

# California Workers Compensation Reform What Should We Expect Next

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Casualty Loss Reserve Seminar  
San Diego, California  
September 15-17, 2014

# Overview

- **Pre-SB 863 Environment**
- SB 863 Summary
- Post-SB 863 Trends
- What's Next?
- Q/A

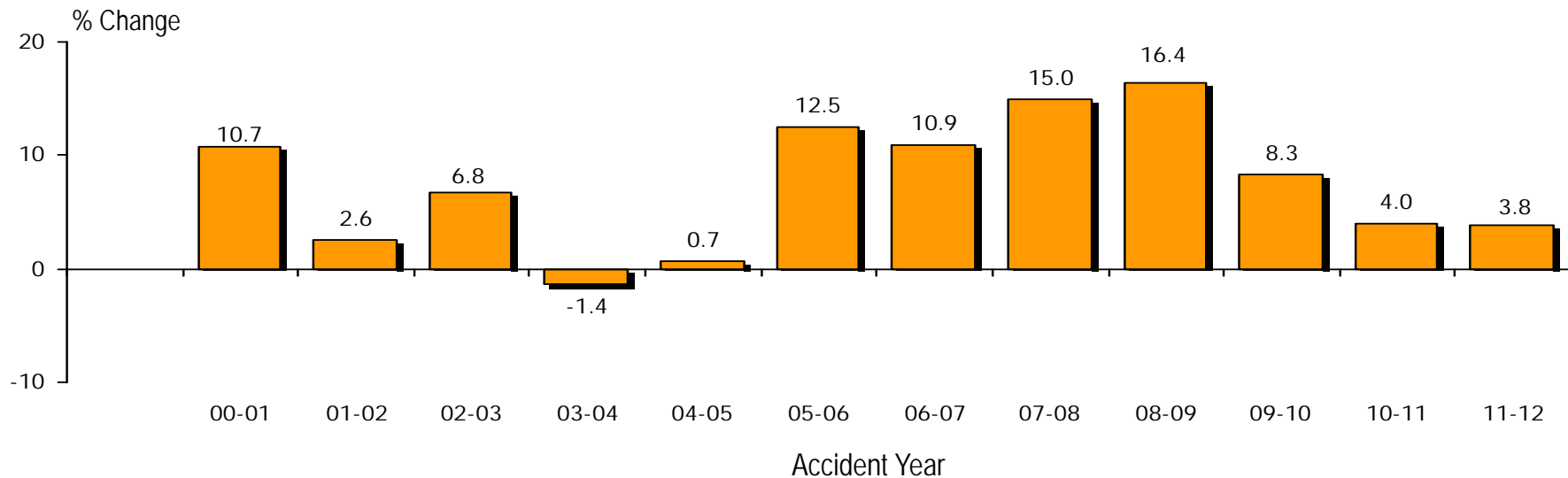
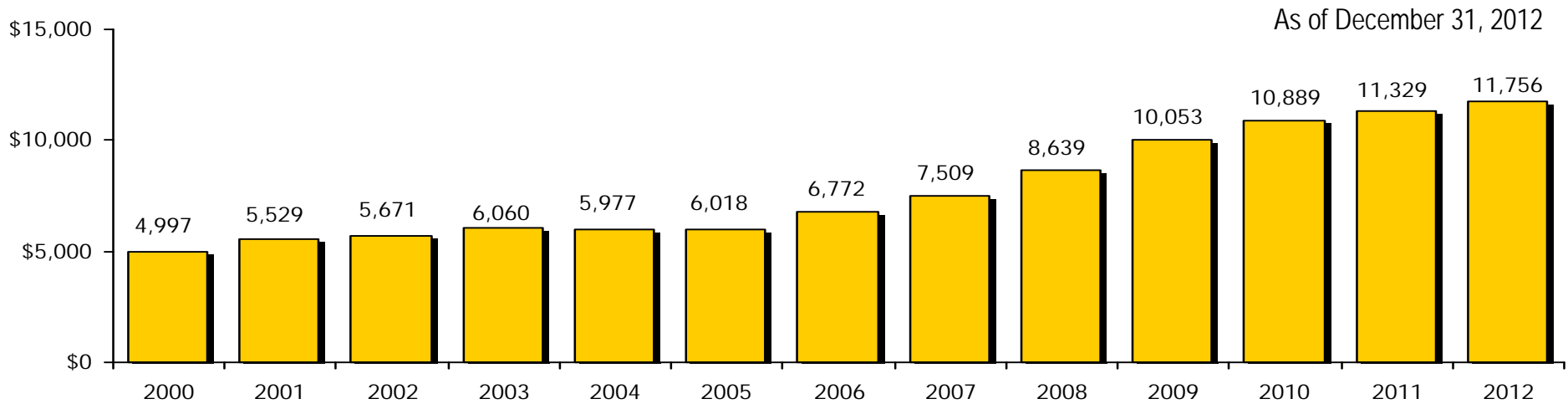
## Pre-SB 863 Underlying Cost Trends - *Reforms of 2002 - 2004*

- Rapidly Escalating Costs Prior to Reforms of 2002 through 2004
- 3-Year Series of Reforms in 2002 through 2004
  - Evidence-based utilization standards
  - Unlimited employer control of medical within networks
  - Limits of physical therapy and chiropractic visits
  - New permanent disability rating schedule based on AMA Guides
  - 2-Year cap on temporary disability
  - Apportionment of permanent disability benefits
- WCIRB Retrospective Estimate of Savings: 66%, or \$14 Billion Annually in Statewide Costs
- Industry Average Rates Declined by Two-Thirds from 2003

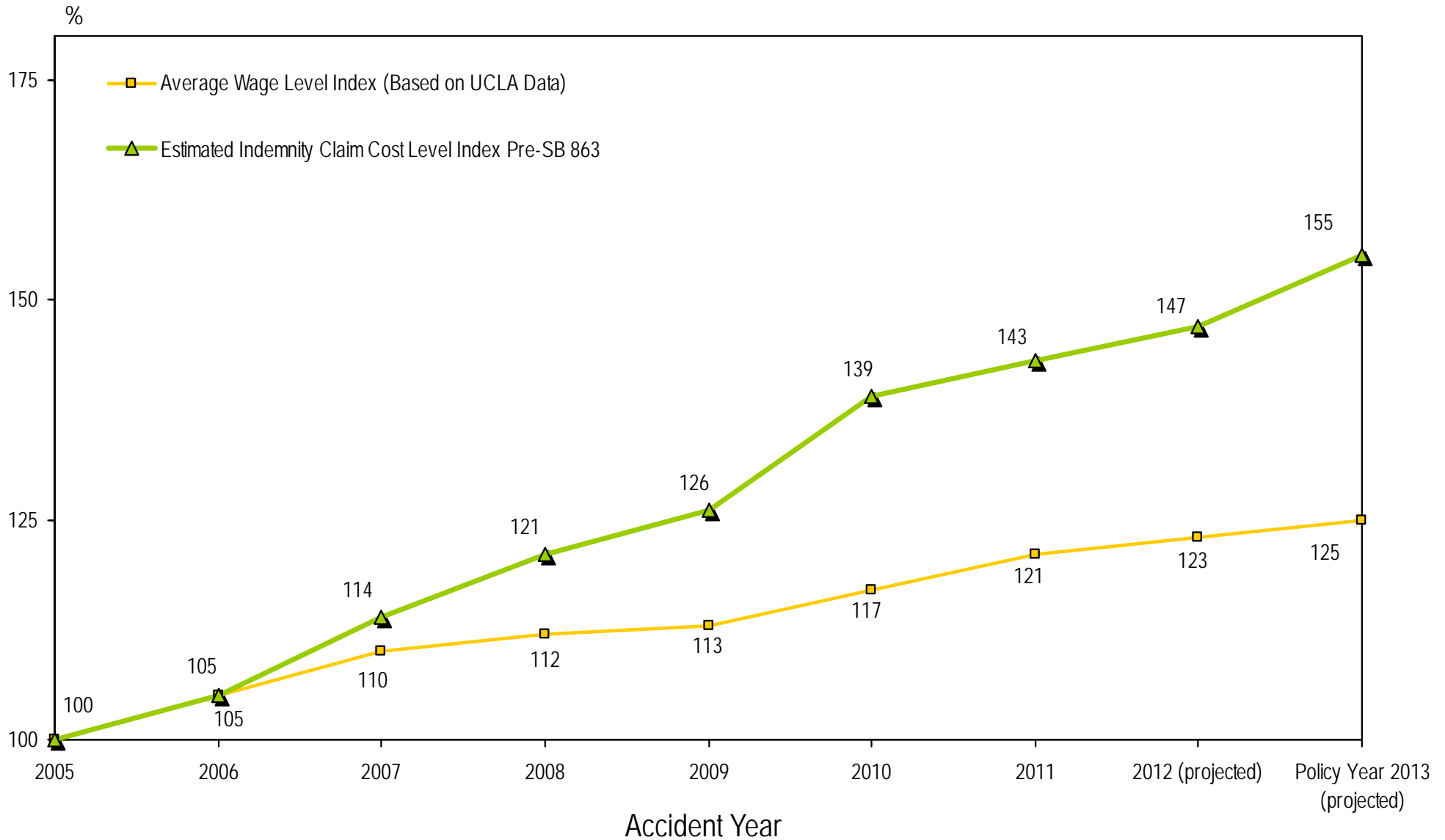
## Pre-SB 863 Underlying Cost Trends - *Erosion of Impact of Reforms of 2002 - 2004*

- Erosion of Reform Impacts Since 2005
  - Indemnity cost per claim up 40% since 2005
  - Medical cost per indemnity claim up 50% since 2005
  - ALAE cost per indemnity claim up almost 100% since 2005
  - Costs rising much quicker than underlying exposure
- Combined Ratios Increasing
- Industry Average Charged Rates up 22% since 2009

