

2020 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 The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.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 2019, but also shows the information reported for 2016, 2017 and 2018 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 95.62 percent of the total health care liability direct premiums written in Tennessee in 2019. 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 2019 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 2019. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2019.² Claims identified in the information submitted related to incidents occurring between 1996 and 2019. However, only six of the 4,571 claims reported (0.13%) 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 2019 was 1,544. 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, dismissal 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

	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	2018 Totals	2018 Percentages	2019 Totals	2019 Percentages
Claims Resolved Through Judgment ³	42 ⁴	2.61	33 ⁵	2.08	21 ⁶	1.16	16	1.04
Claims Resolved Through Settlement	223 ⁷	13.89	253 ⁸	15.92	270 ⁹	14.93	248	16.06
Claims Resolved Through ADR	69	4.30	61	3.84	73	4.04	67	4.34
Claims Otherwise Resolved	1,271	79.20	1,242	78.16	1,444	79.87	1,213	78.56
Total Number of Claims Closed	1,605	100.00	1,589	100.00	1,808	100.00	1,544	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 10 judgments for the defendant awarded between 2014 and 2015 that were appealed with final resolution occurring in 2016 and no payments made.

⁵ 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.

⁶ This figure includes four judgments for the defendant awarded in 2015 and one judgment for the plaintiff awarded in 2017 that were appealed with no final resolution in 2018. It also includes seven judgments for the defendant awarded in 2017 that were appealed with final resolution occurring in 2018 and no payments made. It also includes one judgment for the plaintiff awarded in 2017 that was appealed with final resolution and payment made in 2018. Also included in this figure are two judgments for the plaintiff awarded in 2017 that were appealed with final resolution occurring in 2018; however, payment was made in 2017.

⁷ 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.

⁸ 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.

⁹ This figure includes four claims which went to trial and yielded a judgment for the plaintiff; however, due to a high/low agreement, they were paid as settlements in 2018.

Table 2 – Paid and Unpaid Claims Closed in 2019

	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	2018 Totals	2018 Percentages	2019 Totals	2019 Percentages
Paid Closed Claims	304	18.94	325	20.45	350	19.36	335	21.70
Unpaid Closed Claims	1,301	81.06	1,264	79.55	1,458	80.64	1,209	78.30
Total Closed Claims	1,605	100.00	1,589	100.00	1,808	100.00	1,544	100.00

B. Claims Pending

Pending claims are claims filed in 2019 or in prior years which were still unresolved as of December 31, 2019. It was reported that there were 3,027 claims pending as of December 31, 2019.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants¹⁰

Claimants asserted a total of \$4,741,561,031¹¹ in damages for health care liability related injuries for the claims reported as having been closed in the 2019 reporting year. In the 2019 reporting year, claimants were paid damages totaling \$78,571,023 by way of judgments, traditional settlements, ADR methods, and those otherwise resolved. The total damages paid during 2019 represents 1.66% of the damages that were asserted.

Claimants who had their claims disposed of in 2019 (closed without further payment to be made) were paid a total of \$105,825,163 from the inception of their claims through December 31, 2019, or 2.23% of the damages that were asserted in those claims.

There were 3,027 claims filed but still pending (without final resolution) as of December 31, 2019. The damages asserted by those claimants total \$8,518,332,537. Of those asserted damages, \$20,166,426 has been paid to date.

B. Damages Paid to Claimants

Table 3, on the following page, demonstrates the reported damages paid in 2019 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 2019 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2019. Therefore, this number includes damages that were asserted in years prior to 2019.

Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated, Mediated or Resolved by Other ADR Methods and Closed During Reporting Year 2019

	2016 Totals	2016 %	2017 Totals	2017 %	2018 Totals	2018 %	2019 Totals	2019 %
Total Damages Paid by Settlements	\$ 37,221,367	56.21	\$ 56,025,740	70.06	\$ 53,903,256	62.19	\$ 56,308,697	71.67
Total Damages Paid by Judgments	\$ 2,800,673	4.23	\$ 579,854	0.73	\$ 344,330	0.40	\$ 300,000	0.38
Total Damages Paid by Mediation	\$ 25,942,089	39.17	\$ 23,019,999	28.79	\$ 32,028,794	36.95	\$ 21,304,502	27.11
Total Damages Paid by Claims Otherwise Resolved	\$ 259,439	0.39	\$ 339,376	0.42	\$ 401,382	0.46	\$ 657,824	0.84
Total Damages Paid	\$ 66,223,568	100.00	\$ 79,964,969	100.00	\$ 86,677,762	100.00	\$ 78,571,023	100.00

