**FAQs: Colorado Candor Act**

8/27/20

**WHAT IS CANDOR?**

Candor can be defined as “the quality of being open and honest.” This term has been adopted in health care to describe a framework for addressing adverse medical incidents in a way that preserves the provider-patient relationship, allows for open communication, and supports improvements in patient safety.

The focus on Candor emerged out of efforts by the Agency for Healthcare Research and Quality (AHRQ). AHRQ developed a toolkit that promoted a shift to an environment that encourages open, honest conversations with patients after adverse outcomes occur. The process is also designed to investigate and learn from what happened, to address the patients’ needs alongside providers’ needs, and to disseminate any lessons learned in order to improve future outcomes.

Since then, the Candor framework has been utilized in various health care systems and demonstrated positive results. In addition, Candor-related legislation has been passed in Massachusetts, Oregon, and Iowa.

**WHAT ARE THE ORIGINS OF THE COLORADO CANDOR ACT?**

The Colorado Candor Act originated from discussions between the Colorado Academy of Family Physicians (CAFP) and legislators at the beginning of the 2019 state legislative session. CAFP served as a strong advocate for the health care community and its patients by highlighting the benefits of Candor. CAFP worked closely with other stakeholders, including the Colorado Trial Lawyers Association and patient safety advocates, to garner support for this bipartisan measure that eventually passed as legislation (SB 201).

**WHAT TYPES OF INCIDENTS QUALIFY UNDER THE ACT?**

Adverse health care incidents arising from or related to patient care resulting in the physical injury or death of a patient.

**WHEN DID THE COLORADO CANDOR ACT TAKE EFFECT?**

The Act went into effect on July 1, 2019.

**WHAT TYPES OF MEDICAL PROVIDERS AND FACILITIES CAN UTILIZE THE COLORADO CANDOR ACT?**

Physicians, physician assistants, podiatrists, licensed practical and registered nurses, advanced practice nurses, pharmacists, and others who are licensed, certified, registered or otherwise permitted to provide health care services in Colorado.

In addition, hospitals and health care facilities including clinics, community health centers, community mental health centers, surgical centers, and residential care or nursing homes are eligible to participate jointly with a health care provider involved in the adverse health care incident.

**HOW DOES THE CANDOR PROCESS BENEFIT PATIENTS?**

Patients who have an adverse incident, and their families, are able to engage in open discussions with the provider(s) involved. This helps them understand why the incident occurred and what is being done to prevent similar issues in the future. Patients become a part of the process by helping to identify and implement procedures designed to improve patient safety. The Candor process is also designed to expedite the process of addressing an adverse outcome and offering patients compensation when warranted.

**HOW DOES THE CANDOR PROCESS BENEFIT PROVIDERS?**

As with patients, the open discussions allow for providers to address concerns, offer their perspective on what happened and why, and work together to preserve the provider-patient relationship. The Candor process is meant to be non-adversarial. It allows providers to participate in and learn from the process without creating undue burdens that take the provider away from patient care.

**HOW DOES THE CANDOR PROCESS START?**

The process is initiated by the health care provider involved in the incident. The provider, or the provider jointly with the health facility, needs to provide the patient with written notice of the desire to enter into an open discussion (under the Colorado Candor Act) with the patient. The notice must include specific details about the patient’s rights and the nature of the communications/discussions under the Colorado Candor Act.

**WHAT SHOULD MEDICAL FACILITIES BE AWARE OF WITH THE CANDOR PROCESS?**

The Colorado Candor Act does not change the process for health care facilities to review systems issues, the facility’s quality management process, or the quality of care rendered by individual providers. The Act does not change the current process of reporting certain occurrences to Colorado Department of Public Health and Environment (CDPHE) or CDPHE’s ability to investigate and access medical records and other information allowed under current law.

**WHY ARE THE DISCUSSIONS CONFIDENTIAL AND PRIVILEGED?**

To facilitate open communication between providers and patients in a way that is not hindered by the threat of these communications being used against the provider or facility in subsequent litigation.

**CAN A PATIENT STILL FILE A LAWSUIT AFTER A CANDOR DISCUSSION?**

The Colorado Candor Act does not limit a patient’s ability to use the legal system. Patients can choose to withdraw from the Candor process at any time. However, the discussions and communications that occurred during the Candor process, including any offers of compensation, remain privileged and confidential. Under the Act, an offer of compensation does not constitute an admission of liability. In addition, if a patient chooses to accept an offer of compensation, a provider or facility may require a patient to sign a release of liability, so he or she cannot bring a subsequent lawsuit.

**WHAT REPORTING REQUIREMENTS APPLY TO THE COLORADO CANDOR ACT?**

Because no payments are made as a result of a written complaint or claim demanding payment based on a practitioner’s provision of health care services, incidents handled through the Candor process are not required to be reported to the National Practitioner Data Bank.

Patients participating under the Colorado Candor Act do not waive their right to file a complaint with the relevant licensing board or the Colorado Department of Public Health and Environment, which oversees health care facilities. Where indicated, a provider’s actions can also be addressed through Colorado’s professional review process for physicians, PAs, APNs, or a facility’s quality management process for other licensed health care professionals.

States outside of Colorado may require notification of incidents where there is compensation under the Candor process for providers who are licensed in those states, including through the Interstate Medical Licensure Compact.

**WHAT ARE SOME OF THE OTHER BENEFITS OF THE COLORADO CANDOR ACT?**

A health care provider or health facility that participates in open discussions under the Act may provide de-identified information about an adverse health care incident to any patient safety-centered nonprofit organization for use in patient safety research and education. Such a disclosure does not constitute a waiver of the privilege for open discussions and is not a violation of the Act’s confidentiality requirements.