

**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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Approved by: Alan McClain, State Insurance Commissioner

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REPORT TO THE LEGISLATURE ON ACT 796 OF 1993 THE STATE OF THE WORKERS' COMPENSATION MARKET FOR YEAR ENDING 2022

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 94.6% 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 2022, NCCI filed for decreases in the voluntary market loss costs of -10.8% and in the assigned risk plan rates -11%. In 2023 the NCCI filed for decreases of -2.4% for the voluntary market loss costs and -4.4% 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 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 2022, Arkansas had the lowest loss costs in the region per \$100 of payroll, \$0.43, compared to the regional average loss cost of \$0.56 and the countrywide average loss cost of \$0.75. The Arkansas average loss costs in 2023 were -79.5% 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%
2021	-1.1%	-1.6%
2022	-10.8%	-11.0%
2023	-2.4%	-4.4%

PAYROLL AND EXPERIENCE MODIFIER

Reported payroll in Arkansas continues to increase while premiums for insureds continue to decrease. In 2022 the average experience modifier increased slightly to 0.945 from 0.944. The 2022 countrywide average experience modifier is 0.955. 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 2023 was \$18,484,281 as compared to \$21,240,231 for 2022. As of June 2023, small premium employers (less than \$2,500 in annual premium) constituted approximately 71% of the plan policy volume with an average of \$1,085 in premium per policy. Average plan premium per policy as of June 2023, was \$3,254 for all 5,120 policies in the plan. The top five business classifications seeking coverage in the assigned risk plan were involved with the construction and farming industries.

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 2022, 285 employers were removed from the assigned risk plan, saving those employers, on average 6.59% 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, 2023, the Commissioner re-appointed NCCI as Administrator for the Arkansas assigned risk plan until at least July 1, 2026.

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 staff in Little Rock continue to resolve many policy related service problems and provide Arkansas agents and insureds easy, immediate access to responsive company personnel. The effectiveness 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 service Arkansas are knowledgeable and committed to providing excellent service.

Attached are Exhibit "A" entitled *State Advisory Forum 2023* and Exhibit "B" entitled *Arkansas Plan Premium Report July 2023*; 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 2023.

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, 2023, to December 31, 2025, the carriers are Technology, Liberty Mutual and AmGuard Insurance Company and Continental Indemnity.

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 (1100 total cases in 2022) and not just workers' compensation fraud under Title 11.

Consequently, even though workers' compensation fraud is still an important and integral part of the Criminal Investigation Division, it accounts for less than one percent (.027%) of the referrals that come into CID as compared to insurance fraud as defined under Title 23. As all 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 CID's enforcement powers would likely result in a re-emergence of both frequency and severity of fraud committed by employees, employers, and healthcare providers.

None of the bordering states have Insurance Fraud Divisions actively investigating criminal workers comp cases, they refer them to their designated Workers Comp Commission unless they appear to be criminal, wherein they refer the cases to their Attorney General.

In fact, many cases are not carried forward to prosecution. In many instances where there is not enough evidence to 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 2022 reporting period, there were 30 workers' compensation referrals received by AID CID. Of those referrals, 18 were closed with 12 forwarded for investigation. Two cases were referred for prosecution with both cases being eventually closed, after it being determined that they lacked sufficient evidence for successful prosecution. Since the creation of the Division in 1993, 172 cases have been referred for prosecution, which resulted in 123 convictions.

SELECTED WORKERS' COMPENSATION DECISIONS FISCAL YEAR 2022

Wage Loss Disability/Vocational Rehabilitation.

Sylvia Tillery v. Alma School District, 2022 Ark. App. 425 (October 26, 2022).

While working as a custodian for the Alma School District, Sylvia Tillery suffered an admittedly compensable back injury. She received both conservative and surgical treatment for her injury. Her treating physician, Dr. James Blankenship, determined that Ms. Tillery had reached maximum medical improvement and assessed a 13 percent whole-body impairment rating. The School District accepted his assessment and began paying permanent partial-disability benefits based on that rating. Ms. Tillery, however, claimed that she was entitled to permanent benefits in excess of the 13 percent impairment rating.

At the direction of Dr. Blankenship, she underwent a functional capacity evaluation (FCE). She gave a reliable effort during the FCE, and the FCE indicated that she was able to perform work within the MEDIUM classification of work. Dr. Blankenship reviewed the FCE and concluded that Ms. Tillery could not return to her job as a custodian with

the District. He also opined that Ms. Tillery would be limited to performing a sedentary job with a permanent weight-lifting restriction of twenty pounds. In light of Ms. Tillery's physical limitations, Dr. Blankenship assigned her an impairment rating of 10 percent to the body as a whole and released her from his care. Ms. Tillery disagreed with this impairment rating and requested a hearing.

After the release by Dr. Blankenship, the District requested that Ms. Tillery undergo a vocational rehabilitation evaluation (VRE), which was performed by Heather Taylor, a vocational rehabilitation specialist, in February 2021. Ms. Taylor reported that Ms. Tillery expressed a desire to continue working and seemed motivated to do so. Ms. Tillery also expressed an interest in acquiring new skills, such as typing, word processing, or other computer-related skills, which would allow her to perform a lighter-type job in the future. After having analyzed Ms. Tillery's work history and transferable skills, Ms. Taylor recommended the following training programs at the Arkansas Tech University-Ozark campus: Certificate of Proficiency-Office Support Specialist; Technical Certificate-Business Technology; and Associate of Applied Science-Business Technology. Ms. Taylor reported that these recommended programs would not begin until August 2021 and that Ms. Tillery would need to enroll in computer training as a prerequisite before she could enroll in these programs. Ms. Taylor further reported that Ms. Tillery could receive the prerequisite free computer training at any time at ATU-Ozark. Instead of beginning the computer classes at ATU-Ozark, Ms. Tillery enrolled in computer classes at the Van Buren Adult Education Center. She also contacted the American Indian Services of Arkansas (AISA) and began on-the-job training for twenty hours a week at eleven dollars

an hour. Because Ms. Tillery did not follow the vocational recommendations of Ms. Taylor, the District took the position that Ms. Tillery was not entitled to any wage-loss disability.

The parties proceeded to a hearing before an Administrative Law Judge (ALJ) on Ms. Tillery's claim for wage-loss disability. After hearing the testimony and reviewing the evidence, the ALJ disagreed with the District, stating that he could not find that Ms. Tillery had refused to participate in a program of vocational rehabilitation or job-placement assistance. As a result, the ALJ did not find that Ms. Tillery had waived or refused to cooperate or participate in an offered program of rehabilitation or job-placement assistance. Therefore, she was not barred from receiving benefits in excess of her permanent physical impairment. Considering all the factors set forth in Arkansas Code Annotated section 11-9-522(b)(1) (Repl. 2012), including her age, education, and work experience, the ALJ found that she suffered a loss in wage-earning capacity equal to 10 percent to the body as a whole.

Both parties appealed the ALJ's findings to the Full Commission. After reviewing the record, the Commission affirmed and adopted the decision of the ALJ.

The Court of Appeals affirmed the decision of the Full Commission. The Court noted that this case was fact intensive, as to whether the claimant refused or waived vocational rehabilitation, etc. On these facts there was sufficient evidence on which the Commission could find that the District failed in its burden of showing that Ms. Tillery's refusal to participate in the specific programs of vocational rehabilitation or job-placement assistance offered by it or through some other affirmative action indicated an

unwillingness to cooperate in those endeavors and that such refusal to cooperate was without any reasonable cause. Therefore, the Court affirmed the Full Commission on the vocational rehabilitation issue.

The Court also affirmed the Full Commission's finding regarding wage-loss disability. The Court noted that the Commission considered Ms. Tillery's age, her limited education, and her prior work history as a custodian and her related skills. It also considered her inability to perform the same types of work she had performed in the past because of physical limitations related to her back injury and her ability to obtain future employment upon retraining in arriving at its determination that Ms. Tillery's future earning capacity had been affected by her compensable injuries. The Commission's findings were based on the appropriate wage-loss factors, and its opinion adequately discussed the rationale for their finding.

Reasonable and Necessary Medical Treatment.

The Evangelical Lutheran Good Samaritan Society v. Tara Rowland, 2022 Ark. App. 322, (September 14, 2022).

On April 14, 2014, Tara Rowland, who was employed in patient care by The Evangelical Lutheran Good Samaritan Society (ELGSS), was struck on the right side of her face by a patient while at work. One of her teeth was chipped, and an MRI showed that she suffered a bilateral disc displacement and that there was "bone to bone contact in right TMJ." ELGSS accepted the injury as compensable.

In April 2015, Dr. Kyle Wendfeldt and Dr. Scott Bolding recommended an initial surgery to stabilize the occlusion of her TMJ (temporomandibular joint), followed by orthodontic braces, and possibly orthognathic surgery after the braces were removed.

Ms. Rowland underwent TMJ surgery and tooth repair, but the surgery did not stabilize the occlusion as hoped. After several attempts to stabilize the joint with splints, Dr. Kyle Wendfeldt and Dr. Bolding recommended going forward with braces and orthognathic surgery. ELGSS controverted the necessity of the braces and additional surgery, arguing that there was no causal connection between the compensable injury and the recommended treatment.

In December 2016, the Administrative Law Judge (ALJ) found the recommended treatment to be reasonably necessary in connection with Ms. Rowland's compensable injuries. In 2017, Ms. Rowland began wearing braces; however, during the next two years, she developed dental caries, and in May, 2019, her upper maxilla became infected. Due to the infection, Dr. Bolding determined that it was necessary to extract all of Ms. Rowland's upper teeth and on May 24 he did so without seeking preauthorization for the procedure. In his June follow-up letter, Dr. Bolding recommended dental implants, an interim prosthesis while the implants were healing, and a final prosthesis after Ms. Rowland had healed. Dr. Bolding opined that Ms. Rowland's remaining lower teeth would also require extraction and dental implants, and he attributed her condition to the delays in treatment caused by ELGSS's controversion of her claim. ELGSS controverted the necessity of this treatment, arguing that there was no causal relationship between Ms. Rowland's 2014 injury and her dental caries and the subsequent extraction of her teeth and need for dental implants. ELGSS also contended that Ms. Rowland failed to obtain preauthorization for the May 24 surgery; thus, the procedure was not compensable. ELGSS argued that Rowland's dental caries were related to "dry mouth" caused by her

use of opioids and other medications, kidney disease, and Sjögren's syndrome (a recently diagnosed autoimmune disorder.)

Dr. Bolding testified by deposition that Ms. Rowland took opioids for the pain exacerbated by her delayed treatment and that he believed with a reasonable degree of medical certainty that the dental caries were related to her wearing braces for two years. The ALJ found that Ms. Rowland's dental caries were causally linked to her original injury, and the dental implants were reasonably necessary in connection with the compensable injury claim. The Full Commission, however, found that Ms. Rowland was not entitled to the May 24 surgery and the costs related to that surgery because she failed to obtain preauthorization for the nonemergent procedure. ELGSS appealed the ALJ's decision regarding the causal link between the dental caries and the original injury, and the Commission affirmed. ELGSS timely filed their notice of appeal. Rowland timely filed her notice of cross-appeal regarding the denial of the May 24, 2019 surgery.

ELGSS asserted that the Full Commission ignored evidence of Ms. Rowland's history of preinjury opioid use and continued opioid use, opioid withdrawal medication, kidney disease, and Sjögren's syndrome. The Court of Appeals disagreed with this argument.

Arkansas Code Annotated section 11-9-508(a) (Supp. 2021) requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury. A claimant bears the burden of establishing by a preponderance of the evidence that the treatment is reasonable and necessary and bears a causal connection to the work injury

Dr. Bolding described dental and jaw problems, including dental caries, that were, in his medical opinion, the direct result of delays in treatment for Rowland's 2014 injury due to ELGSS's controversion of her claim. The Court of Appeals affirmed the Full Commission's decision that the dental caries were causally connected to the 2014 injury. The Court also held that there was substantial evidence supporting the Full Commission's decision that Ms. Rowland was entitled to Dr. Bolding's recommended additional medical treatment related to the dental caries. The Court upheld the Full Commission's finding that the dental surgery was not a life-threatening or emergent situation and thus ELGSS was not responsible for the costs and mileage associated with the surgery.

Compensability, Reasonable and Necessary Medical Treatment.

Johnson Controls, Inc. v. Wesley Miller, 2023 Ark. App. 235 (April 19, 2023).

Wesley Miller, a security-system service technician employed by Johnson Controls (Johnson) for more than twenty years, was struck from behind by a semi-tractor trailer while driving a company vehicle in the course of his employment. It was stipulated that he sustained a compensable injury to the right side of his body, including his right shoulder, right arm, and lower back. At the hearing before the ALJ on November 16, 2021, by agreement of the parties, the issues to be litigated were limited to whether Mr. Miller was entitled to (1) additional medical services as recommended by Dr. Gannon Randolph in the form of surgical intervention to his lower back; (2) temporary total-disability benefits from August 7, 2021, to a date yet to be determined; and (3) attorney's fees. Mr. Miller contended that the medical services recommended by Dr. Randolph were

reasonably necessary for his compensable injury. It was Johnson Controls' contention that Mr. Miller had received all medical and indemnity benefits to which he was entitled. After a hearing on the matter and reviewing the record as a whole, including medical reports, the ALJ found that Mr. Miller had proven his entitlement to the surgical procedure recommended by Dr. Randolph and that he was entitled to temporary total disability benefits from August 7, 2021 to a date to be determined. The findings of the ALJ were affirmed and adopted by the Full Commission.

On appeal to the Court of Appeals, Johnson argued that following the accident Mr. Miller's primary complaint was pain in his shoulder and elbow. Johnson contends that, upon examination at the Washington County Regional Medical Center Emergency Department, Mr. Miller indicated pain in his right shoulder and elbow that worsened with movement. Additionally, he indicated pain in the right side of his neck. He failed to complain of a back-related issue until seven weeks after the accident, when, on August 14, 2020, he indicated to Dr. Andrew Heinzelmann that he was experiencing right hip pain. Johnson argued that not only did Mr. Miller fail to complain about back pain in his initial examination after the accident, the record demonstrated that he failed to mention back issues "during any of several visits to many doctors who treated him after the accident." Johnson contends that although Mr. Miller's first complaint concerning back pain came nearly two months after the auto accident, he told Dr. Heinzelmann that the low back pain began on the date of the accident. Johnson further argued that "nothing in the medical records connects Mr. Miller's low back pain to the accident other than his

claim, made for the first time seven weeks after the accident, that he had low back pain since the accident.”

On August 14, 2020, while receiving treatment at Ozark Orthopedics by Dr. Heinzelmann, Mr. Miller complained of right hip and leg pain. He was then referred to Dr. George Deimel to evaluate whether his hip and leg pain were related to a low back injury. Dr. Deimel’s assessment found that Mr. Miller’s symptoms suggested lumbosacral radicular pain, and there was concern for potential fracture of his right hip/thigh.

As part of its appeal, Johnson disputed that Mr. Miller’s low back injury was causally connected to the work-related auto accident. However, the Court observed that the causal link between the back injury and the accident was not an issue before the Commission. By stipulation, the parties agreed, and it was accepted as fact, that Mr. Miller “sustained a compensable injury to the right side of his body to include the right shoulder, right arm, and lower back.” Consequently, the only issue properly before the Court was the Commission’s finding that Mr. Miller proved by a preponderance of the evidence entitlement to the surgery recommended and ultimately performed by Dr. Randolph for Mr. Miller’s admittedly compensable low back injury.

The Court reviewed the evidence in the light most favorable to the Commission’s findings and found that substantial evidence supported the Commission’s finding that the surgical intervention recommended by Dr. Randolph was reasonable and necessary medical treatment for Mr. Miller’s low back injury. The Court affirmed the Commission’s finding that Mr. Miller had established by a preponderance of the evidence that the low back surgery recommended and ultimately performed by Dr. Randolph was reasonable

and necessary medical treatment in connection with his admittedly compensable low back injury.

Dual Employment Issue.

Jacen Gann v. CK Asphalt, LLC, and Bobby Kennedy Construction Co., Inc.,
2023 Ark. App. 218, (April 12, 2023).

On September 12, 2019, Jacen Gann was injured while working when he was struck by a truck driven by Michael Dorton. Mr. Dorton was working for Bobby Kennedy Construction (BKC) at the time. Mr. Gann filed a claim for workers' compensation benefits and had been receiving benefits from Travelers Insurance through his employer, CK Asphalt. He also filed suit in the Van Buren County Circuit Court against BKC and Dorton alleging personal injuries. BKC moved to transfer the case to the Arkansas Workers' Compensation Commission (the Commission) to determine the employment relationship between Gann and BKC for purposes of asserting the exclusive-remedy protection of the Arkansas Workers' Compensation Act. The circuit court granted the motion to transfer.

A hearing was held before an Administrative Law Judge (ALJ), and the issues were briefed. The ALJ found that Mr. Gann was BKC's dual employee on the day of the injury. The ALJ granted BKC entitlement to the exclusive-remedy bar. Mr. Gann timely appealed to the Full Commission, which affirmed the ALJ's reasoning. In adopting the ALJ's findings of fact and conclusion of law, the Commission identified Mr. Gann as "a dual or special employee of Bobby Kennedy Construction Company, Inc., as well as CK Asphalt, LLC, at the time of the work-related accident." This is important, because the nature of the employment relationship dictates that if Mr. Gann may bring a civil suit

against BKC for damages or if he is limited solely to workers'-compensation relief. On appeal, Mr. Gann argued that this finding was in error.

The issue before the Court was the application of the dual-employment doctrine. In *Daniels v. Riley's Health & Fitness Centers*, 310 Ark. 756, 840 S.W.2d 177 (1992), the supreme court held that when a general employer lends an employee to the special employer, the special employer becomes liable for workers' compensation only if three factors are satisfied: (1) the employee has made a contract for hire, express or implied, with the special employer; (2) the work being done is essentially that of the special employer; and (3) the special employer has the right to control the details of the work. The solution in almost every such case depends on the answer to the basic and fundamental question of whether, as to the special employee, the relationship of employer and employee existed at the time of the injury.

The Court of Appeals agreed with Mr. Gann that no contract for hire, either express or implied, existed. While the Full Commission opinion addressed the right to control Mr. Gann's work, it failed to consider that BKC did not pay Mr. Gann for his services. He was performing solely the work of CK Asphalt; BKC had nothing for which to compensate him. Conversely, as the Commission's opinion noted, CK Asphalt paid BKC for its services (BKC provided the trucks). The Court concluded that BKC never became a "special employer." The Court noted that there was no implied contract between Mr. Gann and BLK. The test in *Daniels v. Riley's Health & Fitness Centers*, 310 Ark. 756, 840 S.W.2d 177 (1992), is a three-part conjunctive test. The Court held that the record did not support the finding that Mr. Gann had made a contract for hire, express or implied, with

BKC for purposes of the exclusive-remedy provision of Arkansas Code Annotated section 11-9-105 (Repl. 2012). The Court reversed the Full Commission's finding the Mr. Gann was a dual employee and remanded the case for further proceedings.

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 several 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, 2023

cc: The Honorable Sarah Huckabee Sanders, Governor
The Honorable Hugh McDonald, Secretary, Department of Commerce
The Honorable Dale Douthit, Chairman, AWCC
The Honorable Michael R. Mayton, 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. Paul Keller, Criminal Investigation Division Director, AID



The Source You Trust

Exhibit A

STATE ADVISORY RESOURCES

Arkansas Workers Compensation System
March 2023

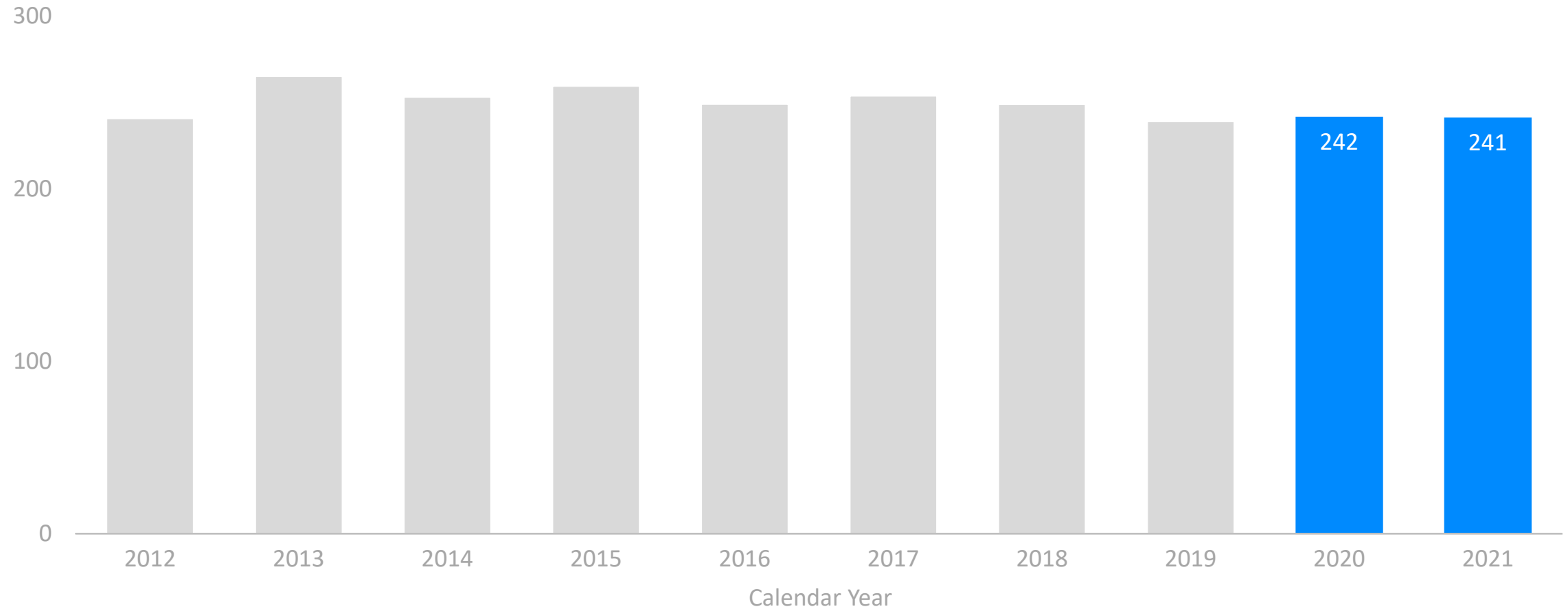


Arkansas Workers Compensation System—An Overview

- Written premium volume was stable in the latest year
- Accident year combined ratios continue to be favorable
- Lost-time claim frequency continues to exhibit a long-term pattern of decline, despite increasing in the most recent year
- Both indemnity and medical severity increased in the latest policy year

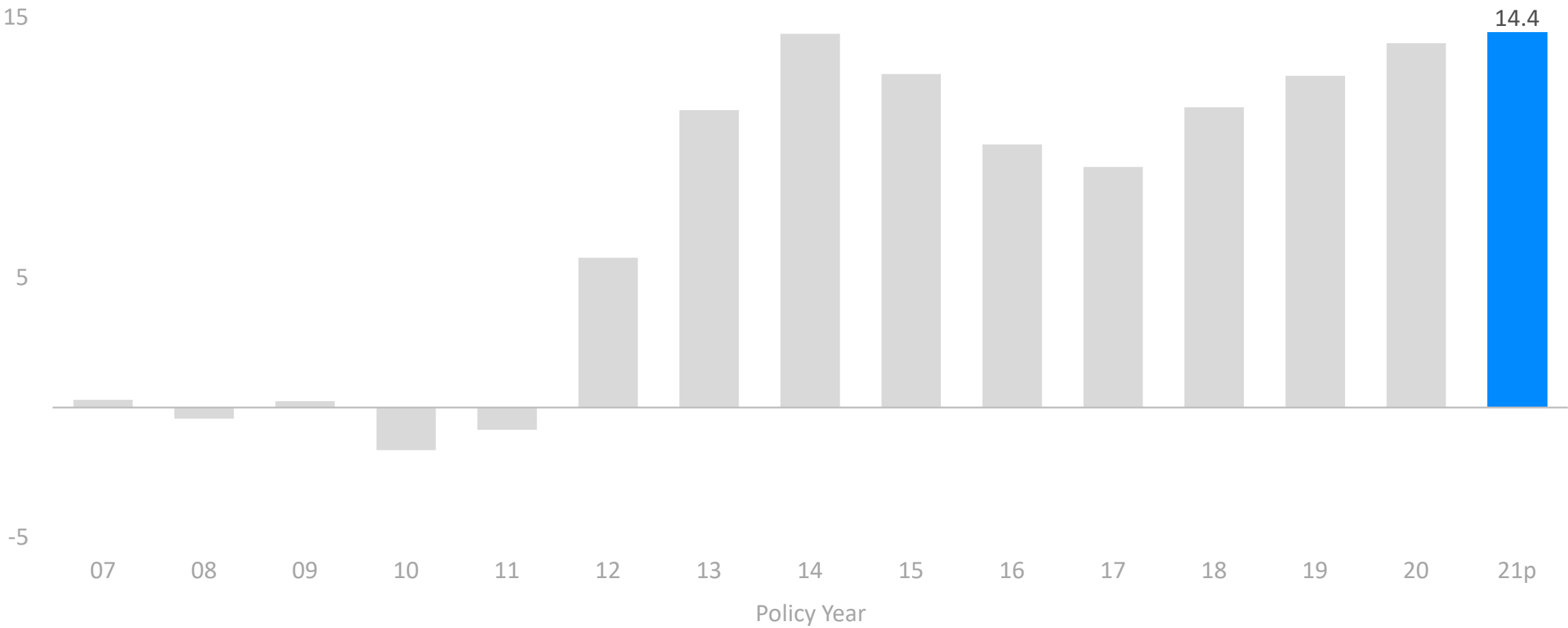
Arkansas Premium Volume

Direct Written Premium in \$ Millions



Source: NAIC's Annual Statement data.

