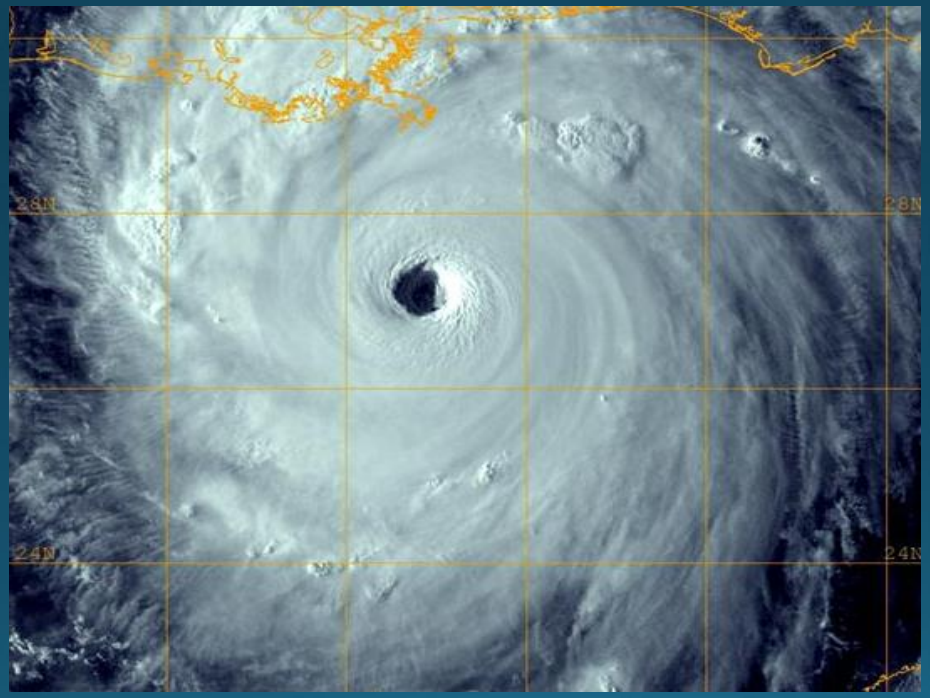
Perfect Storm with Concurrent Public Health Emergencies of COVID-19, Opioid Epidemic, and a Tsunami of Medicaid Managed Care Policies

Testimony Before Medicaid Oversight and Advisory Committee
8/26/2020



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Thank You

Perfect Storm

- A **perfect storm** is a rare combination of events or circumstances creating an unusually bad situation.

- Simply put,
  - A very unpleasant situation in which several bad things happen at once


CORONAVIRUS (COVID-19)

