

Rulemaking Hearing Rules
Of the
Department of Commerce and Insurance
Division of Insurance

Chapter 0780-1-84
Medical Malpractice Claims and Expenses Reporting Rules

Public Comments and Responses
By the Commissioner of Commerce and Insurance

Compiled Pursuant to Tenn. Code Ann. § 4-5-222

On December 15, 2004, a rulemaking hearing was held by Larry C. Knight, Jr., Assistant Commissioner for Insurance and John F. Morris, Chief Counsel for Insurance, by designation of Paula A. Flowers, Commissioner, at the offices of the Department of Commerce and Insurance. This hearing, conducted pursuant to the requirements of the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et. seq.*, allowed the Commissioner of Commerce and Insurance and her designees to hear public comments and responses to the proposed rule. The rule is being promulgated pursuant to Tenn. Code Ann. § 56-54-101.

The Commissioner solicited comments from the public by causing notice of the hearing to be published in accordance with the requirements of Tenn. Code Ann. § 4-5-203. The Commissioner received oral and written comments at the rulemaking hearing.

Comment 1

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that reporting entities should report claims that were paid during the annual period, regardless of the date of the medical event or the date the claim was made. This will provide a “mature” level of payments in each annual reporting period.

Agency Response to Comment 1

The Department agrees with this comment and expects reporting entities to report amounts paid during the period of January 1 to December 31 of the preceding year.

Comment 2

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that reporting entities should report claims newly made during the annual period that are still pending at the end of the reporting period.

Agency Response to Comment 2

The Department agrees with this comment and expects reporting entities to report claims as “pending” if the claim has not been paid during the reporting period by either a settlement or a judgment.

Comment 3

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that reporting entities should report each defendant/insured as a separate “claim”, linking them by the reporting entities’ internal claim number.

Agency Response to Comment 3

The Department agrees with this comment and expects a claimant’s claim against multiple parties occurring as a result of the same medical event to be treated as separate claims for purposes of the reporting requirements.

Comment 4

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that occasionally there are two persons who allege physical injuries from the same medical event. The illustrating hypothetical given was that of a mother and newborn who allege injuries during delivery. It was suggested that the rule clarify whether this is to be reported as one claim or two claims.

Agency Response to Comment 4

The Department expects such claims to be treated as two (2) separate claims for reporting purposes. In the case where both a mother and newborn allege physical injuries from a delivery, the reporting entity should report this as two (2) separate claims listed by both the mother and the newborn’s social security numbers.

Comment 5

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that reporting entities should report the amount paid during the annual reporting periods, and report incremental amounts paid on the same claim in subsequent annual periods, using the same internal claim number as used for the first payment.

Agency Response to Comment 5

The Department agrees with this comment and expects the reporting entities to report the amounts paid on each claim during the reporting period.

Comment 6

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that reporting entities should report payments and pending claims against these defendants/insureds that are either professional partnerships or corporations with a unique medical “specialty” designation.

Agency Response to Comment 6

Tenn. Code Ann. § 56-54-101(a)(1)-(2) requires reporting entities to provide claims information concerning health care institutions and certain licensed health care professionals. All defendants/insured should be reported and identified on this basis.

Comment 7

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was recommended that an internal claim file number to be substituted for the claimant’s social security number, since the social security number is not obtainable. Comments that a reporting entity does not have the status to inquire as to the claimant’s social security number since the reporting entities’ relationship is one with the insured and not the claimant.

Agency Response to Comment 7

Tenn. Code Ann. § 56-54-101(e) requires reporting entities to include in the claims report the date of occurrence that is the subject of each claim and the claimant’s social security number. As such information is absolutely necessary in order to allow the Department to meet its statutory obligations in producing a report to the General Assembly, the Department must insist that reporting entities receive such information from claimants, and, in turn, include such information in their reports to the Department.

Comment 8

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was recommended that damages asserted other than in lawsuits are usually not applicable in medical malpractice claims and this should be reported as zero when applicable.

Agency Response to Comment 8

The Department expects reporting entities to report damages that are asserted either by a lawsuit or otherwise. A reporting entity must report a claim when there is any assertion of damages on behalf of a claimant. The assertion of damages does not have to come in the form on a lawsuit but can come from any other means which gives the reporting entity knowledge of a claim and the damages asserted by that claimant.

Comment 9

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that the type of damage, such as economic or non-economic damages is not determinable in cases that are settled prior to trial. These types of damages are only discernable when a jury verdict is issued.

Agency Response to Comment 9

Tenn. Code Ann. § 56-54-101(c)(3) requires reporting entities to provide the Department with the amount paid on claims. This section goes on to require reporting entities, to the extent possible, to identify separate amounts paid for punitive, compensatory and non-economic damages. If a reporting entity does not have the ability to identify non-economic amounts separately, then it need not report it to the Department. The Department expects reporting entities to identify non-economic damages separately when a reporting entity is able to do so. When a claim is settled prior to trial, the reporting entities should treat the amounts paid as economic damages.

Comment 10

Rule 0780-1-84-.03 Annual Claims Data Submission Requirement

It was commented that insurance companies do not pay the claimant's counsel directly, rather a single payment is made payable to the claimant and the claimant's counsel on a joint basis. It was further commented that reporting entities are not privy to how such jointly payable checks are divided between the claimant and his/her counsel.

Agency Response to Comment 10

Tenn. Code Ann. § 56-54-101(c)(4) requires reporting entities, where available, to list separately certain expenses including the portion of any settlement or judgment received by claimant's counsel. If a reporting entity does not have such information, then it need not report it to the Department. However, this section does require claimant's counsel to provide information about fee arrangements to the reporting entities.

Comment 11

General Comment

It was commented that from the experience gained through the workers' compensation reporting rule, compliance is often low because so much of the information required on the workers' compensation form is not ascertainable.

Agency Response to Comment 11

The obligations to report are statutory and provide for penalties in the event a person fails to report as required by the law. The law does not provide the Department the ability to waive a person's reporting requirements for any reason.

Comment 12

General Comment

It was commented that the rules should reflect the confidentiality provisions that are in the statute in order to stress their importance.

Agency Response to Comment 12

As the confidentiality of the information is statutory, the Department does not believe it necessary to include them in the rules as well. The Department understands its responsibility to maintain the confidentiality of information provided the Department as it relates to the new law, and plans to maintain the confidentiality of that information as provided under the statute regardless of whether or not it is included in the rule.