Notice of Rulemaking Hearing
Department of Commerce and Insurance
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CST on the 17th day of August, 2006.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Tracey Gentry Harney, Staff Attorney, Office of Legal Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

Chapter 0780-1-84
Medical and Professional Malpractice Claims and Expenses Reporting
Amendments

Chapter 0780-1-84 Medical and Professional Malpractice Claims and Expenses Reporting is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-1-84

Medical and Professional Malpractice Claims and Expenses Reporting

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Rule 0780-1-84-.01 Purpose and Scope.

The following rules developed by the Department of Commerce and Insurance govern the reporting of medical or professional malpractice claims and expenses. The purpose of this Chapter is to facilitate the reporting required by T.C.A. § 56-54-101.

Authority: T.C.A. § 56-54-101.

Rule 0780-1-84-.02 Definitions.

(1) "Chiropractor" means an individual licensed pursuant to Title 63, Chapter 4.

(2) "Clinical Pastoral Counselor" means an individual certified pursuant to Title 63, Chapter 22, Part 2.

(3) "Closed Claims" means claims that have been paid pursuant to a settlement or judgment, including, claims that were settled or adjudicated with the condition of open medical treatment to the claimant.

(4) "Commissioner" means the Commissioner of the Department of Commerce and Insurance.

(5) "Dentist" means an individual licensed pursuant to Title 63, Chapter 5.

(6) "Department" means the Tennessee Department of Commerce and Insurance.

(7) "Licensed Clinical Social Worker" means an individual licensed pursuant to Title 63, Chapter 23.

(8) "Marital and Family Therapist" means an individual licensed pursuant to Title 63, Chapter 22, Part 1.

(9) "Medical or Osteopathic Physician" means an individual licensed pursuant to Title 63, Chapter 6 or Chapter 9.

(10) "Nurse Practitioner" means an individual that holds a certificate of fitness issued pursuant to Title 63, Chapter 7, Section 123.

(11) "Optometrist" means an individual licensed pursuant to Title 63, Chapter 8.

(12) "Pending Claims" means claims that have not been paid pursuant to a settlement or judgment but have been made known to the reporting entity either by a lawsuit or some other manner.

(13) "Person" means an individual or business entity.

(14) "Pharmacist" means an individual licensed pursuant to Title 63, Chapter 10.

(15) "Physician Assistant" means an individual licensed pursuant to Title 63, Chapter 19.

(16) "Podiatrist" means an individual licensed pursuant to Title 63, Chapter 3.

(17) "Professional Counselor" means an individual licensed pursuant to Title 63, Chapter 22, Part 1.

(18) "Reporting entity" means the following:

(a) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to a Tennessee health care institution licensed under Title 68.

(b) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to any of the following:

1. Podiatrists;

2. Chiropractors;

3. Dentists;

4. Medical and Osteopathic Physicians;

5. Nurse Practitioners;

6. Optometrists;

7. Psychologists;

8. Pharmacists;

9. Physician Assistants;

10. Professional Counselors;

11. Marital and Family Therapists;

12. Clinical Pastoral Counselors; and

13. Licensed Clinical Social Workers.

(c) Every health care institution licensed pursuant to Title 68 or professional listed in this Rule, except the state and those employed by the state, who does not maintain professional liability insurance.

(d) Counsel for claimants, who are required to submit information as required by T.C.A. § 56-54-101, for the purposes of levying civil penalties pursuant to Rule 0780-1-84-.06.

Authority: T.C.A. § 56-54-101.

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

(1) All reporting entities, with the exception of those enumerated in Rule 0780-1-84-.02(18)(d) shall individually submit to the Commissioner by April 1 of every year, a claims data file containing all information required by this Chapter for medical or professional malpractice claims and expenses for the period of January 1 though December 31 of the preceding year. Additionally, all reporting entities shall separately list the total from the inception date of any filed claim those damages and defense expenses found in subparagraphs (k) and (l) of Paragraph (3) this Rule.

(2) The claims data file shall be comprised of two (2) data sheets—the Closed Claims Sheet and the Pending Claims Sheet, as set forth and explained in more detail in Appendix A.

