2013 Health Care Liability Claims Report

Department of Commerce & Insurance
November 1, 2013

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2013 Tennessee Health Care Liability Report

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 The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.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."

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, counsel for claimants 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. (A copy of 2011 Tenn. Pub. Acts Ch. 112 is attached to this report as Appendix A.)

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

Where useful, this report provides not only the aggregate information for 2012, but also shows the information reported for 2008, 2009, 2010 and 2011 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 2012. 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. Three (3) such health care providers and 97 such health care facilities submitted reports for 2012. Twenty-seven of these health care facilities reported they had no claims to report. As identified in the previous reports, 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.[1]

II. REPORTING PERIOD

The period on which this report focuses is the 2012 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 2012. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2012.[2] Claims identified in the information submitted related to incidents occurring between 1983 and 2012. However, only 78 of the 6,138 claims reported (1.27 percent) arose out of an incident that occurred prior to 2000.[3]

III. CLAIMS CLOSED AND CLAIMS PENDING

A. Claims Closed

The total number of health care liability claims reported as closed in 2012 was 2,211. This total represents claims resolved through the entry of a final court judgment, settlement with the claimant, alternative

[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] One (1) of the claims occurred in the 1980's, and 77 of the claims occurred in the 1990's.

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.

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

	2008 Totals	2008 %	2009 Totals	2009 %	2010 Totals	2010 %	2011 Totals	2011 %	**2012 Totals**	**2012 %**
Claims Resolved Through Judgment[4]	425	13.48	177	6.22	195	7.20	114	4.89	**96**[5]	**4.35**
Claims Resolved Through Settlement	459	14.55	504	17.71	311	11.49	289	12.39	**336**	**15.24**
Claims Resolved Through ADR[6]	43	1.36	281	9.87	133	4.91	145	6.22	**94**	**4.26**
Claims Otherwise Resolved	2,227	70.61	1,884	66.20	2,068	76.40	1,784	76.50	**1,679**	**76.15**
Total Number of Claims Closed	3,154	100.00	2,846	100.00	2,707	100.00	2,332	100.00	**2,205**	**100.00**

Table 2 – Paid and Unpaid Claims Closed in 2012

	2010 Totals	2010 Percentages	2011 Totals	2011 Percentages	**2012 Totals**	**2012 Percentages**
Paid Closed Claims	451	16.67	437	18.74	**436**	**19.72**
Unpaid Closed Claims	2,256	83.33	1,895	81.26	**1775**	**80.28**
Total Closed Claims	**2,707**	**100.00**	**2,332**	**100.00**	**2211**	**100.00**

[4] These figures do not include claims which went to trial and ended in judgments, and had high/low agreements prior to the judgment being rendered; but does include judgments for the defendant.

[5] 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.

[6] This figure includes three (3) claims which went to trial and yielded a judgment for the plaintiff. Later the defendants appealed the verdict. Two (2) claims eventually settled through an alternative dispute resolution in 2009 for an amount different than what had been awarded at trial and one was a high/low agreement and was paid as a settlement in 2012.

B. Claims Pending

Pending claims are claims filed in 2012 or in prior years which were still unresolved as of December 31, 2012. It was reported that there were 3,927 claims pending as of December 31, 2012.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants[7]

Claimants asserted a total of $4,007,314,376[8] (Four Billion, Seven Million, Three Hundred Fourteen Thousand, Three Hundred Seventy-six Dollars) in damages for health care liability related injuries for the claims reported as having been closed in the 2012 reporting year. In the 2012 reporting year, claimants were paid damages totaling $90,520,379 (Ninety Million, Five Hundred Twenty Thousand, Three Hundred Seventy-nine Dollars) by way of judgments, traditional settlements, and ADR methods. The total damages paid during 2012 represents 2.26 percent of the damages that were asserted.

Claimants who had their claims disposed of in 2012 (closed without further payment to be made) were paid a total of $128,622,303 (One Hundred Twenty-eight Million, Six Hundred Twenty-two Thousand, Three Hundred Three Dollars) from the inception of their claims through December 31, 2012, or 3.21 percent of the damages that were asserted in those claims.

