

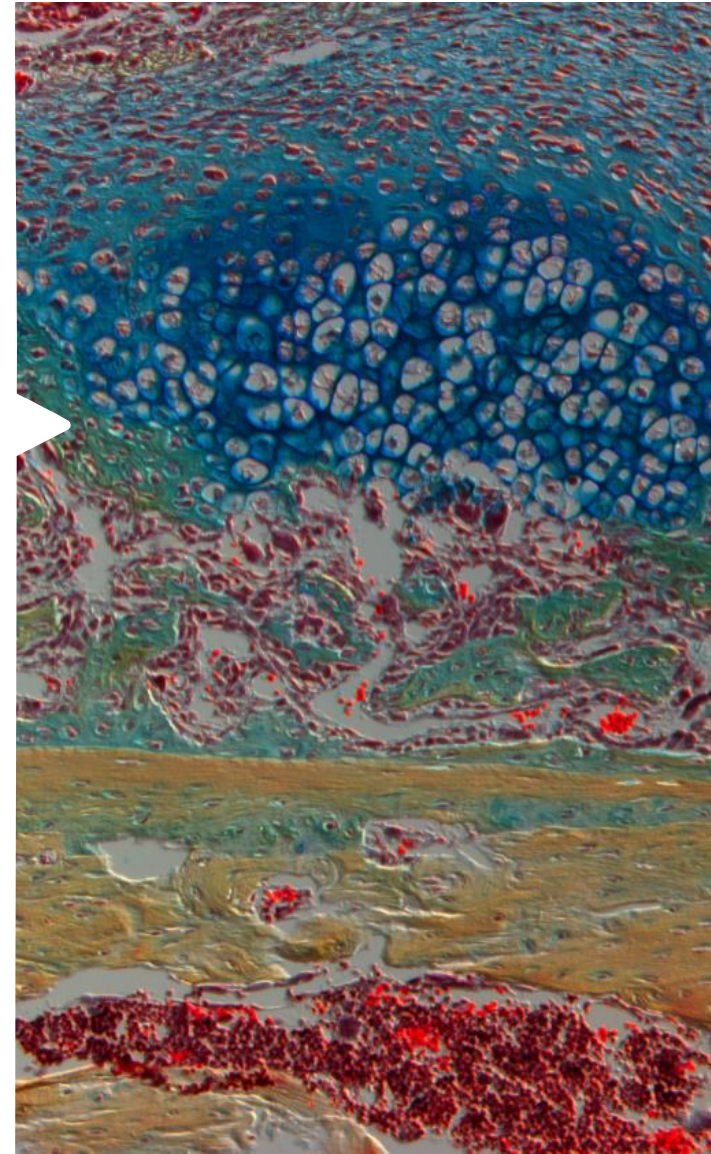


Access to Unapproved Drugs: “Expanded Access” and “Right to Try”

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Disclosures

- I am non-voting, non-paid chair of the Compassionate Use Advisory Committee (CompAC) Infectious Diseases — an external, expert panel of medical experts, bioethicists, and patient representatives formed by NYU — which advises the [Janssen division of Johnson & Johnson](#) about requests for compassionate use of its investigational infectious diseases medicines.
- I am an unpaid member of [Cytokinetics](#)' ethics advisory board.
- I am a fellow of GE2P2, and, in that capacity, advise other companies about pre-approval access ([Novartis](#)).

Pence pushing right-to-try bill

By DAN DIAMOND (ddiamond@politico.com; [@ddiamond](https://twitter.com/ddiamond))

01/04/2018 10:00 AM EST

Trump Called for a 'Right to Try' Law During His State of the Union. Here's What That Means

POLITICS

Physicians, ethicists urge Congress not to pass 'right-to-try' legislation

By IKE SWETLITZ ([@ikeswetlitz](https://twitter.com/ikeswetlitz)) / FEBRUARY 1, 2018

