# **COPY SERVICE FEE SCHEDULE FORUM COMMENTS**

**Andrea Guzman, Claims Regulatory Director** October 8, 2020

Claims Medical and Regulatory Division

State Compensation Insurance Fund (SCIF)

State Compensation Insurance Fund appreciates the opportunity to provide input regarding the Division of Workers’ Compensation’s (DWC) proposed amendments to the Copy Service Fee Schedule. State Fund respectfully submits the following comments for your consideration.

Recommended revisions to the DWC’s proposed regulations are indicated by underscore for added language and ~~strikeout~~ for deleted language.

# § 9980. Definitions.

**Discussion:**

Under §9981, there is a proposed billing code for “Contracted Fees”. A description of what type of services are covered under these fees is not found under §9981 nor under §9980’s list of defined terms used in Article 12 - Document Copy and Electronic Transaction Fees.

The lack of a definition or description for what type of services may be billed as “Contracted Fees” can lead to different interpretations. Thus, it would best serve the DWC’s intent in establishing a mandatory billing code for “Contracted Fees” to provide a definition of this term.

# Recommendation:

State Fund suggests adding and defining the term “Contracted Fees” under §9980’s list of definitions.

# § 9981. Bills for Copy Service Discussion:

*(4) WC 023: Per Page Fee of .10 per page.*

As it currently states under §9981, billing code WC 023 is to be used for the per page fee of $.10 per page, whereas under §9983 and §9984, the DWC proposes to have the $.10 per page fee apply to paper copies above 500 pages. For the purpose of being consistent throughout these copy service regulations, it would help to provide clarity under §9981 as to how billing code WC 023 will be applied.

# Recommendation:

For the reason indicated above, State Fund requests clarity on how billing code WC 023 will be applied.

# Discussion:

*(8) WC 027: Additional Electronic Set of $30.*

It appears this billing code is no longer applicable to any date of service, as it was struck out under §9983(e) and is not mentioned in §9984.

# Recommendation:

State Fund recommends removal of this billing code from §9981.

# Discussion:

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

Here, “Requested Services” is very vague as an item and as a fee. There is a high potential for misuse if copy services are billed under this billing code since the term is not defined and there is no limitation on the fee amount.

# Recommendation:

State Fund recommends removing this billing code from §9981. Alternatively, if the billing code is used, then State Fund recommends defining the term and having a maximum cap for fee amount.

Recommended revision:

*WC 030 Requested Services. (Indicate amount. - not to exceed $25)*

# Discussion:

1. *WC 031: Contracted Fees for Additional Sets. (Indicate amount.)*
2. *WC 032: Contracted Fees.*

Under the Discussion section of §9981 of this document, we suggested defining the term “Contracted Fees” to avoid different interpretations of what it means. This clarity is needed. Also, there is a concern that there is no limitation indicated for a fee amount here.

# Recommendation:

State Fund recommends defining “Contracted Fees” and having a maximum cap for this fee amount.

# §9982. Allowable Services.

**Discussion:**

(b)(3) states:

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

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

Here, the proposed language under paragraph (3) is not clear regarding when payment will not be made for copy and related services involving records provided by a medical provider or agent of the medical provider. The vagueness in paragraph (3) presents a potential issue of different interpretations as to what types of scenarios are deemed not payable under section 9982.

# Recommendation:

For the reasons stated above, State Fund request clarification on the proposed text of paragraph (3).

# §9983. Fees for Copy and Related Services for Dates of Service Prior to January 1, 2021.

**Discussion:**

Paragraph (f) states:

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

Here, there is a difference between disputes on discovery production vs. disputes over fees. Section 9983 covers fees for copy service. LC §132 governs contempt of court proceedings when witnesses do not comply with discovery orders. LC §132 does not cover fee disputes. There is a strong likelihood that if this language, “*filing a petition with a superior court pursuant to Labor Code section 132”* is kept this section, then parties will attempt to resolve their fee disputes in a superior court by petition, citing authority pursuant to LC 132 even though LC 132 was not designed to cover fee disputes. Fee disputes are governed by the Independent Bill Review (IBR) process and Petitions for Cost.

# Recommendation:

State Fund recommends removing language referencing “filing a petition with a superior court pursuant to Labor Code section 132” and suggests the following revision:

*(f) Disputes over the production of records may be resolved by filing a petition with the Workers’ Compensation Appeals Board.~~or by filing a petition with a superior court pursuant to Labor Code section 132.~~*

# §9984. Fees for Services for Dates of Service on and after January 1, 2021.

**Discussion:**

Paragraph (d) states:

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

Please refer to our comments made under §9983 regarding the difference between disputes on discovery production vs. disputes over fees.

# Recommendation:

State Fund recommends removing language referencing “filing a petition with a superior court pursuant to Labor Code section 132” and suggests the following revision:

*(d) Disputes over the production of records may be resolved by filing a petition with the Workers’ Compensation Appeals Board.~~or by filing a petition with a superior court pursuant to Labor Code section 132.~~*

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**Victoria Echeverry** October 8, 2020

CVC Legal

In response to Carlos Echeverry’s comment, maybe the additional fee code would be as approved by carrier.

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**Dan Mora, CEO/Founder** October 8, 2020

Gemini Duplication

Independent legal discovery is a due process right for all parties. It is the responsibility of the Department of Industrial Relations, the Department of Workers' Compensation, and the Workers' Compensation Appeals Board to protect equal access to justice.

Discovery is administered by licensed and bonded agents of the court, responsible and accountable for independent, non-biased representation of evidence.

We concur with the Coalition of Professional Photocopiers and their recommendations.

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**Jason Schmelzer, Legislative Advocate** October 8, 2020

California Coalition on Workers’ Compensation (CCWC)

Thank you for the opportunity to provide comments on the draft amendments to the Copy Service Fee Schedule. While the Copy Service Fee Schedule implemented in 2015 has helped to eliminate many sources of friction and unnecessary costs, there remain a number of problems that continue to be exploited. Employers continue to be subjected to business strategies that result in needless claims expense costs being incurred. The current Copy Service reimbursement rates are not working, so long as the abuses continue.

The abuses of the applicant copy companies are numerous. We have experienced the following examples of ongoing misuse or misapplication of the existing copy service fee schedule regulations:

1. Although expressly precluded by current regulations, applicant attorneys continue ordering subpoenaed records prior to the expiration of the 30-day period provided to claims administrators to serve copies of those records. The order is placed with the copy service vendor within the 30-day period and the subpoena is prepared. When the records are sent by the claims administrator and received by the applicant’s attorney, the pending order is cancelled, and the copy service vendor sends an invoice for a cancellation fee to the claims administrator. In many instances the subpoena come in the mail with a blind application. Invariably they are for records already in defendant’s possession or readily accessible by defendant.
2. The practice of issuing multiple subpoenas to the same custodian of records for different types of records, e.g. payroll records, personnel records, employee handbook, etc. when one subpoena is sufficient to obtain all relevant records at the location.
3. After a claim is set up the abuses continue with subpoenas for records that defendant already has out for copy, which are then duplicated by applicant copy service. Also, copy services routinely request records from locations based on new treatment being provided, even when the records from that new treatment is being properly provided to the applicant. This duplication of efforts is costly and unnecessary.
4. Applicant attorneys issue subpoenas for records from a location they already know the employer/claims administrator/defense attorney has obtained records and are making those records available to the applicant. This is unnecessarily duplicative and incurs a full fee of $180 from a second copy service firm instead of allowing the initial requesting party to provide the same records firm at a cost of $5.
5. Applicant copy service providers order subpoenaed records on claims that have been settled by Compromise and Release, or where the Compromise and Release is pending approval. In the case of an approved C&R and there is no ongoing WCAB jurisdiction that permits this, yet cancellation bills are being submitted to claims administrators and litigated.
6. Copy service companies have a troublesome practice of issuing duplicate invoices for services that have already been billed and responded to, either by issuance of payment with Explanation of Review (EOR) or by objection to the bill in its entirety.
7. Thank you for addressing the disparity between the cost of a second set of records ordered beyond 30 days. There was a practice of delaying submitting a request for a duplicate set of electronic records until after 30 days, thereby increasing the cost of the extra set from $5 to $30. The proposed regulations eliminate the difference in the fee by making all extra copies $5, the regulation also address that the third, forth, etc. replacement set that required documentation of need for this extra set, never received, is no longer the burden of the claims department.
8. Records are sometimes subpoenaed from a location that is unlikely to be related to the case. Upon receipt of objection to the subpoena, a cancellation is issued and an invoice for a $75 cancellation fee is sent for payment.

 Proposed Solutions

The proposed regulatory solution to the abuses outlined above is insufficient. Requiring the copy service to make a declaration under penalty of perjury is not a deterrent and can be easily manipulated (e.g. lien declarations). Intentional bad actors will continue to subpoena unneeded records and play a waiting game to collect payments, banking on the WCAB not having the time or inclination to hear about a penalty of perjury allegation.

We propose a waiting period that is triggered when the copy service company advises the defendant of their intent to copy specific location of records in relation to a specific dispute. We believe that parties should have an opportunity to object within this waiting period. We would recommend a period of 30 days. Once defendant raises an objection the parties must meet and confer to resolve the objection, failing which a WCJ resolves the dispute. If a party, after a valid objection, makes an objection and the copy service copies the records, the bill (or even the cancellation fee) would be disallowed by regulation.

The regulation regarding sanctions should be amended to allow for sanctions if a copy service submits a bill for service after a party has raised an objection to the service and prior to resolution by either agreement of the parties or a ruling by the WCAB. This added deterrence would be helpful.

Additionally, we recommend that the regulations more clearly define the term “Date of Service” as it is used in copy service invoices, as it does not now have a consistent definition. Depending on the vendor, the date of service on the invoice can have multiple meanings (e.g. the date the records were *ordered*, the date the records were *obtained*, or the date the records were *delivered* to the requesting party.) We think one definition would eliminate confusion and dispute.

To better identify duplicate copy service vendor invoices, we recommend the specific *date range* of copies obtained from each location be required in the copy service invoice.

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**Carlos Echeverry** October 8, 2020

CVC Legal Solutions

\*\*\*\*There should be a code where copy service would place additional requested fees for release of records other than the customary $15.00 witness fee.

1. **9984(a)** - We appreciate the $210, and support that as a minimum raise during a difficult year, so long as the change is immediate. If copy services are forced by the process to wait until January 2021, or later, then either a COLA or an additional raise is in order.
2. **9984(c)(1) -** Please remove the new “For paper copies” language from this section. This section pays the copy service for GATHERING and COPYING and MANAGING the images they obtain, as well as then preparing and DELIVERING the images to the requesting party. The point is that the medium (paper vs CD vs Electronic) the images are delivered on does not speak to the cost and resources that were required to actually obtain and prepare the images in the first place.
3. **9984(c)(2)** - It’s CRITICAL that the DWC **not** TAKE AWAY in the second sets the same $30 that were given to copy services as a raise in (a). A high percentage of customers of copy services order additional sets of records on medical other than pure electronic download, and printing the paper or burning the CDs and prepping and shipping these additional sets cost copy services FAR more than $5. The removal of the $30 additional set while only getting a raise of $30 in (a) does not feel like a good faith proposal. Further, as Labor Code Section 4620 defines copies of records as medical legal expenses, the cost of however many additional sets are needed to fully manage the case must be borne by the employer, and not limited to ONE additional copy at a rate so low that case parties will struggle to convince any copy services to print and ship paper or CD records. One panel QME process takes at least THREE sets of any record, if the employer is represented by a law firm. The Administration must allow the applicant and other case parties the resources they need to quickly and efficiently close workers compensation cases.
4. **9981(b)(4)** - please remove the new sentence in this subsection that requires a signed declaration under penalty of perjury. This will cause unnecessary friction and inefficiency to both the applicant and the employer stakeholders for the 80%+ of requests that historically go unchallenged. If a claims examiner suspects a problem with an order they already have full rights to object and do discovery.
5. **9981(e) -** please remove the requirement of a statement under penalty of perjury. No one person has the knowledge to legitimately be held accountable for every other person’s actions in an organization. Therefore, this addition will cause unnecessary paperwork and friction on EVERY copy service invoice with little to no actual useful value as evidence.
6. **9981(f)** - Please insert Labor Code Section 4600 in the list of sections the schedule applies to. Labor Code 4600 is included in the list of sections defined in Labor Code Section 5307.9 as required of the schedule.
7. **9982(a)(4)** - This additional language is subject to a wide range of interpretations and will only serve to increase DISPUTE. Dispute is costly to the employer and waste the state’s valuable court time. There was already a similar paragraph in the current version that should be kept the same, or removed entirely.
8. **9983** - There should be NO changes made to section 9983 because this section will provide authority for the prices and services that have occurred historically, since 2015, and for which payment is still outstanding. Any changes to 9983 would change the rules of the game IN THE PAST.

