

**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 2021

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 2021, NCCI filed for decreases in the voluntary market loss costs of -1.1% and in the assigned risk plan rates -1.6%. In 2022 the NCCI filed for decreases of -10.8% for the voluntary market loss costs and -11% 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 2021, Arkansas had the lowest loss costs in the region per \$100 of payroll, \$0.44, compared to the regional average loss cost of \$0.63 and the countrywide average loss cost of \$0.82. The Arkansas average loss costs in 2022 were -79% 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% |

PAYROLL AND EXPERIENCE MODIFIER

Reported payroll in Arkansas continues to increase while premiums for insureds continue to decrease. In 2021 the average experience modifier decreased slightly to 0.944 from 0.956. The 2021 countrywide average experience modifier is 0.953. 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 2021 was \$20,408,868 as compared to \$21,525,283 for 2020. As of June 2021, small premium employers (less than \$2,500 in annual premium) constituted approximately 74% of the plan policy volume with an average of \$1,024 in premium per policy. Average plan premium per policy as of June 2021, was \$2,955 for all 1549 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 2022, 162 employers were removed from the assigned risk plan, saving those employers, on average 0.47% 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 2022* and Exhibit “B” entitled *Arkansas Plan Premium Report July 2022*; 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 2022.

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 (1065 total cases in 2021) 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 (.03%) 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.

The cases represented by the statistics noted below, which are comparable per capita to those of other states with active anti-fraud efforts (that state being Mississippi who reported less than one percent (1%) workers comp and they only do agent cases) (The other surrounding states don't do workers comp cases, they refer them to their Workers Comp Commission unless they appear criminal, wherein they refer the cases to their Attorney General), 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 2021 reporting period, there were 32 workers' compensation referrals received by AIDCID. Of those referrals, 21 were closed with 11 forwarded for investigation. Three cases were referred for prosecution with all three being eventually closed, after it being determined that they lacked sufficient evidence for successful prosecution. Since the creation of the division in 1993, 170 cases have been referred for prosecution, which resulted in 123 convictions.

SELECTED WORKERS' COMPENSATION DECISIONS
FISCAL YEAR 2021

ARKANSAS SUPREME COURT

Statute of Limitations

Terry Wynne v. Liberty Trailer and Death and Permanent Total Disability Trust Fund, 2022 Ark. 65 (March 31, 2022)

The issue in this case addressed the claimant's request for additional medical benefits within one year of the last payment of compensation.

On November 11, 2015, Mr. Terry Wynne fell from a ladder while working as a trailer technician and certified welder for Liberty Trailer. He sustained a compensable right-shoulder injury. As a result of the fall, he underwent two shoulder surgeries—one on February 2, 2016, and a second one on February 17, 2017. Mr. Wynne's last receipt of payment of medical benefits was on December 5, 2017, for services provided by Dr. Pearce on October 30, 2017.

On February 25, 2019, Wynne filed a Form AR-C with the Arkansas Workers' Compensation Commission requesting additional temporary total disability, additional temporary partial disability, additional permanent partial disability, additional medical expenses, rehabilitation, and attorney's fees. A hearing was held before an Administrative Law Judge (ALJ) on January 8, 2020. The ALJ subsequently issued an opinion denying Wynne's claim for additional medical treatment and finding that the claim was barred by the statute of limitations. The Commission affirmed and adopted the ALJ's opinion.

In his sole point on appeal, Wynne argued that the Commission erred in determining that his claim for additional medical benefits was barred by the statute of limitations. Wynne argued that his claim was timely because he filed it within one year from the last payment of compensation. He asserted that under section 11-9-702(b)(1), when more than two years has passed since the

date of the injury, a claim for additional compensation, i.e., disability or medical benefits, must be made within one year of the date of the last payment of compensation, i.e., disability or medical benefits. Liberty Trailer argued that Wynne's claim for additional medical benefits was time-barred because he did not file his claim within one year of his last payment for medical benefits.

The Arkansas Supreme Court found that Wynne's last receipt of payment for disability benefits was from November 11 through December 14, 2018, by check issued January 17, 2019. Thus, he filed his February 25, 2019, claim for additional medical benefits within one year of the last payment of compensation relating to his November 2015 right-shoulder injury. The Court held that under a plain reading of section 11-9-702(b)(1), Wynne's claim for additional medical benefits was timely. Accordingly, the Court reversed the Commission's decision and remand for further proceedings. To the extent that *Kirk v. Cent. States Mfg. Inc.*, 2018 Ark. App. 78, 540 S.W.3d 714 held that the statute of limitations on a claim for additional benefits commences upon last payment of the specific type of benefit claimant sought, rather than from the date of the last payment of compensation, the Court overruled it.

ARKANSAS COURT OF APPEALS

Statute of Limitations

Richard Cosner v. C & J Forms & Labels Co., 2021 Ark. App. 453 (November 17, 2021).

Richard Cosner was injured in an admittedly compensable injury occurring on December 9, 2001. At the time of the injury, he was employed as a sales representative for the respondent employer, C&J Forms and Labels Co. (C&J). While leaving a customer's parking lot, Cosner ran into a concrete abutment, injuring, among other body parts, his right knee. On September 9, 2002, within two years of the date of the original injury, Cosner filed a form AR-C with the

Commission requesting benefits including PPD, medical expenses, and attorney fees for injuries to knees, back, and neck. Cosner last received indemnity benefits for an impairment rating through mid-2011 but continued to receive medical benefits.

On March 11, 2019, Cosner requested a hearing and sought additional permanent partial disability benefits, among others. A hearing was held and the ALJ found that the statute of limitations had run with respect to Cosner's claim for additional PPD benefits. The ALJ noted that Cosner received an impairment rating in 2009 that was paid shortly thereafter and that Cosner had not requested or brought before the Commission any cause or issue related to indemnity benefits since that time. The ALJ further cited applicable law that the payment of medical benefits does not prohibit the statute of limitations from running on a claim for indemnity benefits. The Full Commission affirmed and adopted the ALJ decision.

The Arkansas Court of Appeals reversed the Full Commission and ALJ decision. Cosner maintained that his claim for additional PPD benefits in this case was timely. It was, after all, filed within one year of the last time Cosner had been furnished medical care. However, C&J and Safeco raised the statute of limitations as a defense to the claim, arguing not that the claim was filed more than one year after the last payment of compensation, but instead asserting it was not timely filed because it had not been paid within one year of the last time Cosner had been paid the same type of benefits being sought. The Court noted that the decision in *Wynne v. Liberty Trailer* had been handed down a few weeks prior and was directly on point for the disposition of this appeal. The Court found that Cosner filed his claim for additional benefits within one year of the last payment of compensation—in this case, in the form of medical-treatment benefits. Following the analysis of *Wynne*, and pursuant to Arkansas Code Ann. §11-9-702(b), the Court reversed the Commission's order finding that Cosner's request for additional PPD benefits was

barred by the statute-of-limitations. The case was remanded back to the Commission for a determination of benefits.

Scheduled Injury vs. Body As A Whole Impairment Rating

Billy Corley v. Acme Brick, 2022 Ark. App. 60 (February 9, 2022).

On November 21, 2018, Corley suffered a compensable injury while working for Acme Brick (Acme) when he fell through a catwalk and injured his hip, leg, arm, and shoulder. He received medical treatment and was found to be at maximum medical improvement on October 15, 2019. Medical records reflected that Corley experienced significant edema in his right leg. He was diagnosed with lymphedema of the right lower extremity. He was assessed impairment for his peripheral vascular disorder which resulted in a 20% impairment to the body as a whole or a 50% lower extremity impairment. The respondents accepted the 50% lower extremity impairment. Corley sought a whole-body impairment rating and the issue was presented to the Commission.

The ALJ issued an opinion on October 5, 2020, finding that Corley had proved by a preponderance of the evidence that he is entitled to a twenty-percent anatomical impairment rating to the body as a whole and that he is entitled to wage loss in the amount of forty-five percent. The Full Commission found that the evidence demonstrated that Corley sustained a compensable scheduled injury and that he was not entitled to the wage-loss awarded by the ALJ. Corley appealed to the Court of Appeals and argued that lymphedema is a vascular disease and therefore should be rated as a body as a whole injury.

The Court of Appeals determined that the Commission's decision was erroneous and reversed the Commission's finding that Corley sustained a scheduled injury. The Court found that the lymphedema affected Corley's entire right leg and hip and therefore was unscheduled. The case

was remanded to the Commission for an award based on a whole-body impairment and for a determination of wage-loss disability.

Employment Services

Wal-Mart Associates, Inc. v. Willie Anderson and Death & Permanent Total Disability Trust Fund, 2022 Ark. App. 12 (January 12, 2022).

Willie Anderson was employed as a truck driver for Wal-Mart. He lived in Arkadelphia and his job was based out of Searcy. He testified that he drove his personal vehicle to Searcy on Monday night and he would spend the night in a Wal-Mart truck. On Tuesday morning he took care of his paperwork and loaded his personal items for the week. He would then leave Searcy in the truck around 8:00 a.m. on Tuesday morning and return to Searcy on Saturday night. Upon his return he was required to drop off the trailer, clean and sanitize the inside of the truck, turn in his paperwork and clock out.

On Saturday, March 9, Anderson returned to Searcy after being on the road all week. He stated that he removed the trailer from the truck, refueled and washed the exterior of the truck, and dropped off his paperwork. He said that he also washed and vacuumed his personal vehicle. He then began removing his personal items from the truck. He said that an alarm went off in the truck, warning him that he had about five minutes before his Arkansas Department of Transportation (DOT) fourteen-hour time limit expired. He stated that he knew he would not be able to finish removing his personal items and cleaning the interior of the truck in time, so he clocked out. He continued to remove his personal supplies from the truck. As he was climbing out of the truck, he missed a step and fell about five feet to the ground onto his hip. His left femur was dislocated from his hip and he fractured his left pelvis. He had a total left hip replacement in December 2019. When he claimed that he was entitled to workers' compensation

benefits for his injuries, Wal-Mart denied the claim, contending that Anderson was not performing employment services at the time of the accident.

The ALJ found that Anderson had failed to prove that he was performing a specific job function at the time of his injuries. The Full Commission reversed the ALJ decision and found that Anderson was performing employment services at the time of his accident. The Commission found that Anderson was required to clean the truck at the end of his work week and he was subject to discipline if he failed to clean the truck. Wal-Mart appealed the Commission's Opinion.

The Court of Appeals affirmed the Commission's decision and found that Anderson was performing employment services when he fell from his truck. The Court noted that when Anderson fell he still had job duties to tend to, namely, cleaning and sanitizing the truck. He was required to do this and was subject to discipline. He was given a company credit card to purchase Lysol to clean and sanitize the interior of the truck. The Court found that substantial evidence supported the Commission's conclusion that Anderson was performing employment services when he fell from his truck.

Compensability

Carl Watson v. Highland Pellets, LLC; 2022 Ark. App. 132 (March 16, 2022).

Carl Watson, who was fifty-four years old at the time of the hearing, worked for Highland Pellets, LLC, as a maintenance technician. Watson testified that on December 7, 2018, he was working on a piece of mobile equipment, lost his footing on the stairs, and fell approximately nine feet. He landed with his upper back on the bottom steps with his feet folded over his head. He was taken to Jefferson Regional Medical Center, x-rayed, and treated for multiple rib fractures on his right side. Highland Pellets accepted the claim as compensable. Watson followed

up with Dr. Lester Alexander at Healthcare Plus. Watson complained of chest pain when receiving treatment at a pain treatment center. An MRI in May 2019 revealed a compression fracture at T7. Physicians that treated Watson stated that the thoracic spine problems were more likely than not related to the work-related incident.

A hearing was held and the ALJ found that the claimant had failed to prove by a preponderance of the evidence that his need for treatment and disability for the thoracic spine problems arose out of his employment or were the result of the work-related incident. The Full Commission affirmed and adopted the ALJ's decision.

The Arkansas Court of Appeals affirmed the Commission's decision denying benefits to Watson. The Court noted that the Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion. *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). This is precisely what the Commission did here. Its decision turned largely on Watson's credibility, his withholding of information from the medical doctors, and the weight and credibility the Commission attached to the doctors' opinions.

Additional Benefits

Serena Dodson v. Valley Behavioral Health Systems, 2022 Ark. App. 128 (March 16, 2022).

Serena Dodson began working at Valley Behavioral as a registered nurse in the pediatric unit in January 2017, and on September 9, 2018, she sustained a compensable injury while responding to a physical fight between patients. She was immediately transported to the emergency room by ambulance. The results of Dodson's CT scan from the day of injury were as follows:

CT cervical spinal impression:

1. Degenerative changes noted with no acute fractures.

2. Right thyroid mass. Ultrasound correlation recommended. Findings discussed with Dr. Wooley in the emergency room.

CT thoracic spine impression:

1. Degenerative changes with no acute fractures. Thoracic stimulator device noted.

CT lumbar spine impression:

1. Multilevel degenerative changes as above with no acute fractures.

Ms. Dodson was treated by various physicians and ultimately came under the care of Dr. Kyle Mangels. Dr. Mangels recommended a myelogram for her thoracic and lumbar spine. Steroid injections were then recommended for pain management. Following her appointment with Dr. Mangels, Valley Behavioral claimed that Dodson had reached the end of her healing period and that she was no longer entitled to temporary partial-disability benefits. It also declined her additional medical treatment by Dr. White. The parties stipulated that Dodson sustained a compensable injury on September 9, 2018, but they submitted the following two issues to an administrative law judge: (1) whether Dodson is entitled to temporary partial-disability benefits and (2) whether Dodson is entitled to additional medical treatment by Dr. White.

Following a hearing, the ALJ found that Dodson was entitled to additional medical treatment in the form of a referral to Dr. White. The ALJ further found that Dodson was entitled to temporary partial-disability benefits from the date of her injury to a date yet to be determined. Valley Behavioral appealed the ALJ's decision to the Commission. The Commission affirmed the ALJ's decision concerning additional medical treatment in the form of an evaluation by Dr. White for consideration of pain management in accordance with Arkansas Code Annotated section 11-9-508(a) (Supp. 2021). The Commission specifically noted, "Based on the record currently before us, the Full Commission makes no finding with regard to whether revision or replacement of a spinal cord stimulator is reasonably necessary in connection with the September 9, 2018, compensable injury."

As to temporary partial-disability benefits, the Commission reversed the ALJ's decision and found that Dodson's healing period ended on January 2, 2019. The Commission found that Dodson was not entitled to temporary partial-disability benefits after that day. In making the determination, the Commission credited Dr. Knox's medical opinion.

The Court of Appeals found that substantial evidence supported the Commission's decision that Dodson was entitled to additional medical treatment in the form of an evaluation by Dr. White. Even though the Commission credited Dr. Knox's opinion that Dodson's healing period had ended, a claimant may be entitled to additional medical treatment following the healing period if the treatment is geared toward management of the injury. Dr. Mangels referred Dodson to Dr. White for pain-management treatment. Also, the parties stipulated to a compensable injury and thus, Dodson was not required to offer objective medical evidence to prove entitlement to additional benefits.

Medical Treatment

Southern Tire Mart, LLC v. Jose Perez, 2022 Ark. App. 179 (April 20, 2022).

The parties stipulated that Jose Perez sustained a compensable work-related injury on October 13, 2017, to his back after he lifted a tire while on a service call during his employment with Southern Tire. He was initially treated on the same day at White County Medical Center. The lumbar spine x-rays showed no fracture or subluxation. Perez was diagnosed with back pain and sciatica; prescribed Valium, Norco, and a Medrol Dosepak; and discharged home in a wheelchair. Thereafter, he was seen at Searcy-Sherwood Urgent Care on October 23, 2017, where he was assessed with "sprain of ligaments of lumbar spine." He was referred for physical therapy and placed on several restrictions, including that he should not lift over five pounds at any time and that he should not twist, bend, stoop, or strain. Perez returned to Searcy-Sherwood Urgent Care on October 31, 2017, for low back pain, and an MRI of his sacrum and lumbar spine

was taken. The MRI of his sacrum revealed a grade one muscle strain involving the gluteus maximus. The MRI of his lumbar spine revealed the following findings and impressions:

FINDINGS:

L3-4: The disc at this level is normal. *There is mild ligamentum flavum hypertrophy noted.*

L4-5: A small focal central protrusion is seen at this level with a central annular tear. There is no mass effect on the adjacent nerve roots. The facet joints show mild degeneration.

IMPRESSION:

1. Annular tear within a central protrusion involving the L4-L5 disc without mass affect on the nerve roots.
2. Mild Facet degenerative changes are seen throughout the lumbar spine. There is no evidence canal or neural foraminal stenosis noted.
(Emphasis added.)

Mr. Perez received various rounds of pain management treatment from several physicians. Eventually a “L3-4 Superion procedure” was recommended by Dr. Olaya. The procedure was explained by Dr. Olaya to be effective in the treatment of foraminal stenosis, ligamentum flavum hypertrophy and spinal stenosis. The employer and their insurance carrier denied the recommended treatment and Perez requested a hearing before an ALJ to determine whether the Superion procedure was reasonable and necessary.

The ALJ filed his opinion on January 26, 2021, wherein he found that appellee had “failed to prove by a preponderance of the credible evidence that the medical treatment which he requested and that consists of the ‘Superion procedure’ is causally related to and reasonably necessary for the treatment of the compensable work-related back injury.” Perez appealed and the Full Commission unanimously reversed the ALJ. The Commission found the Superion procedure to

be reasonable and necessary treatment for management of Perez's pain. The employer appealed to the Court of Appeals.

The Court of Appeals affirmed the Commission's finding that the Superion procedure was in fact reasonable and necessary treatment for Perez's compensable injury. Dr. Olaya explained that the Superion procedure was warranted because it is a proven technique that is very effective in the treatment of foraminal stenosis, ligamentum flavum hypertrophy, and spinal stenosis and that it is reasonable and necessary to control appellee's pain. Dr. Olaya further attributed appellee's need for the procedure to his compensable injury.

The Court noted that the employer "essentially asks us to reject Dr. Olaya's medical opinion that the Superion procedure is reasonable and necessary and bears a causal connection to the work-related compensable injury and reverse the Commission's decision. However, it is well settled that the Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force". The Court held that under the particular facts of this case, it could not say that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission.

