

DWC PROPOSES NEW CHANGES TO COPY SERVICE RULES AND FEES – CCR §§9980-9990

On August 30, 2021, the Division of Workers' Compensation held a public hearing to discuss proposals to amend the Copy Fee Schedule, governing allowable services and related charges for copy of medical reports and obtaining records via subpoena. A SECOND public hearing is scheduled for Friday, February 25, 2022. Specifically, the proposal will increase reimbursement for copies of records for the first set of records obtained.

The points we want to highlight are the important changes effective **April 1, 2022**:

1. For dates of service on or after 4/1/2022, the charges for the first set of records **increases to \$230.00**
2. **Bills must be paid or objected to within thirty (30) days of receipt by the claims administrator. If not, the portion of the billed sum which remains unpaid will be increased by 25 percent.**
3. **The new proposal provides for the parties to “meet and confer” to discuss the relevancy of records being sought.** Title 8, California Code of Regulations §§9980, §9981, §9982, §9983, §9984, §9985, and §9990 are those sections which are relevant to these changes. The proposals would affect the pricing subject to §9983 for dates of service prior to January 1, 2022, and §9984 for dates of service on and after January 1, 2022.
4. The codes to be used on the bills by the subpoenaed company have been updated and/or changed.

The reasoning for the new proposal is to keep with the regulatory proceeding enunciated in Senate Bill 863, where the Administrative Director was directed to adopt a schedule of reasonable maximum prices payable for copy and related services.

COPY SERVICE PRICE SCHEDULE

A fee schedule became effective on July 1, 2015, for copy service. A price schedule was formulated after the findings of the Berkeley Research Group. The new flat fee schedule allowed specific reimbursement values for copy services. The flat Fee Prices for these records are **\$180.00 for services from July 1, 2015, through March 31, 2022.**

NEW PROPOSED COPY SERVICE FEE SCHEDULE TO GO INTO EFFECT AS OF APRIL 1, 2022

The following regulations propose five (5) amendments and would adopt two (2) new sections to the regulations governing copy service rules:

- Amend section 9980 Definitions
- Amend section 9981 Bills for Copy Services
- Amend section 9982 Allowable Services
- Amend section 9983 Prices for Dates of Service Prior to January 1, 2022
- Adopt section 9984 Prices for Dates of Service on and after January 1, 2022
- Adopt section 9985 Disputes
- Amend 9990 Division Prices for Transcripts; Copies of Documents; Certifications; Case File Inspection; Electronic Transactions

DEFINITIONS - §9980

The definitions were changed slightly simply to clarify the meaning and intent of services under the regulations and do not change the allowable reimbursement fee.

BILLS FOR COPY SERVICES from July 1, 2015 through 3/31/2022 - §9981

1. A flat fee of \$180.00 for an initial set of records up to 500 pages and \$0.10 cents per page thereafter.
2. \$75.00 for cancelled records or a "Certificate of No Records"
3. \$20.00 for records obtained from the Employment Development Department
4. \$30.00 for records obtained from the Workers' Compensation Insurance Rating Bureau
5. \$5.00 for an additional electronic set, if ordered within 30 days of subpoena
6. \$30.00 for an additional electronic set (after the first electronic set is obtained) if ordered more than 30 days after subpoena
7. \$10.26 per sheets of x-rays or films and \$3.00 per CD
8. \$3.00 for electronic media
9. Requested services (an amount must be indicated)
10. Contracted prices for additional sets (an amount must be indicated)
11. Contracted services (an amount must be indicated)
12. \$10.00 for an additional set
13. Sales tax are applicable

Still required is a statement under penalty of perjury on all bills that the services are not related to nor the result of a violation pursuant to Labor Code §139.32.

ALLOWABLE SERVICES - §9982

In order to provide clarity, changes were made to reflect that *claim administrators* and NOT employers are those who more commonly contract with copy service providers.

Services not covered by the Fee Schedule may be compensated under a contract or agreement between the claims administrator and the copy service provider.

Another change for allowable services relates to those records obtained within 30 days of a request by an injured worker. The payment for these services would **not be allowed** for those records sought from the employer, claim administrator, or workers' compensation carrier for copies of records in the possession of these entities, which are relevant to the injured workers' claim. The 30-day period starts once the copy service provides a notice of intent to copy records to the employer, claim administrator, or workers' compensation carrier.

However, if the claims administrator fails to serve records in the employer's or insurer's possession, which are being requested by the injured worker or their representative within the time frame (see L.C. §5307.9), or fails to serve a copy of any subsequently received medical report or medical-legal report timely (see CCR §10635), the schedule applies in order to obtain those records.

