2019 Health Care Liability Claims Report

Department of Commerce & Insurance
November 1, 2019

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2019 Health Care Liability Claims Report

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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 The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.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 2018, but also shows the information reported for 2015, 2016 and 2017 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 96.26 percent of the total health care liability direct premiums written in Tennessee in 2018. 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 2018 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 2018. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2018.[2] Claims identified in the information submitted related to incidents occurring between 1996 and 2018. However, only five of the 4,987 claims reported (0.10 %) 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 2018 was 1,808. 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

	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	**2018 Totals**	**2018 Percentages**
Claims Resolved Through Judgment[3]	29[4]	2.03	42[5]	2.61	33[6]	2.08	**21**[7]	**1.16**
Claims Resolved Through Settlement	254	17.77	223[8]	13.89	253[9]	15.92	**270**[10]	**14.93**
Claims Resolved Through ADR	63	4.40	69	4.30	61	3.84	**73**	**4.04**
Claims Otherwise Resolved	1,084	75.80	1,271	79.20	1,242	78.16	**1,444**	**79.87**
Total Number of Claims	**1,430**	**100.00**	**1,605**	**100.00**	**1,589**	**100.00**	**1,808**	**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 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.

[5] 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.

[6] 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.

[7] 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.

[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.

[10] 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.

Closed								

Table 2 – Paid and Unpaid Claims Closed in 2018

	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	**2018 Totals**	**2018 Percentages**
Paid Closed Claims	334	23.36	304	18.94	325	20.45	**350**	**19.36**
Unpaid Closed Claims	1,096	76.64	1,301	81.06	1,264	79.55	**1,458**	**80.64**
Total Closed Claims	**1,430**	**100.00**	**1,605**	**100.00**	**1,589**	**100.00**	**1,808**	**100.00**

B. Claims Pending

Pending claims are claims filed in 2018 or in prior years which were still unresolved as of December 31, 2018. It was reported that there were 3,179 claims pending as of December 31, 2018.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants[11]

Claimants asserted a total of $3,066,533,427[12] in damages for health care liability related injuries for the claims reported as having been closed in the 2018 reporting year. In the 2018 reporting year, claimants were paid damages totaling $86,677,762 by way of judgments, traditional settlements, ADR methods, and those otherwise resolved. The total damages paid during 2018 represents 2.83% of the damages that were asserted.

Claimants who had their claims disposed of in 2018 (closed without further payment to be made) were paid a total of $144,327,155 from the inception of their claims through December 31, 2018, or 4.71% of the damages that were asserted in those claims.

There were 3,179 claims filed but still pending (without final resolution) as of December 31, 2018. The damages asserted by those claimants total $10,245,985,238. Of those asserted damages, $23,563,648 has been paid to date.

B. Damages Paid to Claimants

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

[12] This number includes all claims reported as closed during the 2018 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2018. Therefore, this number includes damages that were asserted in years prior to 2018.

Table 3 demonstrates the reported damages paid in 2018 on claims closed that year broken down by payments made as a result of adjudication, settlement, or ADR.

Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated, Mediated or Resolved by Other ADR Methods and Closed During Reporting Year 2018

	2015 Totals	2015 %	2016 Totals	2016 %	2017 Totals	2017 %	**2018 Totals**	**2018 %**
Total Damages Paid by Settlements	$ 54,963,230	73.01	$ 37,221,367	56.21	$ 56,025,740	70.06	**$ 53,903,256**	**62.19**
Total Damages Paid by Judgments	$ 2,437,244	3.24	$ 2,800,673	4.23	$ 579,854	0.73	**$ 344,330**	**0.40**
Total Damages Paid by Mediation	$ 16,524,270	21.95	$ 25,942,089	39.17	$ 23,019,999	28.79	**$ 32,028,794**	**36.95**
Total Damages Paid by Other ADR Methods	$ 1,355,761	1.80	$ 259,439	0.39	$ 339,376	0.42	**$ 401,382**	**0.46**
Total Damages Paid	**$ 75,280,505**	**100.00**	**$ 66,223,568**	**100.00**	**$ 79,964,969**	**100.00**	**$ 86,677,762**	**100.00**

C. Judgments

In all, it was reported that there were 15 court judgments in 2018. It was reported that 11 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant for these cases. Four judgments were entered in favor of the plaintiff in 2018. One judgment was appealed in 2017 but paid in 2018. Table 4, on the following page, details the five paid judgments and the types of damages awarded in each case.

Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2018

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
$ 268,164	9/23/2010	$ 5,000,000	Medical Doctor/Obstetrics & Gynecology	$ 101,930	$ 166,234	$ 0.00	Death
$ 67,041	9/23/2010	$ 5,000,000	Medical Doctor/Obstetrics & Gynecology	$ 25,482	$ 41,558	$ 0.00	Death
$ 1,875,000	11/9/2006	$ 1,875,000	Medical Doctor/Interventional Radiology & Diagnostic Radiology	$ 1,500,000	$ 375,000	$ 0.00	Grave Permanent Injury
$ 1,875,000	11/9/2006	$ 1,875,000	Corporations Staffing/Doctors, Nurses, Etc.	$ 1,500,000	$ 375,000	$ 0.00	Grave Permanent Injury
$ 9,125	8/28/2012	$ 9,125	Medical Doctor/Surgery	$ 9,125	$ 0.00	$ 0.00	Major Temporary Injury

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2018 was $71,592,248.[13] The total amount reported to have been paid to defense counsel in 2018 was $64,576,317. The following tables detail the defense costs paid in 2018 on closed and pending claims.

Table 5 – Total Amounts Paid in Defense Costs in 2018

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	$ 46,903,772	$ 1,846,260	$ 125,153	$ 498,063	$ 2,053,294
Closed Claims	$ 17,672,545	$ 808,513	$ 27,406	$ 217,847	$ 1,439,395
Total	**$ 64,576,317**	**$ 2,654,773**	**$ 152,559**	**$ 715,910**	**$ 3,492,689**

[13] For purposes of comparison, the approximate total defense fees reported as being paid in 2015, 2016 and 2017 was $72.0M, $80.8M and $76.0M, respectively.

Table 6 – Total Amounts Paid in Defense Costs During the 2018 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	447	$ 10,053,257	$ 612,499	$ 25,585	$ 188,757	$ 622,700
Unpaid Claims	4,540	$ 54,523,060	$ 2,042,274	$ 126,974	$ 527,153	$ 2,869,989
Total	**4,987**	**$ 64,576,317**	**$ 2,654,773**	**$ 152,559**	**$ 715,910**	**$ 3,492,689**

The total defense costs paid on closed and pending claims as of December 31, 2018, since the inception of such claims, was $211,251,511. The following table details these defense costs:

Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through End of 2018 Reporting Year

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	$ 112,872,899	$ 4,812,500	$ 196,938	$ 1,302,204	$ 4,803,931
Closed Claims	$ 78,441,875	$ 2,957,525	$ 121,352	$ 881,474	$ 4,860,813
Total	**$ 191,314,774**	**$ 7,770,025**	**$ 318,290**	**$ 2,183,678**	**$ 9,664,744**

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2018[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 2018.[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 tables on the following pages show the top ten types of health care liability and the top ten types of injury for claims closed during the reporting year 2018 and the amount paid to claimants from the inception of the claim:

Table 8 - Top Ten Types of Health Care Liability During Reporting Year 2018 Ranked by Frequency[16]

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	407	$ 42,165,117
Medication Related	404	$ 22,352,735
Surgery Related	279	$ 20,854,645
Diagnosis Related	278	$ 25,281,668
Monitoring Related	169	$ 21,121,198
Obstetrics Related	79	$ 7,316,000
Anesthesia Related	17	$ 1,833,919
Equipment/Product Related	13	$ 710,387
IV & Blood Products Related	13	$ 35,000
Behavioral Health Related	5	$ 40,000
Totals	**1,664**	**$ 141,710,669**

Table 9 - Top Ten Types of Health Care Liability During Reporting Year 2018 Ranked by Amount in Damages Paid to Claimant

