

**TESTIMONY IN SUPPORT OF SB 243**  
**SENATE BUSINESS, LABOR AND ECONOMIC AFFAIRS COMMITTEE**

**JERRY KECK, ADMINISTRATOR**  
**EMPLOYMENT RELATIONS DIVISION**  
**DEPARTMENT OF LABOR AND INDUSTRY**  
**FEBRUARY 9, 2011**

**Mr. Chairman, members of the committee. My name is Jerry Keck. I am the administrator in the Employment Relations Division of the Department of Labor and Industry. I am here today in support of SB 243.**

**The Labor-Management Advisory Council on Workers' Compensation (LMAC) identified 4 primary cost drivers in our workers' compensation system. In there work over 4 years they proposed solutions in all 4 areas – some requiring legislative changes, some requiring other changes in behavior that cannot be legislated.**

- 1. Injury Rate - Helped create WorkSafeMT**
- 2. Duration off Work – WorkSafeMT plus stay at work provisions in SB 243**
- 3. Escalating Medical Costs – Fee schedules; Utilization Guidelines in SB 243**
- 4. Low rate of Claim Closures – Claim closure, Settle future medicals in SB 243**

**Balanced approach that affects all stakeholders. You will hear opponents say raises benefits at expense of doctors. Labor compromised on a number of issues – limiting course and scope, tightening claim closure provisions, allowing settlement of future medicals, agreeing to only paying for treatments in the Utilization and Treatment Guidelines in exchange for some minor benefit increases that only occur after significant documented premium reductions.**

**Review cost analysis handout. How premium reductions occur. LMAC approach sees significant savings, but are reflected in premiums more slowly over time. But it is balanced. Any proposal that provides immediate reductions basically takes current benefits away from workers.**

**Review the medical cost drivers handouts. NCCI indicates 75 cents of every benefit dollar is for medical costs. WCRI shows Montana with the 7<sup>th</sup> highest rate of physician reimbursement over Medicare. The handouts show the relative relationship of workers' compensation reimbursements to Medicare reimbursements for the same treatments.**

**Mr. Chairman, members of the Committee, I ask you to support SB 243 as a balanced and fair way to provide meaningful, long term reduction in premiums. Thank you.**

## **SB 243**

### **KEY ELEMENTS IN CONSENSUS COMPREHENSIVE PACKAGE BY THE LABOR-MANAGEMENT ADVISORY COUNCIL ON WORKER' COMPENSATION**

#### **PROVISIONS REQUIRING LEGISLATIVE CHANGES**

**Statutory closure of claims after 3 years with limited reopening provision**

Section 1 (pgs. 1-2) and Section 2 (pg. 4 – Def. of Indemnity Benefits)

**Course and scope language on breaks and recreational activities**

Section 3 (pgs. 8-12) and Section 4 (pgs. 12-15)

**Set a 21-day time frame for insurer to accept or deny a claim**

Section 5 (pgs. 15-16)

**Limited payment of attorney fees in medical only disputes**

Section 6, 7, and 8 (pgs. 16-18)

**Trigger increased benefits based on documented premium savings**

Section 9 (pgs. 18-21)

**Set medical fee schedule up to 165% of Medicare (hospitals) and up to 10% above Group Health (doctors)**

Section 10 (pgs. 21-25)

**Adopt utilization and treatment guidelines for treatment of injured workers**

Section 10 (pgs. 21-25)

**Codify the use of the 5<sup>th</sup> Edition of the AMA Guides to Impairment Ratings**

Section 11 (pgs. 25-26)

**Clarify "actual wage loss" for temporary partial disability benefits - housekeeping**

Section 12 (pgs. 26-28)

**Renumbering due to other changes**

Section 13 (pgs. 28-29)

**Provide retroactive payments for waiting period after 21 days of disability**

Section 14 (pg. 29)

**Allow settlement of future medical benefits**

Section 16 (pgs. 30-32)

#### **IMPLEMENT EARLY STAY AT WORK/RETURN TO WORK PROGRAM**

**Provide for Return to Work Assistance upon request of claimant**

Section 15 (pg. 29), Sections 17-21 (pgs. 32-36) and Sections 24-25 (pgs. 37-40)

**Exchange of Information for Stay at Work/Return to Work purposes**

Sections 22-23 (pgs. 36-37)

