

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Jason Chapaner, General Manager  
CD Photocopy Service Inc.

August 16, 2019

Thank you for taking the time to revise and update these regulations. I have read through the proposed changes as well as most of the comments already provided and I feel the proposed changes need to address clarity on issues left to interpretation from the original regulations as well as consistency between those and these new proposed changes.

**Definition of “Set of records” in 9980(e)** – This definition is still too vague and leaves room for confusion. It really needs to be broken into two separate definitions. My proposal is below:

“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.

“Additional set of records” means a copy of the initial set of records retained by the Professional Photocopier and provided in paper, electronic, film, digital, or other format.

**Annual SAWW Increase in 9983(a)(2)** – I agree with this increase as I believe it is only logical to stay consistent with similar fee schedules in the WC industry. However, considering the amount of work put into obtaining a CNR and a Cancellation after service, it seems it should remain consistent and be applied to these two areas as well.

**Shipping** – It appears this has not been addressed in the new proposals, however I would like to address this issue in the hopes it could be added. I really find this most unbelievable to be included in the other items listed that make up the flat rate fee. Many times records are requested to be sent to an Attorney or Doctor with very little notice. If a copy service tries to accommodate the client and overnight a record, it could be anywhere from \$50 to \$100 depending on the size and location. I am not asking for shipping to be applied to a digital copies or even some predetermined rate that someone could make a profit on. Simply a pass-through of the costs should a paper set be sent. One way to easily keep track could be to provide a copy of the shipping invoice from the agency used, like UPS, with the photocopy invoice at the time of submission.

**Paper sets** – Paper sets were never addressed in the initial regulations and I believe is a great cause of confusion. Further, under this new proposal, I believe it only makes it worse because now under section 9983(f)(1) it simply says; “For paper copies, ~~For~~ ten cents (\$.10) per page for copies above 500 pages.” I believe it was the intent of the original regulations that this was added to assist with cost, labor and time for larger than average records that goes beyond what is included in the flat rate. Further, by leaving this wording as is, it becomes too vague and can easily be interpreted to include additional paper sets requested, thereby making it completely free. For example, if a client wanted an additional paper set to go to a QME and the record was 450 pages, some could argue and refuse to pay anything because it is paper, and under 500 pages. Under the fee schedule currently, that same record sent digitally, would be charged at \$5 if within the 30 days or \$30 after the 30 days. My suggestion is to leave this section in the original format it was written; “Ten cents (\$.10) per page for copies above 500 pages.”

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Then I feel clarity needs to finally be made by adding paper sets to the additional set of records in section 9983(f)(2), so that it reads as follows:

“\$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. 0.10 cents per page for each additional set of records in paper form ordered within 30 days of the subpoena, or 0.25 cents per page if ordered after 30 days and the copy is retained by the registered photocopier.

If the injured worker requests an additional set of records the subpoena, the claims administrator is liable for one additional set of records in electronic form for no more than \$5.00 for the additional set of records if ordered within 30 days 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.”

**Billing Codes** – I am in full agreement with most of the other comments made so far in regards to changes to the billing codes. Considering the comments I made above, my suggestion of the codes should be as such:

WC 020: Flat Fee - \$210 (if approved, amount to change in relation to described annual SAWW increase)

WC 021: Cancelled Service - \$75.00 (if approved, amount to change in relation to described annual SAWW increase)

WC 022: Certificate of No Records - \$75.00 (if approved, amount to change in relation to described annual SAWW increase)

WC 023: Per Page Fee of .10 per page for counts over 500 pages (initial set of records)

WC 024: Records of the Employment Development Department (EDD) - \$20.00

WC 025: Records of the Workers' Compensation Insurance Rating Bureau (WCIRB) - \$45.00

WC 026: Additional Electronic Set within 30 days - \$5.00

WC 027: Additional Electronic Set after 30 days - \$30.00

WC 028: Duplication of X-Ray or Scan - \$10.26

WC 029: Electronic storage media containing X-rays and Scans - \$3.00

WC 030: Additional Paper Set within 30 days - \$0.10 per page

WC 031: Additional Paper Set after 30 days - \$0.25 per page

WC 032: Contracted Fees - (Indicate amount)

WC 033: Requested Services - (Indicate amount)

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

With regard to Sales Tax, should another code be warranted, I would suggest WC 034. However I feel adding another code is unnecessary. At the time of the initial copy fee schedule, the WCIRB acknowledged that the code should remain consistent with that of other WC fee schedules and therefore suggested code S9999. We have been utilizing this code for a few years now and the majority of time it seemed to work. If this was reinforced by being added to the list above, I feel there would be no issue with regard to sales tax. In addition, should you want to include the extra codes listed above as WC 032 and WC 033, but not want to add to the amount of codes for simplicity, another possibility would be to utilize code 99199; which is currently being used under medical billing and is identified as: unspecified services.

---

Anonymous

August 16, 2019

I applaud your proposed increase in flat fees. No one takes into consideration the amount of postage that we pay to mail out volumes of records that we are not allowed to bill for. Most attorneys want hard copies instead of cds.

Examiners abuse the extra sets of records requests and use us as an assistant and ask us to mail additional sets at \$5.00 a set to four or five of their doctors for last minutes appointments.

We never get any consideration for rush jobs and most jobs are last minute rush jobs that are with an impossible deadline to meet.

Also, no one has taken into consideration that we have a staff that has annual raises in salary, annual increases in medical and dental benefits and cost of doing business increases every year. Everyone but us gets an increase to do business. We have not an increase in four years.

This has seemed more like a punishment for honest companies that are just trying to make a living.

---

Tony Bazarro  
Compex Legal Services

August 16, 2019

As a member of the Coalition of Professional Photocopiers “**CPP**” and a defense discovery subject matter expert who is responsible and accountable for non-biased representation of evidence I support the position of the **CPP**.

I thank the Administration for recognizing the need to update this schedule and recognize the need for an increase in the basic fee from \$180 to \$210.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

I agree with the **CPP** recommendation to leave the existing billing codes intact, specifically WC 026 and WC 027 as they are correctly supported by 9983(f)(2). The addition of billing codes for "Sales Tax", "Contracted Fees", "Requested Services", and "Additional Sets" makes sense.

I further agree with **CPP** recommendation of the following edits for 9981(c) & (d). The additional billing document requirements are unreasonable, burdensome, and not consistent with current digital ordering practices. We recognize the intent of these changes, but believe the proposed additional data requirements for invoices, in concert with accountability, will accomplish the intent. We strongly recommend:

- 9981(c) Bills for canceled services must include, in addition to the information required in subdivision (a)(1) and (2) of this section, ~~a copy of the request of records that contains~~ the date of the request and the identity of the requestor, ~~and the cancellation order, that contains~~ the date of the cancellation and the identity of the individual or entity that cancelled the request.
- 9981(d) Bills for certificates of no records must include, in addition to the information required in subdivision (a)(1) and (2) of this section, ~~a copy of the request of records that contains~~ the date of the request and the identity of the requestor, ~~and a copy of the certificate of no records, that must include~~ the date of the certificate.

Finally I agree with the **CPP** recommendation striking "paper" from 9983(f)(1). By specifying "paper" the provision excludes digital page counts over 500 pages. This provision fails to understand the operational cost of large volume records processing prior to publishing (printing); scanning, converting, storage, quality assurance, bates stamping, etc.

---

Stacy L. Jones, Senior Research Associate  
California Workers' Compensation Institute

August 16, 2019

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

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

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

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

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

### **Recommendation:**

#### **§ 9980 Definitions**

(e) “Set of records” means records or documents that have been recorded in paper, electronic, film, digital, or other format from one custodian of records under one subpoena or authorization. **“Set of records” does not include separate types of records requested from a single source, regardless of the number of subpoenas issued.**

### **Discussion:**

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

### **Recommendation:**

#### **§ 9981 Bills for Copy Services**

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

**(b) Bills for copy services must specify services provided and include the provider tax identification number and professional photocopier registration number; county of registration; date of billing; case information including employee name, claim number, case number (if applicable); source information including type of records, date of service, description of services, and the number of pages produced.**

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

(1) Bills for records may include billing codes: WC 020 is for Flat Fee of \$180; WC 021 is for Cancelled Service of \$75; WC 022 is for Certificate of No Record of \$75; WC 023 is for Per Page Fee of \$0.10 per page; WC 024 is for records from the Employment Development Department (EDD) of \$20; WC 025 is for records from the Workers' Compensation Insurance Rating Bureau of \$30; WC 026 is for an Additional Electronic Set of \$5; WC 027 is for an Additional Electronic Set of \$30; WC 028 is for Duplication of X-Ray or scan of \$10.26; WC 029 is for CD of X-rays and scans of \$3.

(2) Each bill for services must include a statement that there was no violation of Labor Code section 139.32 with respect to the services described.

### Discussion:

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

### Recommendation:

#### § 9981.1 Bills for Copy Services

- (a) This article applies to services provided on and after ~~July 1, 2015~~ (EFFECTIVE DATE OF ADOPTED CHANGES) regardless of date of injury.
- (b) Bills for copy and related services must specify the services provided and include:
- (1) The individual's or entity's provider tax identification number, professional photocopier registration number, county of registration, and date of billing;
  - (2) The injured worker's name, claim number, Workers' Compensation Appeals Board case number (if applicable); and
  - (3) The source of the information, the type of records produced, the date range of the copied records, the date of copy service, a description of the billed services, and the number of pages produced.
- (c) Bills for canceled services must include, in addition to the information required in subdivision (ab)(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and the cancellation order that contains the date of the cancellation and the identity of the individual or entity that cancelled the request.
- (d) Bills for certificates of no records must include, in addition to the information required in subdivision (ab)(1) and (2) of this section, a copy of the request of records that contains the

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

date of the request and the identity of the requestor, and a copy of the certificate of no records that must include the date of the certificate.

(e) Bills submitted under this section must utilize the following codes and applicable fees:

(1) WC 020: Flat Fee. (Indicate amount allowed under section 9983(a).)

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

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

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

(5) WC 024: Records of the Employment Development Department (EDD) - \$20.00.

