

2016 Health Care Liability Claims Report



**Department of Commerce & Insurance
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Table of Contents

2016 Health Care Liability Claims Report

INTRODUCTION.....2-3

I. REPORTING ENTITIES3

II. REPORTING PERIOD3

III. CLAIMS CLOSED AND PENDING.....3-5

 A. Claims Closed..... 3-5

 B. Claims Pending..... 5

IV. DAMAGES AND COSTS5-8

 A. Damages Asserted by Claimants..... 5

 B. Damages Paid to Claimants..... 6

 C. Judgments..... 6-7

 D. Total Defense Costs and Expenses Paid on Claims..... 7-8

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 20158-18

 A. Reason for Health Care Liability Claim..... 9-10

 B. Age and Sex of Claimant.....10-11

 C. Severity of Injury.....11-12

 D. Geographic Location..... 12-13

 E. Providers..... 13-16

 F. Facilities..... 16-18

VI. 2015 DIRECT PREMIUM WRITTEN.....18

VII. COUNSEL FOR CLAIMANT18-22

 A. Closed Cases..... 19-20

 B. Pending Cases..... 20

 C. Damages Paid to Claimants..... 20-21

 D. Judgments..... 21

 E. Fees Paid to Claimants' Counsel..... 22

 F. TennCare Payments..... 22

VIII. NEXT STEPS.....22

INTRODUCTION

In 2004, the Tennessee General Assembly enacted 2004 Tenn. Pub. Acts Ch. 902 which established reporting obligations for medical professional liability claims for various reporting entities. This law was codified at TENN. CODE ANN. § 56-54-101. Pursuant to TENN. CODE ANN. § 56-54-101(a), “reporting entities” was defined to include insurance companies and risk retention groups that provide medical malpractice or professional liability insurance, as well as health care professionals and facilities lacking medical malpractice insurance. This law was passed after months of testimony and research by the Joint Tort Reform Subcommittee chaired by State Representative Rob Briley and Senator David Fowler. The Final Report prepared by the Subcommittee recommended passage of legislation that would “provide the committee with a clearer picture of the litigation and claim trends in Tennessee....” The Department of Commerce and Insurance (the “Department”) provided testimony to the Subcommittee and actively participated in the development of legislation implementing the Subcommittee’s recommendations.

In general, TENN. CODE ANN. § 56-54-101 required reporting entities, on or before April 1 of each year, to provide information to the Department concerning the number of medical malpractice or professional liability claims asserted, the amount of damages alleged, any damages paid, the types of paid damages, and legal fees paid. The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.

TENN. CODE ANN. § 56-54-101 required the Department to prepare an annual report for the Speakers of the Senate and House of Representatives summarizing this data each year. The statute prescribed that the report may only contain aggregate data.

As a result of the information submitted by the reporting entities for the 2004 calendar year, the Department issued its first report in November of 2005. The report identified several issues necessitating additional information be reported, and the General Assembly modified the reporting requirements in the 2006 legislative session. On May 23, 2006, Tenn. Pub. Acts Ch. 744 was enacted which amended TENN. CODE ANN. § 56-54-101 to attempt to refine the information to be collected. In general, the amendment added a requirement that reporting entities report on the cumulative amount of costs and expenses spent on pending and closed claims from the “inception date of the claim to the end of the preceding calendar year,” 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 sets out largely the same reporting requirements, changes the due date for reporting entities to report on March 1 of each year, and adds, among other things, information to be collected in a manner consistent with the National Practitioner Data Bank. It defines a claim as, “A demand for monetary damages for injury or death caused by medical malpractice; or a voluntary indemnity payment for injury or death caused by medical malpractice.” Tenn. Pub. Acts Ch. 1009 also deleted the definition of “reporting entities” and imposed reporting requirements on specified insuring entities, self-insurers, facilities, and providers under TENN. CODE ANN. § 56-54-105.

In 2011, the Tennessee General Assembly enacted 2011 Tenn. Pub. Acts Ch. 112, effective January 1, 2012, which changed Tennessee Code Annotated Title 56 (Insurance), Chapter 54 (Reports on Medical or Professional Malpractice Claims) and required additional reporting from counsel for claimants. In addition to their fee arrangements, claimant’s counsel was required to report whether the health care provider named in the claim received payment from TennCare for the incident that is the subject of the claim. This includes all closed or open and pending claims on or after January 1, 2012.