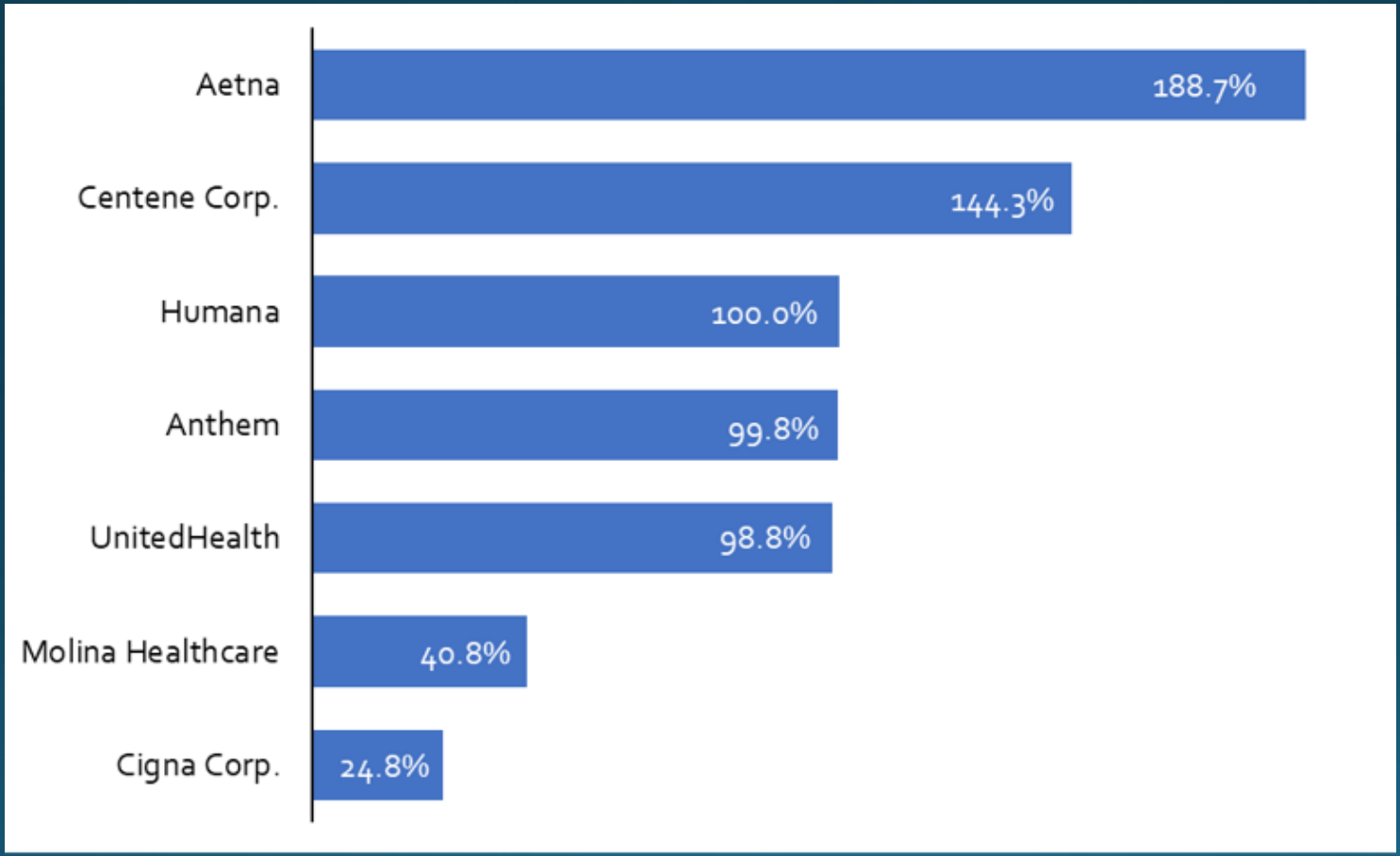
DG Alerts COVID-19

COVID-19 Statistics

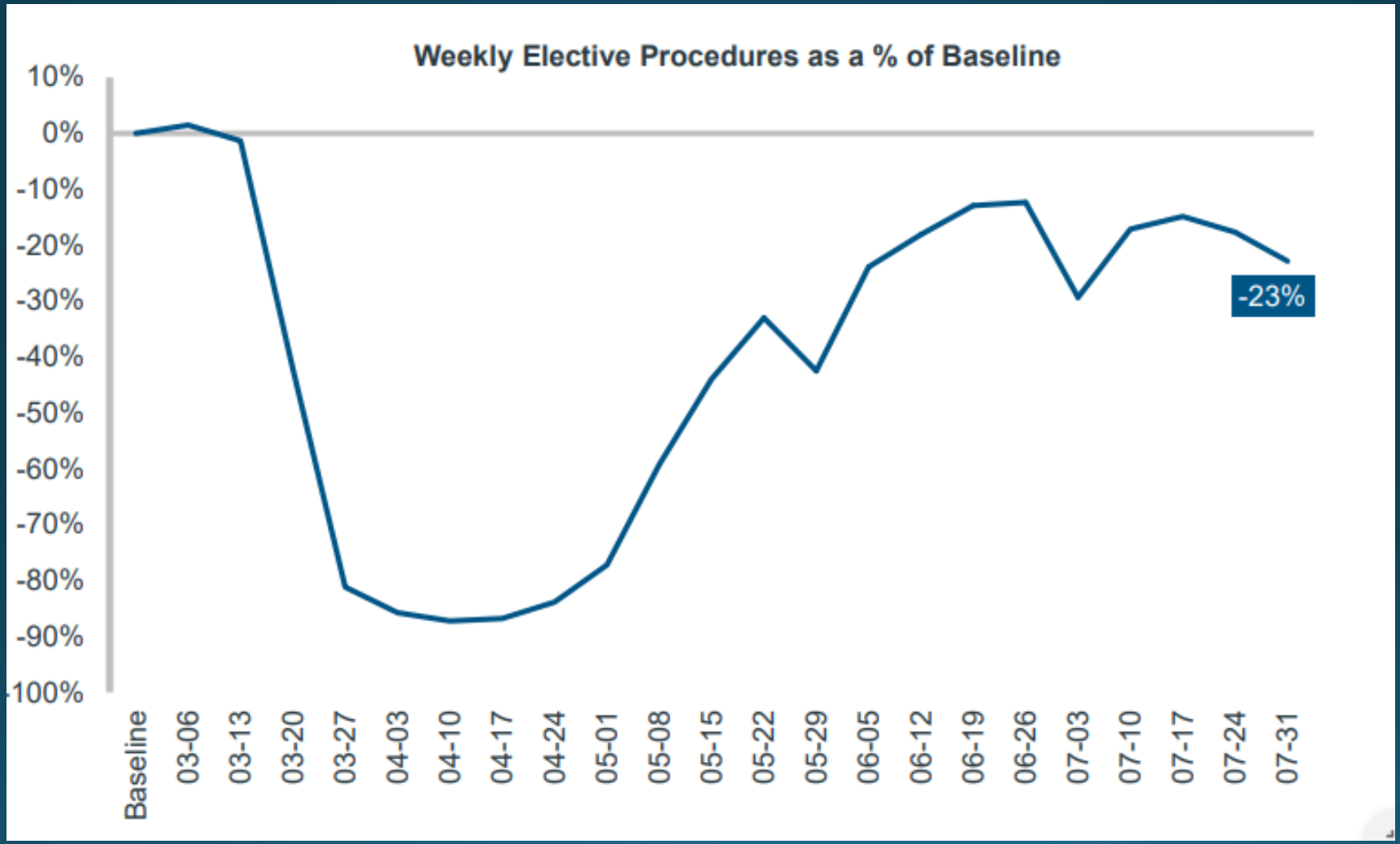
Country	Total confirmed cases	Total deaths	Deaths per million population
US	5,576,384	174,292	533 (6)
Kentucky	42,265	864	193 (35)

Perfect Storm: Soaring Insurance Profits

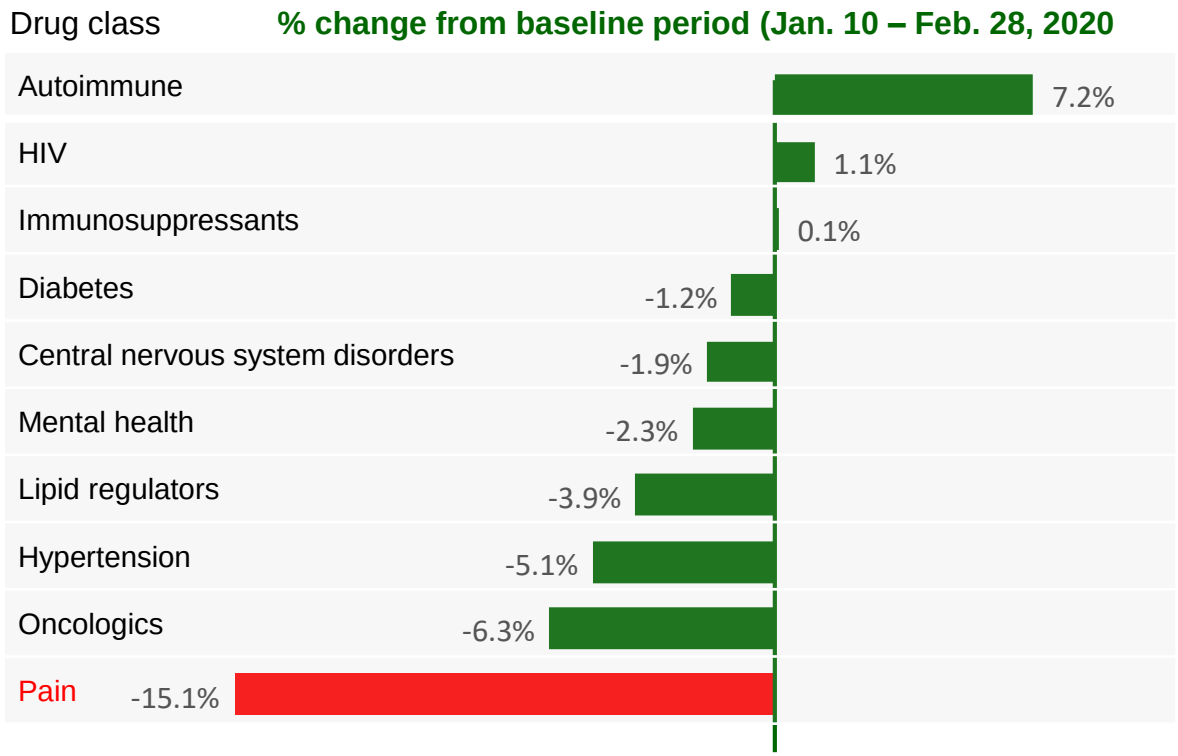
% of net income increase for second quarter (2019 vs 2020)