Impact of Discounting on Workers Compensation Premium in Arkansas



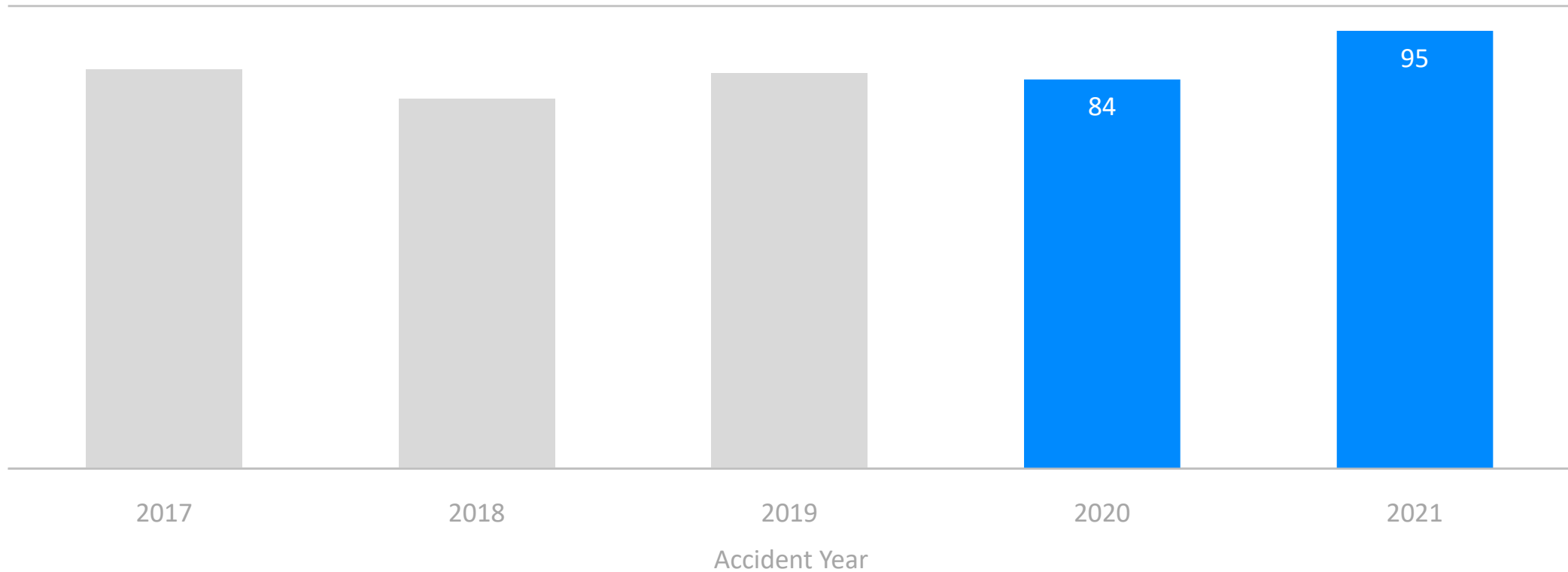
p Preliminary.
Based on data through 12/31/2021.



Arkansas Combined Ratios

Percent

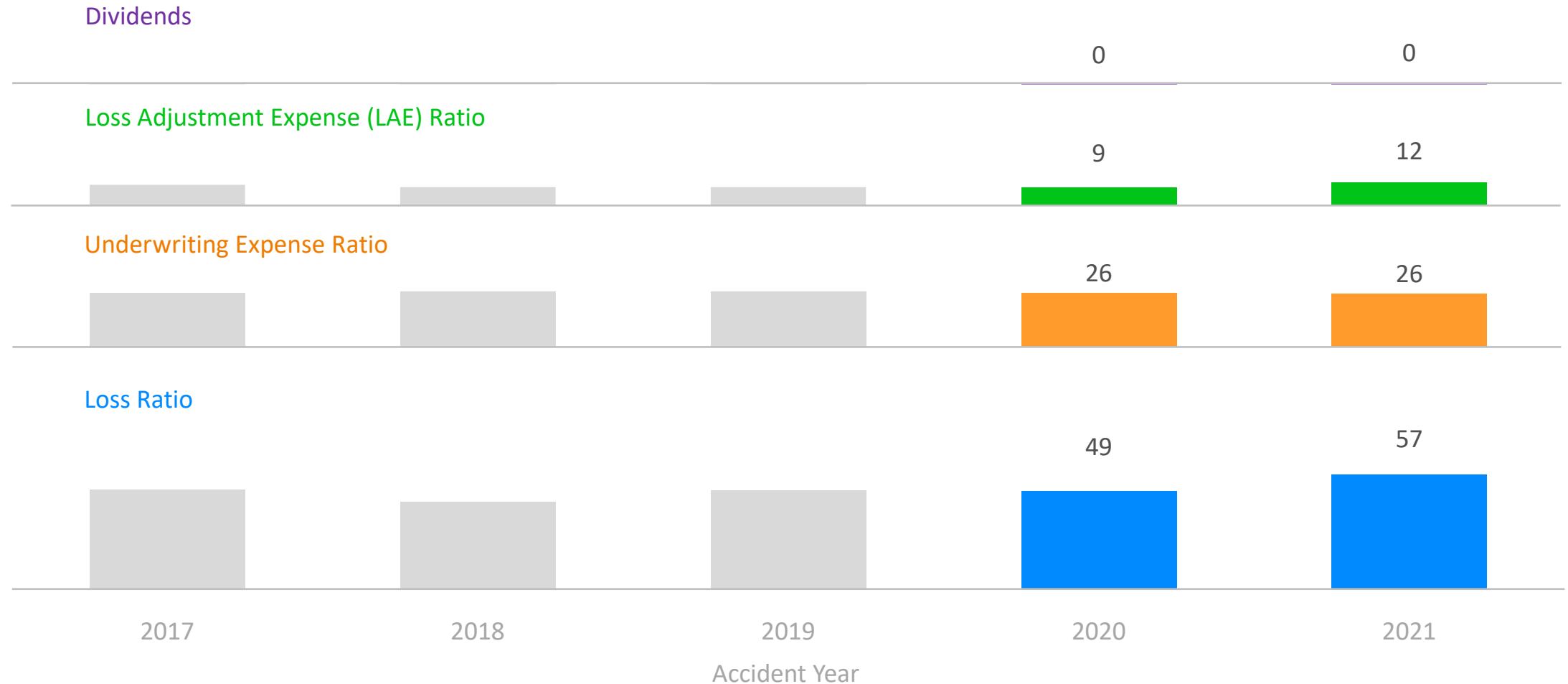
100



Sources: NCCI's Financial data through 12/31/2021 and NAIC's Annual Statement data.

Arkansas Combined Ratios by Component

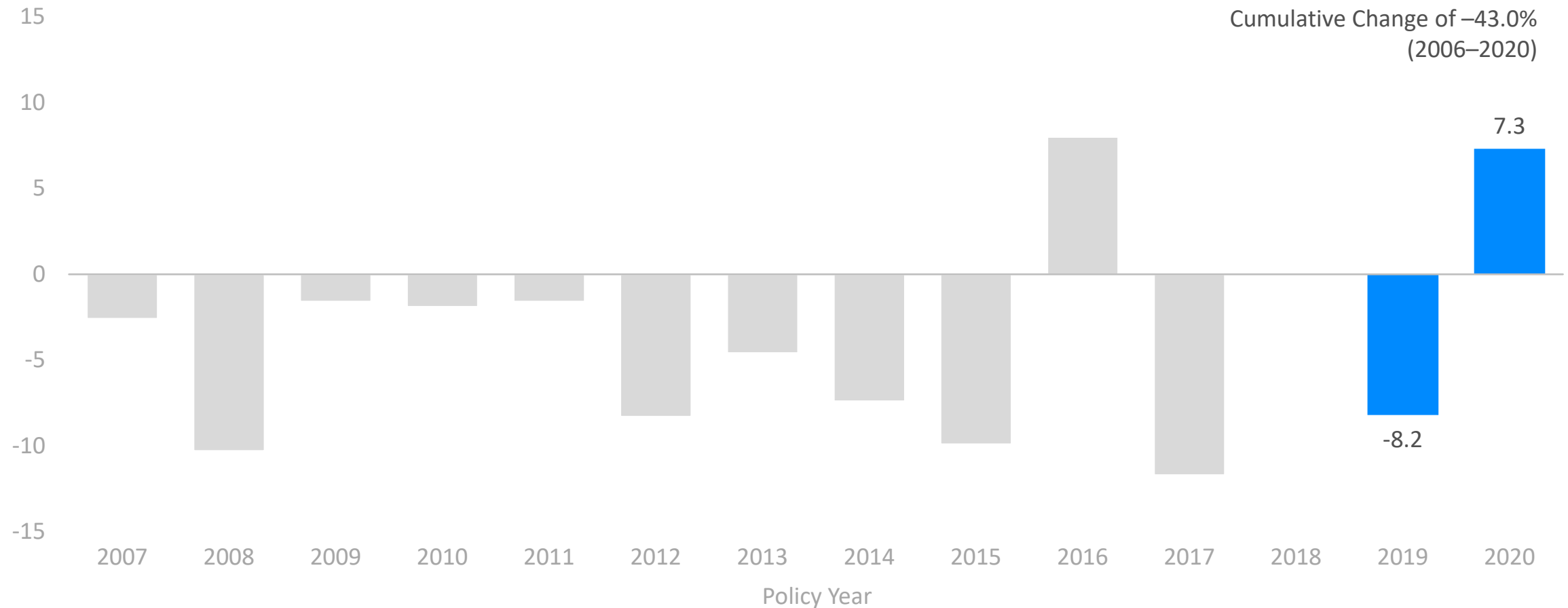
Percent



Sources: NCCI's Financial data through 12/31/2021 and NAIC's Annual Statement data.

Arkansas Change in Claim Frequency

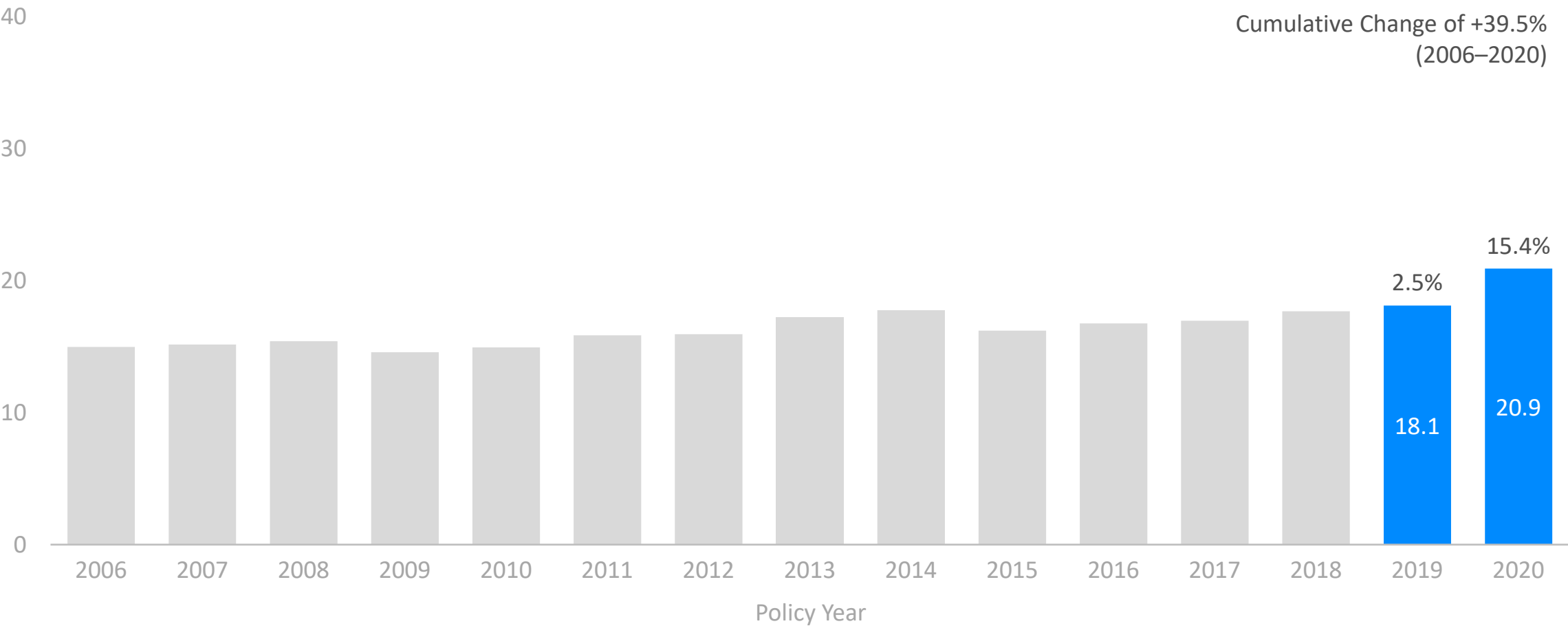
Percent Change in Lost-Time Claims, per \$ Million of On-Leveled Premium



Based on NCCI's Financial data through 12/31/2021, on-leveled, and developed to ultimate, with premium adjusted to common wage level.

Arkansas Average Indemnity Claim Severity

Lost-Time Claim Severity in \$ Thousands

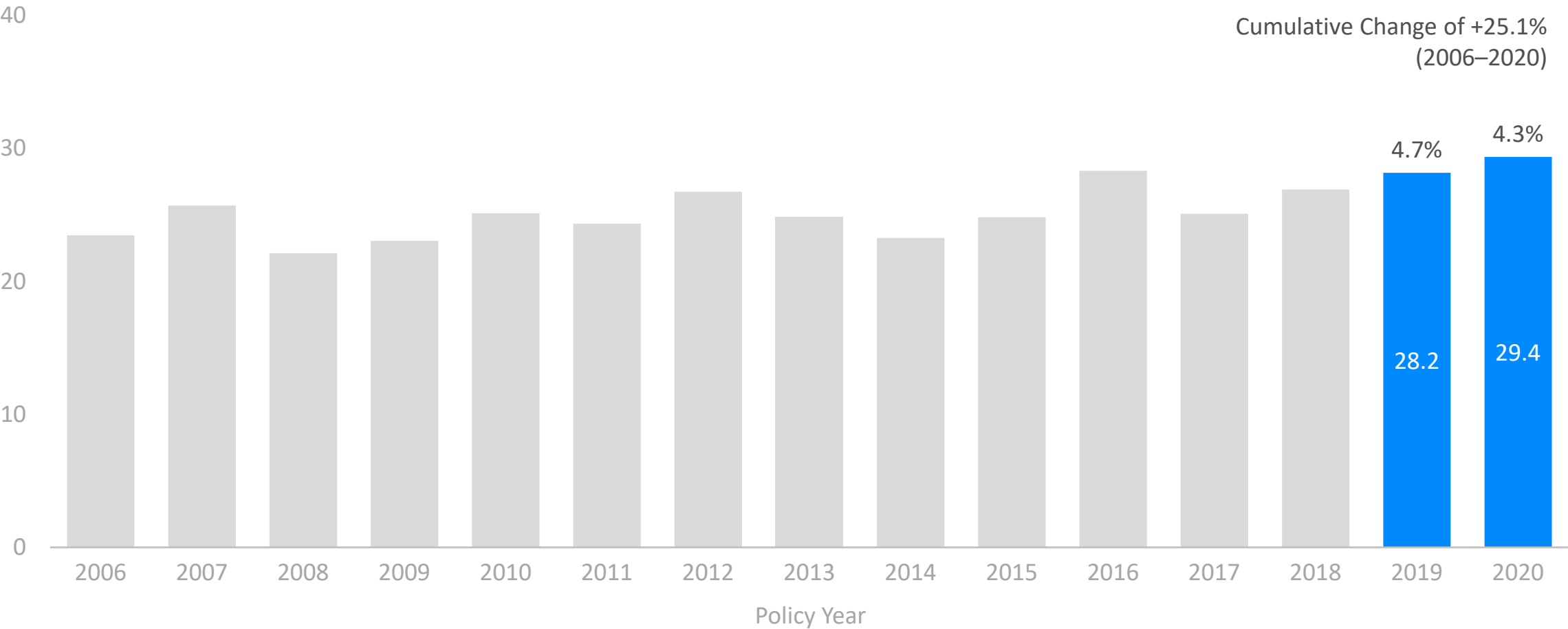


Based on NCCI’s Financial data through 12/31/2021, on-leveled, and developed to ultimate.



Arkansas Average Medical Claim Severity

Lost-Time Claim Severity in \$ Thousands

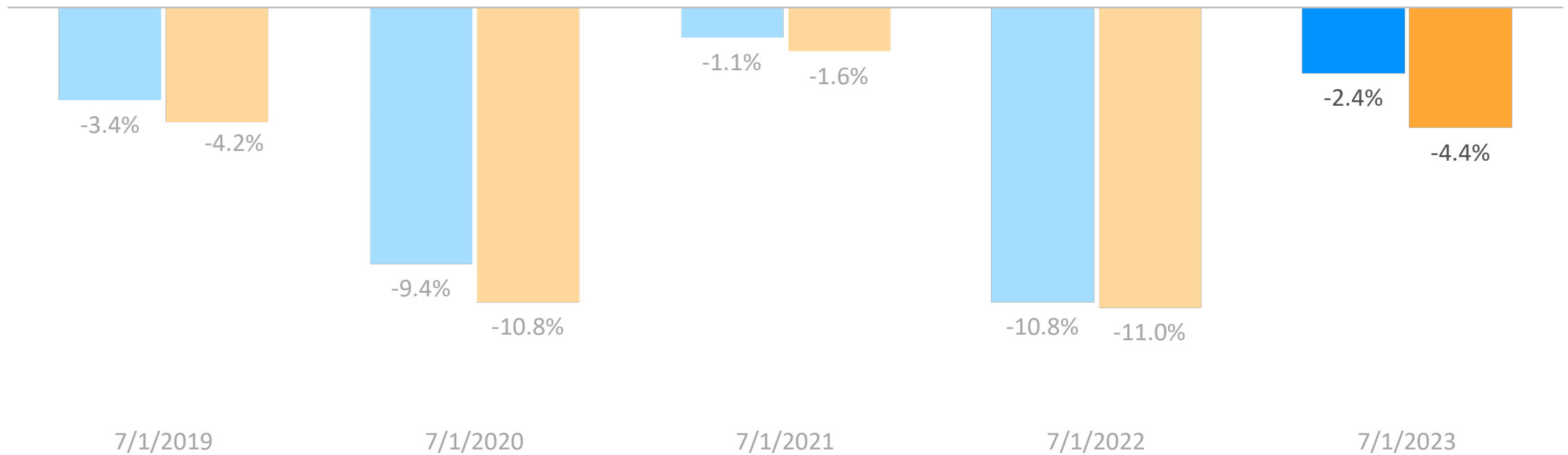


Based on NCCI’s Financial data through 12/31/2021, on-leveled, and developed to ultimate.
Note that medical-only losses are included in the numerator.



Arkansas Filing Activity

Voluntary Loss Cost and Assigned Risk Rate Changes

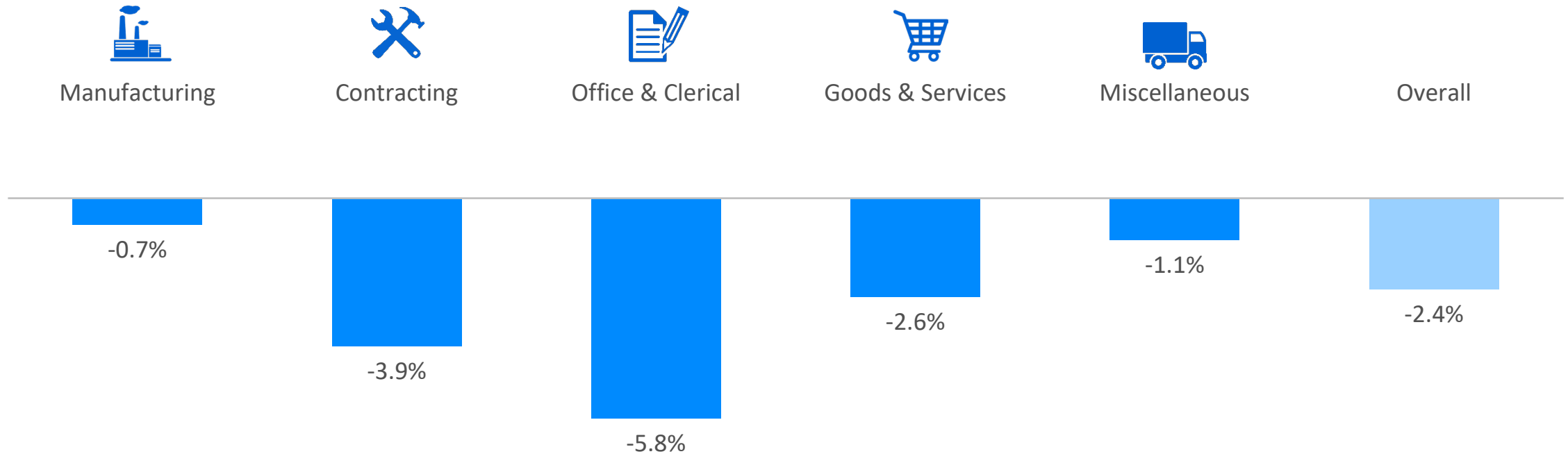


Arkansas July 1, 2023 Loss Cost Filing

Change in Experience:	−2.0%
Change in Trend:	+0.0%
Change in Benefits:	+0.2%
Change in All Other:	−0.6%
<hr/>	
Overall Loss Cost Level Change:	−2.4%

Arkansas July 1, 2023 Loss Cost Filing

Average Changes by Industry Group



Arkansas Economic Drivers



Manufacturing



Medical



Logistics

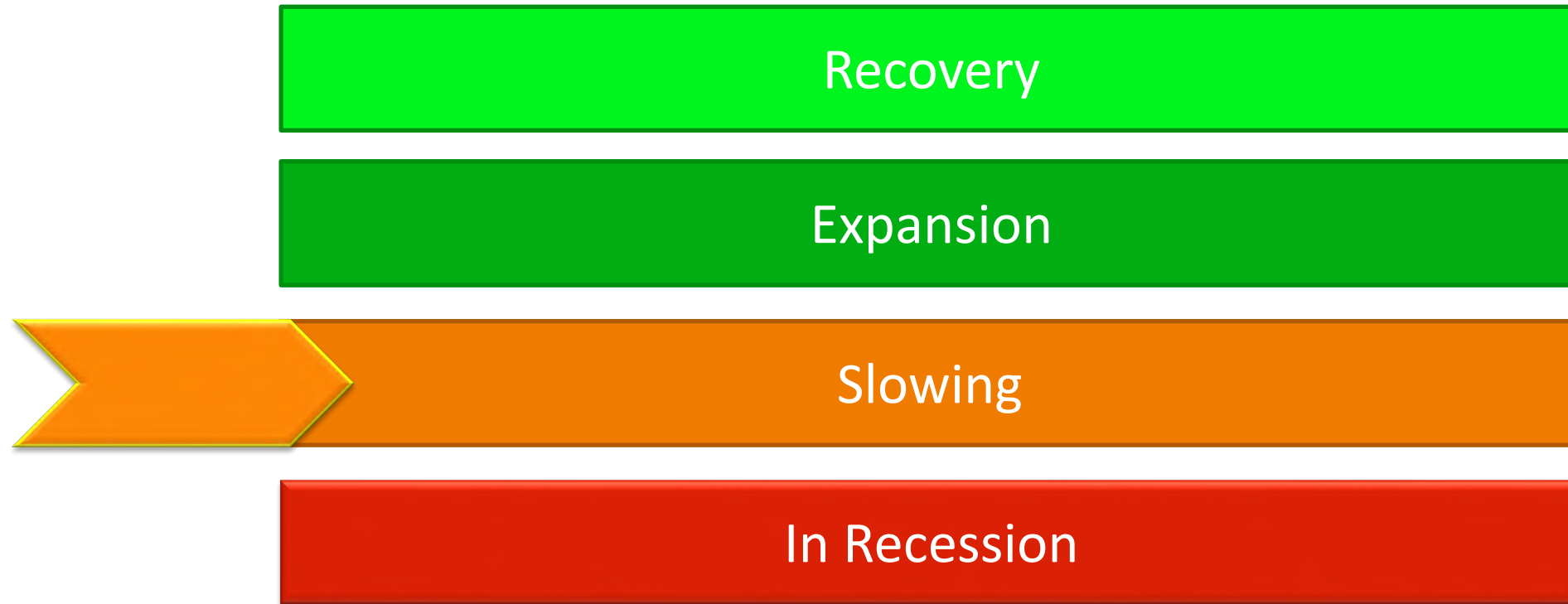
Source: Moody's Analytics.

