

2014 Health Care Liability Claims Report



**Department of Commerce & Insurance
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INTRODUCTION

In 2004, the Tennessee General Assembly enacted 2004 Tenn. Pub. Acts Ch. 902 which established reporting obligations for medical professional liability claims for various reporting entities. This law was codified at TENN. CODE ANN. § 56-54-101. Pursuant to TENN. CODE ANN. § 56-54-101(a), “reporting entities” 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 The reporting requirements, as originally enacted, focused on the claims that were closed and pending during each calendar year.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.”

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, counsel for claimants 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 2013, but also shows the information reported for 2010, 2011 and 2012 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 96 percent of the total health care liability direct premiums written in Tennessee in 2013. 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. Three (3) such health care providers submitted reports for 2013. As identified in the previous reports, 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 2013 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 2013. The second form solicited information concerning health care liability claims that were still considered pending as of December 31, 2013.² Claims identified in the information submitted related to incidents occurring between 1991 and 2013. However, only 56 of the 6,280 claims reported (0.89 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 2013 was 2,085. 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

	2010 Totals	2010 Percentages	2011 Totals	2011 Percentages	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages
Claims Resolved Through Judgment ³	195	7.20	114	4.89	96 ⁴	4.35	135⁵	6.47
Claims Resolved Through Settlement	311	11.49	289	12.39	336	15.24	306	14.68
Claims Resolved Through ADR ⁶	133	4.91	145	6.22	94	4.26	79	3.79
Claims Otherwise Resolved	2,068	76.40	1,784	76.50	1,679	76.15	1,565	75.06
Total Number of Claims Closed	2,707	100.00	2,332	100.00	2,205	100.00	2,085	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 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 2013

	2010 Totals	2010 Percentages	2011 Totals	2011 Percentages	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages
Paid Closed Claims	451	16.67	437	18.74	436	19.72	388	18.61
Unpaid Closed Claims	2,256	83.33	1,895	81.26	1,775	80.28	1,697	81.39
Total Closed Claims	2,707	100.00	2,332	100.00	2211	100.00	2,085	100.00

B. Claims Pending

Pending claims are claims filed in 2013 or in prior years which were still unresolved as of December 31, 2013. It was reported that there were 4,195 claims pending as of December 31, 2013.

IV. DAMAGES AND COSTS

A. Damages Asserted by Claimants⁷

Claimants asserted a total of \$4,686,920,564⁸ (Four Billion, Six Hundred Eighty-six Million, Nine Hundred Twenty Thousand, Five Hundred Sixty-four Dollars) in damages for health care liability related injuries for the claims reported as having been closed in the 2013 reporting year. In the 2013 reporting year, claimants were paid damages totaling \$79,880,429 (Seventy-nine Million, Eight Hundred Eighty Thousand, Four Hundred Twenty-nine Dollars) by way of judgments, traditional settlements, and ADR methods. The total damages paid during 2013 represents 1.70 percent of the damages that were asserted.

Claimants who had their claims disposed of in 2013 (closed without further payment to be made) were paid a total of \$107,587,277 (One Hundred Seven Million, Five Hundred Eighty-seven Thousand, Two Hundred Seventy-seven Dollars) from the inception of their claims through December 31, 2013, or 2.30 percent of the damages that were asserted in those claims.

There were 4,195 claims filed but still pending (without final resolution) as of December 31, 2013. The damages asserted by those claimants total \$11,697,067,560 (Eleven Billion, Six Hundred Ninety-seven Million, Sixty-seven Thousand, Five Hundred Sixty Dollars). Of those asserted damages, \$29,171,654 (Twenty-nine Million, One Hundred Seventy-one Thousand, Six Hundred Fifty-four Dollars) have been paid to date.

⁷ Where reporting entities left the asserted damages field blank, an assumption is made that the amount asserted is the amount that was paid.

⁸ This number includes all claims reported as closed during the 2013 reporting year regardless of when the claim was opened or lawsuit filed and whether or not any payments were made in 2013. Therefore, this number includes damages that were asserted in years prior to 2013.

