**Minnesota Candor Act—Overview of Candor Process**

August 2023

**HOW DOES THE CANDOR PROCESS WORK?**

**1) The process is initiated by the health care provider or health facility.**

A health care provider or health facility involved in the health care adverse incident, or both jointly, may provide the patient with written notice of their desire to enter into an open discussion under the Minnesota Candor Act.

**2) The written notice must be sent to the patient within 365 days of the incident.**

This time period is defined as within 365 days from the date the health care provider or health facility knew, or should have known, of the health care adverse incident.

**3) The notice must include specific details about the patient’s rights and the nature of the communications and discussions under the Minnesota Candor Act.**

The notice must include the following:

* The patient’s right to receive a copy of the medical records related to the incident and to authorize the release of the records to a third party;
* The patient's right to seek legal counsel and have legal counsel present throughout the open discussion process;
* A copy of the relevant statute of limitations with notice that the time for a patient to bring a lawsuit is limited and will not be extended by engaging in an open discussion under the Act unless all parties agree in writing to an extension;
* Notice that if the patient chooses to engage in an open discussion with the health care provider, health facility, or jointly with both, all communications made in the course of the discussion under the Act, including communications regarding the initiation of an open discussion, are:
  + Privileged and confidential,
  + Not subject to discovery, subpoena, or other means of legal compulsion for release, and
  + Not admissible as evidence in a judicial, administrative, or arbitration proceeding arising directly out of the adverse incident.
* An advisement that any communications, memoranda, work product, documents, or other material that are otherwise subject to discovery and not prepared specifically for use in a Candor open discussion are not confidential.

If the patient agrees in writing to engage in an open discussion, the patient, health care provider, or health facility may include other persons in the open discussion process, who must be advised of the privileged and confidential nature of the communications.

**4) Under the Minnesota Candor Act, health care providers and facilities may investigate, disclose, and communicate about how the incident occurred and what steps are being taken to prevent a similar outcome in the future.**

The health care provider/facility that agrees to engage in an open discussion may:

* Investigate how the incident occurred and gather information regarding the medical care or treatment.
* Disclose the results of the investigation to the patient.
* Communicate to the patient the steps that will take place to prevent future occurrences of the incident.

**5) As part of their assessment, health care providers and facilities can determine whether or not an offer of compensation is warranted.**

If no offer of compensation is warranted, the provider or facility shall orally communicate that decision to the patient.

If the provider or facility determines that an offer of compensation is warranted, the provider or facility shall provide the patient with a written offer of compensation.

* If an offer is made and the patient is not represented by legal counsel, the provider or facility is required to:
  + Advise the patient of the patient's right to seek legal counsel regarding the offer of compensation and encourage the patient to seek legal counsel; and
  + Provide notice that the patient may be legally required to repay medical and other expenses that were paid by a third party on the patient’s behalf, including private health insurance, Medicaid, or Medicare, along with an itemized statement from the health provider showing all charges and third-party payments.
* A health care provider/facility may require the patient, as a condition of an offer for compensation, to execute all documents and obtain any necessary court approval to resolve a health care adverse incident.

**6) To facilitate open communication under the Minnesota Candor Act, discussions and offers of compensation under the Act are privileged and confidential.**

* Open discussion communications and offers of compensation made under the Act:
  + Do not constitute an admission of liability;
  + Are privileged and confidential and shall not be disclosed;
  + Are not admissible as evidence in any subsequent judicial, administrative, or arbitration proceeding arising directly out of the health care adverse incident, except as provided[[1]](#footnote-1);
  + Are not subject to discovery, subpoena, or other means of legal compulsion for release; and
  + Shall not be disclosed by any party in any subsequent judicial, administrative, or arbitration proceeding arising directly out of the incident.
* Communications, memoranda, work product, documents, and other materials that are otherwise subject to discovery and not prepared specifically for use in an open discussion are not confidential.
* The limitation on disclosure includes disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding, and a court or other adjudicatory body shall not compel any person who engages in an open discussion under the Act to disclose confidential communications or agreements made as part of the open discussion.
* The Act does not affect any other law, rule, or requirement with respect to confidentiality.

**WHAT REPORTING REQUIREMENTS APPLY TO THE MINNESOTA 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 Minnesota Candor Act do not waive their right to file a complaint with the relevant licensing board or the Minnesota Department of Health, which oversees health care facilities. Where indicated, a provider’s actions can also be addressed through Minnesota’s review organization process (peer review).

