Trends in Medical Malpractice

Patients versus Profits

CAS 2008 Spring Meeting

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How about Patients and Profits?

My goal is to show that the current environment is conducive to both ‘leaps’ in patient safety and insurance company profits!

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Physician Headlines

Physician mutual insurance companies and state run physician compensation funds have made recent headlines as profits fuel dividend and surplus growth.

- Wisconsin – Patient and Families Compensation Fund
- Pennsylvania – Mcare
- Maryland – Medical Mutual
- Illinois – ISMIE Mutual

Headlines - Wisconsin Patients and Families Compensation Fund

- October 2007 – Wisconsin Act 20 (budget bill) included a transfer of $200 million of the Wisconsin Patient and Families Compensation Fund (Fund) to the Medicaid Trust Account.
- Fund provides medical malpractice insurance to doctors and hospitals in excess of primary limits ($1M). Participation is mandatory.
- Surplus of the Fund was negative in the 1990's, became modestly positive between 2000 and 2004, and, based on the $200 million transfer, was considered excessive by Governor Jim Doyle in 2007.

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Headlines - Pennsylvania Mcare

- “Because Mcare payouts are now 50% lower than 5 years ago, there is a significant and growing surplus of funds in the special state account” said Governor Ed Rendell, “Using the dollars in the fund to support Mcare abatement and affordable health care insurance for the uninsured is the right thing to do”
- Mcare provides coverage excess of primary layer.
- Assessment History
  - •2008 Mcare assessment 20%
  - •2007 Mcare assessment 23%
  - •2006 Mcare assessment 29%
  - •2005 Mcare assessment 39%
  - •2004 Mcare assessment 46%
  - •2003 Mcare assessment 43%

Headlines - Medical Mutual Liability Insurance Society of Maryland

- December 2007 – Medical Mutual returns $84 million of state subsidies it had previously received and $13.8 million to policyholders and 8% reduction in rates.
- In 2005, the Maryland General Assembly created the Maryland Healthcare Provider Stabilization Fund after a bitter political battle over Medical Mutual's proposed 41% rate increase request in 2004.
- In calendar year 2003, Medical Mutual's written premium was $82 million and paid loss and expense was $121 million.
- This announcement indicated a considerable turn around in the last 3 to 4 years for this market.

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Headlines – ISMIE Mutual Insurance Company (Illinois)

- April 2008 – ISMIE announced a $11.5 million policyholder dividend.
- April 2007 – ISMIE announced a $18.4 million policyholder dividend to its 13,000 policyholders.
- ISMIE's claim frequency is down for 2005-06 and 2006-07 policy years.
- ISMIE was a leading advocate for tort reform in Illinois enacted in 2005. "The law's centerpiece is a $500,000 cap on non-economic damage awards for physicians."
- Trial lawyers are currently pressing a constitutionality challenge to the law.

Physician Headlines - Conclusion

- All cite substantial decline in the frequency of claims and suits. Underlying cause of frequency decline include:
  - •Patient Safety (our next topic)
  - •Societal Influences (access to my doctor)
  - •Medical Technology
  - •Legislative and Tort reforms
  - •Risk management and willingness to defend
  - •Plaintiff attorneys risk/reward profile

Patient Safety (R)evolution

Many credit the publication of **To Err is Human – Building a Safer Health System**, Committee on Quality in Healthcare, Institute of Medicine, November 1999, as the start of the modern patient safety movement.

The report provided a range of estimated deaths due to medical error of 44,000 to 98,000!

Quotes from the executive study include:

"More people die in a given year as a result of medical errors than from motor vehicle accidents (43,458), Breast Cancer (42,297) or AIDS (16,516)."

"Yet silence surrounds this issue"

"The goal of this report is to break the cycle of inaction."

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Primer for Patient Safety Organizations

- Institute of Medicine (IOM)
  - •Created by federal government to be an unbiased, evidence based advisor on scientific matters
  - •IOM is private and non-governmental
- Agency for Healthcare Research and Quality (AHRQ)
  - •Agency of Health and Human Services
  - •Promulgate patient safety indicators (PSI) to measure adverse events
- National Quality Forum (NQF)
  - •Public private partnership established in 1999 to develop, implement and standardize healthcare quality measurement and reporting.
- Joint Commission
  - •Independent, not-for-profit,
  - •Accredits and certifies hospitals

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Primer for Patient Safety Organizations

- The Leap Frog Group
  - •Formed November 2000 as a response to the IOM report. Goal is to mobilize the group purchasing power of large employers that are paying for employee healthcare and demand “leaps” forward in safety.
- Institute for Healthcare Improvement (IHI)
  - •Independent not for profit organization founded in 1991.
  - •IHI works to accelerate improvement by building the will for change.
- Healthgrades – (Nasdaq:HGRD) – Healthcare ratings company
- Thompsons – (NYSE:TOC) – 100 Best Hospitals
- American Nurses Association
  - •Created Magnet Status as a recognition program for nursing

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IHI 100,000 Lives Campaign

- 100,000 Lives Campaign was a response to IOM's To Err is Human report which estimated 98,000 lives lost due to medical errors
- December 2004 IHI announced a plan to save 100,000 lives.
- Participants volunteered to implement the following six criteria
  - Rapid Response Team
  - Prevent Central Line Infections
  - Prevent Surgical Site Infections
  - Prevent Ventilator Associated Pneumonia
  - Evidence based care for heart attacks
  - Medication reconciliations
- June 2006, IHI declared 122,300 lives saved and has since moved goal to 5 million lives.

