

# 2020 Medical Malpractice Statistical Summary

---

Data submitted by insurers and self-insurers

Claims closed from Jan. 1, 2016 through Dec. 31, 2020

June 2021

**Mike Kreidler**, *Insurance Commissioner*

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

# Table of contents

---

<b>2020 Medical Malpractice Statistical Summary.....</b>	<b>1</b>
<b>Introduction.....</b>	<b>3</b>
<b>Key 2020 closed claim statistics .....</b>	<b>5</b>
<b>Calendar year comparison.....</b>	<b>6</b>
<b>Defense and cost containment.....</b>	<b>7</b>
<b>Million-dollar claims.....</b>	<b>8</b>
<b>Comparison of individual claim data and incident-level data.....</b>	<b>9</b>
<b>Calendar-incident year comparisons .....</b>	<b>10</b>

# Introduction

---

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 statistics about medical malpractice closed claims 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 2016 through 2020.<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.

---

<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 March 4, 2021, 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 April 11, 2021.

<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.

---

<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 2020 closed claim statistics

---

## Claims

- The number of closed claims decreased 10.1% in 2020.

## Indemnity payments

- After trending upward for several years, the average indemnity payment decreased 5.6% to \$582,492.
- Total paid indemnity decreased 18.8% to \$151.4 million.
- The number of indemnity payments decreased 13.9% to 260.

## Defense costs

- Average defense costs increased 30.1% to \$96,419.
- Total defense costs increased 20.3% to \$54.4 million.
- The number of claims with defense costs decreased 7.5% to 564.

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

Data submitted by reporting entities to the OIC for the five-year period ending Dec. 31, 2020:

	Year closed				
	2016	2017	2018	2019	2020
Total claims closed	898	814	836	680	611
Claims with indemnity payments	391	361	412	302	260
Total paid indemnity	\$110,088,350	\$119,624,942	\$186,978,969	\$186,438,929	\$151,447,954
Total economic damages	\$76,913,851	\$84,214,632	\$110,899,936	\$152,520,859	\$95,143,153
Average indemnity payment	\$281,556	\$331,371	\$453,832	\$617,347	\$582,492
Average economic damages	\$196,711	\$233,282	\$269,175	\$505,036	\$365,935
Claims with defense costs	804	681	722	610	564
Total defense costs	\$52,597,149	\$42,198,930	\$52,230,530	\$45,207,463	\$54,380,175
Average defense cost	\$65,419	\$61,966	\$72,341	\$74,111	\$96,419

## Number of claims

- For calendar year 2020, insuring entities and self-insurers submitted 611 medical malpractice<sup>11</sup> closed claim reports to the OIC, a decrease of 10.1% from the previous year.

## Payments to claimants

- In 2020, insuring entities and self-insurers paid \$151.4 million on 260 claims, an average of \$582,492 per paid claim.
- The number of indemnity payments decreased 13.9%, while the average payment decreased 5.6% from the previous year.

## Economic damages

- In 2020, insuring entities and self-insurers paid \$95.1 million for economic damages.
- Average economic damages were \$365,935 per paid claim, a decrease of 27.5% from the previous year.
- Economic damages accounted for 62.8% of the total indemnity payments in 2020, as compared to an average of 70.4% over the previous four years.

<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\(9\)](#).

# Defense and cost containment

In 2020, insuring entities and self-insurers paid \$54.4 million to defend 564 claims. The average defense cost increased 30.1% to \$96,419 per claim. Insuring entities and self-insurers reported defense and cost containment expenses for 92.3% of all claims.

	Year closed				
	2016	2017	2018	2019	2020
Total claims closed	898	814	836	680	611
Claims with defense counsel	622	539	591	533	459
Total paid to defense counsel	\$39,166,902	\$30,775,513	\$37,680,967	\$32,458,263	\$37,982,995
Average paid to defense counsel	\$62,969	\$57,097	\$63,758	\$60,897	\$82,752
Claims with experts hired	433	404	435	343	312
Total paid to experts	\$7,826,725	\$6,222,849	\$6,579,140	\$7,008,479	\$4,639,595
Average paid to experts	\$18,076	\$15,403	\$15,124	\$20,433	\$14,870
Claims with other defense costs	556	427	449	395	363
Total paid for other defense costs	\$5,603,522	\$5,189,953	\$7,970,423	\$5,740,721	\$11,757,585
Average paid for other defense costs	\$10,078	\$12,154	\$17,751	\$14,533	\$32,390
Claims with defense costs (all types)	804	681	722	610	564
Total paid defense costs (all types)	\$52,597,149	\$42,198,930	\$52,230,530	\$45,207,463	\$54,380,175
Average paid defense cost (all types)	\$65,419	\$61,966	\$72,341	\$74,111	\$96,419

