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# The Economics of Defensive Medicine and No-Fault Patients' Compensation Systems for Florida Medicaid Expenses

Report to Patients For Fair Compensation

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# Executive Summary I (Florida)

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- The goal of this study is to estimate the Florida-wide<sup>1</sup> and Florida State-specific<sup>2</sup> savings potential of no-fault Patients' Compensation Systems (PCSs) with a special focus on defensive medicine.
- Two scenarios are projected; the first one is assuming Federal Health Care Reform<sup>3</sup> (FHCR) is not enacted, and the second one is assuming Federal Health Care Reform is enacted (effects starting 2014 and assumed to be implemented by 2017).
- Bioscience Valuation BSV GmbH is a specialized company engaged in healthcare economic and financial modeling.

## Defensive Medicine

- Based on a survey by the Gallup organization (base case), annual cost of defensive medicine to overall health care in Florida is estimated at \$30 billion. Costs are likely in a range of \$17 billion to \$41 billion<sup>4</sup>.
- Annual cost of defensive medicine is almost \$5.2 billion for overall Florida Medicaid, and about \$2.3 billion for Florida State's share of Medicaid (2012).
- If an effective no-fault PCS would be enacted, and assuming a slow change in physicians' defensive medicine behavior, first year savings for overall Florida Medicaid could be \$780 million (2012); that number may grow to reach annual savings of \$2.9 billion (\$3.9 billion if FHCR is enacted) when physicians have reduced their defensive medicine practices significantly (2017).
- Yearly savings for Florida State Share of Medicaid are expected to be in the order of \$340 million in the first year. Savings may reach up to \$1.3 billion (\$1.4 billion if FHCR is enacted) annually by 2017 and \$11 billion (\$12 billion if FHCR is enacted) over a ten-year horizon.

<sup>1</sup> The terms Florida wide and overall Florida Medicaid refer to both State and Federal costs of Medicaid.

<sup>2</sup> The terms Florida State-specific and Florida State's share refer to Florida State's costs of Medicaid.

<sup>3</sup> The Patient Protection and Affordable Care Act was signed into law on March 23, 2010.

<sup>4</sup> A recent survey contracted by Patients for Fair Compensation ('The Practice of Defensive Medicine: A Survey of Florida Physicians', December 2011) suggests that 33% of Florida's healthcare expenses may be attributed to defensive medicine, and that defensive medicine may cost Florida \$40 billion per year. The estimate is within the range reported here.

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## Executive Summary II (Florida)

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- Three major uncertainties are the future effects of Federal Health Care Reform, the percentages of healthcare costs attributable to defensive medicine, and the degree to which physicians change their defensive practices if a PCS were implemented .
- The percentage of healthcare costs that can be attributed to defensive medicine have been varied between 15% and 35% (base case: 26% based on the Gallup survey) <sup>1</sup>. The resulting annual savings potentials are (2017 and beyond):
  - \$1.7 billion to \$3.9 billion (overall Florida Medicaid- assuming FHCR is not enacted),
  - \$2.3 billion to \$5.3 billion (overall Florida Medicaid- assuming FHCR is enacted),
  - \$720 million to \$1.7 billion (Florida State Share of Medicaid- assuming FHCR is not enacted),
  - \$810 million to \$1.9 billion (Florida State Share of Medicaid- assuming FHCR is enacted).
- Once a PCS were enacted, it is assumed that physicians reduce their defensive behavior by 30% to 70%. The resulting annual savings potentials are (2017 and beyond):
  - \$1.7 billion to \$4 billion (overall Florida Medicaid- assuming FHCR is not enacted),
  - \$2.4 billion to \$5.5 billion (overall Florida Medicaid- assuming FHCR is enacted),
  - \$750 million to \$1.8 billion (Florida State Share of Medicaid- assuming FHCR is not enacted),
  - \$850 million to \$2 billion (Florida State Share of Medicaid- assuming FHCR is enacted).
- Long-term, overall Florida Medicaid could achieve savings of \$36 billion over a ten-year period (\$45 billion assuming FHCR is enacted). Of this, Florida State could achieve savings of \$15.5 billion (\$16.8 billion assuming FHCR is enacted) over a ten year period (2012-2021).

<sup>1</sup> A recent survey contracted by Patients for Fair Compensation ('The Practice of Defensive Medicine: A Survey of Florida Physicians', December 2011) suggests that 33% of Florida's healthcare expenses may be attributed to defensive medicine. If this estimate is more accurate to the actual Florida percentage of healthcare costs that can be attributed to defensive medicine (instead of the 26% national), the 35% assumption here is closer to the actual savings.

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## Important Note for Users of this Report

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- This report is based on projections of future medical malpractice claims, the practice of defensive medicine, and the potential effects of implementing no-fault Patient's Compensation Systems. All statements regarding future developments in the healthcare environment as well as expectations, beliefs, goals, plans or prospects that are the basis for these projections should be considered forward-looking. Readers are cautioned that actual results may differ materially from Bioscience Valuation's estimates or projections due to a variety of important factors, including, without limitation, the risks and uncertainties associated with:
  - future changes in malpractice claims,
  - future changes in the practice of defensive medicine,
  - future effects of the Federal Health Care Reform (if enacted),
  - physicians' response to a Patients' Compensation System if implemented,
  - patients' willingness to file legitimate claims if a Patients' Compensation System were enacted.
- Bioscience Valuation does not warrant the results in its report to Patients For Fair Compensation, and is not responsible for Patients For Fair Compensation's reliance upon its report, nor for the actions of any third party with whom Patients For Fair Compensation elects to share Bioscience Valuation's report. Bioscience Valuation's services have been engaged only by Patients For Fair Compensation, and its sole responsibility is to provide the services it agreed to provide to Patients For Fair Compensation. Bioscience Valuation makes no representations and no warranties, and accepts no responsibility or liability to any party for any decision to use or rely upon the report by Bioscience Valuation.