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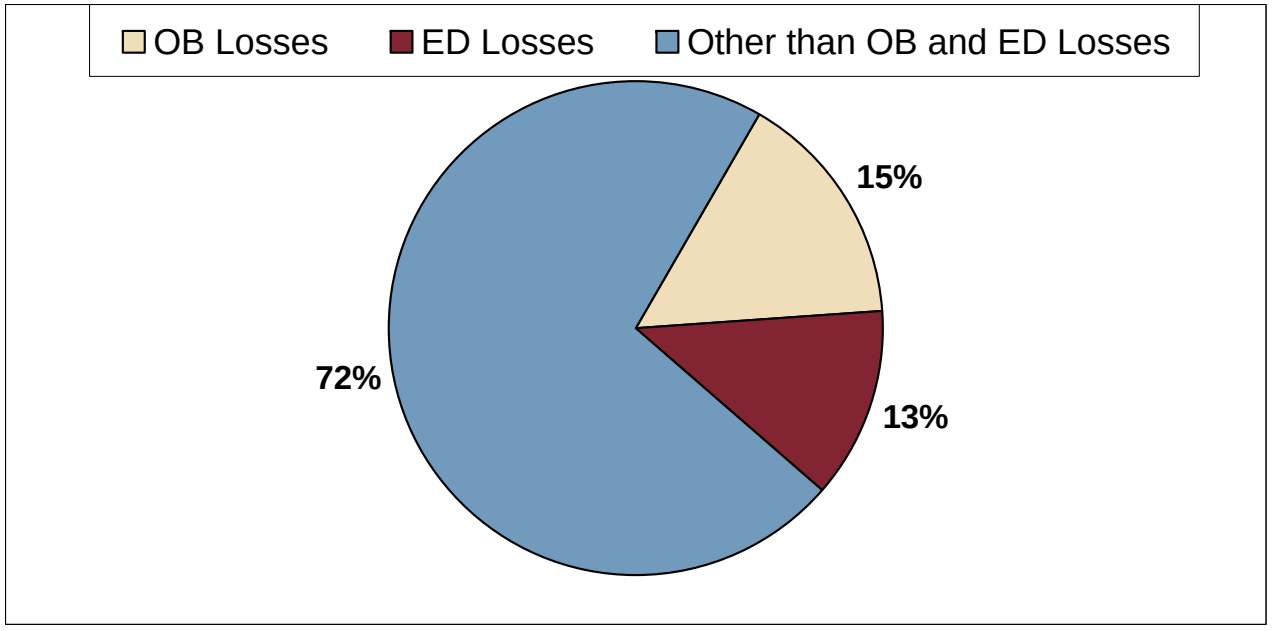
One system's patient safety story

- One of the largest for-profit hospital operator embarked on its own patient safety initiative as a result of the IOM study and a review of internal medical malpractice payouts.
- System decided to focus first on obstetrics (OB) and followed up with the emergency department (ED).
- Medical malpractice results have significantly improved in recent years and the system credits the improvement to patient safety initiatives along with tort reform and other factors.

One system's patient safety story

- OB and ED make up 28% of all liability payouts limited to $2 million. This percentage would be higher for unlimited.

Hospital Professional Liability Benchmark
OB and ED Losses as a Percentage of Total Database
Losses Limited to $2 Million per Occurrence



Obstetrics Initiative

- Started in 1996 and considered fully implemented in all system hospitals by 2002. Steps include:
  - Develop a taskforce to define obstetrical guidelines
  - Implement guidelines via extensive on-site education and consultation
  - Define and hire to appropriate staffing levels
  - Define and capture relevant data items
  - Institute a continual feedback process to review trends in the captured data and disseminate lessons learned from payouts.

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Obstetrics Initiative Successes

- Fetal heart monitoring identified as critical - all Labor and Delivery nurses receive fetal heart monitoring training.
- Emergency C-sections identified as critical – collected data showed an improvement in the timeliness of intervention for emergency C-Sections
- Delivery techniques identified as inconsistent - developed standard approach to identify patients appropriate for vacuum and forceps delivery
- Elopement a serious issue – bar coding for all newborns
- Medications identified as critical – increased focus on high alert medications

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ED Initiative Successes

- ED initiative focused on patient presentations because a review of liability payouts showed claimants entered the ED complaining about:
  - Abdominal pain in patients 50 year old and older
  - Chest pain
  - General abdominal pain
- Similar to OB, the initiative created standards of care around these presentations
- Staffing levels reviewed and on-site education.
- System provides semi annual file audits of all high risk presentations to analyze performance.

Patients in the Spotlight

- Believe me when I tell you that this entire presentation could be spent highlighting patient safety initiatives (effective and other than effective).
- The IOM “To Err is Human” broke the cycle of inaction and gave a voice to the silence surrounding the issue.
- I believe that improved insurance results are due to all the reasons listed but, prospectively, patient safety initiatives have the ability to sustain the improvement.
- However, there is one recent development that the medical malpractice industry should pay close attention to: Never Events.

