| **COPY SERVICE SCHEDULE** | **RULEMAKING COMMENTS**  **2ND 30 DAY COMMENT PERIOD** | **NAME OF PERSON/**  **AFFILIATON** | **RESPONSE** | **ACTION** |
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| General Comment | Commenter opines that DIR has let down workers/employees once again after 7 years who they promised to help and protect by forcing them to work under poverty wages which was set by the DIR.  Minimum wage has gone from $9 to now $15 and/or $16.50 depending on the city. That is a 50% increase! Commenter states that DIR has had 7 years to do an Economic Analysis but has refused to do one so they can purposely keep workers working under poverty wages. Commenter opines that DIR has purposely refused to address the fee schedule or do an analysis year after year to avoid having to give an increase.  Commenter wants to know what excuse there will be this year for no true increase or another delay. Will DIR purposely cause a delay again?  Companies have had to cut medical coverage for their employees just to keep doors open while DIR gets to enjoy the luxury of having healthcare for themselves and family to get care.  Commenter questions why are the workers for copy services any different and why can’t they be paid livable wages so everyone can have the same luxuries of being able to afford a simple thing like healthcare to take care of themselves.  Commenter opines that DIR has made it impossible to be able to continue to work in this industry by putting us through obstacles to do the work and get paid.  **Commenter states that if DIR wants to reduce fraud, then they need to pay workers livable wages to be able to afford basic essentials like food and healthcare. Commenter opines that is how to reduce fraud, not by creating more obstacles and cost without true increase.**    Commenter questions if DIR has done an analysis as to how many copy services **they** have put out of business since the original fee schedule was put in place? Where is the study or if DIR even cares.  Commenter states that one of the largest copy services in the industry just went out of business this year due to not being able to afford to keep their doors open.  **Commenter opines that DIR intentionally put thousands of workers out of work due to their lack of analysis and true increase to pay livable wages.**  Commenter questions how DIR does not understand giving a $20 increase is inexcusable after 7 years which has forced so many companies out of business unless this is their **true intentions**.  Commenter requests that the Division stop listening/taking advice from people that have no idea what it takes to run a copy service, who do not own one. | Anonymous  February 23, 2022  Written Comment  Edna, Doc Central  February 25, 2020  Oral Comment | The flat rate will be increased from $180 to $230. The increase was based on cost-of-living adjustments. | Section 9984(a) provides:  (a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation. |
| 9981(d) | Commenter notes that the current charge is $180, proposed is $230 … yet minimum wages have gone up 50% over the last 7 years. Commenter opines that he/she is not sure why we are not entitled to the full state-imposed increase of minimum wage which is the bare minimum of living on the poverty line. Commenter notes that DIR just reduced the cost on a second set from $30 to $10 in order to transfer it to the Flat Fee line item. Commenter opines that this is not a true increase.  Commenter recommends building in a COLA increase so that they do not have to wait another 7 years for an increase. | Anonymous  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | The flat rate will be increased from $180 to $230. The increase was based on cost-of-living adjustments.  The price for second sets has been changed from tiered pricing to one price and the price is separate from the flat fee. Tiered pricing allowed for $30 after 30 days because at the time the schedule became effective, additional paper copies after 30 days was problematic because copy services might not have stored copy jobs. The current practice is to store all copy jobs electronically and there no longer is a need to retrieve the records again after 30 days.  Disagree with building in a COLA. DWC will consider future increases and adjustments to the price schedule. | Section 9984(a) provides:    (a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.  Section 9984(c)(2) provides,  “(2) $10.00 for each additional set of records. If the injured worker requests an additional set of records, the claims administrator is liable for one additional set of records. All other additional sets of records are payable by the party ordering the additional set.” |
| 9981(d)(10) | Commenter states that the proposed reduction of second set to $10.00 is not reasonable, as it costs more than that to produce a second set. The labor, time, actual CD, label, and postage, etc., exceeds $10.00 in costs. | Anonymous  February 23, 2022  Written Comment | Disagree. After the effective date of the changes, tiered pricing for records ordered after 30 days was changed to a set rate of $10 for simplicity. The set rate is between the current $5 and $30 tiered rates.  Tiered pricing allowed for $30 after 30 days because at the time the schedule became effective, additional paper copies after 30 days was problematic because copy services might not have stored copy jobs. The current practice is to store all copy jobs electronically and there no longer is a need to retrieve the records again after 30 days. | Section 9984(c)(2) provides,  “(2) $10.00 for each additional set of records. If the injured worker requests an additional set of records, the claims administrator is liable for one additional set of records. All other additional sets of records are payable by the party ordering the additional set.” |
| 9983(f)(1)  9984(d)(1) | Commenter notes that the current allowable charge is $0.10 per page. Most large charts are produced by a hospital, the majority of them coming from Release of Information services – who charge them $0.10 per page. They must re-scan the records, do a quality control check, OCR which can take a great length of time, number the pages … all for free as they can only charge the same $0.10 that they get paid! Commenter recommends that this fee be at least $.25 per page since DIR is not willing to provide them the same rates the **DWC charges**.  **DIR currently charges $1.00 per page at their own desk.**  Commenter opines that if DIR cannot afford to do it at $0.10 a page at in their own office than how can they expect them to do so at an offsite location.  Please reference this link that indicates what other states charge per page:  <https://medicopy.net/who-we-are/blog/guide-of-state-statutes-for-copies-of-medical-records>   Upon review you will see that the national average charge is $.42 cents per page. (Georgia $0.97, Illinois $1.09, Louisiana $1.00,  new Jersey $1.00, Michigan $1.27, Iowa $1.00, Pennsylvania $1.60) Commenter states that we are living in California, a state that has the highest living expenses, and charges are required to be provided at no cost to us by handing over our $0.10 a page to the facilities. | Anonymous  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Disagree. The flat rate incorporates per page fees. The additional per page fees of ten cents per page is for records over 500 to compensate for large copy jobs. The Berkeley Research Group (BRG) 2013 report, *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation,* suggested ten cents a page for copy jobs exceeding 1,000 pages and the current schedule reflects increased fees for copy jobs exceeding 500 pages. Other states’ information is not based on a flat rate model. | No change. |
| 9981(d)(3)  9982(e)(3)  9984(b)(2) | Commenter opines that Copy Services do not want to do Certificate of No Records.  There is no profit after paying witness fee/location fees which is not feasible for any company, but they do it because they have to.  The copy service has no way of knowing which facility has records and which do not. Copy Services simply go to the facility that the client requests.  Commenter opines that DIR cannot impose a limit of 4 CNR’s. **Comment states that DIR is asking copy services and medical facilities to break HIPAA laws**. Facilities cannot advise if there are records for patients until a subpoena/authorization is served. This cannot be enforced by DIR per HIPAAA law.  Commenter would like to know why the DWC is limiting discovery. | Anonymous  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Disagree. The limitation of 4 CNRs is reasonable. Discovery is not limited by the schedule. | Section 9982(e) provides:  ”The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| 9981(c)  9981(d)(5)  9983(f)(3) | Commenter states that $10.26 is less than most facilities charge them to produce a copy of the film. Many facilities charge a minimum of $50. Example **[REDACTED]** = $40, **[REDACTED]** = $50, **[REDACTED]** = $50. This does not include their labor costs.  Commenter states that not only is there no increase but asks what about their fee? Commenter would like to know why DIR demands copy services to continue to do free work or to continue to work at a loss. | Anonymous  February 23, 2022  Written Comment | Disagree. $10.26 is consistent with the Official Medical Fee Schedule (OMFS).  The flat rate will be increased from $180 to $230. | Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| 9981(e) | Commenter opines that the 25% penalty is important to ensure that carriers pay on time because otherwise they will continue to not pay or purposely make minimal payments to create more work and delay in payment. Commenter notes that the Fee schedule was put in place to avoid litigation and avoid wasting court time.  Commenter states that in-fact the fee schedule has caused more expenses for the copy services by all the delays that DIR helped put in place for the carriers. Allowing defense to object is only helping defense attorneys to rack up billable hours which defeats this whole argument of getting them paid in a reasonable time. Commenter states that there is no excuse why they should not get paid in a timely matter. Commenter states that the fee schedule has caused more staff time, expenses and less profit due to all of the hurdles that they have to go through to make a dollar. | Anonymous  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Subsection (e) was added to address the problem of untimely-paid bills. DWC is aware of collection issues that copy services have when claims administrators fail to pay and/or object to bills. Currently there is no incentive to pay bills in a timely manner and copy services often must file for assistance from the Workers’ Compensation Appeals Board to receive payment. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9981(c) | Commenter states that the WCIRB charges anywhere from $20 to $40 per year per fee schedule and copy services are only allowed to charge $20. DIR mandates copy services to take loss and to pay out of pocket. Commenter opines that EDD should be a part of the regular fee Schedule, it requires the same type of follow up as all other flat fee items. Why is DIR forcing copy services to take losses or once again pay out of their own pocket? Where is their cost of time and work on this?  Commenter provides services to have Applicant as well as Defense attorneys who request these on a regular basis. How is this ethical for DIR to continue to force copy services to pay for applicant services out of pocket and take losses? | Anonymous  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Disagree. Under section 9982(e)(3), the claims administrator is not liable for payment of WCIRB records that can be obtained without a subpoena at lower cost. | Section 9982 provides:  “(e) The claims administrator is not liable for payment of:  (3) Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau and/or the Employment Development Department that can be obtained without a subpoena at lower cost.” |
| 9982(e)(2) | Medical summaries are a necessity for law firms and their applicants. It reduces the cost and time for all parties including carriers when copy services have these summaries performed. It also reduces the cost on the system which currently pays doctors $3 a page when copy services could have it performed at $1.50 to $2 a page. That is a % 50 savings. This would be a true saving for system. | Anonymous  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Disagree. It is not necessary nor efficient for copy services to summarize medical records. Medical summaries are not related to copy services. | No action. |
| 9983(f)(5)  9984(d)(5) | Personal subpoenas have been excluded from the current fee schedule. Personal Appearance subpoenas help the injured party have witnesses appear to trial, depo's. etc., to help with their case. Commenter states that this right has been stripped from the applicant since it is no longer an allowable service since the fee schedule was put in place.  This is a true necessity for the injured worker to get a fair trial which has been overlooked by DIR. | Anonymous  February 23, 2022  Written Comment  February 25, 2022  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 Comment | Commenter opines 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.  Commenter states that the current Copy Service Fee Schedule contains several loopholes that have led to unnecessary or duplicative copy services becoming a significant area of abuse. Commenter’s data indicates that California Workers Compensation copy service costs more than tripled when the fee schedule took effect. Commenter opines that these increased costs have not led to any discernable benefits to injured workers or employers and he agrees that new reforms are necessary. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | Agree in part. The schedule does not limit discovery. | No action. |
| 9981(d)(1); 9981(d)(2);  9982(e)(5) | Commenter supports an increase in the flat rate only if it is coupled with stronger provisions to combat abuse, including a more clearly defined process for resolving disputes. Otherwise, commenter opines that increased rates are likely to further encourage abuses.  Commenter recommends requiring copy services to provide specific justifications for canceled services, additional copies, or paper copies above 500 pages. All of these have been areas for abuse.  Commenter notes that DWC’s Initial Statement of Reasons acknowledged that cancellation charges have been a significant concern. Commenter states that he is aware of many examples of records being ordered unnecessarily, including situations in which the subpoena is barred by statute or regulation; even if appropriate objection is issued, the copy service may still demand payment of the cancellation charge. Commenter is aware of many invoices in which it is unclear why records were ordered in the first place and/or why the services were canceled.  Commenter supports the proposed 8 CCR 9982(e)(5), which would bar cancellation charges where a signed order quashing the subpoena has been served on the copy service. Commenter recommends taking this a step further and barring cancellation charges for any subpoena for which a timely objection was filed, unless the objection is subsequently overturned or withdrawn. Additionally, commenter recommends barring cancellation charges for subpoenas barred by statute or regulation.  Commenter recommends modifying the service  requirements to reflect the fact that these copy services simply work on behalf of the parties to the case; under WCAB Rules, the copy services are typically not parties in their own right. Therefore, any applicable orders should simply be served on the parties to the case, as defined by WCAB Rules; it should be the parties’ responsibility to notify any copy service(s) working on their behalf.  Commenter recommends requiring any bills for cancellation charges 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. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | Agree in part. There is both a flat rate increase and provisions to combat abuse.  Disagree that cancellation charges should be barred for subpoenas barred by statute.  Disagree with changing Workers’ Compensation Appeals Board service rules which are under the jurisdiction of the WCAB.  Agree. | The flat rate has been increased from $180 to $230.  Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| 9983(f) | Commenter notes that 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 states he has seen examples of additional copies ordered without clear justification 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 April 1, 2022.  Commenter recommends taking this 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. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | Agree.  Disagree. The rate for additional electronic sets is reasonable. | Section 9983 provides:  “(b) In addition to the flat rate allowed in subdivision (a)(1), the following separate rates may be charged:  …  (2) $5.00 for each additional set of records in electronic form ordered within 30 days of the subpoena, or $30.00 if ordered after 30 days and the copy is retained by the registered photocopier. If the injured worker requests an additional set of records in electronic form ordered within 30 days of the subpoena, the claims administrator is liable for one additional set of records in electronic form for no more than $5.00 for the additional set of records if ordered within 30 days and for no more than $30.00 if ordered after 30 days and the copy is retained by the registered photocopier. All other additional sets of records are payable by the party ordering the additional set.”  Section 9984 provides:  “(c) In addition to the flat rate allowed in subdivision (a)(1), the following separate rates may be charged:  …  (2) $10.00 for each additional set of records. If the injured worker requests an additional set of records, the claims administrator is liable for one additional set of records. All other additional sets of records are payable by the party ordering the additional set.” |
