

# **2009 Medical Malpractice Statistical Summary**

Closed Claim Data Submitted by Insurers and Self-Insurers  
**Claims Closed from Jan. 1, 2008 through Dec. 31, 2009**

## **Rates and Forms Division**

Lisa Smego, CPCU, ARM, AIAF, AIE, ARC, ACP  
Data Reporting Manager

June 15, 2010




**Mike Kreidler** - *State Insurance Commissioner*

[www.insurance.wa.gov](http://www.insurance.wa.gov)



## Table of Contents

Introduction.....	1
Key Statistics for 2009.....	3
Calendar Year Comparison.....	4
Calendar/Incident Year Comparisons.....	6
Claim Data by Type of Settlement.....	8
Claim Date by Type of Organization.....	9
Claim Date by Type of Insuring Entity.....	10
Claim Data by Injury Outcome.....	11



## Introduction

In 2006, the Washington State Legislature enacted comprehensive healthcare liability reform, requiring insurers and self-insurers to report medical malpractice closed claim data to the Office of the Insurance Commissioner (OIC).<sup>1</sup> Each year the OIC is required to post summary statistics of medical malpractice closed claim data on the OIC website by April 30. On February 4, 2010, Insurance Commissioner Mike Kreidler notified<sup>2</sup> the legislature that data reporting for calendar year 2009 was incomplete and that the OIC would post the statistical summaries by June 15. The OIC has since received more complete data for this report, which also will be included in the first annual report due Sept. 1, 2010.

Over the last eight months, the OIC completed an extensive audit of data submitted by reporting entities.<sup>3</sup> As a result, nearly 500 records were edited, with data contained in this summary more accurate than data published in June 2009. Most significantly, there was a large error in the amount reported for defense costs on one claim, so the totals adjusted for calendar year 2008 are significantly lower.

These statistical summaries include data for medical malpractice claims closed in calendar years 2008 and 2009 that were reported to the OIC by April 14, 2010. The summaries include three primary types of data:

**Defense Costs:** Expenses paid to defend an insured are called defense and cost containment expenses (DCC). These include 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>4</sup>

**Economic Damages:** The vast majority of these amounts are an estimate of the claimant's economic damages<sup>5</sup> by the reporting entity when an indemnity payment is made to the claimant. In a few cases, a court specified economic damages when issuing a verdict, and these economic damages are included in the totals.

**Paid Indemnity:** The amount paid by the reporting entity to the claimant to resolve the claim.

These summaries include claims closed with an indemnity payment and/or defense and cost containment expenses.<sup>6</sup> Each closed claim is associated with one defendant. Claims without payments or defense costs are not reported to the OIC.

<sup>1</sup> [House Bill 2292 - 2005-06](#) session and [RCW 48.140.010](#)(8) and (11).

<sup>2</sup> [RCW 48.140.040](#)(2).

<sup>3</sup> Entities that must report data include all types of [insurers, joint underwriting associations, risk retention groups](#) and self-insurers.

<sup>4</sup> See [WAC 284-24D-020](#)(1), [WAC 284-24D-330](#) and [WAC 284-24D-340](#).

<sup>5</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](#).

<sup>6</sup> See [WAC 284-24D-060](#).

The OIC has not provided a summary of incident level data, where one incident results in more than one claim. Available incident level data are incomplete, since claims related to one incident may close over a period of years. For example, if several medical providers are sued for their actions related to an incident with a poor medical outcome, some providers may be released early in the litigation, while others may be involved in the dispute resolution process for several years.

Data in this statistical summary cannot be compared to data submitted by attorneys. Insuring entities and self-insurers report:

- **All closed claims for which payments are made.** Attorneys submit reports only if they filed a lawsuit against one or more defendants.
- **Data separately for each defendant.** Attorneys submit one settlement report that includes settlement payments made by all defendants who were sued.
- **Data promptly after each claim is settled.** The plaintiff's attorney must wait until all claims are resolved, so the timing of their reports will be different from insurers and self-insurers. For example, if several medical providers are sued for their actions related to an incident with a poor medical outcome, some providers may be released early in the litigation, while others may be involved in the dispute resolution process for several years. Insurers and self-insurers will report claims as defendants are released from the litigation, while the attorney will wait until all claims are resolved against the remaining defendants.

