A REPORT TO THE LEGISLATIVE COUNCIL AND THE SENATE AND HOUSE INTERIM COMMITTEES ON INSURANCE AND COMMERCE OF THE ARKANSAS GENERAL ASSEMBLY (ACT 796 of 1993 and ACT 1143 of 1997)

ANNUAL STUDY OF THE WORKERS' COMPENSATION INSURANCE MARKET IN ARKANSAS

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REPORT TO THE LEGISLATURE ON ACT 796 OF 1993 THE STATE OF THE WORKERS' COMPENSATION MARKET FOR YEAR ENDING 2019

Previous reports to the Legislature have discussed in detail the condition of Arkansas's Workers' Compensation marketplace prior to the passage of Act 796 in 1993, and subsequent to the changes brought about because of Act 796.

Arkansas continues to enjoy a competitive workers' compensation market with the continuing effects of Act 796 of 1993.

In the most recent data available, Arkansas's combined ratio decreased to 72.8% ranking it among the lowest of any state for which Arkansas's statistical agent, the National Council on Compensation Insurance (NCCI), compiles loss data. In 2019, NCCI filed for decreases in the voluntary market loss costs of -3.4% and in the assigned risk plan rates -4.2%. In 2020 the NCCI filed for decreases of -9.4% for the voluntary market loss costs and -10.8% for the assigned risk plan rates. Several factors and trends in the industry may affect future rates. These factors include changes in claim frequency, increased medical costs, increasing prescription drug utilization, increased reinsurance costs, and catastrophe loading for potential terrorism losses.

CONTINUED RATE IMPACT OF ACT 796 OF 1993

Arkansas's voluntary workers' compensation market would have disappeared and many employers would have found themselves unable to afford workers' compensation coverage, facing the choice of either closing down their business or operating outside the law, had Act 796 not become reality.

The impact of the Act on workers' compensation premiums is clear and significant. Prior to its enactment rates were increasing significantly. For example, for both the voluntary market and the assigned risk plan, rates in 1991 and 1992 increased 15% and 18% respectively. Passage of the Act forestalled anticipated rate increases in 1993 and 1994, with 1993 being the first year in the last ten in which there was no rate increase. 1993 and 1994 were years of market stabilization, and subsequent years have seen significant rate reductions in both the voluntary market and the assigned risk plan. Year 2001 saw our first increase in the assigned risk plan rates while experiencing a decrease in the voluntary market. In 2019, Arkansas had the lowest loss costs in the region per $100 of payroll, $0.51, compared to the regional average loss cost of $0.73 and the countrywide average loss cost of $.98. The Arkansas average loss costs in 2020 were -76.2% from 1995 when the law changes went into effect. There are still positive effects from this Act that benefit Arkansas employers.

Year	Voluntary Market	Assigned Risk Plan
1993	0.0%	0.0%
1994	0.0%	0.0%
1995	-12.4%	-12.4%
1996	-8.0%	-3.7%
1997	-4.7%	-7.6%
1998	-9.1%	-8.2%
1999	-4.1%	-3.0%
2000	-4.5%	-2.0%
2001	-7.5%	-1.9%
2002	-4.5%	-1.9%
2003	1.8%	-5.5%
2004	0.5%	-5.1%
2005	-1.5%	-2.8%
2006	-0.5%	-2.0%
2007	-5.4%	-6.8%
2007 (effective 1/1/08)	2.7%	2.7%
2008 (effective 7/1/08)	-12.8%	-13.8%
2009	-7.0%	-6.4%
2010	1.9%	4.5%
2011	-5.8%	-9.7%
2012	-4.1%	-4.8%
2013	-7.4%	-6.7%
2014	-1.4%	-8.5%
2015	-2.1%	-3.0%
2016	-4.3%	-1.6%
2017	-8.4%	-10.6%
2018	-15.4%	-14.9%
2019	-3.4%	-4.2%
2020	-9.4%	-10.8%

PAYROLL AND EXPERIENCE MODIFIER

Reported payroll in Arkansas continues to increase while premiums for insureds continue to decrease. In 2019 the average experience modifier increased slightly to 0.951 from 0.942. The 2019 countrywide average experience modifier is .0951. Please refer to Exhibit "A" for additional statistical information regarding premiums.

ASSIGNED RISK PLAN

The assigned risk plan has seen a history of decline in population since the passage of Act 796 except for a gentle upward trend during 2002 through 2004. It is down from a record high of

$150,000,000 in 1993, but up from a low of $6,566,275 in September 2000. Voluntary carriers continue to tighten underwriting and maintain their minimum premiums. The assigned risk estimated premium volume through June, 2019 was $22,180,504 as compared to $23,511,816 for 2018. As of June, 2019, small premium employers (less than $2,500 in annual premium) constituted approximately 79% of the plan policy volume with an average of $1,083 in premium per policy. Average plan premium per policy as of June, 2019, was $3,170 for all 1,717 policies in the plan. The top five business classifications seeking coverage in the assigned risk plan were involved with the construction industry.

In 2008, NCCI filed a Voluntary Coverage Assistance Program (VCAP), which has helped to remove some employers from the assigned risk plan by allowing voluntary carriers to file their underwriting guidelines for comparison to new applications submitted. When an application is received by NCCI, it is compared to the filed guidelines and if the risk appears to meet a company's guidelines, the application will be forwarded to the agent/insurer to determine whether they will make a voluntary offer of coverage. This program was approved effective October 1, 2008. As of the quarter ending in June, 2020, 174 employers were removed from the assigned risk plan, saving those employers, on average 4.15% in premium.

PLAN ADMINISTRATION/SERVICING CARRIERS

The NCCI is an "Advisory Organization" licensed in Arkansas to assist its member insurers with ratemaking and data collection activities. Effective July 1, 2020, the Commissioner re-appointed NCCI as Administrator for the Arkansas assigned risk plan until at least July 1, 2023.

Arkansas participates in the oversight of the market and the NCCI through a multi-state working group of the National Association of Insurance Commissioners (NAIC). The working group monitors data reliability and any other issues that arise involving the market.

In recent years, Arkansas has also participated in a multi-state examination of the NCCI in its role as an advisory organization licensed pursuant to Ark. Code Ann. §23-67-214. Participation in the examination task force and periodic reviews of this nature function to assure the quality of the data, as well as presenting the opportunity to improve existing systems and procedures. An advisory organization examination is designed to find concerns with statistical reporting and error correction. These concerns are remedied and monitored by a working group of the National Association of Insurance Commissioners (NAIC). The exams assure the errors never become significant enough to affect the overall reliability of the data reported by the NCCI for the State of Arkansas. NCCI's most recent examinations showed no significant issues.

The location of an office in Little Rock (mandated by 1993 legislation) continues to resolve many policy related service problems and provides Arkansas agents and insureds easy, immediate access to responsive company personnel. The effectiveness of this office is apparent in the reduction of the number of complaints received by the Insurance Department and the reduction in the number of appeals reaching the Appeals Board. The NCCI personnel assigned to the office are knowledgeable and committed to providing excellent service.

Attached are Exhibit "A" entitled *State Advisory Forum 2020 and* Exhibit "B" entitled *Arkansas*

Residual Market 2nd Quarter 2020 Status Report; and the exhibits are prepared by the NCCI and provide detailed information on risk profiles such as average premium size, top ten classifications by code and by premium, and a list of contacts within NCCI for specific areas of concern.

NCCI provides, at no charge to the agent, the option to submit assigned risk applications online. Upon successful submission, the customer receives a confirmation code and application identification number for reference. There are significant savings to the plan when an application can be processed electronically. Arkansas agents have been extremely responsive to this initiative with 100% of applications being submitted online in 2020.

The most recent Annual Servicing Carrier Performance Review conducted by NCCI reveals either "Commendable" or "Satisfactory" scores for all areas for Arkansas's servicing carriers. For the period commencing January 1, 2020 to December 31, 2022, the carriers are Travelers, Technology, Liberty Mutual and AmGuard Insurance Company.

SUMMARY OF INSURANCE DEPARTMENT'S CRIMINAL INVESTIGATION DIVISION

Before the passage of Act 796 of 1993, there had never been a criminal prosecution in Arkansas for workers' compensation fraud committed by employees, employers or healthcare providers. Act 796 of 1993 created the Workers' Compensation Fraud Investigation Division and made any type of fraud committed within the workers' compensation system a Class D felony (maximum six years of incarceration and/or $10,000 fine). The Division was renamed the Criminal Investigation Division (CID) during the 2005 Legislative Session to come in line with its present mandate to investigate not only workers' compensation fraud but all types of insurance fraud.

Fraud in the workers' compensation system was perceived to be epidemic. Since the majority of employers were in the "plan," there was little, if any, incentive for thorough investigation of possibly fraudulent insurance claims and few consequences to those caught making intentional misrepresentations. Act 796 changed the entire landscape of the workers' compensation system, particularly the detection, prevention and prosecution of workers' compensation fraud.

The actual prosecution of a workers' compensation fraud case is contingent on many factors. Key among those factors is the elected prosecutor's willingness to carry a case forward. If the information provided from an investigation is not enough to meet the standards found at Ark. Code Ann. § 11-9-106 for conviction, a prosecutor will be unwilling to pursue the case.

Local law enforcement agencies often do not have the resources to investigate workers' compensation fraud. Fortunately, the investigative authority of the Criminal Investigation Division allows the Arkansas Insurance Department to supplement these often under-funded local agencies. However, the Division is no longer dedicated to a single purpose for complex investigations, as it is tasked to investigate all insurance fraud under Title 23 (1126 total cases in 2019) and not just workers' compensation fraud under Title 11.

Consequently, even though Workers' Comp Fraud is still an important and integral part of the Criminal Investigation Division, it remains at less than four percent (0.036) of the referrals that

come into CID as compared to insurance fraud as defined under Title 23. As all of these complex cases evolve, they frequently require investigators to work through a myriad of leads to develop a case. Occasionally, even with the Division's dedicated resources, there simply is not enough information for a prosecutor to prosecute the crime.

While the number of actual prosecutions varies from year to year, the possibility of investigation and prosecution is a constant deterrent. Any lessening of the Division's enforcement powers would likely result in a re-emergence of both frequency and severity of fraud committed by employees, employers, and healthcare providers.

The cases represented by the statistics noted below, which are comparable per capita to those of other states with active anti-fraud efforts, are believed to have had a significant impact on workers' compensation rates in Arkansas.

In fact, many cases are not carried forward to prosecution. In many instances where there is not enough evidence to actually prosecute the case, the threat of prosecution is enough to get the parties involved to settle the cases outside of court, resulting in restitution for the aggrieved parties. While not technically prosecutor wins, these cases result in positive outcomes for injured workers in the state.

In the 2019 reporting period, there were 41 workers compensation referrals received by AIDCID. Of those referrals 26 developed into investigated cases of which 15 were closed. There were no cases referred for prosecution and successfully prosecuted. Since the creation of the division in 1993, 166 cases have been referred for prosecution, which resulted in 123 convictions. Out of these 166 cases, only three prosecutions have resulted in acquittals. In the remaining cases, the charges were not filed by the locally elected prosecutors.

SELECTED WORKERS' COMPENSATION DECISIONS
FISCAL YEAR 2019
ARKANSAS SUPREME COURT

Exclusive Remedy.
***Mary Katherine Myers v. Yamato Kogyo Company,LTD,* et.al.** 2020 Ark. 136 (April 9, 2020).

This case addressed the issue of whether parent companies of direct employers are immune from tort liability under the exclusive remedy provision, Ark. Code Ann. §11-9-105(a)(Supp. 2017), of the Arkansas Workers' Compensation Act. The case also addressed the standard of review for workers' compensation decisions.

In February, 2014, Michael Myers was employed as a steel plant ladleman by Arkansas Steel Associates, LLC, in Newport, Arkansas. While he was working in the plant's melt shop, a ladle

of molten steel spilled from a hot metal crane and engulfed his body. He died from the resulting injuries. Arkansas Steel Associates did not dispute that Michael Myers's death was work related and paid workers' compensation benefits to his widow, Mary Myers.

Myers subsequently filed a wrongful death suit against Arkansas Steel Associates' parent companies. The parent companies—Appellees in this case—are seven corporations that own, either directly or indirectly, Arkansas Steel Associates. The circuit court, in part, transferred jurisdiction to the Arkansas Workers' Compensation Commission to determine whether the parent companies were entitled to immunity under the exclusive remedy provision of the Arkansas Workers' Compensation Act. *See* Ark. Code Ann. § 11-9-105(a) (Supp. 2017).

The parties stipulated that the parent companies were principals or stockholders of Arkansas Steel Associates. Undisputed evidence showed that the parent companies were separate and distinct entities from Arkansas Steel Associates. They were not involved in employment decisions at Arkansas Steel Associates, such as hiring or firing employees, paying wages, training, providing workers' compensation or other benefits, or establishing work schedules. At the time of the accident, there were no direct employees of the parent corporations present at the jobsite. Also, there was no evidence that any direct employee ever met Michael Myers.

Myers argued that Arkansas Steel Associates was the sole "actual" employer and, therefore, the only entity entitled to immunity under the exclusive remedy provision. According to the parent companies, Myers's "actual" employer analysis was not relevant to the immunity determination. Rather, they argued the decisive question was simply whether they were principals or stockholders of an immune employer. The Commission agreed. It concluded that the parent companies were "party-employers acting within the employer-shareholder role" and entitled to immunity as principals and stockholders of Arkansas Steel Associates under Arkansas

Code Annotated § 11-9-105(a). Given this employer-employee relationship, the Commission further held that the parent companies' statutory entitlement to immunity was consistent with article 5, section 32 of the Arkansas Constitution.

The Supreme Court affirmed the Workers' Compensation Commission's conclusion that the parent companies were statutory employers as principals and stockholders of Arkansas Steel Associates. The Court noted that "because the exclusive benefits statute favors both the employer and the employee, we take a narrow view of any attempt to seek damages beyond the exclusive remedy." The Supreme Court vacated the Court of Appeals opinion and acknowledged that confusion existed in prior cases regarding the standard of review for agency interpretations of a statute, and the Court noted that clarification was warranted to address the level of deference due agency decisions. In cases involving the Commission's interpretation of statutes, we have conducted a de novo review. The Court stated that "by giving deference to agencies' interpretations of statutes, the court effectively transfers the job of interpreting the law from the judiciary to the executive. This we cannot do. Accordingly, we clarify today that agency interpretations of statutes will be reviewed de novo."

Statute of Limitations.

White County Judge v. Bruce Menser, 2020 Ark. 140 (April 16, 2020). This case addressed the statute of limitations issue following the award of additional benefits to Menser based on his on-the-job injury. Menser, who was forty years old at the time of his injuries, was employed as a patrol deputy for the White County Sheriff's Department. On December 16, 2013, as he sat in his patrol car and talked to his wife on the phone, he noticed that something was wrong and that he had a severe headache. He attempted to return to the sheriff's office, but was unable to do so, and drove to a nearby gas station. He parked his vehicle, contacted Sergeant Kevin Smith, and told

him that he felt numb and was unable to drive. When Smith arrived at the scene, Menser tried to get some fresh air outside the vehicle. He gave Smith his weapon, sat in Smith's car, and told Smith that he was having difficulty breathing and needed to go to the hospital. Emergency personnel arrived at the scene and took Menser to the White County Medical Center. The emergency-responder record stated, "Patient has strong smell of rotten eggs on his clothes and noticeable smell around vehicle." That evening, he was treated at the hospital for possible carbon monoxide poisoning and was released.

Menser returned to the hospital the next day because his symptoms had worsened. He presented with severe wheezing, shortness of breath, and a headache. He was diagnosed with having chemical pneumonitis and was treated with intravenous steroids and updrafts. X-rays and additional tests revealed normal findings. On December 21, 2013, Menser was discharged at his own request. After his hospitalization, Menser went to the sheriff's department to retrieve his personal belongings. When he opened the trunk of his police car where the vehicle's battery was located, Menser noticed a white residue in the wheel area and on a new battery that had recently been installed. Menser saw scorch marks on the battery cover, and it appeared that the battery had been on fire. The battery's contents had leaked onto the floor of the trunk.

The workers' compensation insurance carrier accepted the claim as compensable and filed forms AR-1, which is the employer's "First Report of Injury or Illness", and the Form AR-2, the "Employer's Intent to Accept or Controvert Claim". Menser never filed a Form AR-C requesting any compensation because appellants had listed the claim as compensable on Form AR-2 and had already begun making payments. The insurance carrier later decided to controvert the claim in ins entirety and suspended all compensation. The last medical benefit was paid on March 26, 2014, and the last indemnity benefit was paid on April 21, 2014.

Menser's attorney sent a letter to the Clerk of the Commission and requested a hearing on medical benefits and temporary total disability benefits. A hearing was scheduled and the issues listed included whether the statute of limitations barred the claim, compensability, medical treatment, and whether the insurance carrier was entitled to a credit.

An Administrative Law Judge found that Menser did sustain compensable brain and neuropathy injuries and that the statute of limitations did not bar the claim because it had been tolled by Menser's attorney's letter. The Full Commission affirmed and adopted the ALJ's decision. The Commission found that Menser never filed a Form AR-C, but that Menser's counsel had filed a letter with the Commission on July 11, 2014, that sufficiently constituted a claim for additional medical benefits within the requisite two-year statutory period. The

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insurance carrier appealed to the Court of Appeals which remanded the case to the Commission to determine whether the attorney's letter to the Commission was timely filed. The ALJ then filed an amended opinion finding that the ALJ's September 15, 2014 prehearing order- not the attorney's letter – sufficiently stated Menser's claim for additional medical benefits pursuant to Ark. Code Ann. §11-9-702. Once again, the insurance carrier appealed to the Court of Appeals which affirmed the Commission's decision. The carrier then appealed to the Supreme Court.

The issue for the Court to address was whether Menser filed a timely request for additional benefits. The Court noted that a claimant must prove that he acted within the time allowed for filing a claim for additional compensation and that the Court follows a strict-construction interpretation of section 11-9-702.

The Court found that Menser's claim for additional benefits was barred by the statute of limitations. The Court noted that Menser failed to file for additional benefits by December 16,

2015 and that he never formally filed a Form AR-C "Claim for Compensation". The Court concluded that based on a strict interpretation of section 11-9-702 the ALJ's prehearing order was not to be considered a claim for additional compensation. The claim was denied as it was time-barred by the statute of limitations.

Arkansas Court of Appeals

Employee – Independent Contractor.

John M. Davis v. Ed Hickman, P.A., and Travelers Insurance Co., 2020 Ark. App. 188 (March 18, 2020). John Davis sustained permanent injuries on October 7, 2015 in a motor-vehicle collision. At the time, Davis was working as a physical therapist making home patient visits for Ed Hickman, P.A. His claim for workers' compensation benefits before the administrative law judge was disputed by Hickman, P.A. and its insurance carrier, Travelers Insurance. They argued that Davis was an independent contractor, not an employee of Hickman, P.A., when the injury occurred. Following a hearing, the ALJ found that Davis was an independent contractor and not an employee and therefore not entitled to any workers' compensation benefits. The Full Commission affirmed and adopted the ALJ decision.

Davis appealed to the Arkansas Court of Appeals. The Commission's decision was reviewed under the substantial-evidence standard of review.

Hickman, P.A. provided rehabilitation services to patients in or near Fort Smith, Arkansas, and around eastern Oklahoma. When injured, Davis was approximately fifty years old and a licensed physical therapist who provided in-home physical-therapy services for Ed Hickman, P.A. Ed Hickman testified that he owns the business entity and that he had worked with Davis since 1992. Hickman provided some equipment to Davis to use during his in-home patient visits—which included, among other things, an Android device used to make notes for medical

records, "Therabands," and ultrasound equipment. In 2007, Davis signed a written contract to provide physical-therapy services for Hickman, P.A., for which he was paid on a "per patient" basis. The contract stated that "the parties entered into this Agreement as independent contractors, and nothing contained in this Agreement will be construed to create a[n] employment relationship[.]" The agreement required Davis to carry a minimum amount of professional-liability and automobile-liability insurance and to indemnify Hickman, P.A.

In 2010, Davis signed a notarized "Affidavit of Exempt Status Under the Workers' Compensation Act," a document wherein Davis acknowledged that he was an independent contractor for workers' compensation purposes. Ed Hickman testified that at some point his contractors were audited in Oklahoma, and the State of Oklahoma said that it would no longer recognize or honor contract therapists of Hickman, P.A. as being independent contractors. As a result, Hickman "ended up having to pay workers' compensation coverage in Oklahoma." Hickman testified that he still considered the physical therapists independent contractors in his mind but "in my pocketbook, I don't".

The evidence showed that Hickman, P.A. paid Davis as an independent contractor, not as an employee. The Commission found that Davis had sole control over the plan of care provided to a patient and how to implement it, including the order in which Davis saw his patients. It further found that Davis could work for other companies and that he had worked for a hospital while also performing services for Hickman, P.A.

The Court of Appeals affirmed the Commission's decision and held that "whether Hickman paid Travelers for a workers' compensation policy that purportedly included Davis is but one factor to weigh among the others when deciding whether he was covered by a compensation

policy. And having considered the entire record while applying the standard of review, we also hold that the Commission did not err in finding that Davis was an independent contractor."

Illegal Drug Presumption.

Corey Allen v. Employbridge Holding Co., 2020 Ark. App. 127 (February 19, 2020).

Allen was employed by appellee Employbridge Holding Services, a temporary staffing agency, and was performing work for FMH. As part of his job with FMH, Allen was required to move large conveyor-belt parts that weighed approximately one ton. Allen would take a strap that was attached to a crane, adjust the strap around the center of the conveyor, and balance the conveyor so that it would not swing back and forth. Once the strap was placed appropriately, the conveyor part could be lifted by the crane, which was operated by remote control.

On October 24, 2017, Allen was performing his job duties prepping the conveyors. He had just come back to work from his lunch break and was trying to adjust the strap around the conveyor. He could not balance the conveyor part to his satisfaction and so he braced his body against it to keep it from swinging too much. He tried to lower the part, but it came down too fast and hit the remote control that Allen was holding, crushing his right thumb and index finger. A coworker, Johnny Anderson, had to use a forklift to lift the conveyor part off of Allen's hand.

Anderson drove Allen to the hospital, where he was given morphine, Zofran, and lidocaine. Hospital staff also performed a drug screen, which was required by the employer in the event of an employee injury. The nurse who administered the test told Anderson that Allen informed her that he did not want to take the drug test. Anderson then went to speak to Allen, who once again asked to have the hospital not give him the drug test. According to Anderson, "[e]ither he knew he was not going to pass it or he just didn't want to take it." Allen tested positive for marijuana and opiates and was subsequently terminated from his job because of the positive drug test.

Allen sought workers' compensation benefits as a result of his injury; Employbridge controverted his entitlement to benefits, citing the positive test for marijuana and arguing that Allen's injury was substantially occasioned by the use of drugs and therefore not compensable under section 11-9-102(4)(B)(iv)(a). An administrative law judge (ALJ) held a hearing to determine whether Allen's injury was compensable and found that it was. Employbridge appealed to the full Commission, which reversed the ALJ's decision in a 2–1 opinion, finding that Allen failed to rebut the illegal substance presumption. Allen timely appealed to the court of appeals and asserted that the Commission's decision was not supported by substantial evidence.

The Court of Appeals affirmed the Commission's denial of benefits. The Court deferred to the Commission's finding that the claimant was not a credible witness and other credible testimony indicating the accident was Allen's fault.

Objective Medical Findings.

David Evans v. Firestone Building Products, LTD., 2020 Ark. App. 80 (February 5, 2020).

David Evans filed a claim for workers' compensation benefits following an injury he sustained on March 18, 2017. He was fifty-four years old and had worked for Firestone Building Products for approximately two years. Evans suffered a non-controverted, compensable injury to his left thumb. He also claimed that he injured his whole left hand and wrist and asserted entitlement to a 21 percent impairment rating to his body as a whole. Firestone contested the whole-hand/wrist and permanent-impairment claims.

Following a hearing, the Administrative Law Judge (ALJ) denied Evans' claim for additional benefits, concluding that he did not meet his burden of proving injury to the whole left hand or permanent physical impairment. Evans appealed to the Arkansas Workers' Compensation

Commission, which affirmed and adopted the ALJ's opinion. Evans appealed to the Arkansas Court of Appeals.

The Court of Appeals affirmed the denial of benefits. The Court found that the ALJ's decision displays a substantial basis for the denial of Evans's claims. The ALJ made a specific finding that Evans lacked credibility, and aside from the MRI, which supported the compensated injury to Evans's thumb, the ALJ weighed the medical evidence and concluded there were no other objective medical findings of injuries to the left hand attributable to the work injury and no reports of impairment aside from an *active* range-of-motion evaluation, to which she gave little weight. Even Evans's assertion that the ALJ acknowledged some swelling in his left hand at the time of the hearing was undercut by the full context of the ALJ's comments, which found only slight swelling and attributed it to the effects of wearing an elastic hand brace. Fair-minded persons with the same facts before them could reach the Commission's conclusions.

Employer's third-party liability.

Industrial Iron Works, Inc. d/b/a Adams Fertilizer Equipment v. Larry Hodge, Connie Hodge, et.al., 2020 Ark. App. 56, (January 29, 2020).

In 2014, appellee Larry Hodge sustained an on-the-job injury while working for his employer, Greenpoint AG. At the time of his injury, Hodge was attempting to dislodge large clumps of fertilizer in a hopper/fertilizer blender when his leg came into contact with the auger of the hopper resulting in a traumatic amputation of his lower leg and foot. Hodge applied for and received workers' compensation benefits. In April 2017, Hodge and his wife Connie filed a products-liability complaint against Industrial Iron Works, Inc. (IIW), the manufacturer of the hopper, to recover for his injuries. IIW amended its answer to name Hodge's employer, Greenpoint AG, as a nonparty whose fault should be allocated consistent with the Uniform

Contribution Among Tortfeasors Act, codified at Ark. Code Ann. §16-61-201 et. Seq. (Supp. 2017)(UCATA).

The circuit court allowed the amended answer of IIW to be stricken. The Court of Appeals affirmed that decision and noted that generally, an employer who carries workers' compensation insurance is immune from liability for damages in a tort action brought by an injured employee. As such, an immune employer is not an entity that can have "joint or several liability in tort" and does not fit within the plain and unambiguous definition of a "joint tortfeasor" or fall within the confines of the allocation of nonparty fault under the UCATA.

The Court held that the UCATA simply does not allow for the apportionment of fault to an immune nonparty employer. Because the Court concluded that IIW is not entitled to the allocation of fault to Hodge's employer, it did not address the issues regarding the timeliness of IIW's answer or the retroactivity of the amended rules.

Full Commission

Dual Employment.

Landon Bunch v. Gates Corporation, Landon Bunch v. Webb Wheel Products, Claim Numbers G703343 & G703344, Opinion filed February 18, 2020.

Landon Lee Bunch, now age 43, testified that in 1994 he became employed with a company named "Z-Tech." He testified that, through his employment at Z-Tech, he worked on the premises of the respondent Gates Corporation for several months in 1994. It was stipulated that the respondent Gates Corporation "has no record of Bunch ever having worked at its facility in Siloam Springs (or any other Gates location)." Mr. Bunch testified that he worked for several different employers after resigning from Z-Tech. It was also stipulated that the respondent Webb

Wheel Products "has no record of the claimant ever having worked at its facility in Siloam Springs."

Mr. Bunch was diagnosed with acute myeloid leukemia ("AML") on January 29, 2013. The claimant signed a Form AR-C, Claim For Compensation, on May 10, 2017. The Employer Information section of the Form AR-C indicated that the Employer's Name was "Webb Wheel Products, Inc." in Siloam Springs, Arkansas. The Accident Information section of the Form AR-C indicated that the Date of Accident was "1999-2000," "Injury to body as a whole due to toxic substances." The Commission received the Form AR-C on May 16, 2017.

Respondent Gates Corporation.

A hearing was held to determine whether the exclusive remedy provision found at Ark. Code Ann. §11-9-105 applied to Gates Corporation and whether the claimant could then proceed with his third-party action in Benton County Circuit Court. An administrative law judge found that the exclusive remedy provision of the Arkansas Workers' Compensation Act did not apply to the respondent Gates Corporation. The Full Commission affirmed this finding. The Full Commission found that the claimant was not working under an expressed or implied contract of hire with Gates Corporation in 1994. The claimant was paid exclusively by the employer Z-Tech during the claimant's time at Gates in 1994. The Full Commission found that the claimant was not an employee of the respondent Gates Corporation in 1994 while working at Gates through the claimant's employer Z-Tech.

Respondent Webb Wheel Products.

The Full Commission reversed the ALJ's finding that the exclusive remedy provision did not apply to the respondent Webb Wheel Products. The Full Commission noted that the claimant credibly testified that he clocked in at Webb Wheel, that he was supervised by a Webb Wheel

employee, and that the claimant used all of Webb Wheel's tools and equipment while performing his work. The evidence demonstrated that there was at least an implied contract of hire between the claimant and the employer Webb Wheel Products. The record also shows that the claimant's work at Webb Wheel in 1999 was essentially that of the special employer Webb Wheel. In addition, the record shows that Webb Wheel had the right to control the details of the claimant's work for Webb Wheel. The Full Commission found that the claimant was a dual employee of both the temporary employment agency and Webb Wheel Products in 1999.

NATIONAL MARKETS IN GENERAL

While Arkansas continues to experience increases in the average indemnity and medical cost per lost time claim, claims frequency continues to decline resulting in a continued decline in rates upon which premiums are based. Arkansas's market remains strong and competitive.

The attached state of the industry report Exhibit "C" entitled *State of the Line* graphically depicts the sound condition of the workers compensation marketplace; still, the NCCI continues to discover that workers' compensation results are affected by a number of factors that are having an impact on the market:

- Medical services contribution to the costs of claims;
- Impact of fee schedule updates on physician payments;
- Mega claims in workers compensation;
- Motor vehicle accidents in workers compensation;
- Changing employee demographics effects on claims frequency; and
- Hazard group updates;

The incidence of workplace injuries continues to fall since the reform efforts of 1993. This means fewer injured workers – the most valuable outcome imaginable for workers, their families, and employers.

CONCLUSION

Absent the reforms encompassed in Act 796 of 1993, it is doubtful Arkansas's employers would now have the option of voluntary workers' compensation insurance. Rather, the assigned risk plan, designed to be a market of "last resort," would have become Arkansas's market of "only resort." The General Assembly is to be highly commended for its leadership in reforming the workers' compensation market in our State while protecting the interests of the injured worker.

Arkansas's employers need quality workers' compensation products in the voluntary market at

affordable prices. The creation of good jobs requires a marketplace where all businesses, regardless of size, can grow. Maintaining a stable workers' compensation system is essential for this growth. The evidence shows the reforms have worked. Frequency has experienced a dramatic decrease and continues that trend. The incidence of fraud has been reduced through high-profile fraud prosecutions, employee compensation rates and benefits have been increased, and workers injured within the course and scope of their employment have received timely medical treatment and the payment of much improved indemnity benefits. Eroding the positive changes incorporated into Act 796 would be counterproductive to continued economic growth and development.

Prepared for submission by: September 1, 2020

cc: The Honorable Asa Hutchinson, Governor
The Honorable Mike Preston, Secretary, Department of Commerce
The Honorable Dale Douthit, Chairman, AWCC
The Honorable Christopher Palmer, Commissioner, AWCC
The Honorable Scott Willhite**,** Commissioner, AWCC
David Greenbaum, Chief Executive Officer, AWCC
Mr. Russ Galbraith, Insurance Chief Deputy Commissioner, AID
Mr. Nathan Culp, Public Employee Claims Division Director, AID
Mr. Pat O'Kelley, Criminal Investigation Division Director, AID

STATE ADVISORY

FORUMS 2020

Arkansas

June 24, 2020

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Kelly_Briggs@ncci.com
561-893-3069

EXHIBIT "A"

Agenda

01 Arkansas Workers Compensation System

02 Arkansas Residual Market

03 Countrywide and Arkansas Labor Markets

04 Legislative Updates

05 Kids' Chance of Arkansas

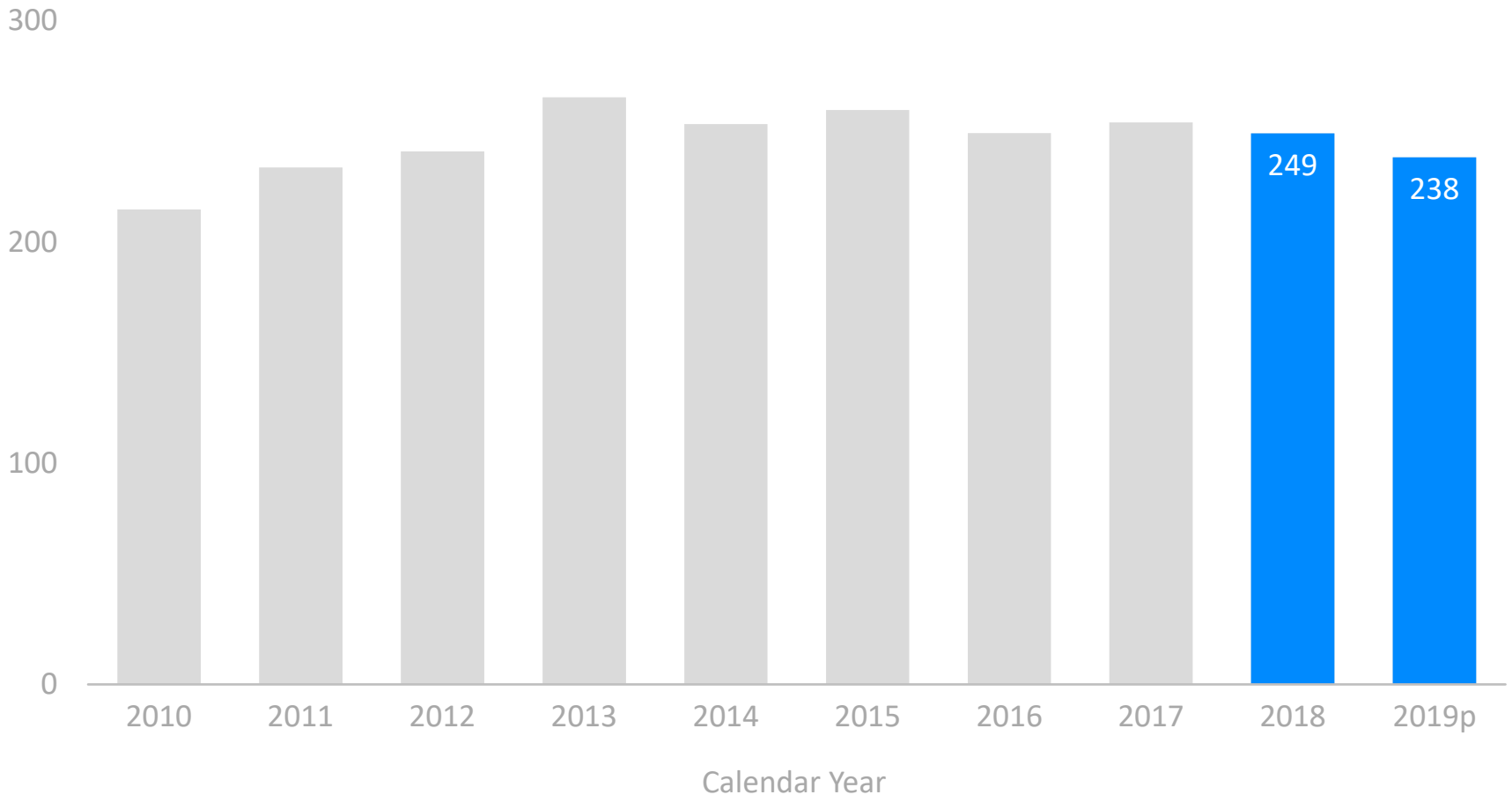
Arkansas
Workers Compensation System

Arkansas Workers Compensation System—An Overview

- Direct written premium decreased in the latest year
- The combined ratio continues to show favorable results
- Lost-time claim frequency declined in the latest year

