

460.17 Sec. 82. [145.685] COMMUNICATION AND RESOLUTION AFTER A HEALTH  
460.18 CARE ADVERSE INCIDENT.

460.19 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have  
460.20 the meanings given.

460.21 (b) "Health care adverse incident" means an objective and definable outcome arising  
460.22 from or related to patient care that results in the death or physical injury of a patient.

460.23 (c) "Health care provider" means a person who is licensed, certified, or registered, or  
460.24 otherwise permitted by state law, to administer health care in the ordinary course of business  
460.25 or in the practice of a profession and practices at a health facility.

460.26 (d) "Health facility" means a hospital or outpatient surgical center licensed under sections  
460.27 144.50 to 144.56; a medical, dental, or health care clinic; a diagnostic laboratory; or a  
460.28 birthing center licensed under section 144.615. The definition of health facility includes  
460.29 any corporation, professional corporation, partnership, limited liability company, limited  
460.30 liability partnership, or other entity comprised of health facilities or health care providers.

460.31 (e) "Open discussion" means all communications that are made during an open discussion  
460.32 process under this section and includes memoranda, work product, documents, and other

461.1 materials that are prepared for or submitted in the course of or in connection with  
461.2 communications made under this section. Open discussion does not include any  
461.3 communication, memoranda, work product, or other materials that would otherwise be  
461.4 subject to discovery and were not prepared specifically for use in an open discussion pursuant  
461.5 to this section.

461.6 (f) "Patient" means a person who receives health care from a health care provider. If the  
461.7 patient is under 18 years of age and is not an emancipated minor, the definition of patient  
461.8 includes the patient's legal guardian or parent. If the patient is deceased or incapacitated,  
461.9 the definition of patient includes the patient's legal representative.

461.10 Subd. 2. **Engaging in an open discussion.** (a) If a health care adverse incident occurs,  
461.11 a health care provider involved in the health care adverse incident, the health facility involved  
461.12 in the health care adverse incident, or both jointly may provide the patient with written  
461.13 notice of their desire to enter into an open discussion with the patient to discuss potential  
461.14 outcomes following a health care adverse incident in accordance with this section. A health  
461.15 facility may designate a person or class of persons who has the authority to provide the  
461.16 notice on behalf of the health facility. The patient involved in the health care adverse incident  
461.17 may provide oral notice to the health care provider, the health facility involved in the health  
461.18 care adverse incident, or both, of the patient's desire to enter into an open discussion with  
461.19 either the health care provider, or the health care provider and health facility jointly, to  
461.20 discuss potential outcomes following a health care adverse incident in accordance with this  
461.21 section.

461.22 (b) If a health care provider or health facility decides to enter into an open discussion  
461.23 as specified in this section, the written notice must be sent to the patient within 365 days  
461.24 from the date the health care provider or the health facility knew, or through the use of  
461.25 diligence should have known, of the health care adverse incident. The notice must include:

461.26 (1) the health care provider, health facility, or both jointly desire to pursue an open  
461.27 discussion in accordance with this section;

461.28 (2) the patient's right to receive a copy of the medical records related to the health care  
461.29 adverse incident and the patient's right to authorize the release of the patient's medical  
461.30 records related to the health care adverse incident to a third party;

461.31 (3) the patient's right to seek legal counsel and to have legal counsel present throughout  
461.32 the open discussion process;

462.1 (4) a copy of section 541.076 with notice that the time for a patient to bring a lawsuit is  
462.2 limited under section 541.076 and will not be extended by engaging in an open discussion  
462.3 under this section unless all parties agree in writing to an extension;

462.4 (5) that if the patient chooses to engage in an open discussion with the health care  
462.5 provider, health facility, or jointly with both, all communications made during the course  
462.6 of the open discussion process, including communications regarding the initiation of an  
462.7 open discussion are:

462.8 (i) privileged and confidential;

462.9 (ii) not subject to discovery, subpoena, or other means of legal compulsion for release;  
462.10 and

462.11 (iii) not admissible as evidence in a proceeding arising directly out of the health care  
462.12 adverse incident, including a judicial, administrative, or arbitration proceeding; and

462.13 (6) that any communications, memoranda, work product, documents, or other material  
462.14 that are otherwise subject to discovery and not prepared specifically for use in an open  
462.15 discussion under this section are not confidential.

462.16 (c) If the patient agrees to engage in an open discussion with a health care provider,  
462.17 health facility, or jointly with both, the agreement must be in writing and must state that  
462.18 the patient has received the notice described in paragraph (b).

462.19 (d) Upon agreement to engage in an open discussion, the patient, health care provider,  
462.20 or health facility may include other persons in the open discussion process. All other persons  
462.21 included in the open discussion must be advised of the parameters of communications made  
462.22 during the open discussion process specified under paragraph (b), clauses (5) and (6).

