

# Senate Health and Human Services Committee

*Sophie Walsh 271-3469*

**HB 701-FN**, relative to a health care patient's right to try certain emergency health care treatment options.

**Hearing Date:** April 23, 2025

**Time Opened:** 10:00 a.m.

**Time Closed:** 11:09 a.m.

**Members of the Committee Present:** Senators Rochefort, Avard, Birdsell, Prentiss and Long

**Members of the Committee Absent:** None

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

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**Sponsors:**

Rep. Mazur

Rep. Alexander Jr.

Rep. Ammon

Rep. Giasson

Rep. Kofalt

Rep. Layon

Rep. Reinfurt

Rep. Seidel

Rep. Nalevanko

Sen. Murphy

Sen. Sullivan

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**Who supports the bill:** 150 people signed in support of the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

**Who opposes the bill:** 6 people signed in opposition of the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

**Who is neutral on the bill:** 1 person signed in neutral to the bill. Full sign in sheets are available upon request by contacting the Legislative Aide, Sophie Walsh (Sophie.Walsh@gc.nh.gov).

**Summary of testimony presented:**

Representative Lisa Mazur, Hillsborough – District 44

- Representative Mazur stated that the goal of this bill is to make New Hampshire the best jurisdiction in the country for clinical trials and right-to-try for people with life-threatening illnesses.

- She said the world is witnessing a rise in innovative treatments for life-threatening and rare diseases. New Hampshire has a unique opportunity to help people in need and pursue a unique economic opportunity.
- Representative Mazur highlighted 5 different areas in which this is different from the current right-to-try law.
- Current law already limits regulatory enforcement actions against providers who give experimental treatments to consenting, terminally ill patients. This bill will go further by allowing terminally ill patients to consent to a strong limitation on civil liability that will help them access experimental treatments. Even in right-to-try states, the threat of civil liability almost completely deters manufacturers and providers from actually selling or granting experimental treatments to dying patients.
- This bill would make New Hampshire the first state to recognize a state law for providers physically present in New Hampshire to conduct a remote prescreening for experimental treatment when a patient is dying.
- This would mitigate one of the largest logistical obstacles that dying patients face in accessing treatments.
- Representative Mazur emphasized that the pre-screening interview is an initial meeting to determine whether a patient can apply to receive treatment.
- This bill would also allow for the remote signing of consent forms.
- This bill would make New Hampshire a jurisdiction that attracts and fosters clinical trials and the development of drugs, biologics, and devices intended to treat terminal illness.
- This bill also provides for the right of a provider or patient to seek injunctive relief against a state, regulatory, or law enforcement authority that is obstructing their treatment.
- Under current law, providers need to wait and see if a licensing authority or agency will come after them and then invoke the current right-to-try law as defense. Representative Mazur emphasized that this does not provide any cautious healthcare providers with the incentive they need to provide treatment.
- Representative Mazur shared a personal story about her father who had a terminal illness. She strongly supports protecting the right of patients with terminal diagnoses to access potentially life-saving or life-extending treatments.
- Senator Rochefort referenced an amendment submitted by Senator Murphy and noted that they are very similar. He asked if the bill requires one or all of the criteria set forth in section 2 item III to be met.
- Representative Mazur deferred to a different speaker who will be providing details on the bill.

Representative Rich Nalevanko, Cheshire – District 9

- Representative Nalevanko stated that he is speaking in support of this bill as a co-sponsor.
- It empowers individuals to make medically informed choices about their own health care, potentially extending their life.
- Representative Nalevanko believes that one of the important aspects of this bill is providing hope to patients, emphasizing the power of prayer and positive thinking in terms of how it affects the overall wellbeing of terminal patients.
- He also thinks personal choice is aligned with ethical principles of autonomy and is very empowering for patients.
- Representative Nalevanko asked the Committee to consider the rapid advances made in medical science and the compassion this shows for patients and their families. He noted that there will be no additional costs to the state.

