

2010 Medical Malpractice Statistical Summary

Data Submitted by Insurers and Self-Insurers
Claims Closed from Jan. 1, 2008 through Dec. 31, 2010

Rates and Forms Division

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June 2011



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www.insurance.wa.gov

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Introduction

In 2006, the Washington State Legislature enacted comprehensive health care liability reform that requires all insuring entities¹ and self-insurers² to report medical malpractice closed claim data to the Office of the Insurance Commissioner (OIC)³. The OIC, in turn, must post summary medical malpractice closed claim reports on the OIC website.⁴

Data included in this statistical summary is similar to that published June 15, 2010. Since June of 2010, insuring entities and self-insurers have updated records and added a few reports, so data contained in this summary is more accurate than data published in June 2010. These summaries include claims closed with an indemnity payment to a claimant and/or defense and cost containment expenses incurred by an insuring entity or self-insurer.⁵ Each closed claim is associated with one defendant.

This summary report includes data for medical malpractice claims closed in calendar years 2008 through 2010⁶. There are three primary types of data summarized in this report:

Defense Costs: These are expenses paid by the insuring entity or self-insurer to defend an insured, and are also called defense and cost containment expenses (DCC). These are expenses allocated to a specific claim, such as court costs and fees paid to defense attorneys or expert witnesses. They do not include internal costs to settle claims, such as salaries for claims staff or operating overhead for a claims department.⁷

Economic Damages: The vast majority of these amounts are an estimate of the claimant's economic damages⁸ by the insuring entity or self-insurer when a claimant receives an indemnity payment. In a few cases, a court specified economic damages when issuing a verdict, and these economic damages are included in the totals.

Paid Indemnity: The amount paid by an insuring entity or self-insurer to the claimant to resolve the claim.

The OIC has also provided a summary of "incident level"⁹ data. One medical incident may result in more than one claim, so incident level data are the sum of two or more claims. Available incident level data are incomplete for several reasons:

1 Insuring entities are defined in [RCW 48.140.010\(8\)](#), and include types of [insurance companies, joint underwriting associations, and risk retention groups](#).

2 Self-insurer is defined in [RCW 48.140.010\(11\)](#).

3 [House Bill 2292 - 2005-06](#) session and [RCW 48.140.010](#) (8) and (11).

4 [RCW 48.140.040](#). On February 2, 2011, Insurance Commissioner Mike Kreidler notified the legislature that the OIC would post statistical summaries by June 15.

5 See [WAC 284-24D-060](#).

6 Data submitted on or before April 5, 2011.

7 See [WAC 284-24D-020\(1\)](#), [WAC 284-24D-330](#) and [WAC 284-24D-340](#).

8 See [RCW 4.56.250\(1\)\(a\)](#), [WAC 284-24D-350](#), [WAC 284-24D-360](#), [WAC 284-24D-362](#), [WAC 284-24D-364](#), and [WAC 284-24D-370](#).

9 [RCW 48.140.030\(1\)](#) says insuring entities and self-insurers must provide an incident identifier for "companion claims", which are defined as "...separate claims involving the same incident of medical malpractice made against other providers or facilities...."

- Claims related to one incident may close over a period of years. An insuring entity or self-insurer may close some claims quickly and report them to the OIC, while other claims related to an incident may remain open and unresolved.
- Defendants may not be part of the same organization or be insured by the same company. In this situation, unrelated insuring entities or self-insurers do not have means to link the claims together.

In spite of the limitations, there is enough data available to show that incidents of medical malpractice are more costly to resolve than individual claims suggest.

Data in this statistical summary cannot be compared to data submitted by attorneys, for several reasons. First, insuring entities and self-insurers report all claims closed with a payment to a claimant or instances where they have expenses to defend a claim. In comparison, attorneys report all settlements only if they file a lawsuit against one or more defendants. Second, insuring entities and self-insurers report data separately for each defendant, right after the claim is resolved. Attorneys submit one settlement report that includes payments made by all defendants whom the attorney sued. An attorney must wait until all claims are resolved; consequently, the timing of their reports will be different from insurers and self-insurers. Finally, since attorneys are reporting all payments made by all defendants, the average settlement will be higher than the average closed claim reported by insuring entities and self-insurers.

Example: If an attorney sues several medical providers, some medical providers may be released from the suit quickly if they had a limited role in providing health care. The remaining medical providers may be involved in the dispute resolution process for several years. Insurers and self-insurers will close and report individual claims to the OIC as each defendant resolves their individual claim. A plaintiff attorney, however, must wait until all claims are resolved against all defendants, and report the total amount of compensation received by the claimant after all claims are settled.

