| **COPY SERVICE & ELECTRONIC TRANSACTION PRICES** | **RULEMAKING COMMENTS**  **30 DAY COMMENT PERIOD** | **NAME OF PERSON/ AFFILIATION** | **RESPONSE** | **ACTION** |
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| General Comment | Commenter states that he is an experienced applicant attorney and that he regularly observes, tests and proves some Defense-oriented facilities sanitize records produced: over 100 times, via separate subpoenas.  Commenter has observed and often commented that the requests for the same records yield materially different Page Counts.  Commenter opines that no one cares and that it’s like sub Rosa film and that he has never sees a “Pro-Applicant” film.  Commenter opines superficial counting rules covering up  conflicting dynamics below surface  ie, Workers Never Report CT (even if they knew what it was.until terminated..); he states that he has  requested defense Cal OSHA Logs (Form 300 Per 8 CCR 14300..) to document specific injury claims  More than 10,000 times, but has received only 10. Commenter states that when he switched to a CT focus.  Commenter opines that this grand, dynamic system, unique on Earth;  It’s great, but ripe for corruption.  Commenter states that Copy Services are not wasted lien money; and that their honest services remain essential  (until Records Standards are reviewed & implemented). | Dan Lispi  August 5, 2021  Written Comment | General comment. | No action. |
| General Comment and Request for COLA | Commenter applauds the proposal to provide a much needed and overdue increase in the fees paid to copy services. He states that the services provided by the copy services (preparation of subpoenas duces tecum, service of the subpoena, traveling to the custodian of records location, duplicating the records, and providing copies to the parties) are critical to the functioning of the workers’ compensation system. Commenter is puzzled that the DWC continues to ignore the need for a cost-of-living increase (COLA) provision in these fee schedules. The California State Auditor recommended that the medical-legal fee schedule should be raised and a COLA should be implemented to prevent it from rapidly becoming outdated, requiring frequent regulatory changes. Commenter opines that the same principle applies here, and is disappointed that the division continues to ignore expert advice and declines to include COLAs in these fee schedules. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment  August 30, 2021  Oral Comment | Disagree. There has been no recommendation from the State Auditor for a COLA on the copy service price schedule and the reasoning behind the State Auditor’s recommendations regarding the Medical-Legal Fee Schedule do not apply to the copy service price schedule. Regulations can be updated. | No action. |
| 9983(e)(5) | Commenter supports the language proposed in this section limiting what 3rd party ROI services can charge. Commenter agrees that this has been a problem. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment | DWC appreciates the support. | No action. |
| 9982(d)(1) | Commenter states that the proposed modification to this section creates a new requirement that a party send a notice of intent to copy (subpoena) records to the opposing side and wait 30 days thereafter to issue a subpoena.  Commenter opines that the language is ambiguous regarding whether this applies only to a subpoena directed at an employer, claims administrator or carrier, or whether it applies to all subpoenas. It further provides that if an objection is raised (apparently within that 30 days) the parties must meet and confer to resolve the objection.  Commenter recommends that this section be rewritten to clarify to which subpoenas it applies. Does it apply to subpoenas for medical records?  Commenter states that whether this applies only to subpoenas directed at defendants or whether it applies to all subpoenas, that the proposed regulation will only cause more delay, more frictional costs, and will substantially impair worker’s rights to discovery. In most cases the reason the applicant subpoenas a claims file is because the claims administrator is not doing their job. All too often, when he files an application and sends a request for documents including medical reports, benefit notices, witness statements etcetera and the claims administrator either ignores this request completely or sends a few records omitting most of the requested documents. Insurance claims files are not privileged. *Mead Insurance Company v. Superior Court* (1986) 188 Cal. App. 3rd 313, *Winchell’s Donut House v. WCAB* (Saldana) (1997) 62 Cal. Comp. Cases 1185, *Bobby Brown v. United Parcel Service* 2012 Cal. Wk. Comp. PD Lexis 334.  Commenter states that there is no reasonable basis to add a notice requirement and a 30-day waiting period to the existing rules. The requirement to meet and confer if there is an objection is entirely redundant: under current law if records are subpoenaed the other side’s “objection” comes in the form of a Motion to Quash the subpoena. The parties are required to meet and confer and, failing an agreement, either party can request a hearing. He opines that the proposed regulation is unnecessary, duplicative, and will create confusion and an opportunity for the less scrupulous defense firms to maximize their billable hours by litigating procedural issues regarding subpoenas.  Commenter opines that the requirements proposed in Section 9982 (d) (1) are beyond the authority of the Administrative Director and that adding process requirements is not a “fee schedule”. Commenter opines that the DWC is attempting to change the requirements for subpoenas from existing legal requirements. Labor Code Section 130 gives the WCAB and the WCJs authority over subpoenas, not the Administrative Director. Commenter states that a 30-day notice requirement prior to issuing the subpoena duces tecum is not a fee schedule; it is a restriction on the workers right to subpoena records. The Administrative Director does not have legal authority to change the statutory provisions for subpoenas.  Commenter states that Title 8 California Code of Regulations Section 10640 provides that the Board may issue Subpoenas Dues Tecum in accordance with the provisions of California Code of Procedure Sections 1985 and 1987.5 and Government Code Section 68097.1. The 30-day advance notice requirement violates this provision. The only requirement in 8CCR Section 10640 is that the subpoenas have to be in accord with the provisions with the Code of Civil Procedure and the Government Code. Those Code sections do not require any advance 30-day notice. Commenter states that the Administrative Director is powerless to mandate changes limiting the parties’ statutory rights in this respect. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment  August 30, 2021  Oral Comment | Agree in part. Labor Code Section 5307.9 provides that the schedule “shall not allow for payment for services provided within 30 days of a 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,” and the Administrative Director has the authority to adopt reasonable prices for copy and related services.  Agree in part. “Notice of intent to copy records” was changed to “written request”; the request requirement came from Labor Code section 5307.9, it was not created in regulations.  Disagree. Labor Code section 5307.9 provides in pertinent part, ”The schedule… shall not allow for payment for services provided within 30 days of a 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.” | The following language has been deleted:  “When an objection is raised, the parties must meet and confer to resolve the objection.”  coThe following language has been deleted:  “notice of intent to copy records” |
| 9982(f) | Commenter opines that the language in this section removes the “good cause” standard regarding obtaining duplicate records and that there is no go reason to do this.  Commenter state that there may be good cause to request duplicate records (what if the office burned down and the records are gone? What if they were destroyed inadvertently? What if the hard drive they were stored on is corrupted and they cannot be accessed?) There are some situations in which there is good cause to get a copy of records that were previously subpoenaed. Commenter states that there should be a good cause standard (parties should not just be able to request multiple copies for no good reason) and opines that eliminating the good cause standard is unfair, unreasonable, and serves no legitimate purpose. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment | Disagree. The “good cause standard” was removed to prevent fraud and duplication of records requests. | No action. |
| 9982(f)(4) | Commenter is concerned about the proposed language in this section. Commenter states that there cases where there are more than 4 certificates of no records on a claim but they are fairly rare but there are situations where this will happen. The parties may have reason to believe, based upon deposition testimony or witness statements or other records, that a particular medical facility or insurance company or employer has records that might be relevant to the case. Often the only way to discover if that is true or not is to subpoena those records. If a CNR comes back then the party can be reasonably assured that there are no such records or that any such records have been lost or destroyed. Commenter states that attorneys on both sides have a duty to their clients to investigate claims and that this may involve subpoenaing records that may or may not exist. Commenter doubts that the proliferation of CNR returns is a real problem, and opines that if it is, adopting an appropriate “good cause” standard rather than simply barring payment for such records would make sense. Otherwise, commenter opines that the DWC is undermining the ability of attorneys (on both sides) to fulfill their professional obligations to their clients. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment | Disagree. Copy services have been convicted of fraud after independently requesting records from clinics without evidence that any treatment was provided resulting in multiple improper charges for certificates of no records. Convicted copy services Expedited Attorney Services and Capital Attorney Services had over 1,400 liens filed with the Division of Workers’ Compensation with a claimed value of more than $2.7 million. | No action. |
| 9980(g) | Commenter questions why this proposed section changes the definition of “date of service” to the date on which records are requested. He states that the current standard is that the “date of service” is the date the services are completed. It is not clear why this change is being made or what the purpose is.  Labor Code Section 4621(a) states: “… The reasonableness of, and necessity for incurring these expenses shall be determined with respect to the time ***when the expenses were actually incurred***. Costs for medical evaluations, diagnostic tests, and interpreters’ services incidental to the production of a medical report ***shall not be incurred earlier than the date of receipt*** by the employer, the carrier, or, if represented, the attorney of record, of all ***reports and documents required by the administrative director*** incidental to the services.”  Commenter recommends the following revised language:    (g) “Date of Service” means the date the requested records are delivered to the requesting party, or if no records were produced, the date the declaration or other supporting documentation was delivered, and the itemized billing for the services has been delivered to the claims administrator. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment | Agree, the definition was withdrawn. | Definition has been deleted. |
| 9981(c) and 9981(e) | Commenter opines that it is unlikely the copy services will see payment for the fee increase on unpaid bills in Section 9981(e) without a properly defined BILLING CODE for the new fee. Commenter recommends the proposed new regulations include new billing codes for both the fee increase defined in Section 9981(e) and for the penalties and interest contained in Labor Code Section 4622, as follows:  (c)(16) WC 034: Unpaid bill sum increase under Section 9981(e)  (c) (17) WC 035: Penalties and Interest subject to LC4622(a)(1)  (c) (18) S9999: Sales Tax. | Mark Gearheart, Esq., Board Member and Regulations Chair  California Applicants’ Attorneys Association (CAAA)  August 23, 2021  Written Comment | Disagree. There is a new billing code for the increased fee and the penalty provision was withdrawn. | No new billing codes were proposed. |
| 9980(g) | Commenter opines that the definition of “date of service” will cause much confusion.  Commenter states that in all other workers compensation billing the “date (or dates) of service” refer to when the provider of services is rendering the services for which the provider is billing. The date which records are requested is not a bill-able service.  Commenter seeks clarification of who is requesting the records from whom. Is this when the records are requested by applicant’s attorney from the claims administrator and employer within the time frames set forth in Labor Code section 5307.9? | Katheryn Greve  WC Hearing Rep & Paralegal Services  August 24, 2021  Written Comment | Agree, the definition was withdrawn. | Definition has been deleted. |
| 9982(b)  9982(d)(1)  9981(b)(4) | Commenter notes that 9982(b) states:  (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 10608, 10653, this fee schedule applies to obtaining those records.  Commenter questions if 9982(b) and the request for records in the employer’s or insurers possession the *date the records were requested?*  Section 9981(b)(4) (Bills for Copy Services)  (4) The date the records were requested, and the name of the individual requesting the records.  … The Bill should contain the name of the *firm or entity* requesting the records; but again *the date the records were requested is not clear* and commenter opines that it should not be “retroactive” [As 9981(a) “… applies to services provided on or after July 1, 2015 ] as there was no proposed/further obligation of a notice of intent to copy.  Commenter opines that it defies rational consideration to have an injured worker or his representative make a demand upon the claims administrator and employer under Labor Code 5307.9, wait 30 plus 5 days and then require an additional 30 days for a notice of intent to copy.  Commenter states that if this is what is going to be adopted as an additional barrier to an injured worker to obtain the right to subpoena records then she would like to know *who* should be responsible for issuing a “notice of intent to copy”? ; a neutral, non-party copy service?  Who would be responsible for following up on an objection by the opposing party?  Commenter states that a copy service does not represent the applicant nor the defendant. The copy service does not know the particulars of the case for a “meet and confer”; and a copy service would certainly not be filing any petition on behalf of any party.  It was stated in the BACKGROUD TO REGULATORY PROCEEDING that the *meet and confer process* would prevent unnecessary cancellation charges.  Commenter notes that under the current schedule cancellation charges most often occur when there has been a written demand under LC 5307.9 and the employer and or claim file is not produced the time frame imposed by the rules and the code and a subpoena issues. Then, sometime later and after the subpoena issues, the defendant either bypasses the deposition officer and finally sends the records directly to the attorney or the subpoena is objected to which results in a $75 charge.  Commenter opines that without clarification as to the “date of service”, the issuance of the notice of intent to copy, and meet and confer delay issues relating to possible objection(s) that there is a very strong likelihood that the proposed regulations will likely lead to further disputes, increased costs & litigation. | Katheryn Greve  WC Hearing Rep & Paralegal Services  August 24, 2021  Written Comment | “Notice of intent,” was withdrawn. | Language now reads:  (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. |
| General comment | Commenter states that she agrees with comments submitted by Mark Gearheart having the applicants’ case delayed trying to obtain records that are not in possession of the insurance carrier or employer at the time of the request. Commenter notes that all the attorneys and copy services that she works with require the letter of intent, and they wait 30 plus five days for the defendant to get records to the applicant attorney that are in their possession.  After that time has passed, they issue a subpoena and then sometimes the defendant will come forward and agree to produce the records. Then they will file a Motion to Quash, perhaps on the 30th day after the subpoena issues saying that the will produce the records or they are going to when the time frame for them to produce has already elapsed. Commenter states that this is a common scenario.  Commenter states that copy services are in a difficult position because they are not the ones to meet and confer – comment wonders what “meet and confer” actually means. Commenter opines that this is an additional barrier to obtaining records.  Commenter questions under what basis the Defendant has to object to the notice of intent to copy – can it be any type of objection? If they object are they going to file a DOR? Commenter references John Castro’s oral comment that the copy service should make certain that notice is provided to the defense attorney when, in fact, they may not even appear on the case search yet. Therefore, the service should not be sanctioned for not sending notice to them and that this will lead to more litigation. | Katheryn Greve  WC Hearing Rep & Paralegal Services  August 30, 2021  Oral Comment | General comment.  Agree in part. The meet and confer proposal did not add a barrier to obtaining records however the proposal was withdrawn. | No action.  Language has been revised as follows:  (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. |
| General Comment | Commenter states that he has been in the copy service business since 1988 and has contributed to pre-regulatory discussions on this update. He considers himself a neutral party as he is neither defense and/or applicant oriented, but is simply concerned with the act of obtaining records. Commenter states that based on his experience discovery is done differently for both the applicant and defense side. Defense attorneys look at the applicant’s history, existing injuries, etc. Applicant attorneys try to prove the injuries of their client, the injured worker. Commenter has provided his detailed written comments to the DWC. | Daniel Lopez  Lopez & Associates  August 30, 2021  Oral Comment | General comment. | No action. |
| 9980(a) | Commenter recommends the following revised language:  (a) “Additional set of records” means a copy of the initial set of records obtained by the copy service provider requested by a party to the case in electronic or paper form.  Commenter opines that an authorization has very little to no value in terms of request by a represented injured worker. All litigated matters require the use of a subpoena duces tecum with proper notice to all known parties to obtain discovery of medical, employment and/or claim files(s).  Commenter references:  Disclosures for Workers' Compensation Purposes 45 CFR 164.512(l)  The HIPAA Privacy Rule does not apply to entities that are either workers’ compensation insurers, workers’ compensation administrative agencies, or employers, except to the extent they may otherwise be covered entities.  HSC 123110 (f) … This section does not supersede any rights that a patient or personal representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. Authorizations are commonly used to obtain records in workers’ compensation claims. | No action. |
| 9980(g) | Commenter recommends the following revised language:  (g) “Date of Service” means the date on which services are complete.  Commenter opines that the “Date of Service” must reflect the date services are complete as defined in § 9983(a). A copy service has many “Dates of Service” and the date records are requested is just the start. Research, data entry, preparation of release by authorization or subpoena duces tecum; “Service” on ALL known Parties or authorized representatives; “Service” of Process on the actual witness or their Agent for Service of Process in either physical or electronic form; “Service” as to the copy, scanning and processing of records, CNR or Cancellation which there are several reasons; then there is the itemized billing and delivery of records and/or CNR. The initial request date and the actual end date of the services can be few or many. Commenter’s suggestion is to accept a date range from the Date the work is requested or initiated to the Last date of the delivery of records, CNR or invoice. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Agree in part. The definition was withdrawn. | Definition has been deleted. |
| 9981(b)(4)  9981(c)(5) | Commenter recommends the following revised language:  (b)(4) The date the records were requested, and the name of the entity/firm requesting the records.  (c)(5) WC 023: Per Page Price of .10 per page for pages in excess of 500 pages or in paper form.  Commenter states that paper records ARE still requested by both parties and often requested to serve on a medical provider (AME/QME) in paper form. Medical providers STILL request records in paper form*.* | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. For accountability, the individual that requested the records is to be listed.  Agree. “for pages in excess of 500 pages” was added. | No action.  (5) WC 023: Per Page Price of .10 per page for pages in excess of 500 pages. |
| 9981(c)(7) | Commenter recommends the following revised language:  (7) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau of $30 per employer per year  Commenter states that some employers to are either uninsured or refuse to provide the required DWC-1 form as required by law. The WCIRB fees are $20 per year per employer. See <https://wcirb.com/coverage-research-request> January 1, 1996 to the present | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. The claims administrator is not liable for payment of WCIRB records that can be obtained without a subpoena at lower cost. | No action. |
| 9981(c)(16) | Commenter states that Sales Tax should only be applied to tangible goods (i.e. a CD of records, DVD of video files, or paper records, etc. 100% percent electronic records are non-taxable at the present time) Sales tax is often being omitted by recommendation of bill review placing additional expense on copy services regardless if contracted or not. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | The regulations do not govern tax application and do not change the current tax structure. | No action. |