| 9984(d)(1) | Commenter recommends that the language in this section be modified to state that paper copies over 500 pages are only reimbursable if the records are unavailable in electronic form. Commenter opines that the now widespread use of electronic records has significantly reduced the need for paper copies and that paper copies equate to unnecessary costs. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | Agree. The additional rate applies “for paper copies.” | Section 9984(c)(1) provides:  “(c) In addition to the flat price allowed in subdivision (a)(1), the following separate rates may be charged:  (1) For paper copies, ten cents ($.10) per page for copies above 500 pages.” |
| 9982(e)(3) | Commenter supports this language in this section that caps the number of Certificates of No Records (CNR) that would be payable on a given claim and this has long been an area of concern. Commenter state that there have been many subpoenas service on locations that were unlikely to possess the records in question, thereby increasing costs while failing to serve the intended purpose of obtaining pertinent records. Commenter is optimistic that this will discourage those abusive practices. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | DWC appreciates the support. | Section 9982(e) provides:  “The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| 9982(d)  9982(e) | Commenter supports the language in these sections that would bar reimbursement for copies of records that have already been provided by a claims administrator or medical provider. These revisions would also bar reimbursement for records submitted to the Independent Medical Review Organization (IMRO) that were previously submitted and/or are already in the possession of the injured worker or the injured workers’ representative. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | DWC appreciates the support. | No action. |
| 9985 | Commenter supports the proposed language in this section be opines that the language is extremely broad and leaves open opportunities for disputes. Commenter recommends that it be revised to establish a clear process for resolving disputes. Consider the following:  * If the defendant issues an objection, then it should be up to the applicant to decide whether to challenge the objection. There should also be a reasonable deadline for doing so. * If the applicant chooses not to timely challenge the objection, then it should be the applicant’s responsibility to meet and confer with the defendant. * Commenter agrees that if an objection remains unresolved that it should go before the WCALJ. Commenter recommends that there also be a reasonable deadline for raising any disputes. Commenter recommends requiring and such petitions to be filed with the DWC within 45 days of the initial objection. | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | DWC appreciates the support. | No action. |
| 9981(e)  LC 4622(a)(1) and 4662(a)(2) | Commenter agrees that there should be clear deadlines for paying bills, and he supports reasonable penalties for non-compliance. Commenter opines that those provisions should be consistent with other deadlines and penalties in California’s Workers Compensation system.  Proposed CCR 9981(e) would require claims administrators to pay or object to 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 Initial Statement of Reasons makes clear that intent is the same.)  Commenter opines that this proposal appears to contradict the underlying statute. California Workers Compensation copy services are typically considered 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 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 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 CCR 9981(e) to mirror Labor Code 4622(a)(1). | Peter Spalding  Network Specialist  Liberty Mutual  February 23, 2022  Written Comment | Disagree. The Administrative Director has authority to adopt reasonable rates for copy and related services. Not all copy jobs involve medical-legal costs or medical treatment expenses and Labor Codes 4622 and 4603 only applies to subsets of records obtainable under the copy service price schedule.  The Berkeley Research Group (BRG) 2013 report, *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation,* suggested tiered pricing with a 41% increase of the flat fee for delayed payment.  “Based on our analysis, we have concluded that the cost of each initial copy set should be $103.55… However, we must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer… We recommend the implementation of a tiered rate to reflect the average estimated business expense for collection and uncertainty when payment is not made promptly.  …  The average payment for applicant copy services is a good indicator  of the fair market value when the seller (the copy service) has to repeatedly rebill, pursue collection, and  risk prolonged delay or nonpayment, and when the payer’s alternative to settlement is to engage in  litigation that often requires multiple hearings.  Therefore, we take the defense copy market as an initial approximation of the fair market value  of copy services when the bills are paid promptly and without disputes, and we take the average  payment of applicant copy service bills as an approximation of the fair market value of copy services  when payment is uncertain and delayed. ..  …the typical cost per copy event of $251.20 is a  reasonable estimate of fair market value.  BRG’s tiered pricing suggestion of a $103.55 flat rate for prompt payment and $251.20 for delayed payment reflects a 41% increase. BRG reasoned that much of the costs incurred from copy services was spent on collections and uncertainty. Instead of scheduling tiered pricing with 41% increases on all set rates, there will be a 25% increase for delayed payments. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9982(e) | Commenter opines that at first glance, the changes in the proposed regulations for copy services seem to have very little to do with physicians. However, with a closer look, it appears that the new proposed copy service schedule (**§ 9982** (e)) will significantly diminish the ability of the injured workers to overturn the UR denial for the treatment requested by their doctors through the IMR process.  **§ 9982** (e) **The claims administrator** is **not liable** for payment of:  (4) Charges for records submitted to the Independent Medical Review Organization (IMRO) for independent medical review, where the submitted records are already in the possession of the injured worker or the injured worker’s representative, or which are duplicative of those submitted to the IMRO by the claims administrator.  Commenter states that it is critical to note that Utilization Review (UR) has 5 working days to respond to a Request for Authorization (RFA) from the injured worker’s physician. Hence, it stands to reason that the UR denial must be from an RFA submitted within the most recent few weeks. Consequently, it would be rare that the injured workers or their representatives as well as Claim Administrators would have the most recent (relevant) medical records from providers’ offices.  In addition, § 9792.10.5. (a) (1) (A) states that “A copy of **all reports** of the physician **relevant** to the employee’s **current** medical condition [be] produced.” It is also unreasonable to expect that non-medically trained parties would know which of the records would be relevant to the UR denial. Therefore, it is **critical** to request a copy of the medical records that are specifically relevant to the UR denial from the **only party** qualified to make that determination, the Requesting Physician.  **Legislative Intent:** In addressing UR denials through the IMR process, commenter opines that the intent of the legislation is abundantly clear. The legislation mandates that both Claim Administrator **AND** the Applicant “shall” submit medical records in the IMR process (**§9792.10.5. (a) (1) and § 9792.10.5. (b)(1), respectively)**. In addition, the physician whose request for authorization was disputed by UR may join or assist the employee seeking IMR (**§ 9792.10.1** (b)(2)(A) (ii)). The requesting physician’s involvement is actually quite important to produce relevant medical records as already discussed above.    **History:** Commenter states that Claim Administrators have not been reliable in sending in any medical records to IMRO, let alone those that are relevant. Here are some quotes from persons involved in the system:  The “sticking point in getting decisions turned around quickly is getting claim adjusters to send in medical records.”  “Our plea or our cry for help at this point is we have injured workers that are still waiting for a decision while we’re awaiting those records … so please, get those in as quickly as possible”  **Case in Point:** Jose Dubon v. World Restoration, Inc.; and State Compensation Insurance Fund (“SCIF”) (en banc) (“Dubon I & II”)  The Workers’ Compensation Judge (“WCJ”) found that there was “a wealth of medical records” that had not been reviewed by UR because there were fifteen reports from the PTP and consulting physician that had been in the possession of SCIF but had not been sent to UR. So, if the Claim Administrators fail to send complete information to their own UR, how can an Applicant or Applicant’s Attorney rely on them to send proper records to IMR?  Being non-medically trained, the Claim Administrators use a **shotgun approach** of sending in hundreds of pages of irrelevant records. This is not only **unnecessarily costly** but could also overwhelm IMRO doctors who may turn to the UR denial summary only for their decision making, explaining the nearly 90% upholding of the UR denial.  Commenter states that according to a recent study by the CWCI, **submitting medical records directly from the requesting physician** has shown significant shift in IMR doctors overturning UR Denials.  Commenter opines that the injured worker CANNOT rely on Claim Administrators to send in relevant medical records and MUST be allowed to obtain fresh and relevant records directly from the physician’s office and send to IMRO to get a fair determination for the requested medical care. | Sana U. Khan, MD, PhD, Director and Chair of Education  California Society of Industrial Medicine and Surgery (CSIMS)  February 24, 2022  Written Comment | Disagree. Treating physicians are required to timely report under section 9785.and parties have a continuing obligation to serve medical reports under section 10635. Under Section 9785, Treating physicians must submit Requests for Authorization on DWC Form RFA. | No action. |
| 9981(e) | Commenter states that this subsection contravenes existing statutory law, which should be avoided.  Pursuant to Labor Code section 4622(a)(1), to the extent that the subject copy services are considered to be medical-legal expenses, the claims administrator has 60 days (not 30, as suggested in these proposed revisions) in which to make payment. In the rare instance that the subject copy services are considered to be medical treatment under Labor Code section 4600, section 4603.2(b)(2) already provides for payment within 45 days at the risk of a 15% penalty together with interest. Even if the subject copy services are deemed a cost item under Labor Code section 5811 as awarded by the WCAB, any such award is subject to ordinary timeframes for payment plus penalty and interest as applicable.  As the Division itself explained in its Responses to Comments for the original Copy Service Fee Schedule in 2015, the fee schedule regulations are premised on authority under Labor Code section 5307.9, which does not provide authority for imposition of a penalty.  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. As explained in detail below, the Division’s new inclusion of an opportunity to “object” does not avoid the conflict with existing statutory provisions. Payment timeframes are fixed by statute, including any financial remedies for increased payments when these timeframes have expired. Commenter recommends that the Division to delete this section. | Stacy Jones, Senior Research Associate  California Workers’ Compensation Institute (CWCI)  February 25, 2022  Written Comment | Disagree. The Administrative Director has authority to adopt reasonable rates for copy and related services.  The Berkeley Research Group (BRG) 2013 report, *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation,* suggested tiered pricing with a 41% increase of the flat fee for delayed payment.  “Based on our analysis, we have concluded that the cost of each initial copy set should be $103.55… However, we must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer… We recommend the implementation of a tiered rate to reflect the average estimated business expense for collection and uncertainty when payment is not made promptly.  …  The average payment for applicant copy services is a good indicator  of the fair market value when the seller (the copy service) has to repeatedly rebill, pursue collection, and  risk prolonged delay or nonpayment, and when the payer’s alternative to settlement is to engage in  litigation that often requires multiple hearings.  Therefore, we take the defense copy market as an initial approximation of the fair market value  of copy services when the bills are paid promptly and without disputes, and we take the average  payment of applicant copy service bills as an approximation of the fair market value of copy services  when payment is uncertain and delayed. ..  …the typical cost per copy event of $251.20 is a  reasonable estimate of fair market value.  BRG’s tiered pricing suggestion of a $103.55 flat rate for prompt payment and $251.20 for delayed payment reflects a 41% increase. BRG reasoned that much of the costs incurred from copy services was spent on collections and uncertainty. Instead of scheduling tiered pricing with 41% increases on all set rates, there will be a 25% increase for delayed payments. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9980(g) | Commenter recommends retaining the language in subsection (g) as follows:  “Date of Service” means the date on which records are requested via subpoena or authorization.  Commenter recommends retaining this language because parties need a single, defined point of reference for a particular set of records, whether discussing invoices, cancellations, certificates of no records, and so forth. For example, in newly proposed §9981(b)(3), the Division has required inclusion of source, type, description, and a date of service. Because the date of service could be interpreted as date of request, date of production, date of delivery, etc., and in order to avoid conflict, “date of service” should be defined with terms that can be readily verified. | Stacy Jones, Senior Research Associate  California Workers’ Compensation Institute (CWCI)  February 25, 2022  Written Comment | Disagree. Defining “date of service” to mean the date on which records are requested could conflict with Labor Code section 4621 which bars medical-legal costs “incurred earlier than the date of receipt… of all… documents… incidental to the services.” | No action. |
