

2021 -- H 5077

LC000160

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO HEALTH AND SAFETY -- TREATMENT FOR PATIENTS WITH
TERMINAL ILLNESS -- THE NEIL FACHON TERMINALLY ILL PATIENTS' RIGHT TO
TRY ACT OF 2021

Introduced By: Representatives McNamara, and Ackerman

Date Introduced: January 22, 2021

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 95

4 TREATMENTS FOR PATIENTS WITH TERMINAL ILLNESS -- THE NEIL FACHON

5 TERMINALLY ILL PATIENTS' RIGHT TO TRY ACT OF 2021

6 **23-95-1. Short title - Treatments for patients with terminal illness.**

7 This chapter shall be known and may be cited as the "Neil Fachon Terminally Ill Patients'
8 Right To Try Act of 2021".

9 **23-95-2. Purpose.**

10 The legislature finds that access to and the use of experimental treatments for patients with
11 terminal illness will provide persons with the fundamental right to control the decisions relating to
12 their own medical care. In order to respect these rights the legislature declares that the laws of the
13 state shall recognize experimental treatments for patients with terminal illness and establish
14 conditions for the use of experimental treatments.

15 **23-95-3. Definitions.**

16 (a) As used in this chapter, and unless the context otherwise requires:

17 (1) "Eligible patient" means an individual who meets all of the following conditions:

18 (i) Has a terminal illness, attested to by the patient's treating physician;

1 (ii) Has considered all other treatment options currently approved by the Food and Drug
2 Administration;

3 (iii) Has received a recommendation from their physician for an investigational drug,
4 biological product, or device;

5 (iv) Has given written, informed consent for the use of the investigational drug, biological
6 product, or device; and

7 (v) Has documentation from their physician that they meet the requirements of this section.

8 (2) "Investigational drug, biological product, or device" means a drug, biological product,
9 or device that has successfully completed phase 1 of a clinical trial but has not yet been approved
10 for general use by the Food and Drug Administration and remains under investigation in a Food
11 and Drug Administration approved clinical trial.

12 (3) "Terminal illness," means a progressive disease or medical or surgical condition that
13 entails significant functional impairment, that is not considered by a treating physician to be
14 reversible even with administration of current Food and Drug Administration approved and
15 available treatments, and that, without life-sustaining procedures, will soon result in death.

16 (4) "Written informed consent" means a written document that is signed by:

17 (i) The patient;

18 (ii) The parent or legal guardian, if the patient is a minor;

19 (iii) Legal guardian; or

20 (iv) Patient advocate designated by the patient under the provisions of this title.

21 (b) Provided that, for purposes of this chapter, written informed consent must be attested
22 to by the patient's physician and a witness and, at a minimum, includes all of the following:

23 (1) An explanation of the currently approved products and treatments for the disease or
24 condition from which the patient suffers;

25 (2) An attestation that the patient concurs with their physician in believing that all currently
26 approved and conventionally recognized treatments are unlikely to prolong the patient's life;

27 (3) Clear identification of the specific proposed investigational drug, biological product, or
28 device that the patient is seeking to use;

29 (4) A description of the potentially best and worst outcomes of using the investigational
30 drug, biological product, or device and a realistic description of the most likely outcome. The
31 description shall include the possibility that new, unanticipated, different, or worse symptoms
32 might result and that death could be hastened by the proposed treatment. The description shall be
33 based on the physician's knowledge of the proposed treatment in conjunction with an awareness of
34 the patient's condition;

1 (5) A statement that the patient's health plan or third-party administrator and provider are
2 not obligated to pay for any care or treatments consequent to the use of the investigational drug,
3 biological product, or device, unless they are specifically required to do so by law or contract;

4 (6) A statement that the patient's eligibility for hospice care may be withdrawn if the patient
5 begins curative treatment with the investigational drug, biological product, or device and that care
6 may be reinstated if this treatment ends and the patient meets hospice eligibility requirements; and

7 (7) A statement that the patient understands that they are liable for all expenses consequent
8 to the use of the investigational drug, biological product, or device, but that this liability does not
9 extend to the patient's estate.

10 **23-95-4. Procedures.**

11 (a) A manufacturer of an investigational drug, biological product, or device may make
12 available and an eligible patient may request the manufacturer's investigational drug, biological
13 product, or device under this chapter. This chapter does not require that a manufacturer make
14 available an investigational drug, biological product, or device to an eligible patient.

15 (b) A manufacturer may do all of the following:

16 (1) Provide an investigational drug, biological product, or device to an eligible patient
17 without receiving compensation; and

18 (2) Require an eligible patient to pay the costs of, or the costs associated with, the
19 manufacture of the investigational drug, biological product, or device.

20 **23-95-5. Cost of services.**

21 (a) This chapter does not expand the coverage required of an insurer pursuant to chapters
22 18, 19, 20, 20.1, or 41 of title 27.

