

2017 Health Care Liability Claims Report



**Department of Commerce & Insurance
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Table of Contents

2017 Health Care Liability Claims Report

INTRODUCTION..... 2-3

I. REPORTING ENTITIES..... 3

II. REPORTING PERIOD..... 3

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

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

 B. Claims Pending..... 5

IV. DAMAGES AND COSTS 5-8

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

 B. Damages Paid to Claimants..... 5

 C. Judgments..... 6-7

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

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2016..... 8-18

 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. 2016 DIRECT PREMIUM WRITTEN.....18

VII. COUNSEL FOR CLAIMANT 18-23

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

 B. Pending Cases..... 20

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

 D. Judgments..... 21-22

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

 F. TennCare Payments..... 22-23

VIII. NEXT STEPS23

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 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. 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 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 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 2016, but also shows the information reported for 2013, 2014 and 2015 as a convenience to the reader.

I. REPORTING ENTITIES

The information provided by this report is primarily comprised of information obtained from insurance companies writing health care liability insurance in this state. It is important to note that the top ten health care liability insurance carriers account for over 95.83 percent of the total health care liability direct premiums written in Tennessee in 2016. 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 2016 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 2016. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2016.² Claims identified in the information submitted related to incidents occurring between 1996 and 2016. However, only 15 of the 5,100 claims reported (0.29 %) 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 2016 was 1,605. 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.

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

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 – Claims Closed through Settlement, ADR or Other Resolution

	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages
Claims Resolved Through Judgment ³	135 ⁴	6.47	41 ⁵	2.49	29 ⁶	2.03	42 ⁷	2.61
Claims Resolved Through Settlement	306	14.68	300	18.24	254	17.77	223 ⁸	13.89
Claims Resolved Through ADR	79 ⁹	3.79	67	4.07	63	4.40	69	4.30
Claims Otherwise Resolved	1,565	75.06	1,237	75.20	1,084	75.80	1,271	79.20
Total Number of Claims Closed	2,085	100.00	1,645	100.00	1,430	100.00	1,605	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 40 judgments for the defendant awarded between 2008 and 2012 that were appealed with final resolution occurring in 2013 and no payments made.

⁵ This figure includes 20 judgments for the defendant awarded in 2013 that were appealed with final resolution occurring in 2014 and no payments made.

⁶ 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.

⁷ 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.

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 two claims which went to trial and yielded a judgment for the plaintiff; however, due to a high/low agreement, it was paid as mediation in 2013.

Table 2 – Paid and Unpaid Claims Closed in 2016

	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages
Paid Closed Claims	388	18.61	385	23.40	334	23.36	304	18.94
Unpaid Closed Claims	1,697	81.39	1,260	76.60	1,096	76.64	1,301	81.06
Total Closed Claims	2,085	100.00	1,645	100.00	1,430	100.00	1,605	100.00

B. Claims Pending

Pending claims are claims filed in 2016 or in prior years which were still unresolved as of December 31, 2016. It was reported that there were 3,495 claims pending as of December 31, 2016.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants¹⁰

Claimants asserted a total of \$3,386,968,735¹¹ in damages for health care liability related injuries for the claims reported as having been closed in the 2016 reporting year. In the 2016 reporting year, claimants were paid damages totaling \$66,223,568 by way of judgments, traditional settlements, ADR methods, and those otherwise resolved. The total damages paid during 2016 represents 1.95 % of the damages that were asserted.

Claimants who had their claims disposed of in 2016 (closed without further payment to be made) were paid a total of \$87,913,687 from the inception of their claims through December 31, 2016, or 2.59 % of the damages that were asserted in those claims.

There were 3,495 claims filed but still pending (without final resolution) as of December 31, 2016. The damages asserted by those claimants total \$11,226,977,579. Of those asserted damages, \$28,883,895 have been paid to date.

B. Damages Paid to Claimants

Table 3 demonstrates the reported damages paid in 2016 on claims closed that year broken down by payments made as a result of adjudication, settlement, or ADR.

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

¹¹ This number includes all claims reported as closed during the 2016 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2016. Therefore, this number includes damages that were asserted in years prior to 2016.