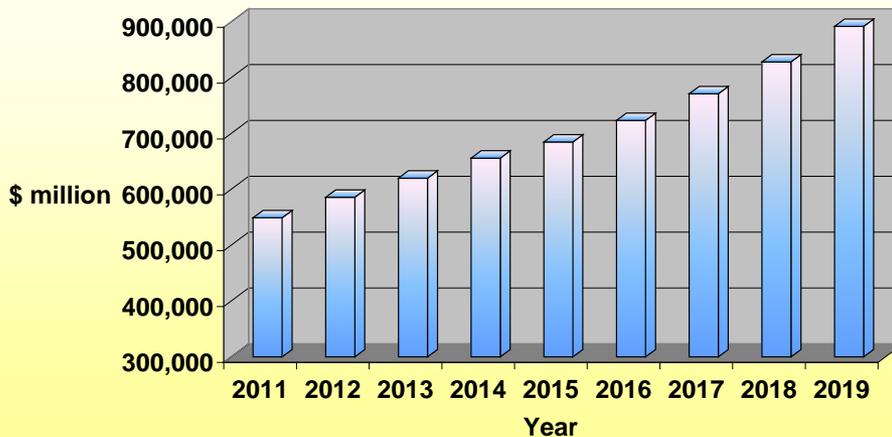
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## Cost of Defensive Medicine (Florida)

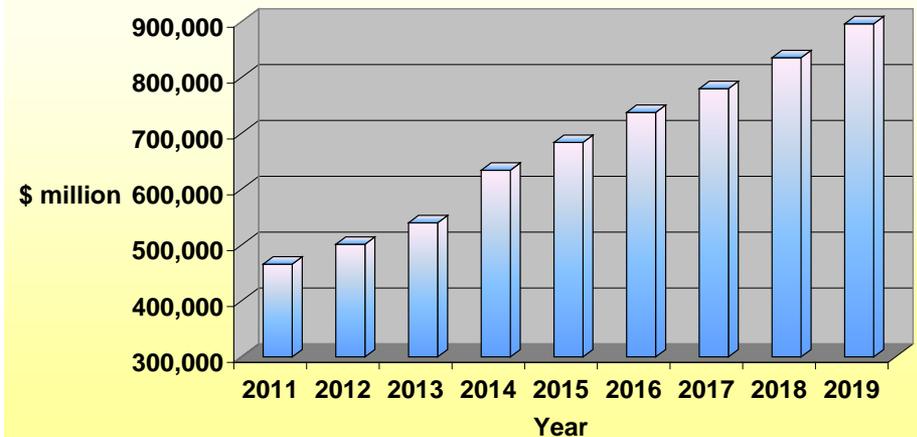
# The Issue: Escalating Healthcare Costs & Defensive Medicine (USA)

- Healthcare costs in the USA are escalating. According to CMS, projected healthcare expenditures for Medicare and Medicaid for the year 2019 are \$891 billion and \$896 billion, respectively<sup>1</sup>.
- The corresponding expected CAGRs<sup>2</sup> of healthcare expenditures are 6.2% for Medicare and 8.5% for Medicaid, well above the annual 2.4% CPI average over the past ten years<sup>3</sup>.
- One important factor driving healthcare expenditures is the practice of defensive medicine. Therefore, initiatives that would decrease defensive medicine would also decrease healthcare costs.
- The goal of this study is to quantify potential savings if a Patients Compensation System would be implemented in the USA that could diminish defensive medicine.

### Projected Medicare Expenses



### Projected Medicaid Expenses



<sup>1</sup> <http://www.cms.gov/NationalHealthExpendData/downloads/NHEProjections2009to2019.pdf>

<sup>2</sup> CAGR = Compound Annual Growth Rate

<sup>3</sup> <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt>

# Defensive Medicine: Cost Estimates (USA)

Estimates of defensive medicine costs vary significantly:

- M.M. Mello et al. estimate defensive medicine costs at **\$45.59 billion** per year (2008 dollars). The authors recognize, however, that this estimate is highly uncertain<sup>1</sup>.
- D.P. Kessler and M.B. McClellan conclude that tort reform could reduce medical costs by 5% - 9%; using the 2009 number of the National Health Expenditures (\$2,486.3 billion), savings could be between **\$124 billion** and **\$224 billion**<sup>2</sup>.
- The Department of Health and Human Services calculated that between **\$60 billion** and **\$108 billion** could be saved if defensive medicine could be eliminated<sup>3</sup>.
- PriceWaterhouseCoopers (PWC) estimates the costs of liability and defensive medicine to be 10% of the costs of medical services; this would result in a **\$249 billion** figure if the National Healthcare Expenditures 2009 are taken as a proxy<sup>4</sup>.
- In another 2008 study PWC quantifies to costs of defensive medicine to **\$210 billion**<sup>5</sup>.
- The National Center for Policy Analysis estimates 2005 costs of defensive medicine to be in the range of **\$100 billion** to **\$178 billion**<sup>6</sup>.
- Studdert et al. conclude, based on an extensive survey, that 93% of physicians practice defensive medicine<sup>7</sup>.
- In line with Studdert et al., Jackson Healthcare finds that 92% of the those physicians who completed a survey (3,070 respondents) practice defensive medicine<sup>8</sup>. On average, physicians attribute 35% of overall healthcare costs to defensive medicine<sup>8</sup>. Based on the 2009 figure of National Health Expenditures, cost of defensive medicine would be **>\$700 billion**.
- In an earlier study, the Gallup organization found that physicians attribute 26% of overall healthcare costs to defensive medicine<sup>9</sup>. Using the 2009 National Health Expenditures figure, **\$543 billion** spending is due to defensive medicine.

<sup>1</sup> M.M. Mello, A. Chandra, A.A. Gawande, D.M. Studdert (2010): National Costs of the Medical Liability System, Health Affairs 9: 1569-1577.

<sup>2</sup> D.P. Kessler, M.B. McClellan (1996): Do Doctors Practice Defensive Medicine? Quarterly Journal of Economics, May 1996.

<sup>3</sup> US Department of Health and Human Services (2003): Addressing the New Health Care Crisis; cited at: The Truth about "Defensive Medicine", American Association for Justice, September 2009.

<sup>4</sup> PWC Report (2008): The Factors Fueling Rising Healthcare Costs 2006, page 7.

<sup>5</sup> PWC Report (2008): The Price of Excess – Identifying Waste in Healthcare Spending, pages 1 and 6.

<sup>6</sup> National Center for Policy Analysis (2007), retrieved from www.medscape.com

<sup>7</sup> D.M. Studdert, M.M. Mello, W.M. Sage, C.M. DesRoches, J. Peugh, K. Zapert, T.A. Brennan (2005): Defensive Medicine Among High-Risk Specialist Physicians in a Volatile Malpractice Environment, JAMA 293: 2609-2617.