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Introduction to Never Events

- Who pays for healthcare in the US?
  - Government
    - Centers for Medicare and Medicaid Services (CMS)
  - Employers
    - Private Health Plans (WellPoint, CIGNA, etc.)
  - Individuals
- As the largest payors, Government and Employers, via organizations such as Leap Frog, have taken a more visible consumerism role in healthcare, demanding safer practices and better outcomes.

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Introduction to Never Events

- The Leap Frog Group, National Quality Forum and others drafted a list of 28 things that should never happen to patients in the hospital setting and called the list Never Events.
- The original goal of Never Events was to promote patient safety by putting hospitals on the hot seat.
- Best practices (voluntary) were developed for Never Events including:
  - disclosure of the event to patients
  - perform a root cause analysis to understand the underlying cause and improve processes
  - waive the bills (cost) related to the event

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Never Events as a Liability Topic

- “No good deed goes unpunished!”
- While original interest in Never Events was in the patient safety arena (*good deed*), CMS interest in Never Events was more fiscally oriented.
- Effective October 1, 2008 CMS selected 8 of the original 28 and will no longer reimburse for these Never Events (*punish*) unless the condition was present at admission.
- April 14, 2008 CMS adds 9 more effective Oct. 2009
- The ‘present at admission’ exception will require comprehensive documentation of all patients at admission.

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CMS Original 8 Never Events

- Object Left in Surgery
- Air Embolism
- Blood Incompatibility
- Catheter – Associated Urinary Tract Infection
- Pressure Ulcers (Decubitus Ulcer)
- Vascular Catheter – Associated Infections
- Surgical Site Infection after Coronary Artery Bypass
- Hospital Acquired Injuries – Fractures, Dislocations, Crushing Injury, Burns and other unspecified

CMS Additional 9 Never Events

- Surgical Site Infection after Knee Replacement
- Legionnaires Disease
- Diabetic Ketoacidosis or Coma, Hypoglycemic Coma
- Iatrogenic Pneumothorax
- Delirium
- Ventilator-Associated Pneumonia (VAP)
- Deep Vein Thrombosis /Pulmonary Embolism
- *Staphylococcus aureus* Septicemia
- *Clostridium difficile*-Associated Disease (CDAD)

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Financial Impact of Never Events on Hospitals

- The financial impact to Hospitals comes from two areas:

1. Top line revenue will be reduced by the amount of billings that are no longer being reimbursed by CMS and other private payors that have adopted similar guidelines. Estimated annual savings for CMS is $20 million and $25 million for the list of 8 and 9, respectively.
2. The frequency and/or severity of medical malpractice lawsuits **may** be impacted by the CMS guidelines.

Impact on Medical Malpractice

- 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 severity of lawsuits as a result of Never Events.

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Trends in Hospital Liability

- Key findings of the Aon/ASHRM Hospital Professional Liability annual benchmark include:

  •Advisory loss costs at lowest levels in the eight year history of report.

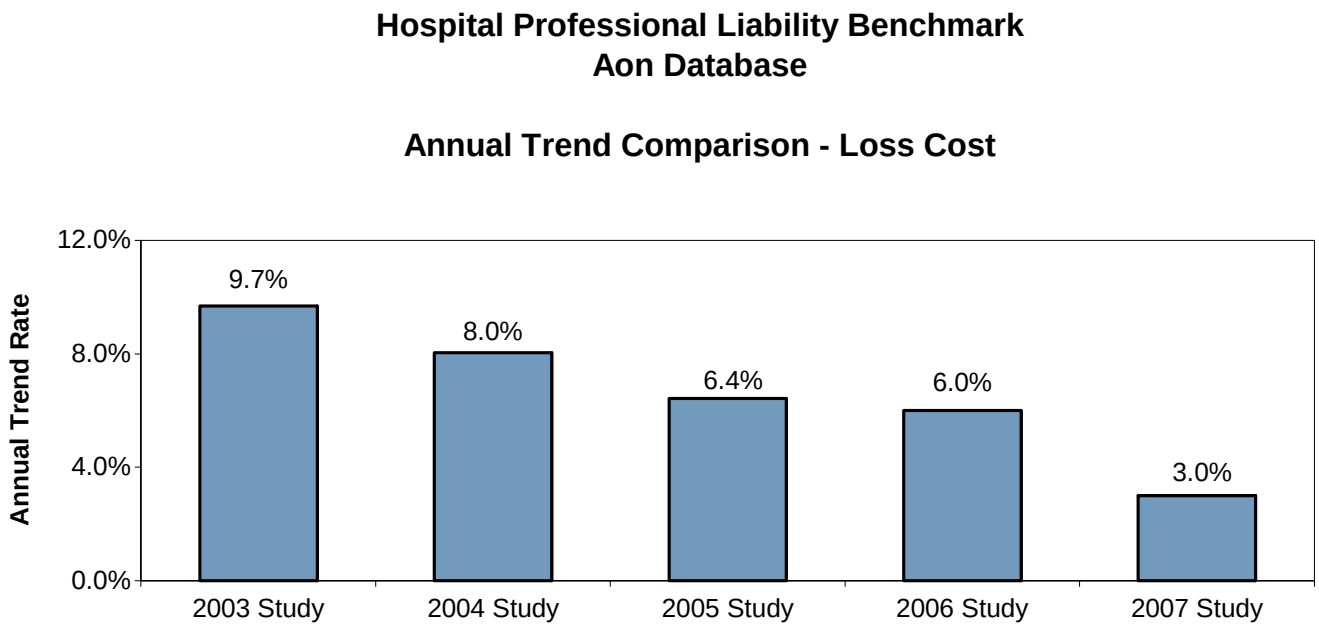
  •Frequency flat for third straight year.