B. Damages Paid to Claimants

Table Three (3) demonstrates the reported damages paid in 2013 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 2013

	2010 Totals	2010 %	2011 Totals	2011 %	2012 Totals	2012 %	2013 Totals	2013 %
Total Damages Paid by Settlements	\$ 42,307,781	38.77	\$ 57,414,009	50.40	\$ 52,650,012	58.16	\$ 45,880,103	57.44
Total Damages Paid by Judgments	\$ 21,581,908	19.78	\$ 1,536,349	1.35	\$ 15,754,959	17.41	\$ 2,348,519	2.94
Total Damages Paid by Mediation	\$ 42,169,681	38.65	\$ 54,955,838	48.25	\$ 21,909,408	24.20	\$ 31,651,807	39.62
Total Damages Paid by Other ADR Methods	\$ 3,054,550	2.80	\$ 0	0.00	\$ 206,000	0.23	\$ 0	0.00
Total Damages Paid	\$ 109,113,920	100.00	\$ 113,906,196	100.00	\$ 90,520,379	100.00	\$ 79,880,429	100.00

C. Judgments

In all, it was reported that there were 126 court judgments in 2013. It was reported that 119 of these judgments resulted in favorable rulings for the defendant and no damages were awarded to the claimant; however, one (1) judgment was appealed with no final results in 2013. Seven (7) judgments were entered in favor of the plaintiff in 2013. Three (3) of these seven (7) judgments were paid as a settlement due to a high/low resolution agreement before trial. 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 2013

Amount Paid	Date of Occurrence	Damages Claimed	Type of Provider/Specialty/Facility	Economic Damages	Non-Economic Damages	Punitive Damages	Severity of Injury
\$ 981,607	1/22/2007	\$ 981,607	Corporation-Staffing/Orthopedic Surgery/Office	\$ 64,194	\$ 917,413	\$ 0	Significant Permanent Injury
\$ 250,000 ⁹	4/1/2008	\$ 2,000,000	Medical Doctor/Otology/Office	\$ 250,000	\$ 0	\$ 0	Major Permanent Injury
\$ 800,000	2/27/2006	\$ 800,000	Medical Doctor/General Surgery/Hospital	\$ 0	\$ 800,000	\$ 0	Major Temporary Injury
\$ 316,912	8/1/2010	\$ 8,000,000	Medical Doctor/Hematology(Internal Medicine)/Office	\$ 316,912	\$ 0	\$ 0	Major Temporary Injury

D. Total Defense Costs and Expenses Paid on Claims

The total defense costs reported to have been paid during 2013 was \$81,856,007 (Eighty-one Million, Eight Hundred Fifty-six Thousand, Seven Dollars). The total amount reported to have been paid to defense counsel in 2013 was \$68,543,638 (Sixty-eight Million, Five Hundred Forty-three Thousand, Six Hundred Thirty-eight Dollars)¹⁰. The following tables detail the defense costs paid in 2013 on closed and pending claims.

Table 5 – Total Amounts Paid in Defense Costs in 2013

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 53,126,665	\$ 5,184,277	\$ 70,768	\$ 1,210,732	\$ 2,372,976
Closed Claims	\$ 15,416,973	\$ 2,084,360	\$ 51,076	\$ 359,147	\$ 1,979,033
Total	\$ 68,543,638	\$ 7,268,637	\$ 121,844	\$ 1,569,879	\$ 4,352,009

⁹ Counsel for claimant, who was identified by the insuring entity, did not report; therefore, this judgment does not appear on Table 30.

¹⁰ For purposes of comparison, the approximate total defense fees reported as being paid in 2010, 2011 and 2012 was \$80.3 (Eighty Million, Three Hundred Thousand Dollars), \$86.1 (Eighty-six Million, One Hundred Thousand Dollars), and \$74.2 (Seventy-four Million, Two Hundred Thousand Dollars), respectively.

**Table 6 – Total Amounts Paid in Defense Costs During the 2013 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	471	\$ 16,526,897	\$ 1,733,692	\$ 64,878	\$ 283,228	\$ 1,021,116
Unpaid Claims	5809	\$ 52,016,741	\$ 5,534,945	\$ 56,966	\$ 1,286,651	\$ 3,330,893
Total	6280	\$ 68,543,638	\$ 7,268,637	\$ 121,844	\$ 1,569,879	\$ 4,352,009

The total defense costs paid on closed and pending claims as of December 31, 2013, since the inception of such claims, was \$227,042,914 (Two Hundred Twenty-seven Million, Forty-two Thousand, Nine Hundred Fourteen Dollars). The following table details these defense costs:

