

Medical Malpractice Calendar Year 2008 Statistical Summaries

Closed Claim Data Submitted by Insuring Entities and Self-Insurers
Claims Closed from Jan. 1 – Dec. 31, 2008

Rates and Forms Division

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Mike Kreidler - *State Insurance Commissioner*

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Introduction

In 2006, the Washington State Legislature enacted comprehensive healthcare liability reform,¹ requiring insurers and self-insurers² to report medical malpractice closed claim data to the Office of the Insurance Commissioner (OIC). The OIC must make available statistical summaries of aggregate medical malpractice closed claim data by April 30 of each year³. On March 12, 2009, Insurance Commissioner Mike Kreidler notified the Legislature that data reporting for calendar year 2008 was incomplete, and was given an extension to June 15 to post the summaries. The OIC believes that data displayed in this summary are still incomplete, and the annual report the agency will issue in June 2010 will include additional, late-reported data for calendar year 2008. Two specific examples:

1. A number of large nursing home and assisted care organizations have not yet registered as self-insurers to report medical malpractice closed claims. The OIC has made a number of outreach efforts to the Washington Health Care Association, but the WHCA has not provided assistance in contacting its members. The OIC will continue to work with these organizations to bring them into compliance, and will consider recommending legislation in 2010 to improve compliance.
2. One risk retention group, Ophthalmic Mutual Insurance Company, refused to report closed claims, citing federal preemption. The OIC will contact members of this risk retention group and notify them that state law requires them to report closed claims.⁴

These statistical summaries display data on medical malpractice claims closed in calendar year 2008 that were reported to the OIC by June 1, 2009. Three primary types of data are displayed:

1. *Defense and Cost Containment Expenses (DCC)*: Expenses allocated to a specific claim to defend an insured, including expenses such as court costs, fees paid to defense attorneys, and fees for expert witnesses. These expenses do not include the internal costs to operate a claims department.⁵
2. *Estimated Economic Damages*: A reporting entity's estimate of the claimant's economic damages⁶ in instances where the reporting entity made an indemnity payment.
3. *Paid Indemnity*: Total compensation the reporting entity paid to the claimant.

These summaries include only closed claims for which indemnity and/or defense and cost containment expenses were paid.⁷ Each closed claim is associated with one defendant. The OIC has not provided a summary of incident level data, which is incomplete, since claims related to one incident may close over a period of years.

¹ [House Bill 2292 - 2005-06](#) session

² [RCW 48.140.010](#)(8) and (11)

³ See [RCW 48.140.040](#)(2).

⁴ See [RCW 48.140.020](#)(1)(c).

⁵ See [WAC 284-24D-020](#)(1), [WAC 284-24D-330](#) and [WAC 284-24D-340](#).

⁶ 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](#).

⁷ See [WAC 284-24D-060](#).

Calendar Year 2008 Summary

Total Number of Closed Claims	876
Total Paid Indemnity	\$ 105,952,520
Number of Claims with Paid Indemnity	452
Average Indemnity Payment	\$ 234,408
Total Estimated Economic Damages	\$ 47,686,615
Number of Claims with Paid Indemnity	452
Average Economic Loss	\$ 105,501
Total Paid Defense Costs	\$ 49,813,997
Number of Claims with Defense Payments	767
Average Defense Cost	\$ 64,947

Number of claims: As of June 1, insuring entities⁸ and self-insurers⁹ (“reporting entities”¹⁰) submitted 876 medical malpractice¹¹ claims closed with an indemnity payment, defense and cost containment expenses (DCC), or both types of payments.¹²

Indemnity payments to claimants: Reporting entities paid \$106.0 million on 452 claims, or an average of \$234,408 per paid claim.

- Reporting entities closed 51.6 percent of all claims with an indemnity payment to a claimant. Most, but not all, claims with paid indemnity also had defense and cost containment expenses.
- Of those claims closed with an indemnity payment:
 - 19 claims closed with paid indemnity over \$1 million. These closed claims resulted in total payments of \$41,775,890, or an average indemnity payment of \$2.2 million.
 - 433 claims closed with paid indemnity of \$1 million or less. These closed claims resulted in total payments of \$64,176,630, or an average indemnity payment of \$148,214.

Estimated economic damages: If a reporting entity makes an indemnity payment, it must estimate the portion of the payment that is for economic damages. Reporting entities paid \$47.7 million on 452 claims, or an average of \$105,501 per paid claim. Average estimated economic damages comprised 45 percent of the average indemnity payment.

Defense and cost containment expenses: Reporting entities paid \$49.8 million to defend 767 claims, or an average of \$64,947 per claim. Reporting entities closed 87.6 percent of all claims with defense and cost containment expenses (DCC).

⁸ See [RCW 48.140.010](#)(8).

⁹ See [RCW 48.140.010](#)(11).

¹⁰ See [WAC 284-24D-020](#)(19).

¹¹ See [RCW 48.140.010](#)(9).

¹² See [RCW 48.140.010](#)(3) and [WAC 284-24D-080](#).