(6) WC 025: Records of the Workers' Compensation Insurance Rating Bureau (WCIRB) - \$45.00.

(7) WC 026: ~~Sales Tax. (Indicate amount.)~~ Additional Electronic Set - \$5.00 (under § 9983(f)(2))

(8) WC 027: Additional Electronic Set - \$30.00 (under § 9983(f)(2))

~~(89)~~ WC ~~027~~ ~~028~~: Duplication of X-Ray or Scan - \$10.26.

~~(910)~~ WC ~~028~~ ~~029~~: Electronic storage media containing X-rays and Scans - \$3.00.

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

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

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

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

### Discussion:

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

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

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

*The proposed amendments to the required billing codes create a problem with services that are provided before or after the effective date of revised regulations. In some instances (e.g.,*

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

*proposed WC026, WC027, WC028 and WC029) the code description and fee amount would differ depending on when the service was billed, creating confusion. The Institute recommends adding new codes for newly-identified services and retaining current codes WC026 and WC027 for services described under § 9983(f)(2), referencing the explanation of the defined fees.*

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

### **Recommendation:**

#### **§ 9982 Allowable Services**

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

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

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

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

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

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

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

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

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



## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

### Discussion:

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

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

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

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

### Recommendation:

#### § 9983 Fees for Copy and Related Services

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

(a) ~~For dates of service prior to (EFFECTIVE DATE OF REGULATION), Aa \$180~~ A flat fee, for a set of records, from a single custodian of records, which includes, but is not limited to, mileage, postage, pickup and delivery, phone calls, repeat visits to the record source and records locators, page numbering, witness fees for delivery of records, check fees, costs charged by a third party for the retrieval and return of records held offsite by the third party, service of the subpoena, shipping and handling, and subpoena preparation.

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

~~(1)~~ For dates of service after (EFFECTIVE DATE OF REGULATION), the flat fee will be increased to \$210.

~~(2)~~ For dates of service starting the next calendar year following (EFFECTIVE DATE OF REGULATION), the flat fee will be increased annually by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year. For the purpose of this

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

section, “state average weekly wage” has the same meaning as that set forth in Labor Code section 4453(a)(10).

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

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

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

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

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

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

### Discussion:

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

*The Institute recommends deletion of proposed subdivision (a)(2) since the flat fee is not limited to employee wages. The flat fee associated with WC020 includes services that are not based on time or effort of a copy service employee and therefore an automatic cost of living increase would not be warranted. If the intent is to factor in an automated increase based on wages, the portion of the flat fee associated with employee wages should be identified and used in a formula. This would be similar to the work relative value component of the payment formula in the Official Medical Fee Schedule for Physicians and Non-Physicians. An automatic increase for expenses such as postage, witness fees, check fees, and automated functions should not be tied to changes in average weekly wages.*

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

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

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

---

Mike Callan, Owner  
Republic Document Management

August 16, 2019

As the owner of a Professional Photocopy Service, located in the Bay Area, I am extremely thankful that the administration has taken the steps necessary to address the Copy Service Fee Schedule Regulations and some of its shortfalls. Although I feel the updates don't go far enough, I recognize the need to compromise and maintain the health of the system. Without getting into too much detail, I believe the adjustors who have commented thus far, are speaking from a biased perspective where all copy services are trying to game the system. In reality, our goal is to make a living and provide good working environments with living wages for as many people as possible and to that end, I believe the proposed regulations will help.

On to the proposed regulations themselves:

I'd like to suggest that the DWC leave the previous billing codes intact as they were (since 2015) – WC 026 thru WC 029 and ADD additional codes for Sales Tax, Contracted Fees, Requested Services and Additional Sets. This will minimize confusion, delays and disputes by both copy services and payors/bill review companies.

I would also like to suggest that the DWC strike the requirement for copies of documentation, suggested in 9981(c) and 9981(d), and replace it with additional information (data) required on each invoice. If the payor needs to know the name of the requestor and date of the request or cancelation, this information (data) can be added to each invoice without retooling our processes. Requiring copies of documentation would not only be burdensome and costly, but it would also create confusion and dispute, which is what we are all trying to avoid.

Thank you, to the DIR/DWC staff, for your time and for addressing the Copy Service Fee Schedule Regulations. It is sincerely appreciated!

---

Jason Schmelzer  
California Coalition on Workers' Compensation

August 16, 2019

California Coalition on Workers' Compensation (CCWC) is pleased to provide the following

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

comments to the proposed amendments to the Copy Service Fee Schedule.

The California Coalition on Workers' Compensation (CCWC) is an association of California's public and private sector employers that advocates for a balanced workers' compensation system that provides injured workers with fair benefits, while keeping costs low for employers. Our members include not only businesses of every size, but also cities, counties, schools and other public entities.

### **State of the California Workers' Compensation system**

As noted in the Workers' Compensation Insurance Rating Bureau's 2019 State of the System Report, "Total loss adjustment expenses increased by \$0.6 billion since 2013 and comprise almost one quarter of all costs in 2018." Loss adjustment expenses are the highest in the nation and more than double the national median. The proposed changes, in particular the automatic annual upward adjustment (COLA) proposed in the draft schedule, will only add to this dubious distinction of California's workers' compensation system and do nothing to improve the delivery of benefits to injured workers.

### **Comments:**

Over the last year, CCWC members have seen the copy services that do most of their work on behalf of applicants have started a practice of responding to EOR's generated by payers by submitting an objection to the EOR and declaring that there is a non-IBR dispute. The provisions of Labor Code 4622(c) and Regulation 10451.1 create the pathway for the copy services to file petitions for costs and sanctions. Commonly this involves the following fact pattern:

1. Within days of the initial filing of the application the copy service issues subpoenas for the records of the employer and the insurer.
2. The claims administrator promptly responds to the subpoena by objecting as having been premature.
3. The Copy Service stops its subpoena efforts but then submits a billing for a cancellation fee of \$75.
4. The claims administrator appropriately objects to the billing and issues in EOR for zero payment.
5. The copy service requests second review.
6. The claims administrator disputes all payment in the second area response.
7. The copy service objects to the EOR's declaring a non-IBR dispute.
8. The claims administrator fails to file the petition and declaration of readiness to proceed required by the statute.
9. The copy service then files its own petition for non-IBR determination and its own DOR.
10. The controversy that is then heard at the WCAB now revolves around attorney fees that sometimes could exceed \$2000 over a dispute regarding a \$75 charge which was improperly incurred in the first place.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

CCWC asserts that, while the Copy Services might have the right to peruse this claim for costs and sanctions, this practice results in absurd litigation. Just because one has the right to pursue a cause of action like this should not necessarily result in exploiting a loophole in the laws that is occurring system wide.

We would like to suggest, in addition to our technical comments, that the copy services exhibit some restraint and thoughtfulness in how and when this remedy be sought and when this is demonstrated that a fee increase be considered.

It is important to note that problem described above is further expounded by the copy services issuing multiple subpoenas for records of the same location seeking payroll, employee handbook and disability/medical records each separately when a single subpoena for the personnel file to include all other specific items would suffice. This practice is trebling the cost to the employers for these records where a single subpoena would serve the same purpose.

CCWC requests that the DWC take action to rein in this costly practice as part of this package of proposed amendment to the Copy Service Fee Schedule.

Given the abuses we are currently facing in the billing, as described above, we are reticent to recommend any increase in the fees to copy services. In furtherance of our position on this issue, we point to the copy services utilized by the defense bar which are able to secure records in nearly every instance below the current fee schedule.

While we are making recommendations to the various sections of the regulation, CCWC strongly recommends that the copy service fees schedule remain unchanged.

### **Additional Recommendations**

#### **§ 9980: Definitions**

CCWC recommends that the proposed amendments add all forms of electronic authorizations in § 9980 (a), as an acceptable, efficient and timely way to provide an authorization.

#### **§ 9982 Allowable Services**

CCWC recommends that the allowable and non-allowable services be split into two separate regulations so that they are easily identifiable. E.g., § 9982 – Allowable Services and § 9982.1 Non-Allowable copy services.

It is also strongly recommended that the § 9982.1 include a section that would further eliminate the need for litigation, as was intended by SB 863. CCWC therefore proposes the following:

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

(e) Any billing in violation of this section, shall null and void and no payment is required. Further any billing for services in violation of this section and is subject to review under the IBR requirements of second bill review and IBR.

### § 9983 Fees for Copy and Related Services

#### § 9983

CCWC, due to the ongoing abuses in this area, strongly recommends that the copy service fees schedule remain unchanged.

#### § 9982 (a) (2)

CCWC objects to the proposed automatic annual upward adjustment (COLA) proposed in the draft schedule in 9982 (a) (2). This is an unprecedented requirement for any fee schedule. COLAs are reserved for benefits, never fees. We believe that this provision will only add to this dubious distinction of California's workers' compensation system and do nothing to improve the delivery of benefits to injured workers. This provision should be deleted from the proposed amendments.

We also recommend that a copy of these comments be sent to the WCAB, for consideration with their own regulatory update

---

Sharon L. Hulbert, Assistant General Counsel  
Vice President, Med-Legal  
The Zenith

August 16, 2019

Thank you for the opportunity to comment on the forum version of the Copy Fee Schedule regulations. Zenith noted several positive changes in the forum proposal. Therefore we support the changes overall, but believe there are areas that can be further improved or clarified. These include:

1. Verification of how rate increase from \$180 to \$210 was determined and how future increases will be determined;
2. Processes to address abusive subpoena practices
  - a. subpoenas issued with no cause;
  - b. subpoenas issued to inappropriate people or entities; and
  - c. subpoenas issued during the investigative phase of a claim;
3. Retirement of certain fees related to records that are available at no cost to the parties; and
4. Modification of processes to reduce waste in the system.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Zenith's comments related to these areas are set forth below:

### **Fee Increase**

It is in all parties' interests, as well as the interests of the overall system, that all participants are treated fairly and reasonably. Zenith supports an adequate rate being charge for copy services. Determining that rate, however, is challenging due to the numerous issues that can impact the costs of performing subpoenas services.

