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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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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 2018

Introduced By: Senators Lynch Prata, and Calkin

Date Introduced: February 15, 2018

Referred To: Senate Health & Human Services

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 2018

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 2018".

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

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

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

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

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

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

18 (i) The patient;

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

20 (iii) Legal guardian; or

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

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

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

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

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

31 (4) A description of the potentially best and worst outcomes of using the investigational
32 drug, biological product, or device and a realistic description of the most likely outcome. The
33 description shall include the possibility that new, unanticipated, different, or worse symptoms
34 might result and that death could be hastened by the proposed treatment. The description shall be

1 based on the physician's knowledge of the proposed treatment in conjunction with an awareness
2 of the patient's condition;

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

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

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

13 **23-95-4. Procedures.**

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

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

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

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

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

24 (a) This chapter does not expand the coverage required of an insurer pursuant to chapters
25 18, 19, 20, 20.1, or 41 of title 27.

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

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

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

34 **23-95-6. Treatment expenses liability.**

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

4 **23-95-7. Health care provider immunity.**

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

12 **23-95-8. Patient access.**

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

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

21 **23-95-9. Right to continue treatment.**

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

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

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

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

34 (4) The facility shall be immune from any liability for any negative outcomes associated

1 with continuing treatment.

2 (5) Notwithstanding the foregoing, a facility may withhold the experimental treatment
3 when necessary for surgical procedures or when inquiring into potential negative interactions
4 with other drugs to be administered in the course of addressing the patient's other medical needs.
5 In either instance, the experimental drug provider and/or physician shall be consulted in a timely
6 fashion for their recommendations.

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

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

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

13 **23-95-10. Cause of action immunity.**

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

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

22 **23-95-11. Severability.**

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO HEALTH AND SAFETY - TREATMENT FOR PATIENTS WITH
TERMINAL ILLNESS--THE NEIL FACHON TERMINALLY ILL PATIENTS' RIGHT TO
TRY ACT OF 2018

1 This act would create the "Neil Fachon Terminally Ill Patients' Right To Try Act of
2 2018," which establishes the conditions for the use of experimental treatments for terminally ill
3 patients.

4 This act would take effect upon passage.

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