2026 General Assembly Legislation Summary

Medical Malpractice

Last Updated May 26, 2026

During the 2026 General Assembly Session, legislators proposed various changes to the medical malpractice damages cap framework. Key stakeholders successfully opposed these efforts, leading instead to the enactment of a data disclosure bill aimed at collecting and analyzing various data on medical malpractice insurance and claims. This document provides a summary of the changes to law and provides background and guidance to assist you in compliance.

If you have any questions or require additional information, please contact Brent Rawlings brawlings@vhha.com or Julie Dime jdime@vhha.com.

Summary

CREATES NEW LAW

SB536 (Obenshain) as introduced would have created an exception to the cap on recovery for pre-judgment interest and became a vehicle for a larger effort to increase the cap and make other changes to medical malpractice actions. The bill was ultimately amended to require medical malpractice information disclosures from insurers issuing medical malpractice liability insurance policies covering health care providers in the Commonwealth and medical care facilities and other health care providers that maintain self-insurance, captive insurance, risk retention arrangements, or other retained financial risk for medical malpractice liability. The legislation requires various medical malpractice claims and insurance cost information, as specified in the legislation. Each entity required to disclose information must also provide a list of verdicts during the reporting year in medical malpractice actions in the Commonwealth in which the jury verdict exceeded the limitation on recovery established pursuant to § 8.01-581.15. The disclosures and information required to be provided are to be submitted to the State Corporation Commission, Bureau of Insurance (the Bureau) in a uniform format prescribed by the Bureau. The initial disclosure and information must be submitted on or before October 1, 2026, for the 2025 calendar year, and subsequent disclosures and information are to be submitted on or before March 31 of each year thereafter for the preceding calendar year. The legislation contains provisions to protect confidential information and requirements to ensure that data remains aggregated and de-identified. The Bureau must compile and analyze the information submitted and prepare a report summarizing such information in aggregate form. The Bureau must submit the report to the Chairs of the House Committee for Courts of Justice and the Senate Committee for Courts of Justice and to the ranking members of the minority party serving on such committees and shall make the report publicly available on the General Assembly's website as soon as practicable after receipt of the required disclosures. The provisions of this section are set to expire upon the effective date of any act of the General Assembly establishing a new limitation on recovery for medical malpractice actions pursuant to § 8.01-581.15. **The law is effective July 1, 2026.**

Action Required

The Bureau is in the process of developing data submission guidelines for health care providers subject to the legislation. Self-insured hospitals, health systems, and other medical care facilities should begin identifying an internal team to oversee data collection and submission once the process is finalized. Organizations should also start establishing policies and procedures to identify and flag confidential or proprietary information within the data submitted to the Bureau. To ensure that confidential proprietary information is not subject to public disclosure under this legislation, the submitting entity must (i) invoke such exclusion, in writing, upon submission of the data or other materials for which protection from disclosure is sought; (ii) identify the data or other material for which protection is sought; and (iii) state the reason why protection is necessary. VHHA will be coordinating communication with the Bureau on behalf of its members regarding the data submission process and any feedback.

Background Information

In recent years, the legislature has considered and rejected several proposals from individual lawmakers to modify or eliminate the medical malpractice damages cap. While multiple medical malpractice bills were introduced this year, SB536 drew the most attention due to significant changes to its language over the course of the General Assembly Session.

SB536 began as a relatively narrow proposal to exclude prejudgment interest from the medical malpractice damages cap. After crossover, however, the House Courts of Justice Committee adopted sweeping amendments that would have more than doubled the cap to $6 million, introduced a biennial medical CPI adjustment, extended the statute of limitations to as much as 10 years for malpractice claims not previously discoverable, and included other related provisions. VHHA, along with numerous stakeholders from the health care and insurance sectors, opposed these changes, emphasizing the potential negative effects on health care affordability and access. Although the amended bill passed the House, it was rejected by the Senate and sent to a conference committee. The conference committee ultimately revised the bill a third time,

removing the proposed changes to the damages cap and instead establishing a data disclosure framework under a new Virginia Code provision. VHHA worked with the Governor's Administration and the bill's patron to agree on favorable amendments, resulting in the final data disclosure framework.

The intent of the data disclosure and analysis, as expressed by the legislators who authored the original version, is to is to gather additional information on medical malpractice insurance in order to inform potential changes to the damages cap without causing adverse impacts on the health care industry.

Statutory Text

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

1. That the Code of Virginia is amended by adding a section numbered 8.01-581.15:1 as follows:

§ 8.01-581.15:1. Medical malpractice information disclosures.