States outside of Minnesota 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.

**CONSIDERATIONS FOR HOSPITALS/HEALTH CARE FACILITIES**

Hospitals and other health facilities follow the same Candor process as individual health care providers. However, they should examine internal systems and what adjustments should be made to integrate the Candor process. This may include the following considerations and/or “best practices”:

1. **Establish a Situation Management Team (SMT) to ensure a timely and effective response**
   1. An SMT is responsible for managing how a facility responds to an adverse outcome in a coordinated approach among various stakeholders within a facility.
   2. The key responsibilities of an SMT are to conduct an analysis, notify the involved providers (if they are not already aware) and provide support to them, determine what type of communication with the patient is appropriate, and evaluate if compensation is warranted.
   3. Members of the SMT can include risk managers, patient safety specialists, patient representatives, and medical and nursing staff leadership.

1. **Recognize the key exclusions that make an incident ineligible for the Candor process.**
   1. A summons or complaint was received.
   2. There is a written demand for compensation.
   3. There is no physical injury to the patient.
2. **Remember that physicians are not the only providers who can participate in the Candor process.**
   1. Besides physicians, eligible providers include physician assistants, podiatrists, licensed practical and registered nurses, advanced practice registered nurses, pharmacists, and any other person who is licensed, certified, registered or otherwise permitted by Minnesota law to administer health care in the ordinary course of business or in the practice of a profession and practices at a health facility.
3. **Be conscious of the 365-day timeframe in which the initial written notice to the patient must be sent.**
4. **Because Candor is meant to be “provider initiated,” the hospital/facility should work with the involved provider(s) to discuss how to speak with the patient and walk through the Candor process.**
   1. The Candor framework recognizes that patients want to hear from the providers who were involved with their care as opposed to an administrative representative from the facility.
5. **Establish a clear contact who will work directly with the patient throughout the entire Candor process.**
6. **Develop patient communication pieces designed to help them understand the Minnesota Candor Act.**
7. **Ensure the proper documentation is used at every step of the process.**
8. **Educate medical staff about the Minnesota Candor Act, and how it can be initiated and utilized.**

**The Minnesota Candor Act framework shares underlying principles with Seven Pillars[[2]](#footnote-2), another recognized approach to addressing adverse events in health care facilities and systems.**

The components of Seven Pillars are:

1. **Patient safety incident reporting**—Reinforce a culture that encourages timely reporting.
2. **Investigation**—Conduct a preliminary review of the incident to determine if patient harm occurred and if a root cause analysis should be performed; the investigation should examine the system as well as provider performance.
3. **Communication and disclosure**—Maintain ongoing communication with the patient and family throughout the process; providers involved should be trained in communication skills required in these situations such as empathy, sincerity, active listening, patience, and tact.
4. **Apology and remediation (if appropriate)**—Ensure that when patient harm did occur, saying “we’re sorry” includes subsequent action such as explaining what is being done to prevent similar outcomes and offers of compensation, if warranted.
5. **System improvement**—Identify and implement system improvements aimed at preventing a recurrence; patients and families may be invited to participate in this aspect of the process.
6. **Data tracking and performance evaluation**—Collect data associated with the incident and utilize this for internal quality assurance, research, and dissemination to relevant stakeholders.
7. **Education and training**—Build a robust education platform based on analysis of adverse events, and utilize case-based, interactive education for all members of the health care team.

**The Minnesota Candor Act does not change the process for health care facilities to review systems issues or the quality of care rendered by individual providers.** The Act does not change the required reporting of certain adverse health care events by facilities to the Department of Health or the health department’s ability to investigate and access medical records and other information allowed under current law.

1. A party may move the court or other decision maker in a subsequent proceeding to adjudicate the matter to admit as evidence a communication made during an open discussion that contradicts a statement made during the proceeding. The court or other decision maker shall allow a communication made during an open discussion that contradicts a statement made at a subsequent proceeding to adjudicate the matter into evidence only if the communication made during an open discussion is material to the claims presented in the subsequent proceeding. [↑](#footnote-ref-1)
2. https://[www.ncbi.nlm.nih.gov/pubmed/20194217](http://www.ncbi.nlm.nih.gov/pubmed/20194217) [↑](#footnote-ref-2)