# Estimated Ultimate ALAE per Indemnity Claim (Excl. MCCP)

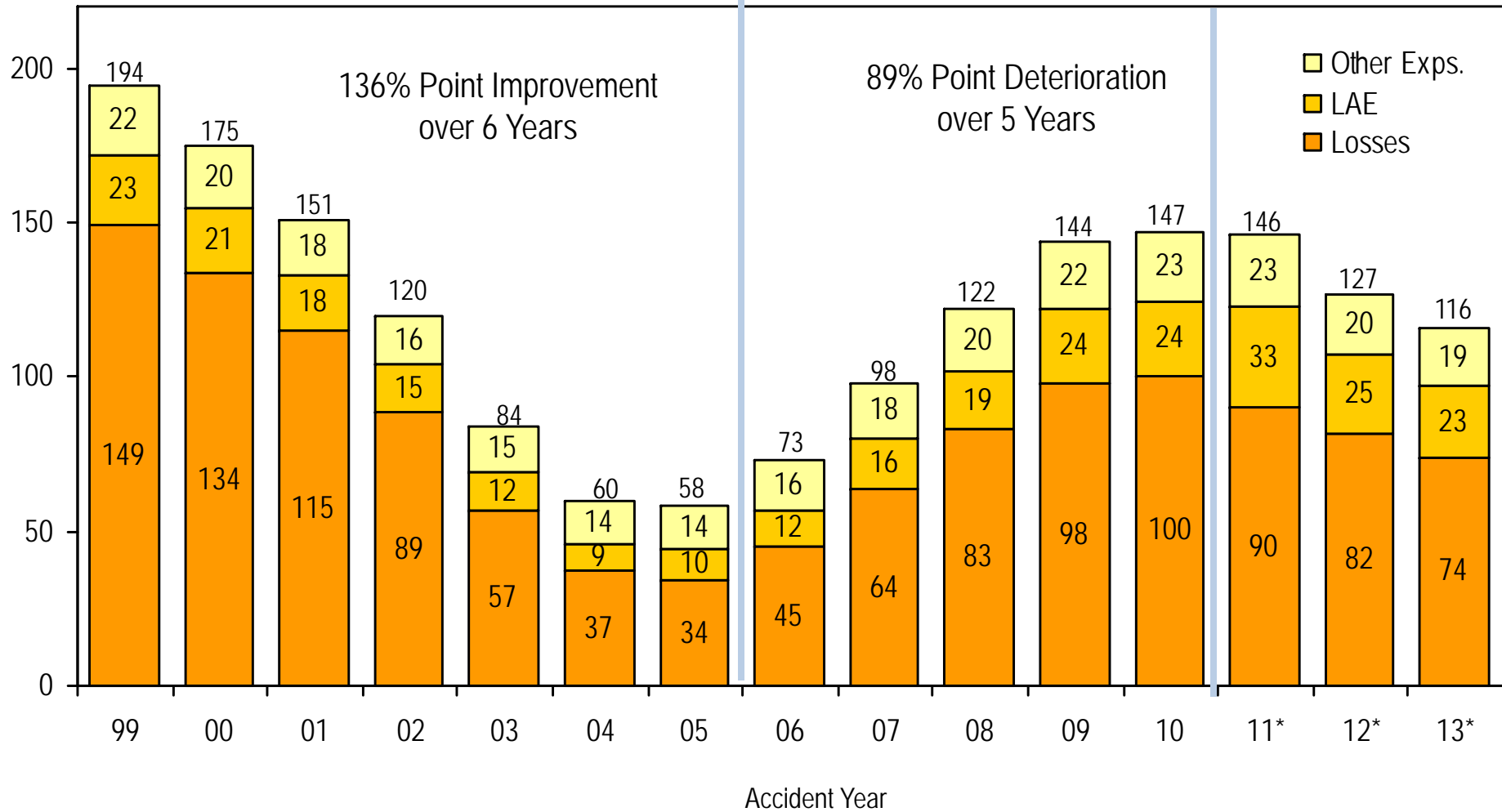


# California Workers' Compensation Claims and Wage Level Index



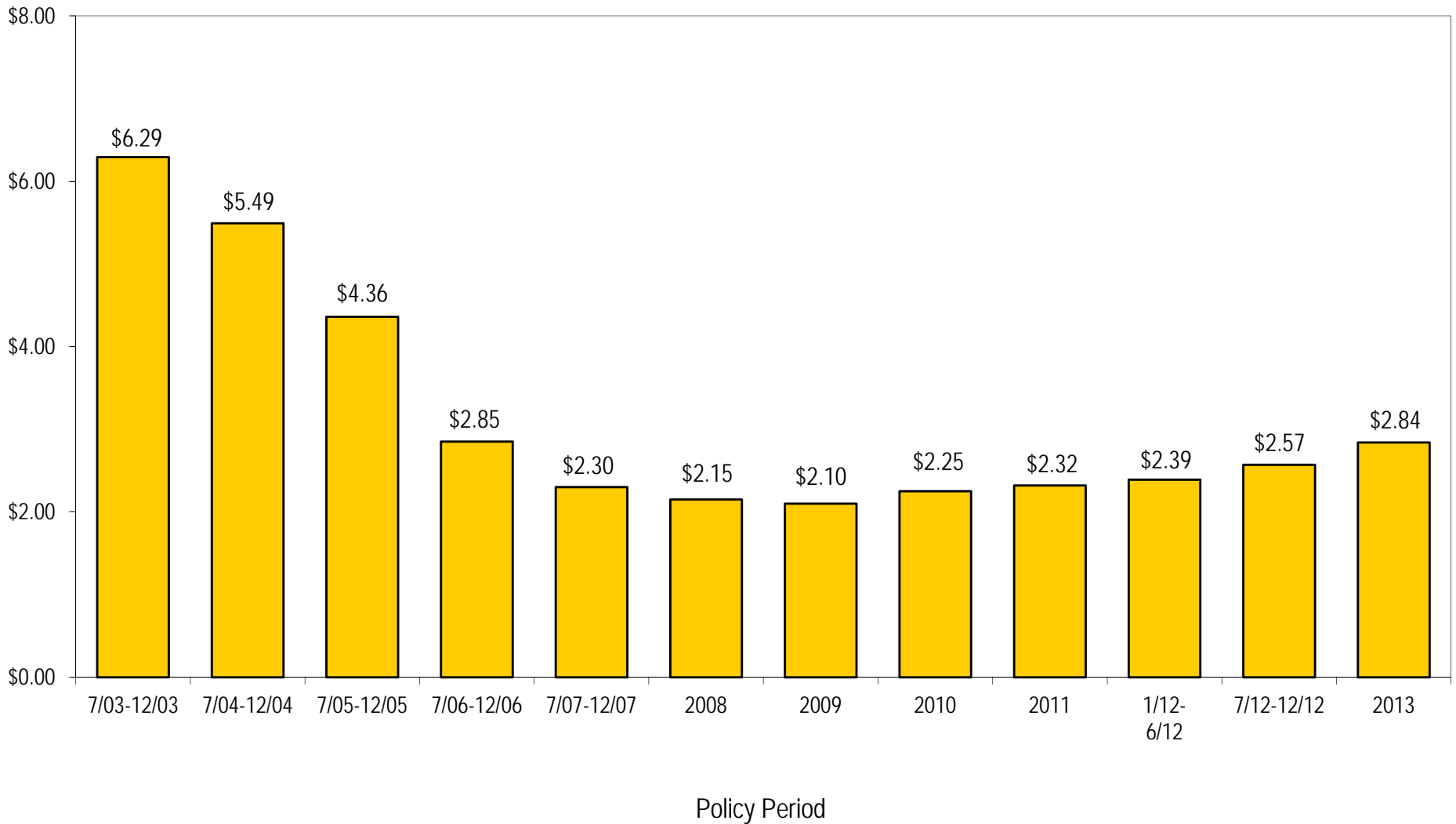
# Accident Year California Projected Combined Loss and Expense Ratios

As of March 31, 2014



\* The cost of medical cost containment programs is reflected in LAE for accident years 2011 and subsequent. It is reflected in losses for all other accident years.

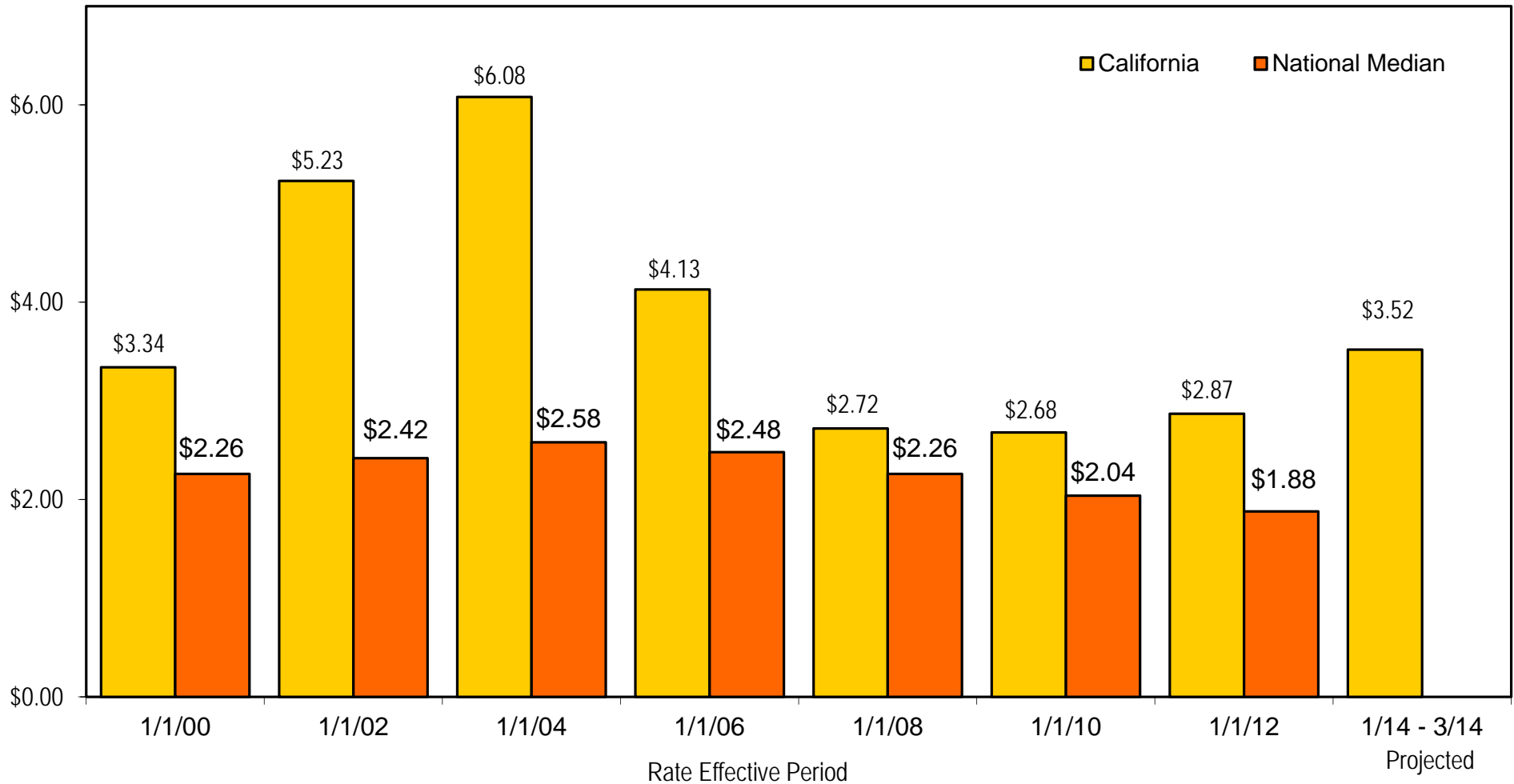
# Estimated Average Charged Insurer Rate Per \$100 of Payroll





# Rate Comparison Based on Oregon Studies

## California\* vs. National Median Average Charged Rate



\* The information is based on the state of Oregon biennial rate comparison and is based on the state of Oregon classification mix and, as a result, the California average rates shown on this exhibit differ from other measures of the average California rate.

