

2021 medical malpractice statistical summary

Data submitted by insurers and self-insurers

Claims closed from Jan. 1, 2017 through Dec. 31, 2021

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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 statistics about medical malpractice closed claims 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 2017 through 2021.⁶ There are three types of data summarized in this report:

1. **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
2. **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.
3. **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. 14, 2022, Insurance Commissioner Mike Kreidler notified the Legislature that the OIC would post statistical summaries by July 1.

⁵ See [WAC 284-24D-060](#).

⁶ Data submitted on or before May 3, 2022, and audited through June 7, 2022.

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 2021 closed claim statistics

Claims

- The number of closed claims decreased 7% in 2021.

Indemnity payments

- The average indemnity payment continued to trend downward in 2021, decreasing 9.1% to \$535,896.
- Total paid indemnity decreased 5.7% to \$147.9 million.
- The number of indemnity payments increased 3.8% to 276.

Defense costs

- Following a significant increase in 2020, average defense costs decreased 30.1% to \$66,654.
- Total defense costs decreased 36.9% to \$34.8 million.
- The number of claims with defense costs decreased 9.7% to 522.

Calendar year comparison¹⁰

Data submitted by reporting entities to the OIC for the five-year period ending Dec. 31, 2021:

	Year closed				
	2017	2018	2019	2020	2021
Total claims closed	814	831	678	627	583
Claims with indemnity payments	361	414	303	266	276
Total paid indemnity	\$119,624,942	\$188,379,498	\$187,608,420	\$156,831,379	\$147,907,178
Total economic damages	\$84,214,632	\$110,899,936	\$153,690,350	\$100,996,578	\$90,243,522
Average indemnity payment	\$331,371	\$455,023	\$619,170	\$589,592	\$535,896
Average economic damages	\$233,282	\$267,874	\$507,229	\$379,686	\$326,969
Claims with defense costs	681	717	608	578	522
Total defense costs	\$42,198,930	\$51,800,642	\$45,208,021	\$55,135,967	\$34,793,352
Average defense cost	\$61,966	\$72,246	\$74,355	\$95,391	\$66,654

Number of claims

- For calendar year 2021, insuring entities and self-insurers submitted 583 medical malpractice¹¹ closed claim reports to the OIC, a decrease of 7% from the previous year.

Payments to claimants

- In 2021, insuring entities and self-insurers paid \$147.9 million on 276 claims, an average of \$535,896 per paid claim.
- The number of indemnity payments increased 3.8%, while the average payment decreased 9.1% from the previous year.

Economic damages

- In 2021, insuring entities and self-insurers paid \$90.2 million for economic damages.
- Average economic damages were \$326,969 per paid claim, a decrease of 13.9% from the previous year.
- Economic damages accounted for 61% of the total indemnity payments in 2021, as compared to an average of 68.9% 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 2021, insuring entities and self-insurers paid \$34.8 million to defend 522 claims. The average defense cost decreased 30.1% to \$66,654 per claim. Insuring entities and self-insurers reported defense and cost containment expenses for 89.5% of all claims.

	Year closed				
	2017	2018	2019	2020	2021
Total claims closed	814	831	678	627	583
Claims with defense counsel	539	588	534	471	445
Total paid to defense counsel	\$30,775,513	\$37,343,634	\$32,464,332	\$38,663,509	\$26,734,891
Average paid to defense counsel	\$57,097	\$63,510	\$60,795	\$82,088	\$60,078
Claims with experts hired	404	432	343	311	277
Total paid to experts	\$6,222,849	\$6,590,473	\$7,008,531	\$4,651,569	\$4,922,334
Average paid to experts	\$15,403	\$15,256	\$20,433	\$14,957	\$17,770
Claims with other defense costs	427	444	392	363	287
Total paid for other defense costs	\$5,189,953	\$7,866,535	\$5,735,158	\$11,820,889	\$3,237,765
Average paid for other defense costs	\$12,154	\$17,717	\$14,631	\$32,564	\$11,281
Claims with defense costs (all types)	681	717	608	578	522
Total paid defense costs (all types)	\$42,198,930	\$51,800,642	\$45,208,021	\$55,135,967	\$34,793,352
Average paid defense cost (all types)	\$61,966	\$72,246	\$74,355	\$95,391	\$66,654

Payments to defense counsel

- The average amount paid for defense counsel decreased 26.8% in 2021.
- Insuring entities and self-insurers reported payments to defense counsel for 76.3% of all claims.

