

# 2016 Medical Malpractice Statistical Summary

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Data submitted by insurers and self-insurers

Claims closed from Jan. 1, 2012 through Dec. 31, 2016

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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 2012 through 2016.<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 Feb. 1, 2017, 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 22, 2017.

<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 2016 closed claim statistics

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### Claims

- The number of closed claims decreased 15.9 percent to 863, compared to 1,026 the prior year.

### Indemnity payments

- The average indemnity payment decreased 23.5 percent to \$286,160.
- Total paid indemnity decreased 31.6 percent to \$106.7 million.
- The number of indemnity payments decreased 10.6 percent to 373.

### Defense costs

- Average defense costs increased 1.8 percent to \$65,481.
- Total defense costs decreased 13.8 percent to \$50.5 million.
- The number of claims with defense costs decreased 15.4 percent to 771.

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

Reporting entities submitted these data to the OIC for the five-year period ending Dec. 31, 2016:

	Year closed					Percent change over prior year
	2012	2013	2014	2015	2016	
Total claims closed	1,182	1,130	1,036	1,026	863	-15.9%
Number of indemnity payments	613	550	472	417	373	-10.6%
Total paid indemnity	\$104,140,627	\$126,396,308	\$125,257,297	\$155,952,164	\$106,737,850	-31.6%
Total economic damages	\$55,176,465	\$70,065,091	\$79,043,041	\$84,156,304	\$71,763,351	-14.7%
Average indemnity payment	\$169,887	\$229,811	\$265,376	\$373,986	\$286,160	-23.5%
Average economic damages	\$90,011	\$127,856	\$167,464	\$201,814	\$193,955	-3.9%
Number of claims with defense costs	902	954	899	911	771	-15.4%
Total defense costs	\$45,172,951	\$45,280,733	\$51,586,944	\$58,601,051	\$50,485,753	-13.8%
Average defense cost	\$50,081	\$47,464	\$57,383	\$64,326	\$65,481	1.8%

**Number of claims:** For calendar year 2016, insuring entities and self-insurers submitted 863 medical malpractice<sup>11</sup> closed claim reports to the OIC, a decrease of 15.9 percent from the prior year. About one quarter of the decline can be attributed to late reporting. This summary includes data reported through March 22, 2017. Based on reporting patterns observed in prior years, there may be another 40 to 50 claims for 2016 that will be reported after that date. Reports are due March 1 of each year.

**Payments to claimants:** In 2016, insuring entities and self-insurers paid \$106.7 million on 373 claims, an average of \$286,160 per paid claim. The number of indemnity payments decreased by 10.6 percent, while the average payment decreased by 23.5 percent from the prior 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 2016, insuring entities and self-insurers paid \$71.8 million for economic damages. Average economic damages were \$193,955 per claim, a decrease of 3.9 percent from the prior year. Economic damages accounted for 67.2 percent of the total indemnity payments in 2016, as compared to an average of 56.4 percent over the previous four years.

## Defense and cost containment

In 2016, insuring entities and self-insurers paid \$50.5 million to defend 771 claims. The average defense cost increased 1.8 percent to \$65,481 per claim, the highest average in the five-year period. Insuring entities and self-insurers reported defense and cost containment expenses for 89.3 percent of all claims.

	-----Year closed-----					Percent change over prior year
	2012	2013	2014	2015	2016	
Total claims closed	1,182	1,130	1,036	1,026	863	-15.9%
Claims with defense counsel	709	729	736	710	593	-16.5%
Total paid to defense counsel	\$34,555,641	\$35,120,893	\$39,153,008	\$43,841,255	\$37,665,594	-14.1%
Average paid to defense counsel	\$48,739	\$48,177	\$53,197	\$61,748	\$63,517	2.9%
Claims with experts hired	504	539	510	509	406	-20.2%
Total paid to experts	\$5,199,401	\$5,019,233	\$5,879,922	\$7,743,156	\$7,402,895	-4.4%
Average paid to experts	\$10,316	\$9,312	\$11,529	\$15,212	\$18,234	19.9%
Claims with other defense costs	600	616	591	650	528	-18.8%
Total paid for other defense costs	\$5,417,909	\$5,140,607	\$6,554,014	\$7,016,640	\$5,417,264	-22.8%
Average paid for other defense costs	\$9,030	\$8,345	\$11,090	\$10,795	\$10,260	-5.0%
Claims with defense costs (all types)	902	954	899	911	771	-15.4%
Total paid defense costs (all types)	\$45,172,951	\$45,280,733	\$51,586,944	\$58,601,051	\$50,485,753	-13.8%
Average paid for all types of defense costs	\$50,081	\$47,464	\$57,383	\$64,326	\$65,481	1.8%

**Payments to defense counsel:** The average amount paid for defense counsel was higher than any of the prior four years, increasing 2.9 percent in 2016 compared to 2015. Total payments for defense counsel decreased 14.1 percent, in line with the lower claim volume for 2016.

**Payments to expert witnesses:** Average payments to expert witnesses reached a five-year high in 2016.

## Million-dollar claims

Insuring entities and self-insurers closed 43.2 percent of claims in 2016 with an indemnity payment to a claimant.

Of those claims:

- 30 claims closed with paid indemnity of \$1 million or more. Total payments for these claims decreased significantly to \$54.3 million.

