

2011 Medical Malpractice Claims Report



**Department of Commerce & Insurance
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2011 Tennessee Medical Malpractice Report

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INTRODUCTION

In 2004, the Tennessee General Assembly enacted 2004 Tenn. Pub. Acts ch. 902 which established medical professional liability claims reporting obligations 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 The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.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 relating additional information that should 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.”

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, makes the reporting entities’ reports due 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.”

Where useful, this report provides not only the aggregate information for 2010, but also shows the information reported for 2006, 2007, 2008 and 2009 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 medical malpractice insurance in this state. It is important to note that the top ten (10) medical malpractice insurance carriers account for over eighty-five percent (85%) of the total medical malpractice direct premiums written in Tennessee in 2010. To date, the Department has identified five (5) insurance companies that failed to comply with the statute's reporting obligations. The 2010 malpractice premiums for the five (5) companies whose claim data is not included in this report totaled \$2,095,872 or eight tenths of one percent (.80%) of the total direct written premiums for medical malpractice insurance in this state. In addition to requiring insurance companies to report the information enumerated in Tenn. Code Ann. § 56-54-105, those 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 medical malpractice claim experience. Only four (4) such health care providers and sixty-four (64) such health care facilities reported in 2010. As identified in the previous reports, the Department remains unable to confirm that the information from this group is complete as it 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.¹

II. REPORTING PERIOD

The period on which this report focuses is the 2010 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 medical malpractice claims closed or otherwise resolved in 2010. The second form solicited information concerning medical malpractice claims that were still considered pending as of December 31, 2010.² Claims identified in the information submitted related to incidents occurring between 1978 and 2010. However, only 143 of the 6,789 claims reported (2.11%) arose out of an incident that occurred prior to 2000.³

III. CLAIMS CLOSED AND CLAIMS PENDING

A. Claims Closed

The total number of medical malpractice claims reported as closed in 2010 was 2,707 (two thousand seven hundred seven). This total represents claims resolved through the entry of a final court judgment, settlement with the claimant, by alternative dispute resolution (ADR) mediation, and ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, or otherwise resolved by the reporting entity.

¹ 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.

² The Department made the forms available to reporting entities on its web site for ease of access.

³ Two (2) of the reported claims arise from events occurring in the 1970's, five (5) of the claims occurred in the 1980's, and one hundred thirty-six (136) of the claims occurred in the 1990's.

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

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

	2006 Totals	2006 %	2007 Totals	2007 %	2008 Totals	2008 %	2009 Totals	2009 %	2010 Totals	2010 %
Claims Resolved Through Judgment ⁴	6	0.20	313	10.28	425	13.48	177	6.22	195	7.20
Claims Resolved Through Settlement	453	15.24	492	16.17	459	14.55	504	17.71	311	11.49
Claims Resolved Through ADR ⁵	N/A	N/A	N/A	N/A	43	1.36	281	9.87	133	4.91
Claims Otherwise Resolved	2,514	84.56	2,238	73.55	2,227	70.61	1,884	66.20	2068	76.40
Total Number of Claims Closed	2,973	100.00	3,043	100.00	3,154	100.00	2,846	100.00	2707	100.00

Table 2 – Paid and Unpaid Claims Closed in 2010

	Totals	Percentages
Paid Closed Claims	451	16.67
Unpaid Closed Claims	2,256	83.33
Total Closed Claims	2,707	100.00

⁴ This figure includes judgments for the defendant. The corresponding number in the report of 2006 data did not include judgments for the defendant. Note also that beginning in 2007, these numbers do not include claims which went to trial and ended in judgments, but where the parties later resolved their disputes.

⁵ This figure includes two (2) claims which went to trial and yielded a judgment for the plaintiff. Later the defendants appealed the verdict. The claims eventually settled through an alternative dispute resolution in 2009 for an amount different than what had been awarded at trial.

