

# **2015 Health Care Liability Claims Report**



**Department of Commerce & Insurance  
November 1, 2015**

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## INTRODUCTION

In 2004, the Tennessee General Assembly enacted 2004 Tenn. Pub. Acts Ch. 902 which established reporting obligations for medical professional liability claims for various reporting entities. This law was codified at TENN. CODE ANN. § 56-54-101. Pursuant to TENN. CODE ANN. § 56-54-101(a), “reporting entities” was defined to include insurance companies and risk retention groups that provide medical malpractice or professional liability insurance, as well as health care professionals and facilities lacking medical malpractice insurance. This law was passed after months of testimony and research by the Joint Tort Reform Subcommittee chaired by State Representative Rob Briley and Senator David Fowler. The Final Report prepared by the Subcommittee recommended passage of legislation that would “provide the committee with a clearer picture of the litigation and claim trends in Tennessee...” The Department of Commerce and Insurance (the “Department”) provided testimony to the Subcommittee and actively participated in the development of legislation implementing the Subcommittee’s recommendations.

In general, TENN. CODE ANN. § 56-54-101 required reporting entities, on or before April 1 of each year, to provide information to the Department concerning the number of medical malpractice or professional liability claims asserted, the amount of damages alleged, any damages paid, the types of paid damages, and legal fees paid. The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.

TENN. CODE ANN. § 56-54-101 required the Department to prepare an annual report for the Speakers of the Senate and House of Representatives summarizing this data each year. The statute prescribed that the report may only contain aggregate data.

As a result of the information submitted by the reporting entities for the 2004 calendar year, the Department issued its first report in November of 2005. The report identified several issues necessitating additional information be reported, and the General Assembly modified the reporting requirements in the 2006 legislative session. On May 23, 2006, Tenn. Pub. Acts Ch. 744 was enacted which amended TENN. CODE ANN. § 56-54-101 to attempt to refine the information to be collected. In general, the amendment added a requirement that reporting entities report on the cumulative amount of costs and expenses spent on pending and closed claims from the “inception date of the claim to the end of the preceding calendar year,” and a requirement for counsel for claimants to report fee arrangements and expenses.

In 2008, the Tennessee General Assembly enacted 2008 Tenn. Pub. Acts Ch. 1009, effective January 1, 2009, which replaced Tennessee Code Annotated Title 56 (Insurance), Chapter 54 (Reports on Medical or Professional Malpractice Claims) with the “Tennessee Medical Malpractice Reporting Act.” It sets out largely the same reporting requirements, changes the due date for reporting entities to report on March 1 of each year, and adds, among other things, information to be collected in a manner consistent with the National Practitioner Data Bank. It defines a claim as, “A demand for monetary damages for injury or death caused by medical malpractice; or a voluntary indemnity payment for injury or death caused by medical malpractice.” Tenn. Pub. Acts Ch. 1009 also deleted the definition of “reporting entities” and imposed reporting requirements on specified insuring entities, self-insurers, facilities, and providers under TENN. CODE ANN. § 56-54-105.

In 2011, the Tennessee General Assembly enacted 2011 Tenn. Pub. Acts Ch. 112, effective January 1, 2012, which changed Tennessee Code Annotated Title 56 (Insurance), Chapter 54 (Reports on Medical or Professional Malpractice Claims) and required additional reporting from counsel for claimants. In addition to their fee arrangements, claimant’s counsel was required to report whether the health care provider named in the claim received payment from TennCare for the incident that is the subject of the claim. This includes all closed or open and pending claims on or after January 1, 2012.

In 2012, the Tennessee General Assembly enacted 2012 Tenn. Pub. Acts Ch. 798, effective April 23, 2012, which deleted the term “medical malpractice” and substituted instead the term “health care liability” in Tennessee Code Annotated Title 56.

Where useful, this report provides not only the aggregate information for 2014, but also shows the information reported for 2011, 2012 and 2013 as a convenience to the reader.

## **I. REPORTING ENTITIES**

The information provided by this report is primarily comprised of information obtained from insurance companies writing health care liability insurance in this state. It is important to note that the top ten (10) health care liability insurance carriers account for over 95 percent of the total health care liability direct premiums written in Tennessee in 2014. In addition to requiring insurance companies to report the information enumerated in TENN. CODE ANN. § 56-54-105, health care facilities and professionals that are uninsured or that are insured by entities asserting federal exemption or other jurisdictional preemption from the reporting requirements are required to report information about their health care liability claims experience. The Department remains unable to confirm that the information from this group is complete as the Department has no information concerning which facilities or professionals do, in fact, fall into such categories. As such, there may be claims and costs incurred in this state that are not included in this report.<sup>1</sup>

## **II. REPORTING PERIOD**

The period on which this report focuses is the 2014 calendar year. The Department required reporting entities to complete two (2) separate forms to meet their obligations under the law. One reporting form solicited information regarding all health care liability claims closed or otherwise resolved in 2014. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2014.<sup>2</sup> Claims identified in the information submitted related to incidents occurring between 1986 and 2014. However, only 36 of the 5,140 claims reported (0.70 percent) arose out of an incident that occurred prior to 2000.

## **III. CLAIMS CLOSED AND CLAIMS PENDING**

### ***A. Claims Closed***

The total number of health care liability claims reported as closed in 2014 was 1,645. This total represents claims resolved through the entry of a final court judgment, settlement with the claimant, alternative dispute resolution (ADR) by mediation, ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, or otherwise resolved by the reporting entity.

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<sup>1</sup> Until the Department has the ability to identify the uninsured health care facilities and providers, as well as compel risk retention groups to report their information, the Department will remain unable to confirm the completeness of the information contained in these reports.

