

Calendar No. 706

105TH CONGRESS
2D SESSION

S. 2564

To provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, OCTOBER 2), 1998

Mr. JEFFORDS, from the Committee on Labor and Human Resources, reported the following original bill; which was read twice and placed on the calendar

A BILL

To provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Ricky Ray Hemophilia Relief Fund Act of 1998”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEMOPHILIA RELIEF FUND

Sec. 101. Ricky Ray Hemophilia Relief Fund.

Sec. 102. Compassionate payment.

Sec. 103. Determination and payment.

Sec. 104. Limitation on transfer of rights and number of petitions.

Sec. 105. Time limitation.

Sec. 106. Certain claims not affected by payment.

Sec. 107. Limitation on agent and attorney fees.

Sec. 108. Definitions.

TITLE II—TREATMENT OF CERTAIN PRIVATE SETTLEMENT PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE MEDICAID AND SSI PROGRAMS

Sec. 201. Treatment of certain private settlement payments in hemophilia-clotting-factor suit under the Medicaid and SSI programs.

3 **TITLE I—HEMOPHILIA RELIEF** 4 **FUND**

5 **SEC. 101. RICKY RAY HEMOPHILIA RELIEF FUND.**

6 (a) ESTABLISHMENT.—There is established in the
 7 Treasury of the United States a trust fund to be known
 8 as the “Ricky Ray Hemophilia Relief Fund”, which shall
 9 be administered by the Secretary of the Treasury.

10 (b) INVESTMENT OF AMOUNTS IN FUND.—Amounts
 11 in the Fund shall be invested in accordance with section
 12 9702 of title 31, United States Code, and any interest on
 13 and proceeds from any such investment shall be credited
 14 to and become part of the Fund.

15 (c) AVAILABILITY OF FUND.—Amounts in the Fund
 16 shall be available only for disbursement by the Secretary
 17 of Health and Human Services under section 103.

1 (d) TERMINATION.—The Fund shall terminate upon
 2 the expiration of the 5-year period beginning on the date
 3 of the enactment of this Act. If all of the amounts in the
 4 Fund have not been expended by the end of the 5-year
 5 period, investments of amounts in the Fund shall be liq-
 6 uidated, the receipts of such liquidation shall be deposited
 7 in the Fund, and all funds remaining in the Fund shall
 8 be deposited in the miscellaneous receipts account in the
 9 Treasury of the United States.

10 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
 11 authorized to be appropriated to the Fund to carry out
 12 this title \$1,771,400,000.

13 **SEC. 102. COMPASSIONATE PAYMENT.**

14 (a) ELIGIBLE INDIVIDUALS.—

15 (1) IN GENERAL.—If the conditions described
 16 in subsection (b) are met and if there are sufficient
 17 amounts in the Fund to make the payment involved,
 18 the Secretary shall make a single payment of
 19 \$100,000 from the Fund to any individual—

20 (A) who—

21 (i) has an HIV infection; or

22 (ii) is diagnosed with AIDS; and

23 (B) who is described in paragraph (2).

24 (2) REQUIREMENT.—An individual described in
 25 this paragraph is any of the following individuals:

1 (A) An individual who—

2 (i) has any form of blood-clotting dis-
3 order, such as hemophilia, and was treated
4 with antihemophilic factor at any time dur-
5 ing the period beginning on July 1, 1982,
6 and ending on December 31, 1987; or

7 (ii) was treated with HIV contami-
8 nated blood transfusion, HIV contaminated
9 blood components, or HIV contaminated
10 human tissue during the period beginning
11 on January 1, 1982, and ending on March
12 31, 1985.

13 (B) An individual who—

14 (i) is the lawful spouse of an individ-
15 ual described in subparagraph (A); or

16 (ii) is the former lawful spouse of an
17 individual described in subparagraph (A)
18 and was the lawful spouse of the individual
19 at any time after a date, within the appli-
20 cable period described in such subpara-
21 graph, on which the individual was treated
22 as described in such paragraph and
23 through medical documentation can assert
24 reasonable certainty of transmission of

1 HIV from the individual described in such
2 subparagraph.

3 (C) The individual acquired the HIV infec-
4 tion through perinatal transmission from a par-
5 ent who is an individual described in subpara-
6 graph (A) or (B).