  •Severity trend at 3%, lowest level in history of this report

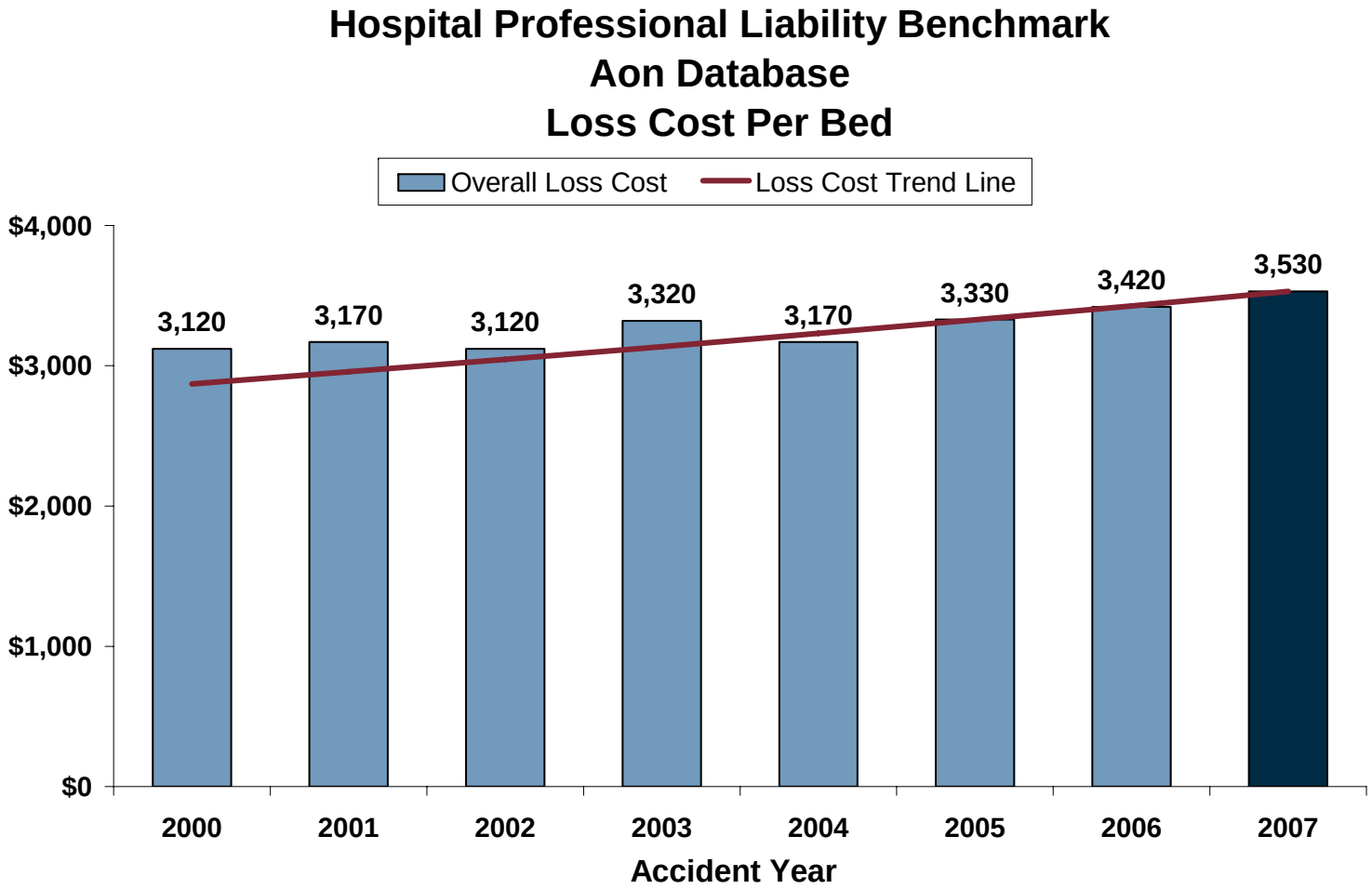
  •Claims Management, Patient Safety, Tort Reforms and Consumer Attitudes collectively credited with improvement.

Hospital Liability Loss Cost Trend

- Our advisory benchmark loss cost trends are at their lowest levels in the eight year history of Aon's advisory benchmark reports.