Perfect Storm: Decimation of Elective Procedures

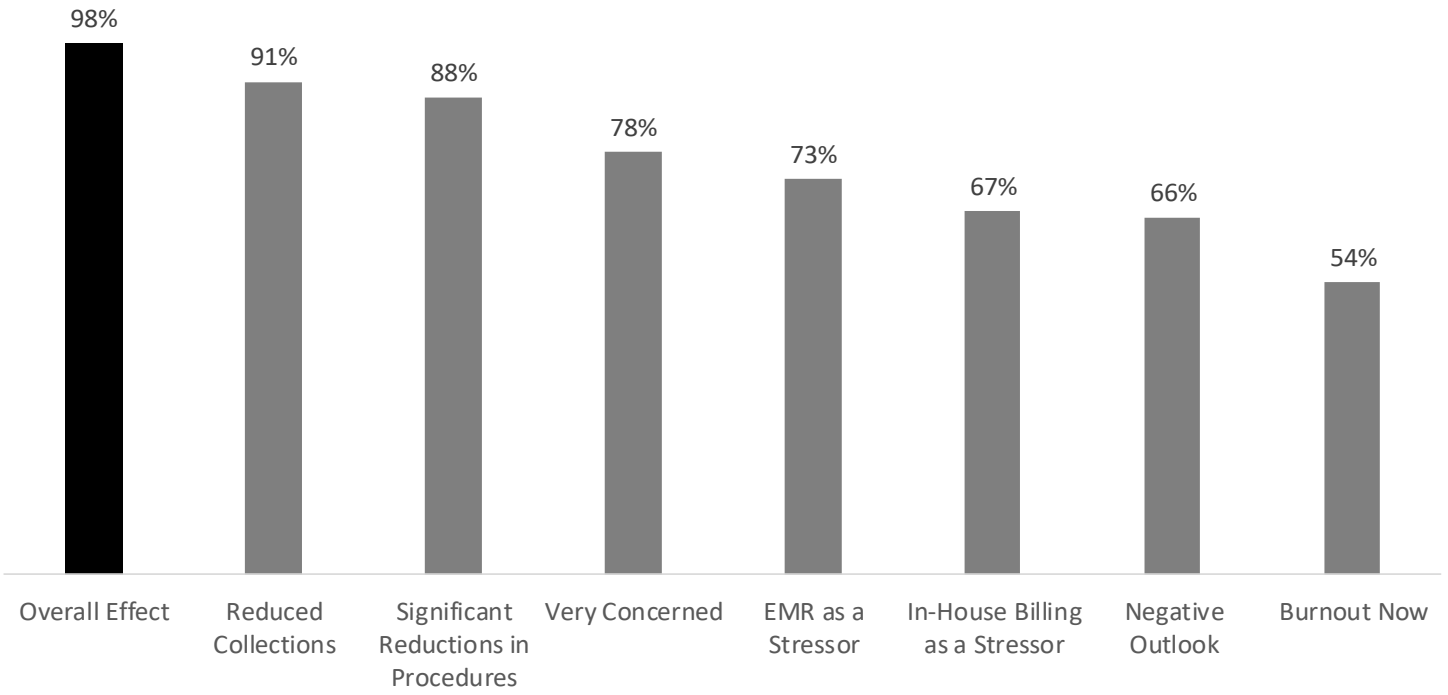


Perfect Storm: Significant Reductions in Pain Prescriptions



https://www.healthsystemtracker.org/chart-collection/how-have-healthcare-utilization-and-spending-changed-so-far-during-the-coronavirus-pandemic/#item-costs-use-covid_percent-change-in-filled-prescriptions-for-selected-drug-classes-week-ending-april-19-24-2020-vs-baseline-and-prior-week

Perfect Storm: Physician Burnout

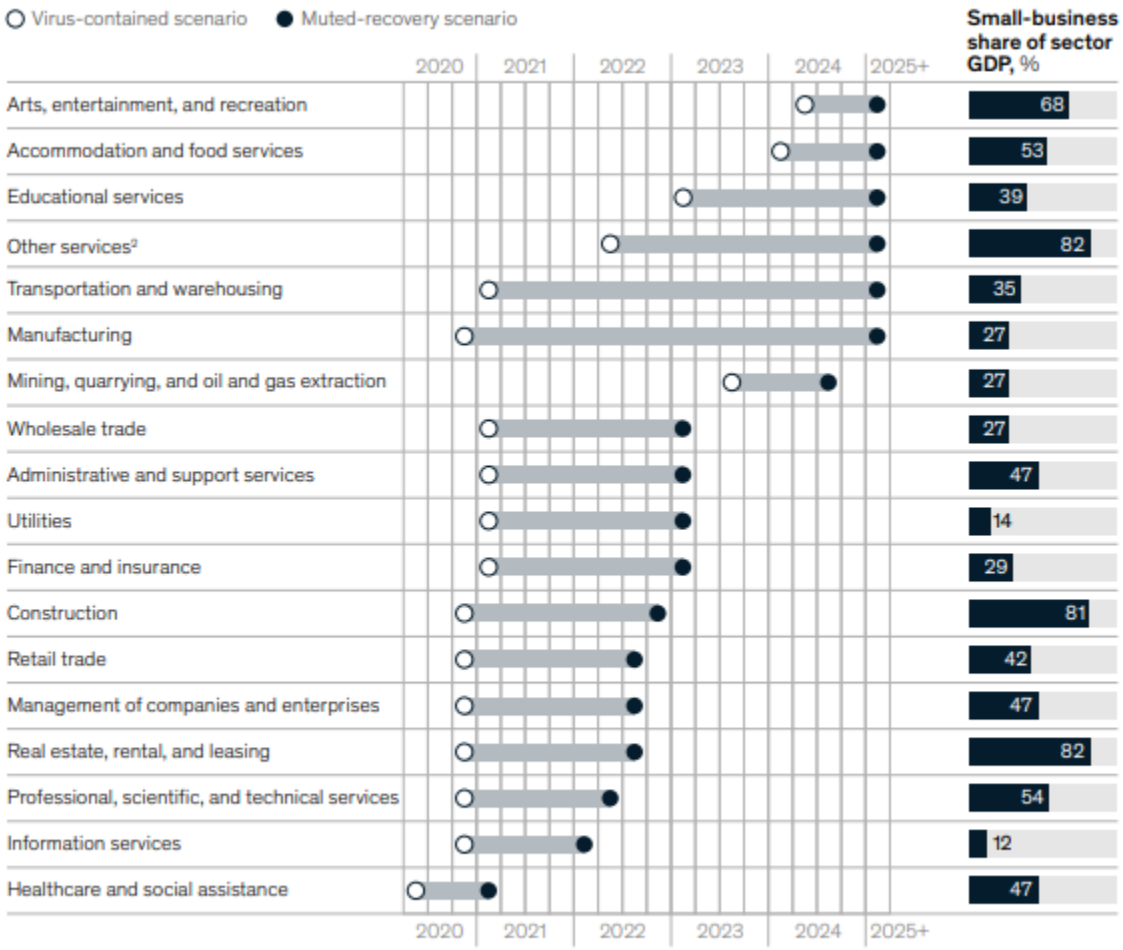


Results of burnout survey illustrating multiple adverse effects of COVID-19 pandemic on IPM Practices.

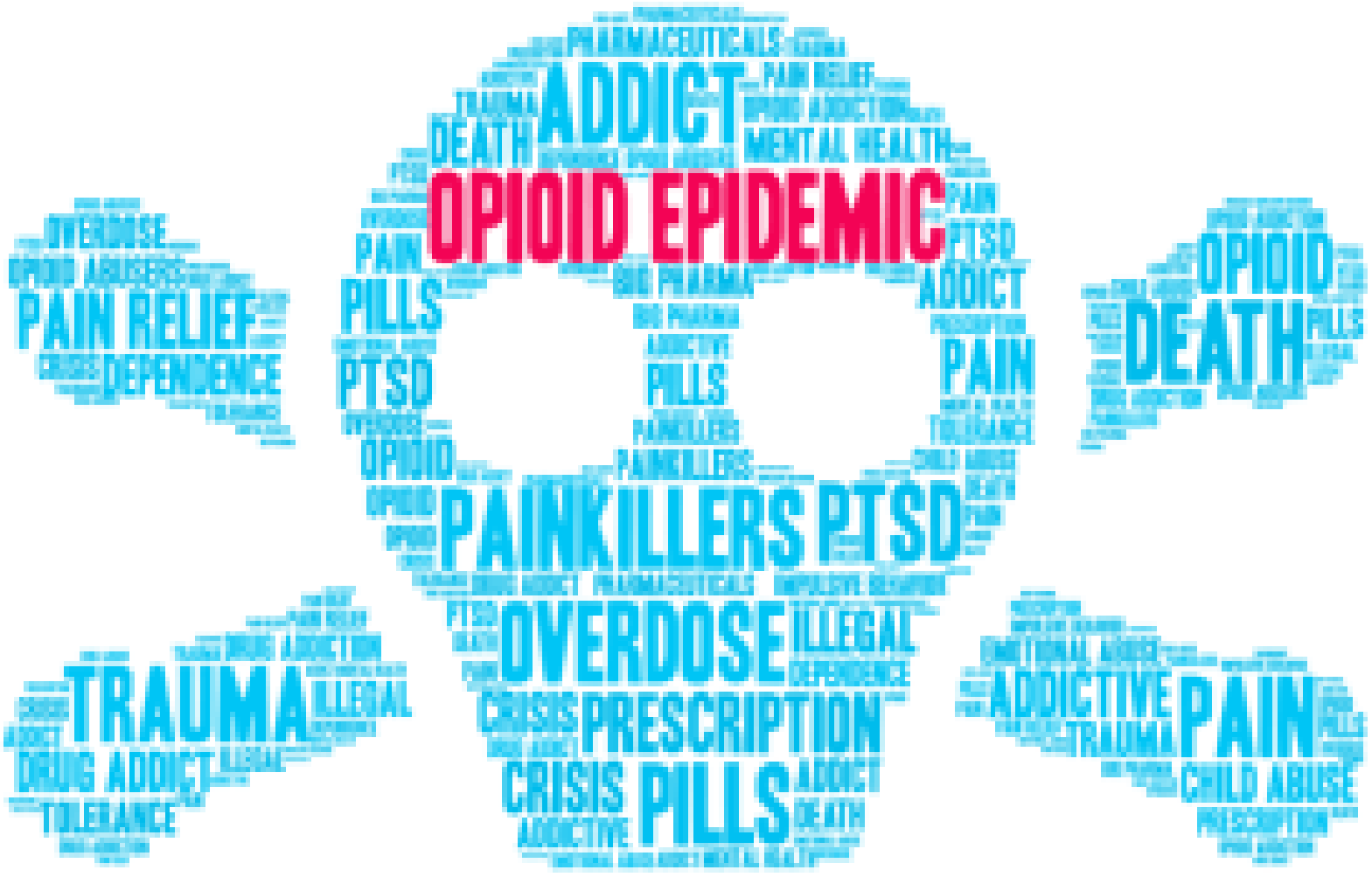
Perfect Storm: Muted Recovery

In a muted recovery, it could take more than five years for the most affected sectors to get back to 2019-level contributions to GDP.