There were 3,927 claims filed but still pending (without final resolution) as of December 31, 2012. The damages asserted by those claimants total $10,968,111,920 (Ten Billion, Nine Hundred Sixty-eight Million, One Hundred Eleven Thousand, Nine Hundred Twenty Dollars). Of those asserted damages, $29,070,670 (Twenty-nine Million, Seventy Thousand, Six Hundred Seventy Dollars) have been paid to date.

B. Damages Paid to Claimants

Table Three (3), on the following page, demonstrates the reported damages paid in 2012 on claims closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

[7] Where reporting entities left the asserted damages field blank, an assumption is made that the amount asserted is the amount that was paid.

[8] This number includes all claims reported as closed during the 2012 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2012. Therefore, this number includes damages that were asserted in years prior to 2012.

Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated, Mediated or Resolved by Other ADR[9] Methods and Closed During Reporting Year 2012

	2008 Totals	2008 %	2009 Totals	2009 %	2010 Totals	2010 %	2011 Totals	2011 %	**2012 Totals**	**2012 %**
Total Damages Paid by Settlements	$83,035,550	69.60	$57,475,878	51.91	$42,307,781	38.77	$57,414,009	50.40	**$52,650,012**	**58.16**
Total Damages Paid by Judgments	$790,000	0.65	$6,153,103	5.56	$21,581,908	19.78	$1,536,349	1.35	**$15,754,959**	**17.41**
Total Damages Paid by Mediation	$35,492,893	29.75	$43,379,905	39.18	$42,169,681	38.65	$54,955,838	48.25	**$21,909,408**	**24.20**
Total Damages Paid by Other ADR Methods	N/A	N/A	$3,707,623	3.35	$3,054,550	2.80	0	0.00	**$206,000**	**0.23**
Total Damages Paid	$119,318,443	100	$110,716,509	100	$109,113,920	100	$113,906,196	100	**$90,520,379**	**100**

C. Judgments

In all, it was reported that there were 130 court judgments in 2012. It was reported that 125 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant. Five (5) judgments were entered in favor of the plaintiff in 2012. In addition to the five (5) judgments entered and paid in 2012, six (6) were paid in 2012 although they were entered prior to 2012. Table Four (4), on the following page, details the 11 paid judgments and the types of damages awarded in each case.

[9] The total damages paid in 2008 by ADR other than by mediation are not shown because that data was not collected.

Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2012

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Severity of Injury
$504,224	2/14/2007	$504,224	N/A – Not Applicable	$252,112	$252,112	Major permanent injury
$5,666,701	3/15/2005	$980,000	N/A – Not Applicable	$0	$1,416,701	Death
$4,673,379	5/22/2007	$4,673,379	Anesthesiology	$4,673,379	$0	Death
$4,673,379	5/22/2007	$4,673,379	N/A – Not Applicable	$4,673,379	$0	Death
$250,000	7/20/2004	$250,000	Otolaryngology	$0	$250,000	Significant permanent injury
$250,000	7/20/2004	$250,000	Otolaryngology	$0	$250,000	Significant permanent injury
$87,500	6/16/2004	$87,500	General Surgery	$0	$87,500	Major temporary injury
$87,500	6/16/2004	$87,500	General Surgery	$0	$87,500	Major temporary injury
$30,000	7/28/2005	$30,000	Family Practice	$10,400	$19,600	Minor temporary injury
$30,000	7/28/2005	$30,000	Unspecified	$10,400	$19,600	Minor temporary injury
$6,500	9/30/2009	$15,000	Emergency Medicine	$0	$6,500	Grave permanent injury

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2012 was $86,051,406 (Eighty-six Million, Fifty-one Thousand, Four Hundred Six Dollars). The total amount reported to have been paid to defense counsel in 2012 was $74,002,129 (Seventy-four Million, Two Thousand, One Hundred Twenty-nine Dollars)[10]. The tables on the following page detail the defense costs paid in 2012 on closed and pending claims.

[10] For purposes of comparison, the approximate total defense fees reported as being paid in 2008, 2009, 2010 and 2011 was $73.5 (Seventy-three Million, Five Hundred Thousand Dollars), $84.7 (Eighty-four Million, Seven Hundred Thousand Dollars), $80.3(Eighty Million, Three Hundred Thousand Dollars) and $86.1 (Eighty-six Million, One Hundred Dollars), respectively.