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**Joe Karapetian** October 8, 2020

Platinum Copy Services

We feel it is very important that you consider raising the copy service fee schedule to 210 dollars sooner than the proposed 01/01/20201 date.   It has been about 6 years now and we have been at the same 180 dollar flat fee, while the costs of doing business has gone up tremendously every year (Ex. labor, shipping, supplies, etc.). After reading the proposed fee schedule I have some concerns I want to point out.

Asking for a signed declaration from the requesting party for each order would be an unnecessary burden to both copy services and all requesting parties.  It just adds more work for the ordering party and the copy service and I feel it complicates the process of ordering records.  I do not understand why this needs to be done when any claims examiner can simply verify this information and object to our bill.

I want to mention that I noticed you added the language of PAPER COPIES to 9984 (c)1.  This line should be removed, because it can be argued that only paper copies of records can be billed for the additional .10 per page.   Copying and scanning the records are a major cost to us already. In some cases we either break even or lose money for records charges after the 500 page mark.

I ask that you do not take away the $30 dollar additional set fee from 9984(c)(2).  5 dollars is simply unreasonable for all copy service companies.  The cost of printing, copying, and burning a CD along with shipping far exceed the 5 dollars you are proposing.   We are a smaller copy service and we are forced to lose money on most of our second set charges.   The 5 dollar fee is just simply unreasonable.  We have numerous doctors in the workers compensation medical field who still refuse to take anything but paper copies.   We ask that you change this back to the 30 dollars that is in the current fee schedule.   Whiteout this change, it is going to be impossible to send an additional set without losing money. Also losing the additional 30 dollar charge offsets most of the increase on the 210 flat fee you are proposing.

Also I ask that you please insert Labor Code Section 4600 in the list of sections the fee schedule applies to. Labor Code 4600 is included in the list of sections defined in Labor Code Section 5307.9 as required of the schedule.

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**Sharanjit Kaur** October 8, 2020

My husband works in the Applicant industry copy service industry. He has always been proud to be in an industry which helps other people. Any company has to make money to be able to survive and pay the employees. I had learned from him last year that a well-deserved price increase was going to come through last year. I found out that it still has not happened and won't be effective till next year now.

Why? What is holding this up? A lot of people's livelihoods are at stake. This cannot be stalled any more. I cannot pretend to understand the government workings but I know that things that are long overdue cannot keep getting delayed. Please move on with the fee schedule immediately.

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**Bob Flynn, President** October 8, 2020

Kopy Kat

**9983(c)**

The fee for obtaining records from the EDD should be either the proposed fee schedule of $210 or the contracted rate the copy service has with their respective client/s.

Why? Speaking as a defense oriented copy service ALL requests from our clientele request the use of a sdt to obtain these records. There is no other mechanism to obtain these records. Additionally, counsel wants and expects an affidavit authenticating records in order to document his/her file.

Costs of SDT’ing the EDD; The EDD is made up of two entities; unemployment and disability. Each unit must be separately subpoenaed. Fixed costs include the preparation of the sdt, sending the sdt to an attorney for his/her signature (as the EDD requires an attorney to sign the sdt), attorney time, the attorney sending the sdt back after his /her signature, sending the applicable notices to opposing counsel, postage, person to serve the sdt and a witness fee of $15.00 paid to each unit. Variable costs include dozens of calls and employee time over the course of 6-8 months to obtain compliance, scanning of documents, bates numbering and uploading/printing of documents to our client. The EDD is one of the most difficult entities to obtain records from in California.

9983 (e)(1) ---For purposes of clarification this section should read “For paper or digital……”

9984 (a): ***DELETE*** the proposed verbage *”costs charged by a third party for the retrieval of records held offsite by the third party”.*

Why? Presently 29% of the requests for records we receive have third party fees. These third party fees come from two different sources. These include: 1) A facility contracts with a third party to comply with record requests, or 2) The sdt’d facility is out of state.

Facilities and /or third parties are entitled in California to $24.00/ hour and $0.10/page. Typically this cost does not amount to much money on a file comprised of 30-50 pages. On the other hand, it can be very expensive. For example a 2-3,000 page file billed to a copy service;

(3000 x $0.10) + (8 hours x $24.00/hour) = $492.00

Under the proposed fee schedule, the copy service can bill for 210 + $250 = $460 + sales tax. A losing proposition for the copy service.

Copy services have two choices 1) Contact their client for approval or 2) Decline to pay for and subsequently not pursue the records. How does a claims professional or attorney effectively represent his / her client with incomplete discovery?

Out of state facilities are under no obligation to comply with a CA sdt and can charge based on their applicable code. For example **[REDACTED]** is based in Texas. Their third party charges $0.72/page. It is not unusual to get insurance files of 2-3,000 pages.

Another example; CA Superior courts charge $0.50/page.

9981 (4) **DELETE** this provision in its entirety. This is a burden and hardship on all parties. Imagine the costs associated with obtaining a declaration from the claims professional, attorney, paralegal or legal secretary on each and every request. Add to it the cost of retrieving the declaration and including it with the invoice.

A simpler, more effective approach might be a declaration from the copy service stating something to the effect “Under penalty of perjury this invoice is for copy services requested on behalf of the above referenced law firm / claims professional.”

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**Mercedes Uribe** October 8, 2020

National Document Imaging

National Document Imaging hereby submits its comments and recommended amendments to the proposed Copy Service Fee Schedule Regulations that were posted to the DWC Forum on September 28, 2020.

1. The increase in fees should **take effect immediately**. As a California employer, my business has been affected negatively by the 2020 Pandemic, and combined with the cuts made in the original fee schedule in 2015 and lack of timely updates, we need your help…. What I’m asking is that the DWC move on these regulations as an emergency and save our business another three months of waiting.
2. **9981(b)(4)** - please remove the new sentence in this subsection that requires a signed declaration under penalty of perjury. This will cause unnecessary friction and inefficiency to both the applicant and the employer stakeholders for the 80%+ of requests that historically go unchallenged. If a claims examiner suspects a problem with an order they already have full rights to object and do discovery.
3. **9981(e) -** please remove the requirement of a statement under penalty of perjury. No one person has the knowledge to legitimately be held accountable for every other person’s actions in an organization. Therefore, this addition will cause unnecessary paperwork and friction on EVERY copy service invoice with little to no actual useful value as evidence.
4. **9982(a)(4)** - This additional language is subject to a wide range of interpretations and will only serve to increase DISPUTE. Dispute is costly to the employer and waste the state’s valuable court time. There was already a similar paragraph in the current version that should be kept the same, or removed entirely.
5. **9983** - There should be NO changes made to section 9983 because this section will provide authority for the prices and services that have occurred historically, since 2015, and for which payment is still outstanding. Any changes to 9983 would change the rules of the game IN THE PAST.
6. **9984(a)** - We appreciate the $210, and support that as a minimum raise during a difficult year, so long as the change is immediate. If copy services are forced by the process to wait until January 2021, or later, then either a COLA or an additional raise is in order.
7. **9984(c)(1) -** Please remove the new “For paper copies” language from this section. This section pays the copy service for GATHERING and COPYING and MANAGING the images they obtain, as well as then preparing and DELIVERING the images to the requesting party. The point is that the medium (paper vs CD vs Electronic) the images are delivered on does not speak to the cost and resources that were required to actually obtain and prepare the images in the first place.
8. **9984(c)(2)** - It’s CRITICAL that the DWC **not** TAKE AWAY in the second sets the same $30 that were given to copy services as a raise in (a). A high percentage of customers of copy services order additional sets of records on medica other than pure electronic download, and printing the paper or burning the CDs and prepping and shipping these additional sets cost copy services FAR more than $5. The removal of the $30 additional set while only getting a raise of $30 in (a) does not feel like a good faith proposal. Further, as Labor Code Section 4620 defines copies of records as medical legal expenses, the cost of however many additional sets are needed to fully manage the case must be borne by the employer, and not limited to ONE additional copy at a rate so low that case parties will struggle to convince any copy services to print and ship paper or CD records. One panel QME process takes at least THREE sets of any record, if the employer is represented by a law firm. The Administration must allow the applicant and other case parties the resources they need to quickly and efficiently close workers compensation cases.

**Conclusion**

We appreciate the opportunity to get a modest increase in the fees for the needed services we provide in the industry. We hope the Department will understand that taking away a $30 service while adding $30 to one of the other fees is a near net zero change for us. We further hope the Department understands that forcing parties to deal with two more signed declarations puts unnecessary friction and inefficiency on the whole system - and yet provide very little in actual evidentiary value. And finally, we urge the Department to push through the fee increase during 2020, and not have it wait until 2021.

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**Paul Boroditsch, CEO** October 8, 2020

ARS Legal

ARS Legal hereby submits the following comments and recommended amendments to the proposed Copy Service Fee Schedule Regulations that were posted to the DWC Forum on September 28, 2020.

1. **9981(b)(4)** - please remove the new sentence in this subsection that requires a signed declaration under penalty of perjury. This will cause unnecessary friction and inefficiency to both the applicant and the employer stakeholders for the 80%+ of requests that historically go unchallenged. If a claims examiner suspects a problem with an order they already have full rights to object and do discovery.
2. **9981(e) -** please remove the requirement of a statement under penalty of perjury. No one person has the knowledge to legitimately be held accountable for every other person’s actions in an organization. Therefore, this addition will cause unnecessary paperwork and friction on EVERY copy service invoice with little to no actual useful value as evidence.
3. **9981(f)** - Please insert Labor Code Section 4600 in the list of sections the schedule applies to. Labor Code 4600 is included in the list of sections defined in Labor Code Section 5307.9 as required of the schedule.
4. **9982(a)(4)** - This additional language is subject to a wide range of interpretations and will only serve to increase DISPUTE. Dispute is costly to the employer and waste the state’s valuable court time. There was already a similar paragraph in the current version that should be kept the same, or removed entirely.
5. **9983** - There should be NO changes made to section 9983 because this section will provide authority for the prices and services that have occurred historically, since 2015, and for which payment is still outstanding. Any changes to 9983 would change the rules of the game IN THE PAST.
6. **9984(a)** - We appreciate the $210, and support that as a minimum raise during a difficult year. Consider either a COLA or an additional cost of living increase over time similar to other government arrangements.
7. **9984(c)(1) -** Please remove the new “For paper copies” language from this section. This section pays the copy service for GATHERING and COPYING and MANAGING the images they obtain, as well as then preparing and DELIVERING the images to the requesting party. The point is that the medium (paper vs CD vs Electronic) the images are delivered on does not speak to the cost and resources that were required to actually obtain and prepare the images in the first place.
8. **9984(c)(2)** - It’s CRITICAL that the DWC **not** TAKE AWAY in the second sets the same $30 that were given to copy services as a raise in (a). A high percentage of customers of copy services order additional sets of records on medica other than pure electronic download, and printing the paper or burning the CDs and prepping and shipping these additional sets cost copy services FAR more than $5. The removal of the $30 additional set while only getting a raise of $30 in (a) does not feel like a good faith proposal. Further, as Labor Code Section 4620 defines copies of records as medical legal expenses, the cost of however many additional sets are needed to fully manage the case must be borne by the employer, and not limited to ONE additional copy at a rate so low that case parties will struggle to convince any copy services to print and ship paper or CD records. One panel QME process takes at least THREE sets of any record, if the employer is represented by a law firm. The Administration must allow the applicant and other case parties the resources they need to quickly and efficiently close workers compensation cases.

