

# Casualty Loss Reserve Seminar

## Trends in Professional Liability

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# Agenda

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- Patient Protection and Affordable Care Act
- Legislative Trends for Medical Malpractice
  - Massachusetts
  - New Hampshire
  - Oregon
  - Florida
- Trends in Physician Employment
- Overall Benchmark Claim Frequency and Severity Levels

# Patient Protection and Affordable Care Act

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- Goal - Guarantee access to medical care at a reasonable cost.
- Health insurance market provisions include:
  - No Medical Underwriting
  - No Lifetime Maximum Benefit
  - Premiums vary by risk but subject to tight bands
- It is widely acknowledged that providers must deliver “savings”.
- Defensive medicine is the “Holy Grail” of savings.

# Patient Protection and Affordable Care Act

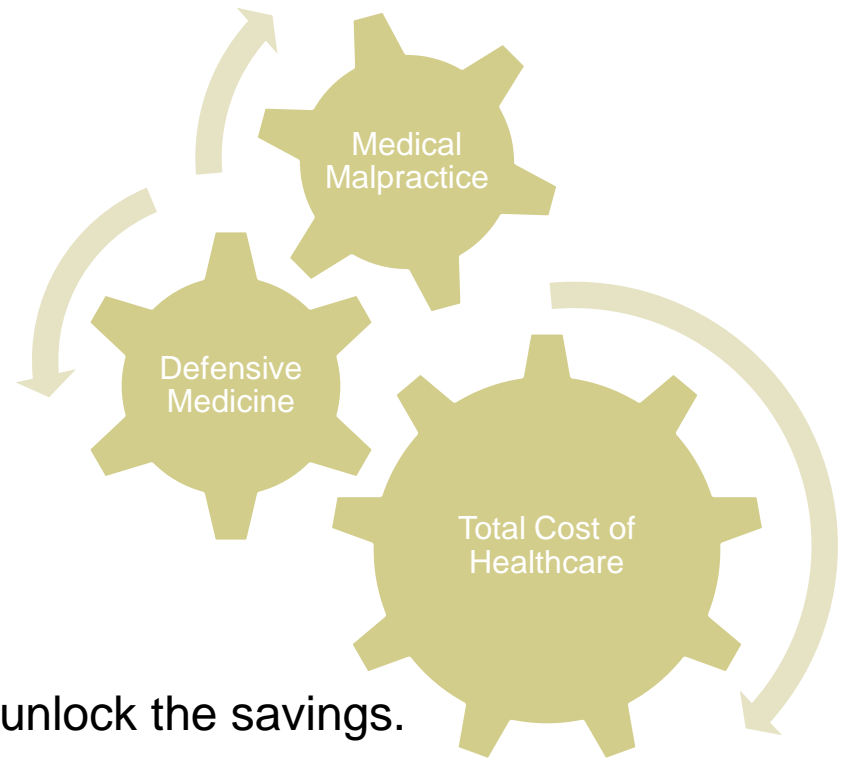
What does PPACA have to do with Medical Malpractice?

- Fear of malpractice litigation drives defensive medicine.
- Defensive medicine drives healthcare costs
- PPACA demands cost savings.