Section 9983(1) increases the flat fee from \$120 to \$210 for copy services rendered after a set date. This is nearly a 15% increase in fees. It is not clear how the increase was determined to be needed or appropriate. In the past, the Division of Workers' Compensation commissioned a study to determine what the flat fee should be.

We would like to inquire as to the analysis conducted that determined that the current rate is insufficient and that the rate proposed will properly compensate copy service companies are properly paid for their legitimate efforts at obtaining records.

### **Annual Fee Increase**

It also appears that copy service rates will be subject to annual increases after the regulations take effect. However, there is no explanation as to the basis for determining whether an increase will occur or not, and if so, what the rate of increase will be. Please further address the basis for the increases and how unintended consequences or artificial inflation of rates will be avoided.

### **Subpoenas**

There is a legitimate need for copy services in the workers' compensation industry. However, we have observed that as with any industry there are some participants who take advantage of the existing rules and regulations for financial profit. It is in the best interests of all legitimate participants in the CA Workers' Compensation system that the rules restrict as much as possible gamesmanship and unethical behavior. The following comments discuss processes that would move in that direction.

Section 9981 provided in pertinent part:

(c)Bills for canceled services must include, in addition to the information required in subdivision (a)(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and the cancellation order, that contains the date of the cancellation and the identity of the *individual* or entity that cancelled the request. [spelling correction added in red]

(d)Bills for certificates of no records must include, in addition to the information required in subdivision (a)(1) and (2) of this section, a copy of the request of records

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

that contains the date of the request and the identity of the requestor, and a copy of the certificate of no records, that must include the date of the certificate.

While these two sections are a step in the right direction, they do not address certain abuses within the system. Some issues not addressed include:

- a. **Inappropriate Subpoenas:** Situations in which that copy service or applicant attorney engage in fishing expeditions by serving subpoenas on multiple people or entities without just cause. For example, claims administrators should not be liable for payment of a \$75 fee for a Certificate of No Records for subpoenas served on a QME that was on a panel list but not selected as a the QME. Yet, we frequently see this type of billing. There must be some requirement that the subpoena be reasonable, and if not, the claims administrator may deny payment for either a cancellation fee or Certificate of No Record. Continued service of improper subpoenas should be subject to penalties and fines to help stop this type of abuse of process. In the current environment, attorneys' do not care how many certificate of no records or cancellation bills are submitted by the copy service as the attorneys and copy service vendors do not pay for the cancellation or Certificate of No Record Fee. Therefore, Zenith proposes two alternatives. Either eliminate payment entirely when no records are found or require that the requestor set forth the basis for the request and establish that the request was for valid reasons and directed at an appropriate person or entity. Eliminating the fee entirely, will significantly reduce subpoenas issued for no valid reason or to inappropriate parties. However, Zenith recognizes, this is probably not palatable to copy service entities. Therefore, we recommend the following modifications to help address this ongoing issue:

(c)Bills for canceled services must include, in addition to the information required in subdivision (a)(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and the cancellation order, that contains the date of the cancellation and the identity of the individual or entity that cancelled the request, the legal reason the request was originally made and the reason the request was canceled. Requests made for records of incorrect persons or entities will not be compensable under this provision. [spelling correction added in red]

(d)Bills for certificates of no records must include, in addition to the information required in subdivision (a)(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and a copy of the certificate of no records, that must include the date of the certificate, the legal reason records were requested from the individual or entity. Requests made for the records of persons or entities without a reasonable belief the person or entity is in possession of records that will lead to the discovery of information pertinent to the industrial claim will not be subject to reimbursement under this provision.



## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

- b. **Request for records during the delay period and requirement to attempt to obtain records prior to use of subpoena:** 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 the *Jose Nevares v. California Motor Club decision* (2019) Cal. Wrk. Comp. P.D. LEXIS 135 and the *Celiflora Lopez vs. Harbor View Farms, LLC* cases, (2018) Cal. Wrk. Comp. P.D. LEXIS 507, the copy service regulations should indicate that the claims administrators cannot be held liable for subpoenas that are submitted while the claim is under investigation.

Zenith also believes a great many disputes could be minimized, not to mention administrative costs to the claim, if applicant attorneys were required to contact the claims administrator before requesting records through copy service.

To address these concerns, Zenith recommends adding the following new section:

(e) Bills for records requests and subpoenas are not compensable if the request for records was served on the claims administrator (i) while a claim is under investigation; or (ii) before the claims administrator received a Disclosure Statement from the applicant's attorney; or (iii) less than 30 calendar days after the date the claims administrator receives a written request from the applicant attorney requesting a copy of the records in the claims administrator's possession. 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.

To address concerns that all records are produced, the claims administrator can provide copies of the records using a declaration under penalty of perjury that all responsive documents have been produced.

Additionally, based on LC 4622(a)(1), if a claims administrator receives a bill from a copy service, the carrier has 60 days to issue an EOR whether the services were provided during the delay period or not. Further, if the copy service objects to an EOR then the carrier has 60 days to file a DOR and a Petition for Non-IBR Medical Legal Determination Dispute (LC 4622(c); 8 CCR 0451.1(c)(2)). We recommend that this rule be amended to provide that if the copy services were provided during the delay period then the carrier is not liable for such services and that the attorney who requested the services be responsible for paying the copy service. It is likely that the copy service does not know that the claim is under investigation; however, the attorney representing the injured worker should know that the claim is under investigation; therefore, the attorney needs to wait until the carrier makes a decision or the 90 days have expired for the carrier to investigate the claim.

### **Retirement of Certain Fees**

The law currently allows for the recovery of certain fees that do not promote system efficiency and result in the issuance of unnecessary subpoenas. For example, section 9981(e) continues to

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

include reimbursement for copy services for obtaining records from the WCIRB or EDD. The WCIRB has a form that is free to injured workers that can be emailed in and the WCIRB will provide the information to the injured worker by email at no cost. Similarly, EDD has a portal on its website where records can be requested for free.

[https://www.edd.ca.gov/about\\_edd/public\\_records\\_request.htm](https://www.edd.ca.gov/about_edd/public_records_request.htm) As these two services are available to the injured worker and the injured worker's attorney, there is no reason for a copy service to be making these requests. While this service may have made sense in the past, it does not in today's world. Therefore, Zenith recommends that Section 9981 be modified to remove reimbursement to copy service companies for the following services:

- ~~(5)WC 024: Records of the Employment Development Department (EDD) – \$20.00.~~
- ~~(6)WC 025: Records of the Workers' Compensation Insurance Rating Bureau (WCIRB) – \$45.00.~~

Zenith also suggests eliminating fees for the following services for the reasons stated:

1. WC 021: Cancelled Service - \$75.00.- if this charge is eliminated completely, it will stop inappropriate billings for cancelled service charges that are submitted without a stated reason. See prior comments above.
2. WC 022: Certificate of No Records - \$75.00.- eliminating this charge will effectively end the practice of serving subpoenas on locations where there is no reasonable expectation that records will be found. See prior comments above.
3. Full charges for multiple requests for the same records from the same entity – For example, Zenith frequently receives a subpoena directed to both Zenith Insurance Company and its law firm Chernow & Lieb for the same record set. We also see requests for the same records being requested by the same entity but served on Zenith by multiple subpoena services or served by the same subpoena service multiple times without a reasonable explanation of why the same request is being repeatedly submitted. Zenith is then charged the full \$180 for each repetitive subpoena. We also see charges for the subpoena of the primary treating physician records who is already required to provide his/her reports to applicant's counsel. Therefore, there should be no reason for counsel to subpoena physician reports counsel is copied on from the claims administrator.
4. WC 031: Additional Sets. (Indicate amount.) This is an archaic requirement and should be eliminated or as discussed above, counsel should be required to request additional copies from the claims administrator before going through a copy service. Zenith consistently sees situations where the copy service companies are billing \$5.45 for a second set of records provided within 30 days and then bill another charge of \$30 for a third set of the same records provided after 30 days. If we send EORs objecting to these additional charges and the copy service company files an objection, carriers are required to file a Petition for Non-IBR and a DOR to bring the matter to court over a \$5.45 or \$30 unnecessary charge. All this waste could be avoided by requiring applicant attorneys to request additional copies directly from the carrier instead of through a copy service as discussed above. This begs the question of why the same applicant attorney needs an outside entity to provide them with so many copies of the

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

- same set of records in this electronic age.
5. Clarify that there should be no charges for obtaining records from EDEX or the Secretary of State.

### **Contracts with Copy Service Vendors**

Section 9982 establishes fees unless the services are covered by a contract between the claims administrator and the copy service provider. This section should be further clarified to require use of the claims administrator's contracted vendors for acquisition of records when the claims administrator has a contracted copy service vendor. This would help eliminate abuse in the system and allow the claims administrator to take advantage of contracts it has implemented with copy service vendors. Zenith recommends the following addition:

(5) when the claims administrator has not designated a contracted copy service vendor. Claims administrators may designate a copy service vendor by either providing written notice to the applicant attorney, injured worker, provider or other party at any time; or by including the name, address and phone number of the copy service vendor in the employer's Medical Provider Network, if applicable. Copy services provided by an entity other than the claims administrator's designated copy service vendor are subject to denial by the claims administrator.

### **Previously Provided Records**

Section 9982 should also be clarified to state that the claims administrator has no duty to pay for records that have already been provided to the requesting party by the claims administrator or which is already in the possession of the requesting party regardless of whether or not they were the requestor was the prior requesting party or not. Zenith recommends the following addition to address this issue:

(c) (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. This also includes records previously provided to the requesting party (regardless of in response to a subpoena or not) when those records were provided under proof of service.

This is another area that would also benefit from a process that would require the requestor to contact the claims administrator for a second copy before going through a copy service or utilizing a subpoena. Again, the claims administrator could verify via certification under penalty of perjury that the copy provided is true and accurate and includes all requested records.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Eric M. Neitzel, Accounting Manager  
Macro-Pro, Inc.

August 16, 2019

Overall this is an excellent collaboration of ideas to clarify many of the issues and concerns we have all dealt with since the inception of the law. Kudos to the DIR for doing this and allowing time for public comment. I trust the proposed regs will be revised with the suggestions offered and an additional public comment period be allowed before regulations are finalized.