#### Aubrey Freedman

- Mr. Freedman stated that he is speaking in support of this bill.
- He questioned why we should not allow terminally ill people to try everything possible to extend their life.
- He emphasized that the choice should be theirs, even if it ultimately terminates their life quicker.
- He addressed remote prescreening and signing, emphasizing that this helps the individual by not making them waste time and resources traveling.
- Mr. Freedman highlighted protections for companies working to create treatments and cures as the most important part of the bill. He thinks these companies are currently holding back in fear of lawsuits, and emphasized that we should encourage innovation and give terminally ill patients a chance.
- Senator Rochefort asked if Mr. Freedman is saying that people should be taking these treatments even if they expedite their passing.
- Mr. Freedman clarified that the intent is to extend their life, but there is always risk when using experimental treatments. He emphasized that the decision should be up to patients.

#### Representative Erica Layon, Rockingham – District 13

- Representative Layon stated that she is a co-sponsor of this bill.
- She used to be a medical device analyst, and her husband has been working in biomedical and cancer research for over 30 years.
- She emphasized that people need to be supported in their terminal illness journey. She said it is important to honor when someone is ready to stop fighting, but we also need to support those who are trying to fight their illness. They can save both themselves and others in the future by having access to these experimental therapies.

- Representative Layon explained that the process between the closure of trials and final approval can take years. While the existing compassionate use process technically gives access to these treatments, there is not much functional access without protections.
- Representative Layon explained that she was based out of Boston as a medical device analyst because so much innovation is taking place there. She emphasized there are huge benefits for New Hampshire, as Massachusetts doctors can come treat patients here in New Hampshire.
- Senator Rochefort referenced remote prescreening and said as he understands it, providers would have to be licensed in both states involved.
- Representative Layon said she could look into it and confirm if an exemption needs to be provided for that.
- Senator Rochefort referenced lines 1-2 on page 3 and said he wants to make sure that providers are not being misled if the other state they are working with and licensed in may have a hook in them, as we cannot control what other states do.
- Representative Layon agreed and said that clarifying the language to say no New Hampshire regulatory or law enforcement agency would not give a false sense of protection to providers.
- Senator Avard asked if this is being done in any other states.
- Representative Layon said she is not aware of any, but she has heard that Montana is doing something similar.
- Senator Avard said he thought a bill doing the same thing was passed a few years ago.
- Representative Layon confirmed that there was right-to-try legislation that ended up conflicting with a federal right-to-try law passed later.
- Senator Avard asked if Representative Layon would be open to an amendment to address the backdoor use of this for suicide.
- Representative Layon said she would, but emphasized the importance of remembering that some of these treatments have the potential risk to shorten life for some patients.
- Senator Rochefort noted that lines 18-20 of the amendment addresses this issue as well.

Attorney Ian Huyett, Cornerstone

- Atty. Huyett stated that he is speaking in support of this bill.
- He explained that we are entering a new era in medicine, and New Hampshire has a unique opportunity to make a change in healthcare for both the state and country.
- He explained that while many states have right-to-try laws, the reality is that no state in the country has a robust legal regime for access to experimental

treatment for dying people. If New Hampshire were to become the first, we would draw a lot of innovation into the state.

- Atty. Huyett addressed civil liability and stated that the Plaintiff's Attorneys Association is the leading group opposed to this legislation, as they argue that civil liability is important to protect people.
- He said the key feature of this bill is the ability to waive civil liability through informed consent. He questioned that while civil liability is important in general, if the main feature of a law that is totally obstructing dying people from getting experimental treatments is the threat of civil liability, why should those people have to die to maintain the precedent that civil liability shouldn't be waivable under state law through informed consent.
- Senator Avarad referenced line 23 on page 2 and asked if this is the section on civil liability Atty. Huyett is referring to.
- Atty. Huyett clarified that this section is referring to preemptive injunction, and the civil liability waiver language starts on line 27 of page 1, where it says that one is immune from suit if they meet conditions (a)-(e).
- He explained that Senator Murphy's amendment tweaks item (e) regarding individualized gene therapy to clarify the sponsor's intent of keeping this condition additional for individualized, investigational treatments.
- Senator Avarad asked for further explanation on page 2 lines 23-29.
- Atty. Huyett explained that while many states have right-to-try laws, they mostly have no effect. One reason for this is that providers may not want to wait for regulatory authorities to come after them and then invoke the right-to-try law as an affirmative defense once in court. He explained that the promise of an affirmative defense once in court may not be enough assurance for many providers.
- This section on preemptive injunction says providers do not have to wait until they are in court.
- Senator Avarad asked if this aligns with federal law.
- Atty. Huyett said it does not contradict federal law. He explained that while essentially every state in the country has some form of a right-to-try law, there has always been controversy around whether any right-to-try law is compatible with federal preemption. He emphasized that this has never been a practical obstacle for any right-to-try law in practice.
- Senator Rochefort referenced the liability criteria (a)-(e) and asked if all of them must be met.
- Atty. Huyett explained that all of them except (e) must be met, which is addressed by the amendment.
- Atty. Huyett addressed Senator Avarad's previous question on suicide and explained this is addressed on lines 11-12 on page 2, as one must meet the