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Treatment Related	$ 42,165,117	407
Diagnosis Related	$ 25,281,668	278
Medication Related	$ 22,352,735	404
Monitoring Related	$ 21,121,198	169
Surgery Related	$ 20,854,645	279
Obstetrics Related	$ 7,316,000	79
Anesthesia Related	$ 1,833,919	17
Equipment/Product Related	$ 710,387	13
Behavioral Health Related	$ 40,000	5
IV & Blood Products Related	$ 35,000	13
Totals	**$ 141,710,669**	**1,664**

[16] Tables 8 and 9 represent the top ten classifications of types of health care liability in closed claims during 2018. One hundred forty-four claims were classified by reporting entities as "other/miscellaneous."

Table 10 - Top Ten Causes of Injury During Reporting Year 2018
Ranked by Frequency[17]

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Product Liability	309	$ 16,000,000
Failure to Diagnose	193	$ 15,737,499
Improper Performance	181	$ 10,762,445
Failure to Monitor	130	$ 16,583,906
Improper Management	88	$ 5,564,003
Failure to Treat	74	$ 1,658,000
Delay in Treatment	55	$ 8,004,285
Failure to Recognize a Complication	51	$ 3,403,070
Improper Technique	45	$ 2,310,340
Failure to Ensure Patient Safety	41	$ 3,862,927
Totals	**1,167**	**$ 83,886,475**

Table 11 - Top Ten Causes of Injury During Reporting Year 2018
Ranked by Amount in Damages Paid to Claimant

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Monitor	$ 16,583,906	130
Product Liability	$ 16,000,000	309
Failure to Diagnose	$ 15,737,499	193
Improper Performance	$ 10,762,445	181
Failure/Delay in Admission to Hospital or Institution	$ 10,072,436	10
Vicarious Liability	$ 9,010,303	14
Delay in Treatment	$ 8,004,285	55
Failure to Treat	$ 7,295,884	74
Improper Management	$ 5,564,003	88
Radiology or Imaging Error	$ 5,550,000	14
Totals	**$ 104,580,761**	**1,068**

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 2018 in each claimant age group[18]:

[17] Tables 10 and 11 represent the top ten classifications of causes of injury in closed claims during 2018. One hundred ninety-four 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 2018, 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 2018 Broken Down by Age of Claimant[19]

Age Range	Number of Claimants
0-13 years	110
14-20 years	22
21-35 years	149
36-49 years	197
50-64 years	336
65+ years	404

Based on the data submitted for claims reported to have been closed in 2018, 702 incidents of alleged health care liability involved females and 559 incidents involved males. On 12 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 2018

Severity of Injury	Number of Claims	Number of Claims Paid During 2018	Number of Claims Not Paid
Death	372	111	261
Major Temporary	215	60	155
Minor Temporary	204	51	153
Significant Permanent	87	15	72
Major Permanent	74	13	61
Minor Permanent	62	16	46
Emotional Injury Only	61	7	54
Insignificant Injury	60	16	44
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	42	14	28

Table 14 – Severity of Injury in Claims Closed and Amounts Paid in

[19] Fifty-five 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.

Damages During Reporting Year 2018[21]

Severity of Injury	Amount Paid in Damages in 2018
Death	$ 40,070,810
Major Temporary	$ 15,061,333
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	$ 10,108,740
Major Permanent	$ 7,729,794
Minor Permanent	$ 4,326,600
Minor Temporary	$ 4,055,568
Significant Permanent	$ 2,160,500
Emotional Injury Only	$ 2,067,084
Insignificant Injury	$ 190,858

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2018

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	$ 75,041,343
Major Temporary	$ 27,865,379
Grave Permanent, such as quadriplegic or brain damage, requiring lifelong dependent care	$ 13,668,740
Major Permanent	$ 7,729,794
Minor Temporary	$ 6,190,147
Significant Permanent	$ 5,085,500
Minor Permanent	$ 4,403,155
Emotional Injury Only	$ 2,080,763
Insignificant Injury	$ 200,858

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-four counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2018. Of the 1,808 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2018 is $86,677,762.