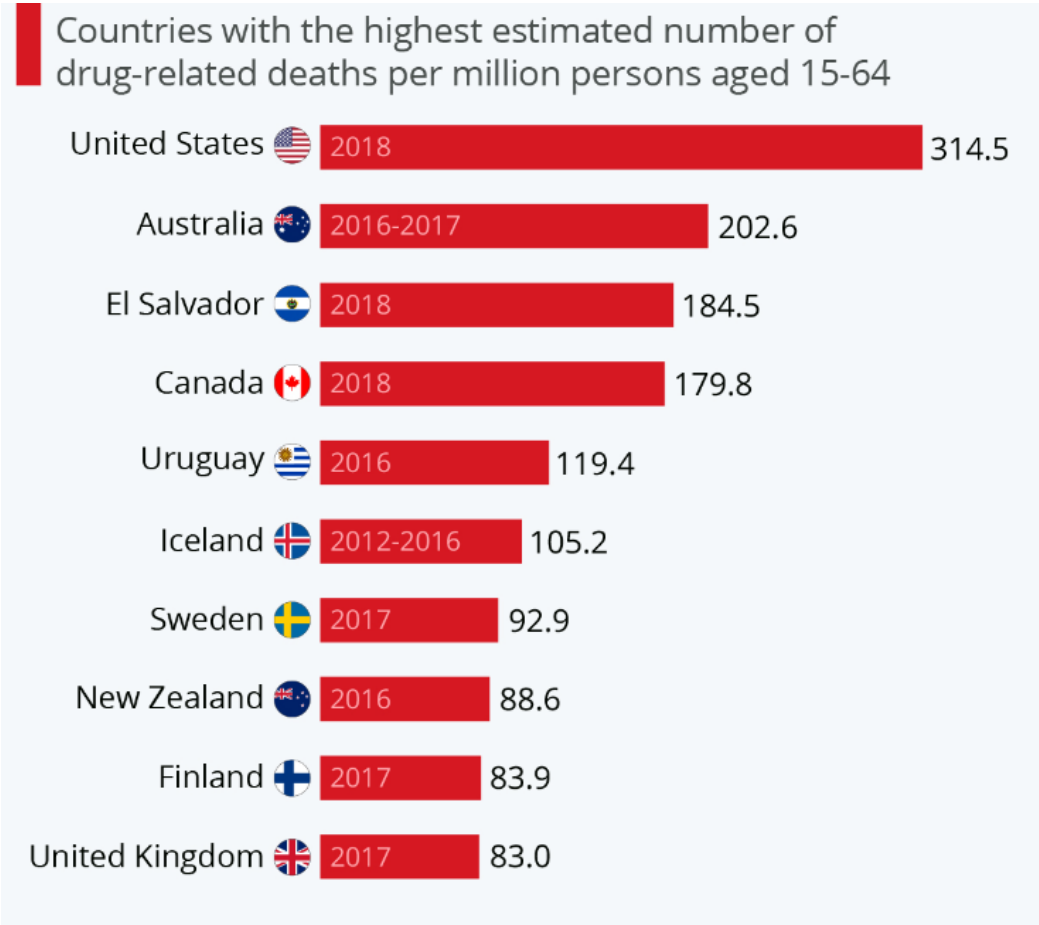
Estimated time to recover to pre-COVID-19 sector GDP[1]



[1]Data as of June 15, 2020.
[2]Excluding public administration.
Source: Oxford Economics; McKinsey analysis; McKinsey Global Institute analysis


OPIOID EPIDEMIC
ADDICT
PHARMACEUTICALS
DEATH
MENTAL HEALTH
PAIN
PTSD
ADDICT
PILLS
BIG PHARMA
PAIN
PTSD
PILLS
PAINKILLERS
OPIOID
PAINKILLERS
PTSD
OVERDOSE
ILLEGAL
CRISIS
PRESCRIPTION
CRISIS
PILLS
ADDICT
ADDICTIVE
DEATH
OVERDOSE
OPIOID ABUSERS
PAIN RELIEF
DEPENDENCE
OPIOID
DEATH
PILLS
TRAUMA
DRUG ADDICT
ILLEGAL
TOLERANCE
ADDICTIVE
PAIN
TRAUMA
CHILD ABUSE
PRESCRIPTION

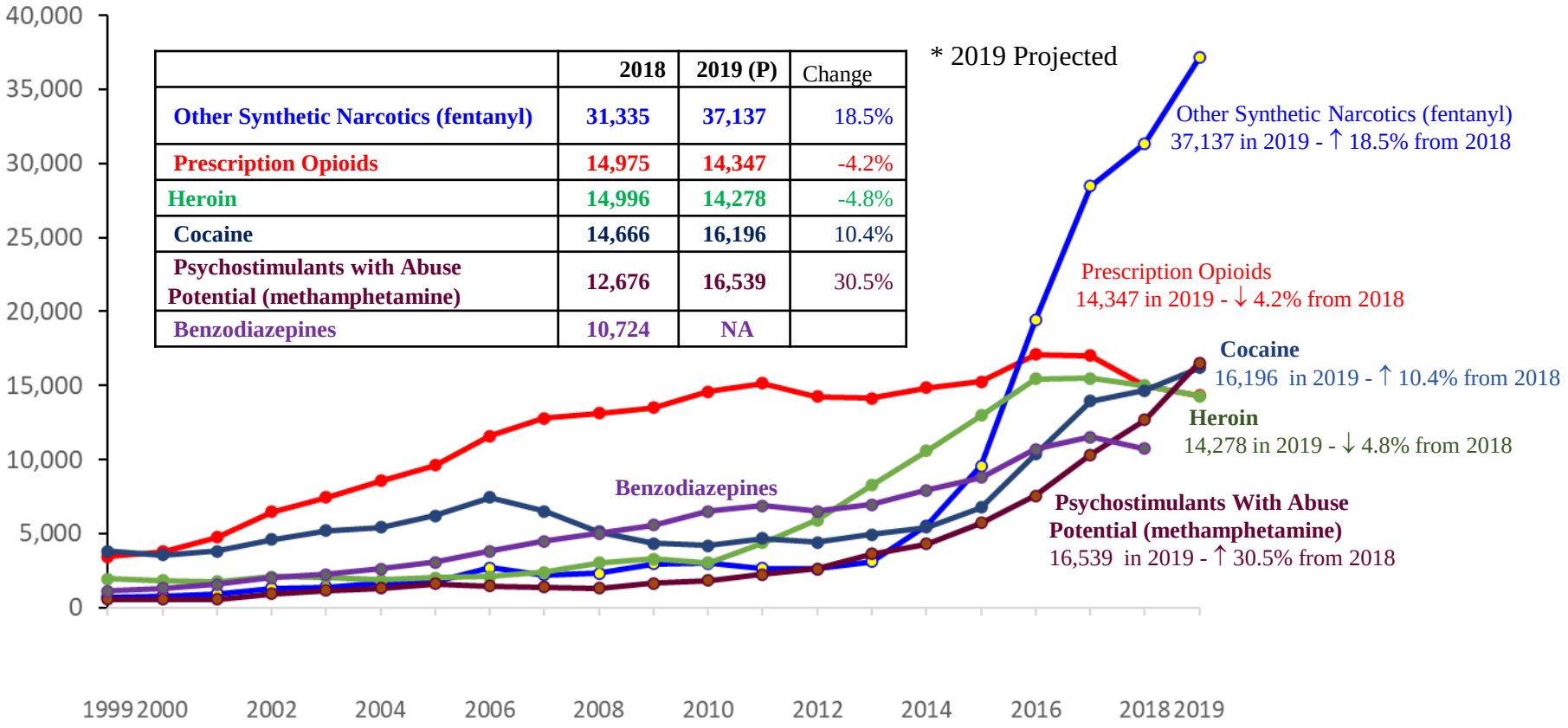
Perfect Storm: Opioid Epidemic



The deadly toll of America's opioid crisis.

