

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**INITIAL STATEMENT OF REASONS
Subject Matter of Regulations: Copy Service Fee Schedule**

**California Code of Regulations, Title 8, Article 11 and Subchapter 1.8.5, Article 8
Sections 9980-9984, 9990, 9992, 9994, and 10208.7.**

1. Introduction

This Initial Statement of Reasons ("ISOR") describes the purpose, rationale, and necessity of the Division of Workers' Compensation's ("DWC") proposed Copy Service Fee Schedule and revisions to existing regulations. In passing Senate Bill 863 (Statutes of 2012, Chapter 363), the Legislature directed the Administrative Director, in consultation with the Commission on Health and Safety and Workers' Compensation, to adopt a schedule of reasonable maximum fees payable for copy and related services. This ISOR fulfills the requirements of California's Administrative Procedure Act (see Government Code sections 11340 et. seq.).

Labor Code section 5307.9 mandates that 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.

To implement this SB 863 fee schedule, DWC proposes to add sections 9980-9984, and to make some related changes to sections 9990, 9992, and 10208.7, and to repeal section 9994.

The proposed new regulations provide for a maximum flat fee of \$180 for records up to 500 pages and includes all associated services such as pagination, witness fees for delivery of records, and subpoena preparation. For excess over 500 pages, an additional per page fee of ten cents per page is allowed. Certificates of no record would be payable at a maximum of \$75. The maximum fee for release of information is controlled by Evidence Code section 1563.

The proposed changes to regulations include allowing DWC to bill \$85.00 an hour instead of \$40.00 an hour for electronic requests made under the Public Records Act and to charge \$1.00 for CDs of these records. The proposed changes also include an allowance for DWC to dispose of paper adjudication documents after 20 years. The proposed changes also replace deposits required for DWC transcripts with an up-front \$150 fee for transcripts of 50 pages and under.

For transcripts over 50 pages, an extra \$3.00 a page would be paid before the transcript is released.

DWC welcomes comments on the ISOR and the accompanying proposed regulations. Please see the Notice of Rulemaking for instructions on how to submit comments on the proposed regulations.

2. Technical, Theoretical, or Empirical Studies. Reports, or Documents

The Division relied upon:

- (1) The California Commission on Health and Safety and Workers' Compensation's ("CHSWC"), *Liens Report* of January 5, 2011.
- (2) Berkeley Research Group's *Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation*, ("BRG study") October 2, 2013.
- (3) Cost-out spreadsheet to determine the hourly billing rate for electronic requests made under the Public Records Act.
- (4) Memo dated May 1, 2014 regarding working in consultation with the Commission on Health and Safety in Workers' Compensation

3. Problem Addressed with this Rulemaking

This rulemaking allows DWC to comply with SB 863's mandate to adopt a copy service fee schedule. CHSWC's 2011 *Liens Report* described a lien problem that was "choking the system." The report also found that the large number of copy service liens added burden on the courts and that much litigation could be avoided with a copy service fee schedule. The proposed fee schedule will reduce copy service fee lien filings and allow providers to submit fee disputes to the independent bill review procedure. It will also add clarity regarding allowable services and fees to the copy service providers and payors.

This rulemaking also updates the hourly billing rate for electronic requests made under the Public Records Act to reflect more current costs, allows the DWC to dispose paper adjudication documents after 20 years to reduce storage costs, and provides a more efficient payment method for DWC transcripts.

4. Specific Technologies or Equipment

None.

5. Reasonable Alternatives to the Proposed Regulations and Reasons for Rejecting Those Alternatives

A reasonable alternative to the flat rate in the proposed copy service fee schedule was an itemized fee structure for individual copy-related services and a per page copy rate. The BRG study concluded that the major costs of providing document copies were the costs of retrieving the documents rather than the actual per page copy costs. The BRG study also pointed out that there were occasional outliers justifying a higher fee. The copy service fee schedule proposes a flat fee for copies up to 500 pages which would constitute the majority of copy jobs. According to BRG, 90% of copy jobs have less than 250 pages. An excess per page fee for copies totaling over 500 pages is also part of the schedule.

Another reasonable alternative was a two-tiered price structure with a flat fee of \$103.55 if the bill was paid within 60 days or \$250 for bills paid after 60 days as recommended by the BRG study. This approach was not well received by the stakeholders, and the proposed two-tiered price structure may have conflicted with the Labor Code requirements regarding penalties for late payments. The two-tiered price structure to account for late payments was discarded as Labor Code section 5814 provides for penalties for delayed payments.

