

Trends in Tort Law: A Proposed Patient Compensation System For Medical Liability

Prepared for: **Casualty Loss Reserve Seminar**

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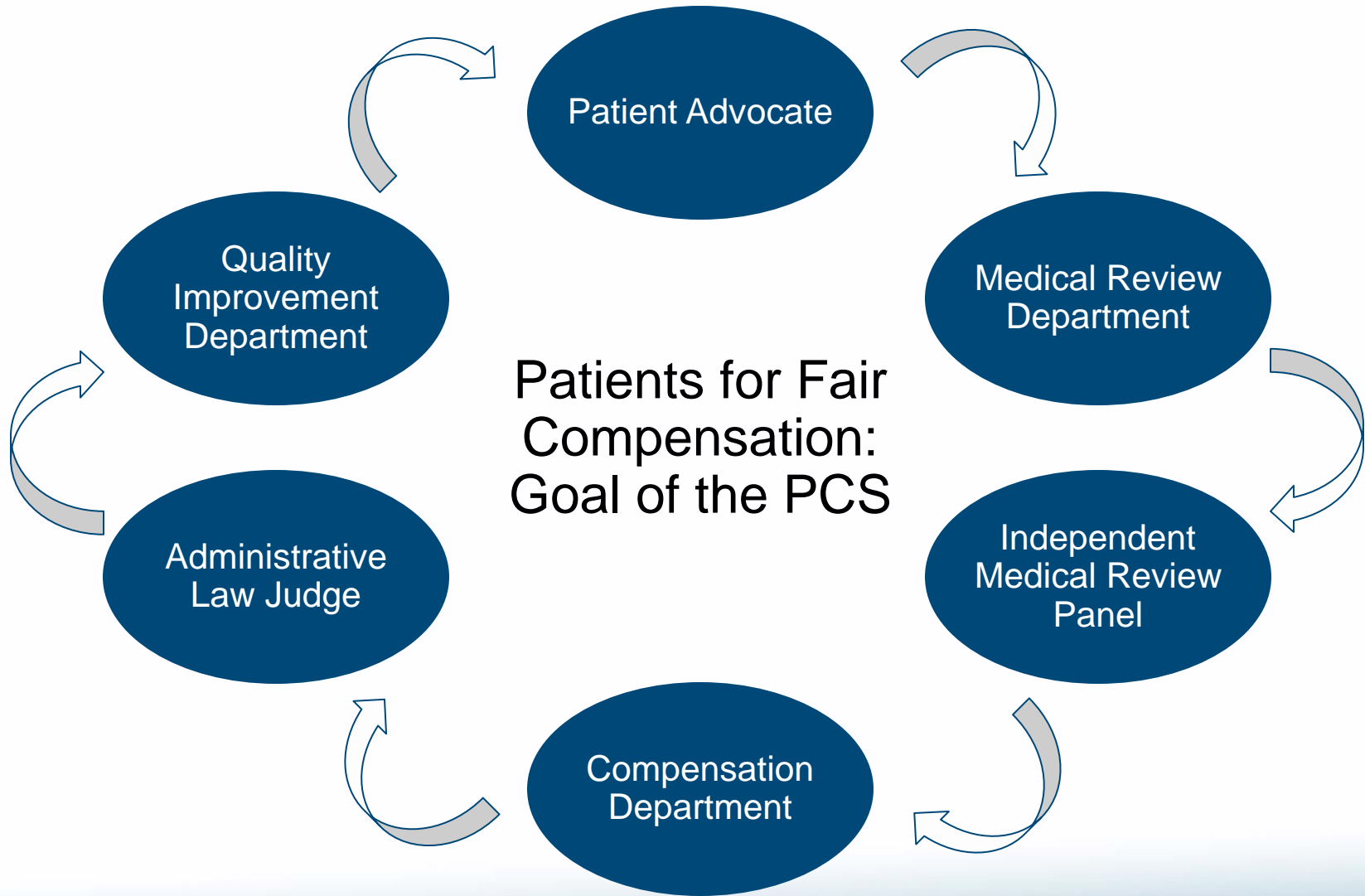
Date: **September 17, 2013**



Overview

- The Proposed Patients Compensation System (PCS)
 - How Might it Work?
- Discussion & Analysis
 - Proposed Legislation
 - Review of Report Funded by Patients for Fair Compensation
 - So How Much is this Going to Cost?
- Other Considerations

How Might it Work?