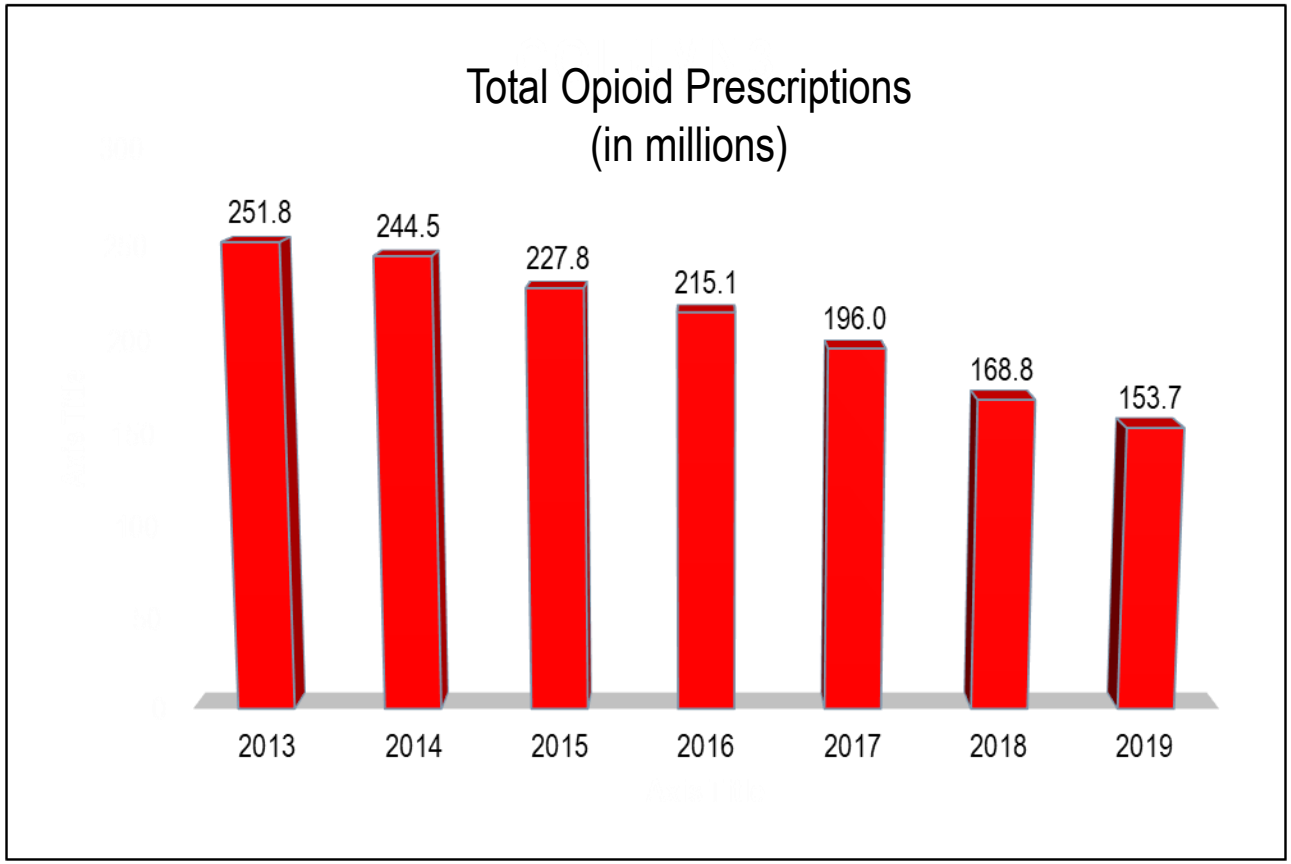
Perfect Storm: Differentiating Illicit Opioid Deaths vs Prescription Opioids

	2018	2019 (P)	Change
Other Synthetic Narcotics (fentanyl)	31,335	37,137	18.5%
Prescription Opioids	14,975	14,347	-4.2%
Heroin	14,996	14,278	-4.8%
Cocaine	14,666	16,196	10.4%
Psychostimulants with Abuse Potential (methamphetamine)	12,676	16,539	30.5%
Benzodiazepines	10,724	NA	



Prescription opioid deaths decreased from 1999 to 2019.

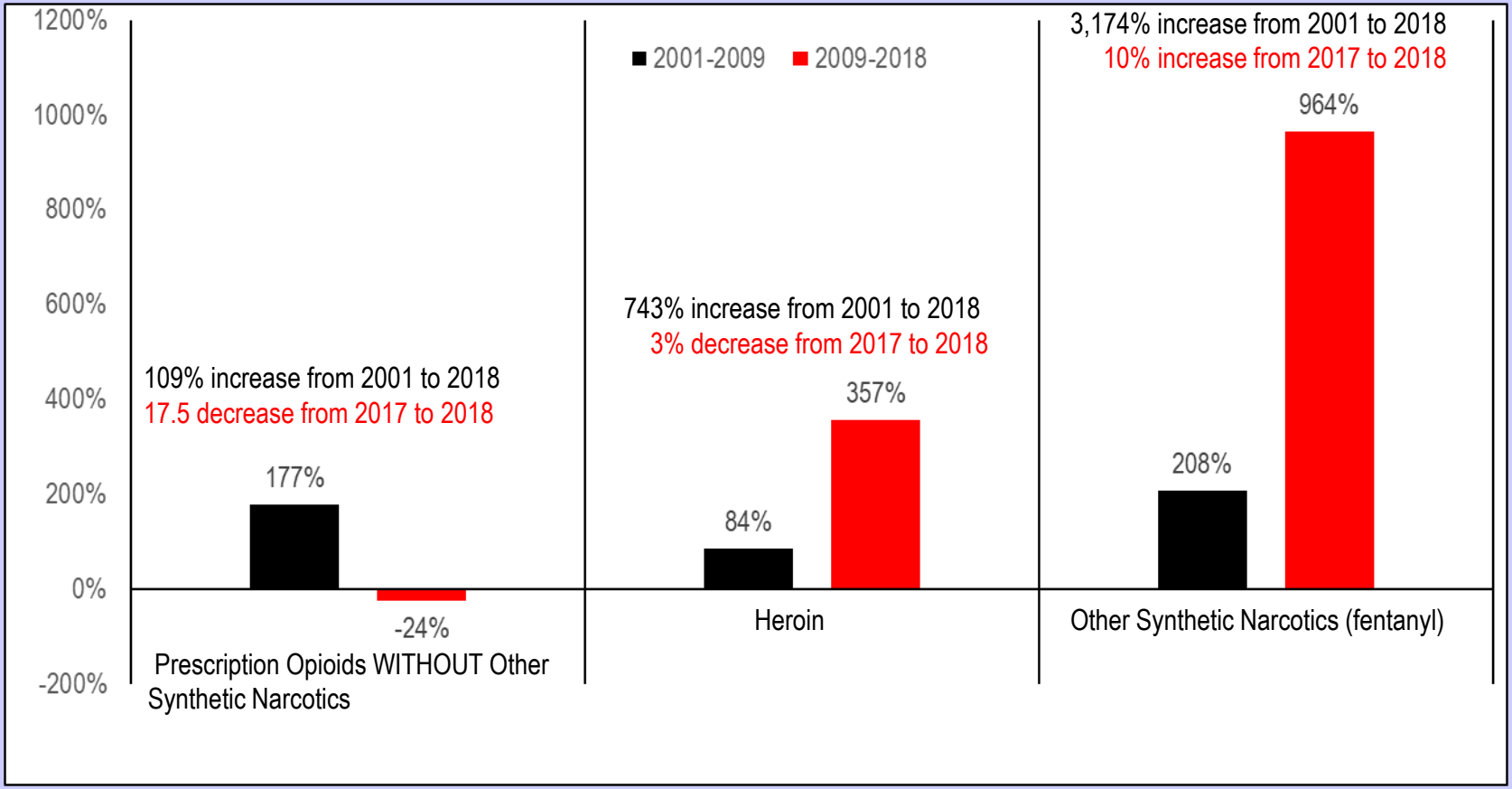
Perfect Storm: Declining Opioid Prescriptions and Declining Deaths