C. Judgments

In all, it was reported that there were 18 court judgments in 2019. It was reported that 17 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant for these cases. Two judgments entered in favor of the defendant in 2019 are pending. One judgment was entered in favor of the plaintiff in 2019. Table 4 details the one paid judgment and the types of damages awarded.

Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2019

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
\$ 300,000	11/5/2013	\$ 300,000	Facility/Hospital	\$ 0.00	\$ 300,000	\$ 0.00	Death

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2019 was \$70,883,024¹². The total amount reported to have been paid to defense counsel in 2019 was \$64,584,229. The tables on the following page detail the defense costs paid in 2019 on closed and pending claims.

¹² For purposes of comparison, the approximate total defense fees reported as being paid in 2016, 2017 and 2018 was \$80.8M, \$76.0M, and \$71.6M, respectively.

Table 5 – Total Amounts Paid in Defense Costs in 2019

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 46,129,602	\$ 2,000,127	\$ 72,420	\$ 391,923	\$ 1,755,308
Closed Claims	\$ 18,454,627	\$ 855,118	\$ 41,334	\$ 207,204	\$ 975,361
Total	\$ 64,584,229	\$ 2,855,245	\$ 113,754	\$ 599,127	\$ 2,730,669

Table 6 – Total Amounts Paid in Defense Costs During the 2019 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	349	\$ 16,947,133	\$ 744,204	\$ 30,473	\$ 173,020	\$ 485,947
Unpaid Claims	4,222	\$ 47,637,096	\$ 2,111,041	\$ 83,281	\$ 426,107	\$ 2,244,722
Total	4,571	\$ 64,584,229	\$ 2,855,245	\$ 113,754	\$ 599,127	\$ 2,730,669

The total defense costs paid on closed and pending claims as of December 31, 2019, since the inception of such claims, was \$191,463,575. The following table details these defense costs:

Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through End of 2019 Reporting Year

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 117,307,495	\$ 4,525,457	\$ 155,763	\$ 967,772	\$ 4,142,132
Closed Claims	\$ 55,517,505	\$ 2,803,752	\$ 148,477	\$ 862,754	\$ 5,032,468
Total	\$ 172,825,000	\$ 7,329,209	\$ 304,240	\$ 1,830,526	\$ 9,174,600

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2019¹³

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,

¹³ 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.

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 2019.¹⁴

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 for claims closed during the reporting year 2019 and the amount paid to claimants from the inception of the claim:

**Table 8 - Top Ten Types of Health Care Liability During Reporting Year 2019
Ranked by Frequency¹⁵**

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	411	\$ 24,851,470
Diagnosis Related	283	\$ 31,034,649
Surgery Related	228	\$ 15,661,542
Medication Related	190	\$ 3,809,832
Monitoring Related	148	\$ 13,710,704
Obstetrics Related	72	\$ 12,795,000
Behavioral Health Related	22	\$ 574,999
Anesthesia Related	17	\$ 381,325
Equipment/Product Related	16	\$ 816,652
IV & Blood Products Related	16	\$ 184,274
Totals	1,403	\$ 103,820,447

¹⁴ The data included here about the age and severity of injury is specific to the claimant and, therefore, does not include data on companion claims to the extent that they can be identified. The data included here about the facilities, providers, and the reasons for the health care liability claims is derived from all of the claim reports including those about companion claims.

¹⁵ Tables 8 and 9 represent the top ten classifications of types of health care liability in closed claims during 2019. One hundred forty-one claims were classified by reporting entities as “other/miscellaneous.”

