2018 Health Care Liability Claims Report

Department of Commerce & Insurance
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INTRODUCTION

In 2004, the Tennessee General Assembly enacted 2004 Tenn. Pub. Acts Ch. 902, which established reporting obligations for medical professional liability claims for various reporting entities. This law was codified at TENN. CODE ANN. § 56-54-101. Pursuant to TENN. CODE ANN. § 56-54-101(a), "reporting entities" were 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. 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 The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.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 suggested several clarifications were needed in the statute. On May 23, 2006, Tenn. Pub. Acts Ch. 744 was enacted which amended TENN. CODE ANN. § 56-54-101 to refine the information to be collected. In general, the amendment added a requirement that reporting entities report on the cumulative amount of costs and expenses spent on pending and closed claims from the "inception date of the claim to the end of the preceding calendar year," and a requirement for counsel for claimants to report fee arrangements and expenses.

In 2008, the Tennessee General Assembly enacted 2008 Tenn. Pub. Acts Ch. 1009, effective January 1, 2009, which replaced Tennessee Code Annotated Title 56 (Insurance), Chapter 54 (Reports on Medical or Professional Malpractice Claims) with the "Tennessee Medical Malpractice Reporting Act." It set out largely the same reporting requirements, changed the due date for reporting entities to report on March 1 of each year, and added, among other things, information to be collected in a manner consistent with the National Practitioner Data Bank. It defined 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, claimants' counsel are required to report whether the health care provider named in the claim received payment from TennCare for the incident that is the subject of the claim. This includes all closed or open and pending claims on or after January 1, 2012.

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

Where useful, this report provides not only the aggregate information for 2017, but also shows the information reported for 2014, 2015 and 2016 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 health care liability insurance carriers account for over 96.53 percent of the total health care liability direct premiums written in Tennessee in 2017. In addition to requiring insurance companies to report the information enumerated in TENN. CODE ANN. § 56-54-105, health care facilities and professionals that are uninsured or that are insured by entities asserting federal exemption or other jurisdictional preemption from the reporting requirements are required to report information about their health care liability claims experience. The Department remains unable to confirm that the information from these groups 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 2017 calendar year. The Department required reporting entities to complete two 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 2017. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2017.[2] Claims identified in the information submitted related to incidents occurring between 1996 and 2017. However, only 14 of the 5,056 claims reported (0.27 %) arose out of an incident that occurred prior to 2000.

III. CLAIMS CLOSED AND CLAIMS PENDING

A. Claims Closed

The total number of health care liability claims reported as closed in 2017 was 1,589. This total represents claims resolved through the entry of a final court judgment, settlement with the claimant, alternative dispute resolution (ADR) by mediation, ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, or otherwise resolved by the reporting entity.

[1] The Department cannot identify the uninsured health care facilities and providers or compel risk retention groups to report their information; therefore, 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 website for ease of access.

Table 1 demonstrates the comparative number of claims reported as closed in each of the four categories:

Table 1 – Claims Closed through Settlement, ADR or Other Resolution

	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	**2017 Totals**	**2017 Percentages**
Claims Resolved Through Judgment[3]	41[4]	2.49	29[5]	2.03	42[6]	2.61	33[7]	2.08
Claims Resolved Through Settlement	300	18.24	254	17.77	223[8]	13.89	253[9]	15.92
Claims Resolved Through ADR	67	4.07	63	4.40	69	4.30	61	3.84
Claims Otherwise Resolved	1,237	75.20	1,084	75.80	1,271	79.20	1,242	78.16
Total Number of Claims Closed	**1,645**	**100.00**	**1,430**	**100.00**	**1,605**	**100.00**	**1,589**	**100.00**

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

[4] This figure includes 20 judgments for the defendant awarded in 2013 that were appealed with final resolution occurring in 2014 and no payments made.