Arkansas Economic Assets and Challenges

- Assets
 - Low cost of doing business
 - Population growth
 - Stable employment levels
- Challenges
 - Below-average educational attainment
 - Few jobs in high-paying industries
 - Below-average per capita income

Source: Moody's Analytics.

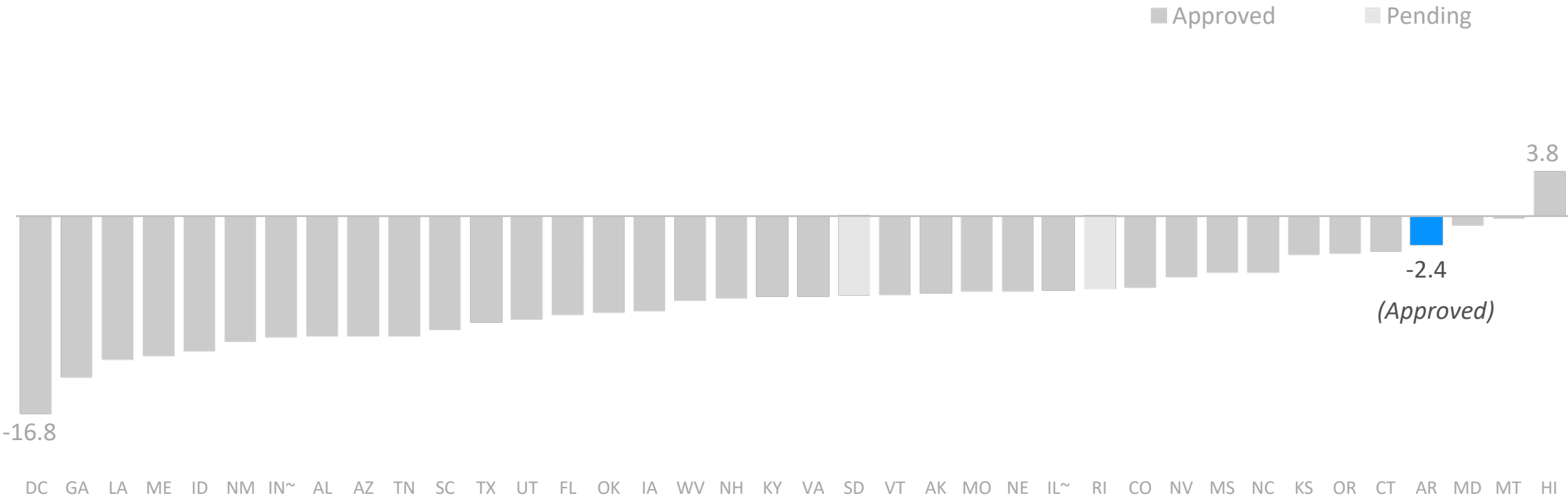
Arkansas Business Cycle Status



Source: Moody's Analytics.

Current NCCI Voluntary Market Loss Cost/Rate Level Changes

Excludes Law-Only Filings

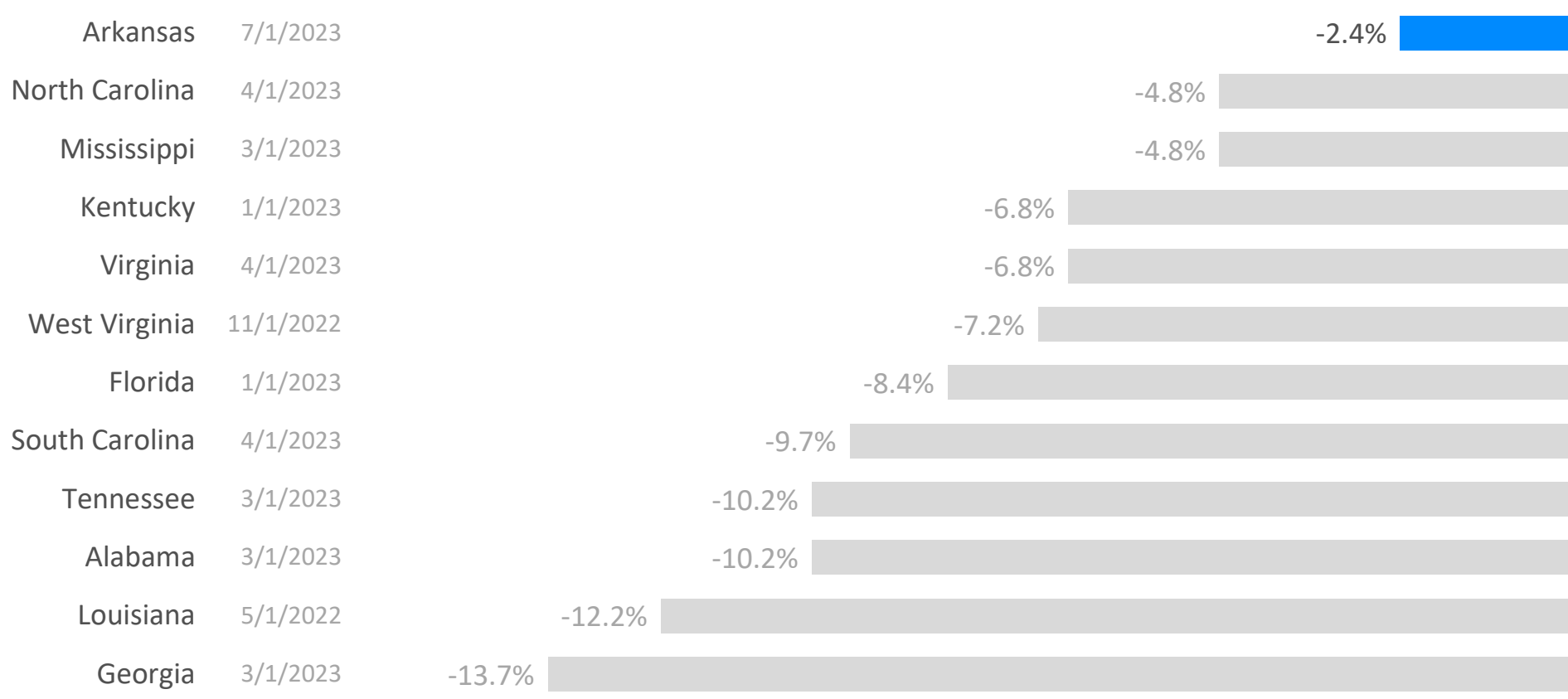


~Value shown is a rate level change; the IN and IL loss cost level changes are -6.2% and -10.3%, respectively.
Reflects the most recent experience filing in each jurisdiction as of 3/17/2023.
Due to the timing of the individual loss cost/rate filings, the figures shown may include changes from prior filing seasons.



Current Voluntary Market Loss Cost/Rate Changes

Southeastern States

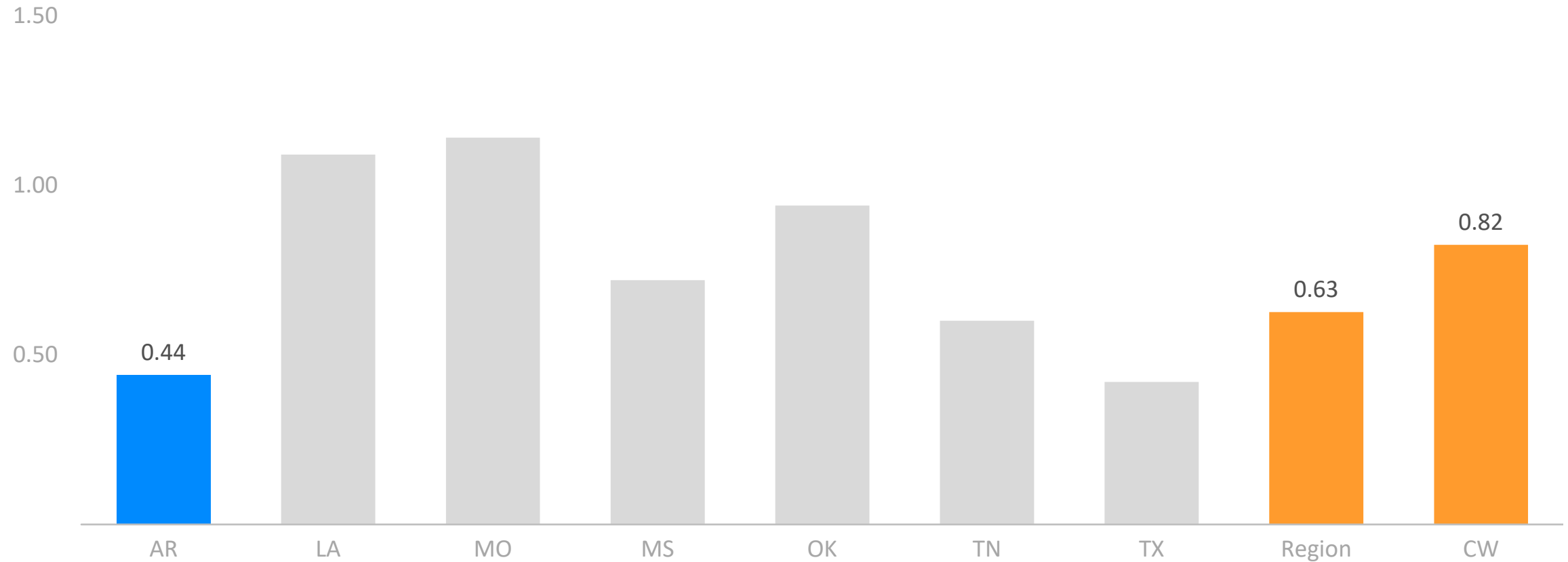


Reflects the most recent experience filing in each jurisdiction as of 3/17/2023.

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 12/31/2020.

CONTACT US



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Senior State Relations Executive
terri_robinson@ncci.com

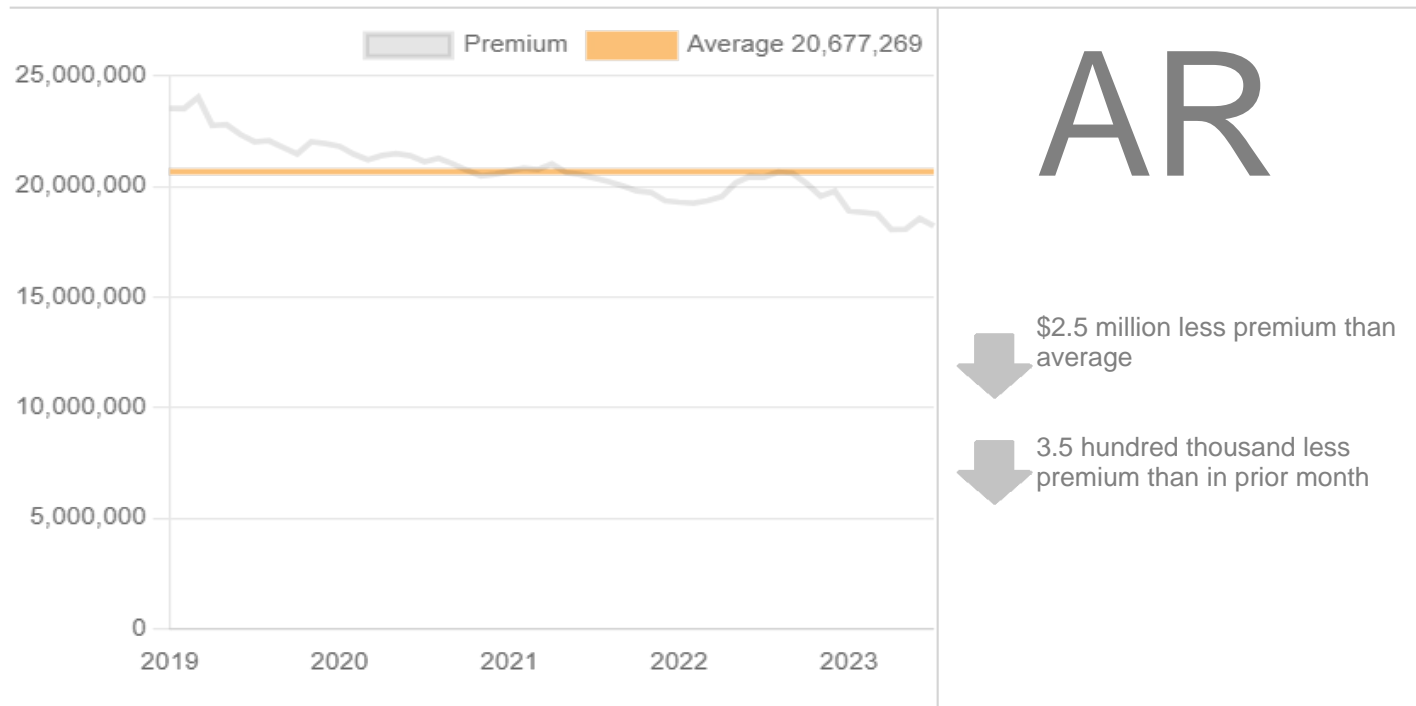


Kelly Briggs

Executive Director & Actuary
kelly_briggs@ncci.com



Arkansas Plan Premium Report July 2023



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 include policies in force as reported to NCCI by Assigned Carriers, assignments less than 90 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

	2019	2020	2021	2022	2023
January	23,540,700	21,826,251	20,706,828	19,294,790	18,897,289
February	23,530,488	21,472,057	20,842,762	19,251,258	18,832,695
March	24,048,132	21,215,711	20,774,844	19,365,418	18,758,514
April	22,763,219	21,407,525	21,032,437	19,542,917	18,054,134
May	22,810,214	21,494,051	20,637,096	20,176,355	18,066,762
June	22,350,420	21,400,795	20,544,583	20,469,621	18,564,480
July	22,025,892	21,129,514	20,395,901	20,430,625	18,218,446
August	22,078,637	21,287,418	20,232,390	20,663,074	
September	21,777,136	21,029,533	20,041,445	20,608,159	
October	21,479,163	20,742,508	19,801,646	20,145,946	
November	22,028,502	20,485,012	19,741,960	19,562,985	
December	21,953,641	20,566,495	19,361,903	19,789,536	

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State of the Line Report

Donna Glenn, FCAS, MAAA

Chief Actuary
NCCI



Property & Casualty (P&C) Industry Results



P&C Industry Net Written Premium Growth—2021 to 2022

Private Carriers

Line of Business	2021 (\$B)	2022p (\$B)	% Change From 2021
Personal Auto	252.9	267.9	
Homeowners	103.4	113.8	
Other Liability (Incl. Product Liability)	89.1	99.4	
Commercial Auto	46.6	51.6	
Commercial Multi-Peril	43.7	48.4	
Fire & Allied Lines (Incl. Earthquake)	41.9	47.2	
Workers Compensation	38.2	42.5	11.2
All Other Lines	95.1	100.3	
Total P&C Industry	710.9	771.0	8.4

p Preliminary

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

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P&C Industry Net Written Premium Growth—2019 to 2022

Private Carriers

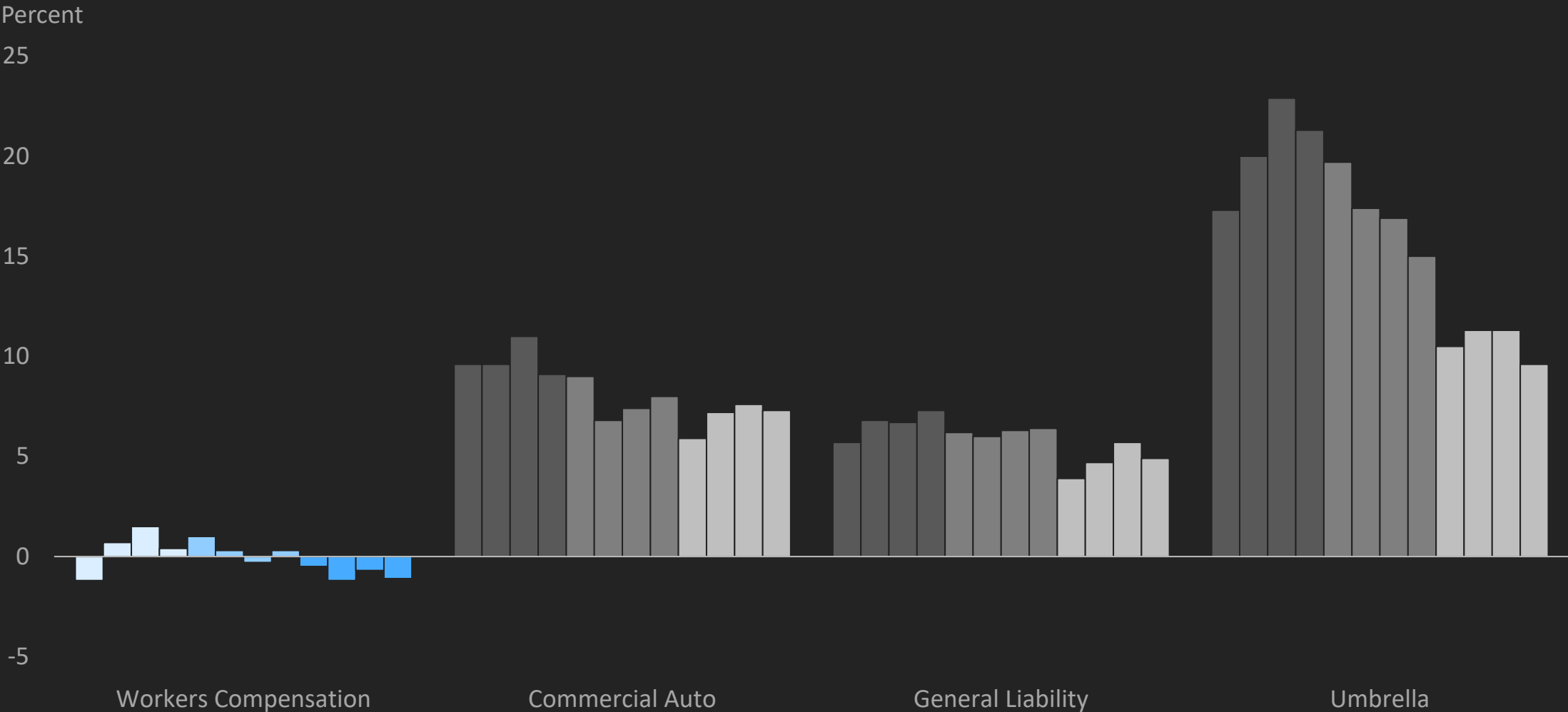
Line of Business	2019 (\$B)	2022p (\$B)	% Change From 2019
Personal Auto	247.7	267.9	
Homeowners	92.3	113.8	
Other Liability (Incl. Product Liability)	64.4	99.4	
Commercial Auto	38.9	51.6	
Commercial Multi-Peril	38.9	48.4	
Fire & Allied Lines (Incl. Earthquake)	32.3	47.2	
Workers Compensation	42.0	42.5	1.1
All Other Lines	77.6	100.3	
Total P&C Industry	634.0	771.0	21.6

p Preliminary

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

Quarterly Average Premium Changes by Line of Business

Q1 2020–Q4 2022



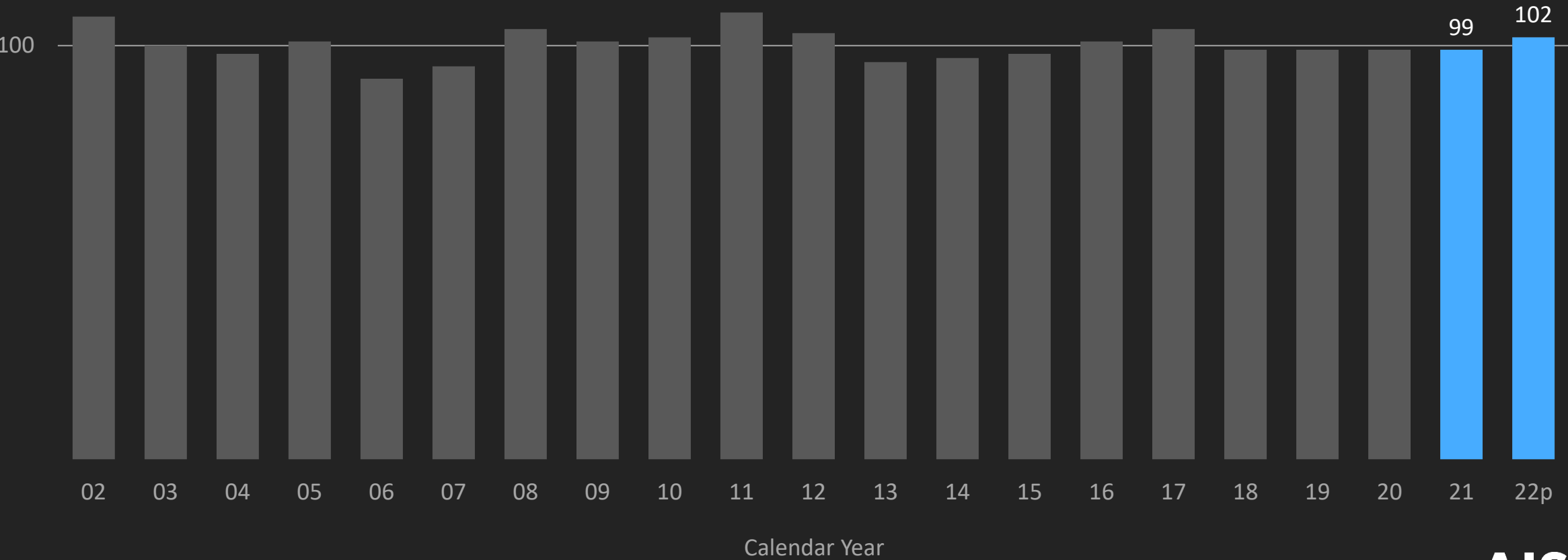
Sources: The Council of Insurance Agents & Brokers: Q4 P/C Market Index Surveys (2020–2022)

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P&C Industry Net Combined Ratio

Private Carriers

Percent



p Preliminary
Sources: 2002–2008 and 2013–2022p NAIC’s Annual Statement data; 2009–2012 Insurance Services Office (ISO)