## National Workers' Compensation Medical Trends vs. CA Medical Costs per Fee Schedule

- Estimated \$9 billion in WC spent on unnecessary medical costs
- Prices paid for nonhospital services in 2012 in Wisconsin, Indiana, and New Jersey double the prices in California, Florida, and North Carolina
- On other spectrum if prices too low reduce the number of providers willing to treat injured workers

## National Workers' Compensation Medical Trends

- Pharmacy
  - Pharmacy providers becoming more sophisticated with data analytics, electronic communications, reporting and innovative drug therapy management
  - Opioids remain top priority
  - Many use “soft” programs-letters to providers, phone calls to doctors who may exhibit problematic prescribing patterns and urine drug testing
  - Resulting in 21% drop in pharmacy inflation in last ten years
  - Declines in new branded drugs, popular drugs going off-patent, and generic conversion programs

# National Workers' Compensation Medical Trends

- ICD-10 Codes
  - 10/2014 new codes to apply
  - Increases medical billing codes from 17,000 to 150,000
  - ICD-9 are 3 to 5 numbers long, ICD-10 is up to 7 digits with numbers and letters

## National Workers' Compensation Medical Trends

- Orthopedic Procedures
  - Millions of dollars spent on medical procedures that are possibly unnecessary
  - Examples:
    - American Academy of Orthopedic Surgeons issued statement that the use of viscoelastic injections for arthritic knees is no better than placebo and very expensive
    - Joint Commission-accredited hospitals have indicated that continuous passive motion machine after knee replacements is of no benefit and has risk factors

## National Workers' Compensation Medical Trends

- Spinal Fusion Surgery
  - Many failed back surgeries in WC
  - Spinal fusion was designed to treat fractures
  - Increasing use for degenerative changes
  - 1990s U.S. had rate twice of Canada and Norway, 5 times of the U.K. for spinal fusions
  - 1990-2001 increase of 220 percent
  - Cochrane Review of conservative care vs. spinal fusion with fusion group had little pain reduction or improvement in quality of life
  - CA-Criminal and civil actions against medical providers providing “false” hardware for spinal fusion surgeries

# Overview

- Pre-SB 863 Environment
- **SB 863 Summary**

## SB 863 Summary – Legislative Process

- Consensus that 2002–2004 Reforms Cut PD Benefits Back Too Far
- Several Attempts to Significantly Increase PD Benefits Vetoed
- 2011: Governor Indicated Would Consider Balanced Solution
- 2012: Labor and Employer Representatives Attempt to Negotiate Compromise Bill
  - Reduce frictional costs
  - Increase PD benefits
  - Reduce employer costs



## SB 863 Summary – Bill Provisions

- Signed by the Governor on September 18, 2012
- Includes Benefit Changes Effective 1/1/2013 and 1/1/2014
- Series of Structural Reforms to Benefit Delivery System
  - Lien Reforms
  - Independent medical review (IMR)
  - Permanent disability add-ons
  - Medical provider networks (MPNs) strengthening
  - Medical reimbursement levels
  - Future earning capacity adjustments (Ogilvie decision)
  - Return-to-work program
  - New Medical Fee Schedules
  - Independent Bill Review

## WCIRB Prospective Cost Evaluation of SB 863 – Process

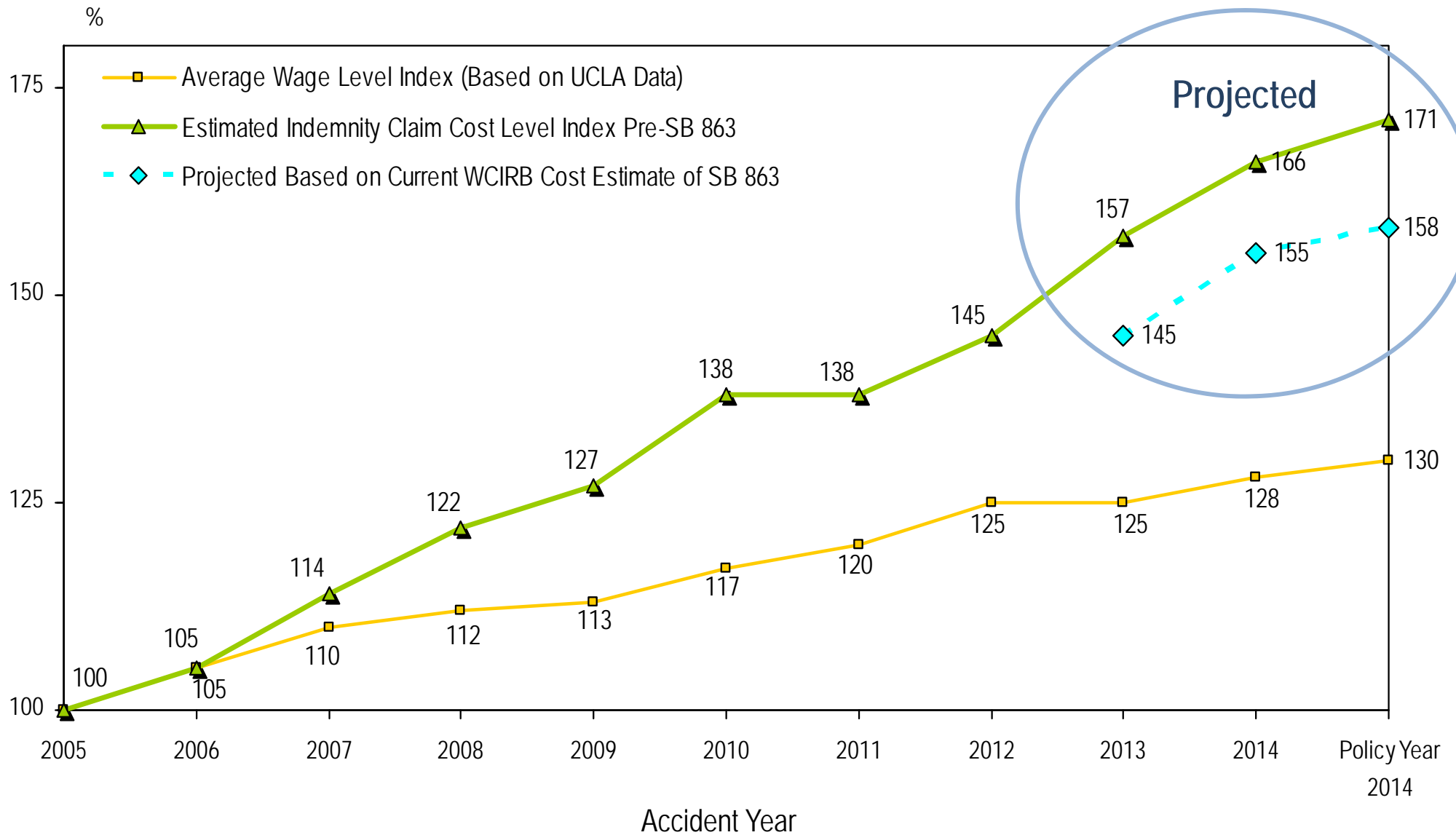
- WCIRB Requested by Insurance Commissioner and Director of DIR to Provide Preliminary Cost Assessments
- Final WCIRB Estimate Reflected in Amended 1/1/2013 Filing
- WCIRB Assessments Reflect
  - Review of legislative provisions
  - Consultation with experts
  - Review of relevant research and analyses
  - New actuarial analyses based on data and timeframes available
  - Judgmental estimates developed when there was consensus as to likely impact
  - Revisions as legislation changed or new information became available
- Develop Plan to Proactively Monitor Emerging Costs
- Measure Impact on Loss Development
- Measure Impact Size of Loss Distribution

# WCIRB Prospective Cost Evaluation of SB 863

## Summary of WCIRB Prospective Estimates (\$'s in billions)

SB 863 Provisions	Impact on Statewide Claim Costs	% Impact on Claim Costs
2013 & 2014 PD Benefit Level Changes	+\$1.2	+6.4%
Elimination of PD Add-ons	(\$0.2)	-0.9%
Three-Tiered Weekly PD Benefits	(\$0.1)	-0.5%
Liens	(\$0.5)	-2.5%
Surgical Implant Hardware	(\$0.1)	-0.6%
ASC Fees	(\$0.1)	-0.4%
IMR (Impact on Frictional Costs & TD Duration)	(\$0.4)	-2.1%
<u>Ogilvie</u> Decision	(\$0.2)	-1.1%
MPN Strengthening	(\$0.2)	-1.0%
<b>Total Estimated Impact of SB 863 (pre RBRVS)</b>	<b>(\$0.5)</b>	<b>-2.7%</b>
RBRVS Fee Schedule	+\$0.3	+1.8%
<b>Total Estimated Impact of SB 863 (post RBRVS)</b>	<b>(\$0.2)</b>	<b>-0.9%</b>

