



INSTITUTE FOR CIVIL JUSTICE

***Compensation and Ratings for  
Permanent Disability in California  
Workers' Compensation:  
Theory and Practice***

**Robert T. Reville, RAND**

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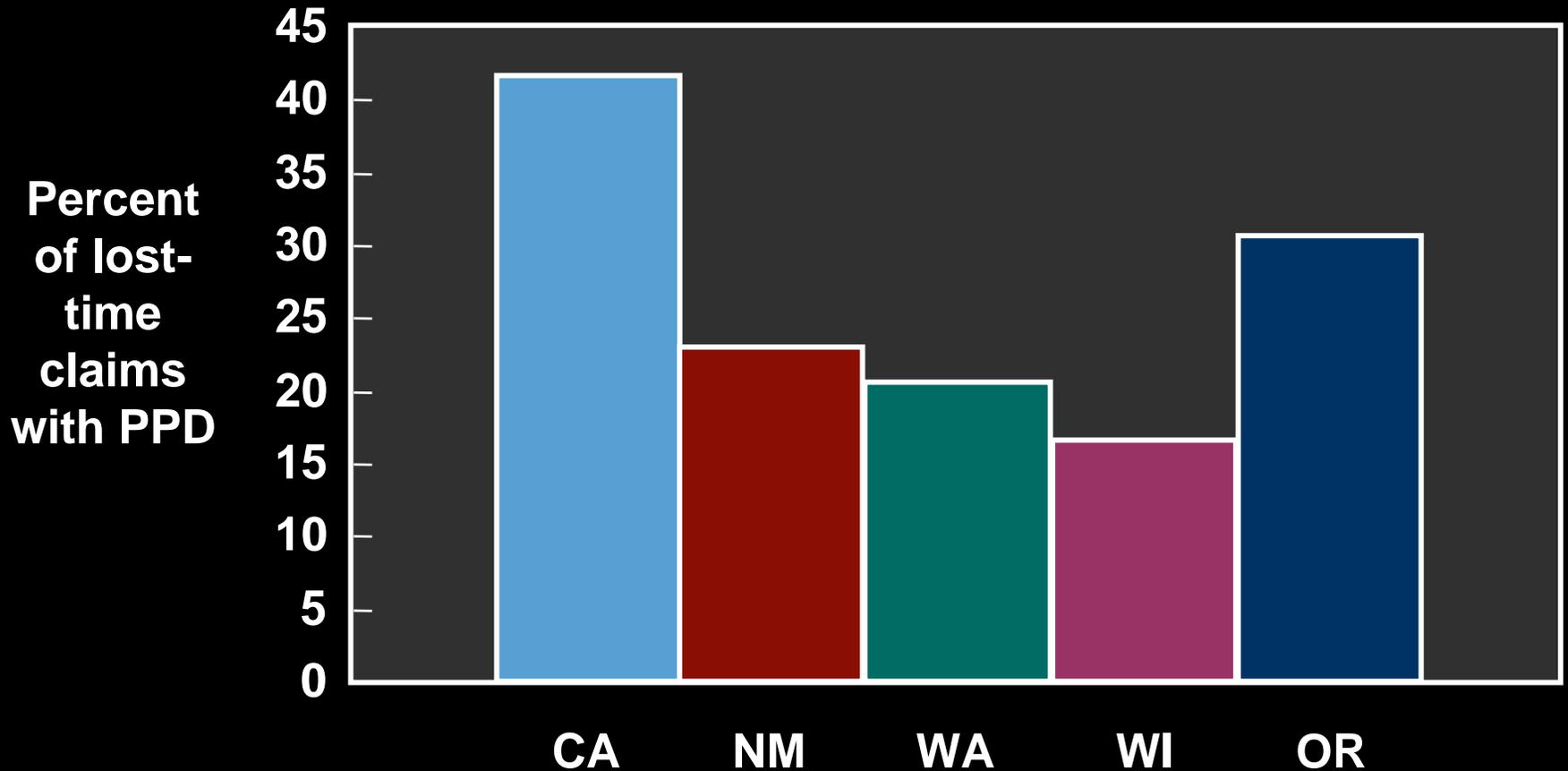
# *Permanent Disability in Workers' Compensation*