P&C Industry Net Combined Ratio

Private Carriers

Line of Business	2021 (%)	2022p (%)	Difference From 2021	
Personal Auto	101	112		
Homeowners	104	104		
Other Liability (Incl. Product Liability)	97	96		
Commercial Auto	99	105		
Commercial Multi-Peril	106	106		
Fire & Allied Lines (Incl. Earthquake)	99	96		
Workers Compensation	87	84	-3	
All Other Lines	92	87		
Total P&C Industry	99	102		3

p Preliminary

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

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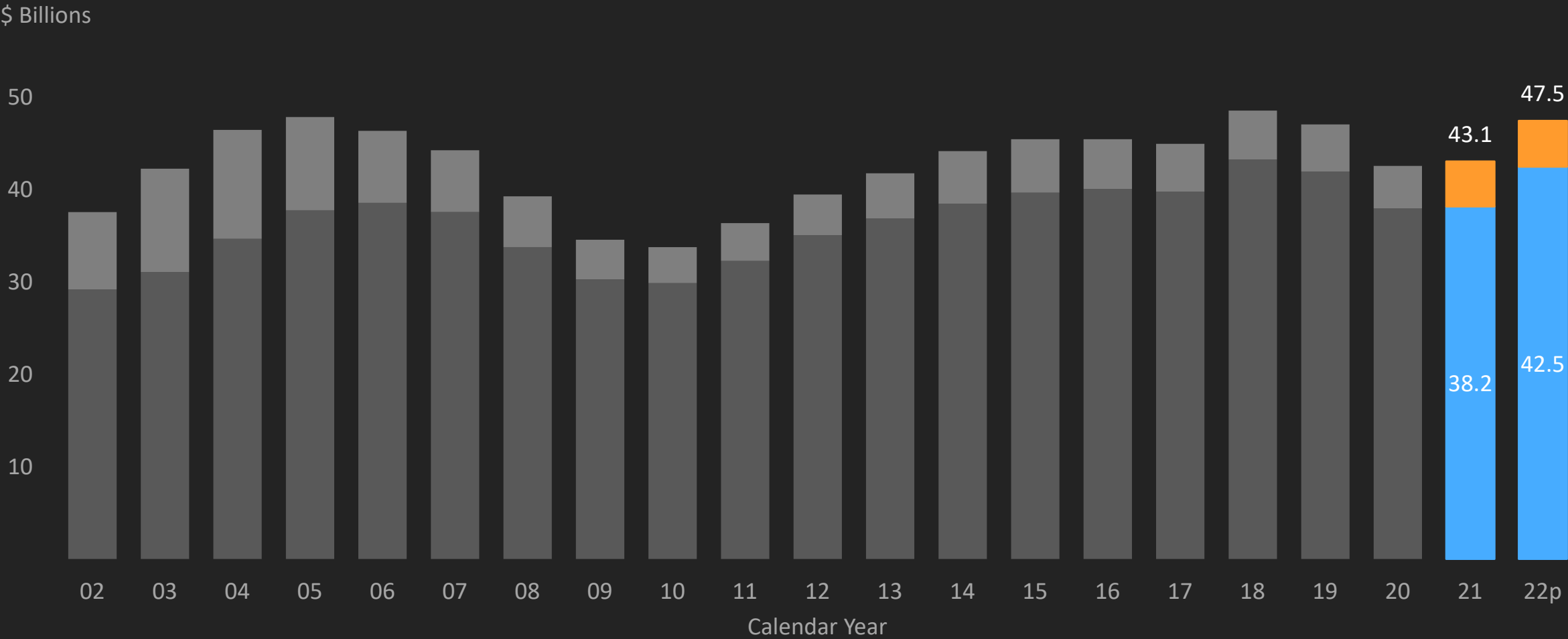
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Workers Compensation (WC) Premium



WC Net Written Premium

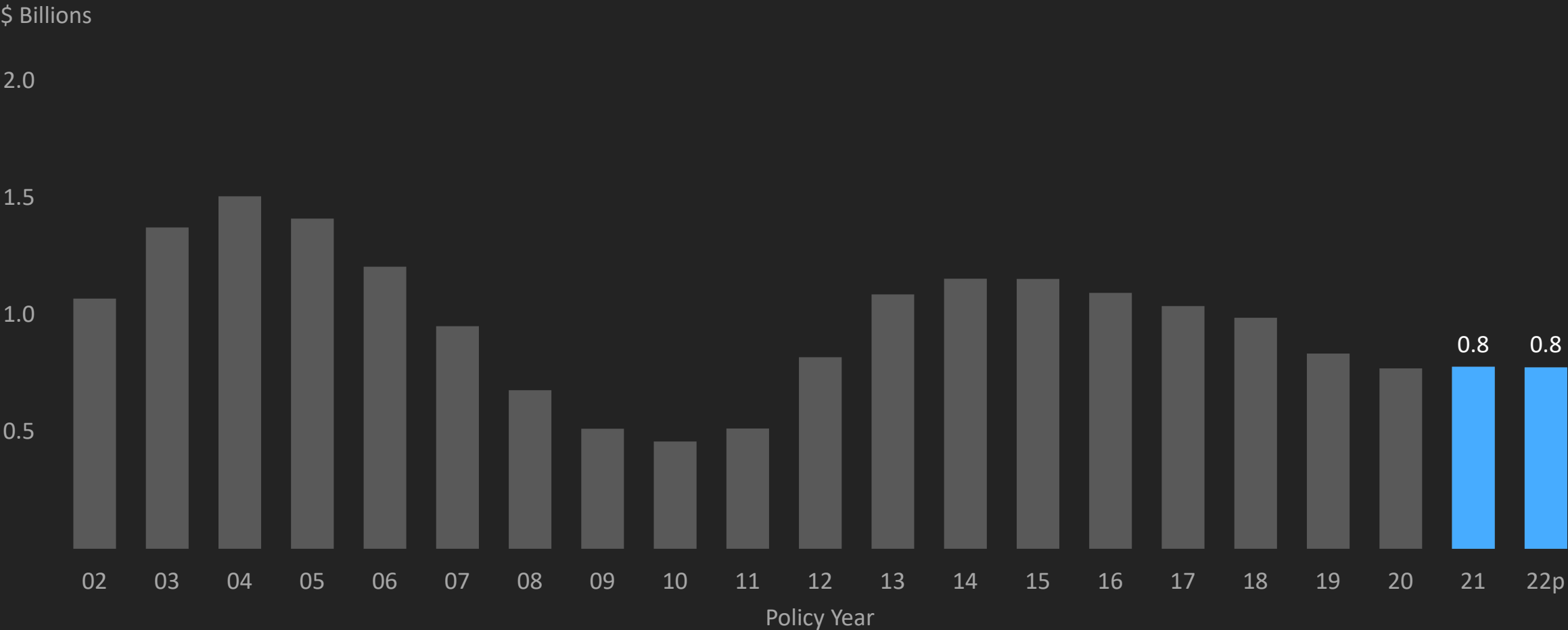
Private Carriers and State Funds



p Preliminary
Source: NAIC's Annual Statement data
The following states are included in the respective calendar years in which they operate as state funds: AZ, CA, CO, HI, ID, KY, LA, MD, MO, MT, NM, OK, OR, RI, TX, and UT

WC Residual Market Premium

NCCI-Serviced WC Residual Market Pools

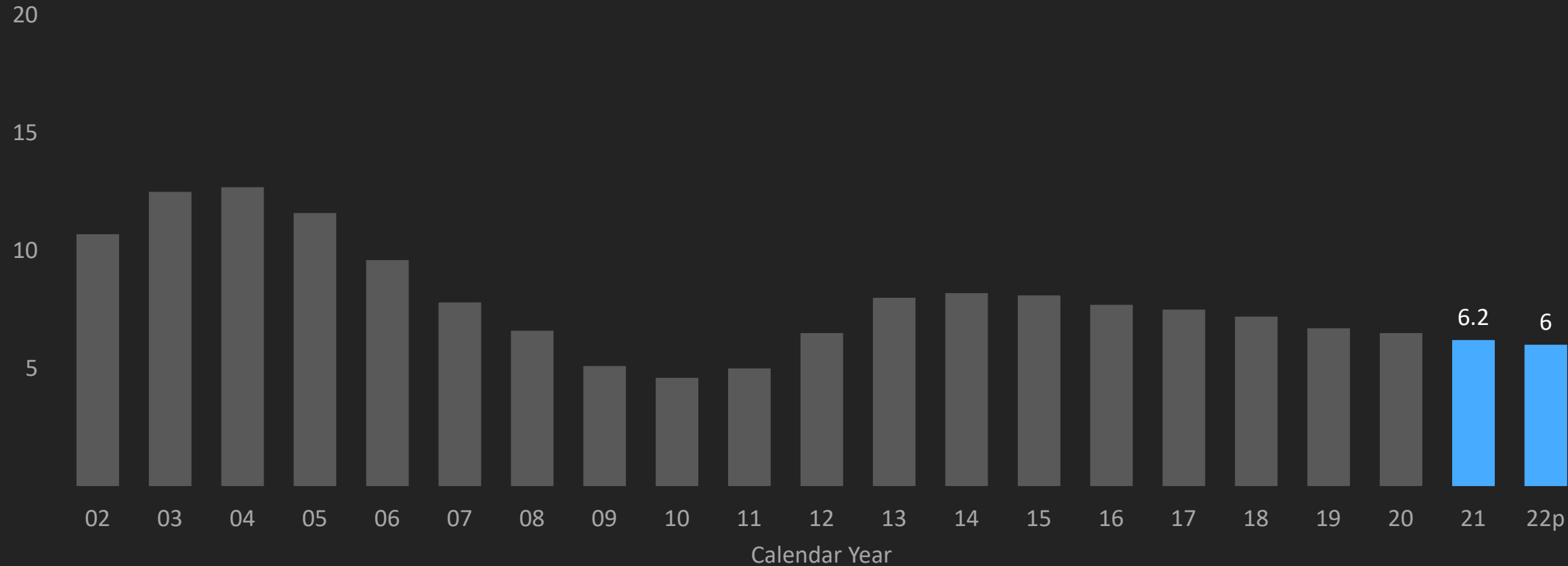


p Preliminary, incomplete policy year projected to ultimate
Source: NCCI's **Residual Market Quarterly Results**
Includes Pool Data for all NCCI-serviced WC Residual Market Pool states, valued as of 12/31/2022
Tennessee Reinsurance Mechanism premium is not included

WC Residual Market Share

NCCI-Serviced WC Residual Market Pools

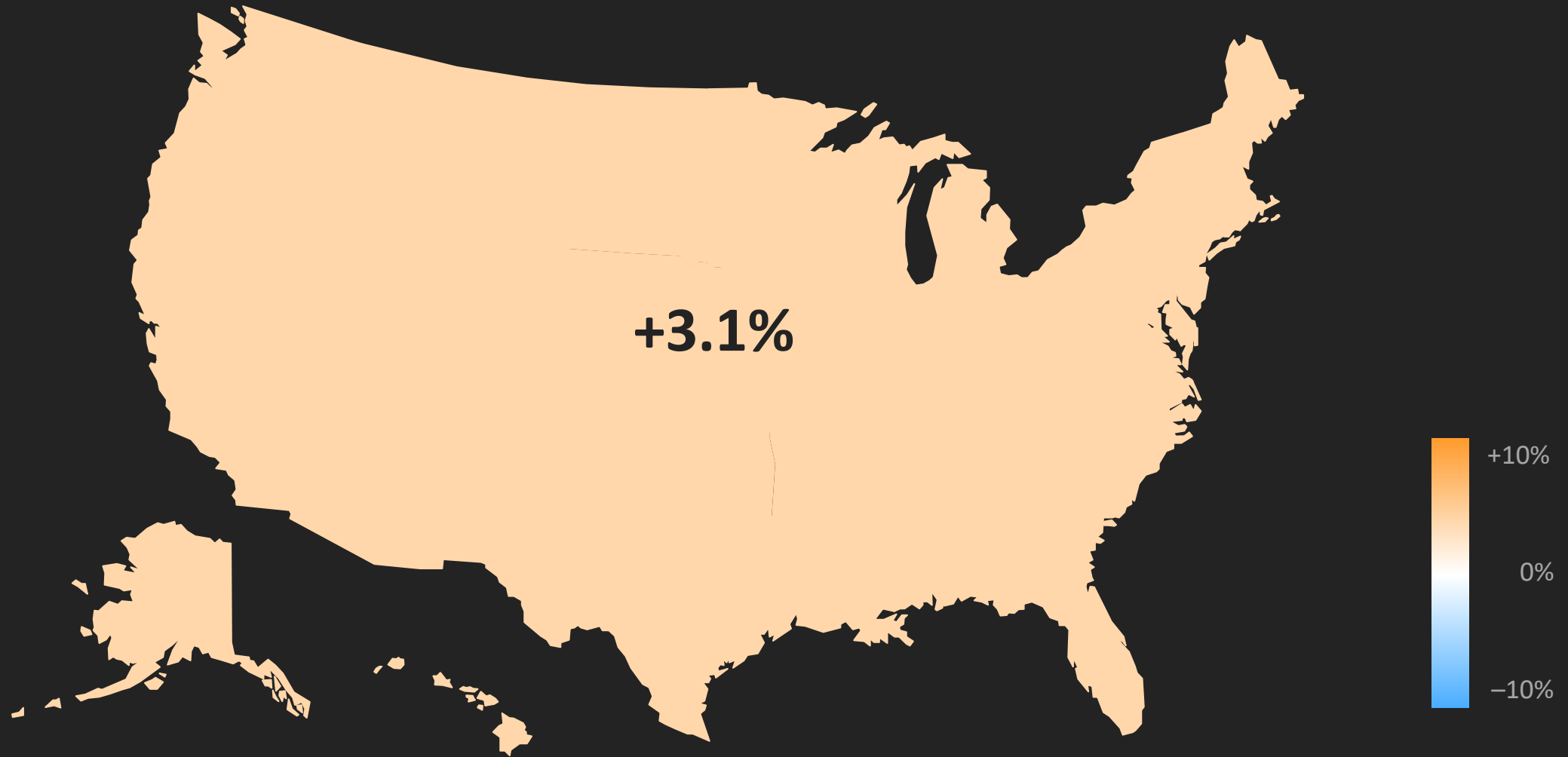
Percent



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

WC Direct Written Premium Change—2019 to 2022

Private Carriers



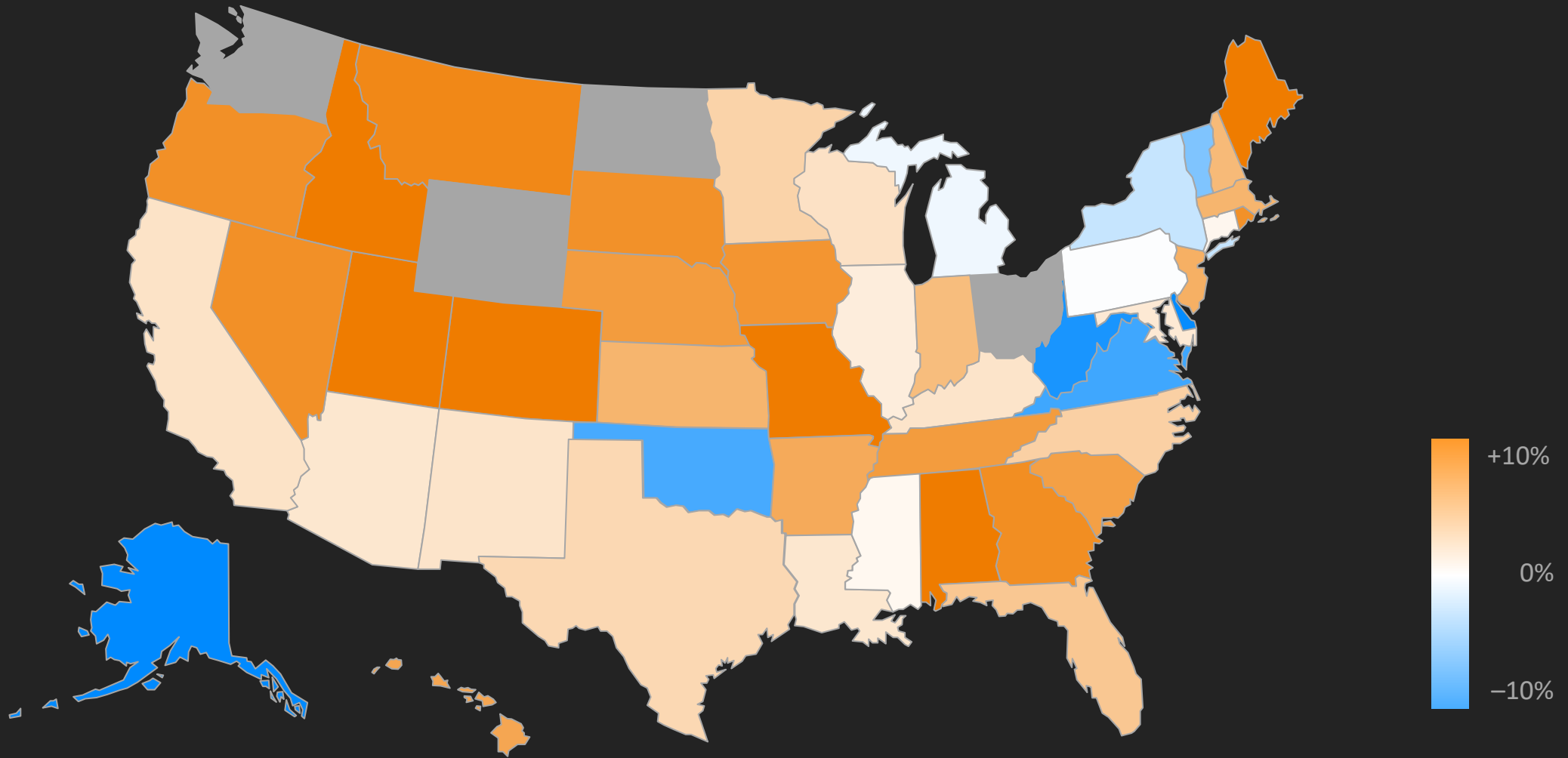
Sources: 2019 and 2022 NAIC's Annual Statement Statutory Page 14

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WC Direct Written Premium Change—2019 to 2022

Private Carriers



Sources: 2019 and 2022 NAIC's Annual Statement Statutory Page 14

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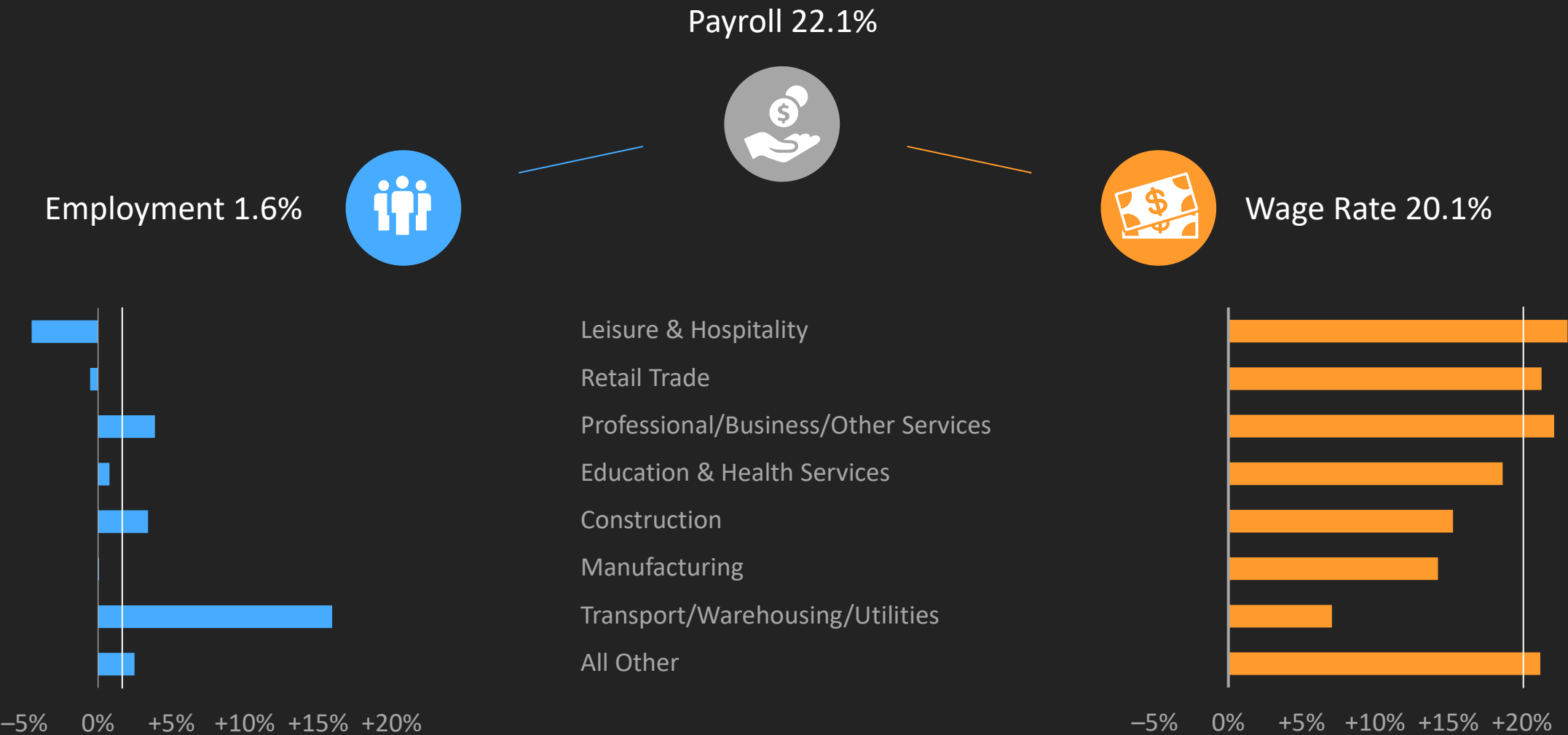
Changes in Payroll by Component—2021 to 2022



Sources: US Bureau of Labor Statistics; US Bureau of Economic Analysis; NCCI

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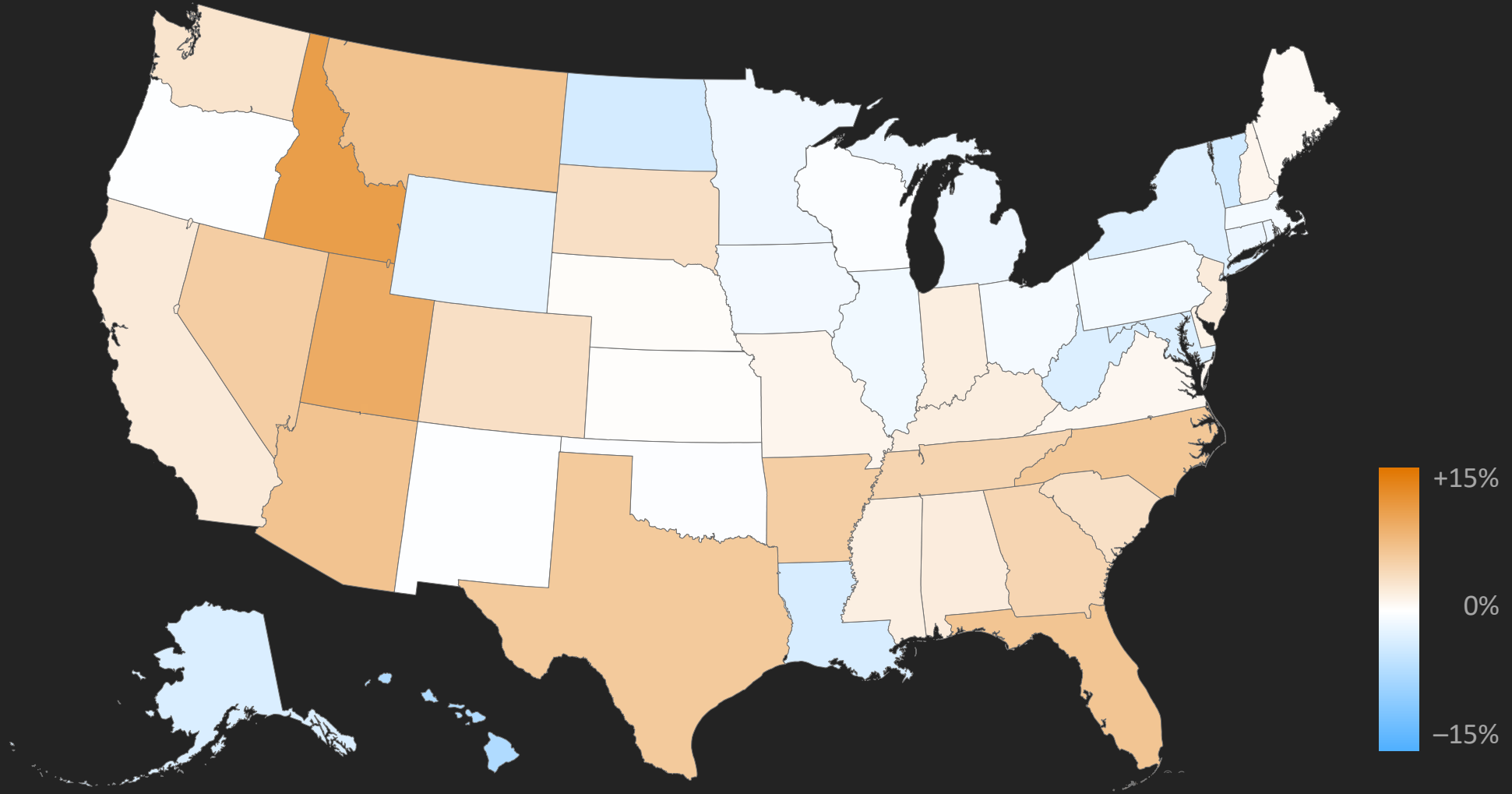
Changes in Payroll by Component—2019 to 2022



