



# Health Care Reform: Implications for the Property/ Casualty Insurance Industry

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# Presentation Outline: 4 Key Issues

- 1. Inflation and the Cost of Health Care**
- 2. Cost Shifting**
- 3. Grant Proposals for Alternatives to Litigation**
- 4. Will Regulation of Health Insurance Policies Affect P/C Insurance?**

■ Q&A



# **Inflation and the Cost of Health Care**

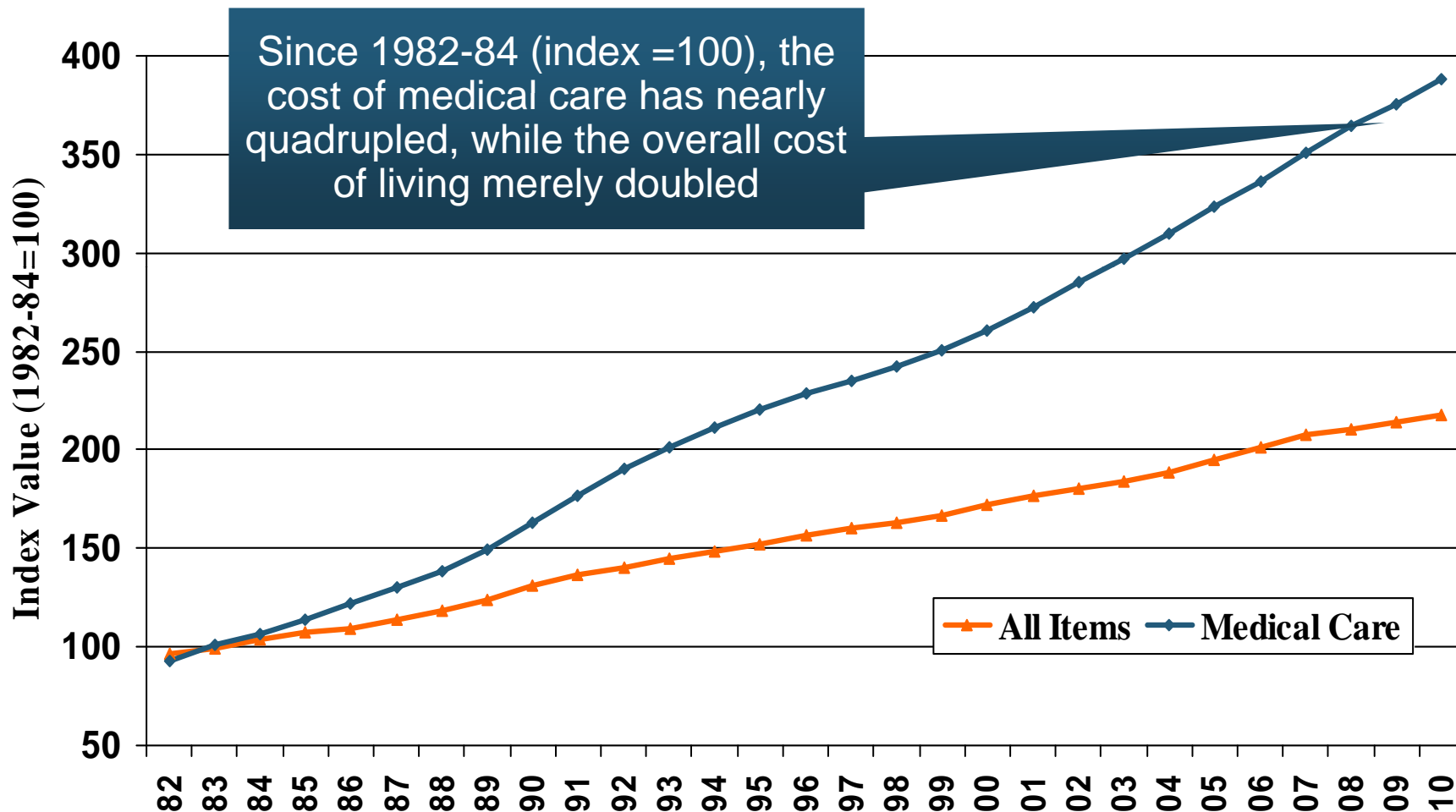
**Will Health Care Reform  
Slow (or even Stop)  
the Growth in the Cost  
of Providing Health Care?**

