

2014 Medical Malpractice Statistical Summary

Data submitted by insurers and self-insurers

Claims closed from Jan. 1, 2010 through Dec. 31, 2014

Rates and Forms Division

Eric Slavich, ACAS, MAAA

May 2015



Insurance Commissioner Mike Kreidler

Introduction.....	3
Key 2014 closed claim statistics.....	5
Calendar year comparisons.....	6
Number of daims:.....	6
Payments to daimants:.....	6
Economic damages:.....	6
Defense and cost containment.....	7
Payments to defense counsel:.....	7
Payments to expert witnesses:.....	7
Million-dollar claims.....	8
Comparison of individual daim data and incident-level data.....	9
Calendar-incident year comparisons.....	10
Claim data by type of settlement.....	12
Claim settlement data: Alternative dispute resolution.....	13

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 its 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 2010 through 2014.⁶ 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 10, 2015, Insurance Commissioner Mike Kreidler notified the legislature that the OIC would post statistical summaries by June 1.

⁵ See [WAC 284-24D-060](#).

⁶ Data submitted on or before April 15, 2015.

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.

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.

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 2014 closed claim statistics:

Claims

- The number of closed claims decreased 8.6 percent to 1,036, compared to 1,133 the prior year.

Indemnity payments

- The average indemnity payment increased 15.2 percent to \$265,402.
- Total paid indemnity decreased 1.5 percent to \$123.7 million.
- The number of indemnity payments decreased 14.5 percent to 466.

Defense costs

- Average defense costs increased 21.4 percent to \$57,127.
- Total defense costs increased 14.2 percent to \$51.4 million.
- The number of claims with defense costs decreased 6 percent to 900.

Calendar-year comparisons¹⁰

Reporting entities submitted these data to the OIC for the five-year period ending December 31, 2014:

	-----Year closed-----					Percent change over prior year
	2010	2011	2012	2013	2014	
Total claims closed	928	1,206	1,183	1,133	1,036	-8.6%
Number of indemnity payments	459	535	613	545	466	-14.5%
Total paid indemnity	\$97,728,452	\$115,202,580	\$104,140,627	\$125,586,308	\$123,677,297	-1.5%
Total economic damages	\$51,270,280	\$52,361,868	\$55,176,465	\$69,974,173	\$77,463,041	10.7%
Average indemnity payment	\$212,916	\$215,332	\$169,887	\$230,434	\$265,402	15.2%
Average economic damages	\$111,700	\$97,873	\$90,011	\$128,158	\$164,815	28.6%
Number of claims with defense costs	789	1,059	903	957	900	-6.0%
Total defense costs	\$29,382,154	\$43,058,358	\$45,173,651	\$45,028,516	\$51,414,314	14.2%
Average defense cost	\$37,240	\$40,659	\$50,026	\$47,052	\$57,127	21.4%

Number of claims: For calendar year 2014, insuring entities and self-insurers submitted 1,036 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 8.6 percent from the prior year.

Payments to claimants: In 2014, insuring entities and self-insurers paid \$123.7 million on 466 claims, an average of \$265,402 per paid claim. The number of indemnity payments decreased by 14.5 percent, while the average payment increased by 15.2 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 2014, insuring entities and self-insurers paid \$77.5 million for economic damages on 466 claims. Average economic damages were \$164,815 per claim, an increase of 28.6 percent from the prior year. Economic damages accounted for 62.1 percent of the total indemnity payments in 2014, as compared to an average of 51.7 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 2014, insuring entities and self-insurers paid \$51.4 million to defend 900 claims. The average defense cost increased 21.4 percent to \$57,127 per claim, the highest average in the five-year period. Insuring entities and self-insurers reported defense and cost containment expenses for 86.9 percent of all claims.

	-----Year closed-----					Percent change over prior year
	2010	2011	2012	2013	2014	
Total claims closed	928	1,206	1,183	1,133	1,036	-8.6%
Claims with defense counsel	567	787	710	730	736	0.8%
Total paid to defense counsel	\$23,075,536	\$33,269,818	\$34,556,341	\$34,904,788	\$39,002,909	11.7%
Average paid to defense counsel	\$40,698	\$42,274	\$48,671	\$47,815	\$52,993	10.8%
Claims with experts hired	362	565	504	541	510	-5.7%
Total paid to experts	\$2,880,606	\$4,651,994	\$5,199,401	\$5,009,817	\$5,869,822	17.2%
Average paid to experts	\$7,957	\$8,234	\$10,316	\$9,260	\$11,509	24.3%
Claims with other defense costs	474	716	600	618	590	-4.5%
Total paid for other defense costs	\$3,426,012	\$5,136,546	\$5,417,909	\$5,113,911	\$6,541,583	27.9%
Average paid for other defense costs	\$7,228	\$7,174	\$9,030	\$8,275	\$11,087	34.0%
Claims with defense costs (all types)	789	1,059	903	957	900	-6.0%
Total paid defense costs (all types)	\$29,382,154	\$43,058,358	\$45,173,651	\$45,028,516	\$51,414,314	14.2%
Average paid for all types of defense costs	\$37,240	\$40,659	\$50,026	\$47,052	\$57,127	21.4%

Payments to defense counsel: The average amount paid for defense counsel was higher than any of the prior four years, increasing 10.8 percent in 2014 compared to 2013. The number of claims involving defense counsel increased 0.8 percent in 2014, even though the total number of claims declined 8.6 percent.

Payments to expert witnesses: As with total defense costs, both average and total payments to expert witnesses reached five-year highs in 2014.

