

# **Current Issues and Trends in Medical Malpractice**

Casualty Loss Reserve Seminar  
September 14, 2009

Chris Coleianne  
Aon Global Risk Consulting  
Columbia, Maryland

# Current “Issues and Trends” in “Medical Malpractice”

- Medical Malpractice
  - Hospital Professional/Physicians Liability
  - Long Term Care Professional Liability
- Issues and Trends
  - Trends: Data based trends in frequency and severity of indemnity and expense costs
  - Issues: What is driving the trends? How are healthcare providers managing the med mal exposure?

# Hospital Professional Liability – Background

Many hospitals participate in primary layers of insurance through captives, SIRs or deductibles.

- Insulation from perceived volatility of commercial market
- Lower expense load
- A way to attract employed physicians

This participation has encouraged an understanding and focus in hospital risk management

- Investment in defense and cost containment strategies
- Patient Safety initiatives
- Tort Reform initiatives
- CFO interest in changes in reserve estimates

# Aon/ASHRM 2008 HPL Benchmarking Study

- Underlying Data: 77,750 non-zero claims; approximately \$9.3b in reported losses; over 1,000 facilities
- Most participants are self-insurers
- 9th annual study
- Actuarial analysis of Frequency, Severity, and Loss Cost trends countrywide and in specific states
- Claim Severity is limited to \$2M per occurrence
- Claim Frequency is based on “non-zero” claim count
- Exposures are “Bed Equivalents”

# Key Findings of 2008 Benchmarking

- The frequency of claims continues to be “non-increasing” overall.
  - NFP frequency is flat to increasing.
  - FP frequency is decreasing to flat.
- The severity of claims (at the \$2M limit) is increasing at a 3% annual rate.
- NFP and FP cost differences have narrowed as FP results improve.
- “Never Events” are a significant portion of claims experience.

## “Never Events”

- In 2002, the term “Never Event” was coined to describe a list of 28 hospital acquired conditions that are preventable and should never occur.  
While original interest in “Never Events” was in the patient safety arena , Centers for Medicare and Medicaid (CMS) interest in “Never Events” was more fiscally oriented.
- CMS non-reimbursement regulations went into effect on October 1, 2008.
- CMS will no longer reimburse for a list of 10 specific hospital acquired conditions.

## “Never Events” and HPL

- Current tort system is a fault based system where fault is determined by comparing the facts of the case to a Standard of Care.
- CMS has just ruled that these Never Events are all preventable. So preventable in fact, that they should never happen and therefore will not be reimbursed!
- Never Events **may** lead to Strict Liability
- Plaintiff's bar now has an interesting angle
- Hospital **may** experience higher frequency and/or severity of lawsuits as a result of publicity and awareness of CMS non-reimbursement regs

# Hospital Acquired Conditions

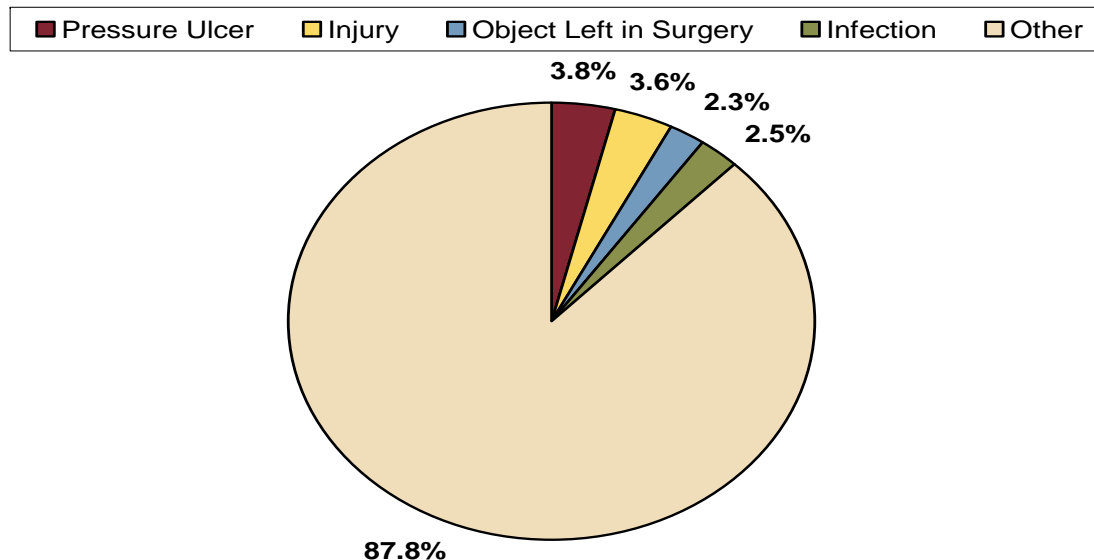
- Aon surveyed participants to see if historical losses alleging one of the 10 specific CMS regulation events were available for analysis.
- Based on the response from the survey, we were able to analyze
  - hospital acquired infections
  - hospital acquired injuries (fractures, dislocations, intracranial injury, crushing injury, burns and other)
  - objects left in surgery
  - pressure ulcers



