

2019 Medical Malpractice Statistical Summary

Data submitted by insurers and self-insurers
Claims closed from Jan. 1, 2015 through Dec. 31, 2019

June 2020

Mike Kreidler, *Insurance Commissioner*
www.insurance.wa.gov

Table of contents

- 2019 Medical Malpractice Statistical Summary..... 1**
- Introduction 3**
- Key 2019 closed claim statistics 5**
- Calendar year comparisons 6**
- Defense and cost containment..... 7**
- Million-dollar claims 8**
- Comparison of individual claim data and incident-level data 9**
- Calendar-incident year comparisons 10**
- Claim data by type of settlement 11**

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 2015 through 2019.⁶ 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. 4, 2020, 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 1, 2020.

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 2019 closed claim statistics

Claims

- After increasing slightly in 2018, the number of closed claims decreased 19.3% in 2019.

Indemnity payments

- The average indemnity payment increased 36.8% to \$623,276.
- Total paid indemnity decreased 0.2% to \$186.4 million.
- The number of indemnity payments decreased 27.1% to 299.

Defense costs

- Average defense costs increased 2.3% to \$74,437.
- Total defense costs decreased 14.2% to \$44.9 million.
- The number of claims with defense costs decreased 16.1% to 603.

Calendar year comparisons¹⁰

Data submitted by reporting entities to the OIC for the five-year period ending Dec. 31, 2019:

	Year closed				
	2015	2016	2017	2018	2019
Total claims closed	1,021	898	813	833	672
Claims with indemnity payments	412	391	359	410	299
Total paid indemnity	\$155,952,164	\$110,088,350	\$119,418,182	\$186,746,161	\$186,359,617
Total economic damages	\$84,156,304	\$76,913,851	\$84,172,872	\$110,867,436	\$152,449,547
Average indemnity payment	\$378,525	\$281,556	\$332,641	\$455,478	\$623,276
Average economic damages	\$204,263	\$196,711	\$234,465	\$270,408	\$509,865
Claims with defense costs	906	804	681	719	603
Total defense costs	\$59,147,858	\$52,597,149	\$42,184,850	\$52,306,437	\$44,885,731
Average defense cost	\$65,285	\$65,419	\$61,945	\$72,749	\$74,437

Number of claims: For calendar year 2019, insuring entities and self-insurers submitted 672 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 19.3% from the previous year.

Payments to claimants: In 2019, insuring entities and self-insurers paid \$186.4 million on 299 claims, an average of \$623,276 per paid claim. The number of indemnity payments decreased 27.1%, while the average payment increased 36.8% from the previous 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 2019, insuring entities and self-insurers paid \$152.4 million for economic damages. Average economic damages were \$509,865 per claim, an increase of 88.6% from the previous year. Economic damages accounted for 81.8% of the total indemnity payments in 2018, as compared to an average of 62.2% 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 2019, insuring entities and self-insurers paid \$44.9 million to defend 603 claims. The average defense cost increased 2.3% to \$74,437 per claim. Insuring entities and self-insurers reported defense and cost containment expenses for 89.7% of all claims.

	Year closed				
	2015	2016	2017	2018	2019
Total claims closed	1,021	898	813	833	672
Claims with defense counsel	714	622	539	588	527
Total paid to defense counsel	\$44,274,195	\$39,166,902	\$30,769,073	\$37,694,085	\$32,328,448
Average paid to defense counsel	\$62,009	\$62,969	\$57,085	\$64,106	\$61,344
Claims with experts hired	509	433	403	435	344
Total paid to experts	\$7,791,687	\$7,826,725	\$6,222,619	\$6,616,977	\$6,990,214
Average paid to experts	\$15,308	\$18,076	\$15,441	\$15,211	\$20,320
Claims with other defense costs	643	556	427	448	385
Total paid for other defense costs	\$7,081,976	\$5,603,522	\$5,182,543	\$7,995,375	\$5,567,069
Average paid for other defense costs	\$11,014	\$10,078	\$12,137	\$17,847	\$14,460
Claims with defense costs (all types)	906	804	681	719	603
Total paid defense costs (all types)	\$59,147,858	\$52,597,149	\$42,184,850	\$52,306,437	\$44,885,731
Average paid defense cost (all types)	\$65,285	\$65,419	\$61,945	\$72,749	\$74,437

Payments to defense counsel: The average amount paid for defense counsel decreased 4.3% in 2019. Insuring entities and self-insurers reported payments to defense counsel for 78.4% of all claims.

Payments to expert witnesses: The average amount paid for expert witnesses increased 33.6% in 2019. Insuring entities and self-insurers reported payments to expert witnesses for 51.2% of all claims.