Million-dollar claims

Insuring entities and self-insurers closed 45 percent of claims in 2014 with an indemnity payment to a claimant. Of those claims:

- 49 claims closed with paid indemnity of \$1 million or more, a five-year high. Total payments for these claims increased slightly to \$63.9 million, while the average payment decreased 27.9 percent to \$1.3 million.

-----Year closed-----						
Claims closed for \$1 million or more	2010	2011	2012	2013	2014	Total
Number of indemnity payments	29	31	27	35	49	171
Total indemnity payments	\$49,868,754	\$52,846,925	\$42,861,472	\$63,348,157	\$63,940,246	\$272,865,554
Average indemnity payment	\$1,719,612	\$1,704,740	\$1,587,462	\$1,809,947	\$1,304,903	\$1,595,705

- 417 claims closed with paid indemnity of less than \$1 million, or 93 fewer than in 2013. These closed claims resulted in total payments of \$59.7 million. The average payment for claims under \$1 million was \$143,254.

-----Year closed-----						
Claims closed for less Than \$1 million	2010	2011	2012	2013	2014	Total
Number of indemnity payments	430	504	586	510	417	2,447
Total paid indemnity	\$47,859,698	\$62,355,655	\$61,279,155	\$62,238,151	\$59,737,051	\$293,469,710
Average indemnity payment	\$111,302	\$123,722	\$104,572	\$122,036	\$143,254	\$119,930

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 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 seven-year period ending December 31, 2014.

	Individual claim data	Incident-level data
Number of claims/incidents	7,237	717
Number with indemnity payments	3,493	359
Total paid indemnity	\$776,693,136	\$182,793,749
Total economic damages	\$404,440,322	\$89,279,622
Average indemnity payment	\$222,357	\$509,175
Median indemnity payment	\$50,000	\$295,000
Average economic damages	\$115,786	\$248,690
Number with defense costs	6,129	709
Total defense costs	\$284,425,219	\$68,034,316
Average defense cost	\$46,406	\$95,958

Average paid indemnity at the incident level is 129 percent higher than average paid indemnity per claim, and the median indemnity payment is almost six times as high. For claims against more than one medical provider or facility, compensation to the claimant is much higher. Of 717 incidents, 63 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, based on the reported number of defendants for the 717 incidents, about 25 percent 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.

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	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
2010	30	41	46	106	136	192	182	153	42				
2011	66		38	46	128	249	228	202	184	65			
2012	39			50	54	292	185	208	141	153	61		
2013	31				21	64	151	252	163	191	195	65	
2014	44					21	72	156	199	183	159	148	54

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												
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
2010	\$54,600	\$408,969	\$406,725	\$219,306	\$246,837	\$139,984	\$171,192	\$12,493					
2011		\$161,987	\$167,585	\$595,258	\$257,648	\$211,112	\$252,416	\$79,400	\$32,786				
2012			\$146,119	\$377,836	\$111,253	\$195,856	\$253,938	\$162,705	\$80,632	\$4,503			
2013				\$242,561	\$314,160	\$512,134	\$276,891	\$281,787	\$237,356	\$35,173	\$10,739		
2014					\$344,286	\$509,437	\$385,272	\$225,168	\$363,619	\$339,980	\$46,371	\$18,882	

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											
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
2010	\$45,315	\$93,847	\$86,758	\$36,783	\$31,488	\$15,608	\$9,089	\$5,954				
2011		\$66,911	\$80,798	\$90,738	\$37,039	\$28,326	\$16,199	\$5,215	\$2,635			
2012			\$110,611	\$106,576	\$73,459	\$48,430	\$35,381	\$20,353	\$6,101	\$1,245		
2013				\$102,030	\$79,983	\$75,964	\$47,967	\$28,957	\$34,199	\$6,261	\$1,420	
2014					\$185,473	\$101,197	\$68,009	\$40,713	\$44,951	\$50,612	\$7,438	\$2,299

Claim data by type of settlement

For claims closed in 2014, the parties negotiated a settlement for 68 percent of claims that resulted in an indemnity payment, and these settlements comprised 62.9 percent of total payments. Average paid indemnity for these types of settlements was \$245,453.

How claim was resolved	-----Calendar year 2014 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	380	49	\$328,078	\$6,695	338	\$7,429,317	\$21,980
Settled by parties	359	317	\$77,808,610	\$245,453	268	\$19,117,360	\$71,333
Court disposed claim	182	5	\$3,415,571	\$683,114	181	\$13,032,518	\$72,003
Settled by alternative dispute resolution	115	95	\$42,125,038	\$443,421	113	\$11,835,119	\$104,736
Total	1,036	466	\$123,677,297	\$265,402	900	\$51,414,314	\$57,127

Claimants agreed to use alternative dispute resolution, including arbitration, mediation, or a private trial, to resolve 20.4 percent of claims with paid indemnity, and these settlements comprised 34.1 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$443,421 and median paid indemnity was \$250,000.

Of the 182 claims resolved by the courts in 2014, 97.3 percent were resolved in favor of the defendant. The courts resolved five claims with paid indemnity, resulting in average paid indemnity of \$683,114.

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 2014 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	7	7	\$544,100	\$77,729	7	\$621,216	\$88,745
Arbitration decision for defense	0	0	\$0	\$0	0	\$0	\$0
Mediation	102	85	\$40,237,763	\$473,385	100	\$10,129,944	\$101,299
Private trial (formal trial before neutral party)	6	3	\$1,343,175	\$447,725	6	\$1,083,959	\$180,660
Total	115	95	\$42,125,038	\$443,421	113	\$11,835,119	\$104,736

In 2014, there were 115 reported claims settled by alternative dispute resolution; 102 of those settled in mediation, resulting in an average indemnity payment of \$473,385. Relatively few claims were resolved using other methods.

¹⁴ See [RCW 7.70.100](#).