aforementioned criteria, one of which is that one cannot engage in willful misconduct which is defined to include any conduct intended to hasten the death of a patient.

- Senator Prentiss asked if Atty. Huyett is saying this slice of civil liability will not have broader implications on other practices of medicine, and Atty. Huyett confirmed.
- He explained that the intention is not to set a precedent for broad waivers on civil liability, but rather to effectively say that waiving civil liability is going to help this specific subcategory of people.
- Senator Prentiss said she agrees on protecting the broader scope and asked if there is any particular case law relevant to this slice of civil liability.
- Atty. Huyett explained that there is not a lot of case law on this because doctors are very cautious about avoiding anything that may interfere with the law or civil liability.
- Senator Avard referenced page 2 and asked if Atty. Huyett could define what is meant by “life threatening diseases.”
- Atty. Huyett explained that this was taken from the current right-to-try law, and the current definition is that death is likely in the ordinary course of the illness.
- He distributed testimony to the Committee from parents of young children with rare, genetic illnesses and explained that adding the word “eminent” would in practice likely preclude many of these children from eligibility.

John Lewicke, Former Representative of Hillsborough – 36

- Mr. Lewicke explained that he was diagnosed with an incurable condition four years ago, and he is here today because he was willing to try things out of the norm that were not approved by the FDA.
- He explained that many of these treatments will never be approved by the FDA because they are off patent. There are many treatments that will fail for one reason and can ultimately never be tested again due to the high costs of going through FDA trials.
- Mr. Lewicke explained that he received further treatment earlier this year and had to sign away all his rights. He emphasized that the only reason he would ever consider taking action against his provider is if they fail to do what they said they would.
- Senator Rochefort clarified that Mr. Lewicke is in support of the bill, and he confirmed.

Brian Norman, Goldwater Institute

- Mr. Norman stated that he is speaking in support of this bill.

- He explained that this will expand New Hampshire's right-to-try program to include investigational, individualized treatments designed using the patient's own genetic information. While these treatments offer promise to patients with rare conditions, they are not available under current right-to-try laws.
- He emphasized that New Hampshire has an opportunity to help lead the nation in solving this issue and saving lives. This bill builds on New Hampshire's leadership on this issue by strengthening liability protections, expanding program access, and allowing patients to access investigational, individualized treatments.
- Mr. Norman stated that this law needs to be upgraded and modernized to account for rapid advancements made in medicine.
- He said this bill creates a safe, physician-directed pathway for patients with rare and ultra-rare diseases who don't have treatment options in clinical trial or who need an individualized treatment approach.

Holly Haines, New Hampshire Association for Justice

- Ms. Haines stated that she is speaking in opposition to this bill.
- She explained that this bill goes further than both Montana's statute and the Goldwater Institute's proposed legislation being used around the country.
- She referenced Montana's statute and explained that it contains the same language as our current statute, requiring that providers exercise reasonable care and comply in good faith.
- Ms. Haines stated that civil liability is an important, substantive right under New Hampshire's constitution.
- She referenced previous testimony about civil liability being the main reason doctors are not providing these treatments. She said this is not true, citing that people are not getting these treatments because drug manufacturers are not willing to participate.
- She noted that as written, this is not a mandatory bill. Patients have the option to ask for these treatments, providers have the option to offer them, but manufacturers also have the option to participate or not. She said the reality is that they are not going to.
- Ms. Haines stated that this bill is in direct conflict with federal law. The amendment adds the definition of "eligible facility" to the statute, and these facilities are subject to federal regulations that prohibit any informed consent or any trials requiring a patient to waive or appear to waive any of their legal rights, or release the investigator, sponsor, institution, or its agents from any liability for negligence.
- Ms. Haines stated that this bill is providing false hope to patients. She explained that while it has good intentions, if implemented and patients are allowed to get these treatments, they could lose their hospice benefits, homecare

benefits, insurance benefits, and government program benefits. She said the only way patients can get hospice and homecare benefits is if they have no eligible treatments.