As the person in charge of our billing process as a defense copy service, I would recommend the following changes to reduce confusion for all stakeholders:

Please add to definitions: "Ordering party" includes all entities listed in section 9980 (5) (C) **AND a defense attorney acting on behalf of the claims administrator**. This eliminates confusion as to who pays for services where the regs state that a service is to be paid for by the ordering party.

Section 9981 (a), clarify that the original bill went into effect 7/1/15 but the changes are effective with dates of service as of the effective date of the regulation. (Similar to language in 9983 (a)). This is important because an invoice can be generated prior to the effective date of the changes, and if not paid, can be reprinted as a past due invoice **AFTER** the effective date. It would be difficult to apply the new regs, codes, etc. to an old invoice. Also, it needs to be made clear that the flat fee schedule only applies to invoices with date of service of 7/1/15 forwards, and revised regs only apply from their effective date. **In other words, it is NOT retroactive!**

9981 (c) and (d), we receive orders via web, fax, mail, and phone. Most cancellations are received via phone. It would be impossible to include the order or cancellation request with invoices for canceled services or CNR's when orders originate from so many different, and non-digital, sources.

9981 (10) WC029: "Contracted Fees" is a very generic term that needs to be defined. Assuming this refers to invoices where there is a contract in place between the claims administrator and copy service, I agree with a code to identify these invoices. Would this code be required on every line item on the invoice, or just in one place on the invoice?

9981 (11) WC030: "Requested Services" needs to be defined since **ALL** services are requested; we don't charge for things that were not requested. Saying "Services Requested but not specifically included under 9983" would be more appropriate. Examples of services that fall outside of the charges included in the regulations are medical summaries performed by the copy service, process server invoices (personal serve of a subpoena for appearance instead of records), bill review services, etc. Invoice must include description of service requested and amount. Requested services are to be paid by the requesting party.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

### **Additional Sets:**

9981 (12) WC031: Additional sets has been a huge source of confusion for everybody. Simply put, at what price? \$5.00 for a 200-page paper set to an applicant attorney doesn't begin to cover the costs of shipping, let alone printing. Nor does it cover the cost of producing, verifying, packaging, and shipping a CD of the records. It really doesn't cover the cost to download a set since that still takes time to ensure the notification is sent to the correct person/email address, making the records available via on our web site, maintaining the proper security, storing on our servers, etc. I recommended a flat fee of \$75 for the first 500 pages and \$0.10/page thereafter to cover all costs including but not limited to printing, archiving, shipping and handling.

9983 (f) (1) and 9983 (f) (2): Re: additional paper sets, some carriers/bill review companies reclassify a paper set as an electronic set and only allow \$5, even though their defense attorney ordered a paper set for the applicant attorney or IME. For example, the first set is 500 pages, produced on paper, sent to the carrier and billed at \$210. The 2<sup>nd</sup> set of 500 printed and shipped to the applicant attorney costs way more than \$5, but many carriers/bill review companies only pay \$5.

Additional note re: 9983 (f) (1) and 9983 (f) (2): An additional paper set can be requested for the applicant attorney by the applicant attorney, the carrier (adjustor), or the defense attorney. As a defense copy service, who do we bill if the set is ordered by the applicant attorney? The law requires a set be made available to the applicant attorney paid for by the claim administrator, but the current regs say additional sets are to be paid by the ordering party. This needs to be clarified.

**General note re: codes – existing codes need to remain as they are: WC026 for additional electronic set at \$5, WC027 for additional electronic set at \$30, WC028 for X-Rays, WC029 for CD of X-Rays. Please do NOT change these, it will cause massive confusion. Instead, add brand new codes for Sales Tax, Contracted Fees, Requested Services, and Additional Sets.**

9982 (b) (3): I don't understand this, was the word "not" left out? 9982 (b) (2) says records must be provided by a registered photocopier, paragraph (3) seems to say the opposite.

9983 (a) (2): It makes sense to apply a COLA escalator to the flat fee, but the COLA escalator should also apply to all charges covered by the regs to reduce the need to revisit the regs every couple of years. All costs increase over time, not just those covered by the flat fee.

9983 (f) (1) "For paper copies": This needs to be defined because carriers/bill review companies are put in an awkward position of trying to interpret the current regs re: shipping multiple sets to different parties. For example, we copy 450 pages of records and are shipping 3 paper sets to different parties, so 450 pages is sent to the first party and another 900 pages to the other parties for a total of 1350 pages. Are the additional 850 pages over the initial 500 supposed to be billed at \$0.10/page (calculated based on total pages shipped), or are 900 additional pages supposed to be billed at \$0.10/page (calculated based on separate sets to different parties)? If the charge for additional paper sets is changed to a flat rate, then this is not an issue.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

9983 (f) (2): Please define “Electronic Set”. A CD is not electronic, but it holds data in an electronic format. A download is truly electronic transmission of data. The BOE considers a CD (physical disk) as a tangible item and is taxed, but a download is not taxed, creating some confusion since the copy service regs seem to consider both a CD and download as electronic. If a CD is determined to NOT be an electronic set then we should have a new, separate code for and additional CD.

Further clarification is needed re: additional sets that are actually a CNR where the CNR is furnished to multiple parties. At what rate is this supposed to be billed? Could the DIR clarify this please? This is a point of confusion with some carriers/bill review companies. It may be beneficial to add a new code for an additional CNR to distinguish it from an additional set of records.

On my wish list would be a new item in the regs that gives a copy service the option to “opt out” of receiving an EOR when an invoice is paid in full. We do NOT need the additional paperwork, we do not need the details unless there is a reduction to our charges. Medical providers, pharmacies, etc. need that information and there is probably a legal requirement to provide it to them. But a copy service is not a typical “service provider” in the worker’s comp world since we are not providing services directly to the injured worker.

---

Gabby Ruiz, Collections & Litigation Manager  
Med Legal, LLC.

August 16, 2019

In response to the proposed changes to the Copy Service Fee Schedule Regulations, I submit my public comments for consideration. Considering all interests in the workers compensation eco system, most of the proposed changes are equitable however, the following sections require either further clarification and/or consideration of exclusion.

### **§9981 Bills for Copy Services**

My recommendations is to leave the existing billing codes as was implemented in 2015 however should consider a comprehensive description of current billing codes WC 026 and WC 027 and simply add the additional billing codes for the expanded services of “sales tax”, “contracted fees” and “requested services”

9981(e)(11) - I would request a clarification of the “requested services” under proposed WC 030 to be added in the Definitions Section of the Regulations so to clarify what this service entails and the compensation rates for such services.

9981 (e)(12) – Additional guidelines and explanation should be considered regarding defining what additional sets is considered and the compensation rates if provided before or after 30 days.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

9981 (e)(6) – I would also request clarification on current billing code WC 025 related to the WCIRB records as to make clear services should be billed for each policy year of research which is in line with how the WCIRB charges the provider.

9981(c) and (d) - Please make note that the reference to (a)(1) and (a)(2) should be (b)(1) and (b)(2). I would also convey support to providing additional documentation to both Cancelled Services and Certificate of No Records however would request that the DIR consider a standardized form and instructions that would meet the requirements set forth in the proposed rules as to minimize the potential friction of interpretation.

### **§9983 Fees for Copy and Related Services**

9983 (a)(1) – Clarification of the language “(EFFECTIVE DATE OF REGULATION)” should be considered to be “EFFECTIVE DATE ON OR AFTER DATE OF REGULATION” as to avoid any misinterpretation.

9983 (a)(2) – Perhaps consideration to a simpler translation of the annual increase can be done by annual publication would avoid confusion by both providers and bill reviewers.

---

Diane Worley, Director of Policy Implementation  
California Applicants’ Attorneys Association

August 16, 2019

The California Applicants’ Attorneys Association offers the following comments regarding the proposed revisions to the Copy Service Fee Schedule regulations currently posted for a written comment period ending August 16, 2019.

Before we offer specific comments on the draft regulations, we would like to offer some general comments.

Litigation has become exceedingly complex with the legislative reforms of 2004 (SB 899) and 2012 (SB 863). A more extensive medical record is required not only by injured workers and their attorneys but by employers and insurance carriers as well. Employers seek complex apportionment findings on multiple body parts and injuries relying on past medical records. Injured workers must obtain medical evidence, in a very short time frame, to support the need for a medical treatment request to comply with independent medical review timeframes.

CAAA sincerely believes that a copy service fee schedule can be designed to not only reduce frictional costs, and promote appropriate billing, but preserve injured workers’ rights to independent discovery, and copy service providers requirements to maintain a profitable business, particularly keeping in mind these increased burdens on the system.

Section by Section comments follow.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

### § 9981 Bills for Copy Services

Subparagraph (c) now requires that bills for canceled services must include a copy of the request of records that contains the date of the request and the identity of the requestor, and the cancellation order, that contains the date of the cancellation and the identity of the individual or entity that cancelled the request.

This new requirement will be overly burdensome to copy service providers as the cancellation request is frequently by telephone. Documentation should only be required where the payor disputes the bill.

Subparagraph (d) also requires this additional documentation for certificates of no records. Documentation should only be required where the payor disputes the bill upon receipt of the certificate of no records.

The following billing codes should be reinstated to be consistent with section 9983 (f) (2) allowing for these charges.

WC 026 Additional Electronic Set (ordered within 30 days of the subpoena) \$5

WC 027 Additional Electronic Set (ordered after 30 days of the subpoena) \$30

New billing code WC 031: Additional Sets should be used for paper copies.

There continues to be no provision anywhere in the copy service fee schedule with regard to time limits for the claims administrator to pay bills for copy and related services. Additionally, there is no provision for penalties if bills are not paid timely.

The Berkeley Research Group in its' study "*Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation*" October 17, 2013, recognized that the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payor. They proposed that the DWC institute a schedule in accordance with the guidelines provided, with payment due within 60 days from receipt of invoice. If a proper invoice is not paid within 60 days, a higher fee should be applied to take account of the increased collection costs and uncertainty.