Source: PFC document, distributed to House subcommittee on April 1, 2013

Milliman Analysis

THE PROPOSED LEGISLATION

Commentary on HB 1233 & HB 897

- Standard for Compensability
- “Exclusive Remedy”
- Compensation Schedule
 - Restriction on Payment Amounts
 - Below Current Compensation Level
- Medical Review of Applications
- Contribution Rates
- National Practitioner Data Bank Reporting

Standard for Compensability

“Medical injury’ means a personal injury or wrongful death due to medical treatment ... which would have been avoided under the care of an experienced ... provider ... Determination ... may only include ... an alternate course of treatment if the harm could have been avoided ...”¹

¹ HB 1233, lines 138 – 148, emphasis added.

Exclusive Remedy

“... exclusive remedy for personal injury or wrongful death ...”²

² HB 897, lines 12 – 13.

“... an alternative to medical malpractice litigation ...”⁴

⁴ HB 897, lines 210 – 211

Compensation Schedule

“damage payments for each injury shall be no less than the average indemnity payment reported by the [PIAA] ... for similar medical injuries with similar severity”⁶

⁶ HB 897, lines 433-437

Compensation Schedule

$$\begin{aligned} &\text{Cost of MPL} \\ &+ \\ &\text{Provider Contributions} \\ &\leq \end{aligned}$$

“the prior fiscal year’s aggregate cost of medical malpractice”⁵

⁵ HB 897, lines 430-433

Compensation Schedule

- PIAA severity would be below current level
- To meet current compensation levels:
 1. Increase 10% to a per occurrence level
 2. Increase 10% (at a minimum) to reflect greater severities for non-physician providers
 3. Adjust for inflation

Medical Review of Applications

“Within 10 days after receipt of a completed application, determine whether the application, prima facie, constitutes a medical injury”¹⁰

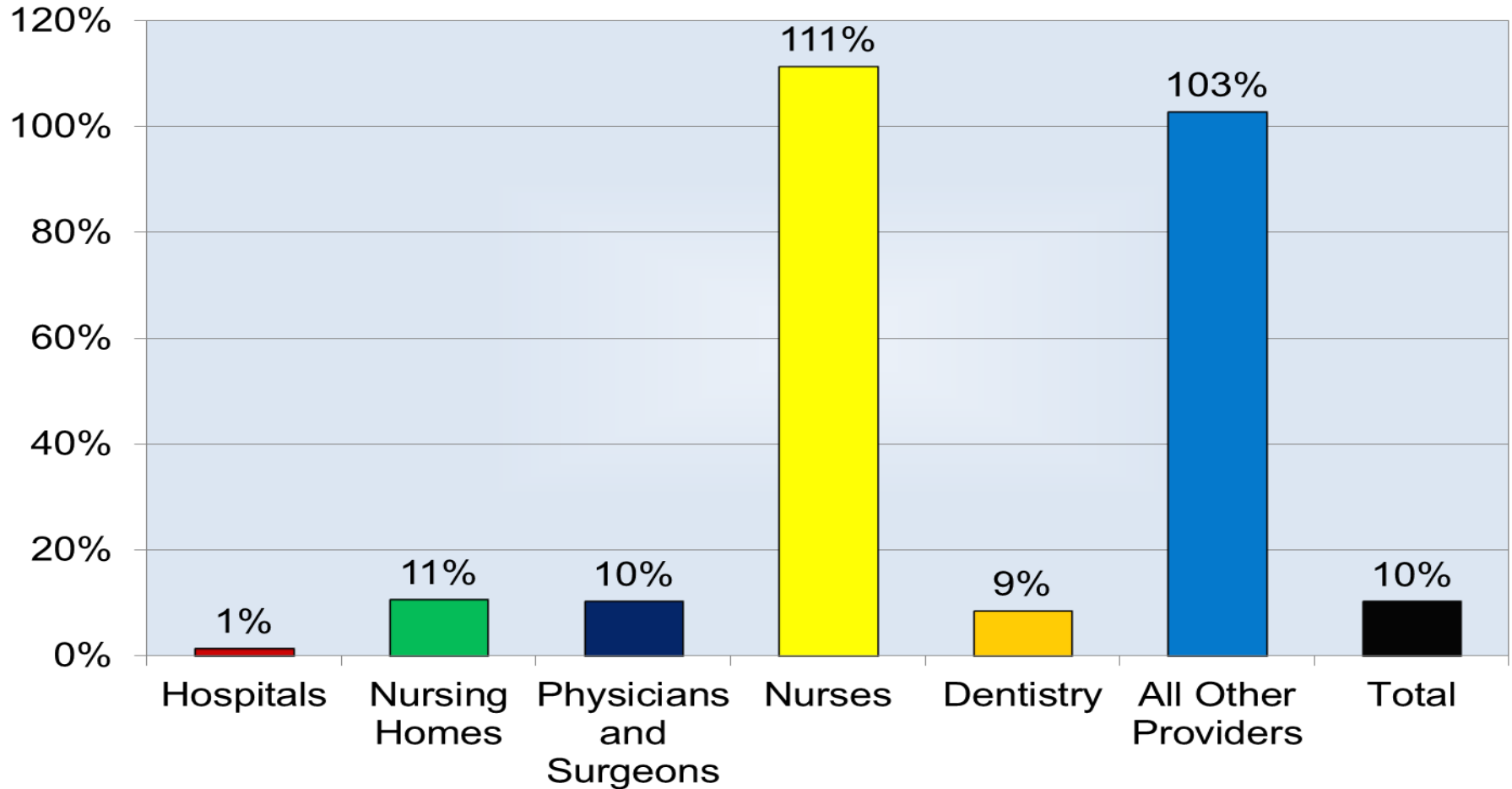
¹⁰ HB 897, lines 548 – 551, emphasis added.