Table 3 – Amounts Paid In Damages for Claims Settled, Adjudicated, Mediated or Resolved by Other ADR Methods and Closed During Reporting Year 2016

	2013 Totals	2013 %	2014 Totals	2014 %	2015 Totals	2015 %	2016 Totals	2016 %
Total Damages Paid by Settlements	\$ 45,880,103	57.44	\$ 61,600,280	59.07	\$ 54,963,230	73.01	\$ 37,221,367	56.21
Total Damages Paid by Judgments	\$ 2,348,519	2.94	\$ 2,250,000	2.16	\$ 2,437,244	3.24	\$ 2,800,673	4.23
Total Damages Paid by Mediation	\$ 31,651,807	39.62	\$ 38,827,399	37.23	\$ 16,524,270	21.95	\$ 25,942,089	39.17
Total Damages Paid by Other ADR Methods	\$ 0	0.00	\$ 1,608,828	1.54	\$ 1,355,761	1.80	\$ 259,439	0.39
Total Damages Paid	\$ 79,880,429	100.00	\$ 104,286,507	100.00	\$ 75,280,505	100.00	\$ 66,223,568	100.00

C. Judgments

In all, it was reported that there were 42 court judgments in 2016. It was reported that 38 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant; however, one judgment was appealed with no final results in 2016. Five judgments were entered in favor of the plaintiff in 2016. One of the five judgments was paid as a settlement due to a high/low resolution agreement before trial. One judgment paid in 2016 was awarded in 2015. 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 2016

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
\$ 986,067	9/23/2014	\$ 3,250,000	Medical Doctor/Surgery/Hospital	\$ 236,067	\$ 750,000	\$ 0	Major permanent
\$ 406,250	4/1/2006	\$ 2,250,000	Osteopathic Physician/Family Medicine OMT/Office	\$ 195,000	\$ 211,250	\$ 0	Minor temporary
\$ 100,000	6/01/2009	\$ 500,000	Medical Doctor/Orthopaedic Surgery/Hospital	\$ 0	\$ 100,000	\$ 0	Minor temporary
\$ 250,000	8/11/2011	\$ 1,850,000	Corporations Staffing/Doctors, Nurses, Etc./Ambulatory Surgical Treatment Center	\$ 0	\$ 250,000	\$ 0	Minor permanent
\$ 250,000	8/11/2011	\$ 1,850,000	Medical Doctor/Orthopaedic Surgery/Ambulatory Surgical Treatment Center	\$ 0	\$ 250,000	\$ 0	Minor permanent

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2016 was \$80,822,468.¹² The total amount reported to have been paid to defense counsel in 2016 was \$74,547,489. The following tables detail the defense costs paid in 2016 on closed and pending claims.

Table 5 – Total Amounts Paid in Defense Costs in 2016

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 57,268,973	\$ 2,362,568	\$ 45,811	\$ 459,700	\$ 1,576,827
Closed Claims	\$ 17,278,516	\$ 705,002	\$ 23,804	\$ 167,530	\$ 933,737
Total	\$ 74,547,489	\$ 3,067,570	\$ 69,615	\$ 627,230	\$ 2,510,564

¹² For purposes of comparison, the approximate total defense fees reported as being paid in 2013, 2014 and 2015 was \$68.5M, \$85.0M, and, \$72.0M, respectively.

**Table 6 – Total Amounts Paid in Defense Costs During the 2016 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	359	\$ 12,264,176	\$ 547,354	\$ 22,485	\$ 153,533	\$ 500,399
Unpaid Claims	4,741	\$ 62,283,313	\$ 2,520,216	\$ 47,130	\$ 473,697	\$ 2,010,165
Total	5,100	\$ 74,547,489	\$ 3,067,570	\$ 69,615	\$ 627,230	\$ 2,510,564

The total defense costs paid on closed and pending claims as of December 31, 2016, since the inception of such claims, was \$208,743,838. The following table details these defense costs:

**Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through
End of 2016 Reporting Year**

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 133,380,788	\$ 7,549,799	\$ 171,176	\$ 1,513,010	\$ 5,349,079
Closed Claims	\$ 53,082,374	\$ 3,423,691	\$ 90,835	\$ 852,060	\$ 3,331,026
Total	\$ 186,463,162	\$ 10,973,490	\$ 262,011	\$ 2,365,070	\$ 8,680,105

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2016¹³

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 2016.¹⁴

¹³ The report is formatted to collect data from the insurers of the providers and facilities in a health care liability claim. For that reason, several companion claims in the reported data will together represent a single health care liability related injury for a single claimant, but are reported as several claims filed against multiple providers and facilities. It is important to remember this when considering claims characteristics. These tables do not reflect the number of injuries, but the number of providers and facilities accused of causing that particular type of injury.