#### **OTHER RECOMMENDATIONS**

**Continue support for WorkSafeMT Foundation to reduce frequency and duration**

**Provide long term private and public funding to support WorkSafeMT efforts**

**SAVINGS AND COST ESTIMATES FOR SB 243 – SENATOR ZINKE ON BEHALF OF LABOR MANAGEMENT  
ADVISORY COUNCIL (LMAC)**

Prepared by Employment Relations Division (ERD) - 2/8/2011

<b>DESCRIPTION</b>	<b>NCCI \$ ESTIMATE</b>	<b>NCCI % ESTIMATE</b>	<b>ERD \$ ESTIMATE</b>	<b>ERD % ESTIMATE</b>
Claim Closure – Section 1 – pgs. 1-2	Expect savings-will see in experience		Expect savings-will see in experience	
Course & Scope of Employment Section 4 – Pgs. 12-13	Expect savings-will see in experience		Expect savings-will see in experience	
Timing of Insurer Decisions to accept or deny - Section 5 – pg. 15	No expected impact		No expected impact	
Attorney Fees – Sections 6, 7 & 8 – pgs. 16-18	<b>+\$1M to +\$2M</b>	<b>+0.2%to+0.5%</b>	<b>+\$0.3M</b>	<b>+0.1%</b>
Medical Fee Schedules – Section 10, pgs. 21-25 – department’s proposed administrative rule	<b>-\$5.3M to -\$6.7M</b>	<b>-1.2% to -1.5%</b>	<b>-\$12.9M</b>	<b>-3.9%</b>
Utilization & Treatment Guidelines, Section 10, pgs. 21-25	Expect savings-will see in experience		<b>-\$85.9</b>	<b>-22.1%</b>
Use 5 <sup>th</sup> Edition of the AMA Guides to Permanent Impairment – Section 11, pgs. 25-26	Unknown – will see in experience		Unknown – will see in experience	
Retroactive Payment for Waiting Period, Section 14, pg. 29	<b>+\$1M to +\$2M</b>	<b>+0.3%to+0.5%</b>	<b>+\$1.4M</b>	<b>+0.4%</b>
Settlements of future medical benefits, Section 16, pgs. 30-33	Expect savings-will see in experience		<b>-\$23.2M</b>	<b>-6.0%</b>
Stay at work/Return to work (SAW/RTW) process- Sections 17-23, pgs. 32-37	Unknown – will see in experience		Unknown – will see in experience	
SAW/RTW Assistance Fund, Sections 24-27, pgs. 37-40	Not yet priced		<b>+\$0.4</b>	<b>+0.1%</b>
<b>TOTAL NET COSTS/SAVINGS</b>	<b>-\$4.7M to-\$1.3M</b>	<b>-1.0%to -2%</b>	<b>-\$119.9M</b>	<b>-31.4%</b>
Permanent Partial (PPD) Increase in No. of weeks- 375 to 400 - <b><u>triggered by savings</u></b> - Section 9, pgs. 18-21  <b><u>Will only see an increase if estimated savings are realized in NCCI’s loss cost filings.</u></b>	Not yet Priced		<b>5% decrease in loss costs (\$19M) would increase benefits by 1% (\$3M)</b>	
PPD increase in maximum rate to 85% SAWW– <b><u>triggered by savings</u></b> – Section 9, pgs. 18-21  <b><u>Will only see an increase if estimated savings are realized in NCCI’s loss cost filings.</u></b>	Not yet Priced		<b>15% decrease in loss costs (\$57M) would increase benefits by 3% (\$11)</b>	

# Estimated Cost Impact of Workers' Compensation Changes

2007 to date

Produced for  
Labor-Management Advisory Council  
By Employment Relations Div.

(LMAC created 12/2006)

	In Millions
NCCI Loss Cost Filing 7/1/07	\$-6.1
NCCI Loss Cost Filing 2/1/08	\$13.5
NCCI Loss Cost Filing 7/1/08	-\$8.2
NCCI Loss Cost Filing 7/1/09	-\$10.0
NCCI Loss Cost Filing 7/1/10	-\$27.8
<b>Used for Cost Estimates Below:</b>	
<b>2010 Total Costs</b>	<b>\$389 Million</b>