7 (b) CONDITIONS.—The conditions described in this
8 subsection are, with respect to an individual, as follows:

9 (1) SUBMISSION OF MEDICAL DOCUMENTA-
10 TION.—The individual submits to the Secretary writ-
11 ten medical documentation that—

12 (A) the individual has (or had) an HIV in-
13 fection; and

14 (B)(i) in the case of an individual de-
15 scribed in subsection (a)(2)(A)(i), that the indi-
16 vidual has (or had) a blood-clotting disorder,
17 such as hemophilia, and was treated as de-
18 scribed in such section; and

19 (ii) in the case of an individual described
20 in subsection (a)(2)(A)(ii), the individual was
21 treated with HIV contaminated blood trans-
22 fusion, HIV contaminated blood components, or
23 HIV contaminated human tissue provided by a
24 medical professional during the period described
25 in such subsection.

1 (2) PETITION.—A petition for the payment is
 2 filed with the Secretary by or on behalf of the indi-
 3 vidual.

4 (3) DETERMINATION.—The Secretary deter-
 5 mines, in accordance with section 103(b), that the
 6 petition meets the requirements of this title.

7 **SEC. 103. DETERMINATION AND PAYMENT.**

8 (a) ESTABLISHMENT OF FILING PROCEDURES.—The
 9 Secretary of Health and Human Services shall establish
 10 procedures under which individuals may submit petitions
 11 for payment under this title.

12 (b) DETERMINATION.—For each petition filed under
 13 this title, the Secretary shall determine whether the peti-
 14 tion meets the requirements of this title.

15 (c) PAYMENT.—

16 (1) ORDER OF PAYMENTS.—

17 (A) GENERAL RULE.—Except as provided
 18 in this paragraph, to the extent there are suffi-
 19 cient amounts in the Fund to cover each pay-
 20 ment, the Secretary shall pay, from the Fund,
 21 each petition that the Secretary determines
 22 meets the requirements of this title in the order
 23 received.

24 (B) PRIORITY PAYMENT.—During the 180
 25 day period beginning on the date on which the

1 Secretary begins accepting petitions under this
2 title, the Secretary shall only make payments to
3 individuals described in section 102(a)(2)(A)(i).

4 (C) OTHER PAYMENTS.—Upon the expira-
5 tion of the period described in subparagraph
6 (B), the Secretary shall make payments under
7 this title as provided for in subparagraph (A).

8 (2) PAYMENTS IN CASE OF DECEASED INDIVID-
9 UALS.—

10 (A) IN GENERAL.—In the case of an indi-
11 vidual referred to in section 102(a)(1)(A)(ii)
12 who is deceased at the time that payment is
13 made under this section on a petition filed by
14 or on behalf of the individual, the payment shall
15 be made as follows:

16 (i) If the individual is survived by a
17 spouse who is living at the time of pay-
18 ment, the payment shall be made to such
19 surviving spouse.

20 (ii) If the individual is not survived by
21 a spouse described in clause (i), the pay-
22 ment shall be made in equal shares to all
23 children of the individual who are living at
24 the time of the payment.

1 (iii) If the individual is not survived
 2 by a person described in clause (i) or (ii),
 3 the payment shall be made in equal shares
 4 to the parents of the individual who are
 5 living at the time of payment.

6 (iv) If the individual is not survived
 7 by a person described in clause (i), (ii), or
 8 (iii), the payment shall revert back to the
 9 Fund.

10 (B) FILING OF PETITION BY SURVIVOR.—

11 If an individual eligible for payment under sec-
 12 tion 102(a) dies before filing a petition under
 13 this title, a survivor of the individual may file
 14 a petition for payment under this title on behalf
 15 of the individual if the survivor may receive
 16 payment under subparagraph (A).