(3) Each claims data file sheet shall contain the following data as set forth and explained in more detail in Appendix A listed by type of provider and indication of specialty, if any:

(a) The name of the entity submitting the information required by T.C.A. § 56-54-101 and this Chapter;

(b) The address of the entity submitting the information required by T.C.A. § 56-54-101 and this Chapter;

(c) The name, telephone number and electronic mail address of a contact person for the entity submitting the information required by T.C.A. § 56-54-101 and this Chapter;

(d) Claim number for each individual and unique claim;

(e) Type of health care institution or professional (and specialty, if applicable);

(f) License number of health care institution or professional;

(g) Date of occurrence of the event that resulted in a medical or professional malpractice claim being filed;

(h) Claimant's social security number, to the extent that the claimant's social security number is available to the reporting entity;

(i) The damages asserted by the claimant listed separately as follows:

1. Damages asserted by the claimant other than amounts asserted by a lawsuit; and

2. Damages asserted by the claimant through a lawsuit; if damages are asserted by the claimant through a lawsuit, the date of the filing of the lawsuit;

(j) The amounts paid on claims listed separately as follows:

1. Amounts paid by the reporting entity to settle a claim; and

2. Amounts paid by the reporting entity pursuant to a judgment;

(k) The amounts paid on claims shall be listed separately by the following types of damages:

1. Compensatory damages;

2. Non-economic damages; and

3. Punitive damages;

(l) The amounts paid on claims shall be listed separately by the following types of legal expenses:

1. Amounts paid to attorneys for defense counsel, excluding amounts paid for expert witness fees, court costs, deposition costs, and other costs;

2. Amounts paid for expert witness fees;

3. Amounts paid in court costs;

4. Amounts paid in deposition costs; and

5. Amounts paid in connection with other legal expenses not previously identified;

(m) The name of the attorney(s) representing the claimant for those claims on which amounts were paid to the claimant and reported under subparagraph (j) of Paragraph (3).

(4) The second and subsequent reports filed by April 1 of each year pursuant to this Chapter by each reporting entity shall also contain information identifying those claims that are subject to settlement or judgment which were contained in a prior report as a pending claim.

(5) Any column left blank by the reporting entity will be assumed to be "not applicable" if any information other than that requiring currency data, and if currency data is required, will be assumed to be zero (0).

(6) The information sumbitted under subparagraphs (a) through (c) of Paragraph (3) of this Rule will not be included in the annual report prepared for the Speaker of the Senate and the Speaker of the House of Representatives and will be kept confidential by the Commissioner.

Authority: T.C.A. § 56-54-101.

Rule 0780-1-84-.04 Reporting Requirements for Counsel for Claimants.

Counsel for claimants asserting claims covered by T.C.A. § 56-54-101 shall provide information about fee arrangements with claimants to the Department. Such information shall include the following:

(1) The name of the attorney submitting the information required by T.C.A. § 56-54-101 and this Chapter;

(2) The address of the attorney submitting the information required by T.C.A. § 56-54-101 and this Chapter;

(3) The name, telephone number and electronic mail address of the attorney submitting the information required by T.C.A. § 56-54-101 and this Chapter;

(4) Claim number for each individual and unique claim;

(5) Date of occurrence of the event that resulted in a medical or professional malpractice claim being filed;

(6) Claimant's social security number, to the extent that the claimant's social security number is available to the attorney; and

(7) The portion of any settlement or judgment received by claimant's counsel for each individual and unique claim number.

(8) The information submitted under Paragraphs (1) through (3) of this Rule will not be included in the annual report prepared for Speaker of the Senate and the Speaker of the House of Representatives and will be kept confidential by the Commissioner.

Authority: T.C.A. § 56-54-101.

Rule 0780-1-84-.05 Format for Submitted Data.

(1) All data submitted to the Commissioner on the claims data file shall be submitted on a Compact Disk or three-and-one-half inch (3.5") computer data disk in the form created by the Commissioner. All data submitted to the Commissioner from counsel for claimants shall be submitted on a form adopted by the Commissioner.

(2) All data located in columns shall be in alpha-numeric format unless otherwise stated. When using numeric data, only regular decimal formats will be acceptable. No compressed or binary (small integer or large integer) data will be accepted as valid.

(3) All date data shall be Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year.