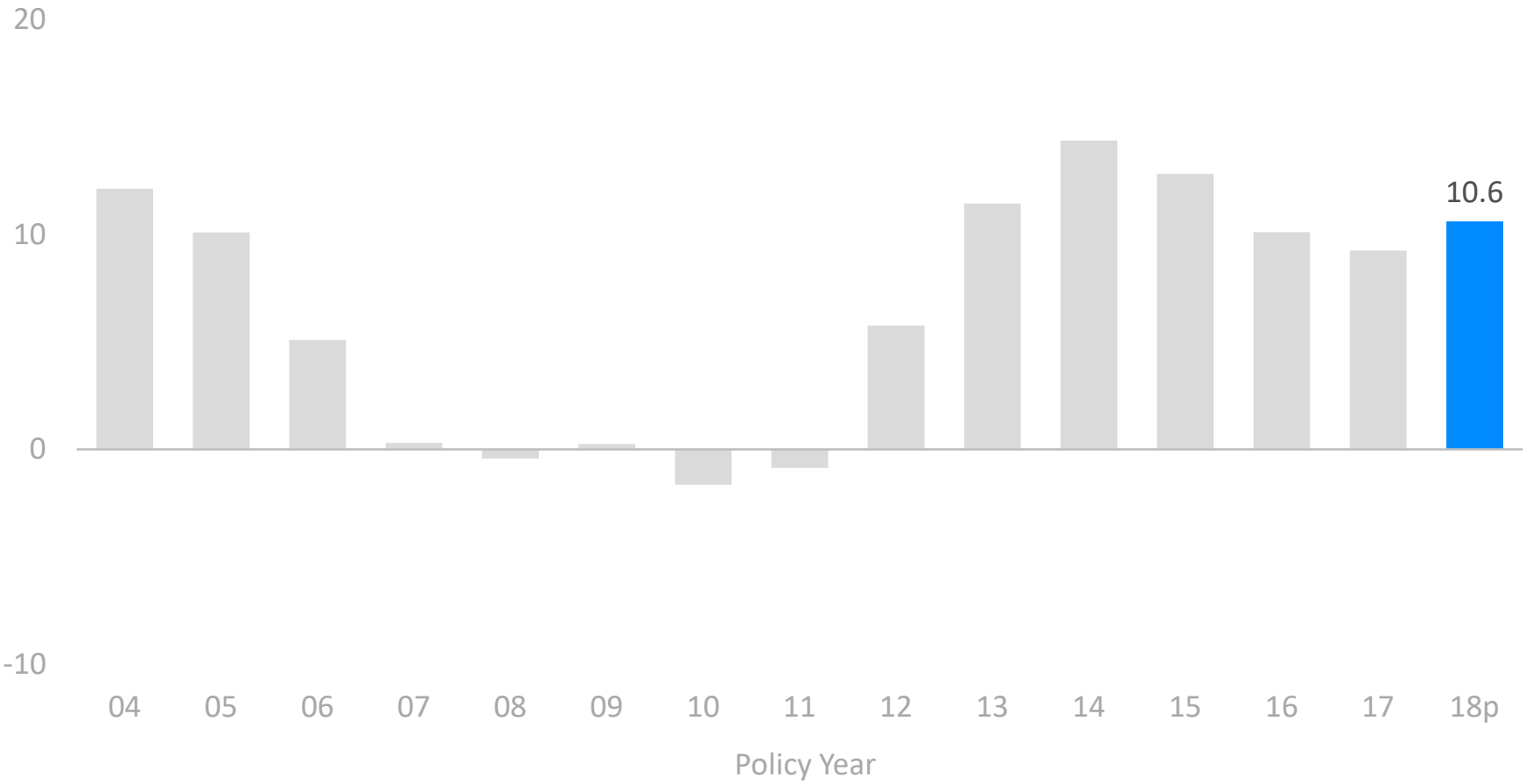
Arkansas Premium Volume

Direct Written Premium in $ Millions



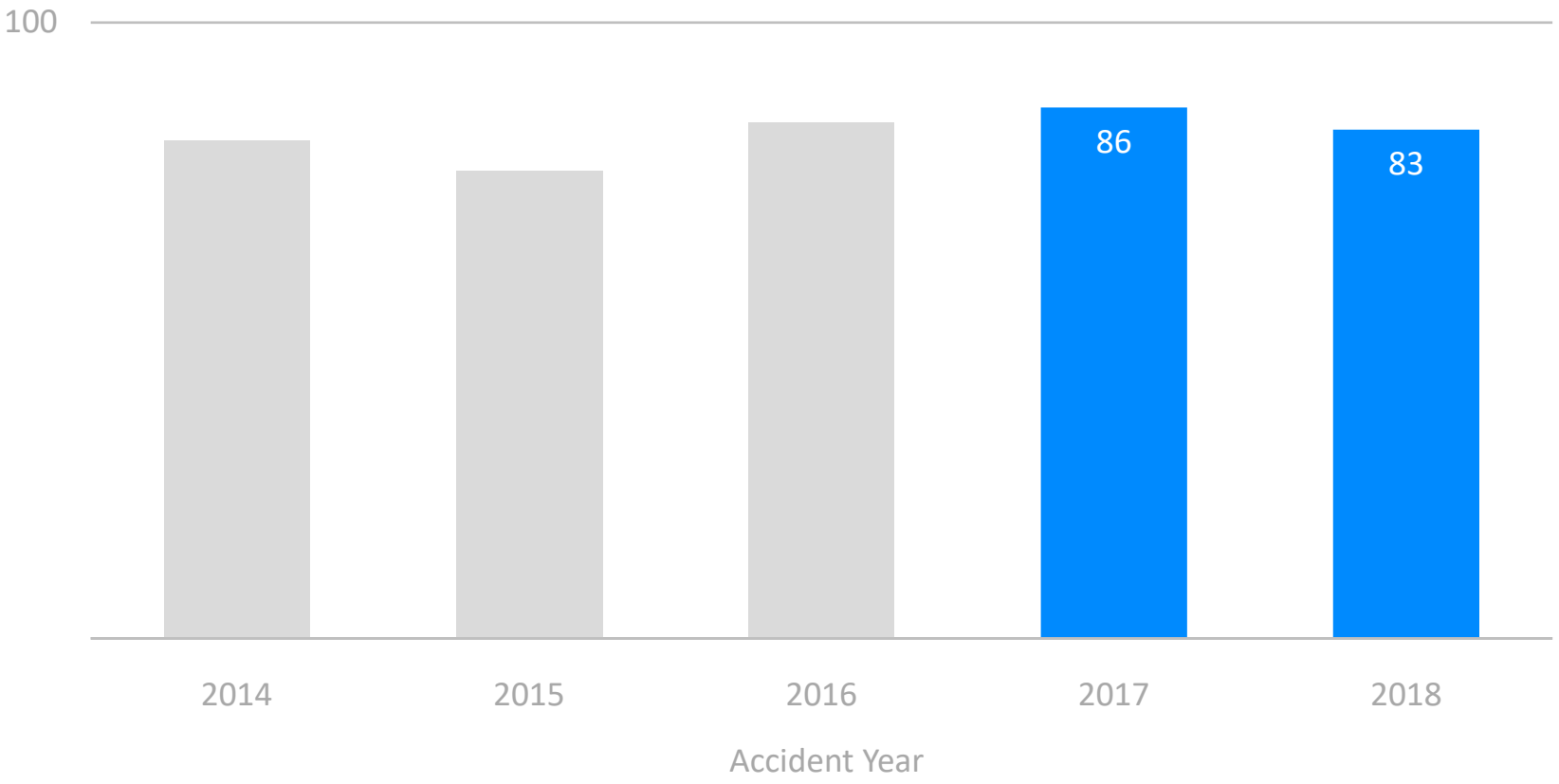
p Preliminary
Source: NAIC's Annual Statement data

Impact of Discounting on Workers Compensation Premium in Arkansas



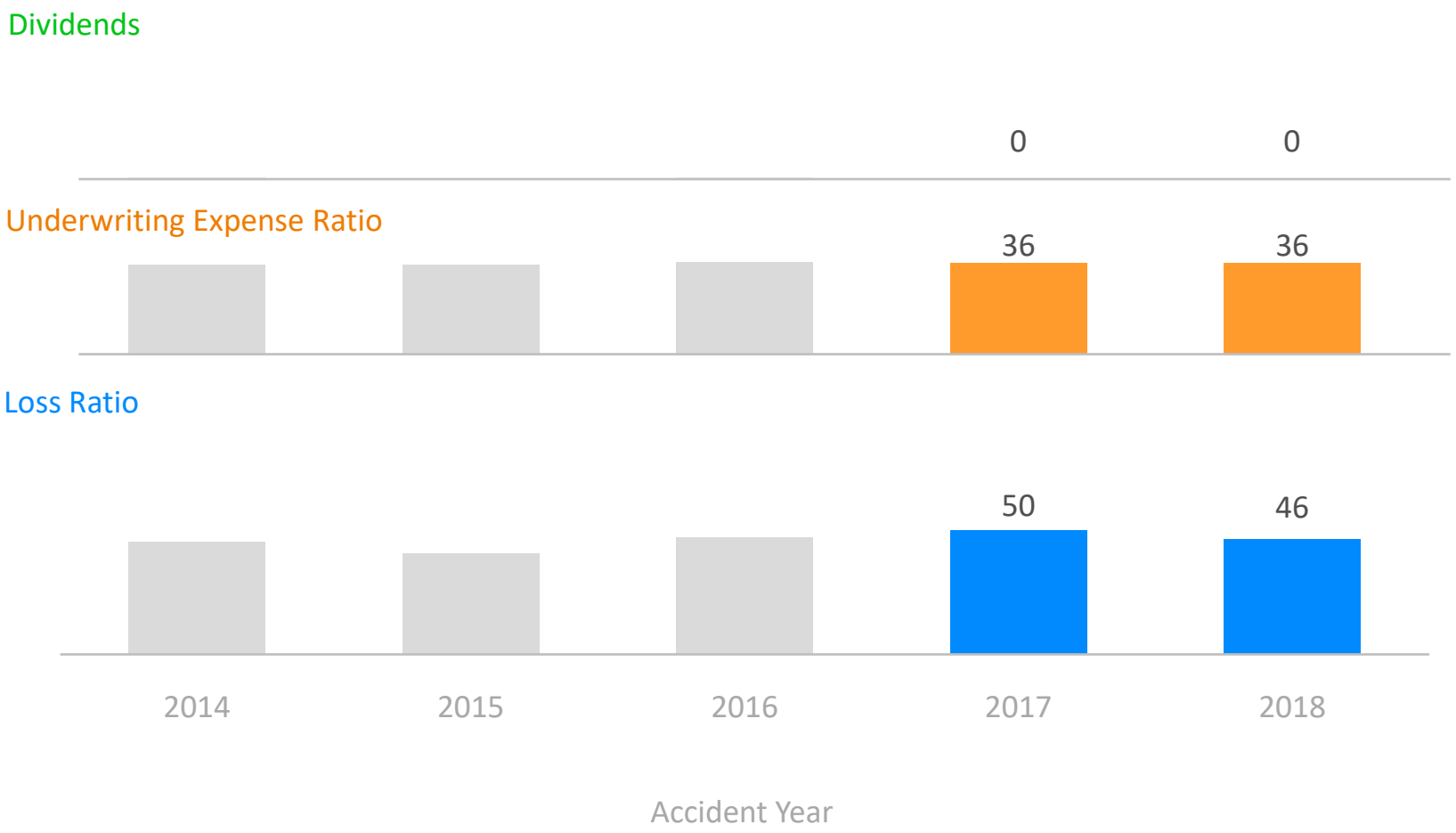
p Preliminary
Based on data through 12/31/2018

Arkansas Combined Ratios



Sources: NCCI's financial data through 12/31/2018 and NAIC's Annual Statement data

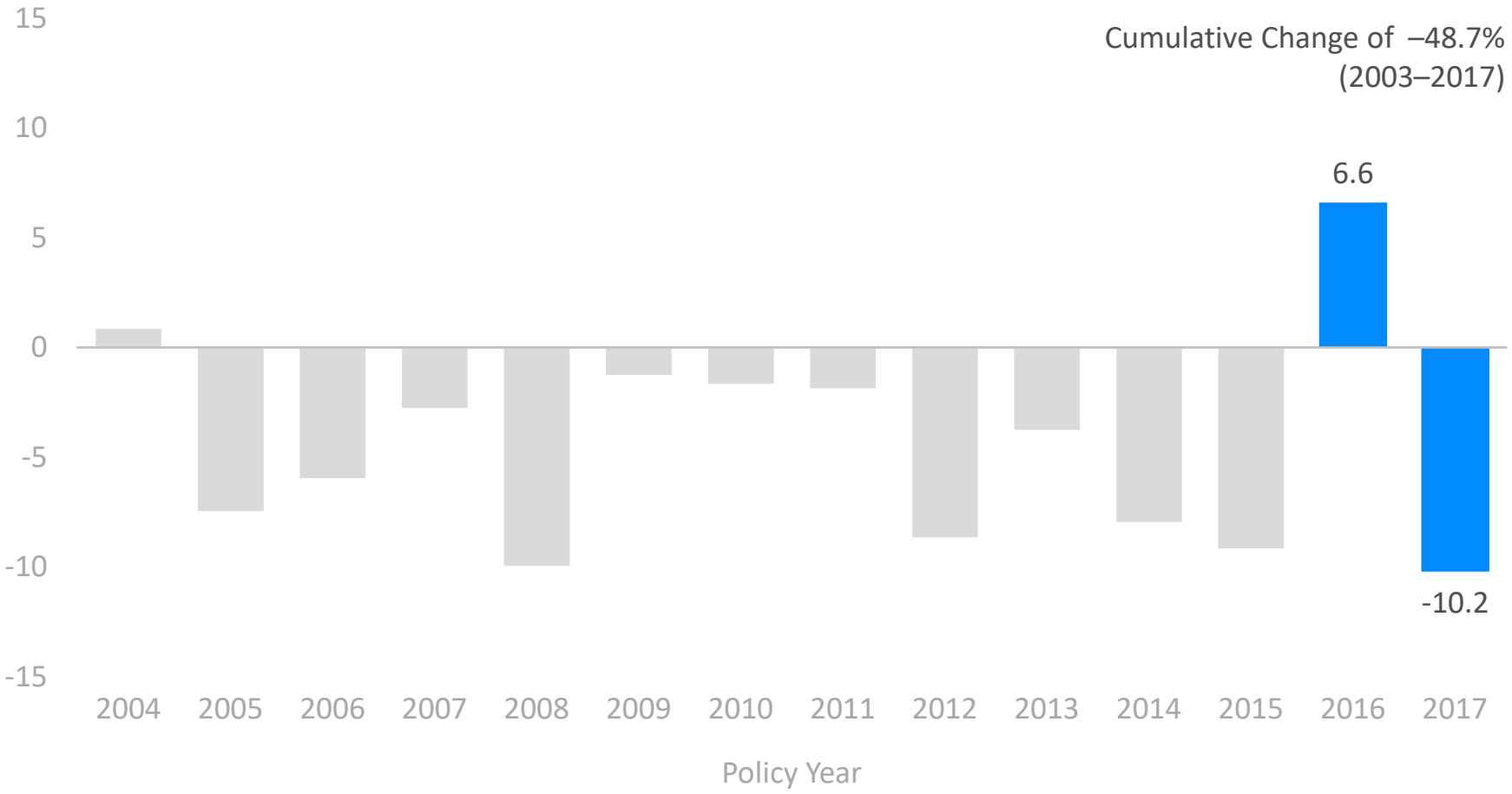
Arkansas Combined Ratios by Component



Sources: NCCI's financial data through 12/31/2018 and NAIC's Annual Statement data

Arkansas Change in Claim Frequency

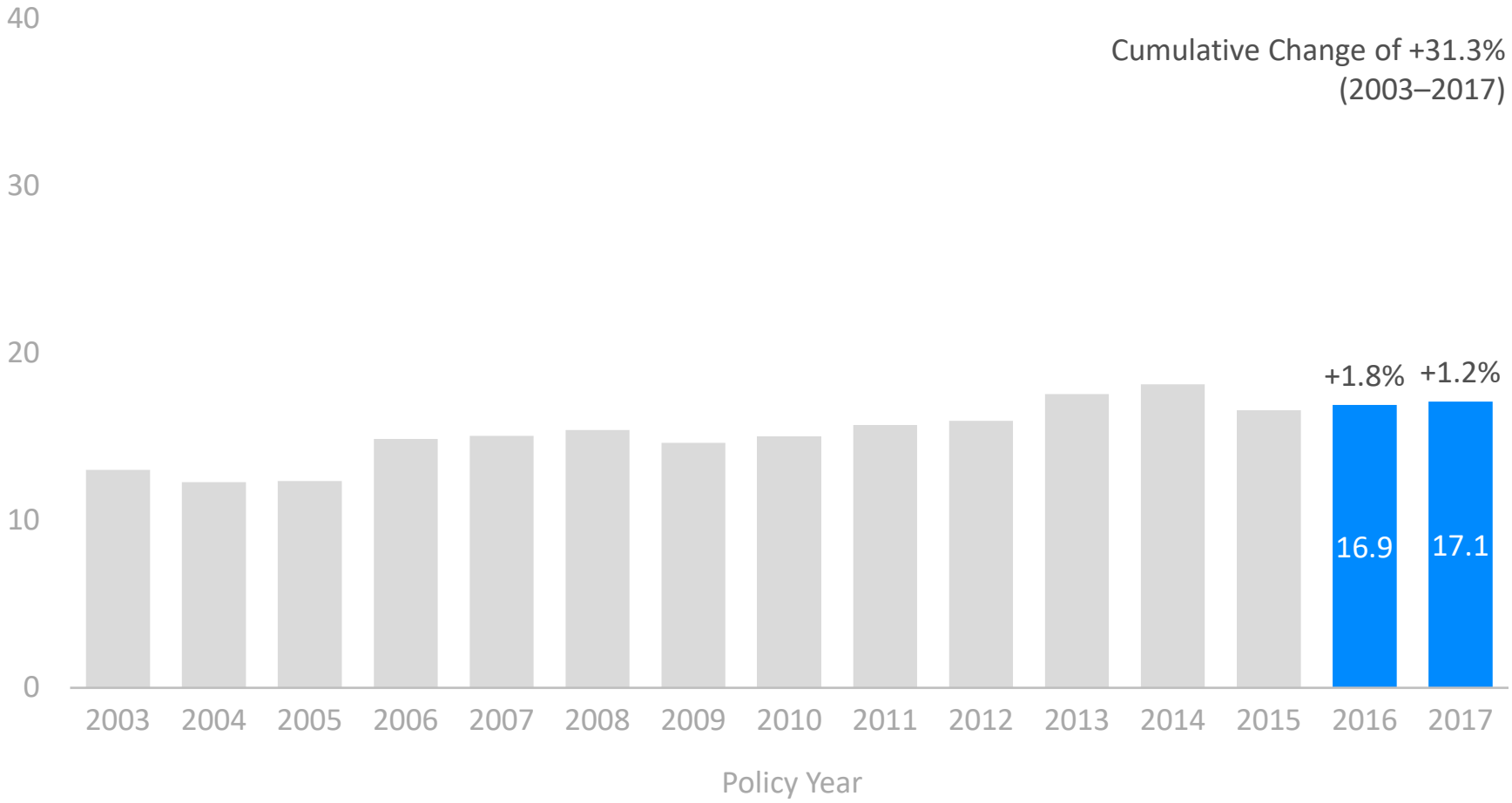
Percent Change in Lost-Time Claims, per $ Million of On-Leveled Premium



Based on NCCI's financial data through 12/31/2018, on-leveled and developed to ultimate, with premium adjusted to common wage level

Arkansas Average Indemnity Claim Severity

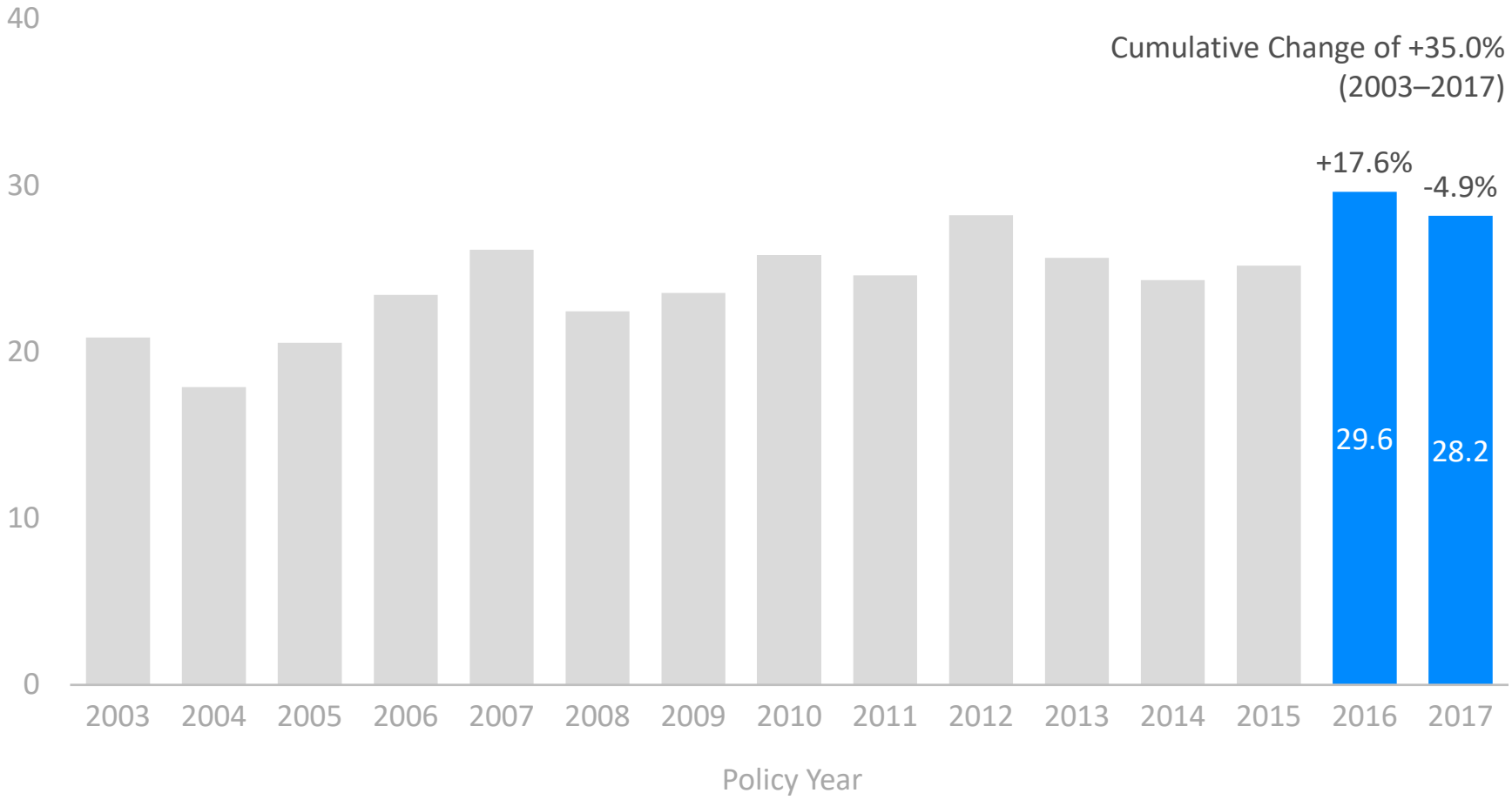
Lost-Time Claim Severity in $ Thousands



Based on NCCI's financial data through 12/31/2018, on-leveled and developed to ultimate

Arkansas Average Medical Claim Severity

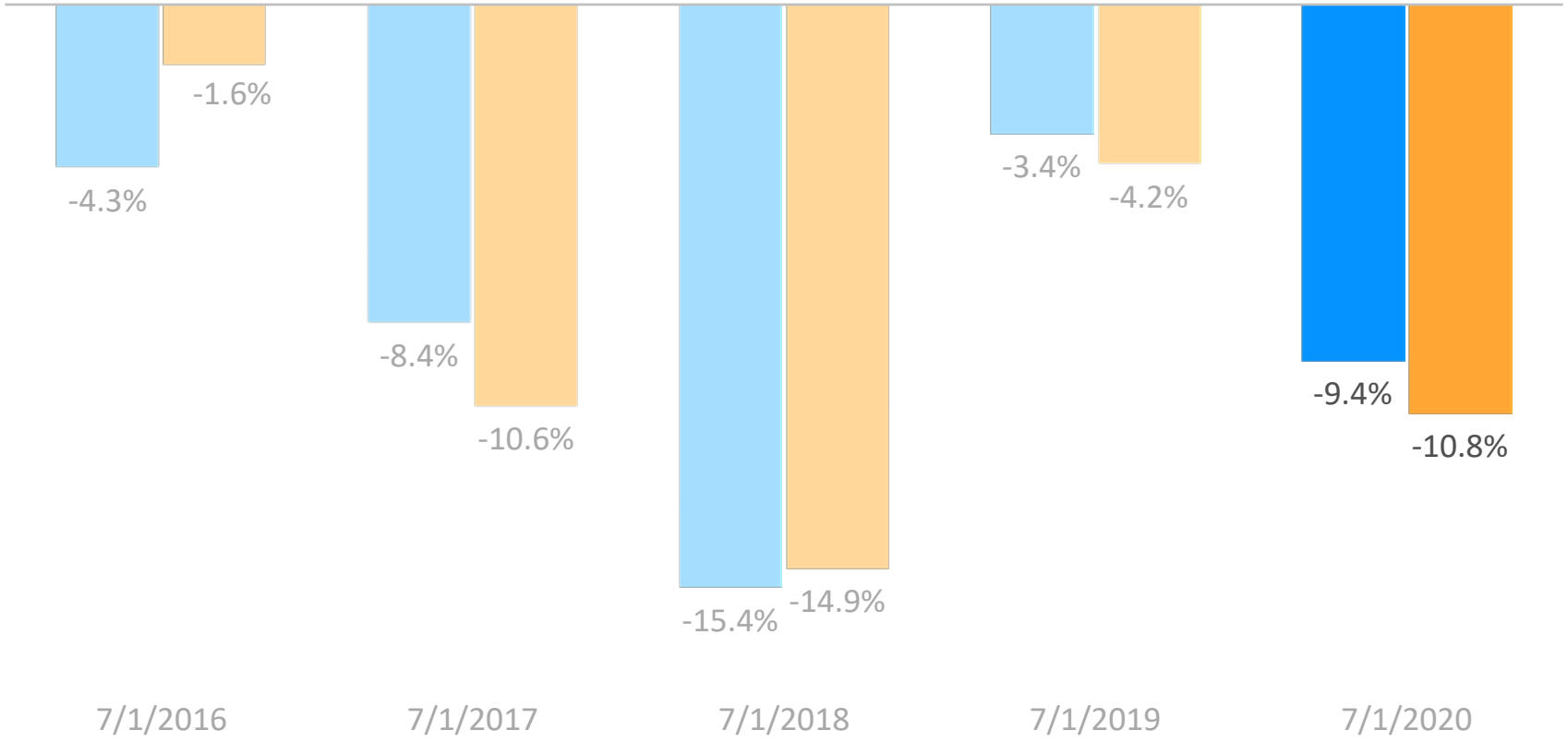
Lost-Time Claim Severity in $ Thousands



Based on NCCI's financial data through 12/31/2018, on-leveled and developed to ultimate

Arkansas Filing Activity

Voluntary Loss Cost and Assigned Risk Rate Changes

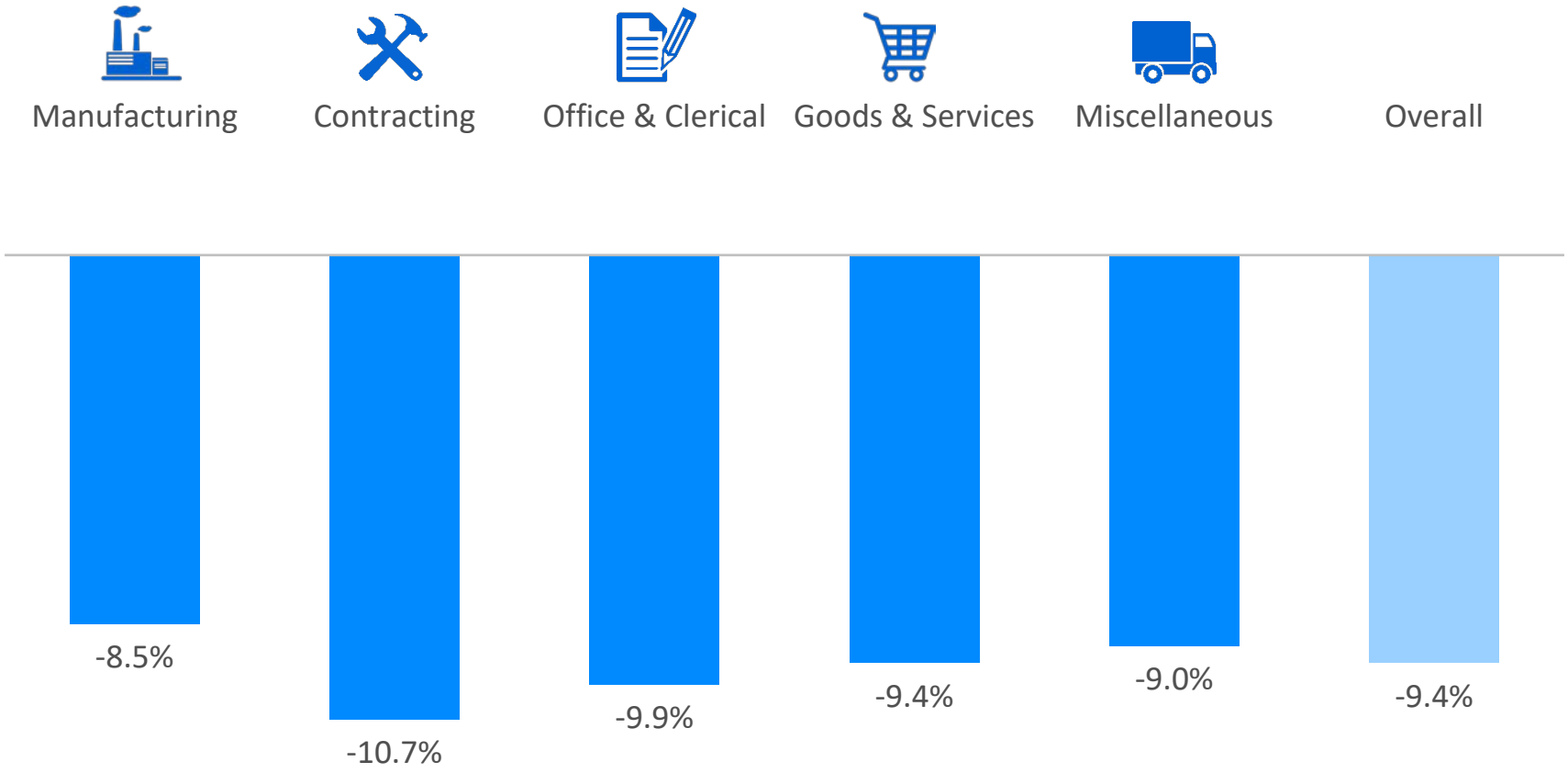


Arkansas July 1, 2020 Loss Cost Filing

Change in Experience:	–9.3%
Change in Trend:	–0.6%
Change in Benefits:	+0.1%
Change in Loss-based Expenses:	+0.4%
Overall Loss Cost Level Change:	–9.4%

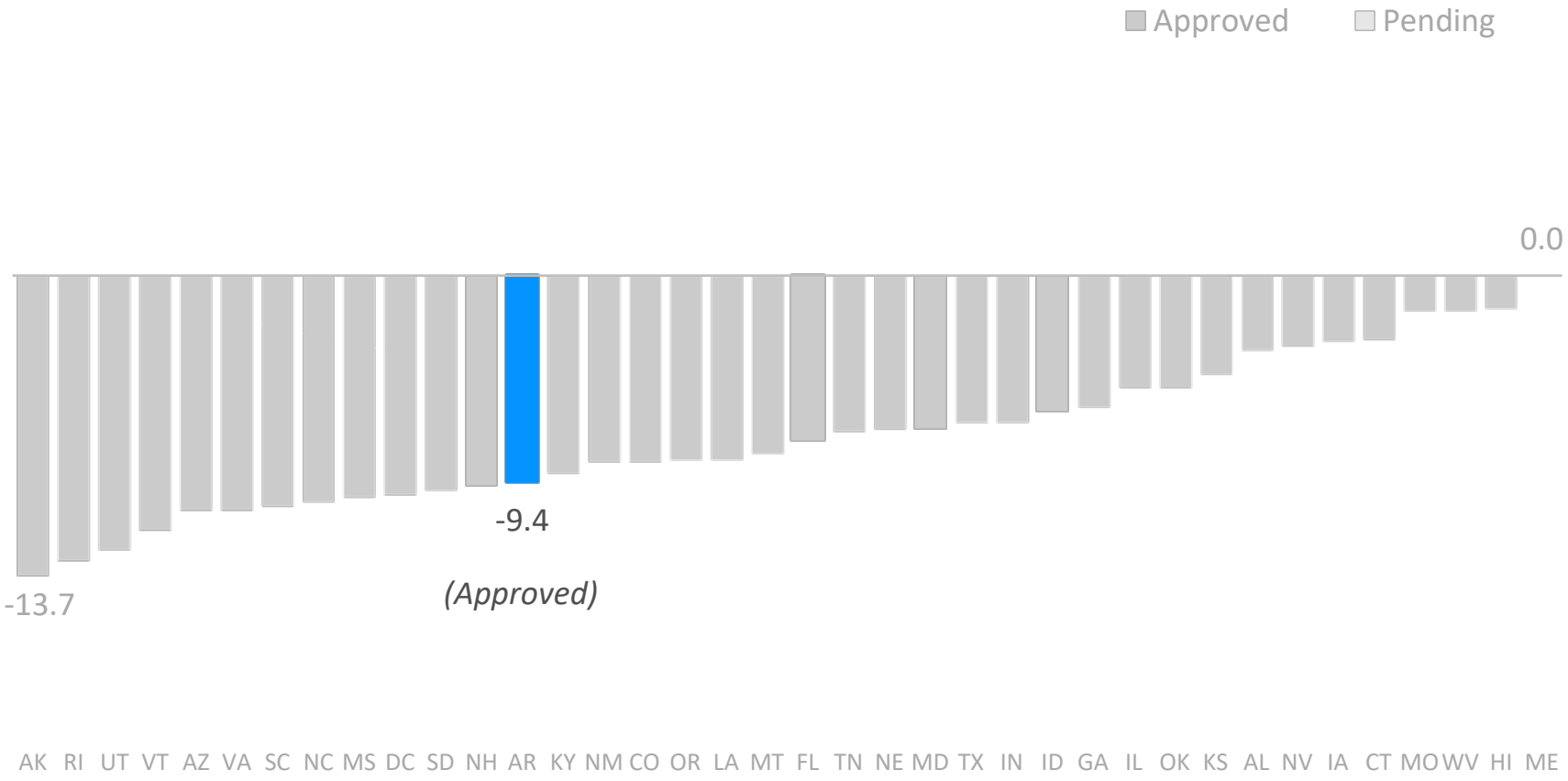
Arkansas July 1, 2020 Loss Cost Filing

Average Changes by Industry Group



Current NCCI Voluntary Market Loss Cost/Rate Level Changes

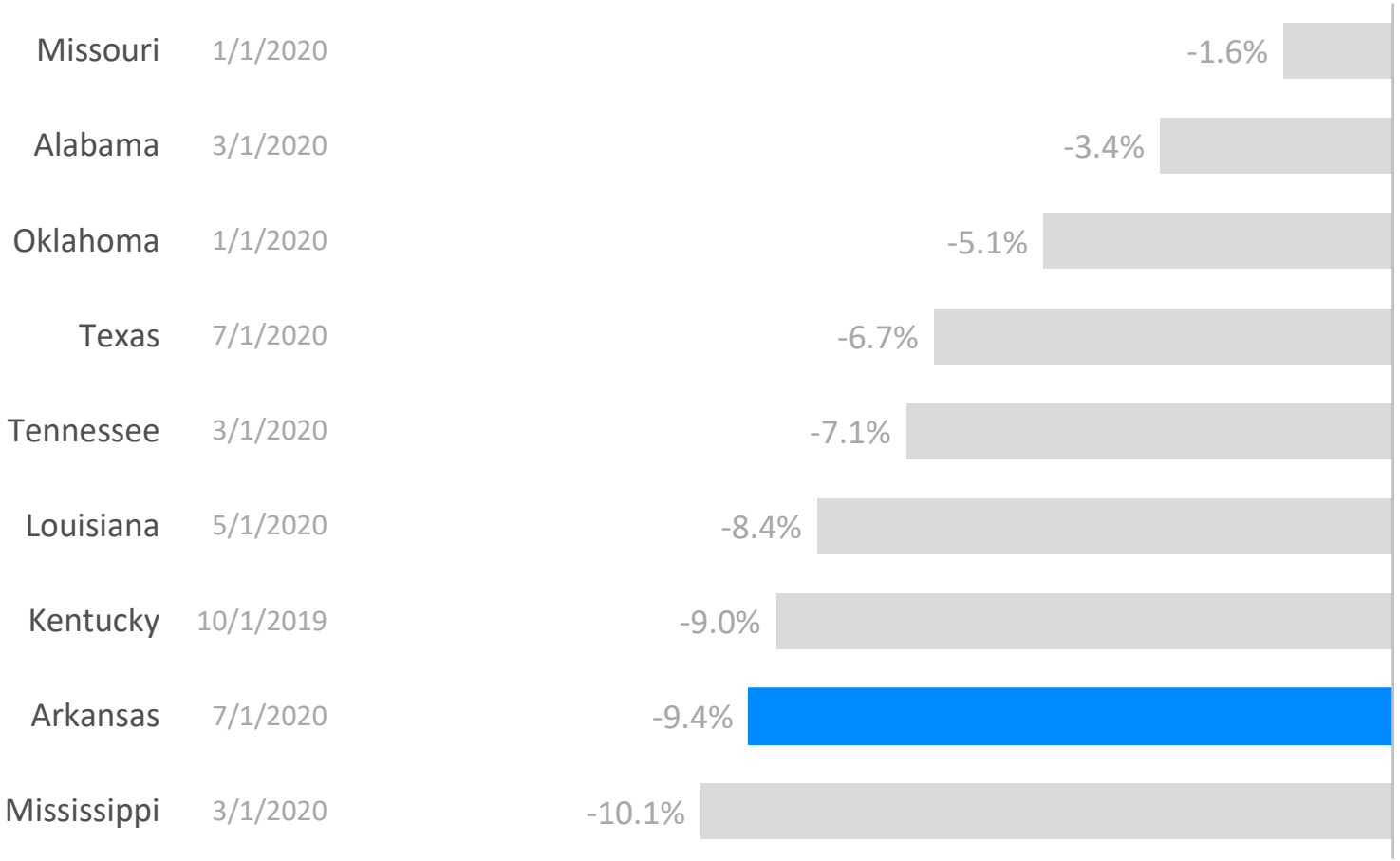
Excludes Law-Only Filings



Reflects the most recent experience filing in each jurisdiction as of 5/15/2020
Due to the timing of the individual loss cost/rate filings, the figures shown may include changes from prior filing seasons