| 9981(e) | Commenter questions whether these will be self-imposed penalties or will the provider be required to revise and reissue a new bill to include the 25% percent penalty? If the new bill is not paid within (30) thirty days will this also be increased by 25%? How does one determine the “RECEIPT” date of the invoice by the claims administrator? Commenter opines that the language in this section as stated will lead to increased cost and increased litigation. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | The increase will not be self-imposed, it was withdrawn. | Section was deleted. |
| 9982(a) | Commenter states that this section does not apply to Service of Process and related witness and mileage fees pertaining to state and non-state employee witnesses for the purpose of a deposition, hearing or trial and opines that this section should be clarified that the fee schedule is for records only requested by a Subpoena Duces Tecum issued by a party to the case.  Commenter states that if the Division decides to consider regulating further on service of process to keep in mind that State employees, witness fees, and mileage are very different.  Commenter states that he has had to subpoena state employees and CHP officers, and the base witness fee is not $35 but $275 under the government code. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment  Oral Comment | It is stated that this section covers copy and related services which would not include fees for depositions, hearings, or trials. | No action. |
| 9982(b) | Commenter references that under 10635, Duty to Serve Documents, (c)(1) to each other with any medical reports received. This only requires reports to be served within 10 calendar days of receipt and 20 days for a Print out of benefits paid. Commenter questions if this means that the entire record is omitted from discovery by a party if a report is served in accordance with 10635? | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | The only change to this subsection is to update the WCAB rule which was renumbered from 10608 to 10635. | No action. |
| 9982(c)  9982(d)(1) | Commenter recommends the following revised language:  (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 or authorization, this 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 by their authorized representative by Letter of Representation with a Proof of Service making a demand for production of documents in their possession to an employer, claims administrator, or workers' compensation insurer. When an objection is raised, the parties must meet and confer to resolve the objection 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.  Commenter states that a copy service is not a party. Commenter opines that the proposed wording is unclear as to who is to meet and confer and creates further delays in the discovery process. If an objection is timely then the parties can file a DOR for discovery issues before the WCAB to resolve pending production disputes. The question is who is to meet and confer as stated here in §9982(d)(1)? | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Agree in part. Labor Code section 4055.2 covers subpoenas only.  “When an objection is raised, the parties must meet and confer to resolve the objection,” was withdrawn.  Copy services are not parties. | “or Authorization” will not be added.  Revised as follows:  (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. |
| 9982(d)(3) | Commenter recommends that this section be stricken.  Commenter states that a provider or an Agent of a provider does not bill an employer, claims administrator or workers’ compensation insurer when records are request by subpoena duces tecum or by an authorization, therefore payment would not be made to a provider or agent. This relates to fees copy services are being charged by a provider or by an agent of the provider when the requesting party has employed a professional photocopier to obtain and or inspect the records. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. Medical providers are not entitled to fees under the copy service price schedule. | No action. |
| 9982(e) | Commenter recommends the following revised language:  (e) If an employer or insurance carrier contracts for services which are not covered by this schedule, the injured worker or their authorized representative shall be allowed to obtain the same services with their copy service provider, including summaries, tabulations, and indexing, at the rate paid by the employer or insurance carrier to their copy service provider.  Commenter would like to know when an injured worker is made aware of non-covered services like summaries, tabulations, and indexing; and how is their copy service made aware of the rate paid for such services by the employer or insurance carrier to their contracted copy services? Should the injured worker’s authorized representative also be entitled to these non-covered services? | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Agree in part. 9982(e) has been withdrawn. In its place is an addition to 9982(f)(2) to allow for payment summaries, tabulations or indexing of documents when the employer or claim administrator obtains these services under a contract. | Language has been revised as follows:  (f) The claims administrator is not liable for payment of:…   1. Summaries, tabulations, or indexing of documents unless the employer or claims administrator obtains these services under a contract. |
| 9982(d)(1) | Records from the same source by way of a Party of Notice or Letter of Intent, if such wording remains in the proposed fee schedule? | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | “Notice of intent” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(f)(2) – (4) | Commenter recommends the following revised language:   1. Summaries, tabulations, or indexing of documents. *(See § 9982(e))* 2. Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau or the Employment Development Department requested on or after January 1, 2022 *unless an employer fails to provide an injured worker a completed DWC-1 Form upon the reporting of a work injury, then WCIRB records can be requested.* 3. ~~More than four Certificates of No Records (CNR) on a claim with dates of service after January 1, 2022~~.   Commenter opines that a Certificate of No Records are definitely not by choice of any copy service. Through the COVID pandemic, businesses have closed offices, moved, retired, been indicted or succumbed to COVID. Other reasons for CNR’s are the requested records are beyond the retention period which include past medical records, employment records, auto insurance claims, other claim files and the obvious WCAB files. Commenter opines that discovery on either side is vital and without it or limitations to it could create increased or decreased claims cost and expose liability to all involved parties. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. EDD records are available to injured workers free of charge upon request.  Disagree. Without a limit on the number of CNRs that claims administrators are liable for can lead to abuses. DWC has received reports of bad practices or papering local clinics with requests for records in the absence of any indication that an injured worker sought treatment at the clinic. | No action.  No action. |
| 9983(a)  9983(d)  9983(e)(5) | Commenter recommends the following revised language:  (a) A $180 flat price, 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 fees for delivery of records, check fees,  (d) $30 for records obtained from the Workers’ Compensation Insurance Rating Bureau per employer per year.  (5) Third party release of information (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 will be paid a maximum flat price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, or a flat price of $15, inclusive of the witness fee and all services of the 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 fees. Third party ROI services shall produce electronically the records or Certificates of No Record, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. The claims administrator is not liable for payment of WCIRB records that can be obtained without a subpoena at lower cost. | No action. |
| 9984(a)  9984(b)  9984(c)(1) – (2)  9984(c)(5) | Commenter recommends the following revised language:  (a) A $225 flat price, for an initial set of records to the requesting party, 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, not to exceed a maximum of $35 dollars, and return of records held offsite by the third party, service of the subpoena duces tecum for records, shipping and handling, and subpoena preparation.  (b) $75 in the event of cancellation after a subpoena duces tecum or request for records by authorization has been issued but before records are produced to the subpoenaing copy service, or for a CNR.  (c) In addition to the flat price allowed in subdivision (a), the following separate prices apply:  (1) For paper copies, ten cents ($.10) per page for copies above 500 pages for the initial set, or for all pages of an additional paper set.  (2) $10.00 for each additional set of records in electronic format. If the injured worker or their authorized representative 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.  (5) Third party release of information (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 maximum flat price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, or a flat price of $15, inclusive of the witness fee and all services of the ROI service when a CNR is produced. Third party ROI services representing deponents or witnesses will accept electronic service of all deposition notices and requests, including subpoena~~s~~ duces tecums and witness fees. Third party ROI services shall produce electronically the records or Certificates of No Records, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative. | Daniel Lopez  Lopez & Associates  August 25, 2021  Written Comment | Disagree. “to the requesting party,” is not necessary.  Disagree. Additional sets have a price. | No action.  No action. |
| 9982 | Commenter opines that this revised section will create problems if additional provisions are not made, as they currently conflict with the **State Bar Rules of Professional Conduct**, primarily **Rule 4.2 Communication with a Represented Person**.    Commenter states that most of the collections for copy related services are done by a hearing representative and despite being non-attorneys, Labor Code § 4907 hold these individuals to the same standard as an attorney when it comes to their legal and ethical obligations. Labor Code section 4907 (b) states “For purposes of this section, non-attorney representatives shall be held to the same professional standards of conduct as attorneys.”    After reviewing the rules pertaining to CCR 9982 (d)(1) Allowable Services, commenter notes that the “notice of intent to copy records” is required to be sent to the claims administrator or workers compensation insurer. When these parties are represented by counsel and it is reflected in EAMS, he recommends that documents as well as any subpoenas and demands for any records should also be carbon copied to counsel of record so that counsel may decide whether a Motion to Quash Subpoena Duces Tecum pursuant to California Code of Civil Procedures §1987.1 or any other legal action, is in order. Commenter opines that this rule change should simply add that if the defendant is represented by counsel, that counsel of record should receive the communication as well.    Commenter notes that the amendment also states that when an objection is raised, the parties must **meet and confer** to resolve the objection for the copies of records. Commenter states this would mean that the copy service provider’s representative would be allowed to **meet and confer with a represented client in violation of the aforementioned State Bar rule 4.2 Communication with a Represented Person**. Commenter opines that this rule change should simply add that if the defendant is represented by counsel, that the meet and confer is to take place with counsel of record.  Commenter states that since a represented claims administrator or workers’ compensation insurer relies on the recommendations of their counsel of record, any records secured by the copy service provider, should be forwarded to counsel of record as well, so that they may make appropriate recommendations so as to avoid unnecessary litigation, provide strong public policies favoring judicial economy, uniformity in the application of the law, and the prevention of inconsistent judgments that undermine the integrity of the judicial system. | John Castro, WCCP, CPFI Quality Control Supervisor, Lien Unit – Hearing Representative  Floyd, Skeren, Manukian, Langevin, LLP  August 26, 2021  Written Comment  August 30, 2021  Oral Comment | “When an objection is raised, the parties must meet and confer to resolve the objection,” was withdrawn. | Language has been revised as follows:  (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. |
| 9982 | Commenter states that he appreciates and respects the copy services doing business – some are excellent and others are not.  Regarding the 30 day Notice of Intent issues – his firm will send the records if they have them. However, if the 30 days has already passed and they have not sent out the records, then they have no reason to object to the copy service going out to copy the records. Commenter requests that in order to make things easier, that the copy service send a copy of the records obtained via subpoena to them so that they can advise their client and avoid litigation. Commenter states when his firm requests a copy many state that they have sent it to the client and to get a copy form them. | John Castro, WCCP, CPFI Quality Control Supervisor, Lien Unit – Hearing Representative  Floyd, Skeren, Manukian, Langevin, LLP  August 30, 2021  Oral Comment | “Notice of intent,” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(d)(1) | Commenter opines that the time to start the 30 days is when a request is made. He questions the delay between the time that the request is made by applicant’s counsel, copy service receives it, copy service sits on it for a week, then the copy service sends out a Notice – already lost a week of that 30 day time period. Commenter states that this is a disadvantage to the defendant. | John Castro, WCCP, CPFI Quality Control Supervisor, Lien Unit – Hearing Representative  Floyd, Skeren, Manukian, Langevin, LLP  August 30, 2021  Oral Comment | “Notice of intent,” was withdrawn. | Language has been revised as follows:  (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. |
| General Comment | Commenter states that she has been in the copy service industry for 42 years and has never experienced such frugal times and problems with collections. Commenter opines that the proposed fee schedule has been designed to put the smaller copy service companies out of business. Commenter states that California, the state that has raised minimum wage from $9.25 to $15.00 during the last six years has not raised copy service rates and, therefore, 89% of her staff makes minimum wage. Commenter states she has employees that have been with her company for over 20 years whose wages have not been increased due to this lack of increase. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | General comment. | No action. |
| Release of Information Services | Commenter submitted examples of bills that she received the day she submitted these comments [Names have been redacted – available upon request.]  Example A: Illustrates that her company received two bills, one for medical and one for billing in answer to one subpoena. They are receiving a total of 35 pages for $99.50.  Example B: Illustrates that it took one hour to produce 12 pages.  Example C: Illustrates that it took 12.5 hours to provide 1,240 pages.  Commenter also submitted a sample of what it would charge, if their copy service billed according to Evidence Code (like ROI’s do), resulting in a minimum of $300 – that does not include any charge per page. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | General comment. | No action. |
| Receivables and Collections | Commenter is directly involved with collections for her company. Commenter states that this fee Schedule has made getting paid much more difficult. They receive 10 checks & 20+ EOR's from the same company on the same day. Commenter opines that many of the reasons for not paying the entire bill are ridiculous, such as: not paying the $5.00 for the additional set, not paying sales tax and my favorite ... paying only 10 cents for ALL pages over 500, instead of paying 10 cents for each page. This happens daily. Here company is required to prove that the invoice or that their response was mailed via certified mail, yet the EOR's are sent regular mail. Much of the time they end of writing debt off due to the time and energy required to chase $5.00, taxes, etc. Commenter states that many of the Insurance Companies own the Bill Review services. By denying payment or reducing it, the Bill Review company earns money & saves the Insurance Company money. Commenter opines that this system is designed to make it difficult to receive payment. Commenter states that getting paid in 60 days rarely happens. Commenter states that all of their clients are defense which means our very own client is choosing to make it troublesome for us to receive payment for the services they asked us to provide. Because the insurance company is their client it puts them in a very awkward position to file petitions and obtain penalties and interest, as once this happens, they will no longer be our client. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | General comment | No action. |
| 9980(b) and  Initial Statement of Reasons | Commenter states that authorizations are sometimes necessary when a case is not yet litigated.  Commenter states that in the Initial Statement of Reasons, under section 9980, Allowable Services, there was a comment regarding authorizations listed as subsection (D)(3) that is not included in this document. It was quoting Evidence Code 1158 which states “Copying of Medical Records…When the requesting attorney has employed…” Commenter opines that if this is not inserted into the actual regulation, that this is a flaw in the evidence code. Using the phrase “When the Requesting Attorney..” eliminates authorizations supplies by insurance companies and therefore on those requests there are no regulations for what facilities or ROI’s can charge. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | DWC drafts regulations and does not correct statutory flaws. | No action. |
| 9980(g) | Commenter states that this definition does not make sense. It should be the date that the records are completed. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | The definition was withdrawn. | Definition has been deleted. |
| 9981(c) | Commenter would like to know why all rates have not been increased. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | The price schedule’s design was to eliminate frictional costs. The flat price includes many services while a la cart prices were included in the schedule as outlier costs. | There are numerous changes to rates in the price schedule. |
| 9981(c)(3) and (4) | Commenter wants to know why these rates have not been increased. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | There is no need to increase these rates. | No action. |
| 9981(c)(5) | Commenter questions why this rate has not been increase from $0.10 per page – all pages. Commenter states that ROI services change her company $0.10 per page based on the Evidence Code and then her company must rescan, quality check, page number, upload, distribute and collect. They lose money on this.  Commenter states that many insurance companies pay them $0.10, one dime, for pages over 500 pages – not $0.10 per page, but only one dime. Commenter opines that it is not only misinterpreted this way, but that $0.10 per pages is not enough since they have to rescan all pages; do a quality check, number the pages, upload them, distribute and collect the money. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | There is no need to increase the per page rate. | No action. |
| 9981(c)(10) | Commenter states that facilities charge them more than this to provide them with a copy. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | General comment. | No action. |
| 9981(c)(11) | Commenter questions this amount of $3.00. States that it is not possible to make an additional set of records in any form for this amount of money. Does not cover labor in duplicating, mailing or emailing, cost of supplies. If mailed via post, amount does not even cover the cost of postage. Comment opines that there is not profit, only loss. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | Disagree. Copy services have provided data showing that this price is reasonable. | No action. |
| 9981(c)(12) and  (14) | Commenter questions the definition of “Requested Service” and “Contracted Services.” Would like to know what these services are. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | Requested services would include summaries, tabulations or indexing of documents of 9981(f)(2).  Contracted services is defined in 9980(d) | No action. |
| 9981(c)(15) | Commenter would like clarification of “Additional Set.” Electronic records? Claims that $10.00 is not sufficient. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | Additional set is defined in 9980(a). | No action. |
| 9981(d) | Commenter questions who is responsible for the penalty of perjury on an invoice – the company or the billing clerk? Does it need to be signed? Commenter opines that it is ridiculous to sign every invoice. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | All bills must include the statement under penalty of perjury. | No action. |
| 9981(e) | Commenter opines that 30 days is not enough time considering that bill review kicks at least 50% of bills. Her company must answer, then the other side answers, etc. Commenter would like to know what happens after 30 days – do they rebill and add 25%. Commenter opines that bill review would get triggered once again and that this entire vicious cycle continues.  Commenter works primarily for the defense and that they do not want to pay – filing for penalties and interest will lose them clients and that collections have been worse since this fee schedule has been implemented. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | The increase provision was withdrawn. | Language has been deleted. |
