

2017 Medical Malpractice Statistical Summary

Settlement data submitted by attorneys

Lawsuits with final disposition from Jan. 1, 2013 through Dec. 31, 2017

June 2018

Mike Kreidler, *Insurance Commissioner*

www.insurance.wa.gov

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Introduction

In 2006, the Washington state Legislature enacted comprehensive health care liability reform,¹ requiring attorneys to report medical malpractice settlement data to the Office of the Insurance Commissioner (OIC). Each year, the OIC must post summary statistics about medical malpractice lawsuits that are resolved.² RCW 7.70.140 does not have tools for the OIC to use to make attorneys report data. Voluntary compliance has been poor and data in this summary are incomplete. The OIC cannot draw conclusions from incomplete data, so this statistical summary is limited to calendar-year statistics.

There are two types of data displayed in this statistical summary:

- **Total paid indemnity:** Total compensation paid by all defendants to the claimant stemming from a lawsuit. Indemnity payments may come from several defendants if a lawsuit named more than one party.³
- **Legal expenses:** All sums paid by the claimant to the attorney to prosecute the claim, including attorney fees, expert witness fees, court costs, and all other legal expenses.⁴

¹ HB 2292 - 2005-06

² RCW 48.140.040(2). On Feb. 1, 2018, Insurance Commissioner Mike Kreidler notified the Legislature that the OIC would post statistical summaries by June 1.

³ WAC 284-24E-150

⁴ RCW 7.70.140(2)(b)(v).

Key statistics about medical malpractice lawsuits resolved in 2017:

- Attorneys reported that 29 lawsuits were resolved with paid indemnity in 2017.
- In cases where indemnity payments were made to the claimant, average compensation to the claimant was \$899,621.
- Average attorney fees were \$293,967.

Calendar year comparison: Attorneys reported these data for the five-year period ending Dec. 31, 2017.⁵

	-----Calendar year-----				
	2013	2014	2015	2016	2017
Settlements reported by attorneys	58	53	47	37	31
Total legal expenses	\$31,971,142	\$27,209,251	\$29,348,515	\$25,170,702	\$10,777,277
Average legal expense per lawsuit	\$551,227	\$513,382	\$624,436	\$680,289	\$347,654
Number of lawsuits with paid indemnity	57	52	44	35	29
Total paid indemnity	\$72,113,776	\$70,617,961	\$74,402,000	\$61,303,662	\$26,089,000
Average indemnity payment	\$1,265,154	\$1,358,038	\$1,690,955	\$1,751,533	\$899,621
Number of lawsuits with attorney fees	58	53	47	37	31
Total attorney fees	\$26,706,371	\$23,910,626	\$25,973,603	\$22,798,754	\$9,112,988
Average fee paid to attorney	\$460,455	\$451,144	\$552,630	\$616,183	\$293,967
Average attorney fee ÷ average indemnity payment	36.4%	33.2%	32.7%	35.2%	32.7%

Number of resolved lawsuits: Attorneys submitted 31 reports about medical malpractice lawsuits that were resolved in calendar year 2017, a 16.2 percent decrease from the previous year.

Indemnity payments to claimants: In 2017, attorneys reported 29 lawsuits in which a claimant received compensation. Payments totaled \$26.1 million, or an average of \$899,621 per reported settlement. After increasing gradually over the previous three years, average payments declined sharply in 2017 compared to 2016.

Total legal expenses: Claimants must pay fees and costs to file a lawsuit regardless of whether they receive a settlement. In 2017, claimants paid \$10.8 million in legal fees to resolve 31 lawsuits, or an average of \$347,654 per reported lawsuit.

⁵ Data submitted by attorneys as of May 2, 2018.

Attorney fees: Claimants pay attorney fees based on their contracts, and these fees are related to the total indemnity paid to the claimant to resolve the lawsuit. For 2017, attorneys reported 31 settlements with average attorney fees of \$293,967.

Reporting compliance: Attorneys reported a small fraction of the 200 to 350 medical malpractice lawsuits resolved each year. There is no enforcement mechanism in the law, so the OIC expects that attorneys will continue to ignore the law and fail to report settlement data.



2017 Medical Malpractice Statistical Summary

Data submitted by insurers and self-insurers

Claims closed from Jan. 1, 2013 through Dec. 31, 2017

June 2018

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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 2013 through 2017.⁶ 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. 1, 2018, 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 March 22, 2018.

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 2017 closed claim statistics

Claims

- The number of closed claims decreased 12.1 percent to 799, compared to 909 the previous year.

Indemnity payments

- The average indemnity payment increased 17.6 percent to \$328,172.
- Total paid indemnity increased 3.6 percent to \$114.2 million.
- The number of indemnity payments decreased 11.9 percent to 348.