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 2015, but also shows the information reported for 2012, 2013 and 2014 as a convenience to the reader.

I. REPORTING ENTITIES

The information provided by this report is primarily comprised of information obtained from insurance companies writing health care liability insurance in this state. It is important to note that the top ten (10) health care liability insurance carriers account for over 98.87 percent of the total health care liability direct premiums written in Tennessee in 2015. 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 this group is complete as the Department has no information concerning which facilities or professionals do, in fact, fall into such categories. As such, there may be claims and costs incurred in this state that are not included in this report.¹

II. REPORTING PERIOD

The period on which this report focuses is the 2015 calendar year. The Department required reporting entities to complete two (2) separate forms to meet their obligations under the law. One reporting form solicited information regarding all health care liability claims closed or otherwise resolved in 2015. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2015.² Claims identified in the information submitted related to incidents occurring between 1992 and 2015. However, only 22 of the 5,059 claims reported (0.43 percent) 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 2015 was 1,430. This total represents claims resolved through the entry of a final court judgment, settlement with the claimant, alternative dispute resolution (ADR) by mediation, ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, or otherwise resolved by the reporting entity.

¹ Until the Department has the ability to identify the uninsured health care facilities and providers, as well as compel risk retention groups to report their information, the Department will remain unable to confirm the completeness of the information contained in these reports.

² The Department made the forms available to reporting entities on its website for ease of access.

The following table demonstrates the comparative number of claims reported as closed in each of the four (4) categories:

Table 1 – Claims Closed through Settlement, Adjudication, Alternative Dispute Resolution (ADR) or Other Resolution

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages
Claims Resolved Through Judgment ³	96 ⁴	4.35	135 ⁵	6.47	41 ⁶	2.49	29 ⁷	2.03
Claims Resolved Through Settlement	336	15.24	306	14.68	300	18.24	254	17.77
Claims Resolved Through ADR ⁸	94	4.26	79	3.79	67	4.07	63	4.40
Claims Otherwise Resolved	1,679	76.15	1,565	75.06	1,237	75.20	1,084	75.80
Total Number of Claims Closed	2,205	100.00	2,085	100.00	1,645	100.00	1,430	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 Six (6) claims ended in judgments prior to 2000 and are not included in the 2012 figures. Three (3) of these judgments were rendered in 2011 and three (3) in 2010; however, payments were made in 2012.

⁵ This figure includes 40 judgments for the defendant awarded between 2008 and 2012 that were appealed with final resolution occurring in 2013 and no payments made.

⁶ This figure includes 20 judgments for the defendant awarded in 2013 that were appealed with final resolution occurring in 2014 and no payments made.

⁷ 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 (1) judgment for the plaintiff awarded in 2014 that was appealed with final resolution occurring in 2015; however, payment was made in 2014.

⁸ This figure includes three (3) claims which went to trial and yielded a judgment for the plaintiff; however, one (1) high/low agreement was paid as a settlement in 2012 and two (2) were paid as a settlement in 2013.

Table 2 – Paid and Unpaid Claims Closed in 2015

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages
Paid Closed Claims	436	19.72	388	18.61	385	23.40	334	23.36
Unpaid Closed Claims	1,775	80.28	1,697	81.39	1,260	76.60	1,096	76.64
Total Closed Claims	2,211	100.00	2,085	100.00	1,645	100.00	1,430	100.00

B. Claims Pending

Pending claims are claims filed in 2015 or in prior years which were still unresolved as of December 31, 2015. It was reported that there were 3,629 claims pending as of December 31, 2015.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants⁹

Claimants asserted a total of \$5,435,092,141¹⁰ (Five Billion, Four Hundred Thirty-five Million, Ninety-two Thousand, One Hundred Forty-one Dollars) in damages for health care liability related injuries for the claims reported as having been closed in the 2015 reporting year. In the 2015 reporting year, claimants were paid damages totaling \$75,280,505 (Seventy-five Million, Two Hundred Eighty Thousand, Five Hundred Five Dollars) by way of judgments, traditional settlements, and ADR methods. The total damages paid during 2015 represents 1.39 percent of the damages that were asserted.

Claimants who had their claims disposed of in 2015 (closed without further payment to be made) were paid a total of \$115,564,899 (One Hundred Fifteen Million, Five Hundred Sixty-four Thousand, Eight Hundred Ninety-nine Dollars) from the inception of their claims through December 31, 2015, or 2.13 percent of the damages that were asserted in those claims.