| 9982 | Commenter opines that charges for personal appearances should be included and that basic fee and fees for after-hours/weekend attempts and mileage need to be allowable. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment  August 30, 2021  Oral Comment | Disagree. The copy service price schedule covers copy and related services. Personal appearances are not related to copy services. | No action. |
| 9982(d)(1) | Commenter states that this is worded differently in the “Initial Statement of Reasons” and “Notice of Proposed Rulemaking.” Those notices state “the 30-day waiting period is triggered when the copy services advises…” Commenter opines that a copy service cannot be responsible for this. What if the order is stopped – then they receive nothing for their efforts? Commenter opines that this needs to be resolved before it reaches the copy service. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | The increase as withdrawn. | Language has been deleted. |
| 9982(d)(3) | Commenter states that the client does not have to pay these bills. The facilities use ROI services and the copy services have to pay them and absorb the charges. The ROI services have a higher profit than the copy services that has to obtain the order, process all the paperwork and then have the liability of waiting to see if they get paid. The ROI services are guaranteed payment as the records are held hostage until payment has been received. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | General comment. | No action. |
| 9982(f)(2) | Commenter opines that a copy service providing accurate summaries would be a very difficult task and would require someone with experience or education related to the medical field. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | General comment. | No action. |
| 9982(f)(4) | Commenter questions what the copy service is supposed to do on a large order if more than four certificates of no records are obtained – close the order? Not respond to the client? Commenter states that there are multiple times on a large assignment when multiple facilities provide certificates as well as times when the client has supplied incorrect or too little information. Comment opines that this is not the copy service’s responsibility. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | The copy service price schedule is meant to reduce system costs. There has been abuse in this area. | No action. |
| 9983(e)(5) | Commenter opines that the invoices will have already been generated without the ROI fees. Commenter questions if they will be required to go back and generate new bills on any outstanding invoices to now include ROI fees. If a new bill is generated does the 30 day time clock for payment start again? What billing code will this fall under? A code for $35 and one for $15? | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | ROI fees are included in the flat price and the increase was withdrawn. | No action. |
| 9984(c)(5) | Commenter questions what billing code will this fall under? A code for $35 and one for $15? | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | There are no billing codes for ROI fees. | No action. |
| 9990(a) | Commenter would like to know why the state does not have to follow the Evidence Code for fees that they can charge. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | The Evidence Code does not govern fees for public records requests. | No action. |
| 9990(a)(1) | Commenter questions why the state gets to charge for postage when copy services cannot. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | Postage is covered in the flat price. | No action. |
| Future increases - COLA | Commenter would like to know why there is no reference to future increases.  Commenter opines that if this revised schedule becomes effective in January 2022, it will have been 6.5 years where there has been no increase. Commenter state that the same state that did not allow an increase for 6.5 years requires them to raise minimum wages from $9.25 per hour to $15.00 per hours.  Commenter states that there needs to be some guaranteed increase within a reasonable time frame. | Darcy Duran  Office Manager  Hard Copy  August 27, 2021  Written Comment | Changes can be made to the price schedule in the future. | No action. |
| 9981(c)(12)  9981(c)(14) | Commenter would like a description as to what the services are for WC030 – Requested Services and WC032 – Contracted Services | Darcy Duran  Office Manager  Hard Copy  August 30, 2021  Oral Comment | Requested services could include items listed in 9982(f)(2). Contracted services would be privately contracted between service providers and requestors. | No action. |
| 9981(c)  9982 | Commenter is disappointed that there is no true increase to the proposed fee schedule. Commenter acknowledges the increase from $180 to $220; however the state is requiring the copy services to pay the facility a minimum of $35.00 which only leaves the copy services with the original fee of approximately $180, circa six years ago. Commenter opines that the state is requiring copy services to police medical facilities but is not providing them with any tools or authority to enforce anything. Commenter would like to see language included that applies sanctions for bad-faith repeat offenders.  Commenter that not only are they not getting a true increase of the $180 flat fee, but there is no more revenue in fee schedule on other billable line items either -- if anything, there is more of an overall reduction. The cost for second sets has been reduced from [$30 to $10] on records after 30 days. Commenter states that there is no need to mention the $5 rate provision for records before 30 days, because not only is DIR expecting us to give free records but requiring copy services to pay out of their own pockets in order to stay in business. No one can afford to stay in business for $5 per record. It is clear any jobs under $30 are complete losses to a company. Commenter opines that perhaps DIR is not aware of how much work it takes to do a second set. There is a cost for the [actual cd, cd sleeve, pulling the physical file and records, stored documentation, communication with requesting party, forms required to be signed and set back, ink to burn the cd, time spent burning the CD (depending the size of the file), postage, envelopes, billing, and continued cost of storage of the files to be saved for a minimum of 6 years], not to mention the number of employees required from data entry to production to process a job that where they are allotted $5 for each record while the minimum wage is $15.00 or more an hour for each employee. This does not include the extraordinary amount of expense that they incur because of carriers who refuses to pay; which includes calls; logging all correspondence into our system, preparing SBR’s, mail, getting in the cue to reach someone at the carrier, and hopefully them getting back to you after an hour of being placed on hold after numerous attempts.  Commenter states that a 25% increase gives them $2.50 on a $10 job, which means that they are once again taking a loss since the initial fee schedule took place. DIR not only expects them to do work for free but lose money on all second- sets paying out of our their own pockets. Most PTP, QME’s, and AME’s refuse to accept cd’s because they need the records to review. Commenter questions how they are supposed to make revenue when many Doctors’ require a paper set of records, where $10 is insufficient to cover their overall costs. Many QME’s will reject the patient records unless they are provided paper copies, which again is injurious to their scope of business operations, and further puts the Injured Party at a time-delayed disadvantage for proper treatment. | Anonymous Legal Copy Service  August 26, 2021  Written Comment | Disagree. Disputes over ROI fees can be brought in Superior Court or at the Workers’ Compensation Appeals Board. | No action. |
| 9990 | Commenter would like an explanation how DIR allows the division to charge $1.00 a page for the first-set, when the division clearly could not afford to do it at their rate of $0.10 a page, are they are required to do. The state also charges $.20 a page for second-set, but they are only allowed a flat rate of $10 as a complete package to do all the work and also incur charges for shipping/handling, which the DIR does not have to do, whether it is 10 pages or 10,000 pages. Commenter opines that to small businesses, this is a clear indication that the DIR is trying to abolish their services in the industry. | Anonymous Legal Copy Service  August 26, 2021  Written Comment | Changes to 9990 were withdrawn. Authority for 9990 is from the Labor Code. | Language will remain as it currently reads. |
| General Comment | Commenter states that it has been hard collecting fees from many carriers after numerous attempts. Many of the carriers that do pay after years of abuse still refuse to pay taxes, which is required per regulations and per Board of Equalization. Commenter notes that they are now required to respond to EOR’s numerous times, which they cannot bill for. Many carriers no longer have a number that they can contact since the last fee schedule, and the carriers now refuse to advise who the adjuster is handling the case. Many times, they end up at a call center overseas where it is not possible to communicate clearly with foreign reps or understand them due to the language barrier. Some of the carrier call centers who are not overseas require you to go through an automated system to get a ticket and wait for a call back, which most of the time does not happen at all. In fact, it is a constant chase, which again requires them to wait years to get paid and is directly the opposite of the reason the State said they were putting the procedure in place. Commenter states that their company has invoices from 2015 which are still outstanding, and they need something in place for carriers who are abusing the system to be held responsible or even sanctioned for not complying with the fee schedule. Although it is great to get a 25 % increase after 30 days; How would they enforce it when they cannot even get taxes paid that are required by the Board of Equalizations and fee schedule.  Minimum wage has gone up from $9.25 to $15.00 an hour since the last fee schedule (six years ago), which is more than a 50% increase. The Copy Services have not received an increase since the last fee schedule, which was 6 years ago. However, the state required all employees to be given a raise in compensation. Again, how do we provide raises to our employees from below poverty to the fine line of poverty with no true increase in our Fee Schedules? It is a common industry belief that as a result of this fee schedule many more companies will go under and out of business soon. Most employees of Copy Services work close to minimum wage, and that is the direct result of the last fee schedule. Commenter does not understand how the state of California permits the Division of Workers Comp to allow its citizens to continue to live in poverty with no money allotted for benefits or health care. We want our voices to be heard. We are all here to help the injured worker get the help they deserve.  Many small companies (Copy Services) have already gone under due to the free schedule that the DIR put in place 6 years ago. The state is paying us less than most other states’ when the cost of living is much higher here in California than in most other states’. As a small company owner, I can only assume that the reason why these fees are allotted is to get rid of smaller companies, which largely represent the business principles this country was founded upon. How else can anyone explain how there has not been any increase in the fee schedule in over 6 years and counting. | Anonymous Legal Copy Service  August 26, 2021  Written Comment | General comment | No action. |
| 9981(c) | Commenter notes that after 6 years there have not been any fee increases for EDD records & WCRIB cases, which are relevant for the injured worker to pursue his/her case. Commenter opines that the DIR is taking away the rights’ of the injured worker by taking away those relevant necessities. WCRIB has a cost range of ($20 to $40 per year) depending on the year requested. The current fee schedule only allows the Copy Service to charge $30, which once again puts them at a working at a loss. There *also is no increase* in duplications of X-Rays, CNR, EDD, in the last 6 years. | Anonymous Legal Copy Service  August 26, 2021  Written Comment | EDD records are available at no charge upon request from the injured worker. | The language has been revised as follows:  (6) WC 024: Records from the Employment Development Department (EDD) of $20 for dates of service prior to January 1, 2022.  (7) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau (WCIRB) of $30 for dates of service prior to January 1, 2022.  (8) WC 026: Additional Electronic Set of $5 for dates of service prior to January 1, 2022.  (9) WC 027: Additional Electronic Set of $30 for dates of service prior to January 1, 2022. |
| 9980(g) | Commenter recommends the following revised language:  “Date of Service” means the date on which order is received/entered. | Anonymous  August 27, 2021  Written Comment | Disagree. The definition of date of service was withdrawn. | Definition has been deleted. |
| 9981(b)(4) | Commenter recommends the following revised language:  The date the records were requested, and the name of the firm name requesting the records. | Anonymous  August 27, 2021  Written Comment | The definition was withdrawn. | Definition has been deleted. |
| 9981(c) | Commenter would like to know why there are no increases on all line items after six, almost seven years. | Anonymous  August 27, 2021  Written Comment | There is no need for an across-the-board increase on all rates. | No action. |
| 9981(c)(2) | Commenter notes that subsection reflects no increase. $225-180 = $185? Would like to know why $30 is reduced to $10. | Anonymous  August 27, 2021  Written Comment | The decrease was in response to reports of abuse. | No action. |
| 9981(c)(3)  9981(c)(4) | Commenter would like to know why there is no increase. | Anonymous  August 27, 2021  Written Comment | There is no need to increase these rates. | No action. |
| 9981(c)(5) | Commenter opines that the amount should be $0.20 per page instead of $0.10. | Anonymous  August 27, 2021  Written Comment | Disagree. | No action. |
| 9981(c)(6)  9981(c)(7)  9981(c)(8)  9981(c)(9) | Commenter states that amounts listed are not adequate and that they are working at a loss. | Anonymous  August 27, 2021  Written Comment | The prices are reasonable. | No action. |
| 9981(c)(10)  9981(c)(11) | Commenter states that the amounts listed are not adequate. Would like to know why a facility can charge them $35 but they can only charge $10.26. | Anonymous  August 27, 2021  Written Comment | Disagree. The prices are reasonable. | No action. |
| 9981(c)(15) | Commenter states that the amount is not adequate and would continue to take a loss when providing a second set of records. | Anonymous  August 27, 2021  Written Comment | Disagree. The rate is reasonable. | No action. |
| 9981(c)(16) | Commenter states that many carriers are refusing to pay the sales tax to the Board of Equalization causing unnecessary expense in litigation. Commenter recommends that there be language included specifying sanctions for not paying the Board of Equalization. | Anonymous  August 27, 2021  Written Comment | Disagree. The price schedule sets reasonable prices. Sanctions are not prices. | No action. |
| 9981(d) | Commenter states that penalty of perjury cannot be put on an invoice. | Anonymous  August 27, 2021  Written Comment | Disagree. | No action. |
| 9981(e) | Commenter opines that 30 days is a self-imposed penalty. | Anonymous  August 27, 2021  Written Comment | The increase was withdrawn. | Section has been deleted. |
| 9982(a) | Commenter opines that the DWC needs to add Personal Appearance subpoena’s to fee schedule – need to include reimbursement for mileage, witness fees, and attempts required. | Anonymous  August 27, 2021  Written Comment | Disagree. Personal appearances are not copy services. | No action. |
| 9982(d)(1) | Commenter states that “notice of intent” must be handled by the attorney as they are not a party to the case. | Anonymous  August 27, 2021  Written Comment | “Notice of intent” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(f)(2) | Commenter states that the copy service has no educational background, nor should it be involved in an injured parties medical diagnosis or care. Currently many copy services send the records overseas to unknown companies who claim they can learn to review medical summaries to make profit. Commenter opines that this is not in the best interest of the injured party and should be left in the hands of the professional medical doctors who have graduated and earned their degree from medical school and can properly read, write, exam, diagnose and treat patients. | Anonymous  August 27, 2021  Written Comment | General comment. | No action. |
| 9982(f)(4) | Commenter states that many facilities have destroyed records after a period of time and that many times they are at a loss. Commenter opines that this should not be turned into a copy services problem to take losses due the medial facilities procedures. Facilities will not advise a copy service if there are no records until a subpoena is served due to Hippa guidelines and violations. | Anonymous  August 27, 2021  Written Comment | Copy services have been convicted of fraud after independently requesting records from clinics without evidence that any treatment was provided resulting in multiple improper charges for certificates of no records. Convicted copy services Expedited Attorney Services and Capital Attorney Services had over 1,400 liens filed with the Division of Workers’ Compensation with a claimed value of more than $2.7 million. | Language has been revised as follows:  (f) The claims administrator is not liable for payment of:   1. ,,, 2. ,,, 3. More than four Certificates of No Records (CNR) on a claim with dates of service after January 1, 2022. |
| 9983(e)(1) | Commenter states that the amount per page should be $0.20, not $0.10, as per Evidence Code 1563. | Anonymous  August 27, 2021  Written Comment | Disagree. The rate is reasonable. | No action. |
| 9983(e)(5) | Commenter opines that the $35.00 flat price should be the maximum amount charged and that there should be some form of sanction for repeat offenders that charge in excess of $35.00. | Anonymous  August 27, 2021  Written Comment | Disagree. Disputes over ROI fees can be brought in Superior Court or with the WCAB. | No action. |
| 9984(c)(1) | Commenter opines that the amount per page should be $0.20 and not $0.10. | Anonymous  August 27, 2021  Written Comment | Disagree. The rate is reasonable. | No action. |
| Future increases – COLA | Commenter would like to see yearly cost of living increases incorporated in these proposed regulations. | Anonymous  August 27, 2021  Written Comment | Disagree. DWC will consider future increases. | No action. |
| General Comment | Commenter states that parties to a Workers Compensation claim are—and should be—entitled to obtain pertinent records for the purpose of proving or disproving a contested claim. However, he opines that unnecessary or duplicative copy services have become a significant area of abuse.  Commenter notes that when the original Copy Service Fee Schedule was enacted in 2015, it did succeed in its stated goal of reducing frictional costs, since it established a standard flat rate for most services.  Commenter opines that it also made it easier for copy services to submit questionable bills and still get paid at the above-noted flat rate, often by exploiting loopholes in the regulations. That in turn led to a number of abuses, as acknowledged in DWC’s Statement of Reasons, which significantly undermined the intent of the fee schedule.  Commenter states that his data shows that his company’s California Workers Compensation copy service costs more than tripled from 2015 to 2016 when the fee schedule took effect, and their costs have remained at that high level ever since. Those increased costs have not led to any discernable benefits to injured workers or employers, so we agree that new reforms are necessary. | Peter Spalding  Network Specialist  Liberty Mutual  August 30, 2021  Written Comment | General comment. | No action. |
| 9981(e)  9982(d) | Commenter supports the proposed increase in the flat rate only if it is coupled with stronger provisions to combat abuse, as well as a more clearly defined process for resolving disputes – otherwise, commenter opines that these increased rates are likely to further encourage abuses.  Commenter supports the proposed revised language to 9982(d); however he recommends additional revision. Commenter agrees that copy services should not be paid for copying records that have already been provided by the claims administrator or medical provider and that there should be an informal mechanism to resolve disputes, to reduce the burden on the WCAB. However, commenter opines that the proposed language is still very broad and leave open many opportunities for disputes and offers the following observations:   * The proposed language states that if a claims administrator objects to a notice of intent, then “the parties must meet and confer to resolve the objection.” However, this section doesn’t clearly define who is responsible for arranging such a meeting, or even who “the parties” should be. It is assumed that “the parties” are meant to include those defined elsewhere in the law, most notably WCAB Rules of Practice and Procedure section 10305(o). However, as currently drafted, this language could be construed to mean that the claims administrator would be responsible for meeting and conferring with a copy service. * Recommend revising this section to clearly define “the parties” as the applicant and defendant, and to exclude the copy service. The process itself should also be spelled out more clearly. If the defendant issues an objection, then is should be up to the applicant to decide whether to challenge the objection, and there should be a reasonable deadline for doing so. If the applicant chooses not to timely challenge the objection, the process should end there. If the applicant does timely challenge the objection, then it should be the applicant’s responsibility to meet and confer with the defendant. * Agrees that if the objection remains unresolved, it should go before the WCAB as provided in the proposed 9985(b).Here too, there should be a reasonable deadline for raising any disputes. Recommend requiring any such petitions to be filed with the WCAB within 45 days of the initial objection. | Peter Spalding  Network Specialist  Liberty Mutual  August 30, 2021  Written Comment | The increase was withdrawn.  The “meet and confer” was withdrawn.  Disagree. DWC does not have authority to set timelines for filing WCAB petitions; the WCAB has authority over setting timelines for filing petitions with the WCAB. | Section 9981(e) has been deleted.  Language has been revised as follows:  (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.  No action. |
