**FAQs: Minnesota Candor Act**

August 2023

**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 Iowa, Colorado, and Utah.

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

The Minnesota Candor Act originated from discussions between the Minnesota Medical Association (MMA) and legislators at the beginning of the 2022 state legislative session that continued into the 2023 session. MMA served as a strong advocate for the health care community and its patients by highlighting the benefits of Candor. MMA worked closely with other stakeholders, including the Minnesota Association for Justice and patient safety advocates, to garner support for this bipartisan measure that eventually passed as part of a public safety omnibus bill (SF 2909).

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

Health care adverse incidents arising from or related to patient care that result in the death or physical injury of a patient.

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

The Act applies only to health care adverse incidents that occur on or after August 1, 2023.

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

The Act applies to a “health care provider,” which means a person who is licensed, certified, or registered, or otherwise permitted by state law to administer health care in the ordinary course of business or in the practice of a profession and practices at a health facility.

It also applies to a “health facility,” which includes a hospital or outpatient surgical center; a medical, dental, or health care clinic; a diagnostic laboratory; or a birthing center. The definition of health facility includes any corporation, professional corporation, partnership, limited liability company, limited liability partnership, or other entity comprised of health facilities or health care providers.

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

Patients who have a health care 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?**

A patient may provide oral notice to a health care provider, health facility, or both of the patient’s desire to enter into an open discussion with them to discuss potential outcomes following a health care adverse incident in accordance with the Act. Under the Act, however, the Candor process is initiated by the health care provider or health facility involved in the incident. The provider, the facility, or both jointly may provide the patient with written notice of their desire to enter into an open discussion with the patient to discuss potential outcomes following a health care adverse incident in accordance with the Act. The notice must include specific details about the patient’s rights and the nature of the communications and discussions under the Minnesota Candor Act.

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

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.

**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. However, a statement made during the open discussion may not be protected in a subsequent proceeding if the court or other decision-maker finds that statement contradicts a statement made in the later proceeding and is material to the claims made in the subsequent proceeding.

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

The Minnesota 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. 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 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.