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Wrong to try?

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Will US right-to-try legislation be a means of giving hope to terminally ill patients, or drug another way for drug regulatory standards to fall?

Federal enactment of US right-to-try legislation, allowing unapproved therapies to be given to terminally ill patients, caused fears that it would give these vulnerable people false hope. The law must initially also have caught the attention of some biotech executives who saw in it a zero-burden path to market.

In the event, however, such worries have yet to materialise; some patient groups have even come out strongly against the law, while with a handful of exceptions biotech has been silent on the matter. Still, even if immediate profiteering is off the table for now, the legislation risks regulatory standards falling further still.

If it does result in an experimental therapy being given to enough patients backed by a vocal lobby, that lobby could exert considerable pressure on the FDA to issue a formal approval, even when strict standards have not been met. And when it comes to backing down before pressure groups the regulator has form, having approved Sarepta's "scientifically elegant placebo", Exondys 51.

Interestingly, Sarepta is one company that has already ruled out taking advantage of Right to Try, stating that this could jeopardise its "ability to provide patients broad, sustainable and long-term access".

Terminally ill

US federal right-to-try legislation, more accurately known as the Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act, was signed into law on May 30.

It promises to give patients with terminal illnesses who have exhausted available options and do not meet clinical trial entry criteria the right to receive relevant but currently not FDA-approved treatments, as long as these have completed at least one phase I trial.

It must be remembered that the law merely formalised on a nationwide basis something that many US states already had in place. Add to this the fact that named-patient sales and early-access programmes had earlier placed in the hands of patients numerous drugs that had yet to receive formal regulatory blessing, and worries over the new law might seem like a storm in a teacup.

However, broad adoption of such legislation threatened to encourage companies to make Right to Try into a business, even though such activity was discouraged.

One company certainly got caught up in this moral minefield: Brainstorm Cell Therapeutics mooted the idea of

setting up a semi-commercial enterprise seeking to turn a modest profit from making its NurOwn cell therapy project available under Right to Try.

Not that there is anything wrong with turning a profit, of course; biotech and pharma companies are not charities, and should not pretend that they are. But the outcry over such use of a government scheme that aims to offer hope to terminal patients forced Brainstorm into a U-turn, stating that it would not, after all, sell NurOwn under Right to Try.

Its reasoning – lack of alternative funding for those unable to afford NurOwn's high cost – got to the heart of the matter: since insurance will not cover a non-FDA approved drug its cost would have to be borne by patients. This, of course, would make companies look like they are profiteering directly from the terminally ill.

At risk

It is for different reasons that two prominent bodies have come out dead against Right to Try: the Cystic Fibrosis Foundation said the law put patients under increased risk, and in the event of a safety scare rendered the FDA powerless – short of placing on hold all clinical research related to the therapy in question.

And a week ago the International Society for Cell and Gene Therapy called the new law "a potential risk to patients, particularly those in the fragile situation of dealing with desperate medical conditions", and said it was "an additional incentive for the increasing number of individuals and clinics offering ... dangerous supposed treatments".

The rest of biopharma, meanwhile, has largely kept schtum. Even Northwest Biotherapeutics, which with its controversial brain cancer vaccine DCVax-L has made extensive use of patient testimonials and case reports in preference to hard data, has made no public pronouncements about Right to Try, though its supporters have been quick to pick up the theme.

In fact the only other public statements seem to have come from Beacon Capital, Batu Biologics and Immune Response Biopharma.

Beacon is a venture capital business that says it wants to get involved in Right to Try, though it stresses that this will be made via a "venture and philanthropy arm". Batu has so far only paid lip service to the possibility of using the legislation to get its unapproved cancer vaccine ValloVax to patients.

Immune Response Biopharma is a more interesting case. The private company arose from the ashes of the bankrupt Orchestra Therapeutics – itself a new name for the former Immune Response Corporation – to develop the Aids vaccine Remune and multiple sclerosis project NeuroVax.

It has welcomed Right to Try, and is to take advance orders for Remune and NeuroVax under the legislation, which it says will in the first year allow it to sell $36-72m of Remune if priced at $3,000 a dose.

Axis of evil

Still, Immune Response Biopharma has said nothing about profitability. Moreover, it has been extremely outspoken about profiteering, at one point accusing big pharma of leading an "axis of evil ... to keep Remune off the market so they can profit off of billions of dollars worth of drug sales".

Even though the group might not be trying to profiteer, it is in dispute with the FDA, which has still not approved Remune. This highlights the other danger of Right to Try: if the agency cannot be bypassed entirely, pressure could be brought to bear on it to force through an approval.

This possibility has not been lost on Leerink analysts, for instance, who last month wrote that Amicus's Pompe disease project could benefit from the FDA becoming less tied to a regimented regulatory process and more receptive to "hope/promise", of which Right to Try was "an extreme example".

Perhaps Right to Try does not pose an immediate threat – the fact companies cannot profit to any significant degree, and that current expanded access programmes are probably good enough, limits this possibility. But if it is used to push the FDA further down the path of leniency this could be a real cause for concern.

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