## Key Statistics for 2009

- The total number of claims closed dropped to 851, as compared to 884 in the prior year.
- The total number of indemnity payments dropped 13.1 percent to 398.
- The average indemnity payment increased 7.0 percent to \$251,995.
- Total paid indemnity, which is a combination of average paid indemnity and the number of paid claims, dropped 7.0 percent as a result of fewer claim payments.
- Average defense costs declined 7.5 percent to \$45,518.

## Calendar Year Comparison

Insurers, self-insurers and risk retention groups reported this data to the OIC for the two-year period ending December 31, 2009:

	-----Year Closed-----		Percent Change
	2008	2009	
Total Claims Closed	884	851	-3.7%
Number of Indemnity Payments	458	398	-13.1%
Total Paid Indemnity	\$107,815,931	\$100,278,029	-7.0%
Total Economic Damages	\$53,123,399	\$45,459,738	-14.4%
Average Indemnity Payment	\$235,406	\$251,955	7.0%
Average Economic Damages	\$115,990	\$114,220	-1.5%
Number of Claims With Defense Costs	775	740	-4.5%
Total Defense Costs	\$38,149,341	\$33,683,448	-11.7%
Average Defense Cost	\$49,225	\$45,518	-7.5%

Number of claims: For calendar year 2009, insuring entities<sup>7</sup> and self-insurers<sup>8</sup> (“reporting entities”<sup>9</sup>) submitted 851 medical malpractice<sup>10</sup> closed claim reports to the OIC, which was a decrease of 3.7 percent from the prior year.

**Payments to claimants:** In 2009, reporting entities paid \$100.3 million on 398 claims, or an average of \$251,955 per paid claim. The number of indemnity payments decreased by 13.1 percent, while the average payment increased by 7.0 percent over the prior year.

<sup>7</sup> See [RCW 48.140.010](#)(8).

<sup>8</sup> See [RCW 48.140.010](#)(11).

<sup>9</sup> See [WAC 284-24D-020](#)(19).

<sup>10</sup> See [RCW 48.140.010](#)(9).

**Economic damages:** If a reporting entity makes an indemnity payment, it must estimate the portion of the payment that is for economic damages. In a handful of cases, the court specified economic damages during the verdict process. In 2009, reporting entities paid \$45.5 million for economic damages on 398 claims. Average economic damages were \$114,220 per claim, which was a decline of 1.5 percent from the prior year. In 2009, economic damages accounted for 45.3 percent of the average indemnity payment, as compared to 49.3 percent in 2008.

**Defense costs (DCC):** In 2009, reporting entities paid \$33.7 million to defend 740 claims. The average defense cost of \$45,518 per claim was 7.5 percent lower than the prior year. Lower defense costs paid by commercial insurers and self-insurers produced this decline, as reported on page 9 . Reporting entities closed 87.0 percent of all claims with defense and cost containment expenses (DCC).

**Million dollar claims:** Reporting entities closed 46.8 percent of all claims with an indemnity payment to a claimant. Of those claims closed in 2009 with an indemnity payment:

- 23 claims closed with paid indemnity \$1 million and over, or 6 fewer than in 2008. These closed claims resulted in total payments of \$50.1 million. The average payment for these claims increased 22.7 percent to \$2.2 million.

Claims Closed for \$1 Million or More	-----Year Closed-----		Percent Change
	2008	2009	
Number of Indemnity Payments	29	23	-20.7%
Total Indemnity Payments	\$51,515,890	\$50,120,627	
Average Indemnity Payment	\$1,776,410	\$2,179,158	22.7%

- 375 claims closed with paid indemnity under \$1 million, or 55 fewer than in 2008. These closed claims resulted in total payments of \$50.2 million. The average payment for claims under \$1 million was \$133,753, or an increase of 1.9 percent over the prior year.