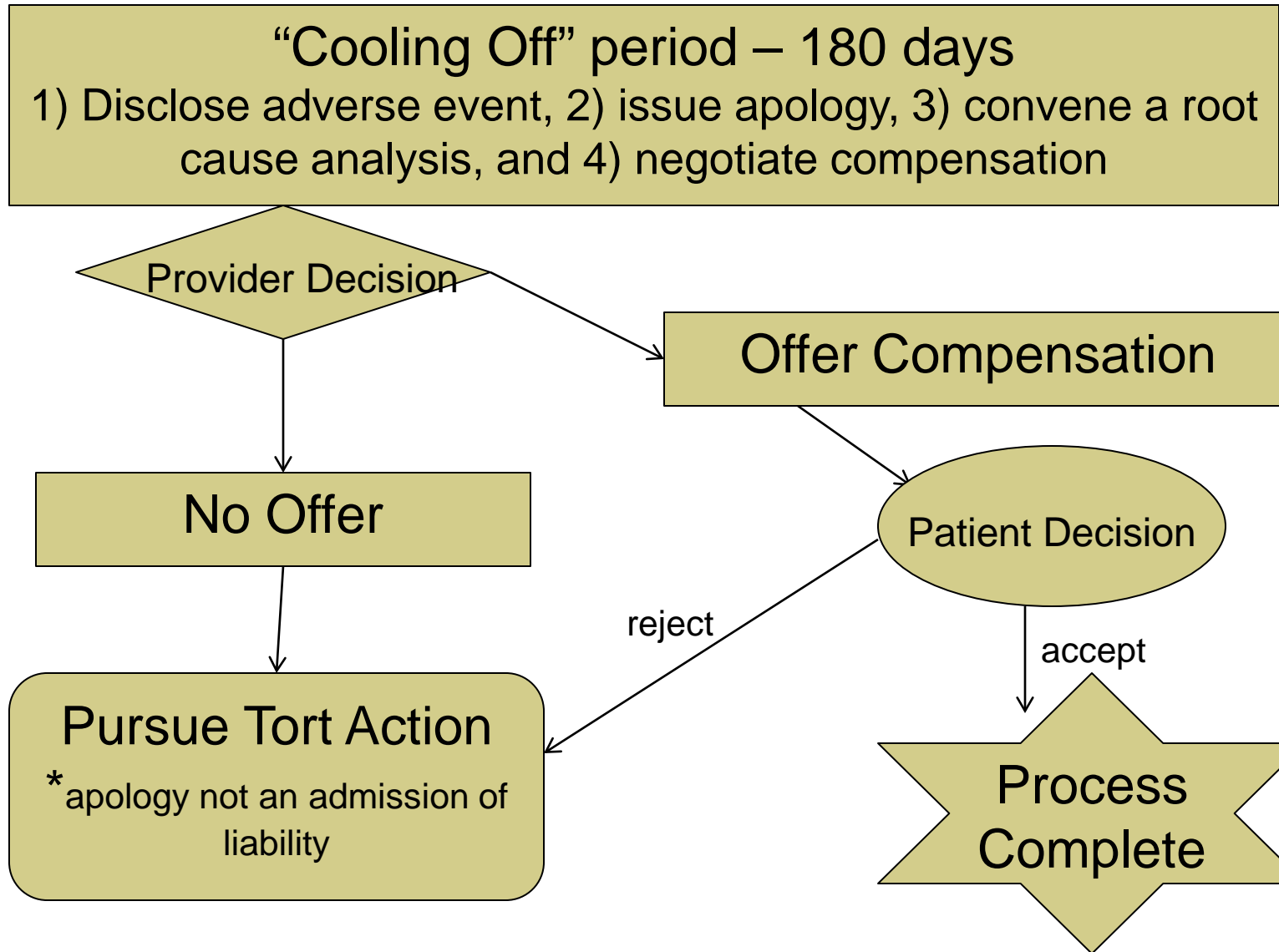
Legislators need to solve the “fear” to unlock the savings.

The old way - Tort Reform - is stuck in trench warfare.

