

Chapter 284-24E WAC

MEDICAL MALPRACTICE CLAIM SETTLEMENT DATA REPORTING RULES FOR ATTORNEYS AND CLAIMANTS

WAC

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WAC 284-24E-010 Purpose. This chapter contains procedural rules to implement RCW 7.70.140. This chapter describes the rules, practices and procedures that claimants and their attorneys must use to report claim settlement data to the commissioner.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-010, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-020 Definitions. The definitions in this section apply throughout this chapter.

- (1) "Claim" means the same as in RCW 48.140.010(1).
- (2) "Claimant" means the same as in RCW 48.140.010(2), and, for reporting purposes, includes a claimant's legal representative.
- (3) "Commissioner" means the insurance commissioner.
- (4) "Facility" means the same as in RCW 48.140.010(6).
- (5) "Insuring entity" means the same as in RCW 48.140.-010(8).
- (6) "Medical malpractice" means the same as in RCW 48.140.010(9).
- (7) "OIC" means office of insurance commissioner.
- (8) "Provider" means the same as in RCW 48.140.010(7).
- (9) "Record identifier" means the number assigned to a claim by the reporting site when a person first enters claim settlement information.
- (10) "Reporting site" means the OIC web-based application that attorneys and claimants must use to report medical malpractice claim settlement data.
- (11) "Self-insurer" means the same as in RCW 48.140.-010(11).

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(12) "User ID" is a permanent number assigned by the reporting site to any claimant or attorney who reports claim settlement data.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-020, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-030 How will the commissioner ensure data confidentiality under RCW 48.140.060(2)? RCW 42.56.400(11) protects data filed under RCW 7.70.140 from public disclosure. To ensure data confidentiality, the commissioner will:

- (1) Develop a secure web-based data reporting application;
- (2) Train OIC staff on applicable laws and agency practices related to protecting confidential and privileged information;
- (3) Limit access to the claim data base to OIC staff responsible for preparing the statistical summaries and annual report;
- (4) Develop and implement confidentiality procedures to be used by staff that has access to the closed claim data base;
- (5) Develop procedures to use if data are accidentally released; and
- (6) Use aggregate data in summaries and reports so that individual claim data cannot be identified.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-030, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-040 How is claim settlement data reported to the commissioner? Persons reporting claim settlement data must use the reporting site maintained by the commissioner. To help attorneys and claimants collect data, the commissioner will post a reporting form on the OIC internet site so that claim settlement data can be organized before it is entered into the reporting site.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-040, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-050 How will the OIC assign user ID codes? The reporting site will assign a permanent user ID to an attorney or claimant the first time the attorney or claimant enters claim settlement data into the reporting site.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-050, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-060 What types of settled claims must be reported to the commissioner? If a medical malpractice claim is actionable under chapter 7.70 RCW and the claimant receives an indemnity payment from an insuring entity, self-insurer, facility or provider, the claimant or his or her attorney must report claim settlement data to the commissioner.

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[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-060, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-063 When is a claim considered settled and subject to reporting with the OIC? A claim is settled when the claimant:

- (1) Receives final indemnity payment(s) from all defendants;
- (2) Pays all related legal expenses; and
- (3) Pays all related attorney fees agreed to by the claimant and his or her attorney.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-063, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-070 Are write-offs or other small sums of money provided as customer service gestures considered claims? If a self-insurer, facility or provider waives copayments, forgives bills or deductibles, or makes other similar accommodations to a client, it is not a claim under RCW 48.140.010(1). Claimants are not required to report these types of accommodations to the commissioner.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-070, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-080 Who has the primary responsibility for reporting claim settlement data to the commissioner? (1) If a claimant is represented by an attorney, the attorney must report claim settlement data to the commissioner after the claim is settled.

- (2) If a claimant is not represented by an attorney:
 - (a) The claimant must report claim settlement data to the commissioner; and
 - (b) An insuring entity, self-insurer or provider may assist or inform the claimant of his or her reporting responsibilities.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-080, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-090 When are claim reports due? Under RCW 7.70.140, a claimant or his or her attorney must report claims settled in the preceding calendar year to the commissioner.

- (1) Beginning in 2009, claim settlement reports for the prior calendar year are due by March 1.
- (2) An attorney or claimant may enter data into the reporting site at any time after the claim is settled, but no later than March 1.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-090, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-100 Can settlement reports be reopened to make changes or corrections to previously reported data? The reporting site will allow an attorney or claimant to change previously reported claim settlement data, subject to these rules:

- (1) OIC will freeze data contained in the reporting site from March 15 through June 30 each year so the OIC can prepare reports and statistical summaries can be prepared as required by RCW 48.140.040 and 48.140.050. The commissioner may accept changes to previously reported data if a correction or omission will significantly affect the conclusions stated in the annual report.

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(2) After June 30, the reporting site will allow an attorney or claimant to change previously reported data.

(a) An attorney or claimant can reopen a claim report using their permanent user ID and the record identifier and make changes or corrections to data.

(b) Changes and corrections submitted after June 30 of each year will appear in future reports and statistical summaries.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-100, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-110 How should claim disposition information be reported? When reporting the final method of claim disposition under RCW 7.70.140 (2)(b)(v), an attorney or claimant must describe the method of claim disposition using one of the descriptions listed below:

- (1) Claim is settled by the parties.
- (2) Claim is disposed of by a court when the court issues a:
 - (a) Directed verdict for plaintiff;
 - (b) Judgment notwithstanding verdict for defendant (judgment for plaintiff);
 - (c) Judgment for plaintiff; or
 - (d) Judgment for plaintiff after appeal.
- (3) Claim settled by alternative dispute resolution process, whether resolved by:
 - (a) Arbitration;
 - (b) Mediation;
 - (c) Private trial; or
 - (d) Other type of alternative dispute resolution process.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-110, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-120 How should information about the timing of the settlement be reported? Persons reporting claims must report whether the claim is settled:

- (1) Before trial, arbitration or mediation;
- (2) During trial, arbitration or mediation;
- (3) After trial or hearing, but before judgment or award;
- (4) After judgment or decision, but before appeal;
- (5) During an appeal; or
- (6) After an appeal.

[Statutory Authority: RCW 48.02.060 and 48.140.060. 08-03-128 (Matter No. R 2007-12), § 284-24E-120, filed 1/23/08, effective 2/23/08. Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-120, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-130 How is the judgment or settlement amount reported? Persons reporting claims must report the total amount paid by all defendants to the claimant to settle the claim.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-130, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-140 How are structured settlements reported? (1) If a claim is settled with a structured settlement agreement, the attorney or claimant must report the lump-sum payment that is paid for the annuity.

(2) If a claim is settled with a combination of a lump-sum payment to the claimant and a structured settlement, the attorney or claimant must report the sum of both payments.

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[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-140, filed 6/4/07, effective 7/22/07.]

WAC 284-24E-150 How should claims settlement data be reported if there is more than one defendant? An attorney or claimant must wait until all claims are settled before reporting under RCW 7.70.140. After all claims are settled, the person reporting claim settlement data must report these data to the commissioner:

- (1) The total of all settlements paid by all defendants;
- and
- (2) The total amounts paid by the claimant for legal expenses, itemized by:
 - (a) Court costs;
 - (b) Expert witnesses fees; and
 - (c) Attorney fees and expenses.

[Statutory Authority: RCW 48.02.060, 48.140.060, and 7.70.140. 07-12-057 (Matter No. R 2006-02), § 284-24E-150, filed 6/4/07, effective 7/22/07.]