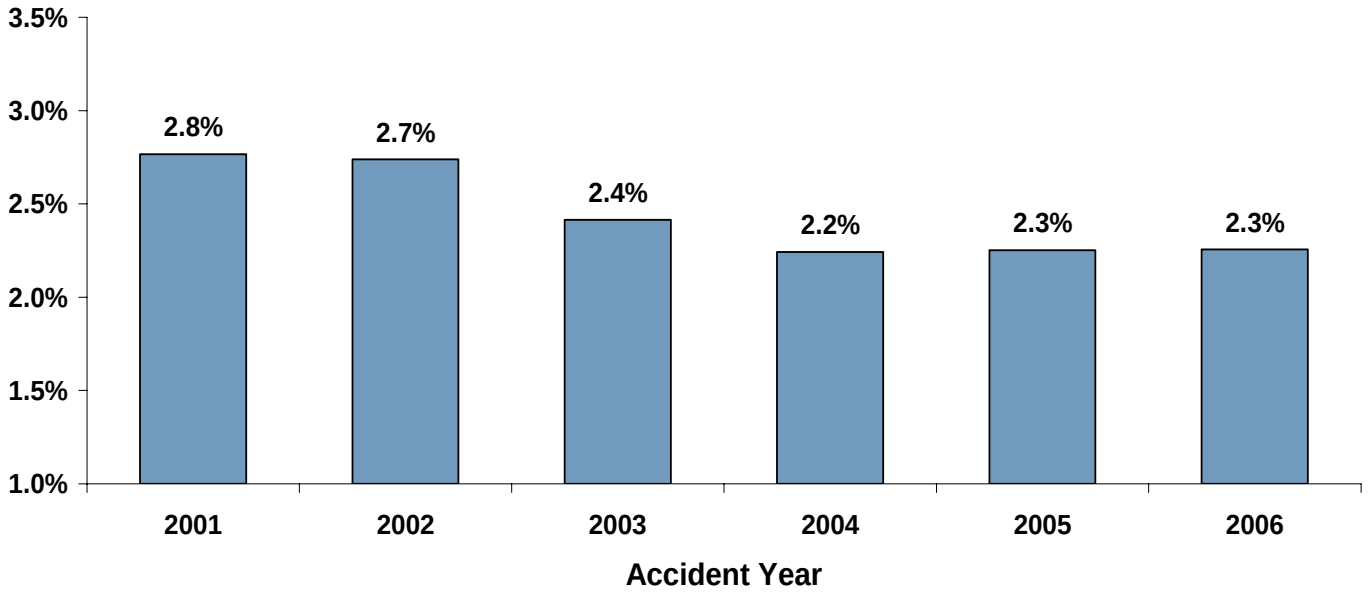


Hospital Liability Loss Costs

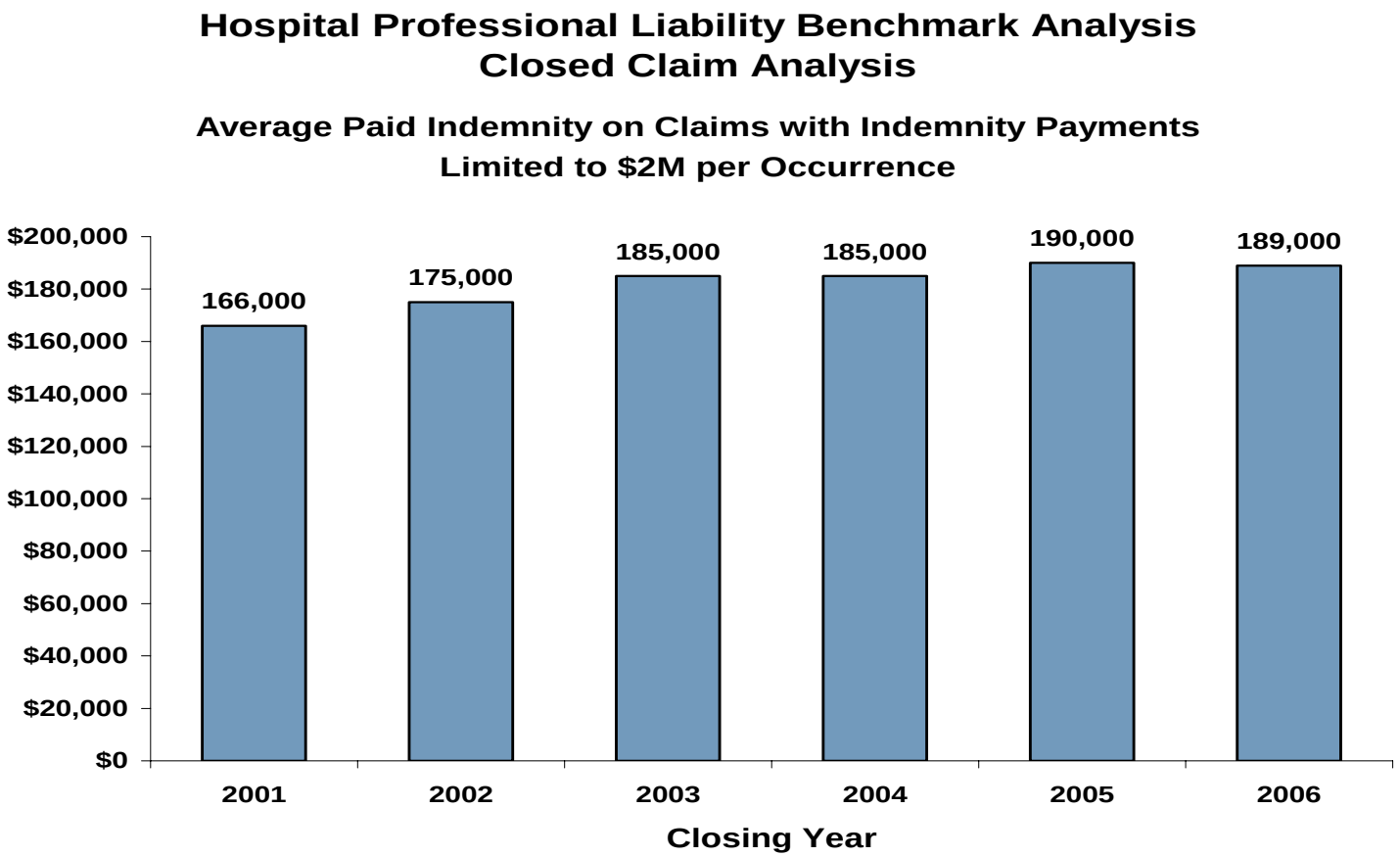


Hospital Liability Frequency

