

105TH CONGRESS
1ST SESSION

S. 358

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

FEBRUARY 26, 1997

Mr. DEWINE (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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 1997”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Section 1. Short title; table of contents.

TITLE I—HEMOPHILIA RELIEF FUND

Sec. 101. Findings and purpose.

Sec. 102. Ricky Ray Hemophilia Relief Fund.

Sec. 103. Compassionate payment relating to individuals with blood-clotting disorders and HIV.

Sec. 104. Determination and payment.

Sec. 105. Limitation on transfer of rights and number of petitions.

Sec. 106. Time limitation.

Sec. 107. Certain claims not affected by payment.

Sec. 108. Limitation on agent and attorney fees.

Sec. 109. 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 certain the medicaid and SSI programs.

1 **TITLE I—HEMOPHILIA RELIEF** 2 **FUND**

3 **SEC. 101. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—Congress finds that—

5 (1) approximately ½ of all individuals in the
6 United States who suffer from blood-clotting dis-
7 orders, such as hemophilia, were exposed, through
8 the use of blood-clotting agents, to human
9 immunodeficiency virus (HIV), which causes the
10 fatal illness known as acquired immune deficiency
11 syndrome (AIDS);

12 (2) blood-clotting agents (called “antihemophilic
13 factor”) used in the treatment of blood-clotting dis-
14 orders, such as hemophilia, have been manufactured
15 from the blood plasma of 1,000 to 20,000 (or more)

1 donors, placing persons with hemophilia at particu-
2 larly high risk for HIV and other blood-borne dis-
3 eases;

4 (3) the Centers for Disease Control, in a weekly
5 morbidity and mortality report (MMWR) issued on
6 July 16, 1982, first identified individuals with hemo-
7 philia who had contracted illnesses now known to be
8 associated with HIV infection and suggested the
9 possible transmission of an infectious agent through
10 blood-clotting agents;

11 (4) the National Blood Policy, published by the
12 Secretary of Health, Education, and Welfare on Sep-
13 tember 10, 1974, outlined the authority of the Fed-
14 eral government, through the Public Health Service,
15 to protect the safety of the blood supply and blood-
16 clotting agents sold in this country and an imple-
17 mentation plan to carry out this policy;

18 (5) the process by which antihemophilic factor
19 is commercially manufactured, marketed, and sold
20 for use by people with blood-clotting disorders, such
21 as hemophilia, is governed by Federal regulations;

22 (6) in its review of the events surrounding the
23 HIV infection of thousands of people with blood-clot-
24 ting disorders, such as hemophilia, a 1995 study, en-
25 titled “HIV and the Blood Supply”, of the Institute

1 of Medicine found “a failure of leadership and inad-
2 equate institutional decision-making processes” in
3 the system responsible for ensuring blood safety,
4 concluding that “a failure of leadership led to less
5 than effective donor screening, weak regulatory ac-
6 tions and insufficient communication to patients
7 about the risk of AIDS”;

8 (7) individuals with blood-clotting disorders,
9 such as hemophilia, who have HIV infections incur
10 annual medical costs that often exceed \$150,000 due
11 to the expense of the necessary medications and the
12 complications caused by the combination of the 2 ill-
13 nesses;

14 (8) 26 other countries have established govern-
15 ment compensation programs to assist individuals
16 with blood-clotting disorders, such as hemophilia,
17 who are infected with HIV;

18 (9) Ricky Ray was born with hemophilia and,
19 like his 2 younger brothers and thousands of others,
20 became infected with the deadly HIV through the
21 use of contaminated blood-clotting products;

22 (10) Ricky Ray and his family have brought na-
23 tional attention to the suffering of the individuals
24 with blood-clotting disorders, such as hemophilia,

1 and their families who have been devastated by HIV;
2 and

3 (11) Ricky Ray died at the age of 15 on De-
4 cember 13, 1992, of hemophilia-associated AIDS
5 and this Act should bear his name.

6 (b) PURPOSE.—It is the purpose of this title to estab-
7 lish a procedure to make compassionate payments to indi-
8 viduals who were infected with HIV after treatment, dur-
9 ing the period beginning in 1982 and ending in 1987, with
10 contaminated blood products.

11 **SEC. 102. RICKY RAY HEMOPHILIA RELIEF FUND.**

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

16 (b) INVESTMENT OF AMOUNTS IN FUND.—Amounts
17 in the Fund shall be invested in accordance with section
18 9702 of title 31, United States Code, and any interest on
19 and proceeds from any such investment shall be credited
20 to and become part of the Fund.

21 (c) AVAILABILITY OF FUND.—Amounts in the Fund
22 shall be available only for disbursement by the Secretary
23 of Health and Human Services under section 104.

24 (d) TERMINATION.—The Fund shall terminate upon
25 the expiration of the 5-year period beginning on the date

1 of the enactment of this Act. If all of the amounts in the
 2 Fund have not been expended by the end of the 5-year
 3 period, investments of amounts in the Fund shall be liq-
 4 uidated, the receipts of such liquidation shall be deposited
 5 in the Fund, and all funds remaining in the Fund shall
 6 be deposited in the miscellaneous receipts account in the
 7 Treasury of the United States.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
 9 authorized to be appropriated to the Fund to carry out
 10 this title \$900,000,000.