B. Claims Pending

Pending claims are claims filed in 2010 or in prior years which were still unresolved as of December 31, 2010. It was reported that there were 4,082 claims pending as of December 31, 2010.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants⁶

Claimants asserted a total of \$36,106,132,862⁷ (thirty-six billion, one hundred six million, one hundred thirty-two thousand, eight hundred sixty-two dollars) in damages for medical malpractice related injuries for the claims reported as having been closed in the 2010 reporting year. In the 2010 reporting year, claimants were paid damages totaling \$109,113,920 (one hundred nine million, one hundred thirteen thousand, nine hundred twenty dollars) by way of judgments, traditional settlements, and alternative dispute resolution methods. That total in damages paid during 2010 represents 0.30% of the damages that were asserted.

Claimants who had their claims disposed of in 2010 (closed without further payment to be made) were paid a total of \$148,438,330 (one hundred forty-eight million, four hundred thirty-eight thousand, three hundred thirty dollars) from the inception of their claims through December 31, 2010, or 0.41% of the damages that were asserted in those claims.

There were 4,082 (four thousand eighty-two) claims filed but still pending (without final resolution) as of December 31, 2010. The damages asserted by those claimants total \$9,877,846,441 (nine billion, eight hundred seventy-seven million, eight hundred forty-six thousand, four hundred forty-one dollars). Of those asserted damages, \$33,069,351 (thirty-three million, sixty-nine thousand, three hundred fifty-one dollars) have been paid to date.

⁶ Where reporting entities left the asserted damages field blank, an assumption is made that the amount asserted is the same as was paid.

⁷ This number includes all claims reported as closed during the 2010 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2010. Therefore, this number includes damages that were asserted in years prior to 2010.

B. Damages Paid to Claimants

Table 3 demonstrates the reported damages paid in 2010 on claims closed in 2010, broken down by payments made as a result of adjudication, settlement, or alternative dispute resolution.

Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated or by Mediation or other ADR⁸ and Closed During Reporting Year 2010

	2006 Totals	2006 %	2007 Totals	2007 %	2008 Totals	2008 %	2009 Totals	2009 %	2010 Totals	2010 %
Total Damages Paid by Judgments	\$4,951,459	4.71	\$9,533,574	7.55	\$790,000	0.67	\$6,153,103	5.56	\$21,581,908	19.78
Total Damages Paid by Settlement	\$100,223,337	95.30	\$116,691,921	92.45	\$83,035,550	69.60	\$57,475,878	51.91	\$42,307,781	38.77
Total Damages Paid by ADR by Mediation	N/A	N/A	N/A	N/A	\$35,492,893	29.75	\$43,379,905	39.18	\$42,169,681	38.65
Total Damages Paid by ADR Other Than By Mediation	N/A	N/A	N/A	N/A	N/A	N/A	\$3,707,623	3.35	\$3,054,550	2.80
Total Damages Paid	\$105,174,796	100	\$126,225,495	100	\$119,318,443	100	\$110,716,509	100	\$109,113,920	100

⁸ The total damages paid in 2006 and 2007 by ADR through mediation are not shown because that data was not collected. Likewise, the total damages paid in 2006, 2007 and 2008 by ADR other than by mediation are not shown because that data was not collected.

C. Judgments

In all, it was reported that there were one hundred ninety-five (195) court judgments in 2010. It was reported that one hundred eighty-five (185) of these judgments resulted in favorable rulings for the defendant where no damages were awarded to the claimant. Once a judgment was entered for the defendant, but payments were made to the claimant in accordance with settlements entered into prior to trial.⁹ Ten (10) judgments were entered in favor of the plaintiff in 2010. Three (3) of them are on claims still pending and on which no payments have been made. In addition to the seven (7) judgments entered and paid in 2010, one (1) was paid in 2010 although it was entered prior to 2010. The following table details the eight (8) paid judgments and the types of damages awarded in each case.

Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2010.¹⁰

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Severity of Injury
\$7,206,908	07/26/2000	\$48,000,000	Hospital	\$575,000	\$6,631,908	Death
\$1,000,000	04/13/2006	\$24,000,000	Advanced Practice Nurse/Hospital	\$250,000	\$750,000	Major Permanent Injury
\$1,000,000	04/13/2006	\$24,000,000	Medical Doctor/Hospital	\$300,000	\$700,000	Major Permanent Injury
\$2,000,000	04/18/2006	\$24,000,000	Medical Doctor/Anesthesiology/Hospital	\$300,000	\$1,700,000	Major Permanent Injury
\$2,250,000	04/13/2006	\$24,000,000	Osteopathic Physician/Orthopedic Surgery/Hospital	\$300,000	\$1,950,000	Major Permanent Injury
\$2,250,000	04/13/2006	\$24,000,000	Medical Doctor/Orthopedic Surgery/Hospital	\$300,000	\$1,950,000	Major Permanent Injury
\$5,500,000	04/17/2006	\$24,000,000	Hospital	\$0	\$5,500,000	Major Permanent Injury
\$375,000	02/14/2008	\$0	Medical Doctor/General Surgery/Hospital	\$126,781	\$248,219	Major Temporary Injury

⁹ In one instance, the claim was resolved through a high/low settlement agreement reached prior to trial between the plaintiff and the defendant. At trial, the verdict was awarded to the defendant; and, therefore, the reporting entity submitted the claim as a judgment for the defendant. For that reason, the dollar amount is reflected in the paragraph and the table that detail settlement dollars. The number describing judgments for the defendant includes this claim.

¹⁰ The six (6) judgments in this table for events occurring in 2006 were awarded for injury to one (1) person through one lawsuit. Three (3) other judgments rendered in that lawsuit were in favor of the defendants.

D. Fees Paid to Claimants' Counsel

Tenn. Code Ann. § 56-54-105 requires counsel for claimants asserting medical malpractice claims to report their fee arrangements. The attorneys reported having received fees in the amount of \$46,163,346 (forty-six million, one hundred sixty-three thousand, three hundred forty-six dollars) in 2010. This includes referral fees received. The fees that claimants' attorneys reported receiving in 2010 are approximately forty-two percent (42%) of the total amount reported by other entities as having been paid in damages to the claimants. The following table details the monies paid to claimants' counsel:

Table 5 – Total Fees Paid to Claimants' Counsel on Claims in 2010

	Fees Paid to Claimants' Counsel for Closed Claims	Average Amount of Fees Paid to Claimants' Counsel for Settlements	Average Amount of Fees Paid to Claimants' Counsel for Judgments	Average Amount of Fees Paid to Claimants' Counsel for Mediations	Average Amount of Fees Paid to Claimants' Counsel for Other ADRs
2007	\$34,925,167	29.77%	14.23%	N/A ¹¹	N/A
2008	\$38,802,022	23.09%	26.50%	25.19%	N/A
2009	\$47,919,183	35.37%	3.75%	41.03%	3.84%
2010	\$46,163,346	39.30%	19.56%	38.37%	2.77%

Of the reported claims, the majority of attorneys reported contingency agreements of thirty-three percent (33%) or less of the total damages. However, the range for fee agreements was from zero percent (0%) to forty-eight percent (48%).

E. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2010 was \$80,352,413 (eighty million, three hundred fifty-two thousand, four hundred thirteen dollars). The total amount reported to have been paid to defense counsel in 2010 was \$64,176,603 (Sixty-four million, one hundred seventy-six thousand, six hundred three dollars)¹². The following table details the defense costs paid in 2010 on closed and pending claims:

Table 6 – Total Amounts Paid in Defense Costs in 2010

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$49,343,943	\$5,469,363	\$57,216	\$1,104,430	\$2,749,998
Closed Claims	\$14,832,660	\$1,698,205	\$78,159	\$242,195	\$4,776,244
Total	\$64,176,603	\$7,167,568	\$135,375	\$1,346,625	\$7,526,242

¹¹ Data was not collected during 2007 and is, therefore, not available.

¹² For purposes of comparison, the total defense fees reported as being paid in 2006, 2007, 2008 and 2009 was \$67 million, \$78.6 million, \$73.5 million and \$84.7 million, respectively.