Current Voluntary Market Loss Cost/Rate Changes

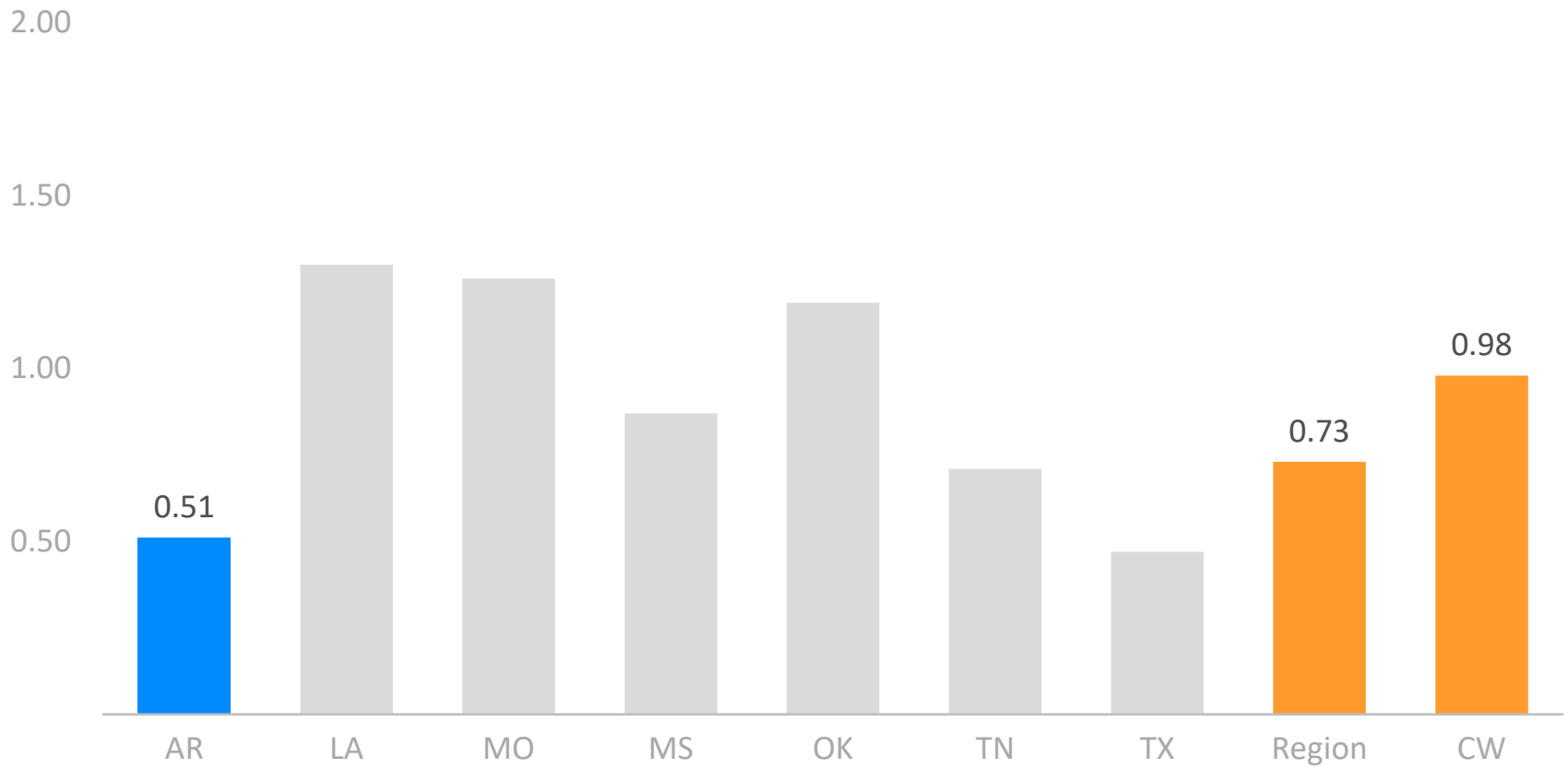
Nearby States



Reflects the most recent experience filing in each jurisdiction as of 5/15/2020
Due to the timing of the individual loss cost/rate filings, the figures shown may include changes from prior filing seasons

Average Voluntary Pure Loss Costs

Using Arkansas Payroll Distribution

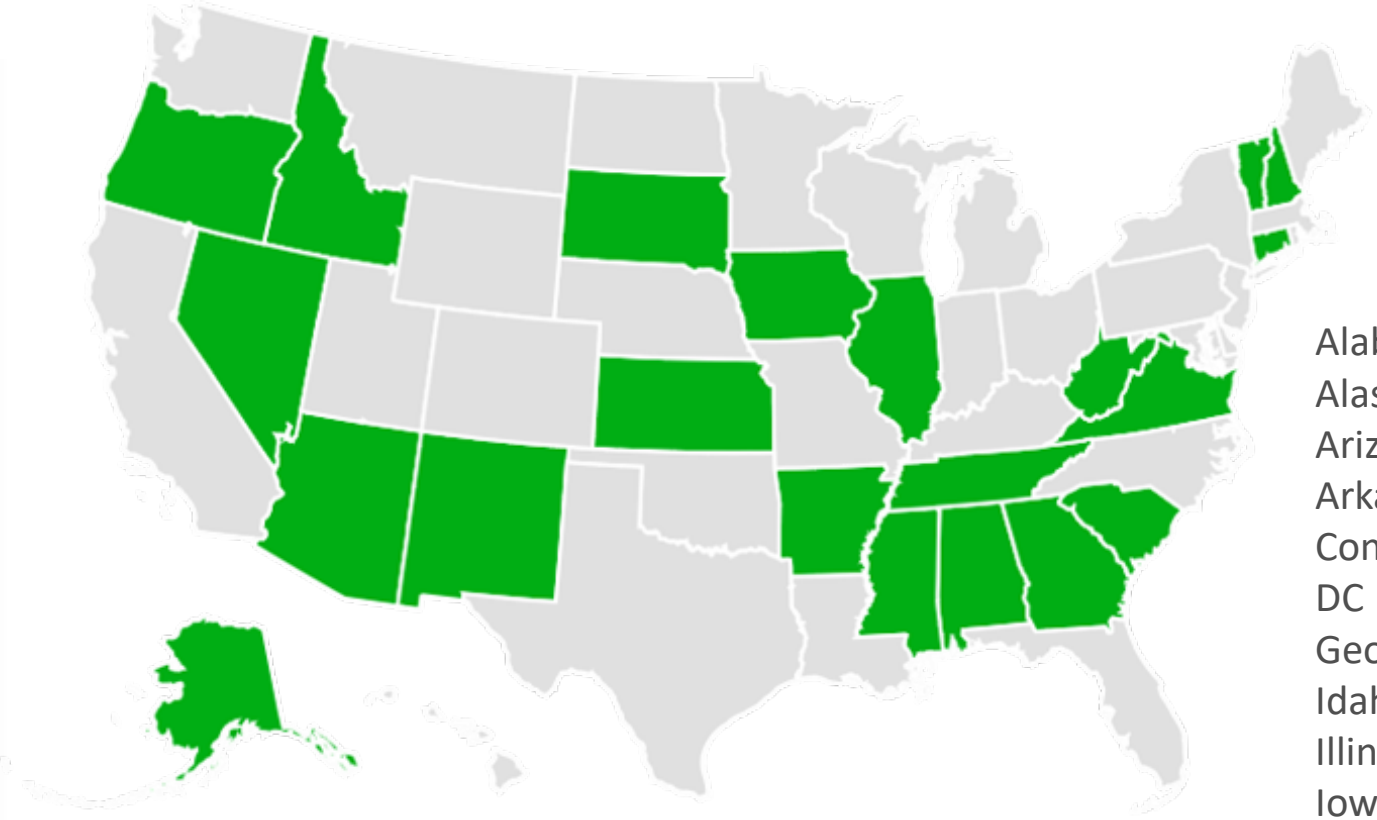


Based on approved rates and loss costs in various jurisdictions from filings using data valued as of 12/31/2018

Arkansas Residual Market

Plan Data

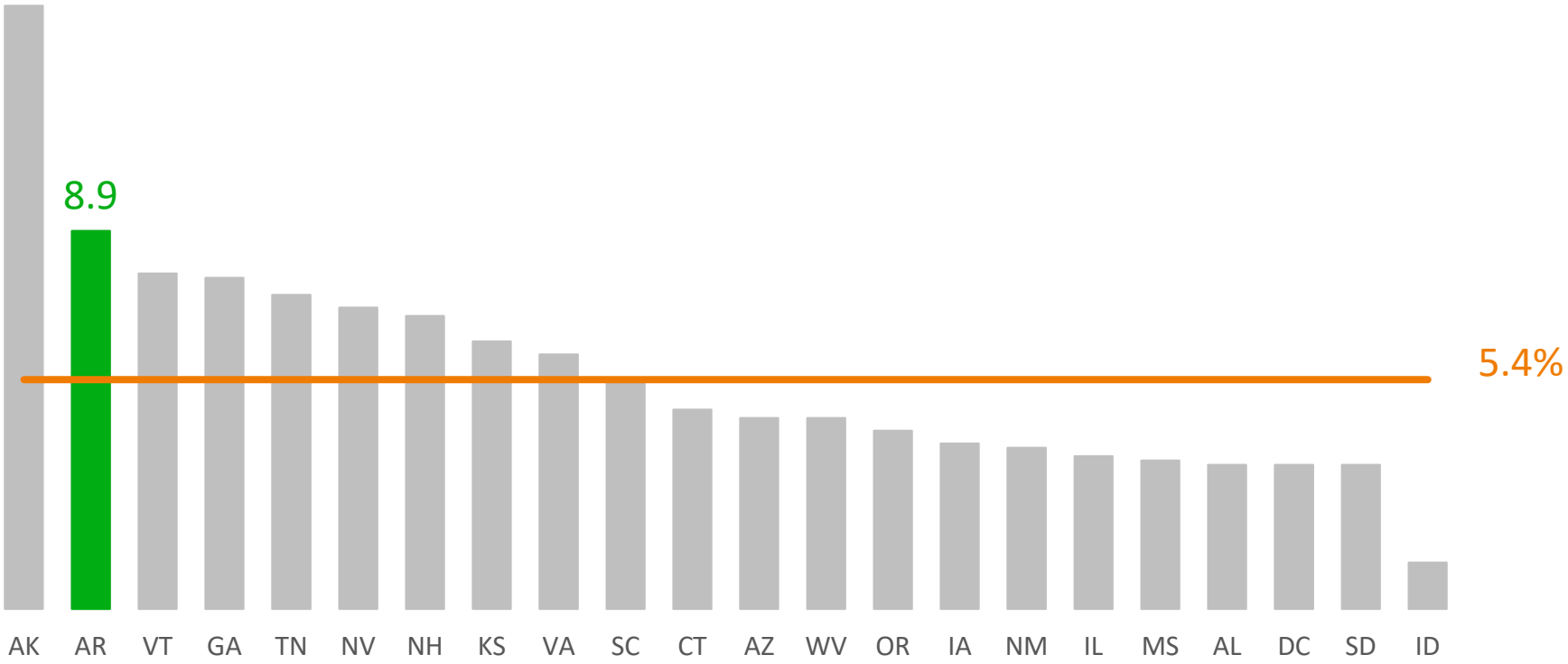
Includes 22 NCCI Plan Administration States



Alabama
Alaska
Arizona
Arkansas
Connecticut
DC
Georgia
Idaho
Illinois
Iowa
Kansas
Mississippi
Nevada
New Hampshire
New Mexico
Oregon
South Carolina
South Dakota
Tennessee
Vermont
Virginia
West Virginia

Assigned Risk Plan Market Share Percentage by State

As of 12/31/2019*

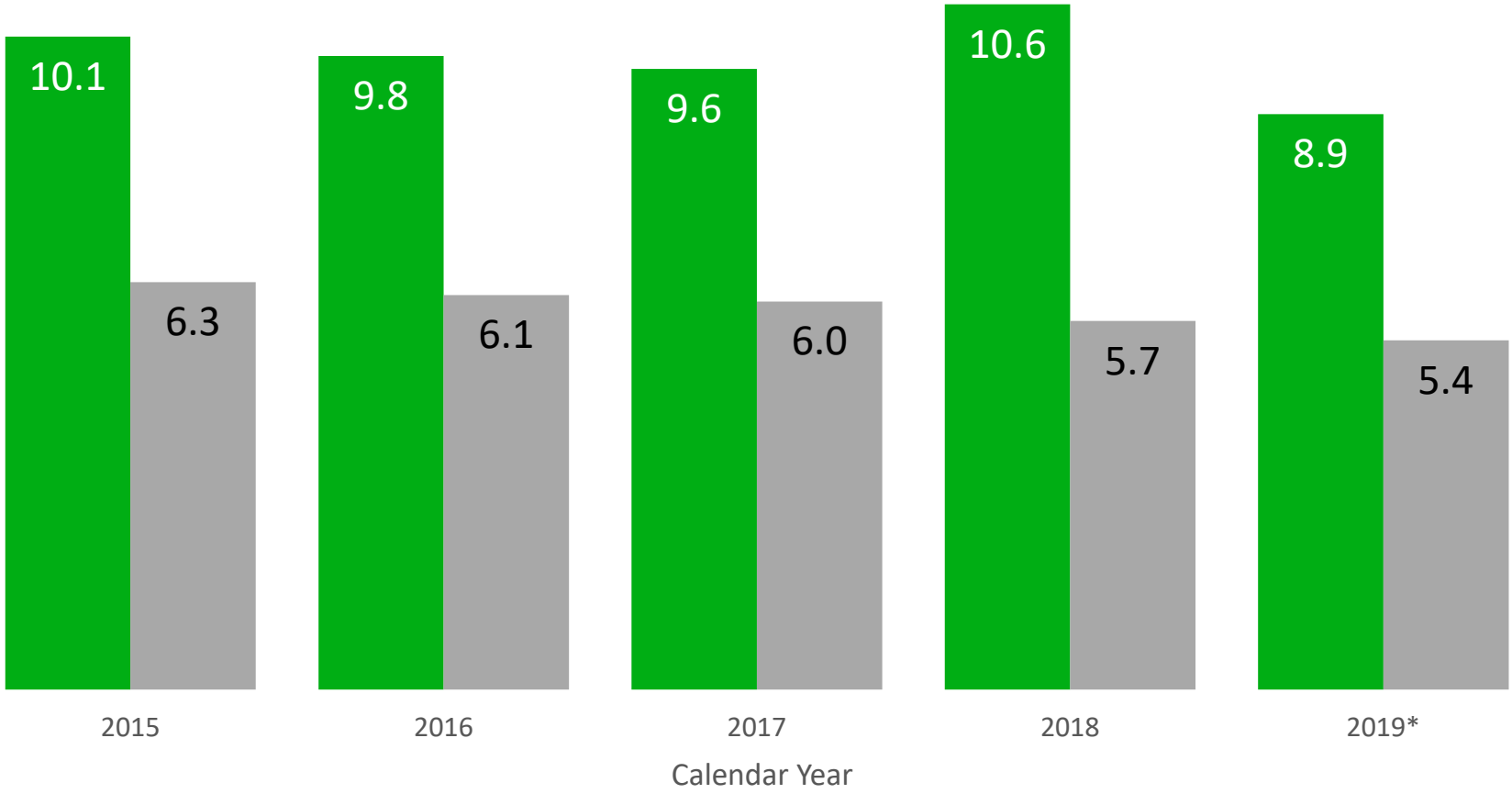


*Preliminary

Market share percentages are from NCCI's 2019 ***Residual Market Management Summary***

Arkansas Residual Market Share Compared to All Plan States Market Share

Plan Premium as a Percentage of Direct Written Premium

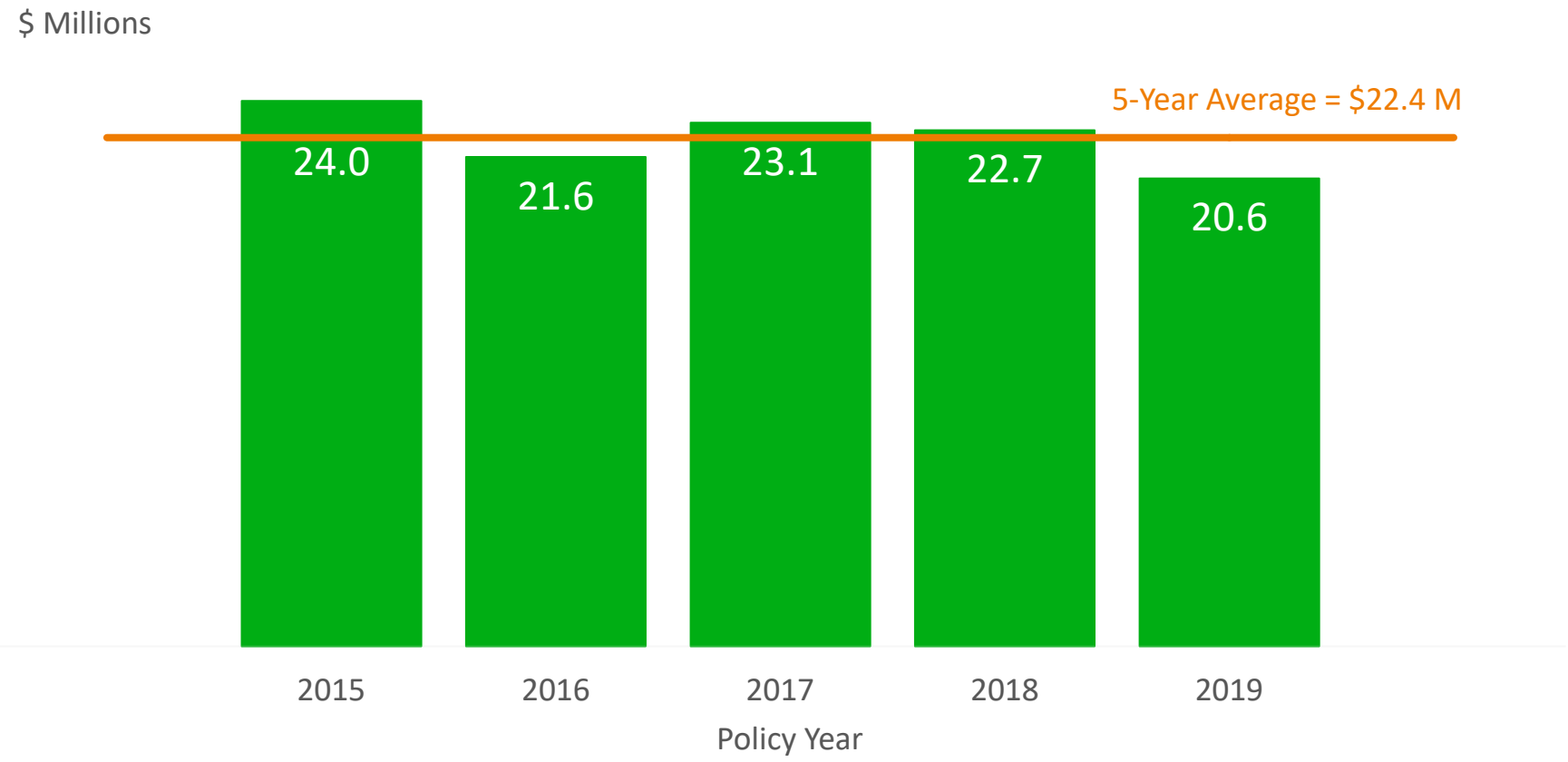


*Preliminary

Market share percentages are from NCCI's 2019 ***Residual Market Management Summary***

Arkansas Residual Market Plan Premium

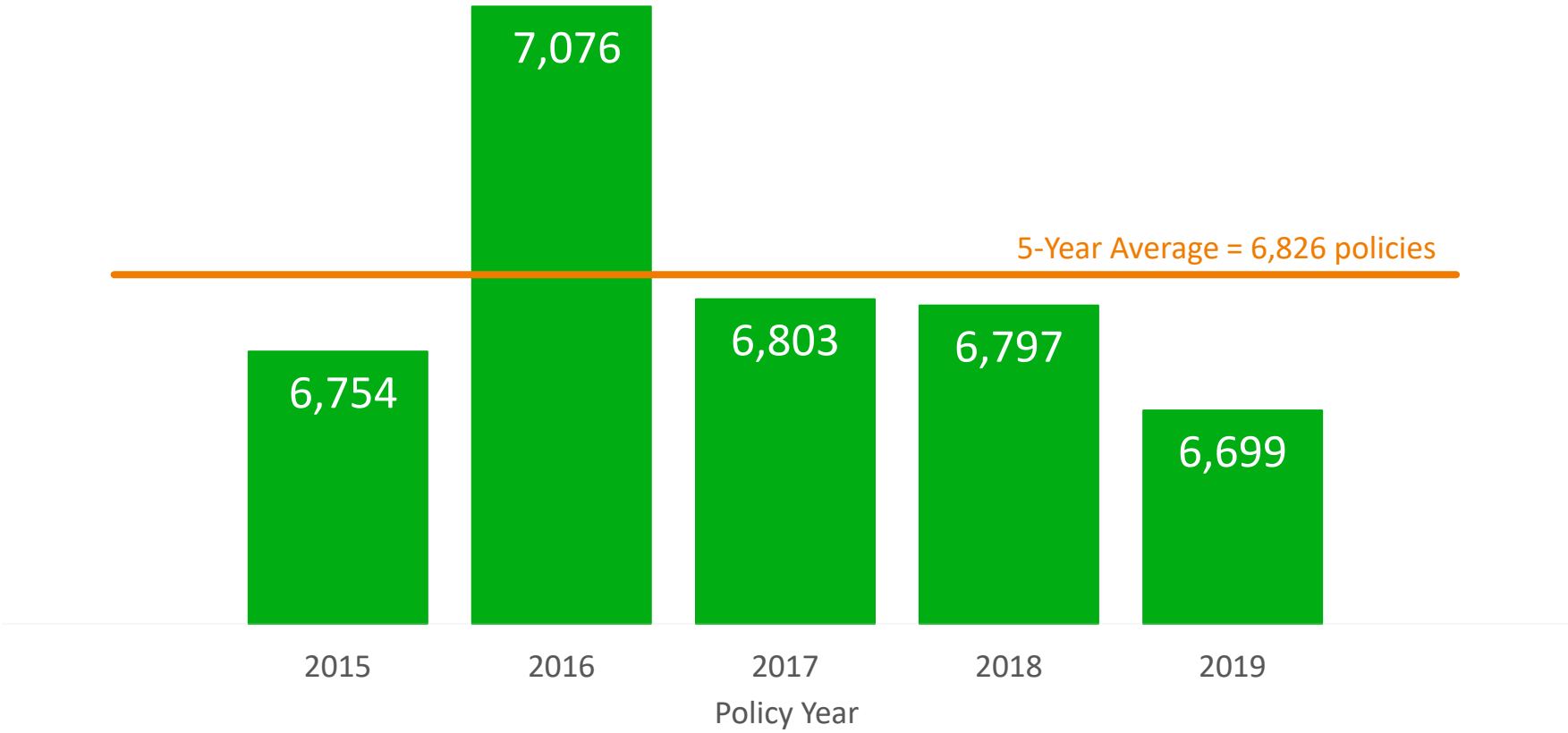
As of 12/31/2019



Premium data is on a policy year basis as reported to NCCI, for policies effective from January 1, 2019, to December 31, 2019, including prorated cancellations, with all policies' premium associated with the dominant state

Arkansas Residual Market Policy Counts

As of 12/31/2019



Policy data is on a policy year basis as reported to NCCI, for policies effective from January 1, 2019, to December 31, 2019, including prorated cancellations, with all policies' premium associated with the dominant state

Arkansas Residual Market Policy Information

$ 3,078

Average RM Policy Size

72.9%

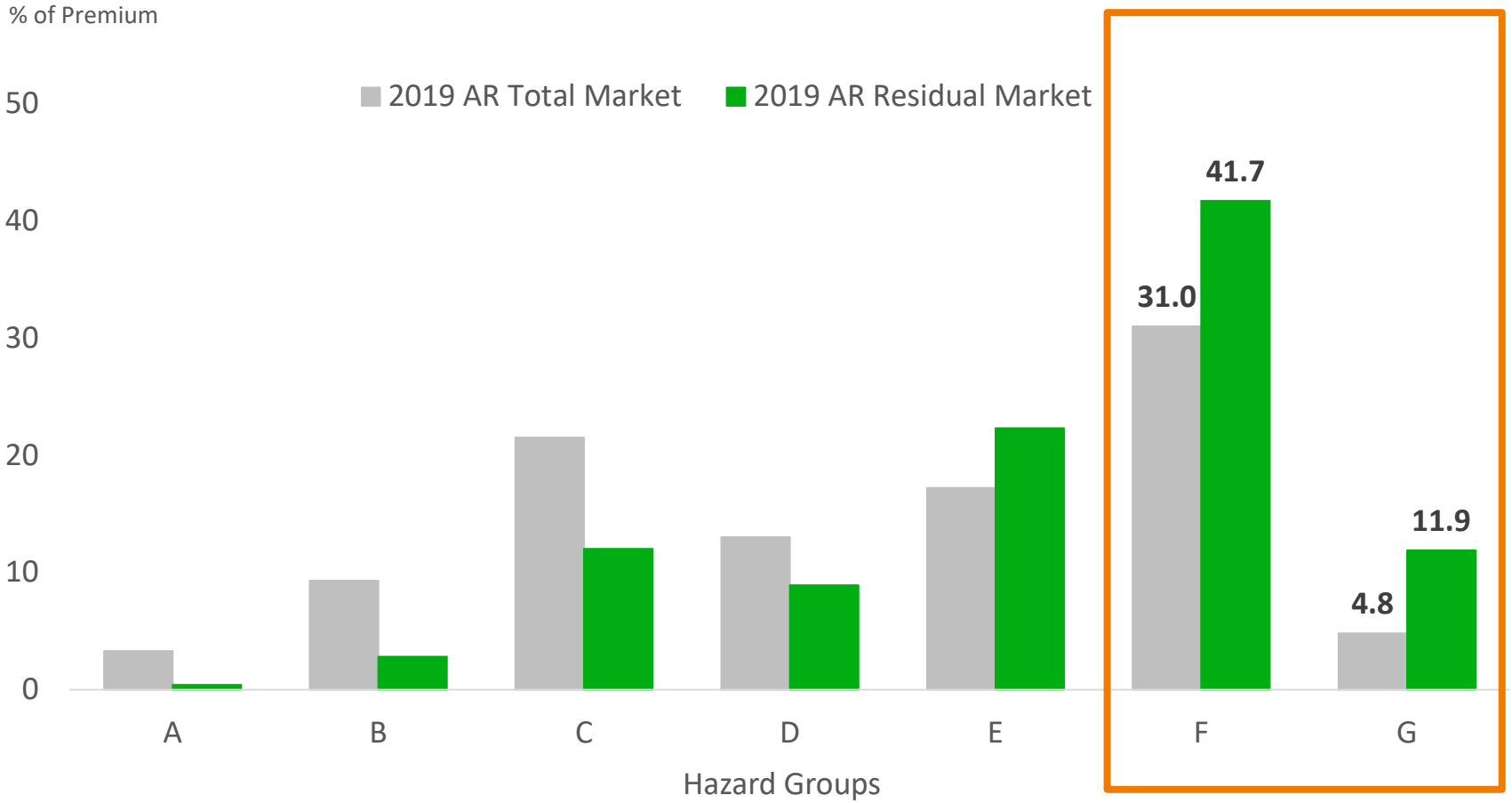
% of RM Policies Under $2,500

23.8%

% of RM Premium Generated by Policies Under $2,500

Premium and policy data is on a policy year basis as reported to NCCI, for policies effective from January 1, 2019, to December 31, 2019, including prorated cancellations, with all policies' premium associated with the dominant state

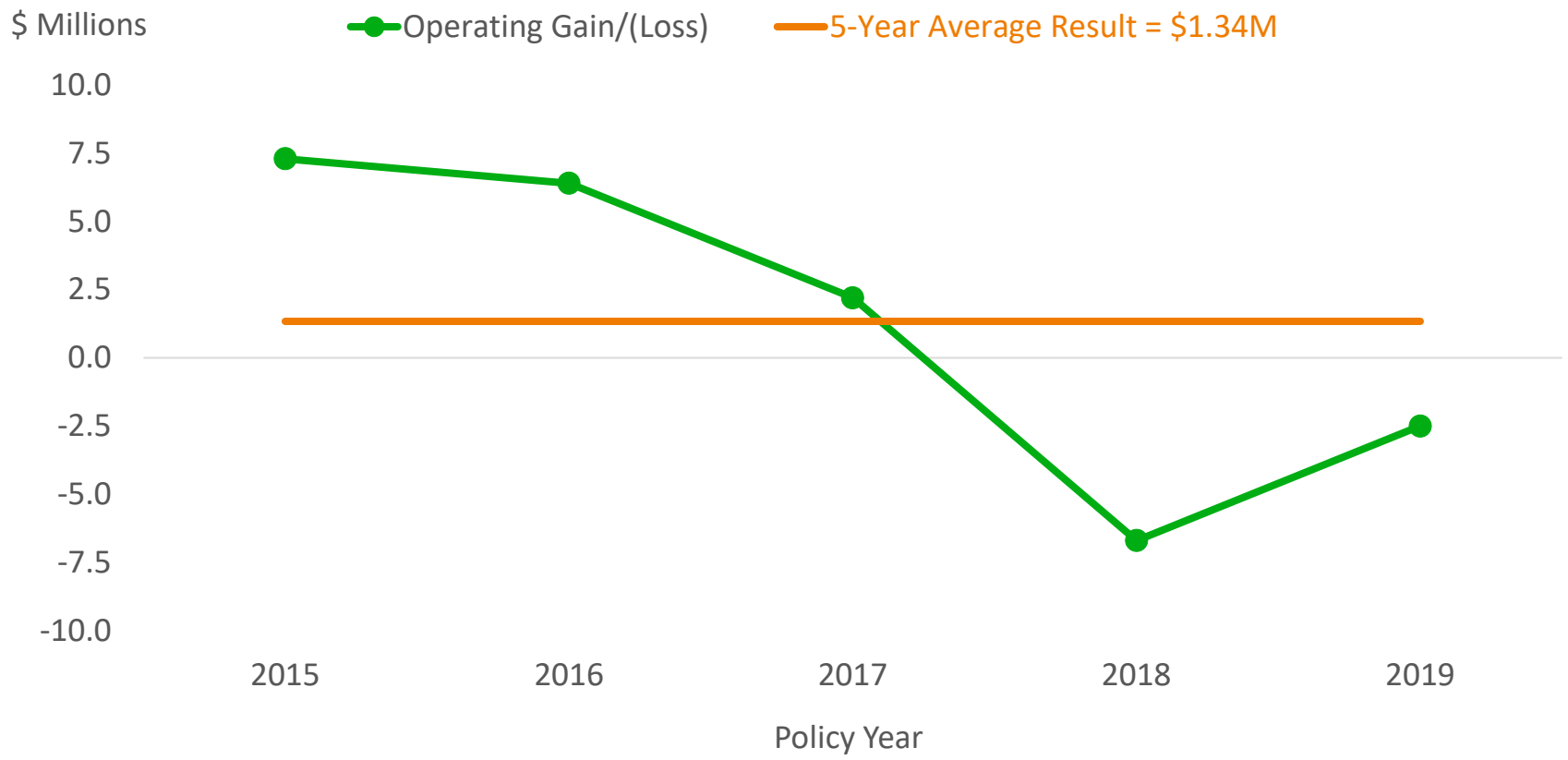
Hazard Groups F and G Account for 54% of the Residual Market Premium



Premium data is on a policy year basis as reported to NCCI, for policies effective from January 1, 2019, to December 31, 2019, including prorated cancellations, with all policies' premium associated with the dominant state

Arkansas Residual Market Reinsurance Pool
Net Operating Results

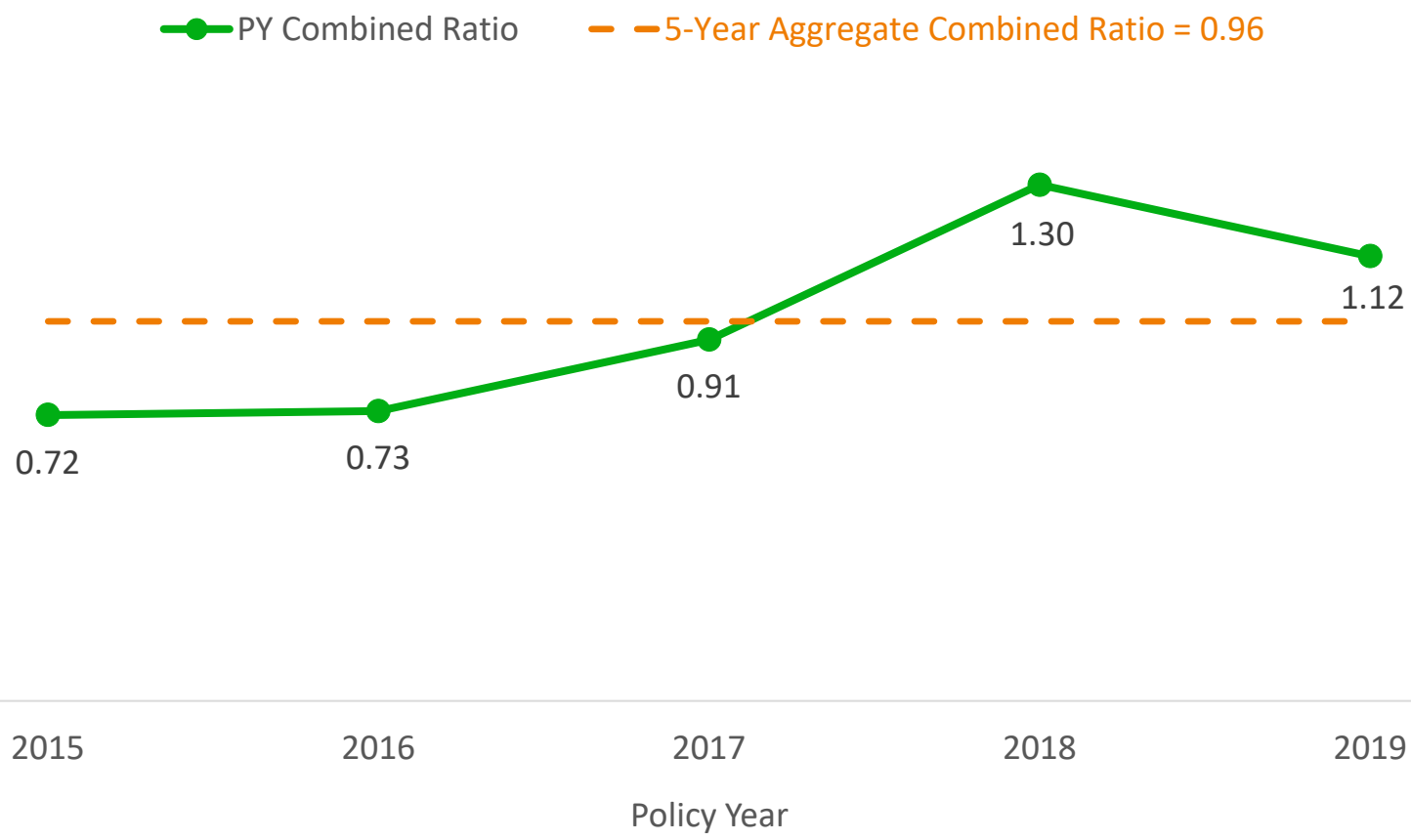
Estimated Net Operating Gains and Losses Projected to Ultimate as of 12/31/2019



From NCCI's ***Residual Market Quarterly Results***—the financial statement presentation that reflects the excess of earned premium over incurred losses, less all operating expenses, plus all investment income in this state