11 **SEC. 103. COMPASSIONATE PAYMENT RELATING TO INDI-**
 12 **VIDUALS WITH BLOOD-CLOTTING DISORDERS**
 13 **AND HIV.**

14 (a) IN GENERAL.—Any individual who has an HIV
 15 infection and who is described in one of the following para-
 16 graphs shall receive \$125,000 from amounts available in
 17 the Fund if the conditions described in subsection (b) are
 18 met:

19 (1) The individual has any form of blood-clot-
 20 ting disorder, such as hemophilia, and was treated
 21 with blood-clotting agents (in the form of blood com-
 22 ponents or blood products) at any time during the
 23 period beginning on July 1, 1982, and ending on
 24 December 31, 1987.

25 (2) The individual—

1 (A) is the lawful spouse of an individual
2 described in paragraph (1); or

3 (B) is the former lawful spouse of an indi-
4 vidual described in paragraph (1) and was the
5 lawful spouse of the individual at any time after
6 a date, within the period described in such sub-
7 paragraph, on which the individual was treated
8 as described in such paragraph.

9 (3) The individual acquired the HIV infection
10 through perinatal transmission from a parent who is
11 an individual described in paragraph (1) or (2).

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

14 (1) SUBMISSION OF MEDICAL DOCUMENTATION
15 OF HIV INFECTION.—The individual submits to the
16 Secretary of Health and Human Services written
17 medical documentation that the individual has an
18 HIV infection.

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

22 (3) DETERMINATION.—The Secretary deter-
23 mines, in accordance with section 104(b), that the
24 petition meets the requirements of this title.

1 **SEC. 104. DETERMINATION AND PAYMENT.**

2 (a) ESTABLISHMENT OF FILING PROCEDURES.—The
 3 Secretary of Health and Human Services shall establish
 4 procedures under which individuals may submit petitions
 5 for payment under this title. The procedures shall include
 6 a requirement that each petition filed under this Act in-
 7 clude written medical documentation that the relevant in-
 8 dividual described in section 103(a)(1) has (or had) a
 9 blood-clotting disorder, such as hemophilia, and was treat-
 10 ed as described in such section.

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

14 (c) PAYMENT.—

15 (1) IN GENERAL.—The Secretary shall pay,
 16 from amounts available in the Fund, each petition
 17 that the Secretary determines meets the require-
 18 ments of this title.

19 (2) PAYMENTS IN CASE OF DECEASED INDIVID-
 20 UALS.—

21 (A) IN GENERAL.—In the case of an indi-
 22 vidual referred to in section 103(a) who is de-
 23 ceased at the time that payment is made under
 24 this section on a petition filed by or on behalf
 25 of the individual, the payment shall be made to
 26 the estate of the individual, if such an estate

1 exists. If no such estate exists, the payment
2 may be made only as follows:

3 (i) If the individual is survived by a
4 spouse who is living at the time of pay-
5 ment, the payment shall be made to such
6 surviving spouse.

7 (ii) If the individual is not survived by
8 a spouse described in clause (i), the pay-
9 ment shall be made in equal shares to all
10 children of the individual who are living at
11 the time of the payment.

12 (iii) If the individual is not survived
13 by a person described in clause (i) or (ii),
14 the payment shall be made in equal shares
15 to the parents of the individual who are
16 living at the time of payment.

17 (B) FILING OF PETITION BY ESTATE OR
18 SURVIVOR.—If an individual eligible for pay-
19 ment under section 103(a) dies before filing a
20 petition under this title—

21 (i) the estate of the individual, if such
22 an estate exists, may file a petition for
23 payment under this title on behalf of the
24 individual; or

1 (ii) if no such estate exists, a survivor
2 of the individual may file a petition for
3 payment under this title on behalf of the
4 individual if the survivor may receive pay-
5 ment under subparagraph (A).

6 (C) DEFINITIONS.—For purposes of this
7 paragraph:

8 (i) The term “spouse” means an indi-
9 vidual who was lawfully married to the rel-
10 evant individual.

11 (ii) The term “child” includes a recog-
12 nized natural child, a stepchild who lived
13 with the relevant individual in a regular
14 parent-child relationship, and an adopted
15 child.

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

18 (3) TIMING OF PAYMENT.—The Secretary may
19 not make a payment on a petition under this title
20 before the expiration of the 90-day period beginning
21 on the date of the enactment of this Act or after the
22 expiration of the 5-year period beginning on the date
23 of the enactment of this Act.

24 (4) CHOICE OF PAYMENT METHODS.—An indi-
25 vidual whom the Secretary determines to be entitled

1 to a payment under subsection (c)(1) may choose to
2 receive the payment in the form of—

3 (A) a lump sum of \$125,000, which shall
4 be paid not later than 90 days after the Sec-
5 retary determines that the individual is entitled
6 to receive payment under subsection (c)(1); or

7 (B) 4 subpayments, of which—

8 (i) the first subpayment shall consist
9 of \$50,000 and shall be paid not later than
10 90 days after the Secretary determines
11 that the individual is entitled to receive
12 payment under subsection (c)(1); and

13 (ii) the second, third, and fourth sub-
14 payments shall each consist of \$25,000
15 and shall each be paid upon the expiration
16 of the 6-month period beginning on the
17 date of the preceding subpayment.

