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# A BILL FOR AN ACT

RELATING TO HEALTH CARE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that four states,  
2 including Colorado, Iowa, Minnesota, and Utah, have introduced  
3 legislation that establishes a voluntary framework for health  
4 care providers and health care facilities to offer  
5 compassionate, honest, timely, and thorough responses to  
6 patients who experience an adverse health care incident. This  
7 is called the candor process. By participating in a candor  
8 process, patients who have a health care adverse incident and  
9 their families are able to engage in open discussions with the  
10 health care providers and health care facilities involved in the  
11 incident. This process is intended to help patients and their  
12 families understand why the incident occurred and what is being  
13 done to prevent similar issues in the future. The candor  
14 process allows patients to help identify and implement  
15 procedures designed to improve patient safety and is designed to  
16 expedite the process of addressing an adverse outcome and  
17 offering patients compensation when warranted.



1           The legislature notes that the candor process established  
2 by this Act is not intended to limit a patient's ability to seek  
3 redress through the legal process. Patients can choose to  
4 withdraw from the candor process at any time and discussions and  
5 communications that occur during the candor process, including  
6 any offers of compensation, remain privileged and confidential.  
7 The legislature also notes that any offer of compensation under  
8 the candor process established by this Act does not constitute  
9 an admission of liability. In addition, if a patient chooses to  
10 accept an offer of compensation, a health care provider or  
11 health care facility may require a patient to sign a release of  
12 liability, so they cannot bring a subsequent lawsuit.

13           The purpose of this Act is to establish a candor process  
14 through which patients and their families, health care  
15 providers, and health care facilities can engage in open  
16 communication about how an adverse care health incident  
17 occurred, how it will be prevented in the future, and what  
18 compensation, if any, will be offered to the patient or their  
19 family.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 CANDOR PROCESS

6 § -1 **Definitions.** As used in this chapter, unless the  
7 context otherwise requires:

8 "Adverse health care incident" means an objective and  
9 definable outcome arising from or related to patient care that  
10 results in the death or physical injury of a patient.

11 "Health care provider" means a physician or osteopathic  
12 physician licensed under chapter 453; physician assistant  
13 licensed and practicing under a supervising physician pursuant  
14 to chapter 453; podiatrist licensed under chapter 463E;  
15 chiropractor licensed under chapter 442; advanced practice  
16 registered nurse, registered nurse, or licensed practical nurse  
17 licensed under chapter 457; dentist licensed under chapter 448;  
18 optometrist licensed under chapter 459; pharmacist licensed  
19 under chapter 461; or any other person who is licensed,  
20 certified, or otherwise authorized or permitted by state law to



1 administer health care in the ordinary course of business or  
2 practice of a profession.

3 "Health care facility" has the same meaning as in section  
4 323D-2.

5 "Open discussion" means all communications that are made  
6 under section -2. "Open discussion" includes all memoranda,  
7 work products, documents, and other materials that are prepared  
8 for or submitted in the course of or in connection with  
9 communications under section -2.

10 "Patient" means a person who receives medical care from a  
11 health care provider, or if the person is a minor, deceased, or  
12 incapacitated, the person's legal representative.

13 § -2 **Open discussions; requirements; notice.** (a) If an  
14 adverse health care incident occurs in a health care facility,  
15 the health care provider, health care facility, or health care  
16 provider jointly with the health care facility, may provide the  
17 patient with written notice of the desire of the health care  
18 provider, health care facility, or health care provider jointly  
19 with the health care facility, to enter into an open discussion  
20 under this chapter. A health care facility may designate a  
21 person or class of persons who have authority to provide notice



1 on behalf of the facility. If the health care provider or  
2 health care facility provides notice, the notice shall be sent  
3 within one year after the date on which the health care provider  
4 knew, or should have known through the exercise of due  
5 diligence, of the adverse health care incident.

6 (b) Written notice under this section shall include:

- 7 (1) The desire of the health care provider, or health care  
8 provider jointly with the health care facility, to  
9 proceed with an open discussion under this chapter;
- 10 (2) The patient's right to receive a copy of the medical  
11 records related to the adverse health care incident  
12 and the patient's right to authorize the release of  
13 the patient's medical records related to the adverse  
14 health care incident to any third party;
- 15 (3) The patient's right to seek legal counsel;
- 16 (4) A copy of section 657-7.3(a) and notice that the time  
17 for a patient to bring a lawsuit is limited under  
18 section 657-7.3(a) and shall not be extended by  
19 engaging in an open discussion under this chapter  
20 unless all parties agree to an extension in writing;  
21 and



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1           (5) If the patient chooses to engage in an open discussion  
2           with the health care provider or health care facility,  
3           a statement that all communications made in the course  
4           of a discussion under this chapter, including  
5           communications regarding the initiation of an open  
6           discussion, shall be privileged and confidential;  
7           shall not be subject to discovery, subpoena, or other  
8           means of legal compulsion for release; and shall not  
9           be admissible in evidence in a judicial,  
10          administrative, or arbitration proceeding.