[5] This figure includes 14 judgments for the defendant awarded in 2014 that were appealed with final resolution occurring in 2015 and no payments made. It also includes one judgment for the plaintiff awarded in 2014 that was appealed with final resolution occurring in 2015; however, payment was made in 2014.

[6] This figure includes 10 judgments for the defendant awarded between 2014 and 2015 that were appealed with final resolution occurring in 2016 and no payments made.

[7] This figure includes eight judgments for the defendant awarded between 2014 and 2016 that were appealed with final resolution occurring in 2017 and no payments made.

[8] This figure includes one claim which went to trial and yielded a judgment for the plaintiff; however, due to a high/low agreement, it was paid as a settlement in 2016.

[9] This figure includes one claim which went to trial and yielded a judgment for the plaintiff; however, during the appeal, a settlement agreement was reached and was paid as such in 2017.

Table 2 – Paid and Unpaid Claims Closed in 2017

	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	**2017 Totals**	**2017 Percentages**
Paid Closed Claims	385	23.40	334	23.36	304	18.94	**325**	**20.45**
Unpaid Closed Claims	1,260	76.60	1,096	76.64	1,301	81.06	**1,264**	**79.55**
TotalClosed Claims	**1,645**	**100.00**	**1,430**	**100.00**	**1,605**	**100.00**	**1,589**	**100.00**

B. Claims Pending

Pending claims are claims filed in 2017 or in prior years which were still unresolved as of December 31, 2017. It was reported that there were 3,467 claims pending as of December 31, 2017.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants[10]

Claimants asserted a total of $20,144,069,193[11] in damages for health care liability related injuries for the claims reported as having been closed in the 2017 reporting year. In the 2017 reporting year, claimants were paid damages totaling $79,964,969 by way of judgments, traditional settlements, ADR methods, and those otherwise resolved. The total damages paid during 2017 represents 0.39 % of the damages that were asserted.

Claimants who had their claims disposed of in 2017 (closed without further payment to be made) were paid a total of $107,106,643 from the inception of their claims through December 31, 2017, or 0.53 % of the damages that were asserted in those claims.

There were 3,467 claims filed but still pending (without final resolution) as of December 31, 2017. The damages asserted by those claimants total $10,865,595,856. Of those asserted damages, $55,060,553 has been paid to date.

B. Damages Paid to Claimants

Table 3 demonstrates the reported damages paid in 2017 on claims closed that year broken down by payments made as a result of adjudication, settlement, or ADR.

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

[11] This number includes all claims reported as closed during the 2017 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2017. Therefore, this number includes damages that were asserted in years prior to 2017.

Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated, Mediated or Resolved by Other ADR Methods and Closed During Reporting Year 2017

	2014 Totals	2014 %	2015 Totals	2015 %	2016 Totals	2016 %	**2017 Totals**	**2017 %**
Total Damages Paid by Settlements	$ 61,600,280	59.07	$ 54,963,230	73.01	$ 37,221,367	56.21	**$ 56,025,740**	**70.06**
Total Damages Paid by Judgments	$ 2,250,000	2.16	$ 2,437,244	3.24	$ 2,800,673	4.23	**$ 579,854**	**0.73**
Total Damages Paid by Mediation	$ 38,827,399	37.23	$ 16,524,270	21.95	$ 25,942,089	39.17	**$ 23,019,999**	**28.79**
Total Damages Paid by Other ADR Methods	$ 1,608,828	1.54	$ 1,355,761	1.80	$ 259,439	0.39	**$ 339,376**	**0.42**
Total Damages Paid	**$ 104,286,507**	**100.00**	**$ 75,280,505**	**100.00**	**$ 66,223,568**	**100.00**	**$ 79,964,969**	**100.00**

C. Judgments

In all, it was reported that there were 27 court judgments in 2017. It was reported that 23 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant; however, eight of these judgments were appealed with no final results in 2017. Four judgments were entered in favor of the plaintiff in 2017. One of these judgments was appealed with no final results in 2017. Table 4, on the following page, details the three paid judgments and the types of damages awarded in each case.

Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2017

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
$ 118,289	12/17/2013	$ 1,300,000	Corporations Staffing/Doctors, Nurses, Etc./Hospital	$ 91,289	$ 27,000	$ 0	Major temporary
$ 118,289	12/17/2013	$ 1,300,000	Medical Doctor/Orthopaedic Surgery/Hospital	$ 91,289	$ 27,000	$ 0	Major temporary
$ 579,854[12]	9/13/2004	$ 579,854	Facility/Facility/Hospital	$ 0	$ 579,854	$ 0	Death

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2017 was $76,010,003.[13] The total amount reported to have been paid to defense counsel in 2017 was $70,428,268. The following tables detail the defense costs paid in 2017 on closed and pending claims.

Table 5 – Total Amounts Paid in Defense Costs in 2017

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	$ 51,189,300	$ 1,383,793	$ 100,136	$ 453,133	$ 1,521,107
Closed Claims	$ 19,238,968	$ 923,589	$ 64,086	$ 113,395	$ 1,022,496
Total	**$ 70,428,268**	**$ 2,307,382**	**$ 164,222**	**$ 566,528**	**$ 2,543,603**

[12] The facility reported the $450,000 judgment paid and included interest paid in the total reported. The counsel for claimant reported $750,000 received by judgments in 2017. Counsel for claimant identified that a provider in this case paid $300,000 by judgment; however, the provider failed to report. Until the Department has the ability to identify the uninsured providers, the Department will remain unable to confirm the completeness of the information contained in these reports.

[13] For purposes of comparison, the approximate total defense fees reported as being paid in 2014, 2015 and 2016 was $85.0M, $72.0M and $80.8M, respectively.

Table 6 – Total Amounts Paid in Defense Costs During the 2017 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	443	$ 12,063,463	$ 732,314	$ 90,646	$ 105,035	$ 734,456
Unpaid Claims	4,613	$ 58,364,805	$ 1,575,068	$ 73,576	$ 461,493	$ 1,809,147
Total	**5,056**	**$ 70,428,268**	**$ 2,307,382**	**$ 164,222**	**$ 566,528**	**$ 2,543,603**

The total defense costs paid on closed and pending claims as of December 31, 2017, since the inception of such claims, was $220,592,846. The following table details these defense costs:

Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through End of 2017 Reporting Year

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	$ 130,052,344	$ 4,683,978	$ 158,100	$ 1,402,664	$ 5,426,756
Closed Claims	$ 70,429,299	$ 4,319,063	$ 164,790	$ 714,229	$ 3,241,623
Total	**$ 200,481,643**	**$ 9,003,041**	**$ 322,890**	**$ 2,116,893**	**$ 8,668,379**

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2017[14]

2008 Tenn. Pub. Acts Ch. 1009, effective January 1, 2009, sets out additional and more claim-specific reporting requirements, including details on the injured person's sex and age on the date of the medical incident, the severity of the injury, the reason for the health care liability claim, and the geographic location where the incident occurred. More specific information about the health care facilities and health care providers against whom the claims were made was also required. The tables that follow provide descriptions of such information, as reported, regarding claims closed in 2017.[15]

[14] 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.

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

A. Reason for Health Care Liability Claim

TENN. CODE ANN. § 56-54-106(12) requires insuring entities, self-insurers, facilities and providers to report the reason for the health care liability claim using the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank. The following tables show the top ten types of health care liability and the top ten types of injury which led to payments to claimants during the reporting year 2017 and the amount paid to such claimants from the inception of the claim:

Table 8 - Top Ten Types of Health Care Liability During Reporting Year 2017 Ranked by Frequency[16]

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	409	$ 26,368,203
Surgery Related	312	$ 24,303,022
Diagnosis Related	242	$ 23,870,902
Monitoring Related	214	$ 17,654,384
Obstetrics Related	96	$ 7,409,075
Medication Related	85	$ 4,731,359
Anesthesia Related	35	$ 1,261,525
Equipment/Product Related	18	$ 203,452
IV & Blood Products Related	9	$ 41,200
Behavioral Health Related	8	$ 34,250
Totals	**1,428**	**$ 105,877,372**

