

2011 Medical Malpractice Statistical Summary

Data Submitted by Insurers and Self-Insurers
Claims Closed from Jan. 1, 2008 through Dec. 31, 2011

Rates and Forms Division

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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, 2011. Since June of 2011, 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 2011. 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 2011.⁶ 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 specifies economic damages when issuing a verdict, and these economic damages are included in the totals.

Paid Indemnity: These are amounts paid by an insuring entity or self-insurer to the claimant to resolve the claim.

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 48.140.020](#).

⁴ [RCW 48.140.040\(2\)](#). On February 2, 2012, 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, 2012.

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](#).

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. For example:

- 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. When multiple claims are connected to a single incident, smaller claims tend to close more quickly than larger claims.
- 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 the means to link the claims together.

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

For several reason, data in this statistical summary cannot be compared to data submitted by attorneys. First, insuring entities and self-insurers report all claims closed with a payment to a claimant or instances in which they have expenses to defend a claim. In comparison, attorneys report 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 each 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’s attorney, however, must wait until all claims are resolved against all defendants, and then report the total amount of compensation received by the claimant after all claims are settled.

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...”

Key 2011 closed claim statistics:

Claims

- The number of claims closed increased 22.3 percent to 1,135, compared to 928 in the prior year.

Indemnity Payments

- The average indemnity payment increased 2.1 percent to \$217,396.
- Total paid indemnity increased 11.8 percent to \$108 million.
- The number of indemnity payments increased 9.5 percent to 498.

Defense Costs

- Average defense costs increased 11.3 percent to \$41,096.
- Total defense costs increased from \$29 million to \$41 million, a 40.4% increase.
- The number of claims with defense costs increased 26.2% to 997.

Calendar year comparisons¹⁰

Reporting entities submitted these data to the OIC for the four-year period ending December 31, 2011:

	-----Year Closed-----				Percent Change over Prior Year
	2008	2009	2010	2011	
<i>Total Claims Closed</i>	888	854	928	1,135	22.3%
<i>Number of Indemnity Payments</i>	458	404	455	498	9.5%
<i>Total Paid Indemnity</i>	\$107,815,931	\$101,612,279	\$96,870,959	\$108,263,146	11.8%
<i>Total Economic Damages</i>	\$53,123,399	\$44,640,566	\$50,881,195	\$49,646,610	-2.4%
<i>Average Indemnity Payment</i>	\$235,406	\$251,516	\$212,903	\$217,396	2.1%
<i>Average Economic Damages</i>	\$115,990	\$110,496	\$111,827	\$99,492	-11.0%
<i>Number of Claims With Defense Costs</i>	779	743	790	997	26.2%
<i>Total Defense Costs</i>	\$38,929,202	\$32,033,539	\$29,158,021	\$40,945,914	40.4%
<i>Average Defense Cost</i>	\$49,973	\$43,114	\$36,909	\$41,069	11.3%

Number of claims: For calendar year 2011, insuring entities and self-insurers submitted 1,135 medical malpractice¹¹ closed claim reports to the OIC, an increase of 22.3 percent from the prior year.

Payments to claimants: In 2011, insuring entities and self-insurers paid \$108 million on 498 claims, or an average of \$217,396 per paid claim. The number of indemnity payments increased by 9.5 percent, while the average payment increased by 2.1 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, a court itemized economic damages during the verdict process. In 2011, insuring entities and self-insurers paid \$49.6 million for economic damages on 498 claims. Average economic damages were \$99,492 per claim, a decrease of 11 percent from the prior year. In 2011, economic damages accounted for 45.8 percent of the total indemnity payments, as compared to an average of 48.5 percent over the three prior years.

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

¹¹ See [RCW 48.140.010\(9\)](#).

Defense and cost containment (DCC)

In 2011, insuring entities and self-insurers paid \$40.9 million to defend 997 claims. The average defense cost of \$41,069 per claim was 11.3 percent higher than the prior year. Insuring entities and self-insurers closed 87.8 percent of all claims with defense and cost containment expenses.