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

A. Reason for Health Care Liability Claim

TENN. CODE ANN. § 56-54-106(12) requires insuring entities, self-insurers, facilities and providers to report the reason for the health care liability claim using the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank. The following tables show the top ten types of health care liability and the top ten types of injury which led to payments to claimants during the reporting year 2016 and the amount paid to such claimants from the inception of the claim:

**Table 8 - Top Ten Types of Health Care Liability During Reporting Year 2016
Ranked by Frequency¹⁵**

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Treatment Related	504	\$ 14,185,893
Surgery Related	287	\$ 19,451,658
Diagnosis Related	264	\$ 21,801,331
Monitoring Related	178	\$ 20,023,606
Medication Related	86	\$ 2,135,579
Obstetrics Related	83	\$ 5,993,620
Anesthesia Related	28	\$ 939,000
Behavioral Health Related	14	\$ 0
IV & Blood Products Related	14	\$ 865,000
Equipment/Product Related	13	\$ 1,057,592
Totals	1,471	\$ 86,453,279

**Table 9 - Top Ten Types of Health Care Liability During Reporting Year 2016
Ranked by Amount in Damages Paid to Claimant**

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Diagnosis Related	\$ 21,801,331	264
Monitoring Related	\$ 20,023,606	178
Surgery Related	\$ 19,451,658	287
Treatment Related	\$ 14,185,893	504
Obstetrics Related	\$ 5,993,620	83
Medication Related	\$ 2,135,579	86
Equipment/Product Related	\$ 1,057,592	13
Anesthesia Related	\$ 939,000	28
IV & Blood Products Related	\$ 865,000	14
Behavioral Health Related	\$ 0	14
Totals	\$ 86,453,279	1,471

¹⁵ Tables 8 and Nine 9 represent the top ten classifications of types of health care liability in paid, closed claims during 2016. One Hundred Thirty-four claims were classified by reporting entities as "other/miscellaneous."

**Table 10 - Top Ten Causes of Injury During Reporting Year 2016
Ranked by Frequency¹⁶**

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Improper Performance	188	\$ 13,224,863
Failure to Monitor	155	\$ 16,891,713
Failure to Diagnose	134	\$ 5,945,828
Vicarious Liability	127	\$ 3,410,000
Failure to Treat	82	\$ 2,424,016
Improper Management	72	\$ 6,035,400
Failure to Recognize a Complication	51	\$ 7,283,403
Delay in Diagnosis	50	\$ 2,482,500
Delay in Treatment	47	\$ 2,405,000
Improper Technique	44	\$ 2,079,265
Totals	950	\$ 62,181,988

**Table 11 - Top Ten Causes of Injury During Reporting Year 2016
Ranked by Amount in Damages Paid to Claimant**

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Monitor	\$ 16,891,713	155
Improper Performance	\$ 13,224,863	188
Failure to Recognize a Complication	\$ 7,283,403	51
Improper Management	\$ 6,035,400	72
Failure to Diagnose	\$ 5,945,828	134
Vicarious Liability	\$ 3,410,000	127
Radiology or Imaging Error	\$ 3,009,000	15
Negligent Credentialing	\$ 2,807,500	7
Delay in Diagnosis	\$ 2,482,500	50
Failure to Treat	\$ 2,424,016	82
Totals	\$ 63,514,223	881

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 2016 in each claimant age group¹⁷:

¹⁶ Tables 10 and 11 represent the top ten classifications of causes of injury in paid, closed claims during 2016. Two Hundred Fourteen claims were classified by reporting entities as “cannot be determined from available record” and “allegation – not otherwise classified.”

