

# Status of the MICRA Non-Economic Damage Cap

Presented by

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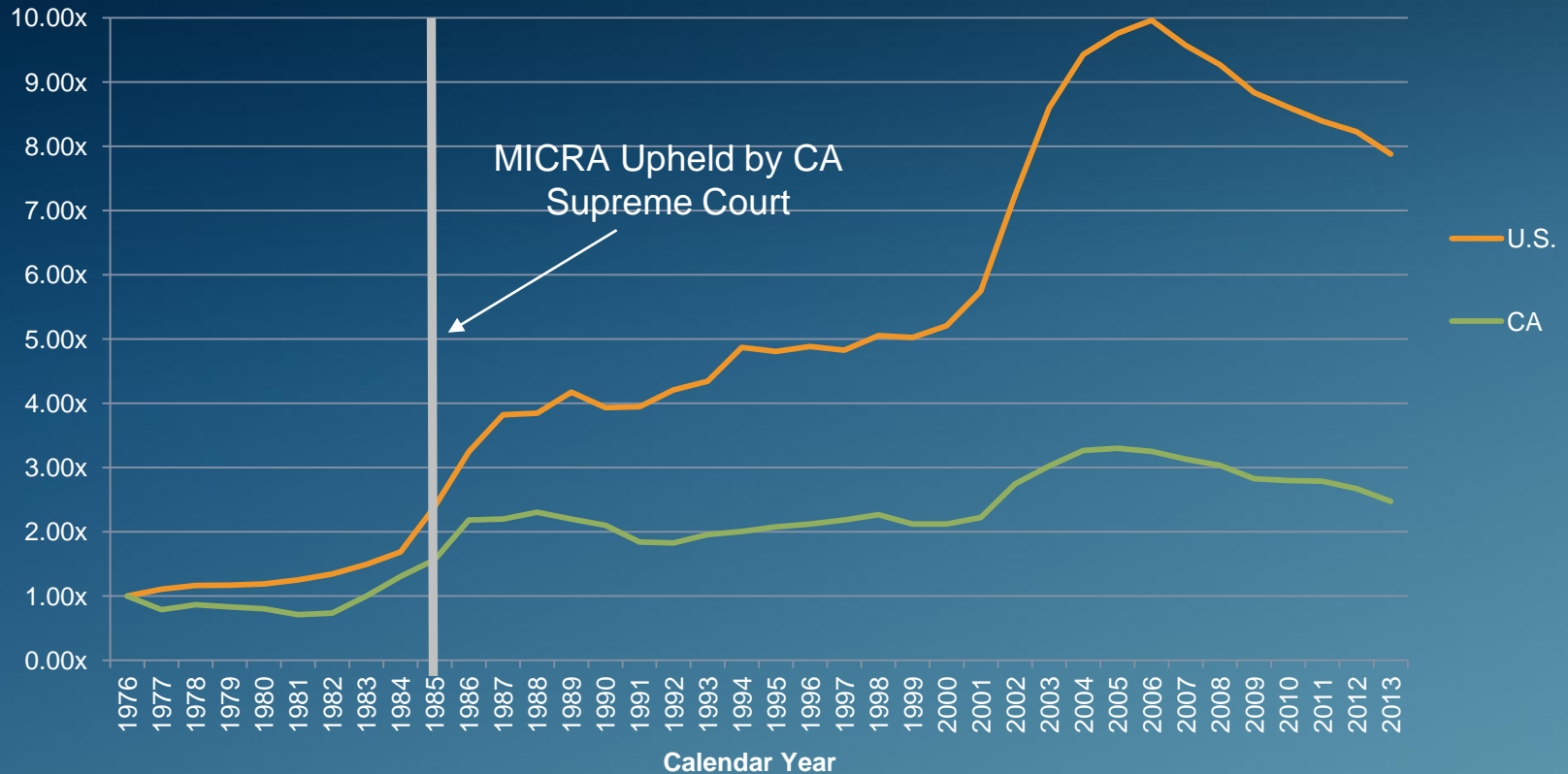
# Agenda

- History of MICRA and the California MPL Environment
- Nationwide MPL Environment and Recent History
- California 2014 Ballot Initiative #13-0016
- Impact if Ballot Initiative is Approved by California Voters