| 9983(f)  9984(c)(1) | * + Commenter recommends requiring copy services to provide specific justifications for canceled services, additional copies, or paper copies above 500 pages because these have been areas for abuse.     - As noted in DWC’s Statement of Records, cancellation charges have been a significant concern. Commenter has witnessed many examples of records being ordered unnecessarily, including situations in which the order is barred by statute; even if an appropriate objection is issued, the copy service may still send an invoice for a cancellation fee. Commenter has seen examples of invoices in which it is unclear why records were ordered in the first place and/or why the services were canceled. Commenter recommends specifically targeting these abuses by requiring these bills to include supporting documentation, including a brief statement as to why the services were ordered and subsequently canceled, to be signed under penalty of perjury. Cancellation charges should not be payable when the original order was barred by statute, or where an appropriate objection was issued and ultimately upheld.     - Additional copies have also been an area of concern. The current CCR 9983(f) allows injured workers to request additional electronic copies for   $5.00 if ordered within 30 days of the subpoena, or $30.00 thereafter. Commenter has seen many examples of additional copies ordered just after the 30th day, thereby allowing the copy service to charge the much higher rate. Commenter supports DWC’s proposal to do away with those higher rates for dates of service on or after January 1, 2022. However, he recommends taking it a step further and making additional sets of electronic records non- reimbursable, since the actual cost of copying electronic records applies only to the first set; additional sets can easily be made at little or no additional cost.   * + - Commenter recommends adding language to CCR 9984(c)(1) to require specific justifications for paper copies over 500 pages. Commenter opines that the now widespread use of electronic records has significantly reduced the need for paper copies, which in turn has reduced the corresponding overhead expenses. Paper copies over 500 pages should only be payable if the records are unavailable in electronic form. | Peter Spalding  Network Specialist  Liberty Mutual  August 30, 2021  Written Comment | Disagree. The proposed limit to CNRs addresses the abuses in this area. | No action. |
| 9982(f)(4) | Commenter supports this proposed language that would cap the number of Certificates of No Records (CNR) that would be payable on a given claim. Commenter opines that this has been an area of concern as he has seen many subpoenas service on locations that were unlikely to possess the records in questions; those subpoenas had the sole effect of increasing costs while failing to serve their intended purpose of obtaining pertinent records. Commenter expects this proposal to discourage those abusive practices and he hopes that it will spur stakeholders to be more judicious about which records they subpoena and ultimately reduce unnecessary expenses. | Peter Spalding  Network Specialist  Liberty Mutual  August 30, 2021  Written Comment | DWC appreciates the support. | No action. |
| 9982(e) | Commenter does not support the proposed CCR 9982(e). Although well-intentioned, commenter finds the language confusing and impractical, and opines that its flaws cannot be readily remedied. We recommend that this provision be removed in its entirety for the following reasons:  * Based on DWC’s Statement of Reasons, it is commenter’s understanding that this provision is intended to make the price schedule as equitable as possible, by allowing injured workers to get the same level of service as that provided to their claims administrators. Realistically, however, this proposal is unlikely to accomplish its stated goal and would only create new administrative burdens and opportunities for disputes. * The proposed CCR 9982(e) would allow an injured worker to obtain certain additional services if the employer or insurance carrier contracts for them, “including summaries, tabulations, and indexing, at the rate paid by the employer or insurance carrier to their copy service provider.” However, the very next sentence, namely the proposed CCR 9982(f), states that the claims administrator “is not liable for payment of… Summaries, tabulations, or indexing of documents.” This appears to be a direct contradiction, though it could also be construed to mean that the injured worker would only be entitled to those services at his or her own expense. * Commenter is unaware of any examples in which summaries, tabulations, or indexes had a material impact on a Workers Compensation claim. Even accepting the assumption that they might have an impact—and even if the above-noted language were revised—it remains unclear how the proposed requirements could be put into practice. There is no easy way for injured workers to be made aware of what services are included in their claims administrators’ contracts. The claims administrators in turn are often bound by confidentiality clauses in those contracts. The proposal fails to include any sort of disclosure requirement, nor would he support creating one: it would raise constitutional issues by impairing the obligations of those contracts, and it would create significant new administrative burdens. These fundamental issues outweigh any potential benefits from this proposal. | Peter Spalding  Network Specialist  Liberty Mutual  August 30, 2021  Written Comment | Agree in part. 9982(e) was replaced by the addition of “unless the employer or claims administrator obtains these services under a contract,” in 9982(f)(2). | Language has been revised as follows:  (f) The claims administrator is not liable for payment of:…   1. Summaries, tabulations, or indexing of documents unless the employer or claims administrator obtains these services under a contract. |
| 9981(e) | Commenter agrees that there should be clear deadlines for paying bills and he supports reasonable penalties for non-compliance. However, he opines that those provisions should be consistent with other deadlines and penalties in California’s Workers’ Compensation system. Commenter offers the following observations:   * This proposed sections would require claims administrators to pay copy service bills within 30 days of receipt. Failure to do so would be subject to a 25% increase. The proposal doesn’t technically characterize the 25% increase as a penalty, but DWC’s Statement of Reasons makes clear that the intent is the same. * This proposal appears to contradict the underlying statute. California Workers’ Compensation copy services are typically conserved medical-legal expenses, as they are intended for the purpose of proving or disproving a contested claim. That in turn means they are subject to Labor Code section 4622(a)(1) which requires medical-legal expenses to be paid within 60 days of receipt; failure to do so is subject to 10% penalty and 7% annual interest. * The proposal is also stricter than the provisions applicable to standard bills for medical treatment. Labor Code section 4603.2(b)(2) requires medical treatment bills to be paid within 45 days of receipt; failure to do so is subject to a 15% penalty.   Commenter recommends modifying this section to mirror Labor Code 4622(a)(1). | Peter Spalding  Network Specialist  Liberty Mutual  August 30, 2021  Written Comment | Agree in part. The increase was withdrawn. | Language has been deleted. |
| 9982(d)(1) | Commenter states that certain provisions exceed the authority of the Administrative Director to enact a fee schedule. Proposed section 9982(d)(1) creates two new pre-conditions to obtain payment for copy services. These pre-conditions are not a fee schedule. First, is the requirement to provide a notice of intent to copy records to the opposing side 30 days before sending out a formal copy request (subpoena) for the records. The language, as currently drafted, would apply to all subpoenas not just those directed to the employer, claims administrator or carrier. Thus, physicians, past and concurrent employers (who are not insured by the carrier for the current application), and other current and past medical providers are covered by this new requirement. While Labor Code § 5307.9 does allow a 30-day window after a request by the injured worker for copies of records; it is limited to copies of records in the possession of the employer, claims administrator, or workers’ compensation insurer. Therefore any 30-day requirement for records not in the possession of the employer, claims administrator, or workers’ compensation insurer is not permitted and exceeds the scope of the authorizing statutes.  Second, the 30-day requirement stands in direct contradiction to the provisions of Labor Code § 1198.5 which provides the employer shall make the employee’s personnel records available for inspection and/or provide a copy no later than 30-days calendar days after such a request. The filing of an Application for Adjudication of Claim at the Workers’ Compensation Appeals Board (‘WCAB’) is not a filing of a lawsuit and therefore the provisions of this Labor Code section are in direct conflict with the proposed regulation.  Third, as to the pre-condition to “meet and confer” to obtain payment for copy services is also not provided for in the authorizing statutes. This requirement just adds an additional pre-condition for the injured worker to obtain a subpoena for records.  Fourth, the addition of these pre-conditions violates the authority of the WCAB as provided for in Labor Code § 130. This section gives the WCAB and the Workers' Compensation Judge's (WCJ's) authority over the issuance of subpoenas. This authority does not lie with the Administrative Director. Also, Regulation 10640 provides the WCAB may issue Subpoenas Duces Tecum in accordance with the provisions of California Code of Procedure Sections 1985 and 1987.5 and Government Code Section 68097.1. Therefore, any additional preconditions usurp the authority of the WCAB and directs it to the Administrative Director, which is not permitted. The only preconditions to be met by the WCAB are those set out in the above-referenced Labor Codes, California Code of Procedure, Government Code, and associated regulations.  Commenter states that if the Administrative Director wishes to truly limit costs and assist the parties, the current approach being taken by the Newsom Administration would not appear to be the best course to advance those goals. Commenter opines that the current proposed regulations appear to be more of an attack on the worker's rights to obtain the discovery they need to prove up their case and not a true fee schedule. If the Administrative Director is so willing to go outside the creation of a fee schedule, one proposed change which would help is when the employer, claims administrator, or insurance carrier provides the documents requested by the injured worker, they are required to provide a statement under penalty of perjury from the custodian of records indicating all records responsive to the injured worker's request have been produced similar to a subpoena response. Way too often the injured worker receives records without any such declaration. It makes it impossible for the injured worker to confirm all records have been produced which were responsive to their request.  In addition, sometimes the worker is aware of documentation missing from what was produced. This forces the injured worker to go ahead and issue a subpoena for those records, which then almost always brings a motion to quash by the defendant. This despite the fact the injured worker has previously provided documentation indicating they would like a declaration under penalty of perjury from the custodian of records indicating the injured worker has received all documents responsive to their request. Commenter recommends that if the Newsom Administration truly wishes to protect injured workers' rights and make the discovery process more efficient, a regulation stating the above requiring declarations under penalty of perjury indicating all documents responsive to the injured worker's request have been produced would go a long way to reducing these perceived copy service "double costs." | Robert McLaughlin, Esq.  McLaughlin & Sanchez, APC  August 30, 2021  Written Comment | The “notice of intent” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(d)(3) | Commenter states that this propose subsection is contrary to how claims are pursued in workers' compensation matters. Quite often, not only insurance companies, but also applicant's counsel, obtain medical authorizations as a quick and easy way to obtain the records. Therefore, this proposed rule would appear to not provide for services for sending out a copy service company to obtain those records. Commenter opines that this is not a fee schedule. It is another precondition being added to the obtaining of records, which is not within the statutory authority provided to the Administrative Director.  Second, this would hurt equally both applicants and insurance companies who quite often rely on authorizations early in the handling of matters to obtain medical records of the injured worker, especially with regards to addressing issues such as causation of injury and apportionment. Commenter states that we live within a capitalistic system and no copy service is going to be able to copy those records with an authorization for free, whether it be for the applicant counsel, injured worker, or the carrier. | Robert McLaughlin, Esq.  McLaughlin & Sanchez, APC  August 30, 2021  Written Comment | Disagree. This subsection regulates improper ROI charges by medical providers for records. | No action. |
| Cost of Living Adjustment – Future Increases | Commenter stats that the proposed copy service fee regulation should include a cost-of-living adjustment (‘COLA’) provision. There is no need to have to revisit these copy service fee regulations every 3-5 years. Despite the time cost of proposing new regulations there is the fact it took over 5 years to revisit these copy service fee regulations. The cost of living for everyone is not the same as it was 5 years ago. Commenter opines that by not having a COLA you force copy service companies to accept reimbursement for services based on a cost-of-living index that can be over 5 years old by the time the fee schedule is revisited. Few businesses can afford to survive such a delay. In fact, many, if not all, of the California employers and the insurance carriers providing workers compensation insurance in California regularly change the rates they charge for their product and services based on their increasing costs. Why should copy service companies not have the same rights as provided in a COLA provision to the fee schedule? The only ones served by not having a COLA provision in the fee schedule are the insurance carriers who can insist on paying copy service fees based on a rate over 5 years old. | Robert McLaughlin, Esq.  McLaughlin & Sanchez, APC  August 30, 2021  Written Comment | Disagree. | No action. |
| 9982(f) | Commenter is disturbed by the deletion of “good cause” in this section. To not allow for duplicate subpoenas when there is good cause for same would limit the discovery rights of the injured worker while providing the carrier with unlimited discovery. The carrier, having the deeper pocket, will clearly pay for records a second, third, fourth, or fifth time if they believe there are records missing. However, by the change, you are now limiting the injured worker's ability to obtain those records if they have good faith belief records are missing. | Robert McLaughlin, Esq.  McLaughlin & Sanchez, APC  August 30, 2021  Written Comment | Disagree. There is abuse in this area. Parties can petition the WCAB for good cause. | No action. |
| General comment | Commenter states that there are many times when the declaration for custodian of records is not included with the records produced by the employer, carrier and/or administrator, and therefore, injured workers are not sure if they have obtained all the records requested. Also, there are many times when the injured worker is aware of additional documents that should be contained in their personnel file or medical file from the physician but are missing. Commenter’s firm has experienced situations wherein they had to send out a subpoena three times before finally obtaining the records. The first time we received a certificate of no records, the second time we received a limited number of records, and the third time we finally received all the records.  To limit the injured worker's discovery is to limit their due process rights. Therefore, the section eliminating ‘good cause’ is highly questionable and when coupled with the other changes in excess of the authority to draft a fee schedule noted above brings into question the true motives of the Administrative Director in proposing these regulations.  Commenter would like to remind the Newsom Administration that the purpose of the Division of Workers Compensation (‘DWC’) is to regulate the workers compensation system, including the insurance companies and employers, and not to do their bidding. Commenter opines that is appears that the DWC may be suffering from regulatory capture as it appears to have been captured by the very insurance industry and employers whom the DWC was to regulate to avoid abuses of power in the administration of California workers’ compensation. | Robert McLaughlin, Esq.  McLaughlin & Sanchez, APC  August 30, 2021  Written Comment | General comment | No action. |
| 9980(g) | Commenter opines that this definition will cause much confusion. In all other workers’ compensation billing, the “date (or dates) of service” refer to when the provider of services is rendering the services for which the provider is billing. The date which records are requested is not a billable service.  Commenter asks who is requesting the records from whom? Is this when the records are requested by applicants’ attorney from the claims administrator and employer within the time frames set forth in Labor Code section 5307.9? | Anonymous  August 30, 2021  Written Comment  Received via post | Agree. The definition was withdrawn. | Language has been deleted. |
| 9982(b)  9981(a)  9981(b)(4)  9981(d)(1) | Commenter seeks clarification of the wording of section 9982(b). Is the request for records in the employer’s or insurer’s possession the date the records were requested? Proposed section 9981(b)(4) states “The date the records were requested, and the name of the individual requesting the records.”  …The Bill should contain the name of the firm or entity requesting the records; but again the date the records were requested is not clear and should not be “retroactive”[ as 9981(a) “…applies to services provided on or after July 1, 2015] as there was no proposed/further obligation of a notice of intent to copy.  Commenter states that it defies rational consideration to have an injured worker or his representative make a demand upon the claims administrator and employer under Labor Code section 5307.9, wait 30 plus 5 days and then require an additional 30 days for a notice of intent to copy.  Commenter questions if this is what is going to be adopted as an additional barrier to an injured worker to obtain the right to subpoena records then who should be responsible for issuing a “notice of intent to copy.” - a neutral, non-party copy service?  Who would be responsible for following up on an objection by the opposing party?  Commenter states that a copy service does not represent the applicant or defendant. The copy service does not know the particulars of the case for a “meet and confer.” A copy service would certainly not be filing any petition of behalf of any party.  Commenter notes that it was stated in the “Background to Regulatory Proceeding” that the meet and confer process would prevent unnecessary cancellation charges.  Commenter states that under the current schedule cancellation charges most often occur when there has been a written demand under Labor Code section 5307.9 and the employer and or claim file is not produced in the time frame imposed by the rules and the code and subpoena issues. Then, sometime later, after the subpoena issues, the defendant either bypasses the deposition officer and finally send the records directly to the attorney or the subpoena is objected to which results in a $75 charge.  Commenter opines that without clarification as to the “date of service,” the issuance of the notice of intent to copy, and the meet and confer delay issue relating to possible objection(s), there is a very strong likelihood that the proposed regulations will likely lead to further disputes, increased costs and litigation. | Anonymous  August 30, 2021  Written Comment  Received via post | The definition was withdrawn.  “Notice of intent” was withdrawn. | Language has been deleted.  Language has been revised as follows:  (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. |
| General Comment | By and large, commenter applauds the Division’s efforts to combat abusive practices that increase costs within the system. The meet-and-confer provision, and the limitation on ROI fees are welcome changes | Amy B. Donovan, Esq., Vice President, Legislative & Regulatory Affairs  Keenan  August 30, 2021  Written Comment | DWC appreciates the support. | No action. |
| 9981(c) | Commenter states that if records are transferred via EDI there is no tangible product and therefore, under the California State Board of Equalization rules no sales tax can be charged. Sales tax should not be charged unless records are returned via tangible media-paper, CD or USB. Commenter states that her organization has experienced copy service vendors improperly charging sales tax for electronically transferred records, and therefore requests that this section be clarified. | Amy B. Donovan, Esq., Vice President, Legislative & Regulatory Affairs  Keenan  August 30, 2021  Written Comment | Disagree. DWC does not regulate improper tax charges. | No action. |
