

2015 Medical Malpractice Statistical Summary

Data submitted by insurers and self-insurers
Claims closed from Jan. 1, 2011 through Dec. 31, 2015

May 2016

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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 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 2011 through 2015.⁶ 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.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 Feb. 9, 2016, 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 14, 2016.

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 2015 closed claim statistics

Claims

- The number of closed claims decreased 2.9 percent to 1,009, compared to 1,039 the prior year.

Indemnity payments

- The average indemnity payment increased 40.1 percent to \$374,881.
- Total paid indemnity increased 18.8 percent to \$148.8 million.
- The number of indemnity payments decreased 15.2 percent to 397.

Defense costs

- Average defense costs increased 10.9 percent to \$63,438.
- Total defense costs increased 9.9 percent to \$56.7 million.
- The number of claims with defense costs decreased 0.9 percent to 894.

Calendar year comparisons¹⁰

Reporting entities submitted these data to the OIC for the five-year period ending Dec. 31, 2015:

	-----Year closed-----					Percent change over prior year
	2011	2012	2013	2014	2015	
Total Claims Closed	1,207	1,183	1,131	1,039	1,009	-2.9%
Number of Indemnity Payments	536	613	547	468	397	-15.2%
Total Paid Indemnity	\$115,317,580	\$104,140,627	\$126,396,308	\$125,257,297	\$148,827,567	18.8%
Total Economic Damages	\$52,411,868	\$55,176,465	\$70,065,091	\$79,043,041	\$79,099,680	0.1%
Average Indemnity Payment	\$215,145	\$169,887	\$231,072	\$267,644	\$374,881	40.1%
Average Economic Damages	\$179,493	\$156,751	\$164,087	\$204,775	\$243,384	18.9%
Number of Claims with Defense Costs	1,060	903	955	902	894	-0.9%
Total Defense Costs	\$43,385,352	\$45,173,651	\$45,282,079	\$51,618,342	\$56,713,271	9.9%
Average Defense Cost	\$40,930	\$50,026	\$47,416	\$57,227	\$63,438	10.9%

Number of claims: For calendar year 2015, insuring entities and self-insurers submitted 1,009 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 2.9 percent from the prior year.

Payments to claimants: In 2015, insuring entities and self-insurers paid \$148.8 million on 397 claims, an average of \$374,881 per paid claim. The number of indemnity payments decreased by 15.2 percent, while the average payment increased by 40.1 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 2015, insuring entities and self-insurers paid \$79.1 million for economic damages. Average economic damages were \$243,384 per claim, an increase of 18.9 percent from the prior year. Economic damages accounted for 53.1 percent of the total indemnity payments in 2015, as compared to an average of 54.5 percent over the previous four 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 2015, insuring entities and self-insurers paid \$56.7 million to defend 894 claims. The average defense cost increased 10.9 percent to \$63,438 per claim, the highest average in the five-year period. Insuring entities and self-insurers reported defense and cost containment expenses for 88.6 percent of all claims.

	-----Year closed-----					Percent change over prior year
	2011	2012	2013	2014	2015	
Total Claims Closed	1,207	1,183	1,131	1,039	1,009	-2.9%
Claims with Defense Counsel	789	710	730	739	697	-5.7%
Total Paid to Defense Counsel	\$33,583,319	\$34,556,341	\$35,121,964	\$39,180,032	\$42,124,464	7.5%
Average Paid to Defense Counsel	\$42,564	\$48,671	\$48,112	\$53,018	\$60,437	14.0%
Claims with Experts Hired	566	504	539	510	497	-2.5%
Total Paid to Experts	\$4,664,645	\$5,199,401	\$5,019,233	\$5,879,922	\$7,598,771	29.2%
Average Paid to Experts	\$8,241	\$10,316	\$9,312	\$11,529	\$15,289	32.6%
Claims with Other Defense Costs	717	600	617	593	643	8.4%
Total Paid for Other Defense Costs	\$5,137,388	\$5,417,909	\$5,140,882	\$6,558,388	\$6,990,036	6.6%
Average Paid for Other Defense Costs	\$7,165	\$9,030	\$8,332	\$11,060	\$10,871	-1.7%
Claims with Defense Costs (All Types)	1,060	903	955	902	894	-0.9%
Total Paid Defense Costs (All Types)	\$43,385,352	\$45,173,651	\$45,282,079	\$51,618,342	\$56,713,271	9.9%
Average Paid for All Types of Defense Costs	\$40,930	\$50,026	\$47,416	\$57,227	\$63,438	10.9%

Payments to defense counsel: The average amount paid for defense counsel was higher than any of the prior four years, increasing 14 percent in 2015 compared to 2014. Total payments for defense counsel also reached a five-year high in 2015, even though the number of claims involving defense counsel decreased 5.7 percent.

Payments to expert witnesses: As with total defense costs, both average and total payments to expert witnesses reached five-year highs in 2015.

Million-dollar claims

Insuring entities and self-insurers closed 39.8 percent of claims in 2015 with an indemnity payment to a claimant.

Of those claims:

- 31 claims closed with paid indemnity of \$1 million or more. Total payments for these claims increased significantly to \$93.6 million, due to some extremely large claims. Since 2008, insurers have reported six claims with indemnity payments of \$10 million or more. Four of those six claims were closed in 2015.

