

What's Ahead for 2019 Workers' Comp Regulations

*and our take on impacts for pharmacy
benefit management*



2019 promises to be an eventful year in workers' compensation, picking up where an active 2018 left off. We expect to see the continuation and expansion of some 2018 trends, as well as new initiatives with the potential to impact pharmacy benefit management in workers' comp, including:



New Leadership:

The balance of power shifted in seven state legislative bodies with five flipping to Democratic control (CO, ME, NH, NY, WA), and one each to Republican (AR) and split party control (MN). Twenty states elected new governors, with seven changing from Republican to Democratic administrations (ME, MI, WI, IL, KS, NM, NV) and one changing from Independent to Republican (AK). At the federal level, Democrats now control the U.S. House of Representatives.

20 new states elected new governors, many of whom have already appointed new workers' compensation directors

Why this matters:

New leaders and lawmakers bring new policies and personnel. Even in states where party control remained the same there are new representatives who come with agendas. New laws that affect workers' comp – directly and indirectly – are likely at both state and federal levels. Perhaps more significant are new governors in almost half the states. Not only do governors appoint new workers' compensation directors, they appoint new IT directors, the combination of which could lead to some much-needed modernization of systems and more efficient processes.

For example:

- ▶ Currently only three states (NC, MN, TX) require payers and providers to submit bills electronically. Virginia and New Jersey have adopted rules requiring e-billing that go into effect during 2019, which will bring the total to five. Many more states could consider efficiencies such as mandatory e-billing in an effort to reduce fraud, waste, and abuse.
- ▶ Regulatory changes are needed to allow better access to new healthcare technologies, such as telemedicine and electronic medical records (EMR). As it stands, only a handful of workers' compensation regulations and fee schedules recognize telemedicine and while most medical providers have been using EMR systems for years, there are some regulatory obstacles to connecting providers, patients and insurers to leverage that technology towards greater efficiency and quality of care.

Federal and state governments are renewing their efforts to tackle the issue of growing drug costs and considering some much-needed change.



Drug Prices:

Several proposals to rein in escalating drug prices have been proposed by rare bipartisan coalitions of federal lawmakers and administrators, including:

- ▶ Bills that would help bring generic drugs to market more quickly
- ▶ Allowing prescription drug imports from Canada
- ▶ Placing caps on out-of-pocket drug expenditures for consumers covered by government and commercial insurance plans
- ▶ Permitting collective drug price negotiation by Medicare
- ▶ Removing patents for drugs deemed “excessively priced,” as determined by comparing U.S. prices to those in other countries and other criteria
- ▶ Allowing government-controlled manufacturing of drugs
- ▶ Ending the current patent-protection system for pharmaceuticals, replacing it with a government-sponsored incentive system to develop needed drugs.

Medical costs in workers’ comp are averaging more than 2/3 of total claim costs

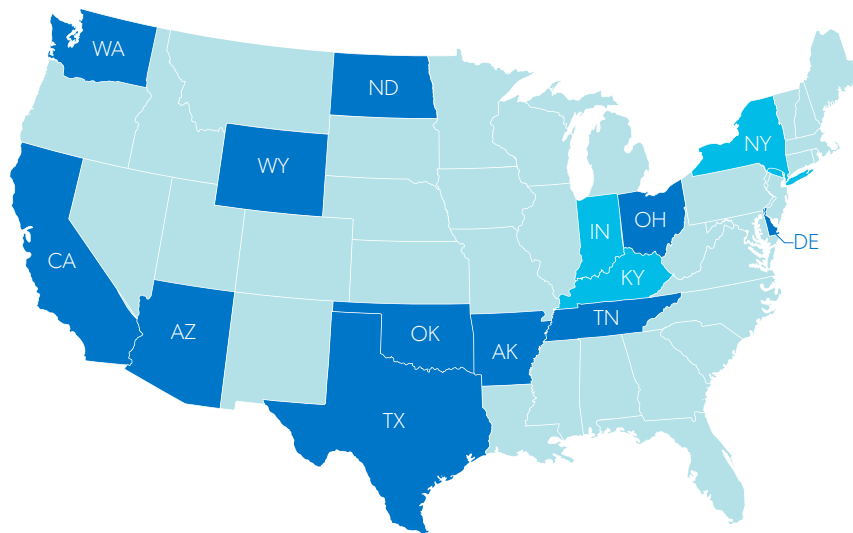
Why this matters:

Medical costs in workers’ comp are averaging more than two thirds of total claim costs and pharmacy costs are a large component of medical costs, especially for long-tail claims. By January 10 of this year, pharmaceutical companies had raised prices on almost 500 drugs by an average of over 6%.¹ Pharmacy costs begin with the list prices of drugs and lower is better, of course. It bears keeping in mind, however, that any action on drug prices is likely to slow the rate of inflation and not actually lower prices, much less reduce overall medical costs. Constructive clinical oversight and drug utilization management focused on outcomes will ultimately realize greater cost savings for payers, while also providing better care for patients.



State Drug Formularies:

One way that states are trying to control utilization and costs is by adopting worker’s compensation drug formularies. Eleven states (TX, OH, OK, TN, DE, ND, AZ, WA, WY, CA, AR) now have formularies. Kentucky and Indiana will be implementing formularies in 2019 and New York is in the process of finalizing its formulary. Drug prices continue to rise, opioids continue to be over prescribed and misused, and two of the pioneering formulary states, Texas and Ohio, are touting good results, which likely means that this trend will continue.