- It is at the heart of the workers' compensation social insurance mission
  - Protecting the most seriously injured
- It is a driver of costs and disputes
  - In 2004 in California, Permanent Partial Disability (PPD) claims were
    - 90% of indemnity costs
    - 80% of medical costs
- Longstanding source of controversy in every state, as well as in comparable federal programs
- By 2004, in California, controversy was coming to a head

# ***In California, Much of the Controversy Has Focused on the Disability Rating***

- **Rating converts medical information to a number (0-100) that measures extent of disability**
- **Ratings are used to**
  - **Determine eligibility for benefits**
  - **Target benefits to those with greatest loss of ability to compete in the labor market**
- **A good rating system should reduce disputes**

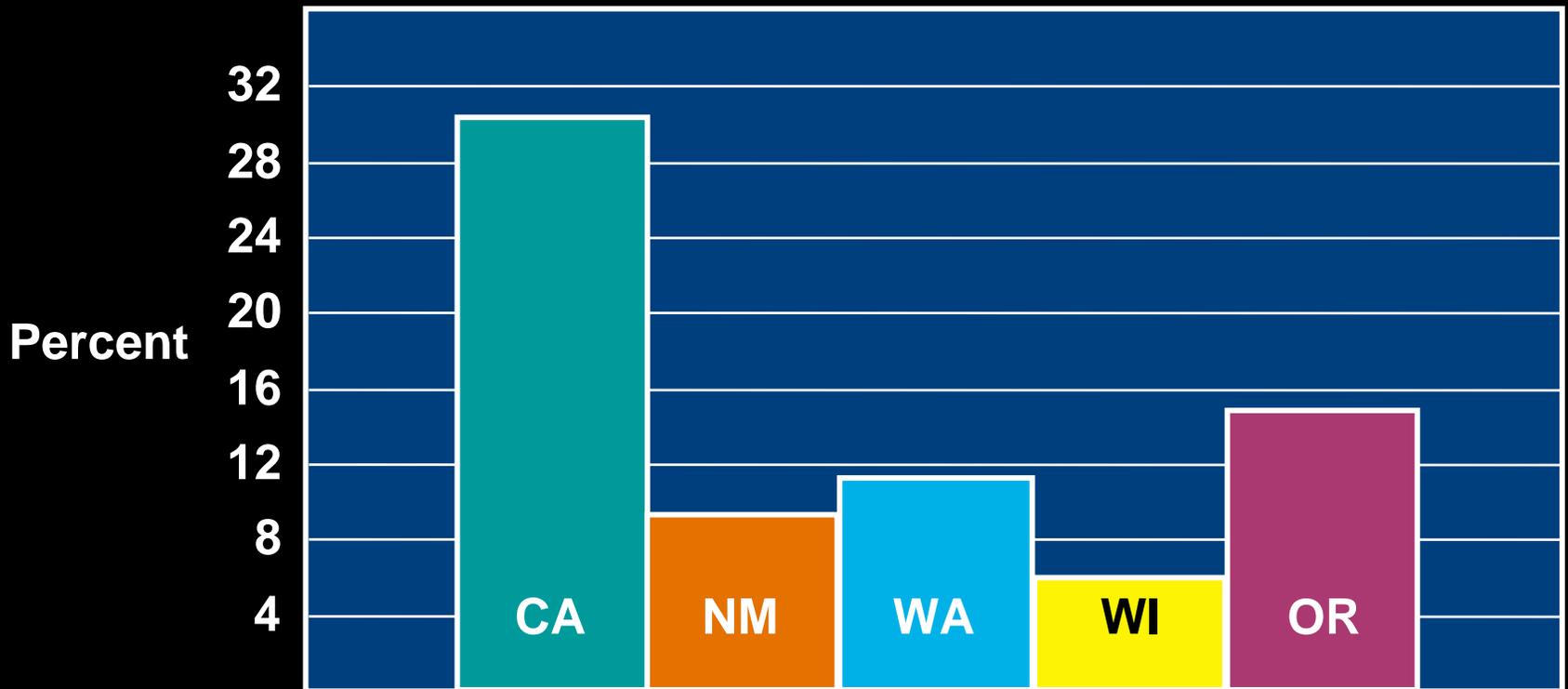
# *More Than 40 Percent of CA Workers with Lost-Time Claims Received PPD (1990s data)*