# Hospital Acquired Conditions

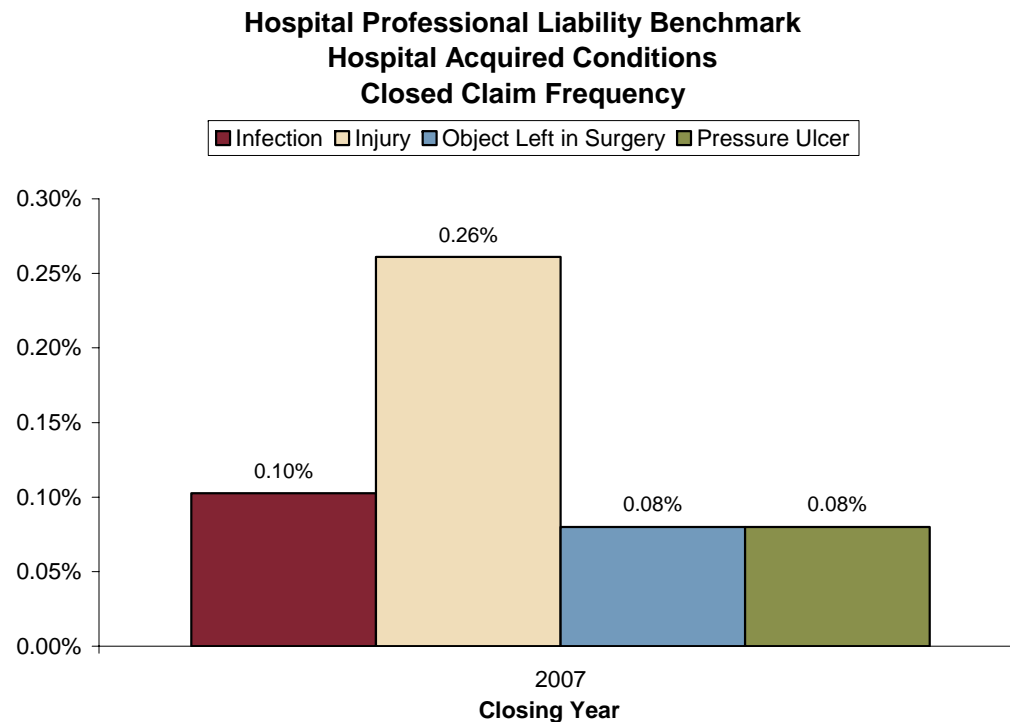
- 12.2 percent of total hospital professional liability costs are associated with these four hospital acquired conditions.

Hospital Professional Liability Benchmark  
Hospital Acquired Conditions  
Losses as a Percentage of Total Database  
Losses Limited to \$2 Million per Occurrence



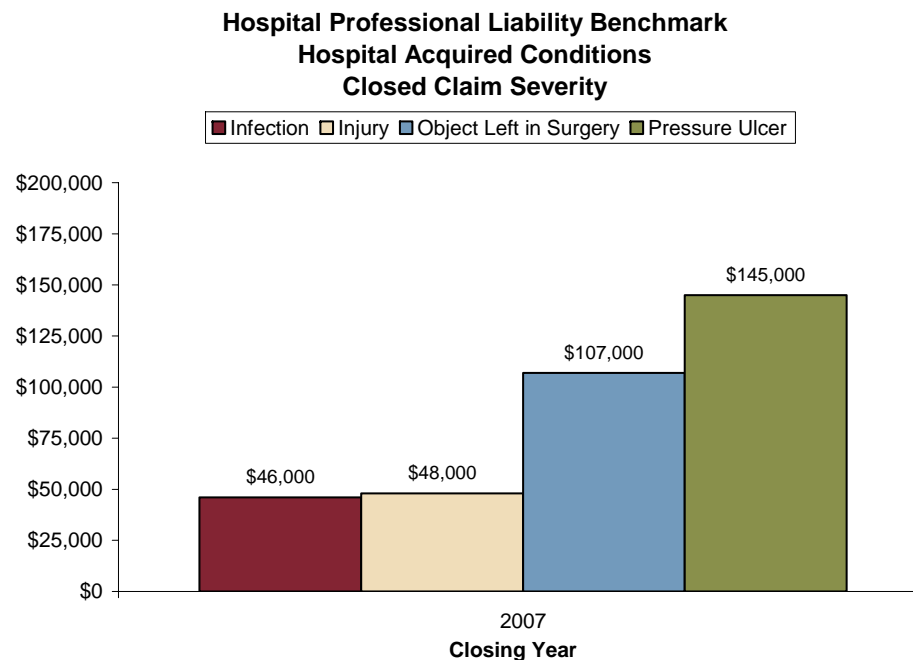
# Frequency of Hospital Acquired Conditions

- One out of every six hospital professional liability claims is due to these four hospital acquired conditions.



# Severity of Hospital Acquired Conditions

- Pressure ulcer severity is similar to overall average severity while other conditions have below average severities.



## **“Never Events” Summary of Conclusions**

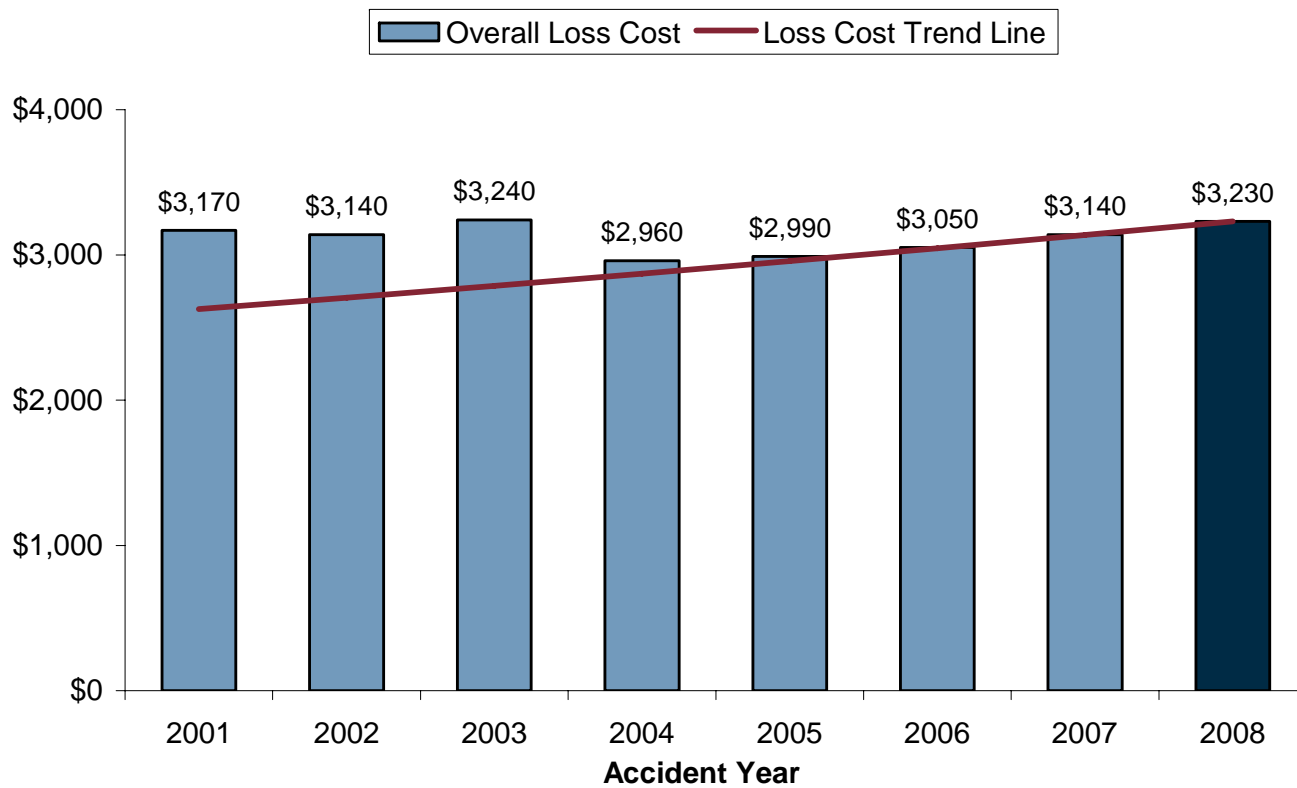
- Patient and plaintiff attorney attitudes toward hospital acquired conditions are likely to change as the result of the awareness.
- Plaintiff attorneys will not stop at the 10 CMS non-reimbursement categories.
- Impact to HPL likely to show up in frequency first.