Based on this we recommend the addition of the following subparagraph (g) to section 9981:

(g) Bills must be paid within sixty days of receipt by the claims administrator. If bills are not paid within this period, then that portion of the billed sum which remains unpaid shall be increased by 25 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill by the claims administrator.

One of the major goals of the fee schedule is to streamline the system to eliminate protracted payment disputes and providing a timeline for payment will help accomplish this.



**§ 9982 Allowable Services**

CAAA is concerned about the deletion of section 9982(e)(A), providing that if there is good cause shown, the claims administrator is liable for payment for a set of duplicate records. Good cause includes new counsel seeking duplicate records for review, and loss or destruction of records due to natural disaster.

The elimination of this section unfairly encumbers the injured worker from getting discovery in the rare cases when the original records are not available.

Section 9982(e)(A) should not be deleted as carriers are sufficiently protected by the language in section 9982 (c) (1) which requires that such subpoena or authorization must be accompanied by a declaration from the party requesting the records setting forth good cause to seek duplicate records.

**§ 9983 Fees for Copy and Related Services**

CAAA supports the increase in the flat fee in section 9983 (a) (1) but believes \$210 is not adequate.

The Berkeley Research Group in its' study "*Formulating a Copy Service Fee Schedule for the California Division of Workers' Compensation*" October 17, 2013 concluded that the defense copy market rates are not comparable to what applicant's copy service providers must charge because the defense market is characterized by ongoing relationships, volume discounts, and hassle-free payment. They 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 this reasonable estimate of fair market value.

CAAA supports the addition of section 9983 (a) (2) providing for an annual cost-of-living adjustment to the flat fee for copy services. This would reduce the need to revisit copy service rates every couple of years.

Lastly, section 9983(f)(1) only accounts for paper printed records, and not for electronic. There is a significant cost for large volumes with scanning, review, storage, bates stamping, etc. We recommend removing "for paper copies" from this section so it applies to all records, paper and electronic.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Dan R. Jakle, Director, Applicant Attorney Division  
ARS Legal

August 16, 2019

### Proposed Changes in RED

#### § 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.

(c) Bills for canceled services must include, in addition to the information required in subdivision (a)(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, ~~and the cancellation order, that contains the date of the cancellation and the identity of the individual or entity that cancelled the request.~~ (many times we just get a verbal cancellation order)

(d) Bills for certificates of no records must include, in addition to the information required in subdivision (a)(1) and (2) of this section, a copy of the request of records that contains the date of the request and the identity of the requestor, and a copy of the certificate of no records, that must include the date of the certificate.

(e) Bills submitted under this section must utilize the following codes and applicable fees:

(1) WC 020: Flat Fee. (Indicate amount allowed under section 9983(a).)

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

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

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

(5) WC 024: Records of the Employment Development Department (EDD) - \$20.00.

(6) WC 025: Records of the Workers' Compensation Insurance Rating Bureau (WCIRB) - \$45.00.

(7) WC 026: is for an Additional Electronic Set of \$5 (same code as previous schedule)

(8) WC 027: is for an Additional Electronic Set of \$30 (same code as previous schedule)

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

(9) WC 028: Electronic storage media containing X-rays and Scans - \$3.00.

(10) WC 029: Contracted Fees (Like out of state fees). (Indicate amount.)

(11) WC 030: Requested Services (like personal appearance subpoenas or special notice of law suit). (Indicate amount.)

(12) WC 031: Sales Tax (Indicate Amount)

(13) WC 032: Duplication of X-Rays \$10.26

### § 9982 Allowable Services

(a) (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. If the copy service or other entity requesting records by subpoena or authorization requests records that are retained in paper, those paper records shall be produced uncopied to the copy service for photocopying. The charge for providing these records will be limited to the \$15 witness fee [as per EC 1563(b)(6)] and be paid at time of service of the subpoena or authorization. If the records are retained in electronic format, they will be provided in a human readable electronic format (like PDF) and will be provided on recordable electronic media like cd, dvd, flash drive or other recordable media. The charge for providing these records will be limited to the \$15 witness fee and an additional fee for the electronic media of \$5,.

---

Mona M. Nemat, Esq.  
Brissman & Nemat

August 16, 2019

9980(d) – The deletion of the word ‘physical’ from the regulation appears to aim at instances where a provider refers a copy service to a third party for records copying, with the idea being that the copy service should not bill for two services in that scenario. In solving for that issue, however, a new problem is created because the regulation fails to recognize instances where a single provider keeps different types of records at different physical locations and/or mandates multiple subpoenas based on the types of records sought. The language defining “Custodian of Records” should be modified to allow for copying and payment per location when the Custodian directs the copy service to obtain records from more than one physical location. Likewise, the definition should address and include situations where the Custodian mandates that multiple subpoenas be issued based on the categories of records sought, regardless of the fact that they may all be housed at a single physical location.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

9982(a)(2) – This language remains imprecise in that it alludes to the possibility that the applicant and/or his attorney do not have a right to independent discovery. While the claims administrator may be the custodian of records related to employment and claims, they are not, and cannot be, the custodian of records as to medical records. In this regard, the regulation retains the uncertainty it always has had and should be modified to confirm that nothing in this section is intended to impede the right of an injured worker and/or his attorney to conduct independent discovery, as has been recognized by the WCAB.

9982(a)(4) – This language fails to recognize scenarios where a copy service must be compensated for services performed, regardless of the fact that the claims administrator may have provided notice to the injured worker pursuant to Labor Code section 4055.2. One such scenario is when the applicant’s attorney has already initiated steps to procure records by way of a subpoena before he/she or the injured worker receives notice (i.e. the order has been placed). Another such scenario arises when the injured worker was unrepresented at the time he/she received notice and did not understand what it meant. The injured worker subsequently retains counsel (perhaps months or years later). The applicant attorney must not be barred from obtaining records by way of a subpoena in such an instance and the copy service must still be compensated. There are a number of other scenarios where the language either explicitly or implicitly bars payment for legitimate services.

9982(b)(1) – Notwithstanding the fact that the applicant attorney and/or applicant must wait 30 days before actually receiving records subject to a subpoena, it should be made clear that this section does not bar or otherwise restrict the right to independent discovery. There is nothing in the Senate and Assembly Floor Analyses of Labor Code 5307.9 or the Initial/Final Statement of Reasons for adopting the copy service regulation that indicated the rule was designed to delay or bar discovery. Currently, it appears that some payors take the position that regardless of the fact that production of records occurred after the expiration of the 30 day period, the fact that the order was placed or the subpoena was issued within that period negates the payors’ obligation to pay for otherwise appropriately subpoenaed records. Copy services customarily wait the full 30-day window before delivering the results from their services, and if the claims administrator properly serves such records in a timely fashion, copy services customarily cancel their services (without billing).

9982(b)(3) – It is entirely unclear what this section means. Perhaps the drafter had a specific scenario in mind at the time of construction, but the language used does not convey any intent or clarity.

---

Gregory S. Webber, CEO  
Med-Legal

August 16, 2019

Med-Legal, LLC (ML) is a leading provider of evidence in WC. In 2015, ML collaborated with a coalition of industry experts and diverse interests to outline key goals for the Copy Service Fee Schedule (CSFS), including; 1) substantial cost reduction, 2) bundled services / fixed fees, 3)

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

simple invoice / payment requirements, 4) timely payment, 5) reduced conflict and friction. This is the ‘grand bargain’ of the CSFS; reduced costs, prompt compliance/payment, and less dispute/friction.

ML monitors key metrics relative to the ‘grand bargain’. The bundled/fixed fee structure directly saved the industry over \$200m since July 2015. And, as non-litigated payments increased from 45% to 75%; frictional costs were reduced, saving the industry an additional \$100m. The CSFS has worked. Costs are down. Compliance increased. Dispute and friction reduced. Building on that success is the best path forward.

Regarding the (initial) increase in fee(s). The proposed increase in the fixed fee (records) to \$210 is in-line with the underlying increase in costs (especially wage-related) over the last four (4) years. Focusing the increase where evidence is produced (fixed fee for records) is appropriate and encourages the industry to add value by providing the evidence requested. The rate adjustment for WCIRB results (to \$45) lines up with the WCIRB’s own adjustment, but the CSFS should indicate that charge is ‘per year’, consistent with WCIRB practices.

Regarding the (annual) increase in fee(s) thereafter. An annual adjustment is appropriate, but; 1) the adjustment factor must be transparent, 2) the DWC should publish the annual adjustment (so there is no dispute), and 3) the effective date made clear (and published by the DWC).

Regarding the changes in requirements for ‘Canceled Jobs’ and ‘CNR’s’. These requirements make good sense. They are often a source of dispute and friction and adding documentation and precision should reduce conflict.

Regarding the change (and addition) of billing codes. ML stands in opposition to these changes. Changing or switching billing codes will produce confusion; leading to more dispute and friction. Alignment with existing billing codes should be carefully preserved. If new billing codes are added – they should be in an add-on sequence.

Other comments and recommendations. The CSFS should require authenticated records (e.g. records retrieved by subpoena) and ML stands in opposition to any modification that includes records retrieved by authorization. The California Code of Civil Procedure is clear that once a legal dispute is registered (ADJ Number); discovery must proceed by subpoena (not authorization). Also, the CSFS should make clear that the 30-day period identified at 9982(b)(1) is not there to delay starting discovery, but rather exists only to allow the claims administrator to serve authenticated records then in their possession within that 30-day period. Clarity there (and following, for ‘independent discovery’) renders the addition at 9982(a)(4) unnecessary (9982(a)(4) should be removed).

Finally, while not existing in the CSFS, ML believes that costly dispute and friction would be significantly reduced if the CSFS made clear that there is a clear right to independent discovery on behalf of an injured worker seeking adjudication of their claim. The facts are; the California Workers’ Compensation is an evidence-based system that favors the production of evidence in the form of written information and reports to; 1) increase precision, 2) adhere and measure

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

performance to standards, while at the same time 3) reducing overall costs (together, 'Evidence Based Medicine' as documented in CCR 10606 and elsewhere). The CSFS should clearly support that.

---

Bob Flynn  
Kopy Kat

August 16, 2019

As the owner of a defense oriented copy service since 1984 I have the following thoughts and/or suggestions.