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, 2022

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. Paul Keller, Criminal Investigation Division Director, AID

ARKANSAS STATE ADVISORY RESOURCES

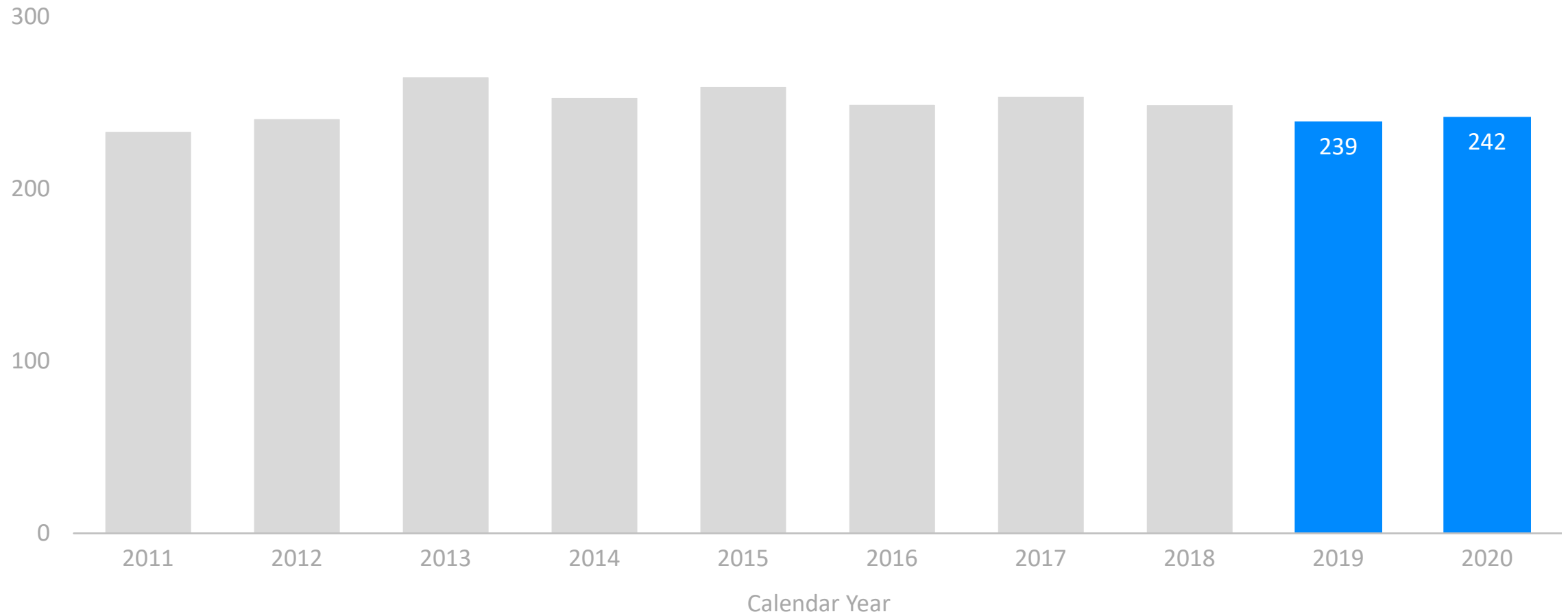
Arkansas Workers Compensation System Overview
March 2022

Arkansas Workers Compensation System—An Overview

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

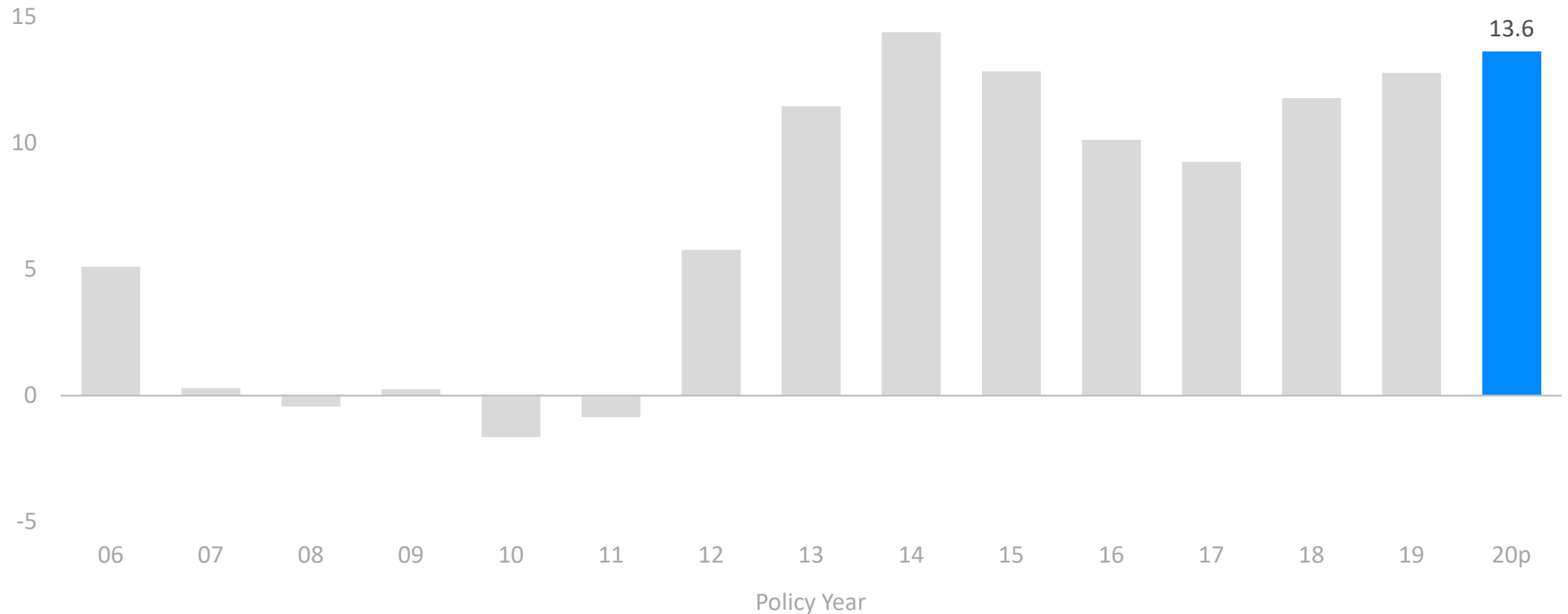
Arkansas Premium Volume

Direct Written Premium in \$ Millions



Source: NAIC's Annual Statement data.

Impact of Discounting on Workers Compensation Premium in Arkansas

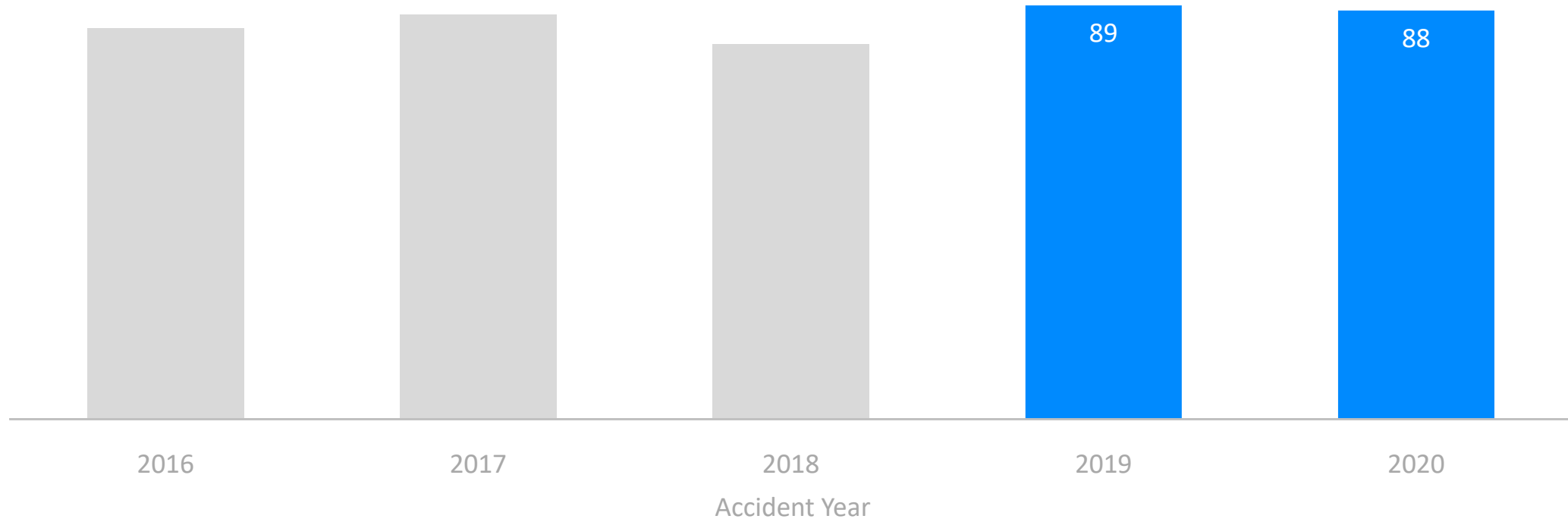


p Preliminary.
Based on data through 12/31/2020.

Arkansas Combined Ratios

Percent

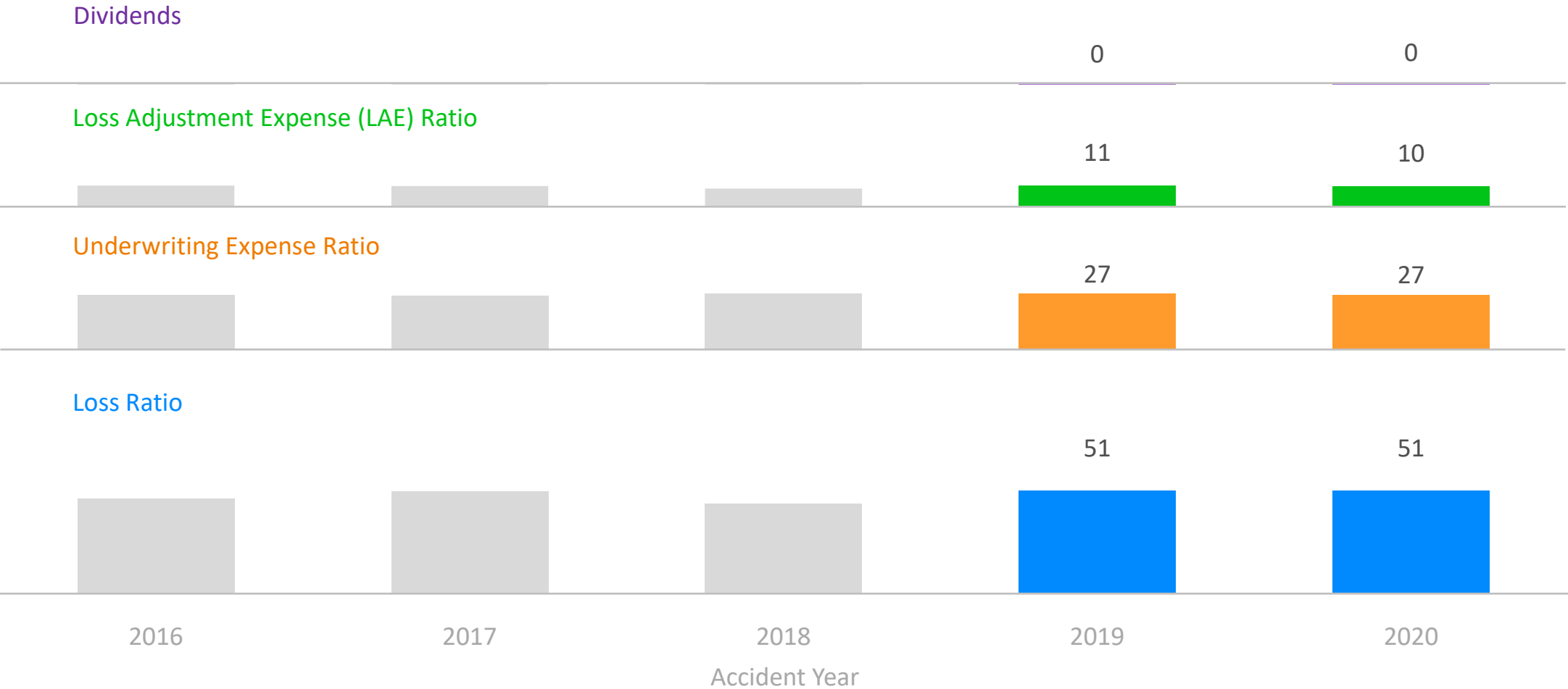
100



Sources: NCCI's financial data through 12/31/2020 and NAIC's Annual Statement data.

Arkansas Combined Ratios by Component

Percent

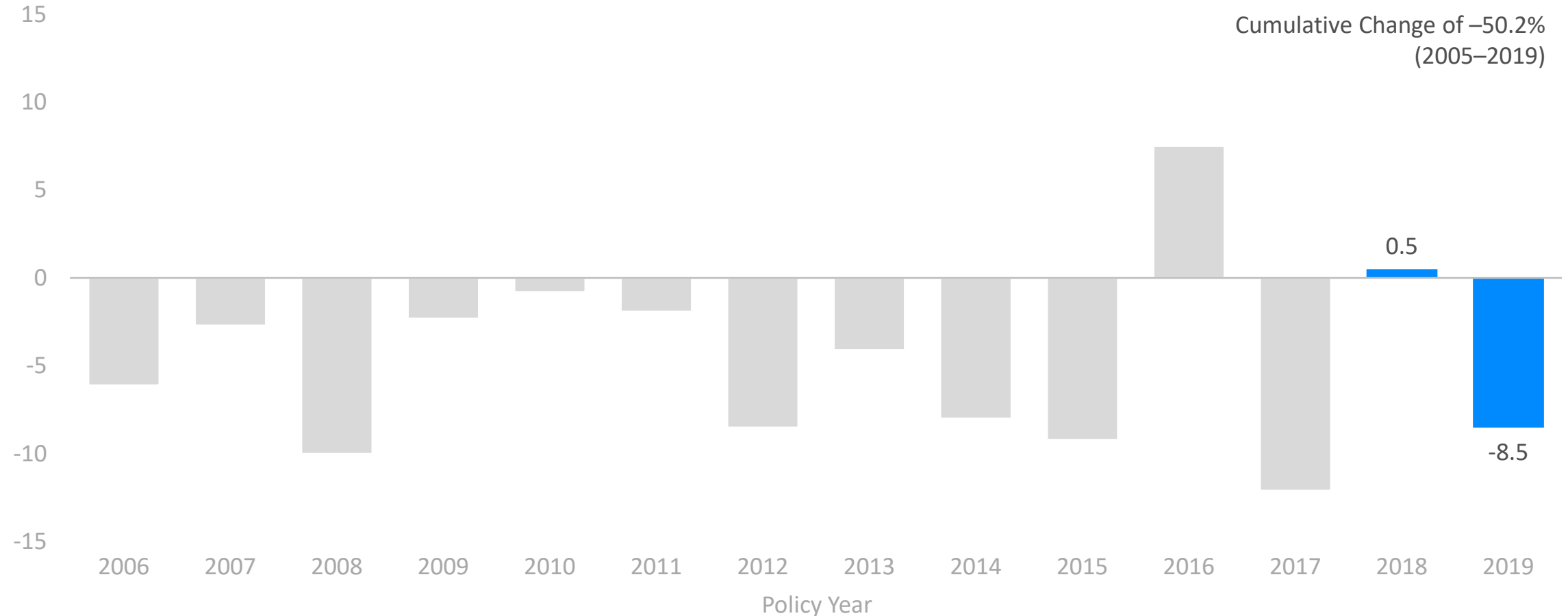


Sources: NCCI’s financial data through 12/31/2020 and NAIC’s Annual Statement data.



Arkansas Change in Claim Frequency

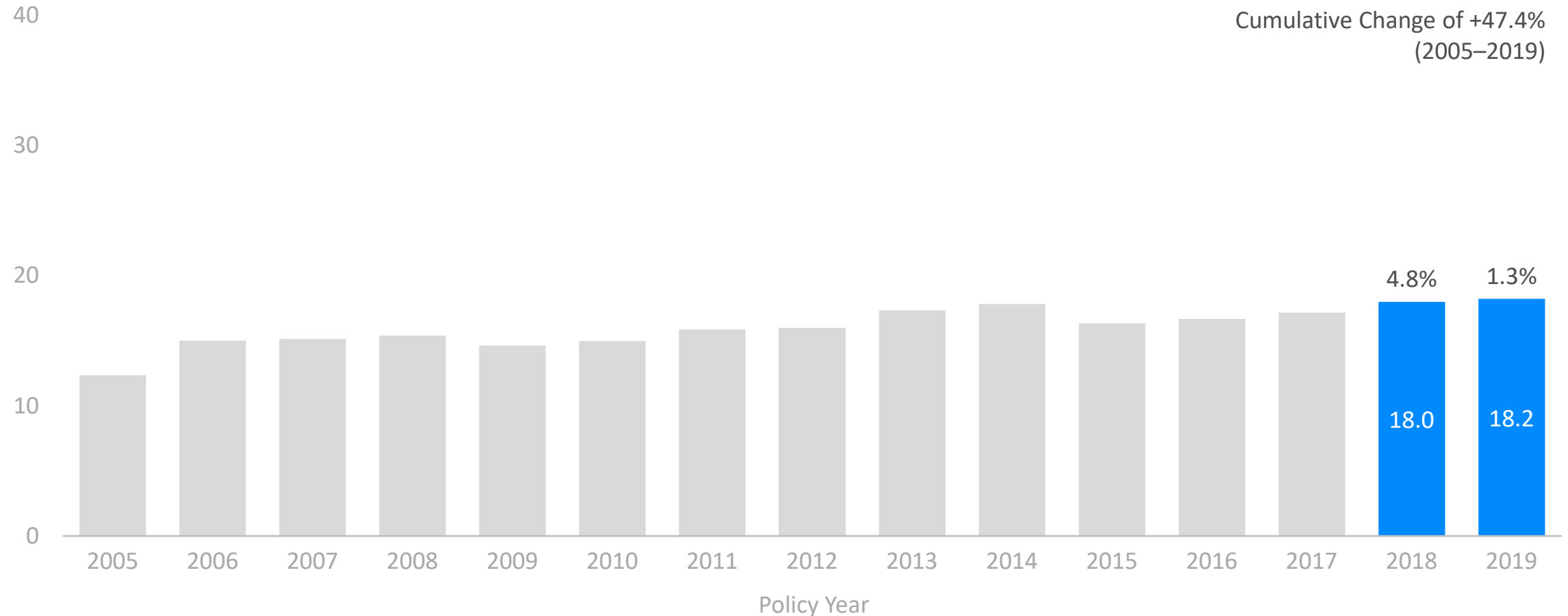
Percent Change in Lost-Time Claims, per \$ Million of On-Leveled Premium



Based on NCCI's financial data through 12/31/2020, on-leveled, and developed to ultimate, with premium adjusted to common wage level.