# Overall Results - Loss Costs

Hospital Professional Liability Benchmark

Aon Database

Loss Cost per Bed

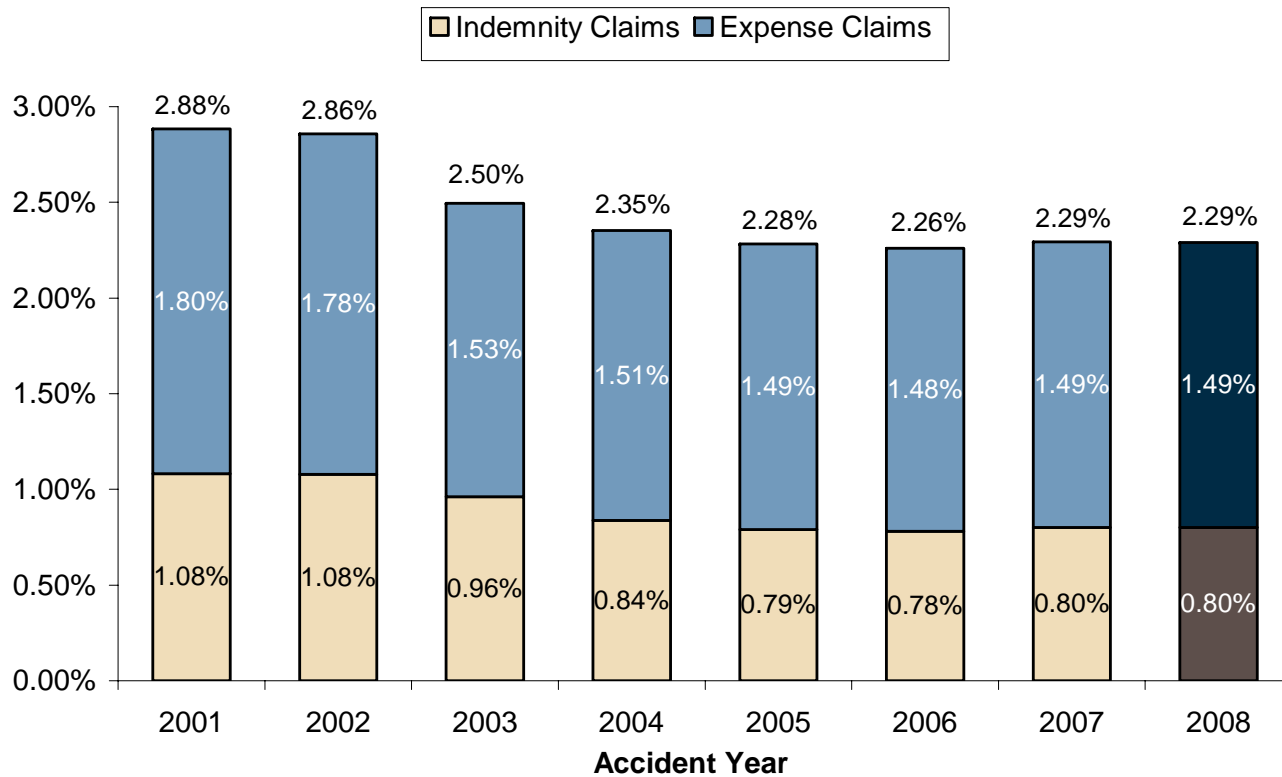


# Overall Results - Frequency

Hospital Professional Liability Benchmark

Aon Database

Frequency per Bed

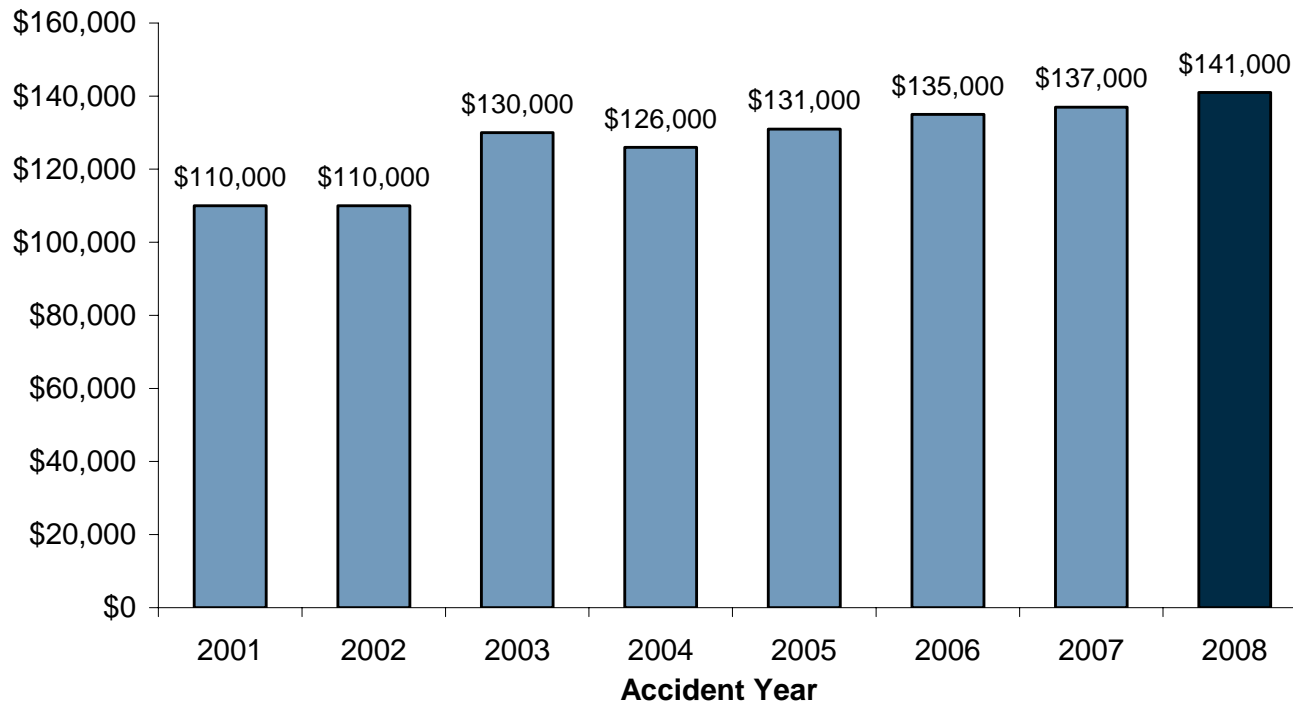


