The workers’ compensation regulatory and compliance environment is constantly evolving, with many new regulations, trends and upcoming legislation. Below, we’ve outlined five trends that affect the workers’ compensation industry now, from billing trends to consumer privacy laws to medical marijuana regulations.

Billing Trends: Preventable Billing Mistakes
The Centers for Medicare and Medicaid Services (CMS) reports that there is an 8.1 percent error rate in medical billing, which has led to $230 billion in losses over the past six years. Though these statistics relate to Medicare specifically, they are telling and provide clues on potential billing mistakes in workers’ compensation claims to include; incomplete documentation, diagnosis reporting issues related to causation and more. In order to combat these common errors, many claims organizations are implementing pre-payment audits in order to catch some of these inaccuracies before sending the bills to be repriced to the fee schedule.

Consumer Privacy Legislation
States are introducing legislation to create guidelines or directives to grant consumers rights related to their personal information and data, including requiring full disclosure to consumers by companies using consumer personal data for analytics, operations or products. Many are using the California Consumer
Privacy Act (CCPA) as a template.

States are also introducing legislation that mirrors the federal privacy and security obligations under HIPAA. Although the Property & Casualty (P&C) industry is not a covered entity or business associate under HIPAA, companies in the P&C industry are required to comply with this legislation unless specifically excluded in the bills. So far, the trend in this legislation has been to expressly exclude P&C from these requirements or to promulgate additional legislation to exclude P&C from these requirements, but insurers should be on the lookout for potential applicability as states continue to pass these new regulations. View details of the bills at NCSL.org.

**Formulary Regulatory Updates**

Drug formulary legislation continues to be implemented in several states. In 2019, New York finalized its drug formulary rule. Montana and Kentucky’s formularies both went into effect in mid-2019. A couple of other states are still considering adopting state-mandated formularies. Click here for a state-by-state overview of formulary laws.

**Medical Marijuana Legalization Continues**

Marijuana continues to be a hot topic across the country. As of September 2019, more than 30 states have legalized medical marijuana and 10 states plus the District of Columbia have legalized the drug for recreational use. In 2019, most states proposed legislation that dealt with issues related to the drug. As noted below, several bills introduced may impact the workers’ compensation industry if passed.

**Summary of Legislation Introduced Related to Workers’ Comp**

- Add medical marijuana to PDMP
- Expand qualifying conditions
- Use for opioid use disorder treatment
- Increasing legal age for recreational use to 25
- Potency limits placed on all marijuana products
- Health warning on medical marijuana products
- Employment discrimination protections
- Require workers’ compensation to reimburse (Kansas, Maine, New Jersey, New York, Vermont)
- Exempt workers’ compensation from reimbursement (Kentucky)
- Repeal all legal use of marijuana (Massachusetts HB 3531)

**Opioids**

Opioid prescribing has decreased since 2012, especially in workers’ compensation. However, opioid
overdose death rates (from all opioids, including street opioids) increased in 2017. This means that states are still trying to find ways to combat the opioid crisis. In total, 25 states have opioid prescribing limits in place. In 2019, five states passed new opioid prescribing limits, while three more have bills running to implement prescribing limits.

**Q4 2019 and Beyond**

As we begin to close out 2019 and look toward 2020, we anticipate that these trends and regulations will continue to be at the forefront for the workers’ compensation industry in addition to new challenges and policies. Check back here at mpower.mitchell.com toward the end of the year to read our full set of predictions and workers’ compensation trends for 2020.