICE PUBLICATION / REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2022-0503-01	FP

For use by Office of Administrative Law (OAL) only

ENDORSED - FILE
in the office of the Secretary of State
of the State of California

JUN 15 2022

2:07pm

OFFICE OF ADMIN. LAW
2022 MAY 3 AM 9:10

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Division of Workers' Compensation

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Copy Service Rate Schedule	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Section 9984 and 9985
	AMEND Sections 9980, 9981, 9982, 9983
	REPEAL 8

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) 7/15/2022
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

George Parisotto, Administrative Director, Division of Workers' Compensation

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

JUN 15 2022

Office of Administrative Law

Chapter 4.5 Division of Workers' Compensation
Subchapter 1, Administrative Director – Administrative Rules
Article 12. Document Copy Service and Electronic Transaction Fees
Rates

§ 9980. Definitions.

As used in this article:

(a) "Additional set of records" means a copy of the initial set of records obtained by the copy service provider.

(b) "Authorization" means a written release to obtain records, signed and dated by the injured worker, or the injured worker's representative if the injured worker is a minor, or an incompetent, or is deceased, to obtain records which contains the following information: states

(1) The the specific uses and limitations on the types of information to be disclosed;

(2) The the name of the person or entity that may disclose the information;

(3) The the name of the person or entity authorized to receive the information;

(4) The a specific date after which the provider is no longer authorized to disclose the information; and

(5) A notice advising advises the person signing the authorization of the right to receive a copy of the authorization.

~~(b) "Copy and related services" means all services and expenses that are related to the retrieval and copying of documents that are responsive to a duly issued subpoena or authorization to release documents for a workers' compensation claim.~~

(c) "Claims administrator" means any of the following persons or entities 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, or joint powers authority, the Self-Insurers' Security Fund, or the California Insurance Guarantee Association (CIGA).

(d) "Contracted services" means services payable under an agreement between a claims administrator or an employer and a copy service provider.

(e) "Copy and related services" means all services and expenses that are related to the retrieval and copying of documents that are responsive to a duly issued subpoena or authorization to release documents for a workers' compensation claim.

~~(d)~~ (f) "Custodian of records" means the person who has physical custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.

~~(e)~~ (g) "Initial Set of records" means records or documents that have been recorded in paper, electronic, film, digital, or other format from one custodian of records under one subpoena or authorization, and includes separate types of records requested from a single source, regardless of the number of subpoenas or authorizations issued.

~~(f)~~ (h) "Professional photocopier" is defined by section 22450 of the Business and Professions Code.

Authority cited: Section 5307.9, Labor Code.

Reference: Section 5307.9, Labor Code.

§ 9981. Bills for Copy Services.

(a) This article applies to services provided on and after July 1, 2015, the effective date of this article regardless of date of injury.

(b) Bills for copy and related services must specify the services provided and include:

(1) The individual's or entity's the provider tax identification number, and professional photocopier registration number, county of registration, and date of billing;

(2) The case information including employee injured worker's name, claim number, and Workers' Compensation Appeals Board case number (if applicable); and

(3) The source of the information, the including type of records produced, the date of service, a description of the billed services, and the number of pages produced, and a statement that the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32.

(c) For dates of service prior to July 15, 2022, bills submitted for records may include the following billing codes:

(1) WC 020: Flat Rate (\$180.00).

