

# 2018 Medical Malpractice Statistical Summary

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Data submitted by insurers and self-insurers

Claims closed from Jan. 1, 2014 through Dec. 31, 2018

June 2019

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[www.insurance.wa.gov](http://www.insurance.wa.gov)

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## Introduction

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In 2006, the Washington state Legislature enacted comprehensive health care liability reform that requires all insuring entities<sup>1</sup> and self-insurers<sup>2</sup> to report medical malpractice closed claim data to the Office of the Insurance Commissioner (OIC).<sup>3</sup> The OIC, in turn, must post summary medical malpractice closed claim reports on its website.<sup>4</sup>

Data in this statistical summary 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.<sup>5</sup> Each closed claim is associated with one defendant.

This summary report includes data for medical malpractice claims closed in calendar years 2014 through 2018.<sup>6</sup> There are three 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*. 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.<sup>7</sup>
- **Economic damages:** The vast majority of these amounts are an estimate of the claimant's economic damages<sup>8</sup> 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.

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

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

<sup>3</sup> [House Bill 2292 - 2005-06](#) session and [RCW 48.140.020](#).

<sup>4</sup> [RCW 48.140.040\(2\)](#). On March 15, 2019, Insurance Commissioner Mike Kreidler notified the Legislature that the OIC would post statistical summaries by June 1.

<sup>5</sup> See [WAC 284-24D-060](#).

<sup>6</sup> Data submitted on or before March 19, 2019.

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

<sup>8</sup> 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”<sup>9</sup> 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.

In addition to the closed claim data submitted by insurers and self-insurers, which are summarized in this report, the OIC also receives medical malpractice settlement data from attorneys, which are summarized in a separate report. For several reasons, 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, as 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.

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<sup>9</sup> [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 2018 closed claim statistics

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### Claims

- The number of closed claims decreased just 0.2% to 807, compared to 809 the previous year.

### Indemnity payments

- The average indemnity payment increased 42.7% to \$466,978.
- Total paid indemnity increased 56.3% to \$182.1 million.
- The number of indemnity payments increased 9.6% to 390.

### Defense costs

- Average defense costs increased 18.2% to \$72,605.
- Total defense costs increased 22.2% to \$50.8 million.
- The number of claims with defense costs increased 3.4% to 700.

## Calendar year comparisons<sup>10</sup>

Reporting entities submitted these data to the OIC for the five-year period ending Dec. 31, 2018:

	Year closed					Percent change over prior year
	2014	2015	2016	2017	2018	
Total claims closed	1,045	1,021	899	809	807	-0.2%
Number of indemnity payments	469	412	391	356	390	9.6%
Total paid indemnity	\$126,157,297	\$155,952,164	\$110,088,350	\$116,493,182	\$182,121,379	56.3%
Total economic damages	\$79,943,041	\$84,156,304	\$76,913,851	\$82,045,340	\$106,877,514	30.3%
Average indemnity payment	\$268,992	\$378,525	\$281,556	\$327,228	\$466,978	42.7%
Average economic damages	\$170,454	\$204,263	\$196,711	\$230,464	\$274,045	18.9%
Number of claims with defense costs	908	906	805	677	700	3.4%
Total defense costs	\$52,546,087	\$59,125,476	\$52,598,342	\$41,589,907	\$50,823,368	22.2%
Average defense cost	\$57,870	\$65,260	\$65,340	\$61,433	\$72,605	18.2%

**Number of claims:** For calendar year 2018, insuring entities and self-insurers submitted 807 medical malpractice<sup>11</sup> closed claim reports to the OIC, a decrease of 0.2% from the previous year.

**Payments to claimants:** In 2018, insuring entities and self-insurers paid \$182.1 million on 390 claims, an average of \$466,978 per paid claim. The number of indemnity payments increased by 9.6%, while the average payment increased by 42.7% from the previous year.

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

<sup>11</sup> See [RCW 48.140.010\(9\)](#).

**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 itemizes economic damages during the verdict process. In 2018, insuring entities and self-insurers paid \$106.9 million for economic damages. Average economic damages were \$274,045 per claim, an increase of 18.9% from the previous year. Economic damages accounted for 58.7% of the total indemnity payments in 2018, as compared to an average of 63.5% over the previous four years.

## Defense and cost containment

In 2018, insuring entities and self-insurers paid \$50.8 million to defend 700 claims. The average defense cost increased 18.2% to \$72,605 per claim. Insuring entities and self-insurers reported defense and cost containment expenses for 86.7% of all claims.