¹⁷ This table represents all non-companion claims closed in 2016, 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 2016 Broken Down by Age of Claimant¹⁸

Age Range	Number of Claimants
0-13 years	87
14-20 years	23
21-35 years	124
36-49 years	222
50-64 years	380
65+ years	397

Based on the data submitted for claims reported to have been closed in 2016, 747 incidents of alleged health care liability involved females and 535 incidents involved males. On 15 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 severity¹⁹:

Table 13 – Severity of Injury in Claims Closed During Reporting Year 2016

Severity of Injury	Number of Claims	Number of Claims Paid During 2016	Number of Claims Not Paid
Death	315	85	230
Minor Temporary	236	55	181
Major Temporary	207	63	144
Emotional Injury Only	62	6	56
Major Permanent	62	12	50
Significant Permanent	59	15	44
Minor Permanent	48	15	33
Insignificant	41	8	33
Quadriplegic, Brain Damage, Lifelong Care	30	5	25

¹⁸ Sixty-four claimants’ ages were reported as “unknown”.

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

Table 14 – Severity of Injury in Claims Closed and Amounts Paid in Damages During Reporting Year 2016²⁰

Severity of Injury	Amount Paid in Damages in 2016
Death	\$ 29,357,246
Major Temporary	\$ 9,167,860
Significant Permanent	\$ 8,733,000
Major Permanent	\$ 8,528,567
Minor Temporary	\$ 3,290,536
Minor Permanent	\$ 3,091,615
Quadriplegic, Brain Damage, Lifelong Care	\$ 1,940,000
Emotional Injury Only	\$ 267,000
Insignificant	\$ 120,312

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2016

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	\$ 34,722,607
Major Permanent	\$ 14,530,637
Major Temporary	\$ 11,387,799
Significant Permanent	\$ 10,629,386
Quadriplegic, Brain Damage, Lifelong Care	\$ 6,296,500
Minor Temporary	\$ 4,425,247
Minor Permanent	\$ 3,547,615
Emotional Injury Only	\$ 283,500
Insignificant	\$ 139,212

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 counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2016. Of the 1,605 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2016 is \$66,223,568.

²⁰ In 2016, claimants were paid a total of \$1,727,432 for claims in which the severity of the injury “could not be determined from available records.”

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

Table 16 – Top Ten Counties Ranked by Number of Claims During Reporting Year 2016²¹

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	403	25.11	\$ 19,073,276
Davidson	304	18.94	\$ 8,915,912
Hamilton	126	7.85	\$ 4,476,210
Knox	122	7.60	\$ 9,824,155
Madison	66	4.11	\$ 1,302,001
Sumner	42	2.62	\$ 592,500
Rutherford	36	2.24	\$ 1,565,338
Sullivan	35	2.18	\$ 1,121,522
Williamson	26	1.62	\$ 2,801,500
Bradley	25	1.56	\$ 465,000

Table 17 – Top Ten Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2016

County Name	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Shelby	\$ 19,073,276	403	25.11
Knox	\$ 9,824,155	122	7.60
Davidson	\$ 8,915,912	304	18.94
Hamilton	\$ 4,476,210	126	7.85
Williamson	\$ 2,801,500	26	1.62
Montgomery	\$ 2,505,548	23	1.43
Rutherford	\$ 1,565,338	36	2.24
Madison	\$ 1,302,001	66	4.11
Hamblen	\$ 1,295,000	19	1.18
Sullivan	\$ 1,121,522	35	2.18

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:

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

Table 18 – Top Ten Provider Types Ranked by Frequency of Claims During Reporting Year 2016²²

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Medical Doctor	526	32.77	\$ 20,452,557
Corporation – Staffing	190	11.84	\$ 7,298,350
Nursing	81	5.05	\$ 1,971,936
Dentist	42	2.62	\$ 746,143
Osteopathic Physician	18	1.12	\$ 1,227,917
Physical Therapy	11	0.69	\$ 594,500
EMS	8	0.50	\$ 772,500
Physician Assistant	7	0.44	\$ 0
Podiatry	7	0.44	\$ 9,000
Chiropractor Examiner	5	0.31	\$ 0
Nursing Home Administrator	5	0.31	\$ 385,000
Midwifery	2	0.12	\$ 2,370
Perfusionist	2	0.12	\$ 0
Pharmacy	2	0.12	\$ 0
Social Worker	2	0.12	\$ 0