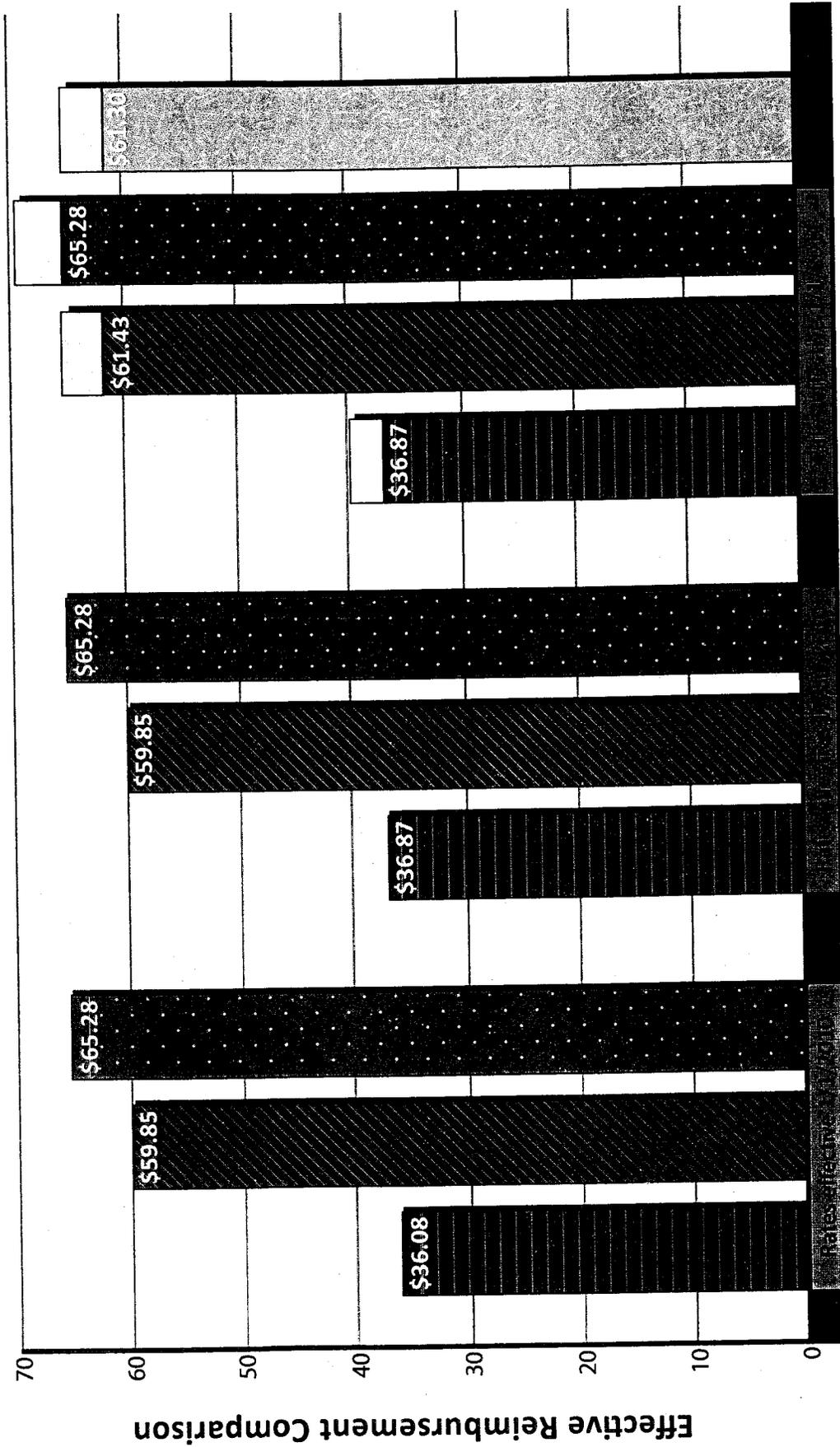
## Recommended Changes

Adoption of Utilization and Treatment Guidelines:	Benefit	Percent Benefit Impact	Percent Indemnity Impact	Percent Medical Impact	Percent Impact on Rates	Employer Costs In Millions	Running Total	Proposed Rule 2011 % of Medicare

(Free Schedule Savings adjusted for self-pay impact of Frontier State provisions)