# Health Care Reform Might Cause Health Care Prices to Rise

## ■ Millions More Will Be Using Medical Services

- ◆ Many people soon will have health insurance who weren't covered before
  - ◆ One estimate: 32 million
- ◆ The “baby boom” generation will begin qualifying for Medicare
- ◆ Will capacity expand—or adapt—quickly enough to absorb the increase, or will prices spurt?
  - ◆ In the current “tight” lending climate, hospitals might have difficulty raising capital or borrowing for expansion

# Medical Cost Inflation Has Outpaced Overall Inflation for Many Years

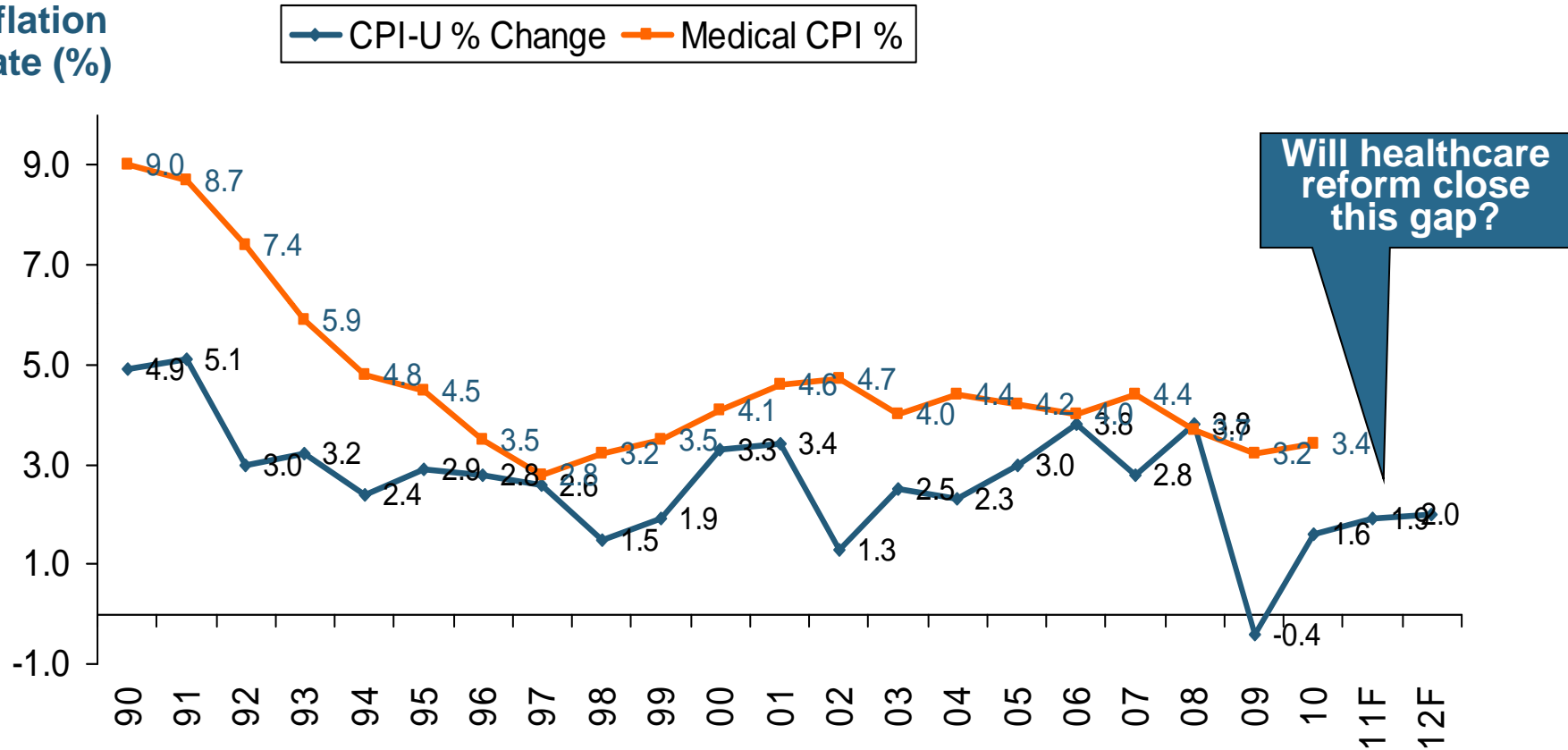


Source: Department of Labor (Bureau of Labor Statistics); not seasonally adjusted