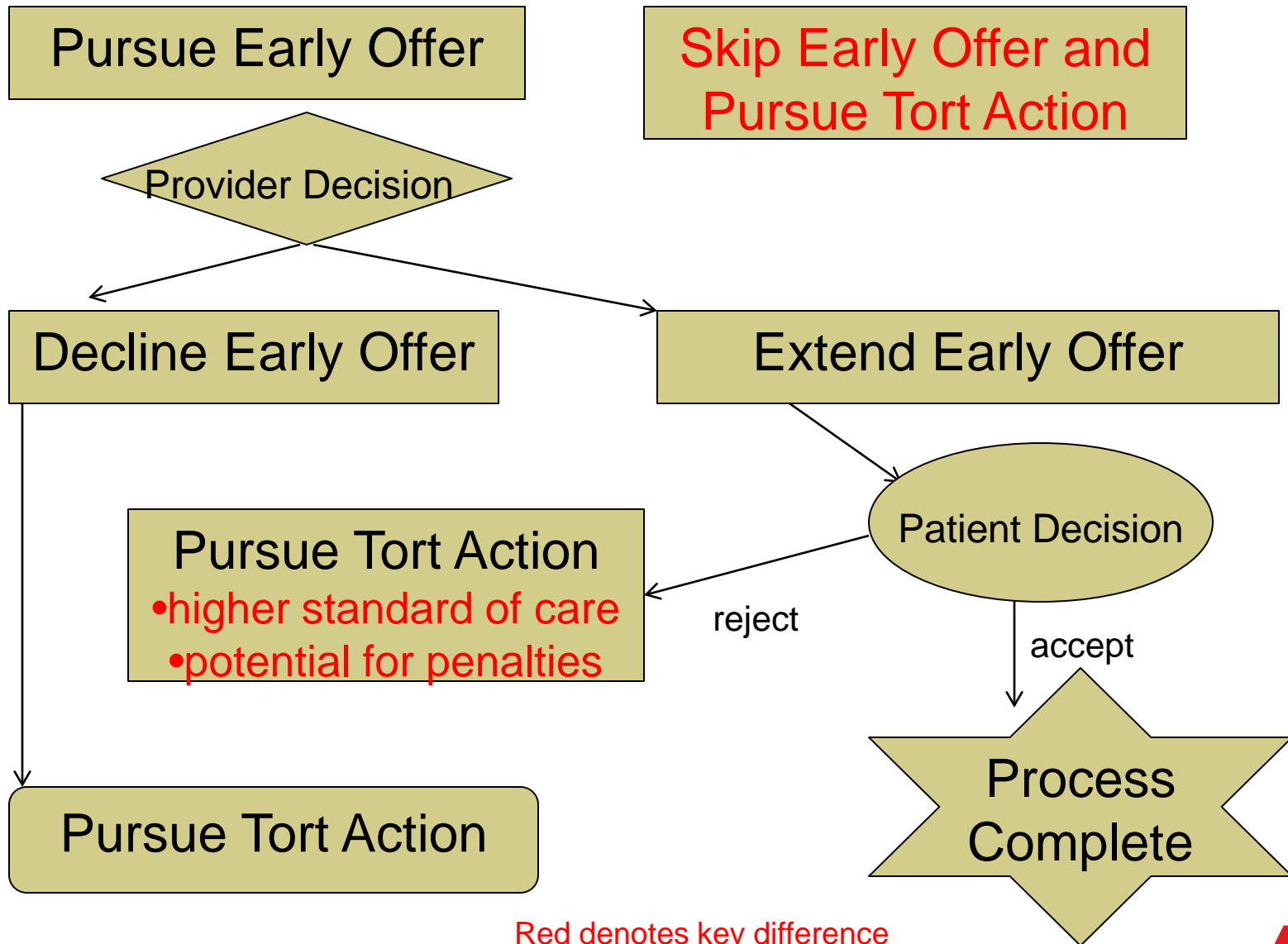
## There has to be a new way!