California's rating approach determines eligibility

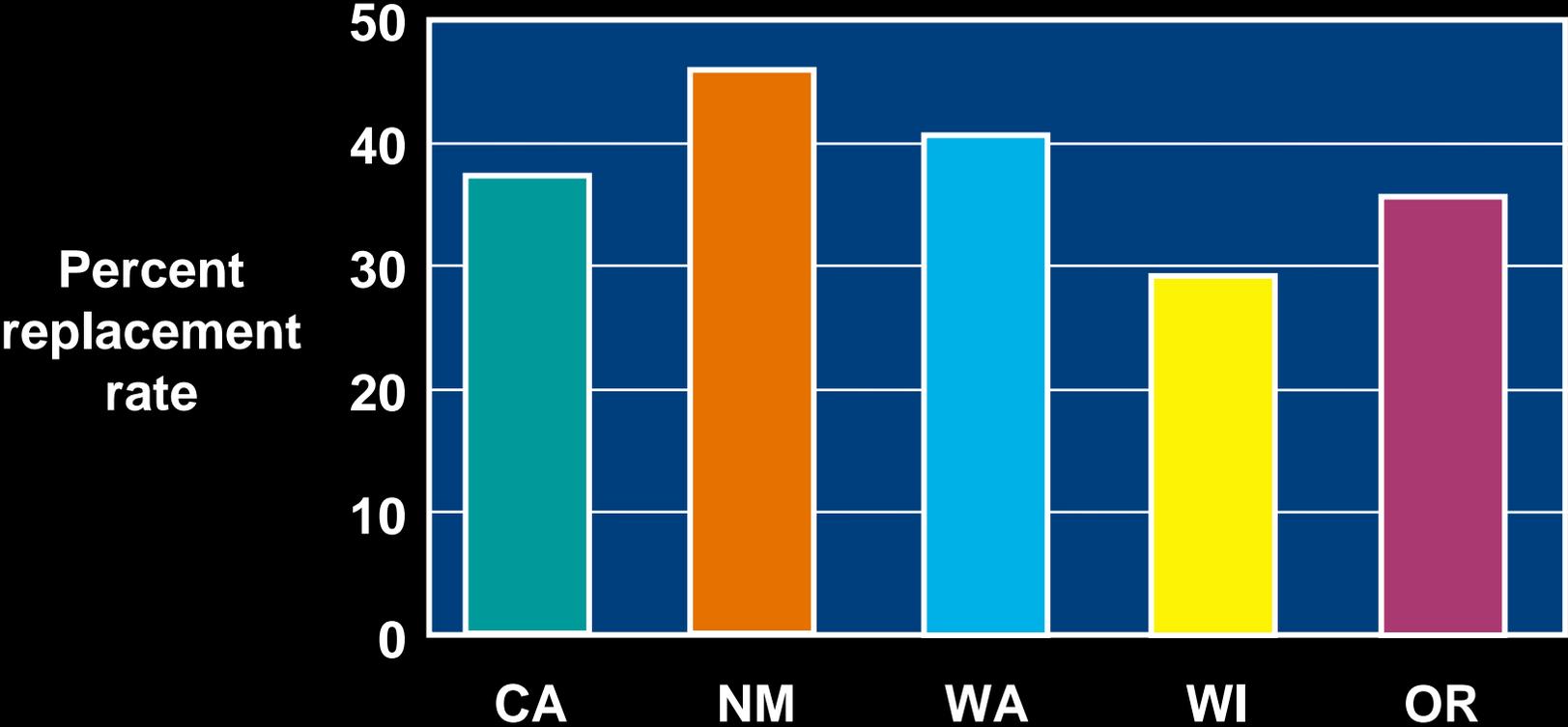
# California Had the Highest Fraction of Disputed Claims (1990s data)

## Percent of Lost-Time Claims with Attorney Involvement



Lost-time claims with PPD

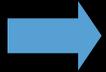
# *California's Replacement Rate Ranked Third of Five in Study from 1990s*