- (2) WC 021: Cancelled Service (\$75.00).
- (3) WC 022: Certificate of No Record (CNR) (\$75.00).
- (4) WC 023: Per Page Rate for documents over 500 pages (\$0.10 per page).
- (5) WC 024: Records from the Employment Development Department (EDD) (\$20.00).
- (6) WC 025: Records from the Workers' Compensation Insurance Rating Bureau (WCIRB) (\$30.00).
- (7) WC 026: Additional Electronic Set (\$5.00).
- (8) WC 027: Additional Electronic Set (\$30.00).
- (9) WC 028: Duplication of X-ray or scan (\$10.26).
- (10) WC 029: CD of X-rays and scans (\$3.00).
- (d) For dates of service on or after July 15, 2022, bills submitted for records may include the following billing codes:
 - (1) WC 019: Flat Rate (\$230.00).
 - (2) WC 021: Cancelled Service (\$75.00).
 - (3) WC 022: Certificate of No Record (CNR) (\$75.00).
 - (4) WC 023: Per Page Rate for documents over 500 pages (\$0.10 per page).
 - (5) WC 028: Duplication of X-ray or scan (\$10.26).
 - (6) WC 029: Electronic Storage Media (\$3.00).
 - (7) WC 030: Requested Services (Indicate amount).
 - (8) WC 031: Contracted Rate for Additional Sets (Indicate amount).
 - (9) WC 032: Contracted Services (Indicate amount).
 - (10) WC 033: Additional Set (\$10.00).
 - (11) WC 034: Surcharge for Late Payment (Indicate amount).
 - (12) S9999: Sales Tax.

(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period, then the unpaid portion of the billed sum will be increased by 25 percent.

~~(1) 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 Certificate of No Record of \$75, WC 023 is for Per Page Fee of .10 per page, 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 027 is for an Additional Electronic Set of \$30, WC 028 is for Duplication of X-Ray or scan of \$10.26, WC 029 is for CD of X-rays and scans of \$3.~~

~~(2) Each bill for services must include a statement that there was no violation of Labor Code section 139.32 with respect to the services described.~~

Authority cited: Section 5307.9, Labor Code.

Reference: Section 5307.9, Labor Code, and Section 22462, Business and Professions Code.

§ 9982. Allowable Services.

(a) This fee schedule covers copy and related services for records relevant to an injured worker's claim, except contracted services ~~a contract between the employer and the copy service provider.~~

(b) 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 the time frames set forth in Labor Code section 5307.9, or fails to serve a copy of any subsequently-received medical report or medical-legal report within the timeframes set forth in section ~~40608~~10635, this fee schedule applies to obtaining those records.

(c) 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.

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

(1) Provided within 30 days of a written 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.

(3) Provided by a medical provider, or by an agent of the provider, when the requesting party has employed a professional photocopier to obtain the records.

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

(1) Records previously obtained by subpoena or authorization 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.~~

~~(A) If there is good cause, the claims administrator is liable for payment. Good cause includes new counsel seeking duplicate records for review, and loss or destruction of records due to natural disaster.~~

(2) Summaries, tabulations, or for indexing of documents.

(3) Subpoenaed records obtainable from the Workers' Compensation Insurance Rating Bureau, and/or the Employment Development Department that can be obtained without a subpoena at lower cost.

(4) Charges for records submitted to the Independent Medical Review Organization (IMRO) for independent medical review, where the submitted records are already in the possession of the injured worker or the injured worker's representative, or are duplicative of those submitted to the IMRO by the claims administrator.

(5) Charges for services related to, or cancellation of, a subpoena for records in the employer's, claims administrator's, or workers' compensation insurer's possession, with an order quashing the subpoena.

(6) More than four Certificates of No Record (CNR) on a claim with dates of service on or after July 15, 2022.

Authority cited: Section 5307.9, Labor Code.

Reference: Section 5307.9, Labor Code; and Section 2019.030, Code of Civil Procedure; section 5307.9, Labor Code.

§ 9983. Rates Fees for Copy and Related Services (Prior to July 15, 2022).

(a) ~~The reasonable maximum fees, not including sales tax, rates~~ payable for copy and related services, for dates of service prior to July 15, 2022, are as follows:

(a1) A \$180.00 flat fee rate, for an initial 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 feescosts for delivery of records, check feescosts, fees for release of information services costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.

(A) Release of information services of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code section 1563.

(b2) \$75.00 in the event of cancellation after a subpoena or request for records by authorization has been issued but before records are produced, or for a €Certificate of nNo rRecords (CNR).