Arkansas Reinsurance Pool's Combined Ratios Over the Past Five Years

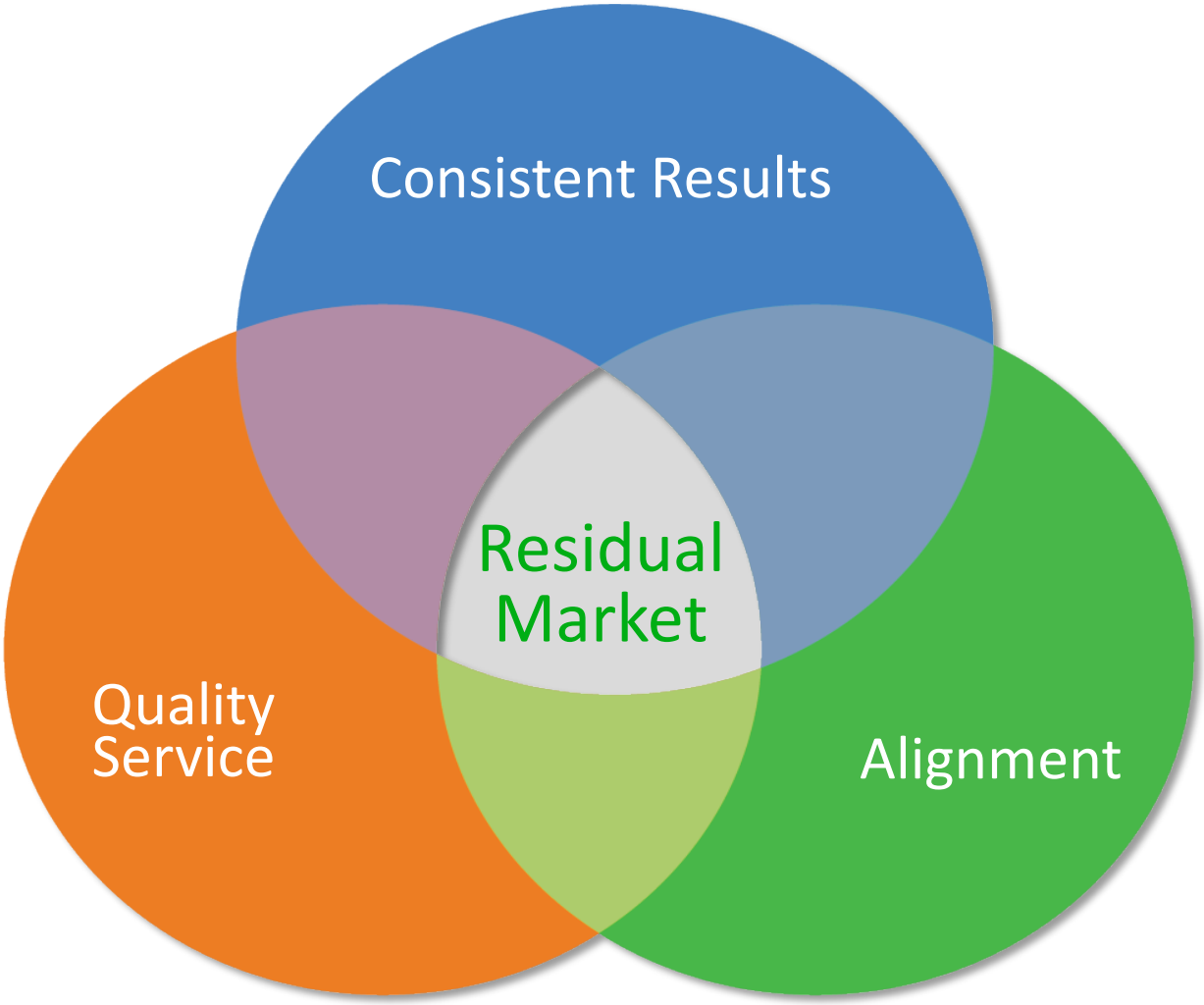
Estimated Policy Year Combined Ratios as of 12/31/2019



From NCCI's ***Residual Market Quarterly Results***—equals [1.0 — Residual Market Operating Gain (Loss)] / Pool Written Premium

Arkansas

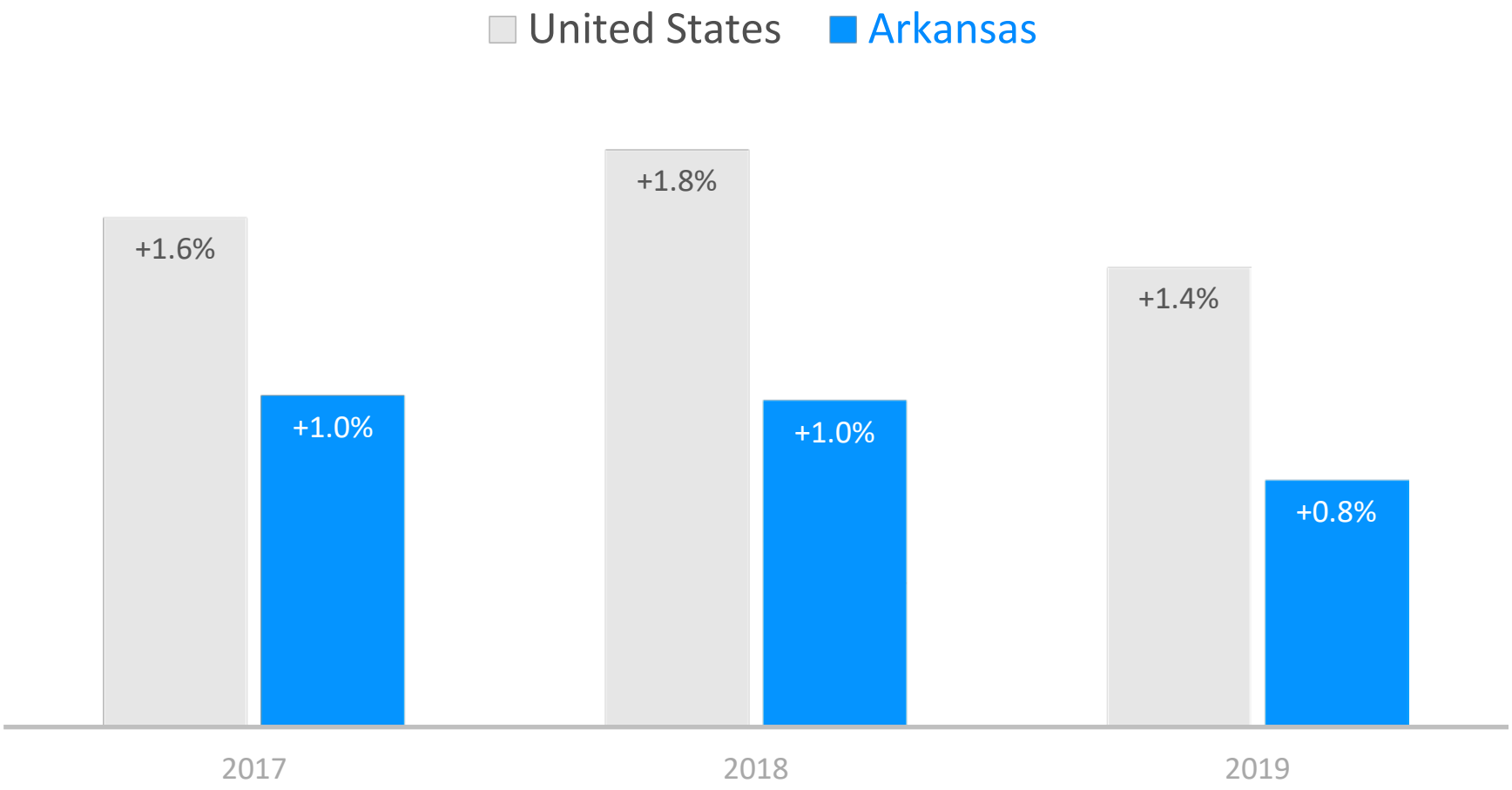
- Overall decreasing premium and policy count
- Relatively high residual market share
- Residual market has been self-funded over the past five years



Countrywide and Arkansas Labor Markets

Change in Private Employment

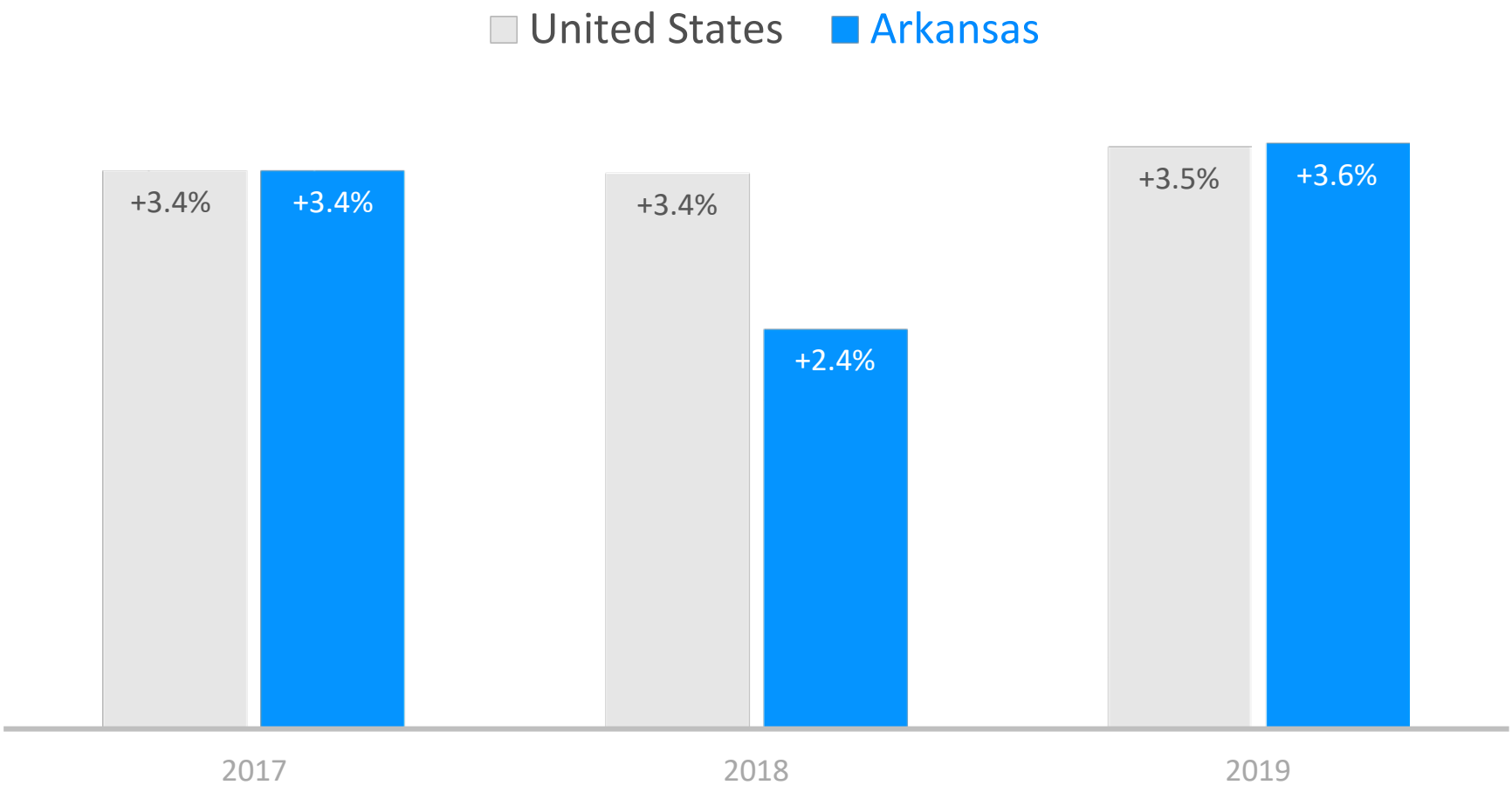
Private Employment Growth Was Below Average



Annual percentage change; employment is for Total Private Industry
Frequency of observation: annual; 2017–2019
Source: US Bureau of Labor Statistics (BLS)

Change in Average Weekly Wages

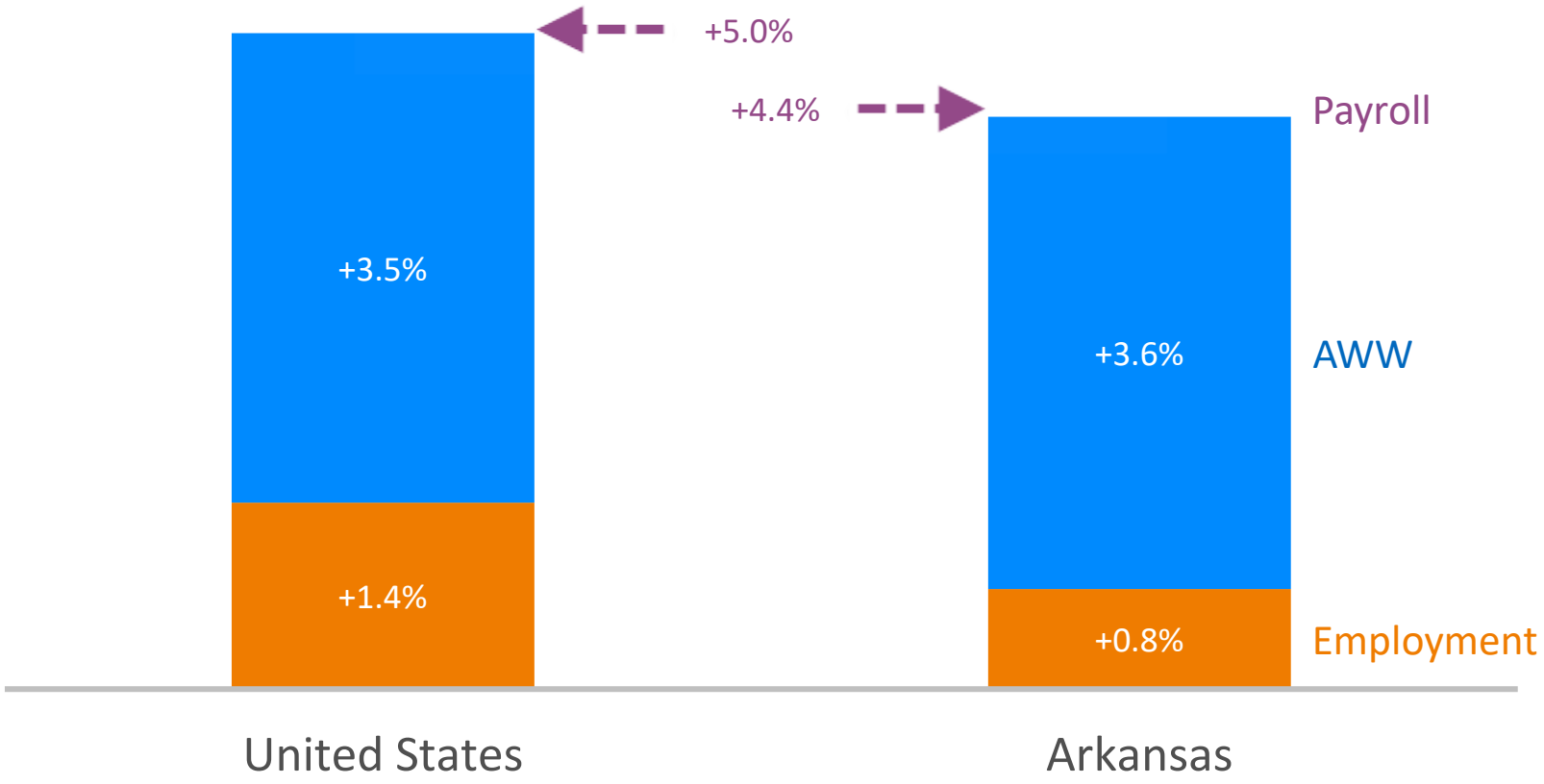
Wage Growth Was Comparable to the National Average



Annual percentage change; wages are for Total Private Industry
Frequency of observation: annual; 2017–2019
Source: US Bureau of Labor Statistics (BLS)

Private Industry Payroll Growth Decomposition

2019 Payroll Growth Was Below the National Average



AWW = Average Weekly Wage
2019 annual percentage change
Source: US Bureau of Labor Statistics (BLS)

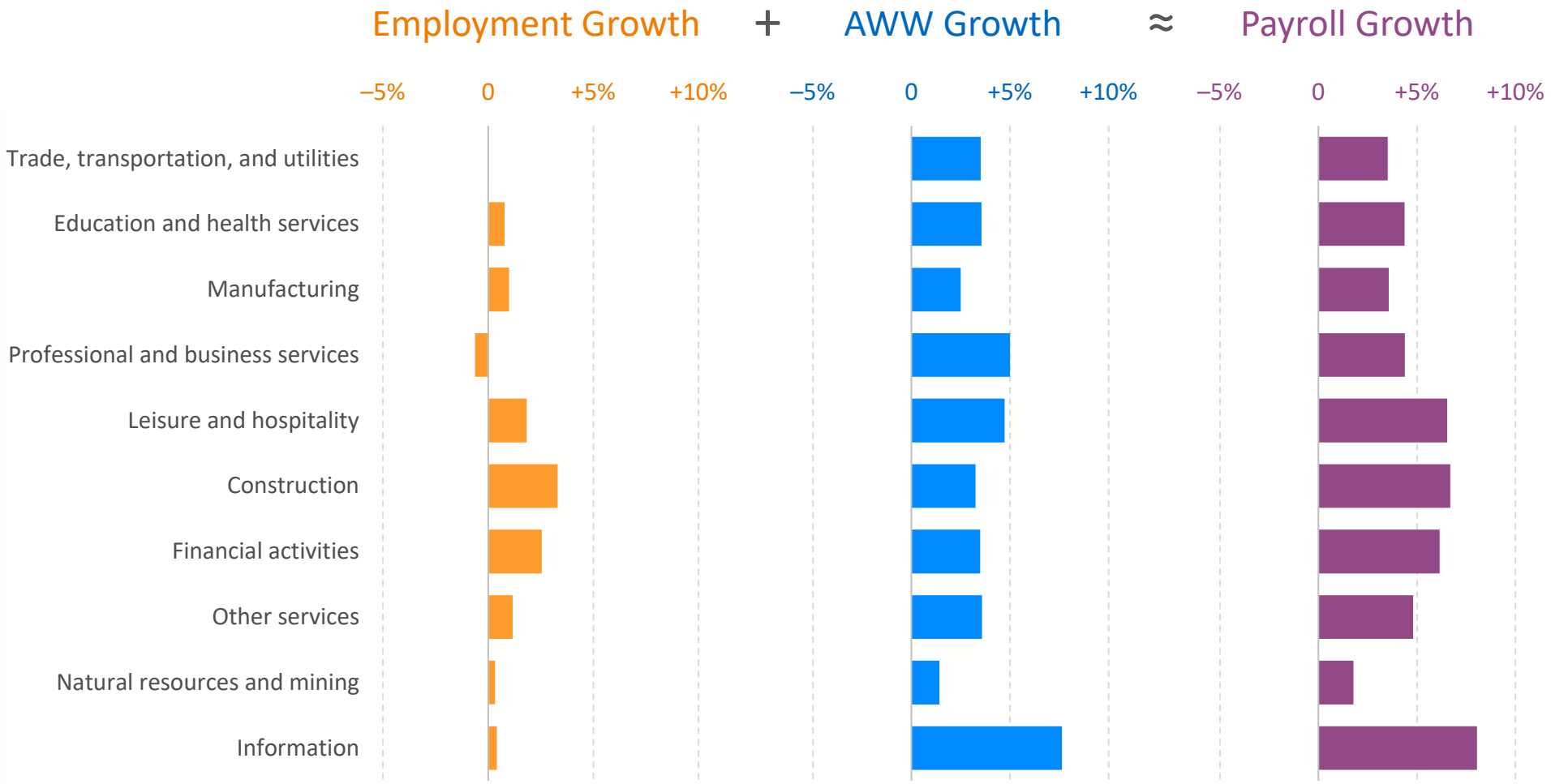
Change in Employment by Sector

Employment Increased in Most Sectors in the Past Year

Economic Sector		Annual Percent Change, 2019	Sector Size	Share %	1-Year Change
Leisure and hospitality	AR +1.8 US +1.5		121,000	12	+2,200
Construction	AR +3.3 US +3.1		53,000	5	+1,700
Manufacturing	AR +1.0 US +1.0		162,000	16	+1,600
Education and health services	AR +0.8 US +2.1		188,000	18	+1,500
Financial activities	AR +2.5 US +1.6		52,000	5	+1,300
Other services	AR +1.2 US +1.1		25,000	2	+300
Natural resources and mining	AR +0.3 US +0.1		16,000	2	+100
Information	AR +0.4 US +1.2		11,000	1	+0
Trade, transportation, and utilities	AR +0.0 US +0.4		249,000	24	+0
Professional and business services	AR –0.6 US +1.7		146,000	14	–900

Employment numbers are rounded to the nearest hundred
2019 annual percentage change; frequency of observation: annual
Source: US Bureau of Labor Statistics (BLS)

Payroll Growth Decomposition by Sector



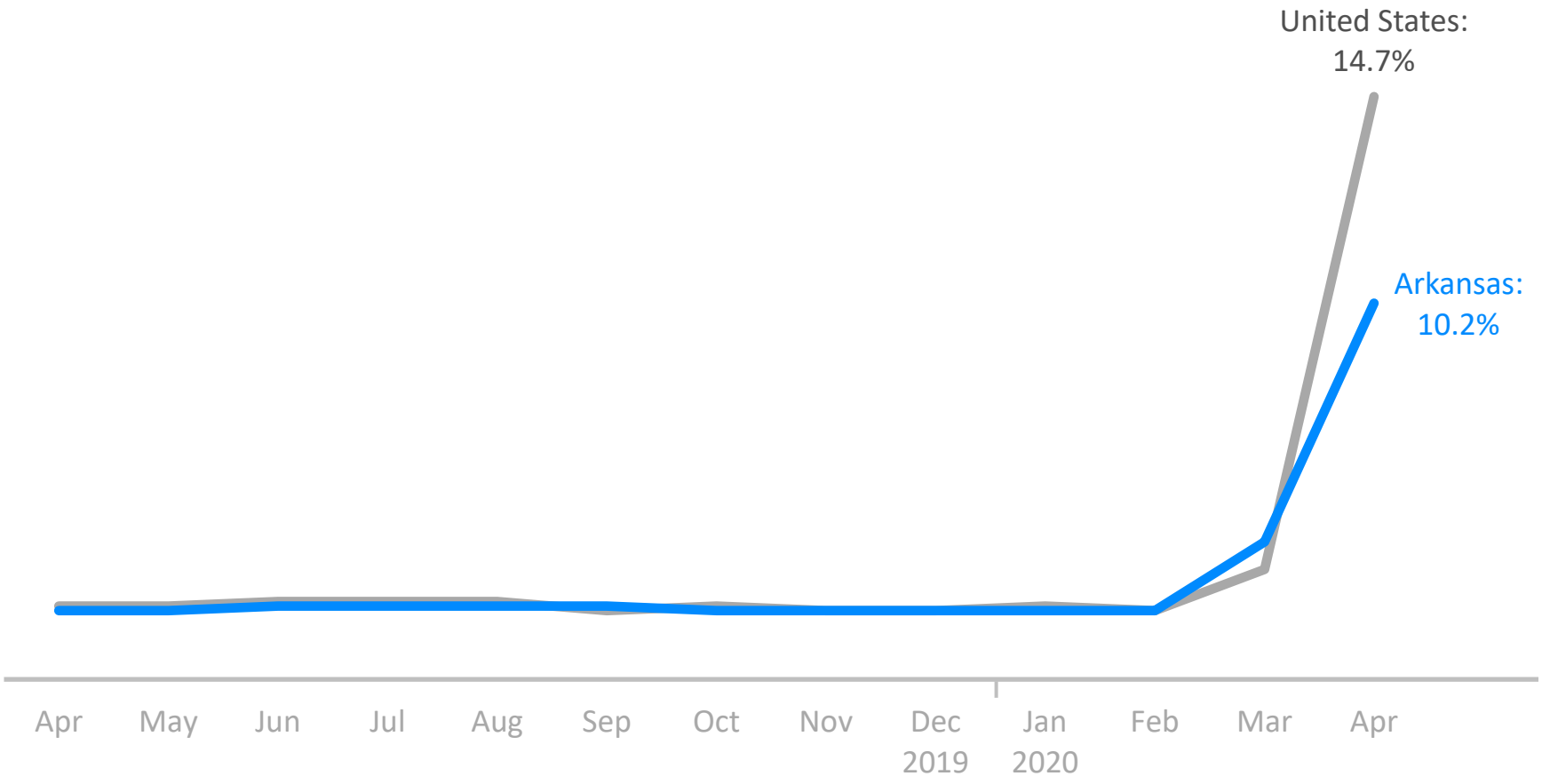
AWW = Average Weekly Wage
2019 annual percentage change; sectors are in descending order by the volume of state payroll amounts
Source: US Bureau of Labor Statistics (BLS)

Arkansas Labor Market

- Employment growth was below the US rate
  - Employment growth in the Leisure and Hospitality, Construction, and Financial Activities sectors outpaced the national average
  - Employment was flat in Trade, Transportation, and Utilities and declined in Professional and Business Services
- Payroll increased in Arkansas from increases in employment
  - The Trade, Transportation, and Utilities sector has the largest payroll
  - Payrolls expanded across all economic sectors

Headline Unemployment Rate

Increases in 2020 Reflect the Impact of the Coronavirus Pandemic



Headline Unemployment Rate, seasonally adjusted
Frequency of observation: monthly; latest available data point: April 2020
Source: US Bureau of Labor Statistics (BLS)

Legislative Updates—Federal and State

Legislative Updates

- NCCI identifies and monitors relevant workers compensation-related bills in all jurisdictions and the federal government.
  - Arkansas held a “Fiscal-Only” session in 2020.
  - Legislative activity for all states is available here.
  - Federal legislative activity is available here.
  - Information specifically related to COVID-19 and workers compensation is available in the NCCI COVID-19 Resource Center here.

Kids' Chance of Arkansas

Kids' Chance of Arkansas

- NCCI is a proud partner of Kids' Chance. NCCI continues to educate and bring awareness about Kids' Chance through our events.
- Kids' Chance makes a difference in the lives of children affected by a parent's workplace injury or death.
- Kids' Chance of Arkansas was incorporated in 2001 with the mission of providing scholarships to the dependents of deceased and permanently totally disabled workers with compensable Arkansas workers' compensation claims.
- Kids' Chance brings together employers, insurers, employee groups and others involved in workers' compensation matters to provide assistance for education to those qualifying dependent children.

Chuck McCauley, President

Mail
PO Box 250249
Little Rock, AR 72225-0249

Phone
866-880-8444

Website
www.kidschancear.org

STATE ADVISORY

FORUMS 2020

Arkansas

June 24, 2020

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561-893-3069

Supplemental Information

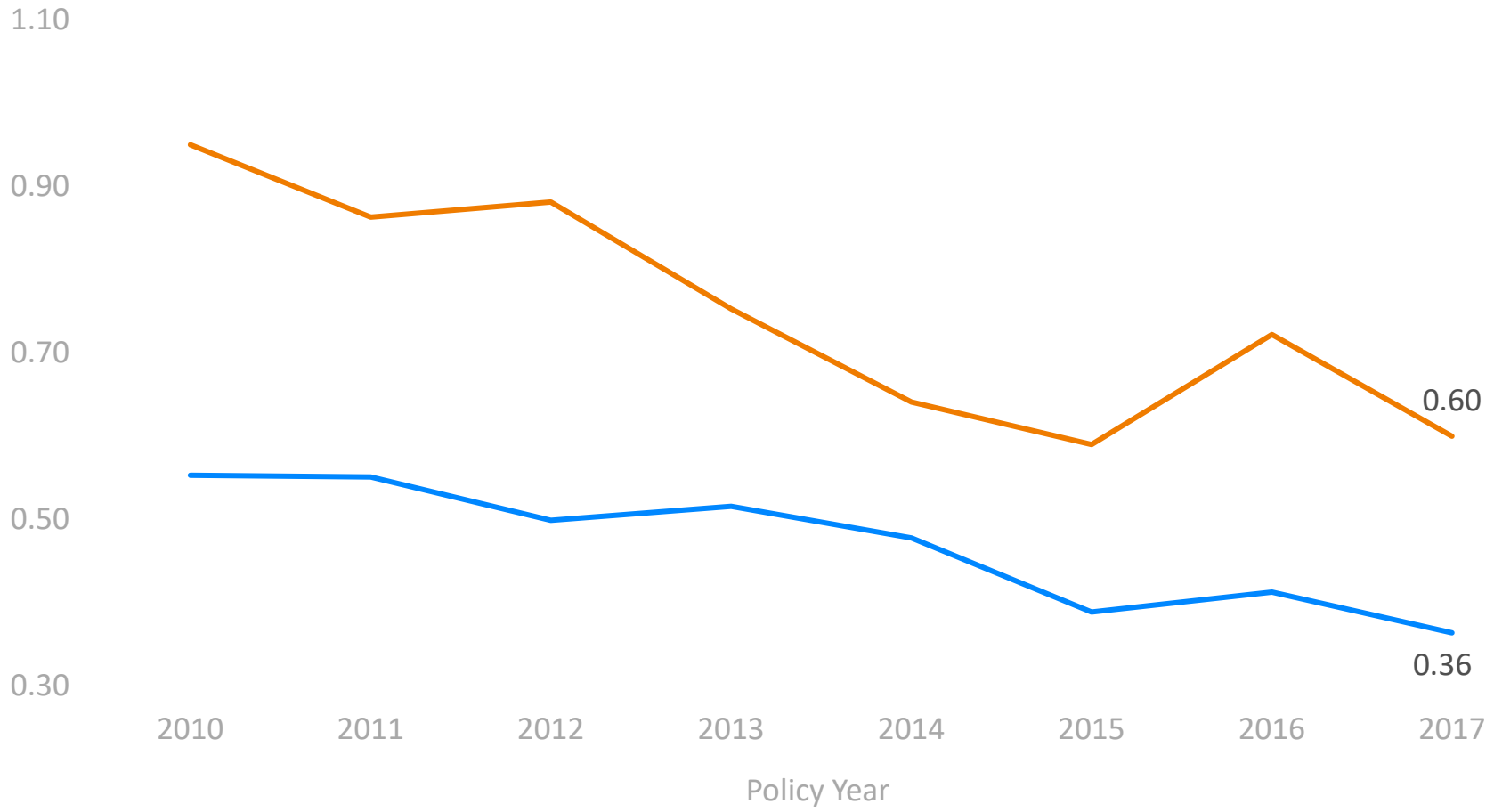
Total Benefit Costs in Arkansas

Indemnity vs. Medical

Regional states are LA, MO, MS, OK, TN, and TX
Based on NCCI's financial data

Arkansas Loss Ratios

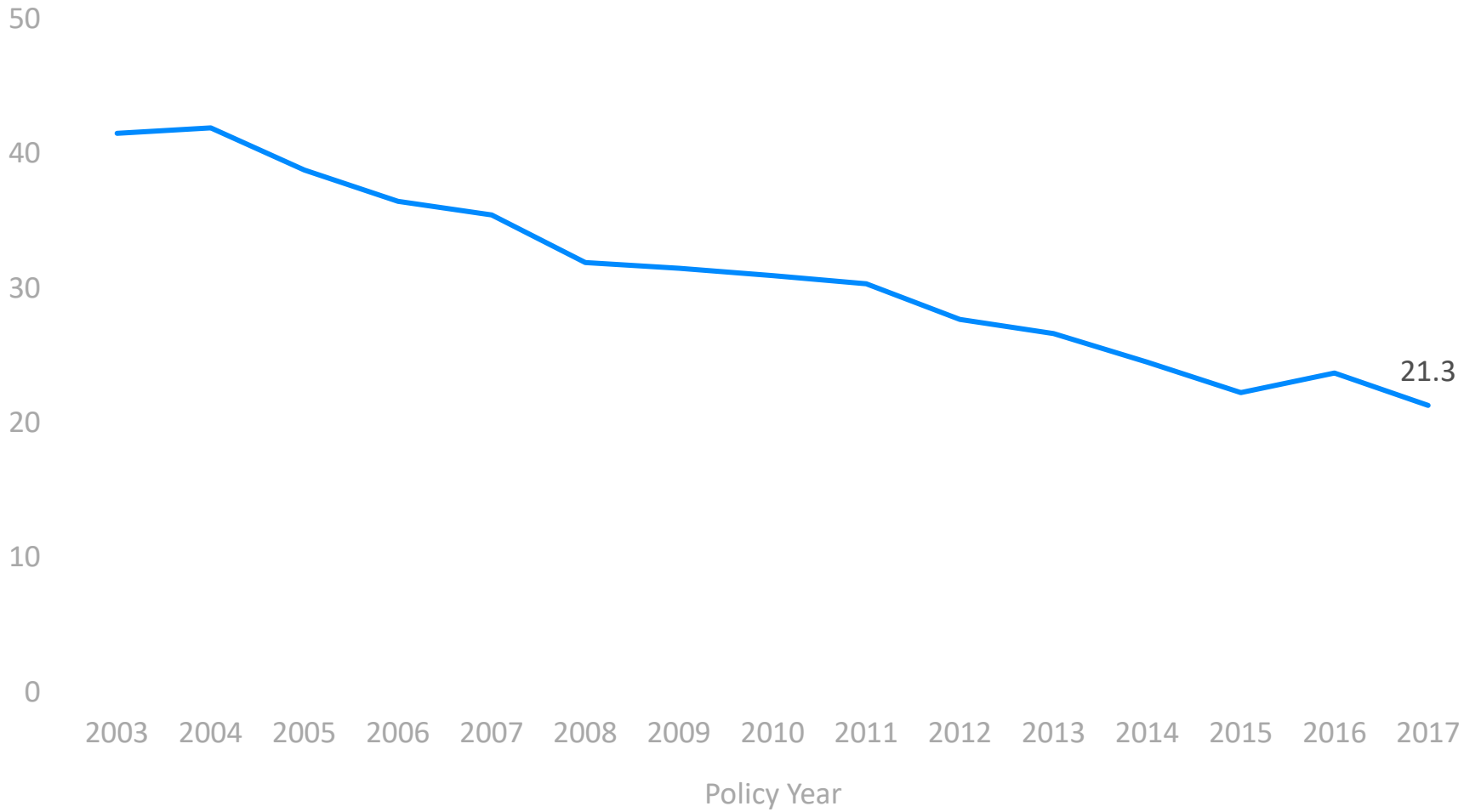
Indemnity vs. Medical



Based on NCCI's financial data through 12/31/2018 at current benefit level and developed to ultimate

Arkansas Claim Frequency

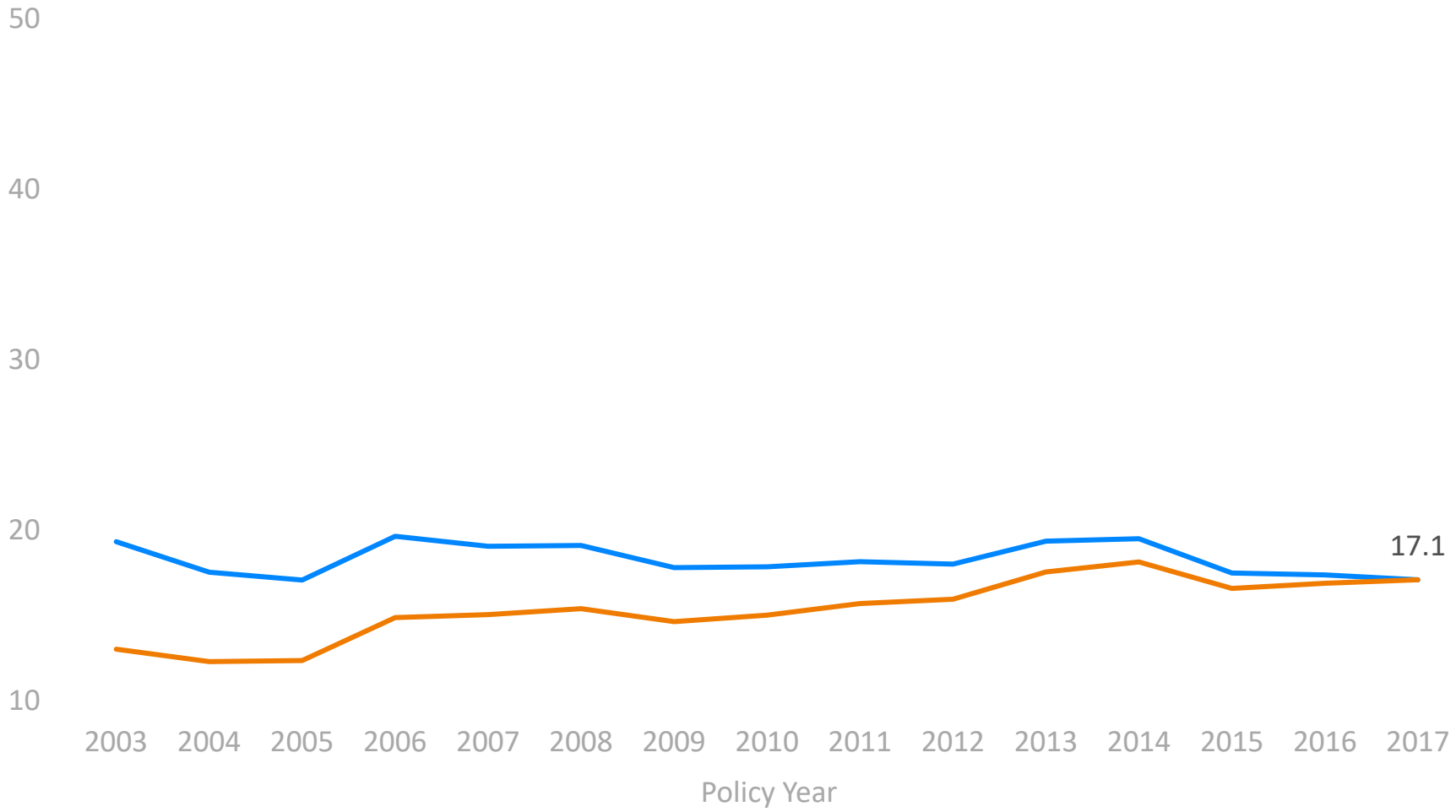
Lost-Time Claims, per $ Million of On-Leveled Premium



Based on NCCI's financial data through 12/31/2018, on-leveled and developed to ultimate, with premium adjusted to common wage level

