CHAPTER 33

ADVERSE HEALTH CARE INCIDENTS — OPEN DISCUSSIONS

S.F. 426

AN ACT relating to privileged communications between a health care provider or health facility and a patient following an adverse health care incident.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. **135P.1 Definitions.**

For the purposes of this chapter, unless the context otherwise requires:

1. *"Adverse health care incident"* means an objective and definable outcome arising from or related to patient care that results in the death or serious physical injury of a patient.

2. *"Health care provider"* means a physician licensed under chapter 148, a physician assistant licensed under chapter 148C, a podiatrist licensed under chapter 149, or an advanced registered nurse practitioner licensed pursuant to chapter 152 or 152E.

3. *"Health facility"* means an institutional health facility as defined in section 135.61, hospice licensed under chapter 135J, home health agency as defined in section 144D.1, assisted living program certified under chapter 231C, clinic, or community health center, and includes any corporation, professional corporation, partnership, limited liability company, limited liability partnership, or other entity comprised of such health facilities.

4. *"Open discussion"* means all communications that are made under section 135P.3, and includes all memoranda, work products, documents, and other materials that are prepared for or submitted in the course of or in connection with communications under section 135P.3.

5. *"Patient"* means a person who receives medical care from a health care provider, or if the person is a minor, deceased, or incapacitated, the person's legal representative.

Sec. 2. NEW SECTION. **135P.2 Confidentiality of open discussions.**

1. Open discussion communications and offers of compensation made under section 135P.3:

a. Do not constitute an admission of liability.

b. Are privileged, confidential, and shall not be disclosed.

c. Are not admissible as evidence in any subsequent judicial, administrative, or arbitration proceeding and 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.

2. Communications, memoranda, work products, documents, and other materials, otherwise subject to discovery, that were not prepared specifically for use in a discussion under section 135P.3, are not confidential.

3. The limitation on disclosure imposed by this section 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 this chapter to disclose confidential communications or agreements made under section 135P.3.

4. This section does not affect any other law, regulation, or requirement with respect to confidentiality.

Sec. 3. NEW SECTION. **135P.3 Engaging in an open discussion.**

1. If an adverse health care incident occurs in a health facility, the health care provider, or the health care provider jointly with the health facility, may provide the patient with written notice of the desire of the health care provider, or of the health care provider jointly with the health facility, to enter into an open discussion under this chapter. If the health care provider or health facility provides such notice, such notice must be sent within one hundred eighty days after the date on which the health care provider knew, or through the use of diligence should have known, of the adverse health care incident. The notice must include all of the following:

a. Notice of the desire of the health care provider, or of the health care provider jointly with the health facility, to proceed with an open discussion under this chapter.

b. Notice of the patient's right to receive a copy of the medical records related to the adverse health care incident and of the patient's right to authorize the release of the patient's medical records related to the adverse health care incident to any third party.

c. Notice of the patient's right to seek legal counsel.

d. A copy of section 614.1, subsection 9, and notice that the time for a patient to bring a lawsuit is limited under section 614.1, subsection 9, and will not be extended by engaging in an open discussion under this chapter unless all parties agree to an extension in writing.

e. Notice that if the patient chooses to engage in an open discussion with the health care provider or health facility, that all communications made in the course of such a discussion under this chapter, including communications regarding the initiation of an open discussion, are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release, and are not admissible in evidence in a judicial, administrative, or arbitration proceeding.

2. If the patient agrees in writing to engage in an open discussion, the patient, health care provider, or health facility engaged in an open discussion under this chapter may include other persons in the open discussion. All additional parties shall also be advised in writing prior to the discussion that discussions are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release, and are not admissible in evidence in a judicial, administrative, or arbitration proceeding. The advice in writing must indicate that communications, memoranda, work products, documents, and other materials, otherwise subject to discovery, that were not prepared specifically for use in a discussion under this section, are not confidential.

3. The health care provider or health facility that agrees to engage in an open discussion may do all of the following:

a. Investigate how the adverse health care incident occurred and gather information regarding the medical care or treatment provided.

b. Disclose the results of the investigation to the patient.

c. Openly communicate to the patient the steps the health care provider or health facility will take to prevent future occurrences of the adverse health care incident.

d. Determine either of the following:

(1) That no offer of compensation for the adverse health care incident is warranted and orally communicates that determination to the patient.

(2) That an offer of compensation for the adverse health care incident is warranted and extends such an offer in writing to the patient.

4. If a health care provider or health facility makes an offer of compensation under subsection 3 and the patient is not represented by legal counsel, the health care provider or health facility shall advise the patient of the patient's right to seek legal counsel regarding the offer of compensation.

5. Except for offers of compensation under subsection 3, discussions between the health care provider or health facility and the patient about the compensation offered under subsection 3 shall remain oral.

Sec. 4. NEW SECTION. **135P.4 Payment and resolution.**

1. A payment made to a patient pursuant to section 135P.3 is not a payment resulting from any of the following:

a. A written claim or demand for payment.

b. A claim for purposes of section 272C.9.

c. A claim for purposes of section 505.27.

2. A health care provider or health facility may require the patient, as a condition of an offer of compensation under section 135P.3, to execute all documents and obtain any necessary court approval to resolve an adverse health care incident. The parties shall negotiate the form of such documents or obtain court approval as necessary.

Approved April 14, 2015