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

[21] In 2018, claimants were paid a total of $877,350 for claims in which the severity of the injury "could not be determined from available records."

During Reporting Year 2018[22]

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Davidson	524	28.98	$ 16,044,033
Shelby	365	20.19	$ 20,583,657
Knox	140	7.74	$ 4,924,100
Hamilton	104	5.75	$ 4,006,351
Madison	70	3.87	$ 2,639,150
Rutherford	49	2.71	$ 4,807,540
Cumberland	38	2.10	$ 1,947,750
Sumner	38	2.10	$ 910,000
Washington	32	1.77	$ 2,537,500
Williamson	32	1.77	$ 3,979,950
Sullivan	28	1.55	$ 415,070
Wilson	27	1.49	$ 1,639,046

Table 17 – Top Ten Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2018

County Name	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Shelby	$ 20,583,657	365	20.19
Davidson	$ 16,044,033	524	28.98
Knox	$ 4,924,100	140	7.74
Rutherford	$ 4,807,540	49	2.71
Hamilton	$ 4,006,351	104	5.75
Williamson	$ 3,979,950	32	1.77
Tipton	$ 3,765,135	12	0.66
Dyer	$ 2,787,875	24	1.33
Madison	$ 2,639,150	70	3.87
Washington	$ 2,537,500	32	1.77

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

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

Claims During Reporting Year 2018[23]

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Facility	744	41.15	$ 39,602,069
Medical Doctor	542	29.98	$ 19,681,211
Corporations - Staffing	319	17.64	$ 15,963,837
Nursing	68	3.76	$ 3,836,944
Dentist	43	2.38	$ 138,836
Osteopathic Physician	22	1.22	$ 4,662,500
Physician Assistant	16	0.88	$ 325,500
Nursing Home Administrator	10	0.55	$ 1,195,000
Pharmacy	8	0.44	$ 83,515
Podiatry	8	0.44	$ 400,000
Optometry	6	0.33	$ 0

Table 19 – Top Ten Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2018

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 39,602,069	744	41.15
Medical Doctor	$ 19,681,211	542	29.98
Corporations – Staffing	$ 15,963,837	319	17.64
Osteopathic Physician	$ 4,662,500	22	1.22
Nursing	$ 3,836,944	68	3.76
Nursing Home Administrator	$ 1,195,000	10	0.55
EMS	$ 529,100	4	0.22
Podiatry	$ 400,000	8	0.44
Physician Assistant	$ 325,500	16	0.88
Dentist	$ 138,836	43	2.38

Table 20 – Top Ten Provider Types Ranked by Damages Paid to

[23] "Unlicensed Personnel" was the chosen provider types for six 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 2018.

Claimants from Inception of Claims Through Reporting Year 2018

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 61,613,734	744	41.15
Medical Doctor	$ 40,465,499	542	29.98
Corporations – Staffing	$ 28,245,062	319	17.64
Osteopathic Physician	$ 5,212,500	22	1.22
Nursing	$ 4,512,610	68	3.76
Nursing Home Administrator	$ 2,006,549	10	0.55
Physician Assistant	$ 545,500	16	0.88
EMS	$ 529,100	4	0.22
Podiatry	$ 400,000	8	0.44
Dentist	$ 238,836	43	2.38

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 2018[24]

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Facility	744	41.15	$ 39,652,069
Doctors, Nurses, Etc.	319	17.64	$ 15,963,837
Anesthesiology	120	6.64	$ 7,225
Emergency Medicine	71	3.93	$ 2,608,300
Obstetrics & Gynecology	66	3.65	$ 3,860,205
Internal Medicine	64	3.54	$ 1,500,000
Family Medicine	45	2.49	$ 1,700,338
Orthopaedic Surgery	35	1.94	$ 1,467,200
Advanced Practice Registered Nurse	34	1.88	$ 1,635,312
Surgery	31	1.71	$ 2,166,325

Table 22 – Top Ten Provider Specialty Types Ranked by Amounts in Damages

[24] "Unknown" was the chosen provider specialty type for two 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 2018.