Arkansas Average Indemnity Claim Severity

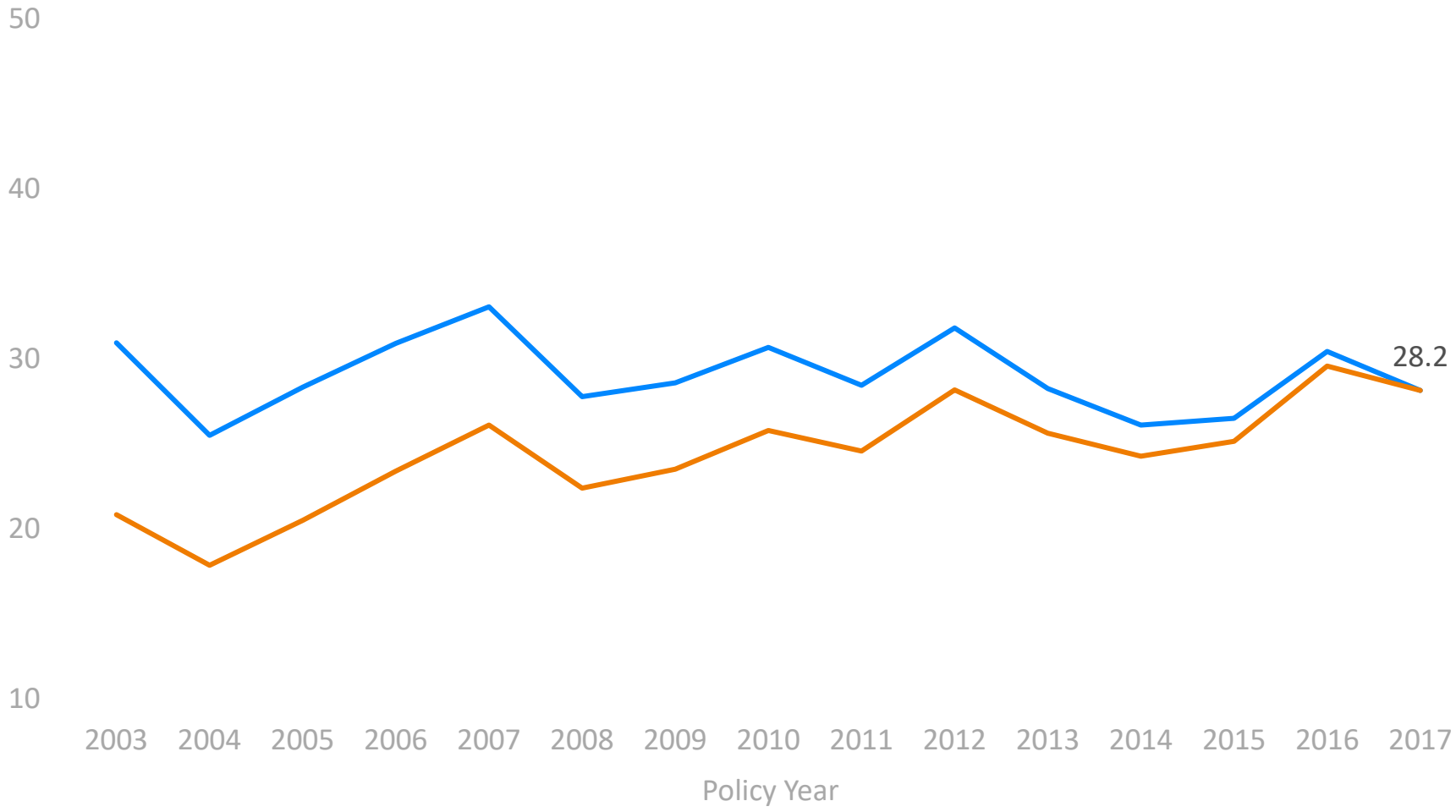
Adjusted to Common Wage Level vs. Actual, in $ Thousands



Based on NCCI's financial data through 12/31/2018 for lost-time claims at current benefit level and developed to ultimate

Arkansas Average Medical Claim Severity

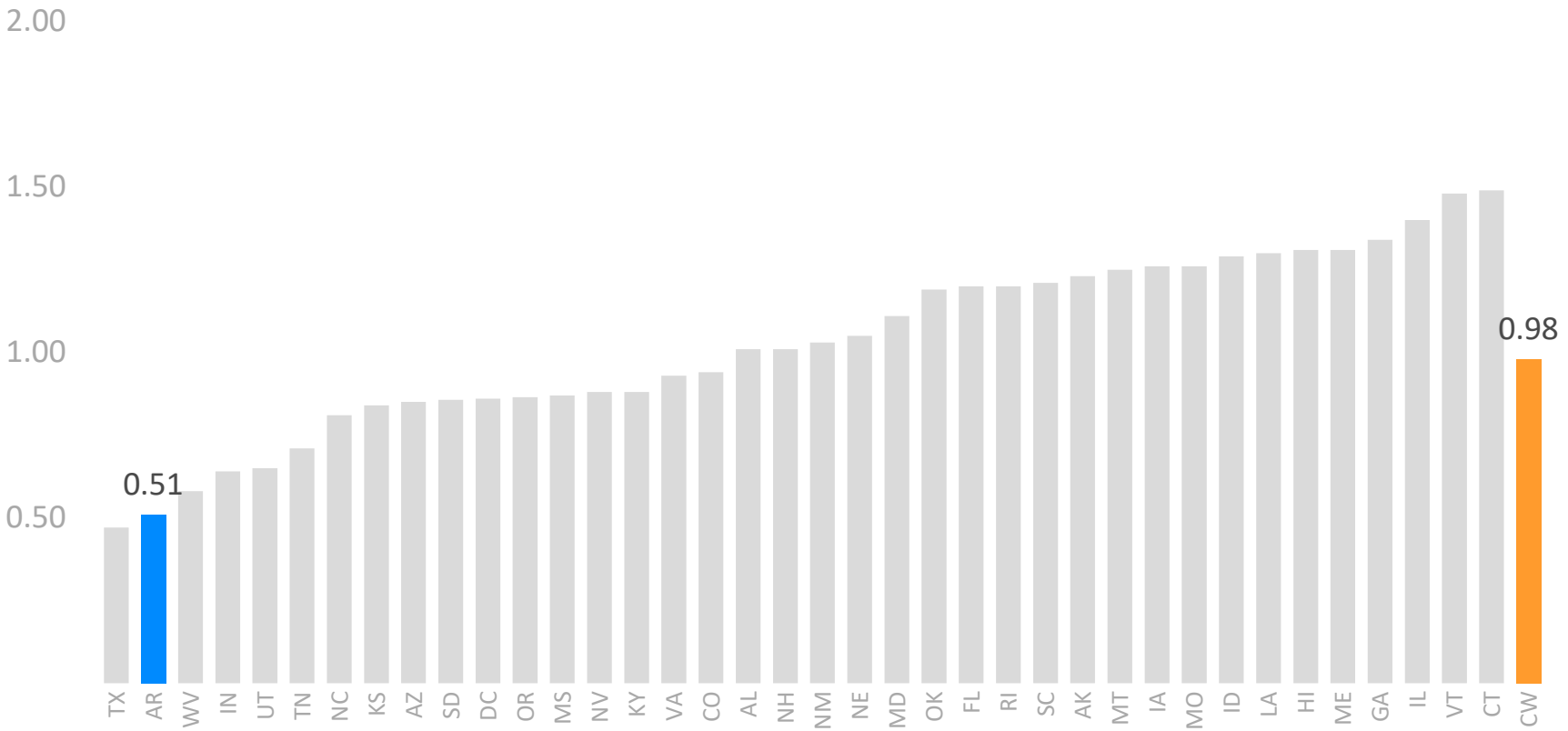
Adjusted to Common Wage Level vs. Actual, in $ Thousands



Based on NCCI's financial data through 12/31/2018 for lost-time claims at current benefit level and developed to ultimate

Average Voluntary Pure Loss Costs

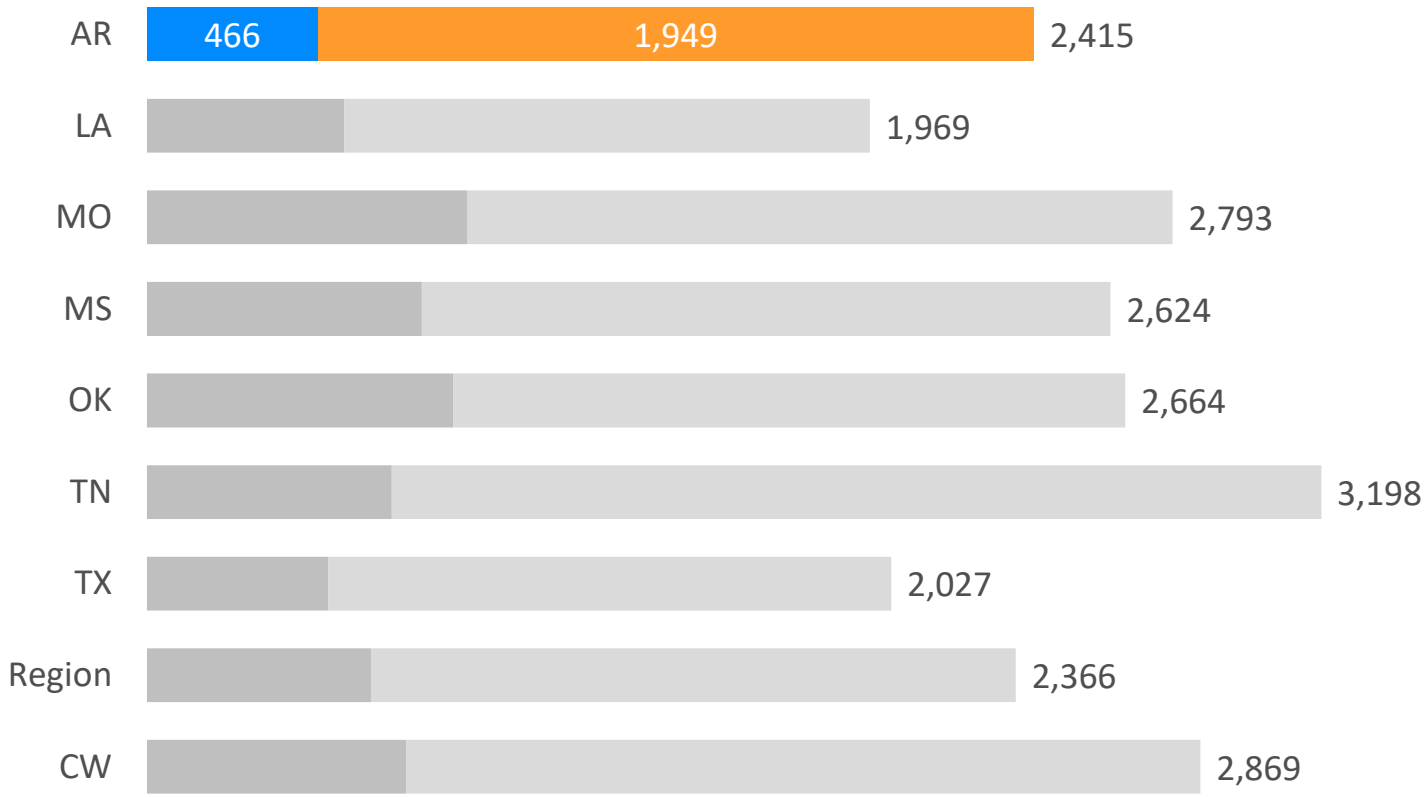
Using Arkansas Payroll Distribution



Based on approved rates and loss costs in various jurisdictions from filings using data valued as of 12/31/2018

Arkansas Average Claim Frequency

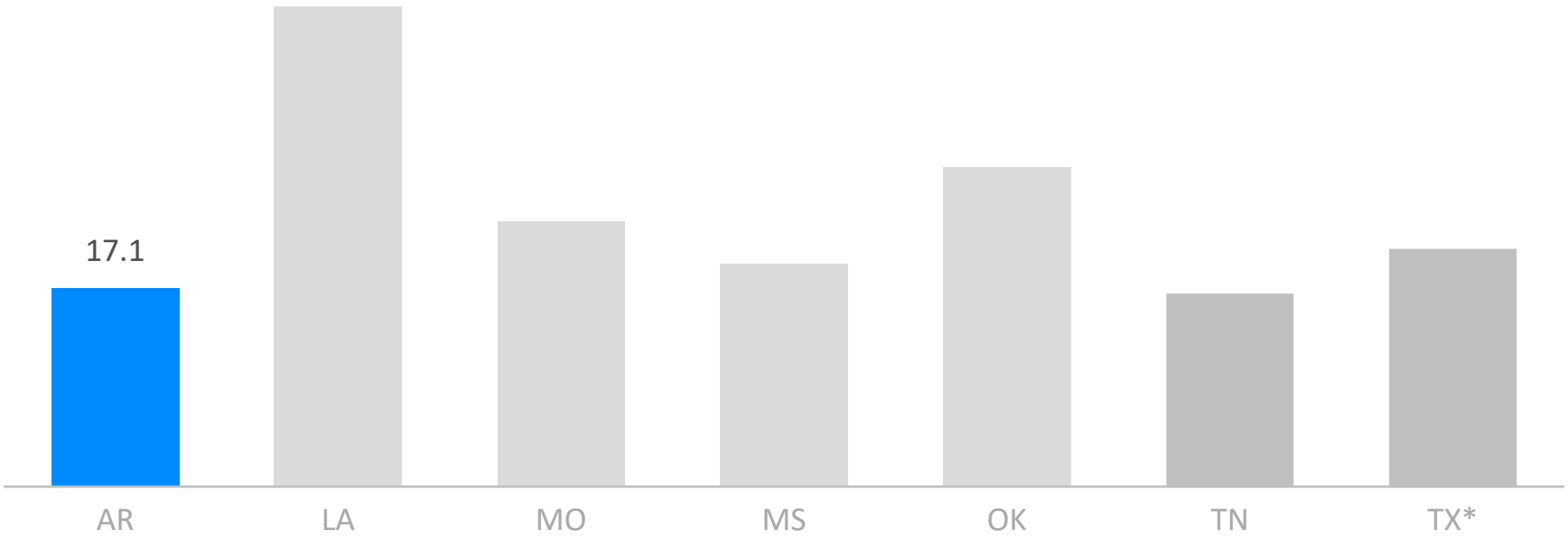
Lost-Time vs. Medical Only, per 100,000 Workers



Based on NCCI's ***Statistical Plan*** data

Average Indemnity Claim Severity in the Region

in $ Thousands

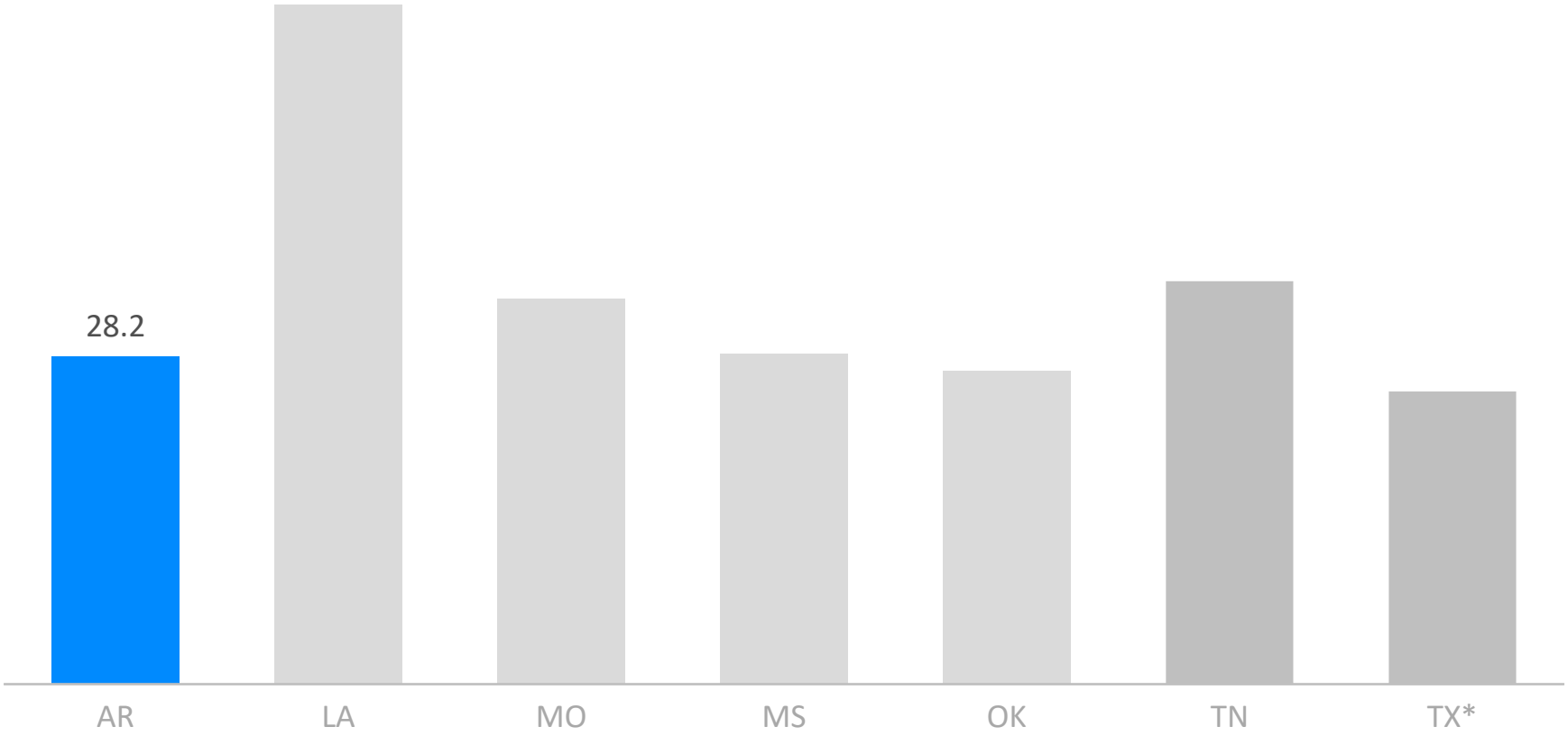


*Unlimited

Based on NCCI's financial data for lost-time claims at current benefit level and developed to ultimate, with premium adjusted to common wage level

Average Medical Claim Severity in the Region

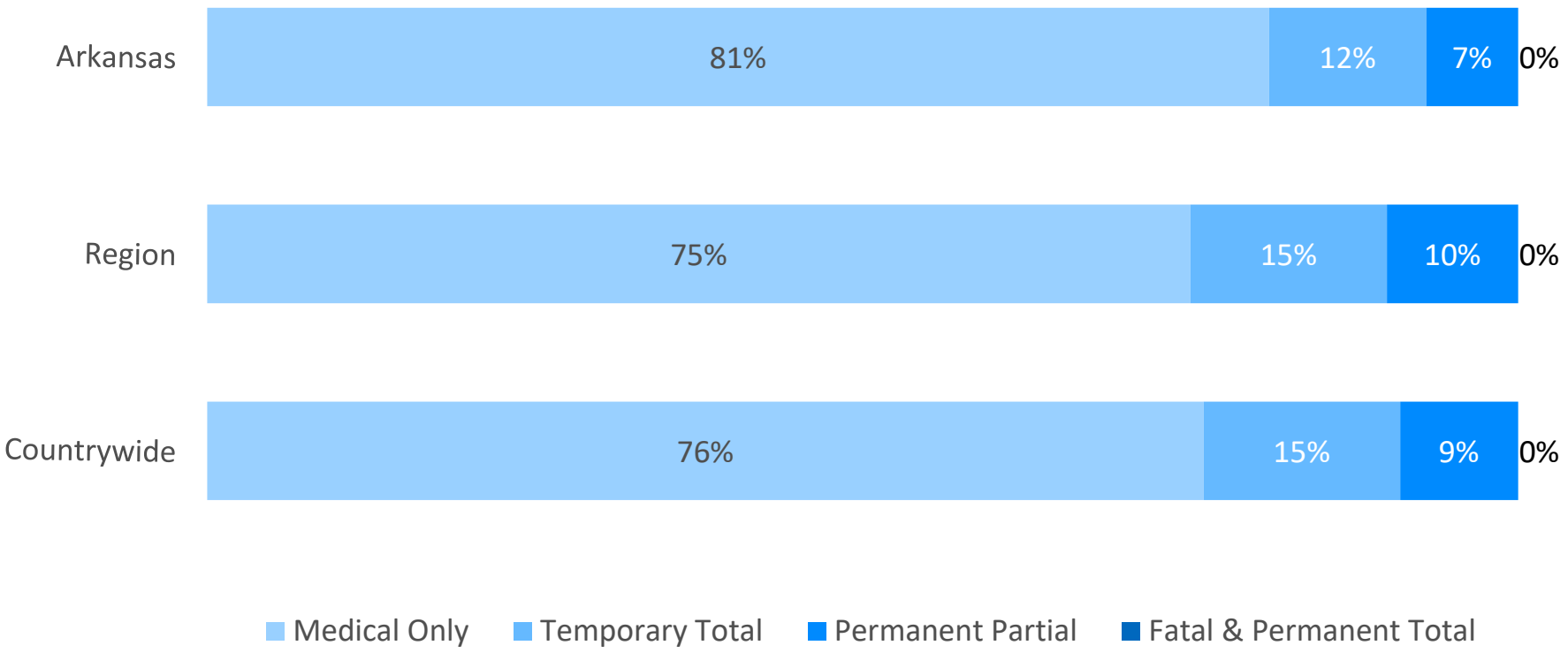
in $ Thousands



*Unlimited

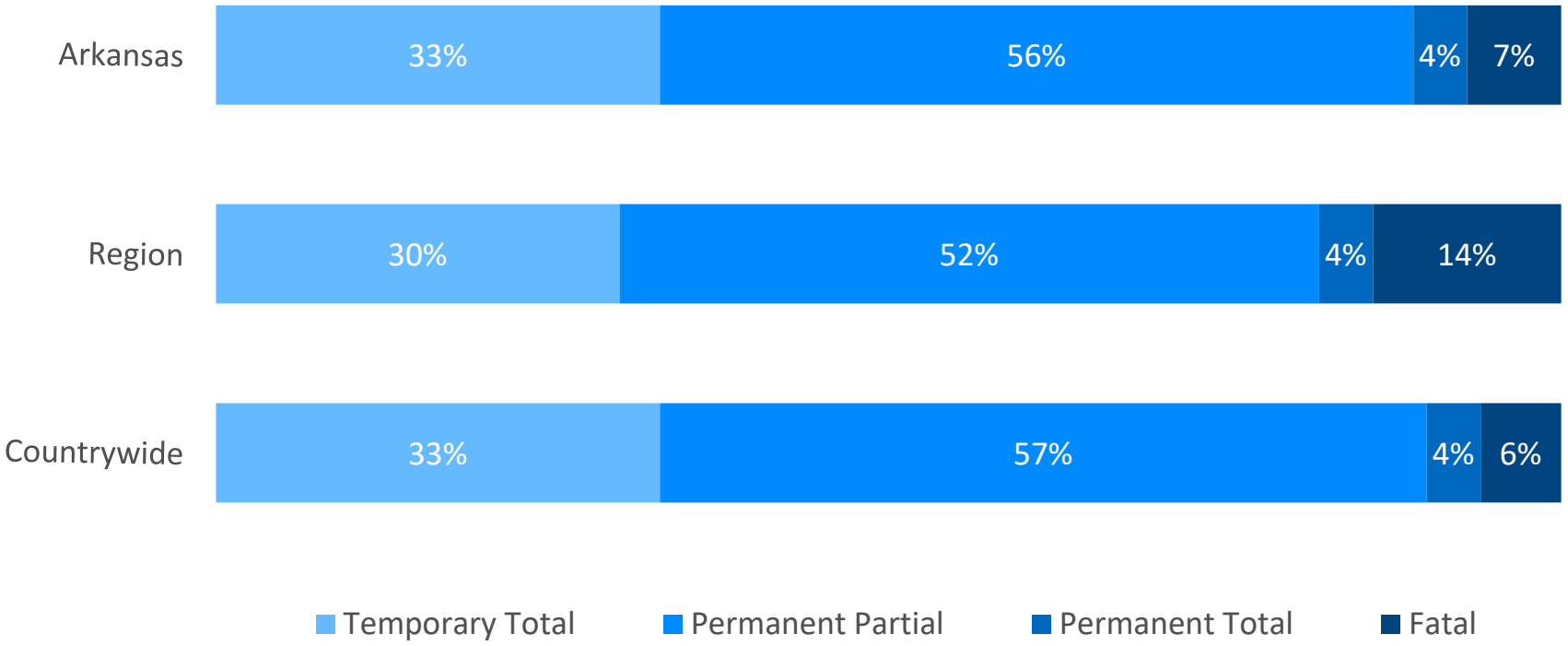
Based on NCCI's financial data for lost-time claims at current benefit level and developed to ultimate, with premium adjusted to common wage level

Arkansas
Distribution of Claims by Injury Type



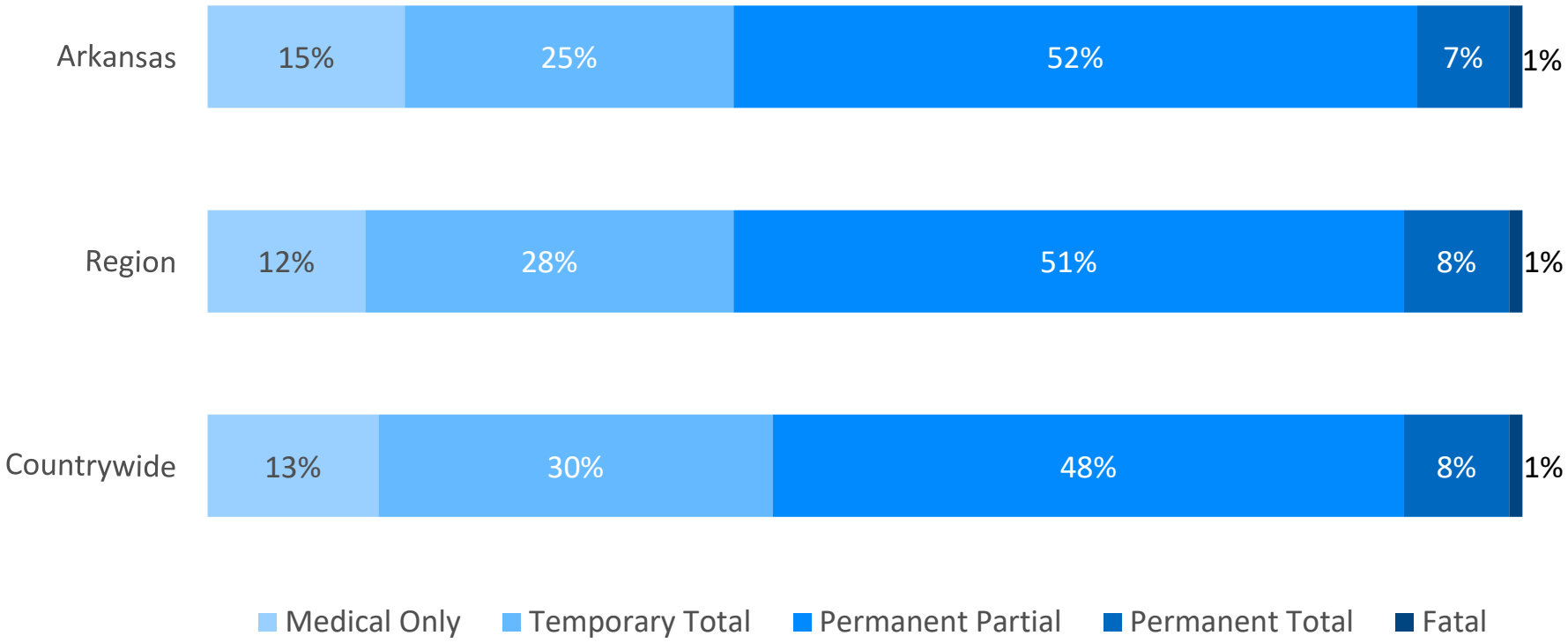
Regional states are LA, MO, MS, OK, TN, and TX
Based on NCCI's ***Statistical Plan*** data for jurisdiction/claim type combinations for which three or more cases exist

Arkansas
Indemnity Loss Distribution by Injury Type



Regional states are LA, MO, MS, OK, TN, and TX
Based on NCCI's ***Statistical Plan*** data for jurisdiction/claim type combinations for which three or more cases exist

Arkansas
Medical Loss Distribution by Injury Type



Regional states are LA, MO, MS, OK, TN, and TX
Based on NCCI's ***Statistical Plan*** data for jurisdiction/claim type combinations for which three or more cases exist

Glossary

Glossary

Active Claim—A workers compensation claim for which there is at least one medical service provided during that service year.

Ambulatory Surgical Center (ASC)—A state-licensed facility that is used mainly to perform outpatient surgery, has a staff of physicians, has continuous physician and nursing care, and does not provide for overnight stays. An ASC can bill for facility fees much like a hospital, but generally has a separate fee schedule.

Assigned Risk Adjustment Program (ARAP)—An assigned risk market program that surcharges residual market risks based on the magnitude of their experience rating modification.

Calendar-Accident Year (CAY)—The accumulation of loss data on all accidents with the date of occurrence falling within a given calendar year. The premium figure is the same as that used in calendar year experience.

Glossary

Calendar Year (CY)—Experience of earned premium and loss transactions occurring within the calendar year beginning January 1, irrespective of the contractual dates of the policies to which the transactions relate and the dates of the accidents.

Claim Frequency—The number of claims per unit of exposure; for example, the number of claims per million dollars of premium or per 100 workers.

Claim Severity—The average cost of a claim. Severity is calculated by dividing total losses by the total number of claims.

Combined Ratio—The sum of the (1) loss ratio, (2) expense ratio, and (3) dividend ratio for a given time period.

Detailed Claim Information (DCI)—An NCCI Call that collects detailed information on an individual workers compensation lost-time claim basis, such as type of injury, whether or not an attorney was involved, and the timing of the claim's report to the carrier.

Glossary

Diagnosis Groups—Based on ICD-10 codes; groups based on similar injuries and parts of body.

Direct Written Premium (DWP)—The gross premium income adjusted for additional or return premiums but excluding any reinsurance premiums.

Drugs—Includes any data reported by a National Drug Code (NDC). Also included are data for revenue codes, the Healthcare Common Procedure Code System (HCPCS), and other state-specific codes that represent drugs.

Durable Medical Equipment—Equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and is not generally useful to a person in the absence of an illness or injury.

Glossary

Hospital Inpatient Service—Services for a patient who is admitted to a hospital for treatment that requires at least one overnight stay (more than 24 hours in a hospital). Payment for a hospital inpatient service is limited to the payment made for the facility cost.

Hospital Inpatient Stay—A hospital admission of a patient requiring hospitalization of at least one 24-hour period.

Hospital Outpatient Service—Any type of medical or surgical care performed at a hospital that is not expected to result in an overnight hospital stay (less than 24 hours in a hospital). Payment for a hospital outpatient service is limited to the payment made for the facility cost.

Indemnity Benefits—Payments by an insurance company to cover an injured worker's time lost from work. These benefits are also referred to as "wage replacement" benefits.

Loss Ratio—The ratio of losses to premium for a given time period.

Glossary

Lost-Time (LT) Claims—Claims resulting in indemnity benefits (and usually medical benefits) being paid to, or on behalf of, the injured worker for time lost from work.

Medical Data Call—Captures transaction-level detail for medical billings that were processed on or after July 1, 2010. All medical transactions with the jurisdiction state in any applicable Medical Data Call state are reportable. This includes all workers compensation claims, including medical-only claims.

Medical-Only Claims—Claims resulting in only medical benefits being paid on behalf of an injured worker.

Net Written Premium (NWP)—The gross premium income adjusted for additional or return premiums; includes any additions for reinsurance assumed and any deductions for reinsurance ceded.

Glossary

Permanent Partial (PP)—A disability that is permanent but does not involve a total inability to work. The specific definition and associated workers compensation benefits are defined by statute and vary by jurisdiction.

Policy Year (PY)—The year of the effective date of the policy. Policy year financial results summarize experience for all policies with effective dates in a given calendar year period.

Prescription Count—Number of drug prescriptions, where refills are counted separately.

Schedule Rating—A debit and credit plan that recognizes variations in the hazard-causing features of an individual risk.

Service Year—A loss accounting term for experience that is summarized by the calendar year in which a medical service was provided.

Glossary

Surgery Visit—A visit in which at least one surgery procedure is performed based on the reported procedure code.

Take-Out Credit Program—An assigned risk program that encourages carriers to write current residual market risks in the competitive voluntary marketplace.

Temporary Total (TT)—A disability that totally disables a worker for a temporary period of time.

Units—The number of units of service performed or the quantity of drugs dispensed. For Paid Procedure Codes related to medications, the quantity/units depend on the type of drug:

- For tablets, capsules, suppositories, and nonfilled syringes, units represent the actual number of the drug provided. For example, a bottle of 30 pills would have 30 units.

Glossary

- For liquids, suspensions, solutions, creams, ointments, and bulk powders that are dispensed in standard packages, the units are specified by the procedure code. For example, a cream is dispensed in a standard tube, which is defined as a single unit.

- For liquids, suspensions, solutions, creams, ointments, and bulk powders that are not dispensed in standard packages, the number of units is the amount provided in its standard unit of measurement (e.g., milliliters, grams, ounces). For example, codeine cough syrup dispensed by a pharmacist into a four-ounce bottle would be reported as four units.

Visit—Any hospital outpatient or ASC service or set of services provided to a claimant on a specific date. At any visit, more than one procedure may be performed, and any claimant may have more than one visit.