# Massachusetts' Disclosure, Apology, Offer



# New Hampshire's Early Offer Alternative

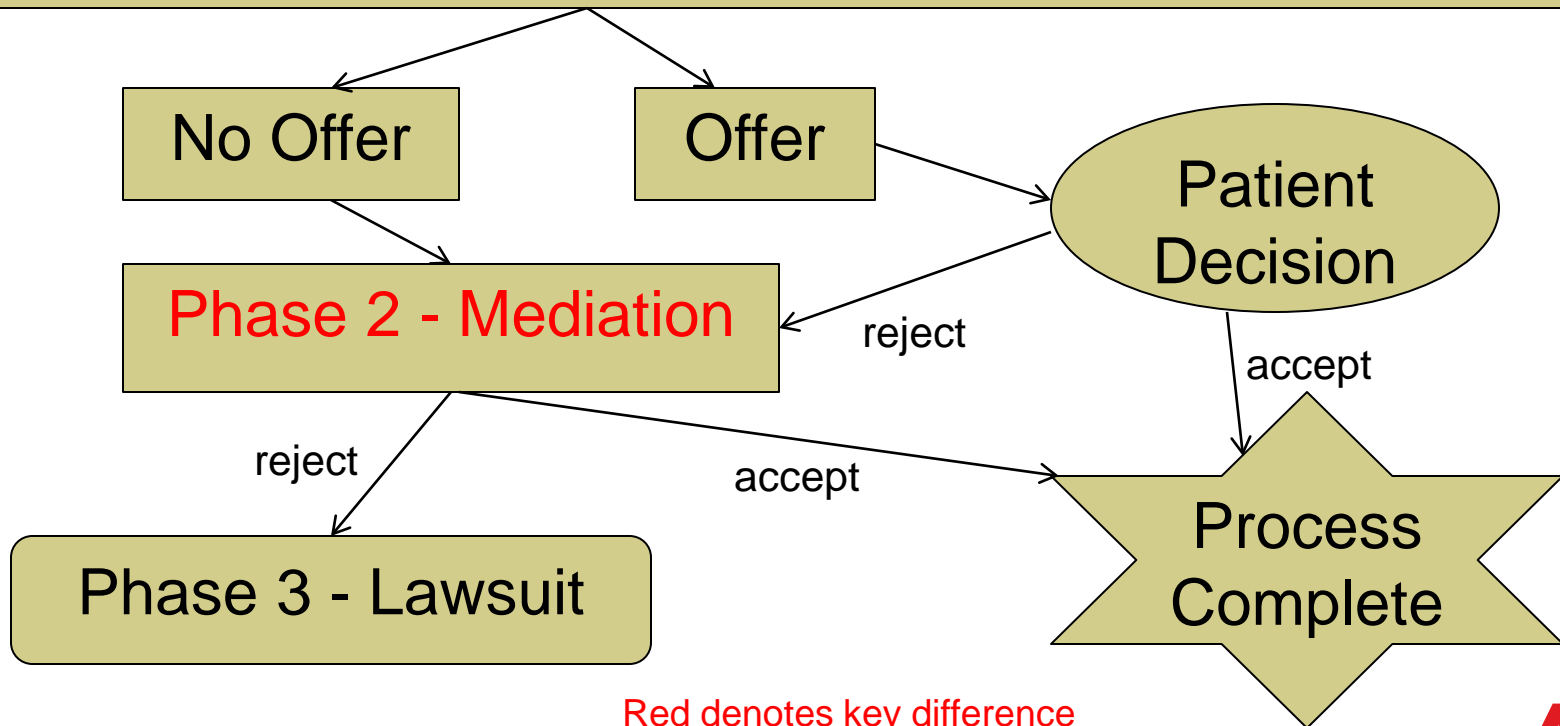


# Oregon's Approach to Medical Liability Reform

Notification of Serious Event

Phase 1 - Early Discussion

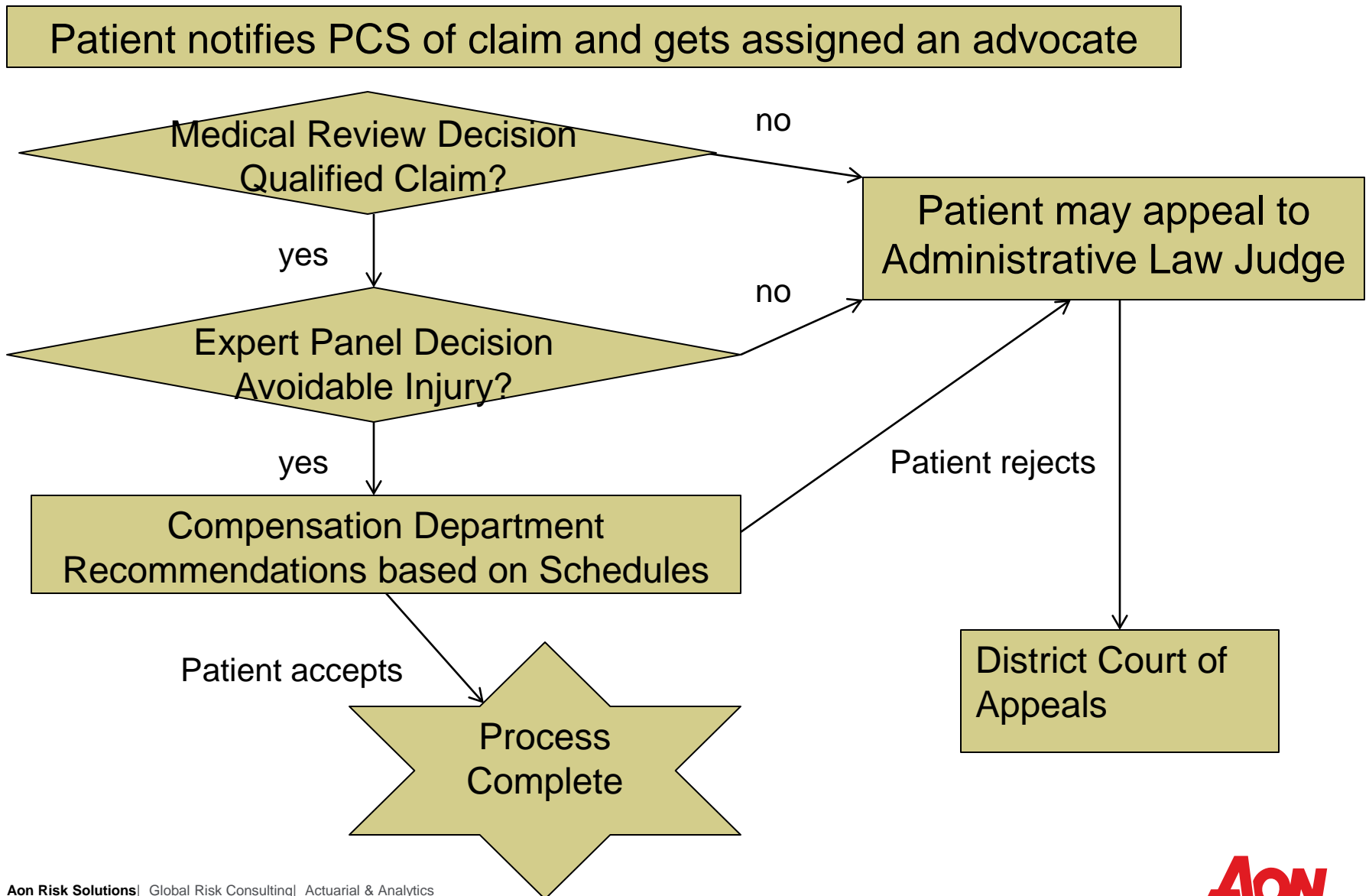
Early Resolution – entities collaboratively decide on compensation



