

During the 2026 General Assembly Session, legislators sought to take additional steps to strengthen Virginia's maternal health infrastructure and improve outcomes. This document provides a summary of the changes to law and provides background and guidance to assist you in compliance.

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Summary

CREATES NEW LAW

HB1403 (Franklin) creates the Severe Maternal Morbidity Surveillance and Review Program (SMM Program) to identify, analyze, and review instances of severe maternal morbidity. The legislation directs the Department of Health to develop a reporting system for hospitals and freestanding birthing centers to report findings and recommendations, as well as a model protocol for conducting reviews of severe maternal morbidity. The legislation requires all hospitals and freestanding birthing centers to participate in the SMM Program and report their findings and recommendations to the Department of Health on an annual basis. **The bill has a delayed effective date of September 1, 2026.**

Action Required

Evaluate the need for any changes to existing policies and procedures related to maternal health case review, quality improvement, and reporting to ensure that hospitals (i) participate in the Severe Maternal Morbidity Surveillance and Review Program; (ii) establish a multidisciplinary advisory board that includes community representation, including at least one community-based organization serving populations with high maternal morbidity or mortality and at least one community-based doula or midwife; (iii) identify and review all severe maternal morbidity events using the state-defined case criteria; (iv) analyze drivers, risk factors, causes, and preventability of such events; (v) engage in related quality improvement activities; and (vi) submit annual findings and recommendations to the Virginia Department of Health in the manner and timeframe specified by the Department, as necessary to comply with the requirements of the law.

Background Information

This bill was part of a broader "Mornibus" package advanced during the 2026 Session to strengthen Virginia's maternal health infrastructure and improve outcomes, particularly in response to persistent racial and regional disparities in maternal morbidity and mortality. While Virginia already had a Maternal Mortality Review Team, policymakers identified a gap in systematically analyzing severe maternal morbidity (SMM)—life-threatening pregnancy or childbirth complications where death does not occur, but significant harm results.

Statutory Text

(NOTE: The language in *italics* and ~~strike through~~ are the only changes to the law. All other language and requirements under the law remain unchanged.)

1. That §§ 2.2-3705.5, 2.2-3711, as it is currently effective and as it shall become effective, and 2.2-4002 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 32.1 an article numbered 25, consisting of a section numbered 32.1-73.33, as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

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7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review Team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review

of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review team to the extent that such information is made confidential by § 32.1-283.7; (v) during a review of any death conducted by the Maternal Mortality Review Team to the extent that such information is made confidential by § 32.1-283.8; (vi) *during a review of any severe maternal morbidity, as that term is defined in § 32.1-73.33, conducted by the Severe Maternal Morbidity Surveillance and Review Program to the extent that such information is made confidential by § 32.1-73.33; or ~~(vii)~~ (vii) during a review of any death conducted by the Developmental Disabilities Mortality Review Committee to the extent that such information is made confidential by § 37.2-314.1.*

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§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

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21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, *those portions of meetings in which severe maternal morbidity cases are discussed by the Severe Maternal Morbidity Surveillance and Review Program pursuant to § 32.1-73.33,* and those portions of meetings in which individual death cases of persons with developmental disabilities are discussed by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

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§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

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B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

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17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1, any operating procedures for review of adult deaths developed by the Adult Fatality Review Team pursuant to § 32.1-283.5, any operating procedures for review of adult deaths developed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, *any operating procedures for review of severe maternal morbidity developed by the Severe Maternal Morbidity Surveillance and Review Program pursuant to § 32.1-73.33,* and any operating procedures for review of the deaths of persons with a developmental disability developed by the Developmental Disabilities Mortality Review Committee pursuant to § 37.2-314.1.

Article 25.

Severe Maternal Morbidity Surveillance and Review Program.

§ 32.1-73.33. Severe Maternal Morbidity Surveillance and Review Program.

A. For the purposes of this section:

“Severe maternal morbidity” means unintended outcomes of the process of labor and delivery that result in significant short-term or long-term consequences to a woman's health.

“SMM Program” means the Severe Maternal Morbidity Surveillance and Review Program established pursuant to this article.

B. The Department shall:

1. Establish the Severe Maternal Morbidity Surveillance and Review Program for the purpose of identifying, analyzing, and reviewing instances of severe maternal morbidity;
2. Develop a reporting system for hospitals and freestanding birthing centers to report findings and recommendations;
3. Develop a severe maternal morbidity surveillance case definition aligned with evidence-based practice and reflecting stakeholder subject matter expertise; and
4. Develop a model protocol for the development and implementation of severe maternal mortality advisory boards established pursuant to subsection C. Such model protocol shall include relevant procedures for conducting reviews of severe maternal morbidity.