<sup>2</sup> The Department made the forms available to reporting entities on its website for ease of access.

The following table demonstrates the comparative number of claims reported as closed in each of the four (4) categories:

**Table 1 – Claims Closed through Settlement, Adjudication, Alternative Dispute Resolution (ADR) or Other Resolution**

	2011 Totals	2011 Percentages	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	<b>2014 Totals</b>	<b>2014 Percentages</b>
Claims Resolved Through Judgment <sup>3</sup>	114	4.89	96 <sup>4</sup>	4.35	135 <sup>5</sup>	6.47	<b>41<sup>6</sup></b>	<b>2.49</b>
Claims Resolved Through Settlement	289	12.39	336	15.24	306	14.68	<b>300</b>	<b>18.24</b>
Claims Resolved Through ADR <sup>7</sup>	145	6.22	94	4.26	79	3.79	<b>67</b>	<b>4.07</b>
Claims Otherwise Resolved	1,784	76.50	1,679	76.15	1,565	75.06	<b>1,237</b>	<b>75.20</b>
<b>Total Number of Claims Closed</b>	<b>2,332</b>	<b>100.00</b>	<b>2,205</b>	<b>100.00</b>	<b>2,085</b>	<b>100.00</b>	<b>1,645</b>	<b>100.00</b>

<sup>3</sup> This figure does not include claims which went to trial and ended in judgments, and had high/low agreements prior to the judgment being rendered.

<sup>4</sup> Six (6) claims ended in judgments prior to 2000 and are not included in the 2012 figures. Three (3) of these judgments were rendered in 2011 and three (3) in 2010; however, payments were made in 2012.

<sup>5</sup> This figure includes 40 judgments for the defendant awarded between 2008 and 2012 that were appealed with final resolution occurring in 2013 and no payments made.

<sup>6</sup> This figure includes 20 judgments for the defendant awarded in 2013 that were appealed with final resolution occurring in 2014 and no payments made.

<sup>7</sup> This figure includes three (3) claims which went to trial and yielded a judgment for the plaintiff; however, one (1) high/low agreement was paid as a settlement in 2012 and two (2) were paid as a settlement in 2013.

**Table 2 – Paid and Unpaid Claims Closed in 2014**

	2011 Totals	2011 Percentages	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	<b>2014 Totals</b>	<b>2014 Percentages</b>
Paid Closed Claims	437	18.74	436	19.72	388	18.61	<b>385</b>	<b>23.40</b>
Unpaid Closed Claims	1,895	81.26	1,775	80.28	1,697	81.39	<b>1,260</b>	<b>76.60</b>
<b>Total Closed Claims</b>	<b>2,332</b>	<b>100.00</b>	<b>2,211</b>	<b>100.00</b>	<b>2,085</b>	<b>100.00</b>	<b>1,645</b>	<b>100.00</b>

### ***B. Claims Pending***

Pending claims are claims filed in 2014 or in prior years which were still unresolved as of December 31, 2014. It was reported that there were 3,495 claims pending as of December 31, 2014.

## **IV. DAMAGES AND COSTS**

### ***A. Damages Asserted by Claimants<sup>8</sup>***

Claimants asserted a total of \$3,941,698,859<sup>9</sup> (Three Billion, Nine Hundred Forty-one Million, Six Hundred Ninety-eight Thousand, Eight Hundred Fifty-nine Dollars) in damages for health care liability related injuries for the claims reported as having been closed in the 2014 reporting year. In the 2014 reporting year, claimants were paid damages totaling \$104,286,507 (One Hundred Four Million, Two Hundred Eighty-six Thousand, Five Hundred Seven Dollars) by way of judgments, traditional settlements, and ADR methods. The total damages paid during 2014 represents 2.65 percent of the damages that were asserted.

Claimants who had their claims disposed of in 2014 (closed without further payment to be made) were paid a total of \$132,460,051 (One Hundred Thirty-two Million, Four Hundred Sixty Thousand, Fifty-one Dollars) from the inception of their claims through December 31, 2014, or 3.36 percent of the damages that were asserted in those claims.

There were 3,495 claims filed but still pending (without final resolution) as of December 31, 2014. The damages asserted by those claimants total \$13,622,052,382 (Thirteen Billion, Six Hundred Twenty-two Million, Fifty-two Thousand, Three Hundred Eighty-two Dollars). Of those asserted damages, \$43,940,760 (Forty-three Million, Nine Hundred Forty Thousand, Seven Hundred Sixty Dollars) have been paid to date.

<sup>8</sup> Where reporting entities left the asserted damages field blank, an assumption is made that the amount asserted is the amount that was paid.

<sup>9</sup> This number includes all claims reported as closed during the 2014 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2014. Therefore, this number includes damages that were asserted in years prior to 2014.