| 9981(b)(4)  9981(e) | Commenter recommends eliminating subsection (e) and revising subsection (b)(4) as follows: (4) The date the records were requested, and the name of the individual requesting the records. A statement that the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32.  Commenter supported the Division’s original proposal that defined “Date of Service” in §9980(g) In this proposed revision, commenter notes that the Division has deleted the definition for “Date of Service.” Unless that definition is reinstated, as recommended above, §9981(b)(4) needs to include the date that the records were requested. Additionally, requiring the invoice to include the name of the individual (or entity) requesting the records will assist the claims administrator in determining the legitimacy of the invoice when making a payment determination.  Commenter remains opposed to the penalty contained in subsection (e). Commenter opines that the Division’s new insertion of “or objected to” in the first sentence of subsection (e) creates a new conflict with the second sentence of (e). As currently drafted, while the claims administrator has the option of “objecting to” an invoice, it is still required to make payment within 30 days regardless of the validity of the objection in order to avoid a 25% penalty. | Stacy Jones, Senior Research Associate  California Workers’ Compensation Institute (CWCI)  February 25, 2022  Written Comment | Disagree. The date that the records were requested is not necessary for all bills. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9982(a) | Commenter recommends that this section be revised to insert the word “written” before agreement.  Commenter supports the proposed inclusion of an agreement between the claims administrator and the copy service; however, she recommends requiring that this agreement be in writing in order to avoid disputes over the existence of such an agreement. | Stacy Jones, Senior Research Associate  California Workers’ Compensation Institute (CWCI)  February 25, 2022  Written Comment | Disagree. There is no need to regulate agreements between copy services and claims administrators. | No action. |
| 9984(c)(1) and (c)(2) | Commenter recommends changing the term “fee” to “rate” in the first sentence of section (c)(1) and inserting the phrase “for an initial set of records” to the last sentence of section (c)(2).  For the purpose of consistency, commenter recommends changing the term “fee” to “price.” Commenter recommends adding the additional language to (c)(2) to clarify that the costs referenced within this subsection are included in the flat price for the initial sect of records under 9984(c)(2), and not for any other cost item such as witness fees. | Stacy Jones, Senior Research Associate  California Workers’ Compensation Institute (CWCI)  February 25, 2022  Written Comment | Agree in part. “flat fee” will be changed to “flat ate” and “witness fee” will be changed to “witness costs”. | 9984 provides:  “(b)(1) Release of information (ROI) services of witness costs for the retrieval and return of physical records held offsite by a third party are included in the flat rate in subdivision (a)(1). ROI services of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code section 1563.  (2) Third-party ROI services that represent deponents or witnesses who are compelled to produce documents for a deposition, records-only deposition, or trial conducted as part of any workers’ compensation claim shall be paid a flat rate of $35.00, inclusive of the witness costs and all services provided by the third-party ROI service, when records are produced, or a flat rate of $15.00, inclusive of the witness costs and all services provided by the third-party ROI service, when a CNR is produced. Third-party ROI services representing deponents or witnesses shall accept electronic service of all deposition notices and requests, including subpoenas and witness costs. Third-party ROI services shall electronically provide the records or certificates, including all affidavits required by Evidence Code section 1561, to the requesting party or their representative. These rates are included in the flat rate in subdivision (a)(1).  (c) In addition to the flat rate allowed in subdivision (a)(1), the following separate rates may be charged:  (1) For paper copies, ten cents ($0.10) per page if the document is over 500 pages.” |
| 9981(e) | Commenter appreciates the 25% penalty for late payment however questions how that would work. Would additional bills be needed to reflect the penalty? | Anonymous  February 24, 2022  Written Comment | General comment. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| General | Commenter notes that this is the third time he/she is commenting on proposed regulations on this subject since they originated seven years ago and questions what happened to all of the proposed changes and would like to know why none of them were adopted.  Commenter opines that DWC does not listen to small business owners and only cares about insurance companies and cutting their costs. Commenter wants to know why there is no COLA incorporated. Commenter notes that the state increases minimum wages but will not increase this fee schedule at the same rate. Commenter states that their industry is suffering under this deflated fee schedule and opines that the state is trying to put them out of business. Commenter states that since this fee schedule has been in effect dozens of small copy shops have gone out of business and that recently the biggest statewide copy service has gone bankrupt and gone out of business.  Commenter states that now injured workers are unable to get records. Commenter states that physicians still request paper copies of documents by that copy services cannot get paid to deliver the necessary medical records to physician for them to review workers’ compensation cases. | Anonymous  February 24, 2022  Written Comment | The flat rate will be increased from $180 to $230. The increase was based on cost-of-living adjustments.  Disagree with scheduling a COLA. DWC will consider future increases.  The schedule does not limit discovery. | Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| 9984(c)(2) | Commenter states that when doctors charge ridiculous ROI fees people do not get their records.  Commenter questions why ROI fees do not have to be paid – to save the insurance company money at cost to the injured worker. Commenter states that ROI fees are out of control and cannot be absorbed by the copy service. | Anonymous  February 24, 2022  Written Comment | Section 9984(c)(2) was added to provide maximum witness costs from third party release of information services to prevent improper charges. | Section 9984(b)(2) provides:  “(2) Third-party ROI services that represent deponents or witnesses who are compelled to produce documents for a deposition, records-only deposition, or trial conducted as part of any workers’ compensation claim shall be paid a flat rate of $35.00, inclusive of the witness costs and all services provided by the third-party ROI service, when records are produced, or a flat rate of $15.00, inclusive of the witness costs and all services provided by the third-party ROI service, when a CNR is produced. Third-party ROI services representing deponents or witnesses shall accept electronic service of all deposition notices and requests, including subpoenas and witness costs. Third-party ROI services shall electronically provide the records or certificates, including all affidavits required by Evidence Code section 1561, to the requesting party or their representative. These rates are included in the flat rate in subdivision (a)(1).” |
| Witness Fees | Commenter would like to know why this fee schedule does not cover related fees for personal appearances of witnesses that have to testify at trials or depositions. | Anonymous  February 24, 2022  Written Comment | Fees for personal appearances are not related to copy services. | No action. |
| 9982(f)(2) | Commenter questions why the Division is limiting discovery and states that it’s not the fault of the copy service if there are no records at a location and questions why they are required to do a fifth certificate of no records for free. | Anonymous  February 24, 2022  Written Comment | The limitation of four CNRs is reasonable.  The schedule does not limit discovery. | Section 9982(e) provides:  “The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| General Comment | Commenter states that he is a student of organizational waste; how to combat it and eliminate it. Commenter opines that the answer is complexity which is the mother of all waste. Commenter states that complex systems require deep subject matter experts and exceptional collaboration to simply maintain, let alone improve the systems that make up their industry.  Commenter notes that California Business and Professions Code 22450 states that a professional photocopier is a registered and bonded entity. Section 22450 continues …Responsible for the integrity and confidentiality in the transmittal of records. Commenter notes that this is a responsibility that his membership agrees to uphold. Commenter states that workers’ compensation is an evidenced based system, truth in evidence is absolute and shall not be compromised. Commenter notes that independent discovery is a presumed right to all parties. Commenter would like to thank the DWC’s policy staff for their time and attention to these regulations and would like to recognize his coalition’s board members Mike Callan and Steven Schneider – industry veterans and professionals with high standards. He also would like to recognize Lori Paul, Sherry and his coalition members. | Dan Mora, President  Coalition of Professional Photocopiers  February 25, 2022  Oral Comment | General comment. | No response. |
| General comment | Commenter states that he understands that the regulations were not meant for the benefit of copy services any more than they were meant for the benefit of the employers. These regulations represent a negotiation by many stakeholders to satisfy their most pressing needs and concerns while likely not making any one of them particularly comfortable.  Commenter states that there are many provisions in this current draft that he is uncomfortable with others to which he is adamantly opposed. Commenter states that there are also a number of provisions included that address some of his industry’s most pressing needs, not the least of which was a substantial increase in fees and putting a higher price tag on disputed and/or delayed invoices than those that were paid timely.  Commenter recommends that these regulations be adopted immediately. | Dan Mora, President  Coalition of Professional Photocopiers  February 24, 2022  Written Comment  February 25, 2022  Oral Comment | General comment. | No action. |
| 9980(g) | Commenter recommends that the term “source” be replaced by “Custodian of records.”  Commenter states that the term source is not defined within the regulation, whereas Custodian of records is well defined and seems to fit the intent of this provision. Commenter states that often an attorney requests different types of records from a witness, such as personnel records and payroll records or medical records and billing records. When a company uses separate custodians responsible for the specific types of records and demands a separate subpoena and separate witness fee for the disparate types of records, commenter opines that these should be treated as separate sources. Commenter opines that recommended edit will accomplish this. | Dan Mora, President  Coalition of Professional Photocopiers  February 24, 2022  Written Comment | Disagree, “source” is clear. The flat price is based on the work involved to travel to a custodian of records. Although custodians of record may accept multiple subpoenas for different types of records, no additional work is involved with obtaining different types of records from a single custodian of records and only one flat price is scheduled. | No action. |
| 9981(e) | Commenter appreciates the increase in fees associated with invoices not paid timely in Section 9981(e) but opines that without a **billing code**defined in the same section, the ability to collect the increased fees will be frictional and unpredictable. **Commenter recommends adding a** **billing code for the increase in fees associated with subsection (e).**  Commenter states that without such a billing code he expects claims administrators will object to the additional fees on their EOR, creating unnecessary friction for the District Offices to resolve and greatly reducing the cash flow of copy services who utilize this provision. | Dan Mora, President  Coalition of Professional Photocopiers  February 24, 2022  Written Comment | Agree. A billing code for increased rates will be added. | Section 9981 (11) has been added:  “(11) WC 034: Surcharge for Late Payment (Indicate amount).” |
| 9982(e)(4) | Commenter states that the current wording of this subsection directly contradicts Section 9792.10.5(b). Commenter recommends replacing the term “**submitted**” with “**requested,**” the word “**are**” with “**were**” and the word “**or**” with “**and**” as follows:  “Charges for records submitted to the Independent Medical Review Organization (IMRO) for independent medical review, where the requested records were already in the possession of the injured worker or the injured worker’s representative, and which are duplicative of those submitted to the IMRO by the claims administrator.”  Cal. Code of Regulations Section **9792.10.5(b)(1)** clearly states that the IMR “***shall***” receive from the injured employee all medical records (*“information”, 9792.10.5[b][ii]*) justifying the disputed medical treatment.  The current wording of 9982(e) exactly contradicts 9792.10.5 by making the copying services not payable when the claims administrator submits similar records from the same Custodian. Commenter states that the recommended changes will provide the protections to the claims administrators from unscrupulous duplicate copying while preserving the rights of injured workers to justify their treatment requests when wrongfully denied.  Commenter requests that the Administrative Director consider that when an IMR is requested, it is in regards to a very recent Request For Authorization  (RFA) denial with which the injured worker disagrees. The records justifying the denied treatment will most likely be generated during the last 30-60 days, which means that very often *neither party* has the relevant records in their possession to submit. Therefore, records requested specifically just prior to an IMR are reasonable and necessary, and should be paid as a valid medical legal expense so long as the service does not produce an exact duplicate set of records as was already in the injured worker’s possession.  Commenter opines that as currently written in the DWC’s draft for this subsection, virtually ALL records submitted by the applicant attorney to IMRO could be interpreted as not payable if the claims adjuster submits records from the same Custodian–even if those records failed to contain records from the last 30-60 days and the employee’s records DID. Commenter is certain this is not what the DWC is intending by this provision, as this would be counter to the whole concept of discovery of evidence to be used to justify disputed treatment. To make the intent more clear while reducing the unnecessary friction of the current draft, commenter recommends that the DWC’s final regulation include these suggested edits. | Dan Mora, President  Coalition of Professional Photocopiers  February 24, 2022  Written Comment | Disagree. The practice of ordering records from the injured worker’s file or from the treating physician for submission to IMR has unnecessarily increased costs. Treating physicians are required to timely report under section 9785.and parties have a continuing obligation to serve medical reports under section 10635. | Section 9982(e)(4) provides:  “(4) Charges for records submitted to the Independent Medical Review Organization (IMRO) for independent medical review, where the submitted records are already in the possession of the injured worker or the injured worker’s representative, or which are duplicative of those submitted to the IMRO by the claims administrator.” |