Table 5 – Total Amounts Paid in Defense Costs in 2012

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	$53,316,743	$4,756,258	$51,017	$1,081,566	$2,592,443
Closed Claims	$20,685,386	$1,846,650	$41,676	$266,904	$1,412,763
Total	**$74,002,129**	**$6,602,908**	**$92,693**	**$1,348,470**	**$4,005,206**

Table 6 – Total Amounts Paid in Defense Costs During the 2012 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	532	$10,795,907	$1,137,301	$40,434	$260,457	$1,094,127
Unpaid Claims	5606	$63,206,222	$5,465,607	$52,259	$1,088,013	$2,911,079
Total	**6138**	**$74,002,129**	**$6,602,908**	**$92,693**	**$1,348,470**	**$4,005,206**

The total defense costs paid on closed and pending claims as of December 31, 2012, since the inception of such claims, was $233,448,495 (Two Hundred Thirty-three Million, Four Hundred Forty-eight Thousand, Four Hundred Ninety-five Dollars). The following table details these defense costs:

Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through End of 2012 Reporting Year

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	$124,564,183	$12,019,204	$186,886	$2,630,525	$7,598,748
Closed Claims	$73,542,817	$6,807,433	$150,856	$1,420,250	$4,527,593
Total	**$198,107,000**	**$18,826,637**	**$337,742**	**$4,050,775**	**$12,126,341**

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2012[11]

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 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 2012.[12]

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 2012 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 2012 Ranked by Frequency[13]

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Surgery Related	543	$31,690,318
Diagnosis Related	496	$21,035,908
Treatment Related	380	$23,318,815
Monitoring Related	199	$23,904,161
Obstetrics Related	147	$5,961,818
Medication Related	110	$6,808,128
Anesthesia Related	50	$9,647,916
IV & Blood Products Related	33	$3,154,810
Behavioral Health Related	25	$182,500
Equipment/Product Related	9	$462,342
Totals	**1,992**	**$126,166,716**

[11] 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.

[12] 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.

[13] Tables Eight (8) and Nine (9) represent the top ten (10) classifications of types of health care liability in paid, closed claims during 2012. One Hundred Fifty-five claims were classified by reporting entities as "other/ miscellaneous" and 64 claims as "unknown".

Table 9 - Top Ten (10) Types of Health Care Liability During Reporting Year 2012
Ranked by Amount in Damages Paid to Claimant

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Surgery Related	$31,690,318	543
Monitoring Related	$23,904,161	199
Treatment Related	$23,318,815	380
Diagnosis Related	$21,035,908	496
Anesthesia Related	$9,647,916	50
Medication Related	$6,808,128	110
Obstetrics Related	$5,961,818	147
IV & Blood Products Related	$3,154,810	33
Equipment/Product Related	$462,342	9
Behavioral Health Related	$182,500	25
Totals	**$126,166,716**	**1,992**

Table 10 - Top Ten (10) Causes of Injury During Reporting Year 2012
Ranked by Frequency[14]

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Improper Performance	201	$13,179,022
Failure to Monitor	179	$23,506,176
Failure to Diagnose	176	$11,633,833
Failure to Ensure Patient Safety	98	$4,675,722
Failure to Treat	78	$3,592,861
Surgical or Other Foreign Body Retained	74	$2,014,817
Improper Management	63	$2,177,500
Delay in Treatment	56	$2,580,500
Radiology or Imaging Error	48	$3,246,250
Delay in Diagnosis	48	$5,065,777
Intubation Problem	32	$559,490
Totals	**1,053**	**$72,231,948**

[14] Tables 10 and 11 represent the top ten (10) classifications of causes of injury in paid, closed claims during 2012. Six Hundred Eighty-four claims were classified by reporting entities as "cannot be determined from available records", "allegation – not otherwise classified", or "unknown".