**Table 7 – Total Amounts Paid in Defense Costs on Claims from Inception through
End of 2013 Reporting Year**

	Fees Paid to Defense Counsel	Expert Witness Fees	Court Costs	Deposition Costs	Other Legal Fees
Pending Claims	\$ 125,214,775	\$ 12,117,875	\$ 145,601	\$ 2,704,971	\$ 6,799,630
Closed Claims	\$ 66,891,154	\$ 6,923,341	\$ 198,722	\$ 1,451,314	\$ 4,595,531
Total	\$ 192,105,929	\$ 19,041,216	\$ 344,323	\$ 4,156,285	\$ 11,395,161

V. CLAIM CHARACTERISTICS OF CLAIMS CLOSED IN 2013¹¹

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 incident date, 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 2013.¹²

¹¹ 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.

¹² 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 2013 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 2013
Ranked by Frequency¹³**

Type of Health Care Liability	Number of Claims	Amount Paid Since Inception of Claim
Diagnosis Related	487	\$ 22,873,780
Surgery Related	416	\$ 16,444,531
Treatment Related	396	\$ 18,332,297
Monitoring Related	184	\$ 21,155,541
Medication Related	149	\$ 11,075,343
Obstetrics Related	128	\$ 4,526,025
Anesthesia Related	59	\$ 3,606,825
Behavioral Health Related	20	\$ 16,751
Equipment/Product Related	18	\$ 716,732
IV & Blood Products Related	18	\$ 962,223
Totals	1,875	\$ 99,710,048

**Table 9 - Top Ten (10) Types of Health Care Liability During Reporting Year 2013
Ranked by Amount in Damages Paid to Claimant**

Type of Health Care Liability	Amount Paid Since Inception of Claim	Number of Claims
Diagnosis Related	\$ 22,873,780	487
Monitoring Related	\$ 21,155,541	184
Treatment Related	\$ 18,332,297	396
Surgery Related	\$ 16,444,531	416
Medication Related	\$ 11,075,343	149
Obstetrics Related	\$ 4,526,025	128
Anesthesia Related	\$ 3,606,825	59
IV & Blood Products Related	\$ 962,223	18
Equipment/Product Related	\$ 716,732	18
Behavioral Health Related	\$ 16,751	20
Totals	\$ 99,710,048	1,875

¹³ Tables Eight (8) and Nine (9) represent the top ten (10) classifications of types of health care liability in paid, closed claims during 2013. One Hundred Fifty-nine claims were classified by reporting entities as “other/ miscellaneous” and 51 claims as “unknown”.

**Table 10 - Top Ten (10) Causes of Injury During Reporting Year 2013
Ranked by Frequency¹⁴**

Cause of Injury	Number of Claims	Amount Paid Since Inception of Claim
Failure to Diagnose	184	\$ 8,769,305
Failure to Monitor	174	\$ 15,358,086
Improper Performance	158	\$ 5,115,502
Failure to Treat	90	\$ 8,280,481
Improper Management	81	\$ 2,933,170
Radiology or Imaging Error	70	\$ 864,999
Failure to Ensure Patient Safety	69	\$ 4,859,800
Delay in Diagnosis	64	\$ 8,042,499
Surgical or Other Foreign Body Retained	56	\$ 833,360
Failure to Recognize a Complication	53	\$ 3,652,400
Totals	999	\$ 58,709,602

**Table 11 - Top Ten (10) Causes of Injury During Reporting Year 2013
Ranked by Amount in Damages Paid to Claimant**

Cause of Injury	Amount Paid Since Inception of Claim	Number of Claims
Failure to Monitor	\$ 15,358,086	174
Failure to Diagnose	\$ 8,769,305	184
Failure to Treat	\$ 8,280,481	90
Delay in Diagnosis	\$ 8,042,499	64
Medication Administered via Wrong Route	\$ 5,444,000	2
Wrong Dosage Administered	\$ 5,407,067	31
Improper Performance	\$ 5,115,502	158
Failure to Ensure Patient Safety	\$ 4,859,800	69
Delay in Treatment	\$ 3,815,651	51
Failure to Recognize a Complication	\$ 3,652,400	53
Totals	\$ 68,744,791	876

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 on the date of the medical incident. Table 12, on the following page, shows the number of claims which were closed in 2013 in each claimant age group¹⁵:

¹⁴ Tables 10 and 11 represent the top ten (10) classifications of causes of injury in paid, closed claims during 2013. Five Hundred Twenty-one claims were classified by reporting entities as "cannot be determined from available record," "allegation – not otherwise classified," or "unknown."