Claims Closed for Less Than \$1 Million	-----Year Closed-----		Percent Change
	2008	2009	
Number of Indemnity Payments	429	375	-12.6%
Total Paid Indemnity	\$56,300,041	\$50,157,402	
Average Indemnity Payment	\$131,236	\$133,753	1.9%

## Calendar/Incident Year Comparisons

Due to confidentiality provisions in the law,<sup>11</sup> the OIC is limited on how much calendar/incident year data it can display. For example, the oldest claim that closed in 2009 stemmed from an incident that occurred in 1976. The OIC cannot show data for years where few claims were closed, since that information may lead to the identity of the claimant, defendant, facility or insurer. The table below shows that most of the claims are settled within one to five years of the date when the incident occurred.

Year Claim Closed	Closed Claim Count								
	-----Incident Year-----								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
2008	27	33	108	166	184	135	143	46	
2009		18	41	98	176	135	164	147	43

<sup>11</sup> See [RCW 48.140.040](#) and [RCW 48.140.060](#).

The table below shows the average indemnity payment is likely to be higher as the claim ages. For claims closed in 2008, the most expensive incident year was 2003. For claims closed in 2009, the most expensive incident year was 2004. Comparative results for early incident years in 2008 and 2009 are inconsistent, and the database is too immature to draw conclusions.

<b>Average Paid Indemnity</b>									
-----Incident Year-----									
<b>Year Claim Closed</b>	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>2008</b>	\$464,452	\$362,204	\$475,434	\$345,098	\$209,945	\$187,375	\$71,325	\$55,729	
<b>2009</b>		\$87,500	\$136,714	\$397,895	\$229,633	\$232,126	\$265,621	\$74,460	\$5,253

Finally, the table below shows defense costs increase as a claim ages, but drop off six years after the incident.

<b>Average Defense Cost</b>									
-----Incident Year-----									
<b>Year Claim Closed</b>	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>2008</b>	\$92,859	\$90,810	\$85,220	\$52,003	\$51,857	\$18,397	\$3,961	\$4,977	
<b>2009</b>		\$77,636	\$79,961	\$120,558	\$36,970	\$31,051	\$22,628	\$3,873	\$808

## Claim Data by Type of Settlement

In 2009, most claims resolved with payments to the claimant were settled by negotiation. Only seven claims abandoned by the claimant resulted in any payments, and the amounts paid were small.

-----Calendar Year 2009 Results-----							
How Claim was Resolved	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	267	7	\$8,323	\$1,189	263	\$2,908,024	\$11,057
Settled by Parties	349	295	\$68,735,505	\$233,002	246	\$10,440,487	\$42,441
Court disposed Claim	143	15	\$9,259,429	\$617,295	143	\$11,486,505	\$80,325
Settled by Alternative Dispute Resolution	92	81	\$22,274,772	\$274,997	88	\$8,848,432	\$100,550
<b>Total</b>	<b>851</b>	<b>398</b>	<b>\$100,278,029</b>	<b>\$251,955</b>	<b>740</b>	<b>\$33,683,448</b>	<b>\$45,518</b>

Reporting entities settled 74.1 percent of claims with paid indemnity by negotiation, and these settlements comprise 68.5 percent of the total payments. Alternative dispute resolution (arbitration, mediation, private trial) was used to resolve 20.4 percent of claims with paid indemnity, and these settlements comprise 22.2 percent of the total paid indemnity. The courts resolved 15 claims with paid indemnity, resulting in average paid indemnity of \$617,295. The defendant prevailed in 89.5 percent of claims resolved by the courts.

Below is a summary of claims resolved by alternative dispute resolution in 2009. The law<sup>12</sup> mandates mediation in most cases where a plaintiff files a lawsuit, and mediation is the most widely-used method of alternative dispute resolution. Alternative dispute resolution means the lawsuit was resolved in a process outside of the government judicial process. Of the 92 reported claims settled by alternative dispute resolution, 81 were settled by mediation.