Table 9 - Top Ten Types of Health Care Liability During Reporting Year 2017 Ranked by Amount in Damages Paid to Claimant

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Diagnosis Related	$ 26,368,203	409
Surgery Related	$ 24,303,022	312
Diagnosis Related	$ 23,870,902	242
Monitoring Related	$ 17,654,384	214
Obstetrics Related	$ 7,409,075	96
Medication Related	$ 4,731,359	85
Anesthesia Related	$ 1,261,525	35
Equipment/Product Related	$ 203,452	18
IV & Blood Products Related	$ 41,200	9
Behavioral Health Related	$ 34,250	8
Totals	**$ 105,877,372**	**1,428**

[16] Tables 8 and 9 represent the top ten classifications of types of health care liability in paid, closed claims during 2017. One hundred sixty-one claims were classified by reporting entities as "other/miscellaneous."

Table 10 - Top Ten Causes of Injury During Reporting Year 2017
Ranked by Frequency[17]

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Improper Performance	203	$ 11,230,684
Failure to Monitor	174	$ 16,754,962
Failure to Diagnose	153	$ 8,779,239
Failure to Treat	81	$ 4,269,664
Improper Management	75	$ 18,901,480
Improper Technique	59	$ 690,346
Delay in Treatment	53	$ 2,536,311
Failure to Recognize a Complication	52	$ 1,927,900
Delay in Diagnosis	49	$ 8,919,164
Failure to Ensure Patient Safety	46	$ 2,416,296
Totals	**945**	**$ 76,426,046**

Table 11 - Top Ten Causes of Injury During Reporting Year 2017
Ranked by Amount in Damages Paid to Claimant

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Improper Management	$ 18,901,480	75
Failure to Monitor	$ 16,754,962	174
Improper Performance	$ 11,230,684	203
Delay in Diagnosis	$ 8,919,164	49
Failure to Diagnose	$ 8,779,239	153
Failure to Treat	$ 4,269,664	81
Failure to Use Aseptic Technique	$ 2,750,000	11
Delay in Performance	$ 2,536,311	3
Failure to Ensure Patient's Safety	$ 2,416,296	46
Failure to Recognize a Complication	$ 1,927,900	52
Totals	**$ 78,485,700**	**847**

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 and sex on the date of the medical incident. Table 12 shows the number of claims which were closed in 2017 in each claimant age group[18]:

[17] Tables 10 and 11 represent the top ten classifications of causes of injury in paid, closed claims during 2017. Two hundred forty-eight claims were classified by reporting entities as "cannot be determined from available record" and "allegation – not otherwise classified."

[18] This table represents all non-companion claims closed in 2017, whether paid or unpaid. The table detailing age is specific to the claimant, and, therefore, the numbers represented are based on the number of injured claimants and not the number of providers that injuries were alleged against.

Table 12 – Number of Claims Closed in 2017 Broken Down by Age of Claimant[19]

Age Range	Number of Claimants
0-13 years	89
14-20 years	30
21-35 years	127
36-49 years	210
50-64 years	315
65+ years	452

Based on the data submitted for claims reported to have been closed in 2017, 768 incidents of alleged health care liability involved females and 490 incidents involved males. On six occasions reporting entities submitted that the claimant's gender was unknown.