**Conclusion**

We appreciate the opportunity to share our view and the importance to get the regulation correct.   We hope the Department will understand that the $30 increase in copy services ($180 to $210) coupled with a $25 decrease in additional sets ($30 to $5) create a nearly net zero increase. We further hope the Department understands that forcing parties to deal with two more signed declarations puts unnecessary friction and inefficiency on the whole system - and yet provide very little in actual evidentiary value. We appreciate your consideration and know you will do the right thing.

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**Diane Worley, Executive Director** October 8, 2020

California Applicants’ Attorneys Association (CAAA)

The California Applicants’ Attorneys Association offers the following comments

regarding the proposed revisions to the Copy Service Fee Schedule regulations currently posted on the DWC Forum for a written comment period ending October 8, 2020.

Section 9981(b)(4):

CAAA has concerns with the proposed new language in Section 9981 (b)(4) that requires “…a statement from the requesting party, signed under penalty of perjury, that the request for records was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim.” on a bill for services. It is unclear why this statement would be required on a bill for services. Subpoenas already require a supporting affidavit under penalty of perjury regarding why the records are necessary for the case. Furthermore, the definition of “duplicative” is not included in the definitions set forth in Section 9980, and it is unclear who makes the decision the records are “duplicative”. This ambiguity in the regulation would allow for an arbitrary application of this term by carriers to deny payment on a bill. CAAA recommends this proposed language be deleted as it is unnecessary since it is already included on a supporting affidavit with a subpoena for records, and will increase frictional costs and disputes.

Section 9982(a)(1):

Proposed Section 9982 (a)(1) still contains the objectional provision that the fee schedule does not apply to contracts between the claim’s administrator and the copy service provider. CAAA had objected to this provision back in 2014 with the original rulemaking on the copy service fee schedule. This section creates an unequal playing field by allowing services under a contract between the employer and the copy service provider to be excluded from the fee schedule. This exclusion makes it questionable whether this schedule is truly intended to be applied evenly to both defense and applicant’s copy service firms. Under this proposed fee schedule the injured worker’s rights to pursue discovery are severely limited by what services will get paid under the fee schedule. By contrast, the defendant can enter into contracts with copy service vendors where they can obtain services outside of the regulations which will be paid for. The injured worker cannot do this. Therefore, a different fee schedule is being applied to defendants by these regulations. This inequity is simply wrong. To eliminate this inequity, additional language would be required in this section, such as:

If a an employer or insurance carrier, contracts for services which are not

allowable and not covered by this fee schedule, the injured worker shall be allowed to obtain the same services with their copy service provider, including summaries, tabulations, and indexing, at the rate paid by the employer or insurance carrier to their copy service provider.

Section 9982(a)(4):

Section 9982 (a)(4) seems to say that the fee schedule applies to copy services for records the claims administrator is seeking by subpoena where they failed to provide written notice to the injured worker. It is unclear what “problem” is being addressed here? If the claims administrator or anyone on the defense side subpoenaed records and didn’t provide notice it seems obvious that it is ok for the injured worker or their representative to obtain those records and their copy service get paid.

Section 9984(a):

CAAA supports increasing the “flat fee”, as set forth in Section 9984 (a), but continues to believe the proposed increase to $210 for dates of service after 1/1/2021 is not adequate, as previously stated in our comments to the DWC Forum in August 2019.

The Berkeley Research Group in its’ study “*Formulating a Copy Service Fee Schedule for the California Division of Workers’ Compensation*” (October 17, 2013) suggested the typical cost per copy event was $251.20 at the time of their study representing the average of the bills they reviewed from both applicant’s and defense copy service providers. Neither the current $180 flat fee nor the recommended increase to $210 comes near the seven-year-old reasonable estimate of fair market value set forth in the above referenced report.

At the very least, to make up for this inadequacy, CAAA strongly recommends that there be a Cost of Living Adjustment (COLA) added to this regulation. The copy services may accept a flat fee of $210 today as a representation of something they can live with for their costs of doing business in 2021 but that fee will quickly become inadequate over time with inflation, and the increasing costs of doing business.

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**Michael A. Lysobey** October 8, 2020

Vice President

Zenith Insurance Company

The Division of Workers’ Compensation has a forum on Copy Service Fee Schedule Regulations with respect to the proposed amendments to Title 10, California Code of Regulations, Chapter 4.5, Subchapter 1, Article 12, sections 9980 – 9984, *Document Copy and Electronic Transaction Fees* (the “Regulations”). We appreciate you providing us with a forum to make statements, and pursuant to your instructions we are presenting these written comments for your consideration and review.

The Regulations, which have been in place since 2015, are designed to ensure fair and appropriate payment for appropriate document copy and electronic transaction services. Zenith supports all efforts to ensure the Regulations allow fair reimbursement for all appropriate and necessary services. Unfortunately, it appears the proposed Regulations may have the unintended consequence of creating certain inefficiencies and costs that should not be borne by the California workers’ compensation system. To avoid such unintended consequences, Zenith proposes the following changes.

# SECTION 9981

1. We note that Section 9981(a) provides that the Regulations are to be to be applied retroactively to July 1, 2015. We understand that the intent here is for the changes in the Regulations to apply to new bills, and that the DWC does not intend insurers to require insurers to demand that an unpaid bill be re-submitted to conform to the new Regulations. In addition, Zenith believes that the Regulations are not meant to authorize applicants to resubmit bills with these new billing standards for all services provided since 2015. Zenith notes that the new WC 033 billing code applicants could erroneously be used to demand additional payments of $30 for all bills going back to July 1, 2015. Zenith proposes that the DWC provide clarification showing that the Regulations as amended only apply to new bills. This would require modifying the Regulations to clarify that the flat fee costs are $180 from July 1, 2015 through the effective date of the new Regulations, and that the flat fee costs are $210 going forward from the effective date of the new Regulations. To address this, Zenith recommends deleting subsection 9981(c)(14), and modifying subsection 9981(c)(1) as follows:

Subsection 9981(c)(1): WC 020: Flat Fee of $180 **for services rendered between July 1, 2015, and December 31, 2020, or $210 for services rendered on or after January 1, 2021**.

1. Section 9981(a)(4) is a new subsection requiring, *inter alia*, that all bills include a statement from the requesting party signed under penalty of perjury. As noted previously, Zenith continues to receive bills for records requested by the attorney while the claim is under investigation and even before Zenith receives the Disclosure Statement from attorneys advising us that the applicant is now being represented by counsel. Based on case law (see *Jose Nevares v. California Motor Club* (2019) Cal. Wrk. Comp. P.D. LEXIS 135; and *Celiflora Lopez vs. Harbor View Farms, LLC*, (2018) Cal. Wrk. Comp.P.D. LEXIS 507), the Regulations should indicate that the claims administrators cannot be held liable for subpoenas that are submitted while the claim is under investigation. Zenith believes a great many disputes and administrative costs to the claim could be minimized if applicant attorneys were required to contact the claims administrator before requesting records through a copy service. Moreover, Zenith is aware of many cases in which a copy service will bill the claims administrator for records even when the applicant attorneys requests the record within 30 days of the claim. In practice, if the claims administrator issues an EOR objecting to the charges and subsequently the SDT provider files an objection to the EOR, the claims administrator is forced into a position where it must file a Petition for Non-IBR and a DOR. This is an unnecessary waste of time and resources for claims administrators and the WCAB.

In addition, Zenith is aware that applicants routinely request documents which they already have in their possession through a variety of means, such as via discovery, directly from the injured worker’s provider (e.g., when a new PPP is selected), or as a result of previous subpoenas to other parties. In such situations, the records being requested would be duplicative, and the statement under penalty of perjury should directly address this common abuse.

To address these concerns, Zenith recommends modifying the new statement under penalty of perjury by adding the following language:

(4) The date the records were requested, the name of the individual requesting the records, and a statement from the requesting party, signed under penalty of perjury, that the request for records was issued in good faith, is not duplicative **(e.g., applicant is not in possession of the records)**, and that the records are necessary to the litigation of the claim. **This statement must also set forth that the request for records was served on the claims administrator (i) after the claims administrator has completed its investigation, or (ii) after the claims administrator received a completed and signed Disclosure Statement from the applicant’s attorney, or (iii) at least 30 calendar days after the date the claims administrator receives a written request from the applicant attorney requesting a copy of the records. Failure of the applicant attorney to request records from the claims administrator in writing prior to issuing a subpoena or records request through a copy service vendor relieves the claims administrator from liability for payment of the copy service bill.**

1. Subsections 9981(c)(2) and 9981(c)(3) set forth the fee of $75 for cancelled services and for a certificate of no records. We note that fees for records obtained from the EDD and from the WCIRB are set at $20 and $30 respectively. We also note that the flat fee has been increased 16.6% to $210, without a response to Zenith’s request for clarification as to how the rate increase was determined and how future increases will be determined. The last set of comments in the DWC’s open forum indicated that copy service vendors routinely contract for amounts below the previous $180 flat fee. With respect to the cancellation and certificate of no record fees, as we noted earlier there is currently a high level of abuse in the system: fishing expeditions, subpoenas served on QMEs that were on a panel list but were not selected as the QME, etc. It does not make sense to spend upwards of two or three times the amount of the fee to fight such improper billing. As such, given that $30 is adequate for a complete copy service request in certain situations, and in the overall spirit of compromise which has brought the Regulations this far, Zenith proposes that the fee for cancelled services and for a certificate of no records be $50.
2. Subsections 9981(c)(7) and 9981(c)(8), providing for payments of $5 and $30 for additional electronic sets, should be removed. This change to the Regulations would create system inefficiency and result in the issuance of unnecessary, superfluous subpoenas that do nothing except add costs to the workers’ compensation system. If one electronic set of documents has been provided to the applicant, there is no reasonable basis for the claims administrator to provide a second set. As noted earlier, in practice Zenith often sees copy services billing $5 for a second set provided within 30 days and then billing $30 for a third set after 30 days. In the last set of comments, copy service vendors noted general operational costs for “scanning, converting, storage, quality assurance, bates stamping, etc.” Current technology has automated all of these processes; for example, we are well past the days of manual bates stamping. With respect to making a second set of electronic documents, there is no need to take additional steps to “create” a second electronic set of documents. Moreover, there is no value or benefit to the injured worker from additional electronic sets of documents. In fact, given today’s technology, it is more burdensome and expensive for the applicant to file a claim and for the claims administrator to respond to that claim – without even considering the cost of the actual provision of the additional electronic sets – than it would be for the applicant to simply make as many additional electronic copies as it deems necessary. In fact, a thumb-drive costs much less than $5. There is no reasonable basis to create Regulations which would allow for such waste and abuse in the workers’ compensation system.
3. Subsections 9981(c)(1) and 9981(c)(14) should be amended to clarify that the claims administrator is only obligated to pay a flat fee once under a subpoena duces tecum (“SDT”). To be clear, as Zenith described earlier, a claims administrator should only be required to pay once to an individual entity for all SDTs served at one particular location. This would avoid inefficiency and waste within the workers’ compensation that Zenith identified in the DWC’s earlier forum. For example, Zenith is aware of applicants that routinely submit one SDT at a provider’s office for billing records and another SDT at the same office for medical records. Similarly, Zenith is aware of a practice whereby applicants serve an SDT on the employer for the payroll record and serve a second SDT on the same employer for the employment records, which results in two SDTs at $180 – or $210 with the new rates. There should only be one SDT for ALL employment or other records located at the same facility/location. We note that the primary treating physician (Section 9785) already has an obligation to provide updated records directly to the applicant’s attorney, and so there would be no need for an applicant’s attorney to use a copy service to obtain records or updated records from a primary treating physician. To avoid abuse, the following changes should be made (please note that if Subsection 9981(c)(14) has been eliminated per our Comment 1 above, then the modification below with respect to Subsection 9981(c)(14) is moot):

Subsections 9981(c)(1): WC 020: Flat Fee of $180 **(only to be reimbursed once per location per 12-month period)**.