# Medical Professional Liability Tort Reform

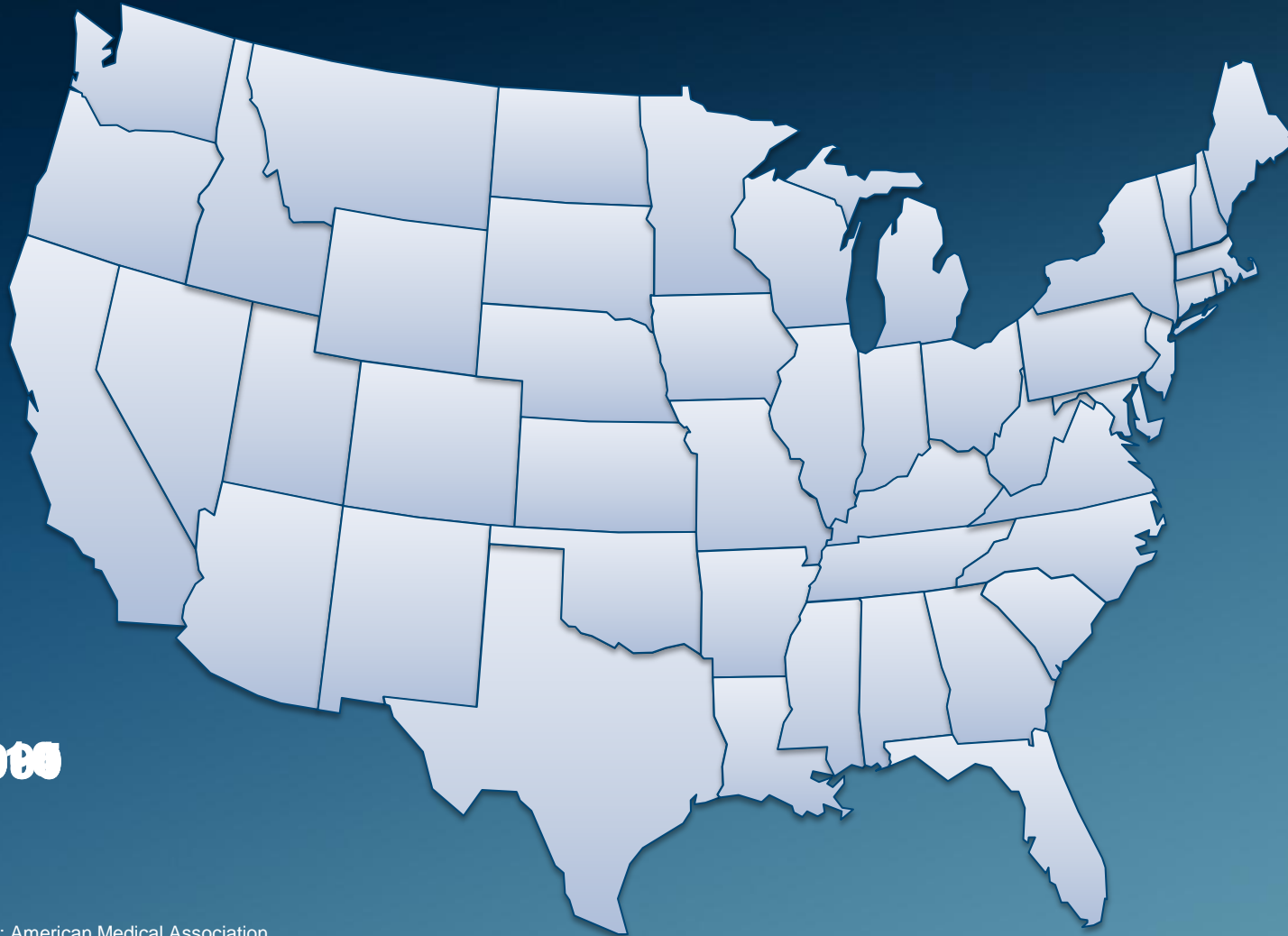
- California Passed MICRA 1975

Medical Professional Liability Direct Written Premiums Indexed to 1976



Source: A.M. Best Aggregates & Averages / SNL Aggregate of P&C Industry, Statutory Page 14 Data.

