**Candor Program Overview-Utah**

The Utah Medical Candor Act, which was enacted in May 2022, establishes a voluntary framework for health care providers, which includes health care facilities, to offer compassionate and timely responses to patients who experience an adverse event.

**HOW DOES THE CANDOR PROCESS WORK?**

**1) The process is initiated by a health care provider.**

A health care provider involved in an “adverse event” (an injury or suspected injury that is associated with a health care process rather than an underlying condition of a patient or a disease) provides the “affected party” (the patient or patient’s representative) with written notice of the desire to enter into the medical candor process under Utah’s Candor law with the patient/family.

**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 after the day on which the health care provider knew of the adverse event involving a patient. The health care provider must also provide written notice, in a timely manner, to any other health care provider involved in the adverse event that invites the health care provider to participate in a medical candor process.

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

The notice must include, among other things:

* the patient’s right to receive a copy of the patient’s medical records related to the adverse event and to authorize the release of the records to any third party;
* the affected party's right to seek legal counsel at their own expense and to have legal counsel present throughout the medical candor process;
* notice to the affected party that there are time limitations for a malpractice action against a health care provider and that a medical candor process does not alter or extend the time limitations for a malpractice action against a health care provider;
* notice to the affected party that, if the health care provider is a public employee or governmental entity, participation in a medical candor process does not alter or extend the deadline for filing the notice of claim under the Governmental Immunity Act of Utah;
* the privileged and confidential nature of all communications made in the course of the medical candor process; and
* notice that a party to the medical candor process may not record any communication without the mutual consent of all parties to the medical candor process.

**4) Under the Utah Medical Candor Act, health care providers, including health care facilities, may conduct an investigation into an adverse event involving a patient; communicate information to the affected party regarding information gathered during an investigation; and communicate the steps that the health care provider will take to prevent future occurrences of the event.**

**5) If any communications or information in any form during a medical candor process involve a health care provider given notice of the medical candor process but the health care provider is not participating in the process, a participating health care provider:**

* may only provide materials or information from the medical record to the affected party regarding any health care provided by the nonparticipating provider;
* may not characterize, describe, or evaluate care provided or not provided by the nonparticipating provider;
* may not attribute fault, blame, or responsibility for the adverse event to the nonparticipating provider; and
* shall inform the affected party of the limitations and requirements on any communications, materials, or information made or provided by the participating healthcare provider in regard to the nonparticipating provider.

**6) As part of their investigation, health care providers, including health care facilities, can determine whether to make an offer of compensation to the affected party for the adverse event.**

If a health care provider determines that no offer of compensation is warranted, the health care provider may orally communicate that decision to the affected party.

If a health care provider determines that an offer of compensation is warranted, the provider shall provide the affected party with a written offer of compensation. If an offer is made and the affected party is not represented by legal counsel, the provider is required to advise the affected party of the party’s right to seek legal counsel, at the party’s expense, and provide notice that the party may be legally required to repay medical and other expenses that were paid by a third party, including private health insurance, Medicare, or Medicaid.

All parties to an offer of compensation must negotiate the form of the relevant documents. As a condition of an offer of compensation, a health care provider may require an affected party to execute all documents to carry out an agreement between the parties and obtain any necessary court approval (such as in the case of a minor). This would generally include the patient signing a release of liability, so he or she could not bring a subsequent lawsuit.

**7) To facilitate open communications under the Utah Medical Candor Act, discussions and offers of compensation under the medical candor process are privileged and confidential.**

The Candor law does not prevent patients or other participants from discussing the care that was received (subject to other privacy laws such as HIPAA), but any communications that are part of the medical candor process cannot be disclosed outside of that process. This is to encourage open and honest discussions with the patient and family about what happened without fear that a participant’s words will be used against him or her if there is a subsequent legal proceeding.

Information that is made in the ordinary course of business, including a medical record or business record, that is otherwise discoverable or admissible and not specifically created for or during a medical candor process is not privileged by the use or disclosure of the information during a medical candor process. Any information that is required to be documented in a patient’s medical record under state or federal law is not privileged by the use or disclosure of the information during a medical candor process. However, this does not include an individual’s mental impressions, conclusions, or opinions that are formed outside the course and scope of the patient care and treatment and are used or disclosed in a medical candor process.

**WHAT REPORTING REQUIREMENTS APPLY TO THE UTAH MEDICAL 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. Payments under and in accordance with the Utah Medical Candor Act are not payments resulting from a professional liability claim or a settlement for purposes of reporting on a license application under the Utah Medical Practice Act; the Utah Osteopathic Medical Practice Act; or the Naturopathic Physician Practice Act.

Patients participating under the Utah Medical Candor Act do not waive their right to file a complaint about a licensed health care professional with the Utah Department of Commerce Division of Occupational and Professional Licensing or with the Utah Department of Health Bureau of Health Facility Licensing and Certification which oversees health care facilities. Where indicated, a health care professional’s actions can be addressed through a hospital’s or other health care entity’s peer review process. The Candor law does not change any reporting requirements for adverse professional review actions or as otherwise required for health care facilities.