There were 3,629 claims filed but still pending (without final resolution) as of December 31, 2015. The damages asserted by those claimants total \$11,805,087,467 (Eleven Billion, Eight Hundred Five Million, Eighty-seven Thousand, Four Hundred Sixty-seven Dollars). Of those asserted damages, \$28,065,301 (Twenty-eight Million, Sixty-five Thousand, Three Hundred One Dollars) have been paid to date.

⁹ Where reporting entities left the asserted damages field blank, an assumption is made that the amount asserted is the amount that was paid.

¹⁰ This number includes all claims reported as closed during the 2015 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2015. Therefore, this number includes damages that were asserted in years prior to 2015.

B. Damages Paid to Claimants

Table Three (3) demonstrates the reported damages paid in 2015 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 2015

	2012 Totals	2012 %	2013 Totals	2013 %	2014 Totals	2014 %	2015 Totals	2015 %
Total Damages Paid by Settlements	\$ 52,650,012	58.16	\$ 45,880,103	57.44	\$ 61,600,280	59.07	\$ 54,963,230	73.01
Total Damages Paid by Judgments	\$ 15,754,959	17.41	\$ 2,348,519	2.94	\$ 2,250,000	2.16	\$ 2,437,244	3.24
Total Damages Paid by Mediation	\$ 21,909,408	24.20	\$ 31,651,807	39.62	\$ 38,827,399	37.23	\$ 16,524,270	21.95
Total Damages Paid by Other ADR Methods	\$ 206,000	0.23	\$ 0	0.00	\$ 1,608,828	1.54	\$ 1,355,761	1.80
Total Damages Paid	\$ 90,520,379	100.00	\$ 79,880,429	100.00	\$ 104,286,507	100.00	\$ 75,280,505	100.00

C. Judgments

In all, it was reported that there were 26 court judgments in 2015. It was reported that 15 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant. Four (4) judgments were entered in favor of the plaintiff in 2015. Seven (7) judgments were appealed with no final results in 2015. Table Four (4), on the following page, details the four (4) paid judgments and the types of damages awarded in each case.

Table 4 – Total Damages Awarded By Final Court Judgment Paid in 2015

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
\$ 150,000	11/3/2007	\$ 3,000,000	Unlicensed/Unlicensed/ Clinic	\$ 150,000	\$ 150,000	\$ 0	Major temporary
\$ 267,244	12/2/2011	\$ 300,000	Facility/Facility/Nursing Home	\$ 0	\$ 267,244	\$ 0	Death
\$ 1,500,000	4/12/2011	\$ 1,500,000	Dentist/Oral & Maxillofacial Surgery/Office	\$ 500,000	\$ 500,000	\$ 500,000	Significant Permanent
\$ 520,000	6/18/2007	\$ 1,500,000	Corporations Staffing/Doctors, Nurses, Etc./Office	\$ 0	\$ 520,000	\$ 0	Death

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2015 was \$72,062,345 (Seventy-two Million, Sixty-two Thousand, Three Hundred Forty-five Dollars).¹¹ The total amount reported to have been paid to defense counsel in 2015 was \$64,586,477 (Sixty-four Million, Five Hundred Eighty-six Thousand, Four Hundred Seventy-seven Dollars). The following tables detail the defense costs paid in 2015 on closed and pending claims.

Table 5 – Total Amounts Paid in Defense Costs in 2015

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 45,830,753	\$ 1,917,418	\$ 104,927	\$ 470,139	\$ 2,022,631
Closed Claims	\$ 18,755,724	\$ 1,131,328	\$ 91,602	\$ 111,025	\$ 1,626,798
Total	\$ 64,586,477	\$ 3,048,746	\$ 196,529	\$ 581,164	\$ 3,649,429

¹¹ For purposes of comparison, the approximate total defense fees reported as being paid in 2012, 2013 and 2014 was \$74.2 (Seventy-four Million, Two Hundred Thousand Dollars), \$68.5 (Sixty-eight Million, Five Hundred Thousand Dollars), \$85.0 (Eighty-five Million Dollars), and, \$72.0 (Seventy-two Million), respectively.