Paid to Claimants During Reporting Year 2018

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 39,652,069	744	41.15
Doctors, Nurses, Etc.	$ 15,963,837	319	17.64
Obstetrics & Gynecology	$ 3,860,205	66	3.65
Emergency Medicine	$ 2,608,300	71	3.93
Pediatric	$ 2,275,000	15	0.83
Surgery	$ 2,166,325	31	1.71
Interventional Radiology & Diagnostic Radiology	$ 2,150,000	10	0.55
Orthopedic Surgery	$ 1,975,000	2	0.11
Family Medicine	$ 1,700,338	45	2.49
Registered Nurse	$ 1,650,397	22	1.22

Table 23 – Top Ten Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2018

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Facility	$ 61,663,734	744	41.15
Doctors, Nurses, Etc.	$ 28,245,062	319	17.64
Neurological Surgery	$ 9,260,000	12	0.66
Obstetrics & Gynecology	$ 6,985,205	66	3.65
Emergency Medicine	$ 4,708,300	71	3.93
Anesthesiology	$ 4,007,225	120	6.64
Surgery	$ 3,216,325	31	1.71
Interventional Radiology & Diagnostic Radiology	$ 2,650,000	10	0.55
Family Medicine	$ 2,396,338	45	2.49
Pediatric	$ 2,275,000	15	0.83

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 2018[25]

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	980	54.20	$ 49,343,496
Ambulatory Surgical Treatment Center	333	18.42	$ 4,524,650
Office	158	8.74	$ 9,264,497
Nursing Home	115	6.36	$ 12,944,532
Clinic	68	3.76	$ 4,006,831
Prison_Penitentiary_Correctional Facility	25	1.38	$ 180,750
Assisted Care Living	17	0.94	$ 2,051,256
Outpatient Diagnostic Center	7	0.39	$ 1,000,000
Pharmacy Location	6	0.33	$ 89,678
Residence	6	0.33	$ 235,000
Birthing Center	5	0.28	$ 0

Table 25 – Top Ten Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2018

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	$ 49,343,496	980	54.20
Nursing Home	$ 12,944,532	115	6.36
Office	$ 9,264,497	158	8.74
Ambulatory Surgical Treatment Center	$ 4,524,650	333	18.42
Clinic	$ 4,006,831	68	3.76
Assisted Care Living	$ 2,051,256	17	0.94
Outpatient Diagnostic Center	$ 1,000,000	7	0.39
Home Health Agency	$ 800,000	3	0.17
Adult Care Home	$ 277,500	3	0.17
EMS Location	$ 275,000	2	0.11

Table 26 – Top Ten Facility Types Ranked by Damages Paid to

[25] "Unknown" and "other" were the chosen health care facility types for 63 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 2018.

Claimants from Inception of Claim Through Reporting Year 2018

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	$ 65,468,765	980	54.20
Clinic	$ 23,305,758	68	3.76
Ambulatory Surgical Treatment Center	$ 20,582,887	333	18.42
Nursing Home	$ 12,944,532	115	6.36
Office	$ 11,967,998	158	8.74
Birthing Center	$ 2,113,683	5	0.28
Outpatient Diagnostic Center	$ 1,000,000	7	0.39
Home Health Agency	$ 800,000	3	0.17
Renal Dialysis Clinic	$ 580,000	6	0.33
Adult Care Home	$ 299,049	3	0.17

VI. 2018 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2018 in Tennessee by insurance companies and risk retention groups was $129,030,067. This total was determined from their 2018 annual financial statements. These premiums were for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2018 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT[26]

[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.

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 2018. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2018.[29] Cases identified in the information submitted related to incidents occurring between 1999 and 2018. However, only two of the 3,223 cases reported (0.06 %) 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 2018 was 1,207. 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

	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	2017 Totals	2017 Percentages	**2018 Totals**	**2018 Percentages**
Cases Resolved Through Judgment	30	2.60	39	3.37	34	2.60	**20**	**1.65**
Cases Resolved Through Settlement	349	30.27	297	25.69	397	30.35	**373**	**30.91**
Cases Resolved Through ADR	136	11.80	109	9.43	132	10.10	**106**	**8.78**
Cases Not Taken[30]	291	25.23	460	39.80	471	36.01	**436**	**36.12**
Cases Otherwise Resolved	347	30.10	251	21.71	274	20.94	**272**	**22.54**

[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.