Appendix

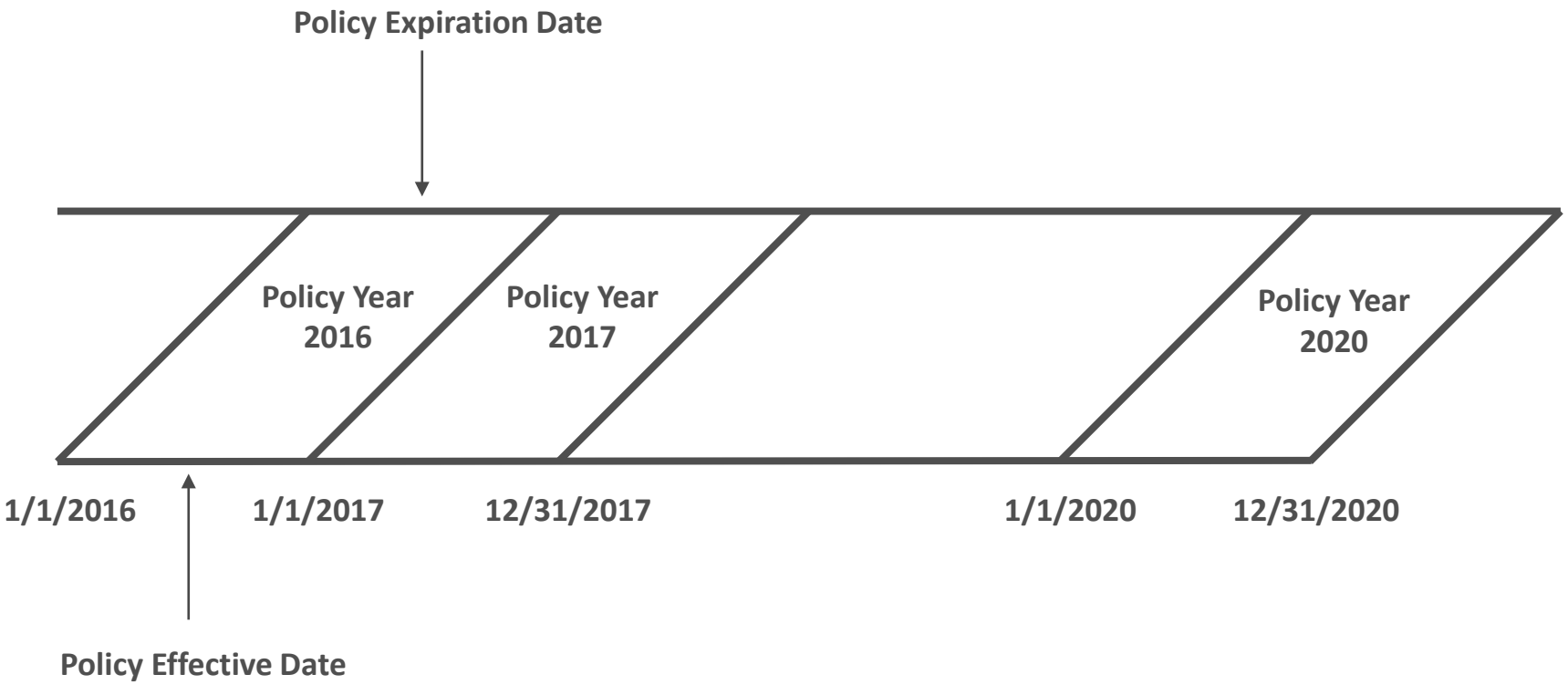
NCCI's Workers Compensation Resources

- Financial Aggregate Calls
  - Used for aggregate ratemaking
- ***Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan)***
  - Used for class ratemaking
- Detailed Claim Information
  - In-depth sample of lost-time claims
- Policy Data
  - Policy declaration page information

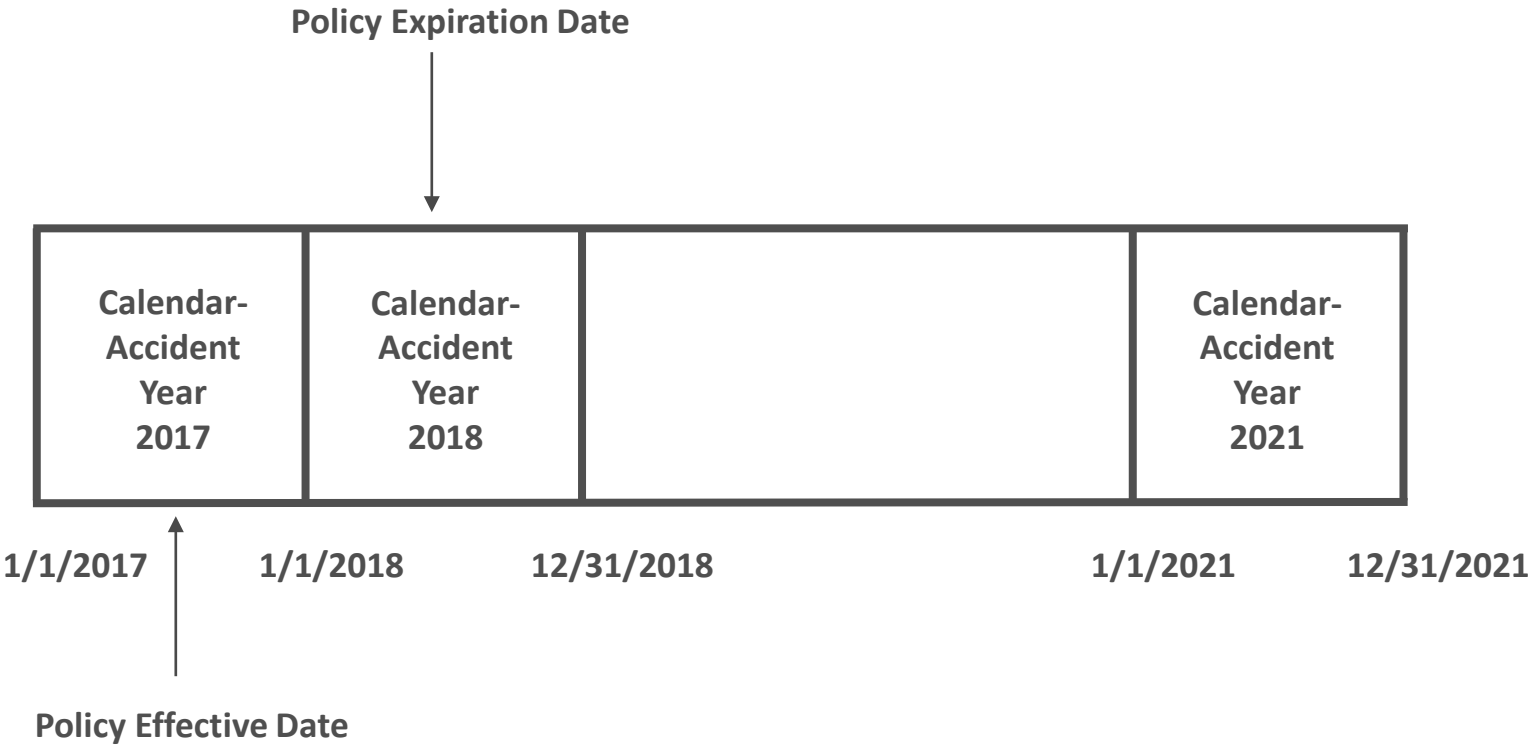
Financial Aggregate Calls

- Collected Annually
  - Policy and calendar-accident year basis
  - Statewide and assigned risk data
- Premiums, Losses, and Claim Counts
  - Evaluated as of December 31
- Purpose
  - Basis for overall aggregate rate indication
  - Research

Policy Year Financial Aggregate Data



Calendar-Accident Year Financial Aggregate Data



Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan) Data

- Experience by Policy Detail
  - Exposure, premium, and experience rating modifications
  - Individual claims by injury type
- Purposes
  - Classification relativities
  - Experience Rating Plan
  - Research

Valuation of Statistical Plan Data

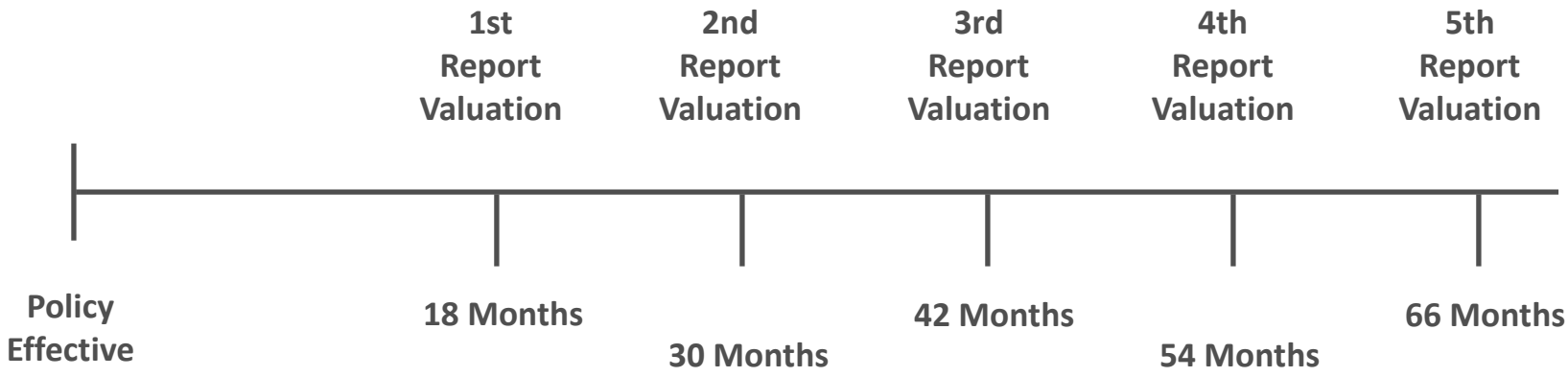
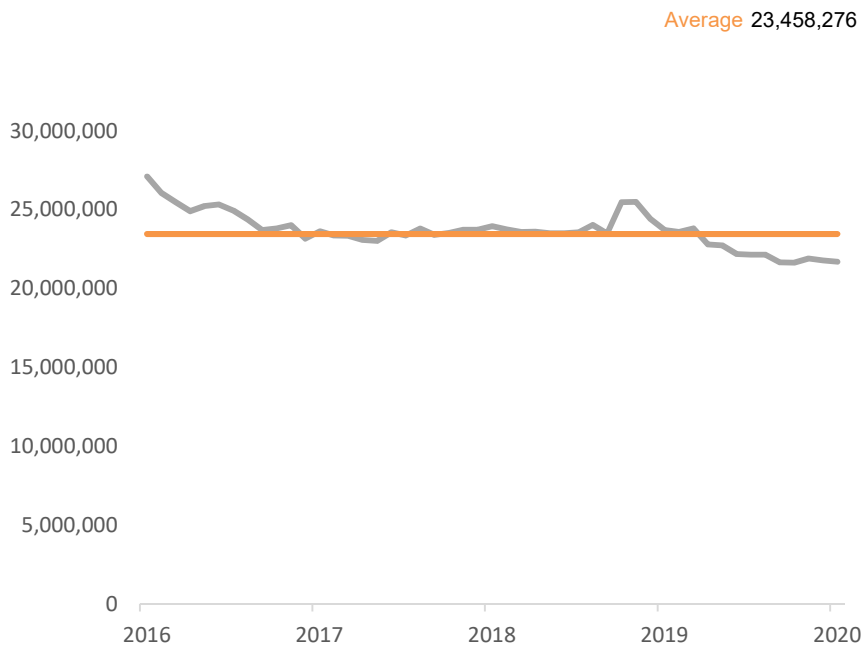


EXHIBIT "B"

Arkansas Plan Premium Report June 2020



AR

$1.9 million less premium than average

$111.8 (000) more premium than in May

Premium Data Parameters

The Plan Premium figures below represent the size of the residual market in Arkansas as of the end of the month stated. These figures are 12-month rolling totals based on policies reported to NCCI by Servicing Carriers. They include assignments less than 120 days old that have not yet been reported as policies and a percentage of recently expired policies that NCCI expects to be renewed. These totals are net of cancellations and include any additional premium due to policy endorsements.

Arkansas Plan Premium Report

	2016	2017	2018	2019	2020
Jan	27,099,108	23,629,421	23,951,298	23,704,293	21,695,357
Feb	26,061,201	23,369,443	23,745,407	23,590,188	21,602,913
Mar	25,469,651	23,348,871	23,592,420	23,810,698	21,136,655
Apr	24,897,877	23,073,914	23,600,461	22,790,524	21,317,707
May	25,230,100	23,018,278	23,500,730	22,737,340	21,413,463
Jun	25,331,807	23,556,627	23,511,816	22,180,504	21,525,283
Jul	24,948,891	23,362,169	23,562,582	22,150,789	
Aug	24,383,211	23,815,183	24,021,119	22,136,720	
Sep	23,707,130	23,391,068	23,482,843	21,652,835	
Oct	23,812,136	23,517,404	25,475,125	21,635,441	
Nov	24,010,871	23,715,689	25,499,957	21,895,265	
Dec	23,153,890	23,723,785	24,423,320	21,776,112	

EXHIBIT "C"

State of the Line Report

Donna Glenn, FCAS, MAAA
Chief Actuary
NCCI

P&C Industry: Personal vs. Commercial Lines of Business

Personal Lines

- Favorable experience in personal auto has resulted in premium credits
- Homeowners has benefited from a relatively mild natural catastrophe season

Commercial Lines

- The policy language debate on business interruption considers the existence of coverage
- Potential responsibility for businesses to mitigate the spread of COVID-19 may fall under general liability or directors and officers
- As the line most sensitive to economic cycles, workers compensation may see more widespread impacts

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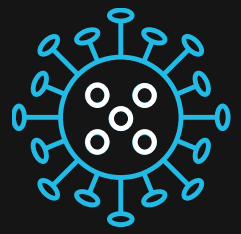
COVID-19 and Workers Compensation



COVID-19 Resource Center

- Frequently Asked Questions
- Real-time COVID-19 legislative activity
- *Quarterly Economics Briefing* series

COVID-19 and Workers Compensation: Modeling Potential Impacts

- White paper that evaluates potential WC system impacts from COVID-19
- Hypothetical Scenarios Tool

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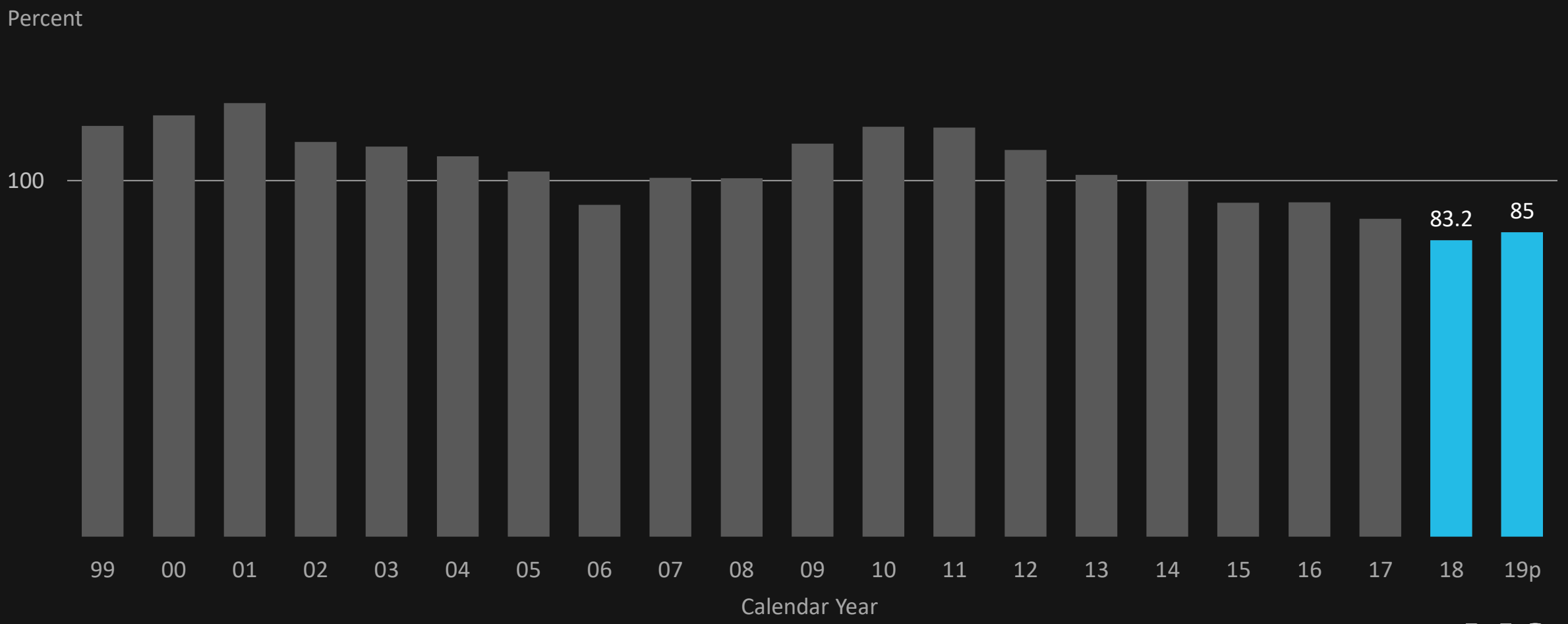
Workers Compensation (WC) Results

WC Combined Ratio—Underwriting Gain Achieved

Private Carriers



p Preliminary
Source: NAIC's Annual Statement data

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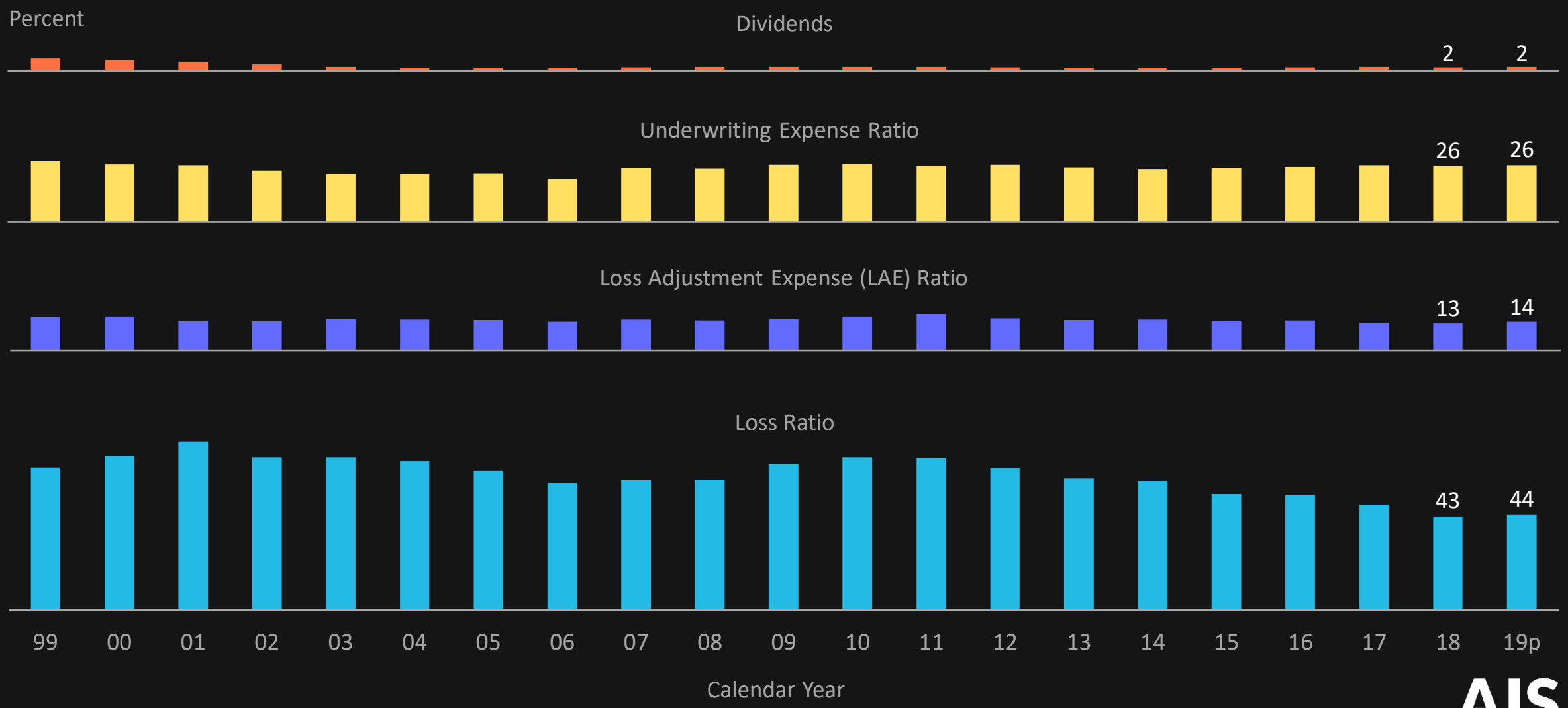
WC Combined Ratio by Component

Private Carriers



p Preliminary
Source: NAIC's Annual Statement data

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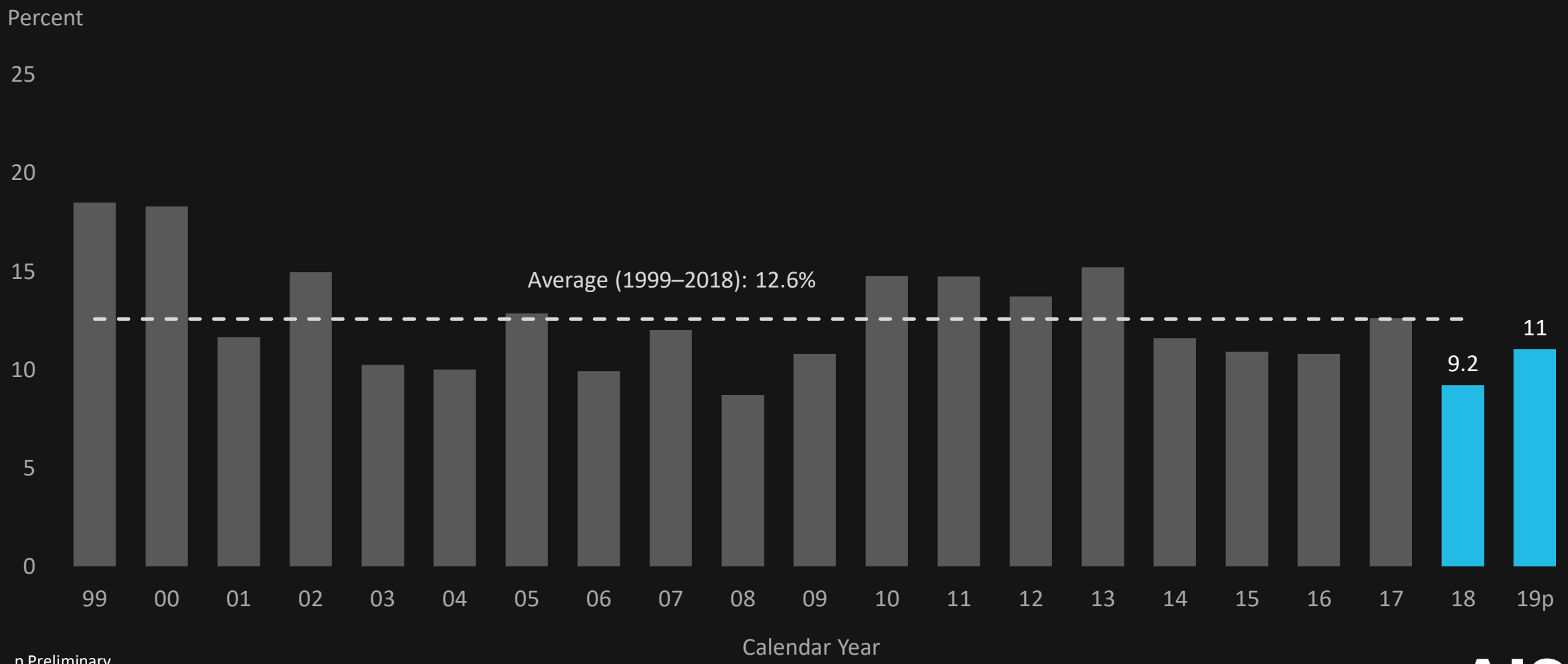
WC Investment Gain on Insurance Transactions

Ratio to Net Earned Premium, Private Carriers



p Preliminary
Source: NAIC's Annual Statement data
Investment Gain on Insurance Transactions includes Other Income
2013 is adjusted to exclude a material realized gain resulting from a single company transaction that involved corporate restructuring; unadjusted value is 19.4

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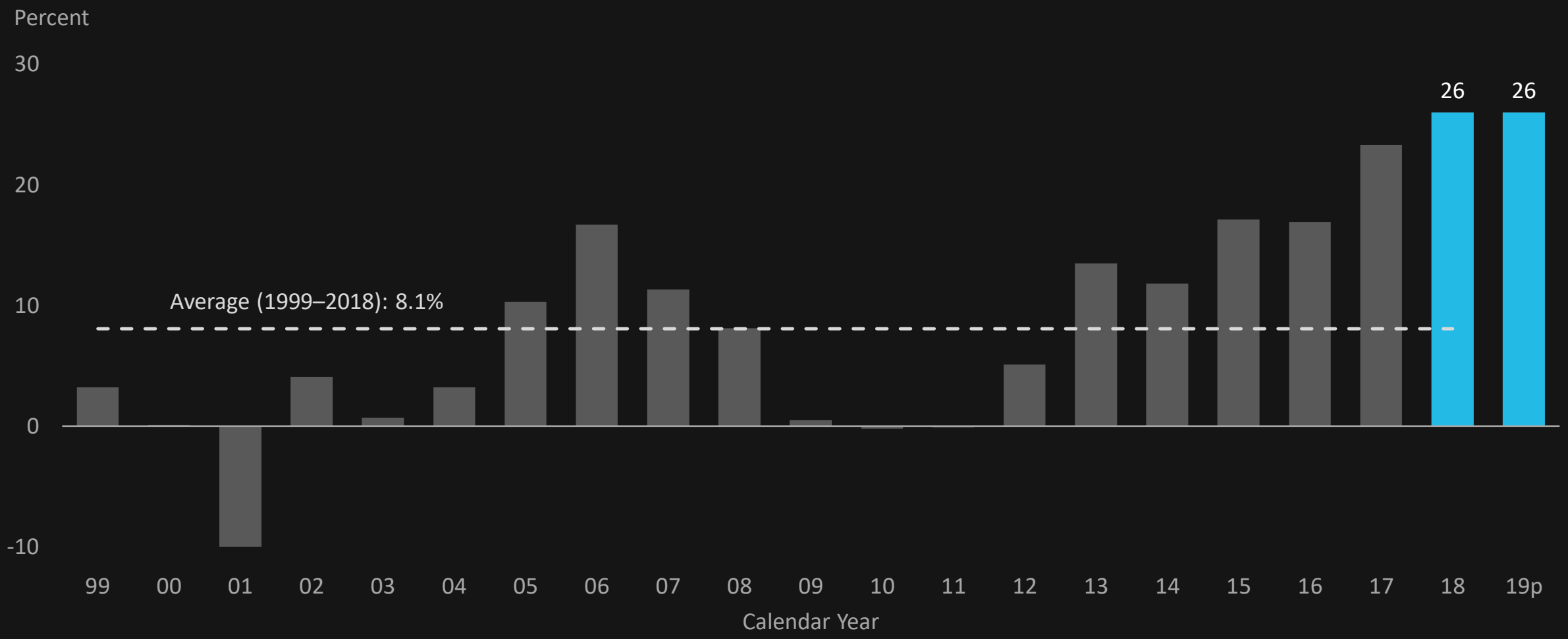
WC Pretax Operating Gain

Private Carriers



p Preliminary
Source: NAIC's Annual Statement data
Operating Gain equals 1.00 minus (Combined Ratio less Investment Gain on Insurance Transactions and Other Income)
2013 is adjusted to exclude a material realized gain resulting from a single company transaction that involved corporate restructuring; unadjusted value is 17.7

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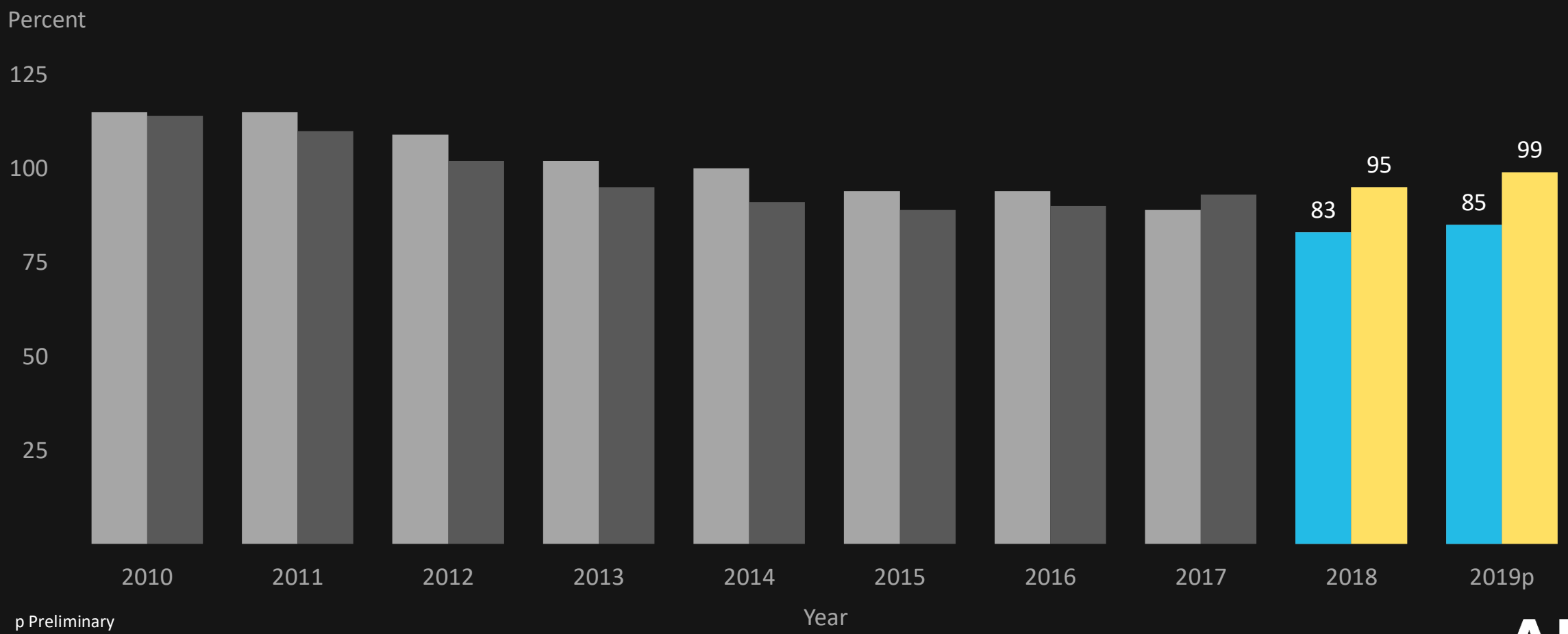
WC Net Combined Ratios—
Calendar Year vs. Accident Year As Reported

Private Carriers

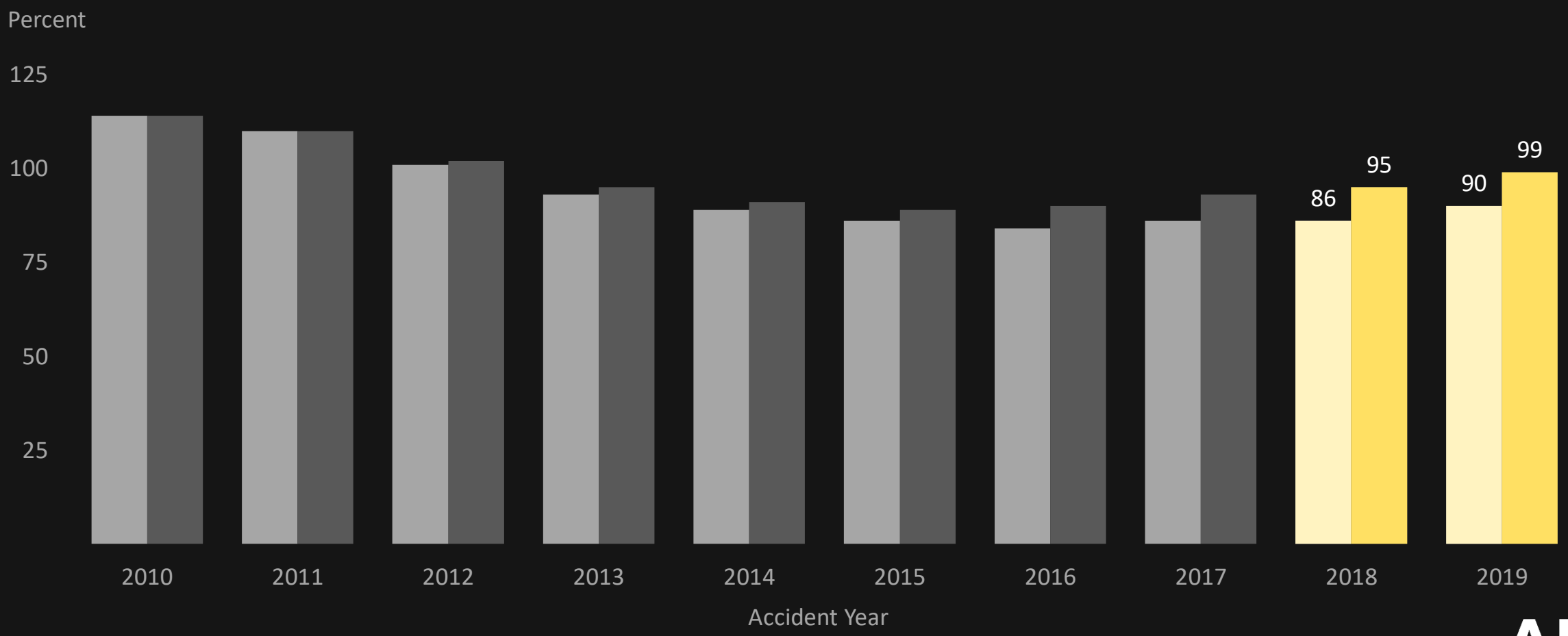


p Preliminary
Source: NAIC's Annual Statement data
Accident Year information is reported as of 12/31/2019
Includes dividends to policyholders

AIS VIRTUAL

WC Net Combined Ratios—
NCCI's Accident Year Selections vs. As Reported

Private Carriers

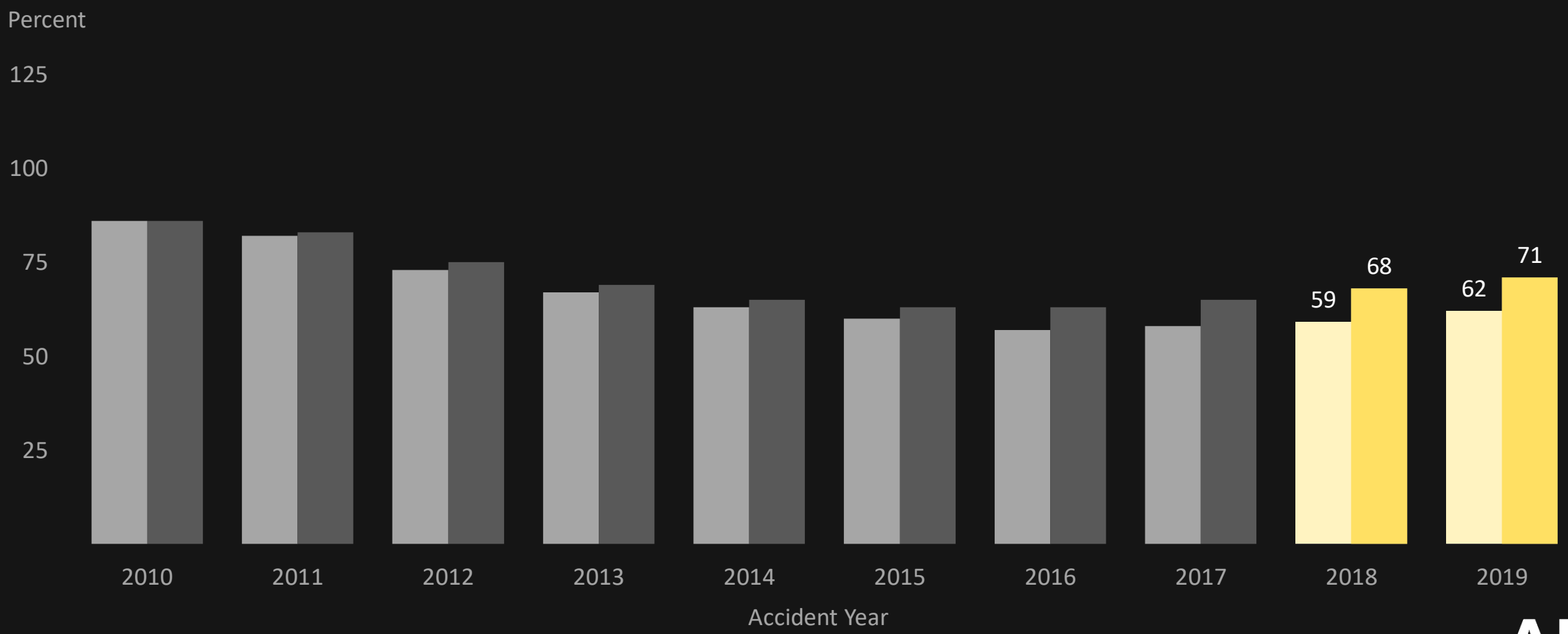


Sources: As Reported: NAIC's Annual Statement Schedule P—Part 1D data as of 12/31/2019
NCCI Selections: NCCI's analysis based on NAIC's Annual Statement data

AIS VIRTUAL

WC Net Loss and LAE Ratios—
NCCI's Accident Year Selections vs. As Reported

Private Carriers



Sources: As Reported: NAIC's Annual Statement Schedule P—Part 1D data as of 12/31/2019
NCCI Selections: NCCI's analysis based on NAIC's Annual Statement data
As Reported Loss and LAE ratios are net of tabular reserve discounts and gross of nontabular reserve discounts

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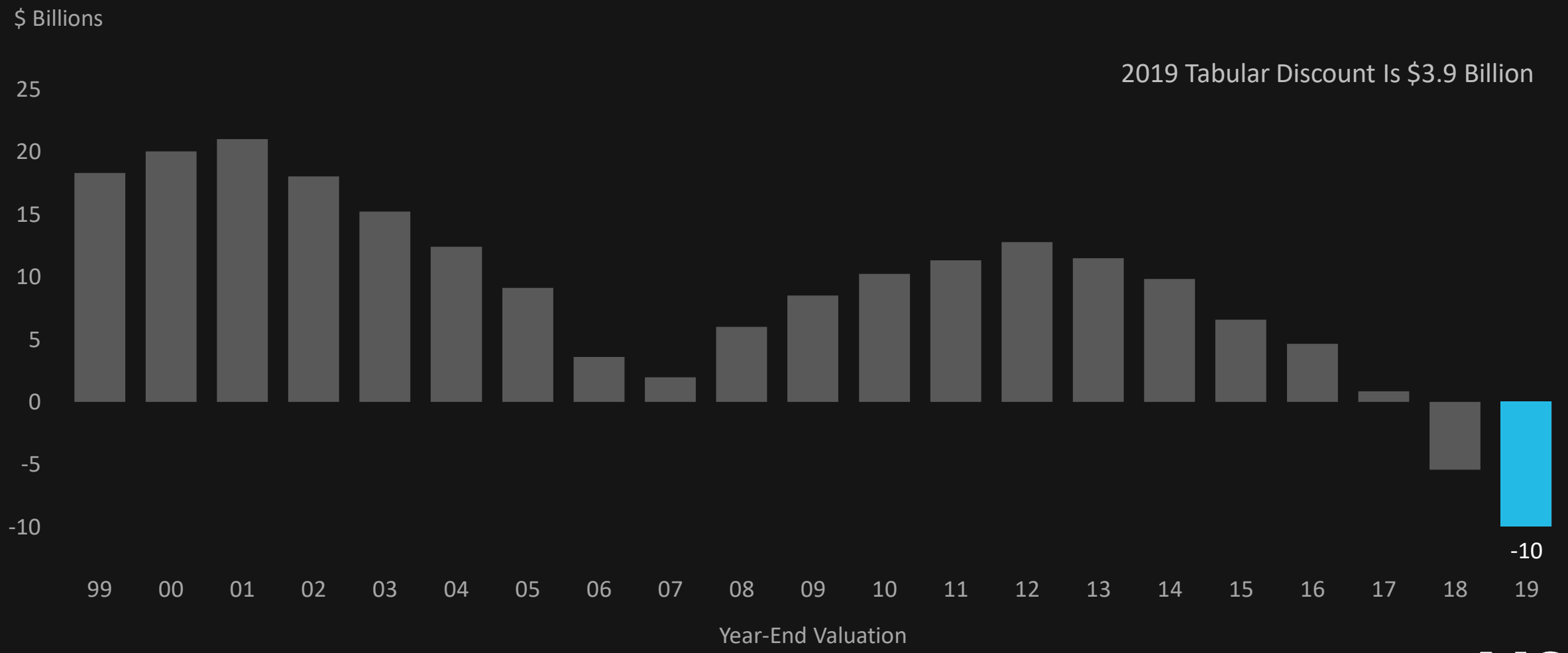
WC Net Loss and LAE Reserve Adequacy

Private Carriers



Source: NCCI's analysis based on NAIC's Annual Statement data
Considers all reserve discounts as deficiencies