# States with MPL Damage Caps

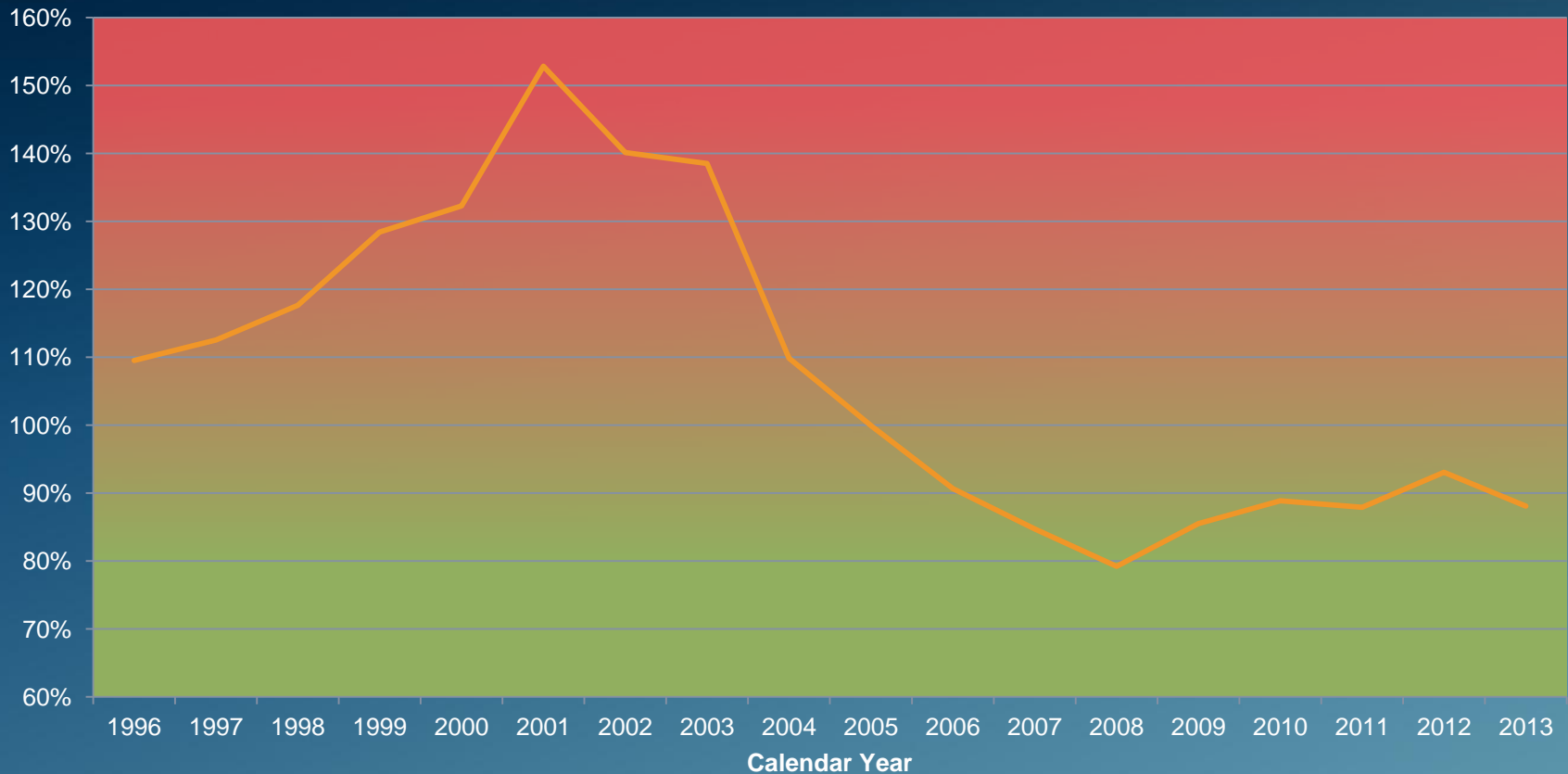


**2010**

Source: American Medical Association.

# The Last Eighteen Years

- MPL Insurance Industry Underwriting Profitability  
Medical Professional Liability Combined Ratio