C. Severity of Injury

TENN. CODE ANN. § 56-54-106(8) requires insuring entities, self-insurers, facilities and providers to report the severity of the health care liability injury using the National Practitioner Data Bank severity scale. The classifications available to demonstrate severity of injury include: emotional injury only, insignificant injury, minor temporary injury, major temporary injury, minor permanent injury, significant permanent injury, major permanent injury, grave permanent injury, and death. The following tables break down those levels of severity by the number of claims closed and the amount of those claims paid versus unpaid at each level of severity[20]:

Table 13 – Severity of Injury in Claims Closed During Reporting Year 2017

Severity of Injury	Number of Claims	Number of Claims Paid During 2017	Number of Claims Not Paid
Death	367	94	273
Major Temporary	220	55	165
Minor Temporary	208	55	153
Significant Permanent	74	21	53
Minor Permanent	70	25	45
Emotional Injury Only	65	3	62
Major Permanent	48	14	34
Insignificant Injury	42	8	34
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	35	8	27

[19] Forty-one claimants' ages were reported as "unknown".

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

Table 14 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2017[21]

Severity of Injury	Amount Paid in Damages in 2017
Death	$ 31,965,914
Major Temporary	$ 11,959,688
Major Permanent	$ 10,527,493
Significant Permanent	$ 9,709,750
Minor Permanent	$ 8,148,490
Minor Temporary	$ 4,845,069
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	$ 3,745,000
Emotional Injury Only	$ 309,300
Insignificant Injury	$ 94,460

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2017

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	$ 39,875,469
Major Temporary	$ 16,872,387
Significant Permanent	$ 12,779,750
Major Permanent	$ 12,015,804
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	$ 11,045,000
Minor Permanent	$ 8,344,571
Minor Temporary	$ 5,653,637
Emotional Injury Only	$ 309,300
Insignificant Injury	$ 94,460

D. Geographic Location

TENN. CODE ANN. § 56-54-106(6) requires insuring entities, self-insurers, facilities and providers to report the geographic location, by city and county, where the health care liability incident occurred. Seventy-eight counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2017. Of the 1,589 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2017 is $79,964,969.

[21] In 2017, claimants were paid a total of $1,582,665 for claims in which the severity of the injury "could not be determined from available records."

The following tables show statistics for the ten counties with the highest number of health care liability claims and their populations:

Table 16 – Top Ten Counties Ranked by Number of Claims During Reporting Year 2017[22]

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	393	24.73	$ 21,448,333
Davidson	180	11.32	$ 17,689,908
Hamilton	118	7.42	$ 5,971,360
Knox	115	7.23	$ 5,964,213
Madison	100	6.29	$ 4,477,626
Sumner	45	2.83	$ 1,177,500
Washington	44	2.76	$ 1,202,645
Rutherford	43	2.70	$ 1,482,974
Williamson	30	1.88	$ 1,997,118
Blount	23	1.44	$ 437,500
Cumberland	23	1.44	$ 220,000
Maury	23	1.44	$ 672,000

Table 17 – Top Ten Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2017

County Name	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Shelby	$ 21,448,333	393	24.73
Davidson	$ 17,689,908	180	11.32
Hamilton	$ 5,971,360	118	7.42
Knox	$ 5,964,213	115	7.23
Madison	$ 4,477,626	100	6.29
Tipton	$ 3,375,371	13	0.81
McNairy	$ 2,450,000	11	0.69
Williamson	$ 1,997,118	30	1.88
Rutherford	$ 1,482,974	43	2.70
Washington	$ 1,202,645	44	2.76

E. Providers

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

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

Table 18 – Top Ten Provider Types Ranked by Frequency of Claims During Reporting Year 2017[23]

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Facility	738	46.44	$ 46,114,055
Medical Doctor	453	28.50	$ 19,123,072
Corporations - Staffing	199	12.52	$ 8,012,004
Nursing	82	5.16	$ 1,951,326
Dentist	31	1.95	$ 180,512
Osteopathic Physician	14	0.88	$ 722,500
Pharmacy	12	0.75	$ 1,031,500
Nursing Home Administrator	10	0.62	$ 707,500
Physical Therapy	9	0.56	$ 202,000
Physician Assistant	9	0.56	$ 0
Podiatry	6	0.37	$ 1,150,000

Table 19 – Top Ten Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2017

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 46,114,055	738	46.44
Medical Doctor	$ 19,123,072	453	28.50
Corporations – Staffing	$ 8,012,004	199	12.52
Nursing	$ 1,951,326	82	5.16
Podiatry	$ 1,150,000	6	0.37
Pharmacy	$ 1,031,500	12	0.75
Osteopathic Physician	$ 722,500	14	0.88
Nursing Home Administrator	$ 707,500	10	0.62
Psychology	$ 300,000	2	0.12
Chiropractor Examiner	$ 287,500	5	0.31

[23] "Unknown" was the chosen provider types for seven 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 2017.

