



California Workers' Compensation Institute

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August 16, 2019

VIA E-MAIL - DWCForums@dir.ca.gov

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142
Attn: DWC Forums

Re: Proposed Amendments to Copy Service Fee Schedule Regulations

Dear Ms. Gray:

These comments on proposed amendments to the Copy Service Fee Schedule are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 81% of California's workers' compensation premium, and self-insured employers with \$72.1B of annual payroll (31.7% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, City of Torrance, Contra Costa County Risk Management, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, East Bay Municipal Utility District, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, The Walt Disney Company, United Airlines, and University of California.

Recommended revisions to the proposed regulation are indicated by **underscore** and **strikeout**. Comments and discussion by the Institute are identified by *italicized text*.

Recommendation:

§ 9980 Definitions

(e) “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. “Set of records” does not include separate types of records requested from a single source, regardless of the number of subpoenas issued.

Discussion:

Although the current proposed amendments do not include any modifications to the definition of “set of records,” the Institute recommends that an attempt be made to mitigate a practice whereby multiple subpoenas are submitted to a custodian of records for different types of records for the same injured worker (e.g., subpoena for payroll records and separate subpoena for employee handbook; subpoena for billing records and separate subpoena for medical records).

Recommendation:

§ 9981 Bills for Copy Services

(a) This article applies to services provided on and after between July 1, 2015 and (EFFECTIVE DATE OF ADOPTED CHANGES) regardless of date of injury.

(b) 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.

(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 \$0.10 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.

Discussion:

While the proposed formatting changes and requirements for cancelled services and certificates of no records are welcome as clarifying, the proposed language in subdivision (a) appears to make the changes retroactive. The Institute recommends providing a clear separation in billing requirements for services rendered prior to the effective date of the proposed amendments.

Recommendation:

§ 9981.1 Bills for Copy Services

- (a) This article applies to services provided on and after ~~July 1, 2015~~ **(EFFECTIVE DATE OF ADOPTED CHANGES)** 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 provider tax identification number, professional photocopier registration number, county of registration, and date of billing;
 - (2) The injured worker's name, claim number, Workers' Compensation Appeals Board case number (if applicable); and
 - (3) The source of the information, the type of records produced, **the date range of the copied records**, the date of **copy** service, a description of the billed services, and the number of pages produced.
- (c) Bills for canceled services must include, in addition to the information required in subdivision ~~(a)~~ **(ab)**(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and the cancellation order that contains the date of the cancellation and the identity of the individual or entity that cancelled the request.
- (d) Bills for certificates of no records must include, in addition to the information required in subdivision ~~(a)~~ **(ab)**(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and a copy of the certificate of no records that must include the date of the certificate.
- (e) Bills submitted under this section must utilize the following codes and applicable fees:
- (1) WC 020: Flat Fee. (Indicate amount allowed under section 9983(a).)
 - (2) WC 021: Cancelled Service - \$75.00.
 - (3) WC 022: Certificate of No Records - \$75.00.
 - (4) WC 023: Per Page Fee of **\$0**.10 per page.
 - (5) WC 024: Records of the Employment Development Department (EDD) - \$20.00.
 - (6) WC 025: Records of the Workers' Compensation Insurance Rating Bureau (WCIRB) - \$45.00.
 - (7) WC 026: ~~Sales Tax. (Indicate amount.)~~ **Additional Electronic Set - \$5.00 (under § 9983(f)(2))**
 - (8) WC 027: **Additional Electronic Set - \$30.00 (under § 9983(f)(2))**
 - ~~(8)~~ **(9)** WC ~~027~~ **028**: Duplication of X-Ray or Scan - \$10.26.
 - ~~(9)~~ **(10)** WC ~~028~~ **029**: Electronic storage media containing X-rays and Scans - \$3.00.

(11) WC 030: Requested Services. (Indicate amount.)

(12) WC 031: Additional Sets. (Indicate amount.)

(13) WC 032: Sales Tax. (Indicate amount)

(14) WC 033: Contracted Fees. (Indicate amount.)

Discussion:

As discussed above, the Institute recommends separating the billing requirements that will be effective once the amendments are adopted. Clear separation will limit confusion and reduce conflict between service providers and claims administrators.

The Institute recommends additional language under subdivision (a)(3), describing the records copied. Requiring the bills for copy services to include the date range of the records copied will enable identification of duplicate services.

The language under new subdivisions §§ 9981(c) and (d) incorrectly references subdivisions (a)(1) and (2). This appears to be a typographical error since the pertinent information is contained in subsection (b).

The proposed amendments to the required billing codes create a problem with services that are provided before or after the effective date of revised regulations. In some instances (e.g., proposed WC026, WC027, WC028 and WC029) the code description and fee amount would differ depending on when the service was billed, creating confusion. The Institute recommends adding new codes for newly-identified services and retaining current codes WC026 and WC027 for services described under § 9983(f)(2), referencing the explanation of the defined fees.

Introduction of new code WC030 for “requested services” without further definition or explanation will result in disputes. This ill-defined code should either be deleted, or further explanation should be provided regarding the type of services that are anticipated to fall under this category as well as the party responsible for payment.