<sup>8</sup> Jackson Healthcare (May 2011): Physicians' on Healthcare Reform Quantifying Defensive Medicine: An Online Quantitative Research Study; only the Personal Health Care figure has been used to exclude administrative expenses (however, the estimate still includes costs such as dental & residential).

<sup>9</sup> Gallup/Jackson Healthcare press release Feb. 19, 2010: New Gallup poll quantifies US physician opinions on the scope of defensive medicine; Jackson Healthcare retained Gallup for the study; only the Personal Health Care figure has been used for the estimate.

# Expected Cost of Defensive Medicine to Florida Medicaid (Assuming Federal Health Care Reform Is Not Enacted): Three Measures

## Approach

- The Jackson Healthcare figure (35% of healthcare spending can be attributed to defensive medicine) is used as a 'high' estimate, the PWC figure (\$210 billion) as a 'low' estimate, and the Gallup result (26% of healthcare spending can be attributed to defensive medicine) as midpoint<sup>1</sup>. All further calculations are based on the Gallup figure.
- Florida Medicaid expenditures serve as basis for the calculation, less relevant cost categories are subtracted (e.g., dental care).
- All figures are expressed in 2011 dollars; expected growth of medical costs (in real terms)
- The development of Florida's population has been forecasted based on data from the Florida Office of Demographic Research<sup>2</sup>.
- The data are fitted to individual years based on Medicaid expenditures per enrollee and change in population.
- The results are multiplied by the percentage share of Medicaid paid by Georgia State based on the Federal Medical Assistance Percentage (FMAP).
- The resulting numbers are multiplied with the Gallup survey estimate for defensive medicine (26%).

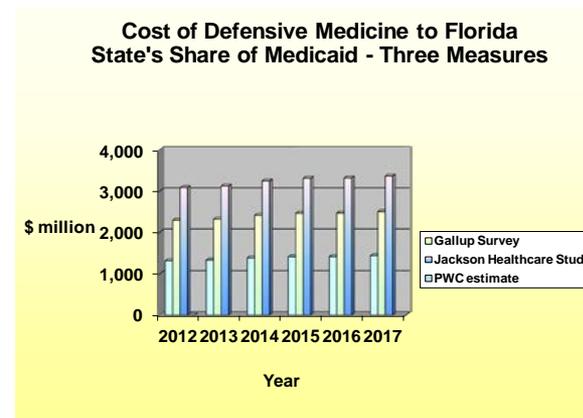
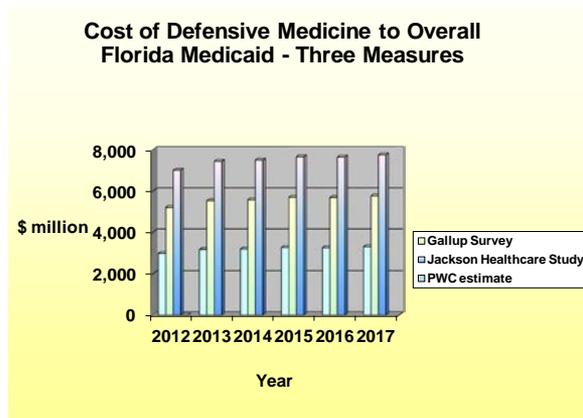
<sup>1</sup> A recent survey contracted by Patients for Fair Compensation ('The Practice of Defensive Medicine: A Survey of Florida Physicians', December 2011) suggests that 33% of Florida's healthcare expenses may be attributed to defensive medicine. If this estimate is more accurate to the actual Florida percentage of healthcare costs that can be attributed to defensive medicine (instead of the 26% national), then the 35% 'high' assumption here is closer to the actual savings.

<sup>2</sup> Florida Demographic Forecast- <http://edr.state.fl.us/Content/conferences/population/index.cfm>

# Expected Cost of Defensive Medicine to Florida Medicaid Results (Assuming Federal Health Care Reform Is Not Enacted): Three Measures

## Results

- The Jackson Healthcare study, scaled to Florida, suggests defensive medicine costs to overall Florida Medicaid may be in the order of **\$7 billion** (2012); that number may grow to **\$7.8 billion** (2017) taking the growing population into account. Florida State's share of costs is **\$3.1 billion** (2012) and may reach **\$3.4 billion** by (2017).
- The Gallup survey, scaled to Florida, indicates that defensive medicine may attribute as much as **\$5.2 billion** to overall Florida Medicaid expenditures; in 2017 that number may grow to almost **\$5.8 billion**. Florida State's share of costs is **\$2.3 billion** (2012) and may reach **\$2.5 billion** by 2017.
- Over a ten-year horizon, the accumulated defensive medicine costs to overall Florida Medicaid may be in the order of **\$56.2 billion**. Of this, Florida State may pay **\$24.4 billion**.
- The low estimate yields 2012 defensive medicine costs to overall Florida Medicaid of **\$3 billion**. Florida State's share of this cost is **\$1.3 billion**.



# Expected Cost of Defensive Medicine to Florida Medicaid (Assuming Federal Health Care Reform Is Enacted): Three Measures

## Approach

- The Jackson Healthcare figure (35% of healthcare spending can be attributed to defensive medicine)<sup>1</sup> is used as a 'high' estimate, the PWC figure (\$210 billion) as a 'low' estimate, and the Gallup result (26% of healthcare spending can be attributed to defensive medicine) as midpoint. All further calculations are based on the Gallup figure.
- Florida Medicaid expenditures serve as basis for the calculation, less relevant cost categories are subtracted (e.g., dental care).
- All figures are expressed in 2011 dollars; expected growth of medical costs (in real terms) and expenditure changes starting in 2014 due to the enactment of Federal Health Care Reform are considered<sup>2</sup>.
- The development of Florida's population has been forecasted based on data from the Florida Office of Demographic Research.
- The data are fitted to individual years based on Medicaid expenditures per enrollee, increase of Medicaid enrollees due to the FHCR, and change in population.
- Federal Medical Assistance Percentage (FMAP) and Federal percent of coverage due to new eligible Medicaid enrollees are taken into account in order to calculate Florida State's share of Medicaid expenses.
- The resulting numbers are multiplied with the Gallup survey estimate for defensive medicine (26%).

