C.R.S. 25-51-101

Copy Citation

25-51-101. Short title.

The short title of this article 51 is the "Colorado Candor Act".

History

Source: L. 2019: Entire article added, (SB 19-201), ch. 144, p. 1752, § 1, effective July 1.

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25-51-102. Definitions.

As used in this article 51, unless the context otherwise requires:

(1) "Adverse health-care incident" means an objective and definable outcome arising from or related to patient care that results in the death or physical injury of a patient.

(2)

(a) "Health-care provider" means any person who is licensed, certified, registered, or otherwise permitted by state law to administer health care in the ordinary course of business or in the practice of a profession.

(b) "Health-care provider" includes a professional service corporation, limited liability company, or registered limited liability partnership organized pursuant to state law for the practice of a health-care profession.

(3) "Health facility" means a facility licensed or certified by the department of public health and environment pursuant to section 25-1.5-103 (1)(a).

(4)

(a) "Open discussion" means all communications that are made under section 25-51-103 and includes memoranda, work product, documents, and other materials that:

(I) Are prepared for, or submitted in the course of or in connection with, communications under section 25-51-103; and

(II) Are not materials described in subsection (4)(b) of this section.

(b) "Open discussion" does not include communications, memoranda, work product, documents, or other materials that are otherwise subject to discovery and that were not prepared specifically for use in an

open discussion under section 25-51-103 as specified in section 25-51-105 (2).

(5) "Patient" means a person who receives health care from a health-care provider, or the person's legal representative if the person is an unemancipated minor under the age of eighteen, deceased, or incapacitated. If the patient is deceased, "patient" includes the parties recognized under section 13-21-201.

(6) "Public employee" has the same meaning as in section 24-10-103 (4).

(7) "Public entity" has the same meaning as in section 24-10-103 (5).

History

Source: L. 2019: Entire article added, (SB 19-201), ch. 144, p. 1752, § 1, effective July 1.

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C.R.S. 25-51-103

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25-51-103. Engaging in an open discussion.

(1) If an adverse health-care incident occurs, a health-care provider involved in the adverse health-care incident, or the health-care provider jointly with the health facility involved in the adverse health-care incident, may provide the patient with written notice of the desire of the health-care provider, or of the health-care provider jointly with the health facility, to enter into an open discussion under this article 51.

(2) A health-care provider or health facility that chooses to provide the notice specified in subsection (1) of this section shall send the notice within one hundred eighty days after the date on which the health-care provider knew, or through the use of diligence should have known, of the adverse health-care incident. The notice must include:

(a) An explanation of the patient's right to receive a copy of the medical records related to the adverse health-care incident and of the patient's right to authorize the release of the patient's medical records related to the adverse health-care incident to any third party;

(b) A statement regarding the patient's right to seek legal counsel and to have legal counsel present throughout the process specified in this article 51;

(c) A copy of sections 13-80-102.5 and 13-80-112 with notice that the time for a patient to bring a lawsuit is limited and will not be extended merely by engaging in an open discussion under this article 51;

(d) If the health-care provider or health facility is a public entity or a public employee, a copy of section 24-10-109, together with the statement that the deadline for filing the notice required under section 24-

10-109 will not be extended by engaging in an open discussion under this article 51;

(e) Notice that if the patient chooses to engage in an open discussion with the health-care provider or health facility, all communications made in the course of the discussion under this article 51, including communications regarding the initiation of an open discussion, are:

(I) Privileged and confidential;

(II) Not subject to discovery, subpoena, or other means of legal compulsion for release; and

(III) Not admissible as evidence in a proceeding arising directly out of the adverse health-care incident, including a judicial, administrative, or arbitration proceeding; and

(f) An advisement that communications, memoranda, work product, documents, and other materials that are otherwise subject to discovery and not prepared specifically for use in an open discussion under this section are not confidential.

(3)

(a) If the patient agrees in writing to engage in an open discussion under this article 51, the patient, health-care provider, or health facility engaged in the open discussion may include additional parties in the open discussion.

(b) The health-care provider, or the health-care provider jointly with the health facility, involved in the adverse health-care incident shall advise all additional parties in writing of the nature of communications made in accordance with this article 51 as specified in section 25-51-105.

(c) Additional parties shall acknowledge the advisement in subsection (3)(b) of this section in writing.

(d) The advisement provided in accordance with this subsection (3) must indicate that communications, memoranda, work product, documents, and other materials that are otherwise subject to discovery and not prepared specifically for use in an open discussion under this section are not confidential.

(4) The health-care provider or health facility that agrees to engage in an open discussion may:

(a) Investigate how the adverse health-care incident occurred and gather information regarding the medical care or treatment provided;

(b) Disclose the results of the investigation to the patient;

(c) Openly communicate to the patient the steps the health-care provider or health facility will take to prevent future occurrences of the adverse health-care incident;

(d) Determine either of the following:

(I) That no offer of compensation for the adverse health-care incident is warranted; or

(II) That an offer of compensation for the adverse health-care incident is warranted.

(5) If a health-care provider or health facility determines that no offer of compensation is warranted, the health-care provider or health facility shall orally communicate that decision with the patient. If a health-care provider or health facility determines that an offer of compensation is warranted, the health-care provider or health facility shall provide the patient with a written offer of compensation.

