

H-1084

1 Amend House File 532 as follows:

2 1. By striking everything after the enacting clause
3 and inserting:

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

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

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

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

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

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

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

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

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

39 a. Do not constitute an admission of liability.

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

42 c. Are not admissible as evidence in any subsequent
43 judicial, administrative, or arbitration proceeding
44 and are not subject to discovery, subpoena, or other
45 means of legal compulsion for release and shall not
46 be disclosed by any party in any subsequent judicial,
47 administrative, or arbitration proceeding.

48 2. Communications, memoranda, work products,
49 documents, and other materials, otherwise subject to
50 discovery, that were not prepared specifically for

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1 use in a discussion under section 135P.3, are not
2 confidential.

3 3. The limitation on disclosure imposed by this
4 section includes disclosure during any discovery
5 conducted as part of a subsequent adjudicatory
6 proceeding, and a court or other adjudicatory body
7 shall not compel any person who engages in an open
8 discussion under this chapter to disclose confidential
9 communications or agreements made under section 135P.3.

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

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

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

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

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

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

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

45 e. Notice that if the patient chooses to engage
46 in an open discussion with the health care provider
47 or health facility, that all communications made in
48 the course of such a discussion under this chapter,
49 including communications regarding the initiation of an
50 open discussion, are privileged and confidential, are

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1 not subject to discovery, subpoena, or other means of
2 legal compulsion for release, and are not admissible in
3 evidence in a judicial, administrative, or arbitration
4 proceeding.

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

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

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

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

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

32 d. Determine either of the following:

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

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

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

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

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

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1 resolution.

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

5 a. A written claim or demand for payment.

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

7 c. A claim for purposes of section 505.27.

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

15 2. Title page, by striking lines 1 through 3 and
16 inserting <An Act relating to privileged communications
17 between a health care provider or health facility and a
18 patient following an adverse health care incident.>

KAUFMANN of Cedar

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