## **B. Damages Paid to Claimants**

Table Three (3) demonstrates the reported damages paid in 2014 on claims closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

**Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated, Mediated or Resolved by Other ADR Methods and Closed During Reporting Year 2014**

	2011 Totals	2011 %	2012 Totals	2012 %	2013 Totals	2013 %	2014 Totals	2014 %
Total Damages Paid by Settlements	\$ 57,414,009	50.40	\$ 52,650,012	58.16	\$ 45,880,103	57.44	<b>\$ 61,600,280</b>	<b>59.07</b>
Total Damages Paid by Judgments	\$ 1,536,349	1.35	\$ 15,754,959	17.41	\$ 2,348,519	2.94	<b>\$ 2,250,000</b>	<b>2.16</b>
Total Damages Paid by Mediation	\$ 54,955,838	48.25	\$ 21,909,408	24.20	\$ 31,651,807	39.62	<b>\$ 38,827,399</b>	<b>37.23</b>
Total Damages Paid by Other ADR Methods	\$ 0	0.00	\$ 206,000	0.23	\$ 0	0.00	<b>\$ 1,608,828</b>	<b>1.54</b>
<b>Total Damages Paid</b>	<b>\$ 113,906,196</b>	<b>100.00</b>	<b>\$ 90,520,379</b>	<b>100.00</b>	<b>\$ 79,880,429</b>	<b>100.00</b>	<b>\$ 104,286,507</b>	<b>100.00</b>

## **C. Judgments**

In all, it was reported that there were 45 court judgments in 2014. It was reported that 38 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant; however, four (4) judgments were appealed with no final results in 2014. Seven (7) judgments were entered in favor of the plaintiff in 2014; however, one (1) judgment was appealed with no final results in 2014 and one (1) judgment was not paid in 2014. Four (4) of the six (6) judgments were paid as a settlement due to a high/low resolution agreement before trial. Four (4) judgments paid in 2014 were awarded between 2010 and 2013 and were appealed. Table Four (4), on the following page, details the five (5) paid judgments and the types of damages awarded in each case.

**Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2014**

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
\$ 300,000	9/13/2004	\$ 300,000	Medical Doctor/General Surgery/Hospital	\$ 0	\$ 300,000	\$ 0	Death
\$ 1,125,000	3/2/2011	\$ 1,125,000	Medical Doctor/Obstetrics & Gynecology/Hospital	\$ 0	\$ 1,125,000	\$ 0	Major temporary
\$ 1,125,000	3/2/2011	\$ 1,125,000	Corporations Staffing/Doctors, Nurses, Etc./Hospital	\$ 0	\$ 1,125,000	\$ 0	Major temporary
\$ 973,791	2/3/2007	\$ 600,000	Medical Doctor/Cardiovascular Diseases/Hospital	\$ 356,000	\$ 617,791	\$ 0	Death
\$ 4,131,907	5/27/2004	\$ 4,131,907	Unknown/Unknown/Hospital	\$ 0	\$ 1,146,907	\$ 2,985,000	Major temporary

**D. Total Defense Costs and Expenses Paid on Claims**

The total defense costs reported to have been paid during 2014 was \$85,021,960 (Eighty-five Million, Twenty-one Thousand, Nine Hundred Sixty Dollars). The total amount reported to have been paid to defense counsel in 2014 was \$70,500,760 (Seventy Million, Five Hundred Thousand, Seven Hundred Sixty Dollars)<sup>10</sup>. The following tables detail the defense costs paid in 2014 on closed and pending claims.

**Table 5 – Total Amounts Paid in Defense Costs in 2014**

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 49,744,979	\$ 4,380,912	\$ 51,878	\$ 953,917	\$ 4,167,876
Closed Claims	\$ 20,755,781	\$ 2,123,728	\$ 68,525	\$ 295,087	\$ 2,479,277
<b>Total</b>	<b>\$ 70,500,760</b>	<b>\$ 6,504,640</b>	<b>\$ 120,403</b>	<b>\$ 1,249,004</b>	<b>\$ 6,647,153</b>

<sup>10</sup> For purposes of comparison, the approximate total defense fees reported as being paid in 2011, 2012 and 2013 was \$86.1 (Eighty-six Million, One Hundred Thousand Dollars), \$74.2 (Seventy-four Million, Two Hundred Thousand Dollars), and \$68.5 (Sixty-eight Million, Five Hundred Thousand Dollars), respectively.

**Table 6 – Total Amounts Paid in Defense Costs During the 2014 Reporting Year  
Broken Down by Paid and Unpaid Claims**

	# of Claims	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Paid Claims	486	\$ 12,958,720	\$ 1,769,869	\$ 47,344	\$ 202,960	\$ 1,458,706
Unpaid Claims	4,654	\$ 57,542,040	\$ 4,734,771	\$ 73,059	\$ 1,046,044	\$ 5,188,447
<b>Total</b>	<b>5,140</b>	<b>\$ 70,500,760</b>	<b>\$ 6,504,640</b>	<b>\$ 120,403</b>	<b>\$ 1,249,004</b>	<b>\$ 6,647,153</b>

The total defense costs paid on closed and pending claims as of December 31, 2014, since the inception of such claims, was \$219,186,108 (Two Hundred Nineteen Million, One Hundred Eighty-six Thousand, One Hundred Eight Dollars). The following table details these defense costs:

**Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through  
End of 2014 Reporting Year**

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 113,837,029	\$ 10,574,270	\$ 182,599	\$ 2,202,056	\$ 6,639,755
Closed Claims	\$ 71,244,159	\$ 8,370,928	\$ 131,538	\$ 1,691,138	\$ 4,312,636
<b>Total</b>	<b>\$ 185,081,188</b>	<b>\$ 18,945,198</b>	<b>\$ 314,137</b>	<b>\$ 3,893,194</b>	<b>\$ 10,952,391</b>

## V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2014<sup>11</sup>

2008 Tenn. Pub. Acts Ch. 1009, effective January 1, 2009, sets out additional and more claim-specific reporting requirements, including details on the injured person’s sex and age on the date of the medical incident, the severity of the injury, the reason for the health care liability claim, and the geographic location where the incident occurred. More specific information about the health care facilities and health care providers against whom the claims were made was also required. The tables that follow provide descriptions of such information, as reported, regarding claims closed in 2014.<sup>12</sup>

<sup>11</sup> The report is formatted to collect data from the insurers of the providers and facilities in a health care liability claim. For that reason, several companion claims in the reported data will together represent a single health care liability related injury for a single claimant, but are reported as several claims filed against multiple providers and facilities. It is important to remember this when considering claims characteristics. These tables do not reflect the number of injuries, but the number of providers and facilities accused of causing that particular type of injury.