Table 11 - Top Ten (10) Causes of Injury During Reporting Year 2012
Ranked by Amount in Damages Paid to Claimant

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Monitor	$23,506,176	179
Improper Performance	$13,179,022	201
Failure to Diagnose	$11,633,833	176
Patient Positioning Problem	$6,496,700	29
Delay in Diagnosis	$5,065,777	48
Failure to Ensure Patient Safety	$4,675,722	98
Contraindicated Procedure	$4,662,500	14
Patient Monitoring Problem	$4,312,924	12
Failure to Treat	$3,592,861	78
Radiology or Imaging Error	$3,246,250	48
Totals	**$80,371,765**	**883**

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. The following table shows the number of claims which were closed in 2012 in each claimant age group[15]:

Table 12 – Number of Claims Closed in 2012 Broken Down by Age of Claimant[16]

Age Range	Number of Claimants
0-13 years	129
14-20 years	46
21-35 years	211
36-49 years	338
50-64 years	376
65+ years	462

Based on the data submitted for claims reported to have been closed in 2012, 964 incidents of alleged health care liability involved females and 655 incidents involved males. On 17 occasions reporting entities submitted that the claimant's gender was unknown.

[15] This table represents all non-companion claims closed in 2012, 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.

[16] Seventy-four claimants' ages were reported as "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[17]:

Table 13 – Severity of Injury in Claims Closed During Reporting Year 2012

Severity of Injury	Number of Claims	Number of Claims Paid During 2012	Number of Claims Not Paid
Death	459	124	335
Major Temporary	277	72	205
Minor Temporary	263	72	191
Significant Permanent	128	23	105
Insignificant	90	21	69
Emotional Only	88	3	85
Major Permanent	67	11	56
Grave Permanent	63	13	50
Minor Permanent	52	16	36

Table 14 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2012[18]

Severity of Injury	Amount Paid in Damages in 2012
Death	$51,403,476
Major Temporary	$11,855,186
Significant Permanent	$7,732,010
Grave Permanent	$7,003,500
Minor Temporary	$5,436,395
Major Permanent	$4,116,000
Minor Permanent	$1,222,309
Insignificant	$338,185
Emotional Only	$103,804

[17] 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.

[18] In 2012, claimants were paid a total of $183,716 (One Hundred Eighty-three Thousand, Seven Hundred Sixteen Dollars) and $525,798 (Five Hundred Twenty-five Thousand, Seven Hundred Ninety-eight Dollars) for claims in which the severity of the injury was "unknown" or where it "could not be determined" by available records, respectively.

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2012

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	$60,471,840
Major Temporary	$15,515,533
Grave Permanent	$15,003,500
Significant Permanent	$13,782,499
Major Permanent	$13,025,999
Minor Temporary	$6,026,811
Minor Permanent	$1,270,602
Emotional Only	$715,500
Insignificant	$421,093

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. Eighty counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2012. Of the 2,177 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2012 is $88,673,379 (Eighty-eight Million, Six Hundred Seventy-three Thousand, Three Hundred Seventy-nine Dollars).

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

Table 16 – Top Ten (10) Counties Ranked by Number of Claims During Reporting Year 2012[19]

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	735	33.76	$37,547,383
Davidson	291	13.37	$9,833,868
Knox	196	9.00	$4,779,250
Hamilton	168	7.72	$4,354,625
Washington	73	3.35	$2,273,286
Sullivan	61	2.80	$1,060,000
Sumner	50	2.30	$24,873
Rutherford	47	2.16	$394,616
Williamson	37	1.70	$669,210
Madison	34	1.56	$604,500

[19] Tables 16 and 17 include data reported on companion claims.

Table 17 – Top Ten (10) Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2012

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	735	33.76	$37,547,383
Davidson	291	13.37	$9,833,868
Carter	5	0.23	$5,966,701
Knox	196	9.00	$4,779,250
Hamilton	168	7.72	$4,354,625
Robertson	14	0.64	$3,602,555
Warren	6	0.28	$3,100,000
Washington	73	3.35	$2,273,286
Hamblen	15	0.69	$1,555,000
Cumberland	14	0.64	$1,396,999

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(8) 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 tables on the following pages show statistics for the ten (10) provider types with the highest number of health care liability claims:

Table 18 – Top Ten (10) Provider Types Ranked by Frequency of Claims During Reporting Year 2012[20]

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Medical Doctor	869	39.30	$27,438,325
Registered Nurse	59	2.67	$2,273,144
Dentist	55	2.49	$832,996
Advanced Practice Nurse	53	2.40	$1,916,250
Osteopathic Physician	24	1.09	$1,086,249
Nursing Home Administrator	15	0.68	$861,395
Physician Assistant	15	0.68	$347,500
Podiatrist	12	0.54	$754,999
Pharmacist	12	0.54	$40,802
Licensed Practical Nurse	9	0.41	$272,010
Physical Therapist	6	0.27	$335,000
Chiropractic Physician	6	0.27	$15,495
Optometrist	6	0.27	$15,000
EMS Personnel	3	0.14	$57,948
Licensed Laboratory Personnel	3	0.14	$25,000