# *Summing Up the Situation in 2004*

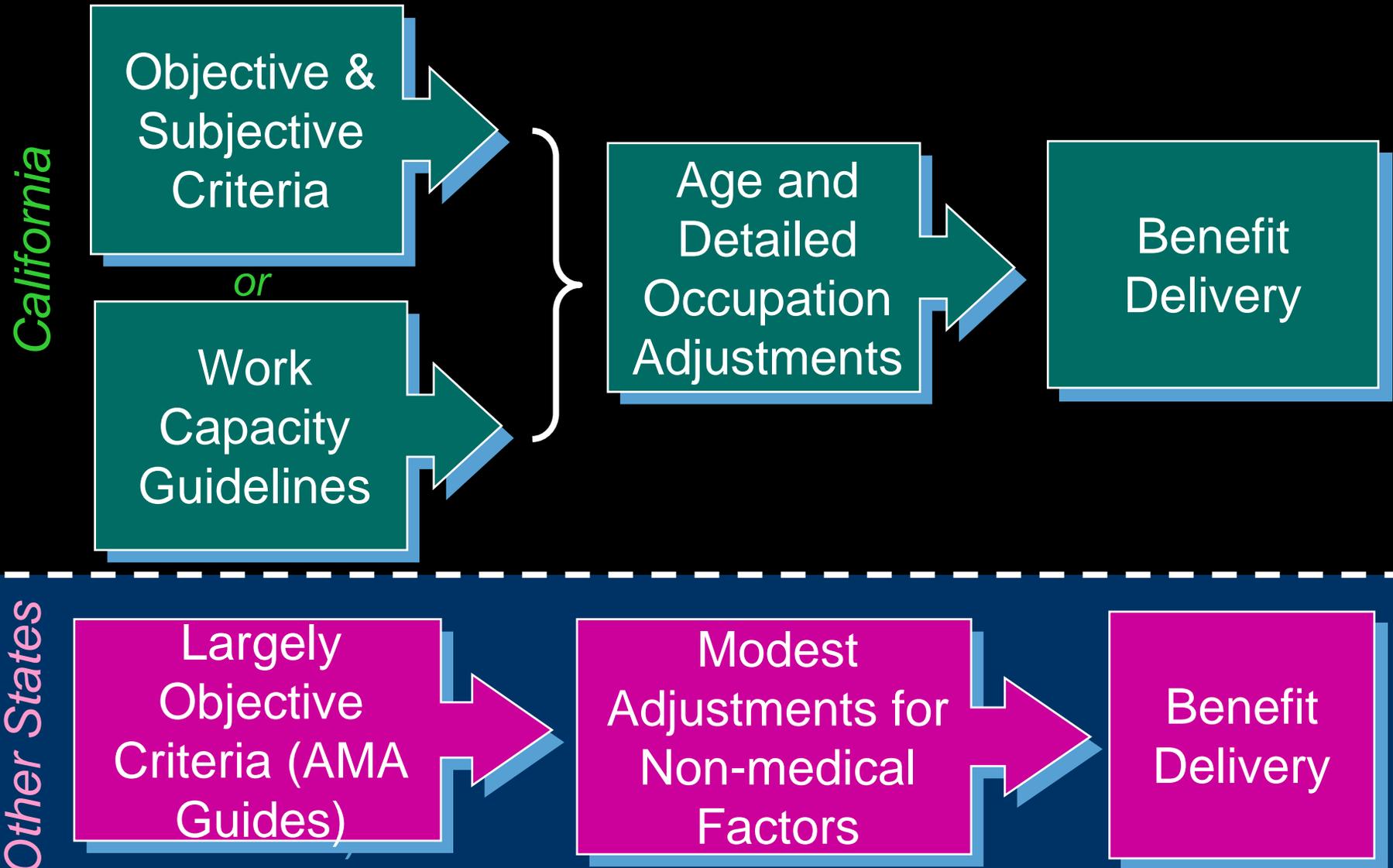
- **California had the highest workers' compensation costs in the country**
- **RAND studies for CHSWC showed that California had bad outcomes for injured workers**
  - **Inadequate benefits**
  - **Low return to work**
- **Increasingly, stakeholders focused on changing PPD ratings as the key to fixing the system.**
- **CHSWC funded a study by RAND on how to improve the system**

# Overview



- **RAND evaluation of permanent disability ratings in California**
- **Changes in Ratings in SB 899 and Barriers to Implementation**
- **Impact of the Reforms**
- **Conclusions**