Arkansas Average Indemnity Claim Severity

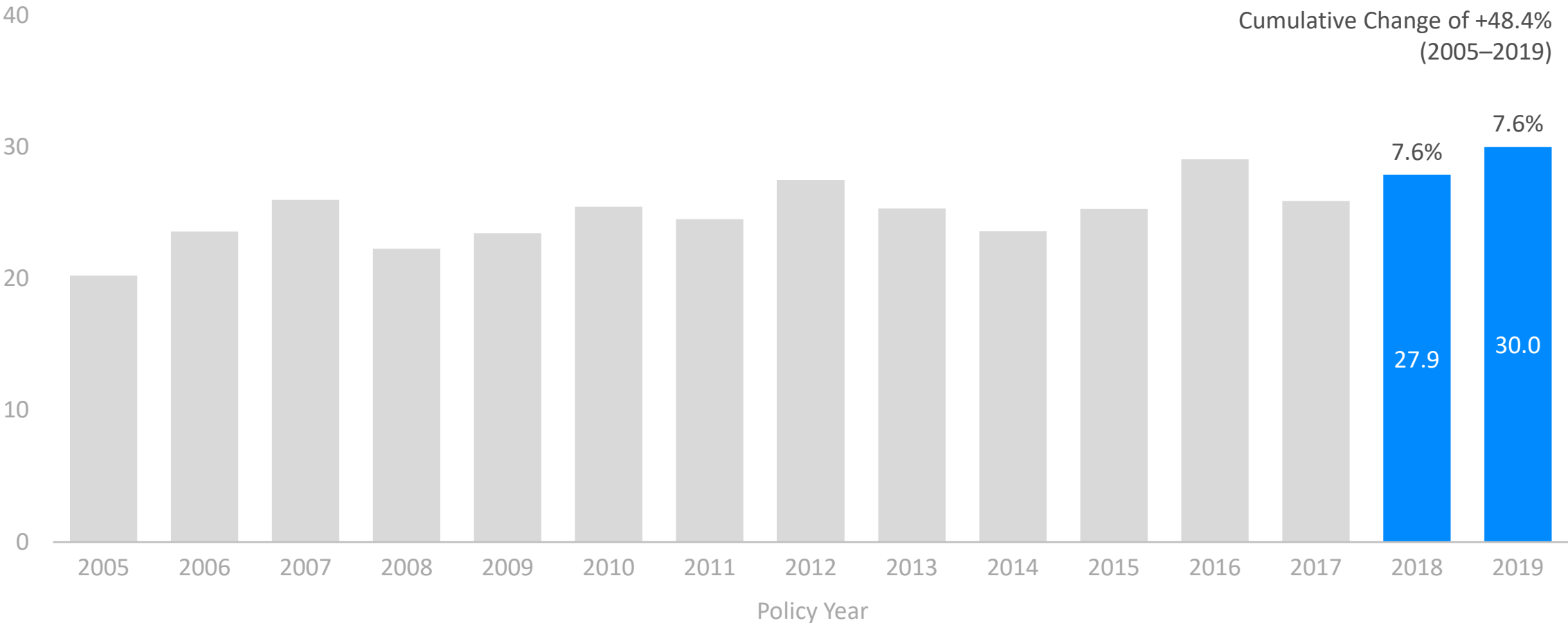
Lost-Time Claim Severity in \$ Thousands



Based on NCCI's financial data through 12/31/2020, on-leveled, and developed to ultimate.

Arkansas Average Medical Claim Severity

Lost-Time Claim Severity in \$ Thousands

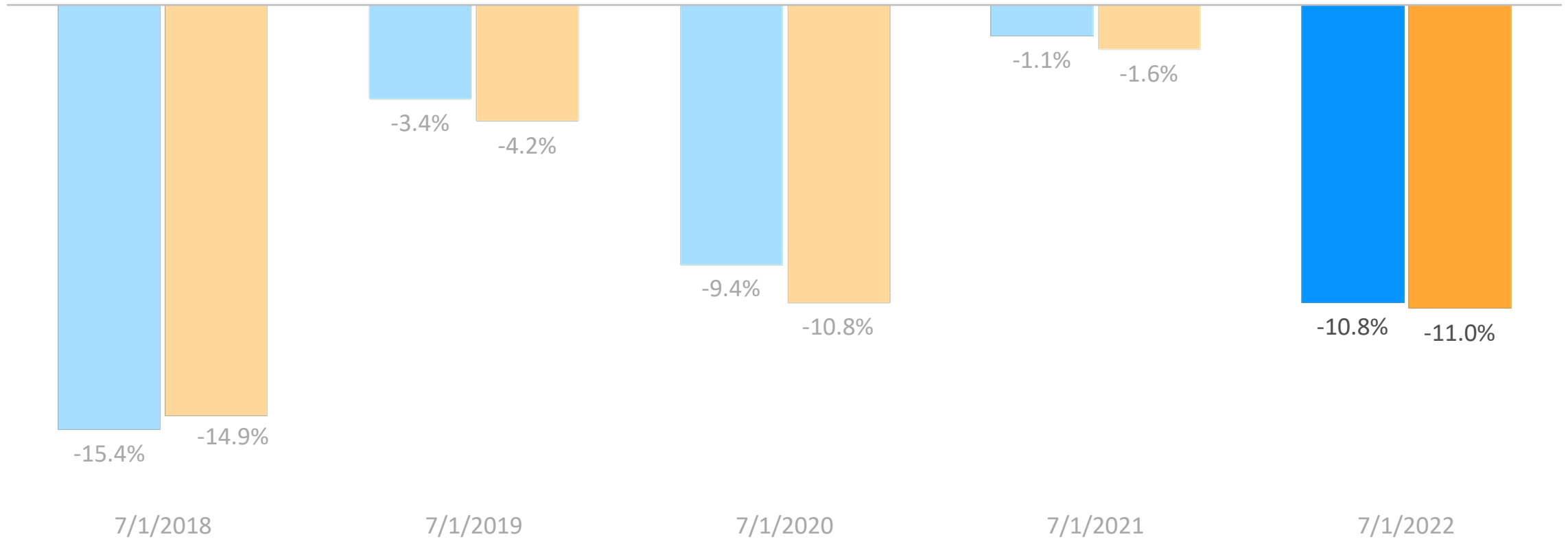


Based on NCCI’s financial data through 12/31/2020, on-leveled, and developed to ultimate.
Note that medical-only losses are included in the numerator.



Arkansas Filing Activity

Voluntary Loss Cost and Assigned Risk Rate Changes

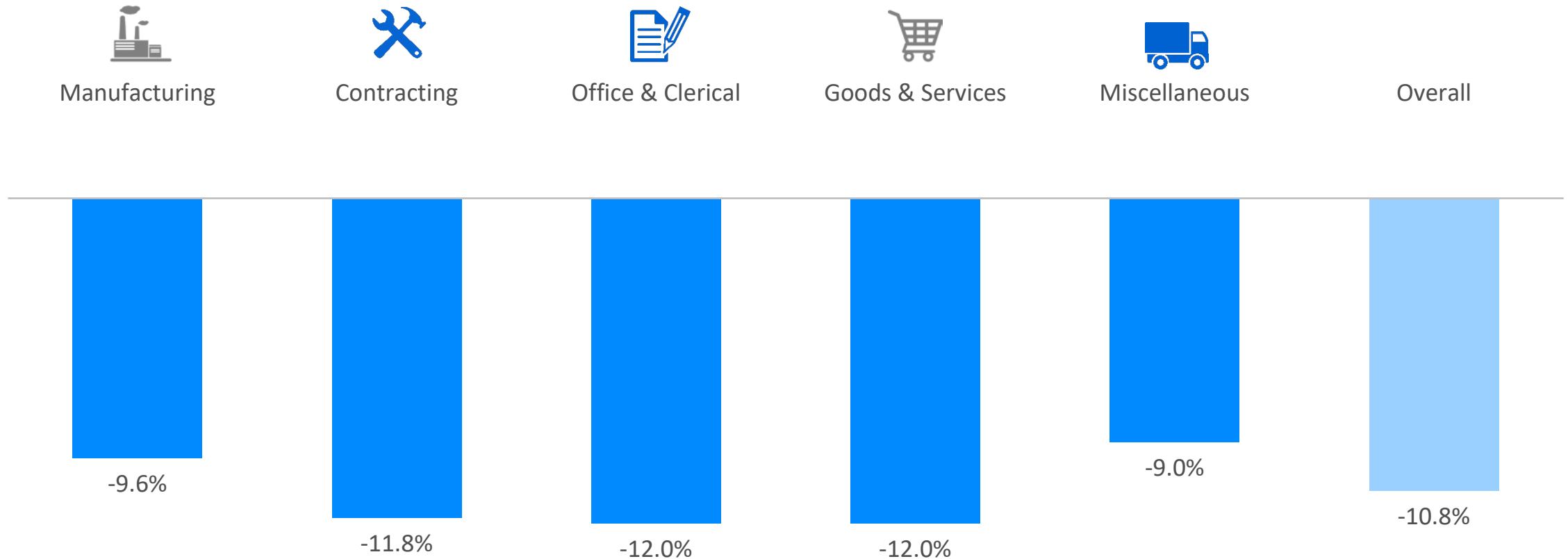


Arkansas July 1, 2022 Loss Cost Filing

| | |
|---------------------------------|--------|
| Change in Experience: | −10.3% |
| Change in Trend: | −0.9% |
| Change in Benefits: | +0.0% |
| Change in Loss-based Expenses: | +0.3% |
| <hr/> | |
| Overall Loss Cost Level Change: | −10.8% |

Arkansas July 1, 2022 Loss Cost Filing

Average Changes by Industry Group



Arkansas Economic Drivers



Medical



Manufacturing



Logistics

Source: Moody's Analytics, Précis® U.S. State, Arkansas, January 2022.

Arkansas Economic Assets and Challenges

- Assets
 - Low cost of doing business
 - Stable employment levels
 - Strong manufacturing and logistics sectors
- Challenges
 - Below average educational attainment
 - Few jobs in high paying industries
 - Below average per capita income

Source: Moody's Analytics, Précis® U.S. State, Arkansas, January 2022.

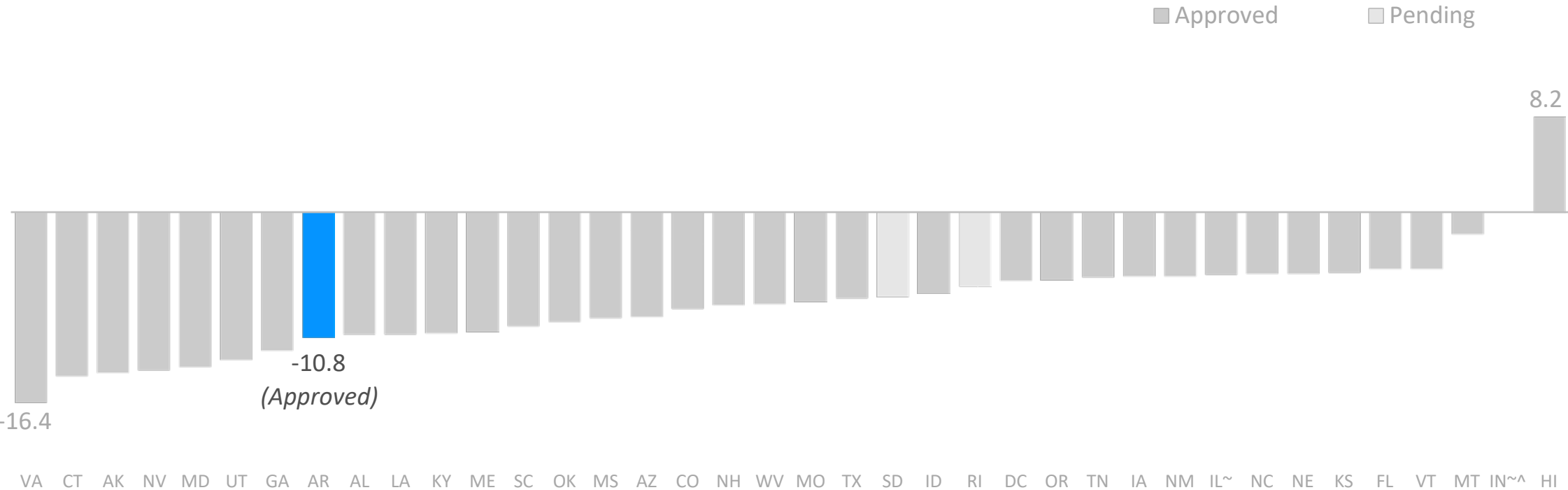
Arkansas Business Cycle Status



Source: Moody's Analytics, Précis® U.S. State, Arkansas, January 2022.

Current NCCI Voluntary Market Loss Cost/Rate Level Changes

Excludes Law-Only Filings

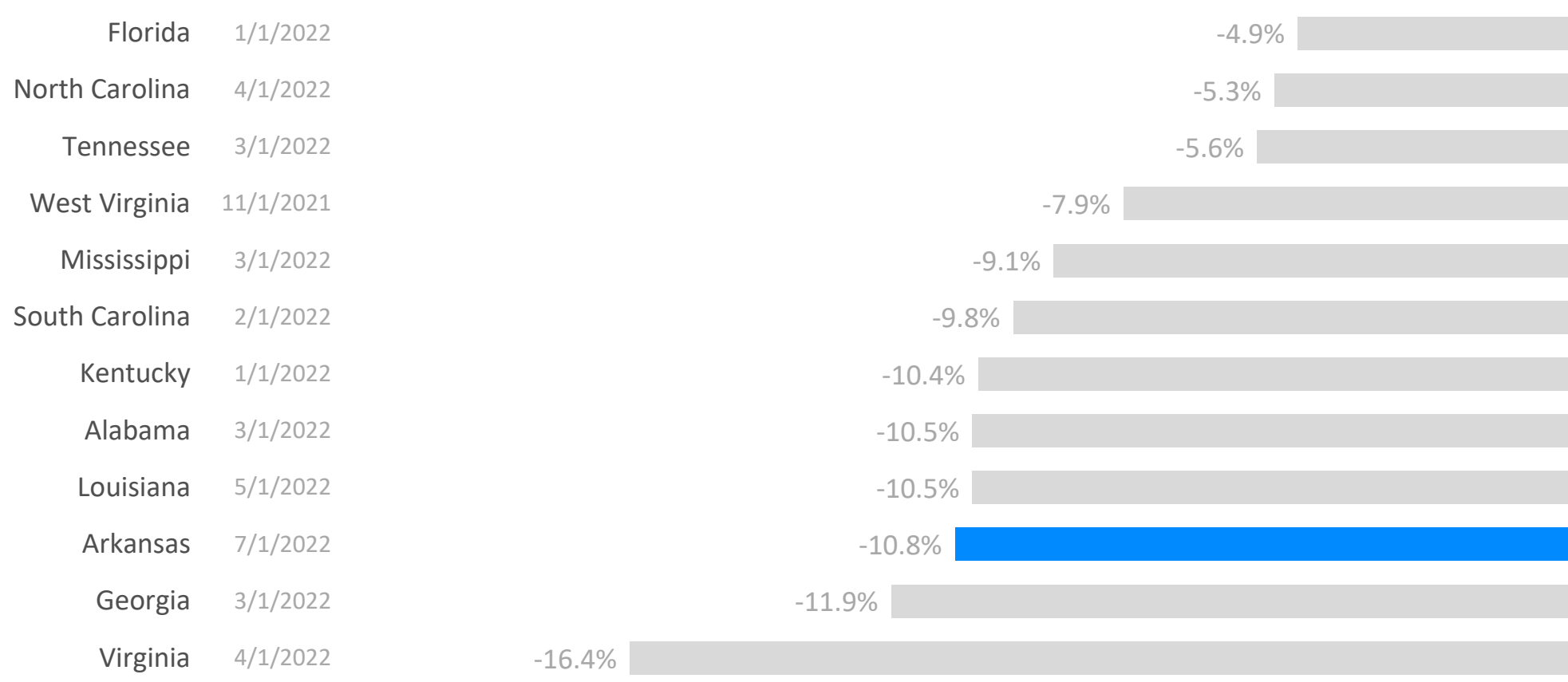


~Value shown is a rate level change; the IL and IN loss cost level changes are -7.4% and -2.7%, respectively.
^IN approved a flat (0.0%) rate level change.
Reflects the most recent experience filing in each jurisdiction as of 3/25/2022.
Due to the timing of the individual loss cost/rate filings, the figures shown may include changes from prior filing seasons.



Current Voluntary Market Loss Cost/Rate Changes

Southeastern States

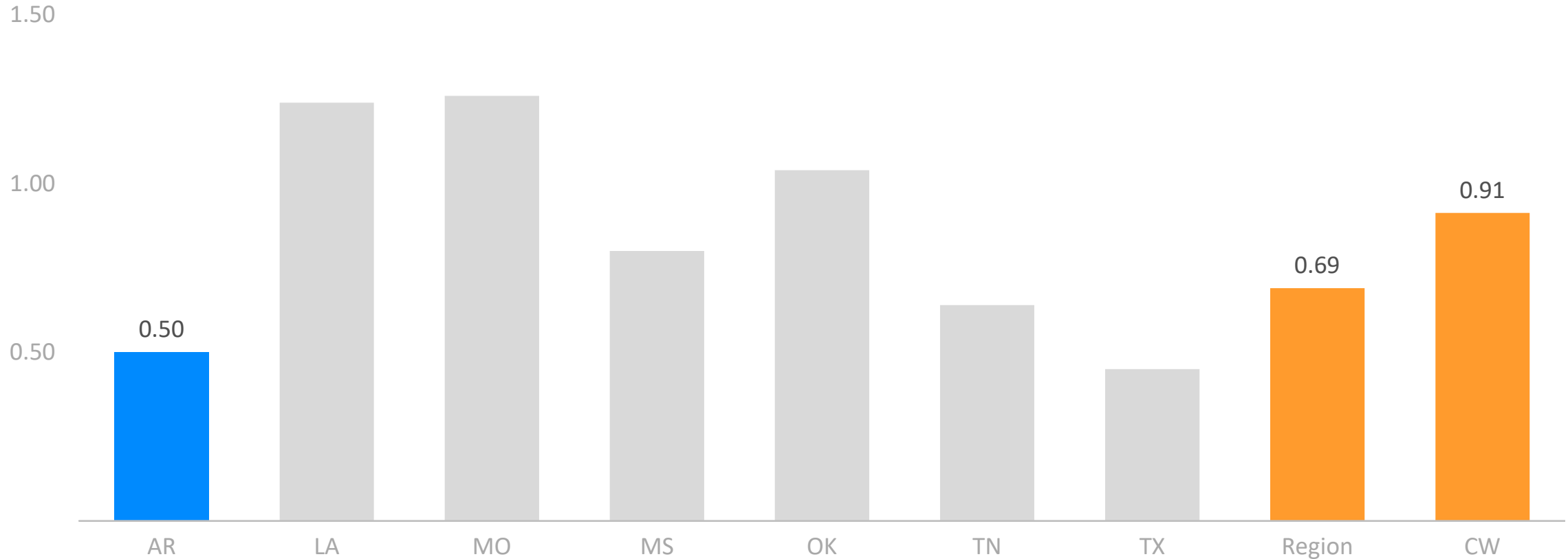


Reflects the most recent experience filing in each jurisdiction as of 3/25/2022.

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 12/31/2019.