	-----Year Closed-----				Percent Change over Prior Year
	2008	2009	2010	2011	
<i>Total Claims Closed</i>	888	854	928	1,135	22.3%
<i>Claims with Defense Counsel</i>	621	591	564	763	35.3%
<i>Total Paid to Defense Counsel</i>	\$29,328,527	\$24,671,686	\$22,873,492	\$31,622,913	38.3%
<i>Average Paid to Defense Counsel</i>	\$47,228	\$41,746	\$40,556	\$41,445	2.2%
<i>Claims with Experts Hired</i>	387	383	357	525	47.1%
<i>Total Paid to Experts</i>	\$4,111,117	\$3,690,354	\$2,859,585	\$4,362,146	52.5%
<i>Average Paid to Experts</i>	\$10,623	\$9,635	\$8,010	\$8,309	3.7%
<i>Claims with Other Defense Costs</i>	457	433	474	684	44.3%
<i>Total Paid for Other Defense Costs</i>	\$5,489,556	\$3,671,499	\$3,424,944	\$4,960,855	44.8%
<i>Average Paid For other Defense Costs</i>	\$12,012	\$8,479	\$7,226	\$7,253	0.4%
<i>Claims with Defense Costs (All types)</i>	779	743	790	997	26.2%
<i>Total Paid to Defense Costs (All types)</i>	\$38,929,202	\$32,033,539	\$29,158,021	\$40,945,914	40.4%
<i>Average Paid for All Types of Defense Costs</i>	\$49,973	\$43,114	\$36,909	\$41,069	11.3%

Payments to defense counsel: The average amount paid for defense counsel was lower in 2010 and 2011. The number of claims involving defense counsel increased significantly in 2011, which correlates to the increased number of closed claims.

Payments to expert witnesses: The average amount paid for experts was also lower in 2010 and 2011. The number of claims involving experts increased significantly in 2011, which correlates to the increased number of closed claims.

Overall, the number of claims with defense costs has increased more than the number of claims with indemnity payments. Claims with defense costs increased by 26.2 percent, while claims with indemnity payments were up by 9.5 percent. This explains, in large part, the 40.4 percent increase in total defense costs.

Million dollar claims

Insuring entities and self-insurers closed 43.9 percent of all claims with an indemnity payment to a claimant. Of those claims closed in 2011 with an indemnity payment:

29 claims closed with paid indemnity of \$1 million or more, the same number as in 2010. These claims resulted in total payments of \$48.8 million. The average payment for these claims decreased 2.1 percent to \$1.68 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	2011	
Number of Indemnity Payments	29	23	29	29	110
Total Indemnity Payments	\$51,515,890	\$50,120,627	\$49,868,754	\$48,837,629	\$200,342,900
Average Indemnity Payment	\$1,776,410	\$2,179,158	\$1,719,612	\$1,684,056	\$1,821,299

469 claims closed with paid indemnity of less than \$1 million, or 43 more than in 2010. These closed claims resulted in total payments of \$59.4 million. The average payment for claims under \$1 million was \$126,707, which is close to the four-year average payment.

Claims Closed for Less Than \$1 Million	-----Year Closed-----				Total
	2008	2009	2010	2011	
Number of Indemnity Payments	429	381	426	469	1,705
Total Paid Indemnity	\$56,300,041	\$51,491,652	\$47,002,205	\$59,425,517	\$214,219,415
Average Indemnity Payment	\$131,236	\$135,149	\$110,334	\$126,707	\$125,642

Comparison of individual claim data and “incident level” data

This table shows how individual claim data compares to “incident level” data for the four-year period ending December 31, 2011. One medical incident¹² can result in several claims against different medical providers or facilities. If this is the case, the insuring entity or self-insurer links these claims together so that the OIC can total the costs to settle all claims related to that medical incident.

