

Notice  
of Rulemaking Hearing  
Department of Commerce and Insurance  
Division of Insurance

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. § 56-54-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the 15th day of December, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243, telephone (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Tracey Gentry Harney, Staff Attorney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-84  
Medical Malpractice Claims Reporting Rules

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

The following rules developed by the Department of Commerce and Insurance govern the reporting of medical malpractice claims and expenses. The purpose of these rules is to facilitate the reporting required by Tenn. Code Ann. § 56-54-101.

Authority: Tenn. Code Ann. § 56-54-101.

Rule 0780-1-84-.02 Definitions.

- (1) "Chiropractor" means an individual licensed pursuant to Title 62, Chapter 4.
- (2) "Clinical Pastoral Counselor" means an individual certified pursuant to Title 62, Chapter 22, Part 2.
- (3) "Closed Claims" means claims that have been paid pursuant to a settlement or judgment, including, claims that were settled or adjudicated with the condition of open medical treatment to the claimant.

- (4) “Commissioner” means the Commissioner of the Department of Commerce and Insurance.
- (5) “Dentist” means an individual licensed pursuant to Title 63, Chapter 5.
- (6) “Department” means the Tennessee Department of Commerce and Insurance
- (7) “Licensed Clinical Social Worker” means an individual licensed pursuant to Title 63, Chapter 23.
- (8) “Marital and Family Therapist” means an individual licensed pursuant to Title 63, Chapter 22, Part 1.
- (9) “Medical and Osteopathic Physician” means an individual licensed pursuant to Title 63, Chapter 6 or Chapter 9.
- (10) “Nurse Practitioner” means an individual that holds a certificate of fitness issued pursuant to Title 63, Chapter 7, Section 123.
- (11) “Optometrist” means an individual licensed pursuant to Title 63, Chapter 8.
- (12) “Pharmacist” means an individual licensed pursuant to Title 63, Chapter 10.
- (13) “Physician Assistant” means an individual licensed pursuant to Title 63, Chapter 19.
- (14) “Podiatrist” means an individual licensed pursuant to Title 63, Chapter 3.
- (15) “Professional Counselor” means an individual licensed pursuant to Title 63, Chapter 22, Part 1.
- (16) “Pending Claims” means claims that have not been paid pursuant to a settlement or agreement but have been made known to the reporting entity either by a lawsuit or some other manner.
- (17) “Person” means an individual or business entity.
- (18) “Reporting entity” means the following:
  - (a) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to a Tennessee health care institution licensed under Title 68.
  - (b) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to any of the following:
    - 1. Podiatrists;
    - 2. Chiropractors;
    - 3. Dentists;
    - 4. Medical and Osteopathic Physicians;
    - 5. Nurse Practitioners;
    - 6. Optometrists;
    - 7. Psychologists;
    - 8. Pharmacists;

9. Physician Assistants;
  10. Professional Counselors;
  11. Marital and Family Therapists;
  12. Clinical Pastoral Counselors; and
  13. Licensed Clinical Social Workers.
- (c) Every health care institution licensed pursuant to Title 68, or professional listed in this Rule, except the state and those employed by the state, who does not maintain professional liability insurance.

Authority: Tenn. Code Ann. § 56-54-101.

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

- (1) All reporting entities shall submit to the Commissioner by April 1 of every year, a claims data file containing all information required by this Chapter for medical malpractice claims for the period of January 1 through December 31 of the preceding year.
- (2) The claims data file shall contain the following data as set forth and explained in more detail in Appendix A listed by type of provider and indication of specialty, if any:
  - (a) Date of occurrence of the event that resulted in a medical malpractice claim being filed;
  - (b) Claimant's social security number;
  - (c) License number of health care institution or provider;
  - (d) The damages asserted by the claimant listed separately as follows:
    1. Damages asserted by the claimant other than amounts asserted by a lawsuit; and
    2. Damages asserted by the claimant through a lawsuit.
  - (e) The amounts paid on claims listed separately as follows:
    1. Amounts paid by the reporting entity to settle a claim; and
    2. Amounts paid by the reporting entity pursuant to a judgment.
  - (f) The amounts paid on claims shall be listed separately by the following types of damages:
    1. Punitive damages;
    2. Compensatory damages; and
    3. Non-economic damages paid by the reporting entity.
  - (g) The deductible amount that was not paid by the insurance company or risk retention group;
  - (h) The amounts paid on claims shall be listed separately by the following types of expenses:

1. Amounts paid to attorneys for defense counsel, excluding amounts paid for expert witness fees, court costs, deposition costs, and other costs;
  2. Amount of the settlement or judgment that is received by claimant’s counsel.
  3. Amounts paid for expert witness fees;
  4. Amounts paid in court cost;
  5. Amounts paid in deposition costs; and
  6. Amounts paid in connection with other legal expenses not previously identified.
- (3) The second and subsequent reports filed by April 1 of each year pursuant to this Chapter by each reporting entity shall also contain information identifying those claims that are subject to settlement or judgment which were contained in a prior report as a pending claim.