Table 20 – Top Ten Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2017

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 61,491,893	738	46.44
Medical Doctor	$ 19,123,072	453	28.50
Corporations - Staffing	$ 10,285,799	199	12.52
Nursing	$ 2,654,490	82	5.16
Pharmacy	$ 1,881,500	12	0.75
Nursing Home Administrator	$ 1,158,500	10	0.62
Podiatry	$ 1,150,000	6	0.37
Osteopathic Physician	$ 722,500	14	0.88
Psychology	$ 300,000	2	0.12
Chiropractor Examiner	$ 278,500	5	0.31

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

Table 21 – Top Ten Provider Specialty Types Ranked by Frequency of Claims During Reporting Year 2017[24]

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Facility	738	46.44	$ 46,114,055
Doctors, Nurses, Etc.	199	12.52	$ 8,012,004
Emergency Medicine	80	5.03	$ 2,416,739
Internal Medicine	70	4.40	$ 2,534,000
Obstetrics & Gynecology	59	3.71	$ 4,225,768
Surgery	44	2.76	$ 2,811,000
Family Medicine	39	2.45	$ 44,998
Advanced Practice Registered Nurse	38	2.39	$ 1,321,650
Registered Nurse	33	2.07	$ 629,676
Cardiovascular Diseases	20	1.25	$ 0

[24] "Unknown" was the chosen provider specialty type for 10 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 2017.

Table 22 – Top Ten Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2017

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 46,114,055	738	46.44
Doctors, Nurses, Etc.	$ 8,012,004	199	12.52
Obstetrics & Gynecology	$ 4,225,768	59	3.71
Surgery	$ 2,811,000	44	2.76
Internal Medicine	$ 2,534,000	70	4.40
Emergency Medicine	$ 2,416,739	80	5.03
Gastroenterology	$ 1,950,000	10	0.62
Interventional Radiology & Diagnostic Radiology	$ 1,725,000	18	1.13
Advanced Practice Registered Nurse	$ 1,321,650	38	2.39
Podiatrist	$ 1,150,000	6	0.37

Table 23 – Top Ten Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2017

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 61,491,893	738	46.44
Doctors, Nurses, Etc.	$ 10,258,799	199	12.52
Obstetrics & Gynecology	$ 4,564,575	59	3.71
Emergency Medicine	$ 3,164,239	80	5.03
Internal Medicine	$ 3,134,000	70	4.40
Surgery	$ 2,956,000	44	2.76
Gastroenterology	$ 1,950,000	10	0.62
Pharmacist	$ 1,881,500	12	0.75
Interventional Radiology & Diagnostic Radiology	$ 1,800,000	18	1.13
Advanced Practice Registered Nurse	$ 1,708,317	38	2.39

F. Facilities

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

Table 24 – Top Ten Facility Types Ranked by Frequency of Claims During Reporting Year 2017[25]

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	1,093	68.78	$ 56,352,459
Nursing Home	141	8.87	$ 10,286,780
Office	139	8.74	$ 4,805-866
Clinic	59	3.71	$ 3,530,332
Ambulatory Surgical Treatment Center	37	2.32	$ 1,059,632
Prison-Penitentiary-Correctional Facility	21	1.32	$ 273,810
Renal Dialysis Clinic	21	1.32	$ 0
Assisted Care Living	13	0.81	$ 555,000
Home Health Agency	7	0.44	$ 280,000
Residence	4	0.25	$ 742,500
Adult Care Home	3	0.18	$ 337,500
Outpatient Diagnostic Center	3	0.18	$ 0