11          (c) If the patient agrees in writing to engage in an open  
12          discussion, the patient, health care provider, or health care  
13          facility may include other persons in the open discussion.  
14          Written notice shall be provided to any additional parties to  
15          the open discussion prior to the discussion that:

16          (1) All communications shall be privileged and  
17          confidential; shall not be subject to discovery,  
18          subpoena, or other means of legal compulsion for  
19          release; and shall not be admissible in evidence in a  
20          judicial, administrative, or arbitration proceeding;  
21          and



1           (2) Communications, memoranda, work products, documents,  
2           and other materials otherwise subject to discovery  
3           that were not prepared specifically for use in the  
4           open discussion shall not be confidential.

5           (d) The health care provider or health care facility that  
6 agrees to engage in an open discussion may:

7           (1) Investigate how the adverse health care incident  
8           occurred and gather information regarding the medical  
9           care or treatment provided;

10          (2) Disclose the results of the investigation into the  
11          adverse health care incident to the patient;

12          (3) Openly communicate to the patient the steps the health  
13          care provider or health care facility will take to  
14          prevent future occurrences of the adverse health care  
15          incident; or

16          (4) Make a determination that:

17                (A) No offer of compensation for the adverse health  
18                care incident is warranted and orally communicate  
19                that determination to the patient; or



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1           (B) An offer of compensation for the adverse health  
2           care incident is warranted and extend an offer of  
3           compensation in writing to the patient.

4           (e) If a health care provider or health care facility  
5 makes an offer of compensation under subsection (d)(4) and the  
6 patient is not represented by legal counsel, the health care  
7 provider or health care facility shall advise the patient of the  
8 patient's right to seek legal counsel regarding the offer of  
9 compensation.

10          (f) A health care provider or health care facility may  
11 require any patient who accepts an offer of compensation under  
12 subsection (d)(4)(B) to sign a release of liability that bars  
13 the patient from bringing a subsequent lawsuit associated with  
14 the adverse health care incident that is the subject of the open  
15 discussion.

16          (g) Except for written offers of compensation under  
17 subsection (d)(4)(B), discussions between the health care  
18 provider or health care facility and the patient about the  
19 compensation offered under subsection (d)(4) shall remain oral.





1           §   -3 Confidentiality of open discussions. (a) Open  
2 discussion communications and offers of compensation made under  
3 section   -2:

4           (1) Shall not constitute an admission of liability;

5           (2) Shall be privileged, confidential, and not be  
6 disclosed; and

7           (3) Shall not be:

8                 (A) Admissible as evidence in any subsequent  
9                         judicial, administrative, or arbitration  
10                        proceeding;

11               (B) Subject to discovery, subpoena, or other means of  
12                        legal compulsion for release; or

13               (C) Disclosed by any party in any subsequent  
14                        judicial, administrative, or arbitration  
15                        proceeding.

16           (b) Communications, memoranda, work products, documents,  
17 and other materials otherwise subject to discovery that were not  
18 prepared specifically for use in a discussion under  
19 section   -2, shall not be confidential.

20           (c) The limitation on disclosure imposed by this section  
21 shall include disclosure during any discovery conducted as part



1 of a subsequent adjudicatory proceeding. A court or other  
2 adjudicatory body shall not compel any person who engages in an  
3 open discussion under this chapter to disclose confidential  
4 communications or agreements made under section -2.

5 (d) This section does not affect any other law, rule, or  
6 requirement with respect to confidentiality.

7 § -4 **Payment and resolution.** (a) A payment made to a  
8 patient pursuant to section -2 shall not be considered a  
9 payment resulting from a written claim or demand for payment.

10 (b) A health care provider or health care facility may  
11 require the patient, as a condition of an offer of compensation  
12 under section -2, to execute all documents and obtain any  
13 necessary court approval to resolve an adverse health care  
14 incident. The parties shall negotiate the form of such  
15 documents or obtain court approval as necessary."

16 SECTION 3. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19 SECTION 4. This Act shall take effect upon its approval.



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INTRODUCED BY:

*Paul Case*

JAN 24 2024



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**Report Title:**

Candor Process; Open Discussions; Adverse Health Care Incidents;  
Health Care Providers; Health Care Facilities; Confidentiality

**Description:**

Establishes a candor process through which patients and their families, health care providers, and health care facilities can engage in open communication about how an adverse care health incident occurred, how it will be prevented in the future, and what compensation, if any, will be offered to the patient or their family. Establishes notice and confidentiality requirements for open discussions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