CONTACT US

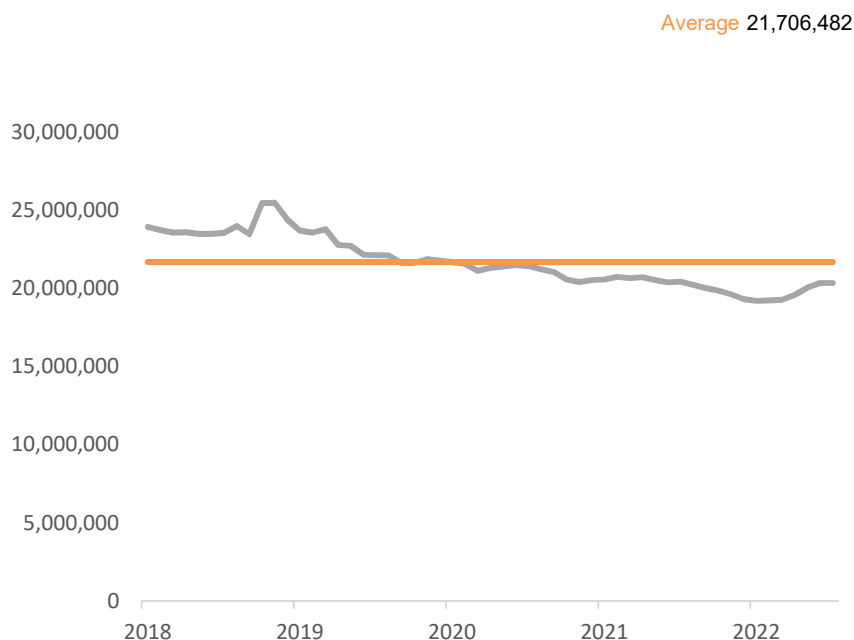


Terri Robinson
State Relations Executive
terri_robinson@ncci.com



Kelly Briggs
Executive Director & Actuary
kelly_briggs@ncci.com

Arkansas Plan Premium Report July 2022



AR

\$1.3 million less premium than average

\$2.5 (000) more premium than in June

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 Assigned 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

| | 2018 | 2019 | 2020 | 2021 | 2022 |
|-----|------------|------------|------------|------------|------------|
| Jan | 23,951,298 | 23,704,293 | 21,695,357 | 20,582,406 | 19,220,087 |
| Feb | 23,745,407 | 23,590,188 | 21,602,913 | 20,743,796 | 19,241,930 |
| Mar | 23,592,420 | 23,810,698 | 21,136,655 | 20,665,864 | 19,290,575 |
| Apr | 23,600,461 | 22,790,524 | 21,317,707 | 20,735,967 | 19,602,575 |
| May | 23,500,730 | 22,737,340 | 21,413,463 | 20,556,286 | 20,061,468 |
| Jun | 23,511,816 | 22,180,504 | 21,525,283 | 20,408,868 | 20,369,409 |
| Jul | 23,562,582 | 22,150,789 | 21,438,523 | 20,447,308 | 20,371,938 |
| Aug | 24,021,119 | 22,136,720 | 21,243,355 | 20,250,488 | |
| Sep | 23,482,843 | 21,652,835 | 21,054,124 | 20,031,724 | |
| Oct | 25,475,125 | 21,635,441 | 20,591,500 | 19,875,553 | |
| Nov | 25,499,957 | 21,895,265 | 20,424,543 | 19,641,603 | |
| Dec | 24,423,320 | 21,776,112 | 20,555,787 | 19,331,648 | |

Disclaimer

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The Source You Trust

Exhibit C

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

Private Carriers

| Line of Business | 2020 (\$B) | 2021p (\$B) | % Change From 2020 |
|---|--------------|--------------|--------------------|
| Personal Auto | 243.3 | 252.8 | |
| Homeowners | 96.2 | 103.4 | |
| Other Liability (Incl. Product Liability) | 73.5 | 88.4 | |
| Commercial Auto | 39.9 | 46.0 | |
| Commercial Multi-Peril | 40.9 | 43.5 | |
| Fire & Allied Lines (Incl. Earthquake) | 35.7 | 41.8 | |
| Workers Compensation | 38.0 | 38.3 | 0.7 |
| All Other Lines | 82.4 | 94.1 | |
| Total P&C Industry | 650.1 | 708.2 | 8.9 |

p Preliminary

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

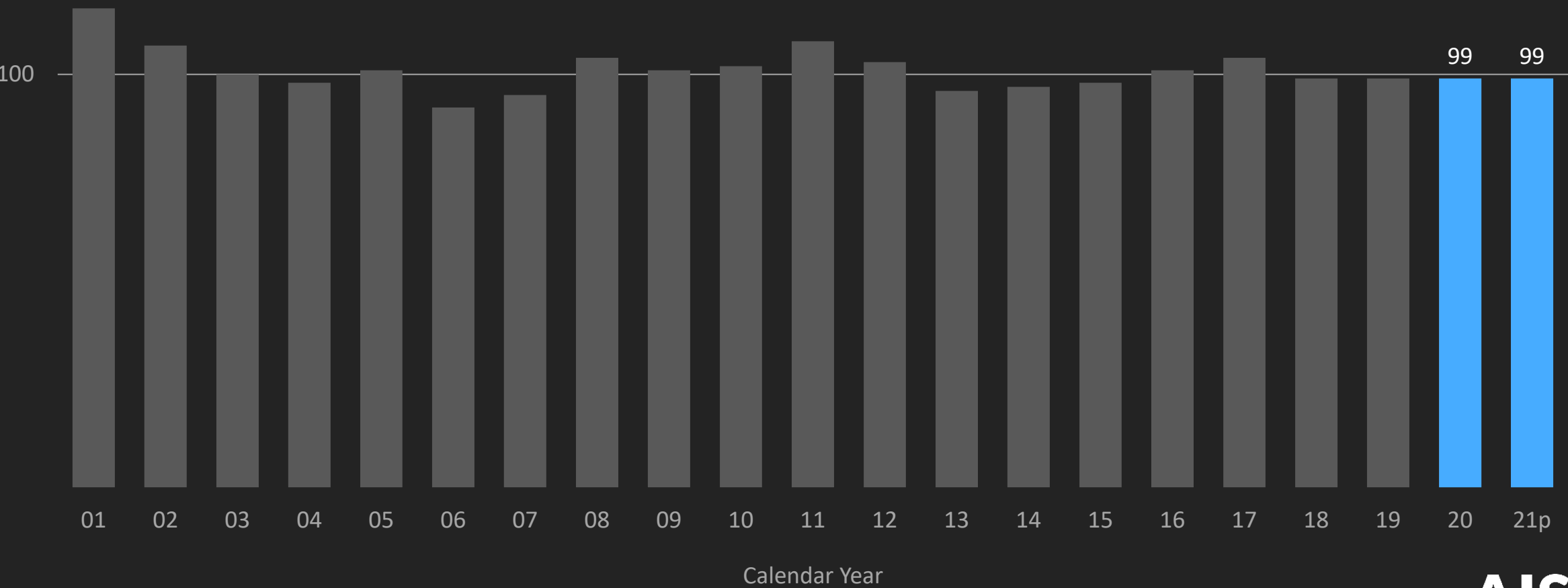
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P&C Industry Net Combined Ratio

Private Carriers

Percent



p Preliminary
Sources: 2001–2008 and 2013–2021p NAIC’s Annual Statement data; 2009–2012 Insurance Services Office (ISO)

P&C Industry Net Combined Ratio

Private Carriers

| Line of Business | 2020 (%) | 2021p (%) | Difference From 2020 | |
|---|-----------|-----------|----------------------|---|
| Personal Auto | 93 | 101 | | |
| Homeowners | 107 | 104 | | |
| Other Liability (Incl. Product Liability) | 105 | 97 | | |
| Commercial Auto | 102 | 99 | | |
| Commercial Multi-Peril | 110 | 106 | | |
| Fire & Allied Lines (Incl. Earthquake) | 103 | 99 | | |
| Workers Compensation | 87 | 87 | | 0 |
| All Other Lines | 98 | 92 | | |
| Total P&C Industry | 99 | 99 | | 0 |

p Preliminary

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

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Today's Workers Compensation Environment

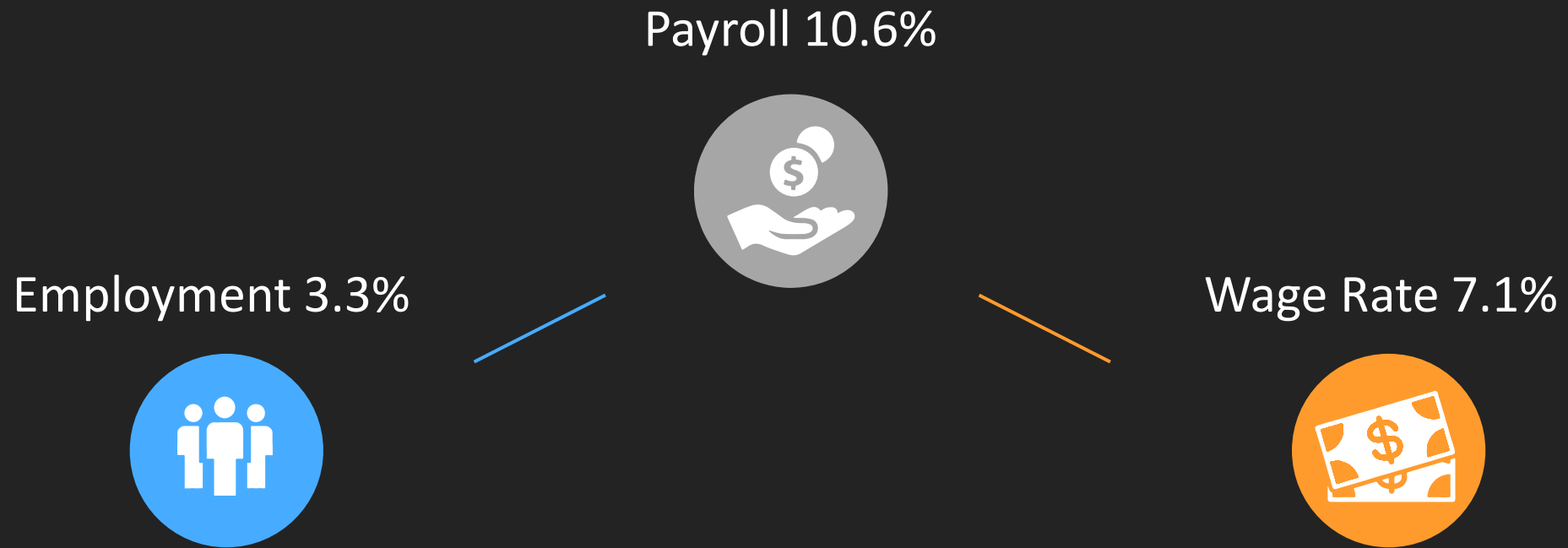


Economic Environment



Workplace Environment

Changes in Payroll by Component 2020–2021



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

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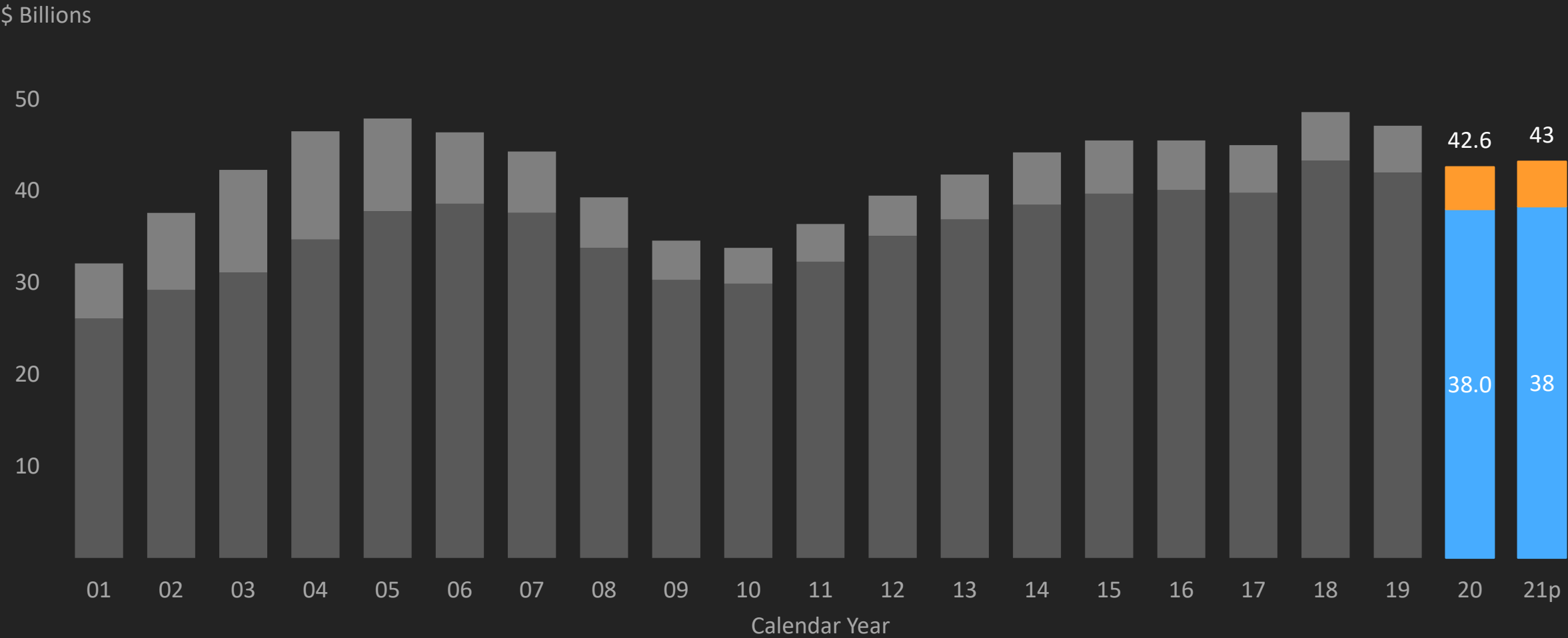
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Workers Compensation (WC) Premium



WC Net Written Premium

Private Carriers and State Funds

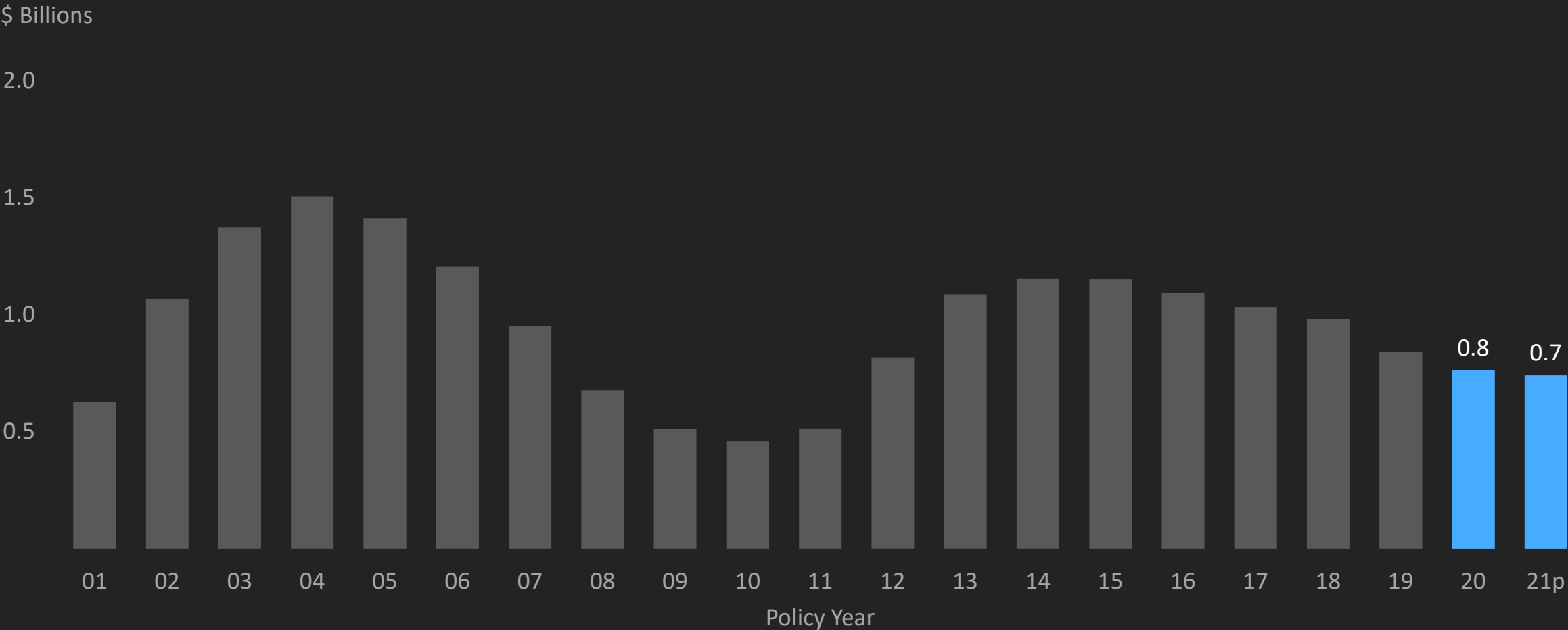


p Preliminary

Source: NAIC's Annual Statement data; 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

WC Residual Market Premium

NCCI-Serviced WC Residual Market Pools

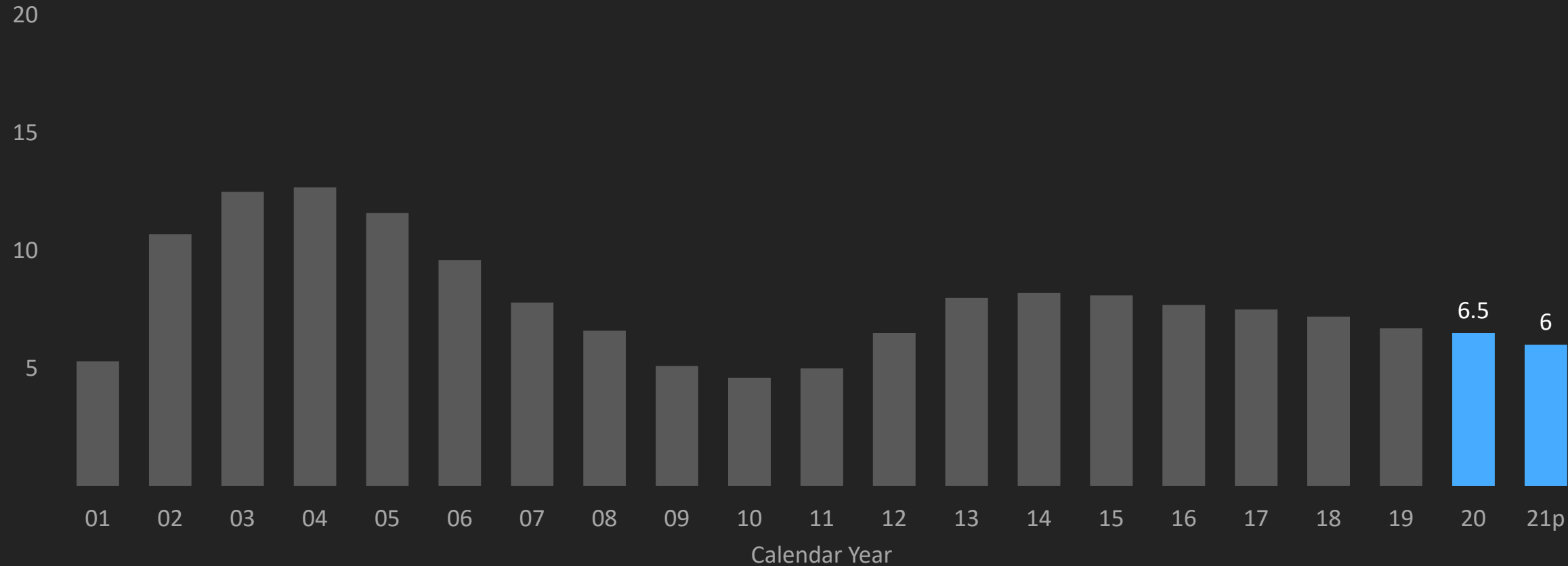


p Preliminary, incomplete policy year projected to ultimate
Source: NCCI's **Residual Market Quarterly Results**
Includes Pool data for all NCCI-serviced WC Residual Market Pool states, valued as of 12/31/2021
Tennessee Reinsurance Mechanism premium is not included

