HB 1735-FN - AS INTRODUCED

2026 SESSION

26-2962
05/06

HOUSE BILL ***1735-FN***

AN ACT permitting treatment of certain severe illness under the right to try act.

SPONSORS: Rep. Cole, Hills. 26; Rep. Kesselring, Hills. 18; Rep. Layon, Rock. 13; Rep. Notter, Hills. 12; Rep. Reinfurt, Hills. 29; Rep. D. McGuire, Merr. 14; Rep. Bernardy, Rock. 36; Rep. Ulery, Hills. 13; Rep. Morton, Hills. 39; Sen. Murphy, Dist 16; Sen. Sullivan, Dist 18; Sen. Innis, Dist 7

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill permits treatment of certain severe illness under the right to try act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

26-2962
05/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT permitting treatment of certain severe illness under the right to try act.

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

1 Right to Try Act. Amend RSA 126-Z:1 through 126-Z:4 to read as follows:

126-Z:1 Definitions. In this chapter:

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

I-a. [~~"Eligible patient" means a person to whom all of the following apply:~~

~~(a) The person has been diagnosed with a terminal illness by the person's physician.~~

~~(b) The person has already tried or is not a candidate for eligible United States Food and Drug Administration (FDA) approved treatment options for their disease or condition.~~

~~(c) The person is unable to participate in a clinical trial involving the eligible investigational drug, biologic or device.~~

~~(d) The person has given written informed consent for the use of the investigational drug, biological product, or device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written informed consent on the patient's behalf.~~

~~(e) The physician providing access to an investigational drug, biologic, or device will not be compensated directly by the manufacturer for providing access to this therapy.~~

~~I-b.~~] "Health care provider" means a physician licensed to practice medicine in the state of New Hampshire.

[~~I-c.~~] ***I-b*** "Individualized investigational treatment" means drugs, biologics, or devices [~~unique to and produced exclusively for use for an individual patient, based on their own genetic profile, including but not limited to individualized gene therapy antisense oligonucleotides (ASO), individualized neoantigen vaccines, and any other individualized treatment~~].

II. [~~"Investigational drug, biologic, or device" means a drug, biologic, or device that has successfully completed phase one of a clinical trial, but has not been approved for general use by the FDA and remains under investigation in a clinical trial.~~

~~II-a.~~] "Other protected access" includes:

(a) "Expanded access" whereby the treating physician requests access to an investigational drug, biologic, or device from the FDA and is subject to oversight from an Institutional Review Board; and

(b) "Off-label use" means prescribing an FDA approved drug, biologic, or device for a use not approved for that specific indication consistent with RSA 329:17, VI-b.

III. "Physician" means the licensed allopathic or osteopathic physician who is providing medical care or treatment to the[~~-eligible~~] patient for the terminal ***or qualifying severe*** illness.

III-a.(a) "Qualifying severe illness" means an illness that is both chronic and debilitating.

(b) "Chronic and debilitating" shall have the same meaning as "severely debilitating" defined under 21 C.F.R. 312.81(b).

IV. "Remote signing" means the signing of any form, witnessed by a notary public or a licensed health care provider, providing written informed consent for a person diagnosed by a physician with a terminal ***or qualifying severe*** illness to participate in a clinical trial or receive a drug, biologic, or device, by the patient or, if the patient is a minor or lacks the mental capacity to provide consent, by a parent or legal guardian on the patient's behalf.

V. "Telehealth prescreening" means any remote, real-time discussion intended, in part, to determine whether a person with a terminal ***or qualifying severe*** illness may be:

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

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

VI. "Terminal illness" means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted, and diseases or conditions with potentially fatal outcomes, where the endpoint of a clinical trial analysis is survival, which is the definition of "life threatening" under 21 C.F.R. section 312.81.

126-Z:2 Availability of Investigational Drugs, Biologics, or Devices; Costs; Coverage.

I. A manufacturer [~~of an investigational drug, biologic, or device~~] may make [~~available an investigational~~] ***a*** drug, biologic, or device [~~to eligible patients pursuant to this chapter. A manufacturer may:~~] ***not approved by the United States Food and Drug Administration available to patients if the requirements of RSA 126-Z:3, III are satisfied.***

I-a. Pursuant to this chapter, a manufacturer may:

(a) Provide [~~an investigational~~] ***a*** drug, biologic, or device to [~~an eligible~~] ***a*** patient without receiving compensation.