**Table 6 – Total Amounts Paid in Defense Costs During the 2015 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	412	\$ 49,828,764	\$ 2,082,686	\$ 112,910	\$ 460,461	\$ 2,713,841
Unpaid Claims	4,647	\$ 14,757,713	\$ 966,060	\$ 83,619	\$ 120,703	\$ 935,588
Total	5,059	\$ 64,586,477	\$ 3,048,746	\$ 196,529	\$ 581,164	\$ 3,649,429

The total defense costs paid on closed and pending claims as of December 31, 2015, since the inception of such claims, was \$272,857,433 (Two Hundred Seventy-two Million, Eight Hundred Fifty-seven Thousand, Four Hundred Thirty-three Dollars). The following table details these defense costs:

**Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through
End of 2015 Reporting Year**

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 112,801,762	\$ 7,370,969	\$ 342,977	\$ 1,564,502	\$ 5,244,150
Closed Claims	\$ 129,033,912	\$ 8,148,088	\$ 347,350	\$ 1,732,326	\$ 6,271,397
Total	\$ 241,835,674	\$ 15,519,057	\$ 690,327	\$ 3,296,828	\$ 11,515,547

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2015¹²

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 2015.¹³

¹² 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.

¹³ The data included here about the age and severity of injury is specific to the claimant and, therefore, does not include data on companion claims to the extent that they can be identified. The data included here about the facilities, providers, and the reasons for the health care liability claims is derived from all of the claim reports including those about companion claims.

A. Reason for Health Care Liability Claim

TENN. CODE ANN. § 56-54-106(12) requires insuring entities, self-insurers, facilities and providers to report the reason for the health care liability claim using the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank. The following tables show the top ten (10) types of health care liability and the top ten (10) types of injury which led to payments to claimants during the reporting year 2015 and the amount paid to such claimants from the inception of the claim:

**Table 8 - Top Ten (10) Types of Health Care Liability During Reporting Year 2015
Ranked by Frequency¹⁴**

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	351	\$ 18,505,341
Diagnosis Related	267	\$ 24,387,524
Surgery Related	256	\$ 18,167,854
Monitoring Related	175	\$ 14,977,667
Medication Related	99	\$ 4,511,112
Obstetrics Related	75	\$ 30,415,833
Anesthesia Related	25	\$ 1,117,727
Behavioral Health Related	16	\$ 802,400
IV & Blood Products Related	10	\$ 250,543
Equipment/Product Related	7	\$ 542,500
Totals	1,281	\$ 113,678,501

**Table 9 - Top Ten (10) Types of Health Care Liability During Reporting Year 2015
Ranked by Amount in Damages Paid to Claimant**

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Obstetrics Related	\$ 30,415,833	75
Diagnosis Related	\$ 24,387,524	267
Treatment Related	\$ 18,505,341	351
Surgery Related	\$ 18,167,854	256
Monitoring Related	\$ 14,977,667	175
Medication Related	\$ 4,511,112	99
Anesthesia Related	\$ 1,117,727	25
Behavioral Health Related	\$ 802,400	16
Equipment/Product Related	\$ 542,500	7
IV & Blood Products Related	\$ 250,543	10
Totals	\$ 113,678,501	1,281

¹⁴ Tables Eight (8) and Nine (9) represent the top ten (10) classifications of types of health care liability in paid, closed claims during 2015. Eighty claims were classified by reporting entities as “other/miscellaneous” and 69 claims as “unknown”.

**Table 10 - Top Ten (10) Causes of Injury During Reporting Year 2015
Ranked by Frequency¹⁵**

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Failure to Monitor	161	\$ 13,125,627
Improper Performance	130	\$ 8,603,516
Failure to Diagnose	130	\$ 13,333,838
Improper Management	88	\$ 8,653,858
Failure to Treat	71	\$ 3,787,309
Surgical or Other Foreign Body Retained	40	\$ 1,908,154
Delay in Treatment	37	\$ 3,004,014
Delay in Diagnosis	37	\$ 5,940,000
Failure to Ensure Patient Safety	34	\$ 1,833,866
Failure to Recognize a Complication	33	\$ 1,988,883
Improper Technique	28	\$ 1,751,582
Radiology or Imaging Error	26	\$ 2,750,254
Totals	815	\$ 66,680,901

**Table 11 - Top Ten (10) Causes of Injury During Reporting Year 2015
Ranked by Amount in Damages Paid to Claimant**

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Diagnose	\$ 13,333,838	130
Failure to Monitor	\$ 13,125,627	161
Improper Management	\$ 8,653,858	88
Improper Performance	\$ 8,603,516	130
Delay in Diagnosis	\$ 5,940,000	37
Failure to Treat Fetal Distress	\$ 5,000,000	4
Failure to Treat	\$ 3,787,309	71
Delay in Treatment	\$ 3,004,014	37
Radiology or Imaging Error	\$ 2,750,254	26
Failure to Recognize a Complication	\$ 1,988,883	33
Totals	\$ 66,187,299	717

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 2015 in each claimant age group¹⁶:

¹⁵ Tables 10 and 11 represent the top ten (10) classifications of causes of injury in paid, closed claims during 2015. Two Hundred Fifty-three claims were classified by reporting entities as “cannot be determined from available record,” “allegation – not otherwise classified,” or “unknown.”

