



30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides revisor instructions.

34 **Utah Code Sections Affected:**

35 ENACTS:

36 [78B-3-450](#), Utah Code Annotated 1953

37 [78B-3-451](#), Utah Code Annotated 1953

38 [78B-3-452](#), Utah Code Annotated 1953

39 [78B-3-453](#), Utah Code Annotated 1953

40 [78B-3-454](#), Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section [78B-3-450](#) is enacted to read:

44 **Part 4a. Utah Medical Candor Act**

45 **78B-3-450. Definitions.**

46 As used in this part:

47 (1) "Adverse event" means an injury or suspected injury that is associated with a health  
48 care process rather than an underlying condition of a patient or a disease.

49 (2) "Affected party" means:

50 (a) a patient; and

51 (b) any representative of a patient.

52 (3) "Communication" means any written or oral communication created for or during a  
53 medical candor process.

54 (4) "Governmental entity" means the same as that term is defined in Section  
55 [63G-7-102](#).

56 (5) "Health care" means the same as that term is defined in Section [78B-3-403](#).

57 (6) "Health care provider" means the same as that term is defined in Section

58 [78B-3-403.](#)

59 (7) "Malpractice action against a health provider" means the same as that term is  
60 defined in Section [78B-3-403.](#)

61 (8) "Medical candor process" means the process described in Section [78B-3-451.](#)

62 (9) "Patient" means the same as that term is defined in Section [78B-3-403.](#)

63 (10) "Public employee" means the same as the term "employee" as defined in Section  
64 [63G-7-102.](#)

65 (11) (a) Except as provided in Subsection (11)(c), "representative" means the same as  
66 that term is defined in Section [78B-3-403.](#)

67 (b) "Representative" includes:

68 (i) a parent of a child regardless of whether the parent is the custodial or noncustodial  
69 parent;

70 (ii) a legal guardian of a child;

71 (iii) a person designated to make decisions on behalf of a patient under a power of  
72 attorney, an advanced health care directive, or a similar legal document;

73 (iv) a default surrogate as defined in Section [75-2a-108](#); and

74 (v) if the patient is deceased, the personal representative of the patient's estate or the  
75 patient's heirs as defined in Sections [75-1-201](#) and [78B-3-105.](#)

76 (c) "Representative" does not include a parent of a child if the parent's parental rights  
77 have been terminated by a court.

78 (12) "State" means the same as that term is defined in Section [63G-7-102.](#)

79 Section 2. Section **78B-3-451** is enacted to read:

80 **78B-3-451. Medical candor process.**

81 In accordance with this part, a health care provider may engage an affected party in a  
82 process where the health care provider and any other health care provider notified in

83 Subsection [78B-3-452](#)(1)(b) that chooses to participate in the process that:

84 (1) conducts an investigation into an adverse event involving a patient and the health  
85 care provided to the patient;

86 (2) communicates information to the affected party regarding information gathered  
87 during an investigation described in Subsection (1);

88 (3) communicates to the affected party the steps that the health care provider will take  
89 to prevent future occurrences of the adverse event; and

90 (4) determines whether to make an offer of compensation to the affected party for the  
91 adverse event.

92 Section 3. Section **78B-3-452** is enacted to read:

93 **78B-3-452. Notice of medical candor process.**

94 (1) If a health care provider wishes to engage an affected party in a medical candor  
95 process, the health care provider shall:

96 (a) provide a written notice described in Subsection (2) to the affected party within 365  
97 days after the day on which the health care provider knew of the adverse event involving a  
98 patient;

99 (b) provide a written notice, in a timely manner, to any other health care provider  
100 involved in the adverse event that invites the health care provider to participate in a medical  
101 candor process; and

102 (c) inform, in a timely manner, any health care provider described in Subsection (1)(b)  
103 of an affected party's decision of whether to participate in a medical candor process.