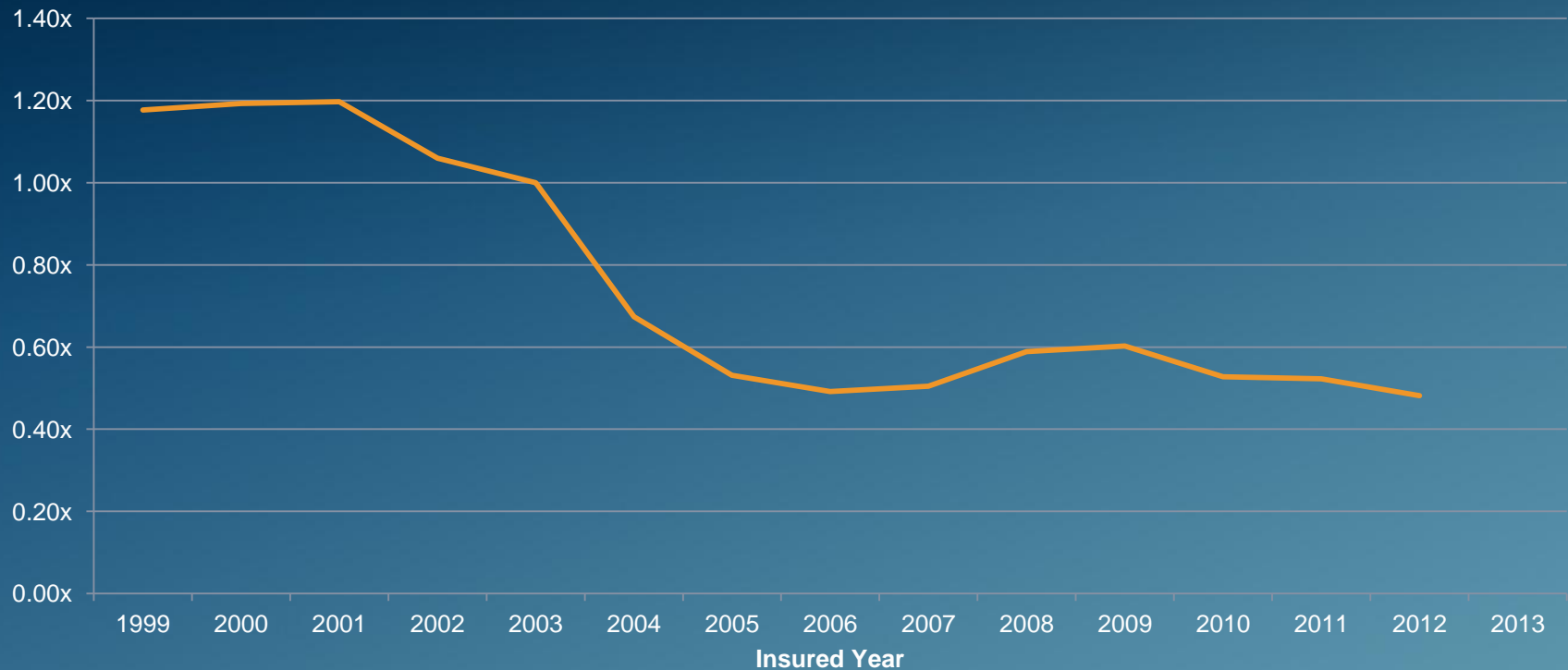


Source: SNL Aggregate of P&C Industry, MPL Combined Ratio.

# The Last Eighteen Years

- Decrease in Number of Claims Filed

The Doctors Company  
Number of Claims per Insured Doctor - Nationwide  
Indexed to 2003



Source: <http://www.cmanet.org/files/pdf/micra/final-2014-micra-report-012114-web.pdf>. Table 2.

# The Last Eighteen Years

- MPL Insurance Results Favorable Last Ten Years
  - Rate Strengthening Followed by Decrease in Number of Claims
  - Quickly Improved Underwriting Results
  - Soft Market – Pricing Remains Competitive
- Decrease in Momentum of Reforms Being Implemented
  - 2000 to 2005: ~15 States Implemented Damage Caps
  - 2006 to 2014: ~5 States Implement Damage Caps
    - Several States Overturn Prior Caps
- March 2014: Florida Cap on Non-Economic Damages Deemed Unconstitutional by Florida Supreme Court (Wrongful Death)

# Ballot Initiative #13-0016

- Troy and Alana Pack
- Every Physician Shall Report to Medical Board of California any Information Known or which Appears to Show Impairment of Another Physician While on Duty
- Hospitals Conduct Drug and Alcohol Testing of Physicians
  - Random Basis for Physicians who are Employed, Contracted, or have Privileges
  - Immediately Upon the Occurrence of an Adverse Event
  - At the Direction of the Medical Board of California
  - Report Positive Test Results to the Medical Board of California
- Presumption of Negligence by Physician or Surgeon who Tested Positive
- Consult the Controlled Substance Utilization Review and Evaluation System (CURES) for Schedule II or Schedule III Drugs
  - Applies to First Time Prescribing (Health Care Practitioners) or Dispensing (Pharmacists) to a Given Patient
- Increase Cap on Non-Economic Damages based on CPI Index