<http://www.bls.gov/news.release/pdf/cpi.pdf>

# Annual Inflation Rates: CPI-U vs. Medical CPI, 1990–2010

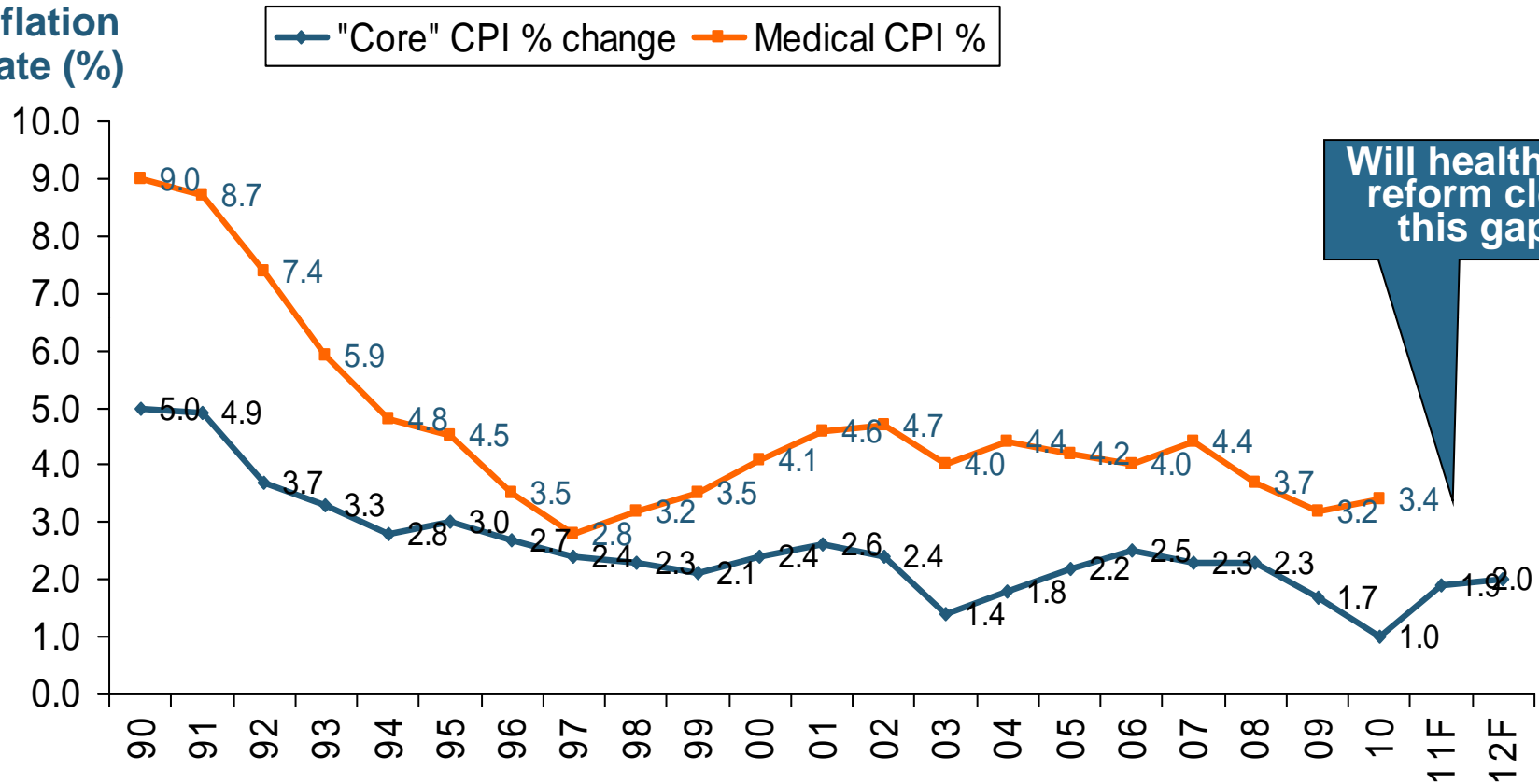
Annual  
Inflation  
Rate (%)



**The Medical CPI has increased roughly twice as fast as the overall CPI almost every year for the last two decades**

# Annual Inflation Rates: “Core” CPI-U vs. Medical CPI, 1990–2010

Annual Inflation Rate (%)