	<i>Total Claims</i>	<i>Incidents (more than one claim)</i>
<i>Number of Claims/Incidents</i>	3,805	396
<i>Number with Indemnity Payments</i>	1,815	192
<i>Total Paid Indemnity</i>	\$414,562,315	\$99,632,380
<i>Total Economic Damages</i>	\$198,291,770	\$43,642,057
<i>Average Indemnity Payment</i>	\$228,409	\$518,919
<i>Median Indemnity Payment</i>	\$50,000	\$263,019
<i>Average Economic Damages</i>	\$109,252	\$227,302
<i>Number with Defense Costs</i>	3,309	389
<i>Total Defense Costs</i>	\$141,066,676	\$34,189,166
<i>Average Defense Cost</i>	\$42,631	\$87,890

Average paid indemnity at the incident level is 127 percent higher than average paid indemnity per claim, and the median indemnity payment is substantially higher at the incident level. For claims made against more than one medical provider or facility, total compensation to the claimants is much higher. Out of 396 incidents, 33 resulted in indemnity payments of \$1 million or more.

Since there can be a significant period of time between when the first claim and the last claim related to an incident is closed, the incident data shown here are incomplete. Only about three-fourths of the claims for these 396 incidents were closed by the end of 2011, so average indemnity payments and defense costs will increase over time as the remaining claims are resolved.

¹² See [RCW 48.140.030\(1\)\(b\)](#).

Calendar-incident year comparisons

These tables¹³ show that many claims were resolved several years after the medical incident that led to the claim. Insuring entities and self-insurers settle most claims within five years of the date when the incident occurred. Claims closed eight or more years after the incident occurred are shown in the “Prior” column.

Year Claim Closed	Closed Claim Count											
	Incident Year											
	Prior	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
2008	42	27	33	110	168	184	133	146	45			
2009	29		18	42	100	176	139	158	146	46		
2010	30			41	46	104	136	193	185	152	41	
2011	66				35	42	124	239	214	187	167	61

The table below shows that the longer a claim remains open and unresolved, the more expensive it is to settle. Simple claims are closed quickly, while more complex and expensive claims take longer to resolve.

Year Claim Closed	Average Paid Indemnity										
	Incident Year										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
2008	\$464,452	\$362,204	\$475,434	\$345,098	\$209,945	\$187,375	\$71,325	\$55,729			
2009		\$87,500	\$136,714	\$387,878	\$239,852	\$228,573	\$265,621	\$74,460	\$5,273		
2010			\$54,600	\$408,969	\$406,886	\$219,306	\$246,837	\$139,984	\$168,178	\$12,834	
2011				\$143,104	\$192,646	\$604,602	\$255,833	\$220,420	\$219,506	\$86,560	\$35,110

¹³ [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](#).

The table below shows defense costs increase as a claim ages.

Year Claim Closed	Average Defense Cost										
	Incident Year										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
2008	\$92,859	\$90,810	\$88,039	\$53,008	\$52,054	\$18,698	\$3,885	\$5,149			
2009		\$77,763	\$78,152	\$99,408	\$37,774	\$31,195	\$22,729	\$3,906	\$1,427		
2010			\$45,315	\$93,847	\$86,961	\$36,783	\$31,347	\$15,198	\$8,666	\$5,957	
2011				\$60,454	\$81,330	\$93,209	\$35,268	\$28,704	\$16,496	\$5,080	\$2,335

Claim data by type of settlement

In 2011, the parties negotiated a settlement for 75.1 percent of claims that resulted in an indemnity payment, and these settlements comprise 55.5 percent of total payments. Average paid indemnity for these types of settlements was \$160,525.

How Claim was Resolved	-----Calendar Year 2011 Results-----						
	Total Reported Claims	Claims with Indemnity Payments	Total Paid Indemnity	Average Paid Indemnity	Claims with Defense Costs	Total Defense Costs	Average Defense Costs
<i>Abandoned by Claimant</i>	391	9	\$39,321	\$4,369	385	\$4,336,668	\$11,264
<i>Settled by Parties</i>	431	374	\$60,036,249	\$160,525	302	\$13,122,186	\$43,451
<i>Court disposed Claim</i>	183	11	\$3,308,394	\$300,763	182	\$13,976,237	\$76,793
<i>Settled by Alternative Dispute Resolution</i>	130	104	\$44,879,182	\$431,531	128	\$9,510,823	\$74,303
Total	1,135	498	\$108,263,146	\$217,396	997	\$40,945,914	\$41,069

Claimants agreed to use alternative dispute resolution (arbitration, mediation, or a private trial) to resolve 20.9 percent of claims with paid indemnity, and these settlements comprise 41.5 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$431,531, and median paid indemnity was \$166,667.

