

2013 Medical Malpractice Statistical Summary

Data Submitted by Insurers and Self-Insurers

Claims Closed from Jan. 1, 2008 through Dec. 31, 2013

Rates and Forms Division

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Insurance Commissioner Mike Kreidler

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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 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.⁵ Each closed claim is associated with one defendant.

This summary report includes data for medical malpractice claims closed in calendar years 2008 through 2013.⁶ 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*. 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 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 6, 2013, 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 8, 2014.

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 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.

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 2013 closed claim statistics:

Claims

- The number of closed claims decreased 6.7 percent to 1,113 compared to 1,193 the prior year.

Indemnity payments

- The average indemnity payment increased 29 percent to \$228,682.
- Total paid indemnity increased 10.4 percent to \$120.5 million.
- The number of indemnity payments decreased 14.4 percent to 527.

Defense costs

- Average defense costs decreased 6.8 percent to \$46,503.
- Total defense costs decreased 4 percent to \$43.7 million.
- The number of claims with defense costs increased 3 percent to 939.

Calendar year comparisons¹⁰

Reporting entities submitted these data to the OIC for the five-year period ending December 31, 2013:

	-----Year Closed-----					Percent Change over Prior Year
	2009	2010	2011	2012	2013	
Total Claims Closed	860	928	1,211	1,193	1,113	-6.7%
Number of Indemnity Payments	411	459	539	616	527	-14.4%
Total Paid Indemnity	\$102,114,279	\$97,728,452	\$115,167,100	\$109,195,627	\$120,515,458	10.4%
Total Economic Damages	\$44,643,434	\$51,270,280	\$51,966,202	\$60,176,465	\$66,552,932	10.6%
Average Indemnity Payment	\$248,453	\$212,916	\$213,668	\$177,266	\$228,682	29.0%
Average Economic Damages	\$108,621	\$111,700	\$96,412	\$97,689	\$126,047	29.0%
Number of Claims with Defense Costs	741	789	1,064	912	939	3.0%
Total Defense Costs	\$32,033,354	\$29,350,625	\$43,029,318	\$45,509,172	\$43,666,375	-4.0%
Average Defense Cost	\$43,230	\$37,200	\$40,441	\$49,900	\$46,503	-6.8%

Number of claims: For calendar year 2013, insuring entities and self-insurers submitted 1,113 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 6.7 percent from the prior year.

Payments to claimants: In 2013, insuring entities and self-insurers paid \$120.5 million on 527 claims, an average of \$228,682 per paid claim. The number of indemnity payments decreased by 14.4 percent, while the average payment increased by 29 percent from 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 itemizes economic damages during the verdict process. In 2013, insuring entities and self-insurers paid \$66.6 million for economic damages on 527 claims. Average economic damages were \$126,047 per claim, an increase of 29 percent from the prior year. Economic damages accounted for 55.1 percent of the total indemnity payments in 2013, as compared to an average of 49 percent over the four 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

In 2013, insuring entities and self-insurers paid \$43.7 million to defend 939 claims. The average defense cost of \$46,503 per claim was 6.8 percent lower than the prior year but still somewhat higher than during the 2009 to 2011 period. Insuring entities and self-insurers reported defense and cost containment expenses for 84.4 percent of all claims.