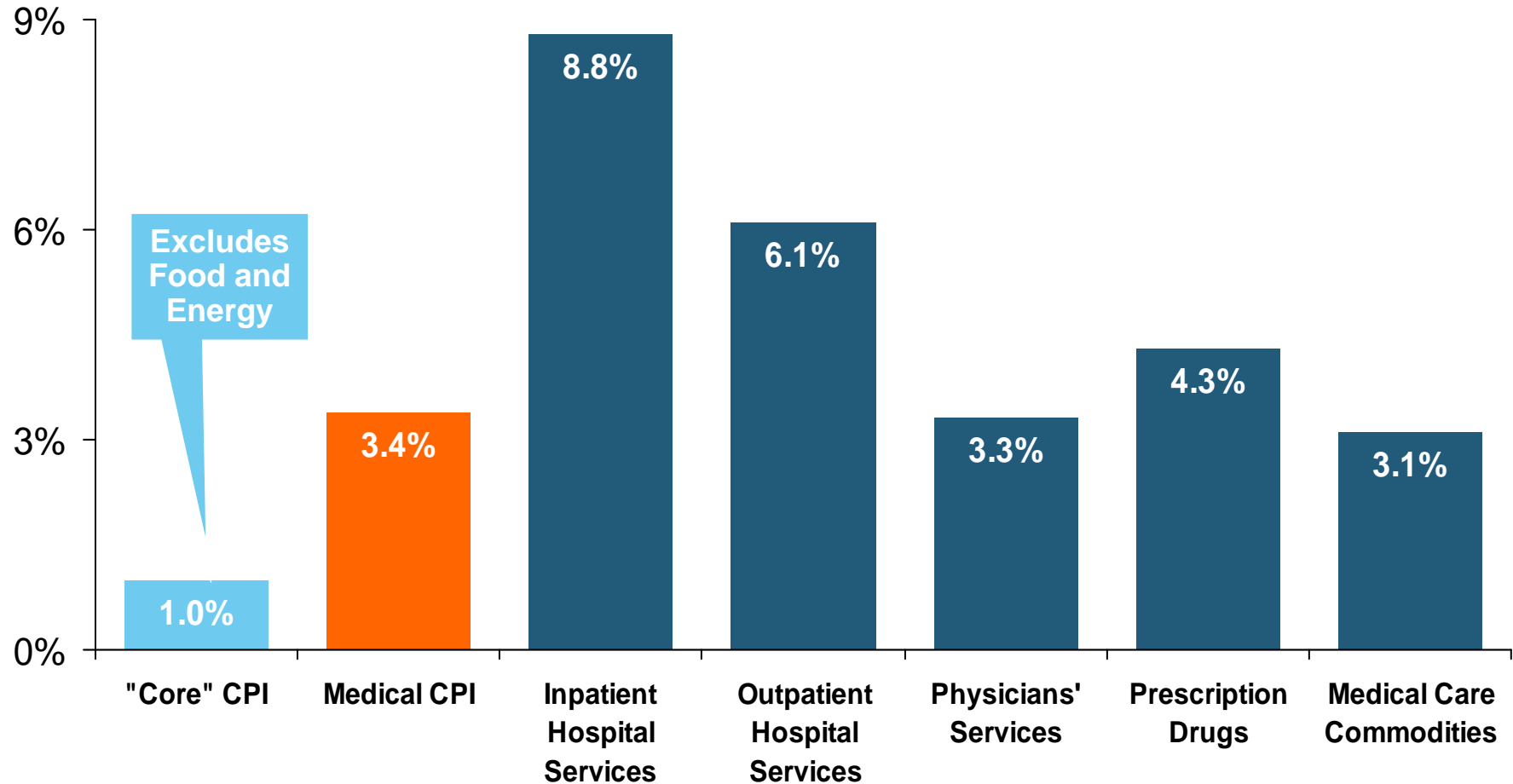


Will healthcare reform close this gap?

**The Medical CPI has increased roughly twice as fast as the “core” CPI (which excludes food and energy) almost every year for the last two decades**