A. Every insurer issuing medical malpractice liability insurance policies covering health care providers in the Commonwealth shall disclose, for the preceding calendar year, information regarding (i) premiums, including total premiums written in the Commonwealth, the number of insured providers, the identity of the named insureds under such policies, the average and median premium per insured provider, investment or interest income attributable to such line of coverage, if maintained separately in the ordinary course of business, and any dividends, premium refunds, premium credits, surplus distributions, or other return of premiums paid or credited to policyholders or members, including the average amount of such payments per insured provider, and such premium information shall be categorized by medical specialty and type of insured entity, including independent physician practices, hospital-employed physicians, academic medical centers, and such other categories as reasonably reflect underwriting classifications used by insurers; (ii) claims activity, specifically the number of claims reported, lawsuits filed, claims settled, claims dismissed, claims tried to verdict, defense verdicts returned, and the average plaintiff verdict amount; (iii) claim payments and litigation costs, specifically the total indemnity paid, total defense and litigation expenses incurred, the average defense cost per closed claim, and the medical malpractice loss ratio, defined for the purposes of this section as the ratio of total indemnity payments and defense and litigation payments, reserves, and actuarially determined but not reported claims to earned premium for such coverage; and (iv) insurer financial condition, including the total surplus held by insurers writing medical malpractice liability insurance in the Commonwealth.

B. Every medical care facility, as defined in § 32.1-3, or other health care provider that maintains self-insurance, captive insurance, risk retention arrangements, or other retained financial risk for medical malpractice liability shall disclose information regarding (i) the number of physicians and health care providers covered under the malpractice liability program; (ii) claims activity, including claims made, lawsuits filed, claims settled, claims tried to verdict, defense verdicts returned, and the average plaintiff verdict amount; and (iii) malpractice expenditures, including total indemnity paid, total defense and litigation expenses, administrative costs of the malpractice liability program, reserves for pending claims, and premiums paid for excess insurance or reinsurance coverage. For purposes of this subsection, a health care provider shall not be required to make any report of information already included in a report submitted pursuant to this subsection by a person or entity providing self-insurance, captive insurance, risk retention arrangements, or other retained financial risk for the medical malpractice liability of the health care provider.

C. Each entity required to disclose information pursuant to subsections A and B shall provide a list of verdicts during the reporting year in medical malpractice actions in the Commonwealth in which the jury verdict exceeded the limitation on recovery established pursuant to § 8.01-581.15. Such list shall include (i) the verdict amount, (ii) the amount recoverable after the application of the limitation on recovery established pursuant to § 8.01-581.15, and (iii) the year in which the cause of action began to accrue. No personally identifiable information of any individual involved in such an action shall be disclosed in such a list.

D. The disclosures and information required to be provided pursuant to the provisions of this section shall be submitted to the State Corporation Commission's Bureau of Insurance (the Bureau) in a uniform format prescribed by the Bureau. Where possible, the Bureau shall develop the uniform format consistent with the reporting requirements set forth in § 38.2-2228.2. The initial disclosure shall be submitted on or before October 1, 2026, for the 2025 calendar year, and subsequent disclosures and information shall be submitted on or before March 31 of each year thereafter for the preceding calendar year. The Bureau shall include in its report aggregate summaries of such information and, to the extent practicable,

shall present such data in a manner that allows comparison among health care providers by size, region, or type of facility. The Bureau shall utilize anonymized or de-identified formats to facilitate comparison, provided that no individual health care provider is identified and that, to the extent practicable, no information is presented that reasonably could be expected to reveal the identity of any individual health care provider, in any public report.

E. The disclosures and information required to be provided pursuant to this section shall be provided in aggregate form that does not allow identification of any individual physician, hospital, insurer, patient, or specific claim and shall be reported in the form maintained in the ordinary course of business by such entity and certified as accurate and complete by an officer of the reporting entity.

F. The disclosures and information submitted may contain information that the entities required to disclose consider confidential proprietary information. Such confidential proprietary information shall be excluded from, and the State Corporation Commission shall not be subject to, subpoena or public inspection with respect to such information if the entity required to disclose (i) invokes such exclusion, in writing, upon submission of the data or other materials for which protection from disclosure is sought; (ii) identified the data or other material for which protection is sought; and (iii) states the reason why protection is necessary.

G. The Bureau shall compile and analyze the information submitted pursuant to this section and shall prepare a report summarizing such information in aggregate form. The report shall not identify any individual physician, hospital, insurer, patient, or specific claim. The Bureau shall submit the report to the Chairs of the House Committee for Courts of Justice and the Senate Committee for Courts of Justice and to the ranking members of the minority party serving on such committees and shall make the report publicly available on the General Assembly's website as soon as practicable after receipt of the required disclosures. The report shall also include disclaimer language stating that the report shall be used to inform evaluation of the medical malpractice damages cap framework and other related policy considerations.

H. The provisions of this section shall expire upon the effective date of any act of the General Assembly establishing a new limitation on recovery for medical malpractice actions pursuant to § 8.01-581.15.