¹⁶ This table represents all non-companion claims closed in 2015, 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 2015 Broken Down by Age of Claimant¹⁷

Age Range	Number of Claimants
0-13 years	124
14-20 years	30
21-35 years	116
36-49 years	198
50-64 years	259
65+ years	331

Based on the data submitted for claims reported to have been closed in 2015, 616 incidents of alleged health care liability involved females and 474 incidents involved males. On 20 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 severity¹⁸:

Table 13 – Severity of Injury in Claims Closed During Reporting Year 2015

Severity of Injury	Number of Claims	Number of Claims Paid During 2015	Number of Claims Not Paid
Death	282	75	207
Major Temporary	217	62	155
Minor Temporary	183	56	127
Significant Permanent	75	17	58
Minor Permanent	64	22	42
Emotional Injury Only	42	4	38
Major Permanent	41	13	28
Insignificant	39	13	26
Quadriplegic, Brain Damage, Lifelong Care	33	16	17

¹⁷ Fifty-two claimants’ ages were reported as “unknown”.

¹⁸ The table referenced in this paragraph does not include companion claims, where those can be identified. The table detailing severity of injury is specific to the claimant; and, therefore, the numbers represented are based on the number of injured claimants and not the number of providers that injuries were alleged against.

Table 14 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2015¹⁹

Severity of Injury	Amount Paid in Damages in 2015
Death	\$ 31,949,696
Quadriplegic, Brain Damage, Lifelong Care	\$ 11,677,499
Major Temporary	\$ 9,434,437
Significant Permanent	\$ 6,485,853
Major Permanent	\$ 4,743,623
Minor Permanent	\$ 2,823,684
Minor Temporary	\$ 2,496,523
Insignificant	\$ 462,686
Emotional Injury Only	\$ 252,500

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2015

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	\$ 42,898,317
Quadriplegic, Brain Damage, Lifelong Care	\$ 31,142,499
Significant Permanent	\$ 12,318,110
Major Temporary	\$ 12,203,721
Major Permanent	\$ 4,979,123
Minor Permanent	\$ 3,384,184
Minor Temporary	\$ 3,154,711
Insignificant	\$ 465,086
Emotional Injury Only	\$ 252,644

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-two counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2015. Of the 1,430 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2015 is \$75,280,505 (Seventy-five Million, Two Hundred Eighty Thousand, Five Hundred Five Dollars).

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

¹⁹ In 2015, claimants were paid a total of \$2,259,004 (Two Million, Two Hundred Fifty-nine Thousand, Four Dollars) and \$1,695,000 (One Million, Six Hundred Ninety-five Thousand Dollars) for claims in which the severity of the injury was “unknown” or where it “could not be determined from available records,” respectively.

**Table 16 – Top Ten (10) Counties Ranked by Number of Claims
During Reporting Year 2015²⁰**

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	378	26.43	\$ 17,919,655
Davidson	176	12.31	\$ 6,782,331
Hamilton	129	9.02	\$ 5,619,520
Knox	101	7.06	\$ 13,869,495
Sullivan	58	4.06	\$ 3,342,500
Sumner	48	3.36	\$ 380,007
Washington	41	2.87	\$ 1,809,461
Madison	39	2.73	\$ 1,284,304
McMinn	27	1.89	\$ 1,723,650
Maury	24	1.68	\$ 1,233,386

**Table 17 – Top Ten (10) Counties Ranked by Amount in Damages Paid to
Claimants During Reporting Year 2015**

County Name	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Shelby	\$ 17,919,655	378	26.43
Knox	\$ 13,869,495	101	7.06
Davidson	\$ 6,782,331	176	12.31
Hamilton	\$ 5,619,520	129	9.02
Sullivan	\$ 3,342,500	58	4.06
Montgomery	\$ 2,725,334	14	0.98
Coffee	\$ 2,050,000	11	0.77
Washington	\$ 1,809,461	41	2.87
McMinn	\$ 1,723,650	27	1.89
Hamblen	\$ 1,697,286	20	1.40

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 (10) provider types with the highest number of health care liability claims:

²⁰ Tables 16 and 17 include data reported on companion claims.