Red denotes key difference



# Florida's Patient Compensation System



# New Hampshire's Early Offer Alternative

- “Medical Injury” becomes a defined term presumably broader than negligence
- Demand can be “Economic Loss” plus “Additional Payment”
- “Economic Loss” include *only* medical expenses, replacement services, reasonable attorney fees and lost wages.
- Additional Payments for linked to injury classification and listed below:

<i>Type of Injury</i>	<i>Type of harm</i>	<i>Additional Payment</i>
Temporary	Emotional	\$5,500
Temporary	Insignificant	\$1,700
Temporary	Minor	\$6,500
Temporary	Major	\$26,500
Permanent	Minor	\$29,750
Permanent	Significant	\$68,250
Permanent	Major	\$107,000
Permanent	Grave	\$117,500
Death	Death	\$57,000

# New Hampshire's Early Offer Comparison

<b>Element of Medical Malpractice Settlement</b>	<b>Current State</b>	<b>Future State - New Hampshire with Affordable Care Act</b>
Standard of Care	<b>Negligence</b>	<b>Medical Injury</b>
Wages and Income	<b>Included in Settlement</b>	<b>Included in Settlement</b>
Future Medical Expenses	<b>Lump sum for future medical often drives settlement values. Future costs are difficult to predict and access to future stream of medical services is often claimant's biggest concern.</b>	<b>Access to lifetime of medical care at reasonable cost is guaranteed by Affordable Care.</b>
Non – Economic Damages	<b>Difficult to predict and subject to mega - awards</b>	<b>“Additional Payment” based on schedule and tied to classification of injury.</b>
Plaintiff's Attorney Fee	<b>Unknown / unrestrained</b>	<b>20% of present value of claimant's economic loss</b>
Total Time to Settlement	<b>2 to 3 years on average</b>	<b>Less than one year</b>

# Patient Protection and Affordable Care Act

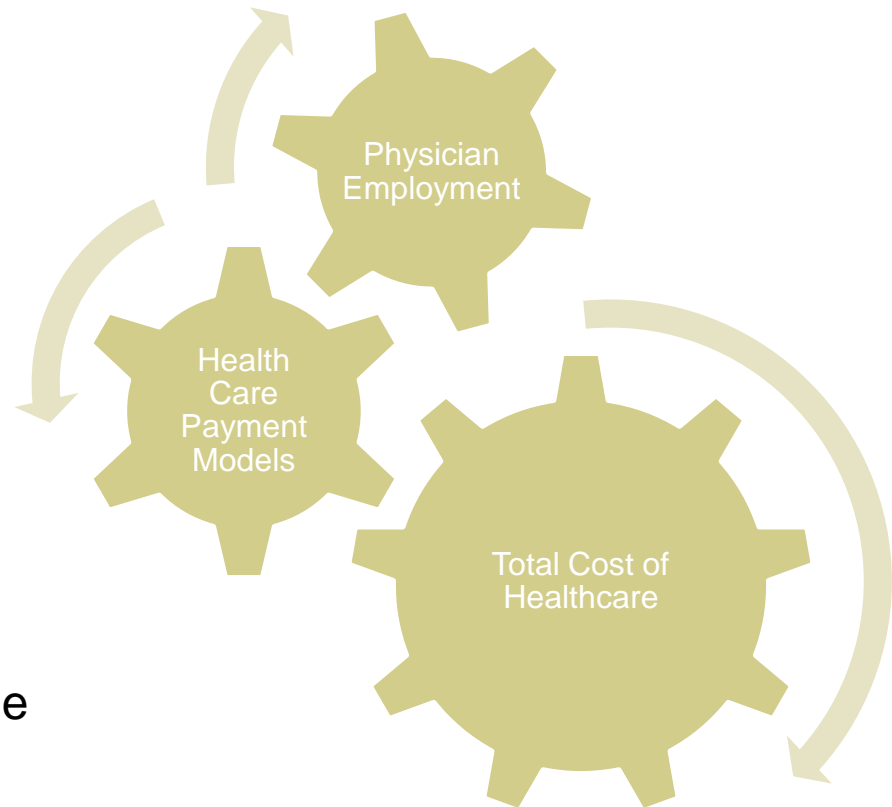
What does PPACA have to do with Medical Malpractice?

