

Senate File 426 - Introduced

SENATE FILE 426
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1176)

A BILL FOR

1 An Act relating to privileged communications between a health
2 care provider or health facility and a patient following an
3 adverse health care incident.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

11 3. "*Health facility*" means an institutional health facility
12 as defined in section 135.61, hospice licensed under chapter
13 135J, home health agency as defined in section 144D.1,
14 assisted living program certified under chapter 231C, clinic,
15 or community health center, and includes any corporation,
16 professional corporation, partnership, limited liability
17 company, limited liability partnership, or other entity
18 comprised of such health facilities.

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

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

27 Sec. 2. NEW SECTION. 135P.2 Confidentiality of open
28 discussions.

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

31 a. Do not constitute an admission of liability.

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

33 c. Are not admissible as evidence in any subsequent
34 judicial, administrative, or arbitration proceeding and are
35 not subject to discovery, subpoena, or other means of legal

1 compulsion for release and shall not be disclosed by any party
2 in any subsequent judicial, administrative, or arbitration
3 proceeding.

4 2. Communications, memoranda, work products, documents, and
5 other materials, otherwise subject to discovery, that were not
6 prepared specifically for use in a discussion under section
7 135P.3, are not confidential.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 *c.* Openly communicate to the patient the steps the health

1 care provider or health facility will take to prevent future
2 occurrences of the adverse health care incident.

3 *d.* Determine either of the following:

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

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

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

15 5. Except for offers of compensation under subsection 3,
16 discussions between the health care provider or health facility
17 and the patient about the compensation offered under subsection
18 3 shall remain oral.

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

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

22 *a.* A written claim or demand for payment.

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

24 *c.* A claim for purposes of section 505.27.

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

31 **EXPLANATION**

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill allows a health care provider, or a health care
35 provider jointly with a health facility, to engage in an open,

1 confidential discussion with a patient related to an adverse
2 health care incident.

3 The bill defines "adverse health care incident" as an
4 objective and definable outcome of patient care that results
5 in the death or serious physical injury of a patient. The
6 bill defines "health care provider" as a physician licensed
7 under Code chapter 148, a podiatrist licensed under Code
8 chapter 149, or an advanced registered nurse practitioner
9 licensed pursuant to Code chapter 152 or 152E. The bill
10 defines "patient" as a person who receives medical care from a
11 health care provider, or if the person is a minor, deceased,
12 or incapacitated, the person's legal representative. The bill
13 defines "health facility" as an institutional health facility
14 as defined in Code section 135.61, hospice licensed under Code
15 chapter 135J, home health agency as defined in Code section
16 144D.1, assisted living program certified under Code chapter
17 231C, clinic, or community health center, and includes any
18 corporation, professional corporation, partnership, limited
19 liability company, limited liability partnership, or other
20 entity comprised of such facilities.

21 If an adverse health care incident occurs, the bill allows a
22 health care provider, or a health care provider jointly with
23 a health facility, to offer to engage in an open discussion
24 with the patient. The notice of an offer to engage in an open
25 discussion must be sent to the patient within 180 days after
26 the date on which the health care provider knew, or through
27 the use of diligence should have known, of the adverse health
28 care incident. If the patient agrees to proceed with an open
29 discussion, the health care provider or health facility may
30 investigate the adverse health care incident, disclose the
31 results to the patient, and discuss steps the health care
32 provider or health facility will take to prevent similar
33 adverse health care incidents. The health care provider or
34 health facility may also communicate to the patient that either
35 the health care provider or health facility has determined

1 that an offer of compensation is not warranted or that an
2 offer of compensation is warranted. An offer of compensation
3 may be conditioned upon the patient executing a release of
4 future liability as to the adverse health care incident. All
5 communications made under the Code chapter are privileged and
6 confidential, are not subject to discovery, subpoena, or other
7 means of legal compulsion for release, and are not admissible
8 in evidence in a judicial, administrative, or arbitration
9 proceeding.

10 The bill provides that a payment made under the Code chapter
11 is not a written claim or demand for payment, a claim that must
12 be submitted to a licensing board under Code section 272C.9, or
13 a medical malpractice insurance claim that must be reported to
14 the commissioner of insurance under Code section 505.27.