# Ballot Initiative #13-0016

## ▪ Arguments For Initiative

- “...no mandatory drug and alcohol testing exists for physicians, as it does for pilots, bus drivers, and others in safety-sensitive occupations, and no effective safeguards exist to stop physicians from practicing until a substance abuse problem is addressed.”
- “...Patients are also harmed by doctors who over-prescribe prescription drugs and fail to prevent prescription drug abuse...”
- “...Adjust the \$250,000 cap... in order to boost health care accountability, act as a deterrent, and ensure that patients, their families, and others who are injured by negligent doctors are entitled to be made whole for their loss.”

Source: [http://oag.ca.gov/system/files/initiatives/pdfs/13-0016 \(13-0016 \(Drug and Alcohol Testing-V 2\) \).pdf](http://oag.ca.gov/system/files/initiatives/pdfs/13-0016%20(13-0016%20Drug%20and%20Alcohol%20Testing-V%202).pdf)

# Ballot Initiative #13-0016

- Arguments Against Initiative

- Increasing the MICRA Non-Economic Damage Cap Will Decrease Access to Care
- “At a time when hospitals and health care providers are attempting to lower costs and prepare for an influx of new patients, any attempt to increase lawsuit payouts will harm patient access and increase costs...” – C. Duane Duaner, President and CEO California Hospital Association
- “Most community clinics are operating on thin margins. If MICRA is changed and our medical liability rates go up, we have to offset those higher costs somehow, either through a reduction in services, a reduction in hours, or a reduction in staff. Either way, it’s our patients, mostly low-income and people of color with few health options, who will lose access to needed health care services.” – Jim Mangia, President and CEO St. John’s Well Child & Family Center

Source: Californians Allied for Patient Protection

# Direct Impacts of Ballot Initiative

- Increase to the Cost of Claims if Approved
  - Could Have a Disproportionate Impact on Self-Insured Hospitals
    - Co-Defendant Physicians Largely Remain at \$1 Million Per Occurrence Policy Limits
- Increased Number of Claims if Approved
  - How Much of Prior Decade Decreases in Claim Frequency Could We Expect?
- Potential for Slowing of Settlements in 2014 in Anticipation of Ballot Results