“If ... [the] provider does not elect to support the application, the office shall complete a thorough investigation ... within 60 days ...”¹²

¹² HB 897, lines 585 – 589, emphasis added.

Contribution Rates

Competitor's Projected Contribution Costs Relative to Losses by Provider Under HB 897



Source: Competitor Allocation Report

National Practitioner Data Bank Reporting

“An application filed ... [does] not constitute a claim for medical malpractice ... therefore, professional liability carriers [are] not obligated to report ... to the National Practitioner Data Bank.”¹⁶

¹⁶ HB 897, lines 221 – 226, emphasis added.

Analysis

REVIEW OF PFC-FUNDED REPORT

Review of PFC-Funded Report

MPL Costs in Florida PFC-Funded Analysis (\$Millions)

Category	Current	Projected	Increase	% Increase
Indemnity	555.6	810.7	255.1	46%
Defense	228.8	76.5	(152.3)	(67)%
Total	784.4	887.2	102.8	13%

Source: PFC-Funded Cost Report

Review of PFC-Funded Report

MPL Indemnity Costs in Florida PFC-Funded Analysis

Category	Current	Projected	% Increase
Occurrences	1,489	3,381	127%
Severity	373,136	239,710	(36)%
Cost	555.6M	810.7M	46%

Source: PFC-Funded Cost Report

Review of PFC-Funded Report

MPL Indemnified Occurrences in Florida PFC-Funded Analysis

Injury Type	Current	Projected	% Increase
Emotional	30	30	0%
Insignificant	50	938	1776%
Minor Temporary	205	653	219%
Major Temporary	228	386	69%
Minor Permanent	224	326	46%
Significant Perm.	179	246	37%
Major Permanent	111	150	35%
Grave	93	118	27%
Death	369	534	45%
Total	1,489	3,382	127%