Subsections 9981(c)(14): WC 033: Flat Fee of $210 **(only to be reimbursed once per location per 12-month period)**.

SECTION 9983

1. Currently, the text of this section does not identify the timeframe during which it is effective (only the section title identifies the applicable timeframe). Section 9984 has some clarifying language in one subsection of the text, but not in all subsections. Therefore, the first sentence of Section 9983 should be amended to clarify this section is only applicable for dates of service prior to January 1, 2021 (see also Comment 9 below):

The reasonable maximum fees ~~not including sales tax~~ payable for copy and related services **for dates of service prior to January 1, 2021** are as follows:

1. As described in Comment 3 above, Zenith proposes that Subsection 9983(b) be modified so that the fee for cancelled services and for a certificate of no records be $50.
2. Subsection 9983(e)(2) should be amended to eliminate the need for claims administrators to provide additional electronic sets. As set forth above in Comment 4, this change to the Regulations would create system inefficiency and result in the issuance of unnecessary, superfluous subpoenas that do nothing except add costs to the workers’ compensation system. As such, we suggest the Regulations be modified as follows:

Subsections 9983(e)(2): **~~$5.00 for each additional set of records in electronic~~ ~~form ordered~~** ~~within 30 days of the subpoena, or~~ ~~$30 if ordered after 30 days and the copy is retained by the registered photocopier.~~ If the injured worker **has already received a set of records, the claims administrator is not liable for any** requests **from the injured worker for** an**y** 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 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

1. As describe above in Comment 6, the first sentence of Section 9984 and Subsection 9984(a) should be amended to clarify this section is only applicable to for dates of service prior to January 1, 2021:

The reasonable maximum fees payable for copy and related services **for dates of service on and after January 1, 2021** are as follows:

(a) **~~For dates of service on and after January 1, 2021, a~~ A** $210 flat fee, for a set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.

1. As described in Comment 3 above, Zenith proposes that Subsection 9984(b) be modified so that the fee for cancelled services and for a certificate of no records be $50.
2. Subsection 9984(c)(2) should be amended to eliminate the need for claims administrators to provide additional electronic sets. As set forth above in Comment 4, this change to the Regulations would create system inefficiency and result in the issuance of unnecessary, superfluous subpoenas that do nothing except add costs to the workers’ compensation system. As such, we suggest the Regulations be modified as follows:

Subsections 9983(e)(2): **~~$5.00 for each additional set of records in electronic~~ ~~form ordered~~**. If the injured worker **has already received a set of records, the claims administrator is not liable for any** requests **from the injured worker for** an**y** additional set of records**~~, the claims administrator is liable for one~~ ~~additional set of records~~** in electronic form. All other additional sets of records are payable by the party ordering the additional set.

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**Mike Callan, Founder & Manager** October 8, 2020

Republic Document Management’

I’d like to start by saying, “Thank you!” to the administration for taking up this very important and long-awaited issue, on behalf of Injured Workers, their representatives and medical providers.  As wages, insurance and living expenses in California continue to skyrocket, a slight increase in the flat fee feels like a gulp of fresh air, that is desperately needed, **immediately** (Not January 1, 2021) to keep our industry alive and ensure that all Injured Workers, exposed to COVID-19 or otherwise injured at work, continue to be represented and supported.

As a member of the Coalition of Professional Photocopiers, I absolutely stand by the CPP’s stated position.  To be clear:

1. **All proposed changes to § 9983 should be removed completely, as well as the proposed changes to § 9982(a)(4) and § 9981.**  All retroactivity must be removed from any regulations to safeguard the unpaid copy service bills for all services that have been rendered previously.

2.  **§ 9984(b)(2) MUST include an additional set of records at $30**.  Parties to the case, including treaters and attorneys, WILL REQUEST additional sets on a case-by-case basis. If this minor fee is eliminated; it **WILL** result in the file being **re-subpoenaed** as the regulations only allow for one set billable at $5.00. Once this additional set request is fulfilled, the copy service would have to turn-away all additional requests for copies of records from that records source forcing the requesting party to re-subpoena the records.  These proposed limitations are very inefficient and will result in more cost passed onto the employer and cause more friction in the system.

3.  § **9981(b)(4) and § 9981(d) (proposed regulation (e)) should be removed and reverted to the previous language.** Requiring additional declarations from both the Applicant’s Attorney AND the copy service IS duplicative, unnecessary and would create another burdensome cost required to fulfill the Injured Workers’ right to discovery.  If the intent is to curb fraud, the previous language should continue to satisfy the Claims Administrator’s need for a declaration that the services have been performed in good faith.

Once again, I’d like to thank the administration for their efforts and for a speedy implementation.

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**Stacy L. Jones, Senior Research Associate** October 8, 2020

California Workers’ Compensation Institute (CWCI)

These comments on proposed amendments to the Copy Service Fee Schedule are presented on behalf of members of the California Workers’ Compensation Institute (the Institute). Institute members include insurers writing 81% of California’s workers’ compensation premium, and self-insured employers with $88B of annual payroll (36.1% of the state’s total annual self-insured payroll).

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

**Recommendation:**

**§ 9980. Definitions.**

As used in this article:

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

**Discussion:***In the initial forum comments from 2019, concerns were raised about the practice of issuing multiple subpoenas to the same custodian of records for different types of records for the same injured worker (e.g., separate subpoenas for payroll records, employee handbook, personnel records, medical records, etc.) when one subpoena would be sufficient to obtain different types of records from a single source. The Institute urges the Division to revisit this issue and take the opportunity to preclude the practice, which has led to disputes and ultimately the adjudication of lien claims that must be resolved by the WCAB.*

**Recommendation:**

**§ 9981. Bills for Copy Services.**

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

(3) The source of the information, the type of records produced, the date range of the copied records, the date of copy service, a description of the billed services, and the number of pages produced; and

(4) The date the records were requested, the name of the individual requesting the records, and a statement from the requesting party, signed under penalty of perjury, that the request for records was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim.

(c) Bills submitted under this section ~~must use~~ are limited to the following codes:

(1) WC 020: Flat Fee of $180 for services rendered between July 1, 2015, and December 31, 2020, or $210 for services rendered on or after January 1, 2021.

(2) WC 021: Cancelled Service - $75.00.

(3) WC 022: Certificate of No Records - $75.00.

(4) WC 023: Per Page Fee of $0.10 per page.

(5) WC 024: Records from the Employment Development Department (EDD) of $20.

(6) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau (WCIRB) of $30.

(7) WC 026: Additional Electronic Set of $5.

(8) WC 027: Additional Electronic Set of $30.

(9) WC 028: Duplication of X-Ray or scan of $10.26.

(10) WC 029: Electronic storage media - $3.00.

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

(12) WC 031: Contracted Fees for Additional Sets. (Indicate amount.)

(13) WC 032: Contracted Fees.

~~(14) WC 033: Flat Fee of $210.~~

(15) S9999: Sales Tax.

(d) All bills submitted under this section must include a statement under penalty of perjury that the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32.

~~(e) Bills must be paid in accordance with Labor Code sections 4621, 4622, 4603.2, 4603.4 and 5811.~~

**Discussion:**

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

*In subsection (b)(4), the Institute understands that the Division intends to address the questionable practice of random searches for records from sources not known to be connected to the case, by requiring the requesting party to verify that a legitimate basis for the requested records exists. Unfortunately, the proposed language will likely not represent a sufficient deterrent. The Institute hopes that further examination of this problem area during the regulatory process will result in a more actionable solution.*

*In subsection (c), the Institute recommends replacing the proposed “must use” text with “limited to,” in order to clarify that no other codes may be used to bill copy and related services, without implying that each bill will include all listed codes. Additional changes are recommended for consistency.*

*To avoid confusion, the Institute recommends using the same code (WC 020) to denote flat fee services irrespective of the date of service. As is common with other California workers’ compensation fee schedules, the payment amount for the same code would simply be determined by the date of service.*

*Subsection (e) is a statement of existing law, which is to be avoided.  The Institute recognizes that the question of the application of penalty and interest to delayed payment of copy service fees has been the subject of dispute.  If, by this new subsection, the Division intends to confirm that the penalty and interest are applicable not only to delayed medical-legal copy service charges under Labor Code section 4622 but also to delayed medical treatment copy service charges under Labor Code section 4603.2, the proposed language does not accomplish that result.  It is true that section 4603.2(b)(1)(A) expressly includes “copy services” in its requirement for itemization of services; however, section 4603.2(b)(2), which authorizes penalty and interest for delayed payments, is expressly limited to “medical treatment provided or prescribed by the treating physician” and does not include copy services payments. The proposed language of subsection (e) here cannot be used to justify an award of penalty and interest for delayed payment of medical treatment copy services where the statute itself does not authorize it.*

**Recommendation:

§ 9982. Allowable Services.**

(a) The fees allowed under sections 9983 and 9984 must be applied to copy and related services:

(3) To obtain a copy of any subsequently-received medical report or medical-legal report, or other medical information relevant to the claim, that the claims administrator failed to timely serve within the time frames set forth in section ~~10637~~ 10635.

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

…

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

(3) Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau or the Employment Development Department that can be obtained without a subpoena at lower cost or ~~that~~ were requested on or after January 1, 2021.

**Discussion:***We recommend a correction of a typographical error in subsection (a), and a correction to syntax in subsection (a)(3). Additionally, the WCAB Rules of Practice and Procedure, effective January 1, 2020, replaced former section 10608 with two new sections (§§10635 and 10637). Of the two sections, §10635 is applicable since it is the section that mandates a compliance timeframe.*

*Additional syntax correction is suggested for subsection (a)(4).*

*In subsection (c)(3), we recommend a correction to syntax. Additionally, the proposed change eliminates language proscribing reimbursement for records obtained from the Workers’ Compensation Insurance Rating Bureau or the Employment Development Department for services rendered prior to January 1, 2021. Because elimination of the language introduces uncertainty regarding billed fees for obtaining records from the WCIRB or EDD prior to January 1, 2021, the Institute recommends retaining existing language.*

**Recommendation:** **§ 9983. Fees for Copy and Related Services for Dates of Service Prior to January 1, 2021.**

[No changes to existing regulation.]

**Discussion**

*While the amendments to the proposed regulation clearly separate the effective date for the new fee amounts, revising the language for services provided prior to January 1, 2021, would render the changes retroactive. The Institute recommends leaving the language unchanged from the existing regulation for services rendered between July 1, 2015, and December 31, 2020.*

**Recommendation:** **§ 9983. Fees for Copy and Related Services for Dates of Service Prior to January 1, 2021.**

[No changes to existing regulation.]

**Discussion**

*While the amendments to the proposed regulation clearly separate the effective date for the new fee amounts, revising the language for services provided prior to January 1, 2021, would render the changes retroactive. The Institute recommends leaving the language unchanged from the existing regulation for services rendered between July 1, 2015, and December 31, 2020.*

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**Dan Mora, President** October 8, 2020

Mike Callan, CFO & Treasurer

Stephen Schneider, Secretary

Coalition of Professional Photocopiers

The Coalition of Professional Photocopiers (Coalition), a Statewide coalition of copy service providers, hereby submits its comments and recommended amendments to the proposed Copy Service Fee Schedule Regulations that were posted to the DWC Forum on September 28, 2020.

**Executive Summary**

We have carefully considered the proposed changes to the regulations and herein submit a number of technical changes. However, there are three CRITICAL points that are paramount:

1. A RAISE to at least $210 on the flat fee for copying, plus an additional raise if the changes are pushed out by the process to 2021
2. Restore the $30 additional set so there is an actual net RAISE in fees
3. Remove the requirement of a Declaration under penalty of perjury by case parties to simply order services

**The Copy Service Fee Schedule Regulations Should Take Effect Immediately**

The CPP requests that the proposed regulations become effective immediately upon adoption by DIR, not on January 1, 2021 as is specified in the proposed regulations.