6. Duplication or Conflicts with Federal Regulations (Government Code section 11346.2(b)(7))

The proposed regulations do not duplicate or conflict with any federal regulations.

7. Facts, Evidence, Documents, Testimony, or Other Evidence on Which the Agency Relies to Support an Initial Determination that the Action will not have a Significant Adverse Economic Impact on Business (Government Code section 11346.2(b)(6)(A))

The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on business. The fee schedule should save costs by reducing disputes. The copy service fee schedule provides reasonable maximum fees for copy and related services. Copy service providers will benefit from more certainty in payment and less litigation. Stakeholders submitted comments in response to the BRG study, in response to draft regulations posted on the DWC public forum, and participated in discussions with DWC.

After receiving stakeholder input, the fee schedule proposal was changed from the BRG study recommendation to the current proposed regulations. The BRG study recommended a two-tiered price structure with a flat fee of \$103.55 if the bill was paid within 60 days or \$250 for bills paid after 60 days. The two-tiered price structure may have conflicted with the Labor Code

requirements regarding penalties for late payments. Labor Code section 5814 provides for penalties for delayed payments.

8. Economic Impact Analysis (Government Code section 11346(b)(1)(A)-(D))

The fee schedule should save overall costs by reducing disputes. The copy service fee schedule provides reasonable maximum fees for copy and related services. Copy service providers will benefit from more certainty in payment and less litigation. The Acting Administrative Director has been informed that there are approximately 50 business entities which provide copy services for workers' compensation cases in the state and it is not anticipated that this number will change.

Copy service providers have been pushing for a fee schedule. It is anticipated that the proposed flat-fee copy fee schedule will result in prompt and accurate payment that will benefit the providers (and reduce their costs incurred in recovering disputed fees) and save costs to the payors (and workers' compensation system) by controlling the amount charged and reducing the litigation costs incurred by the payors. In sum, it is anticipated that savings will result.

Based on the foregoing information, the Acting Administrative Director concludes that it is unlikely that the proposal will create jobs within the state, eliminate jobs within the state, create new businesses with the state, eliminate any existing business within the state, or cause the expansion of businesses currently doing business within the state.

9. The Specific Purpose, Rationale, and Necessity of Each Section of the Proposed New Regulations and Proposed Revisions (Government Code section 11346.2(b)(1))

Section 9980 Definitions

Specific Purpose:

This section lists and defines the terms used in the copy service fee schedule. The purpose of the definitions is to implement, interpret, and make specific Labor Code section 5307.9, and to ensure that the meanings of the terms are clearly understood by the workers' compensation community.

"Copy and related services," "claims administrator," custodian of records," "set of records," and "Professional Photocopier," are defined to ensure that their meanings, as used in the regulations, will be clear to the regulated public.

Necessity:

It is necessary to define each of the key terms used in the copy service fee schedule to ensure that their content and meaning are clearly understood by the workers' compensation community. New definitions have been added to ensure consistency of interpretation of new statutory requirements and terms being used in order to provide clarity and to ensure proper compliance with the regulations.

Section 9981 Bill for Copy Services

Specific Purpose:

Labor Code section 5307.9 requires "specificity in billing." This section implements the specificity requirement by setting forth the appropriate codes that the copy service provider must use. Billing codes must be used for administrative and copy fees. Bills must include a statement that there was no violation of Labor Code section 139.32, and must include a copy of the professional photocopier certificate. Bills for retrieval fees must include documentation of the actual amount of the fee and records obtained by authorization must include a declaration of completion of records.

Necessity:

Labor Code section 5307.9 requires "specificity in billing," which this section implements. This section provides for an effective date for clarity with the regulated public.

Labor Code section 4603.2(b) provides that copy services are among those services that are provided pursuant to Labor Code section 4600, and billing codes will be necessary to properly bill, pay, and report the copy services. This section is necessary to set forth the appropriate codes that the copy service provider must use.

The BRG study recommended that as a condition of payment for pre-litigation documents, a declaration of completion of records be produced.

Section 9982 Allowable Services

Specific Purpose:

This section sets forth what services are included in the copy service fee schedule. The fee schedule covers copy and related services for records that are relevant to an injured worker's claim and to records which were not timely served, except those services under a contract between the employer and the copy service provider.