# California's Approach to Rating Was Unique



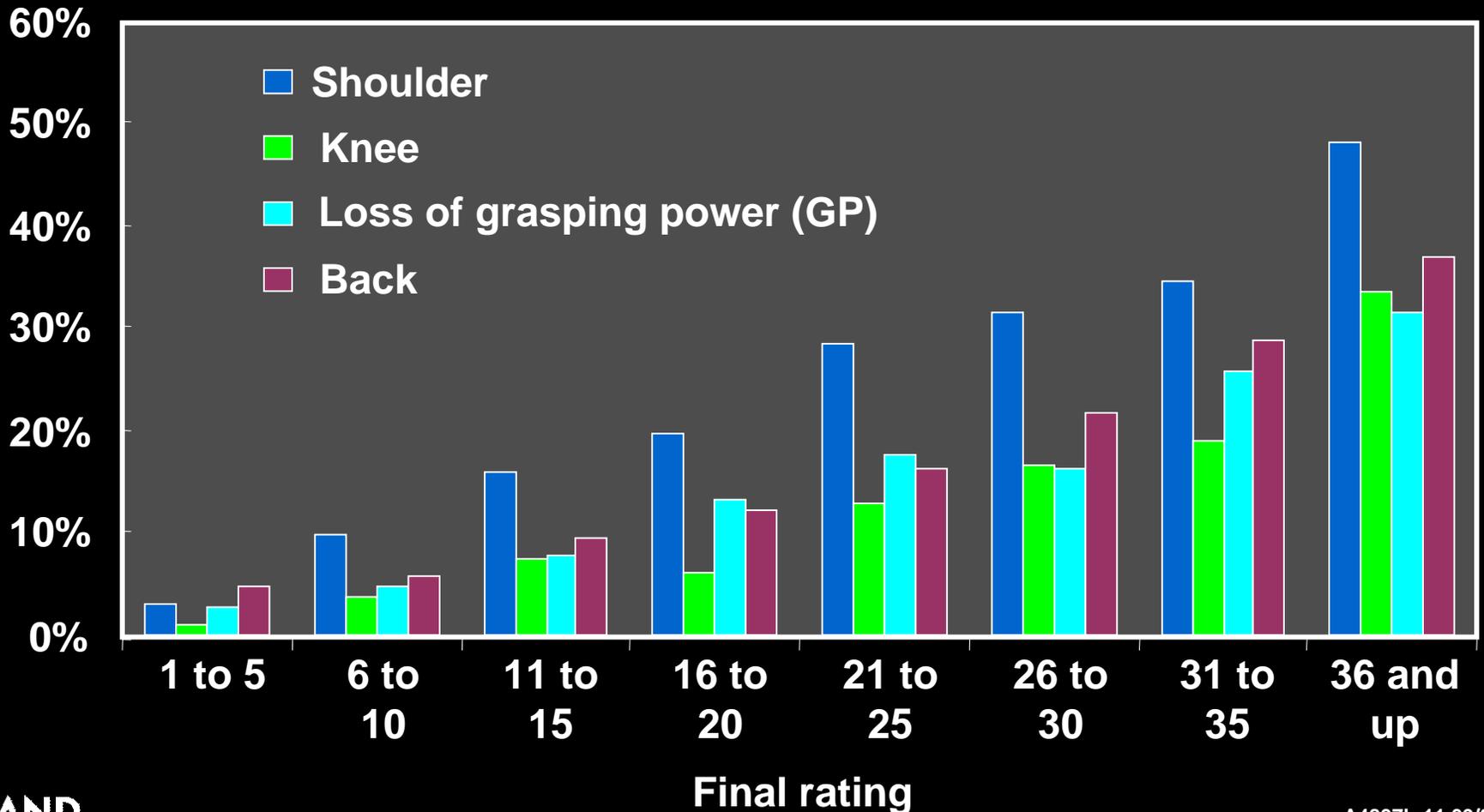
No system has ratings based on data on injured worker outcomes

# *Analytic Approaches in RAND Evaluation*

- **Matched data on 300,000 PPD ratings to wage loss data and compared ratings to observed earnings outcomes**
  - **Since both measure the “loss of ability to compete” (statutory compensation goal of PPD), we argued that both measures should be similar**
- **Also compared defense and applicant ratings on the same case**
  - **Wide disparity in ratings for the same injury encourages litigation over ratings**