# California Workers' Compensation Claims and Wage Level Index

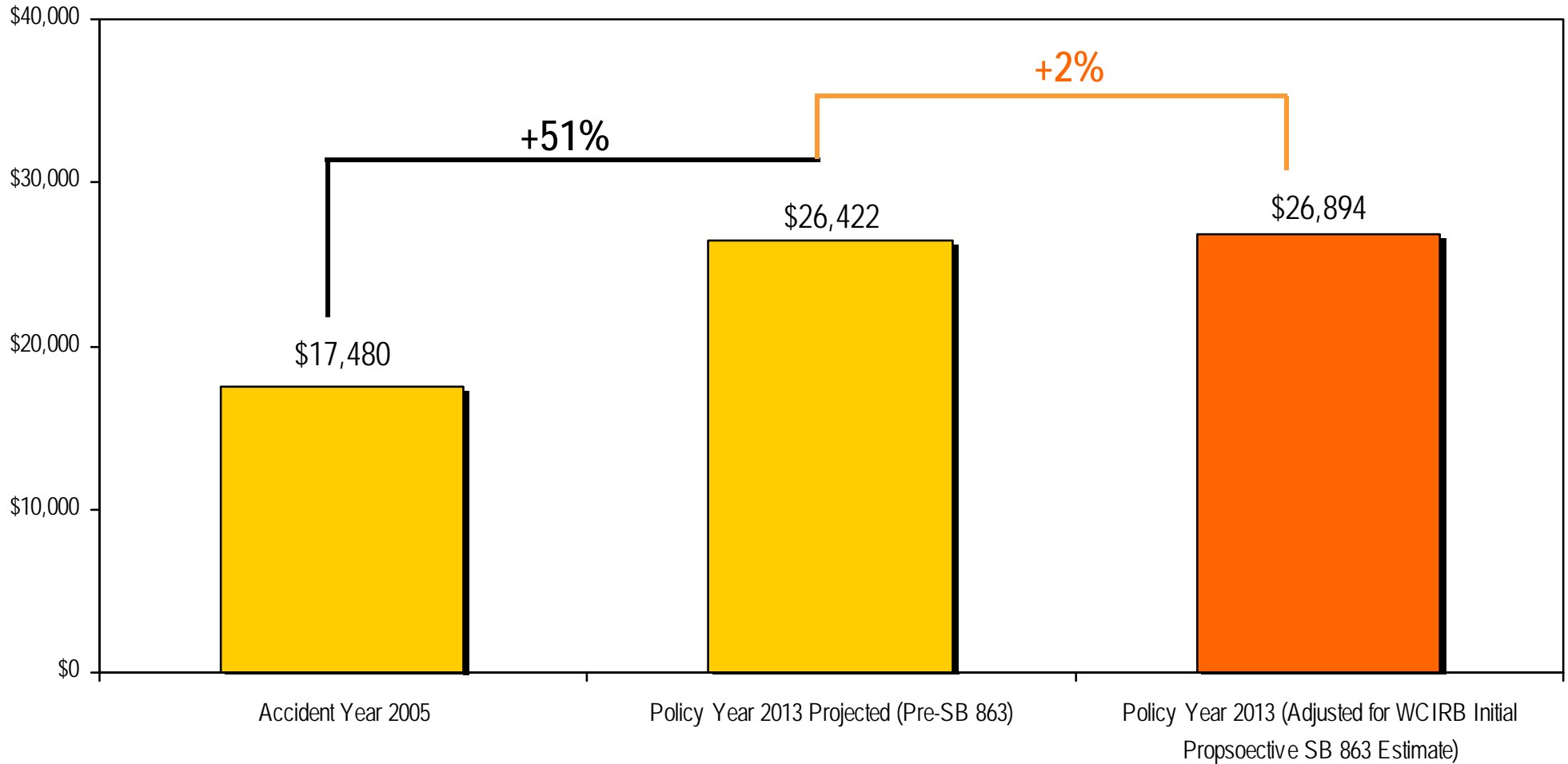


## Anticipated Post-SB 863 Trends – Indemnity

- Temporary Disability Duration
  - IMR and MPN provisions should accelerate claims process & reduce TD duration
- Ogilvie and Almaraz/Guzman
  - Effectively eliminates Ogilvie adjustments
  - Does not address Almaraz/Guzman
- Permanent Disability Rating Disputes/Litigation
  - Eliminates PD rating “add-ons” and 3-tiered benefit system
  - FEC factor replaced by 1.4 adjustment
- Increased Indemnity Claim Frequency Partly Driven by Cumulative Injury Increase
  - Not addressed by SB 863

# WCIRB Projected Indemnity Change – After Initial Prospective SB 863 Adjustments

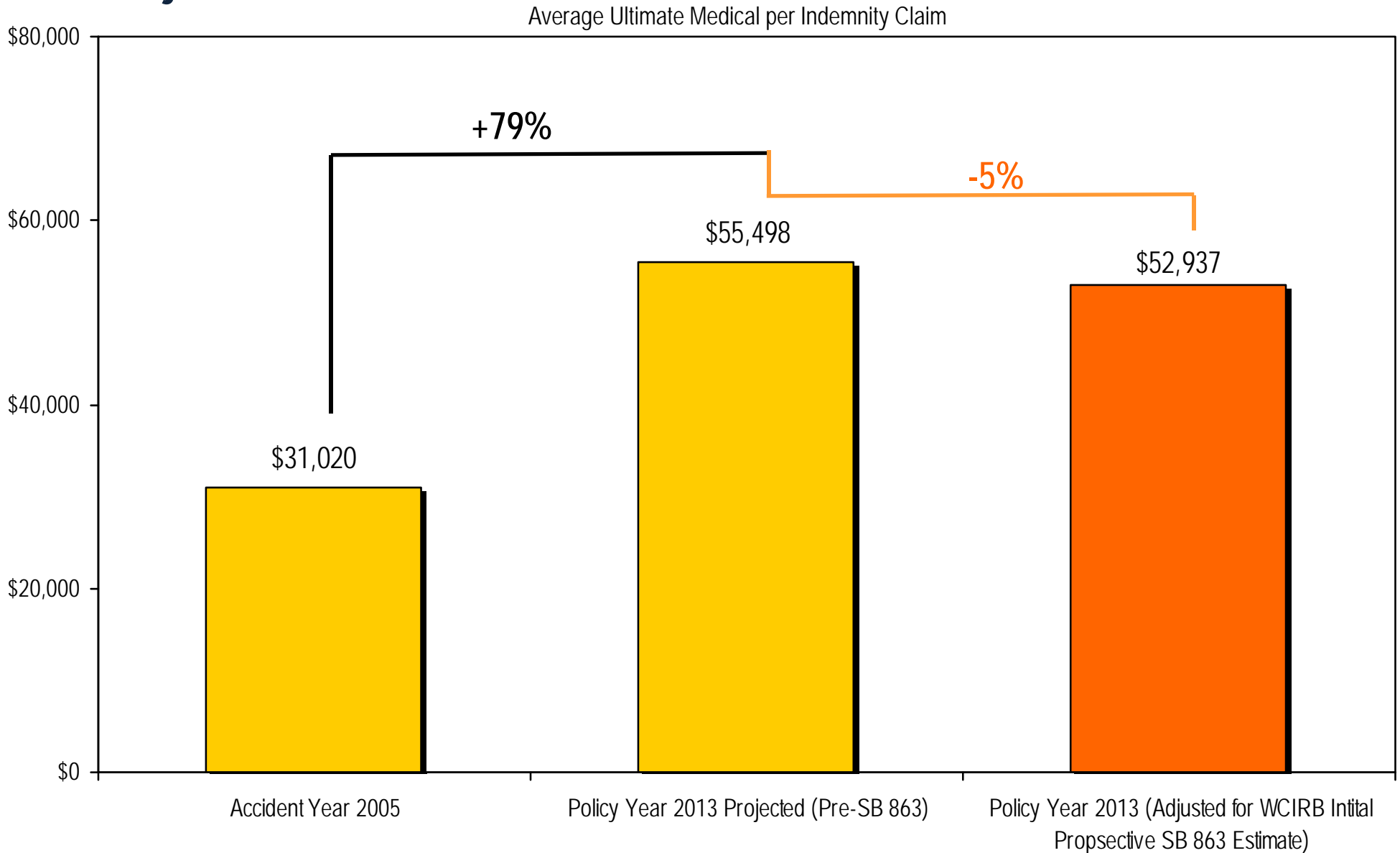
Average Ultimate Indemnity per Claim



## Anticipated Post-SB 863 Trends – Medical

- Medical Treatment Costs
  - ASC fees, surgical implant hardware, and MPNs provisions should reduce costs
  - IMR process should reduce medical treatment disputes (impact on medical costs uncertain)
  - New fee schedules and conversion to RBRVS (impact on medical uncertain)
- Medical Liens
  - Filing fee and statute of limitations should materially reduce volume and cost
- Medical-legal Costs
  - IMR process should reduce medical-legal disputes and cost
- Pharmaceutical Costs and Medicare Set-asides
  - Not addressed by SB 863

# WCIRB Projected Medical Change – After Initial Prospective SB 863 Adjustments

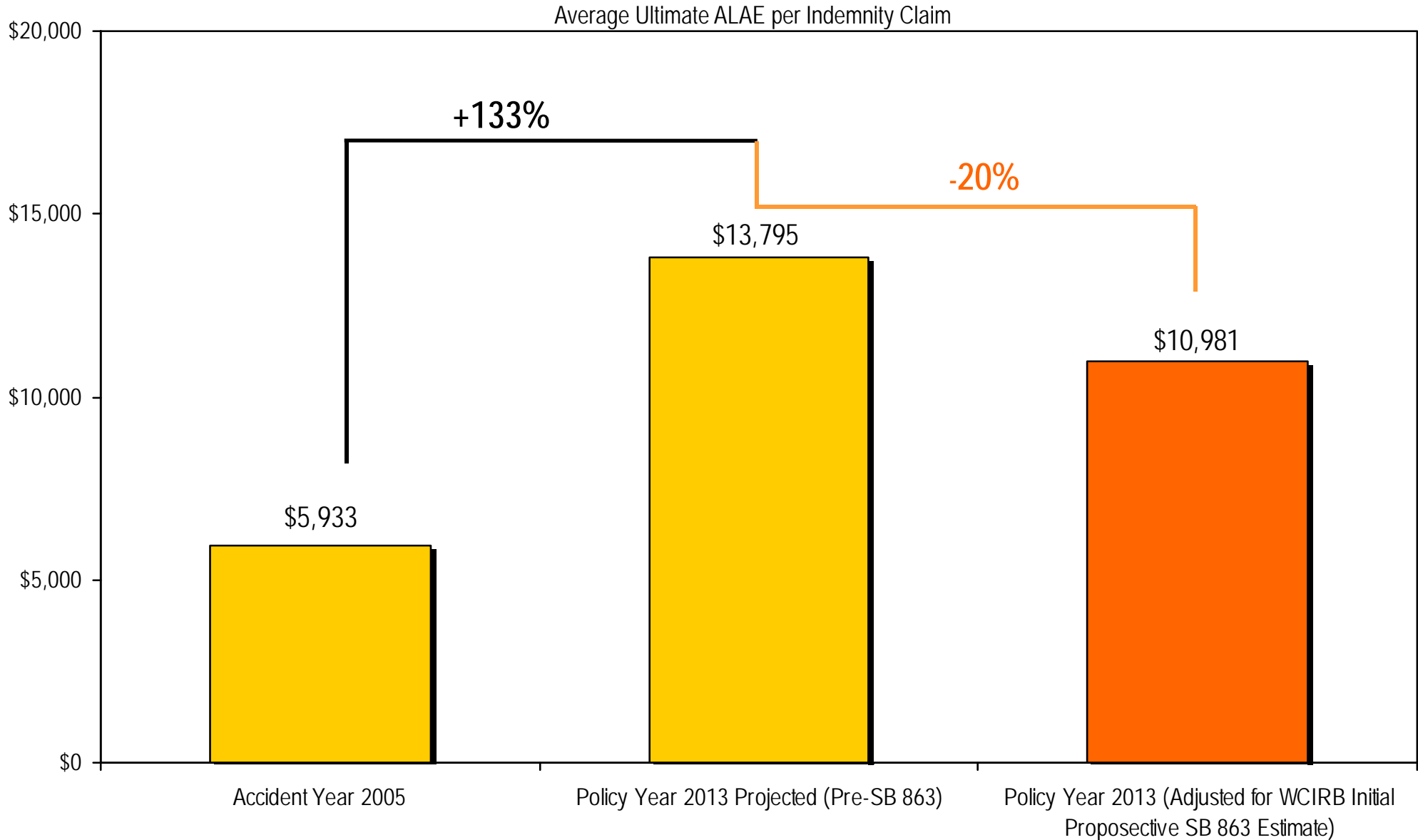




## Anticipated Post-SB 863 Trends – ALAE

- Liens
  - Lien filing fee and statute of limitations should significantly reduce volume and cost of liens
  - IMR should reduce lien costs related to utilization review
- Ogilvie and Almaraz/Guzman
  - SB 863 effectively eliminates Ogilvie
  - Does not address Almaraz/Guzman
- Medical cost containment
  - Not directly addressed although IMR process may reduce frictional costs related to medical disputes
- Increases in Cumulative Injury Claims and Claims with Multiple Body Parts
  - Not addressed by SB 863