Key 2010 closed claim statistics:

- The total number of claims closed increased to 913, compared to 856 in the prior year.
- The total number of indemnity payments increased 11.9 percent to 452.
- The average indemnity payment decreased 15.5 percent to \$212,588.
- Total paid indemnity, which is a combination of average paid indemnity and the number of paid claims, dropped 5.4 percent because of lower average paid indemnity.
- Average defense costs declined 12.8 percent to \$37,481. This is the second year in a row that average defense costs have declined. The overall decrease since 2008 is 24.9 percent.

Calendar year comparisons¹⁰

Reporting entities submitted these data to the OIC for the three-year period ending December 31, 2010:

	-----Year Closed-----			Percent Change over Prior Year
	2008	2009	2010	
Total Claims Closed	889	856	913	6.7%
Number of Indemnity Payments	458	404	452	11.9%
Total Paid Indemnity	\$107,815,931	\$101,612,279	\$96,089,848	-5.4%
Total Economic Damages	\$53,123,399	\$44,640,566	\$50,100,084	12.2%
Average Indemnity Payment	\$235,406	\$251,516	\$212,588	-15.5%
Average Economic Damages	\$115,990	\$110,496	\$110,841	0.3%
Number of Claims With Defense Costs	780	745	774	3.9%
Total Defense Costs	\$38,929,322	\$32,040,112	\$29,010,551	-9.5%
Average Defense Cost	\$49,909	\$43,007	\$37,481	-12.8%

Number of claims: For calendar year 2010, insuring entities and self-insurers¹¹ submitted 913 medical malpractice¹² closed claim reports to the OIC, an increase of 6.7 percent from the prior year.

Payments to claimants: In 2010, insuring entities and self-insurers paid \$96.1 million on 452 claims, or an average of \$212,588 per paid claim. The number of indemnity payments increased by 11.9 percent, while the average payment decreased by 15.5 percent over the prior year.

Economic damages: If an insuring entity or self-insurer makes an indemnity payment, it must estimate the portion of the payment that is for economic damages. In a handful of cases, the court itemized economic damages during the verdict process. In 2010, insuring entities and self-insurers paid \$50.1 million for economic damages on 452 claims. Average economic damages were \$110,841 per claim, an increase of 0.3 percent from the prior year. In 2010, economic damages accounted for 52.1 percent of the average indemnity payment, as compared to 43.9 percent in 2009 and 2008.

¹⁰ [RCW 48.140.040](#) requires the commissioner to provide a calendar year summary of data.

¹¹ See [WAC 284-24D-020](#)(19).

¹² See [RCW 48.140.010](#)(9).

Defense and cost containment (DCC): In 2010, insuring entities and self-insurers paid \$29.0 million to defend 774 claims. The average defense cost of \$37,481 per claim was 12.8 percent lower than the prior year. Insuring entities and self-insurers closed 84.8 percent of all claims with defense and cost containment expenses.

Million dollar claims: Insuring entities and self-insurers closed 49.5 percent of all claims with an indemnity payment to a claimant. Of those claims closed in 2010 with an indemnity payment:

- 29 claims closed with paid indemnity of \$1 million or more, or six more claims than in 2009. These claims resulted in total payments of \$49.9 million. The average payment for these claims decreased 21.1 percent to \$1.7 million. Results in 2009 were skewed by an extraordinary payment of \$14.4 million for one claim. Without this claim, the average indemnity payment in 2009 would have been \$1.6 million instead of \$2.2 million.

Claims Closed for \$1 Million or More	-----Year Closed-----			Total
	2008	2009	2010	
Number of Indemnity Payments	29	23	29	81
Total Indemnity Payments	\$51,515,890	\$50,120,627	\$49,868,754	\$151,505,271
Average Indemnity Payment	\$1,776,410	\$2,179,158	\$1,719,612	\$1,870,435

- 423 claims closed with paid indemnity of less than \$1 million, or 42 more than in 2009. These closed claims resulted in total payments of \$46.2 million. The average payment for claims under \$1 million was \$109,270, a decrease of 19.1 percent over the prior year.

Claims Closed for Less Than \$1 Million	-----Year Closed-----			Total
	2008	2009	2010	
Number of Indemnity Payments	429	381	423	1233
Total Paid Indemnity	\$56,300,041	\$51,491,652	\$46,221,094	\$154,012,787
Average Indemnity Payment	\$131,236	\$135,149	\$109,270	\$124,909

Comparison of individual claim data and “incident level” data

This table shows how individual claim data compares to “incident level” data for the three-year period ending December 31, 2010. One medical incident can result in several claims against different medical providers or facilities. If this is the case, the insuring entity or self-insurer link these claims together and report the total costs to settle all claims related to that medical incident.

