

HB 701-FN - AS AMENDED BY THE HOUSE

26Mar2025... 0967h

2025 SESSION

25-0560

05/08

HOUSE BILL

701-FN

AN ACT

relative to a health care patient's right to try certain emergency health care treatment options.

SPONSORS:

Rep. Mazur, Hills. 44; Rep. Alexander Jr., Hills. 29; Rep. Ammon, Hills. 42; Rep. Giasson, Hills. 29; Rep. Kofalt, Hills. 32; Rep. Layon, Rock. 13; Rep. Reinfurt, Hills. 29; Rep. Seidel, Hills. 29; Rep. Nalevanko, Ches. 9; Sen. Murphy, Dist 16; Sen. Sullivan, Dist 18

COMMITTEE:

Health, Human Services and Elderly Affairs

ANALYSIS

This bill expands a health care patient's right to try emerging health care treatment options.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to a health care patient's right to try certain emergency health care treatment options.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraphs; Terminal Patients' Right to Try Act; Definitions of Telehealth Prescreening
2 and Remote Signing Added. Amend RSA 126-Z:1 by inserting after paragraph III the following new
3 paragraphs:

4 IV. "Telehealth prescreening" means any remote, real-time discussion intended, in part, to
5 determine whether a person with a life-threatening disease may be:

6 (a) Ineligible for or not selected to participate in a clinical trial; or

7 (b) Ineligible to receive or not be offered a drug, biologic, or device.

8 V. "Remote signing" means the signing of any form, witnessed by a notary public or a
9 licensed health care provider, providing written informed consent for a person diagnosed by a
10 physician with a life-threatening disease to participate in a clinical trial or receive a drug, biologic,
11 or device, by the patient or, if the patient is a minor or lacks the mental capacity to provide consent,
12 by a parent or legal guardian on the patient's behalf.

13 VI. "Individualized investigational treatment" means drugs, biologics, or devices unique to
14 and produced exclusively for use for an individual patient, based on their own genetic profile,
15 including but not limited to individualized gene therapy antisense oligonucleotides (ASO),
16 individualized neoantigen vaccines, and any other individualized treatment.

17 VII. "Eligible facility" means an institution that is operating under a Federalwide Assurance
18 ("FWA") for the Protection of Human Subjects under 42 U.S.C. section 289(a) and 45 C.F.R. part 46.
19 Any eligible facility is subject to the FWA laws, regulations, policies, and guidelines including
20 renewals or updates.

21 2 Terminal Patients' Right to Try; Definition of Physician. Amend RSA 126-Z:1, III to read as
22 follows:

23 III. "Physician" means the licensed ***allopathic or osteopathic*** physician who is providing
24 medical care or treatment to the eligible patient for the terminal illness.

25 3 New Paragraph; Terminal Patients' Right to Try Act; Liability of Physician. Amend RSA 126-
26 Z:3 by inserting after paragraph II the following new paragraph:

27 III. Notwithstanding any provision of law to the contrary, a manufacturer of a drug,
28 biologic, or device, a pharmacist, a health care facility, a health care provider, or a person or entity
29 involved in the care of a patient using a drug, biologic, or device is immune from suit for any harm
30 done to a patient resulting from the drug, biologic, or device if:

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1 (a) The person has a life-threatening disease as determined by the person's physician
2 and a consulting physician;

3 (b) The person's physician has determined that the person has no comparable or
4 satisfactory United States Food and Drug Administration (FDA) approved treatment options
5 available to treat the disease or condition involved;

6 (c) The patient has given written informed consent for the use of the drug, biologic, or
7 device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent
8 or legal guardian has given written informed consent on the patient's behalf and, if the patient is a
9 legal adult, the consent is not contrary to the prior documented wishes of the patient; and:

10 (d) The manufacturer, pharmacist, facility, provider, or other person or entity has not
11 engaged in willful misconduct. "Willful misconduct" shall include any conduct intended to hasten
12 the death of the patient.

13 (e) The drug, biologic, or device is an individualized investigational treatment,
14 administered by a health care provider in cooperation with an eligible facility.

15 4 Private Cause of Action. Amend RSA 126-Z:4 to read as follows:

16 126-Z:4 Private Cause of Action.