FIRST IN PRESCRIPTION PULSE: HOUSE LEADERSHIP TO MEET WITH RIGHT-TO-TRY SPONSORS - Reps. [Andy Biggs](#) (R-Ariz.) and [Brian Fitzpatrick](#) (R-Pa.) and Sen. [Ron Johnson](#) (R-Wis.) will meet Monday afternoon with House Speaker [Paul Ryan](#) and Majority Leader [Kevin McCarthy](#) to discuss the trio's right-to-try legislation. (Walden was originally expected to be in the meeting, a source told us, but he will not attend.) The bill, [S. 204 \(115\)](#), which would allow

A compromise 'right-to-try' bill proceeds with help from FDA, but could be a hard sell

By ED SILVERMAN [@Pharmalot](#) / FEBRUARY 5, 2018

40 patient advocacy groups oppose 'right to try' drug bill

BY RACHEL ROUBEIN - 02/06/18 04:07 PM EST

 28 COMMENTS

Best way to get access to investigational drugs (and other treatments): clinical trial

- * Rigorous investigation creates knowledge to help all
- * Study team keeps a close eye on patients (benefit)
- * Depending on study, may be provided the investigational drug after the study ends (“post-trial access”)
- * insurers more likely to trust clinical trial data than not trial data when deciding if to pay for a drug

BUT...not all patients can participate in clinical trials

- * limited slots
- * patient make not fit enrollment criteria (due to co-morbidities, past medical history, pregnancy, etc.)
- *geographic/financial/social barriers



Some may not WANT to participate in a clinical trial

For patients who can't enter a clinical trial, several ways to try “experimental” products

- * self-experimentation
- * use approved products in a new way or for a condition other than what the drug was approved to treat (“off-label” use)
- * personal importation from another country
- * pre-approval access

What is pre-approval access? Access to a medical product before it is approved by a regulator AND outside of a clinical trial

- * Also known as “compassionate use”

- * In the US, legal term is “**expanded access**” – under FDA oversight (Code of Federal Regulations, Title 21, Chapter 1, Subchapter D, Part 312)

- * In the US, currently an effort to create way to access investigational drugs without FDA oversight (“Right to Try”)

Expanded Access

- * no comparable or satisfactory alternative therapy to **diagnose**, **monitor**, or **treat** the patient's disease or condition

- * 2 groups eligible for expanded access:

- (1) those with life-threatening diseases/conditions for whom “there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without treatment” &

- (2) those with serious diseases/conditions associated with “morbidity that has a substantial impact on day-to-day functioning”

 use of an investigational medical product to try to **treat** (aka, not for research, though data may be collected)

Several different types of Expanded Access

- * emergency versus non-emergency
- * individual patient EA / intermediate group EA / large group EA
- * pure treatment vs treatment with data collection

Evolution over time

- Expanded access has existed since the 1970s.
- Became more widely used & known about during the 1980s (AIDS) & 1990s (breast cancer)
- In the 1990s, FDA revised the expanded access regulations
- Since the 1990s, there have been failed legislative efforts to change the system [undercurrent: “get the gov’t out of access to investigational drugs for very sick/dying patients”]

What do you mean, “Get the Gov’t out”???

- Identify willing physician / Identify promising drug
- Identify how to contact company
- Physician contacts company to request drug
- Physician contacts FDA to complete a form (w/ company’s help)
- FDA reviews form, allows proposal to proceed or not
- Physician seeks IRB approval at institution where drug will be used
- Report serious/unexpected adverse events to FDA (and, as required, data to the company)

“Right to Try” *(still in flux & varies across 38 states)*

- Identify willing physician / Identify promising drug
- Identify how to contact company
- Physician contacts company to request drug
- ~~• Physician contacts FDA to complete a form (w/ company's help)~~
- ~~• FDA reviews form, allows proposal to proceed or not~~
- Physician seeks IRB approval at institution where drug will be used ??
- Report ~~serious/unexpected adverse events to FDA~~ (and, as required, data to the company)

“Right to Try”

- Currently law in 38 states (though of questionable constitutionality)
- Federal RTT bill passed by Senate (in order to permit necessary FDA User Fee vote); now in House
- Unknown whether it will pass the House or, if it does, whether it will need to go back to the Senate
- Unknown what the final provisions of the bill would be
- Apparently only been used by 2 doctors* in Texas
- Opposed by many patient groups (supported by some); opposed by ASCO, ACRO, Leukemia and Lymphoma Society, & me

Why do I oppose RTT?