# Overall Results - Severity

Hospital Professional Liability Benchmark

Aon Database

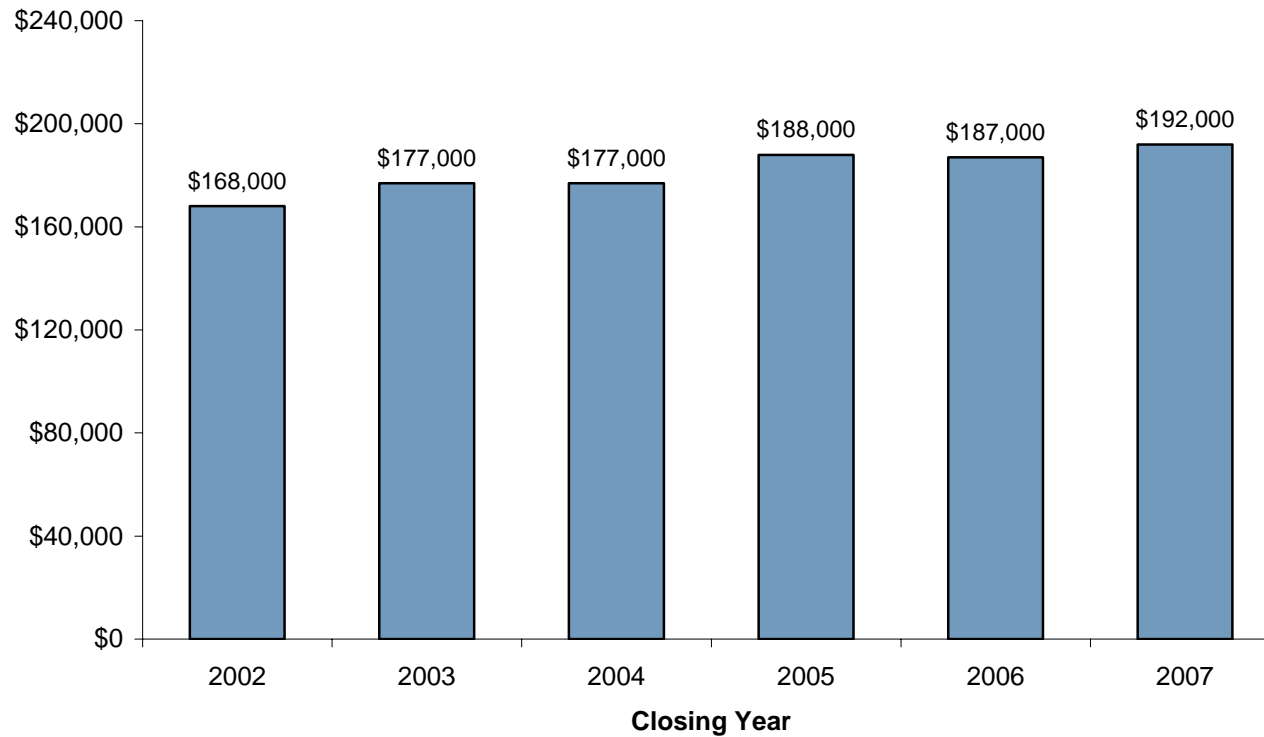
Severity per Claim



# Closed Claim Results - Indemnity

## Hospital Professional Liability Benchmark Analysis Closed Claim Analysis

### Average Paid Indemnity on Claims with