# P/C Insurance Claim Cost Drivers Grow Faster than even the Medical CPI Suggests

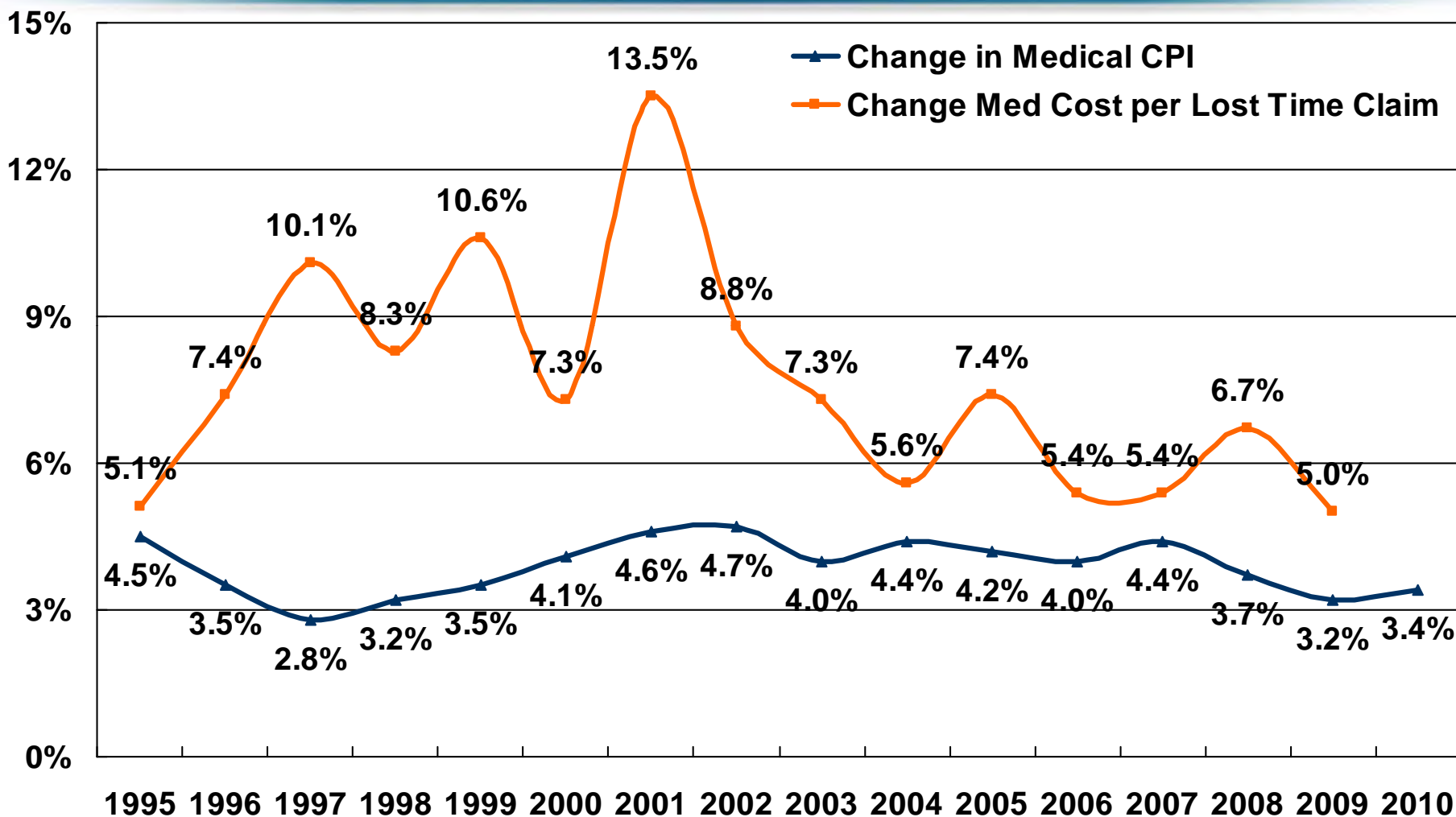
Price Changes  
in 2010



**Healthcare costs are a major liability, med pay, and PIP claim cost driver. They are likely to grow faster than the CPI for the next few years, at least**



# WC Medical Severity Rising at Twice the Medical CPI Rate



The average annual increase in WC medical severity from 1995 through 2009 was nearly twice the medical CPI (7.6% vs. 3.9%). Will healthcare reform affect this gap?



# Cost Shifting

**Will Health Care Reform  
Eliminate This Problem?**

# Definition: Cost Shifting

- Cost shifting occurs when medical providers
  - Charge higher prices to private health insurance plans, property/casualty insurance companies, and others
  - To offset the shortfall resulting from inadequate payments from
    - Public insurance programs and
    - Uninsured patients who don't pay for the healthcare services they receive.

Source: *Hospital Cost Shifting and Auto Injury Insurance Claims*, Insurance Research Council, February 2010, citing Dobson, DaVanzo, and Sen, "The Cost-Shift Payment 'Hydraulic:' Foundation, History, and Implications," *Health Affairs*, January/February 2006, p. 23

# Estimated Magnitude of Medical Care Cost Shifting

- The shortfall in payments to hospitals from [Medicare and Medicaid] ...was \$32 billion in 2008.
- “All cost shifting, by hospitals and physicians combined, equaled 15% of what commercial payers overall pay annually for hospital and physician services.”
- “IRC estimates that excess hospital charges [for auto BI liability claims] due to cost-shifting in the 38 tort and add-on states totaled approximately \$1.2 billion in 2007.”