Method of Alternative Dispute Resolution	Total Reported Claims	Claims with Indemnity Payments	Total Indemnity Payments	Average Indemnity Payment	Claims with Defense Costs	Total Defense Cost	Average Defense Cost
Arbitration award for Plaintiff	3	3	\$51,042	\$17,014	2	\$27,107	\$13,554
Arbitration decision for Defense	2	-	-	-	2	\$299,064	\$149,532
Mediation	81	74	\$20,528,867	\$277,417	78	\$7,968,054	\$102,155
Private trial (formal trial before neutral party)	6	4	\$1,694,863	\$423,716	6	\$554,207	\$92,368
<b>Total</b>	<b>92</b>	<b>81</b>	<b>\$22,274,772</b>	<b>\$274,997</b>	<b>88</b>	<b>\$8,848,432</b>	<b>\$100,550</b>

### Claim Data by Type of Organization

Data for both 2008 and 2009 are combined in this table to neutralize the effect of year-to-year fluctuations. Over the two-year period ending December 31, 2009, it was least costly for hospitals to defend claims, and the highest average indemnity payments were made on behalf of medical groups or practices. Due to a data entry error, the average defense costs reported for hospitals or hospital units appear significantly lower than reported in the June 2009 statistical summary.

<sup>12</sup> See [RCW 7.70.100](#).

## Claim Data by Type of Insuring Entity

In 2009, commercial insurers (admitted and surplus lines) reported higher average defense costs than other types of reporting entities,<sup>13</sup> yet reduced average defense costs from \$54,058 in 2008 to \$48,283 in 2009, or a reduction of 10.7 percent. Self-insurers reduced average defense costs 11.6 percent to \$37,719. These are notable year-to-year improvements.

	-----Type of Insuring Entity-----			
	Commercial Insurers	Self-Insurers	Risk Retention Groups	Total
<b>Total Reported Claims</b>	501	312	38	851
<b>Total Paid Indemnity</b>	\$49,273,378	\$29,860,691	\$21,143,960	\$100,278,029
<b>Number of Claims with Paid Indemnity</b>	230	147	21	398
<b>Average Paid Indemnity</b>	\$214,232	\$203,134	\$1,006,855	\$251,955
<b>Total Defense Costs</b>	\$21,727,203	\$9,806,863	\$2,149,382	\$33,683,448
<b>Number of Claims with Defense Costs</b>	450	260	30	740
<b>Average Defense Cost</b>	\$48,283	\$37,719	\$71,646	\$45,518

**Note:** Due to a data entry error, the average defense costs reported for commercial insurers appear significantly lower than reported in the June 2009 statistical summary.

<sup>13</sup> Reporting of defense and cost containment expenses is explained in [WAC 284-24D-020\(1\)](#), [WAC 284-24D-330](#), and [WAC 284-24D-340](#)

## Claim Data by Injury Outcome

Data for both 2008 and 2009 are combined for this table to neutralize the effect of year-to-year fluctuations. For the two-year period ending December 31, 2009, the highest percentage of economic damages was attributed to claims with grave permanent injury.

Injury Outcome	Claims With Paid Indemnity	Total Paid Indemnity	Total Economic Loss	Average Paid Indemnity	Average Economic Loss	Percent Economic Loss
Emotional injury only	46	\$2,981,442	\$839,842	\$64,814	\$18,257	28.2%
Insignificant injury	65	\$2,381,254	\$1,120,992	\$36,635	\$17,246	47.1%
Minor temporary injury	265	\$6,527,355	\$3,192,253	\$24,632	\$12,046	48.9%
Major temporary injury	91	\$10,124,060	\$3,561,032	\$111,253	\$39,132	35.2%
Minor permanent injury	101	\$16,941,454	\$4,346,388	\$167,737	\$43,034	25.7%
Significant permanent injury	78	\$33,699,841	\$16,313,457	\$432,049	\$209,147	48.4%
Major permanent injury	57	\$55,600,546	\$26,177,487	\$975,448	\$459,254	47.1%
Grave permanent injury	14	\$11,565,000	\$8,695,519	\$826,071	\$621,109	75.2%
Death	139	\$68,273,008	\$34,336,167	\$491,173	\$247,023	50.3%
<b>Total</b>	<b>856</b>	<b>\$208,093,960</b>	<b>\$98,583,137</b>	<b>\$243,100</b>	<b>\$115,167</b>	<b>47.4%</b>