	Year closed					Percent change over prior year
	2014	2015	2016	2017	2018	
Total claims closed	1,045	1,021	899	809	807	-0.2%
Claims with defense counsel	745	714	623	535	571	6.7%
Total paid to defense counsel	\$39,909,835	\$44,261,285	\$39,168,095	\$30,330,400	\$36,463,901	20.2%
Average paid to defense counsel	\$53,570	\$61,991	\$62,870	\$56,692	\$63,860	12.6%
Claims with experts hired	513	508	433	399	428	7.3%
Total paid to experts	\$6,060,316	\$7,782,205	\$7,826,725	\$6,099,777	\$6,503,463	6.6%
Average paid to experts	\$11,813	\$15,319	\$18,076	\$15,288	\$15,195	-0.6%
Claims with other defense costs	594	644	556	426	437	2.6%
Total paid for other defense costs	\$6,575,936	\$7,081,986	\$5,603,522	\$5,149,115	\$7,856,004	52.6%
Average paid for other defense costs	\$11,071	\$10,997	\$10,078	\$12,087	\$17,977	48.7%
Claims with defense costs (all types)	908	906	805	677	700	3.4%
Total paid defense costs (all types)	\$52,546,087	\$59,125,476	\$52,598,342	\$41,589,907	\$50,823,368	22.2%
Average paid for all types of defense costs	\$57,870	\$65,260	\$65,340	\$61,433	\$72,605	18.2%

**Payments to defense counsel:** The average amount paid for defense counsel increased 12.6% in 2018 compared to 2017. Insuring entities and self-insurers reported payments to defense counsel for 70.8% of all claims.

**Payments to expert witnesses:** The average amount paid for expert witnesses decreased by just 0.6% in 2018 compared to 2017. Insuring entities and self-insurers reported payments to expert witnesses for 53% of all claims.



## Million-dollar claims

Insuring entities and self-insurers closed 48.3% of claims in 2018 with an indemnity payment to a claimant.

Of those claims:

- 48 claims closed with paid indemnity of \$1 million or more. Total payments for these claims increased significantly to \$121.6 million.

Claims closed for \$1 million or more	Year closed					Total
	2014	2015	2016	2017	2018	
Number of indemnity payments	50	33	30	34	48	195
Total paid indemnity	\$65,340,246	\$97,644,887	\$54,343,188	\$82,253,866	\$121,626,292	421,208,479
Average indemnity payment	\$1,306,805.00	\$2,958,936	\$1,811,440	\$2,419,231	\$2,533,881	\$2,160,043

- 342 claims closed with paid indemnity of less than \$1 million, 6.2% more than in 2017. These closed claims resulted in total payments of \$60.5 million. The average payment for claims under \$1 million was \$176,886.

Claims closed for less than \$1 million	Year closed					Total
	2014	2015	2016	2017	2018	
Number of indemnity payments	419	379	361	322	342	1,823
Total paid indemnity	\$60,817,051	\$58,307,277	\$55,745,162	\$34,239,316	\$60,495,087	269,603,893
Average indemnity payment	\$145,148	\$153,845	\$154,419	\$106,333	\$176,886	\$147,890

## Comparison of individual claim data and incident-level data

One medical incident<sup>12</sup> 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 the OIC can total the costs to settle all claims related to that medical incident. This table shows how individual claim data compare to “incident-level” data for incidents involving more than one medical provider or facility over the 11-year period ending Dec. 31, 2018.

	Individual claim data	Incident-level data
Number of claims/incidents	10,819	1,187
Number with indemnity payments	5,072	581
Total paid indemnity	\$1,377,042,637	\$345,554,395
Total economic damages	\$773,828,059	\$190,785,909
Average indemnity payment	\$271,499	\$594,758
Median indemnity payment	\$50,000	\$300,000
Average economic damages	\$152,569	\$328,375
Number with defense costs	9,260	1,171
Total defense costs	\$494,165,728	\$145,252,667
Average defense cost	\$53,366	\$124,042

For claims against more than one medical provider or facility, compensation to the claimant is much higher. Average paid indemnity at the incident level is 119% higher than average paid indemnity per claim, and the median indemnity payment is six times as high.

Since there can be a significant period of time between when the first claim related to an incident is closed and when the last claim related to that incident is closed, incident-level data will always be incomplete. For example, based on the reported number of defendants for the 1,187 incidents, 18.5% of the individual claims related to these incidents have not yet been reported. Since incident-level data are incomplete, the true average indemnity payments and defense costs at the incident level are likely to be higher than the averages from reports received by the OIC.