Data displayed by type of settlement: Reporting entities settled most claims closed with paid indemnity by negotiation between the claimant and the reporting entity. Reporting entities settled:

- 74.3 percent of claims with paid indemnity by negotiation. These settlements comprise 48.9 percent of the total paid indemnity.
- 23.2 percent of claims with paid indemnity by alternative dispute resolution (arbitration, mediation, private trial). These settlements comprise 46.3 percent of the total paid indemnity. Reporting entities frequently used mediation to settle claims. Mediated settlements comprised 22.1 percent of claims with paid indemnity and 43.6 percent of total paid indemnity.
- 8 claims with paid indemnity were resolved by verdict in favor of the plaintiff, resulting in average paid indemnity of \$632,277. Most court decisions were favorable to the defendant.

Method of Claim Disposition	Total Reported Claims	Number of Claims with Defense Costs	Total Defense Costs	Average Defense Costs	Number of Claims with an Indemnity Payment	Total Paid Indemnity	Average Indemnity Payment
Abandoned by Claimant	226	225	\$ 2,747,723	\$ 12,212	2	\$ 2,504	\$ 1,252
Settled by Parties	376	270	14,887,901	55,140	336	51,836,913	154,277
Court disposed Claim	154	154	9,864,580	64,056	8	5,058,219	632,277
Alternative Dispute Resolution	120	118	22,313,793	189,100	105	49,049,884	467,142
Total	876	767	\$ 49,813,997	\$ 64,947	452	\$ 105,952,520	\$ 234,408

Below is a summary of claims resolved by alternative dispute resolution. The law¹³ mandates mediation in most cases where a plaintiff files a lawsuit. These data show that mediation is the most widely-used method of alternative dispute resolution.

Claims Resolved by Alternative Dispute Resolution	Total Reported Claims	Claims with Defense Costs	Total Defense Cost	Average Defense Cost	Total Paid Indemnity	Average Indemnity Payment
Arbitration award for Plaintiff	6	5	\$ 178,194	\$ 35,639	\$ 1,597,516	\$ 266,253
Arbitration decision for Defense	6	6	306,618	51,103	-	-
Mediation	101	100	20,789,958	207,900	46,162,241	480,857
Private trial (formal trial before neutral party)	7	7	1,039,023	148,432	1,290,127	430,042
Total	120	118	\$ 22,313,793	\$ 189,100	\$ 49,049,884	\$ 467,142

¹³ See [RCW 7.70.100](#).

Data displayed by type of organization: It was more costly for hospitals to defend and settle claims.

Type Of Organization	Total Reported Claims	Claims with Defense Costs	Total Defense Costs	Average Defense Costs	Claims with an Indemnity Payment	Total Paid Indemnity	Average Indemnity Payment
Hospital or Hospital Unit	310	261	\$ 25,825,863	\$ 98,950	172	\$ 50,692,050	\$ 294,721
Group or Practice	406	375	18,516,018	49,376	190	40,795,272	214,712
All Other	160	131	5,472,116	41,772	90	14,465,198	160,724
Total	876	767	\$ 49,813,997	\$ 64,947	452	\$ 105,952,520	\$ 234,408

Data displayed by type of reporting entity: Commercial insurers (admitted and surplus lines) reported higher average defense costs than other types of reporting entities. The OIC believes that the difference in average defense costs between insurers and other types of reporting entities may be the result of under-reporting by those entities. The OIC will work with self-insurers and risk retention groups in the future to facilitate more accurate reporting under existing administrative rules.¹⁴

Type of Reporting Entity	Total Reported Claims	Number of Claims with Defense Costs	Total Defense Costs	Average Defense Costs	Number of Claims with an Indemnity Payment	Total Paid Indemnity	Average Indemnity Payment
Commercial Insurer	510	466	\$ 37,502,019	\$ 80,476	241	\$ 58,772,448	\$ 243,869
Self-Insured Organization	344	285	11,630,693	40,809	199	44,463,201	223,433
Risk Retention Group	22	16	681,285	42,580	12	2,716,871	226,406
Total	876	767	\$ 49,813,997	\$ 64,947	452	\$ 105,952,520	\$ 234,408

¹⁴ Reporting of defense and cost containment expenses are explained in [WAC 284-24D-020\(1\)](#), [WAC 284-24D-330](#), and [WAC 284-24D-340](#)

Data displayed by injury outcome: There was a logical relationship between the reported injury outcome¹⁵ and paid indemnity. The highest percentage of economic damages was attributed to claims with grave permanent injury.

Injury Outcome	Number of Claims with an Indemnity Payment	Total Paid Indemnity	Average Indemnity Payment	Total Estimated Economic Damages	Average Estimated Economic Damages	Percent Economic Loss
Emotional injury only	26	\$ 1,476,133	\$ 56,774	\$ 420,708	\$ 16,181	28.5%
Insignificant injury	30	1,403,919	46,797	903,782	30,126	64.4%
Minor temporary injury	134	2,632,056	19,642	1,381,434	10,309	52.5%
Major temporary injury	52	5,529,363	106,334	1,664,021	32,000	30.1%
Minor permanent injury	54	8,295,339	153,617	2,452,628	45,419	29.6%
Significant permanent injury	43	19,111,599	444,456	8,810,047	204,885	46.1%
Major permanent injury	33	27,208,874	824,511	14,718,360	446,011	54.1%
Grave permanent injury	11	8,265,000	751,364	5,600,488	509,135	67.8%
Death	69	32,030,237	464,206	11,735,147	170,075	36.6%
Total	452	\$ 105,952,520	\$ 234,408	\$ 47,686,615	\$ 105,501	45.0%

¹⁵ For description of each type of injury outcome, see [WAC 284-24D-220](#)