## Payments to defense counsel

- The average amount paid for defense counsel increased 35.9% in 2020.
- Insuring entities and self-insurers reported payments to defense counsel for 75.1% of all claims.

## Payments to expert witnesses

- The average amount paid for expert witnesses decreased 27.2% in 2020.
- Insuring entities and self-insurers reported payments to expert witnesses for 51.1% of all claims.

# Million-dollar claims

Insuring entities and self-insurers closed 42.6% of claims in 2020 with an indemnity payment to the claimant.

Of the claims:

- 45 claims closed with paid indemnity of \$1 million or more. The average payment decreased 22.3% to \$2,544,434.

Claims closed for \$1 million or more	Year closed				
	2016	2017	2018	2019	2020
Number of indemnity payments	30	35	49	44	45
Total paid indemnity	\$54,343,188	\$84,053,866	\$122,626,292	\$144,083,630	\$114,499,537
Average indemnity payment	\$1,811,440	\$2,401,539	\$2,502,577	\$3,274,628	\$2,544,434

- 215 claims closed with paid indemnity of less than \$1 million. The average payment increased 4.7% to \$171,853.

Claims closed for less than \$1 million	Year closed				
	2016	2017	2018	2019	2020
Number of indemnity payments	361	326	363	258	215
Total paid indemnity	\$55,745,162	\$35,571,076	\$64,352,677	\$42,355,299	\$36,948,417
Average indemnity payment	\$154,419	\$109,114	\$177,280	\$164,168	\$171,853



# Comparison of individual claim data and incident-level data

---

One medical incident<sup>12</sup> can result in multiple 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 the 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 13-year period ending Dec. 31, 2020.

	Individual claim data	Incident level data
Number of claims/incidents	12,124	1,375
Number with indemnity payments	5,649	691
Total paid indemnity	\$1,693,377,805	\$452,029,853
Total economic damages	\$1,011,856,926	\$269,141,651
Average indemnity payment	\$299,766	\$654,168
Median indemnity payment	\$52,352	\$300,000
Average economic damages	\$179,121	\$389,496
Number with defense costs	10,443	1,356
Total defense costs	\$594,594,081	\$195,947,861
Average defense cost	\$56,937	\$144,504

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 118.2% 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 1,375 incidents, 16% 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 by the year the claim was closed and the year of the incident that led to the medical malpractice claim. These tables<sup>13</sup> show that the longer a claim remains open and unresolved, the more expensive it is to defend and settle.

Year claim closed	Closed claim count										
	Incident year										
	Prior	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
2016	135	110	186	181	115	120	51				
2017	122		82	148	179	96	126	61			
2018	104			87	158	180	111	139	57		
2019	95				121	140	113	106	80	25	
2020	89					92	126	112	97	82	13

Year claim closed	Average paid indemnity (in thousands)										
	Incident year										
	Prior	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
2016	\$468	\$317	\$439	\$350	\$275	\$41	\$33				
2017	\$539		\$287	\$307	\$627	\$249	\$52	\$69			
2018	\$1,300			\$605	\$637	\$364	\$481	\$123	\$30		
2019	\$1,373				\$881	\$925	\$405	\$259	\$239	\$13	
2020	\$1,148					\$1,006	\$444	\$612	\$274	\$238	\$37

Year claim closed	Average defense cost (in thousands)										
	Incident year										
	Prior	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
2016	\$149	\$98	\$58	\$46	\$30	\$10	\$3				
2017	\$150		\$99	\$49	\$50	\$21	\$6	\$7			
2018	\$197			\$85	\$67	\$51	\$43	\$12	\$1		
2019	\$132				\$123	\$57	\$58	\$41	\$11	\$3	
2020	\$155					\$91	\$43	\$234	\$30	\$6	\$1

<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.