| 9982(d)(1) | Commenter is very disappointed that DWC has stricken the Notice of Intent and Meet and Confer requirements that were previously part of the proposed regulations. Commenter opines that the meet and confer option, following an objection within 30 days of the issuance of a Notice of Intent works to protect not only the parties from costly litigation over the necessity of records, but it also serves to protect the copy services from expending their time, efforts, and dollars from proceeding with subpoena that becomes subject to objection and then having to expend time and monies to recover those disputed fees.  Commenter states that it’s a very common practice for the copy service to issue SDT’s for copies of the employer’s records and the insurance company records (and many times the records of the treating doctor) on the same date as the application is filed. By requiring the applicant’s attorney to send a notice of intent to issue SDT’s and then further requiring the parties to meet and confer if defendant raises an objection, we believe that there would be a significant reduction in litigation regarding copy service disputes. The way that the proposed regulations read now, there might be path for defendants to prevail in litigation, but the goal is to prevent litigation. DWC should keep in mind that the copy  services have automated their internal processes to generate penalty petitions and disputes over  $230 becomes an issue that might involve thousands of dollars. By requiring these two simple steps we are getting the applicant’s attorney involvement in the case and will stop the “auto pilot” issuance of SDT’s.  Commenter recommends reinstating the language that had previously been proposed. | Jason Schmelzer  California Coalition on Workers’ Compensation (CCWC)  February 25, 2022  Written Comment | The meet and confer proposal was withdrawn 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. | Section 9982 provides:  “(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 recommends that the Notice of Intent to Subpoena be a singular form adopted by the DWC. That it includes 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 recommend the addition of the below paragraphs:  A. 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.  B. 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  California Coalition on Workers’ Compensation (CCWC)  February 25, 2022  Written Comment | “Notice of intent,” was withdrawn. | Section 9982 provides:  “(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 | Commenter notes that 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.  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.  Recommendation:  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. Disputes over the production of records may be resolved by filing a petition with the Workers’ Compensation Appeals Board.  Commenter states that applying separate late payments penalties for medical or medical-legal services for which copy  service costs are claimed exceeds the DWC authority | Jason Schmelzer  California Coalition on Workers’ Compensation (CCWC)  February 25, 2022  Written Comment | The meet and confer proposal was withdrawn.  The Administrative Director has authority to adopt reasonable prices for copy and related services.  The Berkeley Research Group (BRG) 2013 report, *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation,* suggested tiered pricing with a 41% increase of the flat fee for delayed payment.  “Based on our analysis, we have concluded that the cost of each initial copy set should be $103.55… However, we must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer… We recommend the implementation of a tiered price to reflect the average estimated business expense for collection and uncertainty when payment is not made promptly.  …  The average payment for applicant copy services is a good indicator  of the fair market value when the seller (the copy service) has to repeatedly rebill, pursue collection, and  risk prolonged delay or nonpayment, and when the payer’s alternative to settlement is to engage in  litigation that often requires multiple hearings.  Therefore, we take the defense copy market as an initial approximation of the fair market value  of copy services when the bills are paid promptly and without disputes, and we take the average  payment of applicant copy service bills as an approximation of the fair market value of copy services  when payment is uncertain and delayed. ..  …the typical cost per copy event of $251.20 is a  reasonable estimate of fair market value.  BRG’s tiered pricing suggestion of a $103.55 flat price for prompt payment and $251.20 for delayed payment reflects a 41% increase. BRG reasoned that much of the costs incurred from copy services was spent on collections and uncertainty. Instead of scheduling tiered pricing with 41% increases on all set prices, there will be a 25% increase for delayed payments. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9981(e) | Commenter notes that the proposed language 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.”  Labor Code § 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.”  Under Labor Code section 4622(a)(1): To the extent that the subject copy services are considered to be medical-legal expenses, the claims administrator has 60 days (not 30 days as proposed in the revisions) to issue payment.  Under Labor Code section 4603.2(b)(2): To the extent that the subject copy services are  considered medical expenses under Labor Code section 4600, the claims administrator has 45 days (not 30 days as proposed in the revisions) to issue payment.  Under Labor Code section 5811: To the extent that the subject copy services are costs adjusted between the parties, there is no time limit provided in the statute.  Commenter states that there is nothing in Labor Code § 5307.9 which authorizes the imposition of a penalty (regardless of how it is termed and increase if fees due to late payment is 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.  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. | Jason Schmelzer  California Coalition on Workers’ Compensation (CCWC)  February 25, 2022  Written Comment | Disagree. The Administrative Director has authority to adopt reasonable prices for copy and related services. Not all copy jobs involve medical-legal costs or medical treatment expenses and Labor Codes 4622 and 4603.s only applies to subsets of records obtainable under the copy service price schedule.  The Berkeley Research Group (BRG) 2013 report, *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation,* suggested tiered pricing with a 41% increase of the flat fee for delayed payment.  “Based on our analysis, we have concluded that the cost of each initial copy set should be $103.55… However, we must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer… We recommend the implementation of a tiered price to reflect the average estimated business expense for collection and uncertainty when payment is not made promptly.  …  The average payment for applicant copy services is a good indicator  of the fair market value when the seller (the copy service) has to repeatedly rebill, pursue collection, and  risk prolonged delay or nonpayment, and when the payer’s alternative to settlement is to engage in  litigation that often requires multiple hearings.  Therefore, we take the defense copy market as an initial approximation of the fair market value  of copy services when the bills are paid promptly and without disputes, and we take the average  payment of applicant copy service bills as an approximation of the fair market value of copy services when payment is uncertain and delayed. ..  …the typical cost per copy event of $251.20 is a reasonable estimate of fair market value.  BRG’s tiered pricing suggestion of a $103.55 flat price for prompt payment and $251.20 for delayed payment reflects a 41% increase. BRG reasoned that much of the costs incurred from copy services was spent on collections and uncertainty. Instead of scheduling tiered pricing with 41% increases on all set prices, there will be a 25% increase for delayed payments.  The schedule does not limit discovery.  Labor Code section 4622(a)(1) applies to all medical-legal expenses. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| EDD and WCIRB Records | Commenter notes that records from EDD and WCIRB can be obtained at little to no cost without using a subpoena. This was recognized with price codes WC 024 and WC 025 under 8 CCR § 9981 and the requirement to obtain these records at a lower cost when possible under 8 CCR §9982(e)(3). The current proposal eliminates these cost saving measures and would result in the use of subpoenas for these records. Specifically, EDD records, which have allowed for a fee of $20 would now have a fee of $230. WCIRB records, under the prior regulation would be $30, but under the proposed regulation would be $230. Commenter recommends keeping these cost savings structures in the fee schedule. | Jason Schmelzer  California Coalition on Workers’ Compensation (CCWC)  February 25, 2022  Written Comment | Agree. The cost savings structure will remain. | Section 9982 provides:  “(e) The claims administrator is not liable for payment of:  (3) Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau~~,~~ and/or the Employment Development Department that can be obtained without a subpoena at lower cost.” |
| General Comment | Commenter is concerned that the proposed update schedule will:   * Reduce and limit the constitutional right of an injured worker (or their agent) to independent discovery relative to their injury. Such discovery is necessary for the injured worker to find, access, and utilize the records, reports, and information required for the injured worker to receive timely, medically-correct, fully informed treatment/adjudication for their injury, and * Even if not reduced or limited; such production may be significantly delayed by (unnecessary) calendar, schedule, or process limits; thereby directly limiting the injured workers timely access to the medical treatment that is necessary for their specific injury, overall health, and timely return to work, and * Increase dispute and friction; which will only delay treatment, increase costs, and overwhelm the WCAB with expensive and needless dispute, and * Finally, as the ultimate paradox hereunder …. for a system (and especially for the injured workers thereunder) that so deeply relies on the production of written reports, records, and evidence … the limits added within the CSFS, as proposed, and the dispute and friction that will result; will only reduce payment(s) and increase cost(s) for those very vendors who work so diligently to deliver this evidence (on behalf of the injured worker); perhaps even including to such a degree as to make the independent discovery of such evidence (on behalf of an injured worker) increasingly difficult to procure. | Gregory S. Webber  Founding Partner  Emerging Matter LLC  February 25, 2022  Written Comment | Disagree. Discovery is not limited by the price schedule. | No action. |
| 9980(g) | Commenter opines that the “Initial Set of Records” has been redefined, as proposed in a manner that (effectively) limits payment for discovery to one (1) payment per custodian. This completely overlooks the fact that;   1. Many custodians require multiple (and specific) subpoenas (especially for different kinds of records, specialty visits, and also for different dates, etc.) and do so to protect the confidentiality, integrity, and privacy of the individual for which they hold such information; with many custodians expressing concern that responding to an overlay broad, general, or multifaceted request for information may result in the unintended release of information (in short form; precision in the subpoena matters especially when it comes to the personal, protected, and private health information of individuals), and 2. Over time, records must be updated (sometimes repeatedly, as the injured worker returns for additional treatments/visits); as it would be fundamentally wrong for a medical treatment (or adjudication) decision to be made based on outdated information, and 3. Completely overlooks the costs and expenses of the discovery/retrieval vendor associated with executing multiple subpoenas, workflows, and payments (e.g. Witness Fees, etc.) required by the custodian to fully discover necessary evidence given the above, and 4. Effectively, the proposed redefinition is inappropriate, likely vague in application, and in the end will only limit access to (necessary) evidence for the injured worker. | Gregory S. Webber  Founding Partner  Emerging Matter LLC  February 25, 2022  Written Comment | The flat rate is based on the work involved to travel to a custodian of records. Although custodians of record may accept multiple subpoenas for different types of records, no additional work is involved with obtaining different types of records from a single custodian of records and only one flat price is scheduled. | Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| 9982(e)(5) | Commenter references this subsection regarding “No Payment for a Quashed Subpoena”. While in its ‘perfect form’ such a provision is not problematic (and, importantly, is the by default legal condition (and practice) already and therefore unnecessary); the actual application in workers compensation is likely to be much less ‘perfect’; and in fact will likely only increase costs, delay important discovery, and increase friction. Likely, such a provision will;   1. Increase (costly) filings at the WCAB in the form of a ‘Motion to Quash’; perhaps even ‘routinely’ as an ‘automated’ response to the (required) ‘notice to copy’, and 2. Thereby, not only delaying necessary independent discovery, but (deeply) overwhelming the WCAB in unnecessary (and costly) dispute, and 3. As a result, production of the very evidence necessary for treatment and adjudication on behalf of the injured worker will (at the least) be delayed, and (much more likely) will be eliminated altogether as the cost to litigate the ‘Motion to Quash’ is likely prohibitive (in time, in resource, and in cost); effectively disadvantaging the injured worker in seeking treatment and/or adjudication. | Gregory S. Webber  Founding Partner  Emerging Matter LLC  February 25, 2022  Written Comment | General comment. | No action. |
| 9982(e)(4) | Commenter opines that this subsection broadly defines ‘duplication’ as “or which are duplicative of those submitted to the IMRO by claims administrator” …. Taking the broadest sense of that addition suggests that as long as the claims administrator submits records to an IMRO, then;   1. A position could (will) be taken by the claims administrator that any independent discovery of the ‘same’ (whatever ‘same’ actually means, as it is not defined; nor is the term ‘IMRO’) records (wherever or whenever or for whatever reason completed) are (so called) ‘duplicative’ and therefore are not payable, and 2. By positioning that this will result in ‘non-payment’ … this has the potential to severely reduce (if not outright eliminate) any/all independent discovery to which the injured worker has a constitutional right, however 3. That said, it is understandable that payment for review of ‘duplicative records’ (under the Medical Legal Fee Schedule (MLFS)) is a legitimate issue; but solving that in a manner that likely prevents most (if not all) original discovery is wrong, likely an unconstitutional limit to the injured workers right to independent discovery; and uses the CSFS inappropriately; and, therefore 4. To the degree that is an issue, solve the issue within the MLFS itself … not with a poorly crafted edit of the CSFS that is so imprecise; in turn, resulting in this unnecessary (and unconstitutional) limit to independent discovery.   Commenter opines that while the proposed adjustments (and increases) in fees with the CSFS are likely appropriate (and long overdue, after seven years without adjustment); using the pretext of providing an increase while at the same time reducing (likely, deeply) an injured workers access to the very evidence necessary to fully inform their treatment is just plain wrong. Furthermore, it only exacerbates one of the fundamental paradoxes in California Workers compensation … namely … why a system that so deeply relies on the production of written evidence and information to inform the course of medical treatment and evaluation of an injured worker; at the same time, and repeatedly, takes every step possible to reduce, eliminate, complicate, or not pay for the production of such evidence is just plain un-understandable, wrong, and deeply impactful to injured workers. | Gregory S. Webber  Founding Partner  Emerging Matter LLC  February 25, 2022  Written Comment | General comment. | Disagree. |