PPACA is changing health care payments models

- Alternatives to Fee for Service
- Accountable Care Organizations

To prepare for new model hospitals are employing physicians.

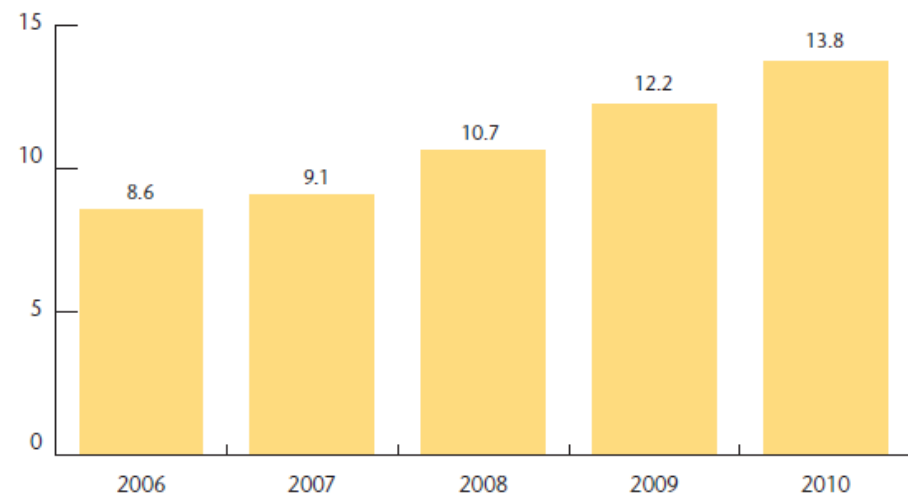
Conclusion - PPACA is changing the landscape for medical malpractice.



# Physician-Hospital Integration is a Growing Trend

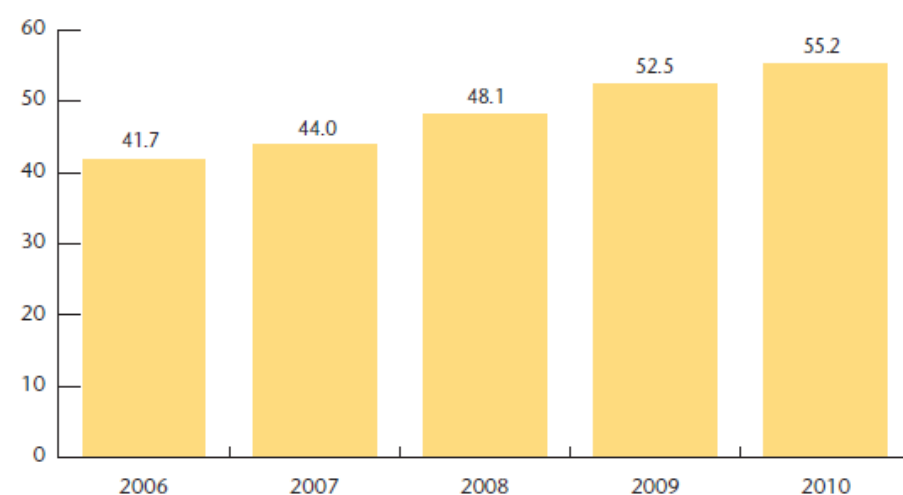
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Employed Surgeons per 100 Beds