	-----Year Closed-----					Percent Change over Prior Year
	2009	2010	2011	2012	2013	
Total Claims Closed	860	928	1,211	1,193	1,113	-6.7%
Claims with Defense Counsel	589	565	792	716	711	-0.7%
Total Paid to Defense Counsel	\$24,671,501	\$23,048,451	\$33,239,026	\$34,861,695	\$33,716,338	-3.3%
Average Paid to Defense Counsel	\$41,887	\$40,794	\$41,968	\$48,690	\$47,421	-2.6%
Claims with Experts Hired	383	362	569	509	532	4.5%
Total Paid to Experts	\$3,690,354	\$2,877,303	\$4,666,532	\$5,223,679	\$4,895,425	-6.3%
Average Paid to Experts	\$9,635	\$7,948	\$8,201	\$10,263	\$9,202	-10.3%
Claims with Other Defense Costs	433	473	719	604	613	1.5%
Total Paid for Other Defense Costs	\$3,671,499	\$3,424,871	\$5,123,760	\$5,423,798	\$5,054,612	-6.8%
Average Paid for Other Defense Costs	\$8,479	\$7,241	\$7,126	\$8,980	\$8,246	-8.2%
Claims with Defense Costs (All Types)	741	789	1,064	912	939	3.0%
Total Paid Defense Costs (All Types)	\$32,033,354	\$29,350,625	\$43,029,318	\$45,509,172	\$43,666,375	-4.0%
Average Paid for All Types of Defense Costs	\$43,230	\$37,200	\$40,441	\$49,900	\$46,503	-6.8%

Payments to defense counsel: The average amount paid for defense counsel decreased 2.6 percent in 2013 compared to 2012, but was still higher than the three years before that. The number of claims involving defense counsel decreased 0.7 percent in 2013, but this was much less than the 6.7 percent decline in total claims.

Payments to expert witnesses: Both average and total payments to expert witnesses decreased in 2013 compared to 2012.

Million-dollar claims

Insuring entities and self-insurers closed 47.4 percent of claims in 2013 with an indemnity payment to a claimant. Of those claims:

- 33 claims closed with paid indemnity of \$1 million or more, five more than in the prior year. These claims resulted in total payments of \$60.5 million. The average payment for these claims increased 7.3 percent to \$1.83 million.

Claims Closed for \$1 Million or More	-----Year Closed-----					Total
	2009	2010	2011	2012	2013	
Number of Indemnity Payments	23	29	31	28	33	144
Total Indemnity Payments	\$50,120,627	\$49,868,754	\$52,846,925	\$47,861,472	\$60,498,157	\$261,195,935
Average Indemnity Payment	\$2,179,158	\$1,719,612	\$1,704,740	\$1,709,338	\$1,833,277	\$1,813,861

- 494 claims closed with paid indemnity of less than \$1 million, or 94 fewer than in 2012. These closed claims resulted in total payments of \$60 million. The average payment for claims under \$1 million was \$121,493.

Claims Closed for Less Than \$1 Million	-----Year Closed-----					Total
	2009	2010	2011	2012	2013	
Number of Indemnity Payments	388	430	508	588	494	2,408
Total Paid Indemnity	\$51,993,652	\$47,859,698	\$62,320,175	\$61,334,155	\$60,017,301	\$283,524,981
Average Indemnity Payment	\$134,004	\$111,302	\$122,678	\$104,310	\$121,493	\$117,743

Comparison of individual claim data and incident-level data

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. This table shows how individual claim data compares to “incident-level” data for incidents involving more than one medical provider or facility over the six-year period ending December 31, 2013.

	Individual Claim Data	Incident-Level Data
Number of Claims/Incidents	6,188	594
Number with Indemnity Payments	3,010	292
Total Paid Indemnity	\$652,536,847	\$142,520,102
Total Economic Damages	\$327,732,712	\$65,284,857
Average Indemnity Payment	\$216,790	\$488,083
Median Indemnity Payment	\$46,289	\$250,000
Average Economic Damages	\$108,881	\$223,578
Number with Defense Costs	5,219	586
Total Defense Costs	\$231,889,077	\$53,469,852
Average Defense Cost	\$44,432	\$91,245

Average paid indemnity at the incident level is 125 percent higher than average paid indemnity per claim, and the median indemnity payment is more than five times as high. For claims against more than one medical provider or facility, compensation to the claimant is much higher. Of 594 incidents, 46 resulted in indemnity payments of \$1 million or more.

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, incidents with exactly two defendants had two claim reports submitted in different years 30 percent of the time; in a few cases, the lag in closing dates between the related claims was five years, the longest possible lag with available data. 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.