(4) Social Security Number data shall be presented in the following format: the first, second and third characters must be numerals, the forth character must be a hyphen (-), the fifth and sixth characters must be numerals, the seventh character must be a hyphen (-), and the eighth, ninth, tenth and eleventh characters must be numerals.

(5) License number data shall be presented in the format of the entire license number expressed numerically without any other characters [e.g.—hyphens (-)] or spaces within the license number.

(6) All currency data shall be in units of U.S. dollars rounded to the nearest whole dollar amount. Leading zeros and the dollars signs are not necessary but may be used so long as the currency fields are consistent.

Authority: T.C.A. § 56-54-101.

Rule 0780-1-84-.06 Penalty.

Any reporting entity that fails to comply with the provisions of this Chapter shall be subject to a civil penalty of one hundred dollars ($100) per day.

Authority: T.C.A. § 56-54-101.

APPENDIX A

SPREADSHEET NAME, FIELD REQUIREMENT OR COLUMN HEADING	DESCRIPTION OF DATA SOUGHT	TECHNICAL FORMATTING OF DATA SOUGHT
Pending Claims Spreadsheet	This should contain information for pending claims that have been asserted through a lawsuit or by other means. This should not include information on claims that have been paid pursuant to a settlement or judgment.	
Closed Claims Spreadsheet	This should contain information for claims that have been paid pursuant to a settlement or judgment, including claims that were settled or adjudicated with the condition of open medical treatment for the claimant.	
Entity Name	This should be the name of the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in alpha-numeric format and reflect the name of the entity as found in the entity's licensure materials (e.g.—insurance company's certificate of authority).
Entity Address 1	This should be the address of the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in alpha-numeric format and reflect the home office address of the entity.
Entity Address 2	This field may be used if the address of the entity is more than one (1) line, but may be left blank if the address of the entity is only one (1) line.	Data shall be in alpha-numeric format and reflect the home office address of the entity.
Entity Address City	This should be the address city of the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in alpha-numeric format and reflect the home office address city of the entity.
Entity Address State	This should be the address state of the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in alpha-numeric format and reflect the home office address state of the entity. The address state shall be two (2) capitalized characters conforming to the United States Postal Service's state abbreviations conventions.

Entity Address ZIP Code	This should be the address ZIP Code of the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in numeric format and reflect the home office address zip code of the entity. This field shall be presented as a five (5) digit numeral. If applicable, the five (5) digit zip code may be followed by the United States Postal Service's "+4" code, in which case the sixth character must be a plus sign (+), with the seventh, eighth, ninth and tenth characters being numerals.
Entity Contact Person	This should be the name of a contact person representing the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in alpha-numeric format, with the first name of the contact person stated first, followed by a space, followed by the last name of the contact person.
Entity Contact Telephone Number	This should be the telephone number of a contact person representing the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter.	Data shall be in alpha-numeric format. The first three (3) characters must be the area code. The fourth character must be a hyphen. The fifth, sixth, and seventh characters must be the three (3) digit prefix that follows the area code. The eighth character must be a hyphen. The ninth, tenth, eleventh, and twelfth characters must be the last four (4) digits of the phone number. If there is an extension that should be entered, an "x" or an "X" shall be placed in the thirteenth position followed immediately by the extension number with a maximum of six (6) alpha-numeric characters.
Entity Contact Electronic Mail Address	This should be the electronic mail address of a contact person representing the entity submitting the information required by Tenn. Code Ann. § 56-54-101 and this Chapter	Data shall be in alpha-numeric format and reflect the full electronic mail address of the entity contact person.
Claim Number	This should be the number used to identify each individual and unique claim.	Data shall be in alpha-numeric format and as found in the reporting entity's records.
Type of Health Care Professional	This should list the type of health care professional against whom the claim was made.	Data shall be chosen from a listing of health care professional options found on the Commissioner's form.
Health Care Professional Specialty (if applicable)	This should list the medical specialty of the health care professional against whom the claim was made.	Data shall be chosen from a listing of health care professional specialty options found on the Commissioner's form.
License Number	This should be the health care institution or provider's license or certificate number.	Data shall be presented in the format of the entire license number expressed numerically without any other characters [e.g.—hyphens (-)] or spaces within the license number.