Sources: *Hospital Cost Shifting and Auto Injury Insurance Claims*, Insurance Research Council, February 2010, citing American Hospital Association, “Underpayment by Medicare and Medicaid,” November 2009 (for \$32 billion estimate) and Fox and Pickering, “Hospital & Physician Cost Shift,” Milliman, Inc., December 2008 (for 15% estimate)

# Consequences of Cost Shifting for P/C Insurers & Insureds

- Higher charges from hospitals and physicians
- Insurers' increased costs of auditing (and, when indicated, challenging) bills from hospitals, physicians, and other medical care providers
- Higher premiums for liability, no-fault auto, workers comp, and other p/c insurance

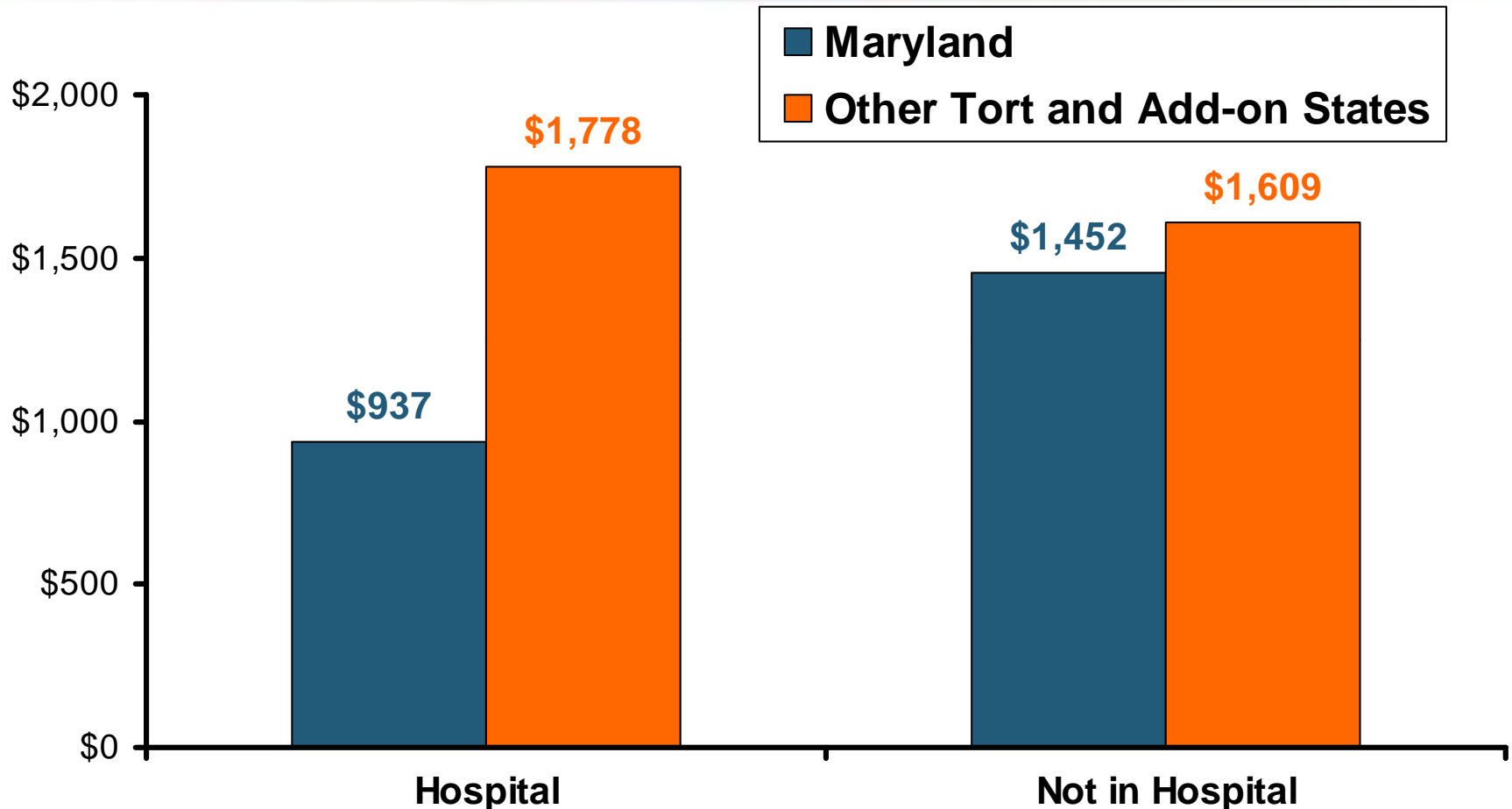
# Methodology of IRC Study of Hospital Cost Shifting & Auto BI Claims