Source: PFC-Funded Cost Report

Review of PFC-Funded Report

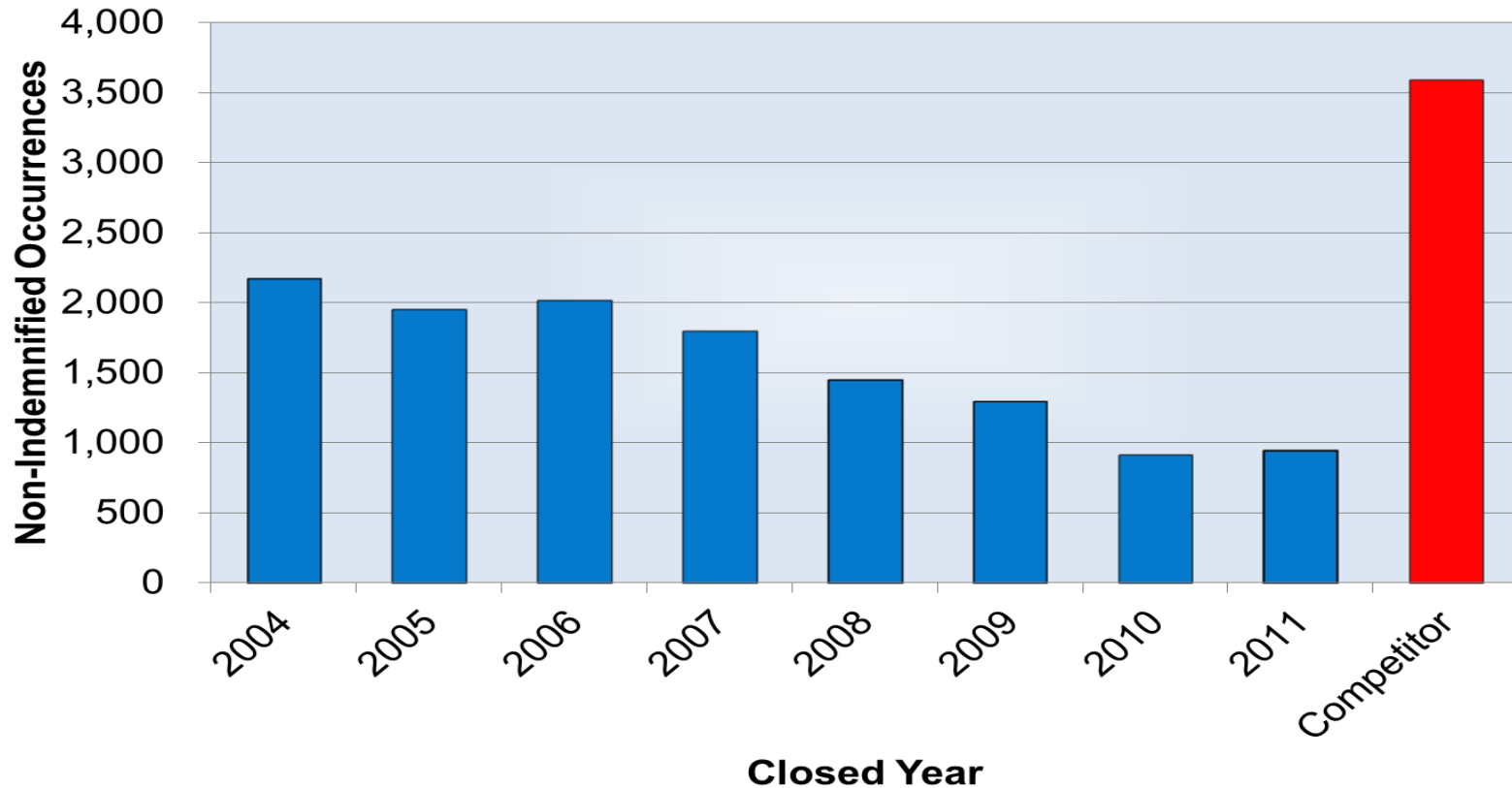
Current and Projected Defense Costs Based on PFC-Funded Analysis

Defense Costs	Value
Projected Overall Change	(67)%
Projected Per Claim Change	(80)%
Current Defense Costs Per Claim	\$45,057
Projected Defense Costs Per Claim	\$9,038

Source: PFC-Funded Cost Report

Review of PFC-Funded Report

Comparison of Historical¹ Non-Indemnified Occurrences to Competitor Estimate **Prior** to HB 897