WC Residual Market Share

NCCI-Serviced WC Residual Market Pools

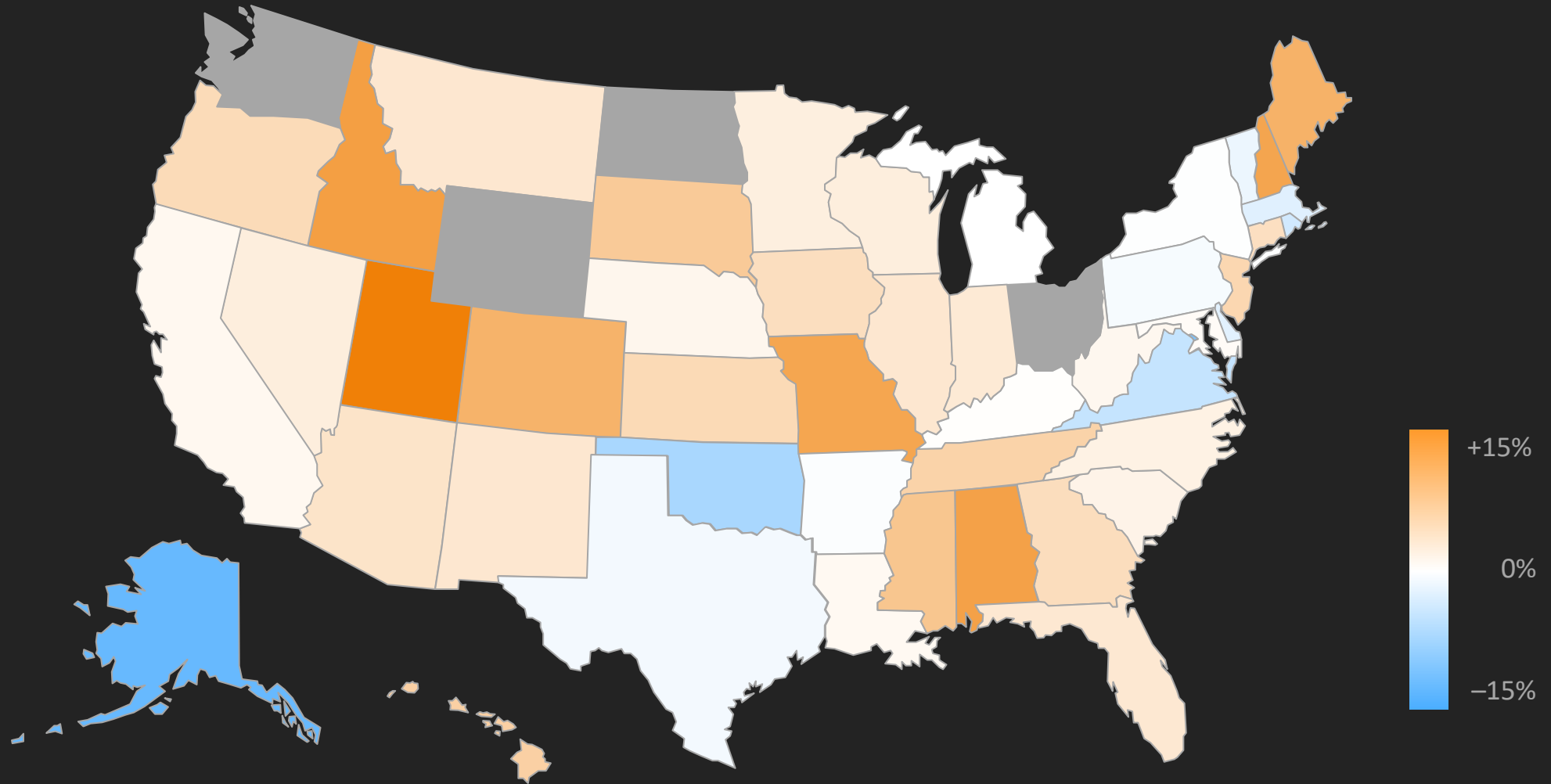
Percent



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—2021

Private Carriers



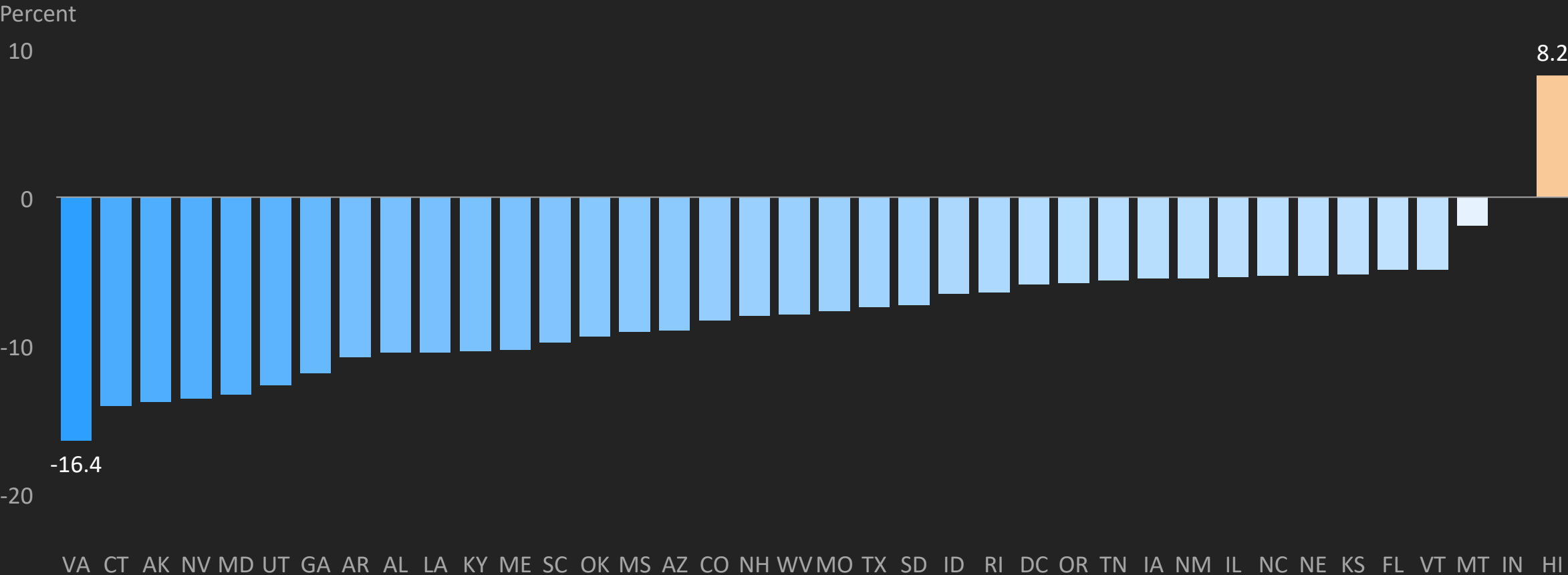
Source: 2020 and 2021 NAIC's Annual Statement Statutory Page 14

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Most Recent Changes in Bureau Premium Level

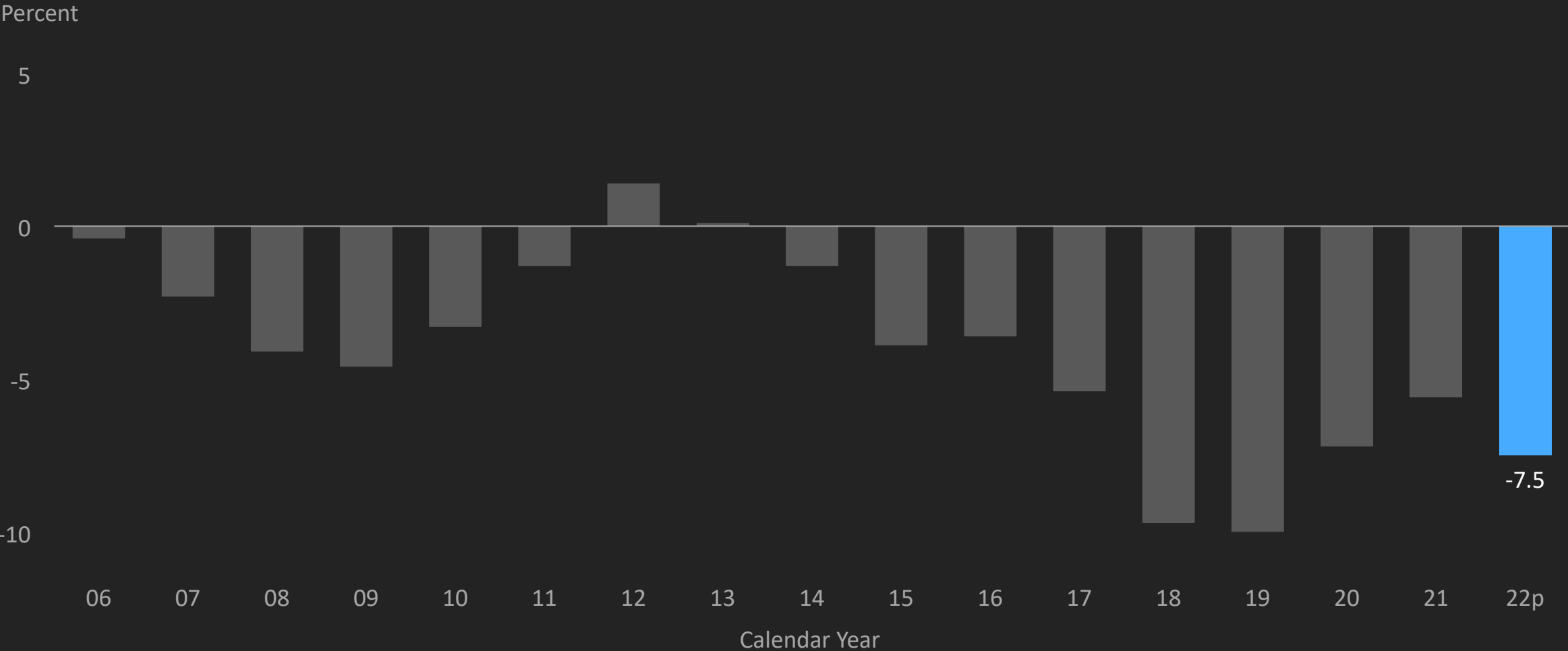
Voluntary Market, Excludes Law-Only Filings



Premium level changes in advisory rates, loss costs, and rating values, as of 5/6/2022, as filed by the applicable rating organization, relative to those previously approved
IN and NC are filed in cooperation with state rating bureaus

WC Approved Changes in Bureau Premium Level

Weighted by Effective Date—NCCI States

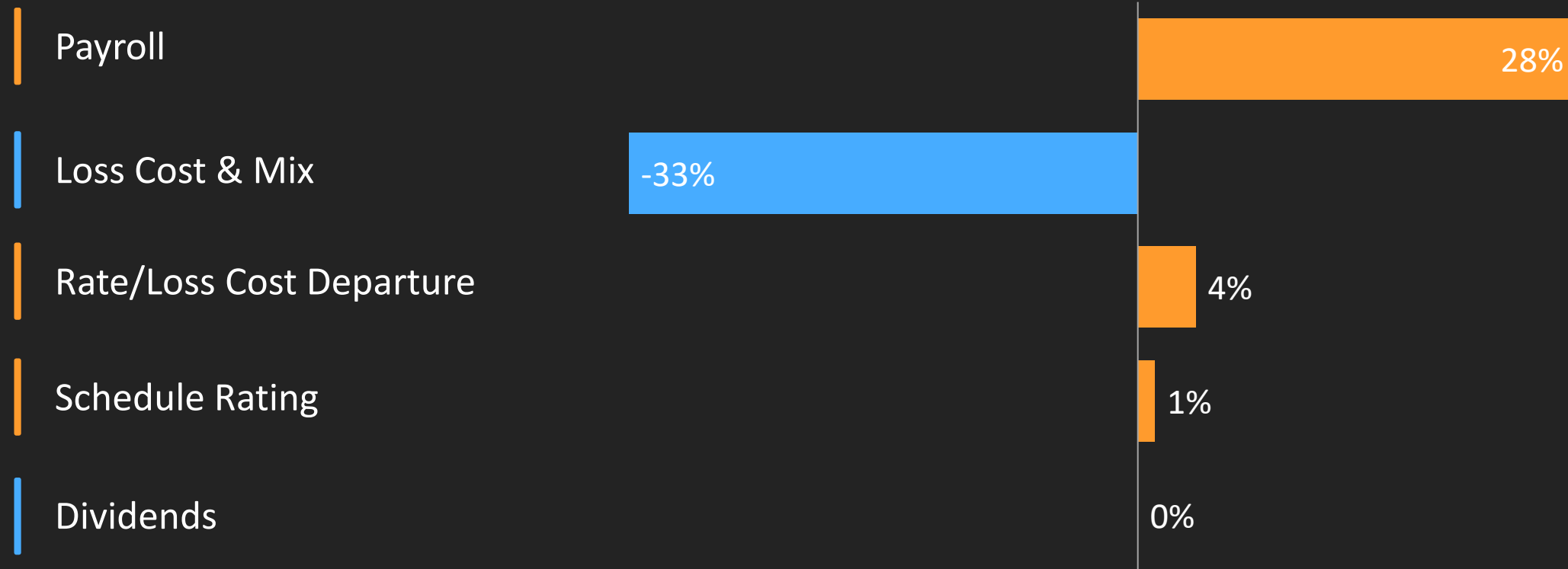


p Preliminary
Source: NAIC's Annual Statement Statutory Page 14
Values reflect changes in average premium levels between years, based on approved changes in advisory rates, loss costs, assigned risk rates, and rating values, as of 5/6/2022
IN and NC are filed in cooperation with state rating bureaus

WC Impact on Premium by Component

Private Carriers—NCCI States

2016 vs. 2021



Sources: NCCI's Policy data, NAIC's Annual Statement Statutory Page 14, NCCI's Financial Call data

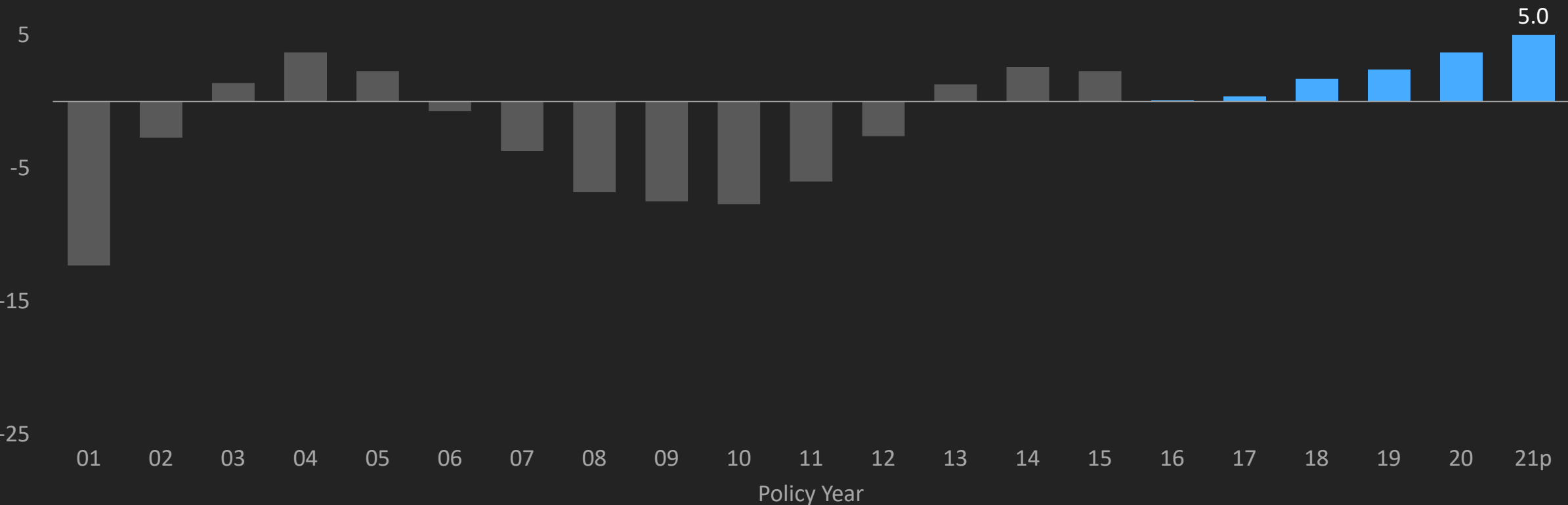
Rate/loss cost departure reflects carrier departure from NCCI rate level, which excludes a profit and contingency provision and expense constant

Based on data for all states where NCCI provides ratemaking services; rate/loss cost departure, schedule rating, and dividends exclude TX

WC Impact of Discounting on Premium

Private Carriers—NCCI States

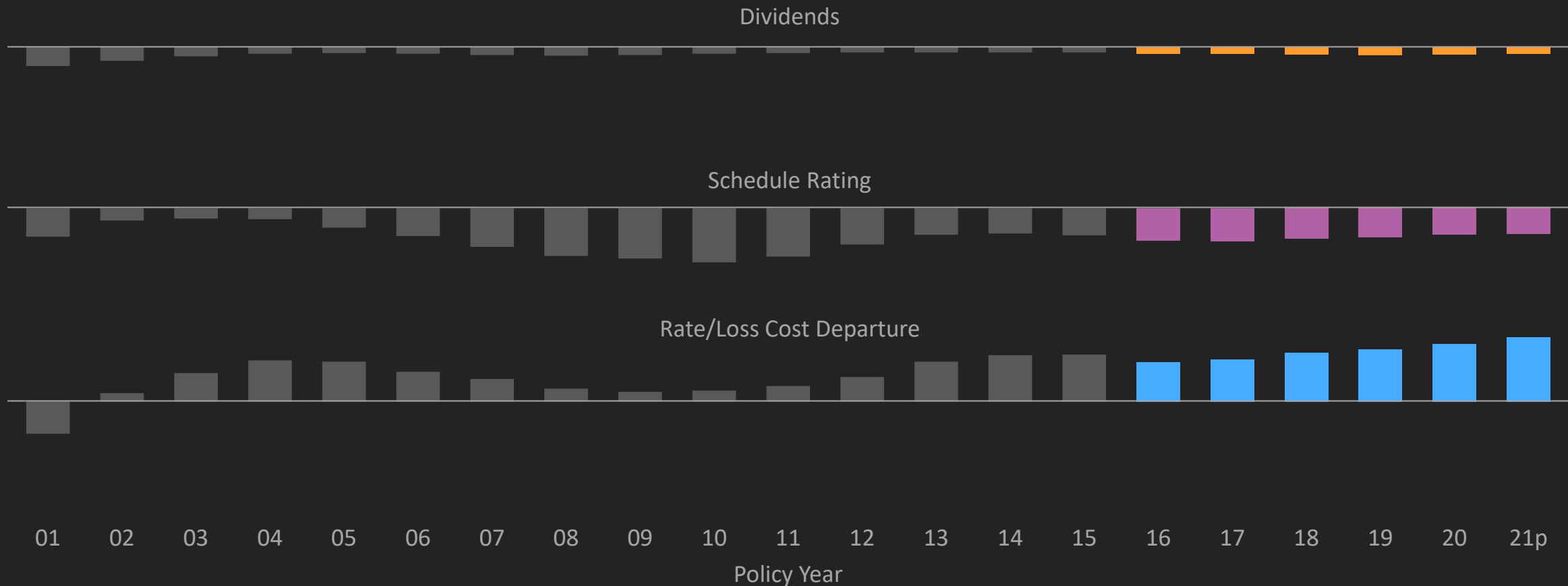
Percent



p Preliminary
Sources: NAIC’s Annual Statement Statutory Page 14 and NCCI’s Financial Call data
Rate/loss cost departure reflects carrier departure from NCCI rate level, which excludes a profit and contingency provision and an expense constant
Based on data for all states where NCCI provides ratemaking services, excluding TX