<sup>12</sup> The data included here about the age and severity of injury is specific to the claimant and, therefore, does not include data on companion claims to the extent that they can be identified. The data included here about the facilities, providers, and the reasons for the health care liability claims is derived from all of the claim reports including those about companion claims.

## A. Reason for Health Care Liability Claim

TENN. CODE ANN. § 56-54-106(12) requires insuring entities, self-insurers, facilities and providers to report the reason for the health care liability claim using the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank. The following tables show the top ten (10) types of health care liability and the top ten (10) types of injury which led to payments to claimants during the reporting year 2014 and the amount paid to such claimants from the inception of the claim:

**Table 8 - Top Ten (10) Types of Health Care Liability During Reporting Year 2014  
Ranked by Frequency<sup>13</sup>**

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	364	\$ 26,500,119
Diagnosis Related	354	\$ 28,747,529
Surgery Related	324	\$ 27,055,601
Monitoring Related	175	\$ 27,201,950
Medication Related	119	\$ 6,087,886
Obstetrics Related	85	\$ 10,863,399
Anesthesia Related	33	\$ 1,945,943
IV & Blood Products Related	17	\$ 109,341
Behavioral Health Related	15	\$ 244,999
Equipment/Product Related	13	\$ 1,880,294
<b>Totals</b>	<b>1,499</b>	<b>\$ 130,637,061</b>

**Table 9 - Top Ten (10) Types of Health Care Liability During Reporting Year 2014  
Ranked by Amount in Damages Paid to Claimant**

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Diagnosis Related	\$ 28,747,529	354
Monitoring Related	\$ 27,201,950	175
Surgery Related	\$ 27,055,601	324
Treatment Related	\$ 26,500,119	364
Obstetrics Related	\$ 10,863,399	85
Medication Related	\$ 6,087,886	119
Anesthesia Related	\$ 1,945,943	33
Equipment/Product Related	\$ 1,880,294	13
Behavioral Health Related	\$ 244,999	15
IV & Blood Products Related	\$ 109,341	17
<b>Totals</b>	<b>\$ 130,637,061</b>	<b>1,499</b>

<sup>13</sup> Tables Eight (8) and Nine (9) represent the top ten (10) classifications of types of health care liability in paid, closed claims during 2014. Ninety-one claims were classified by reporting entities as “other/ miscellaneous” and 55 claims as “unknown”.

**Table 10 - Top Ten (10) Causes of Injury During Reporting Year 2014  
Ranked by Frequency<sup>14</sup>**

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Improper Performance	178	\$ 7,398,232
Failure to Diagnose	153	\$ 11,081,000
Failure to Monitor	134	\$ 33,132,347
Failure to Treat	93	\$ 5,015,076
Improper Management	85	\$ 5,170,889
Delay in Diagnosis	51	\$ 7,577,400
Failure to Ensure Patient Safety	51	\$ 4,518,578
Surgical or Other Foreign Body Retained	44	\$ 1,887,821
Wrong Medication Administered	37	\$ 2,007,000
Failure to Recognize a Complication	34	\$ 739,249
Delay in Treatment	34	\$ 3,410,922
Radiology or Imaging Error	33	\$ 1,289,500
<b>Totals</b>	<b>927</b>	<b>\$ 83,228,014</b>

**Table 11 - Top Ten (10) Causes of Injury During Reporting Year 2014  
Ranked by Amount in Damages Paid to Claimant**

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Monitor	\$ 33,132,347	134
Failure to Diagnose	\$ 11,081,000	153
Intubation Problem	\$ 7,976,144	18
Improper Performance	\$ 7,398,232	178
Delay in Diagnosis	\$ 7,577,400	51
Improper Management	\$ 5,170,889	85
Vicarious Liability	\$ 5,502,500	31
Failure to Ensure Patient Safety	\$ 4,518,578	51
Delay in Treatment	\$ 3,410,922	34
Laboratory Error	\$ 3,000,000	9
<b>Totals</b>	<b>\$ 88,768,012</b>	<b>744</b>

***B. Age and Sex of Claimant***

TENN. CODE ANN. § 56-54-106(7) requires insuring entities, self-insurers, facilities and providers to report the injured person’s age on the date of the medical incident. Table 12 shows the number of claims which were closed in 2014 in each claimant age group<sup>15</sup>:

<sup>14</sup> Tables 10 and 11 represent the top ten (10) classifications of causes of injury in paid, closed claims during 2014. Three Hundred Fifty-five claims were classified by reporting entities as “cannot be determined from available record,” “allegation – not otherwise classified,” or “unknown.”

<sup>15</sup> This table represents all non-companion claims closed in 2014, whether paid or unpaid. The table detailing age is specific to the claimant, and, therefore, the numbers represented are based on the number of injured claimants and not the number of providers that injuries were alleged against.

**Table 12 – Number of Claims Closed in 2014 Broken Down by Age of Claimant<sup>16</sup>**

Age Range	Number of Claimants
0-13 years	124
14-20 years	35
21-35 years	161
36-49 years	278
50-64 years	305
65+ years	354

Based on the data submitted for claims reported to have been closed in 2014, 713 incidents of alleged health care liability involved females and 593 incidents involved males. On 12 occasions reporting entities submitted that the claimant’s gender was unknown.