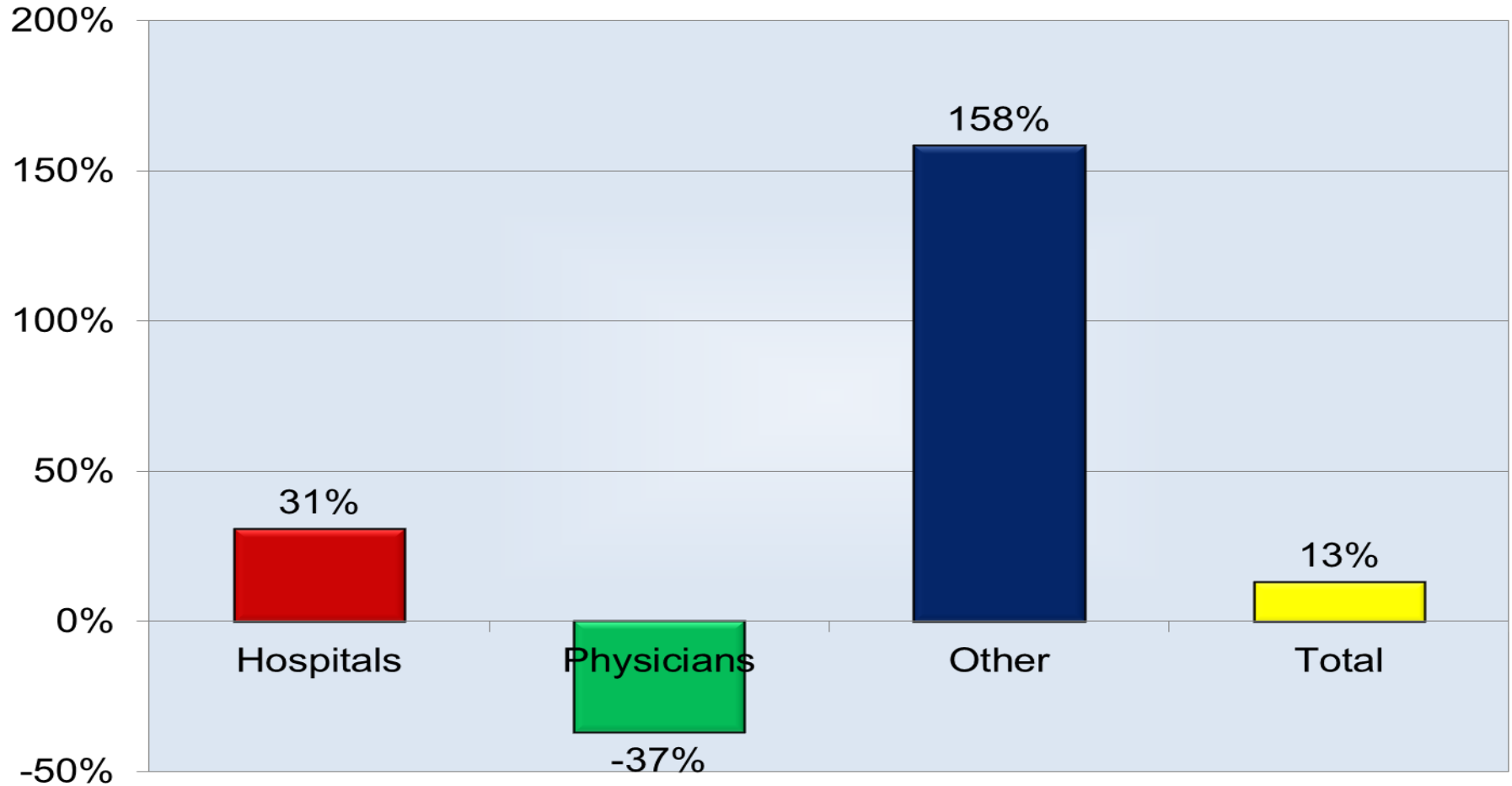


¹ Beginning in 2009 companies were no longer required to report claims without indemnity payment where expense payments were \$5,000 or less.

Sources: FLOIR database & PFC-Funded Cost Report

Review of PFC-Funded Report

Competitor's Projected Change in Costs by Provider After the Implementation of HB 897



Sources: PFC-Funded Cost Report & PFC-Funded Allocation Report

Analysis

HOW MUCH WILL IT COST?