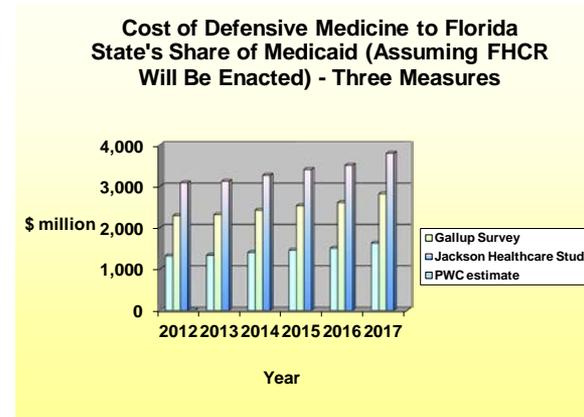
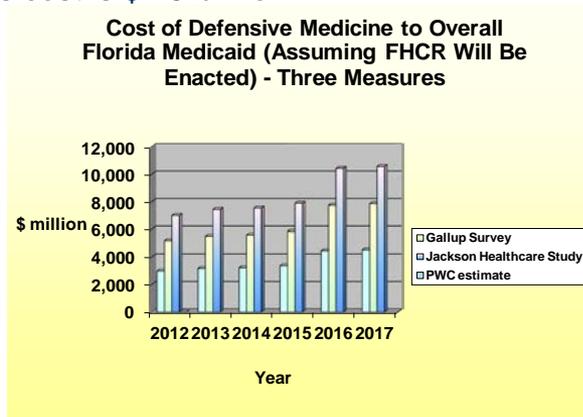
<sup>1</sup> A recent survey contracted by Patients for Fair Compensation ('The Practice of Defensive Medicine: A Survey of Florida Physicians', December 2011) suggests that 33% of Florida's healthcare expenses may be attributed to defensive medicine. If this estimate is more accurate to the actual Florida percentage of healthcare costs that can be attributed to defensive medicine (instead of the 26% national), then the 35% 'high' assumption here is closer to the actual savings.

<sup>2</sup> Based on data from the State of Florida Long-Range Financial Outlook Fall 2011 Report.

# Expected Cost of Defensive Medicine to Florida Medicaid Results (Assuming Federal Health Care Reform Is Enacted): Three Measures

## Results

- The Jackson Healthcare study, scaled to Florida, suggests defensive medicine costs to overall Florida Medicaid may be in the order of **\$7 billion** (2012); that number may grow to **\$10.6 billion** (2017) taking into account the growing population and the increase in enrollment due to the Federal Health Care Reform enactment. Florida State's share of costs can be expected to be **\$3.1 billion** in 2012. After the effects of the enactment of the Federal Health Care Reform are reached (2017), Florida State's share of costs is expected to reach **\$3.8 billion**.
- The Gallup survey, scaled to Florida, indicates that defensive medicine may attribute as much as **\$5.2 billion** to overall Florida Medicaid expenditures; in 2017 that number may grow to almost **\$7.9 billion**. Florida State's share of costs is **\$2.3 billion** (2012) and may reach **\$ 2.8 billion** by (2017).
- The accumulated defensive medicine costs to overall Florida Medicaid over a ten-year horizon may be in the order of **\$67 billion**. Of this, Florida State may pay **\$26 billion**.
- The low estimate yields 2011 defensive medicine costs to overall Florida Medicaid of **\$3 billion**. Florida State's share of this cost is **\$1.3 billion**.



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## **Savings Through Reduced Practice Of Defensive Medicine (Florida)**

# PCS: Savings through Reduced Practice of Defensive Medicine (Florida Medicaid- Assuming Federal Health Care Reform Is Not Enacted)

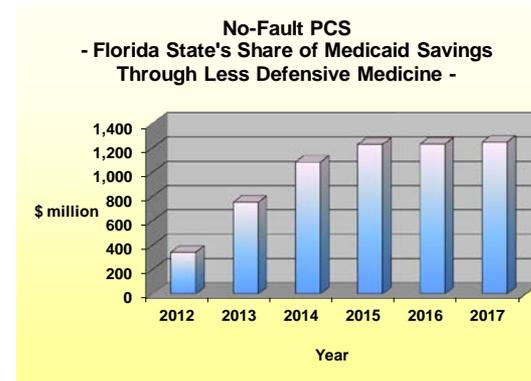
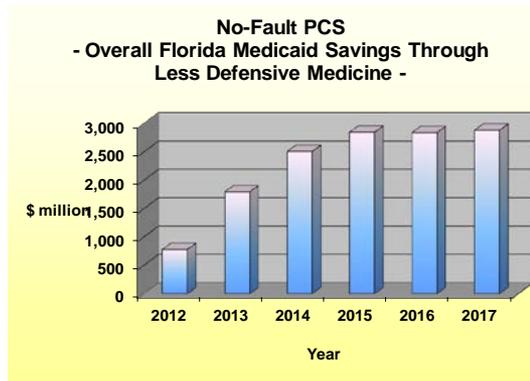
Assuming a Patient Compensation System (PCS) that effectively prevents litigation is implemented in Florida, payors can expect significant savings from reduced practice of defensive medicine.

## Approach

- Cost of defensive medicine estimate is based on the Gallup survey.
- The no-fault PCS reduces the practice of defensive medicine by 50% after full adoption (base case assumption).
- Physicians will slowly reduce their defensive medicine behavior; the model assumes that it would take five years until full adoption (S-shaped adoption curve).

## Results

- A no-fault PCS may produce overall Florida Medicaid savings of **\$780 million in the first year** of implementation (2012), and over **\$2.9 billion** annually by 2017. Florida State's share of savings of this amount would be **\$340 million** the first year and over **\$1.3 billion** annually by 2017.
- Assuming immediate adoption, savings could be **\$2.6 billion** in 2012; **\$1.1 billion** to Florida State's share. Aggregated savings to overall Florida Medicaid over ten years could reach **\$28.7 billion** and **\$12.4 billion** to Florida State's share (not shown).