WC Impact of Discounting on Premium by Component

Private Carriers—NCCI States



p Preliminary

Sources: NAIC's Annual Statement Statutory Page 14 and NCCI's Financial Call data

Rate/loss cost departure reflects carrier departure from NCCI rate level, which excludes a profit and contingency provision and an expense constant

Based on data for all states where NCCI provides ratemaking services, excluding TX

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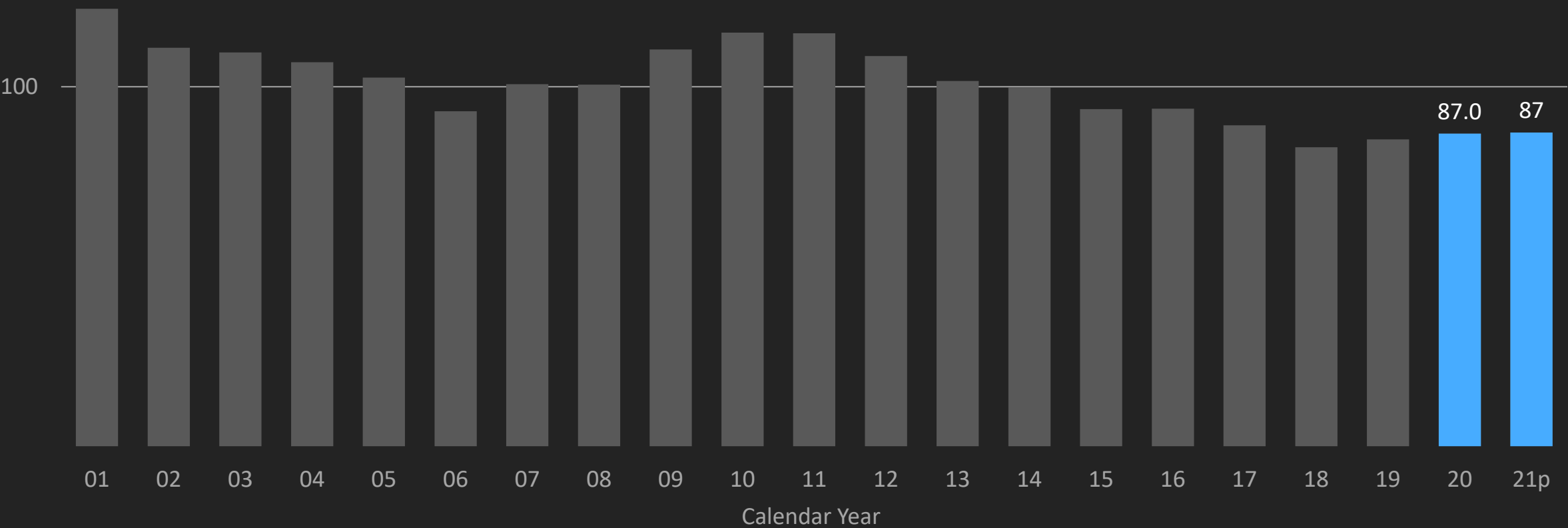
Workers Compensation Results



WC Net Combined Ratio

Private Carriers

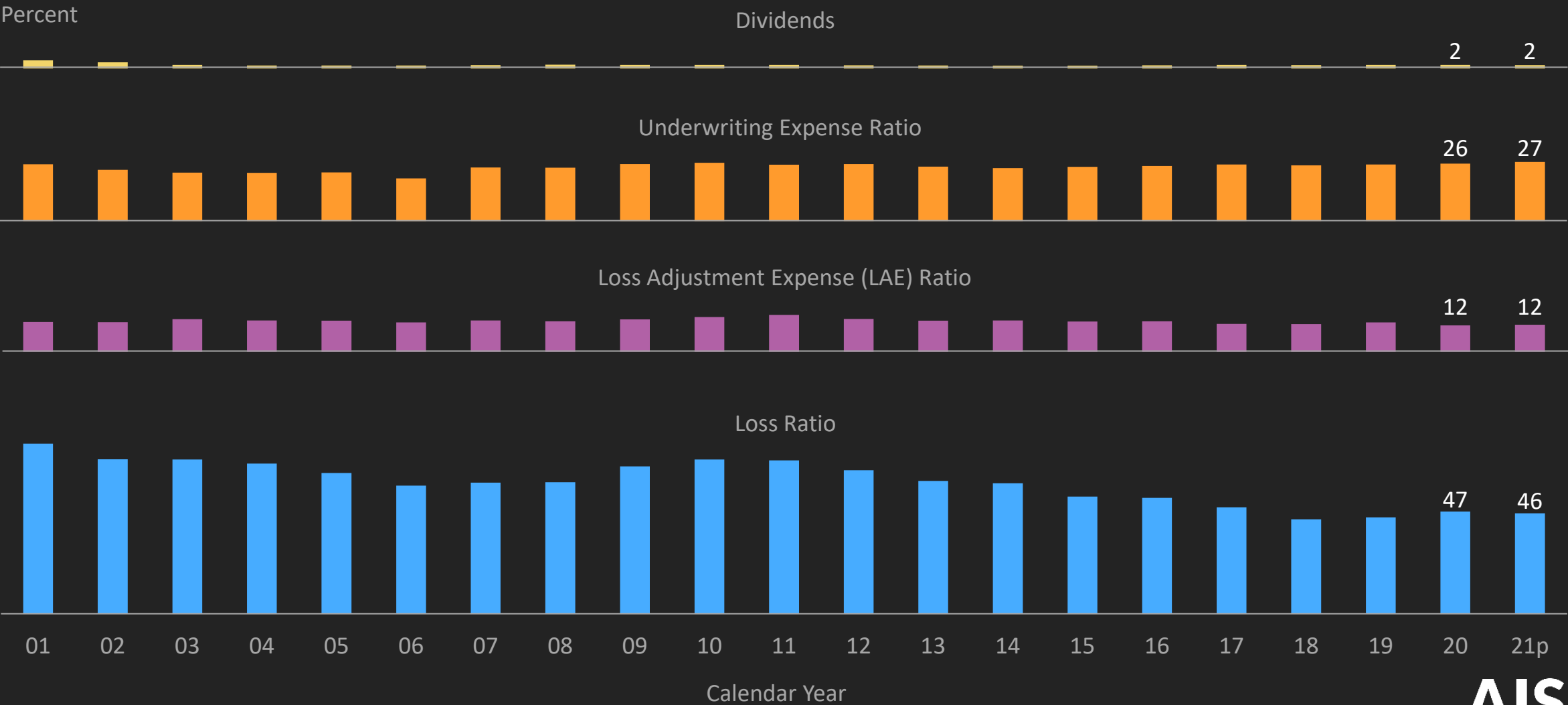
Percent



p Preliminary
Source: NAIC's Annual Statement data

WC Net Combined Ratio by Component

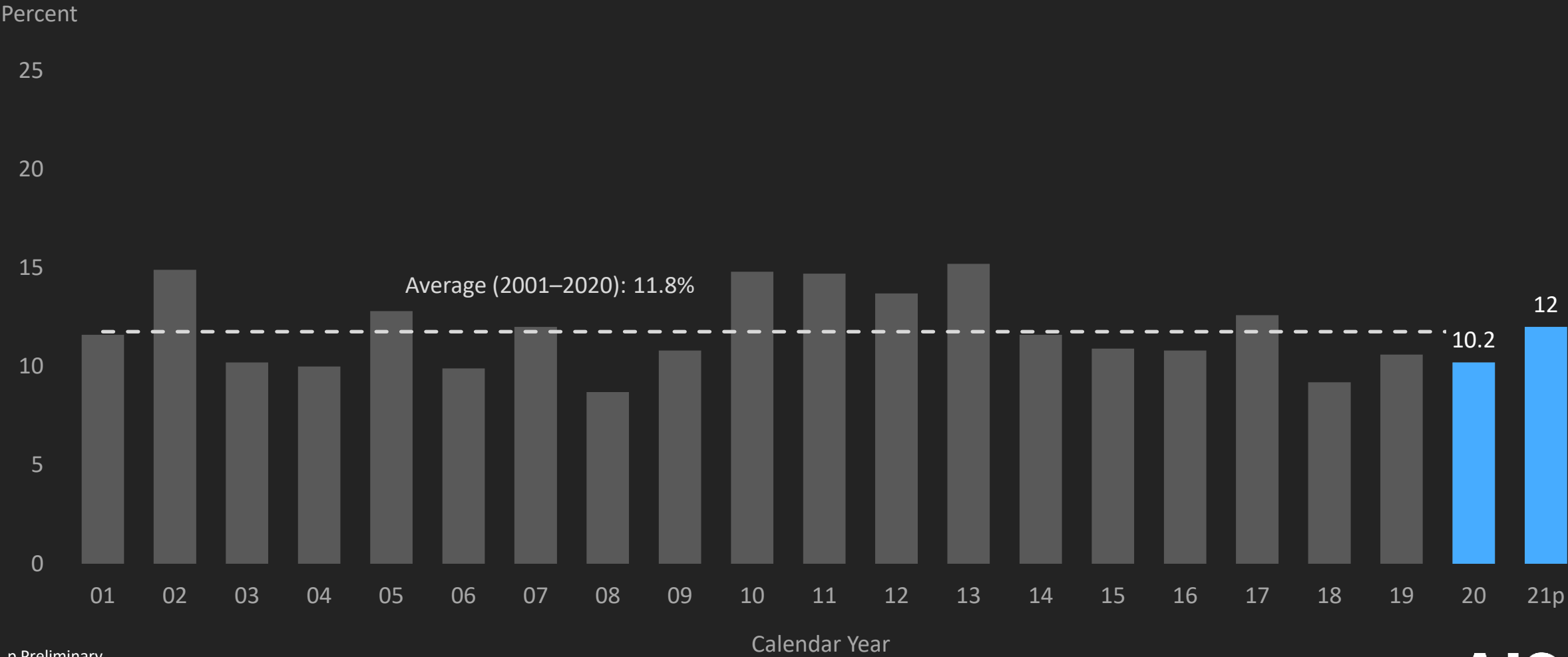
Private Carriers



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

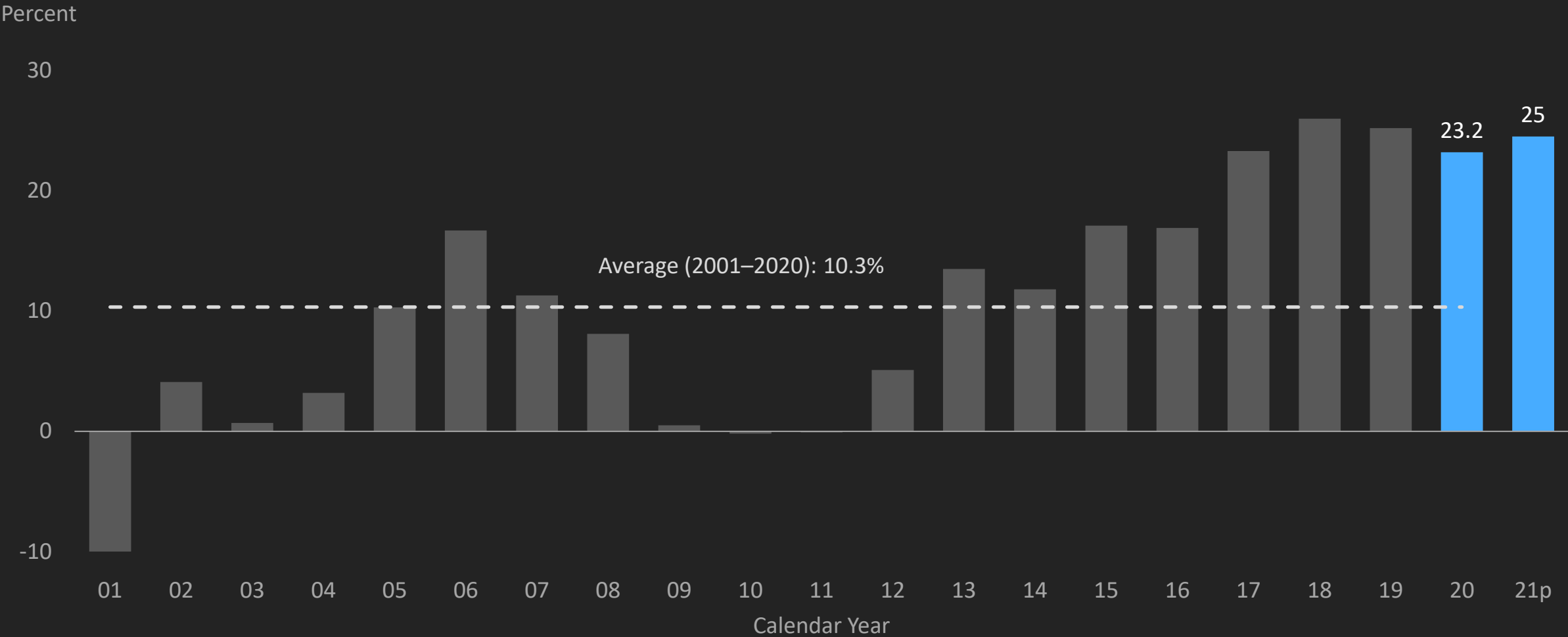
2013 is adjusted to exclude a material realized gain resulting from a single company transaction that involved corporate restructuring; unadjusted value is 19.4

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WC Pretax Operating Gain

Private Carriers



p Preliminary

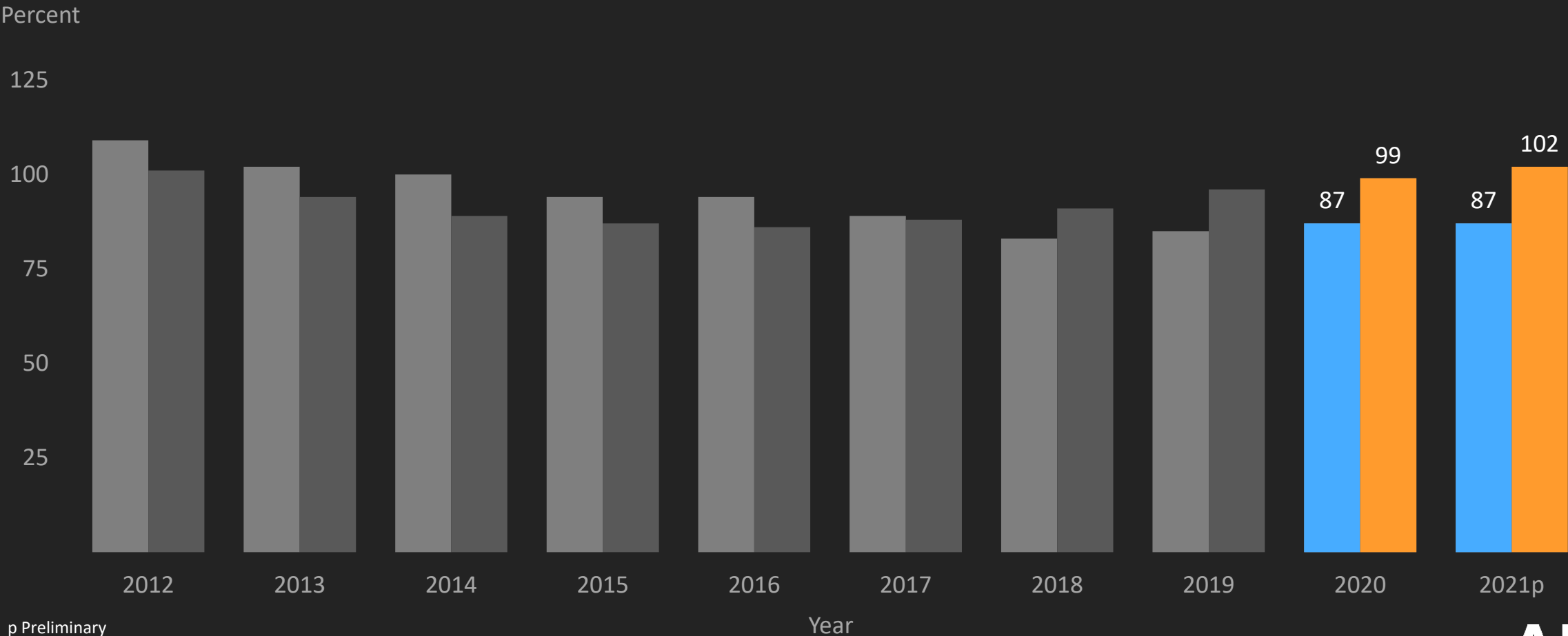
Source: NAIC's Annual Statement data

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

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

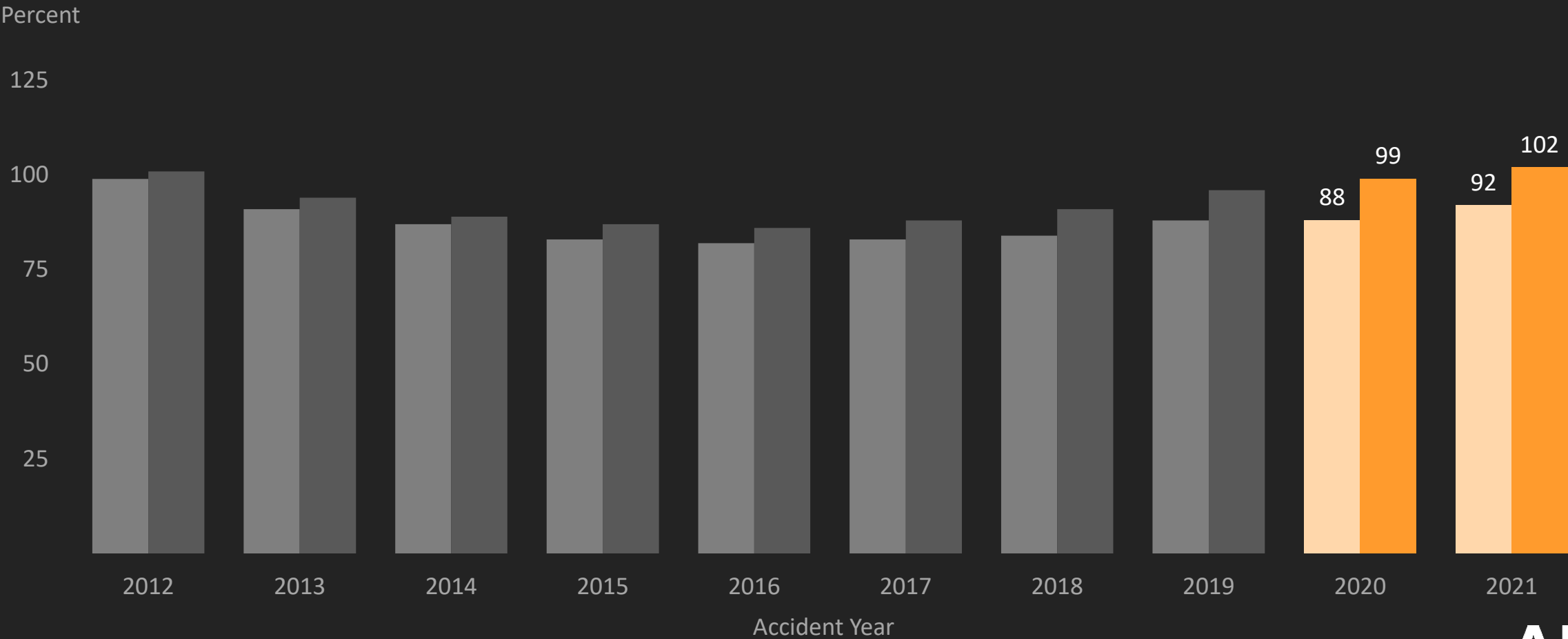
Private Carriers



p Preliminary
Source: NAIC's Annual Statement data
Accident Year information is reported as of 12/31/2021
Includes dividends to policyholders