Table 19 – Top Ten Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2016

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$ 20,452,557	526	32.77
Corporation – Staffing	\$ 7,298,350	190	11.84
Nursing	\$ 1,971,936	81	5.05
Osteopathic Physician	\$ 1,227,917	18	1.12
EMS	\$ 772,500	8	0.50
Dentist	\$ 746,143	42	2.62
Physical Therapy	\$ 594,500	11	0.69
Nursing Home Administrator	\$ 385,000	5	0.31
Podiatry	\$ 9,000	7	0.44
Midwifery	\$ 2,370	2	0.12

²² “Unknown” was the chosen provider types for seven claims. The statistics in Tables 18, 19, and 20 are based on the total amount of claims closed, including companion claims, during the reporting year 2016.

Table 20 – Top Ten Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2016

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$ 24,020,932	526	32.77
Corporation – Staffing	\$ 12,706,726	190	11.84
Nursing	\$ 2,689,436	81	5.05
Osteopathic Physician	\$ 1,227,917	18	1.12
EMS	\$ 772,500	8	0.50
Dentist	\$ 746,143	42	2.62
Physical Therapy	\$ 594,500	11	0.69
Nursing Home Administrator	\$ 385,000	5	0.31
Pharmacy	\$ 20,000	2	0.12
Podiatry	\$ 9,000	7	0.44

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 2016²³

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Doctors, Nurses, Etc.	190	11.84	\$ 7,298,350
Neurological Surgery	124	7.73	\$ 1,133,750
Emergency Medicine	64	3.99	\$ 1,872,500
Internal Medicine	53	3.30	\$ 761,167
Advanced Practice Registered Nurse	42	2.62	\$ 1,005,000
Obstetrics & Gynecology	41	2.55	\$ 1,377,500
Registered Nurse	29	1.81	\$ 628,888
Orthopedic Surgery	27	1.68	\$ 590,035
Surgery	23	1.43	\$ 3,798,567
Dentist	22	1.37	\$ 304,416

²³ “Unknown” was the chosen provider specialty type for 15 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 2016.

Table 22 – Top Ten Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2016

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Doctors, Nurses, Etc.	\$ 7,298,350	190	11.84
Surgery	\$ 3,798,567	23	1.43
Urology	\$ 2,250,000	10	0.62
Emergency Medicine	\$ 1,872,500	64	3.99
Family Medicine	\$ 1,714,828	4	0.25
Obstetrics & Gynecology	\$ 1,377,500	41	2.55
Neurological Surgery	\$ 1,133,750	124	7.73
Advanced Practice Registered Nurse	\$ 1,005,000	42	2.62
Gastroenterology	\$ 1,000,000	7	0.44
Interventional Radiology & Diagnostic Radiology	\$ 874,999	14	0.87

Table 23 – Top Ten Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2016

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Doctors, Nurses, Etc.	\$ 12,706,726	190	11.84
Surgery	\$ 3,798,567	23	1.43
Family Medicine	\$ 2,271,327	4	0.25
Urology	\$ 2,250,000	10	0.62
Emergency Medicine	\$ 1,872,500	64	3.99
Advanced Practice Registered Nurse	\$ 1,535,000	42	2.62
Obstetrics & Gynecology	\$ 1,377,500	41	2.55
Interventional Radiology & Diagnostic Radiology	\$ 1,374,999	14	0.87
Gastroenterology	\$ 1,262,500	7	0.44
Internal Medicine	\$ 1,253,043	53	3.30

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 2016²⁴

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	1,012	63.05	\$ 46,845,522
Clinic	165	10.28	\$ 1,137,458
Office	163	10.16	\$ 5,513,382
Nursing Home	107	6.67	\$ 7,052,336
Prison-Penitentiary-Correctional Facility	41	2.55	\$ 47,500
Ambulatory Surgical Treatment Center	38	2.37	\$ 3,437,500
Residence	10	0.62	\$ 450,000
EMS	9	0.56	\$ 837,500
Outpatient Diagnostic Center	9	0.56	\$ 7,500
Home Health Agency	8	0.50	\$ 312,500
Assisted Care Living	6	0.37	\$ 140,000