| 9981(e) | Commenter opines that a 25% late fee after 30 days is unnecessarily punitive and extraordinarily high compared to late fees in the ordinary course of business and other late fees within the workers’ compensation system. Commenter recommends that if the Division is committed to assessing a late fee that it align that fee with other late fees within the system. | Amy B. Donovan, Esq., Vice President, Legislative & Regulatory Affairs  Keenan  August 30, 2021  Written Comment | The increase was withdrawn. | Language has been deleted. |
| 9980(e) | Commenter is puzzled by the inclusion under subsection (e) of codes WC 031: Contracted Prices for Additional Sets and WC 032: Contracted Services. The negotiated rate will be paid regardless of what the copy service bills. Commenter is concerned that this could expose proprietary negotiated rates to the view of competing third party administrators. Commenter requests that these codes be removed as they are unnecessary. | Amy B. Donovan, Esq., Vice President, Legislative & Regulatory Affairs  Keenan  August 30, 2021  Written Comment | Agree in part. Negotiated rates are not paid regardless of what is billed. Bill review has rejected charges for contracted services. Mandatory use of billing codes was withdrawn and now the codes are optional. | Language has been revised as follows:  (c) Bills submitted under this section are limited to the following codes: |
| General Comment | Commenter would like to thank the Division of Workers’ Compensation Administrative Director and his staff for the long-overdue fee increases in Sections 9981(e) and 9984(a). The loss of the $30 additional set fee starting in 2022 will be difficult to manage, as many times additional sets are requested in physical format, which requires printing, production and packaging/shipping costs. Commenter expresses gratitude for the support when an ROI company becomes involved in the records process Sections 9983(e)(5) and 9984(c)(5). | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | General comment. | No action. |
| 9980(g) | Commenter states that this is an important term to define given the state of the collection law for medical-legal expenses, and in particular, copying services. For this reason, commenter urges the Division to follow the current state of the law defined in Labor Code Section 4621(a). To that end, medical legal SERVICES are not considered incurred earlier than the date services were actually completed, including service of the itemized billing for the services upon the Claims Administrator.  Labor Code Section 4621(a) states: “… The reasonableness of, and the necessity for incurring these expenses shall be determined with respect to the time when the expenses were actually incurred. Costs for medical evaluations, diagnostic tests, and interpreters’ services incidental to the production of a medical report shall not be incurred earlier than the date of receipt by the employer, the employer’s insurance carrier, or, if represented, the attorney of record, of all reports and documents required by the administrative director incidental to the services.”  Commenter recommends the following revised language:  (g) “Date of Service” means the date the requested records are delivered to the requesting party, or if no records ere produced, the date the declaration or other supporting documentation was delivered, and the itemized billing for the services has been delivered to the claims administrator. | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | The definition was withdrawn. | Language has been deleted. |
| 9980 – Authority and Reference | Commenter recommends adding Section 4621 to the Authority and Reference for this section.  Authority: Section 5307.9, and Section 4621, Labor Code. Reference: Section 5307.9, and Section 4621, Labor Code. | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | Disagree. | No action. |
| 9981(a) | Commenter states that by setting the date for the whole ARTICLE back to July 1, 2015, it causes every addition and change in every section and subsection to be RETROACTIVE unless specifically written to apply after 1/1/2022. Many sections, like the changes in 9980, 9981 and 9982 could cause unpaid accounts receivable for copy providers to become invalid under the new changes. This would have a significant detrimental impact on copy service providers. | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | Disagree. Adding the effective date does not change the effective date. | No action. |
| 9981(b)(4)  9981(d) | Commenter states that as currently proposed, the changes to Section 9981(b)(4) and (d) would retroactively add requirements to copy service invoices that were never anticipated or included when the invoices were originally served, creating a new and unnecessary dispute with said invoices, subsequently causing unnecessary cost to employers and providers. Language should be added making the new requirements for both subsections only apply on or after 1/1/2022.  Commenter recommends the following revised language:  (4) For invoices generated on or after 1/1/2022, the date the records were requested, and the name of the individual requesting the records  (d) All bills submitted under this section on or after 1/1/2022…. | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | 9981(b)(4) was withdrawn.  Agree. | Language has been deleted.  Language has been revised as follows:  (d) All bills submitted under this section must include a statement under penalty of perjury that the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32.  All bills submitted under this section on or after January 1, 2022 must include a statement under penalty of perjury that the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32. |
| 9981(c) | Commenter states that it is unlikely the copy services will see payment for the fee increase in Section 9981(e) without a properly defined BILLING CODE for the new fee. Therefore, commenter urges the Division to include new billing codes for both the fee increase defined in Section 9981(e) and, to make it clear this fee increase is unrelated and in addition to the penalties and interest also available for copy services under Labor Code Section 4622(a), and also urge the Division to include a new code for the penalties and interest contained in Labor Code Section 4622. The billing code for the penalties and interest under Labor Code Section 4622 has been missing from the regulations since 2015 and has generated friction and unnecessary expense as a result.  Commenter recommends the following revised language:  (16) WC 034: Unpaid bill sum increase under Section 9981(e)  (17) WC 035:Penalties and Interest subject to LC 4622(a)(1)  (18) S9999: Sales Tax | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | The increase was withdrawn and there is no need to add billing codes for increases. | No action. |
| 9982(d)(1) | Commenter has several concerns about the creation of the new term and dispute process this proposal seems to create for applicant discovery. This is not a trivial change in term from “request,” as defined by the Legislature at Labor Code Section 5307.9 to the Division’s new term, “Notice of Intent.”  This change appears to create an ADDITIONAL 30-day delay on applicant subpoenas that comes AFTER the 30-day voluntary request/service period for records defined by the Legislature at Labor Code Section 5307.9. This change appears to push applicant discovery out a minimum of 60 days, while leaving employers free to pursue discovery without such limitations. Without some clarity and consequences defined by the Division, this new procedure invites abuse, delay and friction by defense attorneys and bill reviewers, which will add new and unnecessary cost to employers. As written, it’s unclear what form the objection must be made in, which objections are to be considered good cause for stopping the forward progress of the applicant’s discovery, and what consequences a claims administrator and/or their attorney risk when making frivolous objections meant solely to cause delay of applicant’s discovery.  Given the above, commenter understands the Division’s concern with allowing Employers to contain costs for copied records when the Claims Administrator already has in their possession the same authenticated records expected to be produced by a witness in a Subpoena received from the applicant’s copy service. THEREFORE, commenter urges the Division to ADD to this provision clarity about valid objections, including a declaration under penalty of perjury that the employer/claims administrator actually HAS all the records matching the Subpoena request in their possession already and intends to serve them forthwith… OR that the records should not be sought by the applicant along with a detailed list of reasons WHY. Such a declaration will give the applicant and his/her attorney some understanding of the dispute at hand so they can make a meaningful response without delay.  The defense attorney bar and bill review companies will likely view this new provision as a revenue opportunity on nearly every claim, unnecessarily increasing costs to the employers of the state. Therefore, commenter also urges the Division to include a provision that frivolous objections meant only to cause delay of applicant’s discovery will subject the person and entity making that objection subject to sanctions and costs.  Should the Division have reservations about requiring the employer/claims administrator (or their attorneys) to include a declaration under penalty of perjury, commenter would like to point out the requirement that copy services provide a similar declaration in Section 9981(d). Commenter appreciates the Division’s desire to reduce abuse in the area of copying services and remind the Division that abuse is not exclusive to only the copy services. Putting pressure on the abuse by the employers/claims administrators and their attorneys will contribute to significant SAVINGS by employers.  Commenter recommends the addition of the following language at the end of this subsection:  … Valid objections shall include a declaration under penalty of perjury describing the records that were in the employer, claims administrator and insurer’s possession at the time of the notice and that are the subject of the objection to the notice of intent to copy records, including for any third party records the date copied and page counts, and including either a statement that the records will be served within the 30-day period, or the reasons why the records should not be produced. The WCAB shall impose a monetary sanction and award attorney fees under Labor Code Section 5813 and Cal. Code of Regulations Section 10421 against any party, person or attorney who serves an objection without substantial justification. | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | “When an objection is raised, the parties must meet and confer to resolve the objection,” was withdrawn. | Language has been revised as follows:  (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. |
| 9985 | For clarity as to what types of disputes subsection (a) applies, commenter urges the Division to add “under Sections 9984(e)(5) and 9985(c)(5)” to the subsection (a) as follows:  (a) Disputes over the production of records under Sections 9984(e) and 9985(c)(5) may be resolved by filing a petition with a superior court pursuant to Labor Code section 132.  Commenter recommends the deletion of subsection (b).  Case parties already have ample authority in the Labor Code to resolve disputes over discovery by filing a Petition to Quash, supported by decades of voluminous case law. As written, it is ambiguous what types of disputes are now limited to the filing of Petitions to resolve. Commenter urges the Division to simply remove subsection (b) and allow the existing body of law for resolving discovery disputes to stand without additional ambiguity in this Fee Schedule. | Don Mora, President  Coalition of Professional Photocopiers  August 30, 2021  Written Comment | Agree in part. 9985 was changed; disputes are now covered in 9983(e) and 9984(c) | Language has been revised as follows:  9983 (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. **§ 9984. Prices for Dates of Service on and after January 1, 2022.** (c)(5) 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. |
| 9981(e)  9984(c) | Commenter notes that this section states:  “Bills must be paid within thirty days of receipt by the claims administrator. If bills are not paid within this period, then that portion of the billed sum which remains unpaid will be increased by 25 percent.”  Commenter notes that Labor Code section 5307.9 states:  “On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers’ Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and shall not allow for payment for services provided within 30 days of a 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. *The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.*”  Commenter opines that there is nothing in Labor Code § 5307.9 which authorizes the imposition of a penalty. However, the statute does say that copy services costs are “claimed” under Labor Code §§ 4600, 4620, or 5811. For copy services, this means that the right to reimbursement is dependent on the reason for which the copies were made – in other words the copying is either for providing medical services or for addressing a med-legal dispute.  Commenter states that copy services are necessary to make certain an injured worker receives medically necessary treatment to cure or relieve the effects of an injury. It is analogous to transportation services, the expenses for which are dependent on and ancillary to medical treatment benefits, not a different benefit. Medical treatment transportation benefits have not been treated as having a separate existence from all other medical treatment benefits, but, instead, have been included as derivative of medical treatment benefits. See: *Avalon Bay Foods v. Workers’ Comp. Appeals Bd. (Moore)* (1998) 18 Cal.4th 1165  The treatment of copy service expenses is also analogous to the question of interpreter fees addressed in *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, an en banc Appeals Board decision. As noted by the Board:  “Although no statutory or regulatory provision specifically provides for interpretation services during medical treatment appointments, we hold that, pursuant to the employer’s obligation under section 4600 to provide medical treatment reasonably required to cure or relieve the injured worker from the effects of his or her injury, the employer is required to provide reasonably required interpreter services during medical treatment appointments for an injured worker who is unable to speak, understand, or communicate in English.”  Thus, the penalty for late payment of fees is the same penalty charged for late payment of medical bills under Labor Code § 4603.2(b)(2). As it relates to copy service costs claimed under Labor Code § 5811, such objections would also be either medical or med-legal expenses and as such penalties for late payment would be those under the applicable statute.  Copy services are also necessary to provide parties relevant documents to address the resolution of disputes. The penalty for late payment of medical-legal expenses is governed by Labor Code § 4622(a)(1) and should control, where applicable, to copy service expenses.  Commenter notes that Labor Code section 5307.9 does permit a delay of any copy related services for 30-days after request. However, the section goes on to clarify that the records in question are the records in the possession of the employer, claims administrator or workers' compensation insurer and that are relevant to the claim. | Jason Schmelzer  Legislative Advocate  August 30, 2021  Written Comment | The increase was withdrawn. | 9981(e) has been deleted.  The language is sections 9984 and 9985 has been revised as follows:  (c) 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.  **§9985 Payment for Release of Information Services on and after January 1, 2022.**  Subsections (a) and (b) have been deleted. |
| 1. (d)(1) | Commenter notes that this section purports to address the process of subpoenas for records that become the subject of an objection or Motion to Quash on receipt, but are continued to be processed by the subpoena company without prior resolution of the objection or Motion to Quash. The manner in which this is achieved is by imposing the requirement of a Notice of Intent to Subpoena and permitting an employer, etc., to raise an objection at any time within the 30-days of issuance or receipt (***this is not clear***). This section does not specify a ban on services (subpoenas) issued until the 30-days has expired or until a timely objection to the Notice of Intent is resolved. As such, much like the current dilemma, there is nothing that precludes action on the copy service or holds that services during these periods are not payable. Also, there is no trigger for when the 30-days commence.  It is further unclear if this regulation is designed to address records sought by a copy service that are not “in possession of the employer, claims administrator or workers' compensation insurer and that are relevant to the claim.” Clearly, we propose that it should apply to all subpoenaed records, and while that Statute may be silent as to records not within the control of the employer, etc. it clearly vests the authority to determine the fee schedule relative to reproduced records and thus the parameters under which payment is governed. This may require a new paragraph under § 9982 (d) for clarification.  Commenter notes that there is reference to a **Notice of Intent to Subpoena**, which to our minds would best be served by a universal and singular form, that is easily identifiable by all and will eliminate the need for unnecessary litigation over whether a **Notice of Intent to Subpoena** was ever actually issued.  Commenter recommends that that Notice of Intent to Subpoena be a singular form adopted by the DWC and that it include a requirement to be served by Proof of Service to the employer and claims administrator and other parties, as identified in EAMS. The 30-day time frame should commence based on the proof of service. Commenter recommends the addition of the following subparagraphs:   * Upon service of the Notice of Intent to Subpoena records, the copy service shall allow 30-days to pass, before issuing a subpoena. Further, if within the 30-days of service of the Notice of Intent to Subpoena, the claims administer issues an objection, then all services are stayed pending resolution of the objection, either by written agreement of the parties or by WCAB decree. * Any services rendered by the copy service within 30-days or prior to the resolution of a timely objection, whichever is later, shall be non-compensable. | Jason Schmelzer  Legislative Advocate  August 30, 2021  Written Comment | “Notice of intent” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(e) | Commenter appreciates the DWC’s efforts to level the playing field, but note that as written this provision is unmanageable. Firstly, the LC calls for the DWC to promulgate a fee schedule and to identify the services to be included and specificity the billing for those services.  Post SB 863, there was significant deliberation about what was necessary and those items were identified in the flat fee noted in §9983 (a). It was the determination that any other services that any party might desire, could be paid for by that party, but were NOT reimbursable.  Some not all employers, third party administrators or workers' compensation insurers may have chosen to request additional services, but not necessarily on all claims they handle. Other have never sought these services. It is certainly appropriate for any defendant choosing to purchase additional services (summaries, indexing, etc.) not covered under the base fee to provide the opposing party with copies of those services, when serving the records.  However, the proposal is for each defendant securing additional services to allow for those services by the applicant’s chosen copy service at the rate the employer (etc.) contracted with their copy service. There are multiple issues with this the first being that a **contracted rate between a defendant and a copy service are proprietary with the authority to release that information solely the right of the copy service.** Thus, defendants would be unable to comply.  Second, by including this provision, the unintentional consequence will be that every bill will contain fees for items in addition to those covered by the flat fee and defendants will be forced to prove a negative (i.e., that they are not utilizing the any additional services). This becomes even more problematic if the services are not universally utilized within a claim administrators office, but rather on a case by case basis.  **Recommendation:**  Commenter proposes that this be addressed as follows:  If the parties truly wish to avail themselves of additional services, he proposes that the forty-five dollar ($45.00) increase in the flat fee is sufficient to cover those services. Alternatively, the below language should level the field for all parties.   1. If an employer, third party administrator or insurance carrier contracts for services which are not covered by this schedule, the injured worker or their representative shall be provided with a full copy of the records secured by the employer, TPA or workers' compensation insurer, to include those services not covered by the fee schedule to which the employer availed itself.    1. To the extent that a copy service working for the injured worker provides additional services not covered by the flat fee, then that work product shall be made available to the employer (etc.), if specifically requested, at the normal fee for that service. If the services are not requested, then the employer (etc.) shall have no obligation to reimburse for the services. | Jason Schmelzer  Legislative Advocate  August 30, 2021  Written Comment | 9982(e) has been withdrawn. In its place is an addition to 9982(f)(2) to allow for payment summaries, tabulations or indexing of documents when the employer or claim administrator obtains these services under a contract. | Section 9982(e) has been deleted and the language has been revised as follows:  (f) The claims administrator is not liable for payment of:…   1. Summaries, tabulations, or indexing of documents unless the employer or claims administrator obtains these services under a contract. |