| General Comment | Commenter states that his company has been providing Subpoena Services to applicant and Defense attorneys since 1996, and is a small company. Commenter states that since the fee schedule was created it has almost put him out of business and only benefits the insurance carriers. Commenter states that he used to have several clients that are applicant attorneys but has had to turn business away and decline to provide them with Subpoena services, because carriers continue to object to most of the invoices coming on behalf of the work performed on behalf of the applicant attorney's. There are some carriers that are great at paying, but others are notorious for not paying the invoices. Also the Fee schedule does not take in to consideration that most medical providers now have affiliates that process their requests for medical records and they charges vary. A company named [REDACTED] is probably one of the most expensive, $40 to process the request and $0.25 per page, and if you don't pay, you don't get the records. In these cases commenter gest invoices from them that are well above the $180 that the fee schedule allows them to bill for. Commenter states that if they bill the carrier for the fees advanced to the provider affiliates they will object to the charges. Commenter now tells its applicant attorney clients that if there's are fees to pay above $50, they will not advance the fees, because its money out of pocket and the chances of getting paid or reimbursed for anything is low.  When he sends the opposing party notice of records being subpoenaed on behalf of the applicant attorneys', he asks that if they have any objections to them obtaining these records or if they will object to our invoice, to let us know beforehand, not until they receive the invoice and all work has been performed and fees have been advanced.  Commenter requests that the fee schedule be changed to reflect any fees that they are required to advance and require the Carriers to reimburse them for those fees in order to prevent the carriers from objecting to their invoices just because they can. The $15 that they used advance for letting the providers allow us to copy the records is almost non-existent, since most providers have digital records and the amount is growing of those that have affiliates to process their records and charge them for providing the records. There is nothing to prevent provider affiliates to charge per page even if the records are digital, it takes them 10 minutes to burn a CD or Email records, but yet charge as if they are providing paper records and it took them an hour. | Mike Fernandez  GLS Legal Scan  February 20, 2022  Written Comment | Section 9984(b)(2) was added to provide maximum witness costs from third party release of information services to prevent improper charges. | 9984(b)(2) provides:  “(2) Third-party ROI services that represent deponents or witnesses who are compelled to produce documents for a deposition, records-only deposition, or trial conducted as part of any workers’ compensation claim shall be paid a flat rate of $35.00, inclusive of the witness costs and all services provided by the third-party ROI service, when records are produced, or a flat rate of $15.00, inclusive of the witness costs and all services provided by the third-party ROI service, when a CNR is produced. Third-party ROI services representing deponents or witnesses shall accept electronic service of all deposition notices and requests, including subpoenas and witness costs. Third-party ROI services shall electronically provide the records or certificates, including all affidavits required by Evidence Code section 1561, to the requesting party or their representative. These rates are included in the flat rate in subdivision (a)(1).” |
| General Comment | Commenter states her company cannot afford any more delays in implementing this revised fee schedule. Commenter’s company has been forced to move two projects overseas and hire an employee from out of state. Even though there are problems with the proposed revisions, some money is better than no money. Commenter’s organization has been required to increase their payroll by 73% over the last six plus years (7 years) without being allowed any increase to their fees. Commenter notes that the state of California has required her organization to raise the minimum wage from $9.00 to $15.00 per hour during this seven year period. Los Angeles will soon see a minimum wage of $16.00 per hour. Commenter states that her organization cannot afford to continue without these fee increases. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | The flat rate will be increased from $180 to $230. | Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| 9983 | Commenter states that there needs to be a provision built in for future increases. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Disagree with building in automatic future increases. DWC will consider future increases. | No action. |
| 9980(h) | Commenter states that this subsection does not allow for more than one subpoena to be issued to a single Custodian of Records. Commenter asks what to do when they need two or more types of records. For example, clinics and hospitals require a separate subpoena for records, billing and x-rays. Each of those items comes from a different department, different witness fee, different follow-up, etc., even though the entity name is the same.  Commenter notes that there are times when a client asks them to return to a facility and request up-dated records which requires a new subpoena to the same facility.  Commenter states that certain entities require a separate request/subpoena for each file. For example, multiple files at the WCAB, multiple files at an insurance company.  Commenter states that there are situations where the client asks for them to return to a location to obtain additional records so that is a new subpoena. Commenter states that her service is requesting updated records but that the bill review kicks it back to them as a duplicate. Commenter notes that there are certain entities that require you to make a separate request for each item. Many insurance companies ask to request each file separately and the WCAB requests a separate request for each file ordered. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment | The flat rate is based on the work involved to travel to a custodian of records. Although custodians of record may accept multiple subpoenas for different types of records, no additional work is involved with obtaining different types of records from a single custodian of records and only one flat price is scheduled. | Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| 9981(e) | Commenter notes that the subsection allows that the portion of the billed sum which remains unpaid will be increased by 25 percent. Commenter would like to know if this is once, monthly, yearly. How will it be enforced? Does a new bill have to be generated – if yes, then billing will appear to have issued more than one subpoena to a single Custodian of Records.  Commenter states that she is not interested in the proposed 25 percent penalty. She states that she has a hard enough time getting paid at all and she works for the defense. Commenter is interested in better ways to get paid.  Commenter states that she agrees with the testimony of Donna Gaetano wherein she notes how hard it is to get paid for services. Commenter opines that the proposed increases are a moot point if they have such difficulty getting paid. Commenter works for the defense and at least 50% of their bills get returned completely unpaid or cut. The ten cents per page over 500 pages get one dime. Taxes are not paid. The second set fees go unpaid. Commenter tries to negotiate but gets no reply. Commenter opines that she does not want to have to file a lien against her client in order to get paid. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | General comment. | No action. |
| 9982(f)(2) | Commenter notes that this subsection states that the claims administrator is not liable for payment of “more than 4 Certificates of No Records (CNR). Commenter questions how they are supposed to bill if they no receive more CNRs due to client error or not having all of the necessary information. There are times when a DOB may be provided to them incorrectly. An AKA can be discovered after all the paperwork has been issued. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | The limitation of four CNRs is reasonable. | Section 9982(e) provides:  “The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| 9982(f)(5) | Commenter notes that this subsection state that the claims administrator is not liable for payment for charges “where a signed order quashing the subpoena has been served on the copy service.” Commenter state that this a situation that the copy service has no control over and that they should at least be entitled to a cancellation fee. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment | Disagree. Claims administrators are not liable for the cost of obtaining records that are the subject of a signed order quashing service. | Section 9982 (e)(5) provides:  “(e) The claims administrator is not liable for payment of:  (5) Charges for services related to, or cancellation of, a subpoena for records in the employer’s, claims administrator’s, or workers’ compensation insurer’s possession, with an order quashing the subpoena.”  . |
| 9984(b)(1) | Commenter notes that this subsection requires that the copy service submit a copy of the cancellation order. What happens if the copy service is the one cancelling? Do they email the client and submit a copy of the email? Commenter states that there are times when the copy service has to cancel/close an order. For example, the location can’t release via subpoena due to confidential records and they do not put it in writing, they cannot located the facility or the facility is refusing to cooperate. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | General comment. | No action. |
| 9984(c)(2) | Commenter would like to know if the DWC is going to either notify Release of Information Services or provide the copy services with written regulations in order enforce these new third party fees. Commenter states that ROI companies make far more money than they do and they are required to pay them immediately; however, they must wait forever to get paid by the carrier and then the majority of their bills are cut by bill review, in error, even though they work for the defense. Commenter notes that the regulation states that the copy services are only going to have to pay $15.00 to ROI services for C&R’s and $35.00 for records. Commenter questions how will they be forced to comply – who will enforce this as the copy services are at their mercy. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment  February 25, 2022  Oral Comment | Notices of rulemaking have been posted. | 9984(b)(2) provides:  “(2) Third-party ROI services that represent deponents or witnesses who are compelled to produce documents for a deposition, records-only deposition, or trial conducted as part of any workers’ compensation claim shall be paid a flat rate of $35.00, inclusive of the witness costs and all services provided by the third-party ROI service, when records are produced, or a flat rate of $15.00, inclusive of the witness costs and all services provided by the third-party ROI service, when a CNR is produced. Third-party ROI services representing deponents or witnesses shall accept electronic service of all deposition notices and requests, including subpoenas and witness costs. Third-party ROI services shall electronically provide the records or certificates, including all affidavits required by Evidence Code section 1561, to the requesting party or their representative. These rates are included in the flat rate in subdivision (a)(1).” |
| 9990(a) | Division fees (for copies of WCAB files) are not be charged at the rate dictated by Evidence Code 1563. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment | Agree. | No action. |
| 9990(a)(1) | Division fees (for copies of WCAB files) states that they will be paying sales tax. Commenter states that copy services are a re-seller and as such do not pay any facility sales tax for providing records to them. | Darcy Duran  Office Manager  Hard Copy  February 23, 2022  Written Comment | Agree. | No action. |
| 9982(e)(5) | Commenter opines that there are serious problems with this proposed subsection and that if adopted in its current format, this provision will essentially eliminate injured workers’ ability to obtain copies of the claims file for their own case and further encourage employers and carriers to suppress evidence.  Proposed Regulation 9982(e)(5) provides that there will never be a fee paid for charges for copy services related to a subpoena for records from the employer’s claims administrator or workers’ compensation insurance carrier “where a party has made a timely objection”.  The main reason applicant attorneys’ subpoena the claims file is the defendants’ failure to respond to a written request for production of records. It is standard procedure in most applicant’s attorney’s offices upon filing an application to correspond with the claim’s administrator or carrier and request production of medical records, benefit notices, MPN notices, payment records, witness statements, and the like. The claims file itself is neither confidential nor privileged and is discoverable. *Winchell’s Donut House v. WCAB* (Saldana) (1997) 62 Cal. Comp. Cases 1185, *Mead Reinsurance Company v. Superior Court* (1986) 188 Cal. App. 3rd 313. 8 California Code of Regulations Section 10635 requires that the parties serve medical reports and benefit printouts etcetera. In most cases it is very important for the applicant to discover the contents of the claims file in order to properly handle the claim.  The most common reason that an applicant attorney subpoenas the claims file or other documents from the carrier is their failure to provide the documents in the first place.  As a practical matter, copy services are not going to subpoena records from claims administrators or carriers if they know they are not going to get paid. The rule, as drafted, bars payment for such services anytime there is “a timely objection”. There is no requirement that the objection be based on good cause. There is no prevision for consequences for frivolous objections. What is likely to happen is that workers will try to subpoena the carrier or claims administrator’s claims file or medical records and a *pro forma* objection will be made. That will result in the carrier refusing to pay for the cost of the subpoena or copy services. This will completely suppress applicant’s discovery rights. Copy services will stop issuing these subpoenas if they know they can’t get paid.  Under current law employers and carriers have a legal remedy for unreasonable subpoenas for records: A Motion to Quash. Motions (Petitions) to Quash subpoenas are commonly filed at the Appeals Board. However, they must be based on good cause and not a desire to suppress evidence. Under the current proposed rule, bad faith actors on the defense side can simply issue objections to subpoenas and then never have any consequences.  This will at a minimum greatly delay discovery and resolution of cases. It is likely to do far more harm than that, in that it will further advantage claims administrators and insurance carriers and greatly disadvantage injured workers in the discovery process.  The rule as written violates Labor Code Section 4621 which requires that the employer pay legitimate medical-legal costs. Injured workers are usually not wealthy and if they are off work living on workers’ compensation or State Disability their income is even further reduced. They are in no position to pay for these costs and the rule appears to be designed to shut down the worker’s discovery and give an unfair advantage to the defense.  It should also be kept in mind that there are cases where the claims administrator’s response to a request for production of documents (medical reports, benefit notices, etc.) is to send a few sheets of paper that are obviously not the entire set of documents requested. In those cases the applicant’s only remedy may be to subpoena the entire claims file, because without a declaration from the custodian of records there is no way to be assured that the defendant is not suppressing evidence (intentionally or perhaps inadvertently).  The rule as drafted will not solve any problem, it will simply further harm injured workers to the benefit of unscrupulous defendants.  Furthermore, to the extent the rule is effectively giving the defense a blank check to block any subpoena for their records, it appears to violate Labor Code Section 130 and 8 California Code of Regulations Section 10640 which quite clearly gives the Workers’ Compensation Appeals Board authority over subpoenas.  Proposed Rule 9982 (e)(5) is not really a fee schedule, it is a thinly disguised attempt to eviscerate workers discovery rights and deprive the Board of jurisdiction over the subject. A Board ruling that the subpoena is legitimate will not make any difference when the Rules say under the fee schedule that the bad faith *pro forma* objection by the carrier absolves it from any liability for the costs. This proposed rule is, in fact, completely contrary to the entire purpose of the workers’ compensation system. California Constitution article XIV, Section 4 specifically provides that the purpose of the system is to provide for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving them from the consequences of any injury or death occurring or sustained in the course of their employment irrespective of fault. It further provides for vesting power and authority and jurisdiction in an administrative body (i.e., the Appeals Board) to determine any dispute or matter arising out of such legislation to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character. The proposed Regulation flies in the face of the purpose of the statute: allowing injured workers to pursue their claims expeditiously and to have an independent administrative body (the Board) to adjudicate disputes. Commenter recommends that subsection 5 be completely eliminated. Commenter does not believe any such provision is appropriate as it will only encourage bad faith and/or negligent suppression of evidence by the defendants.  If some regulation is needed on this topic (and he does not believe that any further regulation is necessary) perhaps the following language would be more consistent with the Labor Code and the Constitution:  Charges for services related to a subpoena for records in the employers, claims administrators or workers’ compensation insurers possession, or for cancellation of such a subpoena are payable by the defendant/employer unless it has filed a timely Petition to Quash the subpoena stating good cause which has been adjudicated in its favor by the Appeals Board. | Mark Gearheart, Esq., Chair  California Applicants’ Attorneys Association (CAAA)  February 24, 2022  Written Comment  Diane Worley, Executive Director  California Applicants’ Attorneys Association (CAAA)  February 25, 2022  Oral Comment | Disagree. Bills which remain unpaid after 30 days will be increased by 25%.  Parties have a continuing obligation to serve medical reports under section 10635 | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.”  Section 9982 (e)(5) provides:  “(e) The claims administrator is not liable for payment of:  (5) Charges for services related to, or cancellation of, a subpoena for records in the employer’s, claims administrator’s, or workers’ compensation insurer’s possession, with an order quashing the subpoena.” |