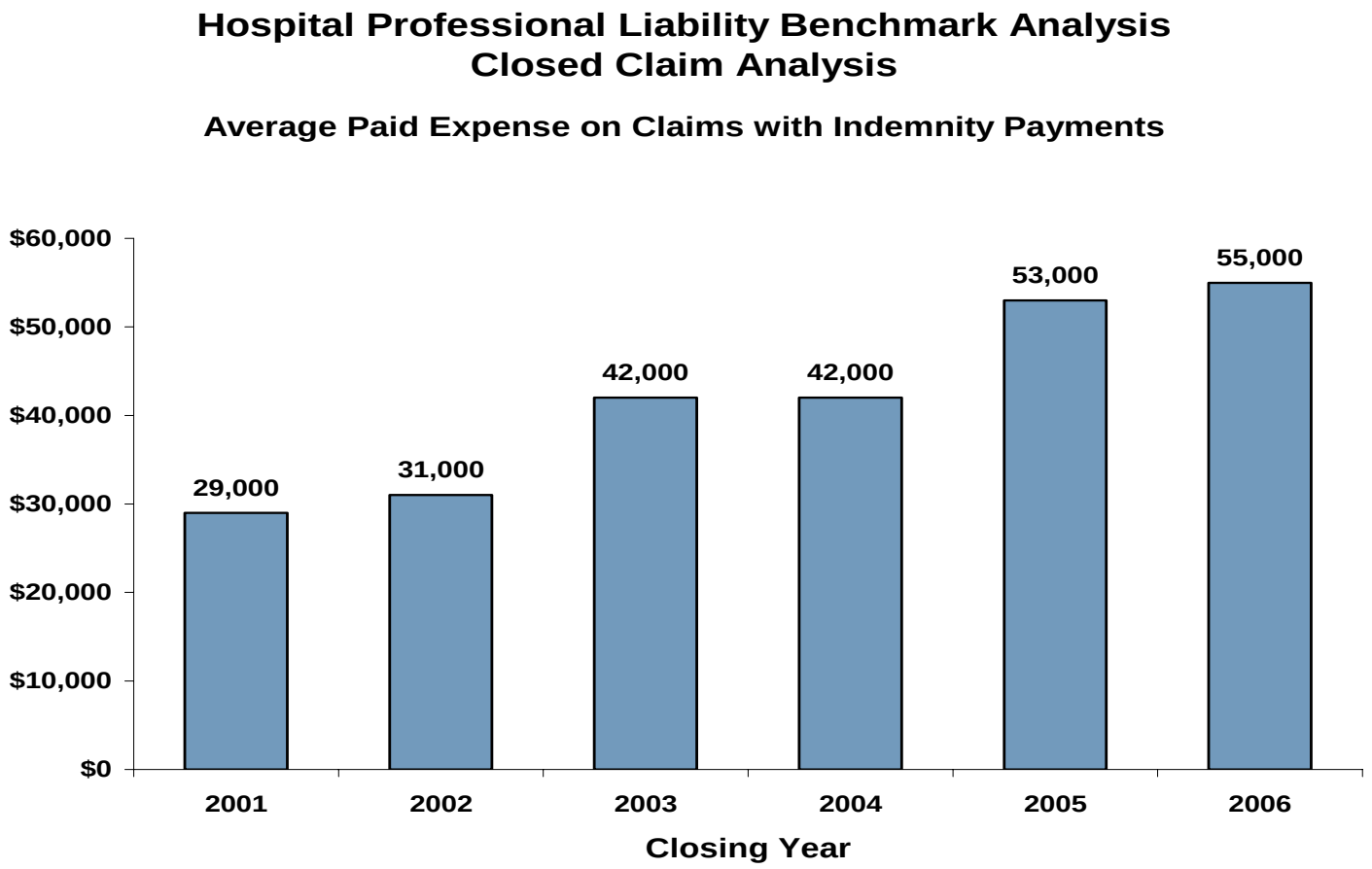
Hospital Professional Liability Benchmark
Aon Database
Historical Frequency Per Acute Care Bed Equivalent