### **C. Severity of Injury**

TENN. CODE ANN. § 56-54-106(8) requires insuring entities, self-insurers, facilities and providers to report the severity of the health care liability injury using the National Practitioner Data Bank severity scale. The classifications available to demonstrate severity of injury include: emotional injury only, insignificant injury, minor temporary injury, major temporary injury, minor permanent injury, significant permanent injury, major permanent injury, grave permanent injury, and death. The following tables break down those levels of severity by the number of claims closed and the amount of those claims paid versus unpaid at each level of severity<sup>17</sup>:

**Table 13 – Severity of Injury in Claims Closed During Reporting Year 2014**

Severity of Injury	Number of Claims	Number of Claims Paid During 2014	Number of Claims Not Paid
Death	329	108	221
Major Temporary	246	73	173
Minor Temporary	234	60	174
Emotional Injury Only	79	9	70
Insignificant	75	15	60
Significant Permanent	68	15	53
Major Permanent	55	11	44
Minor Permanent	54	18	36
Quadriplegic, Brain Damage, Lifelong Care	50	18	32

<sup>16</sup> Sixty-one claimants’ ages were reported as “unknown”.

<sup>17</sup> The table referenced in this paragraph does not include companion claims, where those can be identified. The table detailing severity of injury is specific to the claimant, and therefore the numbers represented are based on the number of injured claimants and not the number of providers that injuries were alleged against.

**Table 14 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2014<sup>18</sup>**

Severity of Injury	Amount Paid in Damages in 2014
Death	\$ 40,906,477
Quadriplegic, Brain Damage, Lifelong Care	\$ 28,270,904
Major Temporary	\$ 13,232,668
Significant Permanent	\$ 7,602,000
Major Permanent	\$ 5,845,444
Minor Temporary	\$ 3,426,895
Minor Permanent	\$ 2,390,446
Insignificant	\$ 399,313
Emotional Injury Only	\$ 247,778

**Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2014**

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	\$ 49,893,927
Quadriplegic, Brain Damage, Lifelong Care	\$ 30,210,921
Significant Permanent	\$ 17,785,000
Major Temporary	\$ 15,221,307
Major Permanent	\$ 9,437,882
Minor Temporary	\$ 3,938,186
Minor Permanent	\$ 2,410,446
Insignificant	\$ 459,833
Emotional Injury Only	\$ 409,181

### ***D. Geographic Location***

TENN. CODE ANN. § 56-54-106(6) requires insuring entities, self-insurers, facilities and providers to report the geographic location, by city and county, where the health care liability incident occurred. Seventy-eight counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2014. Of the 1,645 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2014 is \$104,286,507 (One Hundred Four Million, Two Hundred Eighty-six Thousand, Five Hundred Seven Dollars).

The following tables show statistics for the ten (10) counties with the highest number of health care liability claims:

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<sup>18</sup> In 2014, claimants were paid a total of \$991,475 (Nine Hundred Ninety-one Thousand, Four Hundred Seventy-five Dollars) and \$973,107 (Nine Hundred Seventy-three Thousand, One Hundred Seven Dollars) for claims in which the severity of the injury was “unknown” or where it “could not be determined from available records,” respectively.

**Table 16 – Top Ten (10) Counties Ranked by Number of Claims During Reporting Year 2014<sup>19</sup>**

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	410	24.92	\$ 27,719,410
Davidson	281	17.08	\$ 18,587,885
Knox	153	9.30	\$ 6,959,779
Hamilton	125	7.60	\$ 6,622,345
Sullivan	61	3.71	\$ 2,880,832
Washington	49	2.98	\$ 3,942,500
Sumner	39	2.37	\$ 560,640
Blount	35	2.13	\$ 1,620,000
Madison	35	2.13	\$ 496,905
Williamson	34	2.07	\$ 775,000
Rutherford	25	1.52	\$ 1,315,399

**Table 17 – Top Ten (10) Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2014**

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	410	24.92	\$ 27,719,410
Davidson	281	17.08	\$ 18,587,885
Weakley	16	0.97	\$ 12,665,118
Knox	153	9.30	\$ 6,959,779
Hamilton	125	7.60	\$ 6,622,345
Washington	49	2.98	\$ 3,942,500
Bradley	15	0.91	\$ 3,114,500
Sullivan	61	3.71	\$ 2,880,832
Blount	35	2.13	\$ 1,620,000
Lake	4	0.24	\$ 1,415,997

### **E. Providers**

TENN. CODE ANN. § 56-54-106(3) requires insuring entities, self-insurers, facilities and providers to report the type and medical specialty (if applicable) of the provider named in the claim. TENN. CODE ANN. § 56-54-103(9) defines “health care provider” or “provider,” in pertinent part, as a person licensed in either Title 63, except Chapter 12, or Title 68 to provide health care or related services, or an employee or agent of a licensee while acting in the course and scope of the employee’s or agent’s employment. The following tables show statistics for the ten (10) provider types with the highest number of health care liability claims:

<sup>19</sup> Tables 16 and 17 include data reported on companion claims.