12.6% Annual Growth

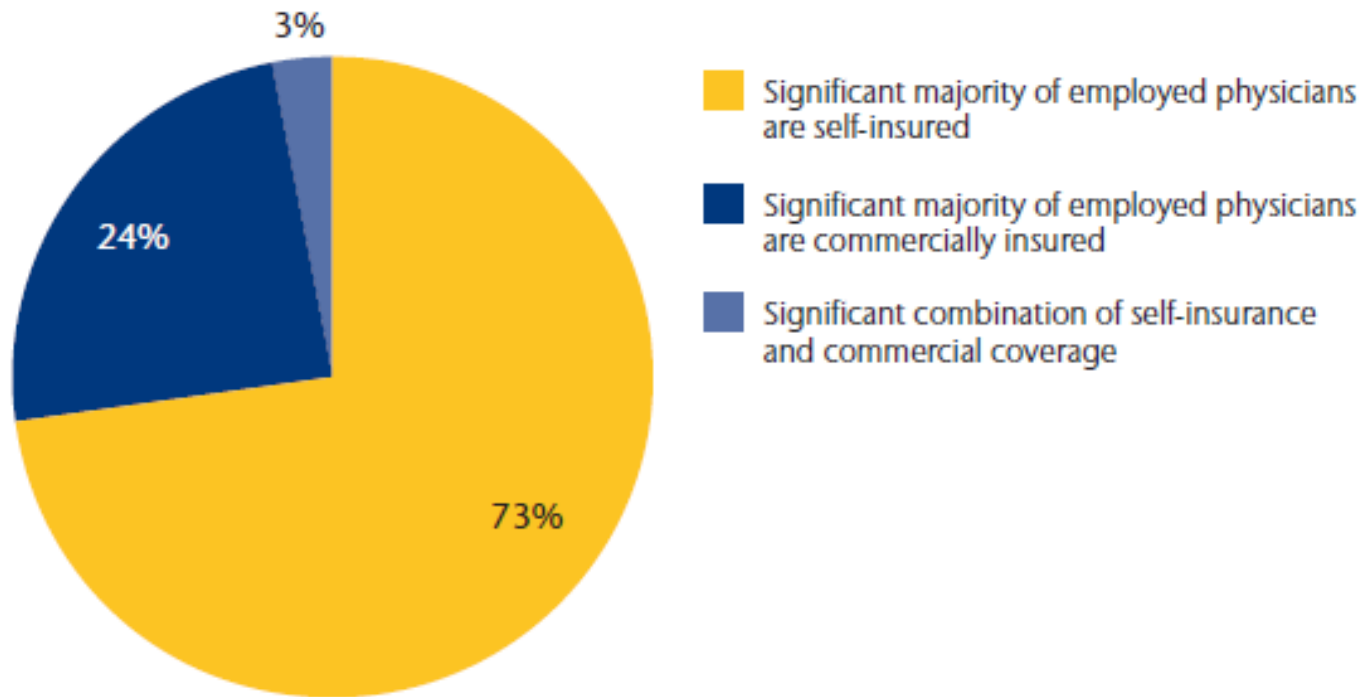
Physicians (Non-Surgeons) per 100 Beds



7.2% Annual Growth

# Survey Question – Self Insurance of Employed Physicians?

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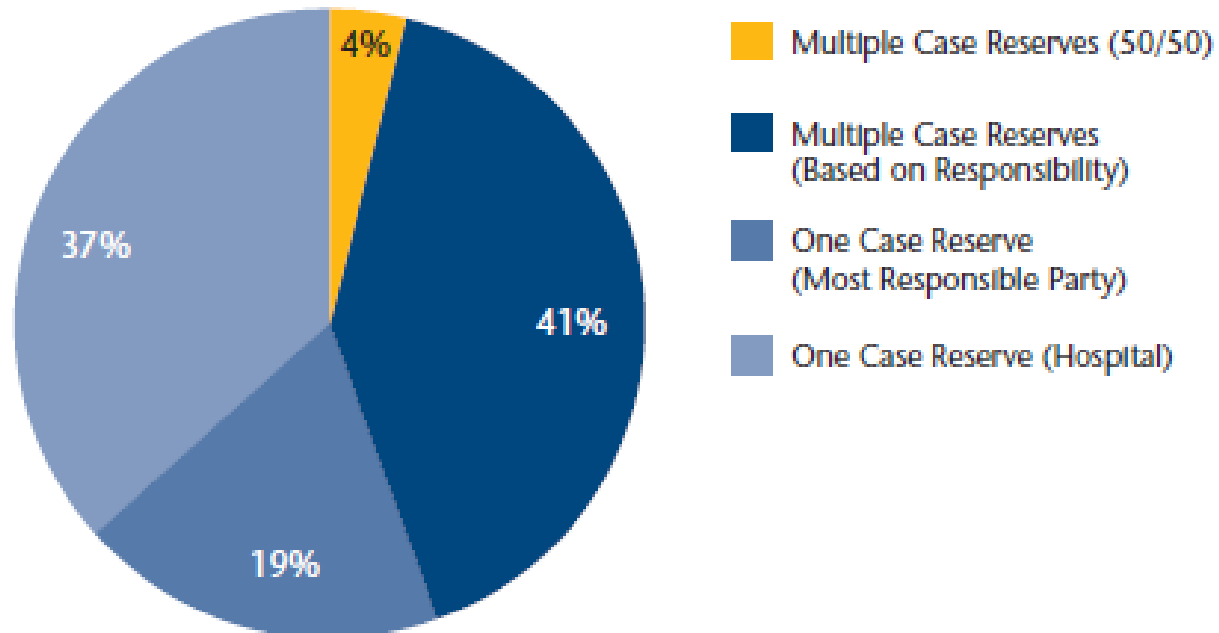