(c3) \$20.00 for records obtained from the Employment Development Department.

(d4) \$30.00 for records obtained from the Workers' Compensation Insurance Rating Bureau.

~~(e) Release of information services of witness costs for the retrieval and return of physical records held offsite by a third party are included in the flat fee. Disputes over the production of records 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. Release of information services of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code Section 1563.~~

(fb) In addition to the flat fee rate allowed in subdivision (a)(1), the following separate fees applyrates may be charged:

(1) For paper copies, tenTen cents (\$0.10) per page for copies aboveif the document is over 500 pages.

(2) \$5.00 for each additional set of records in electronic form ordered within 30 days of the subpoena, or \$30.00 if ordered after 30 days and the copy is retained by the registered photocopier. If the injured worker requests an additional set of records in electronic form ordered within 30 days of the subpoena, the claims administrator is liable for one additional set of records in electronic form for no more than \$5.00 for the

additional set of records if ordered within 30 days and for no more than \$30.00 if ordered after 30 days and the copy is retained by the registered photocopier. All other additional sets of records are payable by the party ordering the additional set.

(3) X-rays and scans are ~~to be paid at~~ \$10.26 per sheet, and \$3.00 per CD of X-rays and scans.

(4) Applicable sales tax.

Authority cited: Section 5307.9, Labor Code.

Reference: Sections 4453 and 5307.9, Labor Code; and Sections 1561 and 1563, Evidence Code.

§ 9984. Rates for Copy and Related Services (On and After July 15, 2022).

(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:

(1) A \$230.00 flat rate, for an initial 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 costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.

(2) \$75.00 in the event of cancellation after a subpoena or request for records by authorization has been issued but before records are produced, or for a Certificate of No Record (CNR). The claims administrator will not be liable for bills submitted under this subdivision unless:

(A) The bill submitted for cancellation includes a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the cancellation order containing the date of cancellation and identity of the cancelling party.

(B) The bill submitted for CNR includes a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the CNR containing the date of the certificate.

(b)(1) Release of information (ROI) services of witness costs for the retrieval and return of physical records held offsite by a third party are included in the flat rate in subdivision (a)(1). ROI services of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code section 1563.

(2) Third-party ROI services that represent deponents or witnesses who are compelled to produce documents for a deposition, records-only deposition, or trial conducted as

part of any workers' compensation claim shall be paid a flat rate of \$35.00, inclusive of the witness costs and all services provided by the third-party ROI service, when records are produced, or a flat rate of \$15.00, inclusive of the witness costs and all services provided by the third-party ROI service, when a CNR is produced. Third-party ROI services representing deponents or witnesses shall accept electronic service of all deposition notices and requests, including subpoenas and witness costs. Third-party ROI services shall electronically provide the records or certificates, including all affidavits required by Evidence Code section 1561, to the requesting party or their representative. These rates are included in the flat rate in subdivision (a)(1).

(c) In addition to the flat rate allowed in subdivision (a)(1), the following separate rates may be charged:

(1) For paper copies, ten cents (\$0.10) per page if the document is over 500 pages.

(2) \$10.00 for each additional set of records. If the injured worker requests an additional set of records, the claims administrator is liable for one additional set of records. All other additional sets of records are payable by the party ordering the additional set.

(3) X-rays and scans are \$10.26 per sheet, and \$3.00 for electronic storage media of X-rays and scans.

(4) Applicable sales tax.

Authority cited: Section 5307.9, Labor Code.

Reference: Section 5307.9, Labor Code; and Section 1563, Evidence Code.

§9985. Disputes.

Disputes over the production of records may be resolved by filing a petition with the Workers' Compensation Appeals Board, or by filing a petition with a superior court pursuant to Labor Code section 132.

Authority cited: Sections 133 and 5307.9, Labor Code.

Reference: Sections 4453 and 5307.9, Labor Code; and Section 1563, Evidence Code.