FISCAL IMPACT REPORT

BILL NUMBER: Senate Bill 33

SHORT TITLE: Right to Try Individualized Treatment Act

SPONSOR: Steinborn/Tobiassen

LAST UPDATE: ______ **ORIGINAL DATE:** 01/26/2025 **ANALYST:** Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
Health Care Authority
Attorney General
New Mexico Medical Board
Office of Superintendent of Insurance
Regulation and Licensing Department
University of New Mexico

Agency or Agencies That Were Asked for Analysis but did not Respond
Department of Health
Board of Nursing

SUMMARY

Synopsis of Senate Bill 33

Senate Bill 33 (SB33) would enact a “right to try individualized treatment act.” The act would allow patients with a life-threatening or severely debilitating illness to avail themselves of treatments specifically designed for them based on their genetic makeup. Patients would have to be recommended by their personal physician and have considered all other federal Food and Drug Administration-approved treatments. The individualized treatment would have to be within or coordinated by an “eligible facility,” recognized by the federal Health and Human Services Department’s patient protection division.

Based on a given patient’s individual genetic data as tested, a manufacturer may design and make a treatment for that patient. Patients would have to be provided with information about possible benefits and dangers of the therapy and would have to provide informed consent. In the case of a child, a parent or guardian could provide the informed consent. The patient's physician would have to attest to the inability of approved and conventional treatments to prolong the patient's life. If applicable, a statement is to be included to state that hospice care can be suspended with the individualized treatment, to be possibly reinstated if the treatment ends and the patient still qualifies for hospice care.

The individualized treatment could be made available to a patient without charge or could be charged to the patient or to the patient's estate if the patient dies before paying the assessed charges, but the debt could not be passed on to the patient's relatives or heirs. Health insurance policies and government agencies such as Medicaid and Medicare would be allowed to pay for the individualized treatment but are not obliged to do so. As noted by the Health Care Authority (HCA), Medicaid is not permitted to cover this sort of treatment.

The health practitioner's license could not be encumbered solely because the provider has recommended an individualized treatment. Manufacturers are also immune from private actions for harm or lack of benefit of the individualized treatment if acting in good faith.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 33. Because Medicaid or other state payors would be unlikely to cover these individualized, the bill is unlikely to have a fiscal impact for the state.

SIGNIFICANT ISSUES

Dying patients and those suffering from severely debilitating conditions who have exhausted or foregone approved therapies may prefer the options of individualized therapies based on their genetic makeup. If given full disclosure of uncertain benefits and risks, they may choose to take the risk of embarking on therapy that has been approved by no government agency, such as the Food and Drug Administration or federal Centers for Disease Control and Prevention, even if they may incur both physical and financial burdens.

Individualized treatment is generally more expensive than broadly available treatments, making them a benefit for the financially secure.

ADMINISTRATIVE IMPLICATIONS

The Regulation and Licensing Department points out that it will need to coordinate with its boards and sub-boards to be certain that all understand the prohibition on sanctions against licensees for participating in this sort of therapy.

TECHNICAL ISSUES

Neither severely debilitating illness nor "patient's personal physician" are defined, raising questions about what illnesses and what providers would be covered. The New Mexico Medical

Board recommends that it be specified that the medical provider be in good standing with the relevant board and that that provider not be compensated by the manufacturer for attesting to the patient's eligibility for the treatment.

It is not clear whether palliative individualized treatments would be authorized in addition to curative individualized treatments.

As stated by the University of New Mexico, "This bill would benefit from adding a good-faith limitation on liability for healthcare providers who administer individualized treatments, similar to the liability protections afforded to drug manufacturers under the federal Right to Try Act."

OTHER SUBSTANTIVE ISSUES

The Office of Superintendent of Insurance points out that it would not be authorized to appeal a health insurer's denial for these individualized treatments.

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