Date of Occurrence	This should be the date on which the incident arose that gave rise to the medical or professional malpractice claim.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year.
Claimant's Social Security Number	This should be the Social Security Number held by the person making the claim.	Data shall be presented in the following format: the first, second and third characters must be numerals, the forth character must be a hyphen (-), the fifth and sixth characters must be numerals, the seventh character must be a hyphen (-), and the eighth, ninth, tenth and eleventh characters must be numerals. (XXX-XX-XXXX)
Asserted Damages (other than set forth in lawsuit)	This should include an amount that has been asserted against a reporting entity in a manner other than by filing a lawsuit.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Damages Claimed by Lawsuit".
Damages Claimed by Lawsuit	This should include the amount of damages asserted against a reporting entity in a lawsuit.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Asserted Damages (other than set forth in lawsuit)".
Date of the Filing of a Lawsuit	This should be the date that any lawsuit was filed asserting damages against a reporting entity.	Data shall be in Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2) digit month (with leading zeros when necessary), a slash (/), a two (2) digit day (with leading zeros when necessary), a slash (/), and a four (4) digit year. Data should be entered in this column only if data is also entered in the column titled "Damages Claimed by Lawsuit".
Amount Paid by Settlement	This should include the total amount paid pursuant to a settlement between the reporting entity and the claimant.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Judgment".
Amount Paid by Judgment	This should include the total amount paid pursuant to a judgment against the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. If data is entered in this column, no data should be entered in the column titled "Amount Paid by Settlement".

Compensatory Damages Paid	This should include the amount of settlement or judgment that was identified as compensatory damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Non-Economic Damages Paid	This should include the amount of settlement or judgment that was identified as non-economic damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Punitive Damages Paid	This should include the amount of settlement or judgment that was identified as punitive damages.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Attorney Fees Paid to Defense Counsel	This should include the amount that was paid to defend the medical or professional malpractice claim. This should not include the expense related to expert witness fees, court costs, deposition costs, and other legal expenses.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Expert Witness Fees	This should include the expert witness fees that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Court Costs	This should include the court costs that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Deposition Cost	This should include the deposition costs that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Other Legal Fees	This should include any other legal fees not specifically identified that were expended by the reporting entity.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount.
Total Legal Expenses	This should include the legal fees that were expended by the reporting entity, including the claimant's attorneys fees.	Data shall be presented as currency data in units of U.S. dollars rounded to the nearest whole dollar amount. Data in this column must equal the sum of "Attorney Fees Paid to Defense Counsel", Portion of Settlement or Judgment Received by Claimant's Counsel", "Expert Witness Fees", "Court Costs", "Deposition Costs" and "Other Legal Fees".
Name of Attorney Representing the Claimant	This should name the attorney(s) representing the claimant and who received attorneys fees from representing the claimant.	Data shall be in alpha-numeric format, with the first name of the attorney stated first, followed by a space, followed by the last name of the attorney.

Legal Contact and/ or party who will approve final copy for publication:
Tracey Gentry Harney, Staff Attorney
Office of Legal Counsel
Department of Commerce and Insurance
Davy Crockett Tower, Twelfth Floor
500 James Robertson Parkway
Nashville, Tennessee 37243
615-741-2199

Contact for disk acquisition:
Tracey Gentry Harney, Staff Attorney
Office of Legal Counsel
Department of Commerce and Insurance
Davy Crockett Tower, Twelfth Floor
500 James Robertson Parkway
Nashville, Tennessee 37243
615-741-2199

Signature of the agency or officers directly responsible for proposing and/or drafting this Chapter:

Tracey Gentry Harney
Staff Attorney

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.

Tracey Gentry Harney
Staff Attorney

DENISE M. LEWIS
STATE OF TENNESSEE
NOTARY PUBLIC
WILSON COUNTY, TENN.

Subscribed and sworn to before me this the 30th day of June, 2006.

Notary Public

My Commission Expires MAR. 22, 2008

My commission expires on the 22nd day of March, 2008

The notice of rulemaking set out herein was properly filed in the Department of State on the 30 day of June, 2006.

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PUBLICATIONS

Riley C. Darnell
Secretary of State

By: _____