Wisconsin Medical Society

Your Doctor. Your Health.

TO: Assembly Committee on Health
Representative Joe Sanfelippo, Chair

FROM: Mark Grapentine, JD – Senior Vice President of Government and Legal Affairs

DATE: February 22, 2017

RE: Opposition to Assembly Bill 69

On behalf of more than 12,000 members statewide, the Wisconsin Medical Society thanks you for this opportunity to share our testimony opposing Assembly Bill 69, deemed "Right to Try" legislation.

Emotions surrounding the issue of terminal illness are powerful. Physicians understand all too well the tremendous toll a terminal illness can take on an entire family and how the desire to find a cure can become all-consuming. It is therefore understandable that someone suffering from a terminal illness or the family of that patient might want to turn to drugs that haven't yet made it through the typical U.S. Food and Drug Administration (FDA) review and approval process.

The Society's members certainly sympathize with this desire – besides family members, a patient's physician is often the most trusted person in a room where discussions take place about therapy options. Physicians also play an important role as patient advocates, including informing the patient and family members about what therapies and/or treatments are available in any particular case.

Physicians are also scientists, keeping abreast of the latest research and developments constantly abounding in the medical world. When serving as advocates, physicians rely upon the latest facts and data to make recommendations about treatments that could be effective for a patient's conditions. These data come from sophisticated clinical trials designed to weed out drugs that are dangerous, drugs that might be safe but don't work, drugs that might work but may have significant side effects for some, drugs that are "breakthroughs," seemingly beneficial to most patients with a minimum of negative impacts, and drugs that fall somewhere else in that spectrum.

The Society believes the FDA's current scientific methods and procedures are important for determining which drugs can serve the greatest good and which drugs should not be approved – even if a patient has a terminal illness. And while Assembly Bill 69 is genuinely promoted as a bill providing hope where little exists for an individual facing the worst circumstances, the Society believes the potential unintended negative consequences for society as a whole might outweigh supporting an individual's desires. The Society therefore respectfully opposes the bill.

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The FDA's Drug Development and Review Process is Scientifically Sound
Assembly Bill 69 allows access to drugs that have passed a Phase 1 clinical trial. While this may sound rigorous to the layperson, it is far from it. According to the FDA a Phase 1 trial is generally conducted with healthy volunteers to determine toxicity – that is, whether the drug is minimally safe, not whether it is effective.[1] The FDA describes the typical Phase 1 sample size as being between 20 and 80 people.

Drugs surpassing this relatively low hurdle – a drug fails a Phase 1 trial if it is shown to have unacceptable toxicity – can then proceed to a Phase 2 trial. The FDA describes a Phase 2 trial thusly:

> Phase 2 studies begin if Phase 1 studies don't reveal unacceptable toxicity. While the emphasis in Phase 1 is on safety, the emphasis in Phase 2 is on effectiveness. This phase aims to obtain preliminary data on whether the drug works in people who have a certain disease or condition. For controlled trials, patients receiving the drug are compared with similar patients receiving a different treatment--usually an inactive substance (placebo), or a different drug. Safety continues to be evaluated, and short-term side effects are studied. Typically, the number of subjects in Phase 2 studies ranges from a few dozen to about 300.[2]

If a drug shows signs of effectiveness, Phase 3 trials can be scheduled. This type of trial involves many more people than the first two phases – from several hundred to around 3,000 people – and study different populations and different dosages while also determining effects when the drug is combined with other drugs.

The FDA Has Worked to Accelerate the Drug Approval Process Where Appropriate
Critics of the FDA process cite the sometimes-lengthy process for new drug approval. In response the FDA in 2009 revised its regulations to allow for accelerated approval for drugs that can treat serious and life-threatening illnesses that don't currently have established medicines.[3] Often called the "compassionate use" or "expanded access" procedure, the FDA approves more than 99 percent of the applications it receives for such use.[4] Even then, the FDA continues to monitor effects of the drug, with the FDA holding the right to withdraw approval if the drug eventually proves ineffective or even harmful. Notably, the push for Right to Try predates the FDA's more recent "compassionate use" procedure, which pursues many of the same objectives in a more systematic and arguably safer manner.

Allowing an Experimental Drug Process Outside the FDA Could Harm Scientific Studies
Because science is so important in the development of potentially-lifesaving drugs, it is important to promote as many thorough, rigorous studies as possible when exploring potential new medicines. By creating and promoting an alternative route to a drug, the Right to Try effort could ironically slow down the process for finding potentially life-saving drugs by siphoning potential participants away from scientific trials. The New York University School of Medicine Working Group on Compassionate Use and Pre-Approval Access takes a dim view of both Right to Try and even Compassionate Use procedures due to this risk of impeding quality drug studies:

[1] https://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm
[2] Id.
[3] https://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm289601.htm
[4] https://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/default.htm

> **How else could granting a dying person access to an unapproved medical product harm an ongoing clinical trial?**
> Several ways. If patients learn that pre-approval access is a possibility, they may not be willing to enroll in a clinical trial, fearing they'll receive a placebo or standard-of-care treatment instead of the desired product. If people had a choice to receive the investigational medical product they wanted through a compassionate use program or by entering a clinical trial, it is not surprising that they would choose the compassionate use program—after all, they would know for sure what they were receiving. While that may be the most rational choice for an individual, it could imperil the availability of patients for clinical trials, which would have dire consequences for the drug development process and for future patients.
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> Many manufacturers have limited supplies of their investigational products, and granting compassionate use access can threaten those supplies. If they run out of supplies, manufacturers may have to scale back or suspend clinical trials. Especially with biologics, it is no easy task to "just make more drug." Some biologics can take more than a year to produce, and there are limited numbers of manufacturing facilities that can perform these complex tasks. Other drugs are hugely costly to make.[5]

There are Unanswered Questions Regarding the Overall Cost of Expanded Experimental Drugs
One aspect of Right to Try expanded access to experimental drugs concerns insurance coverage. Simply put, if a patient suffers harm due to a drug taken via Right to Try, what are the implications for health care coverage of the additional costs borne due to taking the drug? While the bill provides extensive protections for a "manufacturer, distributor, pharmacists, practitioner, or other person who lawfully makes available, delivers, distributes, prescribes, dispenses, or administers an investigational drug, device, or biological product",[6] left unanswered is insurance company responsibility for any additional costs.

The Wisconsin Medical Society deeply appreciates the spirit behind Assembly Bill 69. Physicians join with policymakers in the desire to alleviate suffering and passionate pursuit of breakthrough drugs. Unfortunately, the bill's provisions could theoretically delay rather than promote those discoveries due to interference with current scientific standards, and questions remain about additional costs due to the potentially negative consequences caused by an experimental drug.

Thank you again for this opportunity to provide the Society's testimony on Assembly Bill 69. Please feel free to contact the Society on this and other health-related issues.

[5] http://www.med.nyu.edu/pophealth/divisions/medical-ethics/compassionate-use/nyu-working-group-compassionate-use-pre-approval-access
[6] 2017 Assembly Bill 69, page 3, lines 22-24