Modification of Fee Schedules to 150% of Medicare	% Medical	% Affected	2011 Multiple to Medicare (current rule)	Impact on Medical	Adj. % ER impact	Adj \$ ER cost	\$303.1	
a. Non-Facility	57.6%	90.0%	187.3%	-2.5%	-1.5%	-\$5.8	\$297.3	167.4%
b. Hospital Inpatient (relative to CMS posted base rate)	15.7%	80.9%	169.7%	-1.5%	-0.9%	-\$3.5	\$293.9	149.8%
c. Outpatient Surgery - Total of ASC and Hospital Outpatient	16.6%	80.1%	203.4%	-2.6%	-1.5%	-\$1.2	\$292.7	164.3%
i. Ambulatory Surgery Centers	7.2%	78.8%	202.1%	-0.5%	-0.3%	-\$1.2	\$292.7	184.3%
ii. Outpatient Hospital	9.4%	80.9%	172.9%	-1.1%	-0.6%	-\$2.4	\$290.2	148.9%
Clarifying Course and Scope:	Ind/Med				0.0%	\$0.0	\$290.2	
Statutory Claim Closure:	Ind/Med				0.0%	\$0.0	\$290.2	
Settlement of Future Medical Benefits:	Medical			-10.0%	-6.0%	-\$23.2	\$267.0	
<b>Total After Savings</b>							<b>\$267.0</b>	
<b>Total Savings</b>							<b>\$122.0</b>	