Table 19 – Top Ten (10) Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2012

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	$27,438,325	869	39.30
Registered Nurse	$2,273,144	59	2.67
Advanced Practice Nurse	$1,916,250	53	2.40
Osteopathic Physician	$1,086,249	24	1.09
Nursing Home Administrator	$861,395	15	0.68
Dentist	$832,996	55	2.49
Podiatrist	$754,999	12	0.54
Physician Assistant	$347,500	15	0.68
Physical Therapist	$335,000	6	0.27
Licensed Clinical Social Worker	$330,000	2	0.09

[20] "Unknown" or "Not Applicable" was the chosen provider types for 1,047 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 2012.

Table 20 – Top Ten (10) Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2012

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	$41,711,074	896	39.30
Registered Nurse	$2,519,185	59	2.67
Advanced Practice Nurse	$1,612,083	53	2.40
Osteopathic Physician	$1,495,999	24	1.09
Nursing Home Administrator	$1,259,500	15	0.68
Dentist	$984,065	55	2.49
Licensed Practical Nurse	$817,010	9	0.41
Podiatrist	$779,999	12	0.54
Physician Assistant	$355,000	15	0.68
Physical Therapist	$335,000	6	0.27

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 2012[21]

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Obstetrics & Gynecology	127	5.74	$2,157,501
Internal Medicine	115	5.20	$4,422,014
Emergency Medicine	109	4.93	$1,978,448
Family Practice	106	4.79	$2,846,750
Orthopedic Surgery	93	4.21	$1,377,000
Anesthesiology	76	3.44	$5,249,213
General Surgery	70	3.17	$3,976,892
Radiology	65	2.94	$769,833
General Practice	62	2.80	$1,605,814
Cardiovascular Disease	41	1.85	$361,666

[21] "Unknown", "Unspecified", or "Not Applicable" were the chosen provider specialty types for 907 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 2012.

Table 22 – Top Ten (10) Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2012

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Anesthesiology	$5,249,213	76	3.44
Internal Medicine	$4,422,014	115	5.20
Urology	$4,000,000	26	1.18
General Surgery	$3,976,892	70	3.17
Family Practice	$2,846,750	106	4.79
Obstetrics & Gynecology	$2,157,501	127	5.74
Emergency Medicine	$1,978,448	109	4.93
Gastroenterology	$1,645,000	31	1.40
General Practice	$1,605,814	62	2.80
Orthopedic Surgery	$1,377,000	93	4.21

Table 23 – Top Ten (10) Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2012

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Emergency Medicine	$5,843,448	109	4.93
Internal Medicine	$5,448,055	115	5.20
Anesthesiology	$5,277,546	76	3.44
Family Practice	$5,206,749	106	4.79
Urology	$4,780,000	26	1.18
General Surgery	$4,366,892	70	3.17
Obstetrics & Gynecology	$4,117,251	127	5.74
Radiology	$2,782,333	65	2.94
Otolaryngology	$2,703,000	19	0.86
Orthopedic Surgery	$2,162,000	93	4.21

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) as an entity licensed under Title 68 where a health care provider provides health care to patients. The tables on the following pages 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 2012[22]

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	1419	64.18	$36,743,378
Office	281	12.71	$10,042,167
Nursing Home	120	5.43	$21,082,972
Ambulatory Surgical Treatment Center	57	2.58	$1,335,000
Clinic	45	2.04	$343,677
Surgical Facility	31	1.40	$12,579,258
Prison/Penitentiary/Correctional Facility	22	1.00	$176,000
Pharmacy	17	0.77	$43,302
Group Residence	11	0.50	$345,000
Treatment Facility	8	0.36	$498,999

Table 25 – Top Ten (10) Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2012

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	$36,743,378	1419	64.18
Nursing Home	$21,082,972	120	5.43
Surgical Facility	$12,579,258	31	1.40
Office	$10,042,167	281	12.71
Renal Dialysis Clinic	$2,000,000	5	0.23
Ambulatory Surgical Treatment Center	$1,335,000	57	2.58
Treatment Facility	$498,999	8	0.36
Assisted-Care Living Facility	$475,000	7	0.32
Group Residence	$345,000	11	0.50
Clinic	$343,677	45	2.04

[22] "Unknown" and "other" were the chosen health care facility types for 165 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 2012.