Table 18 – Top Ten (10) Provider Types Ranked by Frequency of Claims During Reporting Year 2015²¹

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Medical Doctor	425	29.72	\$ 25,640,282
Corporation – Staffing	178	12.45	\$ 9,917,195
Nurse	71	4.97	\$ 4,064,856
Dentist	33	2.31	\$ 1,886,252
Physician Assistant	17	1.19	\$ 675,000
Osteopathic Physician	16	1.12	\$ 342,500
Physical Therapy	11	0.77	\$ 220,060
Pharmacy	10	0.70	\$ 266,881
Unlicensed Personnel	9	0.63	\$ 150,000
Nursing Home Administrator	7	0.49	\$ 184,566
EMS	7	0.49	\$ 89,596

Table 19 – Top Ten (10) Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2015

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$ 25,640,282	425	29.72
Corporation – Staffing	\$ 9,917,195	178	12.45
Nurse	\$ 4,064,856	71	4.97
Dentist	\$ 1,886,252	33	2.31
Physician Assistant	\$ 675,000	17	1.19
Podiatry	\$ 550,000	6	0.42
Osteopathic Physician	\$ 342,500	16	1.12
Pharmacy	\$ 266,881	10	0.70
Physical Therapy	\$ 220,060	11	0.77
Nursing Home Administrator	\$ 184,566	7	0.49

²¹ “Unknown” was the chosen provider types for five (5) 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 2015.

Table 20 – Top Ten (10) Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2015

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$ 35,981,472	425	29.72
Corporation – Staffing	\$ 26,742,163	178	12.45
Nurse	\$ 4,756,445	71	4.97
Dentist	\$ 1,866,365	33	2.31
Physician Assistant	\$ 825,000	17	1.19
Podiatry	\$ 550,000	6	0.42
Osteopathic Physician	\$ 417,000	16	1.12
Nursing Home Administrator	\$ 283,066	7	0.49
Pharmacy	\$ 266,881	10	0.70
Physical Therapy	\$ 220,060	11	0.77

The following tables show statistics for the ten (10) provider specialty types with the highest alleged incidence of health care liability:

Table 21 – Top Ten (10) Provider Specialty Types Ranked by Frequency of Claims During Reporting Year 2015²²

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Doctors, Nurses, Etc.	178	12.45	\$ 9,917,195
Emergency Medicine	62	4.34	\$ 2,575,000
Internal Medicine	55	3.85	\$ 3,845,775
Obstetrics & Gynecology	47	3.29	\$ 6,883,333
Family Practice	44	3.08	\$ 1,301,994
Registered Nurse	31	2.17	\$ 2,030,856
Advanced Practice Nurse	30	2.10	\$ 1,982,500
General Surgery	30	2.10	\$ 3,896,963
Orthopedic Surgery	24	1.68	\$ 1,234,750
Dental Public Health	23	1.61	\$ 351,252
Radiology	19	1.33	\$ 360,902

²² “Unknown” was the chosen provider specialty type for 61 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 2015.

Table 22 – Top Ten (10) Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2015

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Doctors, Nurses, Etc.	\$ 9,917,195	178	12.45
Obstetrics & Gynecology	\$ 6,883,333	47	3.29
General Surgery	\$ 3,896,963	30	2.10
Internal Medicine	\$ 3,845,775	55	3.85
Emergency Medicine	\$ 2,575,000	62	4.34
Registered Nurse	\$ 2,030,856	31	2.17
Advanced Practice Nurse	\$ 1,982,500	30	2.10
Oral & Maxillofacial Surgery	\$ 1,535,000	7	0.49
Family Practice	\$ 1,301,994	44	3.08
Orthopedic Surgery	\$ 1,234,750	24	1.68

Table 23 – Top Ten (10) Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2015

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Doctors, Nurses, Etc.	\$ 26,742,163	178	12.45
Obstetrics & Gynecology	\$ 12,185,333	47	3.29
General Surgery	\$ 5,171,963	30	2.10
Internal Medicine	\$ 3,943,275	55	3.85
Emergency Medicine	\$ 2,770,000	62	4.34
Registered Nurse	\$ 2,042,270	31	2.17
Orthopedic Surgery	\$ 1,834,750	24	1.68
Cardiovascular Diseases	\$ 1,788,691	15	1.05
Oral & Maxillofacial Surgery	\$ 1,535,000	7	0.49
Family Practice	\$ 1,376,993	44	3.08

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 (10) health care facility types with the highest alleged incidence of health care liability.