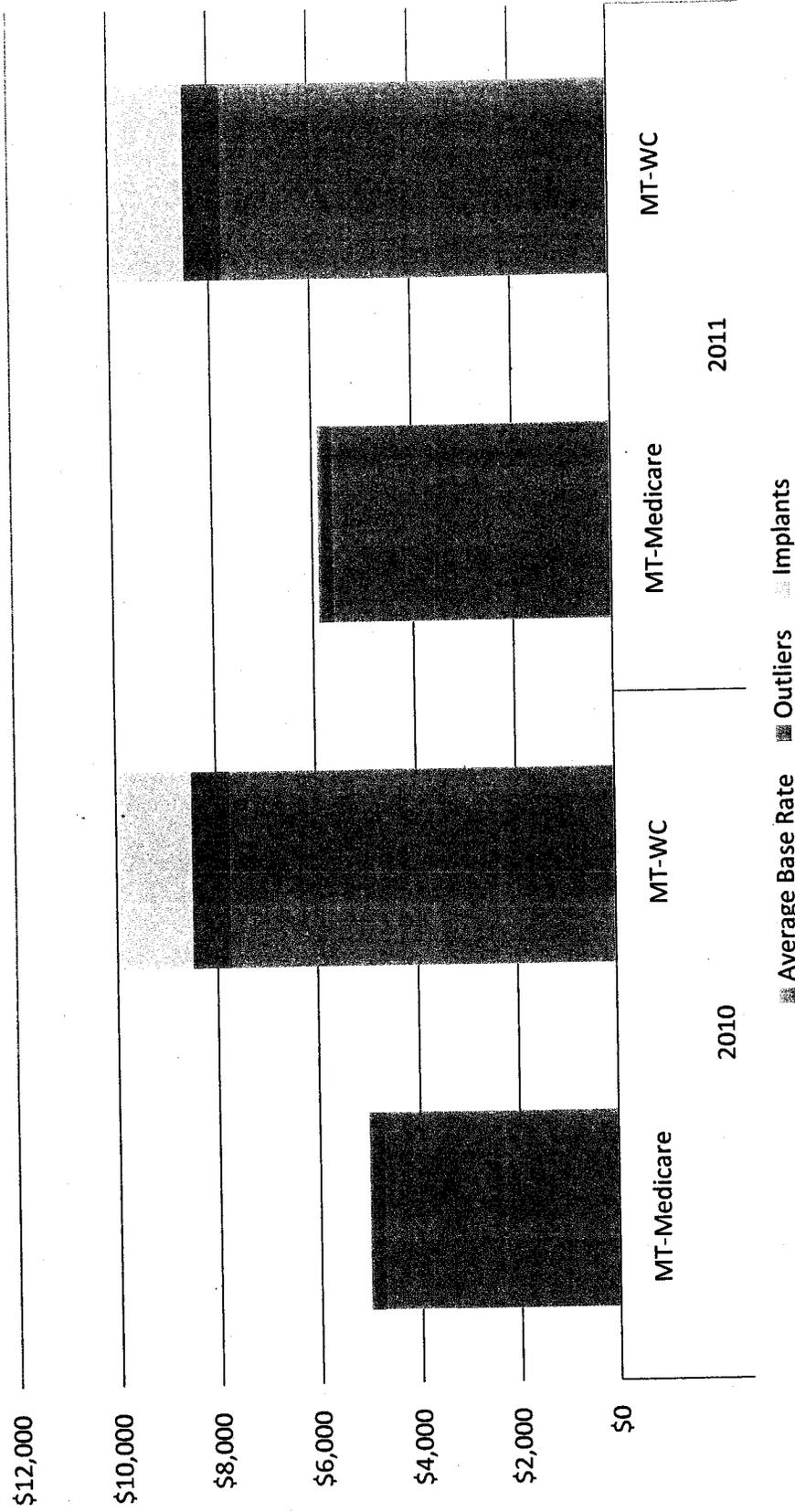
# NON-FACILITY FEE SCHEDULE



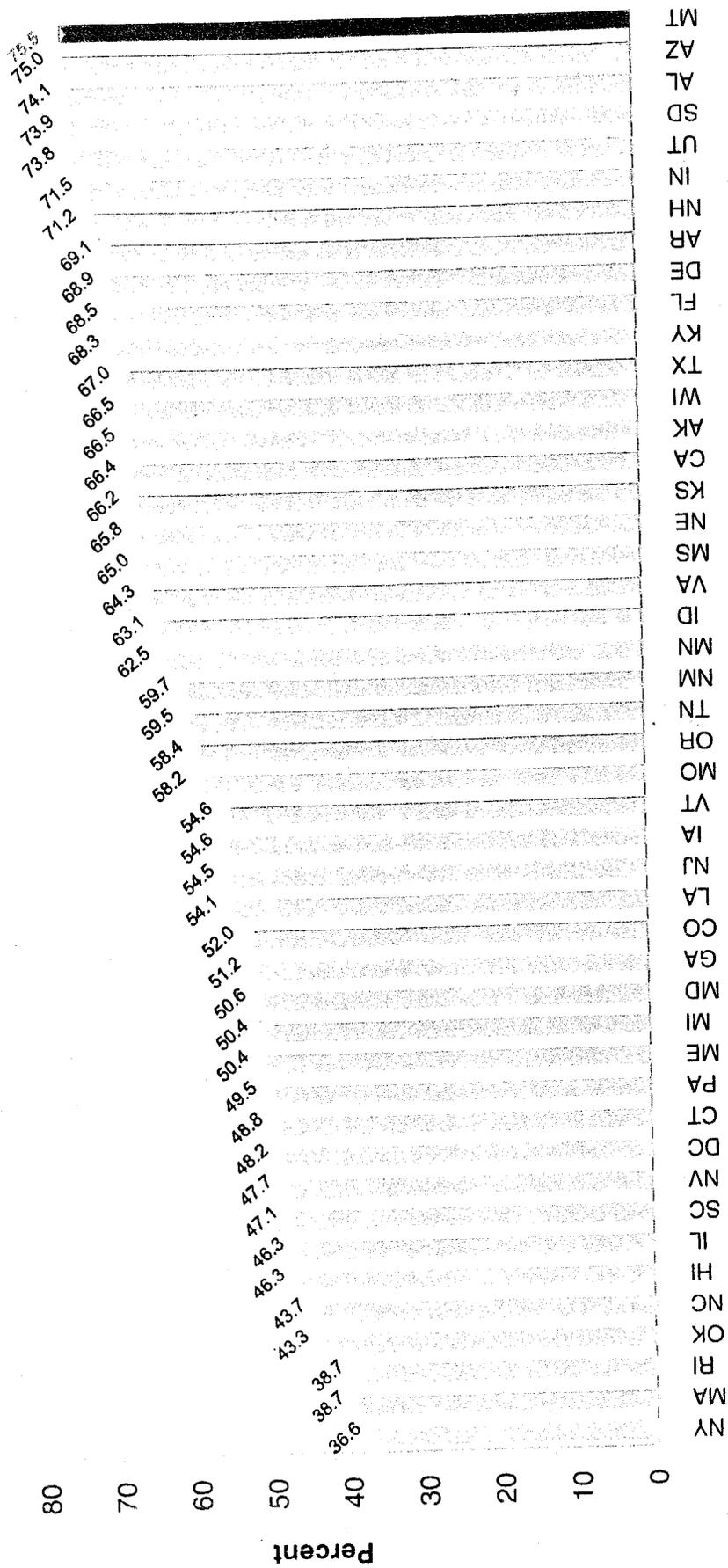
- Medicare
- Group Health
- Workers' Comp
- Conversion factor needed to freeze reimbursements at 2010 rates
- 2011 RVU Inflation (conversion factor x relative value units = payment)