**Table 9 - Top Ten Types of Health Care Liability During Reporting Year 2019
Ranked by Amount in Damages Paid to Claimant**

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Diagnosis Related	\$ 31,034,649	283
Treatment Related	\$ 24,851,470	411
Surgery Related	\$ 15,661,542	228
Monitoring Related	\$ 13,710,704	148
Obstetrics Related	\$ 12,795,000	72
Medication Related	\$ 3,809,832	190
Equipment/Product Related	\$ 816,652	16
Behavioral Health Related	\$ 574,999	22
Anesthesia Related	\$ 381,325	17
IV & Blood Products Related	\$ 184,274	16
Totals	\$ 103,820,447	1,403

**Table 10 - Top Ten Causes of Injury During Reporting Year 2019
Ranked by Frequency¹⁶**

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Improper Performance	197	\$ 13,095,985
Failure to Diagnose	182	\$ 15,832,458
Failure to Conform with Regulation, Statute, or Rule	132	\$ 0
Failure to Monitor	109	\$ 13,329,602
Improper Management	103	\$ 5,500,030
Failure to Treat	101	\$ 4,268,800
Delay in Treatment	48	\$ 7,347,000
Improper Technique	46	\$ 4,187,500
Failure to Ensure Patient Safety	32	\$ 2,657,536
Failure to Recognize a Complication	30	\$ 1,318,018
Totals	980	\$ 67,536,920

¹⁶ Tables 10 and 11 represent the top ten classifications of causes of injury in closed claims during 2019. One hundred eighty-one claims were classified by reporting entities as “cannot be determined from available record” and “allegation – not otherwise classified.”

**Table 11 - Top Ten Causes of Injury During Reporting Year 2019
Ranked by Amount in Damages Paid to Claimant**

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Diagnose	\$ 15,832,458	182
Failure to Monitor	\$ 13,329,602	109
Improper Performance	\$ 13,095,985	197
Delay in Treatment	\$ 7,347,000	48
Delay in Diagnosis	\$ 7,061,000	30
Improper Management	\$ 5,500,030	103
Wrong or Misdiagnosis	\$ 5,024,999	22
Failure to Treat	\$ 4,268,800	101
Improper Technique	\$ 4,187,500	46
Failure to Treat Fetal Distress	\$ 3,500,000	5
Totals	\$ 79,147,374	843

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 2019 in each claimant age group¹⁷:

Table 12 – Number of Claims Closed in 2019 Broken Down by Age of Claimant¹⁸

Age Range	Number of Claimants
0-13 years	80
14-20 years	30
21-35 years	131
36-49 years	197
50-64 years	280
65+ years	323

Based on the data submitted for claims reported to have been closed in 2019, 620 incidents of alleged health care liability involved females and 503 incidents involved males. On 11 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

¹⁷ This table represents all non-companion claims closed in 2019, 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.

¹⁸ Ninety-three claimants’ ages were reported as “unknown”.

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 severity¹⁹:

Table 13 – Severity of Injury in Claims Closed During Reporting Year 2019

Severity of Injury	Number of Claims	Number of Claims Paid During 2019	Number of Claims Not Paid
Death	364	102	262
Minor Temporary	212	56	156
Major Temporary	172	46	126
Significant Permanent	64	21	43
Minor Permanent	63	18	45
Emotional Injury Only	55	14	41
Insignificant Injury	47	7	40
Major Permanent	36	14	22
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	21	8	13

Table 14 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2019²⁰

Severity of Injury	Amount Paid in Damages in 2019
Death	\$ 27,359,032
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	\$ 10,810,000
Major Temporary	\$ 10,398,407
Major Permanent	\$ 10,132,501
Significant Permanent	\$ 9,568,000
Minor Temporary	\$ 4,577,161
Minor Permanent	\$ 2,888,203
Emotional Injury Only	\$ 1,018,221
Insignificant Injury	\$ 522,164

¹⁹ The table referenced in this paragraph does not include companion claims, where those can be identified. The table detailing severity of injury is specific to the claimant; and, therefore, the numbers represented are based on the number of injured claimants and not the number of providers that injuries were alleged against.

²⁰ In 2019, claimants were paid a total of \$1,297,335 for claims in which the severity of the injury “could not be determined from available records.”

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2019

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	\$ 47,697,687
Major Temporary	\$ 12,387,955
Significant Permanent	\$ 12,038,000
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	\$ 11,917,000
Major Permanent	\$ 10,282,001
Minor Temporary	\$ 5,148,897
Minor Permanent	\$ 3,247,776
Emotional Injury Only	\$ 1,335,730
Insignificant Injury	\$ 522,164

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-six counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2019. Of the 1,544 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2019 is \$78,571,023.