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

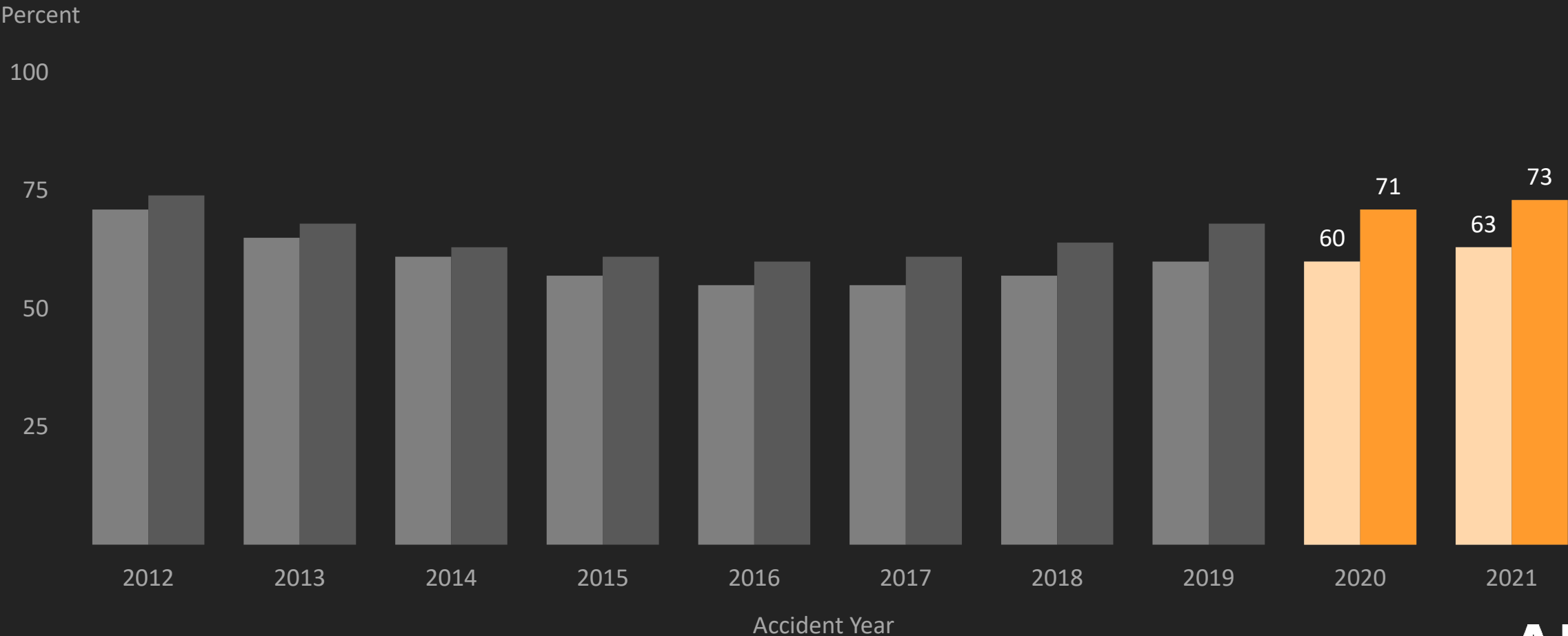
Private Carriers



Sources: As Reported: NAIC's Annual Statement Schedule P—Part 1D data as of 12/31/2021
NCCI Selections: NCCI's analysis based on NAIC's Annual Statement data

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

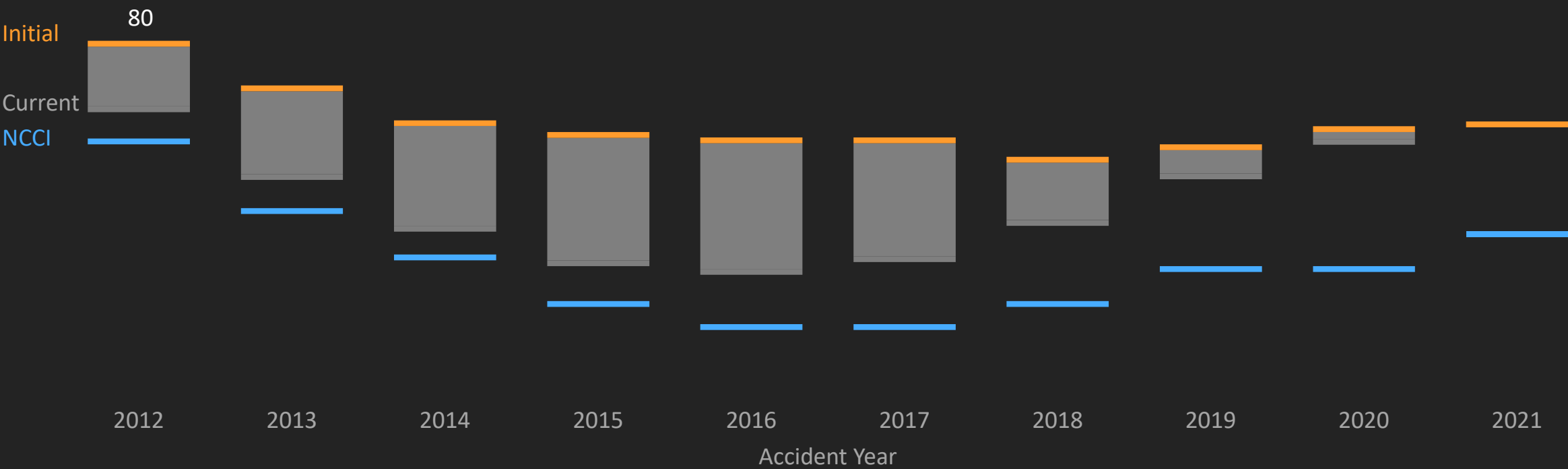
Private Carriers



Sources: As Reported: NAIC's Annual Statement Schedule P—Part 1D data as of 12/31/2021
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

Emergence of Reported WC Net Loss and LAE Ratios

Private Carriers

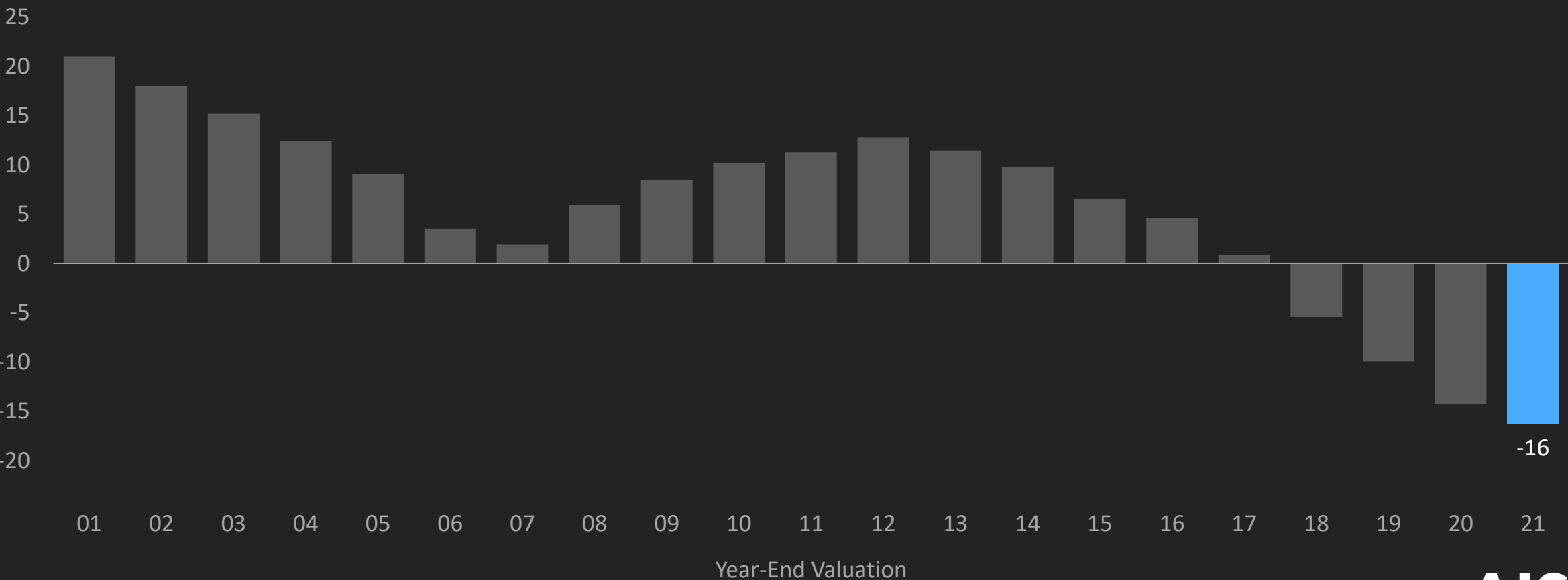


Source: NAIC's Annual Statement Schedule P—Part 1D data at year-end valuations
As Reported Loss and LAE ratios are net of tabular reserve discounts and gross of nontabular reserve discounts

WC Net Loss and LAE Reserve Adequacy

Private Carriers

\$ Billions

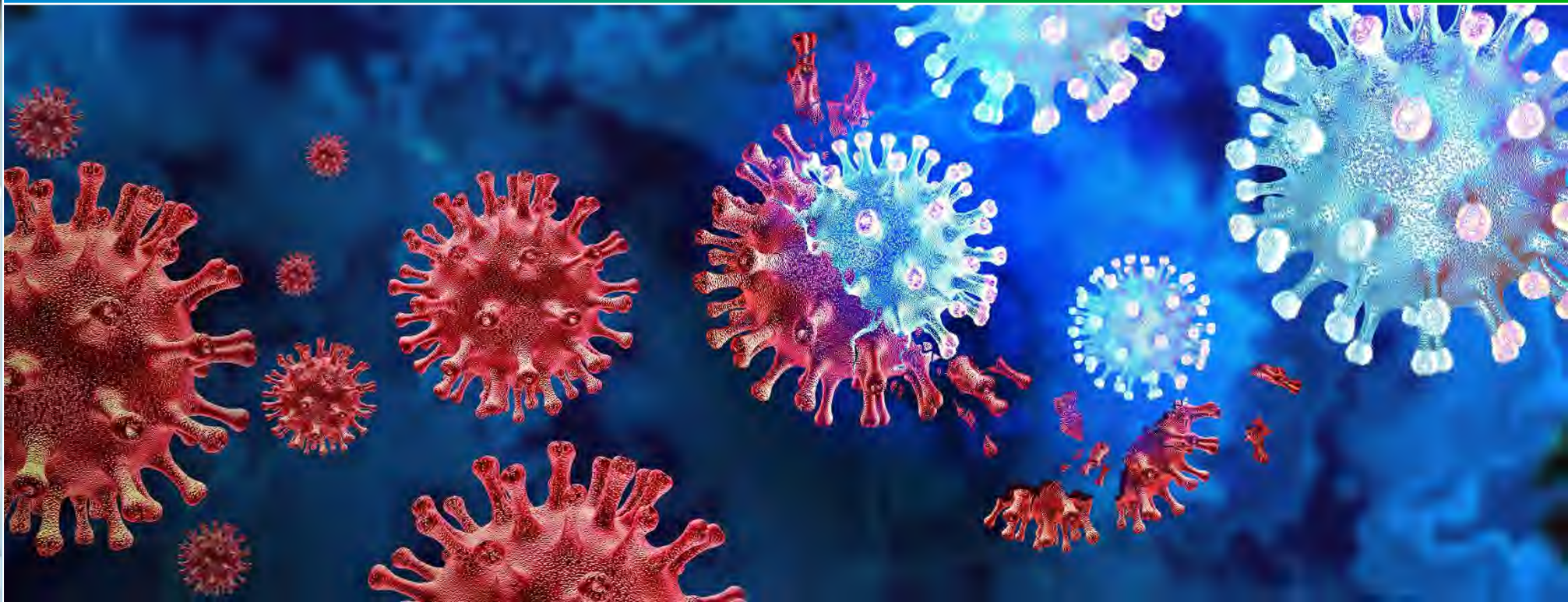


Source: NCCI's analysis based on NAIC's Annual Statement data
Considers all reserve discounts as deficiencies

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COVID-19



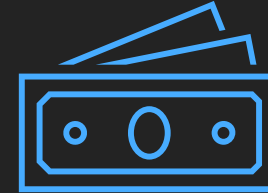
Direct Impact of COVID-19—Accident Years 2020 & 2021

Private Carriers and State Funds—NCCI States

≈60,000 claims



≈\$500M in losses

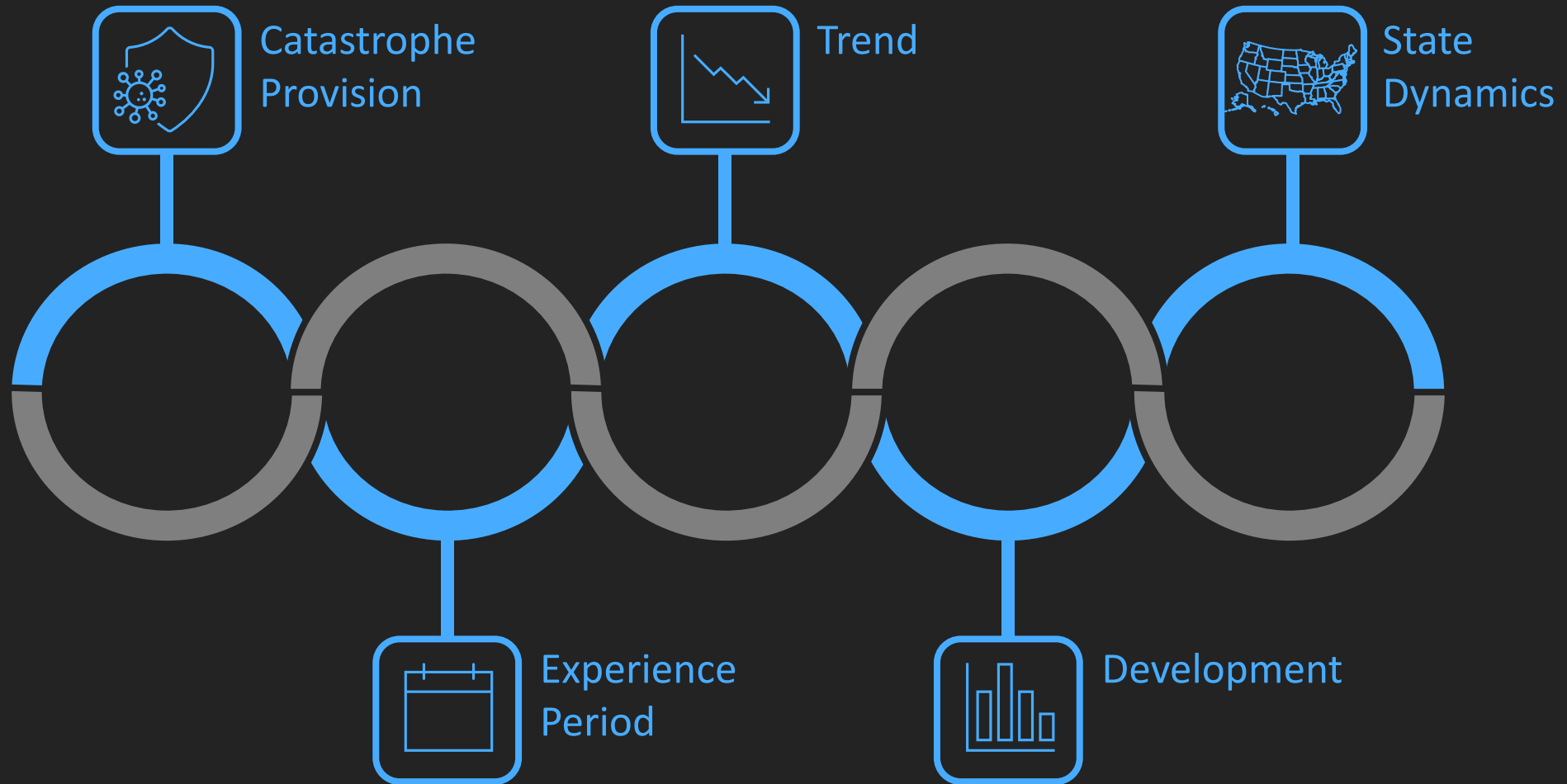


Source: NCCI's Financial Call data through 12/31/2021, excludes expense-only claims

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Considerations in Ratemaking