462.23 (e) If a health care provider or health facility decides to engage in an open discussion,  
462.24 the health care provider or health facility may:

462.25 (1) investigate how the health care adverse incident occurred, including gathering  
462.26 information regarding the medical care or treatment and disclose the results of the  
462.27 investigation to the patient;

462.28 (2) openly communicate to the patient the steps the health care provider or health facility  
462.29 will take to prevent future occurrences of the health care adverse incident; and

462.30 (3) determine that no offer of compensation for the health care adverse incident is  
462.31 warranted or that an offer of compensation for the health care adverse incident is warranted.

463.1 (f) If a health care provider or health facility determines that no offer of compensation  
463.2 is warranted, the health care provider or health facility shall orally communicate that decision  
463.3 to the patient.

463.4 (g) If a health care provider or a health facility determines that an offer of compensation  
463.5 is warranted, the health care provider or health facility shall provide the patient with a written  
463.6 offer of compensation. If an offer of compensation is made under this paragraph, and the  
463.7 patient is not represented by legal counsel, the health care provider or health facility shall:

463.8 (1) advise the patient of the patient's right to seek legal counsel regarding the offer of  
463.9 compensation and encourage the patient to seek legal counsel; and

463.10 (2) provide notice to the patient that the patient may be legally required to repay medical  
463.11 and other expenses that were paid by a third party on the patient's behalf, including private  
463.12 health insurance, Medicaid, or Medicare, along with an itemized statement from the health  
463.13 provider showing all charges and third-party payments.

463.14 (h) Except for an offer of compensation made under paragraph (g), open discussions  
463.15 between the health care provider or health facility and the patient about compensation shall  
463.16 not be in writing.

463.17 Subd. 3. Confidentiality of open discussions and offers of compensation. (a) Open  
463.18 discussion communications made under this section, including offers of compensation made  
463.19 under subdivision 2:

463.20 (1) do not constitute an admission of liability;

463.21 (2) are privileged and confidential and shall not be disclosed;

463.22 (3) are not admissible as evidence in any subsequent judicial, administrative, or arbitration  
463.23 proceeding arising directly out of the health care adverse incident, except as provided in  
463.24 paragraph (b);

463.25 (4) are not subject to discovery, subpoena, or other means of legal compulsion for release;  
463.26 and

463.27 (5) shall not be disclosed by any party in any subsequent judicial, administrative, or  
463.28 arbitration proceeding arising directly out of the health care adverse incident.

463.29 (b) A party may move the court or other decision maker in a subsequent proceeding to  
463.30 adjudicate the matter to admit as evidence a communication made during an open discussion  
463.31 that contradicts a statement made during the proceeding. The court or other decision maker  
463.32 shall allow a communication made during an open discussion that contradicts a statement

464.1 made at a subsequent proceeding to adjudicate the matter into evidence only if the  
464.2 communication made during an open discussion is material to the claims presented in the  
464.3 subsequent proceeding.

464.4 (c) Communications, memoranda, work product, documents, and other materials that  
464.5 are otherwise subject to discovery and that were not prepared specifically for use in an open  
464.6 discussion under this section are not confidential.

464.7 (d) The limitation on disclosure imposed by this subdivision includes disclosure during  
464.8 any discovery conducted as part of a subsequent adjudicatory proceeding, and a court or  
464.9 other adjudicatory body shall not compel any person who engages in an open discussion  
464.10 under this section to disclose confidential communications or agreements made under this  
464.11 section.

464.12 (e) This subdivision does not affect any other law, rule, or requirement with respect to  
464.13 confidentiality.

464.14 Subd. 4. **Payment and resolution.** (a) If a patient accepts an offer of compensation  
464.15 made pursuant to this section, and payment of compensation is made to a patient as a result,  
464.16 the payment to the patient is not payment resulting from:

464.17 (1) a written claim or demand for payment;

464.18 (2) a final judgment, settlement, or arbitration award against a health care institution for  
464.19 medical malpractice purposes; or

464.20 (3) a malpractice claim settled or in which judgment is rendered against a health care  
464.21 professional for purposes of reporting by malpractice insurance companies under sections  
464.22 146A.03, 147.111, 147A.14, 148.102, 148.263, 148B.381, 148F.205, 150A.13, and 153.24.

464.23 (b) A health care provider or health facility may require, as a condition of an offer of  
464.24 compensation made pursuant to this section, a patient to execute all documents and obtain  
464.25 any necessary court approval to resolve a health care adverse incident. The parties shall  
464.26 negotiate the form of the documents to be executed and obtain court approval as necessary.

464.27 Subd. 5. **Sunset.** This section sunsets on June 30, 2031.

464.28 Subd. 6. **Applicability.** This section applies only to health care adverse incidents that  
464.29 occur on or after August 1, 2023.