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 2019²¹

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	328	21.24	\$ 21,866,379
Davidson	185	11.98	\$ 12,230,138
Washington	176	11.40	\$ 6,900,500
Knox	156	10.10	\$ 7,329,538
Hamilton	123	7.97	\$ 2,631,834
Madison	48	3.11	\$ 3,738,500
Williamson	39	2.53	\$ 1,734,450
Sumner	35	2.27	\$ 1,425,368
Rutherford	31	2.01	\$ 2,318,879
Bradley	30	1.94	\$ 1,126,257

²¹ Tables 16 and 17 include data reported on companion claims.

Table 17 – Top Ten Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2019

County Name	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Shelby	\$ 21,866,379	328	21.24
Davidson	\$ 12,230,138	185	11.98
Knox	\$ 7,329,538	156	10.10
Washington	\$ 6,900,500	176	11.40
Madison	\$ 3,738,500	48	3.11
Hamilton	\$ 2,631,834	123	7.97
Rutherford	\$ 2,318,879	31	2.01
Sevier	\$ 2,015,925	12	0.78
Williamson	\$ 1,734,450	39	2.53
Sullivan	\$ 1,728,260	28	1.81

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:

Table 18 – Top Ten Provider Types Ranked by Frequency of Claims During Reporting Year 2019²²

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Facility	576	37.31	\$ 33,840,368
Medical Doctor	520	33.68	\$ 25,806,685
Corporations - Staffing	224	14.51	\$ 11,259,351
Nursing	62	4.02	\$ 2,096,562
Dentistry	36	2.33	\$ 937,732
Osteopathic Physician	28	1.81	\$ 2,950,000
Physician Assistant	16	1.04	\$ 164,000
Podiatry	10	0.65	\$ 400,000
Chiropractor Examiner	10	0.65	\$ 59,799
Pharmacy	10	0.65	\$ 1,700
Physical Therapy	7	0.45	\$ 367,500
Massage	3	0.19	\$ 800

²² “Unlicensed Personnel” and “Unknown” were the chosen provider types for eight 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 2019.

Table 19 – Top Ten Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2019

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	\$ 33,840,368	576	37.31
Medical Doctor	\$ 25,806,685	520	33.68
Corporations – Staffing	\$ 11,259,351	224	14.51
Osteopathic Physician	\$ 2,950,000	28	1.81
Nursing	\$ 2,096,562	62	4.02
Dentistry	\$ 937,732	36	2.33
Nursing Home Administrator	\$ 740,565	23	1.49
Physical Therapy	\$ 367,500	7	0.45
Physician Assistant	\$ 164,000	16	1.04
Chiropractor Examiner	\$ 59,799	10	0.65

Table 20 – Top Ten Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2019

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	\$ 55,271,842	576	37.31
Medical Doctor	\$ 29,435,935	520	33.68
Corporations – Staffing	\$ 11,646,101	224	14.51
Osteopathic Physician	\$ 3,125,000	28	1.81
Nursing	\$ 2,097,106	62	4.02
Nursing Home Administrator	\$ 1,465,565	23	1.49
Dentistry	\$ 1,110,232	36	2.33
Podiatry	\$ 400,000	10	0.65
Physician Assistant	\$ 376,500	16	1.04
Physical Therapy	\$ 367,500	7	0.45

The tables on the following pages 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 2019²³

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Facility	574	37.18	\$ 33,090,368
Doctors, Nurses, Etc.	222	14.38	\$ 11,219,351
Internal Medicine	123	7.97	\$ 1,101,000
Emergency Medicine	70	4.53	\$ 2,820,547
Obstetrics & Gynecology	58	3.76	\$ 7,257,500
Family Medicine	37	2.40	\$ 1,520,000
Medical Oncology	35	2.27	\$ 0
Advanced Practice Registered Nurse	34	2.20	\$ 1,735,250
Surgery	34	2.20	\$ 1,645,001
Orthopaedic Surgery	25	1.62	\$ 3,325,000
Nursing Home Administrator	23	1.49	\$ 740,565