104 (2) A written notice under Subsection (1)(a) shall:

105 (a) include an explanation of:

106 (i) the patient's right to receive a copy of the patient's medical records related to the  
107 adverse event; and

108 (ii) the patient's right to authorize the release of the patient's medical records related to  
109 the adverse event to any third party;

110 (b) include a statement regarding the affected party's right to seek legal counsel at the  
111 affected party's expense and to have legal counsel present throughout a medical candor process;

112 (c) notify the affected party that there are time limitations for a malpractice action  
113 against a health care provider and that a medical candor process does not alter or extend the

114 time limitations for a malpractice action against a health care provider;

115 (d) if the health care provider is a public employee or a governmental entity, notify the  
116 affected party that participation in a medical candor process does not alter or extend the  
117 deadline for filing the notice of claim required under Section [63G-7-401](#);

118 (e) notify the affected party that if the affected party chooses to participate in a medical  
119 candor process with a health care provider:

120 (i) any communication, material, or information created for or during the medical  
121 candor process, including a communication to participate in the medical candor process, is  
122 confidential, not discoverable, and inadmissible as evidence in a judicial, administrative, or  
123 arbitration proceeding arising out of the adverse event; and

124 (ii) a party to the medical candor process may not record any communication without  
125 the mutual consent of all parties to the medical candor process; and

126 (f) advise the affected party that the affected party, the health care provider, and any  
127 other person that participates in a medical candor process must agree, in writing, to the terms  
128 and conditions of the medical candor process in order to participate.

129 (3) If, after receiving a written notice, an affected party wishes to participate in a  
130 medical candor process, the affected party must agree, in writing, to the terms and conditions  
131 provided in the written notice described in Subsection (2).

132 (4) If an affected party agrees to participate in a medical candor process, the affected  
133 party and the health care provider may include another person in the medical candor process if:

134 (a) the person receives written notice in accordance with this section; and

135 (b) the person agrees, in writing, to the terms and conditions provided in the written  
136 notice described in Subsection (2).

137 Section 4. Section **78B-3-453** is enacted to read:

138 **78B-3-453. Nonparticipating health care providers -- Offer of compensation --**

139 **Payment.**

140 (1) If any communications, materials, or information in any form during a medical  
141 candor process involve a health care provider that was notified under Subsection

142 78B-3-451(1)(b) but the health care provider is not participating in the medical candor process,  
143 a participating health care provider:

144 (a) may provide only materials or information from the medical record to the affected  
145 party regarding any health care provided by the nonparticipating health care provider;

146 (b) may not characterize, describe, or evaluate health care provided or not provided by  
147 the nonparticipating health care provider;

148 (c) may not attribute fault, blame, or responsibility for the adverse event to the  
149 nonparticipating health care provider; and

150 (d) shall inform the affected party of the limitations and requirements described in  
151 Subsections (1)(a), (b), and (c) on any communications, materials, or information made or  
152 provided by the participating health care provider in regard to a nonparticipating health care  
153 provider.

154 (2) (a) If a health care provider determines that no offer of compensation is warranted  
155 during a medical candor process, the health care provider may orally communicate that  
156 decision to the affected party.

157 (b) If a health care provider determines that an offer of compensation is warranted  
158 during a medical candor process, the health care provider shall provide the affected party with a  
159 written offer of compensation.

160 (3) If a health care provider makes an offer of compensation to an affected party during  
161 a medical candor process and the affected party is not represented by legal counsel, the health  
162 care provider shall:

163 (a) advise the affected party of the affected party's right to seek legal counsel, at the  
164 affected party's expense, regarding the offer of compensation; and

165 (b) notify the affected party that the affected party may be legally required to repay  
166 medical and other expenses that were paid by a third party, including private health insurance,  
167 Medicare, or Medicaid.

168 (4) (a) All parties to an offer of compensation shall negotiate the form of the relevant  
169 documents.

