

On a scale of 1 to 5  
how familiar are you with Candor?



Please enter a number in the chat window.

# Who we are



Nels Dyste  
Vice President

Dyste Williams is an independent insurance agency providing comprehensive business insurance solutions as well as medical, life, disability and personal insurance to over 1,200 healthcare organizations.



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# Today's Learning Objectives

Understand how the Candor Act creates a framework for an effective communication and resolution program.

Learn the steps required for the legal protections to apply.

Find out about other states' experience and how it has impacted the approach to AMEs, patient and family perspectives, and provider-patient relationships.

Ensure your questions are answered.



# Improving Patient Safety with Candor



Jean Martin, MD, JD  
Deputy General Counsel,  
COPIC Insurance Company



Douglas Mason, CCLA  
Director of Claims,  
COPIC Insurance Company

# History of Candor . . .



Agency for Healthcare  
Research and Quality



Iowa



Colorado

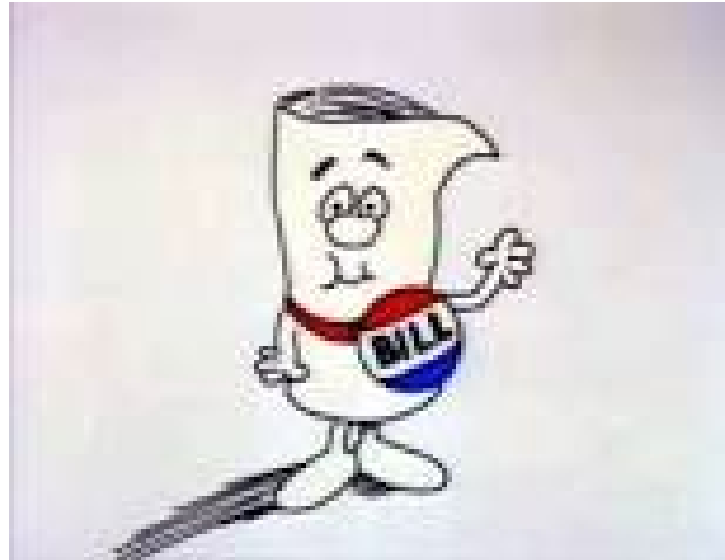


Utah



Minnesota

# Why did we need a bill . . . .?



# Candor Act: Benefits for Providers

- Legal protections for communications with patient/legal representative
- Provider initiated (not a claim)-not reportable to the NPDB
- Offers of compensation do not constitute an admission of liability
- Applies to all health care providers, health facilities, or a provider jointly with a health facility



# Patient Perspective

- Able to meet financial obligations
- Maintained privacy
- Maintained relationship with the practice
- Learned what practice did to prevent the harm from occurring with another patient

**Trust!**







# Pre-Candor

- Initial disclosure
- Primary goal is taking care of the patient's needs
- Report any occurrence early: for liability insurer and Patient Safety Team
- Who else is involved?

# Initiation of the Candor process

**Health care adverse incident** resulting in **death** or **physical injury**

Send patient **written notice** within **365 days** of desire of provider/facility to enter a Candor open discussion including:

- right to receive copy of **medical record** and authorize release to 3<sup>rd</sup> parties
- right to have **legal counsel** present throughout the Candor process
- a copy of the relevant **statute of limitations**

# Initiation of the Candor process



**Notice that all Candor communications, are:**

- **privileged and confidential**
- **not subject to discovery or subpoena**
- **not admissible as evidence**

Communications that are otherwise subject to discovery and not prepared specifically for use in a Candor open discussion are not confidential

# Initiation of the Candor process



- If the patient agrees in writing to the open discussion, the **patient, health care provider or health facility** may include other persons in the discussion

# Health care provider/facility



When agreeing to engage in a Candor discussion may:

- Investigate the incident
- Disclose the results to the patient
- Communicate steps they will take to prevent a future similar occurrence
- Determine whether compensation is warranted

# Health care provider/facility



If an offer is made and the patient is not represented by legal counsel, must:

- advise the patient of the right to seek legal counsel and encourage them to do so
- provide notice that the patient may be required to repay medical and other expenses paid by a third party (private health insurance, Medicaid, Medicare)
- Provide itemized statement showing all charges and third-party payments

# Compensation



**Except for offers of compensation extended to patients in writing, discussions about the compensation offered must not be in writing**

# Compensation



Candor payment is not a payment resulting from:

- a written claim or demand for payment (**NPDB**)
- A final judgment, settlement or arbitration award against a health care institution for medical malpractice
- a malpractice claim for purposes of an insurer or other entity reporting to a licensing board (**state law**)



# Financial resolution

- **Provider/facility may require patient, as condition of compensation, to execute necessary documents**
- **Patient can choose to withdraw from Candor and bring a lawsuit but any statements made during the Candor discussions cannot be used in the lawsuit**



# No change to other reporting laws . . .

No change to reporting adverse professional review actions

No change to reporting certain adverse health care events by facilities to the Department of Health

Patients don't waive their right to file a complaint with a licensing board or the Department of Health



# Resources:

## **AHRQ CANDOR Toolkit**

<https://www.ahrq.gov/patient-safety/capacity/candor/modules.html>

## **COPIC Resources (open source)**

<https://www.callcopic.com/resource-center/guidelines-tools/candor-resources/minnesota-candor-act-resources>

# Thank You for joining us today.



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