# Complications: Case Reserving

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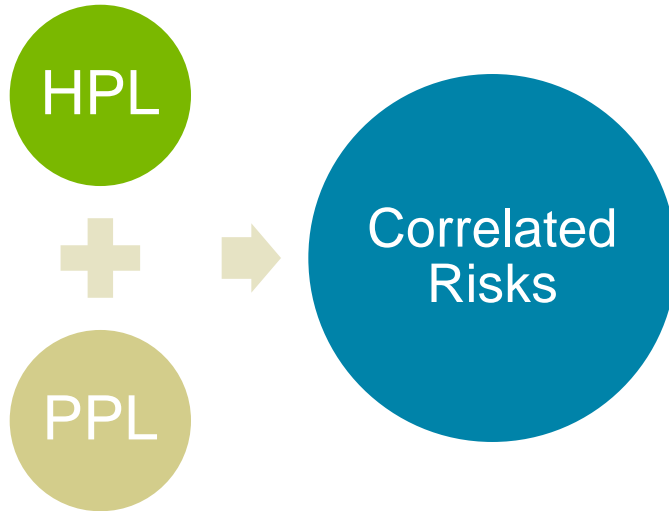
## Survey Result: Case Reserving for Complex Hospital and Physician Liability Claims

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# Hospital-Physician Consolidation: Implications for Hospital Risk Financing

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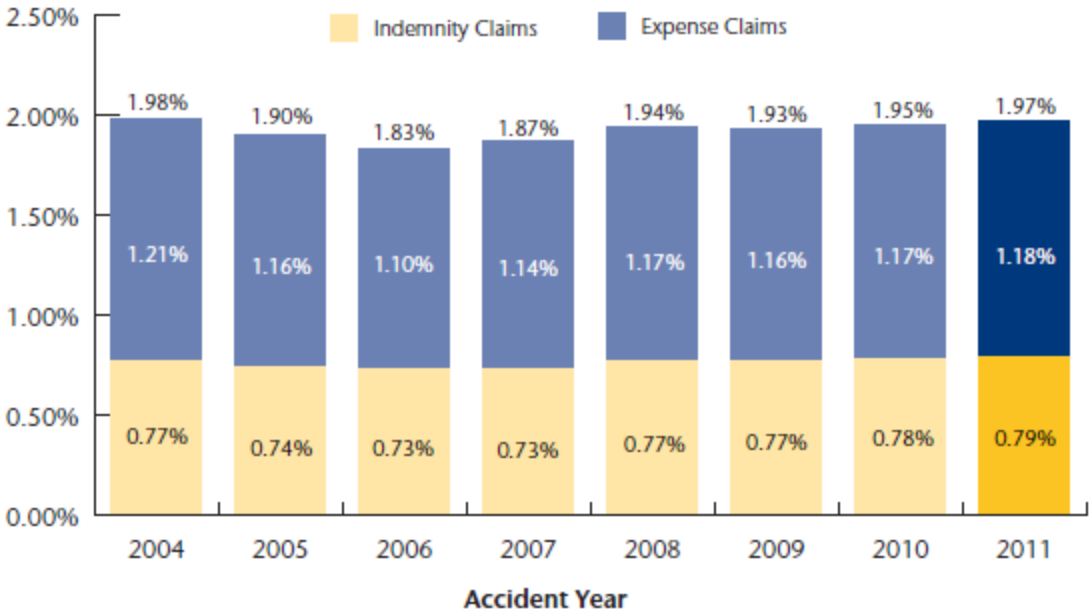


- Health systems are accumulating correlated risks and now have increased exposure to changes in the underlying environment
- Health systems must administer and fund for individual obligations made to physicians such as tail and prior acts coverage
- Health systems must develop philosophies and practices for recording reserves and expenses for complex claims involving both physician and hospital



# Hospital Professional Liability Claim Frequency

Hospital Professional Liability Benchmark  
Frequency per OBE



# Hospital Professional Liability Claim Severity

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Hospital Professional Liability Benchmark  
Claim Severity Limited to \$2M per Occurrence

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# Hospital Professional Liability Loss Rate

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Hospital Professional Liability Benchmark  
Loss Rate per OBE Limited to \$2M per Occurrence

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