Table 25 – Top Ten Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2016

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 46,845,522	1,012	63.05
Nursing Home	\$ 7,052,336	107	6.67
Office	\$ 5,513,382	163	10.16
Ambulatory Surgical Treatment Center	\$ 3,437,500	38	2.37
Clinic	\$ 1,137,458	165	10.28
EMS	\$ 837,500	9	0.56
Residence	\$ 450,000	5	0.31
Home Health Agency	\$ 312,500	8	0.50
Medical Spa	\$ 225,000	1	0.06
Assisted Care Living	\$ 140,000	6	0.37

²⁴ “Unknown” and “other” were the chosen health care facility types for 29 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 2016.

Table 26 – Top Ten Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2016

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 59,952,731	1,012	63.05
Office	\$ 9,830,079	163	10.16
Nursing Home	\$ 9,180,476	107	6.67
Ambulatory Surgical Treatment Center	\$ 3,994,375	38	2.37
Clinic	\$ 1,145,558	165	10.28
Renal Dialysis Center	\$ 867,598	4	0.25
Residence	\$ 847,000	5	0.31
EMS	\$ 837,500	9	0.56
Outpatient Diagnostic Center	\$ 406,500	9	0.56
Prison-Penitentiary-Correctional Facility	\$ 334,000	41	2.55

VI. 2016 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2016 in Tennessee by insurance companies and risk retention groups was \$138,098,619. This total was determined from their 2016 annual financial statements. These premiums were for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2016 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT²⁵

TENN. CODE ANN. § 56-54-105(c) requires counsel for claimants asserting health care liability claims (cases) to report their fee arrangements, whether the health care provider named in the case received payment from TennCare, and all open²⁶ and pending cases.²⁷ The Department required counsel for claimants to complete two separate forms to meet their obligations under the law. One reporting form solicited information regarding all health care liability cases closed or otherwise resolved in 2016. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2016.²⁸ Cases identified in

²⁵ The facilities and providers (insuring entities) identify separate defendants for the same incident as “companion claims” and list them separately. The figures in the counsel for claimant section are calculated from “cases” rather than “claims;” therefore, multiple claims entered by the insuring entities will be considered as one case by the counsel for claimant.

²⁶ “Open” case is not defined in the statute; and, therefore, may have been interpreted and/or applied more than one way by different counsel of claimants.

²⁷ The Department cannot identify all counsels for claimants who work with health care liability cases; therefore, the Department will remain unable to confirm the completeness of the information contained in these reports.

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

the information submitted related to incidents occurring between 1996 and 2016. However, only seven of the 3,237 cases reported (0.22 %) 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 2016 was 1,156. 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

	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages
Cases Resolved Through Judgment	38	4.11	49	4.41	30	2.60	39	3.37
Cases Resolved Through Settlement	339	36.69	337	30.30	349	30.27	297	25.69
Cases Resolved Through ADR	123	13.31	101	9.08	136	11.80	109	9.43
Cases Not Taken ²⁹	318	34.42	301	27.07	291	25.23	460	39.80
Cases Otherwise Resolved	106	11.47	324	29.14	347	30.10	251	21.71
Total Number of Cases Closed	924	100.00	1,112	100.00	1,153	100.00	1,156	100.00

²⁹ “Cases Not Taken” is a closed option showing closure of cases the counsel for claimant decided not to take after research or notice of intent letters were sent.

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsels for Claimants in 2016

	2013 Totals	2013 Percentages	2014 Totals	2014 Percentages	2015 Totals	2015 Percentages	2016 Totals	2016 Percentages
Paid Closed Cases	467	50.54	462	41.55	490	42.50	411	35.55
Unpaid Closed Cases	457	49.46	650	58.45	663	57.50	745	64.45
Total Closed Cases	924	100.00	1,112	100.00	1,153	100.00	1,156	100.00

B. Pending Cases

Pending cases are cases which were opened in 2016 or in prior years and were still unresolved as of December 31, 2016. It was reported by counsels for claimants that there were 2,081³⁰ cases pending as of December 31, 2016.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling \$110,647,118 on cases closed in 2016 by way of judgments, settlements, and ADR methods in the 2016 reporting year.