¹² 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 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 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	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2009	29	18	42	100	183	140	157	145	46				
2010	30		41	46	105	136	192	183	153	42			
2011	66			37	46	128	248	227	208	186	65		
2012	40				50	54	293	185	212	143	155	61	
2013	29					21	63	147	250	160	184	194	65

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												
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
2009	\$87,500	\$136,714	\$387,878	\$224,152	\$226,096	\$265,621	\$75,346	\$5,273					
2010		\$54,600	\$408,969	\$406,725	\$219,306	\$246,837	\$139,984	\$171,192	\$12,493				
2011			\$136,679	\$167,585	\$595,258	\$257,648	\$211,112	\$245,035	\$78,829	\$32,786			
2012				\$146,119	\$377,836	\$111,253	\$195,856	\$253,938	\$158,480	\$80,632	\$4,503		
2013					\$242,561	\$314,160	\$497,503	\$273,695	\$292,442	\$241,483	\$35,483	\$10,739	

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](#).

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

Year Claim Closed	Average Defense Cost											
	Incident Year											
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2009	\$77,763	\$78,152	\$99,408	\$37,774	\$31,195	\$22,896	\$3,945	\$1,427				
2010		\$45,315	\$93,847	\$87,480	\$36,783	\$31,488	\$15,519	\$8,922	\$5,954			
2011			\$66,497	\$80,798	\$90,738	\$37,191	\$28,461	\$15,942	\$5,176	\$2,635		
2012				\$110,611	\$106,576	\$73,996	\$48,438	\$34,700	\$20,290	\$6,131	\$1,245	
2013					\$102,030	\$80,334	\$76,056	\$46,121	\$28,636	\$34,124	\$6,261	\$1,420

Claim data by type of settlement

For claims closed in 2013, the parties negotiated a settlement for 73.1 percent of claims that resulted in an indemnity payment, and these settlements comprised 58 percent of total payments. Average paid indemnity for these types of settlements was \$181,478.

How Claim was Resolved	-----Calendar Year 2013 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	399	47	\$258,636	\$5,503	360	\$5,949,495	\$16,526
Settled by Parties	423	385	\$69,868,865	\$181,478	290	\$15,081,520	\$52,005
Court Disposed Claim	172	4	\$15,509,446	\$3,877,362	172	\$12,780,037	\$74,303
Settled by Alternative Dispute Resolution	119	91	\$34,878,511	\$383,280	117	\$9,855,323	\$84,234
Total	1,113	527	\$120,515,458	\$228,682	939	\$43,666,375	\$46,503

Claimants agreed to use alternative dispute resolution, including arbitration, mediation, or a private trial, to resolve 17.3 percent of claims with paid indemnity, and these settlements comprised 28.9 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$383,280 and median paid indemnity was \$216,667.

Of the 172 claims resolved by the courts in 2013, 97.7 percent were resolved in favor of the defendant. The courts resolved four claims with paid indemnity, resulting in average paid indemnity of \$3,877,362.

Claim settlement data: Alternative dispute resolution

Alternative dispute resolution is a formal settlement process that occurs outside of the judicial system. 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.

-----Calendar Year 2013 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	\$1,368,745	\$456,248	3	\$452,689	\$150,896
Arbitration Decision for Defense	3	0	\$0	\$0	3	\$188,584	\$62,861
Mediation	106	85	\$31,903,467	\$375,335	104	\$7,905,258	\$189,312
Private Trial (Formal Trial Before Neutral Party)	7	3	\$1,606,299	\$535,433	7	\$1,308,792	\$186,970
Total	119	91	\$34,878,511	\$383,280	117	\$9,855,323	\$84,234

In 2013, there were 119 reported claims settled by alternative dispute resolution; 106 of those settled in mediation, resulting in an average indemnity payment of \$375,335. Relatively few claims were resolved using other methods.

¹⁴ See [RCW 7.70.100](#).