Hospital Liability Average Indemnity



Hospital Liability Average Expense

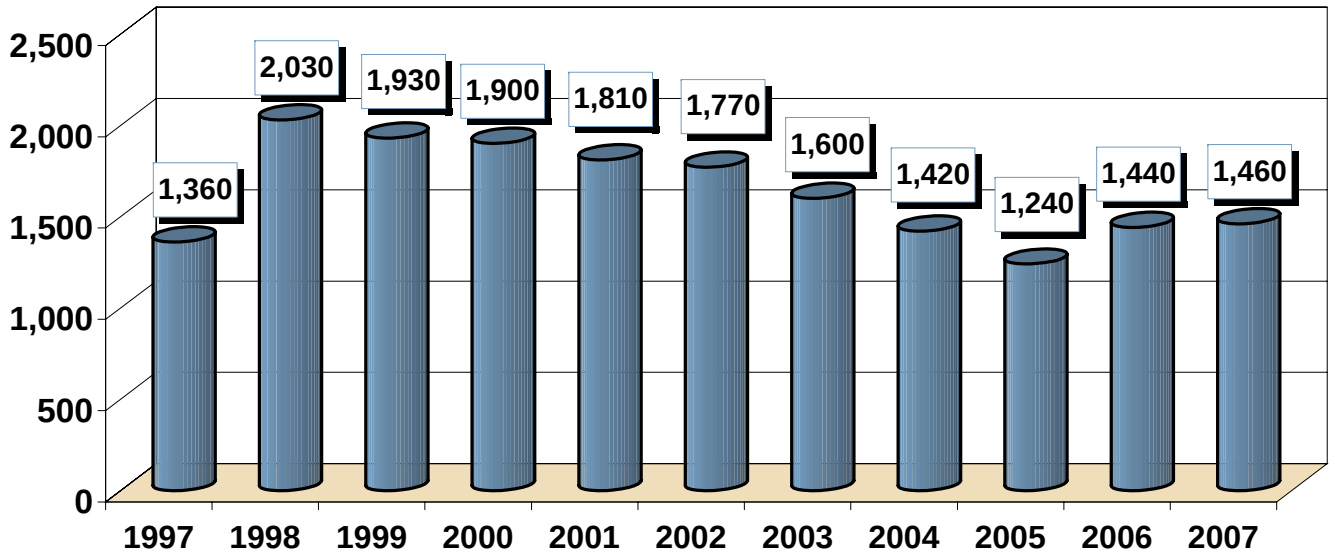


Trends in Long Term Care PL/GL

- Key Trends of the Aon / AHCA Long Tern Care Benchmark include:
  - For the first time in many years, we observe countrywide frequency and severity indications that are stable.
  - After seeing improvements for 4 years, frequency and severity for tort reform states are stable at their post reform levels.
  - Providers are continuing to seek ways to reduce their liability costs through quality of care initiatives, continued emphasis on vigorous legal defenses, structural changes and implementation of alternative dispute resolution.

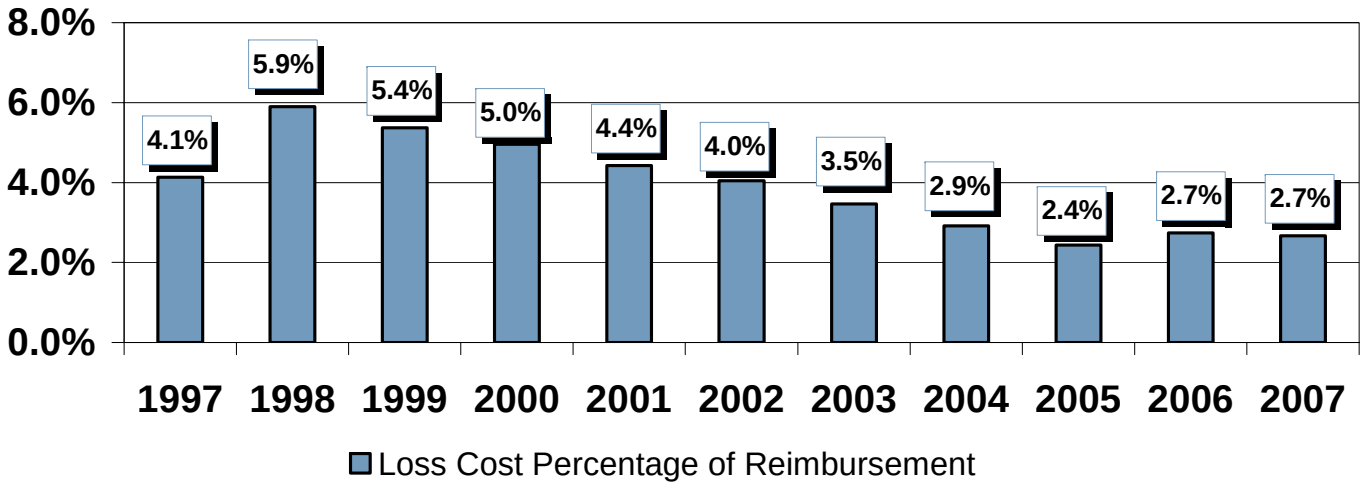
Long Term Care – Loss Cost

Long Term Care
General and Professional Liability
Ultimate Loss Cost per Occupied Bed
Countrywide