Sources: US Bureau of Labor Statistics; US Bureau of Economic Analysis; NCCI

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Changes in Employment for Private Industry—2019 to 2022

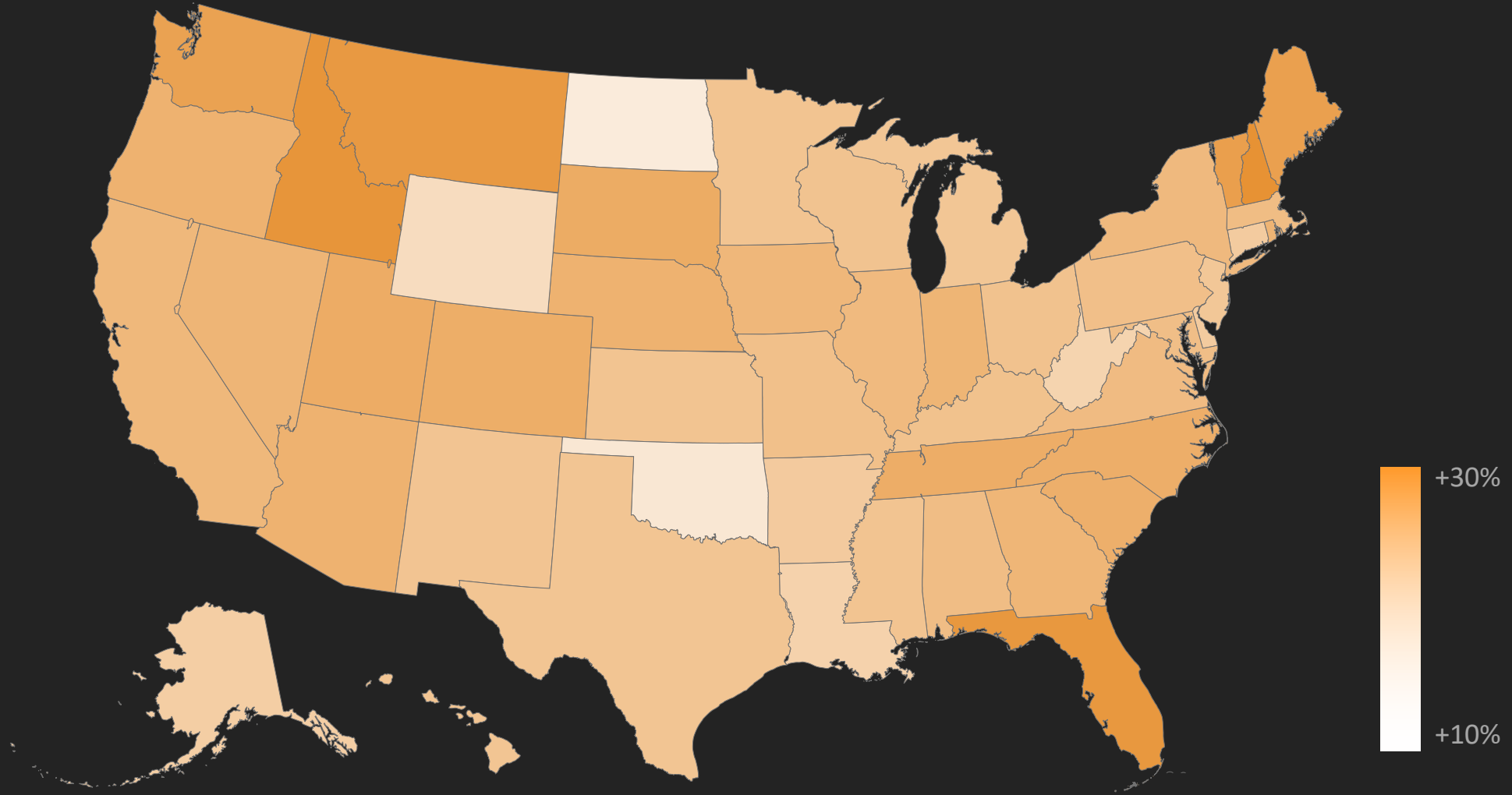


Sources: US Bureau of Labor Statistics; US Bureau of Economic Analysis; NCCI

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Changes in Wage Rate for Private Industry—2019 to 2022



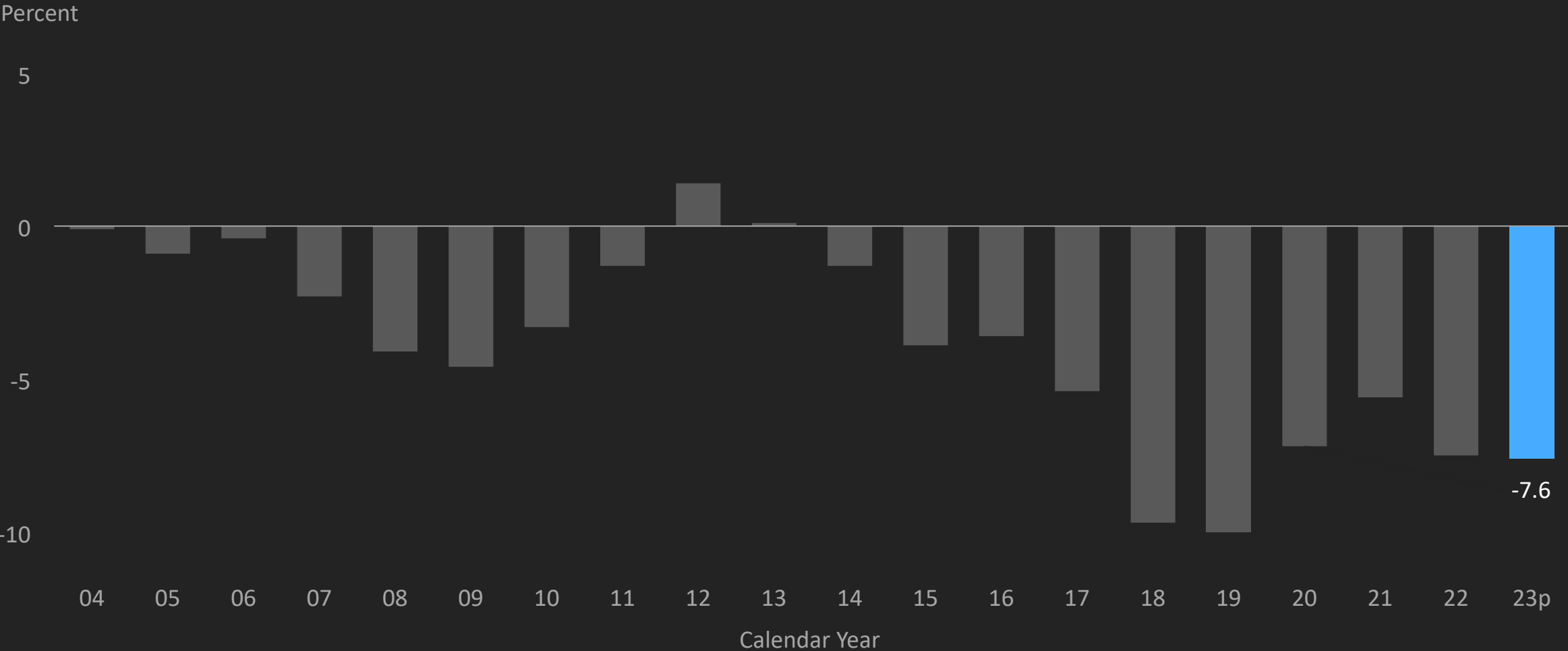
Sources: US Bureau of Labor Statistics; US Bureau of Economic Analysis; NCCI

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WC Approved Changes in Bureau Premium Level

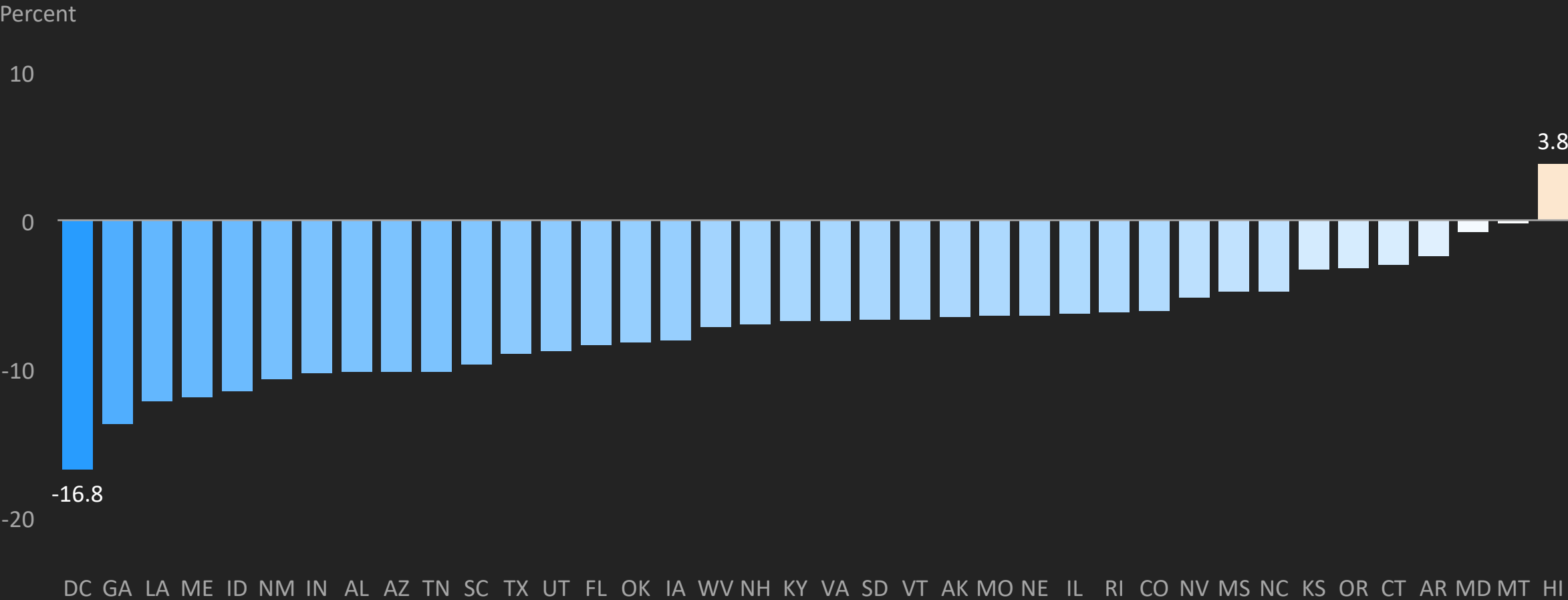
Weighted by Effective Date—NCCI States



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 5/5/2023
IN and NC are filed in cooperation with state rating bureaus

Most Recent Changes in Bureau Premium Level

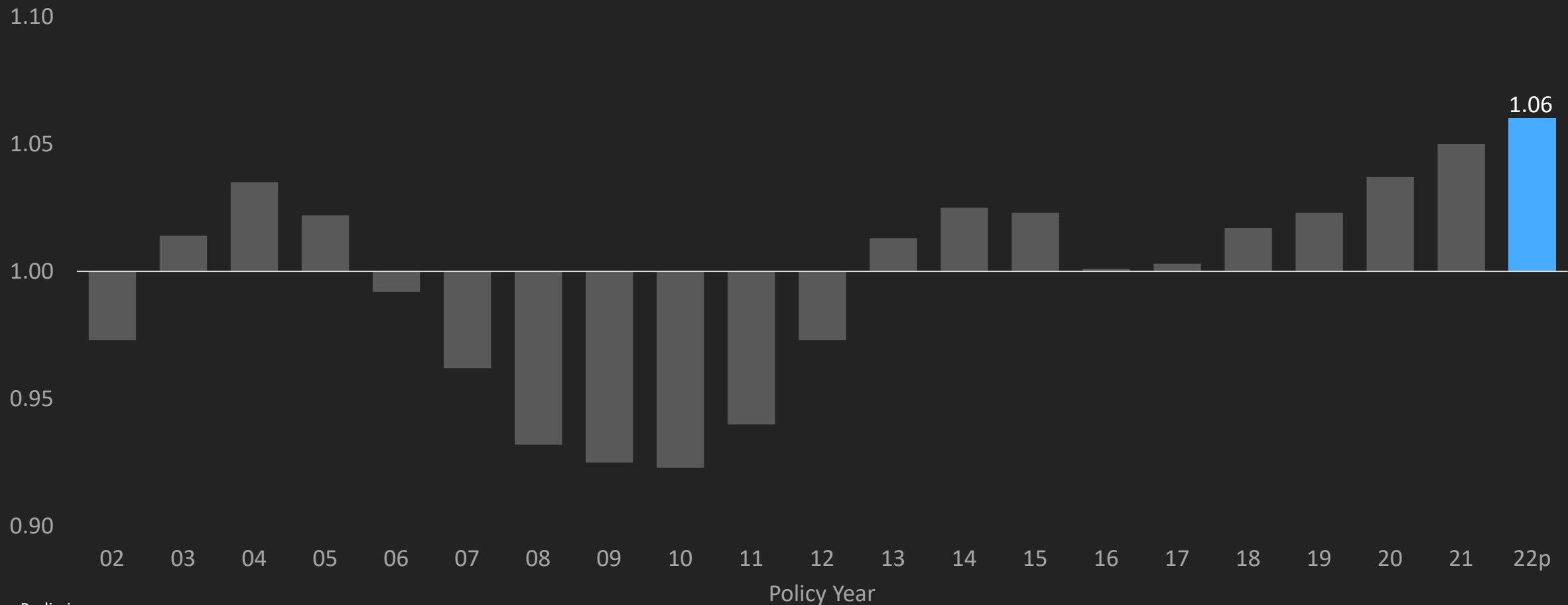
Voluntary Market, Excludes Law-Only Filings



Premium level changes in advisory rates, loss costs, and rating values, as of 5/5/2023, as filed by the applicable rating organization, relative to those previously approved
IN and NC are filed in cooperation with state rating bureaus

Combined Impact of Schedule Rating, Dividends, and Rate/Loss Cost Departure

Private Carriers—NCCI States

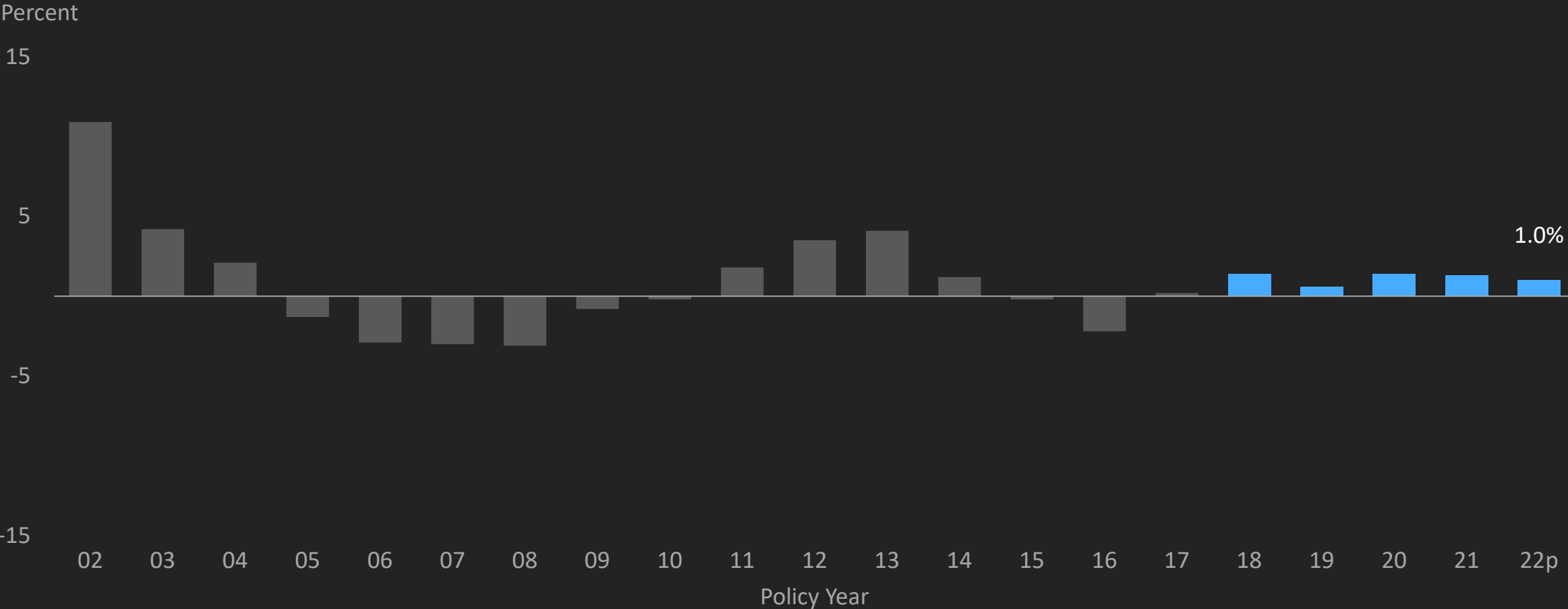


p Preliminary

Sources: NAIC's Annual Statement Statutory Page 14 and NCCI's Financial Call data
Reflects the impact of carrier dividends, schedule rating, and departure from NCCI rate/loss costs
Based on data for all states where NCCI provides ratemaking services, excluding TX

Change in Combined Impact of Schedule Rating, Dividends, and Rate/Loss Cost Departure

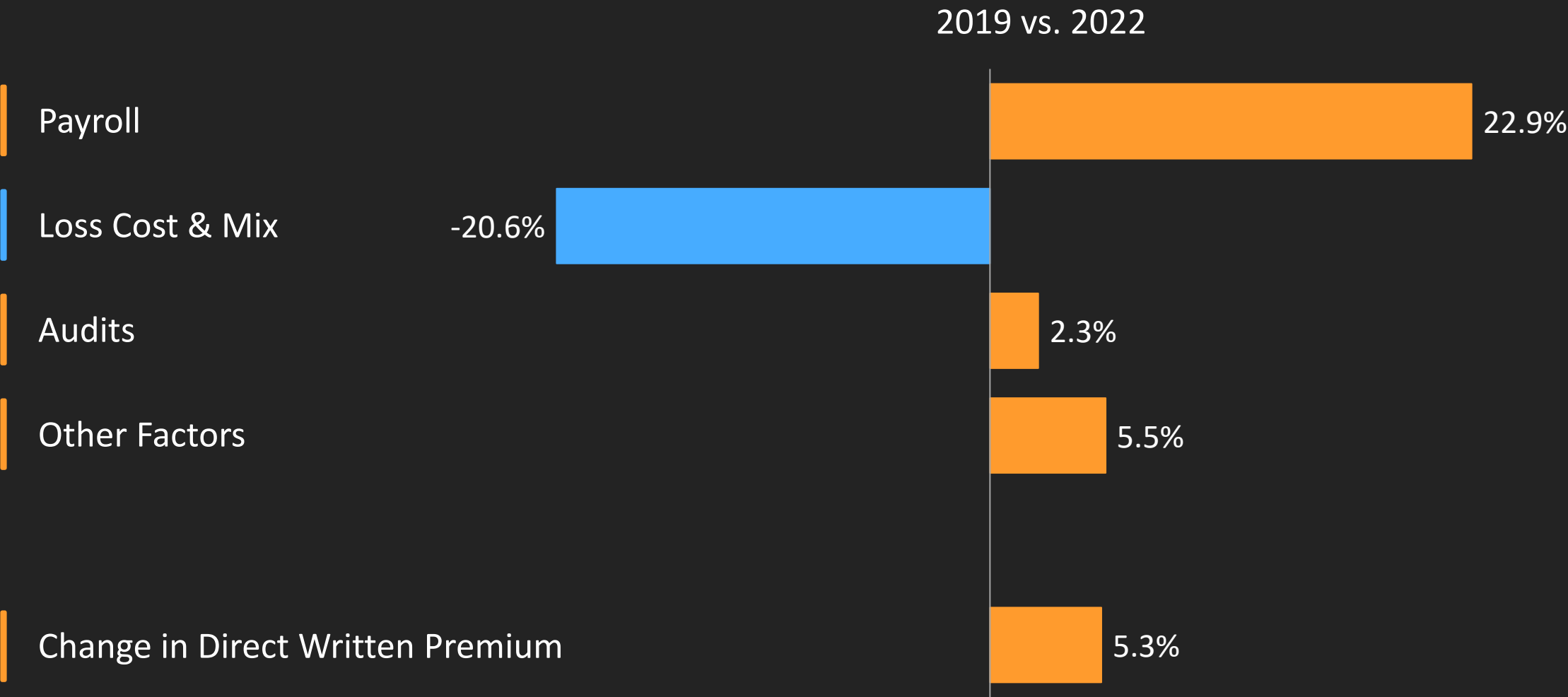
Private Carriers—NCCI States



p Preliminary
Sources: NAIC's Annual Statement Statutory Page 14 and NCCI's Financial Call data
Reflects the impact of carrier dividends, schedule rating, and departure from NCCI rate/loss costs
Based on data for all states where NCCI provides ratemaking services, excluding TX