- Senator Prentiss asked if it is Ms. Haines' position that isolating this slice of civil liability would have a broader impact on civil liability and civil relief in medical cases.
- Ms. Haines said it would have that impact if these treatments are being offered in a negligent manner. She noted that this is a slippery slope for other avenues for providers to give care that doesn't comply with applicable standards.
- Senator Prentiss referenced the loss of benefits and asked if there is any federal law or case law that provides specific examples of where this is happening.
- Ms. Haines explained that while she does not have any case law, there are a lot of studies on this. Professional societies have written papers about their concerns of the impact of this on their patients.
- It is her understanding that to qualify for the benefits, one must have a terminal illness, no other treatment options, and the only remaining options are palliative and hospice care.

Hon. Betty Gay

- Ms. Gay stated that she is speaking in support of this bill.
- This bill allows patients to relieve their providers of the potential risk of being sued.
- It also allows for telehealth pre-screening, which Ms. Gay emphasized is important for individuals who are not local.
- This bill would allow patients to come with an agreement to see a doctor in New Hampshire as their provider. Ms. Gay addressed the previous testimony about licensing and said she does not think it is right for a physician to tell their patients that they cannot see anyone else.
- Ms. Gay said this bill is a good foundational step forward, and she hopes to see it expanded upon in the future.
- Ms. Gay addressed previous testimony about the eminence of death and said she does not think the bill should specify this.

Terese Bastarache

- Ms. Bastarache stated that she is an RN and hospice nurse. She is speaking on behalf of her patients who did not meet trial criteria for drugs that are proving to be very effective.
- She addressed previous testimony regarding hospice benefits and explained that those benefits are for when patients decide that they no longer want curable interventions.

- She explained that one can choose to go into hospice at any point in their journey, and available treatments do not disqualify them from receiving hospice benefits.
- Ms. Bastarache emphasized that we need to give people the freedom to choose without providers being afraid of a lawsuit.

#### Michael Yakubovich

- Mr. Yakubovich stated that he is a stage 4 cancer patient. The 5-year survival rate for the type of cancer he has is 5%.
- He explained that the first line of treatment is chemotherapy for 6 months. He emphasized that his doctors are going above and beyond to treat him, extending his chemotherapy treatment to 18 months.
- Mr. Yakubovich said he believes medicine is more of an art than a science, as there is no one-size-fits-all case. He cares deeply about his doctors and does not want to hinder them in any way.
- Because Mr. Yakubovich's cancer is quite rare, there are existing treatments for other cancers that cannot be prescribed to him because of FDA approval. He explained that in addition to everything they must deal with, doctors are experiencing a lot of bureaucratic red tape.
- Mr. Yakubovich emphasized the nearby innovation in medicine, noting that a pump he had surgically implanted to continuously administer chemotherapy to his liver was invented in Newton, Massachusetts.
- He said New Hampshire has the chance to become a center for this innovation and patient-oriented research.
- Mr. Yakubovich urged the Committee to give doctors the protection they need.

#### Nancy Biederman

- Ms. Biederman stated that she is speaking as the parent of a child with multiple rare diseases.
- Rare diseases can become chronic, progressive, and life-threatening.
- There are currently over 7,000 rare diseases. 1 in 10 people in the United States have a rare disease.
- Nearly 80% of rare diseases are estimated to be genetic in nature, yet less than 5% of rare diseases currently have an FDA-approved treatment. Ms. Biederman said this is largely due to financial constraints and antiquated regulations.
- Ms. Biederman explained that as a result of this, people with rare, life-threatening, or severely debilitating illnesses face large barriers to care. This leaves them with the only option of reducing the severity of symptoms.
- She emphasized that every patient with a rare disease is different. While people may share the same diagnosis, they may react differently to treatments and present the disease in different ways. Thus, what works for one patient may not

work for another. Ms. Biederman said that with innovation, treatments can be individualized for each patient.

- Ms. Biederman stated that this expands access to investigational, individualized treatments and provides civil liability protections, allowing good-faith providers to give patients the innovative treatments they deserve.

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Date Hearing Report completed: May 2, 2025