**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**Division of Workers’ Compensation**

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED RULEMAKING**

**Subject Matter of Regulations: Copy Service Price Schedule**

**California Code of Regulations, Title 8, Subchapter 1, Article 12**

**Sections 9980-9990**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers’ Compensation (DWC) pursuant to the authority vested in him by Labor Code sections 111, 133, 138.2(b), 139.48, 139.5, 4061, 4616, 4658, 4658.5, 4660, 5300, 5307.3, and 5307.4, proposes to amend the proposed regulations described below relating to the Copy Service Price Schedule.

Labor Code section 5307.9 mandates the Copy Service Price Schedule for copy and related services and provides that the schedule shall specify the services allowed and shall require specificity in billing for services.

**PROPOSED REGULATORY ACTION**

The Division of Workers’ Compensation proposes to modify existing regulations, related to the Copy Service Price Schedule by amending Article 12 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations. The following regulations are proposed for amendment:

* Amend section 9980 Definitions
* Amend section 9981 Bills for Copy Services
* Amend section 9982 Allowable Services
* Amend section 9983 Prices for Copy and Related Services
* Amend section 9984 Prices for Dates of Service On and After April 1, 2022
* Amend section 9985 Disputes
* Amend 9990 Division Prices for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

**AN IMPORTANT PROCEDURAL NOTE ABOUT THIS RULEMAKING:**

The Copy Service Price Schedule establishes or fixes “rates, prices, or tariffs” within the meaning of Government Code section 11340.9(g) and is therefore not subject to Chapter 3.5 of the Administrative Procedure Act (commencing at Government Code section 11340) relating to administrative regulations and rulemaking.

This rulemaking is being conducted under the Administrative Director’s rulemaking power under Labor Code sections 111, 133, 138.2(b), 139.48, 139.5, 4061, 4616, 4658, 4658.5, 4660, 5300, 5307.3, 5307.4 and 5307.9. This regulatory proceeding is subject to the procedural requirements of Labor Code section 5307.4.

This Notice complies with the procedural requirements of Labor Code section 5307.4 and for the convenience of the regulated public, assists the regulated public in analyzing and commenting on this non-APA rulemaking proceeding.

**TIME AND PLACE OF VIRTUAL PUBLIC HEARING**

In light of the COVID-19 public health pandemic, a public hearing via ZOOM has been scheduled to permit all those interested the opportunity to present oral statements or arguments with respect to the proposed Copy Service Price Schedule on the following

**Date: Friday, February 25, 2022**

**Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business**

[Access Information](https://dir-ca-gov.zoom.us/j/86980035677): Join from PC, Mac, Linux, iOS or Android: <https://dir-ca-gov.zoom.us/j/86980035677>

Or Telephone:

 Dial:

+1 253 215 8782 +1 301 715 8592 +1 312 626 6799 +1 346 248 7799

+1 669 900 6833 +1 929 205 6099

USA 8883634734 (US Toll Free)

Conference code: 474987

[Find local AT&T Numbers:](https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=2154463656&accessCode=474987)  https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=2154463656&accessCode=474987

Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) or DWCADA@dir.ca.gov as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation or 5:00 P.M., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Administrative Director requests, but does not require, that any persons who make oral comments at the ZOOM public hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed amendment to modify existing regulations, related to the Copy Service Price Schedule to the Department of Industrial Relations, Division of Workers’ Compensation.

The written comment period closes on .The Division of Workers’ Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers’ Compensation by that date. Again, equal weight will be accorded to oral comments presented at the ZOOM public hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

 Maureen Gray

 Regulations Coordinator

 Department of Industrial Relations

 Division of Workers’ Compensation

 P.O. Box 70823

Oakland, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent via e-mail to: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, all written comments must be received no later than February 25, 2022.

**CONTACT PERSON**

Inquiries concerning this proposed action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed amendments to the regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray

Regulations Coordinator

Department of Industrial Relations

Division of Workers’ Compensation

P.O. Box 70823

Oakland, CA 94612

E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

**CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Carol N. Finuliar

Industrial Relations Counsel

Division of Workers’ Compensation

P.O. Box 70823

Oakland, CA 94612

Email: cfinuliar@dir.ca.gov

Telephone: (510) 286-7100

**AUTHORITY AND REFERENCE**

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in them by Labor Code sections 59, 111, 127, 133, 138.7, 5307.3, 5307.9.

Reference is to Labor Code sections 127, 138.7, 138.2(b), 5307.3, and 5307.9; Business and Professions Code sections 22450 and 22462; Code of Civil Procedure section 2019.030; and Evidence Code sections 1561, 1562 and 1563.

**FORMAT OF PROPOSED MODIFICATIONS**

**Proposed Text for 30-day Comment Period:**

The proposed text is indicated by underlining added language. Deletions are indicated by ~~strikeout~~.

