

135P.3 Engaging in an open discussion.

1. If an adverse health care incident occurs in a health facility, the health care provider, the health care facility, 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, the health care facility, or of the health care provider jointly with the health facility, to enter into an open discussion under [this chapter](#). A health care facility may designate a person or class of persons who have authority to provide such notice on behalf of the facility. If the health care provider or health facility provides such notice, such notice must be sent within one year 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 communicate that determination to the patient.

(2) That an offer of compensation for the adverse health care incident is warranted and extend 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.

2015 Acts, ch 33, §3; 2020 Acts, ch 1045, §8

Referred to in §135P1, 135P2, 135P4

Subsection 1, unnumbered paragraph 1 amended