There were 2,081 cases still pending (without final resolution) as of December 31, 2016. \$11,727,637 was paid on these cases in 2016.

Table 29 demonstrates the reported damages paid in 2016 on cases closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

³⁰ This number includes cases which may have been worked on by multiple attorneys. In those incidents, the duplicate entry was removed from the report. However, any payment made to multiple attorneys is included in the counsel for claimant fees identified in Table 31.

Table 29 – Amounts Paid In Damages for Cases Settled, Adjudicated, Mediated or by other ADR Methods and Closed During Reporting Year 2016 as reported by Counsels for Claimants

	2013 Totals	2013 %	2014 Totals	2014 %	2015 Totals	2015 %	2016 Totals	2016 %
Total Damages Paid by Settlements ³¹	\$ 88,968,254	60.59	\$ 118,058,809	60.69	\$ 81,816,845	66.85	\$ 59,915,921	54.15
Total Damages Paid by Judgments	\$ 4,136,028	2.82	\$ 12,906,396	6.64	\$ 2,437,244	1.99	\$ 1,993,323	1.80
Total Damages Paid by Mediation	\$ 53,722,946	36.59	\$ 60,184,494	30.94	\$ 36,585,659	29.90	\$ 48,287,874	43.64
Total Damages Paid by Other ADR Methods	\$ 0	0.00	\$ 3,369,753	1.73	\$ 1,540,036	1.26	\$ 115,000	0.11
Total Damages Paid by Prior Resolutions ³²	\$ 0	0.00	\$ 0	0.00	\$ 0	0.00	\$ 335,000	0.30
Total Damages Paid	\$ 146,827,228	100.00	\$ 194,519,452	100.00	\$ 122,379,784	100.00	\$ 110,647,118	100.00

D. Judgments

In all, it was reported by counsels for claimants that there were four court judgments paid in 2016. Table 30 details four paid judgments and the fees paid to counsels for claimants in each case:

³¹ In 2013, one counsel for claimant reported a payment of \$5,156 although the resolution occurred in a prior year; therefore, the payment was not entered in Table 29.

³² Resolutions were made in 2015 but no payments received until 2016.

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2016³³

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
\$ 101,006 ³⁴	6/9/2009	\$ 31,990
\$ 406,250	4/1/2006	\$ 139,652
\$ 500,000	8/11/2011	\$ 166,667
\$ 986,067	10/1/2013	\$ 312,117

E. Fees Paid to Claimants’ Counsel

There were 672 counsels for claimants who reported. Insuring entities identified another 81 counsels for claimants who failed to report in 2016. 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.³⁵

The attorneys who submitted a report, reported having received fees in the amount of \$35,029,939 in 2016. The fees that claimants’ attorneys reported receiving in 2016 are approximately 40.2% of the total amount reported by other entities as having been paid in damages to the claimants.

Of the reported cases, the majority of attorneys reported contingency agreements of 33 percent or less of the total damages. However, the range for fee agreements was from 0% to 69.72%.

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, on the following page, identifies the number of cases in which TennCare payments were made to the providers:

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

³⁴ This figure includes interest accrued in addition to the awarded judgment shown in Table 4.

³⁵ The Department cannot identify all counsels for claimants who work with health care liability cases; therefore, the Department will remain unable to confirm the completeness of the information contained in these reports.

Table 31 – TennCare Payments Made to Providers

	Yes	No	Unknown³⁶
2013	292	1,701	623
2014	398	1,944	443
2015	399	2,096	582
2016	346	2,010	881

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2017 reporting obligations.

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

³⁶ Due to cases which are still pending, counsels for claimants were uncertain at the time of reporting as to whether TennCare would be making payments to the provider; so they chose “unknown” for this question. The majority of cases reported as “unknown” on the cases closed in 2016 are cases that were not taken by the counsels for claimants.