¹⁵ This table represents all non-companion claims closed in 2013, 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 2013 Broken Down by Age of Claimant¹⁶

Age Range	Number of Claimants
0-13 years	142
14-20 years	46
21-35 years	209
36-49 years	287
50-64 years	392
65+ years	381

Based on the data submitted for claims reported to have been closed in 2013, 852 incidents of alleged health care liability involved females and 673 incidents involved males. On 26 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 severity¹⁷:

Table 13 – Severity of Injury in Claims Closed During Reporting Year 2013

Severity of Injury	Number of Claims	Number of Claims Paid During 2013	Number of Claims Not Paid
Death	419	120	299
Major Temporary	270	71	199
Minor Temporary	257	72	185
Significant Permanent	124	22	102
Insignificant	87	21	66
Emotional Only	83	3	80
Grave Permanent	62	13	49
Major Permanent	61	8	53
Minor Permanent	43	15	28

¹⁶ Ninety-four claimants’ ages were reported as “unknown”.

¹⁷ 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 2013¹⁸

Severity of Injury	Amount Paid in Damages in 2013
Death	\$ 27,056,241
Major Permanent	\$ 20,428,635
Major Temporary	\$ 12,755,312
Significant Permanent	\$ 6,226,574
Grave Permanent	\$ 4,412,500
Minor Permanent	\$ 3,818,999
Minor Temporary	\$ 3,189,094
Emotional Only	\$ 795,718
Insignificant	\$ 380,070

Table 15 – Severity of Injury in Claims Closed, Ranked by Amounts Paid in Damages from Inception of Claim through Reporting Year 2013

Severity of Injury	Amount Paid in Damages For Life of the Claim
Death	\$ 39,879,755
Major Permanent	\$ 23,117,859
Major Temporary	\$ 16,502,795
Significant Permanent	\$ 9,053,225
Grave Permanent	\$ 4,937,500
Minor Permanent	\$ 4,273,999
Minor Temporary	\$ 3,748,270
Emotional Only	\$ 1,467,118
Insignificant	\$ 560,470

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-three counties were reported to have been the geographic location of an incident giving rise to a claim closed in 2013. Of the 2,054 claims reported with a Tennessee geographic location, the total payment reported to have been made during reporting year 2013 is \$78,124,199 (Seventy-eight Million, One Hundred Twenty-four Thousand, One Hundred Ninety-nine Dollars).

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

¹⁸ In 2013, claimants were paid a total of \$25,000 (Twenty-five Thousand Dollars) and \$1,067,874 (One Million Sixty-seven Thousand, Eight Hundred Seventy-four 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 2013¹⁹

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Shelby	537	26.14	\$ 20,677,909
Davidson	336	16.36	\$ 21,846,879
Knox	200	9.74	\$ 8,463,834
Hamilton	124	6.04	\$ 3,248,743
Madison	87	4.24	\$ 3,262,097
Sullivan	75	3.65	\$ 2,064,785
Washington	71	3.46	\$ 1,071,000
Rutherford	38	1.85	\$ 807,300
Sumner	37	1.80	\$ 1,285
Maury	34	1.66	\$ 1,012,877

Table 17 – Top Ten (10) Counties Ranked by Amount in Damages Paid to Claimants During Reporting Year 2013

County Name	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Davidson	336	16.36	\$ 21,846,879
Shelby	537	26.14	\$ 20,677,909
Knox	200	9.74	\$ 8,463,834
Madison	87	4.24	\$ 3,262,097
Hamilton	124	6.04	\$ 3,248,743
Blount	28	1.36	\$ 3,074,024
Sullivan	75	3.65	\$ 2,064,785
Coffee	31	1.51	\$ 1,746,365
Smith	6	0.29	\$ 1,180,000
Hamblen	30	1.46	\$ 1,075,000

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 tables on the following pages show statistics for the ten (10) provider types with the highest number of health care liability claims:

¹⁹ 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 2013²⁰

Type of Provider	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Medical Doctor	751	36.02	\$ 17,521,475
Registered Nurse	78	3.74	\$ 631,557
Dentist	44	2.11	\$ 830,115
Advanced Practice Nurse	34	1.63	\$ 2,153,500
Osteopathic Physician	27	1.29	\$ 274,999
Nursing Home Administrator	21	1.01	\$ 1,384,106
Pharmacist	20	0.96	\$ 178,230
Physician Assistant	14	0.67	\$ 66,667
Podiatrist	8	0.38	\$ 65,000
Chiropractic Physician	7	0.34	\$ 35,000