- Compare Maryland's Auto BI hospital costs to average of 38 other tort states
  - ◆ Maryland **prohibits hospital cost shifting**
    - ◆ The state sets hospital rates and requires hospitals to charge all payers the same amount
    - ◆ For Medicare and Medicaid hospital charges, Maryland is exempt from federal rates and can apply its own to these plans as well as all others
    - ◆ It has been doing this since 1975

# IRC Study of Cost Shifting to Auto BI Liability Claims: More Thoughts

- Although there is no *hospital* cost shifting in Maryland
  - ◆ This does not apply to medical care provided outside of hospitals in Maryland
  - ◆ the IRC study found some evidence of cost shifting in such cases (see next slide)
- In auto Insurance, hospital cost shifting can also occur in PIP, Med Pay, and Uninsured Motorists claims

# Average Unit Charges, MRIs, by Site of Service, 2007



**Without state control of MRI charges outside hospitals, cost shifting occurs in Maryland nearly as much as elsewhere**

Source: "Hospital Cost Shifting and Auto Injury Insurance Claims," Insurance Research Council, February 2010, Figure 1-2.

Note: data are from claims closed with payment and exclude permanent total disability and fatality claims



# Key Findings from IRC Study of Cost Shifting to Auto BI Liability Claims

- **Strongest Factor Contributing to Hospital Cost Shifting**
  - ◆ **Percentage of a state's population without health insurance**
    - ◆ This will persist for several more years, because mandated purchase of coverage/payment of penalty won't start until 2014. (Fine for not buying insurance in 2014: \$95)
  
- **2nd Strongest Factor Contributing to Hospital Cost Shifting**
  - ◆ **Percentage of a state's population covered by Medicaid**
    - ◆ This might get worse under the new law, since it expands the income range for Medicaid coverage in 2014 to 133% of the federal poverty level.

# Possible Effects of Health Care Reform on Cost Shifting

- Reduced need for cost shifting
  - ◆ Expanding Medicaid program eligibility and requiring purchase of insurance would, if it works as intended, nearly eliminate the number of people who pay little or nothing for the care they receive
  - ◆ Initiatives by hospitals to reduce their costs of providing care might bring costs closer to amounts reimbursed by public insurance programs
    - ◆ assumes reimbursements aren't also reduced

# New Pressures for Cost Shifting from the Affordable Care Act

- The Affordable Care Act will
  - limit Medicare hospital payment “updates”
  - impose financial penalties on hospitals that have an excessive number of avoidable readmissions
  - Launch experiments with “bundled payments” for care episodes covering inpatient, outpatient, and post-acute services
- Forcing hospitals to live with tighter fiscal constraints



# Grant Proposals for Alternatives to Litigation

**Proposal conditions might  
make resolving disputes  
harder and more costly**

# Healthcare Reform, Section 10607: Grants to Devise Litigation Alternatives

- (a) The [HHS] Secretary is authorized to award demonstration grants to States for the **development, implementation, and evaluation of alternatives to current tort litigation** for resolving disputes over injuries allegedly caused by health care providers or health care organizations
  
- (c) Conditions for Demonstration Grants
  - ◆ (2) Each State desiring a grant...shall demonstrate how the proposed alternative
    - (A) makes the medical liability system more reliable by increasing the availability of prompt and fair resolution of disputes;
    - (C) encourages the disclosure of health care errors;
    - (E) **improves access to liability insurance;**

# Healthcare Reform, Section 10607: A Trial Lawyer's Dream Come True?

- (c) Conditions for Demonstration Grants (continued)
  - ◆ (2) Each State desiring a grant...shall demonstrate how the proposed alternative
    - (G) provides patients the ability to opt out of or voluntarily withdraw from participating in the alternative at any time and to pursue other options, including litigation, outside the alternative;
    - (I) would not limit or curtail a patient's existing legal rights, ability to file a claim in or access a State's legal system, or otherwise abrogate a patient's ability to file a medical malpractice claim
  