# WCIRB Projected ALAE Change – After Initial Prospective SB 863 Adjustments



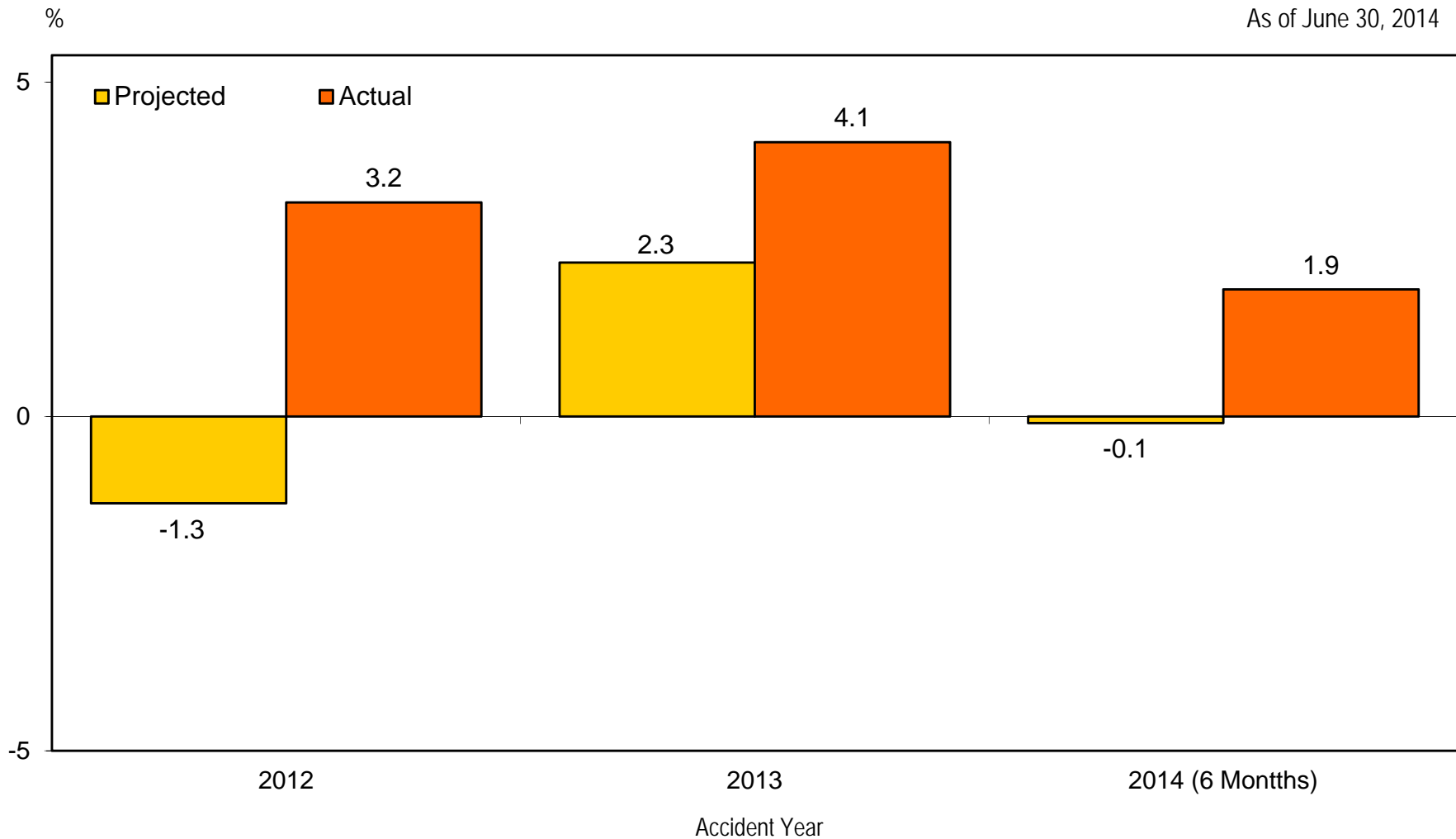
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- SB 863 Summary
- **Post-SB 863 Trends**

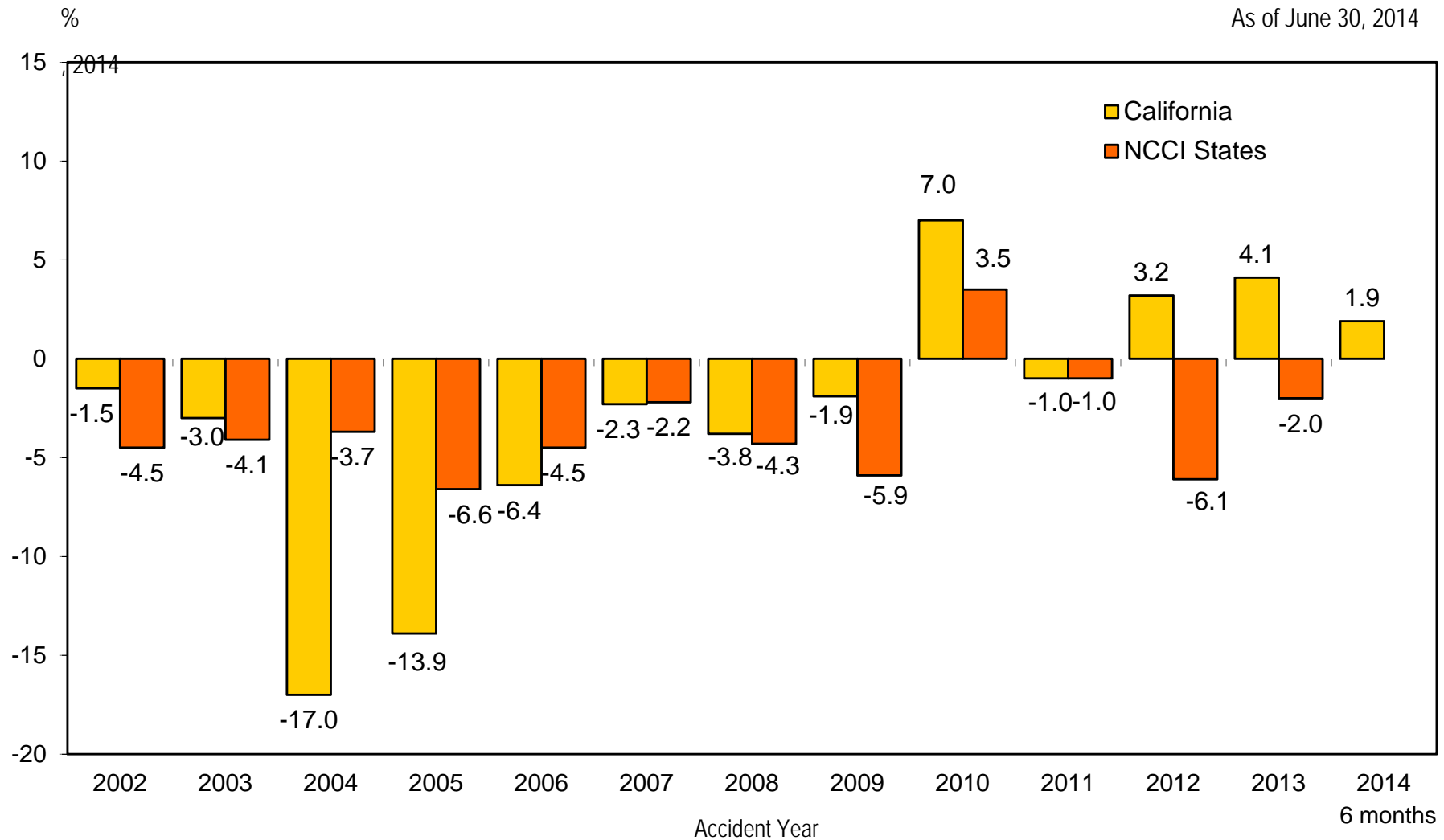
## Permanent Disability Benefit Increase Impact on Indemnity Claim Frequency

- Total SB 863 Impact (Including 2014 PD Benefit Increases) on Frequency Estimated to Increase Costs by 1.1% (\$200M)
- Assumed Frequency Changes Approx. 0.2% for Every 1% Change in Indemnity Benefits
- Frequency in 2012 – 2014 Emerging Much Higher than Projected

# Change in Estimated Indemnity Claim Frequency – Actual vs. Projected



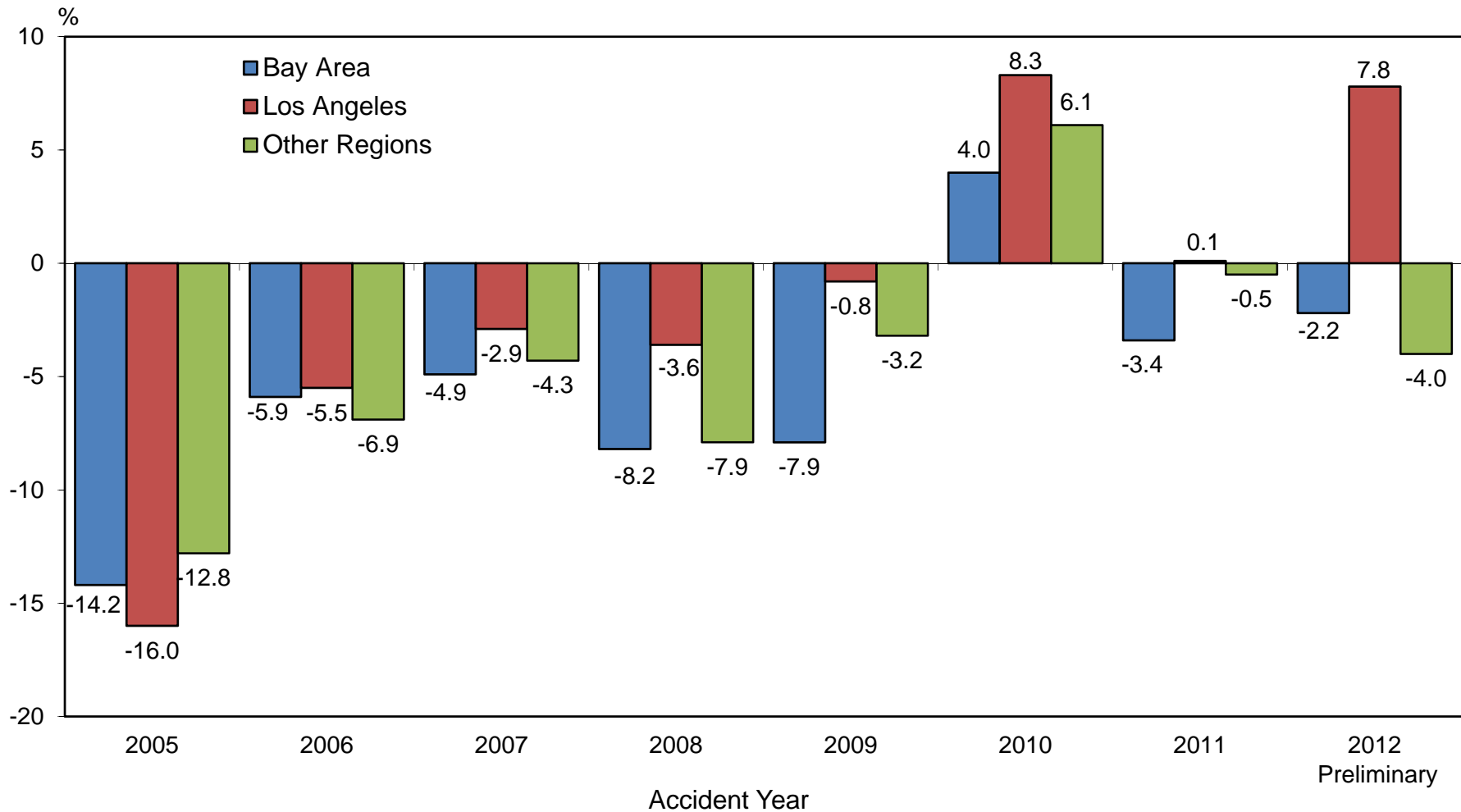
# Change in Estimated Indemnity Claim Frequency – California vs. NCCI States



NCCI estimates are based on the May 8, 2014 State of the Line Presentation (NCCI 2013 estimate is preliminary and the 2010 and 2011 estimates have been adjusted to remove the impact of audit premium and other factors).