**Table 7 – Total Amounts Paid in Defense Costs During the 2010 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	560	\$11,133,669	\$1,414,967	\$65,550	\$188,228	\$4,516,111
Unpaid Claims	6229	\$53,042,934	\$5,752,601	\$69,825	\$1,158,397	\$3,010,131
Total	6789	\$64,176,603	\$7,167,568	\$135,375	\$1,346,625	\$7,526,242

The total defense costs paid on closed and pending claims as of December 31, 2010, since the inception of such claims, was \$234,828,710 (two hundred thirty-four million, eight hundred twenty-eight thousand, seven hundred ten dollars). The following table details these defense costs:

**Table 8 – Total Amounts Paid in Defense Costs on Claims from Inception through
End of 2010 Reporting Year**

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$130,222,254	\$13,017,537	\$133,524	\$2,899,526	\$7,019,664
Closed Claims	\$65,791,183	\$6,176,931	\$237,210	\$1,420,888	\$7,909,993
Total	\$196,013,437	\$19,194,468	\$370,734	\$4,320,414	\$14,929,657

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2010¹³

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 incident date, the severity of the injury, the reason for medical malpractice 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 2010.¹⁴

¹³ The report is formatted to collect data from the insurers of the providers and facilities in a medical malpractice claim. For that reason, several companion claims in the reported data will together represent a single malpractice 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.

¹⁴ 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 medical malpractice claims is derived from all of the claim reports including those about companion claims.

A. Reason for Medical Malpractice Claim

Tenn. Code Ann. § 56-54-106(12) requires insuring entities, self-insurers, facilities and providers to report the reason for the medical malpractice 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 and charts show the top ten types of medical malpractice and the top ten types of injury which led to payments to claimants during the reporting year 2010 and the amount paid to such claimants from the inception of the claim.

**Table 9 – Top Ten Types of Medical Malpractice During Reporting Year 2010
Ranked by Frequency¹⁵**

Type of Medical Malpractice	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	128	\$30,920,366
Monitoring Related	74	\$5,964,326
Surgery Related	67	\$12,381,760
Diagnosis Related	53	\$12,045,999
Medication Related	34	\$1,968,000
IV & Blood Products Related	13	\$1,115,266
Anesthesia Related	10	\$9,225,978
Obstetrics Related	10	\$5,696,500
Equipment/Product Related	10	\$1,412,284
Behavioral Health Related	3	\$260,000
Totals	402	\$80,990,479

**Table 10 -- Top Ten Types of Medical Malpractice During Reporting Year 2010
Ranked by Amount in Damages Paid to Claimant**

Type of Medical Malpractice	Amount Paid Since Inception of Claim	Number of Claims
Treatment Related	\$30,920,366	128
Surgery Related	\$12,381,760	67
Diagnosis Related	\$12,045,999	53
Anesthesia Related	\$9,225,978	10
Monitoring Related	\$5,964,326	74
Obstetrics Related	\$5,696,500	10
Medication Related	\$1,968,000	34
Equipment/Product Related	\$1,412,284	10
IV and Blood Products Related	\$1,115,266	13
Behavioral Health Related	\$260,000	3
Totals	\$80,990,479	402

¹⁵ Tables 9 and 10 represent the top ten classifications of types of medical malpractice in paid, closed claims during 2010. Forty-five (45) claims were classified by reporting entities as “other/ miscellaneous” and four (4) claims as “unknown”.

**Table 11 -- Top Ten Causes of Injury During Reporting Year 2010
Ranked by Frequency¹⁶**

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Failure to Monitor	60	\$7,980,500
Improper Performance	45	\$5,664,415
Failure to Treat	26	\$4,902,458
Failure to Diagnose	24	\$11,358,845
Improper Management	20	\$8,125,691
Failure to Ensure Patient Safety	18	\$3,565,666
Failure to Recognize a Complication	16	\$3,265,303
Surgical or Other Foreign Body Retained	15	\$1,107,030
Improper Technique	15	\$1,989,519
Delay in Treatment	14	\$13,846,784
Patient Positioning Problem	14	\$1,715,000
Wrong Medication Dispensed	9	\$474,530
Totals	276	\$63,995,741

**Table 12 -- Top Ten Causes of Injury During Reporting Year 2010
Ranked by Amount in Damages Paid to Claimant**

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Delay in Treatment	\$13,846,784	14
Failure to Diagnosis	\$11,358,845	24
Improper Management	\$8,125,691	20
Failure to Monitor	\$7,980,500	60
Wrong Diagnosis or Misdiagnosis	\$7,331,908	2
Improper Performance	\$5,664,415	45
Delay in Diagnosis	\$5,363,500	6
Failure to Treat	\$4,902,458	26
Failure to Ensure Patient Safety	\$3,565,666	18
Failure to Recognize a Complication	\$3,265,303	16
Totals	\$71,405,070	231

¹⁶ Tables 11 and 12 represent the top ten classifications of causes of injury in paid, closed claims during 2010. Fifty-four (54) claims were classified by reporting entities as “cannot be determined from available records”, “allegation – not otherwise classified”, or “unknown”.