C. Each hospital and freestanding birthing center shall participate in the SMM Program and shall:

1. Establish an advisory board to review severe maternal morbidity cases. Such advisory board shall consist of a multidisciplinary group of health care providers, experts in maternal care, and community members, including:
 - a. At least one representative from a community-based organization primarily serving minority populations with high rates of maternal mortality or morbidity;
 - b. At least one community-based doula or midwife with experience in providing perinatal support; and
 - c. Other relevant community members, as deemed appropriate by the hospital or freestanding birth center.
2. Review all severe maternal morbidity events using the severe maternal morbidity surveillance case definition;
3. Identify the drivers, risk factors, and causes of severe maternal morbidity;
4. Engage in quality improvement efforts regarding severe maternal morbidity based on the reviews;
5. Determine whether severe maternal morbidity events were potentially preventable;
6. Make recommendations to reduce the prevalence of severe maternal morbidity in the Commonwealth; and
7. Report its findings and recommendations to the Department on an annual basis at a time and through a reporting system specified by the Department.

D. The Department shall analyze reports submitted pursuant to subdivision C 7 and incorporate recommendations as part of the annual report released by the SMM Program. The SMM Program shall also work collaboratively with the Maternal Mortality Review Team established pursuant to § 32.1-283.8 to address shared risk and protective factors for both severe maternal morbidity and maternal mortality.

E. The Department shall annually compile statewide trends of severe maternal morbidity and publish such trends on its website. Any statistical compilations relating to severe maternal morbidity shall comply with the provisions of § 32.1-127.1:03 and the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) and shall not contain any personal identifying information.

F. Upon the request of the Department, made after the conclusion of any law-enforcement investigation or prosecution, the Department or its designee may inspect and copy information and records regarding a severe maternal morbidity event. Information, records, or reports maintained by any attorney for the Commonwealth shall be made available for inspection and copying by the Department or its designee pursuant to procedures that shall be developed by the Department and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to a severe maternal morbidity event shall be made available for inspection and copying by the Department or its designee. In addition, the Department or its designee may inspect and copy from any health care provider or hospital system in the Commonwealth, on behalf of the SMM Program, (i) without obtaining consent, subject to any limitations on disclosure under applicable federal and state law, the health and mental health records of the woman and those prenatal medical records relating to any child born to the woman and (ii) upon obtaining consent, from each adult regarding his records.

G. All information and records obtained or created by the SMM Program or on behalf of the SMM Program regarding a review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 7 of § 2.2-3705.5. All such information and records shall be used by the SMM Program only in the exercise of its proper purpose and function and shall not be disclosed. In preparing information and records for review by the SMM Program, the Department shall remove any individually identifiable information or information identifying a health care provider, as those terms are defined in 45 C.F.R. § 160.103. Such information shall not be subject to subpoena, subpoena duces tecum, or discovery, be admissible in any civil or criminal proceeding, or be used as evidence in any disciplinary proceeding or regulatory or licensure action of the Department of Health Professions or any health regulatory board. If available from other sources, however, such information and records shall not be immune from subpoena, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the SMM Program during a severe maternal morbidity review. The findings of the SMM Program may be disclosed or published in statistical or other form but shall not identify any individual. Upon conclusion of the severe maternal morbidity review, all information and records concerning the case shall be shredded or otherwise destroyed by the Department in order to ensure confidentiality.

All portions of meetings in which individual severe morbidity events are discussed by the SMM Program shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all SMM Program members and other persons attending closed SMM Program meetings, including any persons presenting information or records on specific severe maternal morbidity events to the SMM Program during closed meetings, shall execute a sworn statement to (i) honor the confidentiality of the information, records, discussions, and opinions disclosed during meetings at which the SMM Program reviews a specific severe maternal morbidity event and (ii) not use any such information, records, discussions, or opinions disclosed during meetings at which the SMM Program reviews a specific severe maternal morbidity event for any purpose other than the exercise of the proper purpose and function of the SMM Program. Violations of this subsection are punishable as a Class 3 misdemeanor.

H. The Board shall promulgate regulations as necessary to implement the SMM Program.

2. That the provisions of this act shall become effective on September 1, 2026.

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