Table 24 – Top Ten (10) Facility Types Ranked by Frequency of Claims During Reporting Year 2015²³

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	972	67.97	\$ 55,048,854
Office	133	9.30	\$ 7,506,501
Nursing Home	111	7.76	\$ 6,392,280
Prison-Penitentiary-Correctional	52	3.64	\$ 15,175
Clinic	50	3.50	\$ 3,110,888
Ambulatory Surgical Treatment Center	19	1.33	\$ 371,711
Surgical Facility	16	1.12	\$ 824,999
Home Health Agency	11	0.77	\$ 292,000
Pharmacy	8	0.56	\$ 254,681
EMS Vehicle	5	0.35	\$ 89,596

Table 25 – Top Ten (10) Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2015

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 55,048,854	972	67.97
Office	\$ 7,506,501	133	9.30
Nursing Home	\$ 6,392,280	111	7.76
Clinic	\$ 3,110,888	50	3.50
Surgical Facility	\$ 824,999	16	1.12
Assisted Care Living	\$ 500,000	4	0.28
Ambulatory Surgical Treatment Center	\$ 371,711	19	1.33
Diagnostic Center	\$ 325,254	4	0.28
Home Health Agency	\$ 292,000	11	0.77
Pharmacy	\$ 254,681	8	0.56

²³ “Unknown” and “other” were the chosen health care facility types for 22 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 2015.

Table 26 – Top Ten (10) Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2015

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 85,735,780	972	67.97
Office	\$ 10,186,413	133	9.30
Nursing Home	\$ 9,306,976	111	7.76
Clinic	\$ 3,110,888	50	3.50
Surgical Facility	\$ 1,874,999	16	1.12
Prison-Penitentiary-Correctional	\$ 1,145,784	52	3.64
Ambulatory Surgical Treatment Center	\$ 971,711	19	1.33
Home Health Agency	\$ 669,751	11	0.77
Assisted Care Living	\$ 598,500	4	0.28
Diagnostic Center	\$ 325,254	4	0.28

VI. 2015 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2015 in Tennessee by insurance companies and risk retention groups was \$133,388,984 (One Hundred Thirty-three Million, Three Hundred Eighty-eight Thousand, Nine Hundred Eighty-four Dollars). This total was determined from their 2015 annual financial statements. These premiums were for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2015 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT²⁴

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 open²⁵ and pending cases.²⁶ The Department required counsel for claimants to complete two (2) separate forms to meet their obligations under the law. One reporting form solicited information regarding all health care liability cases closed or otherwise resolved in 2015. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2015.²⁷ Cases identified in the information submitted related to incidents occurring between 1994 and 2015. However, only 10

²⁴ The figures in the counsel for claimant section are calculated from “cases” rather than claims. Companion claims are identified as separate defendants for the same incident, therefore, separate claims by the insuring entities (facilities and providers); are considered as one (1) case by the counsel for claimant.

²⁵ “Open” case is not defined in the statute; and, therefore, may have been interpreted and/or applied more than one (1) way by different counsel of claimants.

²⁶ Until the Department has the ability to identify all counsels for claimants who work with health care liability cases, the completeness of the information contained in these reports is unknown.

²⁷ The Department made the forms available to counsel for claimants on its website for ease of access.

of the 3,077 cases reported (0.32 percent) 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 2015 was 1,153. This total represents cases resolved through the entry of a final court judgment, settlement with the claimant, alternative dispute resolution (ADR) by mediation, ADR by arbitration, private trial and other common dispute resolution methods, dismissed without action, 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 (5) categories:

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

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages
Cases Resolved Through Judgment	10	1.98	38	4.11	49	4.41	30	2.60
Cases Resolved Through Settlement	249	49.40	339	36.69	337	30.30	349	30.27
Cases Resolved Through ADR	148	29.37	123	13.31	101	9.08	136	11.80
Cases Not Taken ²⁸	0	0.00	318	34.42	301	27.07	291	25.23
Cases Otherwise Resolved	97	19.25	106	11.47	324	29.14	347	30.10
Total Number of Cases Closed	504	100.00	924	100.00	1,112	100.00	1,153	100.00

²⁸ “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. This data was not collected in 2012.