Defense costs

- Average defense costs decreased 9.5 percent to \$60,795.
- Total defense costs decreased 25.9 percent to \$40.6 million.
- The number of claims with defense costs decreased 18.1 percent to 668.

Calendar year comparisons¹⁰

Reporting entities submitted these data to the OIC for the five-year period ending Dec. 31, 2017:

	Year closed					Percent change from previous year
	2013	2014	2015	2016	2017	
Total claims closed	1,129	1,036	1,024	909	799	-12.1%
Number of indemnity payments	549	472	417	395	348	-11.9%
Total paid indemnity	\$126,285,431	\$125,257,297	\$155,952,164	\$110,240,850	\$114,203,811	3.6%
Total economic damages	\$69,954,214	\$79,043,041	\$84,156,304	\$76,357,808	\$80,312,499	5.2%
Average indemnity payment	\$230,028	\$265,376	\$373,986	\$279,091	\$328,172	17.6%
Average economic damages	\$127,887	\$167,464	\$201,814	\$195,789	\$232,117	18.6%
Number of claims with defense costs	954	899	909	816	668	-18.1%
Total defense costs	\$45,280,733	\$51,586,944	\$58,842,229	\$54,828,261	\$40,611,261	-25.9%
Average defense cost	\$47,464	\$57,383	\$64,733	\$67,191	\$60,795	-9.5%

Number of claims: For calendar year 2017, insuring entities and self-insurers submitted 799 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 12.1 percent from the previous year.

Payments to claimants: In 2017, insuring entities and self-insurers paid \$114.2 million on 348 claims, an average of \$328,172 per paid claim. The number of indemnity payments decreased by 11.9 percent, while the average payment increased by 17.6 percent from the previous year.

¹⁰ RCW 48.140.040 requires the commissioner to provide a calendar year summary of data.

¹¹ 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 2017, insuring entities and self-insurers paid \$80.3 million for economic damages. Average economic damages were \$232,117 per claim, an increase of 18.6 percent from the previous year. Economic damages accounted for 70.3 percent of the total indemnity payments in 2016, as compared to an average of 59.8 percent over the previous four years.

Defense and cost containment

In 2017, insuring entities and self-insurers paid \$40.6 million to defend 668 claims. The average defense cost decreased 9.5 percent to \$60,795 per claim. Insuring entities and self-insurers reported defense and cost containment expenses for 83.6 percent of all claims.

	-----Year closed-----				Percent change over prior year	
	2013	2014	2015	2016	2017	
Total claims closed	1,129	1,036	1,024	909	799	-12.1%
Claims with defense counsel	729	736	711	632	522	-17.4%
Total paid to defense counsel	\$35,120,893	\$39,153,008	\$44,064,293	\$41,011,853	\$29,603,146	-27.8%
Average paid to defense counsel	\$48,177	\$53,197	\$61,975	\$64,892	\$56,711	-12.6%
Claims with experts hired	539	510	508	434	391	-9.9%
Total paid to experts	\$5,019,233	\$5,879,922	\$7,745,069	\$8,105,126	\$5,941,836	-26.7%
Average paid to experts	\$9,312	\$11,529	\$15,246	\$18,675	\$15,197	-18.6%
Claims with other defense costs	616	591	648	559	420	-24.9%
Total paid for other defense costs	\$5,140,607	\$6,554,014	\$7,032,867	\$5,711,282	\$5,045,992	-11.6%
Average paid for other defense costs	\$8,345	\$11,090	\$10,853	\$10,217	\$12,014	17.6%
Claims with defense costs (all types)	954	899	909	816	668	-18.1%
Total paid defense costs (all types)	\$45,280,733	\$51,586,944	\$58,842,229	\$54,828,261	\$40,611,261	-25.9%
Average paid for all types of defense costs	\$47,464	\$57,383	\$64,733	\$67,191	\$60,795	-9.5%

Payments to defense counsel: After increasing gradually over the previous three years, the average amount paid for defense counsel decreased by 12.6 percent in 2017 compared to 2016. Total payments for defense counsel decreased 27.8 percent.

Payments to expert witnesses: After increasing gradually over the previous three years, the average amount paid for expert witnesses decreased by 18.6 percent in 2017 compared to 2016. Total payments to expert witnesses decreased 26.7 percent.

Million-dollar claims

Insuring entities and self-insurers closed 43.6 percent of claims in 2017 with an indemnity payment to a claimant.

Of those claims:

- 33 claims closed with paid indemnity of \$1 million or more. Total payments for these claims increased significantly to \$80.8 million.