Indemnity Payments Limited to \$2M per Occurrence

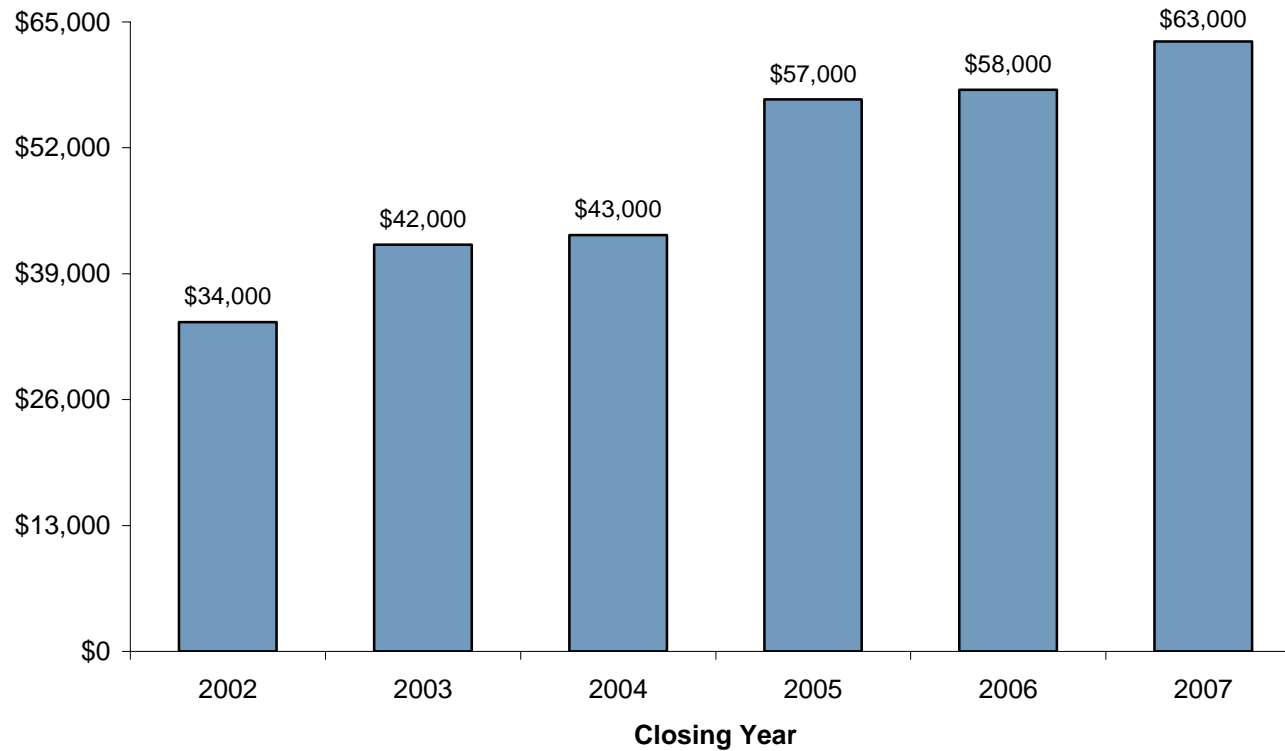




# Closed Claim Results - Expense

## Hospital Professional Liability Benchmark Analysis Closed Claim Analysis

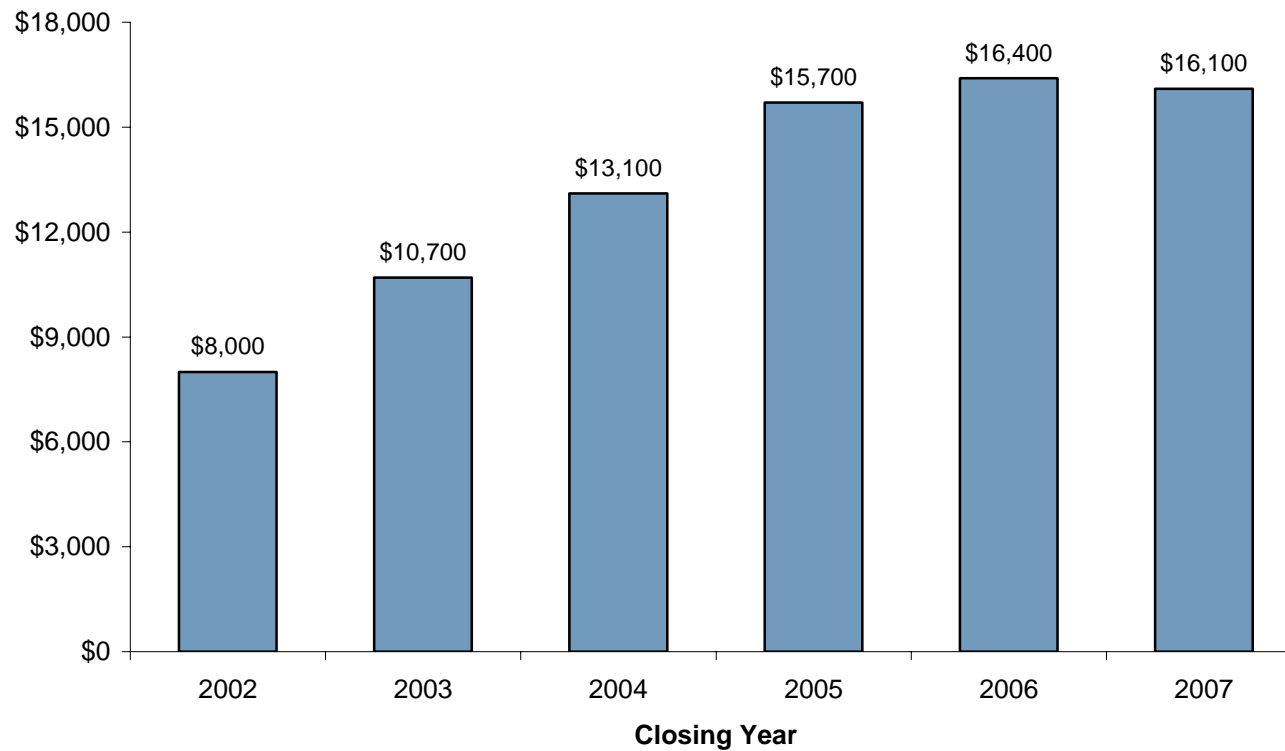
### Average Paid Expense on Claims with Indemnity Payments