Payments to expert witnesses

- The average amount paid for expert witnesses increased 18.8% in 2021.
- Insuring entities and self-insurers reported payments to expert witnesses for 47.5% of all claims.

Million-dollar claims

Insuring entities and self-insurers closed 47.3% of claims in 2021 with an indemnity payment to the claimant.

Of the claims:

- 42 claims closed with paid indemnity of \$1 million or more. The average payment decreased 9.2% to \$2,340,347.

Claims closed for \$1 million or more	Year closed				
	2017	2018	2019	2020	2021
Number of indemnity payments	35	50	45	46	42
Total paid indemnity	\$84,053,866	\$123,626,292	\$145,253,121	\$118,499,537	\$98,294,568
Average indemnity payment	\$2,401,539	\$2,472,526	\$3,227,847	\$2,576,077	\$2,340,347

- 234 claims closed with paid indemnity of less than \$1 million. The average payment increased 21.7% to \$212,020.

Claims closed for less than \$1 million	Year closed				
	2017	2018	2019	2020	2021
Number of indemnity payments	326	364	258	220	234
Total paid indemnity	\$35,571,076	\$64,753,206	\$42,355,299	\$38,331,842	\$49,612,610
Average indemnity payment	\$109,114	\$177,893	\$164,168	\$174,236	\$212,020

Comparison of individual claim data and incident-level data

One medical incident¹² 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 14-year period ending Dec. 31, 2021.

	Individual claim data	Incident level data
Number of claims/incidents	12,760	1,454
Number with indemnity payments	5,960	748
Total paid indemnity	\$1,867,677,619	\$494,303,882
Total economic damages	\$1,114,095,465	\$288,023,143
Average indemnity payment	\$313,369	\$660,834
Median indemnity payment	\$60,000	\$325,000
Average economic damages	\$186,929	\$385,058
Number with defense costs	11,012	1,434
Total defense costs	\$642,508,469	\$208,553,749
Average defense cost	\$58,346	\$145,435

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 110.9% higher than average paid indemnity per claim, and the median indemnity payment more than five 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 1,454 incidents, 15.2% 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 incident that led to the medical malpractice claim. These tables¹³ show that the longer a claim remains open and unresolved, the more expensive it is to defend and settle.

Closed claim count											
Year claim closed	Incident year										
	Prior	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2017	122	82	148	179	96	126	61				
2018	101		87	159	178	110	139	57			
2019	94			121	142	113	104	80	24		
2020	92				93	125	115	101	88	13	
2021	97					91	126	83	87	83	16

Average paid indemnity (in thousands)											
Year claim closed	Incident year										
	Prior	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2017	\$539	\$287	\$307	\$627	\$249	\$52	\$69				
2018	\$1,300		\$605	\$643	\$364	\$481	\$126	\$30			
2019	\$1,373			\$881	\$925	\$405	\$276	\$239	\$13		
2020	\$1,097				\$1,006	\$444	\$619	\$344	\$232	\$37	
2021	\$599					\$415	\$698	\$430	\$801	\$382	\$10

Average defense cost (in thousands)											
Year claim closed	Incident year										
	Prior	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2017	\$150	\$99	\$49	\$50	\$21	\$6	\$7				
2018	\$197		\$85	\$68	\$52	\$43	\$13	\$1			
2019	\$133			\$123	\$56	\$58	\$41	\$11	\$3		
2020	\$157				\$90	\$44	\$226	\$31	\$7	\$1	
2021	\$125					\$77	\$68	\$50	\$32	\$29	\$7

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.