Of the 183 claims resolved by the courts in 2011, 94 percent were resolved in favor of the defendant. The courts resolved 11 claims with paid indemnity, resulting in average paid indemnity of \$300,763.

Claim data by type of settlement: Period-to-period comparison

A comparison of two two-year periods shows that more claims have been reported recently, and both average paid indemnity and average defense costs are declining.

How Claim was Resolved	-----Calendar Year 2008-2009 Results-----						
	Total Reported Claims	Claims with Indemnity Payments	Total Paid Indemnity	Average Paid Indemnity	Claims with Defense Costs	Total Defense Costs	Average Defense Costs
<i>Abandoned by Claimant</i>	484	9	\$22,599	\$2,511	480	\$5,607,071	\$11,681
<i>Settled by Parties</i>	738	639	\$120,892,699	\$189,190	529	\$26,333,570	\$49,780
<i>Court disposed Claim</i>	301	25	\$15,298,256	\$611,930	301	\$22,197,663	\$73,746
<i>Settled by Alternative Dispute Resolution</i>	219	189	\$73,214,656	\$387,379	212	\$16,824,437	\$79,361
<i>Total</i>	1,742	862	\$209,428,210	\$242,956	1,522	\$70,962,741	\$46,625

How Claim was Resolved	-----Calendar Year 2010-2011 Results-----						
	Total Reported Claims	Claims with Indemnity Payments	Total Paid Indemnity	Average Paid Indemnity	Claims with Defense Costs	Total Defense Costs	Average Defense Costs
<i>Abandoned by Claimant</i>	723	12	\$45,989	\$3,832	716	\$7,774,342	\$10,858
<i>Settled by Parties</i>	820	743	\$115,239,161	\$155,100	554	\$24,165,258	\$43,620
<i>Court disposed Claim</i>	292	15	\$3,338,606	\$222,574	291	\$20,986,817	\$72,120
<i>Settled by Alternative Dispute Resolution</i>	228	183	\$86,510,349	\$472,734	226	\$17,177,518	\$76,007
<i>Total</i>	2,063	953	\$205,134,105	\$215,251	1,787	\$70,103,935	\$39,230

For the number of claims reported, claims abandoned by the claimant had the highest percentage of increase when comparing the two periods. These claims represented 27.8 percent of the total claims in 2008-2009, and increased to 35 percent of the total claims in 2010-2011.

Claim settlement data: Alternative dispute resolution

Alternative dispute resolution is a formal settlement process that occurs outside of the judicial process. The law¹⁴ 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 not required for actions subject to mandatory arbitration, which affects a handful of claims.

Method of Alternative Dispute Resolution	-----Calendar Year 2011 Results-----						
	Total Reported Claims	Claims with Indemnity Payments	Total Paid Indemnity	Average Paid Indemnity	Claims with Defense Costs	Total Defense Cost	Average Defense Cost
<i>Arbitration award for Plaintiff</i>	5	5	\$880,854	\$176,171	5	\$527,317	\$105,463
<i>Arbitration decision for Defense</i>	4	0	\$0	\$0	4	\$160,620	\$40,155
<i>Mediation</i>	115	94	\$39,736,465	\$422,728	114	\$8,210,419	\$72,021
<i>Private trial (formal trial before neutral party)</i>	6	5	\$4,261,863	\$852,373	5	\$612,467	\$122,493
<i>Total</i>	130	104	\$44,879,182	\$431,531	128	\$9,510,823	\$74,303

In 2011, of the 130 reported claims settled by alternative dispute resolution, 115 settled in mediation, resulting in an average indemnity payment of \$422,728. Relatively few claims were resolved using other methods, but claims resolved by private trial resulted in significantly higher average paid indemnity and average defense costs than mediation claims.

¹⁴ See [RCW 7.70.100](#). In subsection (3) this law says: "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." Subsection(6) says: "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."