Total opioid prescriptions in the United States in millions, 2013-2019.

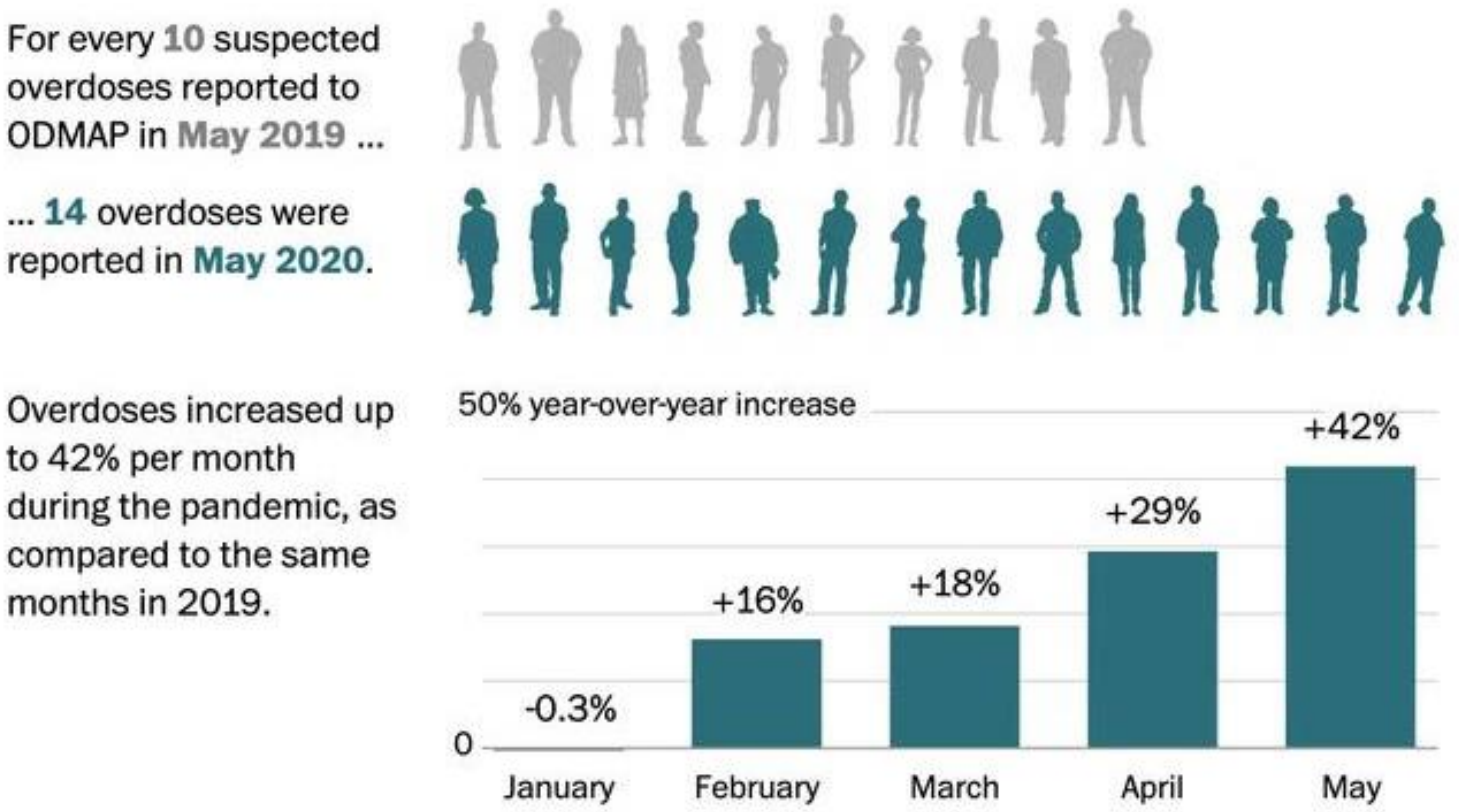
2013-2018 Source: https://www.end-opioid-epidemic.org/wp-content/uploads/2019/06/AMA-Opioid-Task-Force-2019-Progress-Report-web.pdf
2019 Source: https://www.ama-assn.org/system/files/2020-07/opioid-task-force-progress-report.pdf

Perfect Storm: Quantification of Opioid Deaths



Source: https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates
Accessed on 5/05/2020

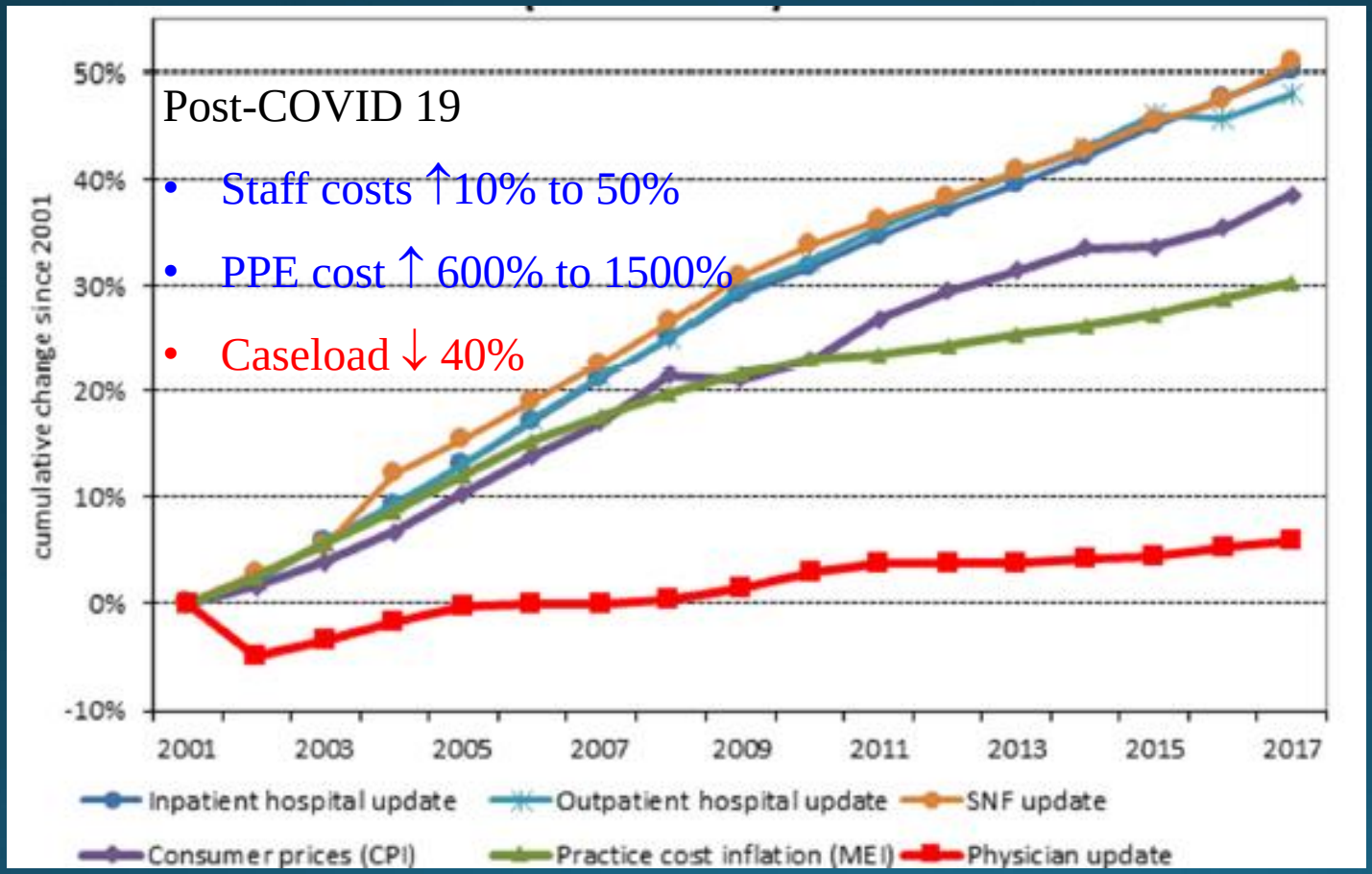
Perfect Storm: COVID-19 Impacts Opioid Overdoses and Deaths