Authority: Tenn. Code Ann. § 56-54-101.

Rule 0780-1-84-.04 Format for Submitted Data.

- (1) All data submitted to the Commissioner on the claims data file shall be submitted in both electronic format and on a CD in the form created by the Commissioner.
- (2) All data located in columns shall be in alpha-numeric format unless otherwise stated. When using numeric data, only regular decimal formats will be acceptable. No compressed or binary (small integer or large integer) will be accepted as valid.
- (3) All date data shall be Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2)-digit month (with leading zeros when necessary), a slash (/), a two (2)-digit day (with leading zeros when necessary), a slash (/), and a four (4)-digit year.
- (4) All currency data shall be in units of U.S. dollars rounded to the nearest whole dollar amount. Leading zeros and the dollars signs are not necessary but may be used so long as the currency fields are consistent.

Authority: Tenn. Code Ann § 56-54-101.

Rule 0780-1-84-.05 Penalties.

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

Authority: Tenn. Code Ann. § 56-54-101.

**APPENDIX A**

Pending Claims	This should contain information for pending claims that have been asserted through a lawsuit or other means. This should not include information on claims that have been paid pursuant to a settlement or judgment.
Date of Occurrence	This should be the date on which the incident arose that gave rise to the medical malpractice claim.
Claimant’s Social Security Number	This should be for the person making the claim.

License Number	This should be the health care institution or provider's license number.
Asserted Damages (other than set forth in lawsuits)	This should include an amount that has been asserted against a reporting entity in a manner other than by filing a lawsuit.
Damages Claimed by Lawsuit	This should include the damages asserted against a reporting entity in a lawsuit.
Closed Claims	This should contain information for claims that have been paid pursuant to a settlement or judgment, including claims that were settled or adjudicated with the condition of open medical treatment for the claimant.
Amount Paid by Settlement	This should include the total amount paid pursuant to a settlement between the reporting entity and the claimant.
Amount Paid by Judgment	This should include the total amount paid pursuant to a judgment against the reporting entity.
Punitive Damages Paid	This should include the amount of settlement or judgment that was identified as punitive damages.
Compensatory Damages Paid	This should include the amount of settlement or judgment that was identified as compensatory damages.
Non-Economic Damages Paid	This should include the amount of settlement or judgment that was identified as non-economic damages.
Total Damages Paid	This should include the amount of settlement or judgment that was the sum total of punitive, compensatory and non-economic damages.
Deductible Amount	This should include the deductible amount that was not paid by the insurance company or the risk retention group.
Attorney Fees Paid to Defense Counsel	This should include the amount of that was paid to defend the medical malpractice claim. This should not include the expense related to expert witness fees, court costs, deposition costs, and other legal expenses.
Portion of Settlement or Judgment Received by Claimant's Counsel	This should include the portion of the settlement or judgment that the claimant's counsel received for their services.
Expert Witness Fees	This should include the expert witness fees that were expended by the reporting entity.
Court Costs	This should include the court costs that were expended by the reporting entity.
Deposition Cost	This should include the deposition costs that were expended by the reporting entity.
Other Legal Fees	This should include the other legal fees not specifically identified that were expended by the reporting entity.
Total Legal Expenses	This should include the legal fees that were expended by the reporting entity, including the claimant's attorney fees.
Grand Total Claims Paid	This should include the total amount that was paid on a claim including the amount of settlement or judgment and the total legal expenses expended by the reporting entity, including the claimant's

attorney fees.

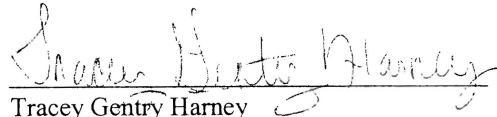
Legal contact and/or party who will approve final copy for publication:

Tracey Gentry Harney  
Staff Attorney  
Department of Commerce and Insurance  
Fifth Floor, Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243  
615-741-2199 (fax) 615-741-4000

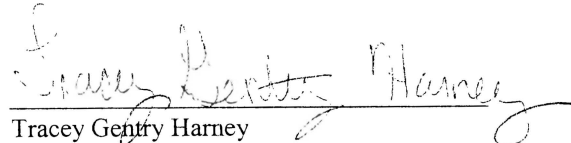
Contact for disk acquisition:

Tracey Gentry Harney  
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Department of Commerce and Insurance  
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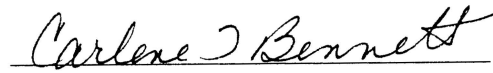
Signature of the agency or officers directly responsible for proposing and/or drafting these rules:

  
Tracey Gentry Harney  
Staff Attorney

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

  
Tracey Gentry Harney  
Staff Attorney  
Tennessee Department of  
Commerce and Insurance

Subscribed and sworn to before me this the 29th day of October, 2004.

  
Notary Public

My commission expires on the 20th day of Sept, 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29 day of Oct, 2004.

Riley C. Darrell  
Riley C. Darrell

*M. Held*

RECEIVED  
OCT 29 PM 3:41  
STATE DEPARTMENT