170           (b) As a condition of an offer of compensation under this section, a health care  
171 provider may require an affected party to:  
172           (i) execute any document that is necessary to carry out an agreement between the  
173 parties regarding the offer of compensation; and  
174           (ii) if court approval is required for compensation to a minor, obtain court approval for  
175 the offer of compensation.  
176           (5) If an affected party did not present a written claim or demand for payment before  
177 the affected party accepts and receives an offer of compensation as part of a medical candor  
178 process, the payment of compensation to the affected party is not a payment resulting from:  
179           (a) a written claim or demand for payment; or  
180           (b) a professional liability claim or a settlement for purposes of Sections [58-67-302](#),  
181 [58-67-302.7](#), [58-68-302](#), and [58-71-302](#).  
182           Section 5. Section **78B-3-454** is enacted to read:  
183           **78B-3-454. Confidentiality and effect of medical candor process -- Recording of**  
184 **medical candor process -- Exception for deidentified information or data.**  
185           (1) Except as provided in Subsections (2), (3), and (4), all communications, materials,  
186 and information in any form specifically created for or during a medical candor process,  
187 including the findings or conclusions of the investigation and any offer of compensation, are  
188 confidential and privileged in any administrative, judicial, or arbitration proceeding.  
189           (2) Any communication, material, or information in any form that is made or provided  
190 in the ordinary course of business, including a medical record or a business record, that is  
191 otherwise discoverable or admissible and is not specifically created for or during a medical  
192 candor process is not privileged by the use or disclosure of the communication, material, or  
193 information during a medical candor process.  
194           (3) (a) Any information that is required to be documented in a patient's medical record  
195 under state or federal law is not privileged by the use or disclosure of the information during a  
196 medical candor process.  
197           (b) Information described in Subsection (3)(a) does not include an individual's mental

198 impressions, conclusions, or opinions that are formed outside the course and scope of the  
199 patient's care and treatment and are used or disclosed in a medical candor process.

200 (4) (a) Any communication, material, or information in any form that is provided to an  
201 affected party before the affected party's written agreement to participate in a medical candor  
202 process is not privileged by the use or disclosure of the communication, material, or  
203 information during a medical candor process.

204 (b) Any communication, material, or information described in Subsection (4)(a) does  
205 not include a written notice described in Section [78B-3-452](#).

206 (5) A communication or offer of compensation made in preparation for or during a  
207 medical candor process does not constitute an admission of liability.

208 (6) Nothing in this part alters or limits the confidential, privileged, or protected nature  
209 of communications, information, memoranda, work product, documents, and other materials  
210 under other provisions of law.

211 (7) (a) Notwithstanding Section [77-23a-4](#), a party to a medical candor process may not  
212 record any communication without the mutual consent of all parties to the medical candor  
213 process.

214 (b) A recording made without mutual consent of all parties to the medical candor  
215 process may not be used for any purpose.

216 (8) (a) Notwithstanding any other provision of law, any communication, material, or  
217 information created for or during a medical candor process:

218 (i) is not subject to reporting requirements by a health care provider; and

219 (ii) does not create a reporting requirement for a health care provider.

220 (b) If there are reporting requirements independent of, and supported by, information or  
221 evidence other than any communication, material, or information created for or during a  
222 medical candor process, the reporting shall proceed as if there were no communication,  
223 material, or information created for or during the medical candor process.

224 (c) This Subsection (8) does not release an individual or a health care provider from  
225 complying with a reporting requirement.



226           (9) (a) A health care provider that participates in a medical candor process may provide  
227 deidentified information or data about the adverse incident to an agency, company, or  
228 organization for the purpose of research, education, patient safety, quality of care, or  
229 performance improvement.

230           (b) Disclosure of deidentified information or data under Subsection (9)(a):

231           (i) does not constitute a waiver of a privilege or protection of any communication,  
232 material, or information created for or during a medical candor process as provided in this  
233 section or any other provision of law; and

234           (ii) is not a violation of the confidentiality requirements of this section.

235           Section 6. **Revisor instructions.**

236           The Legislature intends that the Office of Legislative Research and General Counsel, in  
237 preparing the Utah Code database for publication, not enroll this bill if H.J.R. 13, Joint  
238 Resolution Amending Court Rules of Procedure and Evidence to Address the Medical Candor  
239 Process, does not pass.