Recommendation:

§ 9982 Allowable Services

(a) The fees allowed under section 9983 shall be applied to copy and related services:

(3) To obtain a copy of any ~~subsequently received~~ medical report, medical-legal report, or other medical information relevant to the claim, ~~that the claims administrator failed to timely serve~~ within the time frames set forth in section 10608.

(4) To obtain records that the claims administrator is seeking by subpoena, provided the claims administrator fails to ~~provide written notice~~ send a copy of the subpoena to the injured worker pursuant to Labor Code section 4055.2.

(c) 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.

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

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

(4) Records submitted to Independent Medical Review for medical necessity determinations that are already in possession of the injured worker or the injured worker's representative, or which are duplicative of those submitted by the claims administrator.

(5) Cancellation fees associated with premature subpoenas that were timely objected to by the claims administrator.

Discussion:

The Institute recommends adding language to subdivision (a)(3) in order to clarify that fees do not apply to obtaining records already provided by the claims administrator under § 10608.

Labor Code § 4055.2 requires that a copy of the subpoena be sent to all parties. A notice to consumer is not required.

New subdivision (a)(4) is unclear as written. Subpoenas for medical records are intended for the gathering of information for medical-legal purposes. A growing phenomenon is for an applicant's attorney to copy records from their own file or from the treating physician to submit to Maximus for IMR. This practice results in unnecessary copy services, unsupported copy service fees, and increased administrative costs in IMR. Although billed charges may rightfully be objected to, specificity in the regulatory language would mitigate this questionable practice. The Institute has recommended language that is intended for clarity.

The Institute recommends the addition of subdivision (c)(5) to clarify that cancellation fees are unwarranted when a subpoena for records is issued within the timelines defined under Labor Code § 5307.9 and § 10608. Cancellation of a subpoena that was unwarranted and properly objected to should not result in a fee, and without clarification, the practice of filing unwarranted subpoenas to generate cancellation fees will continue.

Recommendation:

§ 9983 Fees for Copy and Related Services

The reasonable maximum fees, not including sales tax, payable for copy and related services are as follows:

(a) For dates of service prior to (EFFECTIVE DATE OF REGULATION), Aa \$180 A 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, 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.

(1) For dates of service ~~after between July 1, 2015 and~~ (EFFECTIVE DATE OF REGULATION), the flat fee is \$180.

~~(42)~~ For dates of service after (EFFECTIVE DATE OF REGULATION), the flat fee will be increased to \$210.

~~(2) For dates of service starting the next calendar year following (EFFECTIVE DATE OF REGULATION), the flat fee will be increased annually by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year. For the purpose of this section, "state average weekly wage" has the same meaning as that set forth in Labor Code section 4453(a)(10).~~

(d) ~~\$45~~ for records obtained from the Workers' Compensation Insurance Rating Bureau.

(1) For dates of service ~~after between July 1, 2015 and~~ (EFFECTIVE DATE OF REGULATION), the flat fee is \$30.

~~(42)~~ For dates of service after (EFFECTIVE DATE OF REGULATION), the flat fee ~~will be increased to~~ is \$45.

(f) In addition to the flat fee allowed in subdivision (a), the following separate fees apply:

(2) \$5.00 for each additional set of records in electronic form ordered within 30 days of the subpoena, or \$30 if ordered after 30 days and the copy is retained by the registered photocopier. If the injured worker requests an additional set of records ~~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 ~~of the subpoena~~ and for no more than \$30 if ordered after 30 days and the copy is retained by the registered photocopier. All other additional sets of records are payable, ~~at these rates~~, by the party ordering the additional set.

(4) Applicable sales tax ~~(under California Sales and Use Tax Regulations, Article 3, Regulation 1528).~~

Discussion:

Based on the proposed restructuring of § 9983, which uses subdivisions to address varying fees for the same service dependent on the date of service, the Institute recommends more clearly delineating date-dependent fees that share a common service definition. Without specifying the dates associated with records obtained from the Workers' Compensation Insurance Rating Bureau, the increased fee of \$45 appears to be retroactive.

The Institute recommends deletion of proposed subdivision (a)(2) since the flat fee is not limited to employee wages. The flat fee associated with WC020 includes services that are not based on time or effort of a copy service employee and therefore an automatic cost of living increase would not be warranted. If the intent is to factor in an automated increase based on wages, the

portion of the flat fee associated with employee wages should be identified and used in a formula. This would be similar to the work relative value component of the payment formula in the Official Medical Fee Schedule for Physicians and Non-Physicians. An automatic increase for expenses such as postage, witness fees, check fees, and automated functions should not be tied to changes in average weekly wages.

Deletion of “the subpoena” corrects a grammatical error, and “of the subpoena” was added for clarity. The Institute recommends language clarifying that fees for additional sets of records defined under subdivision (f)(2) apply to the provision of records to any party making the request. Disputes have arisen between copy service providers and payers as to whether the defined fees apply to additional records requested only by injured workers.

The Institute recommends reference to the underlying regulation that defines “applicable sales tax.” Reference to the pertinent regulation would mitigate conflicts that arise due to lack of understanding or disagreement over which components of professional copy services are subject to sales tax.

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

Stacy L. Jones
Senior Research Associate

SLJ/pm

cc: George Parisotto, DWC Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee
CWCI Regular Members
CWCI Associate Members