Table 25 – Top Ten Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2017

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	$ 56,352,549	1,093	68.78
Nursing Home	$ 10,286,780	141	8.87
Office	$ 4,805,866	139	8.74
Clinic	$ 3,530,332	59	3.71
Ambulatory Surgical Treatment Center	$ 1,059,632	37	2.32
Pharmacy Location	$ 982,000	12	0.75
Residence	$ 742,500	4	0.25
Assisted Care Living	$ 555,000	13	0.81
Adult Care Home	$ 337,500	3	0.18
Home Health Agency	$ 280,000	7	0.44

[25] "Unknown" and "other" were the chosen health care facility types for 31 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 2017.

Table 26 – Top Ten Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2017

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	$ 70,201,274	1,093	68.78
Nursing Home	$ 13,223,590	141	8.87
Office	$ 8,535,161	139	8.74
Assisted Care Living	$ 4,687,570	13	0.81
Clinic	$ 3,530,332	59	3.71
Residence	$ 1,217,500	4	0.25
Ambulatory Surgical Treatment Center	$ 1,059,632	37	2.32
Pharmacy Location	$ 982,000	12	0.75
Renal Dialysis Clinic	$ 812,274	21	1.32
Prison-Penitentiary-Correctional Facility	$ 573,810	21	1.32

VI. 2017 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2017 in Tennessee by insurance companies and risk retention groups was $134,779,802. This total was determined from their 2017 annual financial statements. These premiums were for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2017 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT[26]

TENN. CODE ANN. § 56-54-105(c) requires counsel for claimants asserting health care liability claims (cases) to report their fee arrangements, whether the health care provider named in the case received payment from TennCare, and all open[27] and pending cases.[28] The Department required counsel for claimants to complete two 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 2017. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2017.[29] Cases identified in the

[26] The facilities and providers (insuring entities) identify separate defendants for the same incident as "companion claims" and list them separately. The figures in the counsel for claimant section are calculated from "cases" rather than "claims;" therefore, multiple claims entered by the insuring entities will be considered as one case by the counsel for claimant.

[27] "Open" case is not defined in the statute; and, therefore, may have been interpreted and/or applied more than one way by different counsel of claimants.

[28] The Department cannot identify all counsels for claimants who work with health care liability cases; therefore, the Department will remain unable to confirm the completeness of the information contained in these reports.

[29] The Department made the forms available to counsel for claimants on its website for ease of access.

information submitted related to incidents occurring between 1993 and 2017. However, only five of the 3,286 cases reported (0.15 %) arose out of an incident that occurred prior to 2000, occurring in the 1990s.

A. Closed Cases

The total number of health care liability cases reported by counsel of claimants as closed in 2017 was 1,308. This total represents cases resolved through the entry of a final court judgment, settlement with the claimant, ADR by mediation, ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, cases not taken, or otherwise resolved by the counsel for claimant.

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

Table 27 – Cases Closed through Settlement, Adjudication, ADR or Other Resolution as Reported by Counsels for Claimants

	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	**2017 Totals**	**2017 Percentages**
Cases Resolved Through Judgment	49	4.41	30	2.60	39	3.37	**34**	**2.60**
Cases Resolved Through Settlement	337	30.30	349	30.27	297	25.69	**397**	**30.35**
Cases Resolved Through ADR	101	9.08	136	11.80	109	9.43	**132**	**10.10**
Cases Not Taken[30]	301	27.07	291	25.23	460	39.80	**471**	**36.01**
Cases Otherwise Resolved	324	29.14	347	30.10	251	21.71	**274**	**20.94**
Total Number of Cases Closed	**1,112**	**100.00**	**1,153**	**100.00**	**1,156**	**100.00**	**1,308**	**100.00**

[30] "Cases Not Taken" is a closed option showing closure of cases the counsel for claimant decided not to take after research or notice of intent letters were sent.