Dramatic growth in monthly overdoses during pandemic.

Medicaid Managed Care Policies

Medicare Updates Compared to Inflation 2001 - 2017



Source: Federal Register, Medicare Trustees' Reports and U.S. Bureau of Labor Statistics

Centene Acquisition of WellCare

- Price tag $17.3 billion
  - Centene from Missouri
  - WellCare from Florida
- The combined company would:
  - Have a presence in all 50 states.
  - Will insure 22 million lives, probably with **minimal or no coverage**.
  - Will generate $100 billion in revenue.
- Profits in second quarter ↑144%

CENTENE-WELLCARE MERGER

- Multiple organizations presented evidence to stop merger
- American Hospital Association (AHA), American Society of Interventional Pain Physicians (ASIPP) and others argue the merger would undermine competition.
- Centene fined $900,000 for failing to met ACA provider standards
- Centene and WellCare reportedly offered competing bids for Aetna assets in 2016.
- Centene abruptly left Kentucky in 2011.

Perfect Storm: Soaring Insurance Profits

- Onerous and inappropriate refund and denial of care requests for Ambulatory Surgery Center (ASC) services:
  - Extensive refund demands
  - Based on a revision and retrospective application of the law to 2015 with Centers for Medicare and Medicaid Services (CMS) grouper rates, which was abolished in 2008
- Failure to follow the contract terms:
  - SHALL = MUST
  - SHOULD = MAY OR MAY NOT
- Notice of proposed material change in health benefit plan's agreement with participating provider clearly states:
  - If an insurer makes any material change to an agreement for the provision of health care services
  - The insurer shall provide the participating provider with at least ninety (90) days' notice of the material change.
  - The notice of proposed material change shall be sent in an orange-colored envelope with the phrase "ATTENTION! CONTRACT AMENDMENT ENCLOSED!" – on the front of the envelope.

Perfect Storm: Onerous and Inappropriate Actions

- ASC fee schedule is quite inappropriate. There are no longer ASC group payments from CMS.
  - They have been changed to separate nerve block codes based on the complexity of the procedure, including required skill personnel, and time since 2008.
- The presented classification by Medicaid managed care organizations of these additional codes into Group I does not consider – their complexity, equipment, disposables, personnel and staff.
- Ironically, the published Grouper rates show that in Grouper 1 there is full payment for add-on codes as per the definition of an add-on code, which is not to be discounted.
- Medicaid does not have a simple philosophy in reimbursing for these grouper rates. They continue to fluctuate.

Perfect Storm: Signed Contract

APPENDIX A

AMBULATORY SURGERY CENTER SERVICES and COMPENSATION

In the capacity of an Ancillary Provider, the Provider shall provide to members Medically Necessary Covered Services, with prior authorization from HMO, within the scope, capacity and license of Provider. However, in no event will HMO's payment exceed Provider's customary and usual charges.

Outpatient Surgery - Outpatient Surgeries are paid on a Per Case (PC) Basis. Reimbursement for outpatient surgical procedures will be at the highest case rate. Ancillary Provider understands that no payment will be made for secondary outpatient surgical procedures performed on the same day with the exception of ungrouped surgeries.

Outpatient Surgical Groupers – Outpatient surgeries are paid on a Per Case (PC) basis utilizing ASC Groupers. The groupers will be updated annually with any new, revised, or deleted CPT codes. HMO will reimburse the following rates to the Ancillary Provider, effective as of the date set forth on the signature page:

Groups	Rate
1	$307.38
2	$412.79
3	$471.90
4	$582.25
5	$664.02
6	$775.59
7	$921.15
8	$911.55
Ungrouped	45% of billed charges

Ancillary Provider will bill with the appropriate CPT code for the description of the surgery. Any CPT code that includes "unspecified" or "unlisted" in its description will be denied. Ancillary Provider shall have the right to submit an appeal to HMO. If it is determined by HMO

Ungrouped Procedure Code - For valid procedure codes that are not grouped, HMO has established a payment rate equal to 45% of total claim billed charges.

Surgical Implants- If the cost of the implant is $100.00 or less, the ASC reimbursement rate is inclusive of the implant. If the cost of the implant is greater than $100.00, Provider will be reimbursed cost plus 10% of the implant cost exceeding $100.00. Provider must submit an invoice from the manufacturer with the claim showing the cost of the implant.

schedule and/or methodology changes.

JAN 05 2018

Perfect Storm: Inappropriately Used Contract

PROCEDURE CODE	DESCRIPTION	EFFECTIVE DATE	END DATE	GROUPER
64490	INJ PARAVERT F JNT C/T 1LEV	01/01/2015	12/31/2299	1
64491	INJ PARAVERT F JNT C/T 2 LEV	01/01/2015	12/31/2299	1
64492	INJ PARAVERT F JNT C/T 3 LEV	01/01/2015	12/31/2299	1
64493	INJ PARAVERT F JNT L/S 1LEV	01/01/2015	12/31/2299	1
64494	INJ PARAVERT F JNT L/S 2 LEV	01/01/2015	12/31/2299	1
64495	INJ PARAVERT F JNT L/S 3 LEV	01/01/2015	12/31/2299	1
64633	DESTROY CERV/THOR FACET JNT	01/01/2015	12/31/2299	1
64634	DESTROY C/TH FACET JNT ADDL	01/01/2015	12/31/2299	1
64635	DESTROY LUMB/SAC FACET JNT	01/01/2015	12/31/2299	2
64636	DESTROY L/S FACET JNT ADDL	01/01/2015	12/31/2299	1
62321	C/T epidural WITH imaging guidance	01/01/2015	12/31/2299	1
62323	L/S epidural WITH imaging guidance	01/01/2015	12/31/2299	1