**Table 18 – Top Ten (10) Provider Types Ranked by Frequency of Claims During Reporting Year 2014<sup>20</sup>**

<b>Type of Provider</b>	<b>Number of Claims</b>	<b>Percentages of Total Claims</b>	<b>Amounts Paid to Claimants</b>
Medical Doctor	539	32.77	\$ 30,546,554
Corporation – Staffing	237	14.41	\$ 24,382,043
Nurse	71	4.32	\$ 1,271,106
Dentist	49	2.98	\$ 514,743
Osteopathic Physician	16	0.97	\$ 970,000
Physician Assistant	15	0.91	\$ 19,750
Pharmacy	13	0.79	\$ 225,500
Chiropractic Physician	8	0.49	\$ 0
Podiatrist	7	0.43	\$ 0
Physical Therapy	6	0.36	\$ 104,877

**Table 19 – Top Ten (10) Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2014**

<b>Type of Provider</b>	<b>Amounts Paid to Claimants</b>	<b>Number of Claims</b>	<b>Percentages of Total Claims</b>
Medical Doctor	\$ 30,546,554	539	32.77
Corporation – Staffing	\$ 24,382,043	237	14.41
Nurse	\$ 1,271,106	71	4.32
Osteopathic Physician	\$ 970,000	16	0.97
Dentist	\$ 514,743	49	2.98
Psychology	\$ 496,999	5	0.30
Social Work	\$ 471,999	1	0.06
Optometry	\$ 337,500	2	0.12
Pharmacy	\$ 225,500	13	0.79
Physical Therapy	\$ 104,877	6	0.36

<sup>20</sup> “Unknown” was the chosen provider types for three (3) claims. The statistics in Tables 18, 19, and 20 are based on the total amount of claims closed, including companion claims, during the reporting year 2014.

**Table 20 – Top Ten (10) Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2014**

<b>Type of Provider</b>	<b>Amounts Paid to Claimants</b>	<b>Number of Claims</b>	<b>Percentages of Total Claims</b>
Medical Doctor	\$ 38,917,508	539	32.77
Corporation – Staffing	\$ 26,044,446	237	14.41
Nurse	\$ 1,271,969	71	4.32
Osteopathic Physician	\$ 1,044,000	16	0.97
Dentist	\$ 514,743	49	2.98
Psychology	\$ 496,999	5	0.30
Social Worker	\$ 471,999	1	0.06
Nursing Home Administrator	\$ 445,000	5	0.30
Optometry	\$ 337,500	2	0.12
Pharmacy	\$ 245,500	13	0.79

The following tables show statistics for the ten (10) provider specialty types with the highest alleged incidence of health care liability:

**Table 21 – Top Ten (10) Provider Specialty Types Ranked by Frequency of Claims During Reporting Year 2014<sup>21</sup>**

<b>Type of Specialty</b>	<b>Number of Claims</b>	<b>Percentages of Total Claims</b>	<b>Amounts Paid to Claimants</b>
Doctors, Nurses, Etc.	237	14.41	\$ 24,382,043
Obstetrics and Gynecology	81	4.92	\$ 7,383,332
Emergency Medicine	68	4.13	\$ 2,375,000
Family Practice	63	3.83	\$ 5,028,205
Internal Medicine	54	3.28	\$ 74,999
General Surgery	36	2.19	\$ 969,498
Registered Nurse	35	2.13	\$ 803,606
Dental Public Health	33	2.01	\$ 194,743
Radiology	26	1.58	\$ 1,262,500
Advanced Practice Nurse	23	1.40	\$ 422,500

<sup>21</sup> “Unknown” was the chosen provider specialty type for 11 claims. The statistics in Tables 21, 22, and 23 are based on the total amount of claims closed, including companion claims, during the reporting year 2014.

**Table 22 – Top Ten (10) Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2014**

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Doctors, Nurses, Etc.	\$ 24,382,043	237	14.41
Obstetrics and Gynecology	\$ 7,383,332	81	4.92
Family Practice	\$ 5,028,205	63	3.83
Emergency Medicine	\$ 2,375,000	68	4.13
Obstetrics	\$ 2,120,900	6	0.36
Orthopedic Surgery	\$ 2,077,083	22	1.34
Cardiovascular Diseases	\$ 1,350,000	9	0.55
Radiology	\$ 1,262,500	26	1.58
General Practice	\$ 1,257,500	9	0.55
Orthopedic Surgery of the Spine	\$ 1,246,250	9	0.55

**Table 23 – Top Ten (10) Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2014**

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Doctors, Nurses, Etc.	\$ 26,044,446	237	14.41
Obstetrics and Gynecology	\$ 8,648,332	81	4.92
Family Practice	\$ 5,377,204	63	3.83
Neurology	\$ 2,880,000	6	0.36
Emergency Medicine	\$ 2,875,000	68	4.13
Obstetrics	\$ 2,120,900	6	0.36
Orthopedic Surgery	\$ 2,077,083	22	1.34
Internal Medicine	\$ 2,019,899	54	3.28
General Surgery	\$ 1,969,498	36	2.19
Cardiovascular Diseases	\$ 1,350,000	9	0.55

## **F. Facilities**

TENN. CODE ANN. § 56-54-106(4) requires insuring entities, self-insurers, facilities and providers to report the type of health care facility where the health care liability incident occurred. “Health care facility” or “facility” is defined under TENN. CODE ANN. § 56-54-103(7), in pertinent part, as an entity licensed under Title 68 where a health care provider provides health care to patients. The following tables show statistics for the ten (10) health care facility types with the highest alleged incidence of health care liability.