Table 26 – Top Ten (10) Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2012

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	$65,503,449	1419	64.18
Nursing Home	$24,554,835	120	5.43
Office	$15,187,416	281	12.71
Surgical Facility	$12,652,380	31	1.40
Renal Dialysis Clinic	$2,000,000	5	0.23
Ambulatory Surgical Treatment Center	$1,545,000	57	2.58
Treatment Facility	$498,999	8	0.36
Assisted-Care Living Facility	$475,000	7	0.32
Clinic	$378,677	45	2.04
Group Residence	$345,000	11	0.50

VI. 2012 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2012 in Tennessee by insurance companies and risk retention groups was $143,207,694 (One Hundred Forty-three Million, Two Hundred Seven Thousand, Six Hundred Ninety-four Dollars). This total was determined from their 2012 annual financial statements. This premium was for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2012 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT[23]

TENN. CODE ANN. § 56-54-105(c) requires counsel for claimants asserting health care liability claims (cases) to report their fee arrangements, whether the healthcare provider named in the case received payment from TennCare, and to report all open[24] and pending cases.[25] 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 2012. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2012.[26] Cases identified in the information submitted related to incidents occurring between 1991 and 2012[27].

[23] The figures in the counsel for claimant section are calculated from "cases" rather than claims. Companion claims 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.

[24] "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.

[25] 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.

[26] The Department made the forms available to counsel for claimants on its web site for ease of access.

However, only 21 of the 1,537 cases reported (1.37 percent) arose out of an incident that occurred prior to 2000, all occurring in the 1990s.

A. Closed Cases

The total number of health care liability cases reported by counsels of claimants as closed in 2012 was 504. 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, 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 Counsel for Claimant

	2012 Totals	2012 %
Cases Resolved Through Judgment	**10**	**1.98**
Cases Resolved Through Settlement	**249**	**49.40**
Cases Resolved Through ADR	**148**	**29.37**
Cases Otherwise Resolved	**97**	**19.25**
Total Number of Cases Closed	**504**	**100.00**

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsel for Claimant in 2012

	2012 Totals	2012 Percentages
Paid Closed Cases	**407**	**80.75**
Unpaid Closed Cases	**97**	**19.25**
Total Closed Cases	**504**	**100.00**

[27] The dates reported by counsel for claimants do not go back as far as those reported by other insuring entities on page 3 of this report. 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.

B. Pending Cases

Pending cases are cases which were opened in 2012 or in prior years and were still unresolved as of December 31, 2012. It was reported by counsels for claimants that there were 1,033[28] cases pending as of December 31, 2012.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling $142,347,318 (One Hundred Forty-two Million, Three Hundred Forty-seven Thousand, Three Hundred Eighteen Dollars) on cases closed in 2012 by way of judgments, traditional settlements, and ADR methods in the 2012 reporting year.

There were 1,033 cases still pending (without final resolution) as of December 31, 2012. $36,317,622 (Thirty-six Million, Three Hundred Seventeen Thousand, Six Hundred Twenty-two Dollars) was paid on these cases in 2012.

Table 29 below demonstrates the reported damages paid in 2012 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 2012 as reported by Counsels for Claimants

	2012 Totals	2012 %
Total Damages Paid by Settlements	**$61,122,922**	**42.94**
Total Damages Paid by Judgments	**$23,260,201**	**16.34**
Total Damages Paid by Mediation	**$57,584,195**	**40.45**
Total Damages Paid by Other ADR Methods	**$380,000**	**0.27**
Total Damages Paid	**$142,347,318**	**100.00**

D. Judgments

In all, it was reported by counsels for claimants that there were ten (10) court judgments paid in 2012. One (1) of the judgments paid was not reported by an insuring entity and, therefore, is not recorded in Table 4. The table on the following page details the ten (10) paid judgments and the fees paid to counsel for claimants in each case.

[28] 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 the multiple attorneys is included in the counsel for claimant fees identified in Table 31.