# Estimated Frequency Changes by Geographic Region

## USR 1<sup>st</sup> Report Level



# Partial Permanent Disability Rates

- Effective for injuries on or after 1/1/13
  - PD ratings below 55%:  
minimum \$160/maximum \$230
  - PD ratings of 55% or greater but less than 70%:  
minimum \$160/maximum \$270
  - PD ratings of 70% or greater but less than 100%:  
minimum \$160(\$130)/maximum \$290(\$270)
- Effective for injuries on or after 1/1/14:
  - Single Rate Structure: minimum \$160/maximum \$290



# Impact of New Rates

Rating %	2012	2013	2014
10	6,957.50	6,957.50	8,772.50
20	17,365.00	17,365.00	21,895.00
30	30,130.00	30,130.00	37,990.00
40	46,230.00	46,230.00	58,290.00
50	62,387.50	62,387.50	78,662.50
60	80,787.50	94,837.50	101,862.50
70	116,177.50	172,042.50	172,042.50
80	160,177.50	172,042.50	172,042.50
90	203,377.50	218,442.50	218,442.50

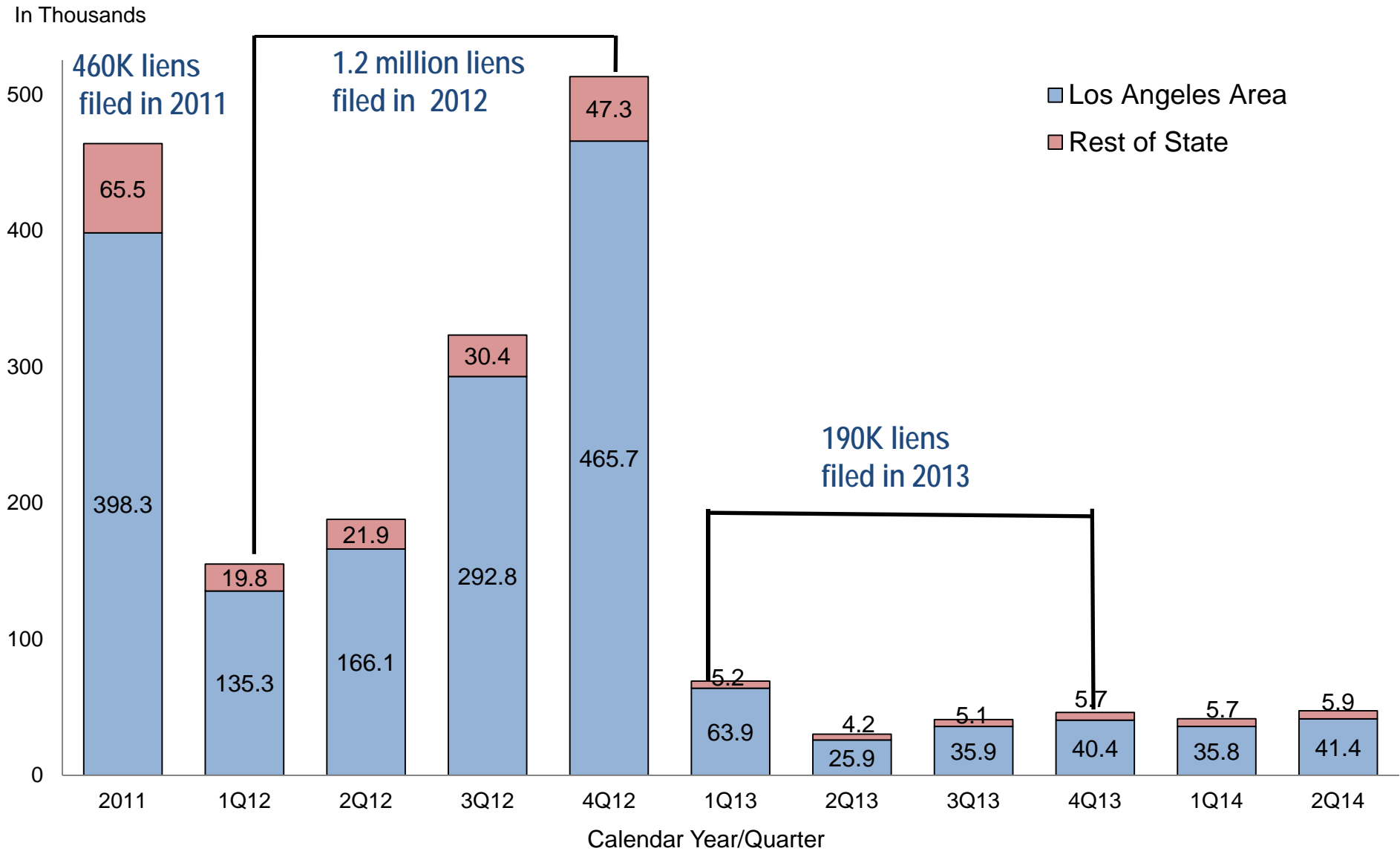
# Impact of New PPD Rates on California Workers' Compensation Industry

- Projected increase in Costs to Employers:
  - \$200 to \$300 Million in 2013
  - \$600 to \$800 Million in 2014 and beyond
- Likely Results:
  - Result in increased PD costs for PD ratings
- Reason for increase
  - Last increase in PD was 2006

## WCIRB SB 863 Cost Monitoring Liens – WCIRB Prospective Estimate

- Total Impact of SB 863 Lien Provisions Estimated to Decrease Costs by 2.5% (\$480M)
- Assumed 260,000 Liens (41%) Eliminated by Filing Fee and Statute of Limitations
- Relatively Smaller Liens Impacted
- Significant Savings in Administrative Costs

# Liens Filed Counts by Region



Source: EAMS Liens Data

## Current Rules for the “Old” Lien System

- Prior to SB 863 CA Workers’ Compensation had a system where a medical provider could file for a “Lien Hearing” to review medical bills that were not paid or not paid in full
- All those who had filed a lien on or before 1/1/14 were required to pay a mandatory \$150 activation fee and by 1/1/14 the lien if not resolved had to file a \$100 reactivation fee or the lien would be dismissed
- In compliance with a preliminary injunction by the U.S. District Court for the Central District of California in the matter of Angelotti Chiropractic, Inc., et al. v. Baker, et al., the Division of Workers’ Compensation will no longer collect lien activation fees as of Nov. 19, 2013.
- **NOW**-Most medical bills have to go through the new IBR process before can file a lien

## Spinal Surgical Implant – WCIRB Estimates

- Elimination of Separate Reimbursements for Implantable Hardware Estimated to Decrease Costs by 0.6% (\$110M)
- Estimate Based on CWCI Study of Multiple Reimbursements
  - Duplicate payments added \$20,000 to each procedure
- Post-Reform Emerging Costs – Calculated Billed and Paid Amounts for the 7 DRGs Pre- and Post-1/1/13

	# Episodes	% DRGS 454 & 455	Total \$ Paid	Avg. \$ Paid Per Episode
Pre-1/1/13	214	84%	\$5,870,125	\$27,430
Post-1/1/13	52	85%	\$628,504	\$12,087
<b>Change</b>				<b>-56%</b>

## Ambulatory Surgical Center Fees – WCIRB Estimates

- Changes to ASC Fees Estimated to Decrease Costs by 0.4% (\$80M)
- Some ASC Fees Reimbursed Under Contract Levels Below Current Fee Schedule
- Assumed Reduction in ASC Facility Fees of 25%
  - Approximate average of savings if all fees are impacted (33%) and if no contract fees are impacted (20%)
- Post-Reform Emerging Costs – Examined ASC Episodes of Care for the 30 Most Highly Reimbursed Procedure Codes (67% of All ASC Costs)