17 (C) DEFINITIONS.—For purposes of this
 18 paragraph:

19 (i) The term “spouse” means an indi-
 20 vidual who was lawfully married to the rel-
 21 evant individual at the time of death.

22 (ii) The term “child” includes a recog-
 23 nized natural child, a stepchild who lived
 24 with the relevant individual in a regular

1 parent-child relationship, and an adopted
2 child.

3 (iii) The term “parent” includes fa-
4 thers and mothers through adoption.

5 (3) TIMING OF PAYMENT.—The Secretary may
6 not make a payment on a petition under this title
7 before the expiration of the 120-day period begin-
8 ning on the date of the enactment of this Act or
9 after the expiration of the 5-year period beginning
10 on the date of the enactment of this Act.

11 (d) ACTION ON PETITIONS.—

12 (1) IN GENERAL.—The Secretary shall complete
13 the determination required by subsection (b) regard-
14 ing a petition not later than 120 days after the date
15 the petition is filed under this title.

16 (2) PETITIONS BY CERTAIN INDIVIDUALS.—In
17 the case of a petition filed by an individual described
18 in section 102(a)(2)(A)(ii), the Secretary may not
19 make a payment on such petition prior to the expira-
20 tion of the period described in subsection (c)(1)(B).

21 (e) HUMANITARIAN NATURE OF PAYMENT.—This
22 Act does not create or admit any claim of or on behalf
23 of the individual against the United States or against any
24 officer, employee, or agent thereof acting within the scope
25 of employment or agency that relate to an HIV infection

1 arising from treatment described in section 102(a)(2). A
 2 payment under this Act shall, however, when accepted by
 3 or on behalf of the individual, be in full satisfaction of
 4 all such claims by or on behalf of that individual.

5 (f) ADMINISTRATIVE COSTS NOT PAID FROM
 6 FUND.—No costs incurred by the Secretary in carrying
 7 out this title may be paid from the Fund or set off against,
 8 or otherwise deducted from, any payment made under sub-
 9 section (c)(1).

10 (g) TERMINATION OF DUTIES OF SECRETARY.—The
 11 duties of the Secretary under this section shall cease when
 12 the Fund terminates.

13 (h) TREATMENT OF PAYMENTS UNDER OTHER
 14 LAWS.—A payment under subsection (c)(1) to an individ-
 15 ual—

16 (1) shall be treated for purposes of the Internal
 17 Revenue Code of 1986 as damages described in sec-
 18 tion 104(a)(2) of such Code;

19 (2) shall not be included as income or resources
 20 for purposes of determining the eligibility of the in-
 21 dividual to receive benefits described in section
 22 3803(c)(2)(C) of title 31, United States Code, or the
 23 amount of such benefits, and such benefits shall not
 24 be secondary to, conditioned upon reimbursement

1 from, or subject to any reduction because of receipt
 2 of, any such payment; and

3 (3) shall not be treated as a third party pay-
 4 ment or payment in relation to a legal liability with
 5 respect to such benefits and shall not be subject
 6 (whether by subrogation or otherwise) to recovery,
 7 recoupment, reimbursement, or collection with re-
 8 spect to such benefits (including the Federal or
 9 State governments or any entity that provides such
 10 benefits under a contract).

11 (i) REGULATORY AUTHORITY.—The Secretary may
 12 issue regulations necessary to carry out this title.

13 (j) TIME OF ISSUANCE OF PROCEDURES.—The Sec-
 14 retary shall, through the promulgation of appropriate reg-
 15 ulations, guidelines, or otherwise, first establish the proce-
 16 dures to carry out this title not later than 120 days after
 17 the date of the enactment of this Act.

18 **SEC. 104. LIMITATION ON TRANSFER OF RIGHTS AND NUM-**
 19 **BER OF PETITIONS.**

20 (a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—
 21 Any right under this title shall not be assignable or trans-
 22 ferable.

