

underscored material = new
[bracketed material] = delete

SENATE BILL

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

INTRODUCED BY

Jeff Steinborn and Nicole Tobiassen

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:

.232649.3

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

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

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

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

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

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

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

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

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

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

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

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

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

16 C. A manufacturer may:

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

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

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

.232649.3

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

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

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

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

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

25 (5) a statement that the eligible patient's

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

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

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

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

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

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

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

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

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

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

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

.232649.3

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

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

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

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

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