Table 19 – Top Ten (10) Provider Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2013

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$ 17,521,475	751	36.02
Advanced Practice Nurse	\$ 2,153,500	34	1.63
Nursing Home Administrator	\$ 1,384,106	21	1.01
Dentist	\$ 830,115	44	2.11
Registered Nurse	\$ 631,557	78	3.74
Medical X-ray Operator	\$ 325,000	1	0.05
Osteopathic Physician	\$ 274,999	27	1.29
Pharmacist	\$ 178,230	20	0.96
Licensed Practice Nurse	\$ 79,000	4	0.19
Physician Assistant	\$ 66,667	14	0.67

²⁰ “Unknown” or “Not Applicable” was the chosen provider types for 15 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 2013.

Table 20 – Top Ten (10) Provider Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2013

Type of Provider	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Medical Doctor	\$ 22,795,551	751	36.02
Nursing Home Administrator	\$ 4,363,757	21	1.01
Advanced Practice Nurse	\$ 2,153,500	34	1.63
Physician Assistant	\$ 1,063,919	14	0.67
Dentist	\$ 1,030,115	44	2.11
Registered Nurse	\$ 727,868	78	3.74
Licensed Laboratory Personnel	\$ 504,224	1	0.05
Medical X-ray Operator	\$ 325,000	1	0.05
Osteopathic Physician	\$ 274,999	27	1.29
Pharmacist	\$ 261,030	20	0.96

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 2013²¹

Type of Specialty	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Internal Medicine	119	5.71	\$ 1,629,244
Obstetrics and Gynecology	104	4.99	\$ 4,897,500
Emergency Medicine	95	4.56	\$ 3,313,333
Family Practice	94	4.51	\$ 2,523,349
General Practice	82	3.93	\$ 2,662,179
General Surgery	77	3.69	\$ 4,496,884
Orthopedic Surgery	71	3.41	\$ 2,712,606
Anesthesiology	63	3.02	\$ 870,000
Radiology	51	2.45	\$ 258,000
Neurological Surgery	30	1.44	\$ 747,500
Pediatrics	30	1.44	\$ 89,999

²¹ “Unknown”, “Unspecified”, or “Not Applicable” were the chosen provider specialty types for 225 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 2013.

Table 22 – Top Ten (10) Provider Specialty Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2013

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Obstetrics and Gynecology	\$ 4,897,500	104	4.99
General Surgery	\$ 4,496,884	77	3.69
Emergency Medicine	\$ 3,313,333	95	4.56
Orthopedic Surgery	\$ 2,712,606	71	3.41
General Practice	\$ 2,662,179	82	3.93
Family Practice	\$ 2,523,349	94	4.51
Urology	\$ 1,886,666	16	0.77
Internal Medicine	\$ 1,629,244	119	5.71
Dermatology	\$ 1,600,000	10	0.48
Anesthesiology	\$ 870,000	63	3.02

Table 23 – Top Ten (10) Provider Specialty Types Ranked by Damages Paid to Claimants from Inception of Claims Through Reporting Year 2013

Type of Specialty	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Obstetrics and Gynecology	\$ 4,933,400	104	4.99
General Surgery	\$ 4,871,884	77	3.69
General Practice	\$ 4,576,831	82	3.93
Internal Medicine	\$ 3,972,184	119	5.71
Family Practice	\$ 3,655,798	94	4.51
Emergency Medicine	\$ 3,515,584	95	4.56
Orthopedic Surgery	\$ 2,722,606	71	3.41
Urology	\$ 1,886,666	16	0.77
Dermatology	\$ 1,600,000	10	0.48
Cardiology	\$ 1,250,000	5	0.24

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 tables on the following pages show statistics for the 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 2013²²