	Total Claims	Incidents (more than 1 claim)
Total Claims Closed	2,658	469
Number of Indemnity Payments	1,314	186
Total Paid Indemnity	\$305,518,058	\$74,336,021
Total Economic Damages	\$147,864,049	\$34,741,187
Average Indemnity Payment	\$232,510	\$399,656
Median Indemnity Payment	\$50,000	\$200,000
Average Economic Damages	\$112,530	\$186,781
Number of Claims With Defense Costs	2,299	453
Total Defense Costs	\$99,979,985	\$23,740,543
Average Defense Cost	\$43,488	\$52,407

Average paid indemnity at the incident level is 71.9 percent higher than average paid indemnity per claim, and the median indemnity payment is substantially higher. If claims are made against more than one medical provider or facility, total compensation to the claimant is much higher.

Settlement data submitted from attorneys is different. An attorney may file a lawsuit against several unrelated entities. When the attorney resolves all claims, they submit a settlement report that includes payments made by unrelated insuring entities and self-insurers. The OIC is prohibited from collecting data that identifies claimants or medical providers, so the OIC cannot provide incident level data that is comparable to what an attorney reports.

Claim data by type of settlement

In 2010, the parties negotiated a settlement for 81.2 percent of claims that resulted in an indemnity payment, and these settlements comprise 57.4 percent of total payments. Average paid indemnity for these types of settlements was \$150,332.

-----Calendar Year 2010 Results-----							
How Claim was Resolved	Total Reported Claims	Claims with Indemnity Payments	Total Paid Indemnity	Average Paid Indemnity	Claims with Defense Costs	Total Defense Costs	Average Defense Costs
Abandoned by Claimant	320	3	\$6,668	\$2,223	318	\$3,420,902	\$10,758
Settled by Parties	387	367	\$55,171,801	\$150,332	250	\$11,034,001	\$44,136
Court Disposed Claim	109	4	\$30,212	\$7,553	109	\$6,999,616	\$64,217
Settled by Alternative Dispute Resolution	97	78	\$40,881,167	\$524,118	97	\$7,556,032	\$77,897
Total	913	452	\$96,089,848	\$212,588	774	\$29,010,551	\$37,481

Claimants agreed to use alternative dispute resolution (arbitration, mediation, private trial) to resolve 17.3 percent of claims with paid indemnity, and these settlements comprise 42.5 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$524,118, and median paid indemnity was \$200,000.

In 2010, the courts resolved only four claims with paid indemnity, resulting in average paid indemnity of \$7,553. This compares to 16 claims in 2009, which had an average indemnity payment of \$639,690.

On the next page is a summary of claims resolved in 2010 by alternative dispute resolution – a formal settlement process that occurs outside of the judicial process. The law¹³ mandates mediation in most cases in which a plaintiff files a lawsuit, and mediation is the most-used method of alternative dispute resolution. Mediation is required for actions subject to mandatory arbitration, which affects a handful of claims.

¹³ See [RCW 7.70.100](#). This law says: “(3) After the filing of the ninety-day presuit notice, and before a superior court trial, all causes of action, whether based in tort, contract, or otherwise, for damages arising from injury occurring as a result of health care provided after July 1, 1993, shall be subject to mandatory mediation prior to trial except as provided in subsection (6) of this section. . . . (6) The mandatory mediation requirement of subsection (4) of this section does not apply to an action subject to mandatory arbitration under chapter 7.06 RCW or to an action in which the parties have agreed, subsequent to the arisal of the claim, to submit the claim to arbitration under chapter 7.04A or 7.70A RCW.”

-----Calendar Year 2010 Results-----

Method of Alternative Dispute Resolution	Total Reported Claims	Claims with Indemnity Payments	Total Paid Indemnity	Average Paid Indemnity	Claims with Defense Costs	Total Defense Cost	Average Defense Cost
Arbitration Award for Plaintiff	3	3	\$1,400,000	\$466,667	3	\$488,341	\$162,780
Arbitration Decision for Defense	4	0	\$0	\$0	4	\$246,813	\$61,703
Mediation	89	74	\$39,331,167	\$531,502	89	\$6,428,687	\$72,232
Private Trial (Formal Trial Before Neutral Party)	1	1	\$150,000	\$150,000	1	\$392,191	\$392,191
Total	97	78	\$40,881,167	\$524,118	97	\$7,556,032	\$77,897

Of the 97 reported claims settled by alternative dispute resolution, 89 settled in mediation, resulting in an average indemnity payment of \$531,502. Three other claims ended with arbitration awards for the plaintiff averaging \$466,667.

Claim data by type of organization

The OIC combined three years of data in this table to neutralize the effect of year-to-year fluctuations. For the three-year period ending December 31, 2010, hospitals had the lowest average cost to defend claims and the highest average indemnity payment.