# Earnings Losses for Similarly Rated Impairments for Different Body Parts Varied Dramatically

Proportional earnings loss

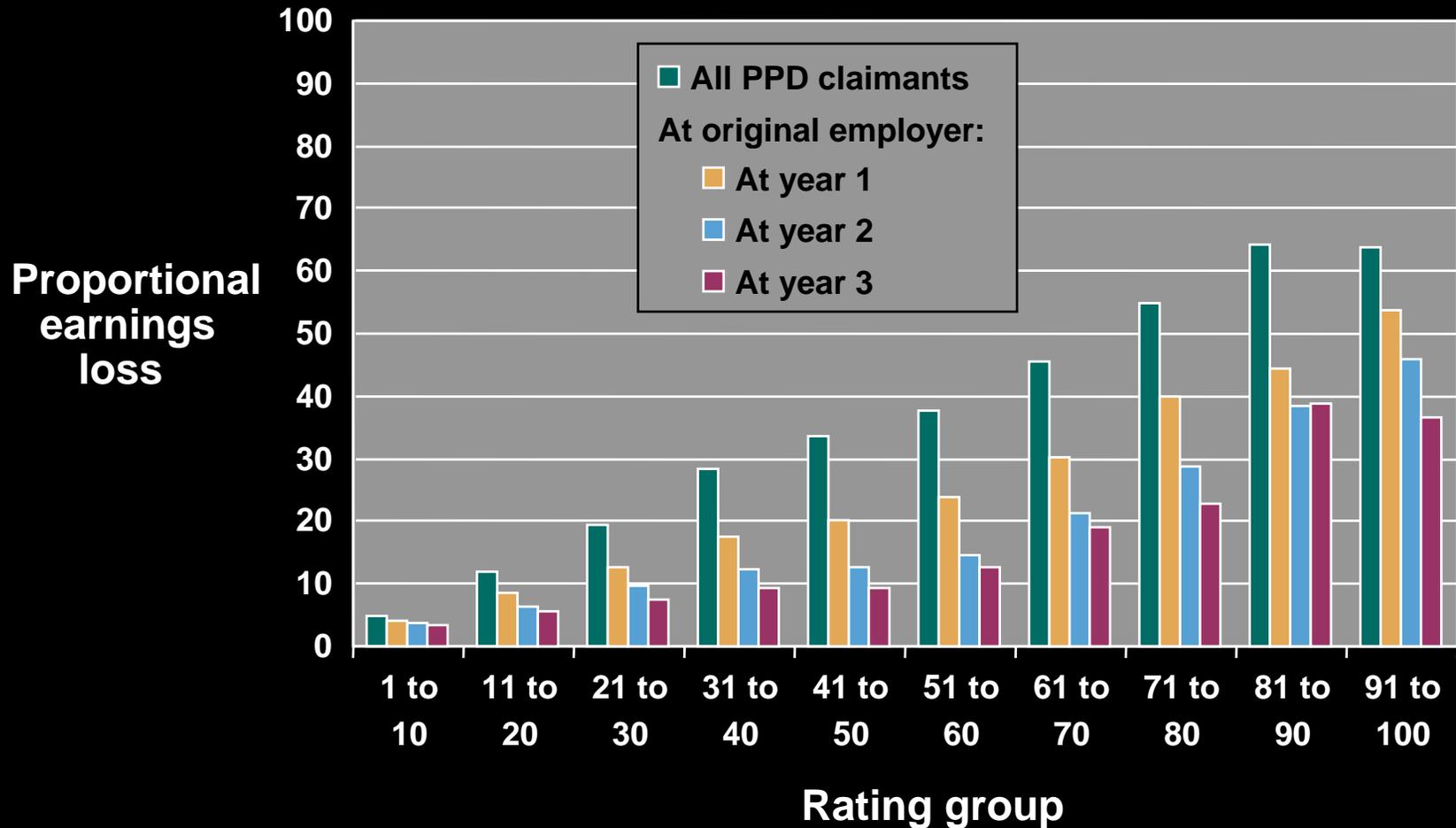


# *There Were Significant Differences Between Physician Assessments*

Average Ratings in Same Cases with Applicant and  
Defense Ratings

Applicant Rating	Defense Rating
<b>35.98</b>	<b>26.85</b>
Difference in applicant and defense ratings:	<b>9.12 (+34%)</b>
<b>N = 17,638</b>	