# PCS: Savings through Reduced Practice of Defensive Medicine (Florida Medicaid-Assuming Federal Health Care Reform Is Enacted)

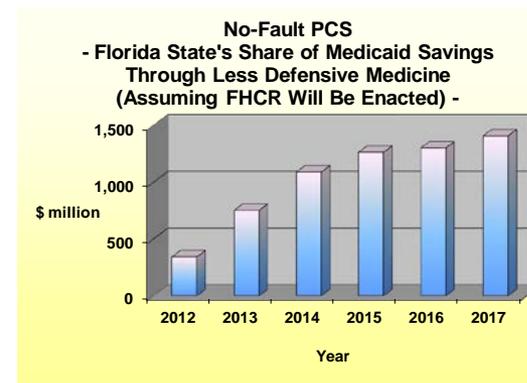
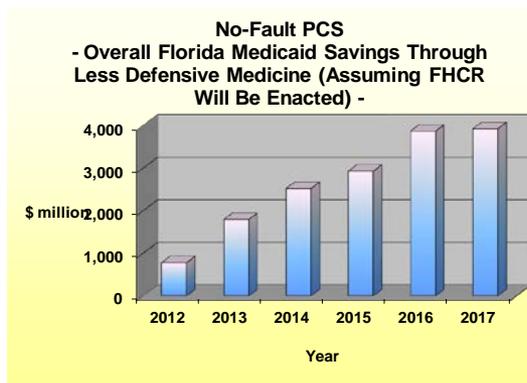
Assuming a Patient Compensation System (PCS) that effectively prevents litigation is implemented in Florida, payors can expect significant savings from reduced practice of defensive medicine.

## Approach

- Cost of defensive medicine estimate is based on the Gallup survey.
- The no-fault PCS reduces the practice of defensive medicine by 50% after full adoption (base case assumption).
- Physicians will slowly reduce their defensive medicine behavior; the model assumes that it would take five years until full adoption (S-shaped adoption curve).

## Results

- A no-fault PCS may produce overall Florida Medicaid savings of **\$780 million in the first year** of implementation, and of **\$4 billion** by 2017. Florida State's share of savings of this amount would be **\$340 million** the first year and over **\$1.4 billion** annually after five years.
- Assuming immediate adoption, savings could be **\$2.6 billion** in 2012; **\$1.1 billion** to Florida State's share. Aggregated savings to overall Florida Medicaid over ten years could reach **\$35.2 billion** and **\$13.3 billion** to Florida State's share (not shown).



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# **Defensive Medicine Costs & Savings (Florida)**

## **- Sensitivity Analyses -**

# Sensitivity Analyses of Defensive Medicine Costs and of Savings through Reduced Practice of Defensive Medicine (Florida)

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Expected savings depend, to a large extent, on three uncertain variables:

- the percentage of healthcare costs that can be attributed to the practice of defensive medicine,
- the effects caused by the enactment of the Federal Health Care Reform (if at all enacted),
- the reduction of defensive medicine behavior once a Patient's Compensation System has been enacted.

Concerning healthcare costs that can be attributed to defensive medicine, estimates for the USA range from \$100 billion to \$700 billion. Although surveys consistently report that over 90% of physicians practice defensive medicine, and that physicians believe 25% to 35% of healthcare practices are defensive, critics argue that those estimates may be biased and subject to significant respondent error.

Concerning a potential reduction of defensive medicine behavior critics note that

- one motivation of practicing defensive medicine is income generation rather than concerns related to potential litigation;
- another motivation may be truly related to maximizing patient benefit (e.g., by using additional diagnostic procedures); those additional procedures may be classified as being "defensive" although they serve the patient.

Therefore, it appears unlikely that the practice of defensive medicine can be completely eliminated.

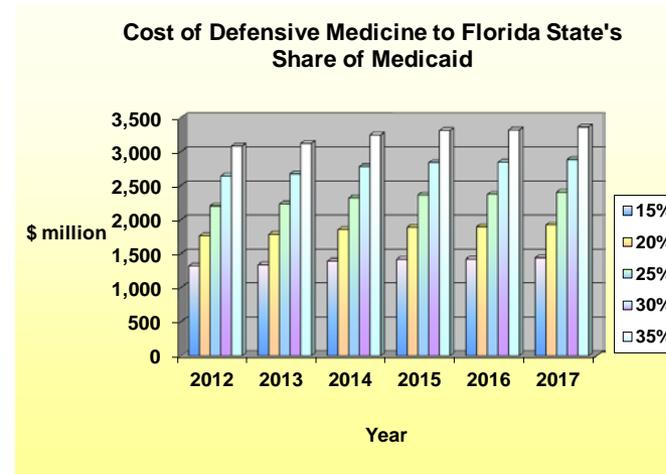
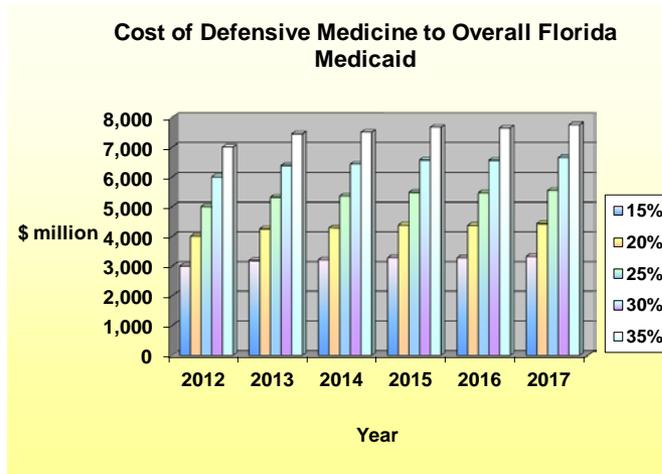
## Approach

- The two most uncertain variables, the percentage of healthcare costs that can be attributed to the practice of defensive medicine and the decrease of defensive medicine behavior once a Patient's Compensation System has been implemented are systematically varied should those variables have lower or higher values than assumed in the base case.
- Concerning savings it is assumed that physicians reduce their practice of defensive medicine by 50% only, and that it will take 5 years until the full savings potential has been reached.