B. Age and Sex of Claimant

Tenn. Code Ann. § 56-54-106 requires insuring entities, self-insurers, facilities and providers to report the injured person's age on the date of the medical incident. The following table shows the number of claims which were closed in 2010 in each claimant age group¹⁷:

Table 13 – Number of Claims Closed in 2010 Broken Down by Age of Claimant¹⁸

Age Range	Number of Claimants
0-13 years	202
14-20 years	54
21-35 years	298
36-49 years	400
50-64 years	468
65+ years	474

Based on the data submitted for claims reported to have been closed in 2010; one thousand one hundred sixty-eight (1,168) incidents of alleged medical malpractice involved females and eight hundred twenty-seven (827) involved males. Six (6) times, reporting entities submitted that the claimant's gender was unknown.

C. Severity of Injury

Tenn. Code Ann. § 56-54-106 requires insuring entities, self-insurers, facilities and providers to report the severity of the malpractice 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 table breaks down those levels of severity by the number of claims closed and how many of those claims were paid versus unpaid at each level of severity¹⁹.

Table 14 – Severity of Injury in Claims Closed During Reporting Year 2010

Severity of Injury	Number of Claims	Number of Claims Paid During 2010	Number of Claims Not Paid
Emotional Only	101	5	96
Insignificant	78	10	68
Minor Temporary	387	86	301
Major Temporary	291	67	224
Minor Permanent	84	19	65
Significant Permanent	157	28	129
Major Permanent	101	31	70
Grave Permanent	71	10	61
Death	528	137	391

¹⁷ This table represents all claims closed in 2010, whether paid or unpaid.

¹⁸ One hundred five (105) claimants' ages were reported as "unknown" or left blank.

¹⁹ 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 15 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2010²⁰

Severity of Injury	Amount Paid in Damages in 2010
Emotional Only	\$345,000
Insignificant	\$60,645
Minor Temporary	\$5,685,447
Major Temporary	\$10,648,483
Minor Permanent	\$1,892,467
Significant Permanent	\$6,750,303
Major Permanent	\$30,304,949
Grave Permanent	\$6,229,000
Death	\$45,649,095

Table 16 – Severity of Injury in Claims Closed Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2010

Severity of Injury	Amount Paid in Damages For Life of the Claim
Emotional Only	\$483,129
Insignificant	\$233,287
Minor Temporary	\$8,719,675
Major Temporary	\$13,540,068
Minor Permanent	\$2,572,091
Significant Permanent	\$10,703,693
Major Permanent	\$40,734,868
Grave Permanent	\$15,264,000
Death	\$54,240,721

D. Geographic Location

Tenn. Code Ann. § 56-54-106 requires insuring entities, self-insurers, facilities and providers to report the geographic location, by city and county, where the medical malpractice incident occurred. Only seventy-nine (79) counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2010. Of the 2678 claims reported with a Tennessee geographic location the total payment reported to have been made during reporting year 2010 is \$108,908,920 (one hundred and eight million, nine hundred and eight thousand, nine hundred and twenty dollars).

²⁰ In 2010, claimants were paid a total of \$425,213, \$5,000 and \$1,118,319 for claims in which the severity of the injury was “unknown”, “none” or where it “could not be determined” by available records, respectively. Tables 15 and 16 include data reported on companion claims.

The following table shows statistics for the ten (10) counties with the highest number of medical malpractice claims.