Type of Facility	Number of Claims	Percentages of Total Claims	Amounts Paid to Claimants
Hospital	1,302	62.45	\$ 52,235,981
Office	343	16.45	\$ 11,644,526
Nursing Home	121	5.80	\$ 10,338,419
Clinic	73	3.50	\$ 2,674,731
Prison/Penitentiary/Correctional	67	3.21	\$ 945,590
Ambulatory Surgical Treatment Center	44	2.11	\$ 745,870
Surgical Facility	19	0.91	\$ 139,999
Pharmacy	18	0.86	\$ 178,480
Home Care Agency	8	0.38	\$ 252,333
Mental Health Hospital	8	0.38	\$ 0
Renal Dialysis Clinic	8	0.38	\$ 120,626
Treatment Facility	8	0.38	\$ 10,000
Outpatient Diagnostic Center	7	0.34	\$ 400,000

Table 25 – Top Ten (10) Facility Types Ranked by Amounts in Damages Paid to Claimants During Reporting Year 2013

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 52,235,981	1,302	62.45
Office	\$ 11,644,526	343	16.45
Nursing Home	\$ 10,338,419	121	5.80
Clinic	\$ 2,674,731	73	3.50
Prison/Penitentiary/Correctional	\$ 945,590	67	3.21
Ambulatory Surgical Treatment Center	\$ 745,870	44	2.11
Outpatient Diagnostic Center	\$ 400,000	7	0.34
Home Care Agency	\$ 252,333	8	0.38
Pharmacy	\$ 178,480	18	0.86
Home for the Aged	\$ 150,000	1	0.05

²² “Unknown” and “other” were the chosen health care facility types for 39 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 2013.

Table 26 – Top Ten (10) Facility Types Ranked by Damages Paid to Claimants from Inception of Claim Through Reporting Year 2013

Type of Facility	Amounts Paid to Claimants	Number of Claims	Percentages of Total Claims
Hospital	\$ 68,431,097	1,302	62.45
Nursing Home	\$ 16,020,207	121	5.80
Office	\$ 15,223,476	343	16.45
Clinic	\$ 3,075,261	73	3.50
Outpatient Diagnostic Center	\$ 1,400,000	7	0.34
Prison/Penitentiary/Correctional	\$ 945,590	67	3.21
Ambulatory Surgical Treatment Center	\$ 745,870	44	2.11
Medical Laboratory	\$ 504,224	2	0.10
Home Care Agency	\$ 252,333	8	0.38
Renal Dialysis Clinic	\$ 224,166	8	0.38

VI. 2012 DIRECT PREMIUM WRITTEN

The total direct health care liability premium written in 2013 in Tennessee by insurance companies and risk retention groups was \$153,013,886 (One Hundred Fifty-three Million, Thirteen Thousand, Eight Hundred Eighty-six Dollars). This total was determined from their 2013 annual financial statements. This premium was for policies that may produce claim payments of unknown amounts in the future. Claim payments made during 2013 usually relate to policies and the corresponding premium from previous years.

VII. COUNSEL FOR CLAIMANT²³

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 to report all open²⁴ and pending cases.²⁵ 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 2013. The second form solicited information concerning health care liability cases that were open and pending as of December 31, 2013.²⁶ Cases identified in the information submitted related to incidents occurring between 1993 and 2013²⁷.

²³ The figures in the counsel for claimant section are calculated from “cases” rather than claims. Companion claims 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.

²⁴ “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. It is unknown as to how many cases were opened but not reported by the attorneys.

²⁵ Until the Department has the ability to identify the counsels for claimants who work with health care liability cases, the Department will remain unable to confirm the completeness of the information contained in these reports.

²⁶ The Department made the forms available to counsel for claimants on its website for ease of access.

However, only 21 of the 2,615 cases reported (0.80 percent) arose out of an incident that occurred prior to 2000, all occurring in the 1990s.

A. Closed Cases

The total number of health care liability cases reported by counsels of claimants as closed in 2013 was 924. 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 Counsel for Claimant

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages
Cases Resolved Through Judgment	10	1.98	38	4.11
Cases Resolved Through Settlement	249	49.40	339	36.69
Cases Resolved Through ADR	148	29.37	123	13.31
Cases Not Taken ²⁸	0	0.00	318	34.42
Cases Otherwise Resolved	97	19.25	106	11.47
Total Number of Cases Closed	504	100.00	924	100.00

Table 28 – Paid and Unpaid Cases Closed as Reported by Counsel for Claimant in 2013

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages
Paid Closed Cases	407	80.75	467	50.54
Unpaid Closed Cases	97	19.25	457	49.46
Total Closed Cases	504	100.00	924	100.00

²⁷ The dates reported by counsel for claimants do not go back as far as those reported by other insuring entities on page 3 of this report. Until the Department has the ability to identify the counsels for claimants who work with health care liability cases, the Department will remain unable to confirm the completeness of the information contained in these reports.

