

2023 medical malpractice statistical summary

Data submitted by insurers and self-insurers
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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

This statistical summary includes data for 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 2019 through 2023.⁶ 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. 13, 2024, 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 March 24, 2024, and audited through June 11, 2024.

⁷ See [WAC 284-24D-020](#)(1), [WAC 284-24D-330](#) and [WAC 284-24D-340](#).

⁸ See [RCW 48.140.010](#)(5), [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 is the sum of two or more claims. Available incident-level data is 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.

Despite 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 suggests.

In addition to the closed claim data submitted by insurers and self-insurers, which is summarized in this report, the OIC also receives medical malpractice settlement data from attorneys that is 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 report 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 2023 closed claim statistics

Claim counts

- As compared to 2022, the total number of closed claims decreased by 10.5% to 571.
- The number of claims with indemnity payments decreased by 9.4% to 280.
The number of claims with defense costs decreased by 9.5% to 531.

Indemnity payments

- The average indemnity payment continued to increase in 2023, reaching a new high of \$900,549. This represents a 4.1% increase over the average indemnity payment for claims closed in 2022.
- Total paid indemnity decreased by 5.6% to \$252.1 million.

Defense costs

- Following a significant increase in 2022, the average defense cost decreased by 20.7% to \$90,028.
- Total defense costs decreased by 28.3% to \$47.8 million.

Overall costs

- As compared to 2022, the total sum of indemnity payments and defense costs decreased by 10.2% to \$300 million.
- The average sum of indemnity payments and defense costs increased by 0.4% to \$525,321 per closed claim.

Calendar year comparison¹⁰

| Summary by year closed | | | | | |
|------------------------------|---------------|---------------|---------------|---------------|---------------|
| Item | 2019 | 2020 | 2021 | 2022 | 2023 |
| Claims closed | 667 | 604 | 563 | 638 | 571 |
| Number of indemnity payments | 305 | 264 | 279 | 309 | 280 |
| Total paid indemnity | \$188,833,420 | \$156,600,864 | \$152,441,343 | \$267,207,399 | \$252,153,696 |
| Total economic damages | \$139,127,976 | \$96,830,671 | \$75,258,105 | \$171,142,844 | \$153,517,041 |
| Average indemnity payment | \$619,126 | \$593,185 | \$546,385 | \$864,749 | \$900,549 |
| Average economic damages | \$456,157 | \$366,783 | \$269,742 | \$553,860 | \$548,275 |
| Claims with defense costs | 597 | 557 | 500 | 587 | 531 |
| Total defense cost | \$44,859,170 | \$54,922,741 | \$34,377,900 | \$66,658,698 | \$47,804,824 |
| Average defense cost | \$75,141 | \$98,605 | \$68,756 | \$113,558 | \$90,028 |
| Overall cost ¹¹ | \$233,692,590 | \$211,523,605 | \$186,819,243 | \$333,866,097 | \$299,958,520 |
| Average cost per claim | \$350,364 | \$350,205 | \$331,828 | \$523,301 | \$525,321 |

Claim counts

- For calendar year 2023, insuring entities and self-insurers submitted 571 medical malpractice¹² closed claim reports to the OIC, a decrease of 10.5% from the previous year.

Economic damages

- Average economic damages were \$548,275 per paid claim in 2023, a decrease of 1% from the previous year.
- Economic damages accounted for 60.9% of the total indemnity payments in 2023, as compared to an average of 62.2% over the previous four years.

Overall costs

- Following a significant increase in 2022, the average sum of indemnity payments and defense costs increased by 0.4% to \$525,321 per closed claim in 2023.

¹⁰ [RCW 48.140.040](#) requires the commissioner to provide a calendar year summary of data.

¹¹ Sum of indemnity payments and defense costs.

¹² See [RCW 48.140.010\(9\)](#).