| General Comment | Commenter acknowledges and supports the testimony of the copy services and hopes that their message is heard loud and clear by DWC. Commenter states that seven years is appalling for them to have to wait for the very minor pay increase reflected in these regulations. | Diane Worley, Executive Director  California Applicants’ Attorneys Association (CAAA)  February 25, 2022  Oral Comment | General comment. | No action. |
| General Comment | Commenter states that public policy is opposed to increasing workers’ compensation litigation costs. Commenter opines that the increased costs set forth in the proposed amendments do not benefit the injured worker nor the employer, but solely copy service companies.  These frictional costs encumber the awarding of compensation to injured workers, and are ultimately passed on to California consumers and taxpayers. The “grand bargain” of workers’ compensation was not made to benefit copy services.  Copy services should not increase, as the current schedule is already quite reasonable, and the value added by copy services has not increased. The modern digitization of copying and record-keeping has made copying easier and should therefore drive down the price of copy services, not increase it. If the industry requires increased prices to survive, prices above the fee schedule can be negotiated with clients (employers) without regulatory intervention.  The legislative interest in protecting copy services’ financial interests is relatively low. Copy services are administrative (not an integral part of the awarding of benefits like medical services or medical-legal evaluations), and are generally replaceable, and do not appear to be in danger as an industry due to cost constraints. | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  February 25, 2022  Written Comment  Oral Comment | Disagree. Costs for obtaining records are a part of the workers’ compensation system. | No action. |
| 9981(d) | Commenter notes that this subsection increases the flat fee to $230 up from $180, a 27% increase. (Inflation from 2015 to 2022 appears to be only 18% to 19%.) This is a major cost increase and will accumulate over time. This regulation overtime will quickly result in thousands of dollars in additional costs to employers. | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  February 25, 2022  Written Comment  Oral Comment | Disagree. The flat rate increase is reasonable. | No action. |
| 9980(a)  9984(d)(2) | Commenter notes that the proposed amendments to this subsections requires a $10 fee for a copy of records already provided. Sending the same records again should be unproblematic for the copy service and should not warrant a $10 fee, as those records do not have to be procured from the source again. Furthermore, the employer should not be liable for Applicant’s Attorney’s irresponsible loss of the records and subsequent request for the same set. This fee should be eliminated or shifted to Applicant’s Attorney. Applicant’s Attorneys are under an ethical obligation to keep records on hand. | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  February 25, 2022  Written Comment  Oral Comment | Disagree. The proposed rate for second sets is reasonable. | No action. |
| 9981(e) | Commenter notes that this subsection requires a 25% penalty for unpaid bills. This penalty is unreasonable. For a $230 service, the penalty would be $57.50. Penalties undermine the cordial and flexible relationship between the copy service and the client.  Copy services, while important, do not warrant a regulatory provision for penalties, especially when the client has acted in good faith. There are already penalties under Labor Code §5814 and 4650 enough to incentivize good faith behavior. Therefore, the 25% penalty should either be eliminated or qualified based on good or bad faith of the nonpayment. | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  February 25, 2022  Written Comment  Oral Comment | Disagree. The Berkeley Research Group (BRG) 2013 report, *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation,* suggested tiered pricing with a 41% increase of the flat fee for delayed payment.  “Based on our analysis, we have concluded that the cost of each initial copy set should be $103.55… However, we must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer… We recommend the implementation of a tiered price to reflect the average estimated business expense for collection and uncertainty when payment is not made promptly.  …  The average payment for applicant copy services is a good indicator  of the fair market value when the seller (the copy service) has to repeatedly rebill, pursue collection, and  risk prolonged delay or nonpayment, and when the payer’s alternative to settlement is to engage in  litigation that often requires multiple hearings.  Therefore, we take the defense copy market as an initial approximation of the fair market value  of copy services when the bills are paid promptly and without disputes, and we take the average  payment of applicant copy service bills as an approximation of the fair market value of copy services  when payment is uncertain and delayed. ..  …the typical cost per copy event of $251.20 is a  reasonable estimate of fair market value.  BRG’s tiered pricing suggestion of a $103.55 flat price for prompt payment and $251.20 for delayed payment reflects a 41% increase. BRG reasoned that much of the costs incurred from copy services was spent on collections and uncertainty. Instead of scheduling tiered pricing with 41% increases on all set prices, there will be a 25% increase for delayed payments. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9982(e)(1) | Commenter agrees with language in this subsection for not holding the claims administrator liable for duplicate records regardless of the reason. | Christian Groneberg, Paralegal  Thomas, Lyding, Cartier, Arnone & Daily, LLP  February 25, 2022  Written Comment  Oral Comment | DWC appreciates the support. | No action. |
| 9980(g) | Commenter states that the DWC is attempting to hold costs by limiting the number of subpoenas that can be considered as an initial set of records, and avoiding unnecessary litigation of costs associated with such subpoenas; however commenter opines that clarity is needed in defining these terms when used throughout the regulations. Commenter recommends the following revised language:  “Initial set of records” means records or documents that have been recorded in paper, electronic, film, digital, or other format requested from one custodian of records under on subpoena or authorization, regardless of the number of subpoenas or authorizations issued by the requesting party. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Agree | Section 9980 provides:  “(g) Initial set of records” means records or documents that have been recorded in paper, electronic, film, digital, or other format from one custodian of records under one subpoena or authorization and includes separate types of records requested from a single source, regardless of the number of subpoenas or authorizations issued.” |
| 9981(b)(3) | Commenter recommends adding the invoice number as a bill requirement and suggests the following revised language: 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;…. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. Invoice numbers are not necessary. | No action. |
| 9981(d)(6) and (d)(7) | Commenter recommends deleting subsections (d)(6) and (d)(7) and requests that billing codes WC 024 and WC 025 be retained and placed back in number order of the listed billing codes under section 9981, as to provide specificity for the payor community when bills are submitted for these types of services. Recommended language as follows:  (5) WC 024: Records from the Employment Development Department (EDD) of $20  (6) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau (WCIRB) of $30  Commenter recommends eliminating subsection (d)(7) as proposed because she opines this subsection is ripe for abuse because “Requested Services” is not defined and there is no limit on the amount that may be billed under this code and without such clarity, dispute may arise over the type of services that are billed under WC 030. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. WC 024 and 025 are available for dates of service predating the effective date of the change. Prices for records from EDD and WCIRB are not scheduled following the effective date of the changes. | Section 9981 provides:  “(5) WC 024: Records from the Employment Development Department (EDD) ($20.00).  (6) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau (WCIRB) ($30.00).” |
| 9981(d)(8) and (d)(9) | Commenter recommends elimination of billing code WC 031 as it appears to be duplicative of service covered under WC 032. Commenter also recommends deleting the reference in WC 032, (indicate amount) because the agreement covers pricing. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. Requested services and contracted rates for additional sets are separate rates. | 9981(b) provides:  “(8) WC 031: Contracted Rate for Additional Sets (Indicate amount).  (9) WC 032: Contracted Services (Indicate amount).” |
| 9981(e) | Commenter opines that DWC’s proposed 30-day payment timeframe and increase of 25% for unpaid portions of a billed sum conflicts with Labor Code sections governing the timeframes and percentage increases for payments.  Copy service costs may be billed as expenses under different sections of the Labor Code (e.g. copy services billed as a medical-legal expense under Labor Code section 4622 have a 60-day payment period). Here, the timeframe for paying copy service bills should align with the legal authority under which copy service providers submit their bills. Additionally, this proposed regulatory increase of 25% lacks statutory authority, and can lead to disputes over whether the proposed regulatory increase is in lieu of, or in addition to, the statutorily imposed increases.  Commenter recommends the following revisions to subsection (e):   * Adding a requirement that the copy service specifies the legal authority they are billing under * Changing the number of days given for the payment period to align with the designated legal authority under which the copy service provider is billing under * Elimination of the 25% increase | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. The Administrative Director has authority to adopt reasonable prices for copy and related services. Not all copy jobs involve medical-legal costs or medical treatment expenses and Labor Codes 4622 and 4603.s only applies to subsets of records obtainable under the copy service price schedule. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9982(a) | Commenter opines that additional amendments to this section would assist in providing consistency with other regulations that address fee contracts or agreements with providers. Commenter recommends the following revised language:  This schedule provided payment for copy and related services for records relevant to an injured worker’s claim. Nothing in this section shall preclude payment to a copy service for services based on an written agreement made between the copy service and the claims administrator, regardless of whether or not such payment is less than, or exceeds, the fees set for in this section. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Agree in part. | § 9982 provides: “(a) This schedule covers copy and related services for records relevant to an injured worker’s claim, except contracted services.” |
| 9982(e)(3) | Commenter recommends retaining the previous language in this subsection that recognizes EDD and WCIRB records can be obtained at a lower cost, or no cost, without the use of a subpoena. Commenter opines that removing this provision increases costs as it allows subpoenas to be used to obtain these records while ignoring the alternative methods of obtaining the same records. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Agree. | Section 9982(e)(3) provides:  “The claims administrator is not liable for payment of:    (3) Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau~~,~~ and/or the Employment Development Department that can be obtained without a subpoena at lower cost.” |
| 9983(e) | Commenter opines that the proposed language in subsection 9983(e) referencing how disputes may be resolved is made redundant with the addition of Section 9985. Commenter recommends the deletion of the second sentence, for the following revised language:  (e) Release of information service of witness cost for the retrieval and return of physical records held offsite by a third party are included in the flat fee. Release of information service of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code Section 1563. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. | No action. |
| 9984(c)(1) | Commenter opines that the proposed language in subsection 9983(e) referencing how disputes may be resolved is made redundant with the addition of Section 9985. Commenter recommends the deletion of the second sentence, for the following revised language:  (e) Release of information service of witness cost for the retrieval and return of physical records held offsite by a third party are included in the flat fee. Release of information service of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code Section 1563. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. | No action. |
| 9984(c)(2) | Commenter states that the language in this proposed subsection does not provide what billing code to use for the recommended flat prices of $35 for produced records and $15 for when no records are produced and that clarity is needed. Commenter requests that billing codes be specified in these regulations for the charges billed as indicated in this subsection related to third party release of information services. | Andrea Guzman  Claims Regulatory Director, State Compensation Insurance Fund  February 24, 2022  Written Comment | Disagree. Billing codes are not needed for ROI costs as ROI costs are not billed by copy service providers. | No action. |
| 9981(b)(2) | Commenter recommends adding the words “if applicable” in relation to the claims number requirement. Claims numbers occasionally are not available or not provided by the claims administrator. Commenter opines, as current written, that this is likely to cause unnecessary delay or denial of payment for mere lack of a claim number on the invoice instead of a legally sound basis. | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree, “if applicable” is not necessary. | No action. |