Table 22 – Top Ten Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2019

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	\$ 33,090,368	574	37.18
Doctors, Nurses, Etc.	\$ 11,219,351	222	14.38
Obstetrics & Gynecology	\$ 7,257,500	58	3.76
Pediatric	\$ 3,374,999	16	1.04
Orthopaedic Surgery	\$ 3,325,000	25	1.62
Emergency Medicine	\$ 2,820,547	70	4.53
Family Medicine OMT	\$ 1,750,000	3	0.19
Advanced Practice Registered Nurse	\$ 1,735,250	34	2.20
Surgery	\$ 1,645,001	34	2.20
Gastroenterology	\$ 1,587,525	7	0.45

²³ “Unknown” and “Other” were the chosen provider specialty types for 17 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 2019.

Table 23 – Top Ten Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2019

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	\$ 54,521,842	574	37.18
Doctors, Nurses, Etc.	\$ 11,606,101	222	14.38
Obstetrics & Gynecology	\$ 8,982,250	58	3.76
Emergency Medicine	\$ 3,880,547	70	4.53
Pediatric	\$ 3,579,999	16	1.04
Orthopaedic Surgery	\$ 3,325,000	25	1.62
Family Medicine OMT	\$ 1,750,000	3	0.19
Advanced Practice Registered Nurse	\$ 1,735,250	34	2.20
Surgery	\$ 1,700,001	34	2.20
Neurological Surgery	\$ 1,697,500	13	0.84

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 2019²⁴

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	942	61.01	\$ 48,717,589
Office	247	16.00	\$ 10,277,482
Nursing Home	74	4.79	\$ 4,826,261
Clinic	63	4.08	\$ 5,845,734
Prison_Penitentiary_Correctional Facility	44	2.85	\$ 225,500
Ambulatory Surgical Treatment Center	41	2.66	\$ 3,053,004
Assisted Care Living	26	1.68	\$ 2,220,278
Adult Care Home	17	1.10	\$ 1,656,500
EMS Location	7	0.45	\$ 77,503
Home Health Agency	5	0.32	\$ 215,960

²⁴ “Unknown” and “other” were the chosen health care facility types for 55 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 2019.

Table 25 – Top Ten Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2019

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 71,786,951	942	61.01
Office	\$ 10,874,982	247	16.00
Clinic	\$ 5,845,734	63	4.08
Nursing Home	\$ 4,826,261	74	4.79
Ambulatory Surgical Treatment Center	\$ 3,053,004	41	2.66
Assisted Care Living	\$ 2,220,278	26	1.68
Adult Care Home	\$ 1,656,500	17	1.10
Medical Laboratories	\$ 430,710	4	0.26
Prison_Penitentiary_Correctional Facility	\$ 225,500	44	2.85
Home Health Agency	\$ 215,960	5	0.32

Table 26 – Top Ten Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2019

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 71,786,951	942	61.01
Office	\$ 10,874,982	247	16.00
Clinic	\$ 6,845,734	63	4.08
Nursing Home	\$ 6,181,784	74	4.79
Ambulatory Surgical Treatment Center	\$ 3,098,004	41	2.66
Assisted Care Living	\$ 2,647,297	26	1.68
Adult Care Home	\$ 1,656,500	17	1.10
Home Health Agency	\$ 615,000	5	0.32
Medical Laboratories	\$ 445,710	4	0.26
Prison_Penitentiary_Correctional Facility	\$ 225,500	44	2.85

VI. 2019 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2019 in Tennessee by insurance companies and risk retention groups was \$131,929,524. This total was determined from their 2019 annual financial statements. These premiums were for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2019 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT²⁵

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 open²⁶ and pending cases.²⁷ 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 2019. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2019.²⁸ Cases identified in the information submitted related to incidents occurring between 1999 and 2019. However, only one of the 3,159 cases reported (0.03 %) 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 2019 was 1,180. 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 Table 27 demonstrates the comparative number of cases reported as closed in each of the five categories:

²⁵ 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.

²⁶ “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.

²⁷ 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.

²⁸ The Department made the forms available to counsel for claimants on its website for ease of access.