- States with mandatory drug formularies
- States with future drug formularies

Why this matters:

The large and fast-moving influx of state-specific formularies can present great complexity for payers operating nationally or in multiple jurisdictions. But the positive results reported by closed formulary states, including Texas and California, regarding concerns such as opioid over-utilization suggest that state formularies can be a force for good. The key is effective and timely implementation paired with a supportive pharmacy program infrastructure that drives formulary adherence at every level throughout the claims process.



Medical Marijuana:

Still classified as a Schedule 1 drug by the DEA, the use of marijuana for medical purposes is now legal in 33 states and the District of Columbia. Some states are also addressing medical marijuana use and compensability for workers' comp patients:

- ▶ 17 states permit, but do not require, reimbursement for medical marijuana
- ▶ New Mexico does require reimbursement of medical marijuana for injured workers
- ▶ New York and Illinois have programs allowing patients to replace their opioid prescriptions with medical marijuana

Medical marijuana is now legal in 33 states

In addition, federal lawmakers are indicating support for the legalization of marijuana in general. The U.S. Senate has introduced a bill to amend the Controlled Substances Act and protect state marijuana legislation across the country, and a companion bill from the House followed. Also of note was the landmark DEA rescheduling of Epidiolex (cannabidiol) epilepsy medication which does not contain THC, from a Schedule I substance to Schedule V status in October.

Why this matters:

Support for medical marijuana has increased significantly in recent years. As long as it is a Schedule I drug, marijuana will not be appearing on any drug formularies, but studies indicating that marijuana may be a safe and effective alternative to opioids hold promise and could bolster the argument for reclassifying the drug, which would open the door to prescribing, as well as reimbursement. In the meantime, the legalization of Epidiolex should pave the way for other non-THC marijuana-based drugs to become available.



Expanding Protections for First Responders:

NCCI named first-responder legislation among the top workers' comp regulatory trends of 2018 because 103 of 814 bills introduced dealt with helping first responders deal with PTSD or cancer.² Only a small number of the bills introduced have become law and more are expected in 2019. Legislative action we saw during 2018 includes:

- ▶ PTSD legally recognized as an occupational disease without requiring any connection to a physical injury in Florida, Washington, New Hampshire and Minnesota
- ▶ Similar efforts underway in other states, including Connecticut, Ohio, Arizona, Utah, and Kentucky
- ▶ Recognition of certain cancers as occupational diseases for firefighters, including the recent additions of New Hampshire and Hawaii
- ▶ Bills that would make these cancers compensable introduced in Montana, Florida, and New Jersey
- ▶ Pending legislation to expand coverage for more types of cancers in Virginia

103 legislative bills introduced in 2018 concerned first responders

Why this matters:

Covering PTSD independently as a mental-only injury will likely increase the number of claims for the disorder, as well as demand for drug therapies and psychiatric visits to treat it. Demand for specialty drugs to treat cancer is also

likely to rise as more cancers become compensable in more states. Payers for states, municipalities, and affiliated private organizations, such as security firms and emergency healthcare providers, will likely be impacted by requirements for expanding first-responder coverage.



Opioid Control:

Lawmakers across the country continue efforts to curb the opioid epidemic using regulatory measures. A growing number of states are limiting initial opioid prescriptions, including South Carolina, Oklahoma, Missouri, Colorado, Florida, Tennessee, and Washington. California is considering a similar bill and Massachusetts is considering an opioid-limited formulary. Other measures address patient and provider education, including:

- ▶ Hawaii now requires providers to adopt an informed-consent process before prescribing opioids to injured workers
- ▶ North Carolina has published an opioid utilization guide
- ▶ Pennsylvania released opioid guidelines for the safe and effective treatment of injured worker
- ▶ The Texas Division of Workers' Compensation published an audit of opioid prescribing habits and record-keeping to ensure that health care providers adhere to the Official Disability Guidelines (ODG) and medically accepted standards of care for prescribing opioids
- ▶ The Centers for Disease Control and Prevention (CDC) has requested the formation of a work group to estimate, or provide reference points for, opioid prescribing

Why this matters:

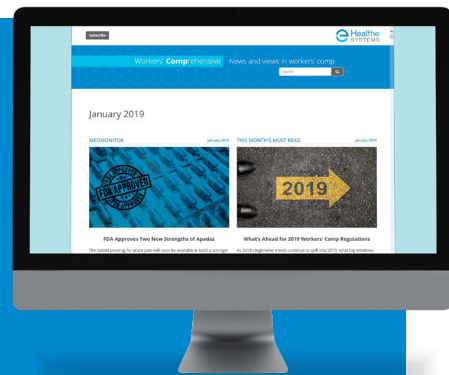
The opioid crisis is a long way from over with just under 48,000 opioid deaths estimated to have occurred in 2017³ and the average American now more likely to die of an opioid overdose than a car accident.⁴ But stringent opioid management programs have been successful in reducing opioid prescriptions and they can become even more effective with additional support from the states, as long as regulatory measures are driven effectively through workers' comp pharmacy programs.

The average American is now more likely to die of an opioid overdose than in a car accident

Keep Up in the Coming Year

Keeping up with workers' compensation regulations across the country is essential for reasons that go beyond compliance. Workers' compensation regulations inform clinical and business strategies. The correct application of relevant regulations provides tremendous opportunity to plan optimal pharmacy benefit management programs, set benchmarks, and measure the success of patient care and cost saving programs.

Stay current on important regulatory developments, including legislation and policy changes, as well as important industry news, **by subscribing to our monthly newsletter Workers' Comprehensive.**



References:

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