# FACILITY FEE SCHEDULE

Average Inpatient Reimbursement per DRG Unit: Medicare & Workers' Compensation



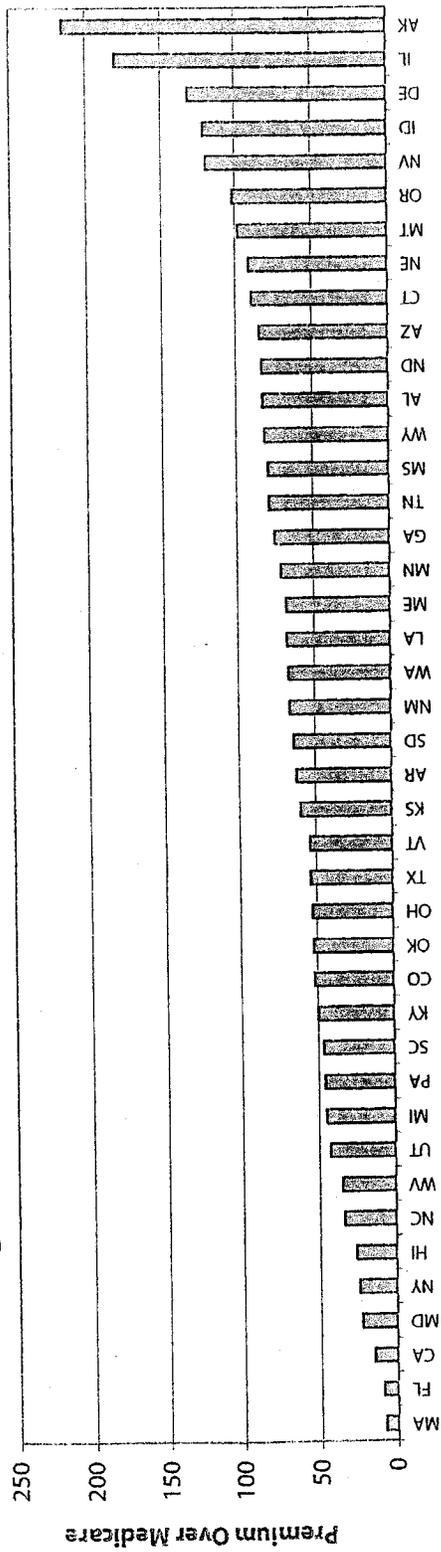
# Workers Compensation Medical Percentage of Benefits 1st Report (Policy Years 2006-7)



Source: NCCI Annual Statistical Bulletin, 2010 Edition

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**Figure 1 Workers' Compensation Premium Over Medicare, December 2009**



Notes: Delaware, Florida, Illinois, New York, Pennsylvania, and Texas have distinct fee schedules for different parts of the state. For each, a single statewide rate was created by averaging the different sub-state fee schedules using the percentage of employed persons in each sub-state region as weights. Medicare establishes distinct sub-state fee schedules in 14 states. For each, a single statewide rate was created using the same procedure. Texas sets a unique conversion factor for surgery in a facility setting. The unique "surgery in a facility setting" conversion factor was applied to the major surgery service group while the "surgery in an office setting" conversion factor was applied to the surgical treatment service group. Ohio does not establish rates for the emergency services included in the marketbasket. For Ohio the overall rate is based on the fee schedule levels for the other seven service groups. Rhode Island has different billing codes for physical medicine and does not establish rates for the majority of the codes. An overall rate is not established for Rhode Island as physical medicine is the largest component of the marketbasket and excluding it significantly biases the results. For more detail see the technical appendix. West Virginia sets the workers' compensation fee schedule to be 135 percent of Medicare using rounded relative value units (RVUs). In 2009 Medicare was still using transitional RVUs, and Medicare does not round during the calculation. The result of these differences is that the 2009 workers' compensation premium over Medicare in West Virginia is not exactly 35 percent.