	-----Year closed-----					
Claims closed for \$1 million or more	2011	2012	2013	2014	2015	Total
Number of Indemnity Payments	31	27	35	50	31	174
Total Indemnity Payments	\$52,846,925	\$42,861,472	\$63,348,157	\$65,340,246	\$93,644,887	\$318,041,687
Average Indemnity Payment	\$1,704,740	\$1,587,462	\$1,809,947	\$1,306,805	\$3,020,803	\$1,827,826

- 366 claims closed with paid indemnity of less than \$1 million, or 52 fewer than in 2014. These closed claims resulted in total payments of \$55.2 million. The average payment for claims under \$1 million was \$150,772.

	-----Year closed-----					
Claims closed for less than \$1 million	2011	2012	2013	2014	2015	Total
Number of Indemnity Payments	505	586	512	418	366	2,387
Total Paid Indemnity	\$62,470,655	\$61,279,155	\$63,048,151	\$59,917,051	\$55,182,680	\$301,897,692
Average Indemnity Payment	\$123,704	\$104,572	\$123,141	\$143,342	\$150,772	\$126,476

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 compare to “incident-level” data for incidents involving more than one medical provider or facility over the eight-year period ending Dec. 31, 2015.

	Individual claim data	Incident-level data
Number of Claims/Incidents	8,252	836
Number with Indemnity Payments	3,900	419
Total Paid Indemnity	\$928,285,441	\$211,127,026
Total Economic Damages	\$485,513,158	\$107,416,850
Average Indemnity Payment	\$238,022	\$503,883
Median Indemnity Payment	\$50,000	\$250,000
Average Economic Damages	\$124,491	\$256,365
Number with Defense Costs	7,028	823
Total Defense Costs	\$342,647,293	\$99,905,515
Average Defense Cost	\$48,755	\$121,392

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 112 percent higher than average paid indemnity per claim, and the median indemnity payment is five times as high. Of 836 incidents, 71 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 836 incidents, about 18 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												
	Prior	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
2011	66	38	46	128	249	227	202	185	66				
2012	39		50	54	292	185	208	141	153	61			
2013	31			21	65	151	252	162	190	194	65		
2014	45				21	72	156	199	183	159	150	54	
2015	43					36	84	122	192	175	148	167	42

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												
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
2011	\$161,987	\$167,585	\$595,258	\$257,648	\$211,112	\$252,416	\$79,739	\$32,786					
2012		\$146,119	\$377,836	\$111,253	\$195,856	\$253,938	\$162,705	\$80,632	\$4,503				
2013			\$242,561	\$325,629	\$512,134	\$270,942	\$278,265	\$237,356	\$35,173	\$10,739			
2014				\$344,286	\$509,437	\$366,008	\$225,168	\$359,487	\$353,398	\$47,856	\$18,882		
2015					\$500,833	\$712,334	\$1,189,619	\$255,146	\$366,356	\$252,553	\$126,406	\$7,651	

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											
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
2011	\$66,911	\$80,798	\$90,738	\$37,039	\$28,445	\$16,199	\$5,257	\$11,964				
2012		\$110,611	\$106,576	\$73,459	\$48,430	\$35,381	\$20,353	\$6,101	\$1,245			
2013			\$102,030	\$82,533	\$75,964	\$48,027	\$29,140	\$34,393	\$6,313	\$1,420		
2014				\$185,473	\$101,197	\$68,009	\$40,713	\$45,161	\$50,825	\$7,420	\$2,299	
2015					\$109,572	\$127,582	\$92,799	\$64,116	\$43,047	\$31,667	\$6,551	\$3,754

Claim data by type of settlement

For claims closed in 2015, the parties negotiated a settlement for 71.3 percent of claims that resulted in an indemnity payment, and these settlements comprised 61.6 percent of total payments. Average paid indemnity for these types of settlements was \$323,772.

How claim was resolved	-----Calendar year 2015 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	373	21	\$38,641	\$1,840	355	\$8,701,964	\$24,513
Settled by parties	317	283	\$91,627,475	\$323,772	220	\$16,530,214	\$75,137
Court disposed claim	217	7	\$3,014,231	\$430,604	217	\$20,190,178	\$93,042
Settled by alternative dispute resolution	102	86	\$54,147,220	\$629,619	102	\$11,290,915	\$110,695
Total	1,009	397	\$148,827,567	\$374,881	894	\$56,713,271	\$63,438

Claimants agreed to use alternative dispute resolution, including arbitration, mediation, or a private trial, to resolve 21.7 percent of claims with paid indemnity, and these settlements comprised 36.4 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$629,619 and median paid indemnity was \$312,250.

Of the 217 claims resolved by the courts in 2015, 96.8 percent were resolved in favor of the defendant. The courts resolved seven claims with paid indemnity, resulting in average paid indemnity of \$430,604.

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.

Method of alternative dispute resolution	-----Calendar Year 2015 Results-----						
	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						
Arbitration decision for defense	5						
Mediation	91	81	\$52,923,321	\$653,374	91	\$9,475,679	\$104,128
Private trial (formal trial before neutral party)	3						
Total	102	86	\$54,147,220	\$629,619	102	\$11,290,915	\$110,695

In 2015, there were 102 reported claims settled by alternative dispute resolution; 91 of those settled in mediation, resulting in an average indemnity payment of \$653,374. Relatively few claims were resolved using other methods and data about these claims were redacted in accordance with confidentiality laws.¹⁵

¹⁴ See [RCW 7.70.100](#).

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