# Percentage of Healthcare Costs Attributable to Defensive Medicine (Florida Medicaid- Assuming Federal Health Care Reform Is Not Enacted)

## Costs

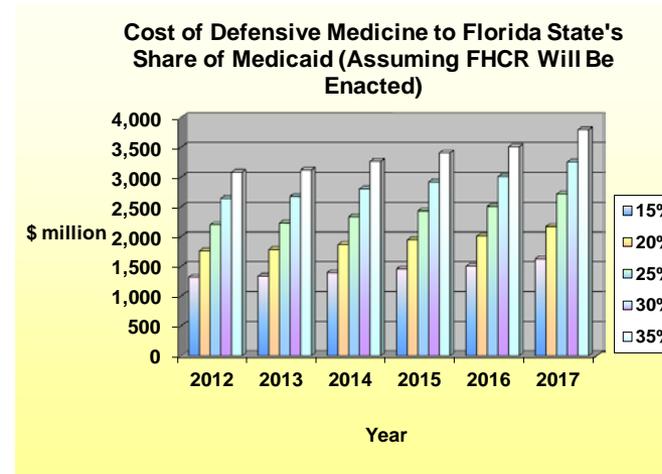
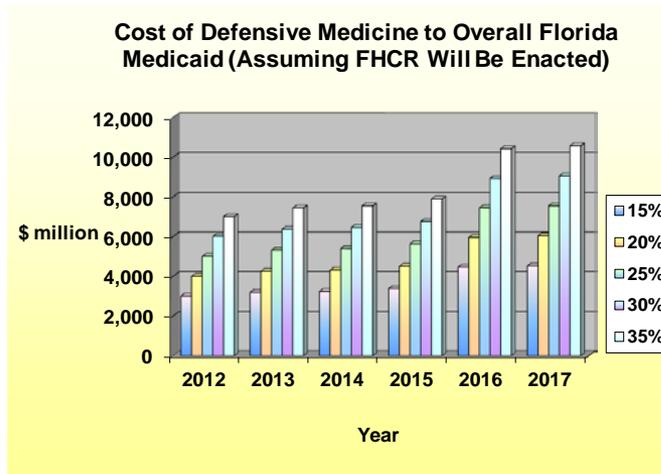
- According to Gallup 26% of healthcare expenses are due to the practice of defensive medicine. The sensitivity analyses assume that between 15% and 35% of relevant healthcare expenditures can be attributed to defensive medicine.
- Based on the analysis costs attributable to defensive medicine range from
  - **\$3 billion to \$7 billion (2012, overall Florida Medicaid),**
  - **\$1.3 billion to \$3 billion (2012, Florida State's Share of Medicaid).**
- Even using the **most conservative** estimate (only 15% of healthcare expenses are due to defensive medicine) the accumulated costs to overall Florida Medicaid could **exceed \$32.4 billion** over a ten-year horizon; of this, **\$14 billion** would be paid by Florida State.



# Percentage of Healthcare Costs Attributable to Defensive Medicine (Florida Medicaid- Assuming Federal Health Care Reform Is Enacted)

## Costs

- According to Gallup 26% of healthcare expenses are due to the practice of defensive medicine. The sensitivity analyses assume that between 15% and 35% of relevant healthcare expenditures can be attributed to defensive medicine.
- Based on the analysis costs attributable to defensive medicine range from
  - **\$3 billion to \$7 billion (2012, overall Florida Medicaid),**
  - **\$1.3 billion to \$3 billion (2012, Florida State's Share of Medicaid).**
- Even using the **most conservative** estimate (only 15% of healthcare expenses are due to defensive medicine) the accumulated costs to overall Florida Medicaid could **exceed \$38.7 billion** over a ten-year horizon; of this, **\$14.9 billion** would be paid by Florida State.

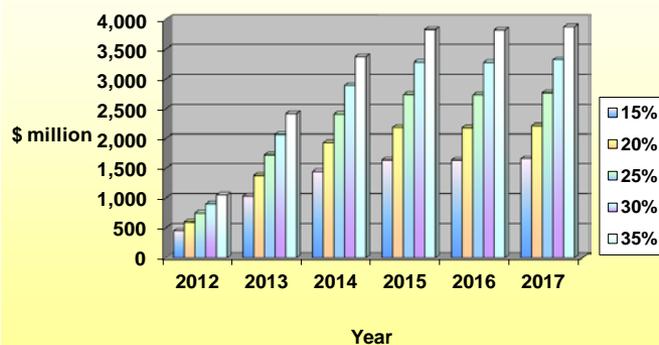


# Savings Potential Over a Range of Healthcare Costs Attributable to Defensive Medicine (Florida Medicaid-Assuming Federal Health Care Reform Is Not Enacted)

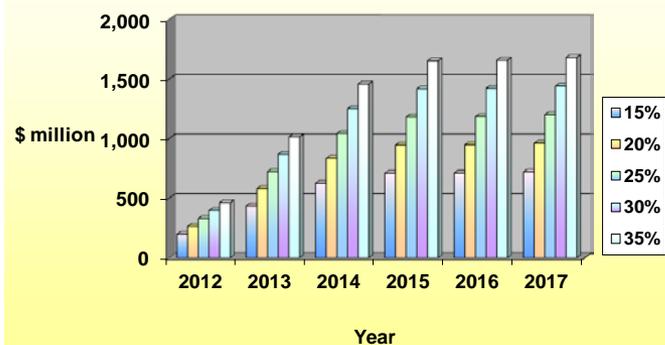
## Savings Potential

- Using the same range of percentages for healthcare expenditures attributable to defensive medicine (15% to 35%), potential savings at full adoption of a PCS (assumed for 2017) are
  - **\$1.7 billion to \$3.9 billion (overall Florida Medicaid),**
  - **\$720 million to \$1.7 billion (Florida State's Share of Medicaid).**
- Applying the **most conservative** estimate (15% of healthcare expenses are due to defensive medicine) and assuming conservatively a slow change in the practice of defensive medicine (over 5 years), the accumulated savings for overall Florida Medicaid could still **exceed \$14.8 billion** over a ten-year horizon. Of this amount, Florida State savings could reach **\$6.4 billion**.

