

2012 Medical Malpractice Statistical Summary

Data Submitted by Insurers and Self-Insurers

Claims Closed from Jan. 1, 2008 through Dec. 31, 2012

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 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 2012.⁶ 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 March 31, 2013.

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 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, 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 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 2012 closed claim statistics:

Claims

- The number of claims closed decreased 4 percent to 1,157 compared to 1,205 the prior year.

Indemnity Payments

- The average indemnity payment decreased 22.6 percent to \$166,401.
- Total paid indemnity decreased 12.5 percent to \$100.5 million.
- The number of indemnity payments increased 13.1 percent to 604.

Defense Costs

- Average defense costs increased 20.5 percent to \$48,667.
- Total defense costs decreased 0.1 percent to \$42.9 million.
- The number of claims with defense costs decreased 17.1 percent to 882.

Calendar year comparisons¹⁰

Reporting entities submitted these data to the OIC for the five-year period ending December 31, 2012:

	-----Year Closed-----					Percent Change over Prior Year
	2008	2009	2010	2011	2012	
Total Claims Closed	883	860	926	1,205	1,157	-4.0%
Number of Indemnity Payments	458	411	459	534	604	13.1%
Total Paid Indemnity	\$107,815,931	\$102,114,279	\$97,728,452	\$114,805,508	\$100,505,927	-12.5%
Total Economic Damages	\$53,123,399	\$44,643,434	\$51,270,280	\$51,964,796	\$52,211,765	0.5%
Average Indemnity Payment	\$235,406	\$248,453	\$212,916	\$214,992	\$166,401	-22.6%
Average Economic Damages	\$115,990	\$108,621	\$111,700	\$97,312	\$86,443	-11.2%
Number of Claims With Defense Costs	774	741	788	1,064	882	-17.1%
Total Defense Costs	\$38,300,233	\$32,033,354	\$29,307,469	\$42,976,250	\$42,924,073	-0.1%
Average Defense Cost	\$49,484	\$43,230	\$37,192	\$40,391	\$48,667	20.5%

Number of claims: For calendar year 2012, insuring entities and self-insurers submitted 1,157 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 4 percent from the prior year.

Payments to claimants: In 2012, insuring entities and self-insurers paid \$100.5 million on 604 claims, or an average of \$166,401 per paid claim. The number of indemnity payments increased by 13.1 percent, while the average payment decreased by 22.6 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 2012, insuring entities and self-insurers paid \$52.2 million for economic damages on 604 claims. Average economic damages were \$86,443 per claim, a decrease of 11.2 percent from the prior year. In 2012, economic damages accounted for 51.9 percent of the total indemnity payments, as compared to an average of 47.6 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 2012, insuring entities and self-insurers paid \$42.9 million to defend 882 claims. The average defense cost of \$48,667 per claim was 20.5 percent higher than the prior year. Insuring entities and self-insurers reported defense and cost containment expenses for 76.2 percent of all claims.

	-----Year Closed-----					Percent Change over Prior Year
	2008	2009	2010	2011	2012	
Total Claims Closed	883	860	926	1,205	1,157	-4.0%
Claims with Defense Counsel	618	589	566	807	701	-13.1%
Total Paid to Defense Counsel	\$28,765,469	\$24,671,501	\$23,014,682	\$33,212,872	\$32,711,214	-1.5%
Average Paid to Defense Counsel	\$46,546	\$41,887	\$40,662	\$41,156	\$46,664	13.4%
Claims with Experts Hired	384	383	362	572	502	-12.2%
Total Paid to Experts	\$4,038,782	\$3,690,354	\$2,874,107	\$4,649,590	\$5,037,634	8.3%
Average Paid to Experts	\$10,518	\$9,635	\$7,940	\$8,129	\$10,035	23.5%
Claims with Other Defense Costs	455	433	472	737	610	-17.2%
Total Paid for Other Defense Costs	\$5,495,982	\$3,671,499	\$3,418,680	\$5,113,788	\$5,175,225	1.2%
Average Paid For other Defense Costs	\$12,079	\$8,479	\$7,243	\$6,939	\$8,484	22.3%
Claims with Defense Costs (All Types)	774	741	788	1,064	882	-17.1%
Total Paid to Defense Costs (All Types)	\$38,300,233	\$32,033,354	\$29,307,469	\$42,976,250	\$42,924,073	-0.1%
Average Paid for All Types of Defense Costs	\$49,484	\$43,230	\$37,192	\$40,391	\$48,667	20.5%

Payments to defense counsel: The average amount paid for defense counsel was higher in 2012 than in the prior three years, but was at about the same level as it was for claims closed in 2008. The number of claims involving defense counsel decreased significantly in 2012, more than is accounted for by the decrease in the overall number of closed claims.

Payments to expert witness: Payments to expert witnesses increased in 2012 compared to 2011, both on average and in total.

Overall, for claims closed in 2012 there was a movement toward resolving claims with indemnity payments but not defense costs. The number of indemnity payments reported increased by 13.1 percent while the number of claims with defense costs decreased 17.1 percent.