| 9982(f)(4) | Commenter appreciates the efforts of the DWC to control the income stream to the copy services for the subpoenas that have no hope of producing records, he believes that four (4) Certificates of No Records appears arbitrary and excessive. It sends the message that for $60.00 dollars in witness fees and very little beyond that they can make a quick $300.00 dollars. The income grows exponentially if, as in many litigated cases, multiple claims are filed. This it is important to apply the limit on Certificates of No Records to the injured workers active cases as a whole. Further, the injured worker certainly knows their medical history better than anyone else involved. As such, the sources of medical records can be easily ascertained by the applicant’s representative and related to the copy service, thus there is no rationale to support Certificates of No Records, for records which they request thus the rational for this provision is flawed.  Commenter recommends that the certificates of no records be applied to the injured workers, as represented by the same attorney or firm, regarding of the number of claims that are pending. Commenter recommends that the limit be reduced to one. | Jason Schmelzer  Legislative Advocate  August 30, 2021  Written Comment | Disagree. The limit of four is reasonable. | No action. |
| 9983(f)(2)  9984(c)(2) | Commenter notes that these sections, as written, only allow the injured worker to request a second set of records. Many defendants choose to minimize and control costs by not duplicating subpoena efforts through their vendors and by merely ordering a copy of subpoenaed records secured at the injured workers request, through a service of their choosing.  Commenter recommends that in order level the playing field and have these sections work equally well for the employer and injured worker, that both be listed in these sections. | Jason Schmelzer  Legislative Advocate  August 30, 2021  Written Comment | Disagree. Employers pay for records ordered by both sides. | No action. |
| 9985 | Commenter states that the timing of the dispute process is not provided. While CCR § 9982 (d)(1) proposes a meet and confer resolution to any dispute, this section provides no such reference as a pre-requisite to filing a petition or a DOR. CCP § 2016.040 provides the definition of meet and confer, which is essentially for the parties to amicably resolve any issue(s) in dispute so as to not burden the court with that task. Granted not all disputes can be resolved, but the fear here is that no Meet and Confer will occur. Instead a petition will be filed or a hearing will be set and parties will be forced to utilize WCAB resources and incur litigations costs to resolve any issue.  Further, if the dispute arises over a Notice of Intent to Subpoena, LC § 132 does not apply, as no subpoena has issued and LC § 132 addresses contempt of subpoena.  Commenter recommends the following revised language:  (a) Parties must meet and confer as defined by CCP § 2016.040 prior to seeking remedies below. All such efforts must be documented as to time and date.   1. Disputes over the production of records may be resolved by filing a petition with the Workers’ Compensation Appeals Board, or 2. Disputes over objections to a notice of intent may be resolved by filing a petition with the Workers’ Compensation Appeal Board. | Jason Schmelzer  Legislative Advocate  August 30, 2021  Written Comment | “When an objection is raised, the parties must meet and confer to resolve the objection,” was withdrawn. | Language has been revised as follows:  (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. |
| 9980(g) | Commenter notes that the proposed definition conflicts internally with section 9981 as subsections (b)(3) and (b)(4) distinguish between a date of service and date when records were requested. These would seems to be two different dates, one dealing with the copy service providing their service and the other being the date notification is sent to the claims administrator beginning the 30-day period in Labor Code section 5307.9. However, the definition of “Date of Service,” as proposed defines these two dates as being the same. Clarity is needed in the meaning of this term when used throughout the regulations.  Commenter recommends the following revised language:  (g) “Date of Service” means the date on which the copy service provided copy and related services. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | The definition was withdrawn. | Subsection has been deleted. |
| 9980 | Commenter recommends adding a definition for the term “Notice of intent to copy records” in order the help support the DWC’s intent to provide definitions and clarity for key terms used in this schedule.  In order to provide clarity to the concept that claims administrators must be given 30 days’ notice before the issuance of a subpoena duces tecum, commenter recommends adding and defining this term as follows:  (j) “Notice of intent to copy records” means a written notice requesting records sent by a party to the claims administrator before a subpoena can be issued at the expense of the claims administrator. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | The definition was withdrawn. | Subsection has been deleted. |
| 9981 | Commenter notes that this section specifies bill requirements, provides the billing codes to be used for administrative and copy services, and contains a proposed added section to address the timeliness of bill payments.  Commenter recognizes the DWC’s efforts in these changes to ensure the payor has the necessary information in determining the appropriate payment of services and timely issuance of payments. Commenter opines that additional amendments to this section are recommended to bring clarity to these bill requirements, the required dates on a bill and their meaning, the billing codes and the applicable date range for dates of service specific to the billing codes, and the processing of bill payments. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | General comment. | No action. |
| 9981(b)(3) | Commenter recommends adding the invoice number as a bill requirement and revising the language as follows:  (b)(3) The source of the information, the type of records produced, the date of service, an invoice number, a description of the billed services, the number of pages produced; and | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Disagree. The invoice number is not needed. | No action. |
| 9981(b)(4) | Commenter recommends using the language of the “date of the notice of intent” to signify the date the records were requested. This aligns with the terminology used in proposed section 9982(d)(1) and would align with her recommend definition for the phrase. Commenter recommends the following revised language:  (b)(4) The date of the notice of intent to copy records, and the name of the individual requesting the records. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | The definition was withdrawn. | Subsection (g) has been deleted. |
| 9981(c)(5) | In order to align with section 9983(e)(1) and 9984(c)(1) and provide clarity on when to apply this billing code, commenter recommends the following revised language:  WC 023: Per Page Price of .10 per page for pages in excess of 500 pages. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Agree. | Language has been revised as follows:  (5) WC 023: Per Page Price of .10 per page for pages in excess of 500 pages. |
| 9981(c)(6)  9981(c)(7)  9981(c)(8)  9981(c)(15) | Commenter states that clarify is needed in these sections to align Sections 9983 and 9984 to specify the dates of service these billing codes apply to. Commenter recommends the following revised language:  (6) WC 024: Records from the Employment Development Department (EDD) of $20 for dates of service prior to January 1, 2022.  (7) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau of $30 for date of service prior to January 1, 2022.  (8) WC 026: Additional Electronic Sect of $5 for dates of service prior to January 1, 2022.  (15) WC 033: Additional Set of $10 for dates of service prior to January 1, 2022. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Agree. | Language has been revised as follows:  (6) WC 024: Records from the Employment Development Department (EDD) of $20 for dates of service prior to January 1, 2022.  (7) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau (WCIRB) of $30 for dates of service prior to January 1, 2022.  (8) WC 026: Additional Electronic Set of $5 for dates of service prior to January 1, 2022.  (9) WC 027: Additional Electronic Set of $30 for dates of service prior to January 1, 2022. |
| 9981(c)(12) | Commenter opines that this subsection is ripe for abuse because it does not define “requested services” and places no limit on the amount that may be charged. This increases frictional costs instead of reducing them.  Commenter recommends this subsection be eliminated or have a maximum cap.  Commenter requests clarity on what “Requested Services” covers and recommends a max cap for this amount. Without such clarity, different interpretations of services to be covered under this WC 030 billing code may arise and cause additional frictional costs instead of a reduction in frictional costs, as the DWC intended with these amendments to the schedule. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Disagree. Requested services include items listed in 9982(f)(2) and these contracted services have differing rates depending on the contract. | No action. |
| 9981(c)(13)  9981(c)(14) | Commenter requests clarity on these sections in regards to how they relate to one another. Proposed WC 031 seems to be subsumed into proposed WC 032 because contracted prices for additional sets would seem to be part of contracted services. The DWC has proposed defining “contracted services”, as evidenced under Section 9980. However, it is not clear if these two proposed billing codes, WC 031 and WC 032, share the same definition when an agreement between parties for services implies the pricing of such services is included. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Disagree. There are different prices for contracted services and contracted prices for additional sets. | No action. |
| 9981(e) | Commenter recommends the following revised language:  Bills must be paid or objected to within thirty days of receipt by the claims administrator. If bills are not paid or objected to within this period, then that portion of the billed sum which is later determined due, will be increased by up to 25 percent.  As currently proposed, this section does not address instances where a dispute may arise between the copy service provider and the payor. Commenter opines that the revised language will account for these instances, clarify the payor’s responsibility for a penalty when no action is taken, and provide the flexibility of the penalty amount that is consistent with LC 5814 and its treatment of an unreasonable delay. Additionally, there should be alignment with the relevant Labor Code sections in determining the timeframe provided to pay or object to copy service bills. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | The increase was withdrawn. | Subsection has been deleted. |
| 9982(b) | Commenter recommends the following revised language:  (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 10635, this schedule applies to obtaining those records.  Under its revised language, the DWC proposed a revision to the cited regulation number section 10608 by replacing this regulation number with 10653. However, section 10653 does not exist in the California Code of Regulations. It appears that the DWC meant to cite section 10635 instead, regarding the Duty to Serve Documents. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Agree. The typo was corrected. | Language has been revised as follows:  (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 10635, this schedule applies to obtaining those records. |
| 9983(e)(5)  9984(c)(5) | Commenter notes that the DWC advised that these subsections were added to prevent improper billing demanded prior to the release of records. Commenter opines that it would be best to provide clarity on pricing for when records are produced vs. when an CNR is produced by using “or.”  Commenter recommends the following revised language:  Third party release of information (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 will be paid a flat price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, or a flat price of $15, inclusive of the witness fee and all services of the 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 fees. Third party ROI services shall produce electronically the records or certificates, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Agree. “Or” was added. | Language has been revised as follows:  **§9985 Payment for Release of Information Services on and after January 1, 2022.**  Third party release of information (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 price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, or a flat price of $15, inclusive of the witness fee and all services of the ROI service when a CNR is produced. Third party ROI services representing deponents or witnesses will accept electronic service of all deposition notices and requests, including subpoenas and witness fees. Third party ROI services shall produce electronically the records or certificates, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative. These fees are included in the flat fee. |
| 9985(a) | Commenter recommends removing language referencing “filing a petition with a superior court pursuant to Labor Code section 132” and suggests the following revision:  Disputes over the production of records may be resolved by filing a petition with the Workers’ Compensation Appeals Board. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Disagree. Disputes can be resolved by filing with the superior court or with the WCAB. | Section 9983(e) has been revised as follows:  (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. |
| 9990 | In the first sentence of this section, the DWC proposes to delete the word “fees”, as what appears to be part of its efforts to cease use of this term throughout the schedule.  The Division will charge and collect fees for copies of records or documents.  Here, this section outlines the DWC’s ability to charge and collect for requested records. As such, the term “fees” should remain in this sentence to define that “money” is being collected. The DWC is removing the term “fees” when the meaning is a substitute for the term “price.”  Commenter recommends keeping the term “fees” in this first sentence to better define what the DWC is collecting:  The Division will charge and collect fees for copies of records or documents. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund (SCIF)  August 30, 2021  Written Comment | Changes to 9990 were withdrawn. | The language in this section shall remain as currently published. |
| General comment | Although the proposed change from “fees” to “prices” is explained in the ISOR, the rationale provided does not seem relevant when historically, and by statute, the DWC has been mandated to create a schedule of fees (§§5307.1, 5307.6, 5307.9). Moreover, a change from “fees” to “prices” implies that the schedule of fees for copy services is somehow different from services covered under the Official Medical Fee Schedule (§9789.10 et seq.) or medical-legal fees (§9795). Commenter recommends retaining “fees” in the Article 12 title and throughout the text of the regulations. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Disagree. “Fee” is defined as a “charge fixed by law for services of public officers or for use of a privilege under control of government.” See Black’s Law Dictionary at page 614. “Price” connotes a commercial transaction. | No action. |
| 9980(g)  9980(h) | Commenter recommends additional language defining “Date of Service” to reinforce an identifiable date that can be readily documented.  Commenter’s Forum Comments expressed concern about the industry practice of multiple subpoenas being issued for different types of records to the same custodian of records for the same injured worker (i.e., separate subpoenas for payroll records, employee handbooks, personnel records, and medical records, etc.) when one subpoena would suffice to obtain these multiple types of records from a single source. Commenter recommends that the Division prohibit this practice, which has caused disputes and ultimately led to adjudication of lien claims to be resolved by the WCAB. As such, she recommends that clarifying language be added to section (h). | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | The definition was withdrawn. | Subsection has been deleted. |
| 9981(b)  9981(c) | Commenter recommends the following revised language:  (b) Bills for copy and related services must specify the services provided and include:  (3) The source of the information, the type of records produced, the date of service, the date the records were produced, a description of the billed services, the number of pages produced; and  (4) The name of the individual requesting the records.  (c) Bills submitted under this section are limited to the following codes:  (1) WC 010: Flat Fee of $225 for services rendered on or after January 1, 2022, regardless of the date of injury.  (2) WC 020: Flat Fee of $180 for services rendered between July 1, 2015, and December 31, 2021, regardless of the date of injury.  (e) ~~Bills must be paid within thirty days of receipt by the claims administrator. If bills are not paid within this period, then that portion of the billed sum which remains unpaid will be increased by 25 percent.~~  Commenter supports the Division’s proposed new definition of “Date of Service” in §9980(g). Commenter recommends an additional requirement in subsection (b)(3) for billings to include the date that records were produced. In subsection (b)(4), commenter recommends deleting language that has now been used to define Date of Service.  In subsection (c), commenter recommends replacing the proposed “must use” language with “limited to,” for the purpose of clarification that no other codes may be used to bill copy and related services -- without implying that each bill must include all listed codes.  Commenter notes that the Division intends for the increased flat fee of $225 to apply to copy services provided on or after January 1, 2022. However, she is concerned that bills will be submitted with code WC 010 for dates of service prior to the effective date identified in §9984. To avoid disputes, she recommends adding clarifying language as to the effective dates in subsections (c)(1) and (2).  Subsection (e) contravenes existing statutory law, which should be avoided. Pursuant to Labor Code section 4622(a)(1), bills must be paid within 60 days of receipt by the claims administrator. Delays in payment of billings are properly remedied by application of existing statutory law. The Division justifies this proposed penalty section in the ISOR by reference to the 2013 BRG Study. However, that study did not contemplate a new 30-day deadline for payment nor did it suggest that additional, non-statutory penalties be applied in the form of a price increase for late payments. Commenter opines that the Division simply does not have statutory authority to impose a new penalty, no matter how it is phrased in the regulation. Payment timeframes are fixed by statute, including any financial remedies for increased payments when these timeframes have expired. Commenter requests that the Division delete this section. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | The definition of “date of service” was withdrawn.  Agree. Mandatory use of billing codes was withdrawn and now the codes are optional. | Subsection has been deleted.  Language has been revised as follows:  (c) Bills submitted under this section are limited to the following codes: |
| 9982(b) | Commenter recommends a change in syntax and correction of typographical errors as follows:  (b) If the claims administrator fails to serve records in the employer’s or insurer’s possession requested by an injured worker or their 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 10635, this schedule applies to obtaining those records. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree. The typo was corrected. | Language has been revised as follows:  (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 10635, this schedule applies to obtaining those records. |