Savings Potential - Overall Florida Medicaid



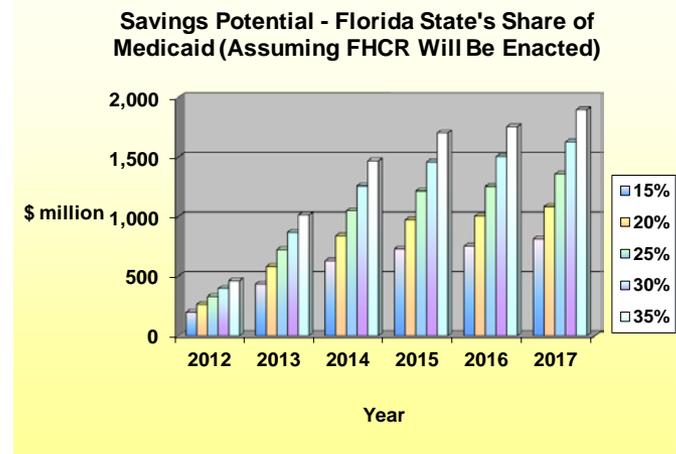
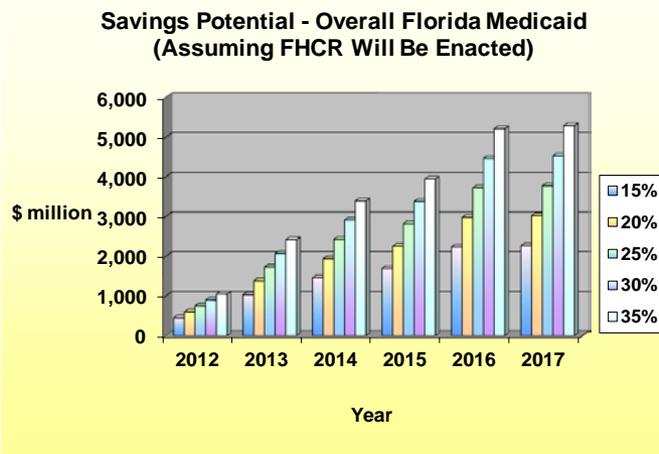
Savings Potential - Florida State's Share of Medicaid



# Savings Potential Over a Range of Healthcare Costs Attributable to Defensive Medicine (Florida Medicaid-Assuming Federal Health Care Reform Is Enacted)

## Savings Potential

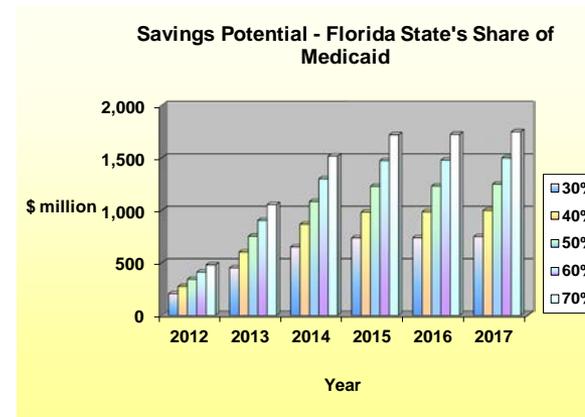
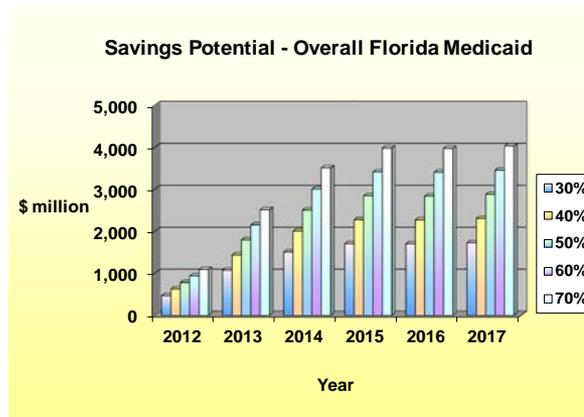
- Using the same range of percentages for healthcare expenditures attributable to defensive medicine (15% to 35%), potential savings at full adoption of a PCS (assumed for 2017) are
  - **\$2.3 billion to \$5.3 billion (overall Florida Medicaid),**
  - **\$810 million to \$1.9 billion (Florida State's Share of Medicaid).**
- Applying the **most conservative** estimate (15% of healthcare expenses are due to defensive medicine) and assuming conservatively a slow change in the practice of defensive medicine (over 5 years), the accumulated savings for overall Florida Medicaid could still **exceed \$18.5 billion** over a ten-year horizon. Of this amount, Florida State savings could reach **\$7 billion**.



# Reduction of Defensive Medicine Practice if a PCS were Enacted (Florida Medicaid-Assuming Federal Health Care Reform Is Not Enacted)

## Savings Potential

- It is not known how much physicians would reduce their practice of defensive medicine if a comprehensive PCS similar to the Swedish system were implemented. There have been some regional efforts to enact no-fault compensation programs<sup>1</sup>. For example, Virginia implemented its 'Birth Injury Fund' and Florida its 'Neurological Injury Compensation Association'. Both programs have reduced malpractice insurance premiums, however, detractors note that the programs are very narrow and provide little actual compensation. Families can, and do, file malpractice claims as an additional remedy. Therefore, those attempts can hardly provide guidance by how much physicians would reduce defensive medicine behavior if a differently designed PCS were enacted.
- It is assumed that a system that resembles the Swedish PCS can decrease defensive medicine by 50%. In the sensitivity analysis, values are varied between 30% and 70%.
- Within the range of investigated values (30% to 70%), potential savings in year 2017 (slow change of physician practice) are
  - **\$1.7 billion to \$4 billion (overall Florida Medicaid),**
  - **\$750 million to \$1.8 billion (Florida State's Share of Medicaid).**
- Using the **most conservative** estimate (only 30% reduction of defensive medicine practice) and further assuming that physicians change their behavior slowly (over 5 years), the accumulated overall Florida Medicaid savings could be above **\$15.3 billion** over a ten-year horizon; Florida State could save **\$6.6 billion** of this amount.