**Table 24 – Top Ten (10) Facility Types Ranked by Frequency of Claims During Reporting Year 2014<sup>22</sup>**

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	1,066	64.80	\$ 68,447,746
Office	197	11.98	\$ 7,644,204
Nursing Home	115	6.99	\$ 15,812,787
Prison/Penitentiary/Correctional	77	4.68	\$ 2,723,497
Clinic	51	3.10	\$ 1,385,981
Surgical Facility	25	1.52	\$ 2,738,132
Ambulatory Surgical Treatment Center	19	1.16	\$ 360,000
Treatment Center	15	0.91	\$ 4,258,235
Assisted Care Living Center	7	0.43	\$ 43,350
Medical Laboratories	6	0.36	\$ 0

**Table 25 – Top Ten (10) Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2014**

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 68,447,746	1,066	64.80
Nursing Home	\$ 15,812,787	115	6.99
Office	\$ 7,644,204	197	11.98
Treatment Center	\$ 4,258,235	15	0.91
Surgical Facility	\$ 2,738,132	25	1.52
Prison/Penitentiary/Correctional	\$ 2,723,497	77	4.68
Clinic	\$ 1,385,981	51	3.10
Ambulatory Surgical Treatment Center	\$ 360,000	19	1.16
Renal Dialysis Center	\$ 224,076	3	0.18
Residence	\$ 80,000	5	0.30

<sup>22</sup> “Unknown” and “other” were the chosen health care facility types for 43 claims. The statistics in Tables 24, 25, and 26 are based on the total amount of claims closed, including companion claims, during the reporting year 2014.

**Table 26 – Top Ten (10) Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2014**

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 87,897,456	1,066	64.80
Nursing Home	\$ 19,610,882	115	6.99
Office	\$ 9,675,703	197	11.98
Treatment Center	\$ 4,545,735	15	0.91
Prison/Penitentiary/Correctional	\$ 3,923,487	77	4.68
Surgical Facility	\$ 3,557,494	25	1.52
Clinic	\$ 1,386,631	51	3.10
Assisted Care Living Center	\$ 548,077	7	0.43
Ambulatory Surgical Treatment Center	\$ 375,000	19	1.16
Renal Dialysis Center	\$ 232,421	3	0.18

## VI. 2014 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2014 in Tennessee by insurance companies and risk retention groups was \$142,533,198 (One Hundred Forty-two Million, Five Hundred Thirty-three Thousand, One Hundred Ninety-eight Dollars). This total was determined from their 2014 annual financial statements. These premiums were for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2014 usually relate to policies and the corresponding premium from previous years.

## VII. COUNSEL FOR CLAIMANT<sup>23</sup>

TENN. CODE ANN. § 56-54-105(c) requires counsel for claimants asserting health care liability claims (cases) to report their fee arrangements, whether the health care provider named in the case received payment from TennCare, and to report all open<sup>24</sup> and pending cases.<sup>25</sup> The Department required counsel for claimants to complete two (2) separate forms to meet their obligations under the law. One reporting form solicited information regarding all health care liability cases closed or otherwise resolved in 2014. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2014.<sup>26</sup> Cases identified in the information submitted related to incidents occurring between 1986 and 2014.

<sup>23</sup> The figures in the counsel for claimant section are calculated from “cases” rather than claims. Companion claims are identified as separate defendants for the same incident, therefore, separate claims by the insuring entities (facilities and providers); are considered as one (1) case by the counsel for claimant.

<sup>24</sup> “Open” case is not defined in the statute; and, therefore, may have been interpreted and/or applied more than one (1) way by different counsel of claimants. It is unknown as to how many cases were opened but not reported by the attorneys.

<sup>25</sup> Until the Department has the ability to identify the counsels for claimants who work with health care liability cases, the Department will remain unable to confirm the completeness of the information contained in these reports.

<sup>26</sup> The Department made the forms available to counsel for claimants on its website for ease of access.

However, only 19 of the 2,785 cases reported (0.68 percent) arose out of an incident that occurred prior to 2000, occurring in the 1980s and 1990s.

### **A. Closed Cases**

The total number of health care liability cases reported by counsel of claimants as closed in 2014 was 1,112. This total represents cases resolved through the entry of a final court judgment, settlement with the claimant, alternative dispute resolution (ADR) by mediation, ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, cases not taken, or otherwise resolved by the counsel for claimant.

The following table demonstrates the comparative number of cases reported as closed in each of the five (5) categories:

**Table 27 – Cases Closed through Settlement, Adjudication, Alternative Dispute Resolution (ADR) or Other Resolution as Reported by Counsels for Claimants**

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages
Cases Resolved Through Judgment	10	1.98	38	4.11	<b>49</b>	<b>4.41</b>
Cases Resolved Through Settlement	249	49.40	339	36.69	<b>337</b>	<b>30.30</b>
Cases Resolved Through ADR	148	29.37	123	13.31	<b>101</b>	<b>9.08</b>
Cases Not Taken <sup>27</sup>	0	0.00	318	34.42	<b>301</b>	<b>27.07</b>
Cases Otherwise Resolved	97	19.25	106	11.47	<b>324</b>	<b>29.14</b>
<b>Total Number of Cases Closed</b>	<b>504</b>	<b>100.00</b>	<b>924</b>	<b>100.00</b>	<b>1,112</b>	<b>100.00</b>

**Table 28 – Paid and Unpaid Cases Closed as Reported by Counsels for Claimants in 2014**

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages
Paid Closed Cases	407	80.75	467	50.54	<b>462</b>	<b>41.55</b>
Unpaid Closed Cases	97	19.25	457	49.46	<b>650</b>	<b>58.45</b>
<b>Total Closed Cases</b>	<b>504</b>	<b>100.00</b>	<b>924</b>	<b>100.00</b>	<b>1,112</b>	<b>100.00</b>

### **B. Pending Cases**

Pending cases are cases which were opened in 2014 or in prior years and were still unresolved as of December 31, 2014. It was reported by counsels for claimants that there were 1,673<sup>28</sup> cases pending as of December 31, 2014.

<sup>27</sup> “Cases Not Taken” is a closed option showing closure of cases the counsel for claimant decided not to take after research or notice of intent letters were sent. This data was not collected in 2012.