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

	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	2018 Totals	2018 Percentages	2019 Totals	2019 Percentages
Cases Resolved Through Judgment	39	3.37	34	2.60	20	1.65	22	1.86
Cases Resolved Through Settlement	297	25.69	397	30.35	373	30.91	331	28.05
Cases Resolved Through ADR	109	9.43	132	10.10	106	8.78	123	10.42
Cases Not Taken ²⁹	460	39.80	471	36.01	436	36.12	424	35.94
Cases Otherwise Resolved	251	21.71	274	20.94	272	22.54	280	23.73
Total Number of Cases Closed	1,156	100.00	1,308	100.00	1,207	100.00	1,180	100.00

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsels for Claimants in 2019

	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	2018 Totals	2018 Percentages	2019 Totals	2019 Percentages
Paid Closed Cases	411	35.55	539	41.21	495	41.01	482	40.85
Unpaid Closed Cases	745	64.45	769	58.79	712	58.99	698	59.15
Total Closed Cases	1,156	100.00	1,308	100.00	1,207	100.00	1,180	100.00

B. Pending Cases

Pending cases are cases that were opened in 2019 or in prior years and were still unresolved as of December 31, 2019. It was reported by counsels for claimants that there were 1,979³⁰ cases pending as of December 31, 2019.

²⁹ “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.

³⁰ 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.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling \$138,561,844 on cases closed in 2019 by way of judgments, settlements, and ADR methods in the 2019 reporting year.

There were 1,979 cases still pending as of December 31, 2019. \$19,442,210 was paid on these cases in 2019.

Table 29 demonstrates the reported damages paid in 2019 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 2019 as reported by Counsels for Claimants

	2016 Totals	2016 %	2017 Totals	2017 %	2018 Totals	2018 %	2019 Totals	2019 %
Total Damages Paid by Settlements	\$ 59,915,921	54.15	\$ 128,780,357	72.40	\$ 86,308,224	64.63	\$ 83,796,069	60.48
Total Damages Paid by Judgments	\$ 1,993,323	1.80	\$ 1,067,615	0.60	\$ 4,094,330	3.06	\$ 300,000	0.21
Total Damages Paid by Mediation	\$ 48,287,874	43.64	\$ 45,281,625	25.46	\$ 39,846,289	29.84	\$ 50,087,989	36.15
Total Damages Paid by Other ADR Methods	\$ 115,000	0.11	\$ 1,352,720	0.76	\$ 275,500	0.21	\$ 1,129,800	0.82
Total Damages Paid by Prior Resolutions	\$ 335,000 ³¹	0.30	\$ 1,394,079	0.78	\$ 2,963,565 ³²	2.22	\$ 3,247,986	2.34
Total Damages Paid Prior to Resolution and Attorney Withdrawal ³³					\$ 52,575	0.04	\$ 0.00	0.00
Total Damages Paid	\$ 110,647,118	100.00	\$ 177,876,396	100.00	\$133,540,483	100.00	\$ 138,561,844	100.00

³¹ Resolutions were made in 2016 but no payments received until 2017.

³² Resolutions were made in 2017 but no payments were received until 2018.

³³ Attorney withdrawals were not tracked until 2018.

D. Judgments

In all, it was reported by counsels for claimants that there was one court judgment paid in 2019. Table 30 details the one paid judgment and the fees paid to counsels for claimants in the case.

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2019

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
\$ 300,000	11/3/2013	\$ 75,000

E. Fees Paid to Claimants' Counsel

There were 552 counsels for claimants who reported. Insuring entities identified another 92 counsels for claimants who failed to report in 2019. There were three counsels for claimants who reported pending cases in 2018 but failed to report in 2019.³⁴ The Department is unable to confirm that the information from this group 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.³⁵

The attorneys, who submitted a report, reported having received fees in the amount of \$44,097,717 in 2019. The fees that claimants' attorneys reported receiving in 2019 are approximately 51.1% 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 74.00% 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:

³⁴ The law requires any previously open or pending cases to be contained in the current year report.

³⁵ 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.

Table 31 – TennCare Payments Made to Providers

	Yes	No	Unknown³⁶
2016	346	2,010	881
2017	350	1,968	968
2018	333	1,787	1,103
2019	103	634	443

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2021 reporting obligations.

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

³⁶ 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 2019 are cases that were not taken by the counsels for claimants.