| 9981(e) | Commenter opines that this section should specify if Defendant’s objection to a copy service bill may be free form or if the objection must comply with the current Explanation of Review requirements in LC §§ 4622, 4603.3 and related Regulation 8 CCR § 9794.  Commenter opines that this section should also specify or direct parties to the processes to follow once Defendant issues an objection to bill within 30 days. Commenter recommends that this subsection also specify if the 25% increase after thirty (30) days of non-payment and failure to “object” is an additional increase prior to the application of LC § 4622(a)(1) 10% penalty and 7% interest per annum after sixty (60) days. | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree. Specification of the form of objection is not needed. Additionally, the increase does not need to specify if statutory increases apply. | No action. |
| 9982(e)(5) | Commenter opines that the intent of this subsection is mostly covered under the provisions of CCR § 9982(d)(1). Commenter states that this subsection is redundant, vexing and a possible cause for more disputes at the WCAB, expending resources.  If this section is not fully removed, commenter recommends the following:  It is suggested that this section specify that Defendant may only file Motion to Quash subpoenas issued to Defense parties such as the Employer, Carrier or Claims Administrator and not subpoenas issued to third parties, such as medical facilities, as Defendant does not have legal standing or right to Motion to Quash subpoenas directed to third party facilities, i.e. medical locations.  This section should specify that an Order Quashing a subpoena is only valid if the initial Motion to Quash was timely filed five (5) days prior to the production date for records.  It is suggested to add clarification that this section is not applicable if the Order quashing subpoena is issued after the services have been completed.  This section should specify that a Motion to Quash is not the proper method by which to prevent incurring cost for records. That instead, the proper way to object to incurred cost for records is by issuing an Explanation of Review pursuant to LC §§ 4622, 4603.3 and related Regulation 8 CCR § 9794 to the copy service bill upon receipt.  This section should specify what grounds are legally reasonable for Quashing of a subpoena in order to prevent arbitrary Motions to Quash. Commenter opines that this subsection will cause an excessive number of Motions to Quash, which will place burden on the court system and will again limit Applicant’s Attorney’s right to liberal pre-trial discovery. What is to ensure that Defendant will not use this section as a means to limit Applicant’s Attorney from obtaining records that may be relevant to Applicant’s case? In addition, if a Motion to Quash is issued on the grounds that the Defense Counsel already provided said records to the Applicant’s Attorney, how is the claims administrator/Defense Counsel proving they have the exact same records in their possession? | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree. Jurisdiction over adjudicatory matters lies with the Workers’ Compensation Appeals Board rather than the Administrative Director. | No action. |
| 9982(c) | Commenter states that this subsection limits Applicant’s Attorney’s right to liberal pre-trial discovery. If defense counsel subpoenas records and provides notice pursuant to LC § 4055.2, the applicant attorney will be limited to the records the Defense council provides.  In addition, what ensures that Defense counsel will not issue notices pursuant to LC § 4055.2 as a means to prevent Applicant’s Attorney from obtaining its own records? What ensures that Defense counsel will follow through with its notices and obtain records via subpoena? And even then, what prevents the claims administrator representative from withholding certain records to gain advantage in the litigation process? Commenter opines that the copy service price schedule should not be a means through which to limit Applicant’s Attorney’s right to liberal pre-trial discovery as liberal pre-trial discovery is what allows the Applicant’s Attorney to represent its client to the best of their ability by subpoenaing its own records from trusted providers. | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree. The schedule does not limit discovery. | No action. |
| 9982(e)(3) | Commenter opines that this subsection is a direct limitation of Applicant’s Attorney’s right to liberal pre-trial discovery.  Often times Applicants do not remember where they have been seen or what medical locations they have visited. As such, the Applicant’s Attorney has to subpoena all possible locations.  In the cases of Adriel De La Cruz v. Protech Painting, 2016 Cal. Wrk. Comp. P.D. LEXIS 633 and Mauricio Arciniega v. Santa Monica Seafood Company, 2016 Cal. Wrk. Comp. P.D. LEXIS 545 panels of commissioners note that a subpoena could result in a certificate of no records and still be a reasonable medical-legal expense. In the case of William Gear v. Schmidt Fire Protection Company, 2019 Cal. Wrk. Comp. P.D. LEXIS 100 the commissioners state, “For example, an applicant’s recollection of where medical treatment was received may not be clear or exact, and a certificate of no records may assist the attorney in narrowing the scope of discovery for medical records.” (pg. 4) As such, and once again, this section is a direct limitation of Applicant’s Attorney’s right to liberal pre-trial discovery.  In addition, there is no way to know which subpoena will result in a certificate of no records. As such, Applicant’s Attorney cannot forgo subpoenaing any possible locations that might render useful records in the representation of his client. This means the copy service still has to subpoena all locations requested by the Applicant’s Attorney. As such, this section puts the cost burden on the providers because the provider completes the jobs without knowing how many CNRs will be generated, only to find out after the services that they will not be reimbursed for more than 4 CNRs. Commenter questions how the arbitrary number of 4 CNRs was decided. | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree. The limitation of four CNRs is reasonable. There are ways to ascertain when a subpoena will result in a Certificate of No Record. | Section 9982(e) provides:  “The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| 9984(b)(1) and (b)(2) | Commenter opines that requiring the inclusion of documents such as a copy of the request for records along with either a cancellation order or copy of certificate of no records is a burdensome requirement which creates more processes, more delay and more cost without providing for compensation for the additional time and cost necessary to include such documentation with each and every bill. If the copy service provider is required to include these documents every time it sends its invoice for cancelled service or a CNR, including every collection attempt made, every demand for payment sent, etc., the provider should be compensated for the additional work by increasing this fee. Suggested changes: remove the requirement for additional documentation every time a bill is submitted or increase the fee to $100-$110. | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree. Cancellation orders are only required to bill for cancelled orders. | No action. |
| 9985(a) | Commenter recommends that this section specify which party has the authority to file such petition. It is commenter’s experience that Applicant’s Attorneys will not file and litigate such petitions due to high labor cost. It is advisable that copy service providers are allowed to file petitions to compel production. | Ani Balian, Collections Manager  City Wide Scanning  February 25, 2022  Written Comment | Disagree. It is not necessary to specify which parties have the authority to petition with the Workers’ Compensation Appeals Board. | No action. |
| 9980(e), (d) and (g) | Commenter states that most of the time a single SDT can be issued for the records, but this is out of a copy service control as the custodian often requires separate subpoena’s for medical records, billing records (if requested) and radiology images. Most Hospitals/Medical centers have separate custodians and require separate SDT’s for these types of records being requested. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | The flat rate is based on the work involved to travel to a custodian of records. Although custodians of record may accept multiple subpoenas for different types of records, no additional work is involved with obtaining different types of records from a single custodian of records and only one flat rate is scheduled. | Section 9980 provides:  “(d) “Contracted services” means services payable under an agreement between a claims administrator or an employer and a copy service provider.    (e) “Copy and related services” means all services and expenses that are related to the retrieval and copying of documents that are responsive to a duly issued subpoena or authorization to release documents for a workers’ compensation claim.  (f) “Custodian of records” means the person who has custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.” |
| 9981(d) | Commenter would like to know what the difference is between WC028 and WC029. Commenter also would like to know the difference between WC030, 031 and 032. Commenter would like to know if WC030 can be used by all copy services. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | WC 028 is for Duplication of X0-Rau or scan of $10.26, WC 029 is for Electronic Storage Media – of $3, WC 030 is for Requested Services, WC 031 is for Contracted Prices for Additional Sets, and WC 0322 is for Contracted Services. | No action. |
| 9981(e) | Commenter questions what the format is for the objection. Commenter questions how does one know the receipt date of an invoice by the claims administrator. Is this 30 plus 5 days for mailing?  Commenter asks that if a MTQ is served on copy, does the MTQ need to be fully executed and signed by a WCJ. What if the MTQ is issued after the deposition date listed on the SDT? Can services still be billed out under WC021 – Cancelled Service? | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. The regulations to not provide for a format for objections. | No action. |
| 9982(d)(1) | Commenter questions how “Relevant to the employees claim” is determined prior to the issuance of an SDT or how/who is determine “relevant.” | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | No action. |
| 9982(d)(3) | Commenter requests clarification of this subsection regarding non-payment when provided by a provider or agent of a provider. Provided to whom?  Prior to a SDT being served on a Provider? Is a provider only relating to Medical Provider or can this be an employer/insurer/TPA? If a SDT is served on a provider and the Custodian fails to comply with an SDT and bypasses the deposition officer/copy service by mailing/sending the records to the requesting party, is the copy service still able to bill out for the services and at what rate? $75 or $230 | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. Section 9982(d)(3) provides that there will be no payment for copy and related services that are:  (3) Provided by a medical provider… | No action. |
| 9982(e)(1) | Commenter states that there is no requirement for Notice to be served on applicant for records obtained on an authorization. This would fall “in the possession of” first 30 days to be served on requesting applicant or applicant’s representative. Commenter requests clarification. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | No action. |
| 9982(e)(3) | Commenter states that copy services do everything to obtain records. He opines that after this COVID pandemic, and indictments, office have closed or moved and copy services don’t have control over no records. Commenter recommends that this provision be removed. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | Disagree. The limitation of four CNRs is reasonable. | Section 9982(e) provides:  “The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| 9982(e)(5) | Commenter requests the definition of timely objection is and by what means an objection can be made. Does the objection need to be specific to the location(s) being requested and should the objection clarify reason – not just overbroad which is often used. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | No action. |
| 9983(e) | Commenter states that records are primarily not held offsite by a third-party. Records are normally accessed by a third-party or the provider is uploading records to the third-party for them to bill additional. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | No action. |
| 9983(f)(2) | Commenter questions what if a paper set is requested? Is there a set fee for production and shipping of a paper set? Second set? Regarding the requirement that all other additional sets of records are payable by the party ordering the additional set – commenter would like to know if this applies to both sides. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | Section 9983 provides:  “(b) In addition to the flat rate allowed in subdivision (a)(1), the following separate rates may be charged:  …  (2) $5.00 for each additional set of records in electronic form ordered within 30 days of the subpoena, or $30.00 if ordered after 30 days and the copy is retained by the registered photocopier. If the injured worker requests an additional set of records in electronic form ordered within 30 days of the subpoena, the claims administrator is liable for one additional set of records in electronic form for no more than $5.00 for the additional set of records if ordered within 30 days and for no more than $30.00 if ordered after 30 days and the copy is retained by the registered photocopier. All other additional sets of records are payable by the party ordering the additional set.”  Section 9984 provides:  “(c) In addition to the flat rate allowed in subdivision (a)(1), the following separate rates may be charged:  …  (2) $10.00 for each additional set of records. If the injured worker requests an additional set of records, the claims administrator is liable for one additional set of records. All other additional sets of records are payable by the party ordering the additional set.” |
| 9983(f)(4) | Commenter states that sales tax for tangible products like a CD of records or a paper set is often omitted and is cost prohibited to chase down. Sales tax is regulated by the EDD sales and use tax. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | Disagree. Sales tax is scheduled and reference to billing code S9999 Sales Tax has been added to 9981. | Section 9981 provides:  “(12) S9999: Sales Tax.” |
| 9984(b)(1) | Commenter states that cancellations primarily happen on an objection tor MTQ or when a provider bypasses the deposition officer/copy service and serves AA after 30 day demand and SDT has been issued. A Notice and copy of the SDT’s have been issued by this point; there should be no further requirement for an original request to be produced. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | Disagree. Claims administrators have asked for confirmation of cancellations after reports of fraudulent cancellation rates were billed. | Section 9984 provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  …  (2) $75.00 in the event of cancellation after a subpoena or request for records by authorization has been issued but before records are produced, or for a Certificate of No Record (CNR). The claims administrator will not be liable for bills submitted under this subdivision unless:  (A) The bill submitted for cancellation includes a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the cancellation order containing the date of cancellation and identity of the cancelling party”. |
| 9984(b)(2) | Commenter opines that this is an unreasonable request as Notices are served from listing requesting party, a CNR is provided by the Custodian of record. Commenter states that there should be no additional requirements of producing an original request for records. Commenter references Dan Mora’s testimony regarding noticing counsel when I subpoena for records is issued. Commenter states that his firm always notices the opposing counsel. Commenter states that since COVID many locations have changed which complicates service. Commenter recommends that the provision for requiring and original order from the requesting party, regardless of side, be eliminated. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment  February 25, 2022  Oral Comment | Disagree. The limitation of 4 CNRs is reasonable. | Section 9982(e) provides:    “The claims administrator is not liable for payment of:  (6) More than four Certificates of No Records (CNR) on a claim with dates of service on or after July 15, 2022.” |
| 9984(c)(1) | Commenter states that most records are electronic and are not held offsite. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | No action. |