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2012[29]

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
$6,500	10/9/2008	$0
$60,000	11/16/2004	$20,000
$175,000	6/16/2004	$35,216
$200,000	8/7/2008	$53,280
$300,000	1/30/2010	$335,000[30]
$310,000	11/9/2006	$103,333
$1,500,000	12/5/2002	$500,000
$5,666,701[31]	3/15/2005	$3,777,800
$5,732,000	7/5/2006	$1,433,150
$9,310,000	5/22/2007	$3,103,333

E. Fees Paid to Claimants' Counsel

There were 230 counsels for claimants who reported. Four (4) counsels for claimants submitted incompliant reports so their data is not included in this report. Another 16 counsels for claimants who were identified by insuring entities as having received fees in 2012 failed to report. 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.[32]

The attorneys who submitted a report, reported having received fees in the amount of $45,104,262 (Forty-five Million, One Hundred Four Thousand, Two Hundred Sixty-two Dollars) in 2012.[33] The fees that

[29] Due to the counsels for claimants reporting multiple claims as one (1) case, the total number of judgments recorded in Table 30 do not equal the number recorded in Table 4 as reported by other insuring entities.

[30] Two (2) counsels for claimants reported equal fees received from this judgment. It is unclear why the fees received by counsel are greater than the judgment awarded.

[31] This judgment was not reported by other insuring entities and not recorded in Table 4.

[32] 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.

[33] The data included here regarding the number of pending cases is specific to the claimant, and, therefore, does not include data on the same cases reported by multiple attorneys to the extent that they can be identified.

claimants' attorneys reported receiving in 2012 are approximately 42 percent 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 31 – Total Fees Paid to Claimants' Counsel on Cases in 2012

	Fees Paid to Claimants' Counsel for Closed Cases	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
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%
2011	$49,248,628	28.06%	57.09%[34]	27.57%	0%
2012	**$45,104,262**	**29.86%**	**56.76%**[35]	**57.21%**	**0.01%**

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 100 percent.

F. TennCare Payments

Of the 1,537 cases reported by counsels for claimants asserting health care liability cases, it was reported that TennCare made payments to the provider named in the case on 247 cases.

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2014 reporting obligations.

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

[34] Counsel for claimants reported $346,345 (Three Hundred Forty-six Thousand, Three Hundred Forty-five Dollars) of fees received by judgments in 2011 that were not reported by an insuring entity. Counsel for claimant identified the facilities in this case and information obtained verified that the facilities failed to report. Until the Department has the ability to identify the uninsured health care facilities, the Department will remain unable to confirm the completeness of the information contained in these reports.

[35] Counsel for claimants reported $716,500 (Seven Hundred Sixteen Thousand, Five Hundred Dollars) of fees received by judgments in 2012 that were not reported by an insuring entity. Counsel for claimant identified the facility in this case and information obtained verified that the facility failed to report. Until the Department has the ability to identify the uninsured health care facilities, the Department will remain unable to confirm the completeness of the information contained in these reports.

Appendix A

State of Tennessee

PUBLIC CHAPTER NO. 112

SENATE BILL NO. 510

By Faulk

Substituted for: House Bill No. 568

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 54, relative to medical malpractice.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-54-105, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c)(1) Counsel for claimants asserting claims covered by this section shall provide:

(A) Information about fee arrangements to the commissioner. The information shall include the portion of any settlement or judgment received by claimant's counsel; and

(B) Information as to whether the healthcare provider named in the claim received payment from TennCare for the incident that is the subject of the claim.

(2) For the purposes of the levying of civil penalties under § 56-54-109, counsel for claimants who are required to submit the information outlined in this subsection (c) shall be considered reporting entities under this section.

(3) The information provided pursuant to subdivision (c)(1)(B) shall be provided for claims closed or open and pending on or after January 1, 2012.

SECTION 2. Tennessee Code Annotated, Section 56-54-111, is amended by adding the following new language to the end of the section:

The report shall also include information as to whether any healthcare provider named in any claim received payment from TennCare for the incident that is the subject of the respective claim.

SECTION 3. This act shall take effect January 1, 2012, the public welfare requiring it.

SENATE BILL NO. 510

PASSED: April 11, 2011

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 25th day of April 2011

BILL HASLAM, *GOVERNOR*