Million-dollar claims

Insuring entities and self-insurers closed 44.5% of claims in 2019 with an indemnity payment to a claimant.

Of those claims:

- 44 claims closed with paid indemnity of \$1 million or more. For these claims, the average payment increased 30.9% to \$3,274,628.

Claims closed for \$1 million or more	Year closed				
	2015	2016	2017	2018	2019
Number of indemnity payments	33	30	35	49	44
Total paid indemnity	\$97,644,887	\$54,343,188	\$84,053,866	\$122,626,292	\$144,083,630
Average indemnity payment	\$2,958,936	\$1,811,440	\$2,401,539	\$2,502,577	\$3,274,628

- 255 claims closed with paid indemnity of less than \$1 million. For these claims, the average payment decreased 6.7% to \$165,788.

Claims closed for less than \$1 million	Year closed				
	2015	2016	2017	2018	2019
Number of indemnity payments	379	361	324	361	255
Total paid indemnity	\$58,307,277	\$55,745,162	\$35,364,316	\$64,119,869	\$42,275,987
Average indemnity payment	\$153,845	\$154,419	\$109,149	\$177,617	\$165,788

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 12-year period ending Dec. 31, 2019.

	Individual claim data	Incident level data
Number of claims/incidents	11,529	1,270
Number with indemnity payments	5,398	627
Total paid indemnity	\$1,576,879,059	\$389,005,895
Total economic damages	\$944,085,199	\$237,458,052
Average indemnity payment	\$292,123	\$620,424
Median indemnity payment	\$50,000	\$300,000
Average economic damages	\$174,895	\$378,721
Number with defense costs	9,895	1,253
Total defense costs	\$541,222,885	\$160,193,211
Average defense cost	\$54,697	\$127,848

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 112.4% higher than average paid indemnity per claim, and the median indemnity payment is six times as high.

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 1,270 incidents, 17.9% 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 by the year the claim was closed and the year of the medical malpractice incident that led to the claim. These tables¹³ show that the longer a claim remains open and unresolved, the more expensive it is to defend and settle. Simple claims are closed quickly, while more complex and expensive claims take longer and require more resources to resolve. Insuring entities and self-insurers settle most claims within five years of the date the incident occurred. Claims closed six or more years after the incident occurred are shown in the "Prior" column.

Closed claim count											
Year claim closed	Incident year										
	Prior	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2015	171	121	195	177	148	166	43				
2016	135		110	186	181	115	120	51			
2017	122			82	148	180	96	126	59		
2018	103				87	157	180	110	139	57	
2019	94					121	141	113	102	78	23

Average paid indemnity (in thousands)											
Year claim closed	Incident year										
	Prior	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2015	\$587	\$1,252	\$278	\$355	\$265	\$125	\$8				
2016	\$468		\$317	\$439	\$350	\$275	\$41	\$33			
2017	\$539			\$287	\$307	\$627	\$249	\$52	\$67		
2018	\$1,331				\$617	\$637	\$364	\$481	\$123	\$30	
2019	\$1,412					\$881	\$909	\$413	\$263	\$240	\$13

Average defense cost (in thousands)											
Year claim closed	Incident year										
	Prior	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2015	\$138	\$94	\$69	\$43	\$33	\$8	\$4				
2016	\$149		\$98	\$58	\$46	\$30	\$10	\$3			
2017	\$150			\$99	\$49	\$50	\$21	\$6	\$6		
2018	\$199				\$86	\$68	\$51	\$43	\$12	\$1	
2019	\$133					\$122	\$57	\$57	\$40	\$11	\$3

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.

Claim data by type of settlement

In this table, entries marked "*" have been redacted due to confidentiality laws.

Calendar year 2019 results							
How claim was resolved	Reported Claims	Paid Claims	Total paid indemnity	Average paid indemnity	Claims with defense costs	Total defense costs	Average defense costs
Abandoned by claimant	188	*	*	*	178	\$4,461,935	\$25,067
Settled by parties	248	206	\$107,801,679	\$523,309	190	\$14,619,914	\$76,947
Court disposed claim	151	*	*	*	151	\$13,430,021	\$88,941
Settled by ADR	85	78	\$77,246,126	\$990,335	84	\$12,373,861	\$147,308
Total	672	299	\$186,359,617	\$623,276	603	\$44,885,731	\$74,437

For claims closed in 2019, the parties negotiated a settlement for 68.9% of claims that resulted in an indemnity payment, and these settlements comprised 57.8% of total payments. Average paid indemnity for these types of settlements was \$523,309.

Claimants agreed to use alternative dispute resolution ("ADR"), including arbitration, mediation, or a private trials, to resolve 26.1% of claims with paid indemnity, and these settlements comprised 41.5% of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$990,335.