| 9984(c)(2) | Commenter questions who and how will this be regulated when most of the ROI companies are out of state. Regarding electronic service – commenter questions if this includes CT corporation and CSC lawyers when serving and insurer and/or employer. Commenter states that most accept by mail but providers, although having received a copy of the SDT, still require hand service on same. Commenter questions who will regulate this. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | General comment. | No action. |
| 9984(d)(3) | Commenter request the definition of the difference between “scans” and “electronic storage media.” Commenter states that costs for CD/DVD of Radiology Images are much higher. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | $10.26 is consistent with the Official Medical Fee Schedule (OMFS). | No action. |
| 9985 | Commenter asks who is to file the petition. Commenter states that a superior court will not hear matters over the workers’ compensation system. | Daniel Lopez  Lopez and Associates  February 24, 2022  Written Comment | Disagree. The Evidence Code provides that disputes over discovery is handled in Superior Court. | No action. |
| Difficulty getting reimbursed for records | Commenter has been listening to testimony from this public hearing and he opines that there seems to be a huge divide here. Commenters states that both sides – applicant and defense – are looking to obtain information. Both side are struggling to get paid. Commenter questions what the problem is. Commenter states that a lot of stuff goes through bill review and he agrees with the testimony of Darcy Duran. He states that he gets paid $0.10 per page and sometimes all they pay is $0.10. They check cost him $0.20 to process so he’s losing money by depositing the check. Commenter states that the common goal of applicants’ and defense attorneys is to provide quality service to their clients. Commenter requests that the DWC take an in depth look at this fee schedule to determine has this fee schedule affects all parties involved. | Daniel Lopez  Lopez and Associates  February 25, 2022  Oral Comment | General comment. | No action. |
| 9982 | Commenter opines that the proposed regulation should be modified to require a notice of intent to copy records be sent to the counsel of record. Commenter states that his firm represents the interests of the insurance carriers. Commenter states that as currently proposed, requires the representative of the copy service to communicate with his client which is a violation of State Bar Rule 4.2, communication with a represented person.  Commenter recommends that the regulations should simply add that if the carrier is represented by counsel, that the meet and confer is to take place with counsel of record. Commenter also recommends that notice be sent to the defense counsel of record.  Commenter wants to address the comments made by Danna Gaetano. Commenter states that in his situation the defendant is already involved and that one merely has to look in EAMS to see that. In commenter’s experience the defense counsel is never ever sent a copy of the subpoena for records and he always has to chase them down for a copy. The response that he gets from the service is that they sent the copy to his client and to get a copy from them.  Commenter states that they often get their bills cut as well so they understand the frustration. However, he notes that he made no argument regarding the proposed increase in fees, but he does have an issue when copy services secure the records, and then multiple more copies in order to maximize their fees.  Commenter agrees with the comments made by Sofia Duncan. | John Castro, WCCP, CPFI  Floyd Skeren Manukian Langevin, LLP  February 25, 2022  Oral Comment | “Notice of intent,” and the meet and confer clause was withdrawn. | Section 9982 provides:  “(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 her copy service represents the defense. Commenter thanks the committee and everyone that she has met with over the past seven years to discuss the unintended consequences of the original copy service reform regulations.Commenter opines that these updated proposed regulations have addressed her concerns and fixed the issues that copy services have dealt with. Commenter would like to that the DWC for the additional regulations addressing ROI companies as their fees have been un-regulated and have continued to increase. | Diane Cohen  Vice President  MacroPro  February 25, 2022  Oral Comment | General comment. | No action. |
| 9984(a) | Commenter would like to address some of the issues raised by other commenters. Commenter states that the claims examiner, who is very much like bill review companies, does not understand the process of copy services and what they do. There’s a complaint that copy services served two subpoenas for one location to obtain records. Commenter state that is not what happens – the real reason is that there may be one building, and there could be two custodians (of records), and in order to get those records, you have to serve the custodian in each location for the records. For example, if you need x-rays on one floor and have medical records on a different floor, there are two different record custodians; therefore, you must serve each custodian with a separate subpoena. Many times these bills are rejected because they assume that the copy service is doing something underhanded when they are not.  Commenter states that bill review companies do not understand the difference between a duplicate and an additional set and this has been a problem for a long time. Commenter states that there are hundreds of thousands of invoices that go unpaid because they will not listen to any explanation. | Diane Cohen  Vice President  MacroPro  February 25, 2022  Oral Comment | The flat rate is based on the work involved to travel to a custodian of records. Although custodians of record may accept multiple subpoenas for different types of records, no additional work is involved with obtaining different types of records from a single custodian of records and only one flat price is scheduled. | Section 9984(a) provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  (1) A $230.00 flat rate, for an initial set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness costs for delivery of records, check costs, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.” |
| General Comment | Commenter thanks Administrative Director Parisotto and the legal staff for their hard work trying to promulgate these proposed regulations. Commenter agrees that everything comes down to cost and that there are and enormous amount of frictional costs in this system. | Charles Rondeau  February 25, 2022  Oral Comment | General comment. | No action. |
| 9982(e)(2)  9982(e)(4) | Commenter opines that this proposed regulation fails to acknowledge or consider that there is a very short time period to submit records to the IMRO, and those records may not even be in the possession of the claims administrator or applicants’ attorney within the period of time that’s provided to submit records. Commenter states that the ability to obtain these records through a professional copy service in order to do this in a more expeditious time frame is in the interest of the injured worker. The injured worker is ultimately the party that this system was created to benefit. | Charles Rondeau  February 25, 2022  Oral Comment | Disagree. Treating physicians are required to timely report under section 9785.and parties have a continuing obligation to serve medical reports under section 10635. | No action. |
| General Comment – Studies | Commenter states that it has been his pleasure to represent multiple copy services that do work for both the defendants and applicants. Commenter acknowledges that the DWC is taking into consideration the costs associated with doing this work – the valuable work – that these companies perform for both defendants and applicants in furthering discovery that’s necessary to move cases forward. Commenter opines that the increases that are proposed in the amended regulations although modest are certainly justified based upon the costs associated with doing business, having consulted with many of these firms, is certainly well-deserved. Commenter opines that the DWC should take a more comprehensive approach to reviewing in the underlying cost factors, frictional costs (as Mr. Groneberg referred to) in determining, not just the copy service fee schedule regulations, but everything in general having to do with the payment of costs associated with the workers’ compensation system – medical/legal, the physician schedules, and so on and so forth and they ought to be evidence based. Commenter states that there should be studies commissioned as there have been in many other instances through RAND, et cetera, so that there is evidentiary support for whatever changes that the administration proposes to make, and that there be an opportunity for public comment upon the results of those studies. | Charles Rondeau  February 25, 2022  Oral Comment | The Berkeley Research Group (BRG) issued a report in 2013 *Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation.* | No action. |
| General Comment – Payment for Services | Commenter states that her copy firm performs services for both the applicant and defense. Commenter would like to know if there is any provision within these proposed revised regulations that address recourse for not getting paid within the mandated time frame already in effect. Commenter guesses not because she had not heard anything regarding this so far during this hearing. Commenter states that after billing for services the insurance company will reply with a bill review statement which was performed by someone out of state who is not familiar with California law on copy charges. In response, the copy service will file a lien, which was supposedly why these changes were original put in place – in order to avoid liens. Commenter states that insurance companies ignore their past due invoices, telephone calls, etc.  Commenter states that unlike what a previous commenter alleged, copy services are not overpaid. They are professionals that are entitled to be paid a fair wage without having to beg to get paid for mandated services. Commenter states that the current and proposed regulations have no teeth to assist them in getting paid in a timely fashion. | Donna Gaetano  Express Copy Service  February 25, 2022  Oral Comment | General comment. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |
| 9983 | Commenter recommends incorporated future increases into these proposed regulations. Commenter does not want to have to wait an additional seven years to get an increase. | Katheryn Greve  February 25, 2022  Oral Comment | Disagree with building in automatic future increases. DWC will consider future increases. | No action. |
| 9982 | Commenter would like to note, in reply to John Castro’s testimony today that the meet and confer has been removed in this present version of the proposed regulations and she agrees that this is an appropriate change. | Katheryn Greve  February 25, 2022  Oral Comment | General comment. | No action. |
| 9982(e)(5) | Commenter states that an objection should not only be timely, but filed with the WCAB and resolved in Order Quashing, signed by a Workers’ Compensation Judge and served upon the copy service as well as all parties to the claim. Commenter states that as soon as a defendant becomes represented, they are definitely sent a copy of the subpoena. Commenter opines that for them to have to get a letter that was sent to the claims administrator and employer before they were involved is an additional burden for the applicant attorney and an opportunity to object, i.e.:   * we will provide it * we will in the future * we don’t think that the claims administrator file is relevant to the claim * some medical – we don’t even know what’s in the medical * Applicant’s medical are not relevant to the claim.   Commenter recommends adding language to this section specifying “filed with the WCAB which resolves an Order Quashing signed by a WCJ and served upon the copy service.”  Commenter states that they will cancel the order upon receipt of the properly filed objection. | Katheryn Greve  February 25, 2022  Oral Comment | Disagree. Not all objections need to filed with the WCAB. | No action. |
| Cost Studies | In reference to the testimony of Charles Rondeau who recommended conducting evidence based studies to determine cost increases, commenter would like to note that SB863, the legislation that mandated a fee schedule for copy services for the first time ever, resulted in a huge RAND study which caused a two year delay in getting the new fee schedule enacted. | Katheryn Greve  February 25, 2022  Oral Comment | General comment. | No action. |
| 9980(e), (d) and (g) | Commenter would like to state that there are several medical locations that require more than subpoena to obtain different types of records. Commenter state that she is litigating this right now before the WCJ as they do not have time to look at this before in a pre-trial conference statement just so they can get paid. | Katheryn Greve  February 25, 2022  Oral Comment | The flat rate is based on the work involved to travel to a custodian of records. Although custodians of record may accept multiple subpoenas for different types of records, no additional work is involved with obtaining different types of records from a single custodian of records and only one flat rate is scheduled. | Section 9980 provides:  “(d) “Contracted services” means services payable under an agreement between a claims administrator or an employer and a copy service provider.    (e) “Copy and related services” means all services and expenses that are related to the retrieval and copying of documents that are responsive to a duly issued subpoena or authorization to release documents for a workers’ compensation claim.  (f) “Custodian of records” means the person who has custody and control of the books, records, documents or physical evidence and maintains them in the ordinary course of business.” |
| 9984 | Commenter appreciates DWC’s addition requiring copy services to provide evidence of the original order form from the requesting attorney. Comment notes that the WCAB has consistently held that essentially it is not about what you know or what you type on an invoice, but what you can prove. Commenter opines that typing a name onto a subpoena or invoice does not prove who actually requested the records. Commenter opines that requiring a copy service to provide evidence of the requesting attorney’s order is akin to requiring medical providers to provide proof of their referral from a physician and that copy services should be held to the same standard as are medical providers and med/legal evaluators. Commenter opines that while most copy service are forthright in their services, on many occasions she has experienced applicant requests form two or more copy services. Commenter states that these orders are not normally brought before the court due to the cost – it’s cheaper just to pay for the services rather than take it to court. | Sofia Duncan  CorVel  February 25, 2022  Oral Comment | General comment. | Section 9984 provides:  “(a) The reasonable maximum rates payable for copy and related services, for dates of service on and after July 15, 2022, are as follows:  …  (2) $75.00 in the event of cancellation after a subpoena or request for records by authorization has been issued but before records are produced, or for a Certificate of No Record (CNR). The claims administrator will not be liable for bills submitted under this subdivision unless:  (A) The bill submitted for cancellation includes a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the cancellation order containing the date of cancellation and identity of the cancelling party.” |
| 9981 | Commenter has been listening to the testimony provided by defense attorneys during this hearing and would like to provide his experience. Commenter states that it is his experience requesting records that he always gets objections and petitions to quash, usually without any justification. In many cases it is denied. Commenter states that the defense is not paying correctly so he requires payment records to make certain that his client(s) are not getting railroaded. Commenter states that there should be consequences for these frivolous objections and petitions to quash but he has not experienced that. Commenter opines that defense denies access to records with impunity. | Victor Altamirano,  Applicants’ Attorney  February 25, 2022  Oral Comment | Bills which remain unpaid after 30 days will be increased by 25%. | Section 9981(e) provides,  “(e) Bills must be paid or contested within thirty days of receipt by the claims administrator. If a bill is not paid within this period,then the unpaid portion of the billed sum will be increased by 25 percent.” |