SENATE BILL 33

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; ENACTING THE RIGHT TO TRY INDIVIDUALIZED TREATMENTS ACT TO PROVIDE CERTAIN PEOPLE WITH LIFE-THREATENING OR SEVERELY DEBILITATING ILLNESSES THE OPPORTUNITY TO TRY INDIVIDUALIZED INVESTIGATIONAL TREATMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Right to Try Individualized Treatments Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Right to Try Individualized Treatments Act:

A. "eligible facility" means an institution that is operating under a federal-wide assurance for the protection of human subjects pursuant to regulations promulgated by the federal department of health and human services;

B. "eligible patient" means a person who has:

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(1) a life-threatening illness or severely debilitating illness, attested to by the patient's treating physician;

(2) considered all other treatment options currently approved by the federal food and drug administration;

(3) received a recommendation from the patient's physician for an individualized investigational treatment, based on analysis of the patient's genomic sequence, chromosomes, deoxyribonucleic acid, ribonucleic acid, genes, gene products or metabolites; and

(4) documentation from the patient's physician that the patient meets the requirements of this subsection;

C. "individualized investigational treatment" means a drug, biological product or device that is unique to and produced exclusively for an individual eligible patient, based on the eligible patient's genetic profile. "Individualized investigational treatment" includes individualized gene therapy antisense oligonucleotides and individualized neoantigen vaccines;

D. "life-threatening illness" means a disease or condition:

(1) in which the likelihood of death is high unless the course of the disease is interrupted; or

(2) with potentially fatal outcomes, in which the end point of clinical trial analysis is survival;

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E. "manufacturer" means a manufacturer of individualized investigational treatments; and

F. "severely debilitating illness" means a disease or condition that causes major irreversible morbidity.

SECTION 3. [NEW MATERIAL] MANUFACTURER OPTIONS--RIGHT OF ELIGIBLE PATIENT.--

A. A manufacturer may make an individualized investigational treatment available to an eligible patient within an eligible facility that is operating in compliance with all applicable federal-wide assurance laws and regulations.

B. An eligible patient who has given written, informed consent for the use of an individualized investigational treatment may request an individualized investigational treatment from a manufacturer.

C. A manufacturer may:

(1) provide an individualized investigational treatment to an eligible patient without receiving compensation; or

(2) require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the individualized investigational treatment.

D. For the purposes of this section, "written, informed consent" means a written document signed by the eligible patient, a parent or legal guardian if the eligible

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patient is a minor or a legal guardian or patient advocate designated by the eligible patient pursuant to the Uniform Health-Care Decisions Act or the Uniform Probate Code, attested to by the eligible patient's physician and a witness, that includes:

(1) an explanation of the currently approved products and treatments for the disease or condition from which the eligible patient suffers;

(2) an attestation that the eligible patient concurs with the eligible patient's physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the eligible patient's life;

(3) clear identification of the specific proposed individualized investigational treatment that the eligible patient is seeking to use;

(4) a description of the potentially best and worst outcomes of using the individualized investigational treatment and a realistic description of the most likely outcome. The description shall include the possibility that new, unanticipated, different or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's condition;

(5) a statement that the eligible patient's

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health plan or third-party administrator and health care provider are not obligated to pay for any care or treatments consequent to the use of the individualized investigational treatment, unless they are specifically required to do so by law or contract;

(6) a statement that the eligible patient's eligibility for hospice care may be withdrawn if the eligible patient begins curative treatment with the individualized investigational treatment and that care may be reinstated if this treatment ends and the eligible patient meets hospice eligibility requirements; and

(7) a statement that the eligible patient understands that the eligible patient is liable for all expenses consequent to the use of the individualized investigational treatment and that this liability extends to the eligible patient's estate, unless a contract between the eligible patient and the manufacturer provides otherwise.

SECTION 4. [NEW MATERIAL] INSURANCE--PAYMENT OF COSTS--ADDITIONAL SERVICES.--

A. A health plan, third-party administrator or governmental agency may provide coverage for the cost of an individualized investigational treatment or the cost of services related to the use of an individualized investigational treatment pursuant to the Right to Try Individualized Treatments Act.

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B. The Right to Try Individualized Treatments Act does not:

(1) expand coverage required of an insurer pursuant to the Health Care Purchasing Act, the New Mexico Insurance Code or other applicable state or federal law;

(2) require any governmental agency to pay costs associated with the use, care or treatment of an eligible patient with an individualized investigational treatment; or

(3) require a health facility licensed pursuant to the Health Care Code to provide new or additional services, unless approved by the health facility.

SECTION 5. [NEW MATERIAL] LIABILITY FOR DEBT.--If an eligible patient dies while being treated with an individualized investigational treatment, the eligible patient's heirs shall not be liable for any outstanding debt related to the treatment or lack of insurance due to the treatment.

SECTION 6. [NEW MATERIAL] EXEMPTION FROM PROFESSIONAL DISCIPLINE.--A licensing board or disciplinary subcommittee shall not revoke, fail to renew, suspend or take any action against a health care provider's license based solely on the health care provider's recommendations to an eligible patient regarding access to or treatment with an individualized investigational treatment. An entity responsible for medicare certification shall not take action against a health care

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provider's medicare certification based solely on the health care provider's recommendation that a patient have access to an individualized investigational treatment.

SECTION 7. [NEW MATERIAL] PROHIBITED ACTS.--An official, employee or agent of this state shall not block or attempt to block an eligible patient's access to an individualized investigational treatment. Counseling, advice or a recommendation consistent with medical standards of care from a health care provider is not a violation of this section.

SECTION 8. [NEW MATERIAL] LIMITATION OF CIVIL LIABILITY--MANDATORY HEALTH CARE COVERAGE.--The Right to Try Individualized Treatments Act does not:

A. create a private cause of action against a manufacturer of an individualized investigational treatment or against any other person or entity involved in the care of an eligible patient using the individualized investigational treatment for any harm done to the eligible patient resulting from the individualized investigational treatment if the manufacturer or other person or entity is complying in good faith with the terms of that act and has exercised reasonable care; or

B. affect any mandatory health care coverage for participation in clinical trials pursuant to the New Mexico Insurance Code.

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