Defense costs

| Defense costs by year closed | | | | | |
|---------------------------------------|--------------|--------------|--------------|--------------|--------------|
| Item | 2019 | 2020 | 2021 | 2022 | 2023 |
| Claims closed | 667 | 604 | 563 | 638 | 571 |
| Claims with defense counsel | 536 | 472 | 441 | 529 | 507 |
| Total paid to defense counsel | \$32,347,086 | \$38,747,474 | \$26,342,316 | \$53,429,785 | \$39,464,238 |
| Average paid to defense counsel | \$60,349 | \$82,092 | \$59,733 | \$101,001 | \$77,839 |
| Claims with expert witnesses hired | 345 | 310 | 274 | 319 | 260 |
| Total paid to expert witnesses | \$6,839,108 | \$4,656,207 | \$4,874,892 | \$8,516,710 | \$5,204,292 |
| Average paid to expert witnesses | \$19,824 | \$15,020 | \$17,792 | \$26,698 | \$20,017 |
| Claims with other defense costs | 381 | 341 | 267 | 278 | 228 |
| Total paid for other defense costs | \$5,672,976 | \$11,519,060 | \$3,160,692 | \$4,712,203 | \$3,136,294 |
| Average paid for other defense costs | \$14,890 | \$33,780 | \$11,838 | \$16,950 | \$13,756 |
| Claims with defense costs (all types) | 597 | 557 | 500 | 587 | 531 |
| Total paid defense cost (all types) | \$44,859,170 | \$54,922,741 | \$34,377,900 | \$66,658,698 | \$47,804,824 |
| Average paid defense cost (all types) | \$75,141 | \$98,605 | \$68,756 | \$113,558 | \$90,028 |

In 2023, insuring entities and self-insurers paid \$47.8 million to defend 531 claims. The average defense cost decreased by 20.7% to \$90,028 per claim. Insuring entities and self-insurers reported defense and cost containment expenses for 93% of all claims closed in 2023, as compared to an average of 90.6% over the previous four years.

Insuring entities and self-insurers report three categories of defense costs for each closed claim. Following significant increases in 2022, the average defense cost decreased in 2023 for all three categories. The average amount paid:

- To defense counsel decreased by 22.9% to \$77,839.
- To expert witnesses decreased by 25% to \$20,017.
- For other defense costs decreased by 18.8% to \$13,756.

Million-dollar claims

Insuring entities and self-insurers closed 49% of claims in 2023 with an indemnity payment to the claimant.

Of those claims, 63 closed with paid indemnity of \$1 million or more. The average payment increased 12.2% to \$3.1 million.

| Claims closed for \$1 million or more | | | | | |
|---------------------------------------|---------------|---------------|---------------|---------------|---------------|
| Item | 2019 | 2020 | 2021 | 2022 | 2023 |
| Number of indemnity payments | 46 | 46 | 44 | 78 | 63 |
| Total paid indemnity | \$146,253,121 | \$118,999,537 | \$103,869,568 | \$218,061,543 | \$197,642,454 |
| Average indemnity payment | \$3,179,416 | \$2,586,946 | \$2,360,672 | \$2,795,661 | \$3,137,182 |

There were 217 claims closed with paid indemnity of less than \$1 million. For these claims, the average payment increased 18.1% to \$251,204.

| Claims closed for less than \$1 million | | | | | |
|---|--------------|--------------|--------------|--------------|--------------|
| Item | 2019 | 2020 | 2021 | 2022 | 2023 |
| Number of indemnity payments | 259 | 218 | 235 | 231 | 217 |
| Total paid indemnity | \$42,580,299 | \$37,601,327 | \$48,571,775 | \$49,145,856 | \$54,511,242 |
| Average indemnity payment | \$164,403 | \$172,483 | \$206,688 | \$212,753 | \$251,204 |

Comparison of individual claim data and incident-level data

One medical incident¹³ 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 compares to “incident-level” data for incidents involving more than one medical provider or facility over the 16-year period ending Dec. 31, 2023.

| Comparing individual claim data to incident-level data | | |
|---|------------------------------|----------------------------|
| Category | Individual claim data | Incident-level data |
| Number of claims/incidents | 13,894 | 1,622 |
| Number with indemnity payments | 6,550 | 859 |
| Total paid indemnity | \$2,386,195,520 | \$645,597,211 |
| Total economic damages | \$1,477,571,920 | \$374,088,138 |
| Average indemnity payment | \$364,305 | \$751,568 |
| Median indemnity payment | \$72,500 | \$350,000 |
| Average economic damages | \$225,583 | \$435,493 |
| Number with defense costs | 12,053 | 1,603 |
| Total defense costs | \$748,458,908 | \$254,138,662 |
| Average defense cost | \$62,097 | \$158,539 |

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 106.3% higher than average paid indemnity per claim, and the median indemnity payment is almost 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 1,622 incidents, 14.5% of the individual claims related to these incidents have not yet been reported. Since incident-level data is 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.