| 9982(d) | Commenter recommends the following revised language:  (d) There will be no payment for copy and related services that are:  (1) 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, where those records have been provided within 30 days of an Authorization (as defined) by an injured worker or their authorized representative. For purposes of this subsection, 30 days is calculated   * 1. from the date that is five (5) calendar days after the date of the proof of service where the Authorization was mailed within California with a proof of service; or   2. from the date that is five (5) calendar days after the date of the United States postmark stamped on the envelope in which the Authorization was mailed within California without a proof of service; or   3. from the date that is ten (10) calendar days after the date of the proof of service where the Authorization was mailed outside of California with a proof of service; or   4. from the date that is ten (10) calendar days after the date of the United States postmark stamped on the envelope in which the Authorization was mailed outside of California without a proof of service; or   5. for facsimile or electronic mail service, the Authorization shall be deemed to have been received by the claims administrator on the date the Authorization was received if the receiving facsimile or electronic mail address electronically date stamps the transmission when received. If there is no electronically stamped date recorded, then the date the Authorization was transmitted shall be deemed to be the date the form was received by the claims administrator. An Authorization transmitted by facsimile or electronic mail after 5:00 PM Pacific Time shall be deemed to have been received by the claims administrator on the following business day. The copy of the Authorization transmitted by a facsimile transmission or by electronic mail shall bear a notation of the date, time, and place of transmission and the facsimile telephone number or the electronic mail address to which the Authorization was transmitted.  1. Charges for services related to, or cancellation of, a subpoena for records where a party has made a timely objection. When an objection is raised, the parties shall within 20 days of the objection meet and confer in good faith to resolve the objection prior to the filing of a petition with the Workers’ Compensation Appeals Board by either party. This subsection shall not apply where the WCAB overrules the party’s objection, or where the holder of the records objects to disclosure.   (3) Provided by any person or entity which is not a registered professional photocopier.  (4) Provided by a medical provider, or by an agent of the provider, when the requesting party has employed a professional photocopier to obtain or inspect the records.  (5) Charges for records submitted to Independent Medical Review for medical necessity determinations, where those records 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.  Commenter appreciates the Division’s efforts in (d)(1) to cure violations of Labor Code section 5307.9 and address costs to the system for cancellations when records are subpoenaed by the injured worker or an authorized representative prior to the expiration of the 30-day period under Labor Code section 5307.9. Commenter recommends deletion of a meet and confer requirement for payment of these services, as the services are expressly barred by statute. Additionally, she recommends that the Division take advantage of the refined definition of “Authorization” under §9980(b) by incorporating its use into this subsection. Doing so will avoid confusion for practitioners over what constitutes a “notice of intent to copy records” without implicating the entirely different rules and requirements that apply to formal subpoenas. Finally, as proposed, subsection (d)(1) fails to specify the triggering event for the commencement of the 30-day period that expressly precludes orders for obtaining copied records. A definition of this triggering event is critical in order to avoid potential disputes between the parties as to the date of expiration of this period, which would also lead to frictional disputes that must be resolved by the WCAB. Commenter recommends additional language in subsection (d)(1) to provide this specificity as to the commencement of this protected period.  With the recommended creation of new subsection (d)(2), commenter proposes the separation of violations of Labor Code section 5307.9 from the dissimilar concern of records being subpoenaed from a location that is unlikely to be related to the case, which necessitates an objection and then results in the issuance of a cancellation charge. Here suggestion provides for a meet and confer process here, as opposed to subsection (d)(1), because the subpoenas contemplated here are not already precluded by statute, and reasonable minds may differ on the validity of a subpoena. Informal resolution avoids the use of limited WCAB resources while still allowing the filing of a petition by either party if necessary.  Commenter recommends adding new subsection (d)(5). Subpoenas for medical records are intended for the gathering of information for medical-legal and discovery purposes. It has become commonplace for an applicant’s attorney to order 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. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree in part. “Notice of intent,” and “meet and confer,” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(e) | Commenter recommends that this subsection be deleted.  Commenter agrees that it is appropriate to provide copies of records from a party’s own copy service provider that include items not covered by the flat fee charge if the party has chosen to purchase them (e.g., summaries, tabulations, indexing, etc.) when these records are served on opposing parties. However, she recommends that subsection (e) be struck in its entirety. Payment for charges not covered in §9983(a) or §9984(a) should be the responsibility of the party securing the records from their own copy service provider.  Notwithstanding the extra-charge responsibility, commenter opines that the most concerning aspect of this section is the requirement to pay the injured worker’s copy service provider for non-covered flat-fee charges at the same rate as the contractual rate between an employer, insurer, or claims administrator and their copy service provider. Application of the proposed provision would be difficult, in light of the fact that these non-covered items are not always ordered. Moreover, a contracted rate represents a proprietary business transaction between the claims administrator and its chosen vendor(s) and is not subject to disclosure. The inevitable consequence of this proposed regulation will be an escalation of disputes where invoices include these non-covered charges, leaving defendants in the position of having to prove the absence of any contracted rate on each item that is not covered by the flat fee. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Disagree. 9982(e) has been withdrawn. In its place is an addition to 9982(f)(2) to allow for payment summaries, tabulations or indexing of documents when the employer or claim administrator obtains these services under a contract. | Subsection has been deleted. |
| 9982(f) | Commenter recommends that this subsection be limited to one certificate of no records (CNR) regardless of the number of pending claims by the injured worker. Commenter notes that the Division has correctly acknowledged the issue of abuse by copy service providers submitting charges for CNRs when there is no basis for securing records at a particular location. If liability for multiple CNRs remains, commenter opines that it would perpetuate an excessive and unnecessary financial responsibility for the claims administrator and would fail to create any significant deterrence to an industry-wide abuse. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Disagree. The limit of 4 CNRs is reasonable. | No action. |
| 9983 | Commenter recommends that there be no changes to the existing language in this section.  Commenter opines that while the amendments to the proposed regulation clearly separate the effective date for the new fee amounts, revising the language for services provided prior to January 1, 2022, would render consequential changes retroactive. Commenter recommends leaving the language unchanged from the existing regulation for services rendered between July 1, 2015, and December 31, 2021. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree in part. Some corrections were proposed. New section 9984 separates out services provided after January 1, 2022. | No action. |
| 9984(b)  9984(c) | Commenter recommends that the title of this section be in boldface type in order to be consistent with other regulations and that “Fee” be used instead of “Price.” | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree. The title was bolded.  Disagree with the use of “fee,” which is defined as a “charge fixed by law for services of public officers or for use of a privilege under control of government.” See Black’s Law Dictionary at page 614. Whereas “price” connotes a commercial transaction. | Title has been bolded.**§ 9984. Prices for Dates of Service on and after January 1, 2022.** |
| 9984(b) | Commenter recommends the following revised language:  (b) $75 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 CNR.  (1) Bills submitted for cancellation of a subpoena shall also include 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.   (2) Bills submitted for certificates of no records shall also include a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the certificate of no records containing the date of the certificate.  (3) If the copy service fails to provide the information required by this section, the claims administrator shall have no liability for payment.  Regarding subsection (b), and as acknowledged in the Initial Statement of Reasons, a common industry practice has evolved whereby the employee’s representative, through and/or in coordination with the copy service, serves multiple subpoenas on multiple entities even in the absence of any good faith belief that records exist. Similarly, subpoenas may be issued and then quickly cancelled before any work might reasonably have been completed, but nevertheless result in billing for cancellation fees. All of these unreasonable copy service fees are unfairly borne by the claims administrator. Additional requirements for the production of information in subsections (b)(1) and (2) will help to eliminate inappropriate subpoenas, and result in subpoenas that will lead to the discovery of information pertinent to the industrial injury and for which payment of the copy service fee is appropriate. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree. | Language has been revised as follows:  (b) $75 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 CNR.The claims administrator will not be liable for bills submitted under this subdivision unless:  1) Bills submitted for cancellations include 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  2) Bills submitted for certificates of no records include a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the certificate of no records containing the date of the certificate. |
| 9984(c) | Commenter recommends the following revised language.  (c) In addition to the flat price allowed in subdivision (a), the following separate prices apply:  (4) Applicable sales tax under California Sales and Use Tax Regulations, Article 3, Regulation 1528.  Commenter recommends reference in subsection (c)(4) to the underlying regulation that defines “applicable sales tax.” CWCI data from 2018 shows tremendous variability in sales tax fees related to the underlying copy services; for example, a single provider received 9.9% of flat fee service payments and 9.7% of total payments but received 30.9% of the total payments for 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. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Disagree. “Applicable sales tax” includes the suggested regulations. | None. |
| 9984  9985 | Commenter recommends the following revised language:  Third party release of information (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 price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, and a flat price of $15, inclusive of the witness fee and all services of the ROI service when a CNR is produced. These fees are included in the flat fee of $225 pursuant to §9984(a). Third party ROI services representing deponents or witnesses will accept electronic service of all deposition notices and requests, including subpoenas and witness fees. Third party ROI services shall produce electronically the records or certificates, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative.  Additional language added clarifies that the ROI is included in the flat fee, along with correction of a typographical error. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree. Subsection (a) and (b) have been deleted and a new paragraph composed. | Language has been revised as follows:  **§9985 Payment for Release of Information Services on and after January 1, 2022.**  Third party release of information (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 price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, or a flat price of $15, inclusive of the witness fee and all services of the ROI service when a CNR is produced. Third party ROI services representing deponents or witnesses will accept electronic service of all deposition notices and requests, including subpoenas and witness fees. Third party ROI services shall produce electronically the records or certificates, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative. These fees are included in the flat fee. |
| 9985 | Commenter recommends the following revised language which conforms to the recommendations she made regarding section 9982:   1. Disputes over objections raised under §9982(d)(1) may be resolved by filing a petition with the Workers’ Compensation Appeals Board only after the 30-day period under Labor Code section 5307.9 has expired. 2. Disputes over the production of records under §9982(d)(2) 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. | Stacy L. Jones  Senior Research Associate  California Workers’ Compensation Institute (CWCI)  August 30, 2021  Written Comment | Agree in part. It is not necessary to include “only after the 30-day period…” | Language has been revised as follows:  9983 (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. |
| 9980(g) | Commenter questions what this definition means. Does this mean when records are requested by AA from the copy service or when records are subpoenaed by the copy service from the facility or when the records are copied? Does this mean that all invoices will have the same Date of Service if they were requested by the AA on the same form/date? Would this be an accurate reflection of a date of service?  Commenter notes that 9981(b)(3) states that bills for copy services must include the date of service (aka date records requested) and 9981(b)(4) states bills for copy services must include the date the records were requested. If the “date of service” means the date records are requested then why is it further specified in 9981(a)(4)? Commenter opines that this terms need some refinement and definition to prevent confusion and debate and the expenditure of everyone’s resources.  Commenter recommends that the “date of services” means the date the records are processed, or the date a Certificate of No Records (CNR) is obtained, or the date Subpoena is served (for cancelled services). | Ani Balian  Collections Manager  City Wide Scanning  August 30, 2021  Written Comment | The definition was withdrawn. | Definition has been deleted.  Language has been revised as follows:  9984 (c) 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.  **§9985 Payment for Release of Information Services on and after January 1, 2022.**  Subsection (a) and (b) have been deleted. |
| 9981(b)(2) | Commenter questions why the requirement to require the Case Number is conditioned “if applicable” but the Claim Number is not also conditioned as “if applicable.” Commenter states that often carriers do not provide/disclose claims numbers, for whatever reason. Commenter states that this is an obstacle for business services. Commenter recommends removing the claim number as required, or specifying “if applicable.” | Ani Balian  Collections Manager  City Wide Scanning  August 30, 2021  Written Comment | Disagree. Every claim has a claim number. | No action. |
| 9981(e) | Commenter recommends replacing the term “must” with “shall” as the term “shall” is legally defined and means mandatory (22 CCR section 50000). Commenter opines that the term “must” will cause parties to go around the regulation as it will open up a gray area. | Ani Balian  Collections Manager  City Wide Scanning  August 30, 2021  Written Comment | The increase was withdrawn. | Language has been revised as follows:  (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. |
| 9982(d)(1) | Commenter states that the meet and confer requirement is extra time, extra cost, extra delay in discovery, extra obstacle in AA’s proper representation of his client. It is not specified which party will serve Notice of Intent and which parties will participate in meet and confer. Commenter opines that it is to be expected that defense will object to all kinds of records, even records that are not in defense’s possession nor which Defense has the legal standing to object to (such as third party subpoenas). This requirement will create more disputes than it will resolve.  Commenter recommends removing the requirement to meet and confer for every Defendant objection to subpoena. | Ani Balian  Collections Manager  City Wide Scanning  August 30, 2021  Written Comment |  | Language has been revised as follows:  (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. |
| 9982(f)(4) | Commenter removing this subsection which provides that no more than 4 CNRs can be charged on post 1/01/2022 dates of service.  Commenter questions how the Division arrived at the number 4 as a reasonable amount of possible CNRs. Commenter opines that this limits AAs liberal discovery rights and goes against numerous cases which state that even a CNR is relevant information to an AA. Commenter states that it is impossible to know if a request will result in a CNR until after the subpoena is served. Commenter states this will restrict discovery.  Commenter notes that the ISOR states that this was included as a “financial incentive for claims administrators to pay bills timely” and she questions the logic on how limiting the number of CNR locations helps to ensure that the defense will pay the other locations of CNR or records obtained.  Commenter notes that the ISOR also states that copy services independently pursued records from clinics without evidence that any treatment was provided at the clinic. Commenter questions how one can obtain evidence of treatment from a medical facility prior to issuing a subpoena and opines that is makes it almost impossible to SDT any facility without first obtaining evidence of treatment. Will there be a process implemented so that AAs/copy services can verify treatment prior to subpoenaing locations? How is this allowable under HIPPA to verify applicant is treating at a clinic? Commenter opines that it will be virtually impossible to obtain this information and will make subpoenaing any location difficult and therefor limit the scope of discovery. | Ani Balian  Collections Manager  City Wide Scanning  August 30, 2021  Written Comment | Disagree. Injured workers can request records but claims administrators will not be liable for payment for records requested that return over 4 CNRs. | No action. |
| General Comment – Public Hearing | Commenter states that preventing an AA from subpoenaing records because the Defendant has already served some supposed records is limiting AAs right to liberal pre-trial discovery. There is no way to confirm if Defendant’s have served all records in their possession upon AA without the legal requirement in a subpoena to do so. Additionally, AAs subpoena entire patient files from medical facilities, whereas Defendants merely serve AA with reports. | Ani Balian  Collections Manager  City Wide Scanning  August 30, 2021  Written Comment | Disagree. . Labor Code section 5307.9 provides in pertinent part, ”The schedule… shall not allow for payment for services provided within 30 days of a 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.” | No action. |
| 9983(e)(1) | Commenter requests that the section be modified to include… “for paper **and digital** copies.”  Commenter opines that both paper and digital copies are essentially synonymous involving the same amount of work and cost to secure, minus the hard paper copy costs. | Bob Flynn  Kopy Kat  August 30, 20221  Written Comment | Disagree. Paper and digital copies do not involve the same amount of work to obtain. | No action. |
| 9984(c) | Commenter recommends that a cost of living adjustment (COLA) be added to the code in order to be proactive and address this now instead of continually revisiting price increases in the future.  Commenter states that this original fee schedule was implemented effective July 2015 and that minimum wage in California at that time was $8.00 per hour and that in 2022 the minimum wage will be $15.00 per hour. | Bob Flynn  Kopy Kat  August 30, 20221  Written Comment | Disagree. Changes can be made to the price schedule in the future. | No action. |
| 9983(c) | Commenter opines that the fee for obtaining records from the EDD should be either the proposed fee schedule of $225 or the contracted rate the copy service has with their respective client/s.  *The EDD is the most difficult entity in California to obtain records from*. On average it takes 7.25 months to gain compliance from the EDD.  Commenter’s organization is a defense oriented copy service and ALL requests from their clientele requests the use of a SDT to obtain EDD records. Commenter states that he has yet to request an EDD file by means of writing a letter. Given the EDD’s lack of timely compliance on a subpoena duces tecum request does not foresee timely compliance when making a request by letter. Additionally, claims professionals and counsel require an affidavit authenticating records in order to document his/her file.  Costs of SDT’ing the EDD; The EDD is made up of two entities; unemployment and disability. Each unit must be separately subpoenaed. Fixed costs include the preparation of the SDT sending the SDT to an attorney for his/her signature (as the EDD requires an attorney to sign the sdt), attorney time, the attorney sending the SDT back after his /her signature, sending the applicable notices to opposing counsel, postage, person to serve the SDT and a witness fee of $15.00 paid to each unit. Variable costs include dozens of calls and employee time over the course of 6-8 months to obtain compliance, scanning of documents, bates numbering and uploading/printing of documents. | Bob Flynn  Kopy Kat  August 30, 20221  Written Comment | Disagree. EDD records are available at no charge upon request from the injured worker. | No action. |
| 9984(b) | Commenter notes that fees for cancellations and CNR’s have not changed since 2015. Commenter states that a cancellation fee of $75.00 is appropriate and should remain in effect. CNR rates should be raised to a minimum of $100.00  Why the increase?  Commenter sates that in their day to day practice many times obtaining a CNR is significantly more time consuming and costly than securing records. Commenter states that he is unsure of the reason for this but it is the reality in his industry. | Bob Flynn  Kopy Kat  August 30, 20221  Written Comment | Disagree. The prices for cancellations and CNRs are reasonable. | No action. |
| 9984(c)(2) | Commenter states that a $10.00 fee for an additional set of records is appropriate when simultaneously requested on the original request.  A minimum charge of $30 (plus tax) for requests made after 30 (thirty) days should continue to apply.  Why? Applying economies of scale an additional disk copy of records is easily prepared when simultaneously requested on the original request. If requested after 30 (thirty) days added costs are incurred including; order entry of the request, retrieving records from digital archives, confirming correct records have been retrieved, cost of disk, placing and password protecting the disk, labeling the disk, costs of mailing/UPS’ing, invoicing the request and submitting the invoice to the carrier for payment and lastly, if not paid, cost of follow up calls. This totals an estimated 32 minutes per request. Minimum wage is $15.00 + $7.00 (benefits) + shipping = $24.00. A losing proposition if billed at $10.00.  Commenter recommends that since all parties are under a continuing obligation for full disclosure that the Division take a proactive approach and require ALL parties to request a second set of records to be simultaneously served on opposing counsel. This will reduce costs, streamline discovery and remove arguments of duplicative requests. | Bob Flynn  Kopy Kat  August 30, 20221  Written Comment | Disagree. There has been reported abuse of the $30 fee. | No action. |