There are specific services for which there will be no payment for copy and related services where they are either:

1. *Provided within 30 days for a written request by the injured worker or their representative to an employer, claims administrator or workers' compensation insurer*
2. *They are not provided by a person or entity who is a registered professional photocopier*
3. *Provided by a medical provider, or agent of the provider, when the requesting party has employed a professional photocopier to obtain or inspect the records*
4. *Previously obtained by subpoena or authorization by the same party and served from the same source*
5. *Summaries, tabulations, or indexing of documents*
6. *More than four (4) Certificates of Records on a claim with dates of service after April 1, 2022*
7. ***Charges for records submitted to IMR Organization where the records are already in the possession of the injured worker or representative are which are duplicative of those submitted to the IMRO by the claims administrator***
8. *Charges for records where a signed Order quashing the subpoena has been served on the copy service*

PRICES FOR DATES OF SERVICE PRIOR TO April 1, 2022 - \$9983

The reimbursable allowances remains as enunciated for dates of services effective July 1, 2015, with the only changes being the removal of services related to release of information. services of witness costs, for the retrieval and return of physical records held offsite by a third party, and the addition of a flat price of \$35.00 when records are produced by a deponent or witness, or \$15.00 flat price if a witness or deponent provides a Certificate of No Records.

BILLS FOR COPY SERVICES ON OR AFTER APRIL 1, 2022 - §9984

Note: fees for the initial set of records would increase to a flat price **\$230.00** for records obtained **on or after April 1, 2022**. The flat fee includes mileage, postage, pick up and delivery of records, telephone calls, visits to the records source and records locators whether or not on a repeated basis, page numbering, witness fees, check fees, costs charged by 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. *Applicable sales tax is a separate price and is allowable.*

Also added is a \$35.00 flat fee for third party release of information for deponents or witnesses who are compelled to produce documents for a deposition, records only deposition, or at trial. This flat fee is inclusive of the witness fee and all services provided by the third party who provides information or documentation. A flat price of \$15.00 is allowance and inclusive of the witness fee when a Certificate of No Records is provided by the deponent or witness.

The separate codes for retrieval of records from the Employment Development Department and the Workers' Compensation Insurance Rating Bureau have been deleted, as well as the codes for the additional set of electronic records.

These are the significant proposed changes to the allowable prices by copy services.

DISPUTES - §9985

Disputes with respect to the production of records may be resolved by filing a petition with the WCAB, or by filing a petition, pursuant to Labor Code §132, with the superior court.

Disputes relating to objections to a notice of intent to obtain records may be resolved by filing a petition with the WCAB.

DIVISION PRICES - §9990

This section relates to those prices to be charged by the Division for copies of records or documentation.

PRACTICAL EFFECTS OF THE NEW PROPOSAL

The study conducted in 2013 by the Berkeley Research Group found that a fair market value to copy records was approximately \$251.00. The initial flat price of \$180.00 was adopted. However, since the current flat price is lower than the fair market value reported in the study prepared by BRG, the DWC proposes to increase the flat price from \$180.00 to \$225.00 to be more in line with the fair market value of copy services.

The new proposal also wanted to address the challenges experienced as a result of a multitude of bills being submitted by copy service companies for cancellation of record services. Thus, the intent behind the "30-day rule" for the employer, claim administrator or workers'

compensation carrier to have an opportunity to submit records to the applicant and his/her representative prior to the necessity of requesting those records via subpoena.

The “meet and confer” process has been proposed to allow the parties to discuss the relevancy and necessity of records being sought by the injured worker and avoid unnecessary cancellation charges. If the records are being requested on behalf of the injured worker, the copy service would send a notice of intent to copy records and would trigger the 30-day time period for the employer, claim administrator or workers’ compensation carrier to object to the copying of records, and a meet and confer would be necessary to discuss the records. If the dispute cannot be resolved, a petition can be filed with the WCAB to assist the parties. If records are obtained after a valid objection, the bill would be disallowed by regulation.

There is also a proposal to limit the number of “certificates of no records” to four (4) to avoid the abuse of this service. Reports of incidences where records are being sought from locations where the injured worker never received medical treatment from that particular provider or facility prompted a look at adopting this limitation.

Copy service companies raised the issue of separate fees for instances where a request is made for release of information from a witness or deponent subject to testimony at trial or deposition where specific information or documentation has been compelled. Currently, these fees are included in the flat price, but often exceed the cost of the flat price provided in the current fee allowance. In order to avoid an abuse related to the services, a maximum witness fee for third party release of information costs is proposed.

Finally, in its constant challenge to keep costs down and incentivize the parties, the Administrative Director proposed an increase of 25% to be paid by the claim administrator, employer or workers’ compensation carrier if the bill submitted by the copy service is not paid within 30 days.

This is an ever-changing system, and the Law Offices of Pearlman, Brown & Wax endeavor to keep you apprised of all changes, updates and revisions in order that you may administer your claims more effectively and efficiently!