Table 17 – Top Ten Counties Ranked by Number of Claims During Reporting Year 2010²¹

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	786	29.35	\$28,648,867
Davidson	352	13.14	\$20,725,771
Knox	249	9.30	\$3,795,634
Hamilton	223	8.33	\$7,042,027
Sullivan	81	3.02	\$1,601,078
Washington	80	2.99	\$497,000
Madison	80	2.99	\$3,095,499
Williamson	41	1.53	\$224,324
Coffee	41	1.53	\$415,000
Dickson	39	1.46	\$282,000
Anderson	38	1.42	\$1,636,148
Rutherford	36	1.34	\$755,000

Table 18 – Top Ten Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2010

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	786	29.35	\$28,648,867
Davidson	352	13.14	\$20,725,771
Franklin	18	0.67	\$14,000,000
Warren	14	0.52	\$7,411,908
Hamilton	223	8.33	\$7,042,027
Knox	249	9.30	\$3,795,634
Madison	80	2.99	\$3,095,499
Marion	16	0.60	\$2,624,000
Wilson	17	0.63	\$1,906,500
Anderson	38	1.42	\$1,636,148

²¹ Tables 17 and 18 include data reported on companion claims.

E. Providers

Tenn. Code Ann. § 56-54-106 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 defines “health care provider” or “provider” 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 medical malpractice claims.

Table 19 – Top Ten Provider Types Ranked by Frequency of Claims During Reporting Year 2010²²

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Medical Doctor	1544	57.04	\$29,289,316
Registered Nurse	105	3.88	\$4,919,661
Dentist	75	2.77	\$754,022
Advanced Practice Nurse	43	1.59	\$2,083,332
Physician Assistant	22	0.81	\$1,500
Nursing Home Administrator	21	0.78	\$652,000
Osteopathic Physician	19	0.70	\$2,250,000
Podiatrist	17	0.63	\$25,000
Licensed Practical Nurse	13	0.48	\$35,808
Chiropractic Physician	12	0.44	\$682,207

Table 20 – Top Ten Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2010

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$29,289,316	1544	57.04
Registered Nurse	\$4,919,661	105	3.88
Osteopathic Physician	\$2,250,000	19	0.70
Advanced Practice Nurse	\$2,083,332	43	1.59
Dentist	\$754,022	75	2.77
Chiropractic Physician	\$682,207	12	0.44
Nursing Home Administrator	\$652,000	21	0.78
Licensed Clinical Social Worker	\$450,000	2	0.07
Optometrist	\$342,816	4	0.15
Pharmacist	\$310,000	5	0.18

²² “Unknown” or “Not Applicable” were the chosen provider types for seven hundred and ninety (790) claims. The statistics in Tables 19, 20, and 21 are based on the total amount of claims closed, including companion claims, during the reporting year 2010.

Table 21 – Top Ten Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2010

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctors	\$52,057,895	1544	57.04
Registered Nurse	\$4,922,449	105	3.88
Nursing Home Administrator	\$2,484,500	21	0.78
Osteopathic Physician	\$2,250,000	19	0.70
Advanced Practice Nurse	\$2,083,332	43	1.59
Dentist	\$799,022	75	2.77
Chiropractic Physician	\$682,207	12	0.44
Licensed Clinical Social Worker	\$450,000	2	0.07
Optometrist	\$342,816	4	0.15
Pharmacist	\$310,000	5	0.18

The following tables show statistics for the ten (10) provider specialty types with the highest alleged incidence of medical malpractice.

Table 22 – Top Ten Provider Specialty Types Ranked by Frequency of Claims During Reporting Year 2010²³

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Obstetrics and Gynecology	132	4.88	\$1,371,324
Internal Medicine	129	4.77	\$1,559,064
Family Practice	122	4.51	\$2,234,264
Emergency Medicine	115	4.25	\$1,874,499
General Surgery	107	3.95	\$2,874,843
Orthopedic Surgery	87	3.21	\$5,022,500
General Practice	82	3.03	\$1,827,164
Radiology	75	2.77	\$381,000
Anesthesiology	69	2.55	\$2,218,001
Otolaryngology	55	2.03	\$305,000

²³ “Unknown”, “Unspecified”, or “Not Applicable” were the chosen provider specialty types for one thousand two hundred and sixteen (1216) claims. The statistics in Tables 22, 23, and 24 are based on the total amount of claims closed, including companion claims, during the reporting year 2010.

