

COLORADO

Colorado Candor Act enacted in 2019

C.R.S. 25-51-101 et seq.

(text available at <https://leg.colorado.gov/colorado-revised-statutes>)

Intention Behind the Legislation: The legislation was intended to be a tool that formalizes the Candor process of responding to adverse events by encouraging open communication between health care providers and patients and their families while also offering legal protections to health care providers who participate. The goal was to encourage full and honest discussions after an unexpected outcome, to learn from that outcome, and to prevent similar adverse events with future patients.

Organizations Key to Development of the Legislation: COPIC (a leading medical liability insurance provider) worked with the Colorado Academy of Family Physicians, the Colorado Trial Lawyers Association, and Citizens for Patient Safety (a patient advocacy NGO) to develop the legislation and testify in support of the bill.

Summary of Process.

Definition of Adverse Health Care Incident: Physical injury or death related to/arising from patient care.

Mandatory versus Optional: Optional initiation of an “open discussion” into an “adverse health care incident” by a health care provider/health facility; patients may then choose to either engage/not engage in the offered open discussion. Suggested contents of open discussion also written in the language of “may” rather than “must”.

Initiation of the Process:

1. Health care provider +/- health facility sends written notice to the patient of their wish to engage in open discussion within 180 days of knowledge of the adverse health care event.
 - Notice MUST include information on **(i)** the right to receive medical records, **(ii)** the right to obtain legal counsel, **(iii)** no tolling of the statute of limitations, and **(iv)** confidentiality of communication.
2. Patients who wish to engage in the offered open discussion then provide written agreement.

Contents of Open Discussion: Open discussion “may” include **(i)** investigation into the adverse health care incident, **(ii)** sharing with the patient the results of that investigation as well as steps being taking to prevent similar adverse medical events in the future, and **(iii)** an offer of compensation if warranted (if an offer of compensation is made to a patient without an attorney, they receive a second notice of their right to seek legal counsel and notice that they may be required to repay medical liens).

Oral versus Written: The notices described above and any offer of compensation should be in writing. All other discussion related to compensation should remain oral.

Additional Features: The statute provides a way to share de-identified information regarding an adverse health care incident to non-profit organizations for purposes of patient safety research and education without waiving the privilege.

Statute of Limitations: While the statute of limitations is not automatically tolled during the Candor process, as an affirmative defense, the parties can agree not to assert it.

Impact on Future Litigation: Communication and offers of compensation prepared as part of an open discussion are NOT an admission of liability, cannot be admitted as evidence in a future proceeding, and are privileged and confidential. Furthermore, as a condition of receiving offered compensation, a patient may be required by a health care provider/ health facility to sign a release of liability preventing them from bringing a future claim or cause of action regarding the adverse medical event.