- We appreciate the continuing efforts of the DWC and others to simplify and contain costs.
- WC020-29: The DWC should ***NOT*** change these original pre-existing billing codes. This would only cause more confusion.
- I suggest adding codes WC030 for "Sales Tax", WC031 for "Contracted Fees", WC032 for "Requested Services" and WC033 for "Additional Sets".
- WCO20-9983(a): I suggest "*fees for release of information services*" and/or the proposed verbage "*costs charged by a third party for the retrieval of records held offsite by the third party*" be **DELETED**. Why? Presently 18% 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. Out of state facilities are under no obligation to comply with a CA sdt and can charge based on their applicable code/s. 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.
- Suggestion: Add a code WC034 for "Third Party Fees" for the case where a third party charge is received. In this instance the copy service must provide a copy of the invoice supporting the fee/s paid. An added suggestion; a definition be made to identify the third party charges must be in excess of \$75.00. If the third party fees are less than \$75.00 then the WC020 code would apply.
- WC024: The fee for obtaining records from the EDD should be either the fee schedule of \$180 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. Also counsel wants and expects an affidavit authenticating records in order to document his/her file. Absent a sdt a declaration is not provided by the EDD. As an aside obtaining records from the EDD is tremendously difficult at best. We are required by law to pay a \$15.00 witness fee. Also the EDD takes 6-8 months for compliance and countless phone calls.
- 9981 (c and d): I suggest the proposed verbage for these be omitted in their respective entirety.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

This is cumbersome and arduous for all parties. I further suggest keeping the status quo. If a carrier or third party bill review vendor requires this information an EOR should be sent to this effect. Bottom line; the copy service/s will learn to adapt and address this on their own in order to expedite payment.

- WC 026 and 027: This appears to be a point of contention. My suggestion will do away with the debate. I suggest all parties when pursuing records (by sdt or medical release) are to request a set of records be provided to the requesting party, opposing counsel and possibly the carrier/TPA. All parties are entitled to full disclosure. All parties should be filing and serving medicals on an ongoing basis. Make this the norm in discovery; not the exception.

---

Andrea Guzman, Claims Regulator Director  
State Compensation Insurance Fund

August 16, 2019

State Compensation Insurance Fund appreciates the opportunity to provide input regarding the Division of Workers' Compensation's (DWC) proposed amendments to copy service fee schedule. State Fund respectfully submits the following comments for your consideration.

State Fund recommends not reusing payment codes. Changing the description of these codes may cause confusion for the industry and would introduce risk for paying bills incorrectly.

Recommended text changes are indicated by underscore for additional language and ~~strikeout~~ for deleted language.

### **§9981. Bills for Copy Services:**

#### *New Language*

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

(4) a copy of the request for records that contains the date of the request and the identity of the requestor.

#### *Text Change*

(c) Bills for canceled services must include, in addition to the information required in subdivision (a)(1) ~~and (2) and (4)~~ of this section, a copy of ~~the request of records that contains the date of the request and the identity of the requestor,~~ and the cancellation order, that contains the date of the cancellation and the identity of the individual or entity that cancelled the request. Copy service is not entitled to a cancellation fee if the subpoena is served prior to the requesting party's right to subpoena records.

(d) Bills for certificates of no records must include, in addition to the information required in subdivision (a)(1) ~~and (2) and (4)~~ of this section, ~~a copy of the request of records that contains the date of the request and the identity of the request,~~ and a copy of the certificate of no records, that must include the date of the certificate.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

### **Discussion:**

*State Fund recommends §9981 (b) be amended to include section (4) to assure the records are being requested by a party, and to be consistent with section (c) that includes the identity of the individual or entity cancelling the request. New language under (c) will align this section with current language under 9982(d)(1).*

*Request for Clarification*

WC030: Requested Services (Indicate amount)

### **Discussion:**

*State Fund request additional clarification on the new code WC030 – “Requested Services”. What are the requested services and what are the rates?*

### **§9982. Allowable Services:**

*Text Change*

- (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. Good cause does not include new counsel seeking duplicate records for review.

### **Discussion:**

*State Fund recommends adding language to §9982 (1) to provide a clearer definition of good cause.*

### **§9983. Fees for Copy and Related Services:**

*Text Change*

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

### **Discussion:**

*State Fund recommends deleting this language because the flat fee is not limited to employee wages. In addition, there is no other fee schedule which providers receive an annual increase based upon the State Average Weekly Wage.*



## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Dan Mora, CEO/Founder  
Gemini Duplication

August 15, 2019

We want to sincerely thank the Administration for their wisdom and diligent effort to propose this timely update.

We strongly concur with the rightly and timely adjustment to the flat fee in 9983(a). Although grateful, we continue to advocate for actuarial adjustments. Sound policy is always rooted with verifiable and accurate data. In *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 CalComp Cases 1588, en banc decision, the WCAB established the methodology for determining fees for services.

"In determining the reasonableness of (a).. fee.. the Board may take into consideration a number of factors, including but not limited to the.. usual fee.. which means the fee usually accepted, not the fee usually charged.." "We emphasize that the "usual fee" to which we refer is the fee usually accepted, not the fee usually charged.."

In 2013 CHSWC commissioned the BRG study and report for proper fees. At that time professional photocopy services submitted 592,927 paid invoices, at an adjusted average of \$251.20. The study recommended a lower rate, not consistent with Kunz, but also said, "We must caveat our conclusion with this important condition: the proposed fee schedule is feasible only if there is prompt payment of copy services invoices by the payer."

Although some payers responsibly self-police, from the outset of the proposed fee schedule, our ability to collect has been life altering. In 2010 we collected at .80 cents on the dollar. In 2014 we collected at .45 cents on the dollar. Only when we committed hundreds of thousands of dollars (sunk cost), at its height 30% of total labor expense, to traditional collection methods did we see this trend change direction.

To be very clear, nothing in this fee schedule prevents bad faith delay and deny tactics. Today, with a four year established fee schedule, 56.65% of Gemini's invoices are objected to, with only 6.43% timely. Additionally, 96% of the invoices objected to are either already paid at the time of the objection or ultimately paid. The conservative estimated employer cost to object is \$23,453,100 annually. Gemini's cost to respond to these tactics is prodigious and wholly unreasonable given an established fee schedule. A similar delay and deny tactic, filed Motions to Quash, 996 filed this year to date. This cost has not been calculated, but extrapolated upon all industry invoices, the cost is obviously tremendous.

We conclude that objections and quashes are prolific due to lack of clarity on invoicing and lack of education on due process rights of all parties to perform discovery. Recognizing this, we have taken proactive measures to provide more clarity on our invoicing, and have sought to educate the industry on discovery rights through numerous speaking opportunities, white papers, objection and quash responses, and in our advocacy to the Administration.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

To this end, we support the data requirements in 9981(c)&(d), but cannot support the document requirements. The document requirements are burdensome and unrealistic given modern digital workflows. Please reference the public comment recommendations from the Coalition of Professional Photocopiers for Gemini's edit recommendations to these provisions.

Given the continued industry acrimony, and lack of accountability on delay and deny tactics, we support the BRG's following recommendation, "An insurance company who delays payment beyond 60 days from presentation of the invoice should be required to pay substantially more money, perhaps the \$251.20 which represents the mean of the applicant copy service data, in order to motivate compliance with the regulation." And, "In cases where the copy company incurs additional business expense, aging receivables, and risk of non-payment, however, neither the defense copy market nor the other state's fee schedules are comparable. In those cases, the average payment on the 592,927 applicant copy service transactions (with less than or equal to 1,000 pages) is the best available indicator of the fair cost of the service including all associated business expenses. As demonstrated in Exhibit 4(a) the cost is considerably higher than our earlier determined \$103.55 and the typical cost per copy event of \$251.20 is a reasonable estimate of fair market value. Exhibit 4(b) shows the distribution of applicant copy payment amounts." At this rate, calculated more than six years ago, plus inflation, we again advocate for a higher rate than this proposal suggests. And again, we also commend and are grateful to the Administration for taking this step in the right direction.

Additionally, we are grateful for the COLA provision in 9983(a)(2), but must advocate that this provision encompass all fees under this schedule, and recommend this change.

We strongly recommend the Administration provides better education regarding all parties' due process right to independent discovery. The assertion that one party is not entitled to this right makes up the largest fraction of objections and quashes. Although there is a mountain of precedence upholding the independent right to obtain evidence, this objection continues to dominate delay and deny tactics. 9982(a)(2),(3)&(4), is contrary and injurious to this due process legal principal. In addition these provisions are unworkable, as it's unreasonable to expect a copy service to surmise the if/then scenarios outlined in these provisions, subsequently to be denied payment on such unreasonable expectations. We strongly recommend these provisions be deleted.

The recommended independent discovery education should also highlight chain of custody and custodial principals. It is erroneous to assume records from the claim administrator are the same as what's requested independently, they are not, as defined by chain of custody principals, jurisprudence, and DWC regulations. Once any record is obtained by the claims administrator, that record is defined within the "claim file", Regulation 10101.1. Claim File - Contents (e) "The original or a copy of every medical report.." Additionally, as a party to the case, records produced by the claims administrator are categorically partial. Although any party can accept all forms of evidence, it is improper to deny any party the due process right to independent discovery. Supported reference:

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Independence from outside influence is the foundation of discovery, and has its roots in the due process clause of the Constitution (U.S. Const. amend. IV and XIV). Statutory constructions are meant to be “liberally construed” in favor of discovery, not against it (*Greyhound Corp. v. Superior Court* (1961), 56 Cal.2d 355, 382-383, 388).

The requirements of due process can vary in procedure depending on what is "appropriate to the nature of the case," *Mullane v. Central Hanover Trust Co.* (1950), 339 U.S. 306, 313. However, it is still possible to identify the core goals of due process. First, "procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus* (1978), 435 U.S. 247, 259. Second, "procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." *Mathews v. Eldridge* (1976), 424 U.S. 319, 344. “At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result.” *Carey v. Piphus* (1978), 435 U.S. 247, 266-67. “The core of these requirements is notice and a hearing. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record.”