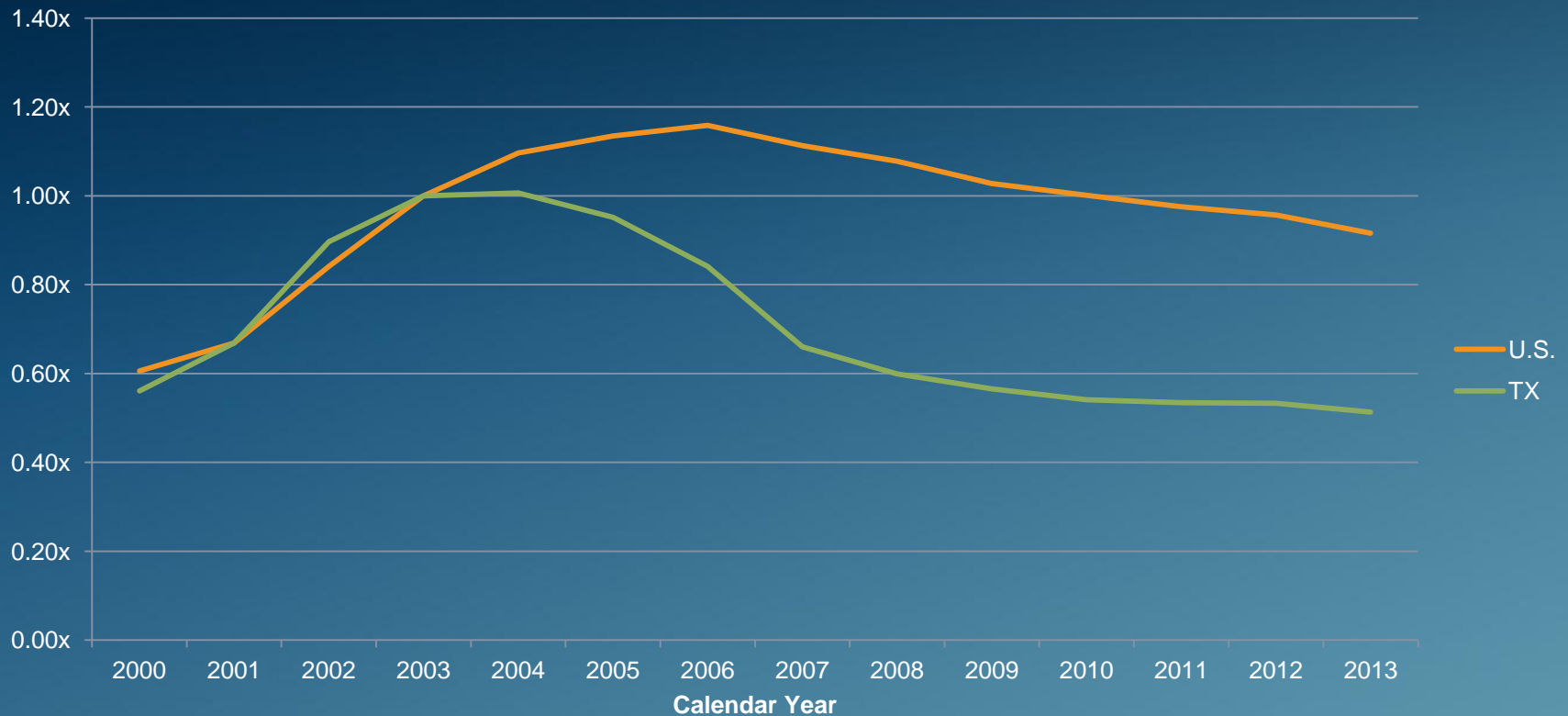
# Texas House Bill 4 and Proposition 12

- Texas House Bill 4
  - \$250,000 Cap on Non-economic Damages
  - Filing of Medical Report Demonstrating Liability Before Discovery
  - Signed Into Law June 11, 2003
  
- Texas Proposition 12
  - Changed Texas Constitution to Authorize Legislature to Determine Limitations on Non-Economic Damages
  - Passed September 13, 2003 Special Election

# Texas House Bill 4 and Proposition 12

- Texas Medical Professional Liability Reform Effective 2003

Medical Professional Liability Direct Written Premiums Indexed to 2003



Source: SNL Aggregate of P&C Industry, Statutory Page 14 Data.

# Potential for Increased Number of Claims

- MICRA Limits on Attorney Contingent Fees Remain Intact

Damages	Contingency Fee Limit	Max Contingency Fee	
		\$250,000 Award	\$1,100,000 Award
0-\$50,000	40%	\$20,000	\$20,000
\$50,001-\$100,000	33%	16,500	16,500
\$100,001-\$600,000	25%	37,500	125,000
\$600,001+	15%	0	75,000
<b>Total</b>		<b>\$74,000</b>	<b>\$236,500</b>

Source: Contingency Fee Limits per *California Business and Professions Code Section 6146*.

# Impacts of Ballot Initiative

- Section 3333.2 of the Civil Code is Amended
  - *“(c). On January 1, 2015, the cap on the amount of damages specified in subdivision (b) shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics since the cap was established. Annually thereafter, the cap on the amount of damages specified in this subdivision shall be adjusted to reflect any increase in inflation....”*
  - *“(e). The adjusted cap provided for in Subdivision (c) shall apply to an award of noneconomic damages in any action which has not been resolved by way of a final settlement, judgment, or arbitration award as of January 1, 2015.”*

- Increased Cap Would Apply to Existing and Future Claims
- Immediate Balance Sheet Impact for Self-Insured Entities

# Other Potential Impacts of Ballot Initiative

- Cost Shifting
  - Increased Incentive to File an MPL Claim
  - Increased Coinsurance / Deductibles with Health Insurance
- Confluence with Implementation of ACA
  - Increase in Insured Population
    - Acuity of Formerly Uninsured
    - Additional Responsibility for Nurse Practitioners / Physician Assistants
  - Patient-Centered Outcomes Research Institute (PCORI)
  - Consolidation of Healthcare
    - Accenture: Independent Physicians 57% in 2000 to 36% in 2013
      - Business Costs & Expense Largest Factor Physicians Seek Employment
  - Evidence of Collateral Source Payments



# Closing

- These Slides are Incomplete Without the Accompanying Narrative Presentation.
  
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