Ad-on codes

Refusing to pay consider add-on codes

CGS Medicare Fee Schedule

CPT CODE	DESCRIPTION	ASC
64490	INJ PARAVERT F JNT C/T 1LEV	$368.90
64491	INJ PARAVERT F JNT C/T 2 LEV	
64492	INJ PARAVERT F JNT C/T 3 LEV	
64493	INJ PARAVERT F JNT L/S 1LEV	$368.90
64494	INJ PARAVERT F JNT L/S 2 LEV	
64495	INJ PARAVERT F JNT L/S 3 LEV	
64633	DESTROY CERV/THOR FACET JNT	$716.35
64634	DESTROY C/TH FACET JNT ADDL	
64635	DESTROY LUMB/SAC FACET JNT	$716.35
64636	DESTROY L/S FACET JNT ADDL	
62321	C/T epidural WITH imaging guidance	$283.95
62323	L/S epidural WITH imaging guidance	$283.95

Perfect Storm:

UNREASONABLE AND ONEROUS COVERAGE POLICIES

- **Preapprovals with denials**
  - Each organization has its own policies and its own multiple agencies spending too many dollars and time on administration.
    - A pre-certification visit, and a follow-up visit in-between.
    - Some of the insurers do not approve multiple treatments on one day, encouraging them to come back on multiple occasions or omit the treatments.
  - Medicaid managed care organizations have incorporated many onerous, highly variable, precertification requirements NOT based on evidence.
  - Utilization of multiple guidelines (which are not publicly available with each individual MCO having their own guidelines) rather than freely available and universally accepted guidelines such as Medicare LCDs is a major issue.
  - MCOs are denying many treatments

Perfect Storm: Telehealth

Telephone only Follow-ups

Medicare Approval from March 2020

Office Visits		Telephone Visits	
Cpt code	Rate	Cpt code	Rate
99212	$42.46	99441	$42.46
99213	$70.82	99442	$70.82
99214	$103.14	99443	$103.14

Medicare vs Medicaid

Office Visits			Telephone Visits		
CPT code	Medicare	Medicaid	CPT code	Medicare	Medicaid
99212	$42.46	$31.08 (73%)	99441	$42.46	$11.05 (26%)
99213	$70.82	$42.63 (60%)	99442	$70.82	$21.57 (30%)
99214	$103.14	$67.10 (65%)	99443	$103.14	$31.84 (31%)

Perfect Storm:

ADHERENCE MONITORING AND URINE DRUG TESTING FOR PATIENTS ON OPIOID THERAPY

- Managed care organizations are attempting to discourage any type of monitoring so that patients will no longer be on opioids.
  - However, some patients need opioids to maintain their activity levels in conjunction with interventional techniques, even at lower doses.
  - Denial of these medications will only make them more vulnerable to illicit drugs on the street, a partial contributing factor to the heroin and fentanyl epidemic in the Commonwealth of Kentucky – worsened by COVID-19.
- Urine Drug Testing Mandated or Recommended by:
  - CDC guidelines
  - HB1 of Commonwealth of Kentucky
  - Kentucky Board of Medical Licensure regulations
  - ASIPP Opioid Guidelines

Perfect Storm:
Medicare and Medicaid Dual-Eligibility

- Dual-eligible beneficiaries are individuals who receive both Medicare and Medicaid benefits.
  - CMS pays state Medicaid a fee.

- The two programs cover many of the same services, but Medicare pays first for the Medicare-covered services that are also covered by Medicaid.

- Medicaid covers services that Medicare does not cover, and these benefits are outlined in detail in this guidance.

Perfect Storm:

Medicare Cost-Sharing for Dual Eligibles: Who Pays What for Whom?

- State Medicaid agencies have legal obligations to pay Medicare cost-sharing for most "dual eligibles" – Medicare beneficiaries who are also eligible for some level of Medicaid assistance.
- Further, most dual eligibles are excused, by law, from paying Medicare cost-sharing, and providers are prohibited from charging them.

Perfect Storm:
Cost-Sharing Plans

- An example of the cost-sharing payment system allowed by the BBA is as follows:
  - If Medicare allows $100 for a physician visit (and thus pays $80, or 80%), under full payment of cost-sharing, the state would pay the full $20 remaining.
  - But if the state's rate for the same service is $80, the state will pay nothing, since Medicare has already paid the full amount of the state payment.
  - If the state's payment was $90, the state would pay the difference between Medicare's payment and the state's payment, or $10.

Requested Actions

Perfect Storm: May continue …

- If this is allowed to continue, there will be no protections for providers.
  - Medicaid fee schedules are being slashed with no notice and no opportunity to discuss it with the MCOs.
  - For example, WellCare, Passport Health Plan and other MCOs are slashing fee schedule amounts, such as a reductions of 40% to 60% for laboratory testing on top of severe utilization restrictions.
- Present status
  - The new contracts do not cover standard, legitimate treatments that are recognized by the professional provider associations and are covered by Medicare and backed by extensive literature.
- For example, the MCOs are denying care or therapeutic facet joint nerve blocks that are paid for and recognized by Medicare (with 100% denial rate) recognized by Medicare, thus, Centers for Medicare and Medicaid Services (CMS) which incorporates Medicaid in the name itself.
- The letters of denial include repetition of same language, often insulting and condescending language and reports.

Perfect Storm: A real life example

- The current situation is synonymous to purchasing a car for a sticker price of $16,000.

Perfect Storm: A real life example

- After the payment for car is made, the dealer comes and takes away 2 of the seats.
- After a month, the dealer comes back and takes away another 2 seats.
- Then, the dealer comes back and takes the wheels. The next month or even next week, the dealer takes away the steering wheel, and after that, takes the engine.

Perfect Storm: Requested Actions

- Timing
  - Once the contracts are signed, no one can do anything at all. We have this experience with Centene with the Senior Beshear Administration.
  - Now we are going to repeat the same with the present Administration.
- The Commonwealth has already paid a certain price per member per month based on rates for anticipated coverage of certain procedures.
- The General Assembly shall pass an omnibus provider protection bill immediately, or at the latest in the upcoming 2021 Session, to address the issue of adhesion contracts and denial of basic protections and due process for providers.
  - During this time, contracts of state with Medicaid managed insurers **MUST** be suspended indefinitely.

Perfect Storm: Requested Actions

- That the omnibus bill shall address multiple issues:
- Fee schedule rates that should be fixed per the term of the contract instead of a constant change and reduction of reimbursements without notice or an opportunity to discuss or negotiate. The rates as per the old contract must be fixed for the duration of the contract without increases or decreases.
- That MCOs must follow previously signed contracts, fee schedules, and must honor those fee schedules for the term of the contract of insurers with state. If they would like to revised after 3 years, with a lower rate Medicare fee schedule and rates of 100% must be followed, with modifiers.
- All MCOs must offer the same template contract to providers that has been approved by Medicaid and provider associations.
- Providers should be given a choice to participate in value-based programs and receive additional benefits if the provider provides improved care.

Perfect Storm: Requested Actions

- Medicaid **MUST** follow evidence-based guidelines prepared by Medicare in the form of LCDs which are prepared by national experts based on evidence, instead of using their own non-evidence or evidence-biased guidelines which do not make any sense.
  - Since Centers for Medicare and Medicaid Services, includes MEDICAID in its name and the major funding source, this must be made mandatory.
- Medicaid whether it is for Medicaid only members, or continuously misapplied by Managed Care Organizations must revise their fee schedule based on evidence or simply must use Medicare fee schedules along with all the modifiers including their LCDs.
- Subsequently, if Medicaid Managed Care Organizations are willing to refund the state, reduce their prices or increase the access, the Medicare schedule may be applied to all services by traditional Medicaid along with Medicaid Managed Care Organizations.

Perfect Storm: Requested Actions

- Must start reimbursement for phone only services as per CMS, applying back to March 2020.
  - MCOs are severely hampering the access to patients.
  - This would be of great assistance to the public and also improve quality of care, specifically in rural areas, improving safety enormously
  - It is our goal during this pandemic to keep patients away from health care facilities, thus avoiding exposures to the best of our ability while also providing appropriate care.
- Medicaid also continues to have multiple issues with payments related to Medicare copay when Medicaid is the secondary payer.

We will work with

- General Assembly
- Administration
- MCOs
- Any and All Relevant Parties

Thank You

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