

**Senate File 426 - Reprinted**

SENATE FILE 426  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1176)

(As Amended and Passed by the Senate March 12, 2015)

**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 physician assistant licensed under chapter  
9 148C, a podiatrist licensed under chapter 149, or an advanced  
10 registered nurse practitioner licensed pursuant to chapter 152  
11 or 152E.

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

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

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

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

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

32 a. Do not constitute an admission of liability.

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

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

1 not subject to discovery, subpoena, or other means of legal  
2 compulsion for release and shall not be disclosed by any party  
3 in any subsequent judicial, administrative, or arbitration  
4 proceeding.

5 2. Communications, memoranda, work products, documents, and  
6 other materials, otherwise subject to discovery, that were not  
7 prepared specifically for use in a discussion under section  
8 135P.3, are not confidential.

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

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

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

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

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

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

1 incident to any third party.

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

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

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

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

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

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

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

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

4     *d.* Determine either of the following:

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

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

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

16     5. Except for offers of compensation under subsection 3,  
17 discussions between the health care provider or health facility  
18 and the patient about the compensation offered under subsection  
19 3 shall remain oral.

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

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

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

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

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

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