23 (b) A health plan, third-party administrator, or governmental agency may, but is not
24 required to, provide coverage for the cost of an investigational drug, biological product, or device,
25 or the cost of services related to the use of an investigational drug, biological product, or device
26 under this chapter.

27 (c) This chapter does not require any governmental agency to pay costs associated with the
28 use, care, or treatment of a patient with an investigational drug, biological product, or device.

29 (d) This chapter does not require a hospital or facility licensed pursuant to chapter 17 of
30 this title to provide new or additional services, unless approved by the hospital or facility.

31 **23-95-6. Treatment expenses liability.**

32 Regardless of whether a patient dies while being treated by an investigational drug,
33 biological product, or device, the patient's heirs and/or the patient's estate shall not be liable for any
34 outstanding debt related to the treatment or lack of insurance due to the treatment.

1 **23-95-7. Health care provider immunity.**

2 A licensing board or disciplinary subcommittee shall not revoke, fail to renew, suspend, or
3 take any action against a health care provider's license issued under this title, based solely on the
4 health care provider's recommendations to an eligible patient regarding access to or treatment with
5 an investigational drug, biological product, or device. An entity responsible for Medicare
6 certification shall not take action against a health care provider's Medicare certification based solely
7 on the health care provider's recommendation that a patient have access to an investigational drug,
8 biological product, or device.

9 **23-95-8. Patient access.**

10 (a) An official, employee, or agent of this state shall not block or attempt to block an
11 eligible patient's access to an investigational drug, biological product, or device. Counseling,
12 advice, or a recommendation consistent with medical standards of care from a licensed health care
13 provider is not a violation of this section.

14 (b) A patient with a terminal diagnosis and condition within the ambits of this chapter has
15 the right to try the use of an unconventional treatment that has demonstrated more safety and
16 efficacy, through either trial research-based or anecdotal evidence, than standard conventional
17 treatment.

18 **23-95-9. Right to continue treatment.**

19 A clinical trial patient has a right to continue the experimental treatment in a hospital
20 setting, provided the patient or guardian signs a waiver of liability in favor of the hospital and its
21 staff.

22 (1) Hospitals and nursing homes, or any other medical facility shall not suspend the
23 treatment with medications associated with any clinical trial or experimental drug a patient was
24 using before hospitalization or placement in another medical facility or nursing home.

25 (2) A patient's status as participating in a clinical trial or undergoing experimental treatment
26 shall not be cited as the reason to prohibit access to any medical facility.

27 (3) The facility shall have the right to receive all information pertaining to the clinical
28 trial/experimental treatment drug and may also require some training to administer that treatment.
29 It shall be the responsibility of the provider of that treatment to provide the training on its
30 administration.

31 (4) The facility shall be immune from any liability for any negative outcomes associated
32 with continuing treatment.

33 (5) Notwithstanding the foregoing, a facility may withhold the experimental treatment
34 when necessary for surgical procedures or when inquiring into potential negative interactions with

1 other drugs to be administered in the course of addressing the patient's other medical needs. In
2 either instance, the experimental drug provider and/or physician shall be consulted in a timely
3 fashion for their recommendations.

4 (6) A facility may advise discontinuation of experimental treatment when negative drug
5 interactions are observed, and constitute a grave threat to the patient's life;

6 (i) In any conflict of opinion under this subsection, the provider of the experimental
7 treatment shall determine when or if to discontinue treatment, except that;

8 (ii) The patient or the patient's guardian shall have the final decision on whether or not to
9 continue treatment.

10 **23-95-10. Cause of action immunity.**

11 (a) This chapter does not create a private cause of action against a manufacturer of an
12 investigational drug, biological product, or device, or against any other person or entity involved
13 in the care of an eligible patient using the investigational drug, biological product, or device for
14 any harm done to the eligible patient resulting from the investigational drug, biological product, or
15 device, if the manufacturer or other person or entity is complying in good faith with the terms of
16 this chapter and has exercised reasonable care.

17 (b) This chapter does not affect any mandatory health care coverage for participation in
18 clinical trials under the insurance provisions contained in this title or title 27.

19 **23-95-11. Severability.**

20 If any provisions of this chapter are declared unconstitutional, or the applicability of any
21 provisions to any person or circumstance is held invalid, the constitutionality of the remainder of
22 this chapter and its applicability to other persons and circumstances shall not be affected thereby.

23 SECTION 2. This act shall take effect upon passage.

=====
LC000160
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- TREATMENT FOR PATIENTS WITH
TERMINAL ILLNESS -- THE NEIL FACHON TERMINALLY ILL PATIENTS' RIGHT TO
TRY ACT OF 2021

- 1 This act would create the "Neil Fachon Terminally Ill Patients' Right To Try Act of 2021,"
- 2 which establishes the conditions for the use of experimental treatments for terminally ill patients.
- 3 This act would take effect upon passage.

=====
LC000160
=====