# Closed Claim Results - Expense

## Hospital Professional Liability Benchmark Analysis Closed Claim Analysis

### Average Paid Expense on Expense Only Claims

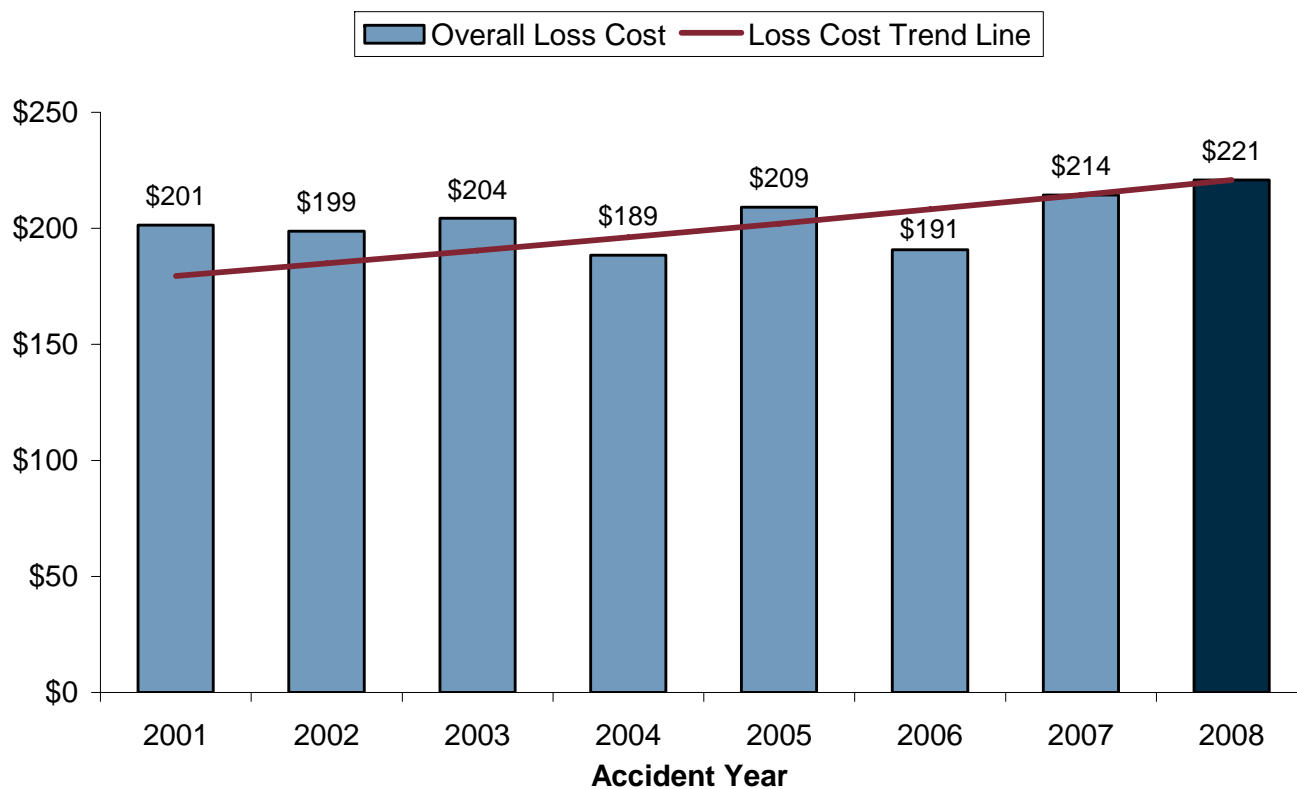


# Results by Service Line - OB

Hospital Professional Liability Benchmark

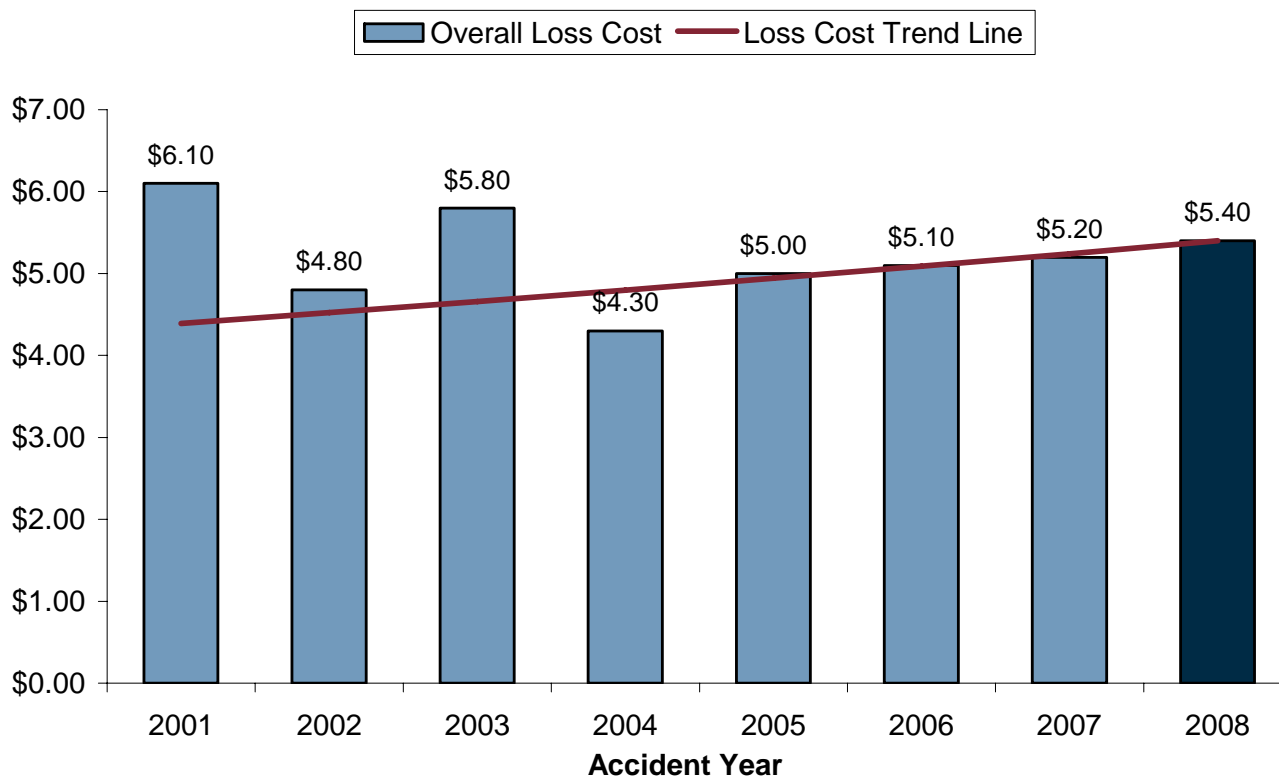
OB Analysis

Loss Cost per Birth



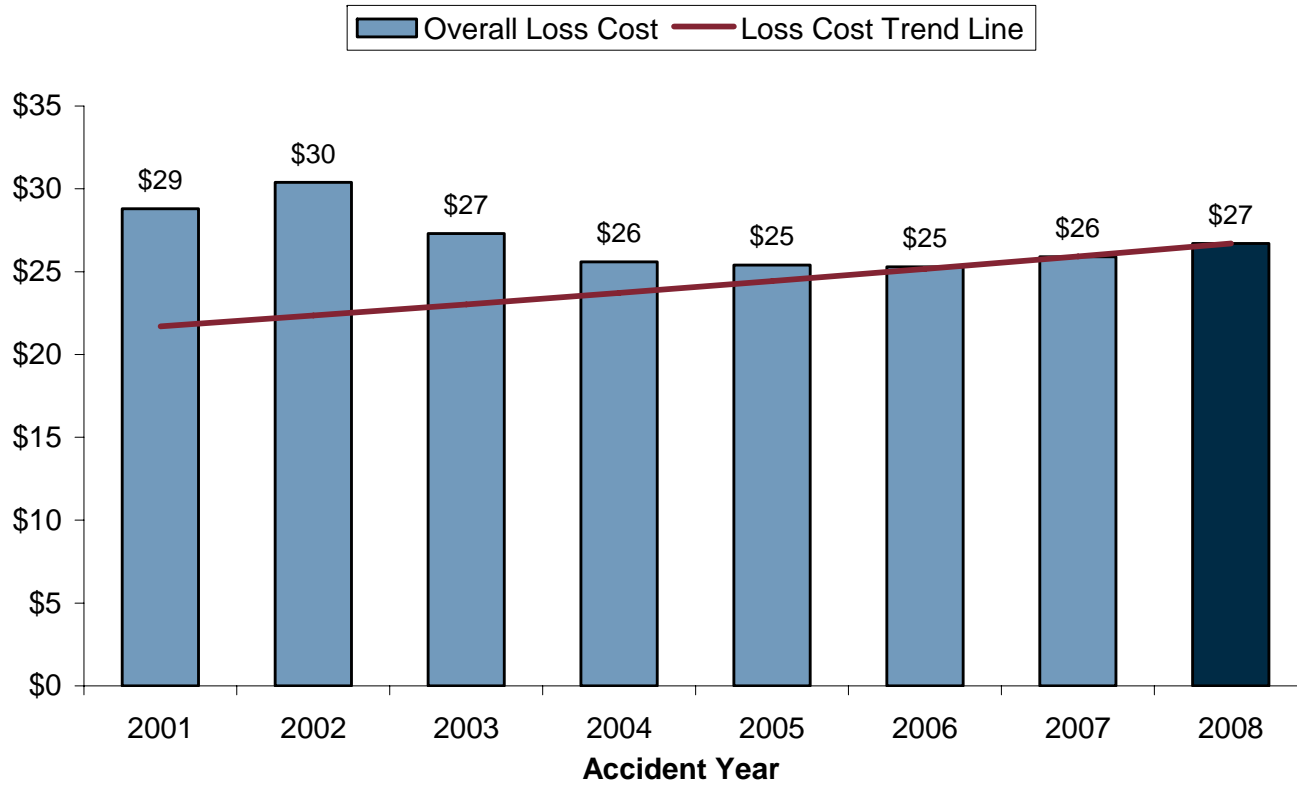
# Results by Service Line - ED

Hospital Professional Liability Benchmark  
ED Analysis  
Loss Cost per ED Visit



# Results by Service Line - Surgery

Hospital Professional Liability Benchmark  
Surgery  
Loss Cost per Surgery



# HPL Future

- Right now, the environment seems relatively stable.
  - Frequency has been decreasing, but seems flat lately.  
Will this trend turn?
  - Severity is moderately increasing.
- Areas of interest
  - Never Events
  - Overall medical inflation
  - Service line components
  - Changes to liability laws
  - Federal healthcare reform

# Physician Professional Liability – Industry Issues and Trends

- Commercial Premium relief continues in many jurisdictions
- More mutual companies and state funds declare dividends
- The state fund returns have raised political issues
- Many hospitals directly employing physicians (esp high risk specialties) and including them in their professional liability program
  - A recruiting tool to bring in specialists
  - A way of influencing the quality of care and risk management practices
  - In light of recent commercial results, a perceived cost savings
- *A whole new underwriting ballgame (insuring a portfolio of physicians as opposed to a hospital system)*

# Long Term Care Professional Liability – Industry Issues

- A more varied landscape of participants – from very large chains with 500+ facilities to the “mom and pop” operations. Sophisticated self insurance with over \$1B reserves to never heard of professional liability insurance.
- Over the past 10 years, Long Term Care Liability trends have changed dramatically. On a countrywide basis, claim frequency and claim severity have stabilized.
- There is a very high level of regional variability. Loss costs for some states are multiples of countrywide.
- In certain venues, some facilities opt to procure minimal or even no insurance to avoid being a “target”.
- Strategies for controlling or reducing liability costs include:
  - Implementing Arbitration agreements
  - Investing in legal defense
  - Investing in quality of care, family education, staffing ratios