# Losses Are Lower When Workers Return to the At-injury Employer



# ***RAND's Recommendations***

- **Adopt a more consistent underlying basis for ratings**
- **Combine changes in ratings with incentives to employers to increase return to work**
  - **Specifically recommended a “two-tier” system**
- **Set rating for different impairments to reflect empirical estimates of differences in average wage loss**

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# *Basing Ratings on Wage Loss*

- **Two approaches to compensating permanent disability**
  - **Prospective**
  - **Concurrent, or retrospective**
- **Prospective approaches estimate future disability using a rating system (such as California's old system or the AMA Guides)**
  - **Criticized as being inequitable**
- **Concurrent approaches pay benefits to workers currently out of work**
  - **Criticized as discouraging employment**
- **Using data on earnings loss can incorporate information on labor market outcomes without discouraging return to work**

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# *Be Careful What You Recommend*

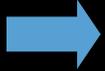
- California amended the Labor Code so that
  - Ratings “incorporate the descriptions and measurements of physical impairment and the corresponding percentages in the [AMA Guides]”
  - Consideration shall be given to the employee’s “**diminished future earnings capacity**” where this shall be a “numeric formula based on empirical data” on the “average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule” using data from the “**RAND Institute for Civil Justice, and upon data from additional empirical studies.**”
- Several return to work incentives were adopted as well
  - Including two-tier system

# ***Policy and Empirical Barriers to Implementation***

- **Legislature did not provide guidance regarding scale of disability ratings**
  - **Pegged to old system, holding benefits on average constant?**
  - **Pegged to estimates of proportional wage loss?**
- **No crosswalk between AMA Guides and estimates of wage loss were available**
  - **No empirical basis to determine how AMA Guide ratings should be adjusted by diminished future earnings capacity**
- **Rapid implementation timeline**

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# ***Stunning Reduction in Employer Costs from Recent Reforms***

- **Sixty percent reduction in employer costs since January 2004 (SF Chronicle)**
  - **January 2004: Premium was \$5.39 per \$100 of payroll**
  - **January 2007: Recommendation from Rating Bureau is \$2.03 per \$100 of payroll**
  - **Recent reforms include multiple changes**
- **WCIRB estimates SB 899 reforms expected to cut permanent disability costs by 38%, explaining 12% of overall reduction**

# *Average Ratings Have Fallen Also*

<b>Average Ratings</b>			
	<b>2005 PDRS</b>	<b>Pre-2005 PDRS</b>	<b>Difference</b>
<b>Summary</b>	<b>11.4%</b>	<b>19.9%</b>	<b>-42.8%</b>
<b>Consults</b>	<b>18.6%</b>	<b>32.7%</b>	<b>-43.1%</b>

CHSWC-UC  
Berkeley analysis

# *The Result is Dramatic Reductions in Average PD Awards*

<b>Average Indemnity Award</b>			
	<b>2005 PDRS</b>	<b>Pre-2005 PDRS</b>	<b>Difference</b>
<b>Summary</b>	<b>\$ 9,824</b>	<b>\$22,046</b>	<b>-54.6%</b>
<b>Consults</b>	<b>\$19,374</b>	<b>\$38,846</b>	<b>-50.1%</b>

CHSWC-UC  
Berkeley analysis

# ***Tremendous Need for Continued Data and Evaluation***

- **CHSWC-UC Berkeley found that inequities across impairment categories remain after FEC adjustments**
- **Unknown impact on return to work**
  - **Possible to increase return to work by enough to offset decline in benefits?**
- **Ultimately, we will want to know the impact on wage loss and fraction of wage loss replaced**
- **Unknown impact on other key outcomes, including**
  - **Fraction disputed**
  - **Fraction of temporary disability receiving permanent disability**

***Conclusion:***  
***California's experiment with empirical PD ratings is promising but difficult***

- **California is leading the way in designing a more equitable rating system**
  - **First system based upon empirical data on worker outcomes**
  - **The leading edge of a modern system for permanent disability workers' compensation**
- **Policy is outpacing the empirical data**
  - **Politics fill in the gap**