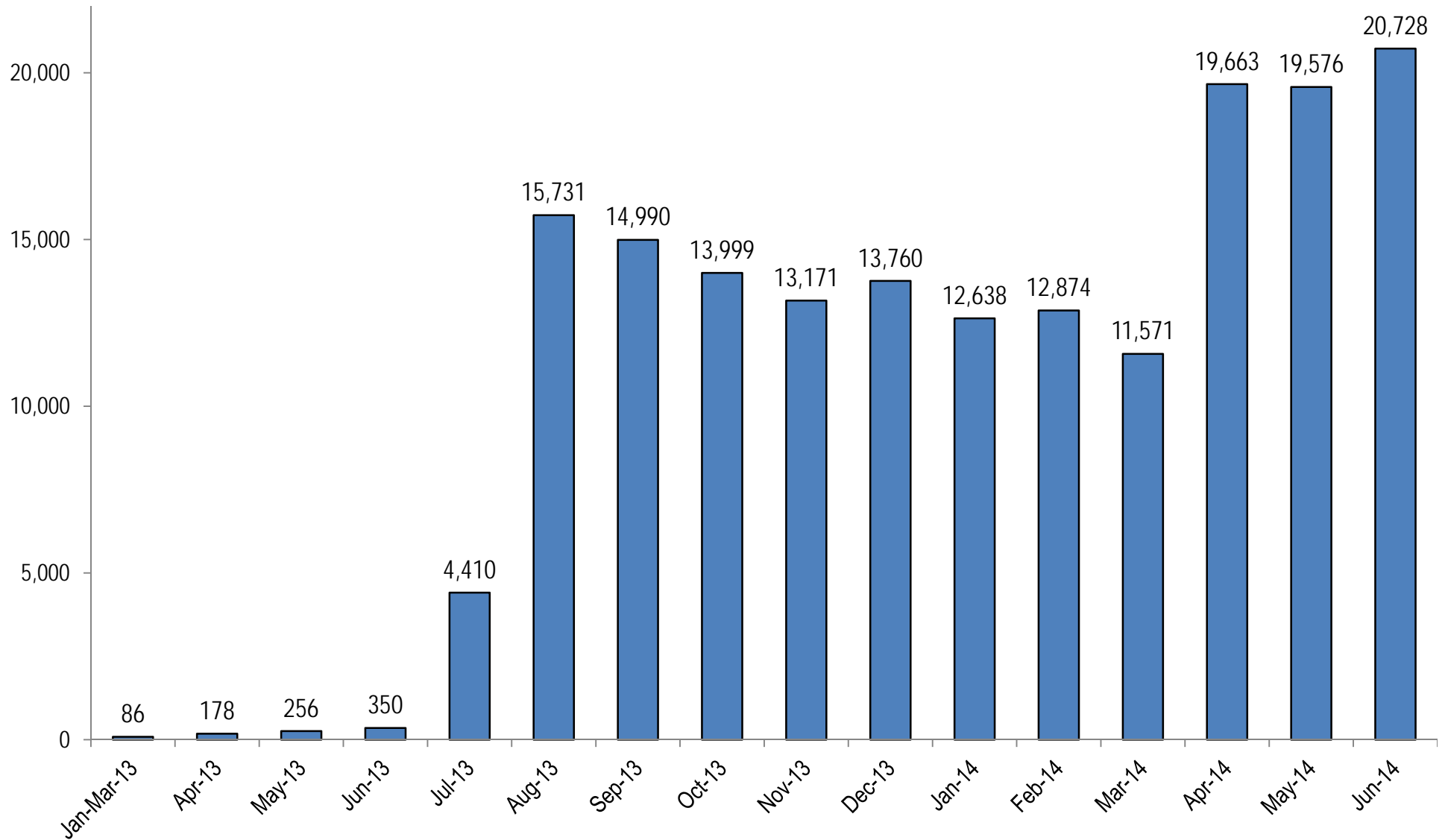
ASC Surgeries Top 30 Paid Codes	% of all ASC \$ in Top 30 Codes	# of Episodes	\$ Paid	\$ Paid per Episode
Services Pre-1/1/13	65%	11,435	\$37,628,741	\$3,291
Services Post-1/1/13	68%	5,497	\$13,430,373	\$2,443
<b>Change</b>				<b>-26%</b>

## Independent Medical Review – WCIRB Prospective Estimate

- Total Quantifiable Impact of SB 863 IMR Provisions Estimated to Decrease Costs by 2.1% (\$390M)
- IMR Frictional Cost Saving Assumptions
  - 30,000 medical liens for UR disputes replaced by IMR reports
  - 21,000 QMEs for medical treatment replaced by IMR reports
  - 9,000 expedited hearings eliminated
- Reduction in Delays for Medical Treatment Assumed to Reduce TD Duration by 4%
- Reduced Litigation Related to Medical Treatment Assumed to Reduce ALAE Costs by 2.4%
- No Estimate for IMR Impact on Medical Treatment Levels



# Number of IMR Requests by Month



Source: DWC

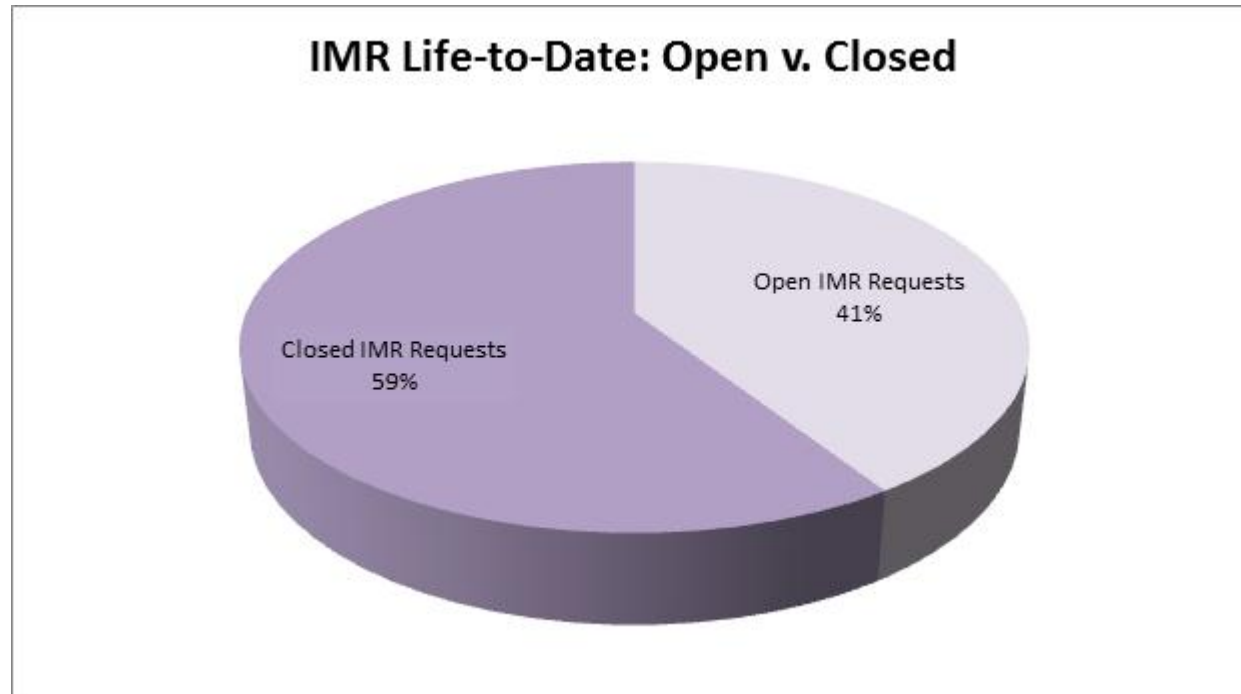
# IMR Requests to June 2014

IMR Requests Received (TOTAL) 187,248

Open IMR Requests 76,461

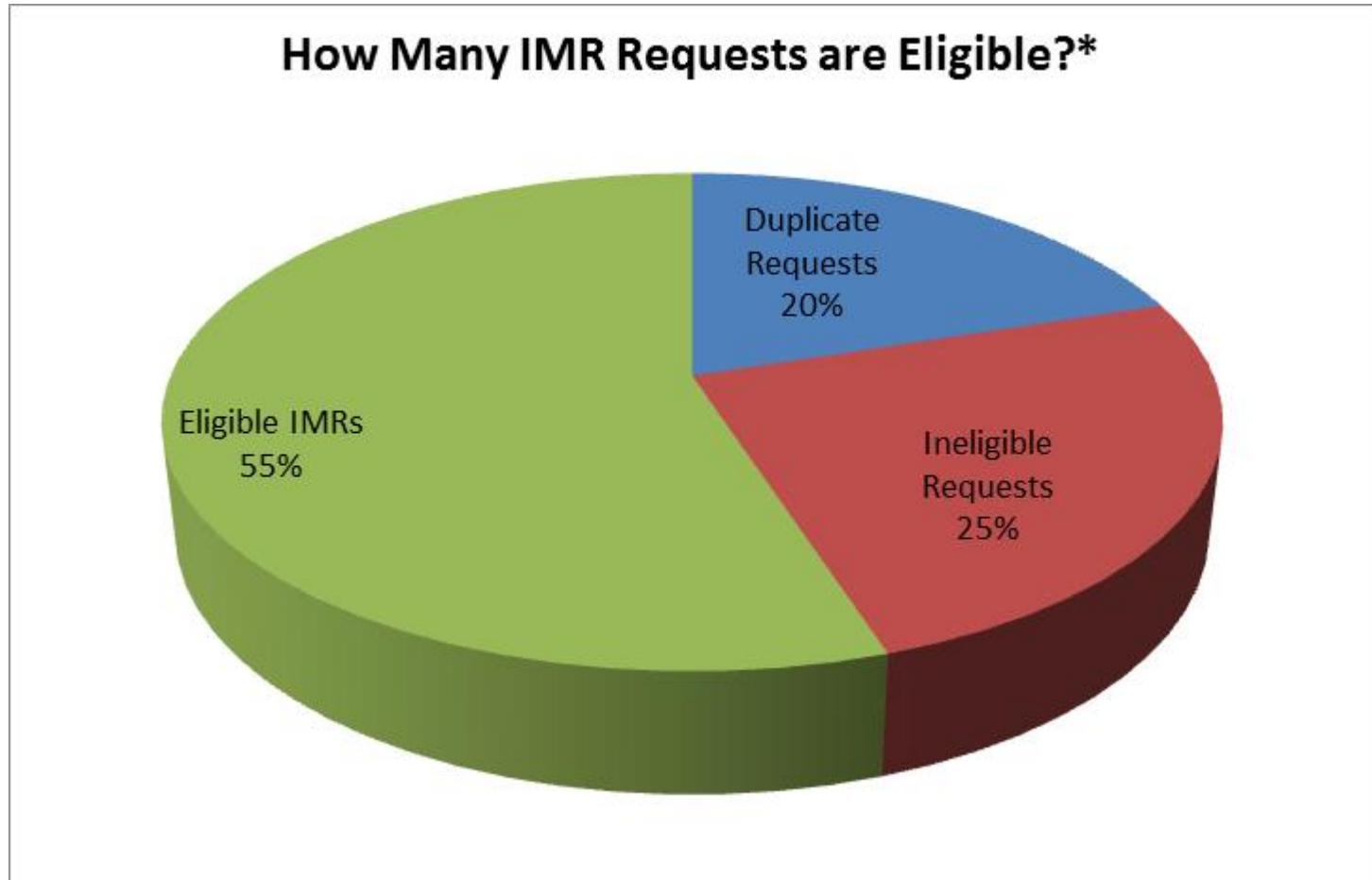
Closed IMR Requests

\* [www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc)