¹³ See [RCW 48.140.030\(1\)\(b\)](#).

Claim data by type of settlement

| Results for calendar years 2019-2023 by settlement method | | | | | |
|--|------------------------|--------------------|-------------------------------|----------------------------------|-----------------------------|
| Settlement method | Reported claims | Paid claims | Average paid indemnity | Claims with defense costs | Average defense cost |
| Settled by parties | 1,111 | 960 | \$592,125 | 885 | \$114,647 |
| Abandoned by claimant | 897 | 55 | \$42,996 | 859 | \$27,123 |
| Court disposed claim | 590 | 12 | \$1,054,578 | 590 | \$96,589 |
| Settled by ADR | 445 | 410 | \$1,057,992 | 438 | \$152,681 |
| Total | 3,043 | 1,437 | \$707,889 | 2,772 | \$89,691 |

For claims closed from 2019 to 2023, the parties negotiated a settlement for 66.8% of claims that resulted in an indemnity payment, and these settlements comprised 55.9% of total payments. Average paid indemnity for these types of settlements was \$592,125.

Claimants agreed to use alternative dispute resolution (“ADR”), including arbitration, mediation, or private trials, to resolve 28.5% of claims with paid indemnity, and these settlements comprised 42.6% of the total paid indemnity. Claims settled using alternative dispute resolution had both the highest average paid indemnity (\$1.1 million) and the highest average defense cost (\$152,681).

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 tables¹⁴ show that the longer a claim remains open and unresolved, the more expensive it is to defend and settle.

| Closed claim count | | | | | | | | | | | |
|--------------------|-------|------|------|------|------|------|------|------|------|------|------|
| Incident year | | | | | | | | | | | |
| Year closed | Prior | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| 2019 | 92 | 123 | 142 | 114 | 102 | 71 | 23 | | | | |
| 2020 | 91 | | 93 | 127 | 111 | 93 | 77 | 12 | | | |
| 2021 | 95 | | | 90 | 127 | 80 | 81 | 73 | 17 | | |
| 2022 | 146 | | | | 82 | 125 | 121 | 76 | 73 | 15 | |
| 2023 | 111 | | | | | 116 | 137 | 66 | 81 | 47 | 13 |

| Average paid indemnity (in thousands) | | | | | | | | | | | |
|---------------------------------------|---------|-------|---------|-------|---------|---------|---------|-------|-------|-------|------|
| Incident year | | | | | | | | | | | |
| Year closed | Prior | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| 2019 | \$1,373 | \$870 | \$925 | \$416 | \$276 | \$239 | \$13 | | | | |
| 2020 | \$1,127 | | \$1,006 | \$453 | \$612 | \$354 | \$232 | \$37 | | | |
| 2021 | \$645 | | | \$416 | \$758 | \$427 | \$865 | \$293 | \$8 | | |
| 2022 | \$1,637 | | | | \$1,299 | \$961 | \$442 | \$772 | \$201 | \$8 | |
| 2023 | \$1,396 | | | | | \$1,073 | \$1,030 | \$917 | \$525 | \$273 | \$40 |

| Average defense cost (in thousands) | | | | | | | | | | | |
|-------------------------------------|-------|-------|------|------|-------|-------|------|------|------|------|------|
| Incident year | | | | | | | | | | | |
| Year closed | Prior | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| 2019 | \$133 | \$121 | \$56 | \$57 | \$42 | \$13 | \$3 | | | | |
| 2020 | \$159 | | \$90 | \$43 | \$235 | \$31 | \$7 | \$1 | | | |
| 2021 | \$132 | | | \$76 | \$65 | \$47 | \$39 | \$19 | \$3 | | |
| 2022 | \$249 | | | | \$157 | \$77 | \$59 | \$28 | \$12 | \$3 | |
| 2023 | \$181 | | | | | \$112 | \$64 | \$53 | \$34 | \$21 | \$9 |

¹⁴ [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.