Claims closed for \$1 million or more	Year closed					Total
	2012	2013	2014	2015	2016	
Number of indemnity payments	27	35	50	33	30	175
Total indemnity payments	\$42,861,472	\$63,348,157	\$65,340,246	\$97,644,887	\$54,343,188	\$323,537,950
Average indemnity payment	\$1,587,462	\$1,809,947	\$1,306,805	\$2,958,936	\$1,811,440	\$1,848,788

- 343 claims closed with paid indemnity of less than \$1 million, 9.5 percent less than in 2015. These closed claims resulted in total payments of \$52.4 million. The average payment for claims under \$1 million was \$152,754.

Claims closed for less than \$1 million	Year closed					Total
	2012	2013	2014	2015	2016	
Number of indemnity payments	586	512	418	379	343	2,238
Total paid indemnity	\$61,279,155	\$63,048,151	\$59,917,051	\$58,307,277	\$52,394,662	\$294,946,296
Average indemnity payment	\$104,572	\$123,141	\$143,342	\$153,845	\$152,754	\$131,790

## 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 nine-year period ending Dec. 31, 2016.

	Individual claim data	Incident-level data
Number of claims/incidents	9,126	954
Number with indemnity payments	4,302	465
Total paid indemnity	\$1,042,147,888	\$242,794,526
Total economic damages	\$562,333,133	\$127,027,850
Average indemnity payment	\$242,247	\$522,139
Median indemnity payment	\$50,000	\$250,000
Average economic damages	\$130,714	\$273,178
Number with defense costs	7,810	939
Total defense costs	\$394,987,321	\$101,661,450
Average defense cost	\$50,575	\$108,266

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 116 percent higher than average paid indemnity per claim, and the median indemnity payment is five times as high. Of 954 incidents, 82 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 954 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.

<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 eight or more years after the incident occurred are shown in the "Prior" column.

Year claim closed	Closed claim count												
	Prior	Incident year											
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
2012	39	50	54	292	185	208	140	153	61				
2013	31		21	65	151	252	162	190	194	64			
2014	45			21	71	156	199	183	158	149	54		
2015	45				36	88	121	197	178	150	168	43	
2016	49					33	51	105	178	170	112	116	49

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												
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	
													Incident year
2012	\$146,119	\$377,836	\$111,253	\$195,856	\$253,938	\$162,705	\$80,632	\$4,503					
2013		\$146,119	\$377,836	\$111,253	\$195,856	\$253,938	\$162,705	\$80,632	\$4,503				
2014			\$344,286	\$509,437	\$366,008	\$225,168	\$359,487	\$353,398	\$47,856	\$18,882			
2015				\$344,286	\$509,437	\$366,008	\$225,168	\$359,487	\$353,398	\$47,856	\$18,882		
2016					\$498,938	\$548,906	\$312,004	\$447,131	\$358,244	\$275,437	\$40,770	\$33,556	

<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											
	Incident year											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
2012	\$110,611	\$106,576	\$73,459	\$48,430	\$35,381	\$20,510	\$6,101	\$1,245				
2013		\$102,030	\$82,533	\$75,964	\$48,027	\$29,140	\$34,393	\$6,313	\$1,425			
2014			\$185,473	\$102,271	\$68,009	\$40,713	\$45,161	\$51,186	\$7,450	\$2,299		
2015				\$109,572	\$129,427	\$93,578	\$67,710	\$42,295	\$32,063	\$6,506	\$3,889	
2016					\$208,256	\$125,958	\$100,354	\$55,490	\$46,405	\$30,899	\$10,350	\$2,996

## Claim data by type of settlement

For claims closed in 2016, the parties negotiated a settlement for 75.5 percent of claims that resulted in an indemnity payment, and these settlements comprised 60.5 percent of total payments. Average paid indemnity for these types of settlements was \$228,008.

How claim was resolved	Calendar year 2016 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	288	17	\$73,207	\$4,306	274	\$6,282,030	\$22,927
Settled by parties	313	283	\$64,526,341	\$228,008	235	\$17,016,795	\$72,412
Court disposed claim	168	5	\$3,563,000	\$712,600	168	\$16,411,660	\$97,688
Settled by alternative dispute resolution	94	70	\$38,575,302	\$551,076	94	\$10,775,268	\$114,631
Total	863	375	\$106,737,850	\$284,634	771	\$50,485,753	\$65,481

Claimants agreed to use alternative dispute resolution, including arbitration, mediation, or a private trial, to resolve 18.7 percent of claims with paid indemnity, and these settlements comprised 36.1 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$551,076 and median paid indemnity was \$309,950.

Of the 168 claims resolved by the courts in 2016, 97 percent were resolved in favor of the defendant. The courts resolved five claims with paid indemnity, resulting in average paid indemnity of \$712,600.

## 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.

Method of alternative dispute resolution	Calendar Year 2016 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	2						
Arbitration decision for defense	2						
Mediation	89	68	\$37,375,683	\$549,642	89	\$10,358,318	\$116,386
Private trial (formal trial before neutral party)	1						
<b>Total</b>	<b>94</b>	<b>70</b>	<b>\$38,575,302</b>	<b>\$551,076</b>	<b>94</b>	<b>\$10,775,268</b>	<b>\$114,631</b>

In 2016, there were 94 reported claims settled by alternative dispute resolution; 89 of those settled in mediation, resulting in an average indemnity payment of \$549,642. Relatively few claims were resolved using other methods and data about these claims were 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\(6\)](#).