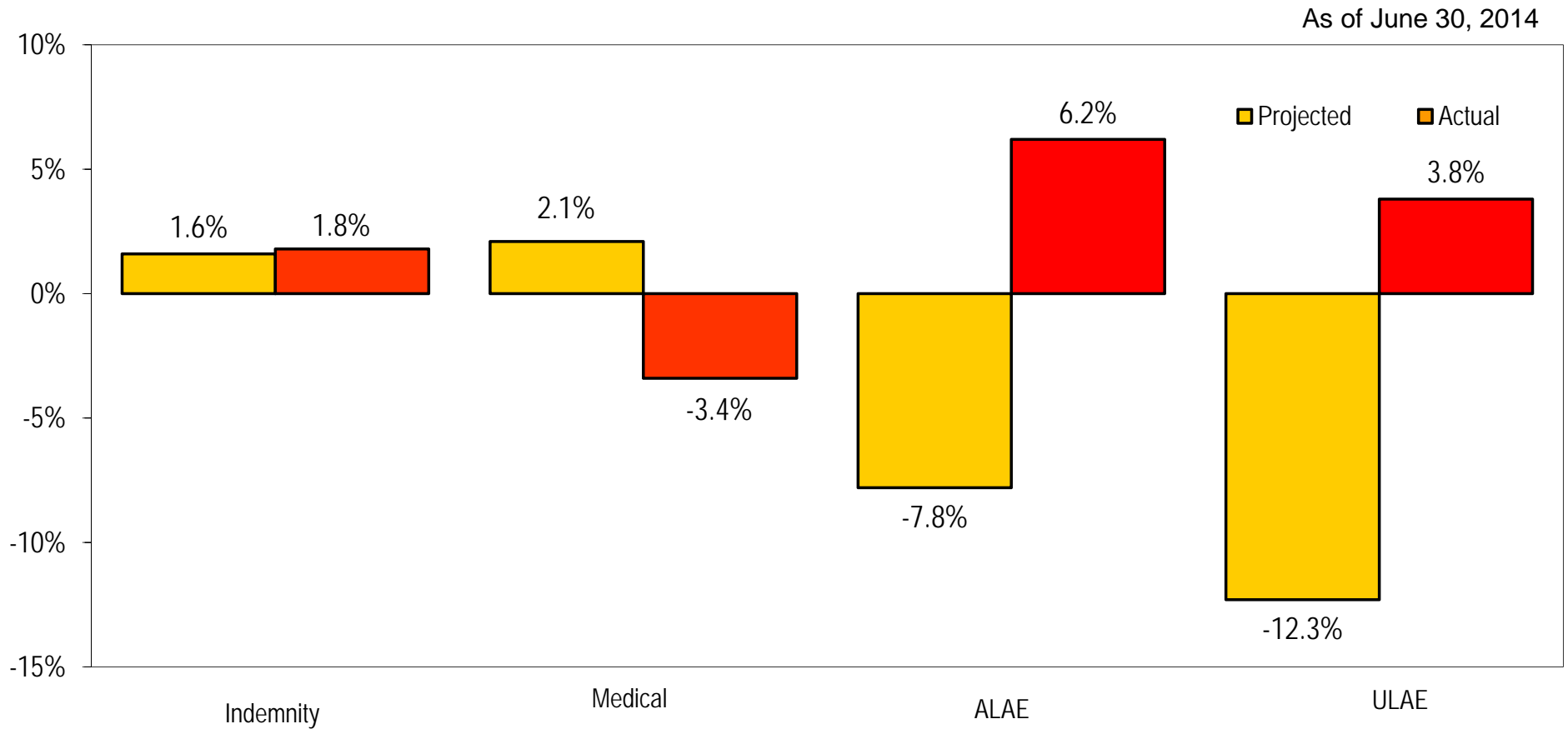


# IMRs eligible for Review

[\\*www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc)











# 2013 Severity Changes – Projected Vs Actual



# WCIRB Cost Evaluation of SB 863

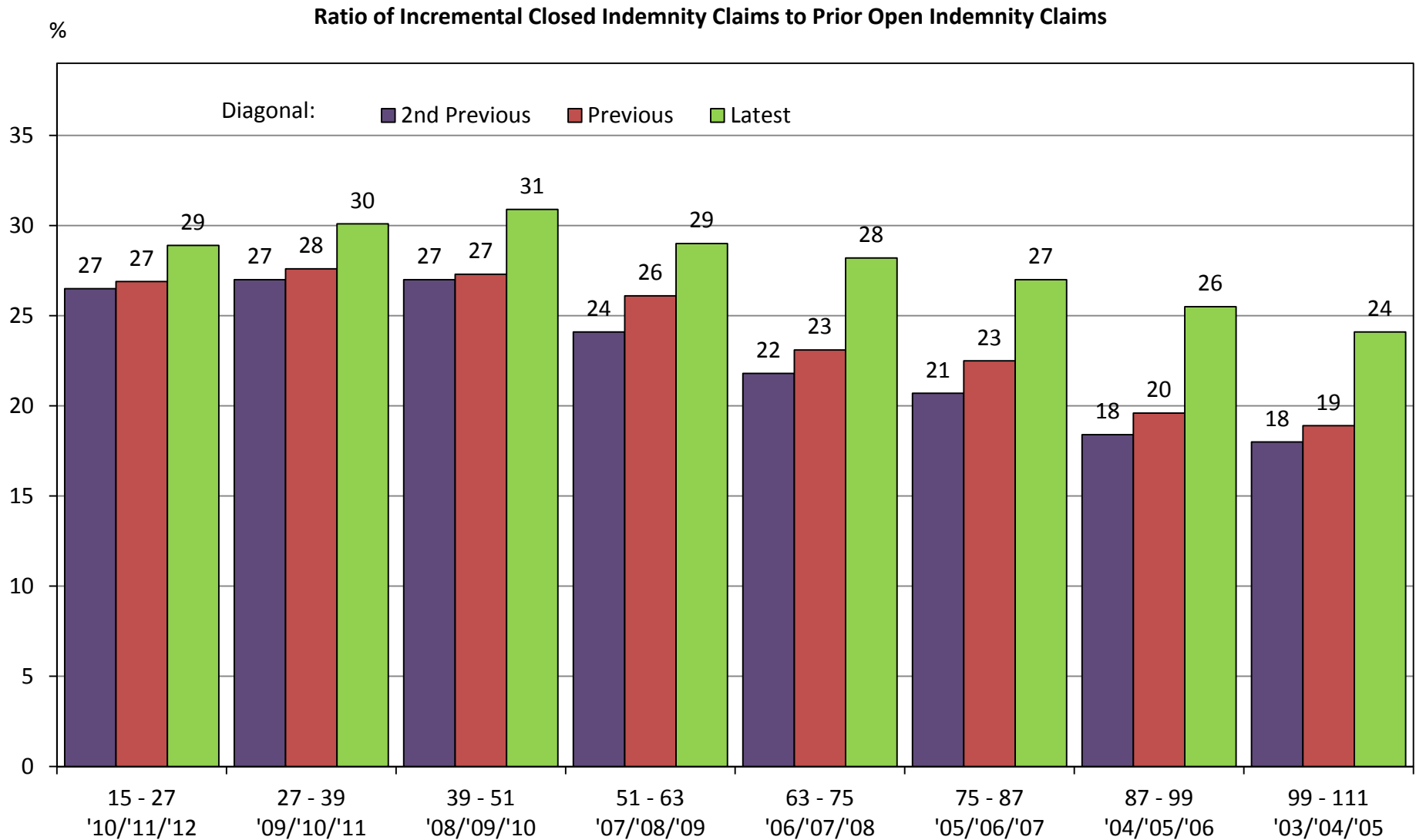
## Summary of Estimates (\$'s in billions)

SB 863 Provisions	WCIRB Prospective Cost Estimates (Impact on Statewide Claim Costs)	Preliminary Monitoring Results (Impact on Savings Estimates)
<b>2013 &amp; 2014 PD Benefit Level Changes</b>	<b>+\$1.2</b>	
Elimination of PD Add-ons	(\$0.2)	TBD
Three-Tiered Weekly PD Benefits	(\$0.1)	TBD
Liens	(\$0.5)	
Surgical Implant Hardware	(\$0.1)	
ASC Fees	(\$0.1)	
IMR (Impact on Frictional Costs & TD Duration)	(\$0.4)	
<u>Ogilvie</u> Decision	(\$0.2)	TBD
MPN Strengthening	(\$0.2)	TBD
RBRVS Fee Schedule	+\$0.3	TBD
Indemnity Severity	Small Increase	
Medical Severities	Small Increase	
ALAE and ULAE Severities	Significant Declines	

## SB 863 – Potential Impact on Existing Pre-2013 Claims

- Liens
  - 1.2 million liens filed in 2012 - most are still in pipeline
  - Activation fee on pre-2013 liens subject to court stay
- IMR, IBR and Most Other Medical-Related Provisions Effective on Post-2013 Services on Pre-2013 Claims (\$480M)
- RBRVS Effective on Post-2014 Medical Services on Pre-2014 Claims
- TD Duration on Pre-2013 Claims Projected to Decline Modestly
- IMR Backlog May Delay Any Impacts to Emerge
- WCIRB Adjusting Development Factors Modestly for SB 863 Impact
- Recent Acceleration in Claim Settlement Observed

# Incremental Indemnity Claim Settlement Ratio



Source: WCIRB Quarterly Calls for Experience

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## Current Activity

- Fee Schedules to be Adopted – Interpreter, Copy Services, Home Health
- Pending Legal Challenges – Lien Fees
- Legal Cases of interest

## Recent California Workers' Compensation Legal Cases of Interest

- **Dubon**-On 2/27/14 WCAB ruled that if a utilization review (UR) is untimely or suffers from material procedural defects of a material nature that the medical decision on the matter should be decided by the WCAB. SCIF filed a Petition for Reconsideration and accepted on 5/22/14 granting such.
  - **Impact**: SB863 intent was to reduce costs of legal proceedings in the UR/medical decisions and that final decisions for medical necessity would be determined by the IMR process. If *Dubon* is allowed to stand it could result in higher medical legal costs and longer tail on medical claims.

## Recent California Workers' Compensation Legal Cases of Interest

- City of Sacramento-ALJ ruled in the initial proceedings that a claim for plantar fasciitis should not result in an impairment rating because it was not "complex or extraordinary condition" as required under *Almaraz/Guzman II*. On second level appeal the City argued that a condition that had no objective findings would not be "complex or extraordinary condition" and should not be used for the impairment rating. The Third Court held that this condition which is manifested by subjective findings was poorly understood and would qualify as a "complex or extraordinary" and allowed the impairment rating for plantar fasciitis.
  - Impact: There are certain medical syndromes that are subjective in nature and difficult to prove or disapprove that could now receive impairment ratings and increase indemnity costs.

## Recent California Workers' Compensation Legal Cases of Interest

- **Stevens**-One of the first challenges to the validity of the IMR process. In the original case UR denied the treatment request and upon review by IMR the denial was upheld. The injured worker challenged the IMR process on grounds of due process, the right to a fair hearing, the right to cross examine the reviewer, and no meaningful judicial review because there is no ability to contest the opinion of the anonymous reviewer. District Court of Appeals denied the request for review.
- **Impact**: This is likely going to be one of many challenges to the legal validity of the IMR process. If the IMR process upholds the denial of the treatment in UR, this denial is valid for 1 year. If the IMR process would be found to be improper, it could cause increased costs and uncertainties what treatment can be denied and upheld.

## Recent California Workers' Compensation Legal Cases of Interest

- **South Coast Framing**-WCAB affirmed a decision that an injured employee died as a result of medications he took while treating for an industrial injury. The District Court of Appeals over turned the decision and found that the applicant had failed to establish a causal connection between the injured party's death of overdose of medications and the industrial injury. The case has been appealed to the Supreme Court and they accepted review and a decision will be forthcoming.
- **Impact**: The issue will likely be is the burden of proof one where the alleged issue was a "material" factor contributing to the death or is it a lesser standard of "contributing" cause. If the court finds the lesser standard, higher costs of having to pay death benefits could be anticipated on cases where the death occurs after an industrial injury then is occurring now.

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