23 (b) 1 PETITION WITH RESPECT TO EACH VICTIM.—
 24 With respect to each individual described in subparagraph
 25 (A), (B), or (C) of section 102(a)(2), the Secretary may

1 not make payment with respect to more than 1 petition
2 filed in respect to an individual.

3 **SEC. 105. TIME LIMITATION.**

4 The Secretary may not make any payment with re-
5 spect to any petition filed under this title unless the peti-
6 tion is filed within 3 years after the date of the enactment
7 of this Act.

8 **SEC. 106. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.**

9 A payment made under section 103(c)(1) shall not
10 be considered as any form of compensation, or reimburse-
11 ment for a loss, for purposes of imposing liability on the
12 individual receiving the payment, on the basis of such re-
13 ceipt, to repay any insurance carrier for insurance pay-
14 ments or to repay any person on account of worker's com-
15 pensation payments. A payment under this title shall not
16 affect any claim against an insurance carrier with respect
17 to insurance or against any person with respect to work-
18 er's compensation.

19 **SEC. 107. LIMITATION ON AGENT AND ATTORNEY FEES.**

20 Notwithstanding any contract, the representative of
21 an individual may not receive, for services rendered in con-
22 nection with the petition of an individual under this title,
23 more than 5 percent of a payment made under this title
24 on the petition. Any such representative who violates this
25 section shall be fined not more than \$50,000.

1 **SEC. 108. DEFINITIONS.**

2 For purposes of this title:

3 (1) The term “AIDS” means acquired immune
4 deficiency syndrome.

5 (2) The term “Fund” means the Ricky Ray
6 Hemophilia Relief Fund.

7 (3) The term “HIV” means human immuno-
8 deficiency virus.

9 (4) Unless otherwise provided, the term “Sec-
10 retary” means Secretary of Health and Human
11 Services.

12 **TITLE II—TREATMENT OF CER-**
13 **TAIN PAYMENTS IN HEMO-**
14 **PHILIA-CLOTTING-FACTOR**
15 **SUIT UNDER THE SSI PRO-**
16 **GRAM**

17 **SEC. 201. TREATMENT OF CERTAIN PAYMENTS IN HEMO-**
18 **PHILIA-CLOTTING-FACTOR SUIT UNDER THE**
19 **MEDICAID AND SSI PROGRAMS.**

20 (a) PRIVATE PAYMENTS.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, the payments described in para-
23 graph (2) shall not be considered income or re-
24 sources in determining eligibility for, or the amount
25 of—

1 (A) medical assistance under title XIX of
2 the Social Security Act, or

3 (B) supplemental security income benefits
4 under title XVI of the Social Security Act.

5 (2) PRIVATE PAYMENTS DESCRIBED.—The pay-
6 ments described in this subsection are—

7 (A) payments made from any fund estab-
8 lished pursuant to a class settlement in the case
9 of *Susan Walker v. Bayer Corporation, et al.*,
10 96–C–5024 (N.D. Ill.); and

11 (B) payments made pursuant to a release
12 of all claims in a case—

13 (i) that is entered into in lieu of the
14 class settlement referred to in subpara-
15 graph (A); and

16 (ii) that is signed by all affected par-
17 ties in such case on or before the later
18 of—

19 (I) December 31, 1997, or

20 (II) the date that is 270 days
21 after the date on which such release is
22 first sent to the persons (or the legal
23 representative of such persons) to
24 whom the payment is to be made.

25 (b) GOVERNMENT PAYMENTS.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, the payments described in para-
3 graph (2) shall not be considered income or re-
4 sources in determining eligibility for, or the amount
5 of supplemental security income benefits under title
6 XVI of the Social Security Act.

7 (2) GOVERNMENT PAYMENTS DESCRIBED.—The
8 payments described in this subsection are payments
9 made from the fund established pursuant to section
10 101 of this Act.

Calendar No. 706

105TH CONGRESS
2D Session

S. 2564

A BILL

To provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

OCTOBER 7 (legislative day, OCTOBER 2), 1998

Read twice and placed on the calendar