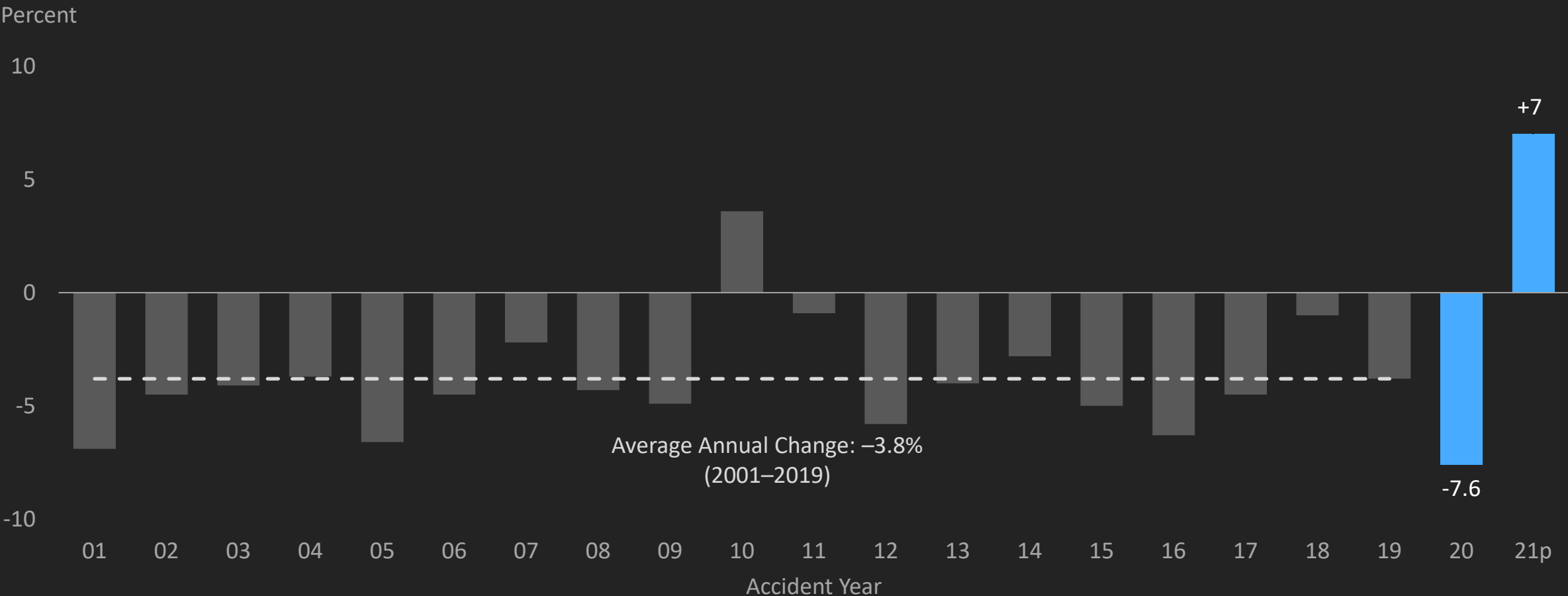


Workers Compensation Loss Drivers



WC Lost-Time Claim Frequency

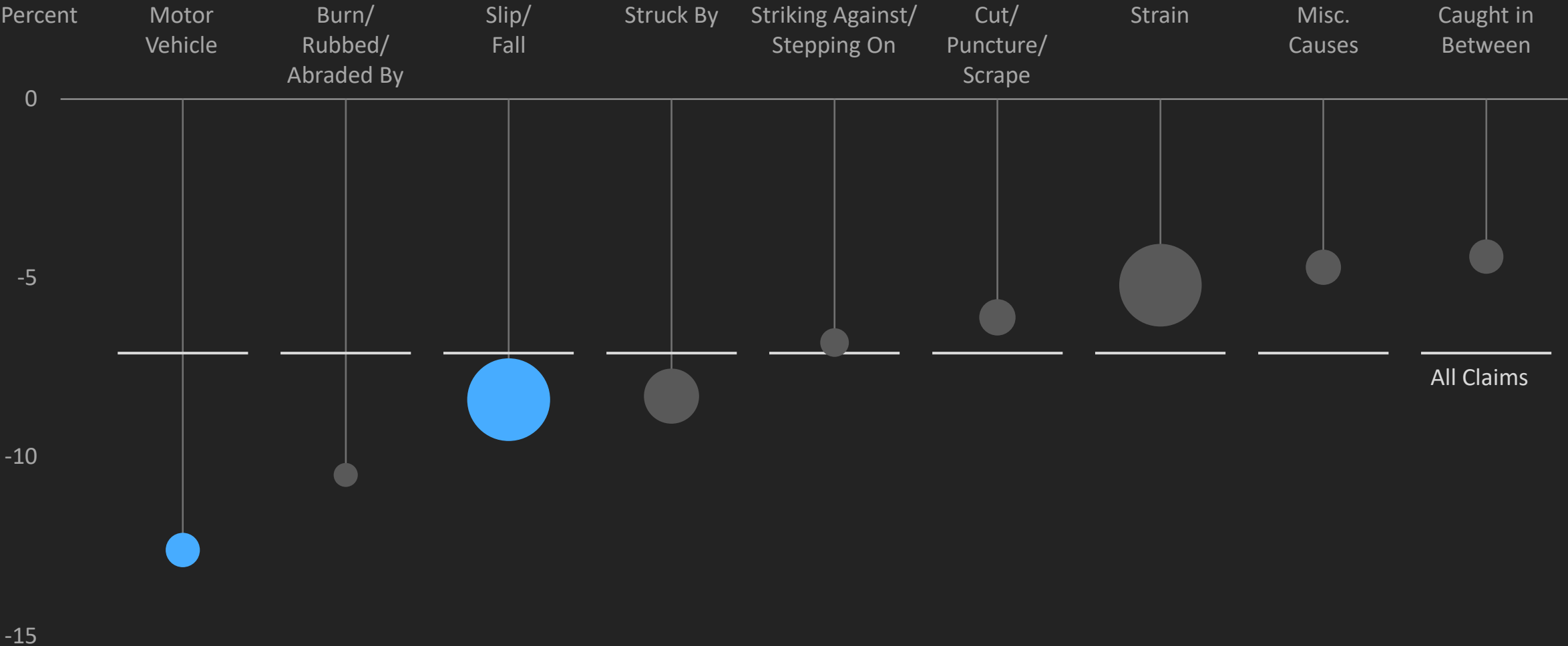
Change in Claims per \$1M Pure Premium, Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



2010–2011 and 2019–2021 have been adjusted to reflect the impact of changes in audit activity
p Preliminary, based on data valued as of 12/31/2021; 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 12/31/2020
Includes all states where NCCI provides ratemaking services; NV is excluded through 2001, TX is excluded through 2006, and WV is excluded through 2011

WC Lost-Time Claim Frequency by Cause of Injury

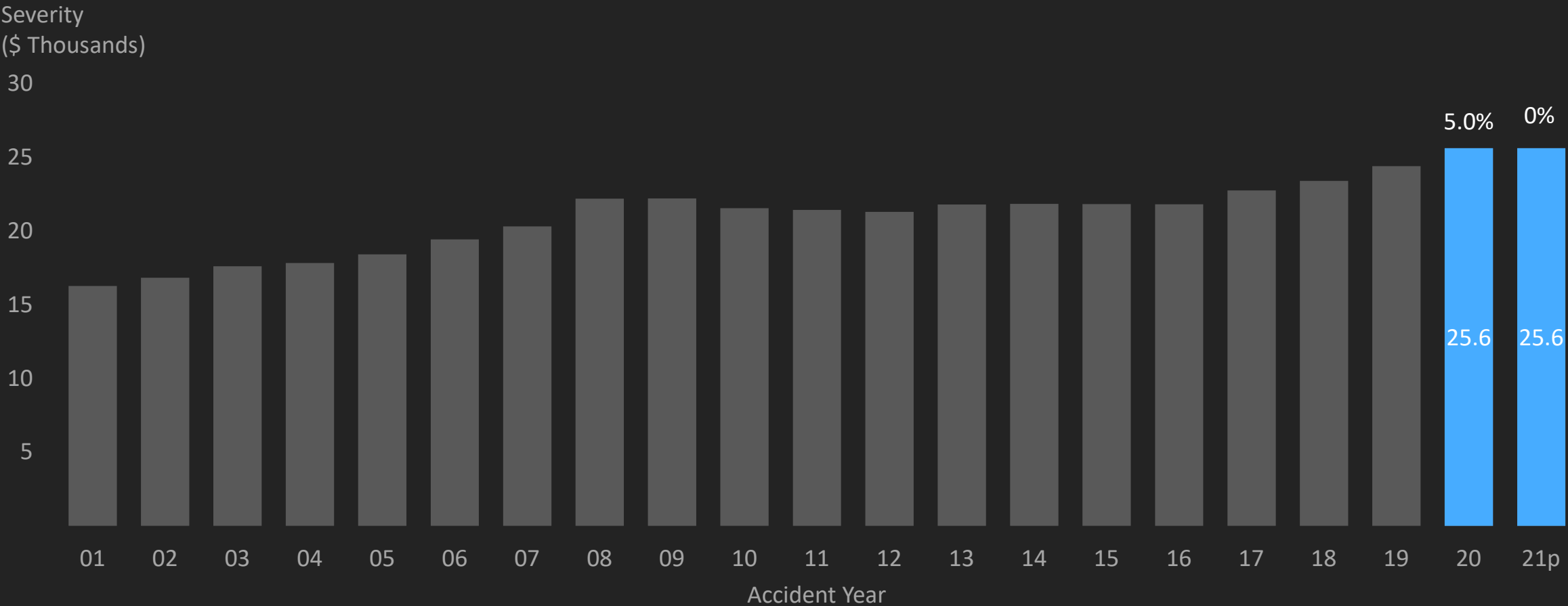
Change in Claims per \$1M Pure Premium, Accident Year 2019–2020p, Private Carriers and State Funds—NCCI States



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 Average Indemnity Claim Severity

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



p Preliminary, based on data valued as of 12/31/2021; excludes COVID-19 claims

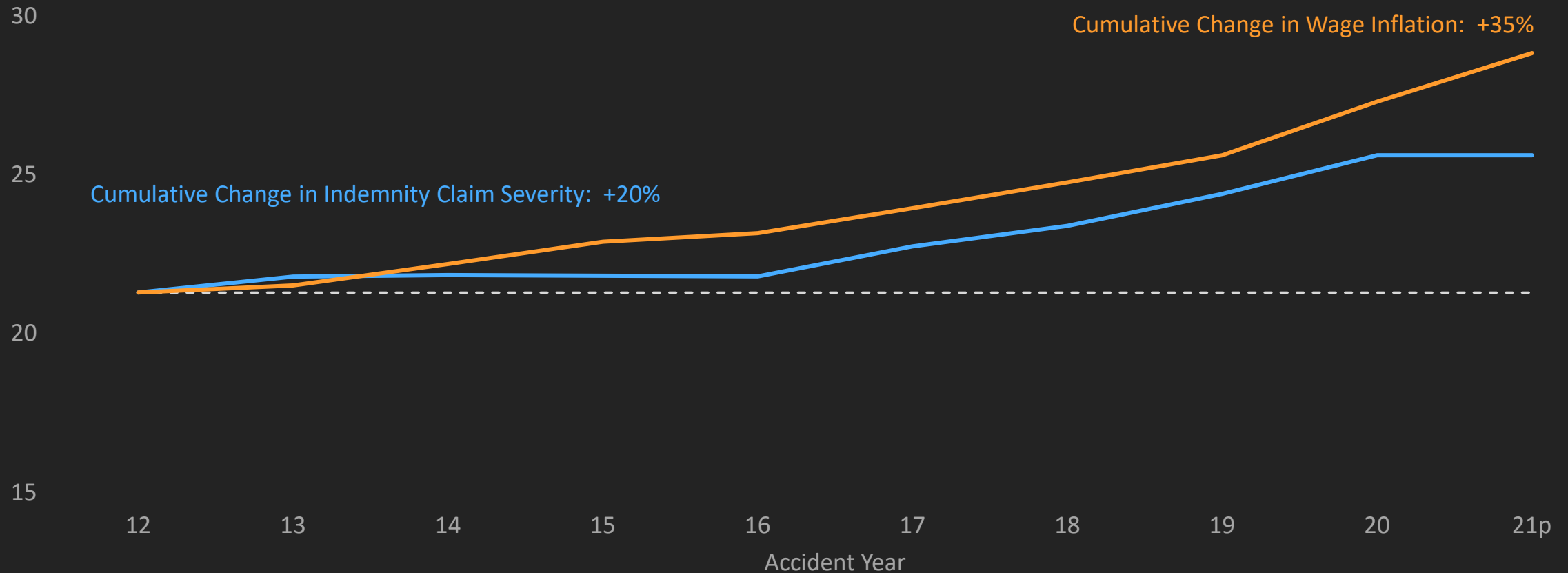
Source: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2020

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 2006, and WV is excluded through 2010

WC Average Indemnity Claim Severity

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



p Preliminary, based on data valued as of 12/31/2021; excludes COVID-19 claims

Sources: US Average Weekly Wage: 2012–2019 Quarterly Census of Employment and Wages (QCEW); 2020 NCCI and QCEW; 2021p NCCI and Moody's Analytics

Severity: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2020

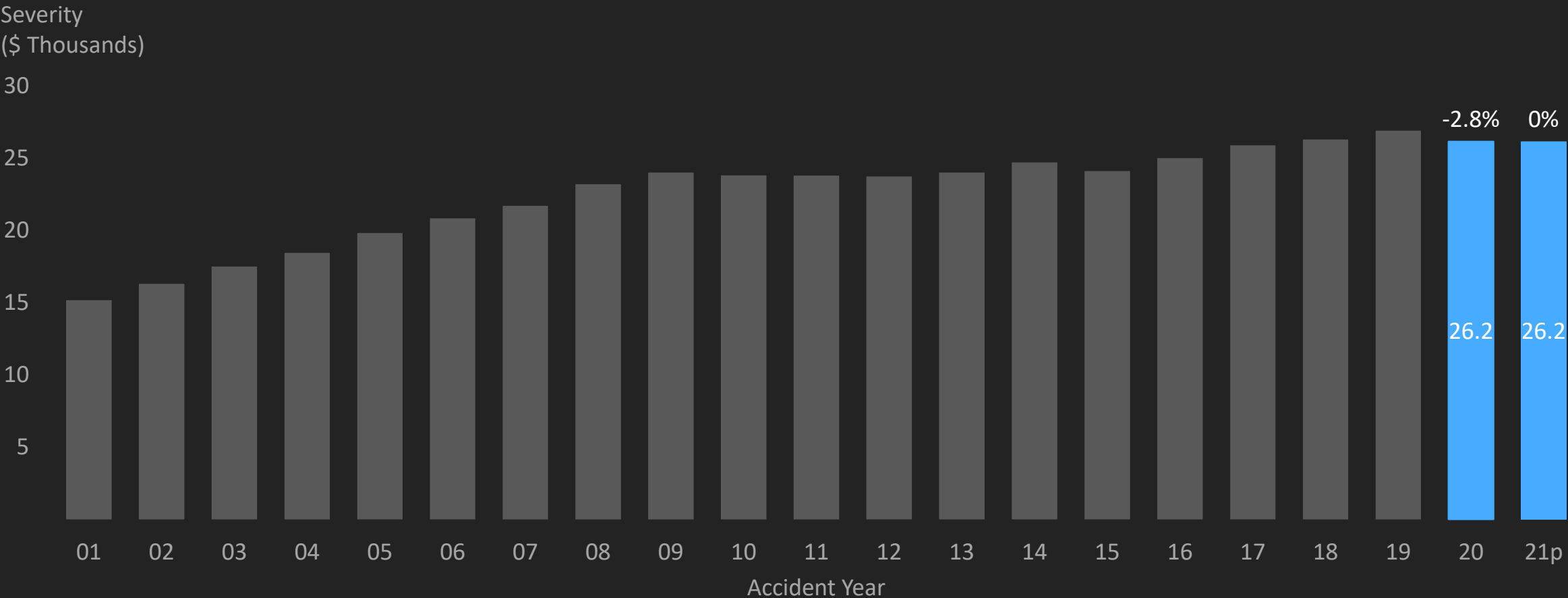
Values displayed reflect the methodology underlying the most recent rate/loss cost filing

Includes all states where NCCI provides ratemaking services

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WC Average Medical Lost-Time Claim Severity

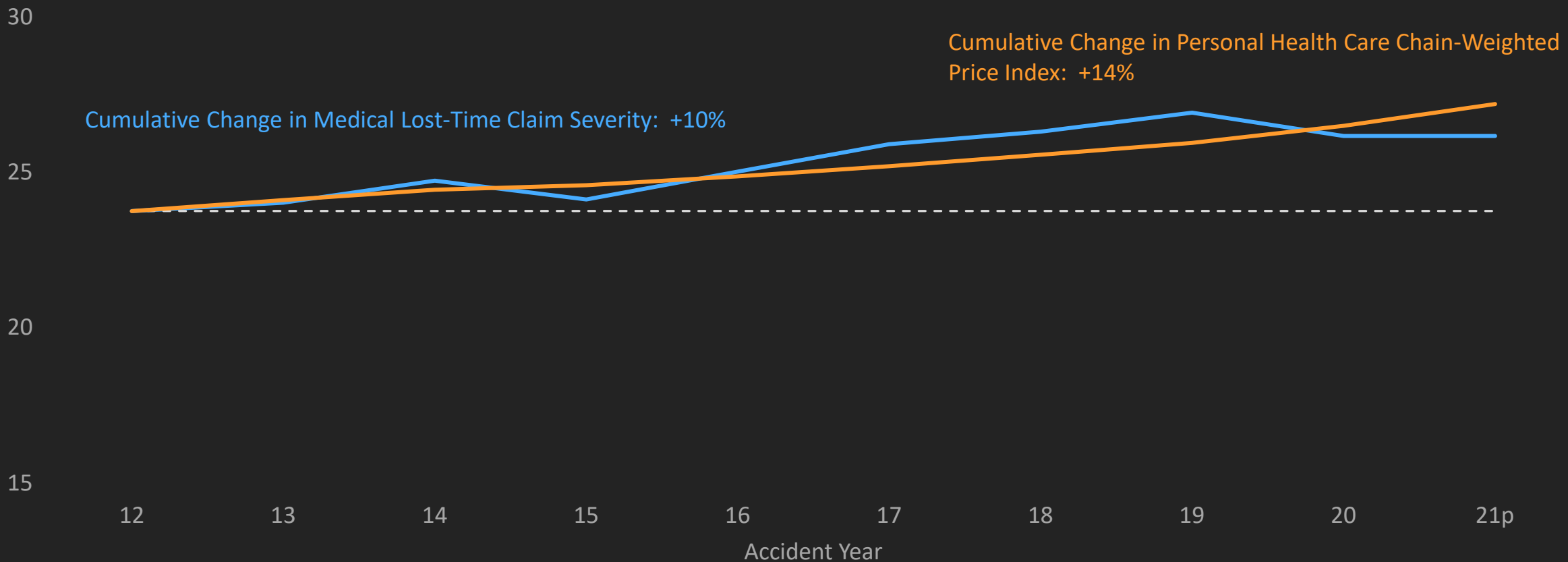
Private Carriers and State Funds—NCCI States, Excludes COVID-19 Claims



p Preliminary, based on data valued as of 12/31/2021; excludes COVID-19 claims
Source: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2020
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 2006, and WV is excluded through 2010

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 12/31/2021; excludes COVID-19 claims
Sources: Severity: NCCI's Financial Call data, developed to ultimate, excludes high-deductible policies; based on data through 12/31/2020
Values displayed reflect the methodology underlying the most recent rate/loss cost filing
Includes all states where NCCI provides ratemaking services
PHC Chain-Weighted Price Index: Centers for Medicare & Medicaid Services

2021 Workers Compensation Insights

Net written
premium
increased by
1%



Reported
combined ratios:

CY 2021
87%

AY 2021
102%



\$16B
reserve
redundancy



Excluding COVID-19 claims:

Claim frequency
declined by **1%**
since 2019

Indemnity and medical severity
changes remain moderate



≈\$500M

reported
COVID-19 losses
since 2020



AIS
2022

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