17 ***I.*** Nothing in this chapter shall be construed to create a private cause of action against [~~a
18 manufacturer of an investigational drug, biologic, or device or against any other person or entity
19 involved in the care of an eligible patient using the investigational drug, biologic, or device for any
20 harm done to the eligible patient resulting from the investigational drug, biologic, or device, if the
21 manufacturer or other person or entity is complying in good faith with the terms of this chapter and
22 has exercised reasonable care]~~ ***any person or entity except as specified in paragraph II.***

23 ***II.*** ***Notwithstanding any provision of law to the contrary, any patient diagnosed by
24 a physician with a life-threatening disease, and who has been treated, is being treated, or
25 otherwise could be treated in New Hampshire with a drug, biologic, or device, and is
26 affected by a violation of this chapter, or a health care facility or a health care provider
27 involved in the treatment of the patient, shall be entitled to petition the superior court for
28 injunctive relief and reasonable attorney's fees against any regulatory or law enforcement
29 authority that violates this chapter.***

30 5 New Sections; Telehealth Prescreening and Remote Signing. Amend RSA 126-Z by inserting
31 after section 5 the following new sections:

32 126-Z:6 Telehealth Prescreening.

33 ***I.*** Notwithstanding any regulation or provision of law to the contrary, any health care
34 provider, while physically located in New Hampshire, may conduct a telehealth prescreening with
35 any patient, in any state or jurisdiction, who has been diagnosed by a physician with a life-
36 threatening disease.

1 II. No regulatory or law enforcement agency or subdivision shall take action against a
2 health care facility, a health care provider, or a person or entity involved in the care of a patient for
3 conducting a telehealth prescreening as defined in this chapter and pursuant to paragraph I.

4 III. A health care facility, a health care provider, or a person or entity involved in the care of
5 a patient shall be immune from suit to the extent that the suit is based upon a telehealth
6 prescreening.

7 126-Z:7 Remote Signing.

8 I. Notwithstanding any regulation or provision of law to the contrary, a manufacturer of a
9 drug, biologic, or device, a pharmacist, a health care facility, a health care provider, or a person or
10 entity involved in the care of a patient using a drug, biologic, or device may obtain consent to treat a
11 patient using remote signing as defined in this chapter, provided that the manufacturer, pharmacist,
12 facility, provider, or other person or entity has an office in the state of New Hampshire and has
13 conducted a telehealth prescreening pursuant to RSA 126-Z:1, IV. The remote signing shall amount
14 to full and effective consent for treatment under all applicable laws and regulations.

15 II. No regulatory or law enforcement agency or subdivision shall take action against a health
16 care facility, a health care provider, or a person or entity involved in the care of a patient for
17 obtaining patient consent through remote signing, as defined in this chapter, if the provider or
18 facility has complied with paragraph I.

19 III. A health care facility, a health care provider, or a person or entity involved in the care of
20 a patient shall be immune from suit to the extent that the suit challenges the validity of a remote
21 signing to effect lawful consent, provided that the person or entity is complying in good faith with
22 the terms of this chapter and has not engaged in willful misconduct.

23 126-Z:8 Statutory Construction. The general court enacts this chapter to promote maximum
24 access by removing barriers in state law and indemnifying those involved in providing potentially
25 life-saving treatments and treatments to improve the quality of patients' remaining life, to
26 incentivize health care facilities, health care providers, manufacturers of drugs, biologics and/or
27 devices, and other persons and entities involved in the care of patients, to treat life-threatening
28 conditions, whether through company-sponsored clinical trial, single-patient protocol, compassionate
29 use protocol, or any other means of access to drugs, biologics, and/or devices which gathers
30 information on patient outcomes, and to make New Hampshire a jurisdiction that attracts and
31 fosters clinical trials and the development of drugs, biologics, and devices intended to treat life-
32 threatening conditions. This chapter shall be construed consistently with the general court's stated
33 purpose.

34 6 Effective Date. This act shall take effect January 1, 2026.

**HB 701-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to a health care patient's right to try certain emergency health care treatment options.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
<i>Revenue Fund(s)</i>	Superior Court filing fees			
Expenditures*	\$0	Indeterminable	Indeterminable	Indeterminable
<i>Funding Source(s)</i>	General Fund, filing fees			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

METHODOLOGY:

This bill expands upon terminal patients' right to try emerging health care treatments. In addition, the bill allows patients to petition the superior court for injunctive relief in instances in which this right is violated by any regulatory or law enforcement authority. While it is unclear how many cases may be brought as a result of the bill, the Judicial Branch has provided the following cost information with respect to civil cases and related fees:

Judicial Branch Average Civil Case Estimates	FY 2025	FY 2026
Superior Court Complex Civil Case	\$1,430	\$1,473
Superior Court Routine Civil Case	\$535	\$552

Common Superior Court Civil Case Fees	As of 2/12/2020
Original Entry Fee	\$280
Third-Party Claim	\$280
Motion to Reopen	\$160

The full fee schedule can be found at the link below::

https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-06/filing_fees_superior.pdf

AGENCIES CONTACTED:

Judicial Branch