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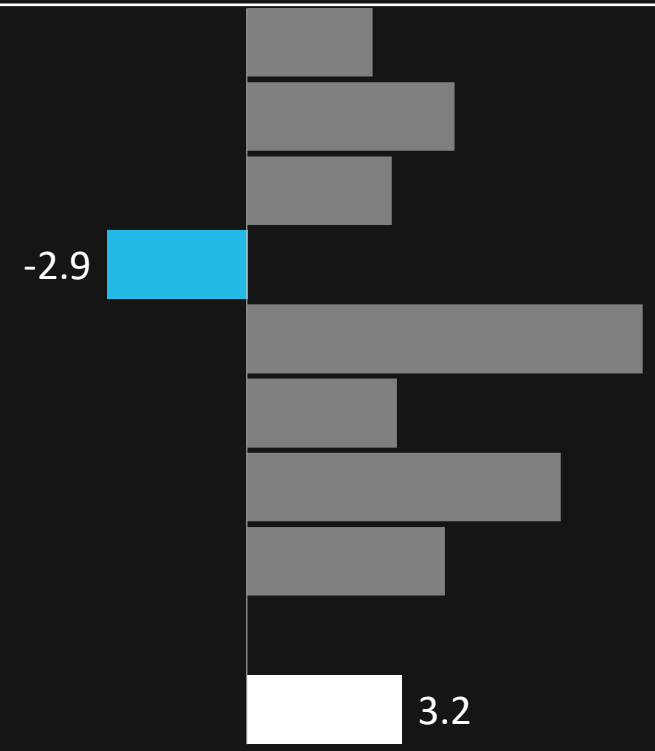
Property & Casualty (P&C) Industry Results

P&C Industry Net Written Premium Growth

Private Carriers

Line of Business	2018 ($B)	2019p ($B)
Personal Auto	240.9	247.2
Homeowners	88.3	92.1
Other Liability (Incl. Product Liability)	62.4	64.3
Workers Compensation	43.3	42.0
Commercial Auto	35.8	38.7
Commercial Multiple Peril	37.5	38.6
Fire & Allied Lines (Incl. EQ)	30.2	32.1
All Other Lines	74.3	77.3
Total P&C Industry	**612.6**	**632.4**



p Preliminary

Source: NAIC's Annual Statement data for individual carriers prior to consolidation of affiliated carriers

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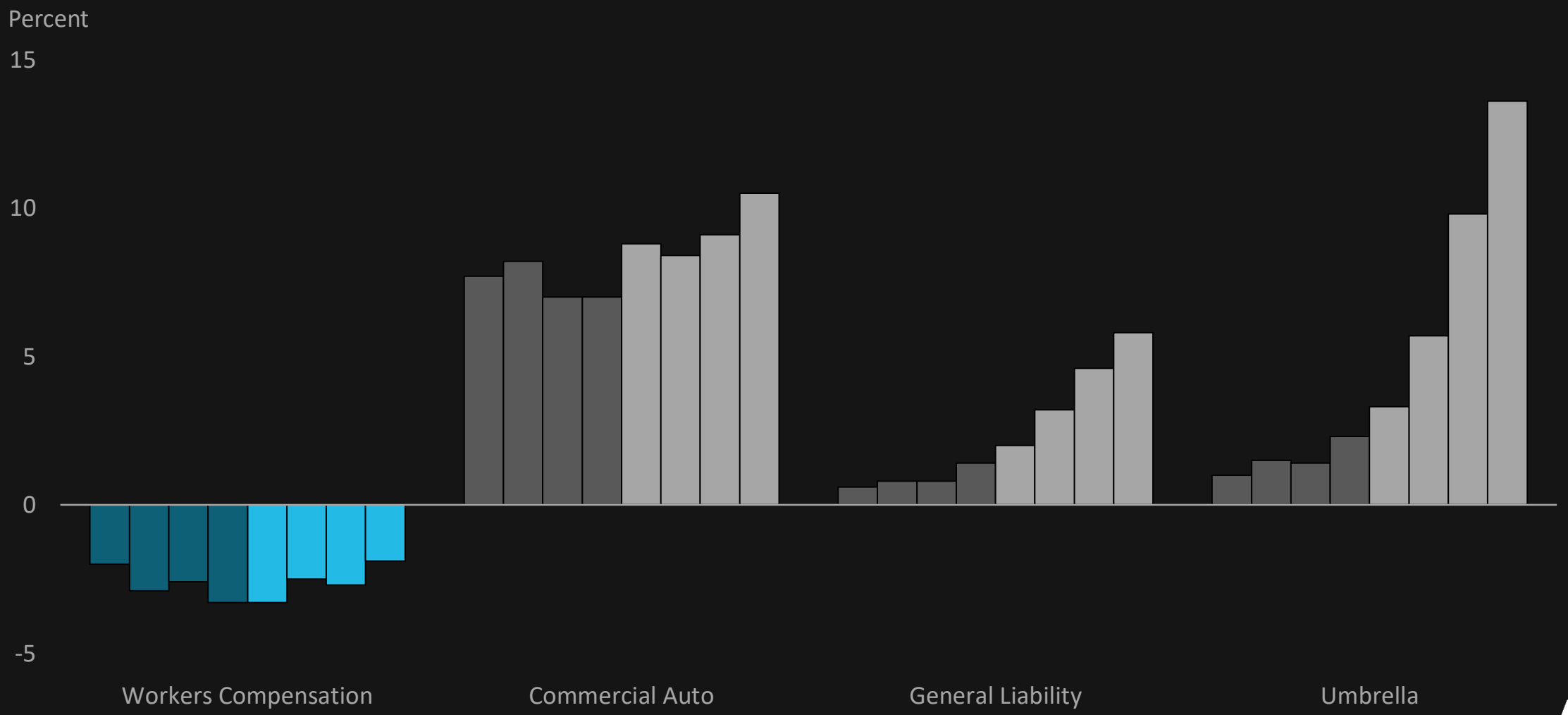
Quarterly Average Premium Changes by Line of Business

1Q 2018–4Q 2019



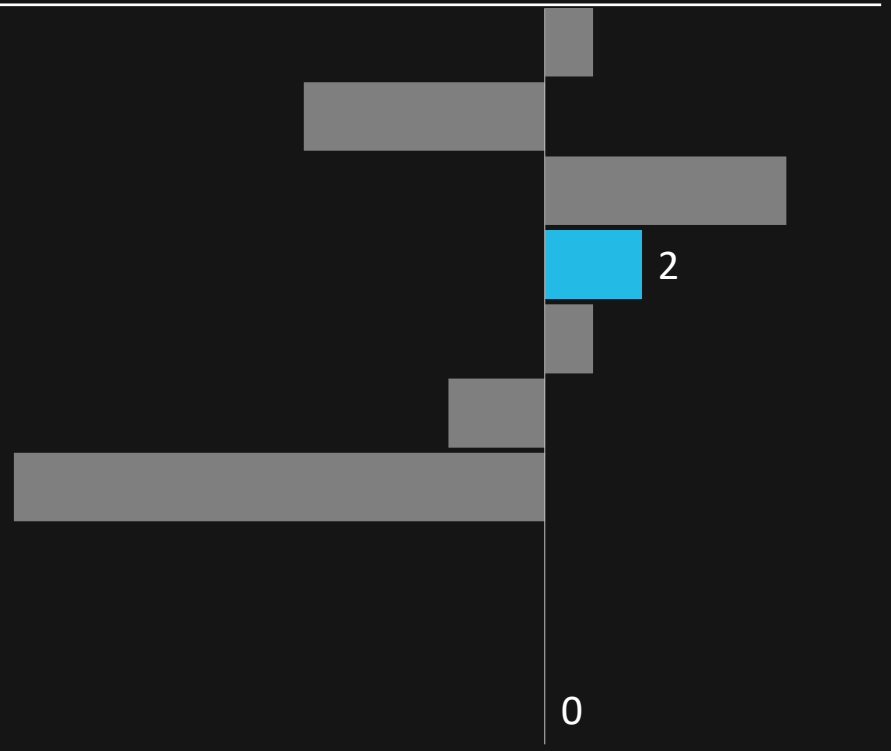
Sources: The Council of Insurance Agents & Brokers: Q4 P/C Market Index Surveys (2018–2019)

AIS VIRTUAL

P&C Industry Net Combined Ratio

Private Carriers

Line of Business	2018 (%)	2019p (%)
Personal Auto	98	99
Homeowners	104	99
Other Liability (Incl. Product Liability)	101	106
Workers Compensation	83	85
Commercial Auto	108	109
Commercial Multiple Peril	107	105
Fire & Allied Lines (Incl. EQ)	109	98
All Other Lines	92	92
Total P&C Industry	**99**	**99**



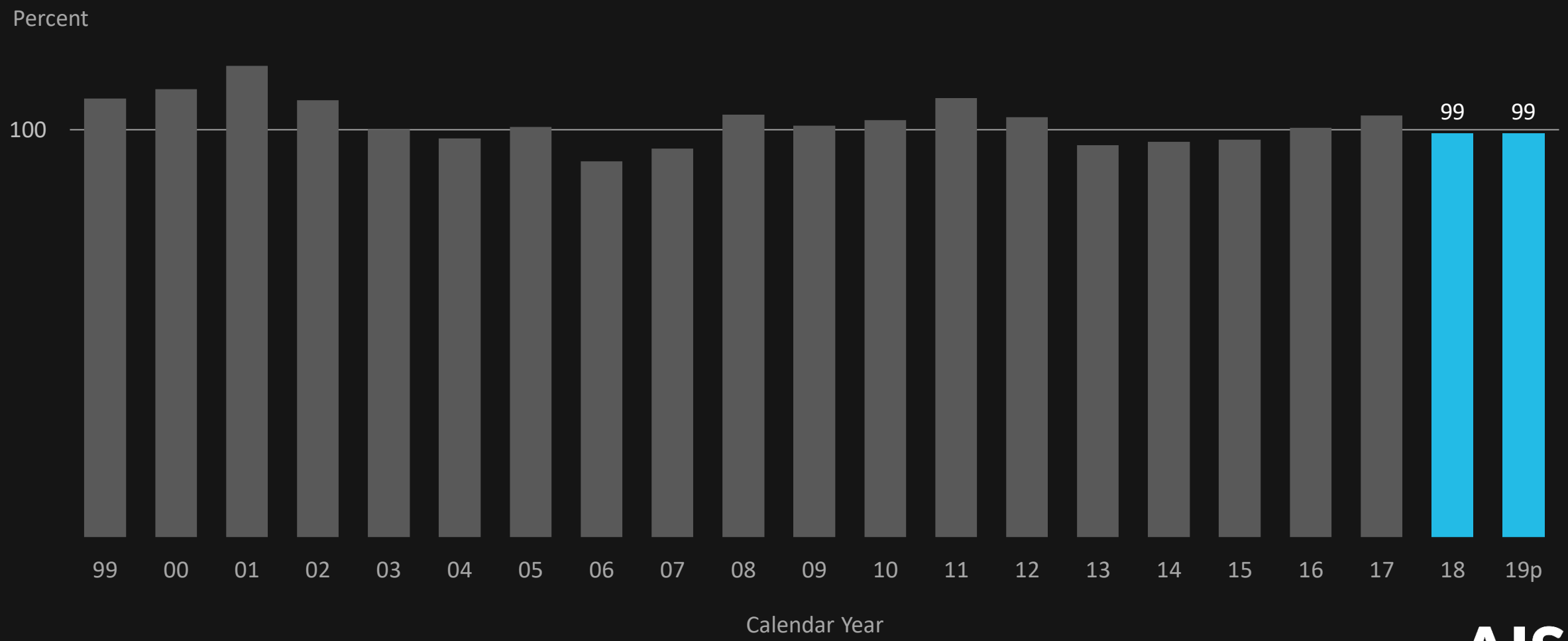
p Preliminary

Source: NAIC's Annual Statement data for individual carriers prior to consolidation of affiliated carriers

AIS VIRTUAL

P&C Industry Net Combined Ratio

Private Carriers



p Preliminary
Sources: 1999–2008 and 2013–2019p NAIC's Annual Statement data; 2009–2012 ISO

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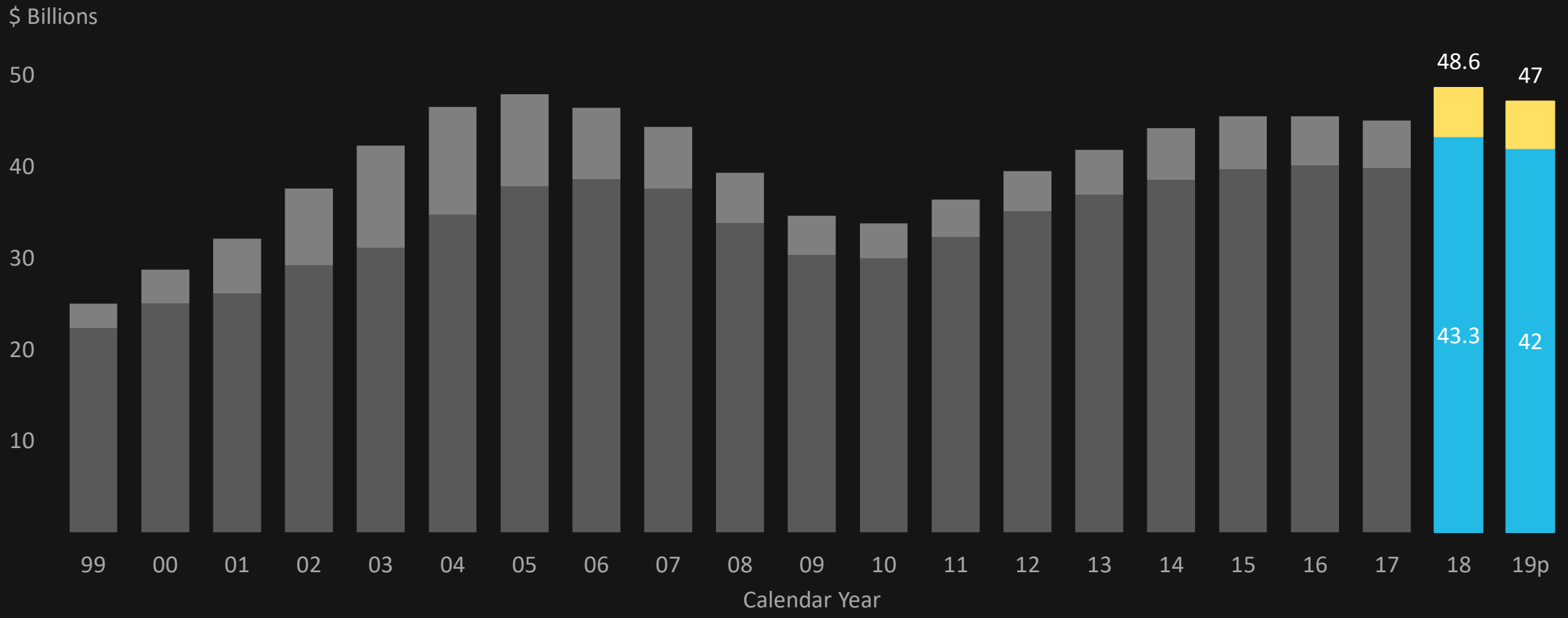
Workers Compensation Premium

WC Net Written Premium

Private Carriers and State Funds

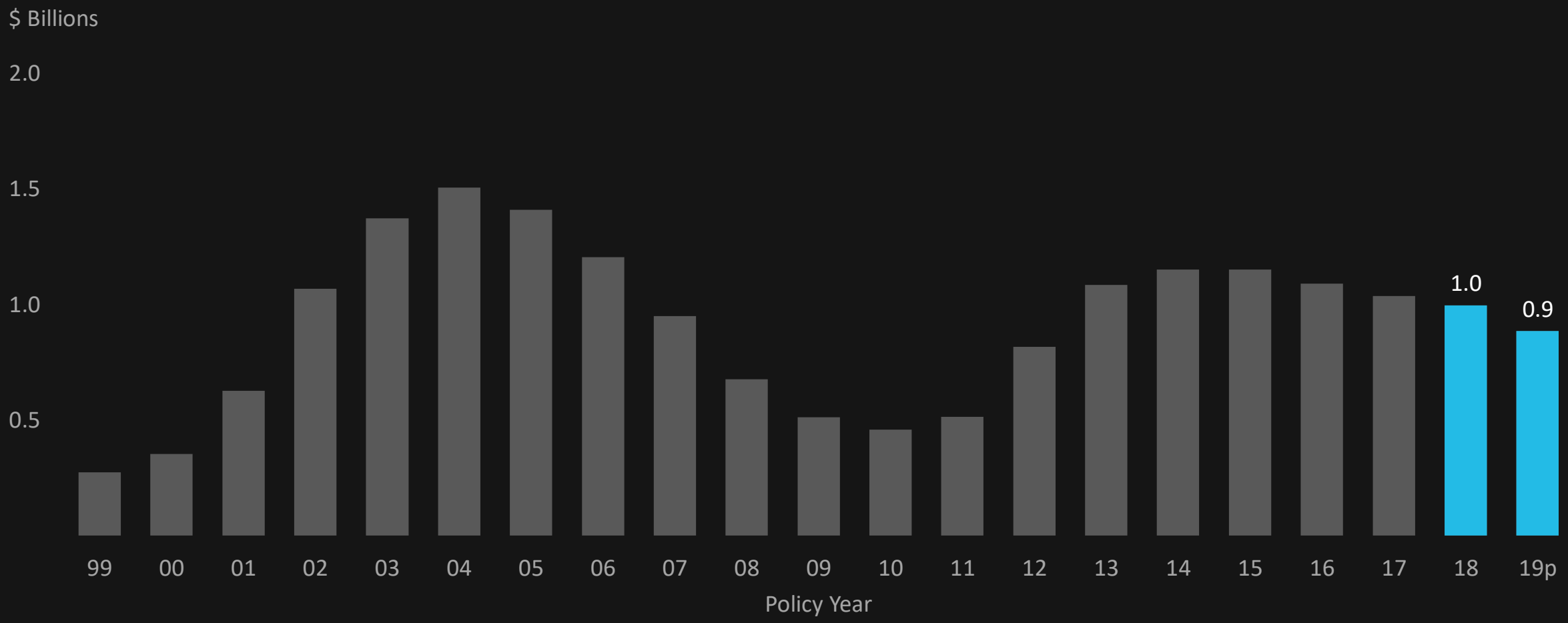


p Preliminary
Source: NAIC's Annual Statement data; includes state insurance fund data for the following states: AZ, CA, CO, HI, ID, KY, LA, MD, MO, MT, NM, OK, OR, RI, TX, and UT
Each calendar year total for state funds includes all funds operating as a state fund in that year

AIS VIRTUAL

WC Residual Market Premium

NCCI-Serviced WC Residual Market Pools



p Preliminary, incomplete policy year projected to ultimate
Source: NCCI's ***Residual Market Quarterly Results***
Includes Pool data for all NCCI-serviced WC Residual Market Pool states, valued as of 12/31/2019
Tennessee Reinsurance Mechanism premium is not included

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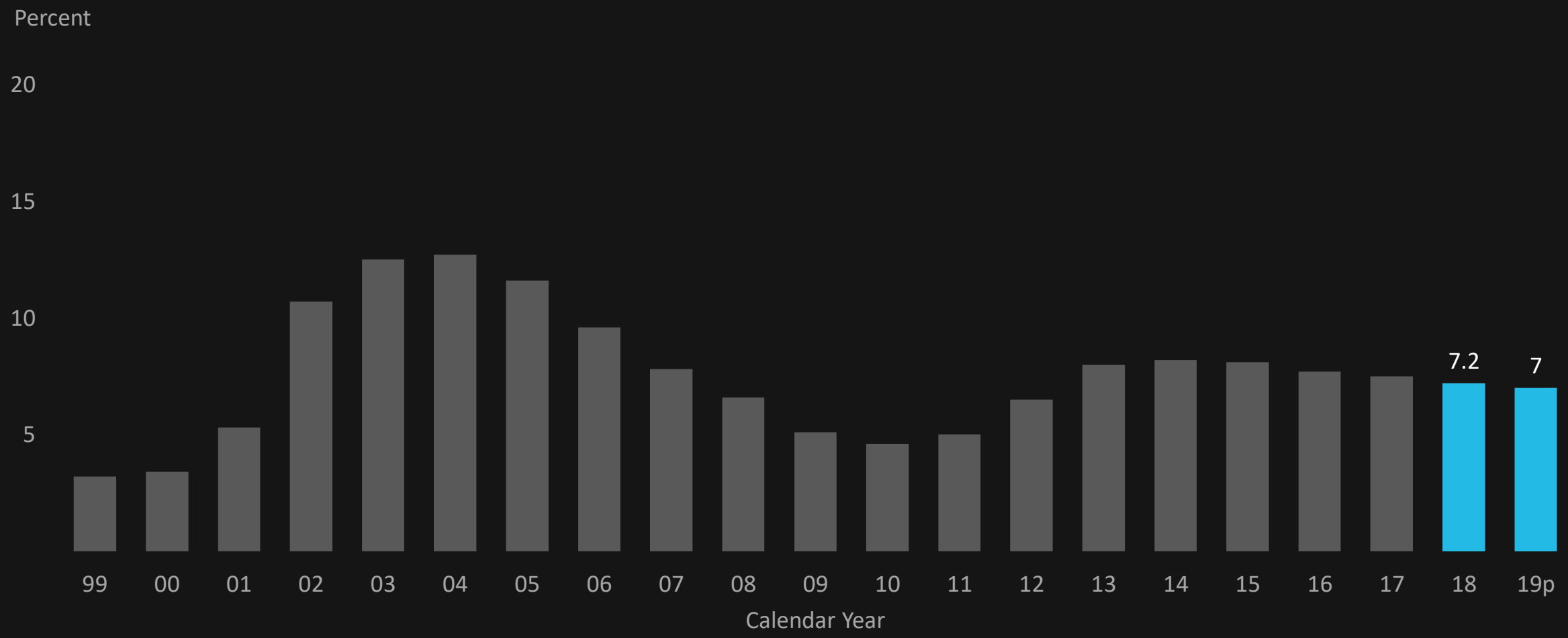
WC Residual Market Share

NCCI-Serviced WC Residual Market Pools

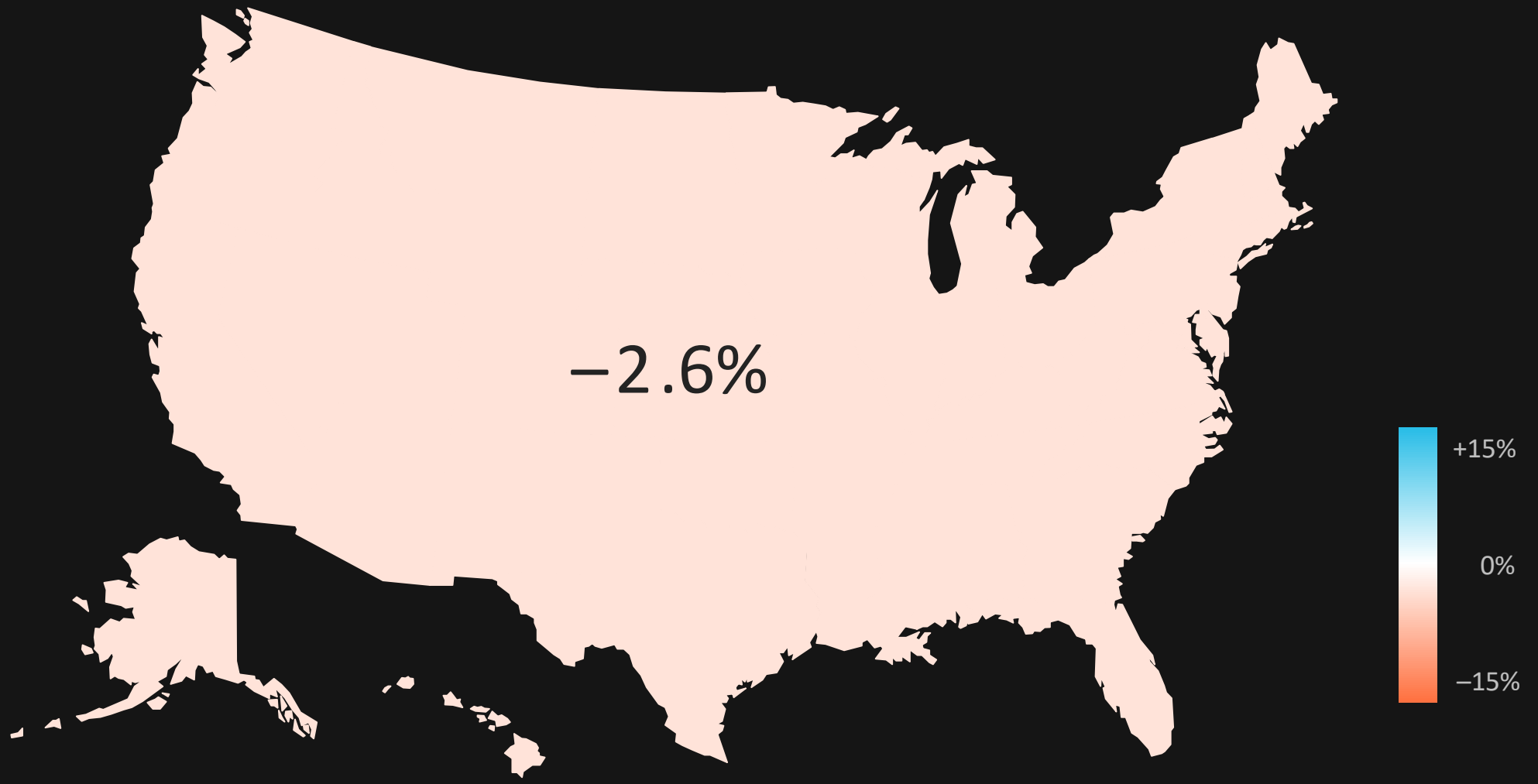


p Preliminary
Source: NCCI's ***Residual Market Management Summary***
Includes Pool and direct assignment data for all NCCI-serviced WC Residual Market Pool states

AIS VIRTUAL

WC Direct Written Premium Change—2019

Private Carriers

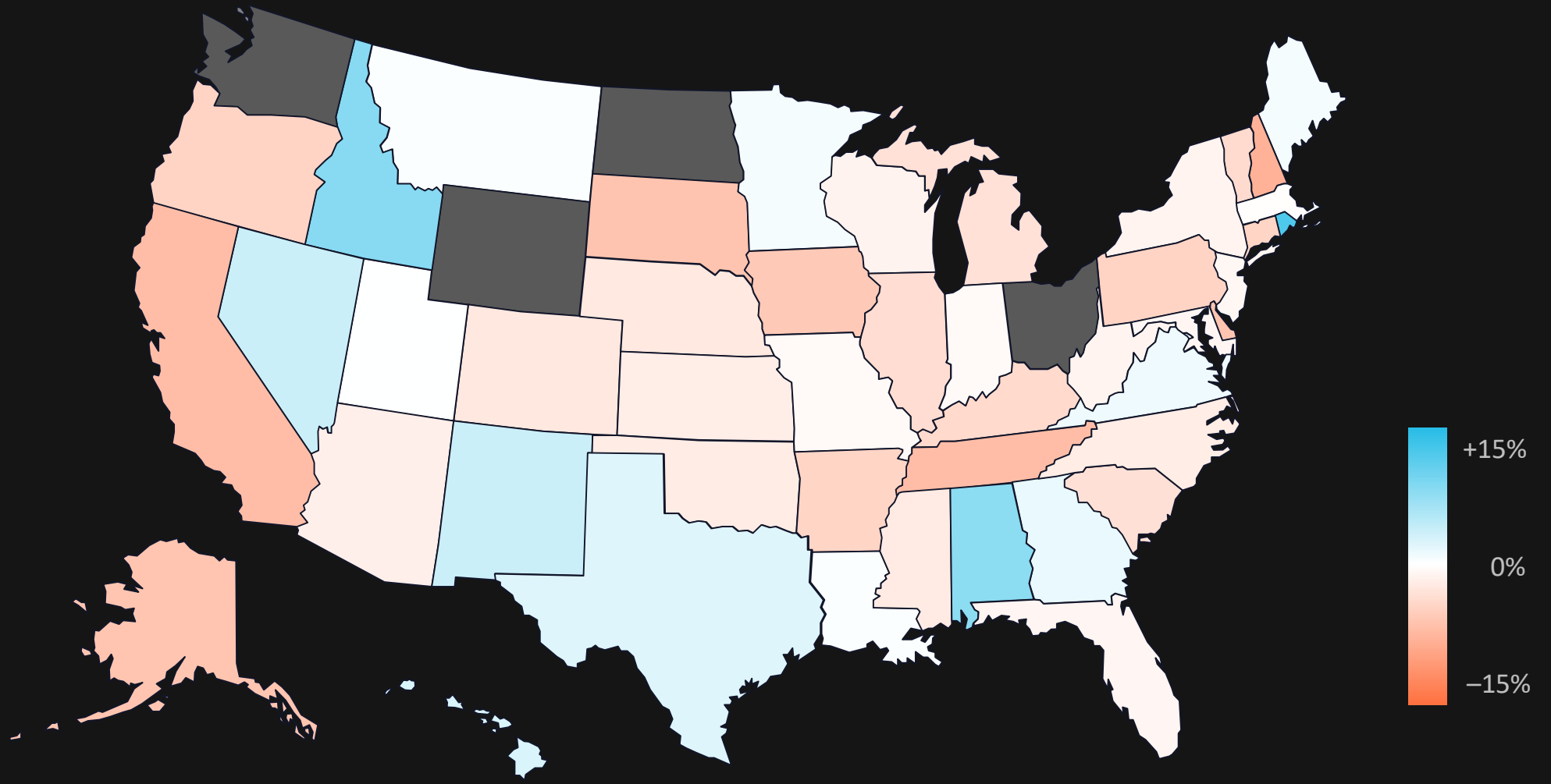


Source: 2018 and 2019 NAIC's Annual Statement Statutory Page 14

AIS VIRTUAL

WC Direct Written Premium Change—2019

Private Carriers

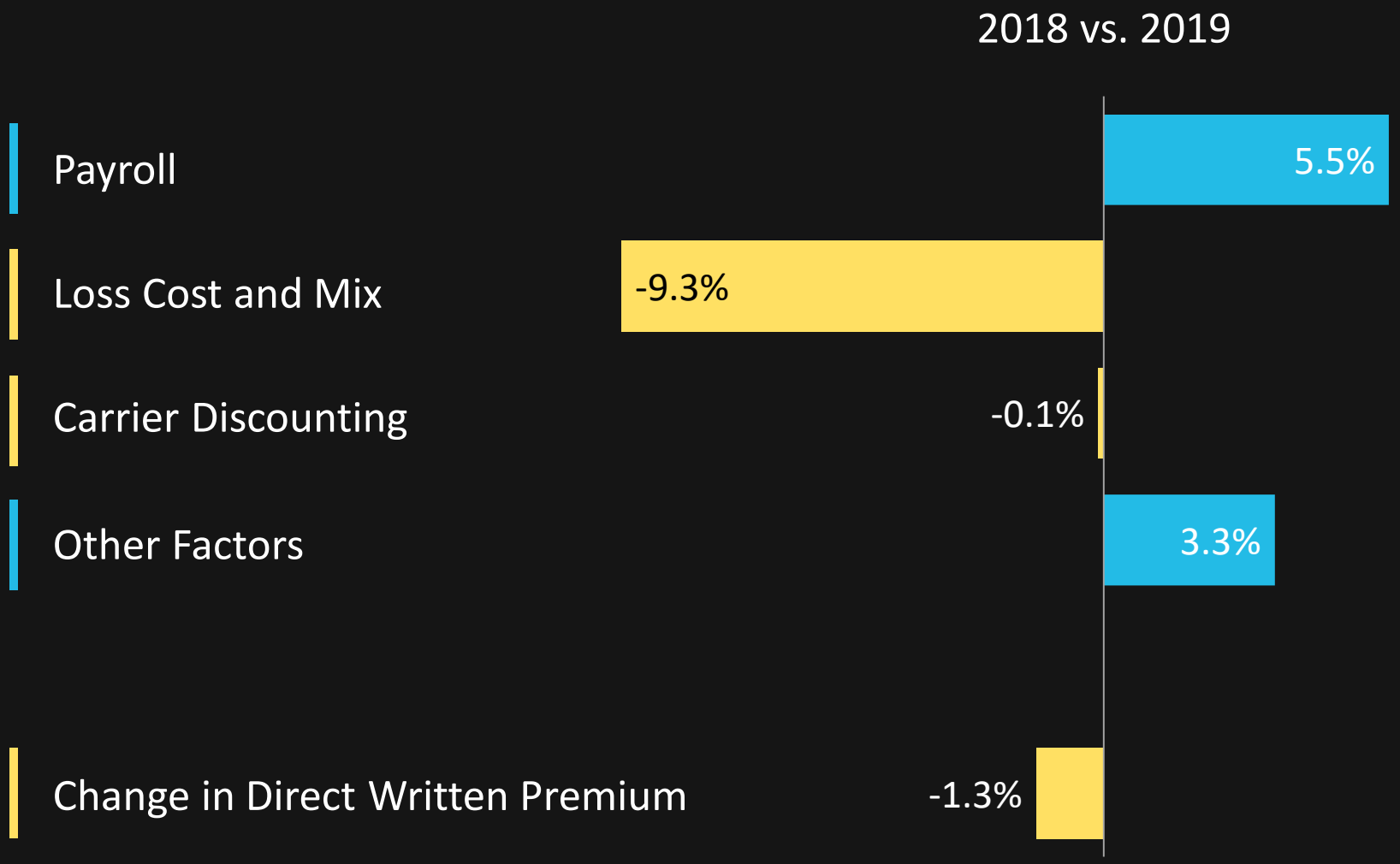


Source: 2018 and 2019 NAIC's Annual Statement Statutory Page 14

AIS VIRTUAL

WC Direct Written Premium Change by Component

Private Carriers—NCCI States



Sources: Direct Written Premium Change: NAIC's Annual Statement Statutory Page 14 for all states where NCCI provides ratemaking services
Components: NCCI's Policy data

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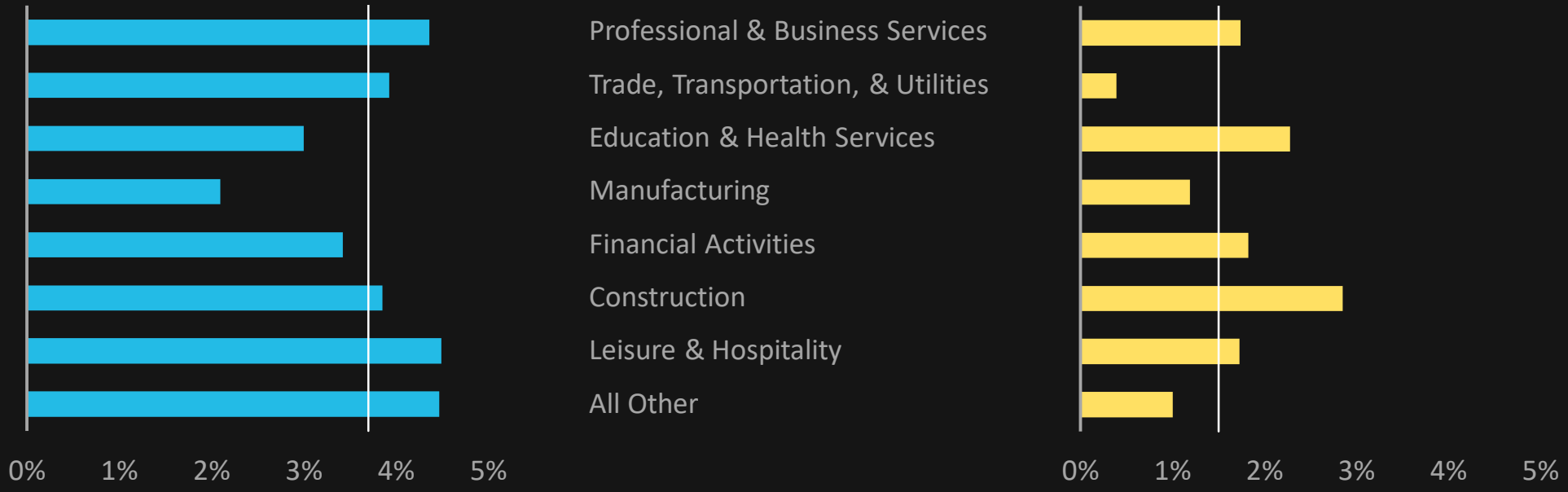
Changes in Payroll by Component