On March 4, 2020, the Governor proclaimed a State of Emergency in connection with the COVID-19 pandemic. Pursuant to the Emergency Proclamation, the Governor issued Executive Order N-62-20 on May 6, 2020, pertaining to administration of workers’ compensation benefits. The State of Emergency and all subsequent Executive Orders issued to implement the COVID-19 Emergency Proclamation remain in effect.

Among other things, Executive Order N-62-20 authorizes the Administrative Director to adopt, amend, or repeal any regulations that the Administrative Director deems necessary to implement the Executive Order. Any such regulations promulgated by the Administrative Director are exempt in their entirety from the Administrative Procedures Act (Government Code § 11340 et seq.), and can take effect immediately upon submission to the Office of Administrative Law for publication in the California

Regulatory Notice Register.

As of August 31, 2020, there have been more than 37,000 COVID-19 related workers’ compensation claims, and over 140 related deaths. These claims have added pressure on copy service providers in the workers’ compensation system to be available to perform the necessary function of providing records to injured workers, employers, and their attorneys.

An expedited effective date is necessary in order to give the copy service industry a couple of extra months to ramp up the substantial changes to their invoices that are recommended in the proposed regulations, so if the fee increase is made effective as of October 8th, then the rest of the regulations could be made effective on January 1, 2021. This would enable the copy service providers to comply on day one. On the other hand, if the fee increase becomes effective on the same day as the rest of the regulations, then the proposed $210 flat fee will be less than the Statewide Average Weekly Wage for the year 2021.

It should also be noted that raising the flat fee to $210 is based on increases in the Statewide Average Weekly Wage, and therefore, without a COLA provision, the $210 is only fair and equitable if adopted in calendar year 2020. If the effective date of the fee increase is not contemplated until 2021, then the Coalition requests an increase to the flat fee to account for the additional year it has taken to adopt the changes to the copy service fee schedule. The Coalition suggests that, at a minimum, the flat fee rate should then be increased by an additional 3.84%, from $210 to $218.

The Coalition submits that this industry has waited for five and a half years to see an increase in fees for the valuable service they provide to the employer and the injured worker when a workers’ compensation claim is contested. The Coalition believes that the revisions we are proposing will greatly enhance communication, accountability, and transparency within the workers’ compensation system.

**Discussion of the Coalition’s Proposed Revisions to the Fee Schedule Regulations**

* *All retroactivity must be removed so as not to negatively affect the existing, unpaid invoices for copy services. This appears in many places, but all of the* ***changes to 9983 should be removed*** *and left as it has been since 2015. Also, several* ***changes to 9981 and 9982 should be reverted to the current regulation text,*** *as these changes made retroactively would threaten the accounts receivable of all copy services.*

* ***§ 9981(b)(4)*** *- Applicant law firms should not be required to sign a declaration UNDER PENALTY OF PERJURY just to order discovery, and must do this every single time they order services. This specific addition to the language should be removed. Only a small percentage of the copy service invoices are disputed, so forcing this frictional extra manual step on every single request for services and attaching it as yet another document that must be submitted with every invoice is unnecessary, inefficient, and burdensome. The Claims Administrator has ample opportunity for discovery to make sure all services are requested in good faith.*

* ***§ 9981(d)*** *– inserting the new requirement of the copy company statement being a declaration under penalty of perjury and attached to each invoice is unreasonable, unnecessary, and should be reverted to the existing language. No single person has the knowledge of every other person’s actions in a copy company, or every single process that occurred. Therefore, no single person would have the knowledge and authority to make such a declaration - especially with such a harsh penalty. The existing language in the regulation as written in 2015 should be sufficient to represent the copy company’s official statement and drive discovery and further litigation should a Claims Administrator suspect problems with the service.*

* *The* ***CHANGE to § 9982(a)(4) should be removed*** *and reverted to the previous language, which in the proposed regulations is strikethrough subsection (c). The first problem is once again this appears to apply retroactively, which threatens the copy company’s existing accounts receivable performed under the current regulations. Additionally, the language as written might be interpreted by claims administrators as meaning the existence of a Subpoena served by the Employer STOPS the discovery by the applicant, even if the applicant’s subpoena for similar records had already been served. Such an interpretation would cause unnecessary and increased DISPUTE. Further, if such a limitation were to be implemented it should be worded so that it applies* ***equally*** *to both the applicant and employer, giving BOTH parties an opportunity to affect the other’s discovery rights. As written, the subsection appears to only negatively affect the Applicant's discovery rights. Please just revert this subsection back to the way this section was written, or just remove it.*

* ***§ 9984(c)(2)******must*** *i****nclude*** *an additional set of records at $30 in any media format (paper, CD, etc.), and at least THREE electronic sets of any record that has been copied. There are too many parties and physicians that need and use additional sets of records - on various types of media - for this to be taken away. Providing an increase to copy services from $180 to $210, billed as a long-owed increase for at least the changes to SAWW, should not be offset by the same amount of REDUCED revenue on the additional sets. As written, the changes to the schedule produce a near NET ZERO increase for copy services. Either the $210 should be increased significantly to compensate for the loss of the additional set, or the $30 additional set should be written back into 9984(b)(2) as it was in the previous version.*

*As noted above, the claims administrator should be liable for producing THREE additional electronic sets of records in electronic form if requested by the Applicant, so that the applicant has the resources necessary to comply with Labor Code Section 4062.2(a) and (b). When an applicant seeks to have records reviewed by a QME on a case with a represented claims administrator, Labor Code §4062.3 (a) and (b) require THREE sets of each record to be served. Applicant law offices should not be forced to serve unencrypted electronic copies of private medical records by email, nor bear the cost of re-copying and shipping voluminous paper or CD records. Moreover, Labor Code Section 4620 defines medical records as expenses that are to be paid entirely by the employer/defendant—not by the applicant. Therefore, the copy service fee schedule must include payment for applicant copy services to supply at least three electronic sets of every record at $5, plus at least one set delivered on any type of media for a flat $30, including shipping.*

Below are the revisions that the Coalition of Professional Photocopiers respectfully requests. Recommended text changes are indicated by **boldface underline** for additional language and **boldface ~~strikeout~~** for deleted language.

**PROPOSED AMENDMENTS TO DWC DRAFT COPY SERVUCE FEE SCHEDULE REGULATIONS:**

**§ 9981. Bills for Copy Services**.

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

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

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

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

(3) The source of the information, the ~~including~~ type of records produced, the date of service, a description of the billed services, and the number of pages produced~~.~~ ; and

(4) The date the records were requested, the name of the individual requesting the records, **~~and a statement from the requesting party, signed under penalty of perjury, that the request for records was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim~~**. **This paragraph shall take effect 90 days after the regulation adding this paragraph is adopted**.

(c) **Except as provided in subdivision (d), bills ~~Bills~~** submitted under this section must use the following codes:

(1) WC 020: Flat Fee of $180.

(2) WC 021: Cancelled Service - $75.00.

(3) WC 022: Certificate of No Records - $75.00.

(4) WC 023: Per Page Fee of .10 per page.

(5) WC 024: Records from the Employment Development Department (EDD) of $20.

(6) WC 025: Records from the Workers’ Compensation Insurance Rating Bureau of $30.

(7) WC 026: Additional Electronic Set of $5.

(8) WC 027: Additional Electronic Set of $30.

(9) WC 028: Duplication of X-Ray or scan of $10.26.

(10) WC 029: Electronic storage media - $3.00.

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

(12) WC 031: Contracted Fees for Additional Sets. (Indicate amount.)

(13) WC 032: Contracted Fees.

(14) WC 033: Flat Fee of $210.

(15) S9999: Sales Tax.

~~(1) Bills for records may include billing codes. WC 020 is for Flat Fee of $180, WC 021 is for Cancelled Service of $75, WC 022 is for Certificate of No Record of $75, WC 023 is for Per Page Fee of .10 per page, WC 024 is for records from the Employment Development Department (EDD) of $20, WC 025 is for records from the Workers’ Compensation Insurance Rating Bureau of $30, WC 026 is for an Additional Electronic Set of $5, WC 027 is for an Additional Electronic Set of $30, WC 028 is for Duplication of X-Ray or scan of $10.26, WC 029 is for CD of X-rays and scans of $3.~~

**(d)** **The amendments to subdivision (c) shall take effect 90 days after the fee schedule regulation amending subdivision (c) is adopted, and shall not apply retroactively to bills for services rendered that were submitted prior to that date.**

~~(e)~~ ( **e**) All bills submitted under this section ~~Each bill for services~~ must include a statement **~~under penalty of perjury~~** that ~~there was no~~ the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32 ~~with respect to the services described~~.

(~~e~~ f) Bills must be paid in accordance with Labor Code sections 4621, 4622, 4603.2, 4603.4**, 4600** and 5811.

**§ 9982. Allowable Services**

(a) The fees allowed under section 9983 and 9984 must be applied to copy and related services:

(1) ~~This fee schedule covers copy and related services for~~ To obtain records relevant to an injured worker’s claim, unless such services are covered ~~except services~~ under a contract between the ~~employer~~ claims administrator and the copy service provider.

(2) To obtain records in the claims administrator’s possession that the claims administrator failed to timely serve following a request by the injured worker or their representative within the time frames set forth in Labor Code section 5307.9.

(3) To obtain a copy of any subsequently-received medical report or medical-legal report, or other medical information relevant to the claim, the claims administrator failed to timely serve within the time frames set forth in section 10637.

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

~~(b) If the claims administrator fails to serve records in the employer’s or insurer’s possession requested by an injured worker or his or her representative within the time frames set forth in Labor Code section 5307.9, or fails to serve a copy of any subsequently-received medical report or medical-legal report within the timeframes set forth in section 10608, this fee schedule applies to obtaining those records.~~

~~(c) If the claims administrator fails to provide written notice, pursuant to Labor Code section 4055.2, to the injured worker of records which they are seeking by subpoena, this fee schedule applies to obtaining those records.~~

(b) ~~(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~~ the injured worker’s authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim~~,~~ .

(2) Provided by any person or entity which is not a registered professional photocopier.

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

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

1. Records previously obtained by subpoena or authorization by the same party and served from the same source, unless the subpoena or authorization is accompanied by a declaration from the party requesting the records setting forth good cause to seek duplicate records.

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

1. Summaries, tabulations, or ~~for~~ indexing of documents.

(3) Subpoenaed records obtainable from the Workers’ Compensation Insurance Rating Bureau~~, and~~ or the Employment Development Department that were requested **~~on or after January 1, 2021~~ 90 days after the effective date of the fee schedule regulation amending this section.** ~~that can be obtained without a subpoena at lower cost~~.

 **DELETE ALL AMENDMENTS TO § 9983 IN THE PROPOSED REGULATIONS and INSTEAD, AMEND EXISTING § 9983 [8 Cal. Code Regs. §9983], AS FOLLOWS:**

**8 C.C.R. § 9983. Fees for Copy and Related Services.**

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

(a) A $180 flat fee for a set of records, from a single custodian of records, which includes, but is not limited to mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, fees for release of information services, service of the subpoena, shipping and handling, and subpoena preparation.

(b) $75 in the event of cancellation after a subpoena or request for records by authorization has been issued but before records are produced, or for a certificate of no records.

(c) $20 for records obtained from the Employment Development Department.

(d) $30 for records obtained from the Workers' Compensation Insurance Rating Bureau.

(e) Release of information services of witness costs for the retrieval and return of physical records held offsite by a third party are included in the flat fee. Disputes over the production of records may be resolved by filing a petition with the Workers' Compensation Appeals Board or by filing a petition with the superior court pursuant to Labor Code section 132. Release of information services of witness costs for retrieval and return of physical records held offsite by a third party are governed by Evidence Code Section 1563.

(f) In addition to the flat fee, the following separate fees apply:

(1) Ten cents ($.10) per page for copies above 500 pages.

(2) $5.00 for each additional set of records in electronic form ordered within 30 days of the subpoena, or $30 if ordered after 30 days and the copy is retained by the registered photocopier. If the injured worker requests an additional set of records 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 if ordered after 30 days and the copy is retained by the registered photocopier. All other additional sets of records are payable by the party ordering the additional set.

