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H.B. No. 21

Substitute the following for H.B. No. 21:

By: Crownover

C.S.H.B. No. 21

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to authorizing patients with certain terminal illnesses to  
3 access certain investigational drugs, biological products, and  
4 devices that are in clinical trials.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. (a) This Act shall be known as the Right To Try  
7 Act.

8 (b) The legislature finds that:

9 (1) the process for the approval of investigational  
10 drugs, biological products, and devices in the United States takes  
11 many years;

12 (2) patients with a terminal illness do not have the  
13 luxury of waiting until an investigational drug, biological  
14 product, or device receives final approval from the United States  
15 Food and Drug Administration;

16 (3) the standards of the United States Food and Drug  
17 Administration for the use of investigational drugs, biological  
18 products, and devices may deny the benefits of potentially  
19 life-saving treatments to terminally ill patients;

20 (4) patients with a terminal illness have a  
21 fundamental right to attempt to pursue the preservation of their  
22 own lives by accessing available investigational drugs, biological  
23 products, and devices;

24 (5) the use of available investigational drugs,

1 biological products, and devices is a decision that should be made  
2 by the patient with a terminal illness in consultation with the  
3 patient's physician and is not a decision to be made by the  
4 government; and

5 (6) the decision to use an investigational drug,  
6 biological product, or device should be made with full awareness of  
7 the potential risks, benefits, and consequences to the patient with  
8 a terminal illness and the patient's family.

9 (c) It is the intent of the legislature to allow for  
10 patients with a terminal illness to use potentially life-saving  
11 investigational drugs, biological products, and devices.

12 SECTION 2. Subtitle C, Title 6, Health and Safety Code, is  
13 amended by adding Chapter 489 to read as follows:

14 CHAPTER 489. ACCESS TO INVESTIGATIONAL TREATMENTS FOR PATIENTS  
15 WITH TERMINAL ILLNESSES

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 489.001. DEFINITIONS. In this chapter:

18 (1) "Investigational drug, biological product, or  
19 device" means a drug, biological product, or device that has  
20 successfully completed phase one of a clinical trial but has not yet  
21 been approved for general use by the United States Food and Drug  
22 Administration and remains under investigation in the clinical  
23 trial.

24 (2) "Terminal illness" means an advanced stage of a  
25 disease with an unfavorable prognosis that, without  
26 life-sustaining procedures, will soon result in death or a state of  
27 permanent unconsciousness from which recovery is unlikely.

1       SUBCHAPTER B. ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL  
2       PRODUCTS, AND DEVICES FOR PATIENTS WITH TERMINAL ILLNESSES

3       Sec. 489.051. PATIENT ELIGIBILITY. A patient is eligible  
4 to access and use an investigational drug, biological product, or  
5 device under this chapter if:

6           (1) the patient has a terminal illness, attested to by  
7 the patient's treating physician; and

8           (2) the patient's physician:

9                   (A) in consultation with the patient, has  
10 considered all other treatment options currently approved by the  
11 United States Food and Drug Administration and determined that  
12 those treatment options are unavailable or unlikely to prolong the  
13 patient's life; and

14                   (B) has recommended or prescribed in writing that  
15 the patient use a specific class of investigational drug,  
16 biological product, or device.

17       Sec. 489.052. INFORMED CONSENT. (a) Before receiving an  
18 investigational drug, biological product, or device, an eligible  
19 patient must sign a written informed consent. If the patient is a  
20 minor or lacks the mental capacity to provide informed consent, a  
21 parent or legal guardian may provide informed consent on the  
22 patient's behalf.

23           (b) The executive commissioner of the Health and Human  
24 Services Commission, in collaboration with the Texas Medical Board,  
25 by rule may adopt a form for the informed consent under this  
26 section.

27       Sec. 489.053. PROVISION OF INVESTIGATIONAL DRUG,

1 BIOLOGICAL PRODUCT, OR DEVICE BY MANUFACTURER. (a) A manufacturer  
2 of an investigational drug, biological product, or device may make  
3 available the manufacturer's investigational drug, biological  
4 product, or device to eligible patients in accordance with this  
5 chapter if the patient provides to the manufacturer the informed  
6 consent required under Section 489.052.

7 (b) This chapter does not require that a manufacturer make  
8 available an investigational drug, biological product, or device to  
9 an eligible patient.

10 (c) A manufacturer may:

11 (1) provide an investigational drug, biological  
12 product, or device to an eligible patient without receiving  
13 compensation; or

14 (2) require an eligible patient to pay the costs of, or  
15 the costs associated with, the manufacture of the investigational  
16 drug, biological product, or device.

17 Sec. 489.054. NO CAUSE OF ACTION CREATED. This chapter does  
18 not create a private or state cause of action against a manufacturer  
19 of an investigational drug, biological product, or device or  
20 against any other person or entity involved in the care of an  
21 eligible patient using the investigational drug, biological  
22 product, or device for any harm done to the eligible patient  
23 resulting from the investigational drug, biological product, or  
24 device.

25 Sec. 489.055. STATE MAY NOT INTERFERE WITH ACCESS TO  
26 INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE. An official,  
27 employee, or agent of this state may not block or attempt to block

1 an eligible patient's access to an investigational drug, biological  
2 product, or device under this chapter.

3 Sec. 489.056. CORRECTIONAL MANAGED CARE. A person covered  
4 by the correctional managed health care plan under Subchapter E,  
5 Chapter 501, Government Code, is an eligible patient for purposes  
6 of this chapter only to the extent that the correctional managed  
7 health care Offender Health Services Plan and federal law governing  
8 offender participation in biomedical research permit the  
9 offender's access to and use of the investigational drug,  
10 biological product, or device.

11 SUBCHAPTER C. HEALTH INSURANCE

12 Sec. 489.101. HEALTH BENEFIT PLANS. A health benefit plan  
13 may, but is not required to, provide coverage for the cost of an  
14 investigational drug, biological product, or device.

15 Sec. 489.102. EFFECT ON HEALTH CARE COVERAGE FOR CLINICAL  
16 TRIAL ENROLLEES. This chapter does not affect the coverage of  
17 enrollees in clinical trials under Chapter 1379, Insurance Code.

18 SUBCHAPTER D. PHYSICIANS

19 Sec. 489.151. ACTION AGAINST PHYSICIAN'S LICENSE  
20 PROHIBITED. Notwithstanding any other law, the Texas Medical Board  
21 may not revoke, fail to renew, suspend, or take any action against a  
22 physician's license under Subchapter B, Chapter 164, Occupations  
23 Code, based solely on the physician's recommendations to an  
24 eligible patient regarding access to or treatment with an  
25 investigational drug, biological product, or device, provided that  
26 the care provided or recommendations made to the patient meet the  
27 standard of care and the requirements of this chapter.

1           SECTION 3. This Act takes effect immediately if it receives  
2 a vote of two-thirds of all the members elected to each house, as  
3 provided by Section 39, Article III, Texas Constitution. If this  
4 Act does not receive the vote necessary for immediate effect, this  
5 Act takes effect September 1, 2015.