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsels for Claimants in 2015

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages
Paid Closed Cases	407	80.75	467	50.54	462	41.55	490	42.50
Unpaid Closed Cases	97	19.25	457	49.46	650	58.45	663	57.50
Total Closed Cases	504	100.00	924	100.00	1,112	100.00	1,153	100.00

B. Pending Cases

Pending cases are cases which were opened in 2015 or in prior years and were still unresolved as of December 31, 2015. It was reported by counsels for claimants that there were 1,924²⁹ cases pending as of December 31, 2015.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling \$122,379,784 (One Hundred Twenty-two Million, Three Hundred Seventy-nine Thousand, Seven Hundred Eighty-four Dollars) on cases closed in 2015 by way of judgments, settlements, and ADR methods in the 2015 reporting year.

There were 1,924 cases still pending (without final resolution) as of December 31, 2015. \$17,564,711 (Seventeen Million, Five Hundred Sixty-four Thousand, Seven Hundred Eleven Dollars) was paid on these cases in 2015.

Table 29 demonstrates the reported damages paid in 2015 on cases closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

²⁹ 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 2015 as reported by Counsels for Claimants

	2012 Totals	2012 %	2013 Totals	2013 %	2014 Totals	2014 %	2015 Totals	2015 %
Total Damages Paid by Settlements ³⁰	\$ 61,122,922	42.94	\$ 88,968,254	60.59	\$ 118,058,809	60.69	\$ 81,816,845	66.85
Total Damages Paid by Judgments	\$ 23,260,201	16.34	\$ 4,136,028	2.82	\$ 12,906,396	6.64	\$ 2,437,244	1.99
Total Damages Paid by Mediation	\$ 57,584,195	40.45	\$ 53,722,946	36.59	\$ 60,184,494	30.94	\$ 36,585,659	29.90
Total Damages Paid by Other ADR Methods	\$ 380,000	0.27	\$ 0	0.00	\$ 3,369,753	1.73	\$ 1,540,036	1.26
Total Damages Paid	\$ 142,347,318	100.00	\$ 146,827,228	100.00	\$ 194,519,452	100.00	\$ 122,379,784	100.00

D. Judgments

In all, it was reported by counsels for claimants that there were four (4) court judgments paid in 2015. The following table details four (4) paid judgments and the fees paid to counsels for claimants in each case:

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2015

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
\$ 520,000	7/18/2007	\$ 242,666
\$ 260,723	11/22/2011	\$ 86,908
\$ 150,000	11/3/2008	\$ 43,783
\$ 1,500,000	3/2/2011	\$ 350,000

³⁰ In 2013 one counsel for claimant reported a payment of \$5,156 (Five Thousand One Hundred Fifty-six Dollars) although the resolution occurred in a prior year; therefore, the payment was not entered in Table 29.

E. Fees Paid to Claimants' Counsel

There were 708 counsels for claimants who reported. Insuring entities identified another 100 counsels for claimants who failed to report in 2015. The Department is unable to confirm that the information from this group is complete as it has no information concerning which attorneys do, in fact, fall into this category. As such, there may be cases and fees incurred in this state that are not included in this report.³¹

The attorneys who submitted a report, reported having received fees in the amount of \$41,140,977 (Forty-one Million, One Hundred Forty Thousand, Nine Hundred Seventy-seven Dollars) in 2015. The fees that claimants' attorneys reported receiving in 2015 are approximately 42.37 percent 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 zero (0) percent to 70.00 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, below, identifies the number of cases in which TennCare payments were made to the providers:

Table 31 – TennCare Payments Made to Providers

	Yes	No	Unknown ³²
2012	233	1,304	0 ³³
2013	292	1,701	623
2014	398	1,944	443
2015	399	2,096	582

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2016 reporting obligations.

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

³¹ Counsels for claimants are identified on the reports submitted by facilities and providers asserting health care liability claims. Until the Department has the ability to identify all counsels for claimants, the completeness of the information contained in these reports is unknown.

³² 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 2015 are cases that were not taken by the counsels for claimants.

³³ The first year counsels for claimants were to report on TennCare payments and open cases was 2012. The choice of "unknown" was not available. The majority of attorneys did not report open and pending cases.