Million dollar claims

Insuring entities and self-insurers closed 52.2 percent of claims in 2012 with an indemnity payment to a claimant. Of those claims:

- 26 claims closed with paid indemnity of \$1 million or more, five fewer than the prior year. These claims resulted in total payments of \$40 million. The average payment for these claims decreased 9.8 percent to \$1.54 million.

-----Year Closed-----						
Claims Closed for \$1 Million or More	2008	2009	2010	2011	2012	Total
Number of Indemnity Payments	29	23	29	31	26	138
Total Indemnity Payments	\$51,515,890	\$50,120,627	\$49,868,754	\$52,846,925	\$39,986,472	\$244,338,668
Average Indemnity Payment	\$1,776,410	\$2,179,158	\$1,719,612	\$1,704,740	\$1,537,941	\$8,917,861

- 578 claims closed with paid indemnity of less than \$1 million, or 75 more than in 2011. These closed claims resulted in total payments of \$60.5 million. The average payment for claims under \$1 million was \$104,705, lower than any of the previous four years.

-----Year Closed-----						
Claims Closed for Less Than \$1 Million	2008	2009	2010	2011	2012	Total
Number of Indemnity Payments	429	388	430	503	578	2,328
Total Paid Indemnity	\$56,300,041	\$51,993,652	\$47,859,698	\$61,958,583	\$60,519,455	\$278,631,429
Average Indemnity Payment	\$131,236	\$134,004	\$111,302	\$123,178	\$104,705	\$604,424

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 five-year period ending December 31, 2012.

	Individual Claim Data	Incident Level Data
Number of Claims/Incidents	5,031	493
Number with Indemnity Payments	2,466	245
Total Paid Indemnity	\$522,970,097	\$123,315,239
Total Economic Damages	\$253,213,674	\$53,821,121
Average Indemnity Payment	\$212,072	\$503,328
Median Indemnity Payment	\$45,000	\$250,000
Average Economic Damages	\$102,682	\$219,678
Number with Defense Costs	4,249	485
Total Defense Costs	\$185,541,379	\$44,704,723
Average Defense Cost	\$43,667	\$92,175

Average paid indemnity at the incident level is 137 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, compensation to the claimant is much higher. Out of 493 incidents, 40 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, the incident data shown here are incomplete. Only about three-fourths of the claims for these 493 incidents were closed by the end of 2012, 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	2012
2008	41	27	33	109	168	184	132	144	45				
2009	29		18	42	100	183	140	157	145	46			
2010	30			41	46	105	136	192	182	152	42		
2011	66				37	46	128	248	227	204	186	63	
2012	38					49	53	289	175	208	137	149	59

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	2012
2008	\$464,452	\$362,204	\$475,434	\$345,098	\$209,945	\$187,375	\$71,325	\$55,729				
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	\$252,416	\$78,829	\$33,591	
2012					\$146,119	\$377,836	\$111,253	\$200,736	\$257,011	\$158,077	\$82,178	\$4,571

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											
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2008	\$92,859	\$94,003	\$85,524	\$53,008	\$52,054	\$18,853	\$3,926	\$5,149				
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	\$15,433	\$8,878	\$5,695		
2011				\$66,497	\$80,798	\$90,738	\$37,037	\$28,326	\$16,045	\$5,058	\$2,458	
2012					\$113,838	\$106,234	\$70,186	\$46,395	\$35,346	\$20,107	\$6,207	\$1,166

Claim data by type of settlement

In 2012, the parties negotiated a settlement for 79.6 percent of claims that resulted in an indemnity payment, and these settlements comprised 61.9 percent of total payments. Average paid indemnity for these types of settlements was \$129,372.

-----Calendar Year 2012 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	315	18	\$176,058	\$9,781	299	\$4,711,383	\$15,757
Settled by Parties	528	481	\$62,227,896	\$129,372	270	\$11,848,577	\$43,884
Court Disposed Claim	189	4	\$481,480	\$120,370	189	\$12,639,112	\$66,874
Settled by Alternative Dispute Resolution	125	101	\$37,620,493	\$372,480	124	\$13,725,001	\$110,685
Total	1,157	604	\$100,505,927	\$166,401	882	\$42,924,073	\$48,667

Claimants agreed to use alternative dispute resolution (arbitration, mediation, or a private trial) to resolve 16.7 percent of claims with paid indemnity, and these settlements comprised 37.4 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$372,480 and median paid indemnity was \$200,000.

Of the 189 claims resolved by the courts in 2012, 97.9 percent were resolved in favor of the defendant. The courts resolved four claims with paid indemnity, resulting in average paid indemnity of \$120,370.

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.

-----Calendar Year 2012 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	\$653,016	\$217,672	3	\$257,071	\$85,690
Arbitration Decision for Defense	4	0	\$0	\$0	4	\$1,313,923	\$328,481
Mediation	112	95	\$36,222,477	\$381,289	111	\$11,210,437	\$100,995
Private Trial (Formal Trial Before Neutral Party)	6	3	\$745,000	\$248,333	6	\$943,570	\$157,262
Total	125	101	\$37,620,493	\$372,480	124	\$13,725,001	\$110,685

In 2012, of the 125 reported claims settled by alternative dispute resolution, 112 settled in mediation, resulting in an average indemnity payment of \$381,289. Relatively few claims were resolved using other methods.

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."