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

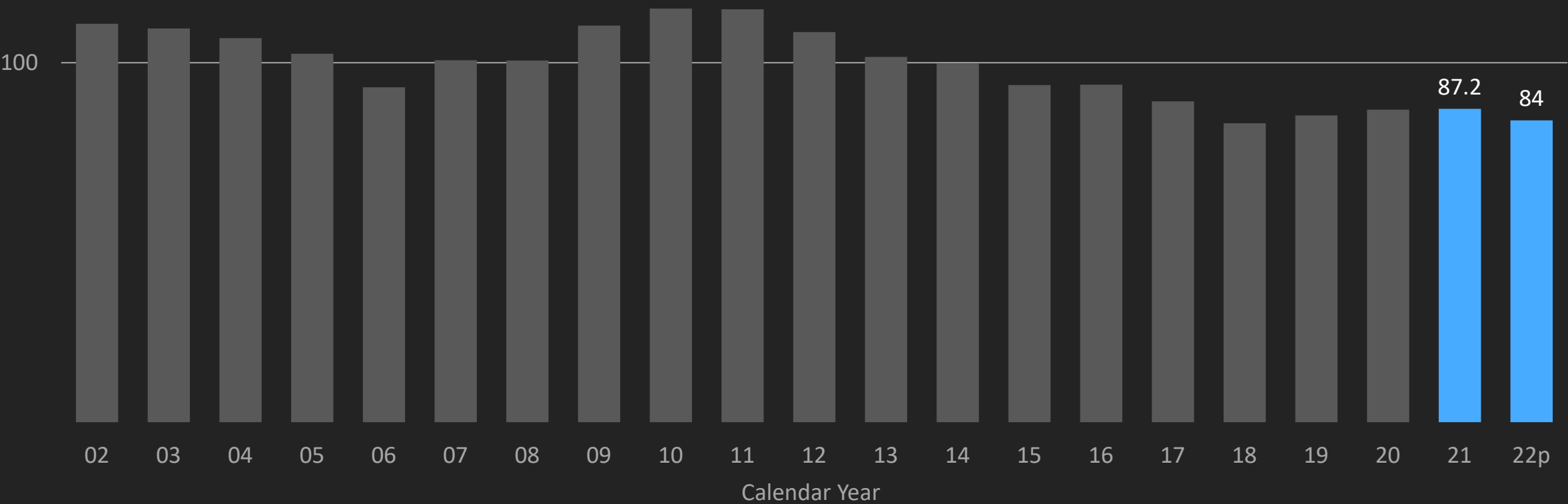
Workers Compensation Results



WC Net Combined Ratio

Private Carriers

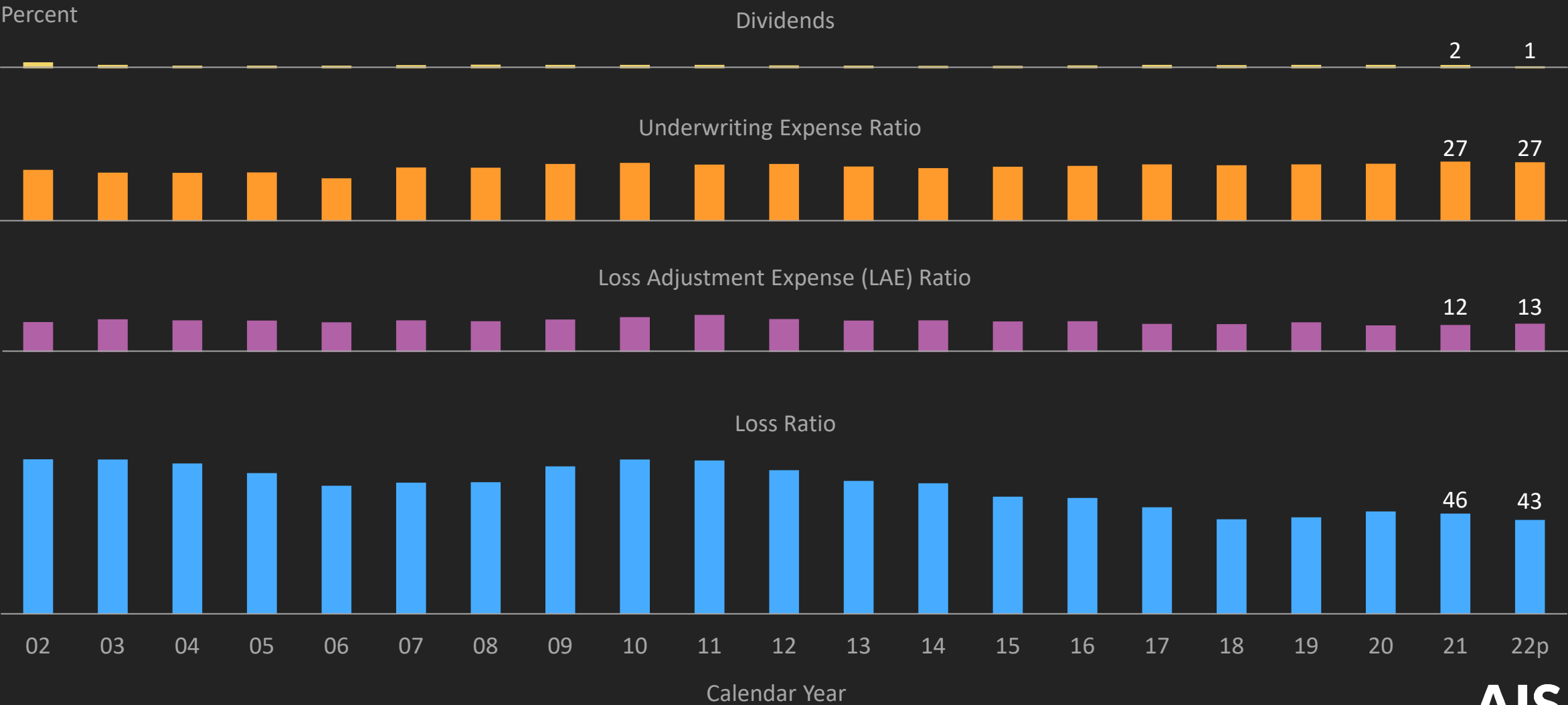
Percent



p Preliminary
Source: NAIC's Annual Statement data

WC Net Combined Ratio by Component

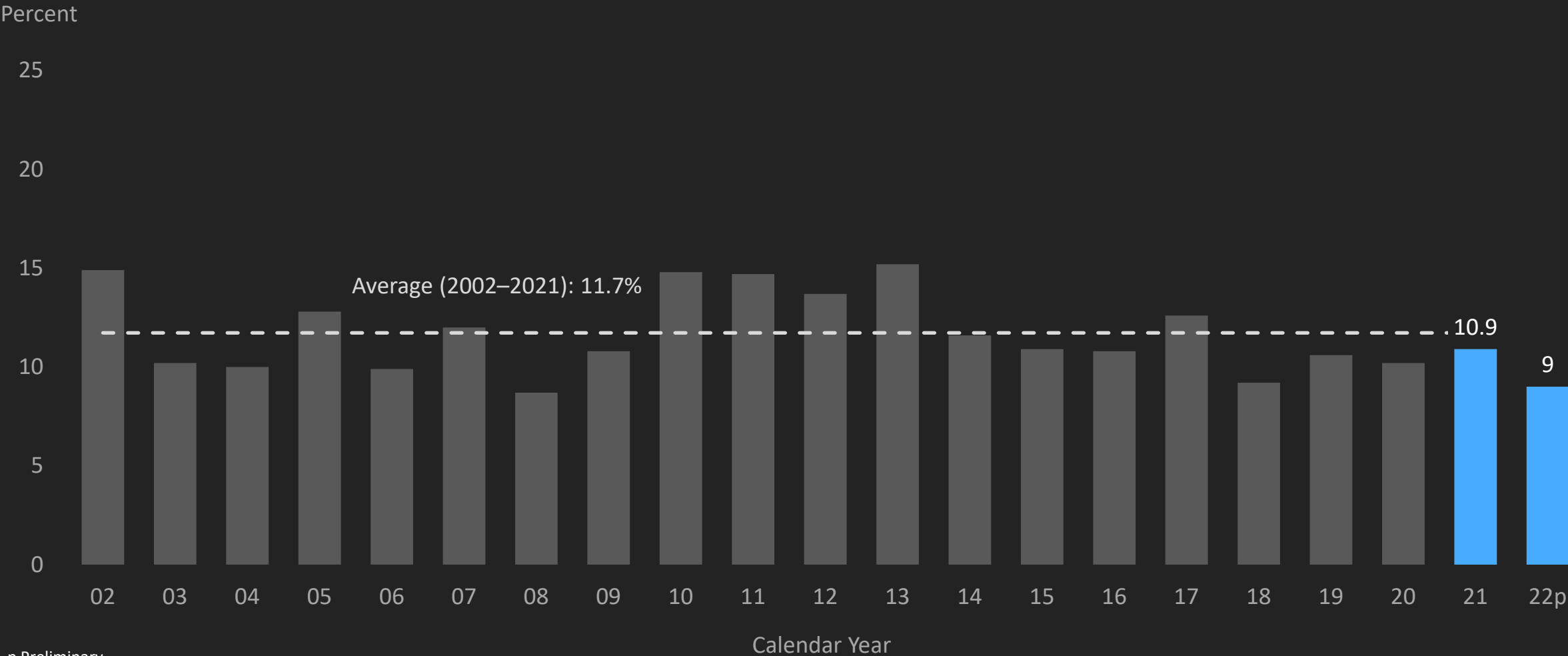
Private Carriers



p Preliminary
Source: NAIC's Annual Statement data

WC Investment Gain on Insurance Transactions

Ratio to Net Earned Premium, Private Carriers



p Preliminary

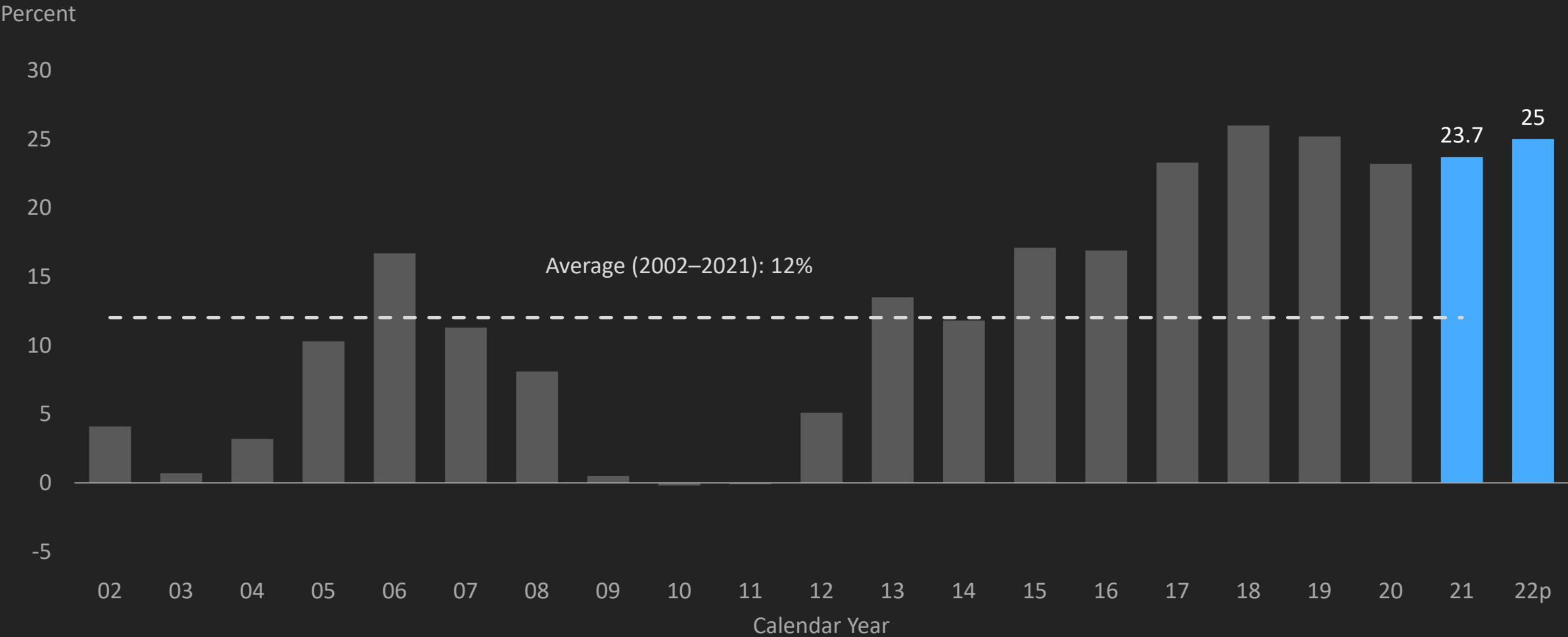
Source: NAIC's Annual Statement data

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

WC Pretax Operating Gain

Private Carriers



p Preliminary

Source: NAIC's Annual Statement data

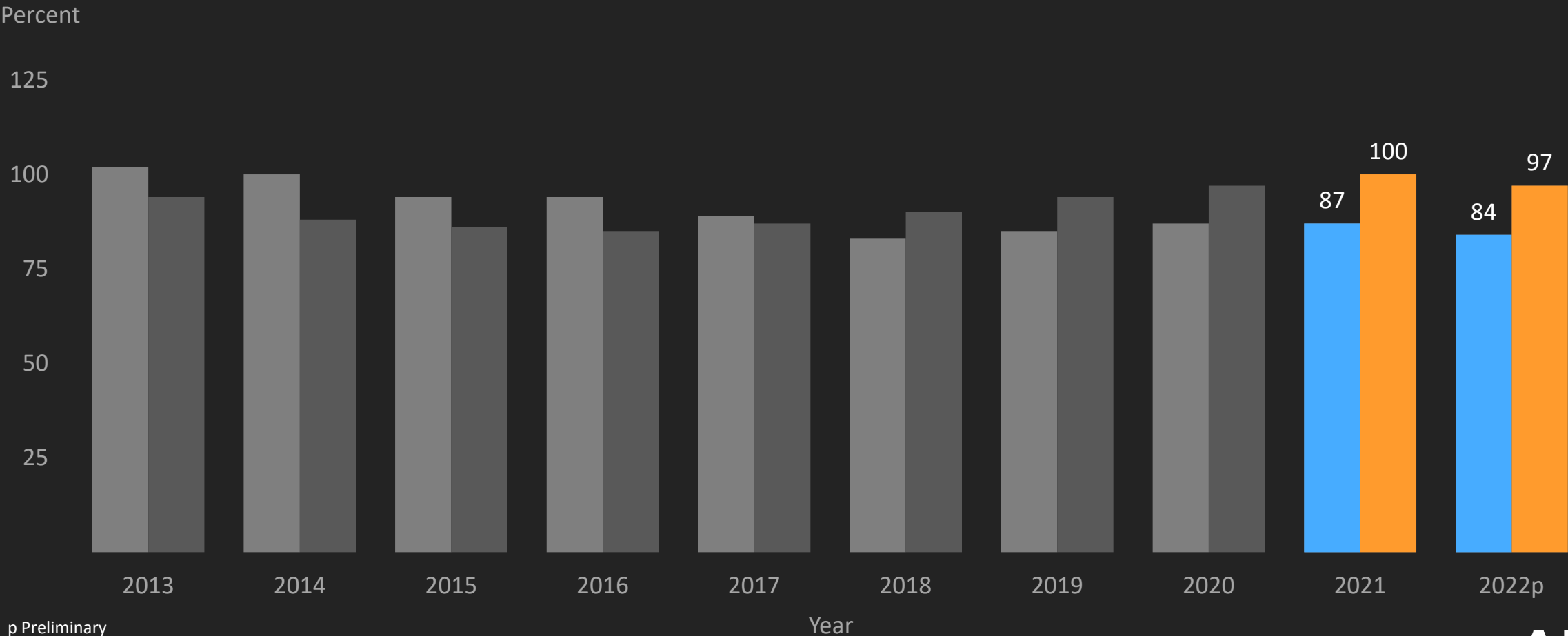
Operating Gain equals 1.00 minus (Combined Ratio less Investment Gain on Insurance Transactions and Other Income)

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

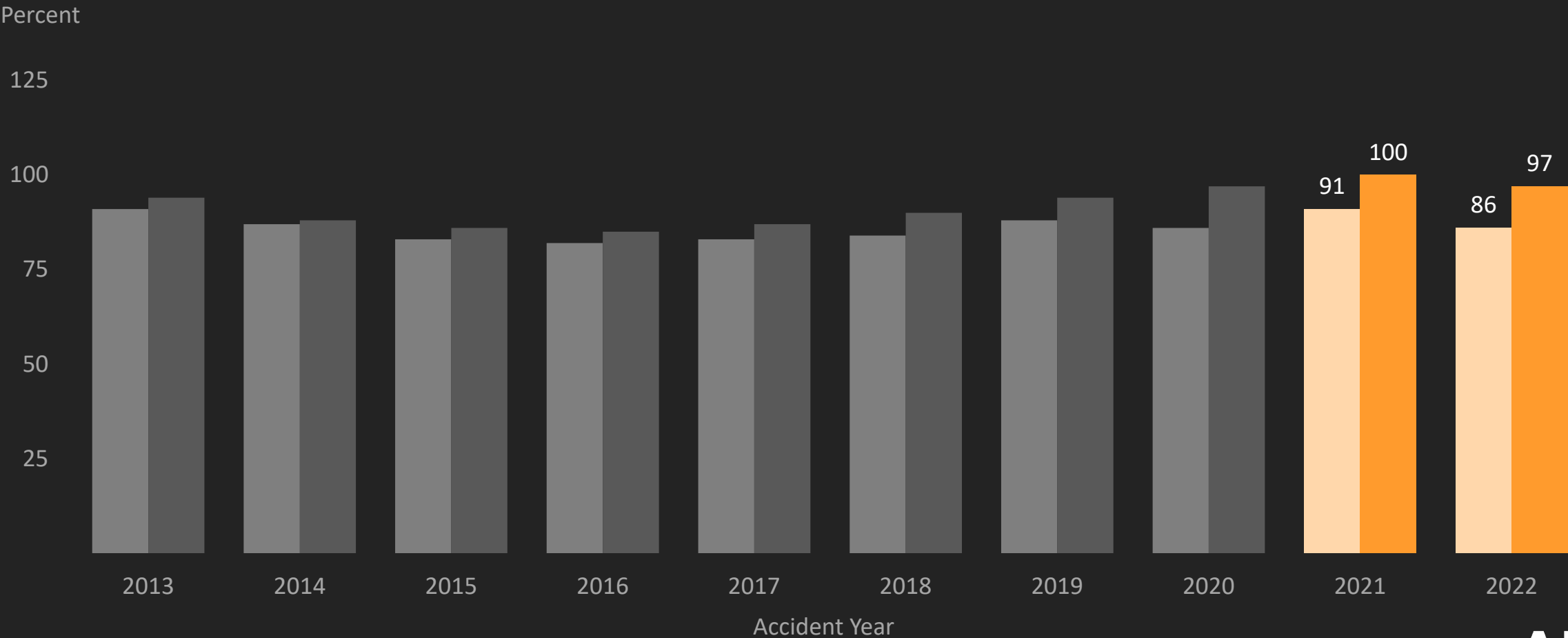
Private Carriers



p Preliminary
Source: NAIC's Annual Statement data
Accident Year information is reported as of 12/31/2022
Includes dividends to policyholders

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

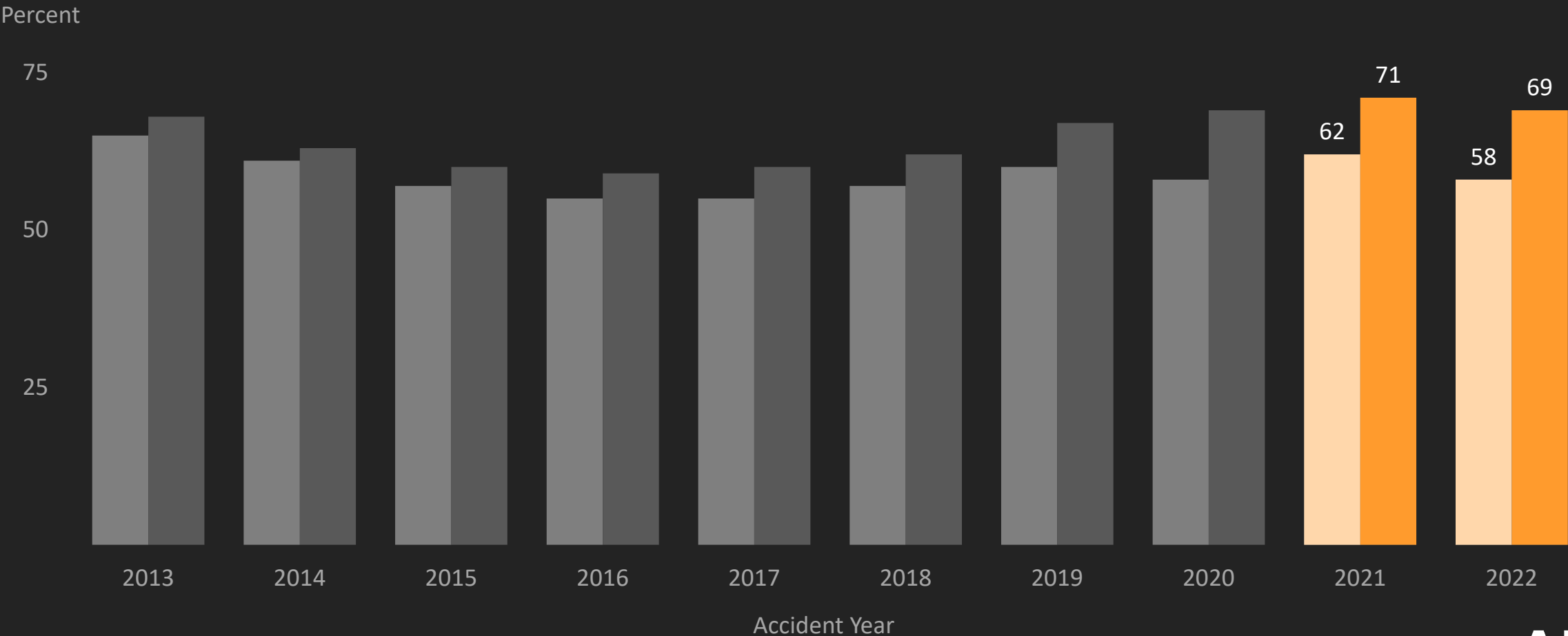
Private Carriers



Sources: NCCI Selections: NCCI's analysis based on NAIC's Annual Statement data
As Reported: NAIC's Annual Statement Schedule P—Part 1D data as of 12/31/2022

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

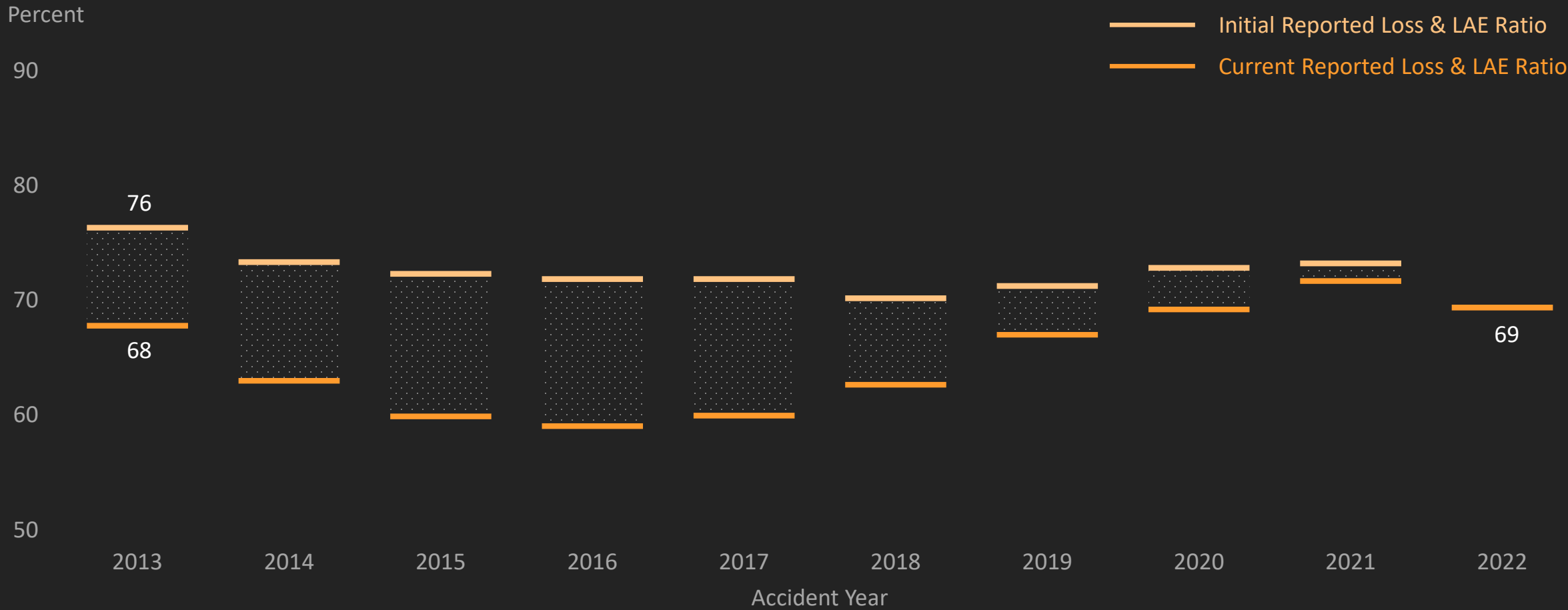
Private Carriers



Sources: NCCI Selections: NCCI's analysis based on NAIC's Annual Statement data
As Reported: NAIC's Annual Statement Schedule P—Part 1D data as of 12/31/2022
As Reported Loss and LAE ratios are net of tabular reserve discounts and gross of nontabular reserve discounts