	-----Type of Organization-----			Three Year Total
	Group or Practice	Hospital or Hospital Unit	All Other	
Total Reported Claims	1443	792	423	2658
Total Paid Indemnity	\$152,531,770	\$104,963,263	\$48,023,025	\$305,518,058
Number of Claims with Paid Indemnity	666	429	219	1314
Average Paid Indemnity	\$229,027	\$244,670	\$219,283	\$232,510
Total Defense Costs	\$60,023,150	\$25,065,957	\$14,890,878	\$99,979,985
Number of Claims with Defense Costs	1274	660	365	2299
Average Defense Cost	\$47,114	\$37,979	\$40,797	\$43,488

Claim data by type of insuring entity

For the three-year period ending December 31, 2010, commercial insurers (admitted and surplus lines) reported higher average defense costs than self-insurers, but have reduced defense costs every year since 2008. In 2008, commercial insurers reported average defense costs of \$54,397. Average defense costs for commercial insurers dropped to \$48,592 in 2009 and \$39,077 in 2010. These are notable year-to-year improvements.

	-----Type of Insuring Entity-----			
	Commercial Insurers	Self-Insurers	Risk Retention Groups	Total
Total Reported Claims	1,583	984	91	2,658
Total Paid Indemnity	\$159,045,404	\$120,128,873	\$26,343,781	\$305,518,058
Number of Claims with Paid Indemnity	750	516	48	1,314
Average Paid Indemnity	\$212,061	\$232,808	\$548,829	\$232,510
Total Defense Costs	\$66,036,626	\$30,547,437	\$3,395,922	\$99,979,985
Number of Claims with Defense Costs	1,400	825	74	2,299
Average Defense Cost	\$47,169	\$37,027	\$45,891	\$43,488

Claim data by injury outcome

The OIC combined data in this table to neutralize the effect of year-to-year fluctuations. For the three-year period ending December 31, 2010, claims with grave permanent injury had the highest percentage of economic damages, followed by claims with major permanent injuries.

Injury Outcome	Claims With Paid Indemnity	Total Paid Indemnity	Total Economic Loss	Average Paid Indemnity	Average Economic Loss	Percent Economic Loss
Emotional Injury Only	116	\$5,607,919	\$1,065,208	\$48,344	\$9,183	19.0%
Insignificant Injury	89	\$2,858,264	\$1,233,293	\$32,115	\$13,857	43.1%
Minor Temporary Injury	400	\$13,509,994	\$5,339,130	\$33,775	\$13,348	39.5%
Major Temporary Injury	146	\$18,710,091	\$6,767,362	\$128,151	\$46,352	36.2%
Minor Permanent Injury	142	\$23,745,536	\$6,373,987	\$167,222	\$44,887	26.8%
Significant Permanent Injury	103	\$41,489,191	\$19,937,731	\$402,808	\$193,570	48.1%
Major Permanent Injury	80	\$68,854,170	\$36,982,018	\$860,677	\$462,275	53.7%
Grave Permanent Injury	21	\$18,957,373	\$12,230,412	\$902,732	\$582,401	64.5%
Death	217	\$111,785,520	\$57,934,908	\$515,141	\$266,981	51.8%
Total	1,314	\$305,518,058	\$147,864,049	\$232,510	\$112,530	48.4%

Calendar-incident year comparisons

These tables¹⁴ show that many claims were resolved several years after the medical incident that led to the claim. This table shows that insuring entities and self-insurers settle most claims within six years of the date when the incident occurred.

Year Claim Closed	Closed Claim Count by Incident Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
2008	27	33	110	168	184	133	146	46		
2009		18	42	100	176	139	160	146	46	
2010			41	46	104	135	187	182	148	40

The table below shows that the longer a claim remains open and unresolved, the more expensive it is to settle. For example, the most expensive incident years were 2001 and 2003 for claims closed in 2008. A similar pattern is evident for claims closed in 2009 and 2010.

Year Claim Closed	Average Paid Indemnity Per Closed Claim by Incident Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
2008	\$464,452	\$362,204	\$475,434	\$345,098	\$209,945	\$187,375	\$71,325	\$55,729		
2009		\$87,500	\$136,714	\$397,895	\$229,633	\$232,126	\$265,621	\$74,460	\$5,253	
2010			\$54,600	\$408,969	\$406,886	\$219,306	\$241,053	\$141,799	\$169,721	\$12,834

Finally, the table below show defense costs increase as a claim ages.

Year Claim Closed	Average Defense Cost Per Closed Claim by Incident Year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
2008	\$92,859	\$90,810	\$88,039	\$53,008	\$52,054	\$18,698	\$3,885	\$4,897		
2009		\$77,763	\$78,152	\$99,408	\$37,774	\$31,195	\$22,449	\$3,906	\$1,427	
2010			\$45,187	\$93,866	\$86,961	\$37,374	\$31,669	\$15,472	\$8,870	\$6,239

¹⁴ [RCW 48.140.040](#) requires the OIC to summarize calendar-incident year data. The amount of data the OIC can display in these tables is limited by [confidentiality laws](#).