Long Term Care – Medicaid Reimbursement

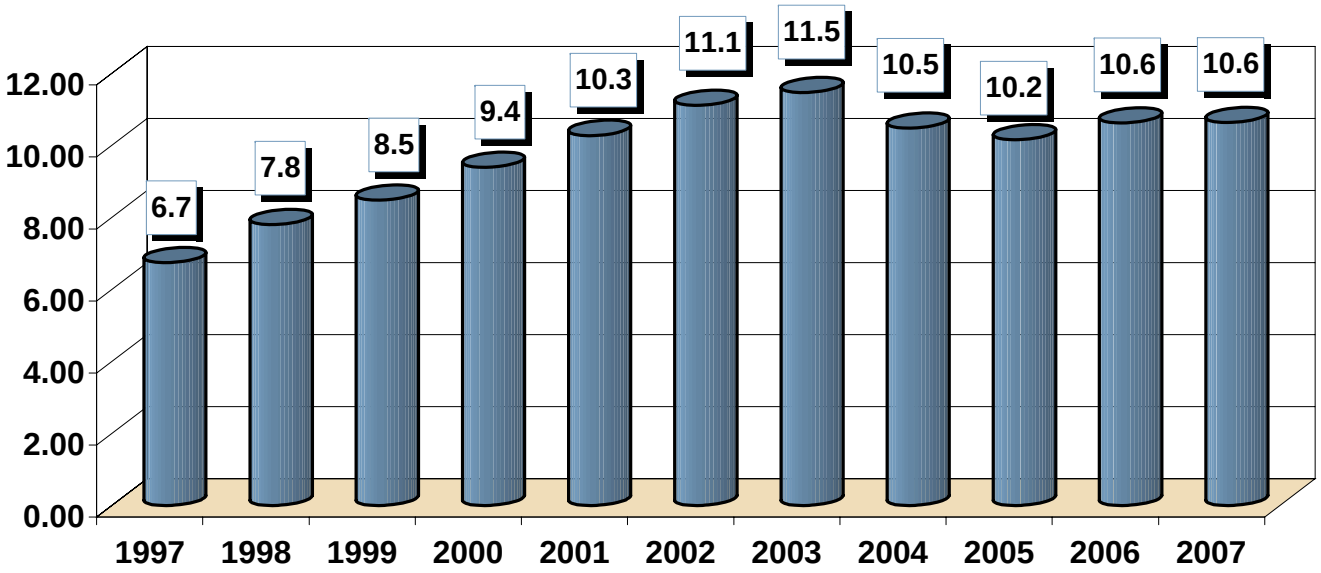
Countrywide Loss Cost as a Percentage of Medicaid Reimbursement



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Average Medicaid Per Diem Reimbursement	90.3	94.3	98.6	105.1	112.1	119.8	126.4	133.5	139.7	144.2	149.8
Per Diem Loss Cost Per Bed	3.7	5.6	5.3	5.2	5.0	4.9	4.4	3.9	3.4	4.0	4.0

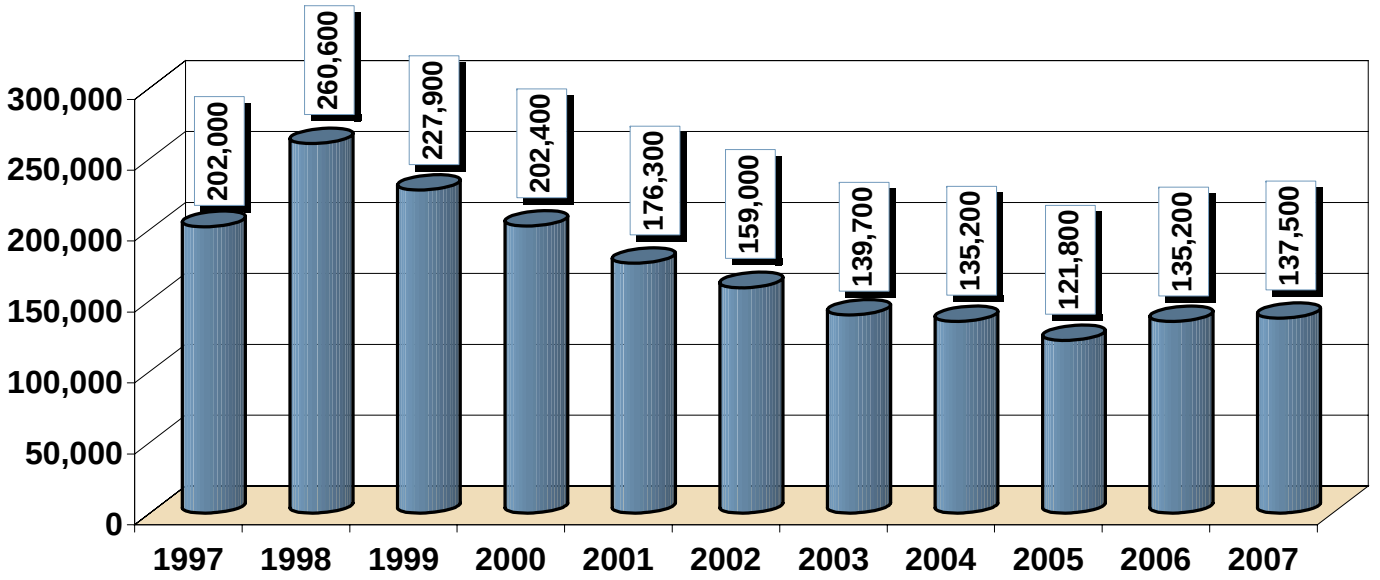
Long Term Care – Frequency

Long Term Care
General and Professional Liability
Annual Number of Claims per 1,000 Occupied Beds
Countrywide



Long Term Care – Severity

Long Term Care
General and Professional Liability
Severity per Claim
Countrywide



Patients and Profits!

I hope I achieved my stated goal which was to show that both patients and profits are possible.

- Physician results have been profitable
- Patient safety has impact and momentum
- Never Events and the legal challenge to tort reforms to be monitored closely
- Stable trends in hospital professional liability
- Stable trends in long term care GL/PL

Discussion?