Emergence of Reported WC Net Loss and LAE Ratios

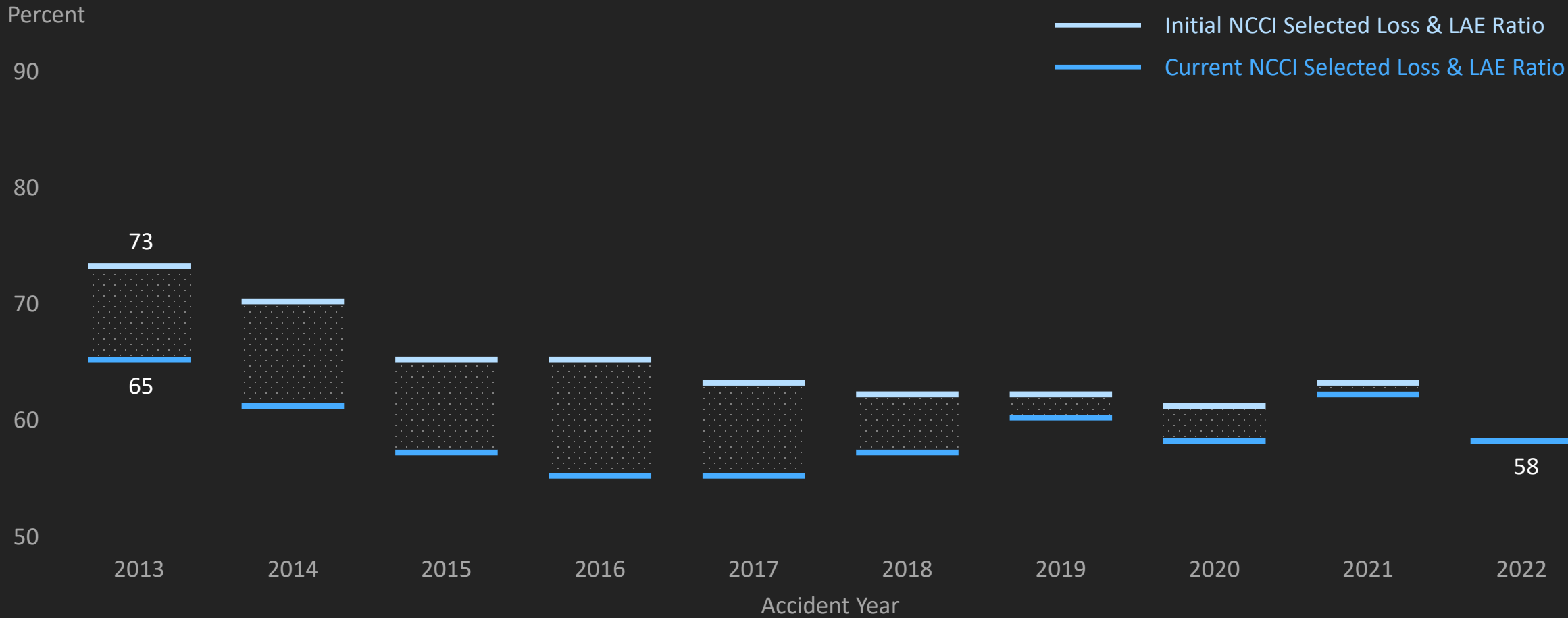
Private Carriers



Source: NAIC's Annual Statement Schedule P—Part 1D data at year-end valuations
As Reported Loss and LAE ratios are net of tabular reserve discounts and gross of nontabular reserve discounts

Emergence of NCCI Selected WC Net Loss and LAE Ratios

Private Carriers

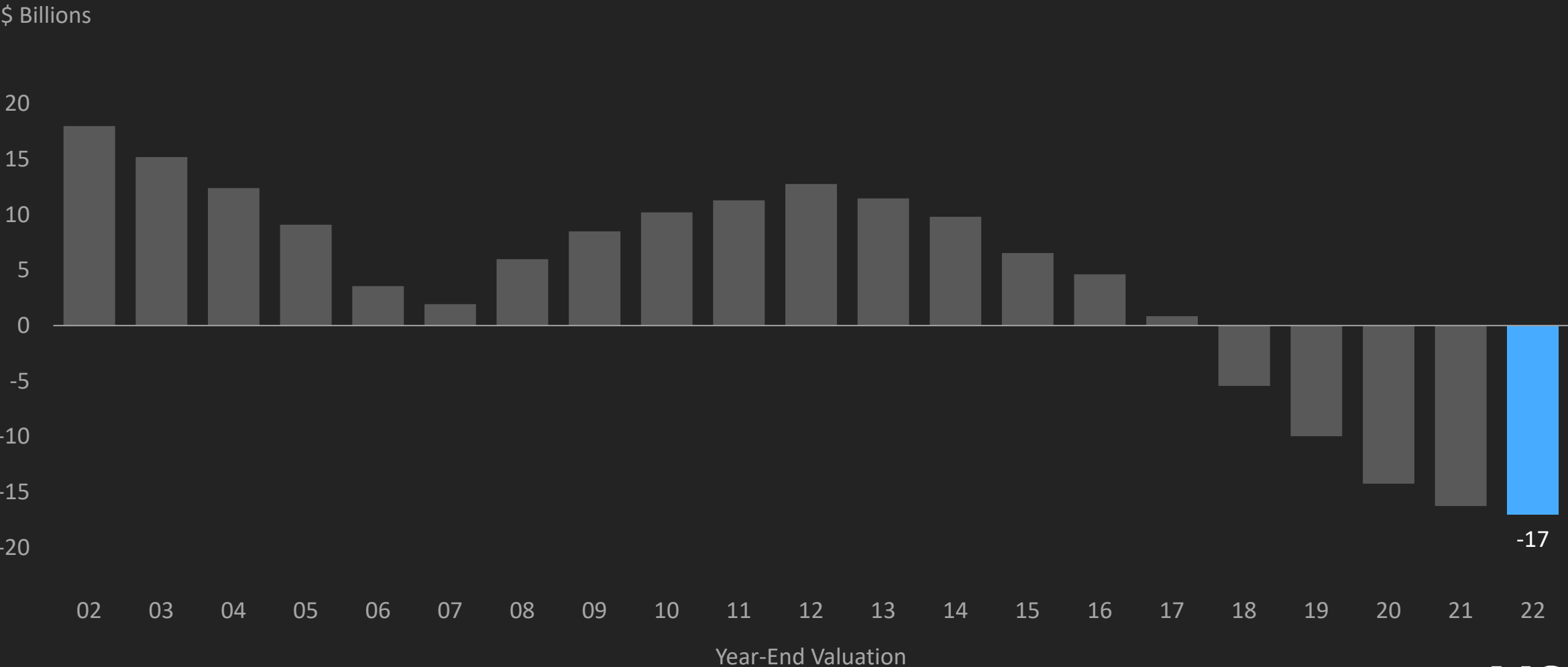


Source: NCCI's analysis based on NAIC's Annual Statement data

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WC Net Loss and LAE Reserve Adequacy

Private Carriers



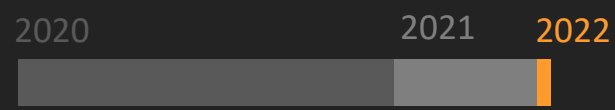
Source: NCCI's analysis based on NAIC's Annual Statement data
Adequacy values above consider all reserve discounts as deficiencies

Ratemaking and COVID-19

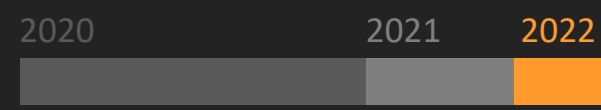


The Direct Impact of COVID-19—Accident Years 2020–2022

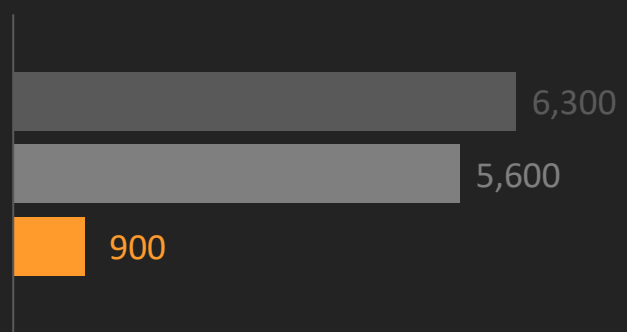
 **\$628M** in losses



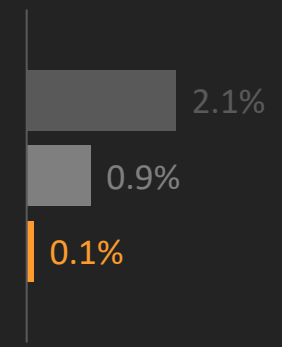
 **118,000** claims



 **\$5,300** average severity



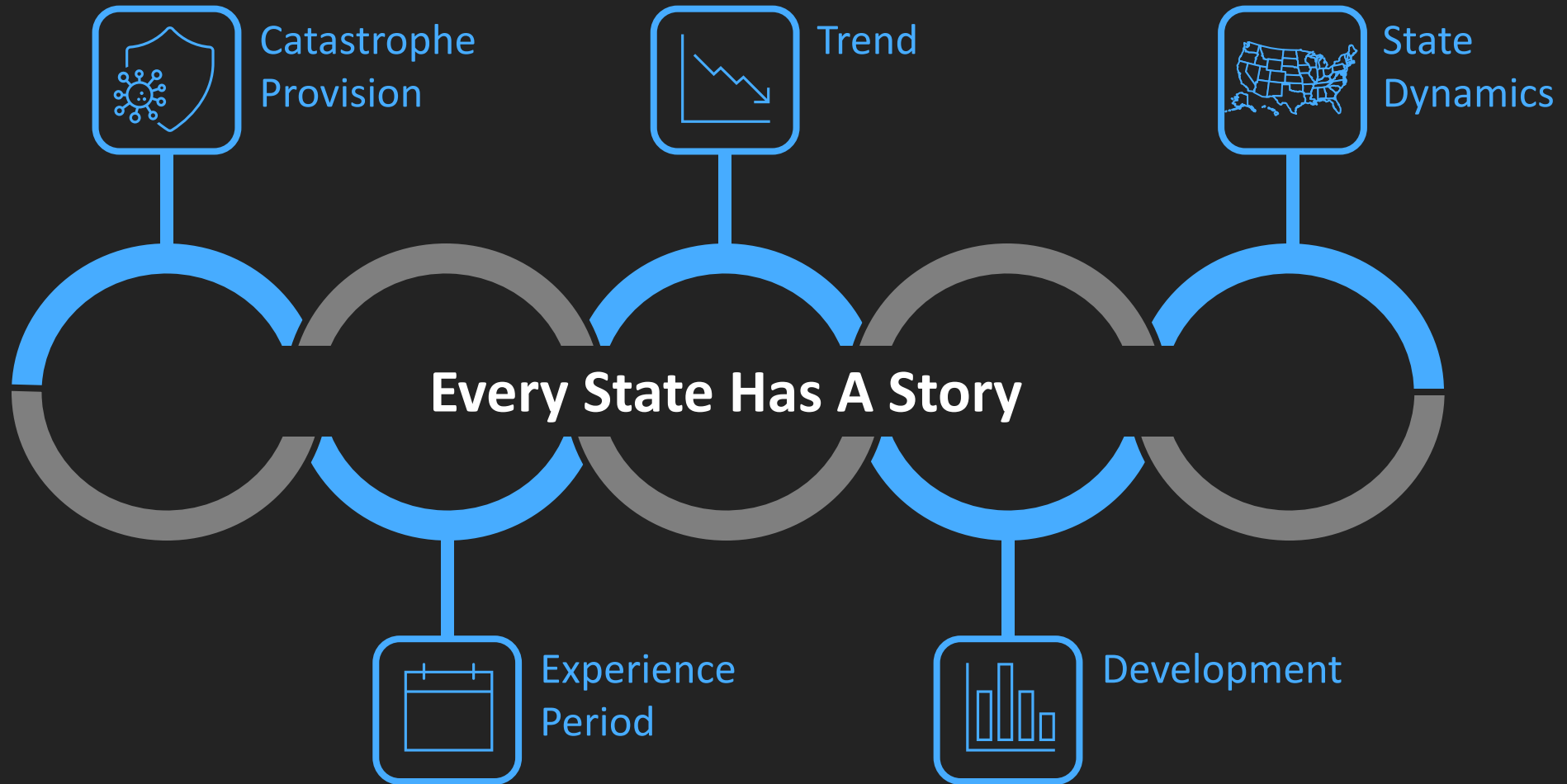
 **1%** of total losses



Source: NCCI's Financial Call data evaluated as of 12/31/2022

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Considerations in Ratemaking



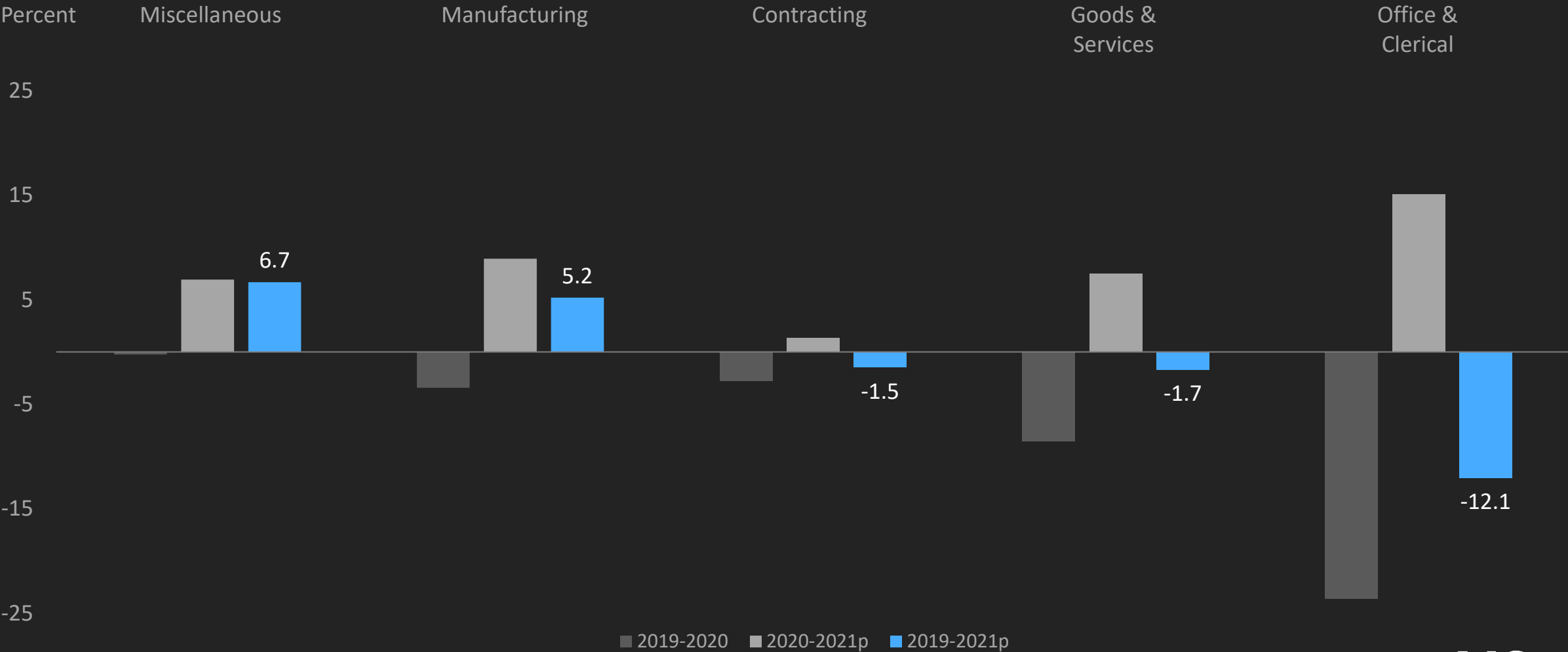
Workers Compensation Loss Drivers

January February March April May June July August September October November December



WC Lost-Time Claim Frequency by Industry Group

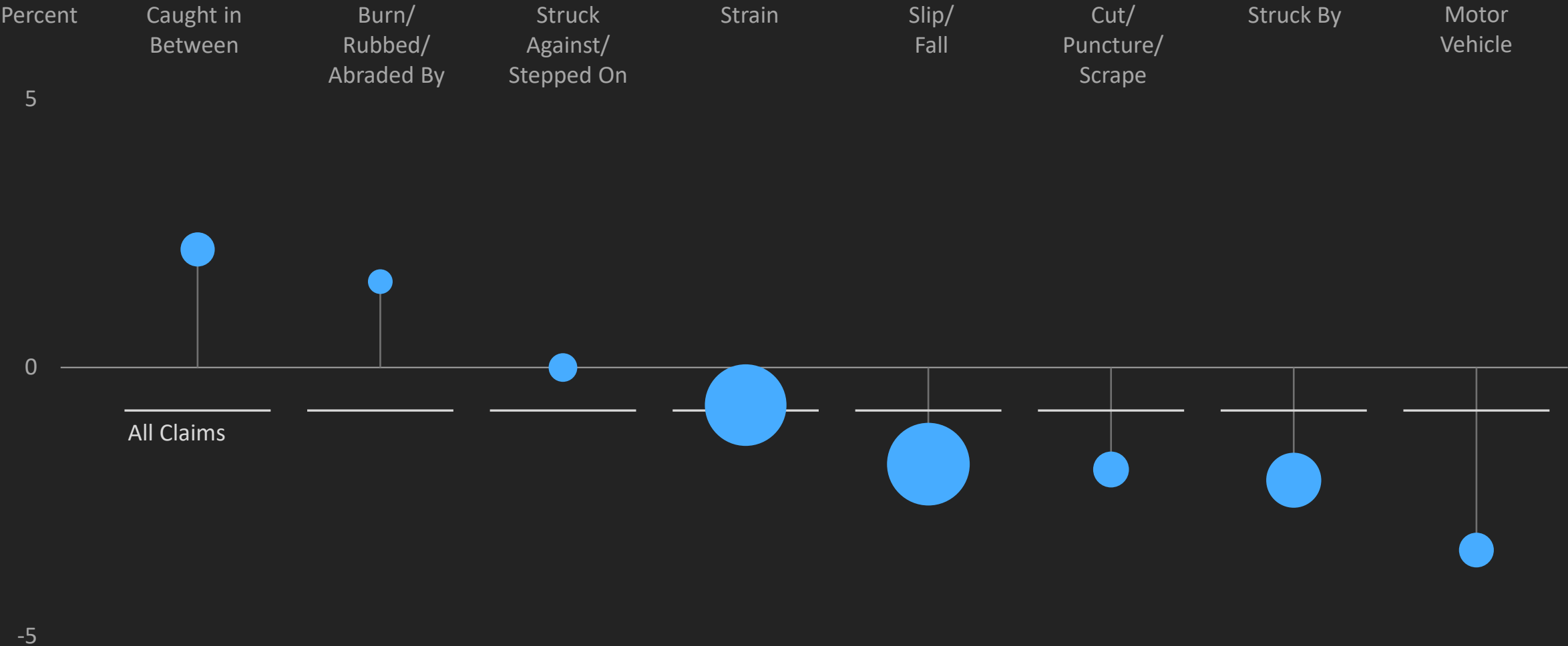
Change in Claims per \$1M Pure Premium, Accident Years 2019–2021p, Private Carriers and State Funds—NCCI States



p Preliminary
Source: Based on NCCI’s Statistical Plan data at first report, premium adjusted to current wage and voluntary pure premium level, excludes high-deductible policies and COVID-19 claims
Includes all states where NCCI provides ratemaking services

WC Lost-Time Claim Frequency by Cause of Injury

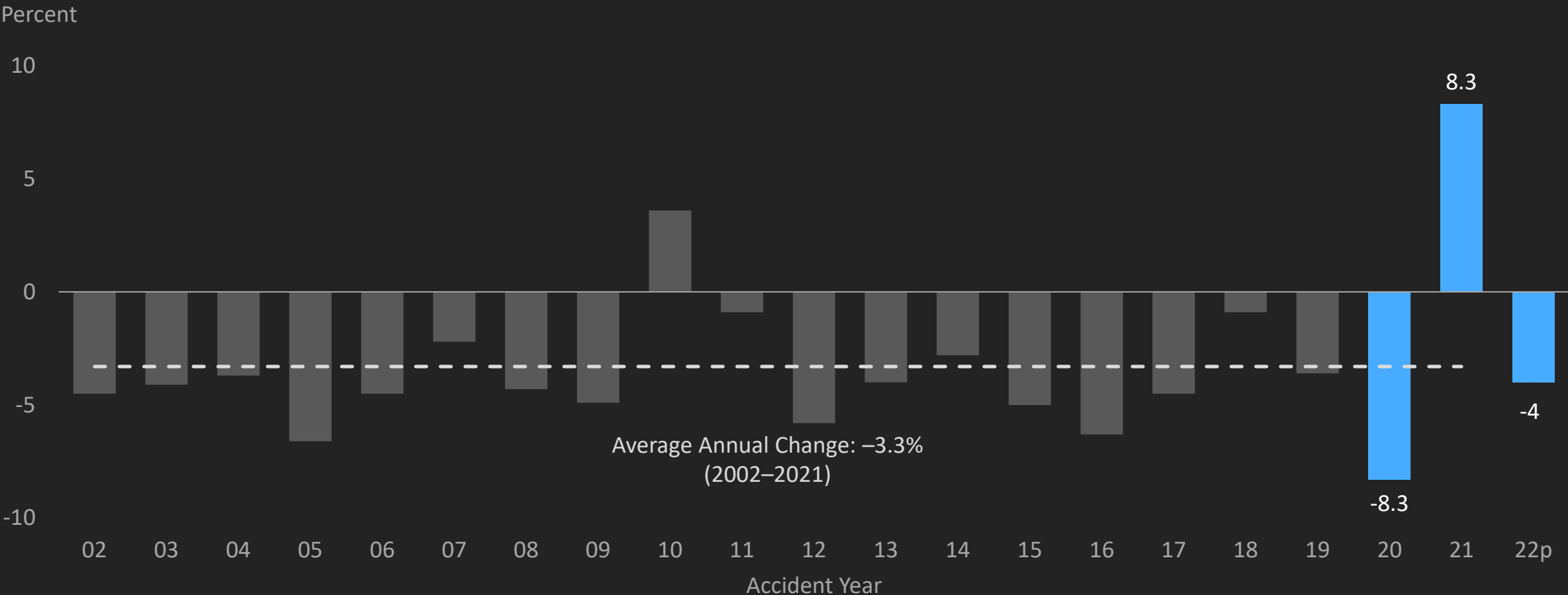
Change in Frequency, Accident Years 2019–2021^p, Private Carriers and State Funds—NCCI States



^p Preliminary
Source: Based on NCCI’s Statistical Plan data at first report; frequency measured as lost-time claims per \$1M pure premium (adjusted to current wage and voluntary pure premium level), severity measured as total indemnity and medical paid plus case cost per lost-time claim, excludes high-deductible policies and COVID-19 claims
Includes all states where NCCI provides ratemaking services