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

**(g) This section shall apply to all invoices for copy and related services submitted prior to the adoption of Section 9984 of this Article.**

**§ 9984. Fees for Copy and Related Services. ~~for Dates of Service on and after January 1, 2021~~**

The reasonable maximum fees payable for copy and related services are as follows:

(a) **~~For dates of service on and after January 1, 2021, a $210 flat fee~~**, **A flat fee of $210** for a set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.

(b) $75 in the event of cancellation after a subpoena or request for records by authorization has been issued but before records are produced, or for a certificate of no records.

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

(1) **~~For paper copies, ten~~** **Ten** cents ($.10) per page for copies above 500 pages.

(2) $5.00 for each additional set of records in electronic form. If the injured worker requests an additional set of records, the claims administrator is liable for **~~one~~** **three** additional **~~set~~ sets** of records in electronic form**, and one** **additional set of records in any form of media for a fee of $30.** All other additional sets of records are payable by the party ordering the additional set.

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

(4) Applicable sales tax.

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

**(e) This section shall take effect immediately upon its adoption.**

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**D. Diann Cohen** October 8, 2020

Vice President of Client Relations

Macropro

Securing EDD records is very important.  However, the revised regulations did not increase the allowable charges to secure those records.   The work to secure EDD records is the same as any other set of records. Actually, it is more difficult has EDD requires additional step to be taken, getting a wet signature from the attorney creates a lot of additional work for the copy service.  It is reasonable the allowable charge should be billed at WC 020 and not WC024.  WC 024 should be removed from the fee schedule.

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**Edna Toufer** October 8, 2020

DocCentral, Inc.

1 - All retroactivity must be removed so as not to negatively affect the existing, unpaid invoices for copy services. This appears in many places, but all of the changes to **9983** should be removed and left as it has been since 2015. Also, several changes to 9981 and 9982 should be reverted to the current regulation text, as these changes made retroactively would threaten the accounts receivable of all copy services.

2 – 9981(b)(4) - Applicant law firms should not be required to sign a declaration UNDER PENALTY OF PERJURY just to order discovery, and have to do this every single time they order services. This specific addition to the language should be removed. Only a small percentage of the copy service invoices are disputed, so forcing this frictional extra manual step on every single request for services and attaching it as yet another document that must be submitted with every invoice is unnecessary, inefficient, and burdensome. The Claims Administrator has ample opportunity for discovery to make sure all services are requested in good faith.

3 - 9981(d) – inserting the new requirement of the copy company statement being a declaration under penalty of perjury and attached to each invoice is unreasonable, unnecessary, and should be reverted to the existing language. No single person has the knowledge of every other person’s actions in a copy company or every single process that occurred. Therefore, no single person would have the knowledge and authority to make such a declaration - especially with such a harsh penalty. The existing language in the regulation as written in 2015 should be sufficient to represent the copy company’s official statement and drive discovery and further litigation should a Claims Administrator suspect problems with the service.

4 - The CHANGE to the 9982(a)(4) should be removed and reverted to the previous language, which in the proposed regulations is strikethrough subsection (c). The first problem is once again this appears to apply retroactively, which threatens the copy company’s existing accounts receivable performed under the current regulations. Additionally, the language as written might be interpreted by claims administrators as meaning the existence of a Subpoena served by the Employer STOPS the discovery by the applicant, even if the applicant’s subpoena for similar records had already been served. Such an interpretation would cause unnecessary and increased DISPUTE. Further, if such a limitation were to be implemented it should be worded so that it applies **equally** to both the applicant and employer, giving BOTH parties an opportunity to affect the other’s discovery rights. As written, the subsection appears to only negatively affect the Applicant's discovery rights. Please just revert this subsection back to the way this section was written, or just remove it.

5 – 9984(b)(2) **must** include an additional set of records at $30. There are too many parties and physicians that need and use additional sets of records - on various types of media - for this to be taken away. Providing an increase to copy services from $180 to $210, billed as a long-owed increase for at least the changes to SAWW, should not be offset by the same amount of REDUCED revenue on the additional sets. As written, the changes to the schedule produce a near NET ZERO increase for copy services. Either the $210 should be increased significantly to compensate for the loss of the additional set, or the $30 additional set should be written back into 9984(b)(2) as it was in the previous version.

6 – Copy services are struggling along with the rest of the country and world under COVID and the COVID response. Copy services have been waiting for these changes for several years and have not had an increase in five years. Therefore, copy services ask that the fee increase be adopted in an expedited process, and made effective immediately and before the end of the year.

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**Thomas Smith, President** October 8, 2020

Matrix Document Imaging Inc.

Matrix Document Imaging hereby submits its comments and recommended amendments to the proposed Copy Service Fee Schedule Regulations that were posted to the DWC Forum on September 28, 2020.

1. The increase in fees should **take effect immediately**. As a California employer, my business has been affected negatively by the 2020 Pandemic, and combined with the cuts made in the original fee schedule in 2015 and lack of timely updates, we need your help…. What I’m asking is that the DWC move on these regulations as an emergency and save our business another three months of waiting.
2. **9981(b)(4)** - please remove the new sentence in this subsection that requires a signed declaration under penalty of perjury. This will cause unnecessary friction and inefficiency to both the applicant and the employer stakeholders for the 80%+ of requests that historically go unchallenged. If a claims examiner suspects a problem with an order they already have full rights to object and do discovery.
3. **9981(e) -** please remove the requirement of a statement under penalty of perjury. No one person has the knowledge to legitimately be held accountable for every other person’s actions in an organization. Therefore, this addition will cause unnecessary paperwork and friction on EVERY copy service invoice with little to no actual useful value as evidence.
4. **9982(a)(4)** - This additional language is subject to a wide range of interpretations and will only serve to increase DISPUTE. Dispute is costly to the employer and waste the state’s valuable court time. There was already a similar paragraph in the current version that should be kept the same, or removed entirely.
5. **9983** - There should be NO changes made to section 9983 because this section will provide authority for the prices and services that have occurred historically, since 2015, and for which payment is still outstanding. Any changes to 9983 would change the rules of the game IN THE PAST.
6. **9984(a)** - We appreciate the $210, and support that as a minimum raise during a difficult year, so long as the change is immediate. If copy services are forced by the process to wait until January 2021, or later, then either a COLA or an additional raise is in order.
7. **9984(c)(1) -** Please remove the new “For paper copies” language from this section. This section pays the copy service for GATHERING and COPYING and MANAGING the images they obtain, as well as then preparing and DELIVERING the images to the requesting party. The point is that the medium (paper vs CD vs Electronic) the images are delivered on does not speak to the cost and resources that were required to actually obtain and prepare the images in the first place.
8. **9984(c)(2)** - It’s CRITICAL that the DWC **not** TAKE AWAY in the second sets the same $30 that were given to copy services as a raise in (a). A high percentage of customers of copy services order additional sets of records on medica other than pure electronic download, and printing the paper or burning the CDs and prepping and shipping these additional sets cost copy services FAR more than $5. The removal of the $30 additional set while only getting a raise of $30 in (a) does not feel like a good faith proposal. Further, as Labor Code Section 4620 defines copies of records as medical legal expenses, the cost of however many additional sets are needed to fully manage the case must be borne by the employer, and not limited to ONE additional copy at a rate so low that case parties will struggle to convince any copy services to print and ship paper or CD records. One panel QME process takes at least THREE sets of any record, if the employer is represented by a law firm. The Administration must allow the applicant and other case parties the resources they need to quickly and efficiently close workers compensation cases.

**Conclusion**

We appreciate the opportunity to get a modest increase in the fees for the needed services we provide in the industry. We hope the Department will understand that taking away a $30 service while adding $30 to one of the other fees is a near net zero change for us. We further hope the Department understands that forcing parties to deal with two more signed declarations puts unnecessary friction and inefficiency on the whole system - and yet provide very little in actual evidentiary value. And finally, we urge the Department to push through the fee increase during 2020, and not have it wait until 2021.

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**Gabriela Ruiz** October 7, 2020

Director of Litigation & Collections

Med-Legal, LLC

We have reviewed the proposed changes to the Copy Service Fee Schedule (“CSFS”). While we appreciate many of the changes, especially those that provide a degree of clarity, we have serious concerns about the functionality and viability of certain proposed changes. Below, we have laid out our concerns, in order of impact to the industry.

RETROACTIVE APPLICATION IS IMPROPER

An overarching theme in the proposed revisions is that all changes will apply retroactively. This is simply not functional and will result in chaos in the industry. Retroactive application will impose after the fact requirements for billing that did not exist in the law at any point that the copy services were rendered or billed for.

By way of example, take section 9981(b)(4). That new subsection, which is made applicable to ‘services provided on and after July 1, 2015’ by way of section 9981(a), requires that bills include a statement from the requesting party, under the penalty of perjury, that the request for records was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim. If applied retroactively, copy services will need to locate the requesting party and hope that now, sometimes years after the fact, they recall the specific records they requested and are *willing* to sign something, *under the penalty of perjury* indicating that the records were 1) requested in good faith, 2) not duplicative, and 3) that the records were necessary to the litigation of the claim. That is an impossible ask.

Similar problems exist throughout the proposed revisions. The entirety of section 9983 applies to dates of service prior to January 1, 2021. Despite the fact that copy services have been rightfully billing, and payors have been paying, $30 for an additional set of records if that set was ordered 30 days after the services were rendered, the proposed revision would do away with that portion of 9983 that allowed for this payment. If applied retroactively, arguably, payors could go so far as to seek to undo these settled transactions. While the strength of such an argument is up for debate, given the climate in the workers compensation industry, it is entirely foreseeable that large scale consolidations might be instituted in an effort to undue such transactions, or at a minimum, use them as a bargaining tool to thwart collection efforts on otherwise legitimate bills.

Frankly, retroactive application of *any* changes will lead to increased litigation at the WCAB, loss of essentially all accounts receivable to date, and potentially civil lawsuits challenging the retroactive application. It is in everyone’s best interest to apply any proposed changes prospectively only, effective January 1, 2021.

SIGNATURE REQUIREMENTS CREATE AN UNDUE BURDEN

The proposed changes require statements under the penalty of perjury to accompany bills in two separate sections.

As discussed above, Section 9981(b)(4) requires that the requesting party make certain representations under the penalty of perjury. This creates an undue burden for both the copy service and the requesting party when a vast majority of invoices do not have issues of good-faith, duplication, or necessity associated with them. Adding this requirement, even prospectively, does nothing but increase the cost of business and creates yet another area of dispute based on interpretation between copy services and payors.

Section 9981(d) also contains a requirement for a statement to be made under the penalty of perjury. This time, the statement centers around an affirmative statement that ‘the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32.’ There is already an existing requirement to have such a statement on the bill. The issue here is that the proposed revision will require someone to sign, under the penalty of perjury, that the statement is true. No single person will have the knowledge and authority to make such a declaration. This requirement is simply impractical and unworkable.

SECTION 9982(a)(4) IMPERMISSABLY INFRINGES ON DISCOVERY RIGHTS

Section 9982(a)(4) is confusing at first read and for that reason, if nothing else, it should be eliminated. Moreover, one possible interpretation – namely that the applicant loses rights to discovery if a claim administer subpoenas the same records – renders the provision effectively unenforceable and unfair. Take, for example, the situation where an applicant attorney has already begun the process of requesting copies before he/she is served with a notice by the claim’s administrator. As written, it appears that the applicant’s request must be put on hold and the applicant must now wait and see if and when the claims administrator will receive the records and if and when they will turn them over.

ONE ADDITIONAL SET MUST BE ALLOWED TO BE BILLED AND PAID AT $30

Records are often requested later subsequent to the original production. By taking away the ability to be compensated at the $30 rate for one additional set in any format, it appears that the AD is giving with one hand while taking away with the other. The increase to $210 is essentially off set by eliminating the $30 payment, thereby rending any increase an increase in name only.

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**Ling Lie** October 7, 2020

The Cities Group, Joint Powers Authority

Comments and Questions on Copy Service Fee Schedule Text of Regulations Sept 20

§ 9984. Fees for Services for Dates of Service on and after January 1, 2021.
(c)(2) $5.00 for each additional set of records in electronic form.
Question 1 – Is injured worker also referred to as the injured worker’s representative?
Question 2 – If an injured worker is represented, are they allowed one additional set of records only?