Forecast Change 2018–2019

Payroll 5.3%

Wage Rate 3.7%

Employment 1.5%



Sources: Moody's Analytics and NCCI

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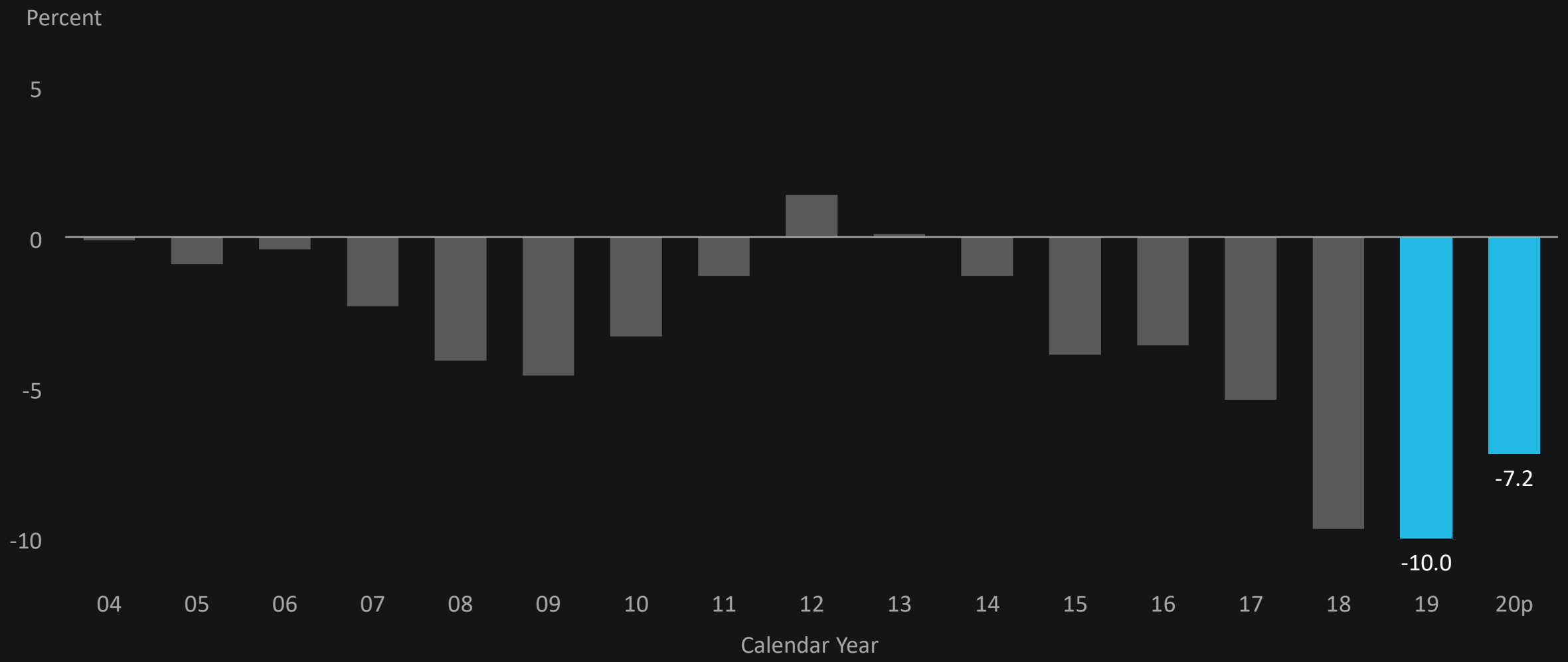
WC Approved Changes in Bureau Premium Level

Weighted by Effective Date—NCCI States

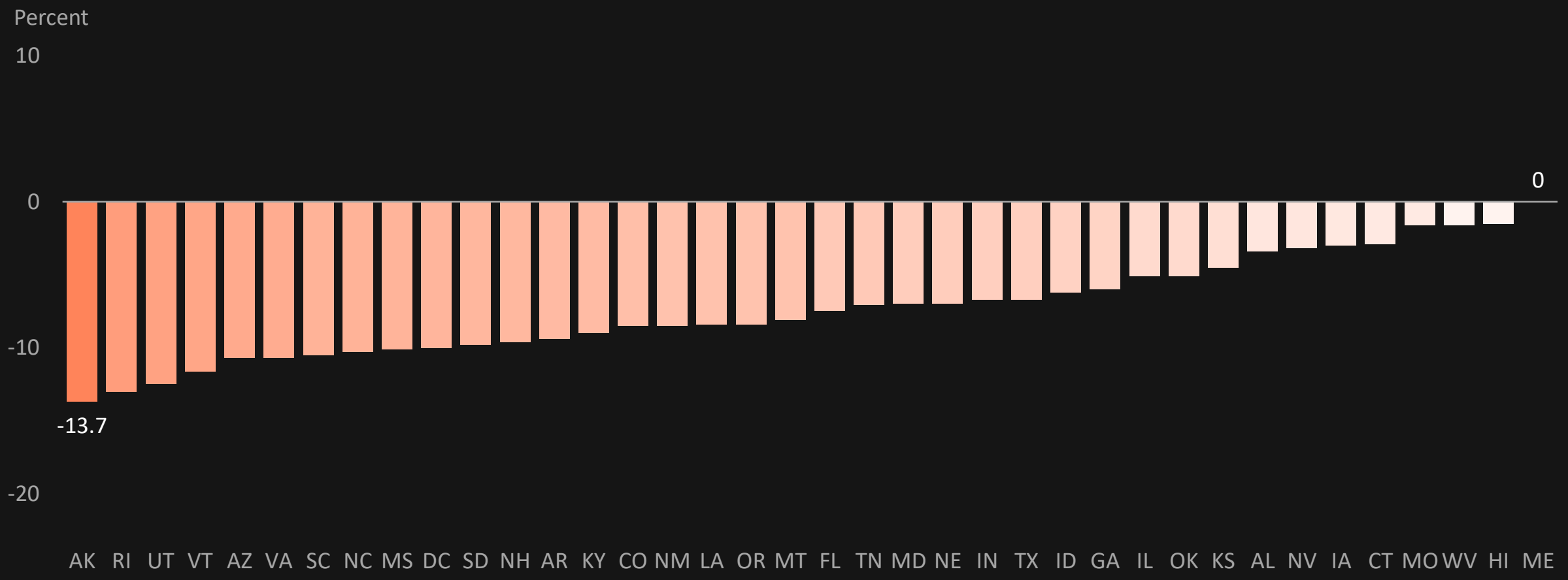


p Preliminary
Source: NAIC's Annual Statement Statutory Page 14
Values reflect changes in average premium levels between years, based on approved changes in advisory rates, loss costs, assigned risk rates, and rating values, as of 5/8/2020
IN and NC are filed in cooperation with state rating bureaus

AIS VIRTUAL

Most Recent Changes in Bureau Premium Level

Voluntary Market, Excludes Law-Only Filings



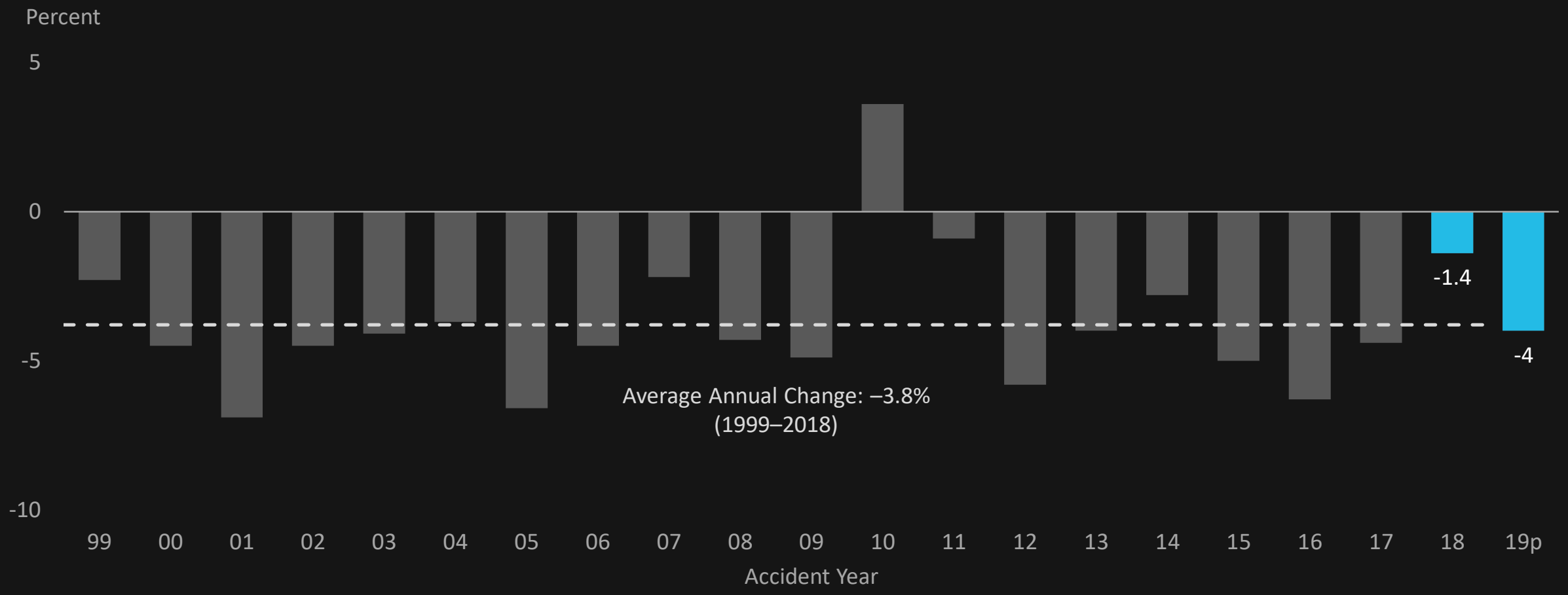
Premium level changes in advisory rates, loss costs, and rating values, as of 5/8/2020, as filed by the applicable rating organization, relative to those previously approved
IN and NC are filed in cooperation with state rating bureaus

AIS VIRTUAL

Workers Compensation Loss Drivers

WC Lost-Time Claim Frequency

Change in Claims per $1M Pure Premium, Private Carriers and State Funds—NCCI States

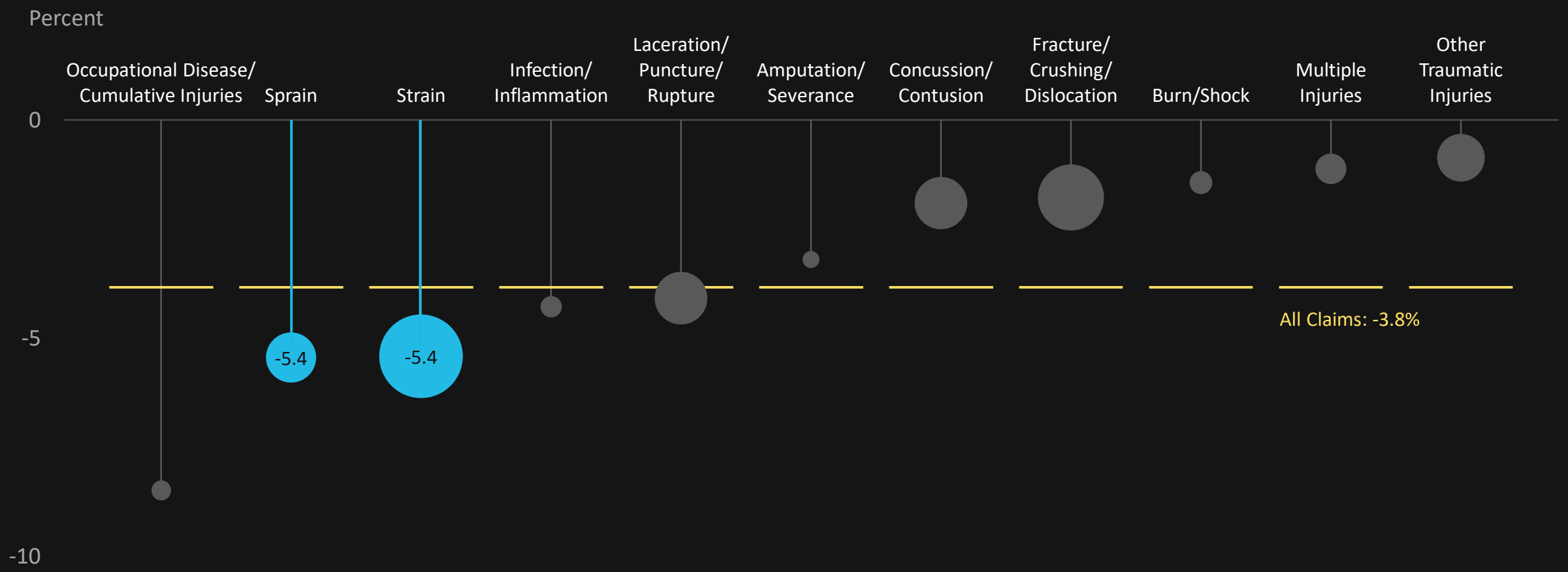


2010 and 2011 adjusted primarily for significant changes in audit activity
p Preliminary, based on data valued as of 12/31/2019
Source: NCCI's Financial Call data, developed to ultimate, premium adjusted to current wage and voluntary pure premium level, excludes high-deductible policies; based on data through 12/31/2018
Includes all states where NCCI provides ratemaking services; NV is excluded prior to 2002, TX is excluded prior to 2007, and WV is excluded prior to 2012

AIS VIRTUAL

WC Lost-Time Claim Frequency by Nature of Injury

Average Annual Change 2013–2018, Private Carriers and State Funds—NCCI States

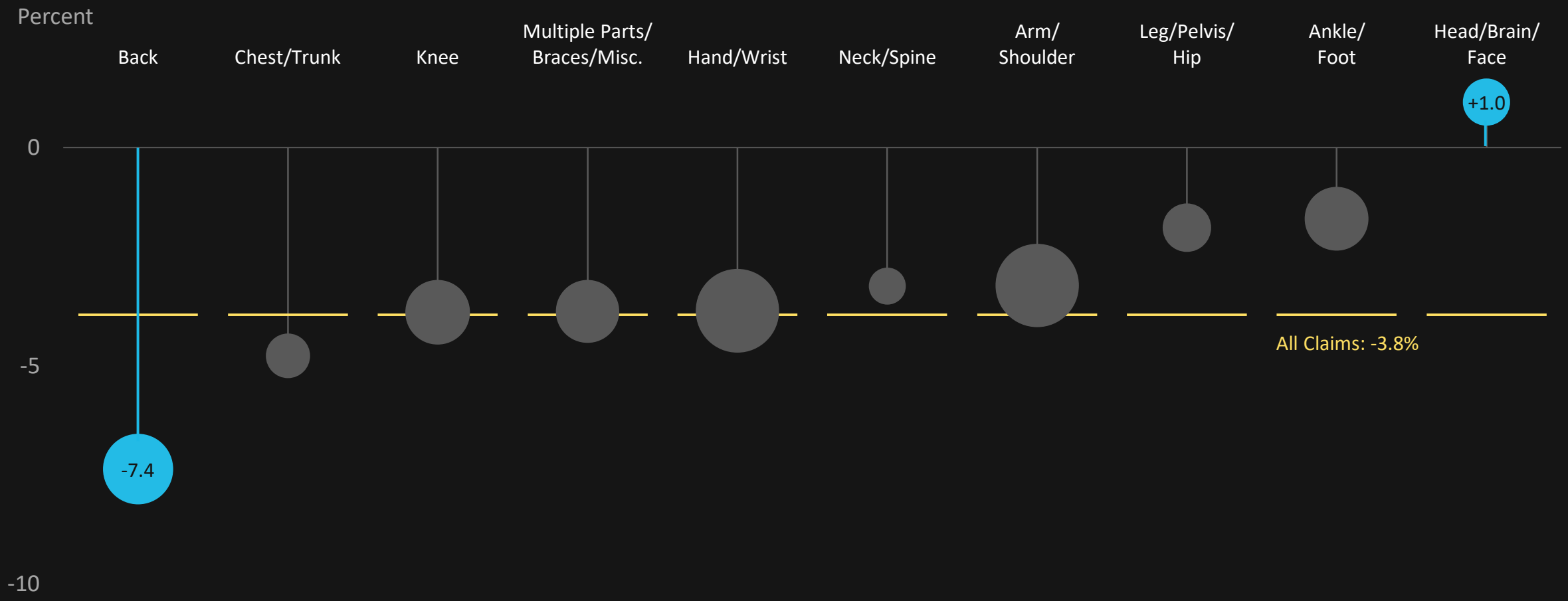


The size of the circle represents the number of lost-time claims in each nature-of-injury group
The value of the frequency change is at the center of the circle
Sources: NCCI's ***Statistical Plan*** data, undeveloped lost-time claims at first report per $1M earned premium at current wage and NCCI pure loss cost level; excludes large deductible policies
Includes all states where NCCI provides ratemaking services

AIS VIRTUAL

WC Lost-Time Claim Frequency by Part of Body

Average Annual Change 2013–2018, Private Carriers and State Funds—NCCI States



The size of the circle represents the number of lost-time claims in each part-of-body group
The value of the frequency change is at the center of the circle
Sources: NCCI's ***Statistical Plan*** data, undeveloped lost-time claims at first report per $1M earned premium at current wage and NCCI pure loss cost level; excludes large deductible policies
Includes all states where NCCI provides ratemaking services

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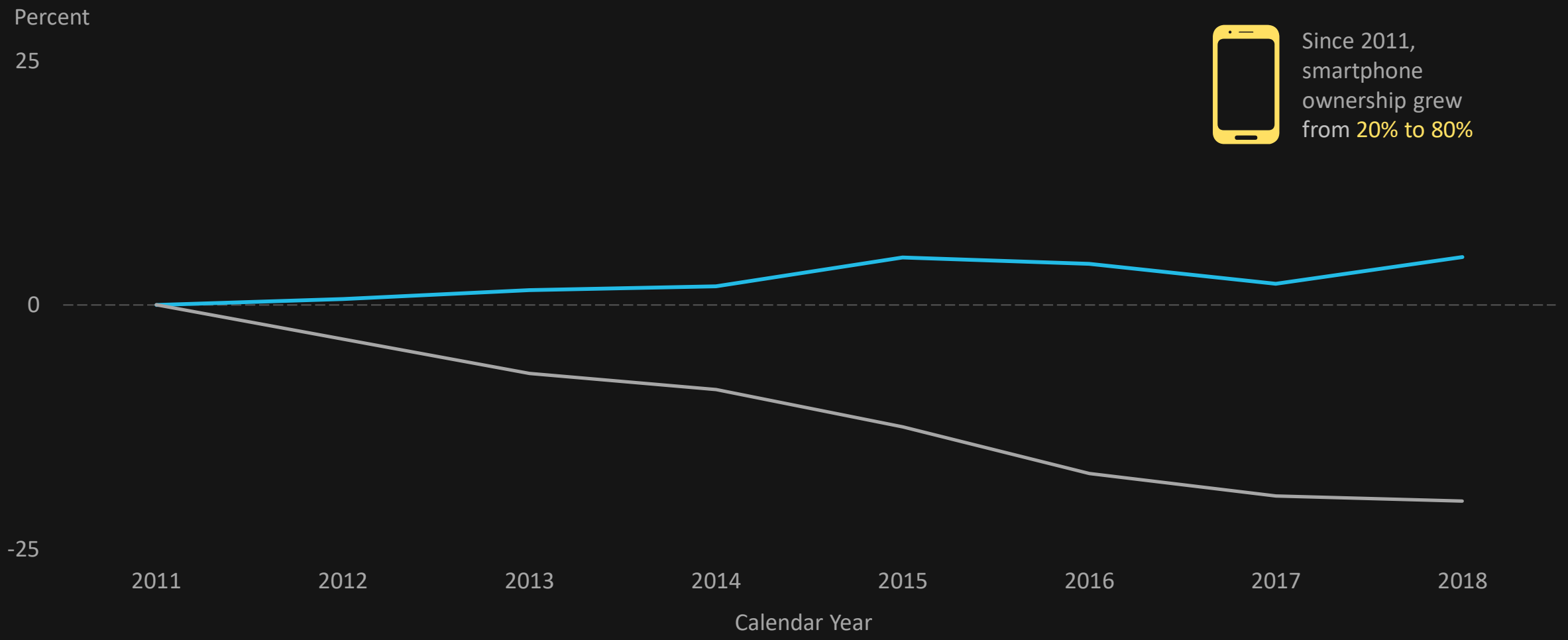
Cumulative Change in Claim Frequency

Motor Vehicle Accidents vs. All Claims



Sources: Frequency: NCCI's ***Statistical Plan*** data, undeveloped lost-time claims at first report per $1M earned premium at current wage and NCCI pure loss cost level; includes large deductible policies
Includes all states where NCCI provides ratemaking services
Smartphone ownership: Pew Research Center and Comscore

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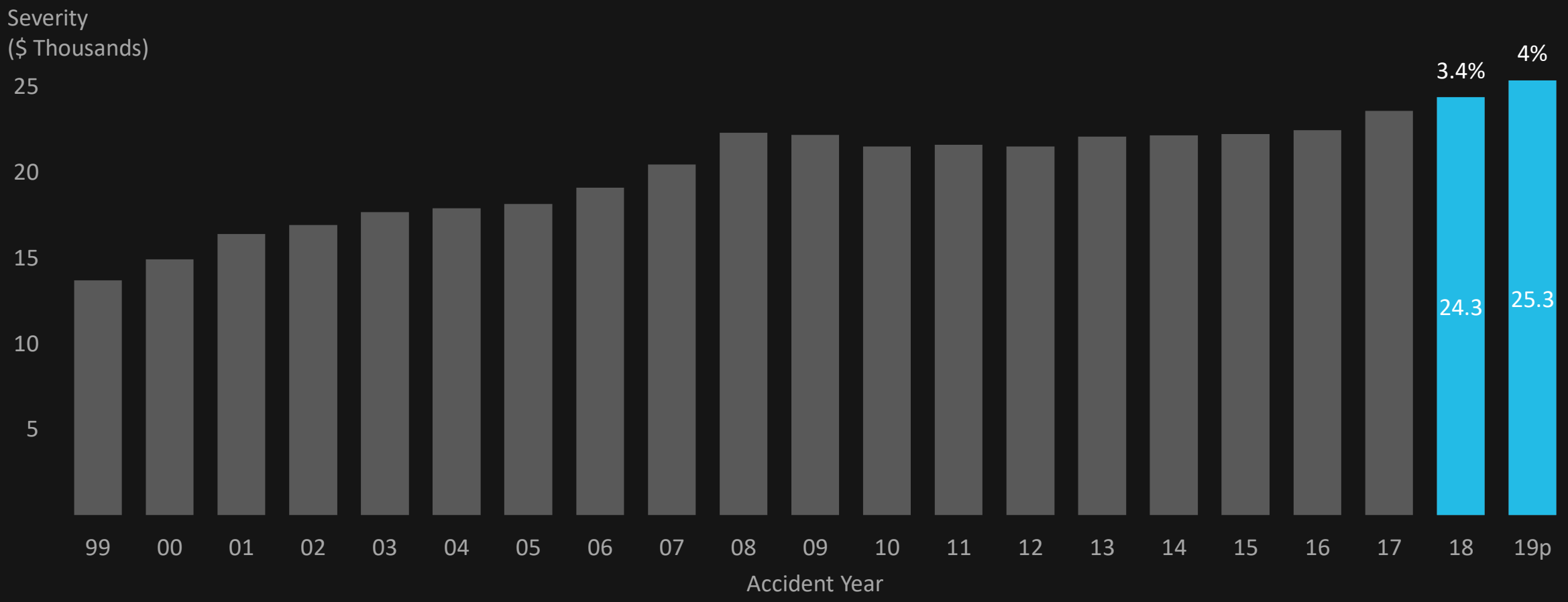
WC Average Indemnity Claim Severity

Private Carriers and State Funds—NCCI States



p Preliminary, based on data valued as of 12/31/2019
Source: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2018
Values displayed reflect the methodology underlying the most recent rate/loss cost filing
Includes all states where NCCI provides ratemaking services; NV is excluded prior to 2004, TX is excluded prior to 2005, and WV is excluded prior to 2009

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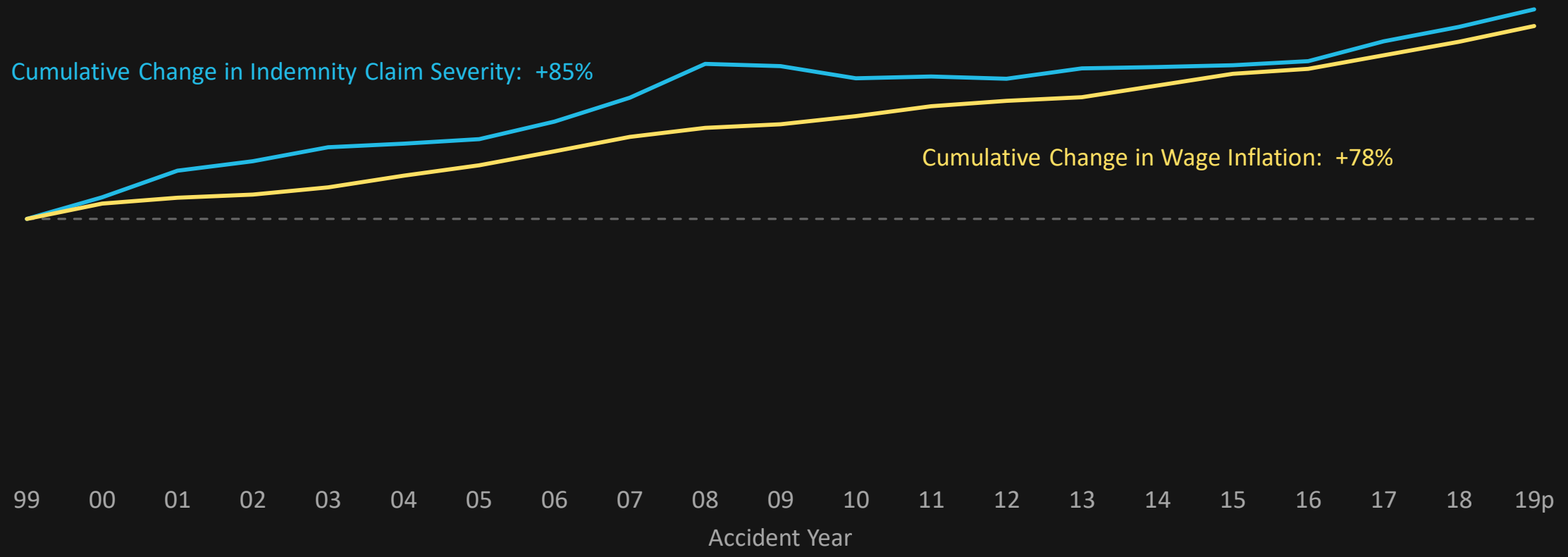
WC Average Indemnity Claim Severity

Private Carriers and State Funds—NCCI States



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Sources: Severity: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2018
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Includes all states where NCCI provides ratemaking services; NV is excluded prior to 2004, TX is excluded prior to 2005, and WV is excluded prior to 2009
US Average Weekly Wage: 1999–2007 and 2012–2018 Quarterly Census of Employment and Wages, US Bureau of Labor Statistics (BLS); 2008–2011 NCCI; 2019p NCCI and Moody's Analytics

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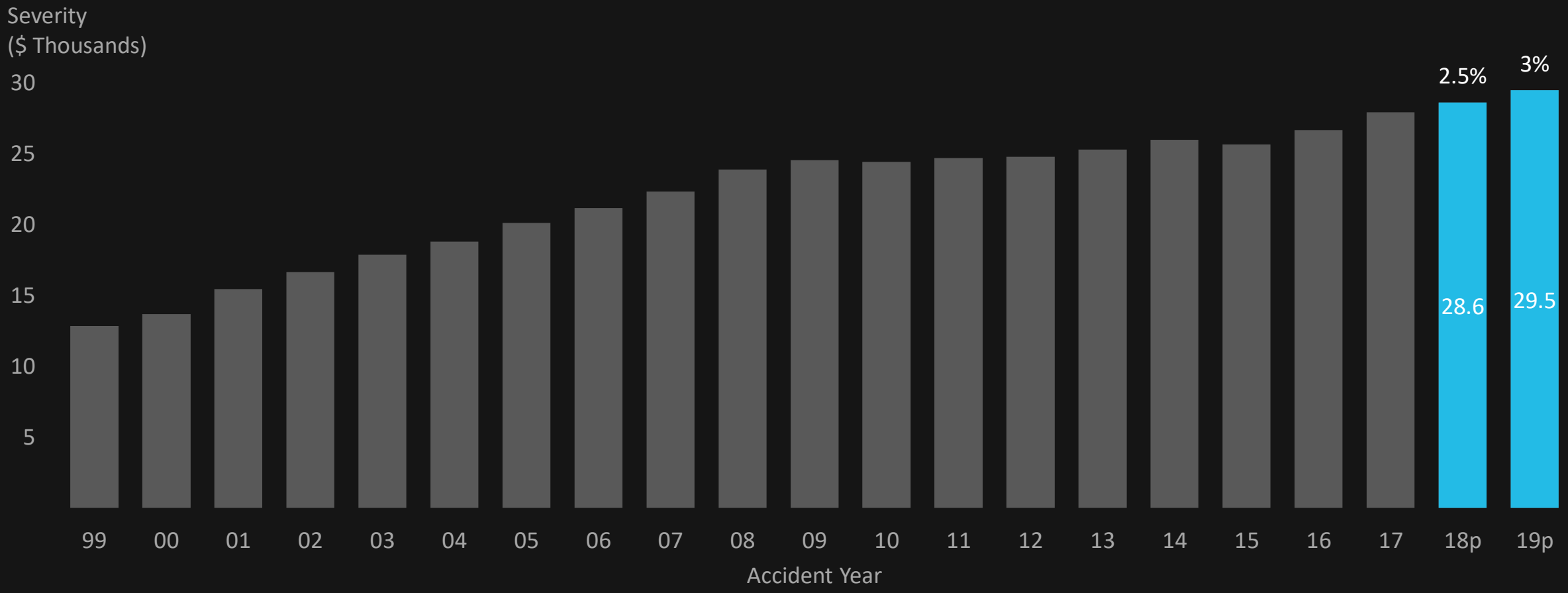
WC Average Medical Lost-Time Claim Severity

Private Carriers and State Funds—NCCI States



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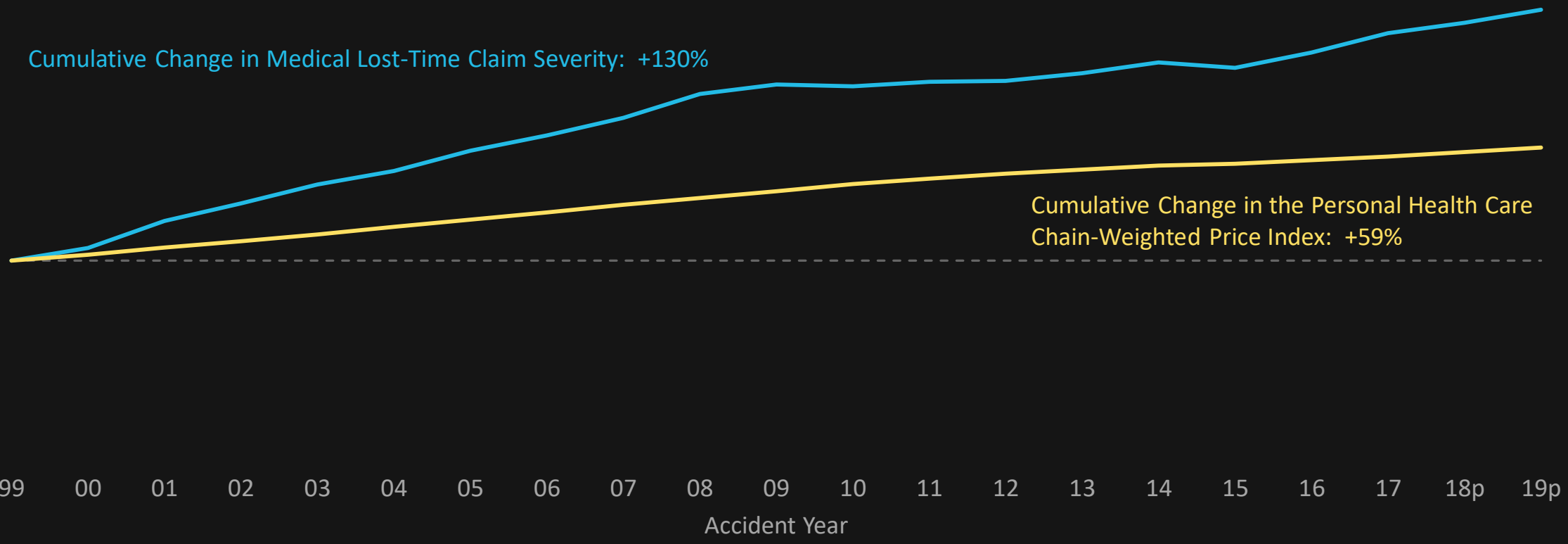
WC Average Medical Lost-Time Claim Severity

Private Carriers and State Funds—NCCI States



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PHC Chain-Weighted Price Index: Centers for Medicare & Medicaid Services

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Uncertainty Ahead

COVID-19 and Employment

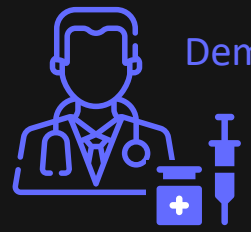
Leisure, Hospitality, and Travel

Many shut down by government mandate or saw traffic drop to near zero

Professional Services

Telecommuting may help to maintain current employment with a reduced risk of COVID-19 exposure

Healthcare for Urgent Needs



Demand surged for urgent medical service and supplies

Durable and Discretionary Goods

Cancelled or deferred orders have impacted a wide range of products

Groceries and Direct Delivery

Demand and online sales skyrocketed, resulting in temporary new hires

Reduction in Jobs | Jobs Maintained | Increase in Jobs

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COVID-19 and Premium

Exposure Decline

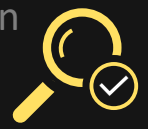
Recent changes in unemployment and fewer hours worked have reduced payroll

Small businesses may be especially impacted

Audit vs. Mid-Term Adjustments

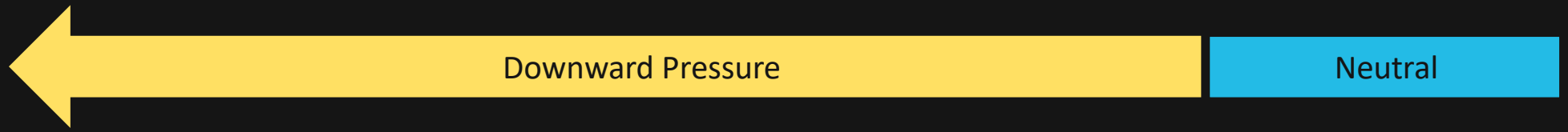
Mid-term endorsement activity capturing changes in exposure is likely to impact premium in the short term

Otherwise, negative audits after policy expiration are expected



Timing Flexibility

Some carriers have suspended the cancellation of policies and penalties for late premium payments



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COVID-19 and Claim Frequency

Claim Reporting

Possible deferral of claim reporting may result in reduced injury frequency

Changes in Exposure

Increased telecommuting reduces driving and may result in fewer motor vehicle accidents

However, remote working environments may increase ergonomic injuries

Occupational Disease

Recent legislation clarifies coverage for first responders and healthcare workers

Elevated Unemployment

In addition to those who have lost their jobs, employed individuals may be reluctant to file claims

Compensability Expansion

Potential for employees in other "essential" occupations

Downward Pressure ← → Upward Pressure

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COVID-19 and Claim Severity

Telehealth

Increased use may reduce severities

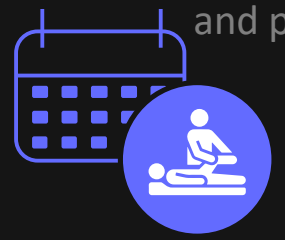
Return-to-Work

May take longer due to deferred treatment, and some jobs will remain furloughed

Return-to-work and light-duty programs may be used less often while WC benefits continue

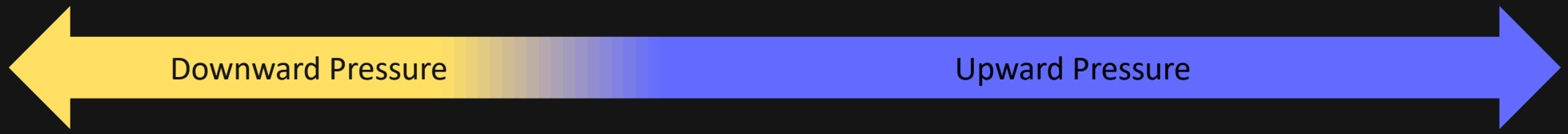
Medical Care

Deferral of hospital treatments and physical therapy may increase claim duration



Claims Handling

Potential for reduced efficiencies and impacts to claim adjustment costs



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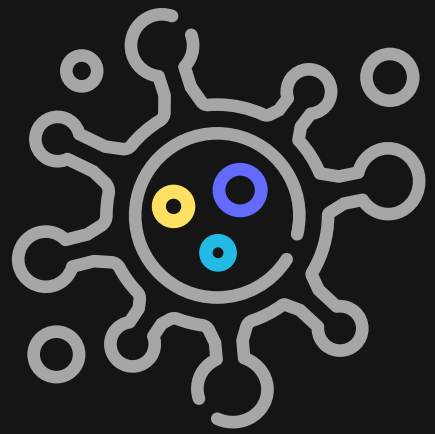
What Could a COVID-19 Claim Look Like?

Indemnity

Minimal time away from work

Significant time away from work



Medical

Mild symptoms with low medical costs

Long-term hospital stay

Short-term hospital stay

Need for rehabilitation

Mental-Mental

OTC/Rx Medication

Require therapy session(s)

Long-term impairment

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Workers Compensation Summary

Year-End Observations

- Favorable combined ratios continue
- Strong reserve position
- Average loss costs and rates declined for the seventh consecutive year
- Frequency declined, consistent with the long-term average
- Indemnity and medical severity moderately increased

Uncertainty Ahead

- Overall, employment is down significantly with mixed impacts by industry
- Premium is expected to decline with reduced employment and hours
- Broad compensability actions could have severe impacts
- Several factors may exert upward or downward pressure on frequency and severity

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Meet the Experts

Virtual session later today

Contact Us

stateoftheline@ncci.com

Resources on **ncci.com**

State of the Line Report

State of the Line Guide

COVID-19 Resource Center