Table 23 – Top Ten Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2010

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Orthopedic Surgery	\$5,022,500	87	3.21
General Surgery	\$2,874,843	107	3.95
Family Practice	\$2,234,264	122	4.51
Anesthesiology	\$2,218,001	69	2.55
Pediatrics	\$1,900,000	36	1.33
Emergency Medicine	\$1,874,499	115	4.25
General Practice	\$1,827,164	82	3.03
Plastic Surgery	\$1,800,000	23	0.85
Internal Medicine	\$1,559,064	129	4.77
Obstetrics and Gynecology	\$1,371,324	132	4.88

Table 24 – Top Ten Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2010

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Orthopedic Surgery	\$5,877,500	87	3.21
Family Practice	\$5,861,764	122	4.51
Gastroenterology	\$4,416,567	29	1.07
Obstetrics and Gynecology	\$4,032,620	132	4.88
Emergency Medicine	\$3,881,832	115	4.25
Anesthesiology	\$3,005,142	69	2.55
General Surgery	\$2,934,843	107	3.95
Pediatrics	\$2,481,249	36	1.33
Otolaryngology	\$2,404,990	55	2.03
Plastic Surgery	\$1,836,000	23	0.85

F. Facilities

Tenn. Code Ann. § 56-54-106 requires insuring entities, self-insurers, facilities and providers to report the type of health care facility where the medical malpractice incident occurred. “Health care facility” or “facility” is defined 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 medical malpractice.

Table 25 – Top Ten Facility Types Ranked by Frequency of Claims During Reporting Year 2010²⁴

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	1643	60.69	\$77,857,011
Office	357	13.19	\$5,569,589
Nursing Home	152	5.62	\$16,035,501
Ambulatory Surgical Treatment Center	42	1.55	\$1,396,500
Clinic	37	1.37	\$686,343
Pharmacy	19	0.70	\$349,275
Home Care Agency	18	0.66	\$2,291,500
Assisted Care Living Facility	15	0.55	\$295,808
Surgical Facility	15	0.55	\$25,000
Treatment Facility	15	0.55	\$0
Mental Health Center	10	0.37	\$450,000
EMS Vehicle	6	0.22	\$0
Outpatient Diagnostic Center	6	0.22	\$0

Table 26 – Top Ten Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2010

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$77,857,011	1643	60.69
Nursing Home	\$16,035,501	152	5.62
Office	\$5,569,589	357	13.19
Home Care Agency	\$2,291,500	18	0.66
Ambulatory Surgical Treatment Center	\$1,396,500	42	1.55
Clinic	\$686,343	37	1.37
Hospice	\$599,000	4	0.15
Mental Health Center	\$450,000	10	0.37
Pharmacy	\$349,275	19	0.70
Assisted-Care Living Facility	\$295,808	15	0.55

²⁴ “Unknown” and “other” were the chosen health care facility types for three hundred fifty-eight (358) claims. The statistics in Tables 25, 26, and 27 are based on the total amount of claims closed, including companion claims, during the reporting year 2010.

Table 27 – Top Ten Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2010

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$105,333,024	1643	60.69
Nursing Home	\$19,868,001	152	5.62
Office	\$9,520,875	357	13.19
Home Care Agency	\$2,291,500	18	0.66
Ambulatory Surgical Treatment Center	\$2,056,500	42	1.55
Clinic	\$687,563	37	1.37
Hospice	\$599,000	4	0.15
Mental Health Center	\$450,000	10	0.37
Assisted-Care Living Facility	\$385,808	15	0.55
Pharmacy	\$354,775	19	0.70

VI. 2009 DIRECT PREMIUM WRITTEN

The total direct medical malpractice premium written in 2010 in Tennessee by insurance companies and risk retention groups was \$260,458,000 (two hundred sixty million, four hundred fifty-eight thousand dollars). This total was determined from their 2010 annual financial statements. This premium was for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2010 usually relate to policies and the corresponding premium from previous years.

VII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2012 reporting obligations. Pursuant to PC112 of 2011, the Department will include information as to whether any healthcare provider named in the claim received payment from TennCare for the specific incident reported for the 2011 calendar year. Such data will be illustrated in the 2012 report.