We received numerous invoices for set of records to be served to Maximus Federal Services for IMR. We were advised by Maximus Representative that any medical records received after the Final Determination Letter was issued, those records will not be reviewed by Maximus and are of no use.
Comments – Please add the following in the Regulation –
“ANY RECORDS SERVED TO MAXIMUS UNTIMELY IS NOT PAYABLE”

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**Matthew Callan, Owner & Manager** October 7, 2020

Republic Document Management

We wish to send our gratitude to the administration for taking up this issue on behalf of Injured Workers, their representatives, and copy services. We stand united with the position offered by the Coalition of Professional Photocopiers. To clarify our stance on the proposed regulations, please see below:

1. We stand firmly against making the proposed regulations retroactive. This would have dire consequences for any unpaid copy service bills. Quite frankly, that would be unfair. **All proposed changes to 9983 should be removed, as well as the proposed change to 9982(a)(4).**
2. **We firmly believe 9984(b)(2) must include the $30 additional set.** Parties to the case, including other treaters and opposing attorneys, are going to need additional sets on a case-by-case basis. If this minor fee is eliminated; it may result in the file being re-subpoenaed as the regulations only allow for one set billable at $5.00. And once this additional set request is fulfilled, the copy service would have to turn-away additional requests for copies of records from that records source. Having to re-subpoena the records in this fashion, due to these proposed limitations, appears to be very inefficient and may result in more cost passed onto the employer.
3. **Regarding 9981(b)(4) and 9981(d),** we believe these proposed changes to require **additional declarations from both the applicants’ attorney and the copy service appears to be duplicative, unnecessary and would be a burdensome cost added in order to fulfill the Injured Workers’ rights to discovery.**

Lastly, we appreciate additional effort and time placed in making these regulations active as soon as possible.

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**Susan C. Bowman** October 7, 2020

All of the comment posted to date are speaking to the same need loudly and clearly.  The $210 fee should have become effective a long time ago, and cannot be delayed by a single day.  This is one item that there is complete universal agreement on.  I have great faith and respect for the sense of fairness in DWC, DIR, OAL and other involved departments.  CA government is on the forefront of forward-looking initiatives and action.  I can only think that the inordinate delay in adopting the fee increase is an oversight.  It can be easily corrected by immediate action and adoption.  Everyone seems to be not only supportive, but demanding that this happen.  We hope you are listening.

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**Peter Dixon** October 7, 2020

The copy service industry has diligently served the injured worker’s interest through the years and especially through these trying times of Covid. Many industries have been helped by the government on an emergency basis but this industry has been singularly excluded, or even punished, by fixing a price for their services in 2015 and not changing it for over five years while ignoring all ground realities of cost and other Covid hardships. It is dismaying that a price increase to $210 has been languishing for nearly two years and tossed from department to department without any action.

After reading the regulations and also some of the posted comments, it is clear that there is only one right course of action. **The fee increase to $210 should be peeled out and separately adopted with immediate effectiveness under a Governor’s Executive Order, like other good measures that the Governor has taken.** Any other matters, if they need any further deliberation, should be resolved speedily but can be issued separately. We cannot and should not wait on the price adjustment. We need action this week.

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**Swati Virginkar** October 6, 2020

Covid has affected a lot of industries badly. The applicant attorney industry has had a price fixed by regulation for five years. The intervening increases in cost of doing business have shot up further due to Covid impact on the healthcare industry. After studying the proposed regulation, I would like to urge you to adopt the $210 flat price. The industry is in a very fragile state and needs resuscitation very speedily. Waiting another 3 months may force a job loss and in turn hurt the injured worker.

I feel some other clauses are also detrimental. The change in the additional set pricing should not be done. Also, the paperwork to accompany each invoice will only add to the burden and cost without much benefit.

Help is needed now! Please help.

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**Soumya Sudhakar** October 6, 2020

These regulations have some necessary changes like the price increase to $210 and some very unnecessary changes. The reduction in the additional set price must be a typo. Otherwise the regulation net has no fee increase whatsoever. Please keep the $210 and let everything else remain the same including the additional paperwork. It has been five years since the flat price was set. DIR has an obligation to revise the price on a timely basis if they want to regulate the price. I am also deeply disturbed that the price increase will not be effective immediately after the public comment period, and the industry has to wait for 3 more months for what should have been done last year. This is grossly unfair and unacceptable.

*Please move forward with the price change to $210 immediately.*

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**Poorva Virginkar** October 6, 2020

These regulations appeared to be moving in the right direction. But you are taking away via the additional set price reduction what you are giving via the flat price increase to $210.

Moreover, after waiting for two long years, the effective date is pushed out again to next year, instead of releasing the fee schedule now. There is no logic, rhyme, or reason why the fee schedule cannot be released right away. How can any further delay be morally justified when the whole industry is hurting so badly?

Please, please, please make the fee schedule increase to $210 effective October 8 or even retroactively to an earlier date.

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**Kanchan Rajadhyaksha** October 6, 2020

I am a legal immigrant to the US and have always been amazed at the speed at which things happen in the US. I love California. I have worked in applicant the copy services industry for many years and now am worried about my job. I was told two years ago that the government will increase the fees and that would help the company. The company is now in a precarious position without an immediate fee increase. The workers have had to work because everyone was told that this is an essential business and supports the rights of the injured worker. Now it appears that you are even taking away the additional set price.

I am sincerely urging you to take immediate action and make the $210 fee effective Oct. 1 with no other changes.

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**Mike Spongberg** October 6, 2020

Let us not let the federal government stalemates affect California. I am proud of living in CA and the timely responsible actions that our government takes. This industry serves the injured worker and is badly affected by the effects of the pandemic. Help is needed immediately. Every day counts. MAKE THE REGS EFFECTIVE THIS WEEK!

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**Kimberly Martinez** October 6, 2020

This regulation has been repeatedly delayed because of other priorities.  We applaud the expedited posting despite the unfair changes to the additional set price and burdensome paperwork.  We urge you to focus on the $210.00 fee increase without other burdensome changed and release the regs right after the posting period is over - no later than October 10, 2020.  Please act with haste.

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**Ary Perdomo** October 6, 2020

Thank you for finally bringing the price increase from $180 to $210 to a point where it can be put into effect.  But, after the extended delays it must be put into effect immediately.  The cost to provide the services to the injured workers has grown substantially due to COVID requirements to protect the well being of our staff and those they come in contact with on a daily basis and the relief is needed now.

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**Emily Jaquish** October 6, 2020

I always thought that CA is a fair state and the regulations protect the workers. This fee schedule is an example although would recommend maintaining the additional set charge and not many other changes. But let us move without any delay and make this effective this week, copy services have been waiting too long for any further delay.

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**Faye Rouhi** October 6, 2020

The additional set price should be retained at $30. Otherwise the fee schedule change to $210 is negated. Also, no more waiting. The copy service industry is hurting. Please adopt immediately using an expedited process with an Executive Order from the Governor.

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**Patty Waldeck, President** October 6, 2020

Macro-Pro

As I understand §*9981(b)(4)*, the DIR wants to require that every request by every adjustor or attorney, defense or applicant, sign a good faith declaration under penalty of perjury stating that they need the records they are requesting?

What is the purpose of this declaration or the reasoning behind it? Why would the defense order records they don’t need?  Is there some belief that applicant attorneys order records they don’t need? Is there some proof that they order what they don’t need? How does that make any sense to anyone?

§*9981(b)(4)* The date the records were requested, the name of the individual requesting the records, and a statement from the requesting party, signed under penalty of perjury, that the request for records was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim.

This is an unnecessary burden on the timely gathering of the evidence all parties require for their case. I would appreciate a general communication explaining the logic behind §*9981(b)(4) but I would really like to see it deleted.*

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**Margaret Guevara** October 6, 2020

The price increase is outstanding, the timing is terrible.  Please do the right thing and make the regulations effective October 15th.

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**Lisa Gordon** October 6, 2020

If we care about the workers of CA, both injured and those providing services to assist them, then the price increase must be effective immediately.  This should not be driven by insurance companies who are most interested in their bottom line than the injured workers and residents of CA. Do not punish companies and their employees who are working on behalf of the injured workers, maintain the $30 additional set and make effective October 16th.

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**Hiten Patel** October 6, 2020

I am happy to see the posting regarding the copy service fee schedule on the DIR forum. I have studied the regs. It seems to me that the flat fee change to $210 is long overdue after over five years of no change. I have been concerned about the health of the copy service industry, and its impact on the injured worker, in recent years and even more so after the Covid hit. I believe the industry needs urgent help to survive. I was surprised by the reduction in the price for the additional set. I think that clause and some others regarding additional paperwork should be left as is from the 2015 regulation and the **$210 increase should be implemented today.**The industry cannot absorb any more delays.

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**Jaspal Singh** October 6, 2020

These changes are long overdue. Some of the retroactivity language is bothersome, the additional paperwork onerous and the additional set price decrease uncalled for. Let us move NOW with the $210 change and keep things the same that do not need to be changed.

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**Vijaya Sonalkar** October 6, 2020

I am pleased to see the regulation posted for public comment. I have close friends working in the industry. They are showing the same dedication as shown by other front line workers in this Covid situation. They have told me that they are risking their lives because theirs is an essential business where the injured workers are depending on them. Many of them would have made more money with the generous state/federal unemployment benefits.

Now they are worried about their livelihood as the industry has started furloughing workers. The flat fee price increase Of $210 needs to go into effect immediately to save jobs and save the injured worker. Please implement the change without further wait.

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**Mita Shah** October 6, 2020

Very happy to see the fee schedule moving finally. Request keeping it up and take it to conclusion with changes effective no later than October 15.

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**Sergey Krasnov** October 6, 2020

The copy service industry has waited patiently and served the injured worker despite the ballooning costs. Let us keep most of the 2015 fee schedule regs, including the additional set price, change the flat fee to $210, and move right away in an expedited process just like what is being done in the expedited posting.

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**Divaker Kamath** October 6, 2020

I have been a consultant to the applicant copy service industry for a long time and have tracked the copy service fee schedule regulation closely since 2015. I have seen this industry go from a profitable industry to a struggling industry today without any price relief since 2015 during which time the costs have mounted. The industry has asked its workers to keep working despite the Covid pandemic as an essential business helping the injured worker. An update to the regs was posted for public comment in August 2019. I cannot imagine why it has taken over a year since then to release the fee increase. Foot-dragging by every day in releasing the $210 flat fee is adding insult to injury.

Please display your sense of responsibility and fair play by making the fee schedule effective this week. Pardon my strong feelings but enough is enough!

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**Arvind Korde** October 6, 2020

Costs are up, risks are higher, price has not changed since 2015. The time for $210 is now. We need an expedited release process from DIR and OAL consistent with the other expedited regulations involving Covid related injured workers. Also, we request no retroactivity and changes to other 2015 provisions. The delay in releasing the price schedule is hurting the industry, and as a result, the injured worker every day. The CA government is speedily moving on so many fronts in terms of needed regulations. Why has this regulation been singled out for such slow treatment?

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**Shannon Strickland** October 6, 2020

Hooray for the $210 price increase although 18 to 24 months past due. Boo to the elimination of the $30 second set, this hinders the injured workers right to get their records to a medical provider for an additional opinion or in support of an appeal. Make the increase effective October 15th.

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**Ajay Joshi** October 5, 2020

The regs have been vetted. Everyone is supportive. Why are we waiting any longer by even a day? October 8 the effective date! And please no change to the additional set pricing.

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**Rich Ragan** October 5, 2020

The copy service industry is speaking with one voice now. We are pained that it has taken so long to implement a fee increase to $210. The industry is doing its part to follow processes scrupulously and serving the injured worker at great cost and hardship to its own workforce. The industry needs immediate help. Adopt the fee increase now without the additional set price takeaway and do not burden it with unnecessary paperwork.