**Proposed Text for Second 30-day Comment Period:**

The proposed text is indicated by double underlining added language. Deletions are indicated by double strikeout deleted language.

**SUMMARY OF PROPOSED CHANGES**

**Amend Section 9980 - Definitions**

* Subsection (d), the definition of “Contracted services” clarified as an agreement with a claims administrator or an employer and a copy service provider.
* The definition for “Date of Service,” of subsection (g) was deleted. Section re-lettered to account for deletion.
* The definition of “Initial Set of Records” is clarified to include separate types of records requested from a single source, regardless of the number of subpoenas issued.

**Amend Section 9981 - Bill for Copy Services**

* Initially proposed subsection (a)(4) was deleted and replaced by requirement that a bill contain a statement that the services described in the bill are neither related to nor the result of a violation of Labor Code section 139.32.
* Subsection(c) was added to return the billing codes set forth in subsection (b)(1) of the existing regulation and provide that the codes are applicable to services provided on or before 30 days after the effective date of the proposed amendments.
* Subsection (c) as initially proposed was re-lettered as subdivision (d) and provides that the billing codes in the subdivision are applicable to services provided on or after 30 days after the effective date of the proposed amendments.
* Subsection (d) “For dates of service on or after April 1, 2022, bills submitted for records under this section may include the following codes,” replaces “Bills submitted under this section must use the following codes.”
* Subsection (d)(1) reflects that the flat price is $230 the code number was changed from WC 010 to WC 019 as WC 010 is a current code for duplication of X–Ray.
* Flat price for code 020 of $180 is deleted. Subsection renumbered to account for deletion.
* Subsection (d)(4) amended to provide that the price of .10 per page is for pages in excess of 500 pages.
* Subsections (d)(6), (d)(7), (d)(8), and (d)(9) have been deleted.
* Subsection (e) “or objected to” has been added.

**Amend Section 9982 - Allowable Services**

* Subsection (a) is clarified to provided that the schedule only covers copy and related services set forth in sections 9983 and 9984. Other services may be compensation under agreement or contract. “covers,” was changed to “provides payment for.”
* Subsection (b) corrected a typo, “10653” was changed to “10635.”
* Subsection (d)(1) was changed back to the current language; “notice of intent to copy records” was deleted and “written request by an injured worker or his or her authorized representative” was added. “When an objection is raised the parties must meet and confer to resolve the objection” was deleted.
* Subsection (e) was deleted.
* Subsection (f)(3) was deleted. The remaining subsections are re-numbered.
* The new subsection (f)(3) provides that that there cannot be more than four Certificates of No Records billed after the effective dates of the regulation.
* Subsection (f)(4) was added to provide that: ”Charges for records submitted to the Independent Medical Review Organization (IMRO) for independent medical review, where the submitted records are already in possession of the injured worker or the injured worker’s representative, or which are duplicative of those submitted to the IMRO by the claims administrator.”
* Subsection (f)(5) was added. “Charges for services related to, or cancellation of, a subpoena for records in the employer’s claims administrator’s or workers’ compensation insurer’s possession, where a signed order quashing the subpoena has been served on the copy service.”

**Amend Section 9983 - Prices for Copy and Related Services**

The title was changed to “Prices for Copy and Related Services.” The regulation is returned to the language currently in effect. The dates of service were updated to prior to April 1, 2022.

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

Subsection (f)(5) was deleted.

**Adopt Section 9984 - Prices for Dates of Service on and after April 1, 2022**

The title was changed to reflect the effective date of the amendments of April 1, 2022. The proposed regulation sets forth the prices for services on or after the effective date of the regulations.

* Subsection (a) the flat price was changed from $225 to $230.

* Subsection (b) added:

“The claims administrator will not be liable for bills submitted under this subdivision unless:

1) Bills submitted for cancellations include a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the cancellation order containing the date of cancellation and identity of the cancelling party

2) Bills submitted for certificates of no records include a copy of the request for records containing the date of the request and identity of the requesting party, and a copy of the certificate of no records containing the date of the certificate.”

* Subsection (c) is amended to clarify the payment for Release of Information (ROI) services. Subdivision (c)(2) is added to provide:

Third party release of information (ROI) services that represent deponents or witnesses who are compelled to produce documents for a deposition, records-only deposition, or trial conducted as part of any workers compensation claim shall be paid a flat price of $35 when records are produced, inclusive of the witness fee and all services provided by the third party ROI service, or a flat price of $15, inclusive of the witness fee and all services of the ROI service when a CNR is produced. Third party ROI services representing deponents or witnesses will accept electronic service of all deposition notices and requests, including subpoenas and witness fees. Third party ROI services shall produce electronically the records or certificates, including all affidavits required by section 1561 of the Evidence Code, to the requesting party or their representative. These prices are included in the flat price.

* Subsection (d)(5) was deleted.

**Section 9985 Disputes**.

* Subdivision (b) was deleted.

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

The proposed changes to 9990 were withdrawn.