- FDA not obstacle (merely looks for biological plausibility of idea & known safety risks more severe than the patient's condition)
- Companies unlikely to provide product without FDA sign-off
- FDA review is useful & pro-patient (improves treatment plan)
- Removes monetary caps on what companies can charge patients
- Opens door to bad actors
- Multiple state RTT laws have bad provisions
- Federal law has provision blocking FDA from routinely learning of bad outcomes (public health & consumer protection issue)

So, is the current system perfect? NO!

List of common concerns:

- Lack of knowledge = unequal access
- Concern about paperwork burden
- Fear about litigation
- Fear that a death would cause problems for development/approval
- Ancillary costs not covered by insurance
- Anecdotally, IRB review might cause problems (time, money)
- Within FDA, divisions vary on receptivity to expanded access
- Fear that expanded access will hurt trials
- Fear that patients are unable to make free & informed decision to try an investigational product

FDA has taken action... (even though this was a myth)

- Concern about paperwork burden
 - Introduced streamlined form for single patient requests
 - Released updated guidance documents
 - Has dedicated staff you can call for help

Other FDA/gov't actions...

- **Lack of knowledge = unequal access**
 - FDA charged the Reagan Udall Foundation of the FDA to create an “Expanded Access Navigator” website
 - ClinicalTrials.gov revised to make it possibly to more easily search for expanded access opportunities
 - 21st Century Cures bill (passed Dec 2016) mandates companies to provide their expanded access policy to the public when any of the products move to Phase II testing
 - FDA released updated guidance documents
 - FDA revised their webpage dealing with expanded access

Other FDA/gov't actions...

- IRB review might cause problems (time, money)
 - October 2017, FDA updated guideline for FDA review of expanded access – intended to make it faster

- Fear that expanded access will hurt trials

- FDA restricts expanded access to those who have “no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the patient's disease or condition”
- Companies must restrict expanded access to those who are ineligible for their trials (physically, geographically, socially). Mere unwillingness to participate in a trial should not suffice.
- That said, companies should try to make the trials as appealing as possible (with regard to study design, procedures, etc.)

- Fear that patients are unable to make a truly free & informed decision to try an investigational product
 - If true, no (ethical) clinical trials!
 - Capacity for free and informed decision-making must be individually assessed, but there is no ethical reason to assume that patients who have no other options are incapable of making treatment or research decisions.


- Within FDA, divisions vary on receptivity to expanded access

- ??????
- If so, is a problem that FDA administration must fix
- (Remember, FDA can only approve what it gets, so if there is less expanded access in Neurology than in other divisions, it may be that neurologists submit less requests than, say, their peers in oncology and/or that drug companies are declining to provide product)

- Ancillary costs not covered by insurance

- Varies by insurer, but generally true – insurance does not pay for investigational therapies or ancillary costs incurred outside of clinical trials (including doctors' time)
- Makes some doctors/institutions unwilling to participate in expanded access
- Covering these costs may help with the unequal access issue

Where we need to do more

- **Lack of knowledge = unequal access** 
- Concern about paperwork burden
- Fear about litigation
- **Fear that a death would cause problems for development/approval ***
- **Ancillary costs not covered by insurance**
- **Anecdotally, IRB review might cause problems (time, money)***
- **Within FDA, divisions vary on receptivity to expanded access**
- Fear that expanded access will hurt trials
- Fear that patients are unable to make free & informed decision to try an investigational product

Equally important - must work with companies to identify incentives/disincentives for them to make their products available re expanded access.

Example: “real world data”



Check out the FAQs & resources on CUPA's webpage –
just search for “NYU Compassionate Use”

Thank You

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