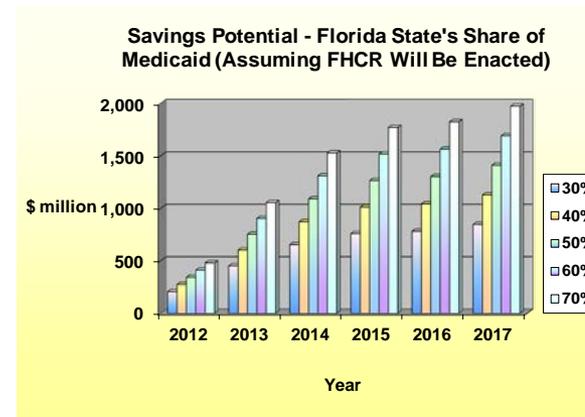
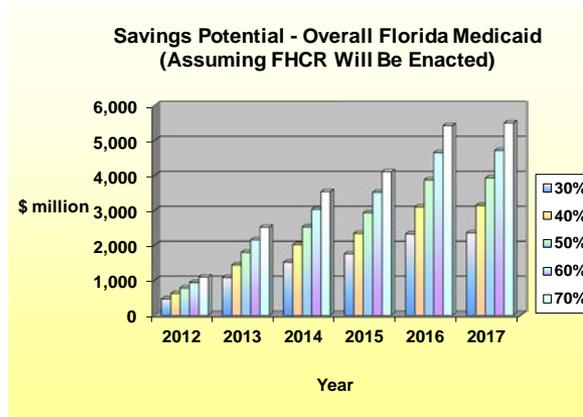


<sup>1</sup> H. Huang, F. Soleimani (2010): What Happened to No-Fault? The Role of Error Reporting in Healthcare Reform, Hous. J. Health Law & Policy 10: 1-34.

# Reduction of Defensive Medicine Practice if a PCS were Enacted (Florida Medicaid-Assuming Federal Health Care Reform Is Enacted)

## Savings Potential

- It is not known how much physicians would reduce their practice of defensive medicine if a comprehensive PCS similar to the Swedish system were implemented. There have been some regional efforts to enact no-fault compensation programs<sup>1</sup>. For example, Virginia implemented its 'Birth Injury Fund' and Florida its 'Neurological Injury Compensation Association'. Both programs have reduced malpractice insurance premiums, however, detractors note that the programs are very narrow and provide little actual compensation. Families can, and do, file malpractice claims as an additional remedy. Therefore, those attempts can hardly provide guidance by how much physicians would reduce defensive medicine behavior if a differently designed PCS were enacted.
- It is assumed that a system that resembles the Swedish PCS can decrease defensive medicine by 50%. In the sensitivity analysis, values are varied between 30% and 70%.
- Within the range of investigated values (30% to 70%), potential savings in year 2017 (slow change of physician practice) are
  - **\$2.4 billion to \$5.5 billion (overall Florida Medicaid),**
  - **\$850 million to \$2 billion (Florida State's Share of Medicaid).**
- Using the **most conservative** estimate (only 30% reduction of defensive medicine practice) and further assuming that physicians change their behavior slowly (over 5 years), the accumulated overall Florida Medicaid savings could be above **\$19.3 billion** over a ten-year horizon. Of this, Florida State's savings could reach **\$7 billion**.



<sup>1</sup> H. Huang, F. Soleimani (2010): What Happened to No-Fault? The Role of Error Reporting in Healthcare Reform, Hous. J. Health Law & Policy 10: 1-34.

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## Discussion & Conclusions (Florida)

# Discussion & Conclusions I (Florida)

## Defensive Medicine

- Annual cost of defensive medicine in Florida may range from \$17 billion to \$41 billion. A survey conducted by the Gallup organization suggests that current cost of defensive medicine is in the order of \$30 billion.
- The analysis shows that a no-fault PCS that resembles the Swedish system and that is able to prevent litigation has the potential to produce significant savings due to reduced defensive medicine practices.
- Conservatively assuming a slow, gradual change in defensive physician behavior, overall Florida Medicaid annual savings could already be \$780 million in the first year (2012) and grow to \$2.9 billion (\$3.9 billion if FHCR is enacted) by 2017. Over a ten-year horizon aggregate savings well exceeding \$ 25.6 billion (\$32.1 billion if FHCR is enacted) could be realized.
- Florida State's Share of Medicaid could achieve savings of \$340 million in the first year (2012) and grow to \$1.3 billion (\$1.4 billion if FHCR is enacted) by 2017. Ten-year aggregated savings to Florida State could reach \$11 billion (\$12 billion if FHCR is enacted).
- Three highly uncertain variables are i) the amount of healthcare dollars spent on defensive medicine, ii) by how much defensive medicine practices would decline once a PCS has been enacted, and iii) the future financial effects of the Federal Health Care Reform (if enacted at all).
- Detractors note that high defensive medicine estimates based on physician surveys may be biased, although the reason for the potential bias remains unclear.
- Concerning a potential reduction of defensive medicine behavior some critics argue that one motivation of practicing defensive medicine is income generation rather than concerns related to potential litigation. However, according to the US Bureau of Labor Statistics, more than 70% of US physicians are employed<sup>1</sup>. It is unlikely that those physicians can drive their income by extensively practicing defensive medicine. In line with those findings a survey by Jackson Healthcare revealed that 82% of physicians receive no compensation from tests, prescriptions, procedures and admissions they order. According to the survey, only 6.2% of physician income can be attributed medical orders<sup>2</sup>.

<sup>1</sup> <http://www.bls.gov/oco/ocos074.htm#employ>; <sup>2</sup> Jackson Healthcare May 24, 2011: Survey debunks myth that physicians make big bucks on medical orders.

## Discussion & Conclusions II (Florida)

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- Another motivation to practice defensive medicine may be truly related to maximizing patient benefit (e.g., by using additional diagnostic procedures to gain diagnostic certainty); these 'defensive' practices will not be completely eliminated.
- The three major uncertainties have been investigated in a sensitivity analysis:
  - 1) Varying the percentage of healthcare costs attributable to defensive medicine between 15% and 35% (base case: 26% based on the Gallup survey) suggests annual savings potentials after full adoption (year 2017) that range from
    - \$1.7 billion to \$3.9 billion (overall Florida Medicaid),
    - \$2.3 billion to \$5.3 billion (overall Florida Medicaid- Assuming FHCR is enacted),
    - \$720 million to \$1.7 billion (Florida's State Share of Medicaid),
    - \$810 million to \$1.9 billion (Florida's State Share of Medicaid-Assuming FHCR is enacted).
  - 2) Changing the estimate by how much physicians would decrease defensive medicine practices from 30% to 70% (base case: 50%) suggests yearly (2017) savings potentials ranging from
    - \$1.7 billion to \$4 billion (overall Florida Medicaid),
    - \$2.4 billion to \$5.5 billion (overall Florida Medicaid-Assuming FHCR is enacted),
    - \$750 million to \$1.8 billion (Florida State's Share of Medicaid),
    - \$850 million to \$2 billion (Florida State's Share of Medicaid-Assuming FHCR is enacted).