(6) If a health-care provider or health facility makes an offer of compensation under subsection (5) of this section and the patient is not represented by legal counsel, the health-care provider or health facility shall:

(a) Advise the patient of the patient's right to seek legal counsel regarding the offer of compensation; and

(b) Provide notice that the patient may be legally required to repay medical and other expenses that were paid by a third party, including private health insurance, medicare, or medicaid.

(7) Except for an offer of compensation under subsection (5) of this section, open discussions between the health-care provider or health facility and the patient about the compensation offered under subsection (5) of this section shall not be in writing.

History

Source: L. 2019: Entire article added, (SB 19-201), ch. 144, p. 1753, § 1, effective July 1.

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25-51-104. Payment and financial resolution.

(1) If a patient accepts an offer of compensation made pursuant to section 25-51-103 (5) and receives the compensation, the payment of compensation to the patient is not a payment resulting from:

(a) A written claim or demand for payment;

(b) A final judgment, settlement, or arbitration award against a health-care professional or health-care institution for medical malpractice for purposes of section 13-64-303;

(c) A malpractice claim settled or in which judgment is rendered against a professional for purposes of reporting by malpractice insurance companies under section 10-1-120, 10-1-120.5, 10-1-121, 10-1-124, 10-1-125, 10-1-125.3, 10-1-125.5, or 10-1-125.7;

(d) A final judgment against, settlement entered into by, or arbitration award paid on behalf of an applicant for malpractice under section 12-30-102 (4)(h); or

(e) A judgment, administrative action, settlement, or arbitration award involving malpractice under section 12-200-106 (5), 12-210-105 (5), 12-215-115 (1)(i), 12-220-201 (1)(q) or (1)(r), 12-235-111 (1)(i), 12-240-125 (4)(b)(III), 12-245-226 (7), 12-250-116, 12-255-119 (3)(b)(II), 12-255-120 (1)(dd), 12-275-120 (1)(p) or (1)(v), 12-275-129, 12-280-126 (1)(t), 12-285-120 (1)(o), 12-285-127 (1)(a), 12-285-211 (1)(k), 12-285-216 (1)(a), or 12-290-113 (2)(b)(III).

(2) As a condition of an offer of compensation under section 25-51-103 (5), a health-care provider or health facility may require a patient to execute all documents and obtain any necessary court approval to resolve an adverse health-care incident. The parties shall negotiate the form of the documents or obtain

court approval as necessary.

History

Source: L. 2019: Entire article added,(SB 19-201), ch. 144, p. 1755, § 1, effective July 1. **L. 2020:**(1)(e) amended,(HB 20-1402), ch. 216, p. 1056, § 60, effective June 30; (1)(c) and (1)(e) amended,(HB 20-1216), ch. 190, p. 867, § 9, effective July 1; (1)(c) amended,(HB 20-1219), ch. 300, p. 1498, § 10, effective September 1; (1)(e) amended,(HB 20-1056), ch. 64, p. 263, § 8, effective September 14. **L. 2021:**(1)(c) and (1)(e) amended,(SB 21-094), ch. 314, p. 1945, § 34, effective September 1.

Annotations

State Notes

Notes

Editor's note:

Amendments to subsection (1)(c) by HB 20-1216 and HB 20-1219 were harmonized. Amendments to subsection (1)(e) by HB 20-1056, HB 20-1216, and HB 20-1402 were harmonized.

Research References & Practice Aids

Cross references:

For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of Colorado 2020.

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25-51-105. Confidentiality of open discussions and offers of compensation.

(1) Open discussion communications and offers of compensation made under section 25-51-103 and in substantial compliance with this article 51:

(a) Do not constitute an admission of liability;

(b) Are privileged and confidential and shall not be disclosed;

(c) Are not admissible as evidence in any subsequent judicial, administrative, or arbitration proceeding arising directly out of the adverse health-care incident;

(d) Are not subject to discovery, subpoena, or other means of legal compulsion for release; and

(e) Shall not be disclosed by any party in any subsequent judicial, administrative, or arbitration proceeding arising directly out of the adverse health-care incident.

(2) Communications, memoranda, work product, documents, and other materials that are otherwise subject to discovery and that were not prepared specifically for use in an open discussion under section 25-51-103 are not confidential.

(3) The limitation on disclosure imposed by this section includes disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding arising directly out of the adverse health-care incident, and a court or other adjudicatory body shall not compel any person who engages in an open discussion under this article 51 to disclose confidential communications or agreements made under section 25-51-103.

(4) This section does not affect any other law, rule, or requirement with respect to confidentiality.

History

Source: L. 2019: Entire article added, (SB 19-201), ch. 144, p. 1756, § 1, effective July 1.

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25-51-106. Patient safety research and education.

(1) A health-care provider or health facility that participates in open discussions under this article 51 may provide de-identified information about an adverse health-care incident to any patient-safety-centered nonprofit organization for use in patient safety research and education.

(2) Disclosure of de-identified information under subsection (1) of this section:

(a) Does not constitute a waiver of the privilege specified in section 25-51-105 (1)(b); and

(b) Is not a violation of the confidentiality requirements of section 25-51-105 (1)(b).

History

Source: L. 2019: Entire article added, (SB 19-201), ch. 144, p. 1757, § 1, effective July 1.

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