<sup>12</sup> See [RCW 48.140.030\(1\)\(b\)](#).

## Calendar-incident year comparisons

Insurers report several dates associated with each claim. The tables below show claim counts, average indemnity, and average defense costs sorted using two of these dates: the year the claim was closed by the insurer and the year of the medical malpractice incident that led to the claim. These tables<sup>13</sup> 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 the incident occurred. Claims closed seven or more years after the incident occurred are shown in the “Prior” column.

Year claim closed	Closed claim count											
	Prior	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2014	67	73	158	202	184	158	149	54				
2015	81		90	121	195	177	148	166	43			
2016	83			52	110	186	182	115	120	51		
2017	72				49	82	148	177	96	126	59	
2018	56					44	82	154	175	110	133	53

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											
	Prior	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2014	\$397,989	\$520,286	\$385,272	\$225,168	\$363,619	\$353,398	\$47,856	\$18,882				
2015	\$375,232		\$762,409	\$1,252,231	\$277,556	\$355,231	\$265,347	\$125,015	\$7,651			
2016	\$423,114			\$548,906	\$317,293	\$439,164	\$349,902	\$274,863	\$41,114	\$32,554		
2017	\$599,614				\$445,119	\$287,460	\$306,864	\$614,651	\$248,584	\$52,457	\$67,384	
2018	\$2,386,842					\$436,349	\$651,250	\$641,106	\$376,339	\$480,098	\$121,131	\$31,844

<sup>13</sup> [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.

Finally, the table below shows that average defense costs increase as a claim ages.

Year claim closed	Average defense cost											
	Prior	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2014	\$162,131	\$103,214	\$68,963	\$41,303	\$45,586	\$51,186	\$7,450	\$2,299				
2015	\$147,972		\$128,051	\$93,578	\$68,963	\$42,904	\$32,908	\$8,019	\$3,889			
2016	\$165,845			\$124,556	\$98,010	\$58,107	\$46,175	\$30,487	\$10,077	\$2,894		
2017	\$167,286				\$125,111	\$99,141	\$49,138	\$47,586	\$20,996	\$6,464	\$6,165	
2018	\$266,416					\$116,054	\$84,896	\$67,093	\$51,670	\$42,640	\$11,174	\$1,410

## Claim data by type of settlement

For claims closed in 2018, the parties negotiated a settlement for 65.1% of claims that resulted in an indemnity payment, and these settlements comprised 57% of total payments. Average paid indemnity for these types of settlements was \$409,033.

How claim was resolved	Calendar year 2018 results						
	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	289	45	\$119,293	\$2,651	250	\$4,454,737	\$17,819
Settled by parties	275	254	\$103,894,280	\$409,033	210	\$18,806,901	\$89,557
Court disposed claim	155	9	\$27,568,298	\$3,063,144	155	\$17,309,549	\$111,675
Settled by alternative dispute resolution	88	82	\$50,539,508	\$616,335	85	\$10,252,181	\$120,614
<b>Total</b>	<b>807</b>	<b>390</b>	<b>\$182,121,379</b>	<b>\$466,978</b>	<b>700</b>	<b>\$50,823,368</b>	<b>\$72,605</b>

Claimants agreed to use alternative dispute resolution, including arbitration, mediation, or a private trial, to resolve 21% of claims with paid indemnity, and these settlements comprised 27.8% of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$616,335.

Of the 155 claims resolved by the courts in 2018, 94.2% were resolved in favor of the defendant. The courts resolved nine claims with paid indemnity, resulting in average paid indemnity of \$3,063,144.

## Claim settlement data: Alternative dispute resolution

Alternative dispute resolution is a formal settlement process that occurs outside of the judicial system. The law<sup>14</sup> 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.

Calendar year 2018 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	0	0	\$0	\$0	0	\$0	\$0
Arbitration decision for defense	2				2		
Mediation	85				82		
Private trial (formal trial before neutral party)	1				1		
<b>Total</b>	<b>88</b>	<b>82</b>	<b>\$50,539,508</b>	<b>\$616,335</b>	<b>85</b>	<b>\$10,252,181</b>	<b>\$120,614</b>

In 2018, there were 88 reported claims settled by alternative dispute resolution; 93.2% of those resulted in an indemnity payment. Only three claims were resolved using methods other than mediation. As such, most of the information in this table was redacted in accordance with confidentiality laws.<sup>15</sup>

<sup>14</sup> See [RCW 7.70.100](#).

<sup>15</sup> See [RCW 48.140.060\(2\)](#) and [WAC 284-24E-030\(6\)](#).