- This means that “a plaintiff may opt-out of an approved demonstration project at any time, even after the process has reached a final determination. ... **This provision encourages plaintiffs to use the “alternative” system as a testing ground for their cases, so they may determine which cases are strong enough to pursue in traditional litigation.**”

# Healthcare Reform, Section 10607: A Trial Lawyer's Dream Come True?

- (c) Conditions for Demonstration Grants (continued)
  - ◆ (4) Scope.
    - (B) ...A state shall demonstrate how patients would be notified ...[of] the process by which they may opt out of or voluntarily withdraw from participating in the alternative. The decision of the patient whether to participate or continue participating in the alternative process shall be made at any time and shall not be limited in any way.
  - ◆ (5) In awarding [demonstration] grants, the Secretary shall give preference to States
    - (C) that make proposals that are likely to improve access to liability insurance

# Healthcare Reform, Section 10607: A Trial Lawyer's Dream Come True?

- (d) Application for Demonstration Grants
  - ◆ (2) Review panel.
    - (A) In reviewing applications...[for grants], the Secretary shall consult with a review panel composed of relevant experts...
    - (B) (ii) Composition/Appointment
      - The Comptroller General shall appoint at least 9 but not more than 13 ... individuals to serve on the review panel and shall ensure that the following entities receive fair representation on such panel:
        - » (I) Patient advocates
        - » (III) Attorneys with expertise in representing patients and health care providers
        - » (IV) Medical malpractice insurers
        - » (VI) Patient safety experts



# Healthcare Reform, Section 10607: A Trial Lawyer's Dream Come True?

## ■ (e) Reports

- ◆ (1) Each State receiving a grant [for a litigation alternative] shall submit to the Secretary an annual report.... Such report shall, at a minimum, include the impact of the activities funded on
  - Patient safety and
  - The availability and price of medical liability insurance.
  
- ◆ (2) The Secretary shall submit to Congress an annual compendium of the reports submitted [by the States] ...that examines that result from such activities in terms of
  - The quality of care
  - Number and nature of medical errors
  - Medical resources used
  - Length of time for dispute resolution, and
  - The availability and price of liability insurance

# Healthcare Reform, Section 10607: A Trial Lawyer's Dream Come True?

- (g) (2) Evaluation of effectiveness of grants: Contents
  - ◆ (E) A comparison ... of States
    - Receiving a grant [for a litigation alternative]
    - **That**, prior to the enactment of the PPACA, **enacted any cap on non-economic damages**, and
    - **That**, prior to the enactment of the PPACA, **enacted a requirement that the complainant obtain an opinion regarding the merit of the claim**, although the substance of such opinion may have no bearing on whether the complainant may proceed with a case.

# Healthcare Reform, Section 10607: A Trial Lawyer's Dream Come True?

- (g) (3) Evaluation of effectiveness of grants shall analyze and make comparisons on the basis of
  - ◆ (A) the nature and number of disputes over injuries allegedly caused by health care providers or health care organizations;
  - ◆ (B) the nature and number of claims in which tort litigation was pursued despite the existence of an alternative;
  - ◆ (C) the disposition of disputes and claims, including the length of time and estimated costs to all parties;
  - ◆ (D) **the medical liability environment**
  - ◆ (H) impact on utilization of medical services, appropriately adjusted for risk



# Will Regulation of Health Insurance Policies Affect P/C Insurance?

**Once new templates/patterns of regulation are developed, it is easy for regulators/legislators to apply them to other lines**

# NAIC's Top Priority: Health Care Standardization

- The new health care law requires the NAIC to create
  - ◆ Standard methodologies for determining medical loss ratios
  - ◆ Uniform enrollment forms for the new insurance exchanges
  - ◆ Model standards and forms for private insurers to report fraud and abuse

# NAIC's Top Priority: Health Care Standardization (cont'd)

- The new health care law also requires the NAIC to consult with HHS as HHS develops standards or regulations, including
  - ◆ Standard summary of benefit and coverage disclosure documents
  - ◆ Standards to govern the interim reinsurance program
  
- Health plans are now required to comply with the NAIC's Uniform External Review Model Act.

# NAIC's Top Priority: Health Care Standardization (cont'd)

- The new health care law requires states to establish and support independent offices of health consumer assistance or health insurance ombudsman programs that meet HHS criteria. These offices
  - ◆ Assist consumers in filing complaints and appeals
  - ◆ Collect, track, and quantify information on consumer problems
  - ◆ Report data on consumer problems to HHS

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***Thank you for your time  
and your attention!***