There will be no payment for copy and related services provided within 30 days of a request by an injured worker for copies of records in defendants' possession. Also excluded from the fee schedule are records from the Workers' Compensation Insurance Rating Bureau ("WCIRB"), the DWC's Electronic Data Exchange System ("EDEX"), and the Employment Development Department ("EDD"). Additionally, summaries, tabulations, and indexing of documents services are not covered by the fee schedule. The fee schedule requires that photocopiers be registered.

Necessity:

This section is necessary to set forth what services are included in the fee schedule. Labor Code section 5307.9 requires that the schedule specify the services allowed. Labor Code section 5307.9 excludes contracts between the employer and the copy service provider and payment for services provided within 30 days of a request by an injured worker.

Duplicative records are not payable by the fee schedule because it would not be fair for defendants to have to pay for duplicate records requested by both defendants and injured workers. If the claims administrator fails to provide written notice to the injured worker of records that are being sought, the fee schedule applies to obtaining those records because the injured worker would be unaware of what records were previously sought.

Records from the WCIRB, EDEX, and EDD were excluded because these records often were not needed and can be obtained at less cost than through a copy service. Each of these entities complained about being needlessly inundated with requests for records from copy services.

Summaries, tabulations, and indexing is excluded based on recommendations contained in the BRG study. BRG also recommended that copy service providers be registered.

Section 9983 Fees for Copy and Related Services

Specific Purpose:

This section is the fee schedule for copy and related services. A \$180 flat fee covers a set of records up to 500 pages and is inclusive of all associated services such as pagination, witness fees, and subpoena preparation. For excess over 500 pages, an additional per page fee of ten cents per page is allowed. For additional sets of records ordered within 30 days, \$50.00 is allowed for paper form records and \$5.00 for electronic form. If electronic copies are available after 30 days, \$30 is allowed. For certificates of no record or cancellations, \$75 is allowed. The maximum fee for release of information services of witness costs is controlled by Evidence Code section 1563.

Necessity:

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California Code of Regulations, title 8, sections 9981, 9982, 9983, 9984, 9990, 9992, 9994, and 10208.7

Labor Code section 5307.7 mandates this copy service fee schedule. This section is necessary to set the maximum fees allowed. The flat fee is based on recommendations in the BRG study. Witness fees are based on Evidence Code section 1562.

For excess over 500 pages, an additional per page fee of ten cents per page is allowed. The BRG study pointed out that there were occasional outliers justifying a higher fee.

Fees in the event of cancellation after a subpoena has been issued are covered to allow payment for work completed by copy services. Fees for additional sets of records are also covered by the fee schedule based upon stakeholder input.

Fees for X-rays and scans are to be paid at the rates contained in the Official Medical Fee Schedule already in place.

Section 9984 Declaration of Completion of Records Obtained by Authorization

Specific Purpose:

This section requires the custodian of records to issue a declaration that all responsive documents have been produced with pre-lawsuit production of documents (via authorization).

Necessity:

This section is necessary to reduce duplicate requests using a subpoena following the filing of an Application for Adjudication. This was recommended by the BRG study.

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

Specific Purpose:

This section has been amended to clarify that it covers fees charged by DWC. Proposed amendments allow DWC to bill \$85.00 an hour instead of \$40.00 an hour for electronic requests made under the Public Records Act and to charge \$1.00 for CDs of these records. Deposits for DWC transcripts have been replaced by an up-front fee of \$150 for transcripts of 50 pages or less.

Necessity:

This amendment is necessary to clarify that it is not part of the copy service fee schedule and that it covers fees charged by DWC. 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 (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.

Section 9992 Payment of Fees in Advance to the Division

Specific Purpose:

This amendment is necessary to clarify that it is not part of the copy service fee schedule. The title and number of this section has been amended to clarify that it covers fees paid to DWC.

Necessity:

This amendment is necessary to clarify that it is not part of the copy service fee schedule and that it covers fees charged by DWC.

Section 9994 Payment for Transcripts to the Division

Specific Purpose:

This section has been repealed because deposits are no longer needed to order transcripts from DWC.

Necessity:

It is necessary to repeal this section which will no longer apply.

Section 10208.7 Retention, Return and Destruction of Records and Exhibits

Specific Purpose:

This section has been amended to allow DWC to dispose of paper adjudication documents after 20 years.

Necessity:

This amendment is necessary to allow DWC to dispose of paper adjudication documents after 20 years, which will reduce storage costs