### C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling \$194,519,452 (One Hundred Ninety-four Million, Five Hundred Nineteen Thousand, Four Hundred Fifty-two Dollars) on cases closed in 2014 by way of judgments, traditional settlements, and ADR methods in the 2014 reporting year.

There were 1,673 cases still pending (without final resolution) as of December 31, 2014. \$12,410,322 (Twelve Million, Four Hundred Ten Thousand, Three Hundred Twenty-two Dollars) was paid on these cases in 2014.

Table 29 demonstrates the reported damages paid in 2014 on cases closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

**Table 29 – Amounts Paid In Damages for Cases Settled, Adjudicated, Mediated or by other ADR Methods and Closed During Reporting Year 2014 as reported by Counsels for Claimants**

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages
Total Damages Paid by Settlements <sup>29</sup>	\$ 61,122,922	42.94	\$ 88,968,254	60.59	<b>\$ 118,058,809</b>	<b>60.69</b>
Total Damages Paid by Judgments	\$ 23,260,201	16.34	\$ 4,136,028	2.82	<b>\$ 12,906,396</b>	<b>6.64</b>
Total Damages Paid by Mediation	\$ 57,584,195	40.45	\$ 53,722,946	36.59	<b>\$ 60,184,494</b>	<b>30.94</b>
Total Damages Paid by Other ADR Methods	\$ 380,000	0.27	\$ 0	0.00	<b>\$ 3,369,753</b>	<b>1.73</b>
<b>Total Damages Paid</b>	<b>\$ 142,347,318</b>	<b>100.00</b>	<b>\$ 146,827,228</b>	<b>100.00</b>	<b>\$ 194,519,452</b>	<b>100.00</b>

<sup>28</sup> This number includes cases which may have been worked on by multiple attorneys. In those incidents, the duplicate entry was removed from the report. However, any payment made to multiple attorneys is included in the counsel for claimant fees identified in Table 31.

<sup>29</sup> One counsel for claimant reported a payment of \$5,156 (Five Thousand One Hundred Fifty-six Dollars) where the resolution occurred in a prior year; therefore, the payment was not entered in Table 29.

## D. Judgments

In all, it was reported by counsels for claimants that there were seven (7) court judgments paid in 2014. The following table details seven (7) paid judgments and the fees paid to counsels for claimants in each case:

**Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2014<sup>30</sup>**

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
\$ 1,035,668 <sup>31</sup>	2/3/2007	\$ 344,860
\$ 2,250,000	3/2/2011	\$ 450,000
\$ 4,131,907	5/29/2004	\$ 826,313
\$ 230,000 <sup>32</sup>	9/8/2011	\$ 76,667
\$ 5,233,590 <sup>33</sup>	6/27/2008	\$ 1,308,397
\$ 25,231 <sup>34</sup>	7/29/2011	\$ 8,410
\$ 300,000	9/13/2004	\$ 100,000

## E. Fees Paid to Claimants' Counsel

There were 714 counsels for claimants who reported. Insuring entities identified another 106 counsels for claimants who failed to report in 2014. The Department is unable to confirm that the information from this group is complete as it has no information concerning which attorneys do, in fact, fall into this category. As such, there may be cases and fees incurred in this state that are not included in this report.<sup>35</sup>

The attorneys who submitted a report, reported having received fees in the amount of \$49,979,310 (Forty-nine Million, Nine Hundred Seventy-nine Thousand, Three Hundred Ten Dollars) in 2014. The fees that claimants' attorneys reported receiving in 2014 are approximately 34.60 percent of the total amount reported by other entities as having been paid in damages to the claimants.

<sup>30</sup> Due to the counsels for claimants reporting multiple claims as one (1) case, the total number of judgments recorded in Table 30 does not equal the number recorded in Table 4 as reported by other insuring entities.

<sup>31</sup> This figure includes interest accrued in addition to the awarded judgment shown in Table 4.

<sup>32</sup> This judgment was not reported by other insuring entities and not recorded in Table 4.

<sup>33</sup> This judgment was not reported by other insuring entities and not recorded in Table 4.

<sup>34</sup> This judgment was not reported by other insuring entities and not recorded in Table 4.

<sup>35</sup> Counsels for claimants are identified on the reports submitted by facilities and providers asserting health care liability claims. Until the Department has the ability to identify all counsels for claimants, the Department will remain unable to confirm the completeness of the information contained in these reports.

Of the reported cases, the majority of attorneys reported contingency agreements of 33 percent or less of the total damages. However, the range for fee agreements was from zero (0) percent to 66.67 percent.

**F. TennCare Payments**

TENN. CODE ANN. § 56-54-105(B) requires counsel for claimants asserting health care liability claims (cases) to report as to whether the health care provider named in the case received payments from TennCare. Table 31, below, identifies the number of cases in which TennCare payments were made to the providers:

**Table 31 – TennCare Payments Made to Providers**

	Yes	No	Unknown <sup>36</sup>
2012	233	1,304	0 <sup>37</sup>
2013	292	1,701	623
2014	398	1,944	443

**VIII. NEXT STEPS**

The Department will work with the insurance industry and the other reporting entities as it relates to their 2015 reporting obligations.

The Department will consider whether existing rules need to be revised to reflect statutory changes made since the rules were last updated.

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<sup>36</sup> Due to cases which are still pending, counsels for claimants were uncertain at the time of reporting as to whether TennCare would be making payments to the provider; so they chose “unknown” for this question. The majority of cases reported as “unknown” are cases that were not taken by the counsels for claimants.

<sup>37</sup> The first year counsels for claimants were to report on TennCare payments and open cases was 2012. The choice of “unknown” was not available. The majority of attorneys did not report open and pending cases.