[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.

Total Number of Cases Closed	**1,153**	**100.00**	**1,156**	**100.00**	**1,308**	**100.00**	**1,207**	**100.00**

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsels for Claimants in 2018

	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages	**2017 Totals**	**2017 Percentages**	**2018 Totals**	**2018 Percentages**
Paid Closed Cases	490	42.50	411	35.55	**539**	**41.21**	**495**	**41.01**
Unpaid Closed Cases	663	57.50	745	64.45	**769**	**58.79**	**712**	**58.99**
Total Closed Cases	**1,153**	**100.00**	**1,156**	**100.00**	**1,308**	**100.00**	**1,207**	**100.00**

B. Pending Cases

Pending cases are cases that were opened in 2018 or in prior years and were still unresolved as of December 31, 2018. It was reported by counsels for claimants that there were 2,016[31] cases pending as of December 31, 2018.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling $133,540,483 on cases closed in 2018 by way of judgments, settlements, and ADR methods in the 2018 reporting year.

There were 1,207 cases still pending as of December 31, 2018. $17,553,270 was paid on these cases in 2018.

Table 29 demonstrates the reported damages paid in 2018 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 2018 as reported by Counsels for Claimants

	2015 Totals	2015 %	2016 Totals	2016 %	2017 Totals	2017 %	**2018 Totals**	**2018 %**
Total Damages Paid by Settlements	$ 81,816,845	66.85	$ 59,915,921	54.15	$ 128,780,357	72.40	**$ 86,308,224**	**64.63**
Total Damages Paid by Judgments	$ 2,437,244	1.99	$ 1,993,323	1.80	$ 1,067,615	0.60	**$ 4,094,330**	**3.06**
Total Damages Paid by Mediation	$ 36,585,659	29.90	$ 48,287,874	43.64	$ 45,281,625	25.46	**$ 39,846,289**	**29.84**
Total Damages Paid by Other ADR Methods	$ 1,540,036	1.26	$ 115,000	0.11	$ 1,352,720	0.76	**$ 275,500**	**0.21**
Total Damages Paid by Prior Resolutions	$ 0	0.00	$ 335,000[32]	0.30	$ 1,394,079	0.78	**$ 2,963,565[33]**	**2.22**
Total Damages Paid Prior to Resolution and Attorney Withdrawal							**$ 52,575**	**0.04**
Total Damages Paid	**$ 122,379,784**	**100.00**	**$ 110,647,118**	**100.00**	**$ 177,876,396**	**100.00**	**$133,540,483**	**100.00**

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

[33] Resolutions were made in 2017 but no payments were received until 2018.

D. Judgments

In all, it was reported by counsels for claimants that there were three court judgments paid in 2018.[34] Table 30 details the three paid judgments and the fees paid to counsels for claimants in each case.

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2018[35]

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
$ 3,750,000	11/8/2005	$ 1,262,500
$ 335,205	9/4/2010	$ 115,068
$ 9,125	8/28/2012	$ 0.00

E. Fees Paid to Claimants' Counsel

There were 587 counsels for claimants who reported. Insuring entities identified another 71 counsels for claimants who failed to report in 2018. There were six counsels for claimants who reported pending cases in 2017 but failed to report in 2018.[36] 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.[37]

The attorneys, who submitted a report, reported having received fees in the amount of $46,390,832 in 2018. The fees that claimants' attorneys reported receiving in 2018 are approximately 43.0% 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 66.67% percent.

F. TennCare Payments

[34] One of these judgments was awarded to the plaintiff and appealed in 2017 with resolution paid in 2018.

[35] 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.

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

[37] 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.

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[38]
2015	399	2,096	582
2016	346	2,010	881
2017	350	1,968	968
2018	333	1,787	1,103

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2019 reporting obligations.

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

[38] 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 2018 are cases that were not taken by the counsels for claimants.