WC Lost-Time Claim Frequency

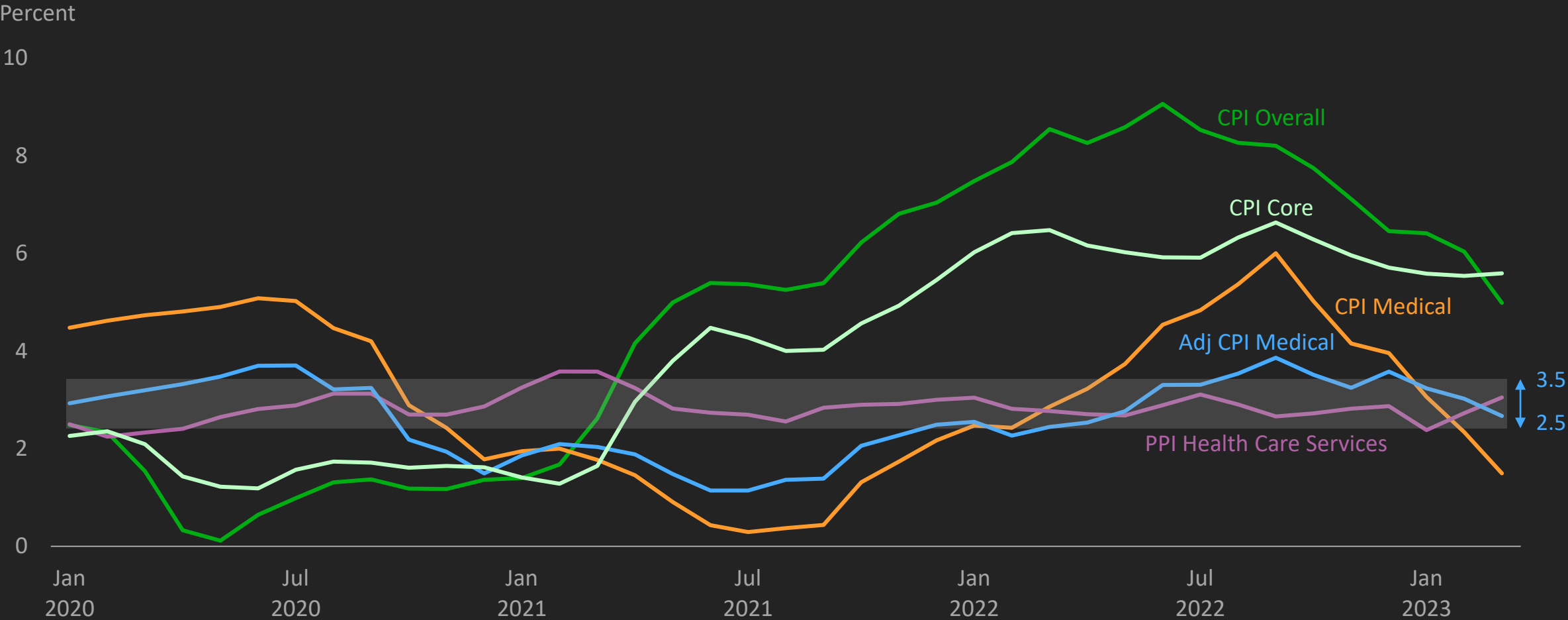
Change in Claims per \$1M Pure Premium, Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



2010–2011 and 2019–2022 are adjusted to reflect the impact of changes in audit activity
p Preliminary, based on data valued as of 12/31/2022; excludes COVID-19 claims
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 12/31/2021
Includes all states where NCCI provides ratemaking services; TX is excluded through 2006 and WV is excluded through 2011

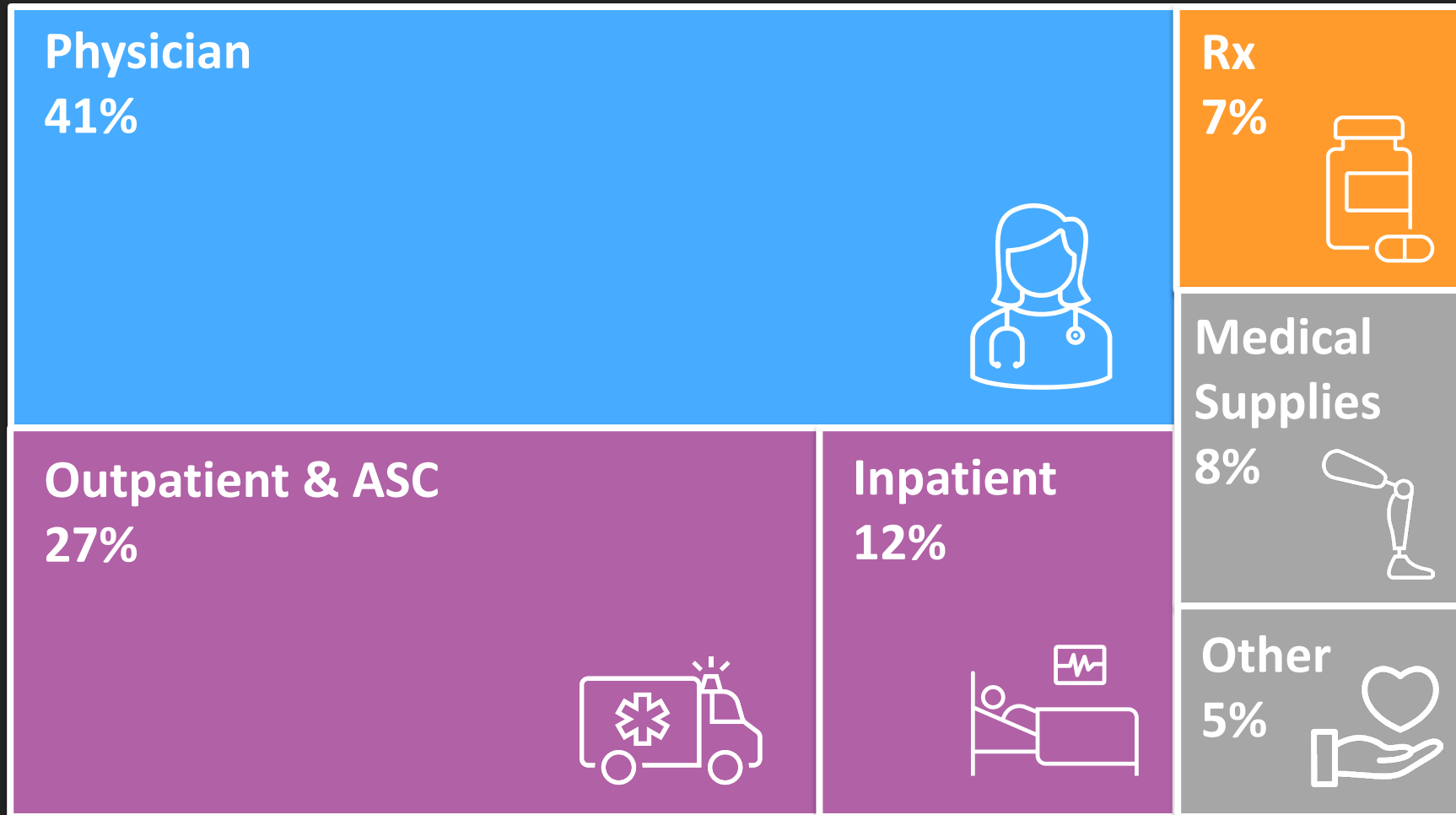
Inflationary Measures

2020–2022



Source: US Bureau of Labor Statistics
Consumer Price Index (CPI)
Producer Price Index (PPI)

Medical Cost Distribution—Service Year 2021



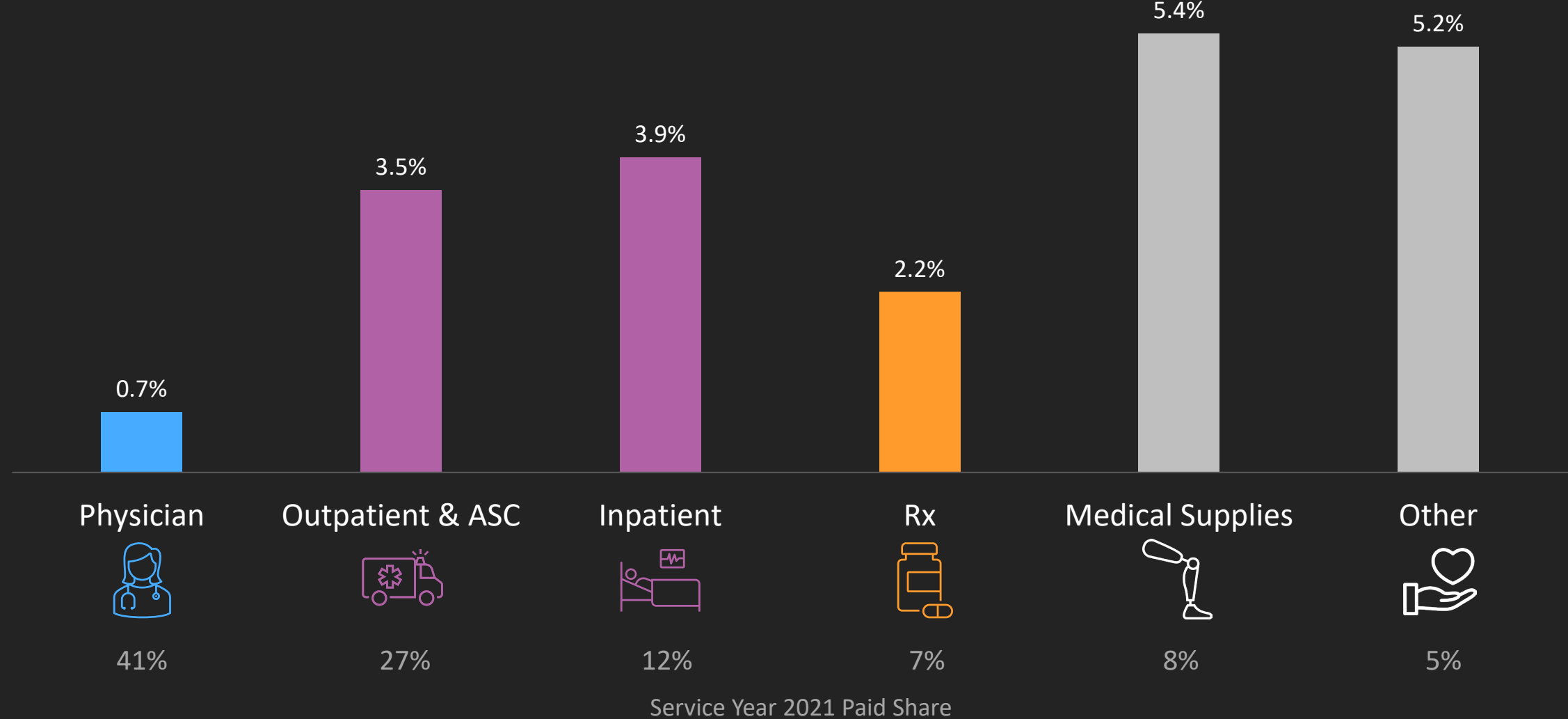
Source: NCCI's Medical Call data

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AIS
2023

Medical Price Pressure by Medical Cost Category

Change between 2021 and 2022

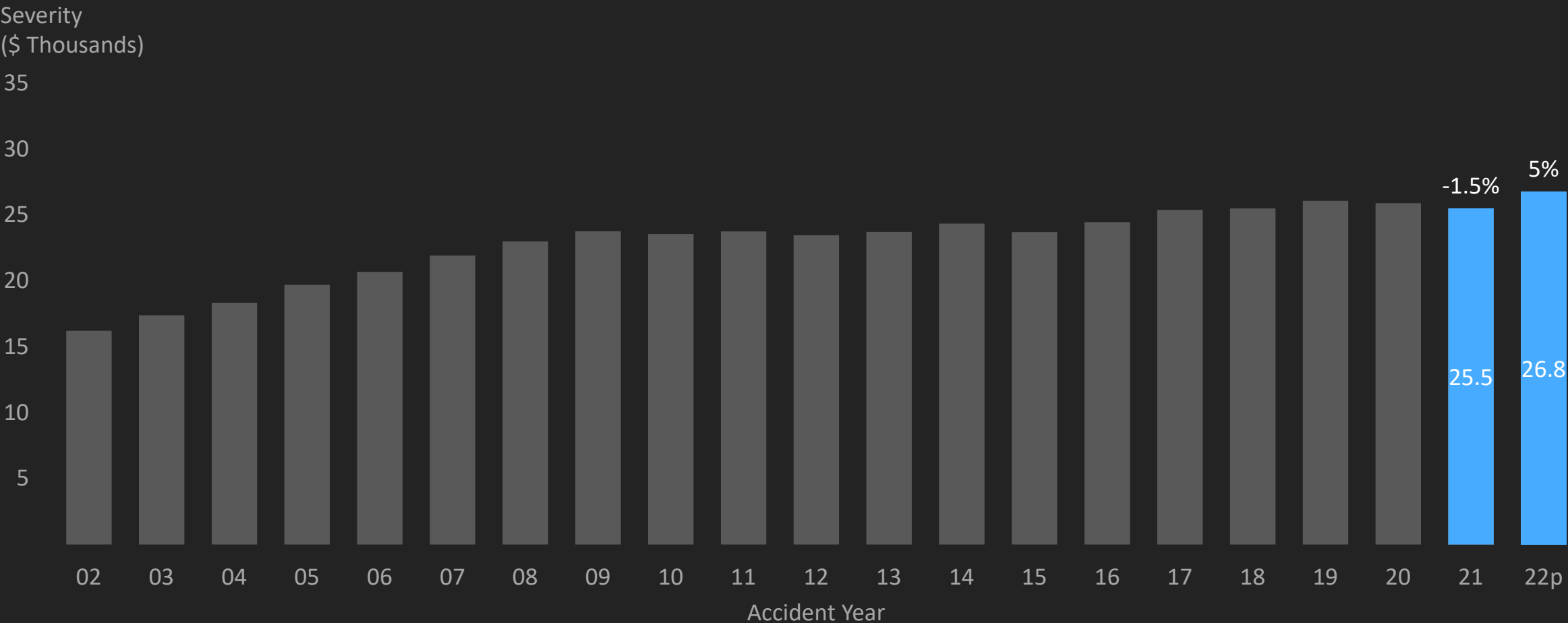


Sources: US Bureau of Labor Statistics and NCCI’s Medical Call data

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WC Average Medical Lost-Time Claim Severity

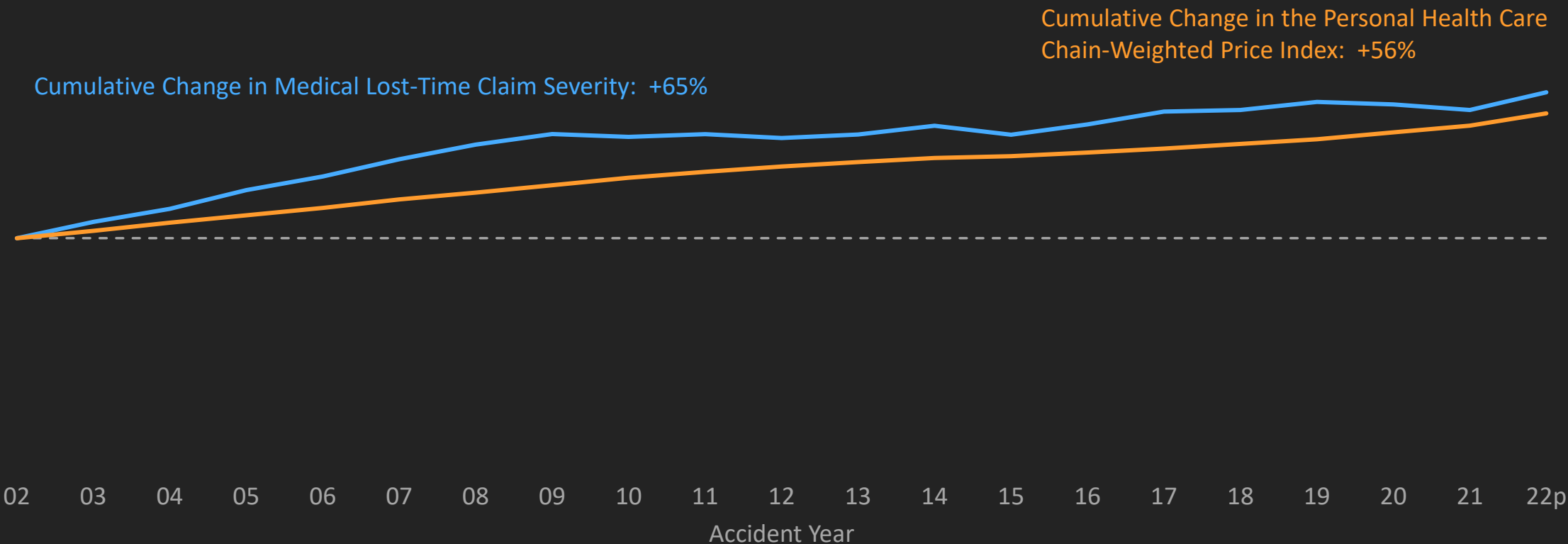
Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



p Preliminary, based on data valued as of 12/31/2022; excludes COVID-19 claims
Source: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2021
Values displayed reflect the methodology underlying the most recent rate/loss cost filing
Includes all states where NCCI provides ratemaking services; NV is excluded through 2003, TX is excluded through 2007, and WV is excluded through 2011

WC Average Medical Lost-Time Claim Severity

Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



p Preliminary, based on data valued as of 12/31/2022; excludes COVID-19 claims

Sources: Severity: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2021

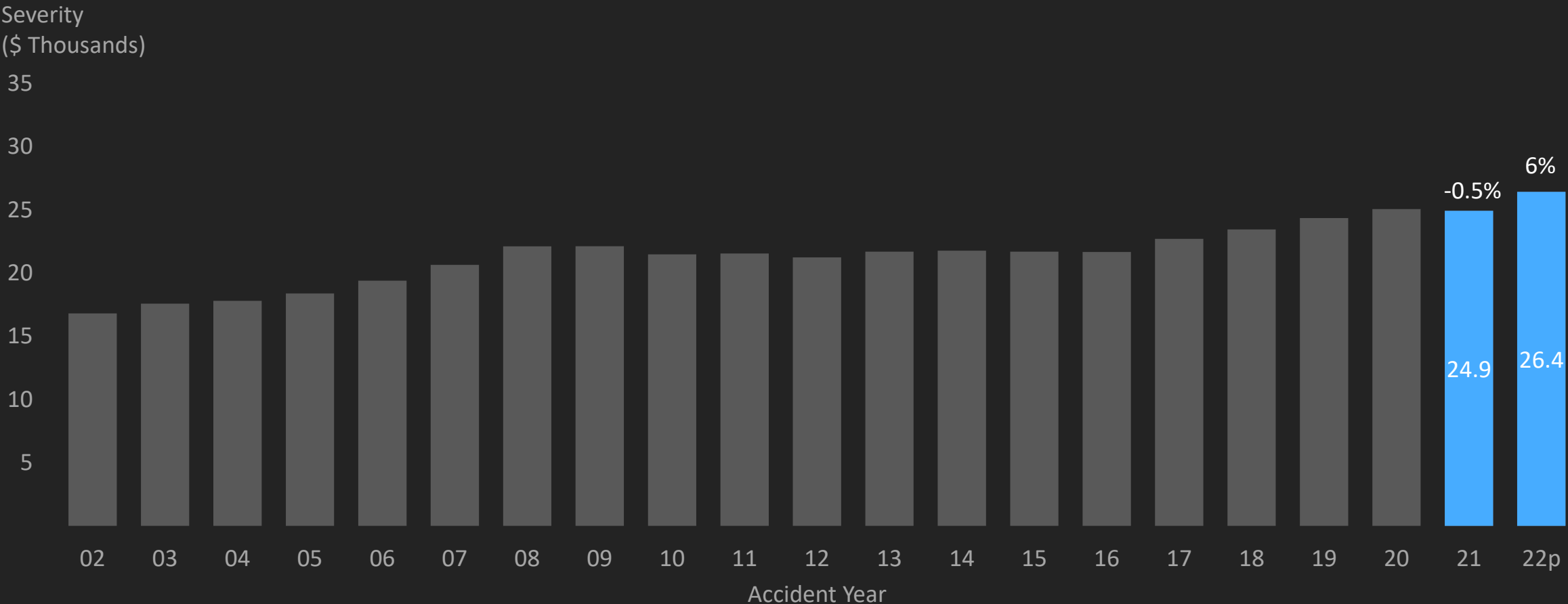
Values displayed reflect the methodology underlying the most recent rate/loss cost filing

Includes all states where NCCI provides ratemaking services; NV is excluded through 2003, TX is excluded through 2007, and WV is excluded through 2011

PHC Chain-Weighted Price Index: 2002–2022 Centers for Medicare & Medicaid Services (CMS)

WC Average Indemnity Claim Severity

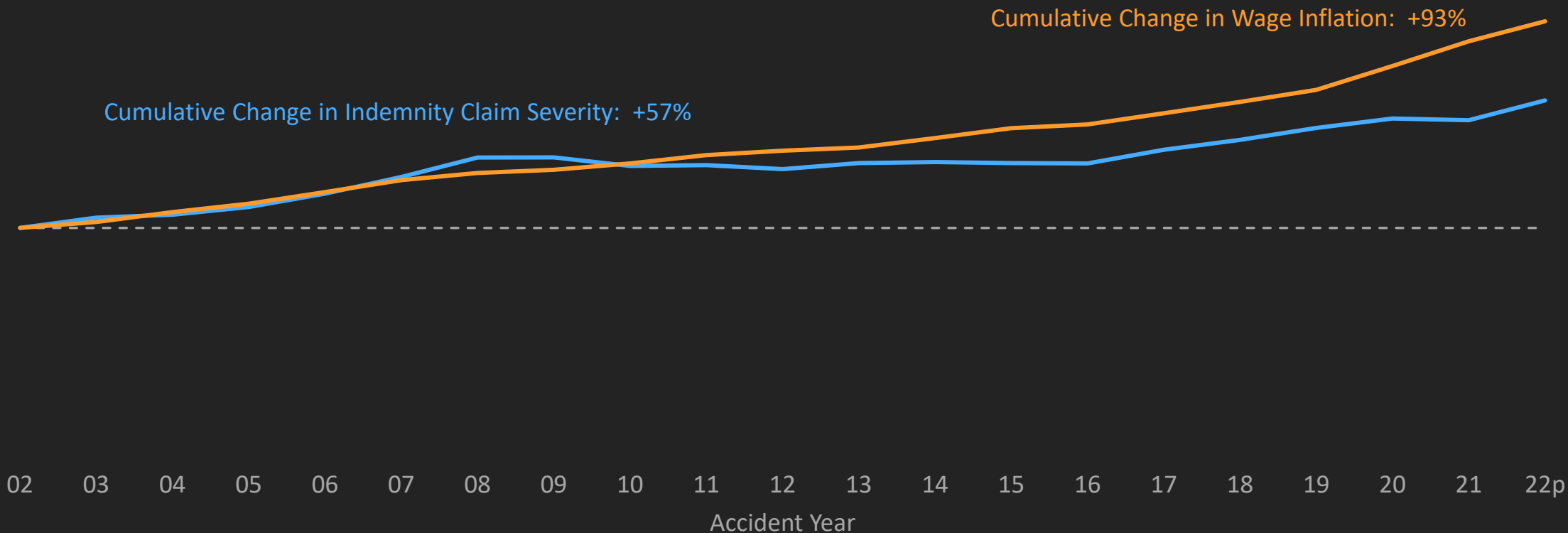
Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



p Preliminary, based on data valued as of 12/31/2022; excludes COVID-19 claims
Source: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2021
Values displayed reflect the methodology underlying the most recent rate/loss cost filing
Includes all states where NCCI provides ratemaking services; NV is excluded through 2003, TX is excluded through 2007, and WV is excluded through 2011

WC Average Indemnity Claim Severity

Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



p Preliminary, based on data valued as of 12/31/2022; excludes COVID-19 claims
Sources: US Average Weekly Wage: 2002–2007 and 2012–2019 Quarterly Census of Employment and Wages (QCEW), US Bureau of Labor Statistics (BLS); 2008–2011 and 2020–2021 NCCI and QCEW; 2022p NCCI and Moody’s Analytics
Severity: NCCI’s Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2021
Values displayed reflect the methodology underlying the most recent rate/loss cost filing
Includes all states where NCCI provides ratemaking services; NV is excluded through 2003, TX is excluded through 2007, and WV is excluded through 2011

2022 Workers Compensation Insights

Net written
premium
increased by
11%

Reported
combined ratios:

CY 2022
84%

AY 2022
97%

\$17B
reserve
redundancy

Claim frequency
decreased by **4%**

Excluding COVID-19 claims:

Indemnity severity
increased by **6%**

Medical severity
increased by **5%**

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2023

Q&A With the Experts

Live session after break

Contact Us

stateoftheline@ncci.com

Resources on ncci.com

State of the Line Report

State of the Line Guide

COVID-19 Resource Center