The “selection of the method of discovery is made by the party seeking discovery; it cannot be dictated by the opposing party.” (*Irvington-Moore, Inc. v. Superior Court* (1993) 14 Cal.App.4th 733, 739). *Pember v. Superior Court* (1966) 240 Cal.App.2d 888, 889-890 also iterates: the method of discovery is made by the party seeking discovery. Neither party has any legal obligation to rely on opposing counsel for complete records and can order from any copy service of their choosing in order to develop the record.

California Civil Procedure 2017.010 clarifies: “Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” In this context, evidence is “relevant” if it might reasonably assist a party in evaluating a case (*Glenfield Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113).

Moreover, parties must have records to support a litigated claim pursuant to Evidence Code Section 500: “a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief that he is asserting.” Code of Civil Procedure 2018.020 further seeks to protect an attorney’s right to investigate records, favorable and unfavorable, without the other side taking “undue advantage of their adversary's industry and efforts.”

The right of all parties to enjoy independent discovery is supported by:

- The U.S. Constitution (amend. IV and XIV)
- The California Constitution Article XIV, Section 4
- California Code of Regulations, Title 8 Section 10626
- Code of Civil Procedure Sections 1985.3, 2016.040, 2017.010, 2018.020, 2031

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

- Labor Code Sections 3762, 3208.3, 5307
- California Civil Discovery Act (1986), Code of Civil Procedure Section 2016-2036
- Greyhound Dev. Corp. v. Superior Court (1961) 56Cal. 2d 355
- Darbee v. Superior Court (1962) 208 Cal. App. 2d 680
- Pember v. Superior Court (1966) 66 Cal. 2d 601
- Irvington-Moore Inc. v. Superior Court (1993) 14 Cal. App. 730
- Allison v. Workers' Comp. Appeals Bd. (1999) 72 Cal App. 4th 654
- Fairmont Inc. Co. v. Superior Court (2000) 22 Cal. 4th 245

Continually problematic and unaddressed in these changes is the Evidence Code fee abuse and overcharging by third party custodians of records. In this fee schedule, copy services unfairly carry 100% of this financial burden. We are put into an untenable situation, faced with combating overcharges and meeting our client's urgent need for the records they've requested, records needed to develop the case or required for reference by a physician. This situation unfairly favors larger copy services who can better absorb these abuses. Combating the root of Evidence Code abuses requires a significant financial and legal effort, made impossible by the initial fee reduction and real challenges to collections. We strongly recommend these fees serve as a pass through cost to payers. The potential time delay of evidence required to expedite treatment and resolution of claims is not worth this oversight. Additionally, payers are exponentially prepared and have exponentially more resources to affect this abuse.

Lastly, we advocate striking "paper" from 9983(f)(1). By specifying "paper" the provision excludes digital page counts over 500 pages. Contrary to the intent, this provision provides incentive to print large volume paper record sets. This provision fails to understand the operational cost of large volume records processing prior to publishing (printing); scanning, storage, quality assurance, bates stamping, etc.

Thank you for your careful consideration of these recommendations. As always, full transparency of stated facts are available to the Administration at any time. Again, we are grateful for the Administration's recognition of the timely need for these changes. We continue to covet a healthy working relationship with all industry stakeholders. Our industry is enormously complex, and requires trusted relationships between subject matter experts.

---

Coalition of Professional Photocopiers

August 15, 2019

The Coalition of Professional Photocopiers represents 14 services, both applicant and defense discovery subject matter experts. CPP is committed to the education, promotion, and advocacy of legal and ethical discovery practices, critical to a healthy environment of legal due process. Discovery is a due process right and benefit to all parties, administered by licensed and bonded agents of the court. We are responsible and accountable for independent, non-biased representation of evidence.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

We want to specifically commend the Administration and individual administrators who recognized the timely need to update this schedule.

**CPP RECOMMENDS** leaving existing billing codes intact, specifically WC 026 and WC 027 as they are correctly supported by 9983(f)(2). We agree with the addition of billing codes for "Sales Tax", "Contracted Fees", "Requested Services", and "Additional Sets", and suggest billing codes WC 030 - WC 033 to correspond.

**CPP RECOMMENDS** the following edits for 9981(c) & (d). The additional billing document requirements are unreasonable, burdensome, and not consistent with current digital ordering practices. We recognize the intent of these changes, but believe the proposed additional data requirements for invoices, in concert with accountability, will accomplish the intent. We strongly recommend:

- 9981(c) Bills for canceled services must include, in addition to the information required in subdivision (a)(1) and (2) of this section, ~~a copy of the request of records that contains~~ the date of the request and the identity of the requestor, ~~and the cancellation order, that contains~~ the date of the cancellation and the identity of the individual or entity that cancelled the request.
- 9981(d) Bills for certificates of no records must include, in addition to the information required in subdivision (a)(1) and (2) of this section, ~~a copy of the request of records that contains~~ the date of the request and the identity of the requestor, ~~and a copy of the certificate of not records, that must include~~ the date of the certificate.

**CPP RECOMMENDS** striking "paper" from 9983(f)(1). By specifying "paper" the provision excludes digital page counts over 500 pages. Contrary to the intent, this provision provides incentive to print large volume paper record sets. This provision fails to understand the operational cost of large volume records processing prior to publishing (printing); scanning, storage, quality assurance, bates stamping, etc.

Coalition Members: Gemini Legal; Matrix Document Imaging; Republic Document Management; Scandoc Imaging; Macro-Pro Inc.; Compex Legal Services, Inc.; ARS, LLC; CD Photocopy Service, Inc.; Universal Copy; Copy Quest Legal Services, Inc.; Lopez & Associates, Inc.; Platinum Copy; CVC Legal Solutions; DocuCents Inc.

---

Diann Cohen, Vice President  
MacroPro, Inc.

August 15, 2019

I would like to thank the DIR for revisiting this issue and for incorporating to all of the stakeholder's interest in these revisions.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

After future reviewing the proposed changes, I would like to add my support to NOT changing or taking over existing billing codes as it could create more unintended consequences. The billing codes should stay as they are, since electronic copies are still going to be ordered there must be a mechanism to for the bill review companies to pay for them. Any new codes should be just that new. Changing the codes could create big issues for the payer and bill review companies.

For clarification purpose it may be worth adding the following to the proposed regulations so that this issue does not end up in front of a judge over and over again and wasting the courts time:

An ADDITIONAL SET is a set sent to a party other than the set going to the ordering party. (Example: The examiner is the ordering party and they order a copy of the records for a QME which would be the additional set) and is to be paid by the ordering party.

A DUPLICATE SET is the same set of records being provided more than once to the SAME party.

Regarding the cancelation of an order. The proposed regulations state documentation must be provided. Cancellations are often done by phone so there is no documentation that can be provided. Changing the requirement to the name of the person and date of the cancelation must be included on an invoice would provide the payer with the information they are seeking.

---

Stephen Schneider  
DocuCents/Scan Files  
Associate Member: Coalition of Professional Photocopiers

August 13, 2019

I owned and managed the largest applicant copy service in the state from 1986 until 2012, and I was deeply involved in the negotiations with the DIR/DWC leading up to the initial copy service fee schedule. I met with and dealt directly with the researchers at the Berkeley Research Group during CHSWC's study of the industry, and have a solid understanding of what is at stake with these proposed changes.

Overall, the changes proposed for the Copy Service Fee Schedule regulations is a reasonable compromise for **ALL** the stakeholders, which includes the injured workers and their attorneys, the employers and carriers paying for the services, the claims examiners that must manage the paperwork and payments, and the Judges and District Offices that must resolve the ensuing disputes. I doubt any of the stakeholder groups are happy with the sum of all the changes (and things neglected to be addressed), but can live with the necessary compromise to get their most important needs met.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

**Change in the \$180 Flat Fee:** The most obvious change, the \$30 increase in the flat fee for copying (from \$180 to \$210), with annual increases, seems fair. I personally delivered the applicant copy service data set to the Berkeley Research Group in 2013 and had multiple discussions directly with the researchers about the differences in costs between applicant, defense, and the ROI copy service data that they studied, and I would argue that \$210 is still too low... but it's a reasonable compromise. It's odd that the \$75 fee for certificates of no records and cancelled requests were not increased, but I assume that was part of the compromise.

**I would like to suggest** that the DWC **NOT** change the existing Billing Codes defined in Reg. **9981** and have been in use since 2015. This will surely create confusion during the Bill Review process, and that means an increase in DISPUTE. None of the Stakeholders want MORE dispute, so I suggest leaving the existing Billing Codes WC026-WC029 as they are now, and add WC030 for "Sales Tax", WC031 for "Contracted Fees", WC032 for "Requested Services", and WC033 for "Additional Sets".

**I would also like to suggest** that the DWC **NOT** require additional documentation or attachments to the billing/invoice for either Cancelled requests in **9981(c)**, or bills for certificate of no records in **9981(d)**. The proposed change of requiring a copy of the request for records is not in keeping with the current ways of doing business for copy services. Many requests are made over the telephone, via email, or even submitted on web forms... so there is no "request" to include copies of. This new requirement will hang up and confuse Bill Reviewers, and INCREASE DISPUTE. The bottom line is adding additional documentation to the Bill/Invoice just creates friction, additional cost, and requires substantial process changes by the whole industry - and is *unnecessary*. If the Bill Review company or Payor wants that additional information prior to paying the Invoice/Bill, they only need request it on an as-needed basis. Since 70-75% of the invoices are paid without question now, then tasking all the people in the industry managing copy service invoices with this additional change in process and paperwork on EVERY bill/invoice is not a positive change. The proposed additional attachments would likely require changes in the electronic billing regulations and processing, as well.

While I might quibble over some other proposed changes, I would like to thank the DIR/DWC staff for addressing the most important needs of stakeholders with these changes, and look forward to a speedy adoption process.

---

Kevin Boyd, Claim Consultant  
The Hartford Financial Services Group, Inc.