| 9984(e)(5) | Commenter appreciates that the Division is addressing the third party ROI services. This is a significant problem area for all parties. Commenter opines that in practice the $35.00 flat fee for ROI services will be a hard sale. Commenter opines that there will likely be the need for implement provisions for enforcement as there will be a great deal of kickback from ROI services on this set fee structure.  Commenter is concerned that “out of state” facilities are not required to comply with or adhere to CA codes. | Bob Flynn  Kopy Kat  August 30, 20221  Written Comment | General comment. | No action. |
| General | Commenter appreciations that the Division is moving forward with the long overdue process of updating these regulations. Specifically, the fee increases in Sections 9981(e) and 9984(a) will help provide stability, for their industry, both in amount of payment received, as well as the promptness of payment. Commenter supports the proposed Section 9983(e)(5), limiting what 3rd party ROI companies may charge. This is another long overdue and welcomed update.  As the Vice President and member of the Coalition of Professional Photocopiers, commenter fully support their (CPP) stated position. | Mike Callan  Vice President  Coalition of Professional Photocopiers  President of Republic Document Management  August 30, 2021  Written Comment  Oral Comment | The increase was withdrawn. | 9981(e) has been deleted. |
| 9980(g) | Medical‐Legal services, such as photocopy and related services, are considered incurred once ALL of the services are actually completed, per Labor Code Section 4621(a), INCLUDING the service of the itemized billing upon the Claims Administrator. Commenter states that the DWC should use the currently ACCEPTED definition for Date of Service, rather than opening a new area for dispute, friction and expense. | Mike Callan  Vice President  Coalition of Professional Photocopiers  President of Republic Document Management  August 30, 2021  Written Comment | The definition was withdrawn. | Definition has been deleted. |
| 9981(c) | Commenter supports the DWC’s efforts at increasing the allowable fees included in the fee schedule, however, he opines that it is highly unlikely that these new fees will be paid, without properly defined billing codes. Commenter recommends the addition of the following codes:  WC 034: Unpaid bill sum increase, under Section 9981(e).  WC 035: Penalties and Interest, included in Labor Code Section 4622(a)(1). | Mike Callan  Vice President  Coalition of Professional Photocopiers  President of Republic Document Management  August 30, 2021  Written Comment | The increase was withdrawn. | No action. |
| 9982(d)(1) | Commenter states that this system relies heavily on the TIMELY availability of ALL evidence, to help inform proper medical treatment and bring about a speedy resolution to Workers’ Compensation claims. Section 9982(d)(1) CREATES friction, ADDS room for dispute, and purposely DELAYS the TIMELY delivery of such evidence. If the Department truly wants to reduce friction, dispute, and therefore COSTS, rolling back the proposed language in 9982(d)(1), to the original language, is paramount. | Mike Callan  Vice President  Coalition of Professional Photocopiers  President of Republic Document Management  August 30, 2021  Written Comment  Oral Comment | The meet and confer proposal was withdrawn. | Language has been revised as follows:  (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. |
| 9982(f)(4) | Commenter states that the job of a Professional Photocopy Service is to gather (DISCOVER) evidence for interested parties in a Workers’ Compensation case. Limiting the number of CNRs, that may be billed to the carrier/employer, limits the ability of attorneys, for BOTH the applicant and the defendant, to fulfill their professional obligations to investigate Workers’ Compensation claims. If the DWC is concerned with the proliferation of CNRs in the system, he recommends adding or adopting a “good cause” standard will soothe those concerns, rather than limiting the RIGHTS of injured workers. | Mike Callan  Vice President  Coalition of Professional Photocopiers  President of Republic Document Management  August 30, 2021  Written Comment | Disagree. The limit of 4 CNRs is reasonable. | No action. |
| Cost of Living Increase (COLA) | Commenter states that costs and expenses (labor, insurance, fuel, materials, postage, etc.) continue to spiral out of control, especially in California and recommends that the DWC add a Cost‐of‐Living Adjustment to these regulations, as recommended by the California State Auditor. The purpose of a COLA is to prevent the Copy Service Fee Schedule from becoming outdated AND it has the added benefit of REDUCING the WORKLOAD of the DWC. | Mike Callan  Vice President  Coalition of Professional Photocopiers  President of Republic Document Management  August 30, 2021  Written Comment | Disagree. DWC will consider future increases. | No action. |
| 9982(d)(1) | Commenter is concerned over the meet and confer requirement being promulgated on the new copy code regulations. Since the 30 day notice of intent to copy requirement the amount of litigation from defendants preventing applicants from obtaining records has grown exponentially. This new requirement will add yet another requirement to deprive applicant of their own records which in many circumstances are their own employment files and medical records. For many requests the form defense objection is already expected but adding yet another hurdle for applicants to obtain discovery. There are also numerous circumstances where defendants will object and advise they will provide the subpoenaed records. However, what defendants claim is a complete file and what is later obtained through the copy service many times are not even remotely similar. Commenter recommends that the meet and confer requirement to an objected subpoena not be implemented. | Andrea Burger, Esq.  Graiwer & Kaplan, LLP  September 3, 2021  Written Comment | The meet and confer proposal was withdrawn. | Language has been revised as follows:  (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. |
| General Comment – Regulations do not comply with the APA | Commenter opines that these proposed regulations will have a continued negative impact on the financial interest of all VIAW members and any other similarly situation adversely affected injured workers as we as medical and other service providers in claims of benefits regulated by the DWC.  Commenter states that administrative regulations that alter or amend a statute or enlarge or impair its scope are void, and courts not only may but it is their obligation to strike down regulations, Morris v Williams (1967) 67 Cal 2d 733.  Commenter opines that many of the proposed regulations are beyond the ISOR and the legal authority of the DWC to seek to improperly regulate the discovery activities by attorneys on behalf on injured workers.  Under Government Code section 11351, the APA is expressly applicable to the Division of Workers’ Compensation (DWC).  The California Administrative Procedures Act, Government Code section 11400 et seq. defines “regulation” to mean “every rule, regulation, order, or standard of general application… adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it…”  Unless “expressly” or “specifically” exempted, all state agencies not in legislative or judicial branch must comply with rulemaking part of the APA when engage in quasi-legislative activities. Winzler & Kelly v Department of Industrial Relations (1981) 121 Cal.App.3d 120.  Commenter opines that the WCAB division of the DWC is only statutorily exempted from Article 8 of the APA by Government Code section 11351(c) relating to judicial review thus the challenged actions of the DWC in the present petition are not exempted from the applicable provisions of the APA.  All regulations are subject to the APA, unless expressly exempted by statute. Englemann v State Board of Education (1991) 2 Cal. App. 4th 47. Agencies need not adopt as regulations those rules contained in a statutory scheme which the Legislature has already established; but to the extent that any of the agency rules depart from, or embellish upon, express statutory authorization and language, the agency will need to promulgate regulations. As presented herein, the DWC has not promulgated reasonable regulations on this subject as required by the authorizing statutes Labor Code sections 111, 113 and 5307.3.  The importance of the public notice and public comment functions was noted in, The Federal Administrative Agencies 45; H. Friendly (1962) that can be where, “…Agencies discover that they are not always repositories of ultimate wisdom; they learn from the suggestions of outsiders and often benefit from that advice.”  The states that the DWC cannot be heard to contend in mitigation that the proposed rules are good rules as presently proposed. As the Court of Appeal held in Blatz Brewing Co. v Collins (1948, Cal App) 88 Cal App 2d 438, an invalid rule is not validated by fact that it is good rule and has effect claimed for it.  Commenter notes that the noticed public hearing only notified the regulated public that the “Copy Service Price Schedule” was proposed to be regulated. The vast majority of the proposed regulatory activity is not related to a price schedule but proposes to limit the due process of an on behalf of injured workers by their attorneys. Commenter opines that the proposed regulations and public hearing proceeding was far outside the Notice of Rulemaking and the Initial Statement of Reasons.  Labor Code section 5307.9 mandates the Copy Service Price Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for services. The statutory authority does not authorize regulation of the discovery process by attorneys.  The Copy Service Price Schedule establishes or fixes “rates, prices, or tariffs” within the meaning of Government Code section 11340.9(g) and is therefore not subject to Chapter 3.5 of the Administrative Procedures Act (commencing at Government Code section 11340) relating to administrative regulations and rulemaking.  Commenter opines that by logical extension the legal nexus is created that all of the proposed regulatory activity in the proposed regulations that is not directly related to “rates, prices, or tariffs” within the meaning of Government Code section 11340.9(g) and therefore is subject to Chapter 3.5 of the Administrative Procedures Act. | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | Disagree. The schedule does not regulate discovery. | No action. |
| 9980(g) | Commenter opines that “Date of Service” means that date on which records are requested is not a proper legal measure to define when the copy service provided the service and their time period within which the right to file a lien begins. | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | The definition was withdrawn. | Definition has been deleted. |
| 9981(e) | Commenter states that the language “Bills ‘must’ be paid within thirty days” should be changed to “shall” as to provide legal definition to the regulated activity not found in the use of the term “must.” | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | The increase was withdrawn. | Subsection has been deleted. |
| 9982(d) | Commenter notes that the proposed language proposed to regulate that, “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 notice of intent to copy records to an employer, claims administrator, or workers’ compensation insurer. When an objection is raised, the parties must meet and confer to resolve the objection 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.”   Commenter states that subsection (2) is legally untenable as it is in violation of existing B&P code sections authorizing attorney to copy medical records and receive payment for such record copied.  Commenter states subsection (1) is beyond the powers of the DWC administrative director to attempt to introduce limitation on the ability of attorney due process rights to subpoena documents that have long existed and statutorily contradict the proposed regulation. Commenter opine the proposed Notice of Intent is vague and ambiguous. The proposed meet and confer provision is unenforceable and legally redundant and propose to reward the objecting party prior to a determination as to the validity of any claimed objection.  Commenter asks what is to prevent Defendant from employing objections to subpoenas as a delay tactic to subvert discovery. What will ensure Defendants do not issue baseless objections? What is to ensure Defendants will diligently meet and confer? | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | “Notice of intent,” was withdrawn. | Language has been revised as follows:  (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. |
| 9982(f)(4) | Commenter opines that this section as proposed is a legally unsupported attempt to limit an attorney’s due process right to conduct discovery equally as that propounded by defendant and seeks to penalize the copy service provider for having provided a service that resulted in no records. | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | Disagree. It was reported to DWC that copy services independently pursued records from clinics without evidence that any treatment was provided at the clinic resulting in multiple improper charges for certificates of no records. This new provision is needed to cap the number of certificates of no records that must be paid. | No action. |
| 9985 | Commenter opines that this proposal to require the filing of a petition to resolve what will likely be rote boilerplate objections by insurance carriers and their attorney’s is financially untenable and will undoubtedly further clog WCAB hearing calendars. | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | Disagree. Disputes can be resolved by filing petitions. | Language has been revised as follows:  9983 (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. |
| General Comment | Commenter states the proposed fee increases are using as their basis for alleged support a study conducted over either years ago in the BRG study. Commenter questions why a new study hasn’t been commissioned to set the copy price schedule at a financially sustainable level. Commenter opines that the alleged increases in the price schedule are subsumed by the proposed reduction in line item fees and limitation on other service pricing items.  Commenter states that the lack of a more legally insightful review, and additional public comment on the revisions of proposed regulations will undoubtedly lead to a variety of petitions to the Office of Administrative Law to invalidate the draconian and legally unsupported proposed regulations, many of which are far beyond the powers of the DWC and the Administrative Director to improperly seek to limit the discovery rights of injured workers and the attorneys that represent them. | Jesus Cristobal  Voters Injured at Work (VIAW)  August 31, 2021  Written Comment | General comment. | No action. |
| General Comment | Commenter would like to thank the division for the proposed changes to these regulations. She opines that these revised regulations do a very nice job of correcting most of what the defense lost in the original adopted regulations. Specifically she want to thank the DWC for restoring the ability to obtain paper sets and providing additional codes. | Diane Cohen  August 30, 2021  Oral Comment | General Comment. | No action. |
| General Comment | Commenter states that she agrees with the comments made by Darcy Duran. | Edna Toufer  August 20, 2021  Oral Comment | General comment. | No action. |
| 9981(c) | Commenter states that although the Flat Price was increased to $225, it is not really an increase due to the reduction in price from $30 to $10 for the second set of records. Commenter opines that this amount does not compensate them for their work product especially since many doctors refuse to accept records on a disk but request paper copies. Commenter would like to see price increases on each line item. | Edna Toufer  August 20, 2021  Oral Comment | General comment. | No action. |
| 9981(c)(4)  9982(f)(4) | Commenter states that an issue in reference to Certificate of No Records is that there is no money for the copy service – by the time they contact the facility and have paid a $15 witness fee they try to charge an additional $50 to sign the Certificate of No Record. | Edna Toufer  August 20, 2021  Oral Comment | General comment. | No action. |
| 9981(c) Personal Appearance Subpoenas | Commenter states that they have some clients that want personal appearance subpoenas and that there is nothing in the regulations that allow for that. For her company to do that they need to file a lien, which would be at a loss since it’s not listed as a line item. It cost $150 to they have to pay out of pocket, plus the witness fee and the mileage. | Edna Toufer  August 20, 2021  Oral Comment | The copy service price schedule covers copy and related services to obtain documents. Personal appearances are not related to documents. | No action. |
| General | Commenter states that the Division needs to have regulations in place that allows them authority to police and or assist in enforcing compliance by the medical facilities.  Commenter also recommends that the Administrative Director meet with some of the smaller copy services that are not a part of a coalition, and therefore do not have lobbyist working on their behalf.  Commenter states that many copy services, especially smaller ones, have already gone out of business because of the last fee schedule put into place six years ago. Since then minimum wage has increased 50% and even with a 25% increase, diminished by the second set, doesn’t even address the current problem. | Edna Toufer  August 20, 2021  Oral Comment | General comment. | No action. |
| 9981(c)(5) | Commenter wants to clarify that the $0.10 per page is going straight to the facility as they are currently charging them $0.10 per page, so anything over 500 pages, that $0.10 goes straight to them. Commenter would like to see a $0.20 per page fee.  Currently her company has to go to court to get the carrier to pay fees and sales taxes which is an additional loss of revenue. | Edna Toufer  August 20, 2021  Oral Comment | General comment. | No action. |
| General Comment | In response to Ruth Leshay’s oral comment she opines that it is very hard for someone to tell a firm how to run their business when it’s not what they do for a living. Commenter understands that concept of streamlining, but she opines that people working in law firms don’t understand what is required for a copy service to be able to do what they do. | Edna Toufer  August 20, 2021  Oral Comment | General comment. | No action. |
| General comment | Commenter states that the proposed increase appears to be fair for both sides as she has worked for both a copy service for a defense firm. Commenter opines part of the problem lies in understanding flaw in copy-service billing.  Commenter states the question lies in when does there become a need for a copy service. From a defense perspective that is the biggest question as they are entering into the records quest when records are already in route to be produced and/or distributed to the applicant attorney, and they are requesting records that have going to be produced anyway.  Commenter opines that in order to be an efficient copy service that most of their work cannot be manual and that they need to become more efficient and effective.  Commenter states that for medical they are dealing with an electronic transfer from themselves to the custodian of records (back and forth). Commenter opines efficiencies to their system will eliminate a lot of extra charges.  Commenter states that QME’s and AME’s ordering additional sets should be paying for it, especially if they are requesting individualized services that are unique to them as opposed to the defendant and that is where the conflict comes into play. The defendant is having to go to court and litigate anything and everything and that clogs the workers’ compensation system with issues that should be simple to resolve. | Ruth Leshay  Law Office of Edward De La Loza  August 20, 2021  Oral Comment | General comment. | No action. |
| 9982 | Commenter states the Notice of Intent to Copy records is informing the employer that they are going to copy records from their location. Commenter opines that it would be helpful if the notice included a listing of all the locations, not just the employer’s location, or those in possession of the TPA or the insurance company, but of all locations that the applicant’s attorney is requesting records from. This would allow the claims administrator to piggy-back on the request and request copies of the records as well. Commenter states that main objection on the employer side is the duplication and the main objection on the insurance, TPA or self-insured employer side is that the records are being requested by both sides simultaneously.  Commenter opines that this practice would eliminate one side editing what is received and the need for a meet and confer process. The applicant’s attorney would have to sign and indicate what records are being requested and that way the claims administrator, insurance company or defense attorney can agree and not raise any objection to letting the records be provided and request a copy be served on them as well. Many times the copy service offers a copy but they never provide one.  Commenter recommends indicating what a valid request for additional copies is - that if an applicant’s attorney or injured worker is requesting additional copies of records that it be verified by requestor’s signature. In commenter’s experience, he has observed that the records are obtain as a flat-fee bill, and a copy is received via electronic copy, CD or link and then on day 31 he is being billed $30 for provided additional copies to all parties when there is no evidence of a request being made.  Commenter requests that the DWC indicate what a valid med-legal copy charge would be. If a request for records comes in at it has already been provided to the Applicant’s attorney, then they will do a “Motion to Quash.” Commenter opines that this costs about $500. Then there is a need to file an objection for a non-IBR, and go before the judge. The judge typically defers this until the end of the case and now there is an outstanding lien filing fee.  Commenter states that the claims administrators are not properly objecting to the copy service – they are sending an objection letter instead of an explanation of review. Due to this, it does not start the med-legal process. Then the copy service will send in one objection to the billing and then the other will state that they did not file a proper DOR. After 60 or 90 days they have to pay the bill in full with penalties, potential sanctions and interest. | Daniel Rodriguez  California Schools JPA  August 30, 2021  Oral Comment | “Notice of intent,” was withdrawn. | Language has been revised as follows:  (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. |