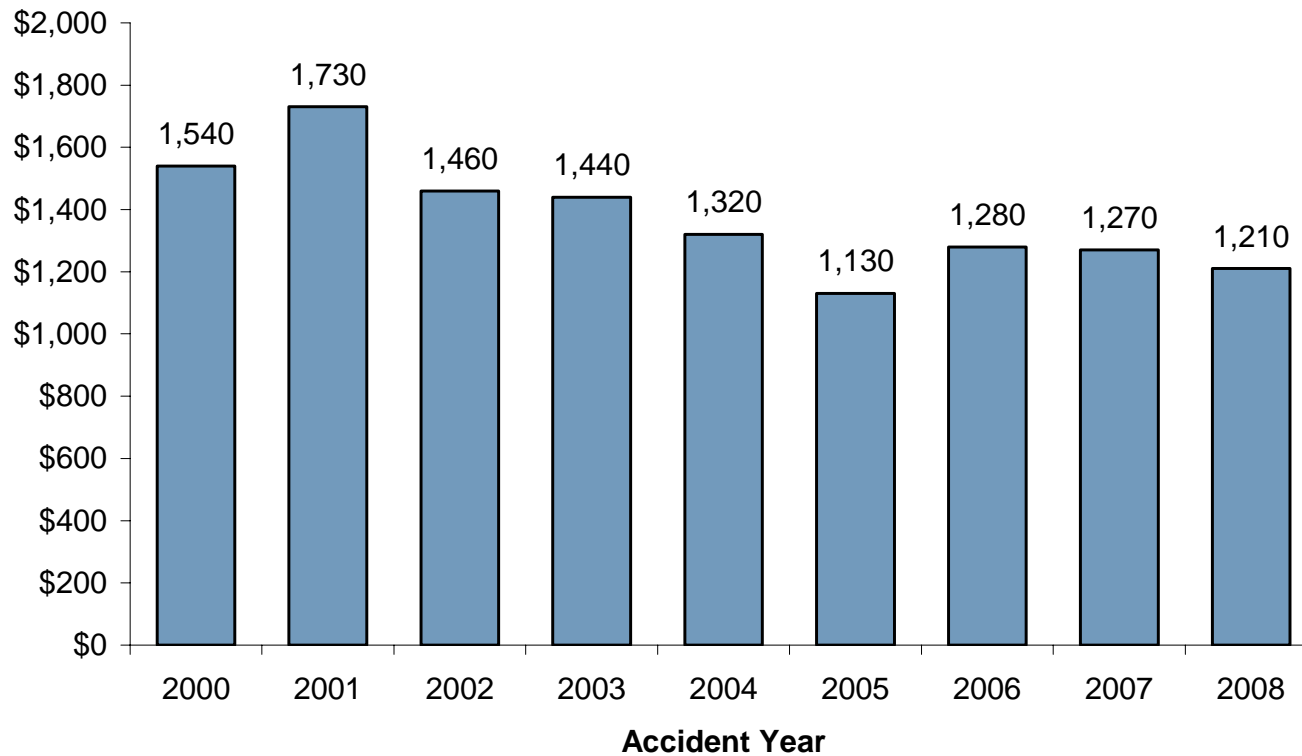


# Long Term Care Professional Liability – Arbitration

- Arbitration has been increasingly cited by LTC providers as a strategy employed to reduce costs.
- It must be somewhat effective, as the trial lawyers are promoting legislation to ban pre-dispute arbitration agreements!
- We examined a subset of about 1,500 closed claims since 2004. 1/3 had some arbitration involvement.
  - Arbitration does not seem to reduce the likelihood of indemnity.
  - The size of claims was 30-40% smaller when arbitration was involved.

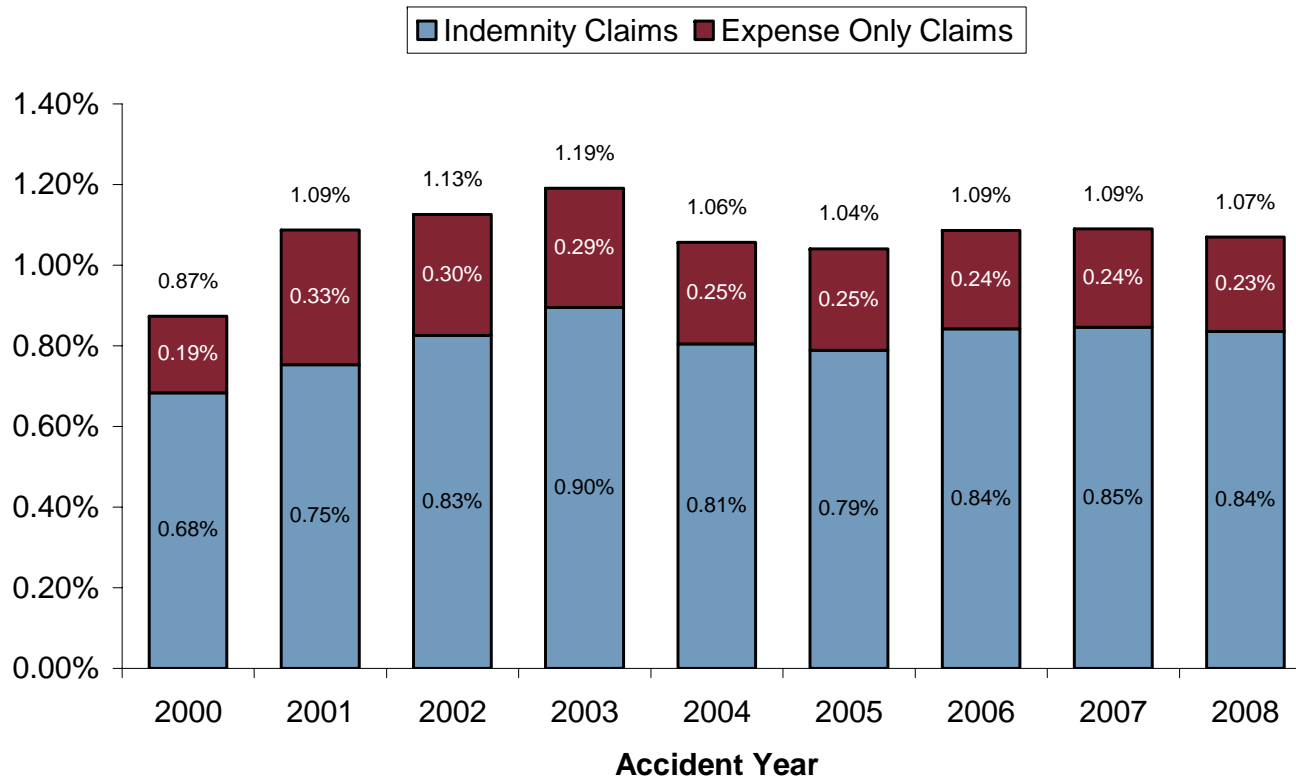
# LTC Loss Costs

Long Term Care Benchmark  
General and Professional Liability  
Loss Cost per Occupied Bed - Limited to \$1M  
All States



# LTC Frequency of Claims (Accident Year)

Long Term Care Benchmark  
General and Professional Liability  
Claim Frequency per Occupied Bed  
All States



# LTC Severity of Claims (Accident Year)

Long Term Care Benchmark  
General and Professional Liability  
Claim Severity - Limited to \$1M  
All States

