THE SENATE THIRTY-SECOND LEGISLATURE, 2024 STATE OF HAWAII

S.B. NO. 3330

'JAN 2 4 2024

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 process, patients who have a health care adverse incident and 8 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 process allows patients to help identify and implement 14 procedures designed to improve patient safety and is designed to 15 expedite the process of addressing an adverse outcome and 16 17 offering patients compensation when warranted.



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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		



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

3 "Health care facility" has the same meaning as in section4 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 S -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 provider jointly with the health care facility, may provide the 16 17 patient with written notice of the desire of the health care provider, health care facility, or health care provider jointly 18 with the health care facility, to enter into an open discussion 19 under this chapter. A health care facility may designate a 20 21 person or class of persons who have authority to provide notice

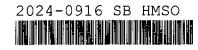


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on behalf of the facility. If the health care provider or
health care facility provides notice, the notice shall be sent
within one year after the date on which the health care provider
knew, or should have known through the exercise of due
diligence,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

6 Written notice under this section shall include: (b) 7 The desire of the health care provider, or health care (1) 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 records related to the adverse health care incident 11 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; The patient's right to seek legal counsel; 15 (3) 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 of a discussion under this chapter, including 4 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 facility may include other persons in the open discussion. 13 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



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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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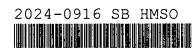
1 An offer of compensation for the adverse health (B) 2 care incident is warranted and extend an offer of 3 compensation in writing to the patient. 4 If a health care provider or health care facility (e) 5 makes an offer of compensation under subsection (d)(4) and the 6 patient is not represented by 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.

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



1	ş ·	-3 C	confidentiality of open discussions. (a) Open			
2	discussion	n com	munications and offers of compensation made under			
3	section -2:					
4	(1)) Shall not constitute an admission of liability;				
5	(2)	Shal	l be privileged, confidential, and not be			
6		disc	losed; and			
7	(3)	Shal	l 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)	Comm	unications, memoranda, work products, documents,			
17	and other	mate	rials otherwise subject to discovery that were not			
18	prepared s	speci	fically 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 incl	Lude	disclosure during any discovery conducted as part			



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

5 (d) This section does not affect any other law, rule, or6 requirement with respect to confidentiality.

7 S -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 -2, to execute all documents and obtain any 12 under section 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.

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



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INTRODUCED BY:



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.