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**Lina Doher** October 5, 2020

The copy service industry is an essential industry. Its workers are putting themselves at risk for the injured worker. The industry needs help to be able to keep serving. Please remove the retroactivity language, restore the additional set $30 charge and make the schedule effective immediately following the comment period using a Governor's EO. This is a must expedite.

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**Heather Landi** October 5, 2020

Applaud bringing the copy service fee schedule to this point with two exceptions:

1. don’t wipe out the increase by taking away the second set dollars which is needed for the injured workers continued treatment evaluation; and
2. make effective as soon as possible, October 16th.

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**Tony Bazurto** October 5, 2020

The governor has sought to expedite regulations to assist individuals who have lost work due to COVID and supported the stimulus payments, so why delay the implementation of the price increase to January 2021.  The services provided by the copy services are essential to the injured worker and the services need assistance now considering they have not had an increase in 5 years but minimum wage has gone from $10 to $13 and going to $14 in January. DON’T DELAY make effective October 8th.

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**Michelle Barnette** October 5, 2020

DIR and OAL need to complete this process with immediate effect. The industry has waited long enough. The $210 was the right number for 18 months ago. On top of that, the additional set price is being dropped. Not fair. Let us keep the $30 and implement immediately.

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**Merlyn Balingit** October 5, 2020

The governor has passed so many emergency measures to help the injured worker. We have waited 2 years for this fee schedule adjustment. It should not be delayed for a single day longer. Please adopt NOW.

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**Salvador H. Zamora** October 5, 2020

Copy service industry is suffering. Applicant attorneys are closing shop and costs have gone up 50 percent in records retrieval due to issues with custodians of records. The Governor passed SB1159 and AB865 on an expedited basis to help the injured worker. The same logic applies here. This industry serves the injured worker. It deserves the increase to be effective immediately, not wait till next year. Also, retroactivity clauses should be eliminated, and the language reverted to 2015 version. Additional set $30 is a must.

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**Kellyann Small** October 5, 2020

If the government wants to set the price, it is only fair that they revise the price in a timely fashion to reflect cost increase. This regulation should have already adopted the $210 two years ago with no change since 2015. Why is it being delayed further? There is no logic for that. Please adopt it immediately.

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**Humildad Pasimio** October 5, 2020

We thank you for undertaking this on an expedited basis. Let us complete the job using an expedited process to go live forthwith, or even retroactively apply the price increase to the unbilled invoices. Please do not take away the charge for the additional sets. Alternative is to increase the flat fee further. But the simpler solution is to just retain the $30. Also, do not understand why some clauses are being made retroactive and further declaration paperwork added for each invoice. This only increases costs.

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**Shaneka M. Johnson** October 5, 2020

Thank you for finally expediting the fee schedule comment period. After the long wait, the fee increase must be made effective October 8. We see no logic to wait.

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**Patty Waldeck, President/CEO** October 1, 2020

Macro-Pro, Inc.

Workers’ Compensation Defense law firms must subpoena records from the Employment Development Department (EDD) to obtain the claimant’s EDD disability or unemployment records. There is no other process that is available to obtain them.

Macro-Pro currently has over 150 open subpoena requests from Workers’ Compensation defense firms that have been served to the EDD which are waiting for records to be made available.

The EDD requires that the subpoena must be personally served with a $15.00 Witness Fee at the EDD Sacramento office. The time and expense to prepare and serve the subpoena is equal to or greater than the cost of serving any subpoena, as is the cost of obtaining and preparing the records.

Why does the DIR believe that any legal request to the EDD can be accomplished at no cost? There must be a misunderstanding of the EDD-required process. We invite the DIR to speak to the defense law firms and the EDD for confirmation of our comments.

* **Subpoena and Search Warrant Request** – Requests can be made to the EDD Legal Office at 916-654-8410 or 722 Capitol Mall, MIC 53, Sacramento, CA 95814.

The Employment Development Department should be deleted from Regulation, §9982 (c) 3, to reflect the reality of the EDD record retrieval process. The fee to serve and obtain records from the EDD should be identical to any subpoena service (WC 020). Surely the DIR is not asking that the service be free?

**§9982 (c) 3**

(c) ~~(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 were requested on or after January 1, 2021 ~~that can be obtained without a subpoena at lower cost~~.

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**Edna Toufer** October 1, 2020

DocCentral, Inc.

Please reconsider the proposed copy service changes. We have been looking forward to this increase for 6 years and now to find out that there really is no increase is devastating. The proposed changes not only took away services we offer but also took the $30 charge for second set to be added to original $180.  No other increase on any other services after 6 years. Please advise what happened to those rates? We are worse than before. Since the last increase, we have had to downsize the company drastically.  We have had to cut off employee benefits for health coverage because we cannot afford to offer them to our employees any longer. We have had to keep them barely above minimum wage. We are a small company. These rates are continuously putting smaller companies out of business. Small companies are what we are all founded on.  Minimum wage has gone from $9 to $15 an hour.   How can we afford to keep our doors open with these proposed changes? The board charges $1 a pages but yet we only get $0.10 a page after 500 pages. We have to then pay the $.10 a page to the facilities so we are working for free. We are also required to police the facilities just to get these rates you provided to stay afloat.

We are in this business because we care about the injured workers but at the rates we cannot continue to stay in business and help them. Please do right for the smaller companies and take care of us.

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**Bernard J. Finnegan, Esq.** September 30, 2020

D’Andre Law LLP

As a defense attorney, securing EDD records can be very important.  However, the revised regulations did not increase the allowable charges to secure those records.  At $20, there is concern that we will not be able to find a copy service willing to gather those records.  Given the work to secure EDD, records are the same as any other set of records it is reasonable the allowable charge should be billed at WC 020 and not WC024.  WC 024 should be removed from the fee schedule.

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**Jeff Oakley** September 30, 2020

VP of Operations

AAA Copy, LLC

1. **Proposed requirement to include requesting party statement with all copy service bills**

Per DIR Newsline Release Number 2020-82: "To prevent fraud, each request for records requires a statement from the requesting party that the request was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim."

Per proposed regulation § 9981(b)(4), bills for copy services would require "The date the records were requested, the name of the individual requesting the records, and a statement from the requesting party, signed under penalty of perjury, that the request for records was issued in good faith, is not duplicative, and that the records are necessary to the litigation of the claim."

If there is non-anecdotal data establishing significant fraud by copy services in the areas mentioned above, the Division should publish it to support this proposed requirement. To require such a statement to accompany every copy service bill would be enormously burdensome on and problematic for copy service providers. Consider that the source of records indicated on the requesting party's initial referral may not match the ultimate source of records listed on the final bill. As examples: requester names a specific doctor, but records are held by a medical corporation (or vice versa); or, requester names a claims administrator which has transferred a claim to or has been wholly acquired by a different claims administrator. Situations in which copy services must make one or more revisions to the original request are frequent, and copy services are trusted by requesters to handle these revisions based on the copy service's experience and expertise. Any good-faith statement provided by the requester at the outset would be rendered moot each time the copy service needs to make a revision in order to get to the correct source of records. Forcing copy services to obtain a new signed statement authorizing each revision will slow or halt the discovery process and the ability of copy services to be reimbursed for their work.

The obvious "workaround" would be for copy services to ask their requesters for a boilerplate template letter into which final details can be filled by the copy service for each bill. In effect, this would become merely an extra step for the copy service provider with little to no involvement from the requesting party, defeating the purpose of the new requirement and reopening the door to the alleged "fraud."

Additionally, the purpose of this proposed requirement is already met when the copy service provider serves a copy of each subpoena on all case parties. (Perhaps create a clear requirement to serve copies of authorization requests on both the applicant and the defendant to eliminate the potential authorization service loophole.) As is the current practice, a properly-notified party can choose to object to the request before records are even obtained or a bill issued. If copies of the request for records were not served on the defense, the claims administrator can object to the bill. There is no need to add a superfluous, upfront burden to the copy service provider.

Bill reviewers are already welcome to demand the information required in the proposed statement as they see fit. Based on my experience with bill review departments -- even as a "defense" copy service -- the current trend is that claims administrators utilize outsourced, overseas bill review vendors who inappropriately object to a significant percentage of copy bills based on misunderstanding or misapplication of regulations. Worse, they often fail to review or understand the documentation and explanations included with requests for second bill review. At present, I would not trust the bill review community at large to consistently acknowledge or understand an additional piece of documentation included with each bill; I would expect this new requirement to create additional opportunities for inappropriate bill objections and payment delays.

1. **References to "release of information" eliminated; flat fee to include costs for "records held offsite"**

In past public comments on copy service fee schedule proposals, copy service providers have consistently raised the issue of abusive billing practices by third party "release of information" companies. With this latest proposal, whether directly intentional or not, the Division's response to this issue is to simply disregard it by removing all references to "release of information." The matter is exacerbated by replacing the overly broad "fees for release of information services" with the dangerously specific and problematic "costs charged by a third party for the retrieval and return of records held offsite by the third party." This proposed language gives direct license to both first- and third-party custodians to charge arbitrary "retrieval" or "storage" fees, on which there are no limits under the relevent Evidence Code sections.

I can tell you from firsthand experience that it is very common for medical clinics, claims administrators, and third party release of information companies to refuse to retrieve records from "storage" until an arbitrary fee is paid. It has become apparent to me that in most of these situations, there is no traditional storage facility involved; records are electronically stored, and terminologies like "held offsite by a third party" and "storage" are interpreted to mean "stored on a server somewhere." The cloud, in effect, becomes offsite storage, and a fee for the retrieval of records from this storage is invented. Therefore, by proposing the seemingly more specific "records held offsite" language, the Division is giving custodians the green light to exploit a virtually unregulated fee at the expense of copy service providers. Copy services are being asked to prove good faith in billing capped fees, but little is done to require the same of records custodians who are able to bill whatever they want in storage fees.

Why specifically stick copy services with the obligation to pay this fee? Burdening copy services with the task of filing a petition each time this issue comes up is not a good solution. The reality is that if copy services want to get paid in any semblance of a timely manner, they are essentially forced to decide whether or not they can eat the extra fees. If a copy service chooses to fight or not pay the fees, they risk obtaining no records, issuing no bill, and losing their requester's future business. As these "offsite retrieval" fees become more common and more expensive, the proposed flat fee increase is essentially negated.

Further confusing matters is the proposed § 9982(b)(3): "[There will be no payment for copy and related services that are:] Provided by a medical provider, or by an agent of the provider, when the requesting party has employed a professional photocopier to obtain or inspect the records." As worded, this would not prevent medical providers or their agents from billing copy services for release of records; it would only prevent medical providers or their agents from billing claims administrators. The intent of this language seems unclear.
2. **WC 023 ($.10/pg over 500 pgs) applicable to "paper copies" only**

"Paper copies" needs further definition. Does this mean scanning of paper records in excess of 500 pages, printing of paper records in excess of 500 pages, or an interchangeable term applicable to both?

The larger issue with this proposed change is that it discounts the time and labor involved in processing large files in excess of 500 pages. Even when records are provided electronically by the custodian and provided electronically by the copy service to the requesting party -- with no paper involved -- processes such as page-by-page quality control and optical character recognition are incredibly demanding of time and resources. Large electronic files also commonly come with complex technical and formatting issues which must be addressed by a worker with IT skills. These types of processes can in fact take much longer than scanning and printing. In fact, scanning a large quantity of paper records can be less labor-intensive than processing the same quantity of electronic records; sophisticated scanners perform optical character recognition during the scanning process, and the copy service has full control over the digital format of the scanned file.

In terms of cost, it would be inappropriate to treat a complicated 1,000 page electronic file the same as a one page file. The proposed "paper copies" limitation should be removed and WC 023 should apply copies in excess of 500 pages regardless of format or medium.
3. **Closing remarks**

The proposed increase to the flat fee is very much needed and appreciated. However, many of the proposed changes to the regulations seem to shift blame and responsibility to copy services that potentially outweigh the extra $30. The major issues within the copy service community were largely resolved with the advent of the fee schedule in 2015. Five years later, copy service providers are still being treated as the problem while their concerns go unheeded.