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsels for Claimants in 2017

	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	**2017 Totals**	**2017 Percentages**
Paid Closed Cases	462	41.55	490	42.50	411	35.55	**539**	**41.21**
Unpaid Closed Cases	650	58.45	663	57.50	745	64.45	**769**	**58.79**
Total Closed Cases	**1,112**	**100.00**	**1,153**	**100.00**	**1,156**	**100.00**	**1,308**	**100.00**

B. Pending Cases

Pending cases are cases that were opened in 2017 or in prior years and were still unresolved as of December 31, 2017. It was reported by counsels for claimants that there were 1,978[31] cases pending as of December 31, 2017.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling $177,876,396 on cases closed in 2017 by way of judgments, settlements, and ADR methods in the 2017 reporting year.

There were 1,978 cases still pending as of December 31, 2017. $24,410,382 was paid on these cases in 2017.

Table 29 demonstrates the reported damages paid in 2017 on cases closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

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

Table 29 – Amounts Paid In Damages for Cases Settled, Adjudicated, Mediated or by other ADR Methods and Closed During Reporting Year 2017 as reported by Counsels for Claimants

	2014 Totals	2014 %	2015 Totals	2015 %	2016 Totals	2016 %	**2017 Totals**	**2017 %**
Total Damages Paid by Settlements	$ 118,058,809	60.69	$ 81,816,845	66.85	$ 59,915,921	54.15	**$ 128,780,357**	**72.40**
Total Damages Paid by Judgments	$ 12,906,396	6.64	$ 2,437,244	1.99	$ 1,993,323	1.80	**$ 1,067,615**	**0.60**
Total Damages Paid by Mediation	$ 60,184,494	30.94	$ 36,585,659	29.90	$ 48,287,874	43.64	**$ 45,281,625**	**25.46**
Total Damages Paid by Other ADR Methods	$ 3,369,753	1.73	$ 1,540,036	1.26	$ 115,000	0.11	**$ 1,352,720**	**0.76**
Total Damages Paid by Prior Resolutions[32]	$ 0	0.00	$ 0	0.00	$ 335,000	0.30	**$ 1,394,079**	**0.78**
Total Damages Paid	**$ 194,519,452**	**100.00**	**$ 122,379,784**	**100.00**	**$ 110,647,118**	**100.00**	**$ 177,876,396**	**100.00**

D. Judgments

In all, it was reported by counsels for claimants that there were two court judgments paid in 2017. Table 30 details the two paid judgments and the fees paid to counsels for claimants in each case.

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2017[33]

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
$ 236,578	12/17/2013	$ 78,859
$ 750,000	9/13/2004	$ 277,012

E. Fees Paid to Claimants' Counsel

There were 620 counsels for claimants who reported. Insuring entities identified another 73 counsels for claimants who failed to report in 2017. The Department is unable to confirm that the information from this group

[32] Resolutions were made in 2016 but no payments received until 2017.

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

is complete, as the Department 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.[34]

The attorneys, who submitted a report, reported having received fees in the amount of $61,555,707 in 2017. The fees that claimants' attorneys reported receiving in 2017 are approximately 47.2% of the total amount reported by other entities as having been paid in damages to the claimants.

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 0 to 70.40 percent.

F. TennCare Payments

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

Table 31 – TennCare Payments Made to Providers

	Yes	No	Unknown[35]
2014	398	1,944	443
2015	399	2,096	582
2016	346	2,010	881
2017	350	1,968	968

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2018 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] The Department cannot identify all counsels for claimants who work with health care liability cases; therefore, the Department will remain unable to confirm the completeness of the information contained in these reports.

[35] Due to cases which are still pending, counsels for claimants were uncertain at the time of reporting as to whether TennCare would be making payments to the provider; so they chose "unknown" for this question. The majority of cases reported as "unknown" on the cases closed in 2017 are cases that were not taken by the counsels for claimants.