(b) Require [~~an eligible~~] ***a*** patient to pay [~~the costs of or associated with the manufacture of the investigational~~] ***for the treatment and establish payment arrangements for the*** drug, biologic, or device.

(c) Require [~~an eligible~~] ***a*** patient to participate in data collection relating to the use of the [~~investigational~~] drug, biologic, or device.

II. This chapter shall not require a health care insurer or any state agency to provide coverage for the cost of any [~~investigational~~] drug, biologic, or device.

III. Nothing in this chapter shall require the manufacturer of [~~an investigational~~] ***a*** drug, biologic, or device to include [~~an eligible~~] ***a*** patient in a particular clinical trial or study.

IV. Nothing in this chapter shall require a health care provider, health care facility, or the manufacturer of [~~an investigational~~] ***a*** drug, biological product, or device, to make an experimental treatment available to [~~an eligible~~] ***a*** patient.

126-Z:3 Liability of Physician; Facility.

I. Notwithstanding any provision of law to the contrary, the board of medicine shall not revoke, fail to renew, or take any other action against a physician's license issued pursuant to RSA 329 based primarily on a physician's recommendation to [~~an eligible~~] ***a*** patient regarding or prescription for or treatment with [~~an investigational~~] ***a*** drug, biologic, or device ***pursuant to this chapter***.

II. Notwithstanding any provision of law to the contrary, the department of health and human services shall not take action against a facility licensed under RSA 151 based primarily on the institution's participation in the treatment or use of [~~an investigational~~] ***a*** drug, biologic, or device under this chapter.

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

(a) The person has a terminal ***or qualifying severe*** illness as determined by the person's physician and a consulting physician;

(b) The person's physician has determined that the person has no comparable or satisfactory United States Food and Drug Administration (FDA) approved treatment options available not approved by the FDA to treat the disease or condition involved;

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

(d) The manufacturer, pharmacist, facility, provider, or other person or entity has not engaged in willful or reckless misconduct or other bad faith conduct. "Willful or reckless misconduct" shall include, but is not limited to, any conduct intended to hasten the death of the patient; and

(e) If the drug, biologic, or device is an individualized investigational treatment, it is administered by a health care provider [~~at~~] ***in cooperation with*** an eligible facility.

126-Z:4 Private Cause of Action.

I. Nothing in this chapter shall be construed to create a private cause of action against any person or entity except as specified in paragraph II.

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

2 Telehealth Prescreening. Amend RSA 126-Z:6, I to read as follows:

I. Notwithstanding any regulation or provision of law to the contrary, any health care provider, while physically located in New Hampshire, may conduct a telehealth prescreening with any patient, in any state or jurisdiction, who has been diagnosed by a physician with a terminal ***or qualifying severe*** illness.

3 Statutory Construction. Amend RSA 126-Z:8 to read as follows:

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

4 Effective Date. This act shall take effect upon its passage.

LBA
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HB 1735-FN- FISCAL NOTE
AS INTRODUCED

AN ACT permitting treatment of certain severe illness under the right to try act.

FISCAL IMPACT:

Estimated State Impact				
	FY 2026	**FY 2027**	**FY 2028**	**FY 2029**
Revenue	$0	$0	$0	$0
Revenue Fund	None			
Expenditures*	Indeterminable			
Funding Source	General Fund			
Appropriations*	$0	$0	$0	$0
Funding Source	None			

***Expenditure = Cost of bill** ***Appropriation = Authorized funding to cover cost of bill**

Estimated Political Subdivision Impact				
	FY 2026	**FY 2027**	**FY 2028**	**FY 2029**
County Revenue	$0	$0	$0	$0
County Expenditures	Indeterminable			
Local Revenue	$0	$0	$0	$0
Local Expenditures	Indeterminable			

METHODOLOGY:

This bill adds, deletes, or modifies a criminal penalty, or changes statute to which there is a penalty for violation. Therefore, this bill may have an impact on the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state, as well as county and local governments. A summary of such costs can be found at: https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Justice, Department of Corrections, New Hampshire Association of Counties, and New Hampshire Municipal Association