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.

B. Pending Cases

Pending cases are cases which were opened in 2013 or in prior years and were still unresolved as of December 31, 2013. It was reported by counsels for claimants that there were 1,691²⁹ cases pending as of December 31, 2013.

C. Damages Paid to Claimants

As reported by counsels for claimants, claimants were paid damages totaling \$146,827,228 (One Hundred Forty-six Million, Eight Hundred Twenty-seven Thousand, Two Hundred Twenty-eight Dollars) on cases closed in 2013 by way of judgments, traditional settlements, and ADR methods in the 2013 reporting year.

There were 1,691 cases still pending (without final resolution) as of December 31, 2013. \$15,111,600 (Fifteen Million, One Hundred Eleven Thousand, Six Hundred Dollars) was paid on these cases in 2013.

Table 29 below demonstrates the reported damages paid in 2013 on cases closed that year, broken down by payments made as a result of adjudication, settlement, or ADR.

Table 29 – Amounts Paid In Damages for Cases Settled, Adjudicated, Mediated or by other ADR Methods and Closed During Reporting Year 2013 as reported by Counsels for Claimants

	2012 Totals	2012 Percentages	2013 Totals	2013 Percentages
Total Damages Paid by Settlements ³⁰	\$ 61,122,922	42.94	\$ 88,968,254	60.59
Total Damages Paid by Judgments	\$ 23,260,201	16.34	\$ 4,136,028	2.82
Total Damages Paid by Mediation	\$ 57,584,195	40.45	\$ 53,722,946	36.59
Total Damages Paid by Other ADR Methods	\$ 380,000	0.27	\$ 0	0.00
Total Damages Paid	\$ 142,347,318	100.00	\$ 146,827,228	100.00

D. Judgments

In all, it was reported by counsels for claimants that there were six (6) court judgments paid in 2013. The table on the following page details six (6) paid judgments and the fees paid to counsel for claimants in each case:

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 the multiple attorneys is included in the counsel for claimant fees identified in Table 31.

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

Table 30 – Total Damages Awarded By Final Court Judgment Paid in 2013³¹

Amount Paid	Date of Occurrence	Fees Paid to Counsel for Claimant
\$ 256,510 ³²	10/31/2007	\$ 57,002
\$ 316,912	7/29/2011	\$ 105,637
\$ 800,000 ³³	2/28/2006	\$ 106,666
\$ 800,000	2/28/2006	\$ 160,000
\$ 981,000 ³⁴	11/24/2006	\$ 88,290
\$ 981,606	12/1/2006	\$ 238,858

E. Fees Paid to Claimants’ Counsel

There were 679 counsels for claimants who reported. Six (6) counsels for claimants submitted non-compliant reports so their data is not included in this report. Insuring entities identified another seventy-five (75) counsels for claimants who failed to report in 2013. 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 \$35,471,923 (Thirty-five Million, Four Hundred Seventy-one Thousand, Nine Hundred Twenty-three Dollars) in 2013. The fees that claimants’ attorneys reported receiving in 2013 are approximately 27.70 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 60.88 percent.

³¹ Due to the counsels for claimants reporting multiple claims as one (1) case, the total number of judgments recorded in Table 30 do not equal the number recorded in Table 4 as reported by other insuring entities.

³² This judgment was not reported by other insuring entities and not recorded in Table 4.

³³ Due to multiple counsels for claimant receiving a portion of the fees on this one judgment, it appears twice on Table 30.

³⁴ Due to multiple counsels for claimant receiving a portion of the fees on this one judgment, it appears twice on Table 30. The date and payment differs from each attorney; but, verification was made that this is the same judgment. These are the same numbers as reported by counsels for claimant.

³⁵ 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 Department will remain unable to confirm the completeness of the information contained in these reports.

F. TennCare Payments

TENN. CODE ANN. § 56-54-105(B) 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, shows how many cases in relation to TennCare payments:

Table 31 – TennCare Payments Made to Providers

	Yes	No	Unknown ³⁶
2012	233	1,304	0 ³⁷
2013	292	1,701	623

VIII. NEXT STEPS

The Department will work with the insurance industry and the other reporting entities as it relates to their 2014 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” are cases that were not taken by the counsels for claimants.

³⁷ 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.