August 5, 2019

In response to the fee schedule for copy services. I would like to input my observations as a High exposure claims consultant who has administered copy service payments for over eight years. In my experience, I see copy service companies will duplicate services by requesting records from the same provider multiple times in order to increase their revenue. It is no wonder why the copy

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

service companies are leading this initiative to increase copy service costs. Unfortunately, it appears very unlikely an increase in costs will stop copy services from providing duplicate services and billings. Instead, they will likely increase it in attempt to further increase their revenue.

There has been no explanation provided why a copy service company that primarily provides records for the defense only incurs costs on average of \$108, while applicant oriented companies charge on average \$251 for identical services. The amount of work required is identical for both sides. In addition, the volume of work that applicant oriented copy services provide is much, much higher than that of a defense oriented copy service.

Please advise if you would like proof of the duplicate services in order to illustrate their excessive billing procedures.

---

Matt Vasquez

August 5, 2019

Increasing the fee for copy service only emboldens the copy service industry to further their ethically questionable billing tactics and location retrievals. They already pursue multiple billings and services for one location – duplicate copies (basically having defendant pay for Applicant attorney copying the same medicals again and again), provision of both electronic and paper copies without any justification, cancellation fees for service locations that are highly questionable and mass billing of duplicate invoices and on previously settled liens.

Do not increase fee to copy service agencies until you rein in these unethical strategies and make it a fair playing field. The nature of copy services by applicant attorney copy service firms is extortion with failure of oversight by the DWC. Administrators are held to much higher standards than the copy service or applicant attorney offices for that matter. Oversight needs to be prioritized before copy service profits.

---

Kathi Ruhe

August 2, 2019

We are besieged with the \$5.00 charges and then 30 days later a \$30.00 charge and never, never is it accompanied with a copy to the Defense attorney nor evidence that it was requested or for what purpose.

If they need a copy (or as the copy services states the applicant is entitled to a copy) for the “physician” and the “Applicant” as they claim they could ask for these extra copies at the time of



## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

the original services, limiting these charges to \$5.00 only. The copy services are already getting more than the \$180.00 charge for each set of records by using this tactic...over and over again.

The cost of EOR for each service exceeds the cost of these charges (or extra charges) and yet are the only recognized defense against the charges. They often get additional "copies" (at \$30.00 each) several times over again with no evidence that the records were ever requested by the applicant attorney claiming that the order came to them electronically. Again, to litigate this issue becomes excessive. These are often for the PTP's records and diagnostic facilities referred by the PTP. How or why would these be necessary? Since the AA represents the applicant they can request these records be served rather than SDT be issued. This only serves to drive up the defense cost of the claim.

---

D. Diann Cohen  
Macro-Pro, Inc.

August 2, 2019

### **New codes:**

The need for the proposed billing codes is very important so that bill review companies are consistent from one company to the next how they pay these bills. Currently, all companies do not all pay the same way and many are not aware of or know how to process preferred/contracted pricing that the TPA, Employer or insurer as engaged in. With the additional codes, this should clarify what is to be paid; reducing the need for multiple bill review request, IBR and collection efforts. **This is a win-win-win for the payer, bill review companies and the copy services.**

### **New Codes and why they are needed**

#### **(7) WC 026: Sales Tax. (Indicate amount.)**

Taxes are determined by the counties and the percentages vary. This cannot be a flat fee. This code will be very helpful as not all bill review companies are paying for the tax and are reducing them off of the invoices.

#### **(10) WC 029: Contracted Fees. (Indicate amount.)**

Many TPA, Employers, and insurance companies have preferred providers and/or panels based on services and special pricing. This new code will be helpful to the bill review companies to identify those companies/accounts so they don't apply the reform rates.

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

This is especially important for services not covered under the regulations such as but not limited to personal serves, tabbing, indexing, medical summaries or getting records from out-of-state.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

*It is imperative to include that the ordering party (defense or applicant) is responsible to pay for WC 030. Without that clarification attached to this code, there is no way to control those cost.*

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

Example one why this code is needed: Currently, when one party request the records, let's say the examiner and they want a paper set, either the defense or applicant attorneys are forced to take an electronic download of the records. Because of the way the regulations are currently written if all three parties want a copy of the records only one party is allowed a paper set and **only one other party** may get the download. The third party's set of records are regularly rejected by the bill review company as a duplicate. This code would fix the unintended consequence of the regulations as they are currently.

Historically, all parties were able to order records in their preferred format. This would save the payer money as all parties could get identical records from one source. When the second and third parties want paper or a DC they must now go to another service for those records at the cost of \$180 + tax each.

Example two why this code is needed: This would allow a set of records for an expert such as a QME or AME. Currently, records to additional parties are rejected as duplicates. *This is incorrect as a duplicate set is when the same exact set of records is provided more than once to the same party.*

*It is imperative to include that the ordering party (defense or applicant) is responsible to pay for WC 031.*

#### **Amount**

The additional set should be a flat and predictable \$75 for the first 500 pages to includes retrieving the records out of archives, if necessary, bate stamping, and shipping and handling and \$ 0.10 a page thereafter.

#### **Annual cost-of-living adjustments to the flat fee for copy services**

COLA is used for other fee scheduled applied to the WC system and this should be no different. This would reduce the need to revisit copy service rates every couple of years.

#### **Requirements that bills for both canceled services and certificates of no records include specified information regarding the request for the services, including the name of the requestor and the date of the request.**

This would be helpful to the payer and there should be no objection from copy services for this requirement.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Christopher Dill, SIU Manager/Special Investigations Unit  
ICW Group Insurance Companies

August 2, 2019

Please accept my personal commentary below regarding a portion of the proposed regulation(s). These views expressed are my own, based upon information readily available to me today, and subject to change and/or expansion.

### **Reference 9981 (e) (1-10)**

From a copy service bill review, as well as a data analytics perspective, it could prove to be detrimental to reassign copy service billing codes which already have an understood description at this time. To do so will only cause confusion in the submission of bills as the codes will need to be analyzed not only based upon what code was billed but the date of service (i.e. WC026 pre new regulation date represented 'x' service, but post new regulation date represented 'y' service).

The preferred scenario would be to create new copy service bill codes, only for those newly articulated billing scenarios and, if existing codes are to be decommissioned, to simply notate the proposed regulations with when which codes are no longer effective.

Additionally problematic will be allowing a variety of charge amounts under the same code as appears to be proposed under the new code of WC031 (\$5 before 30 days and \$30 after 30 days)

Specifically, codes WC026 and WC027, as opposed to being consolidated under the newly proposed code of WC031, should remain effective if the ultimate plan (9983 (f)(2)) is to allow copy service providers to continue to charge either \$5 or \$30 depending upon when the service was rendered (pre-30 or post-30 days). This opinion would apply to any other scenarios which similarly repurpose existing billing codes.

If additional code descriptions are to be considered, then please consider assigning new bill codes in those scenarios vs. taking over existing codes. Consistency is key. To wholly reassign the understood meaning of a billing code to a completely different service would seem to be contradictory to how medical billing codes are utilized. Existing billing codes can be expanded or simplified in their description but starkly different services are better to be assigned as new codes.

Thank you for your consideration of my personal opinion on this portion of the proposed Copy Service Fee Schedule Regulations.

COPY SERVICE FEE SCHEDULE FORUM COMMENTS

(e) Bills submitted under this section must utilize the following codes and applicable fees:

(1) WC 020: Flat Fee. (Indicate amount allowed under section 9983(a).)

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

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

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

(5) WC 024: Records of the Employment Development Department (EDD) - \$20.00.

(6) WC 025: Records of the Workers' Compensation Insurance Rating Bureau (WCIRB) - \$45.00.

(7) WC 026: Sales Tax. (Indicate amount.)

(8) WC 027: Duplication of X-Ray or Scan - \$10.26.

(9) WC 028: Electronic storage media containing X-rays and Scans - \$3.00.

(10) WC 029: Contracted Fees. (Indicate amount.)

2

Copy Service Fee Schedule (July 2019)

California Code of Regulations, title 8, §§ 9980, 9981, 9982, and 9983

---

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

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

---

Jeffrey Thompson, Workers' Compensation Supervisor  
City of Simi Valley

August 1, 2019

Due to the fact that, at least in our experience, applicant attorneys have completely ignored the requisites of Rule 9982(a), it appears necessary that an addition to that rule be made after (b)(1):

COPY SERVICE FEE SCHEDULE FORUM COMMENTS

**2: Obtained without verified documentation that a written request was tendered to the employer, claims administrator, or workers' compensation insurer, and that the requested records have not been provided to the injured worker or their authorized representative within the requisite 30 days.**

If 9982 (b)(2) also contained verbiage that applicants, or their attorneys who violate the rule are to be held liable for the costs of the services rendered, I believe you would see a drastic reduction in litigation between copy services and the defense industry. It would also serve as a quid pro quo to offset the rate increase.

---

Anonymous

August 1, 2019

The outrageous fees proposed for copy service are a dis-service to the very people DWC was set up to represent and serve (unless it's another Socialist power and control grab).

Injured workers ought not pay a penny for their own records and any documents or attachments related to them.

---

Lisa Andes, Lien Unit Manager  
Michael Sullivan & Associates LLP

August 1, 2019

I would propose adding the following requirement to all invoices for additional sets of copies as well:

Requirements that bills for both canceled services and certificates of no records include specified information regarding the request for the services, including the name of the requestor and the date of the request.

Our firm and several TPAs/insurance carriers have noticed an increase in invoices for "additional sets" of copies. It appears these charges are being routinely billed by photocopy companies as a matter of practice, where it seems unlikely that AA has made the request. Since the charges are small and carriers are more likely to simply pay, rather than object, it's ripe for abuse and the additional required details could help curb the practice.

## COPY SERVICE FEE SCHEDULE FORUM COMMENTS

Ron Nassif, RN, BSN, CCM, COHN-s  
Vice President – PRIME Managed Care  
Keenan

August 1, 2019

There is no reason to increase the flat rate to \$210. All the copy service vendors on the Defense side say they have never billed anywhere close to \$180. This just gives more wiggle room for the AA Copy Services to jack up expenses....even those under investigation for fraudulent activity. I have contracted up to 60% below fee schedule without anyone blinking an eye. I would recommend a decrease in the flat rate to \$150.00, not an increase.