	Year closed					Total
	2013	2014	2015	2016	2017	
Claims closed for \$1 million or more						
Number of indemnity payments	35	50	33	30	33	181
Total indemnity payments	\$63,348,157	\$65,340,246	\$97,644,887	\$54,343,188	\$80,753,866	\$361,430,344
Average indemnity payment	\$1,809,947.34	\$1,306,805	\$2,958,936	\$1,811,440	\$2,447,087	\$1,996,853

- 315 claims closed with paid indemnity of less than \$1 million, 13.2 percent less than in 2016. These closed claims resulted in total payments of \$33.4 million. The average payment for claims under \$1 million was \$106,190.

	Year closed					Total
	2013	2014	2015	2016	2017	
Claims closed for less than \$1 million						
Number of indemnity payments	511	418	379	363	315	1,986
Total paid indemnity	\$62,937,274	\$59,917,051	\$58,307,277	\$55,897,662	\$33,449,945	\$270,509,209
Average indemnity payment	\$123,165	\$143,342	\$153,845	\$153,988	\$106,190	\$136,208

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 10-year period ending Dec. 31, 2017.

	Individual claim data	Incident-level data
Number of claims/incidents	9,968	1,049
Number with indemnity payments	4,669	496
Total paid indemnity	\$1,159,743,822	\$269,375,579
Total economic damages	\$647,129,212	\$141,349,127
Average indemnity payment	\$248,392	\$543,096
Median indemnity payment	\$50,000	\$250,000
Average economic damages	\$138,601	\$284,978
Number with defense costs	8,521	1,034
Total defense costs	\$440,182,268	\$118,301,337
Average defense cost	\$51,659	\$114,411

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 119 percent higher than average paid indemnity per claim, and the median indemnity payment is five times as high. Of 1,049 incidents, 94 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 1,049 incidents, about 20 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	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2013	31	21	65	151	252	162	190	194	63				
2014	45		21	71	156	199	183	158	149	54			
2015	45			36	88	121	197	177	150	167	43		
2016	51				35	53	108	190	184	118	120	51	
2017	46					23	48	80	148	182	92	121	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												
	Prior	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2013	\$242,561	\$325,629	\$512,134	\$270,942	\$278,265	\$237,356	\$35,173	\$8,736					
2014		\$344,286	\$509,437	\$366,008	\$225,168	\$359,487	\$353,398	\$47,856	\$18,882				
2015			\$500,833	\$762,409	\$1,189,619	\$264,746	\$355,231	\$265,347	\$125,015	\$7,651			
2016				\$498,938	\$518,824	\$317,293	\$439,164	\$338,069	\$274,863	\$41,530	\$32,554		
2017					\$207,500	\$447,626	\$287,460	\$306,864	\$614,651	\$259,794	\$51,631	\$67,384	

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											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
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	\$67,858	\$42,722	\$32,127	\$7,957	\$3,889		
2016				\$268,559	\$122,924	\$99,431	\$56,990	\$44,788	\$29,687	\$10,520	\$2,894	
2017					\$107,610	\$121,982	\$101,146	\$47,098	\$46,559	\$19,601	\$6,470	\$6,165

Claim data by type of settlement

For claims closed in 2017, the parties negotiated a settlement for 68.7 percent of claims that resulted in an indemnity payment, and these settlements comprised 55 percent of total payments. Average paid indemnity for these types of settlements was \$262,814.

How claim was resolved	Calendar year 2017 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	290	34	\$115,248	\$3,390	262	\$7,188,559	\$27,437
Settled by parties	271	239	\$62,812,663	\$262,814	169	\$13,801,840	\$81,668
Court disposed claim	157	5	\$5,540,087	\$1,108,017	157	\$12,430,999	\$79,178
Settled by alternative dispute resolution	81	70	\$45,735,813	\$653,369	80	\$7,189,863	\$89,873
Total	799	348	\$114,203,811	\$328,172	668	\$40,611,261	\$60,795

Claimants agreed to use alternative dispute resolution, including arbitration, mediation, or a private trial, to resolve 20.1 percent of claims with paid indemnity, and these settlements comprised 40 percent of the total paid indemnity. Average paid indemnity for claims settled using alternative dispute resolution was \$653,369.

Of the 157 claims resolved by the courts in 2017, 96.8 percent were resolved in favor of the defendant. The courts resolved five claims with paid indemnity, resulting in average paid indemnity of \$1,108,017.

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 2017 Results					
	Total reported claims	Claims with indemnity payments	Total paid indemnity	Average paid indemnity	Claims with defense costs	Total defense cost
Arbitration award for plaintiff	0	0	\$0	\$0	0	\$0
Arbitration decision for defense	3					
Mediation	74	67	\$44,053,820	\$657,520	73	\$6,316,461
Private trial (formal trial before neutral party)	4					
Total	81	70	\$45,735,813	\$653,369	80	\$7,189,863

In 2017, there were 81 reported claims settled by alternative dispute resolution; 74 of those settled in mediation, resulting in an average indemnity payment of \$657,520. 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).