How Much Will It Cost?

$$\begin{aligned} &\text{Cost of MPL} \\ &+ \\ &\text{Provider Contributions} \\ &< = \end{aligned}$$

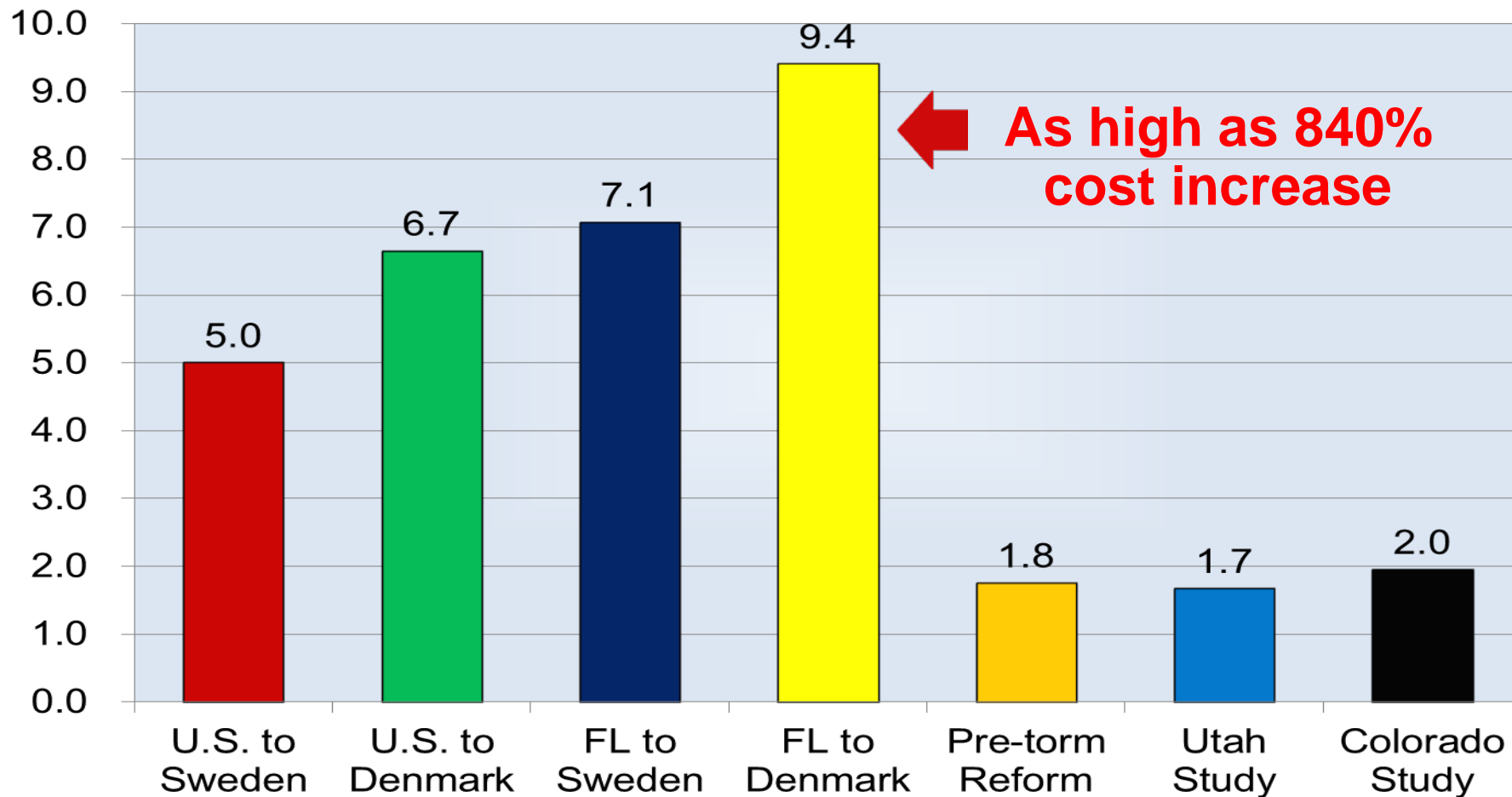
“the prior fiscal year’s aggregate cost of medical malpractice”⁵

 *0% cost increase under HB 897*

⁵ HB 897, lines 430-433

How Much Will It Cost?

Potential Increases in Filed Occurrences (in Multiples to the Current System)



OTHER CONSIDERATIONS

Other Considerations

Accompanying Oral Discussion

- This document is not complete without the accompanying oral discussion and explanation of the underlying information and concepts as well as any interpretational limitations.

Limited Distribution

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Data Reliance

- We have relied upon data and other background information prepared by others, as documented throughout this presentation. We have performed a limited review of the data for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.