18 (d) ACTION ON PETITIONS.—The Secretary shall
19 complete the determination required by subsection (b) re-
20 garding a petition not later than 90 days after the date
21 the petition is filed under this title.

22 (e) PAYMENT IN FULL SETTLEMENT OF CLAIMS
23 AGAINST UNITED STATES.—Payment under this title,
24 when accepted by an individual described in section 103(a)
25 or by the estate of or a survivor of such an individual on

1 behalf of the individual, shall be in full satisfaction of all
 2 claims of or on behalf of the individual against the United
 3 States or against any officer, employee, or agent thereof
 4 acting within the scope of employment or agency (but not
 5 against any other private person or entity) that relate to
 6 an HIV infection arising from treatment, at any time dur-
 7 ing the period beginning on July 1, 1982, and ending on
 8 December 31, 1987, with blood-clotting agents (in the
 9 form of blood components or blood products).

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

15 (g) TERMINATION OF DUTIES OF SECRETARY.—The
 16 duties of the Secretary under this section shall cease when
 17 the Fund terminates.

18 (h) TREATMENT OF PAYMENTS UNDER OTHER
 19 LAWS.—A payment under subsection (c)(1) to an individ-
 20 ual or an estate—

21 (1) shall be treated for purposes of the internal
 22 revenue laws of the United States as damages re-
 23 ceived on account of personal injuries or sickness;

1 (2) shall not be included as income or resources
2 for purposes of determining the eligibility of the in-
3 dividual to receive benefits described in section
4 3803(c)(2)(C) of title 31, United States Code, or the
5 amount of such benefits, and such benefits shall not
6 be secondary to, conditioned upon reimbursement
7 from, or subject to any reduction because of receipt
8 of, any such payment; and

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

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

19 (j) TIME OF ISSUANCE OF PROCEDURES.—The Sec-
20 retary shall, through the promulgation of appropriate reg-
21 ulations, guidelines, or otherwise, first establish the proce-
22 dures to carry out this title not later than 90 days after
23 the date of the enactment of this Act.

24 (k) JUDICIAL REVIEW.—An individual whose petition
25 for payment under this title is denied may seek judicial

1 review solely in a district court of the United States. The
2 court shall review the denial on the administrative record
3 and shall hold unlawful and set aside the denial if the de-
4 nial is arbitrary, capricious, an abuse of discretion, or oth-
5 erwise not in accordance with law.

6 **SEC. 105. LIMITATION ON TRANSFER OF RIGHTS AND NUM-**
7 **BER OF PETITIONS.**

8 (a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—
9 Any right under this title shall not be assignable or trans-
10 ferable.

11 (b) 1 PETITION WITH RESPECT TO EACH VICTIM.—
12 With respect to each individual described in paragraph
13 (1), (2), or (3) of section 103(a), the Secretary may not
14 make payment with respect to more than 1 petition filed
15 to receive compensation under this title for the harm suf-
16 fered by the individual.

17 **SEC. 106. TIME LIMITATION.**

18 The Secretary may not make any payment with re-
19 spect to any petition filed under this title unless the peti-
20 tion is filed within 3 years after the date of the enactment
21 of this Act.

22 **SEC. 107. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.**

23 A payment made under section 104(c)(1) shall not
24 be considered as any form of compensation, or reimburse-
25 ment for a loss, for purposes of imposing liability on the

1 individual receiving the payment, on the basis of such re-
 2 ceipt, to repay any insurance carrier for insurance pay-
 3 ments or to repay any person on account of worker's com-
 4 pensation payments. A payment under this title shall not
 5 affect any claim against an insurance carrier with respect
 6 to insurance or against any person with respect to work-
 7 er's compensation.

8 **SEC. 108. LIMITATION ON AGENT AND ATTORNEY FEES.**

9 Notwithstanding any contract, the representative of
 10 an individual may not receive, for services rendered in con-
 11 nection with the petition of an individual under this title,
 12 more than 5 percent of a payment made under this title
 13 on the petition. Any such representative who violates this
 14 section shall be fined not more than \$50,000.

15 **SEC. 109. DEFINITIONS.**

16 In this title:

17 (1) AIDS.—The term “AIDS” means acquired
 18 immune deficiency syndrome.

19 (2) FUND.—The term “Fund” means the Ricky
 20 Ray Hemophilia Relief Fund.

21 (3) HIV.—The term “HIV” means human
 22 immunodeficiency virus.

23 (4) SECRETARY.—Unless otherwise provided,
 24 the term “Secretary” means Secretary of Health
 25 and Human Services.

1 **TITLE II—TREATMENT OF CER-**
 2 **TAIN PRIVATE SETTLEMENT**
 3 **PAYMENTS IN HEMOPHILIA-**
 4 **CLOTTING-FACTOR SUIT**
 5 **UNDER THE MEDICAID AND**
 6 **SSI PROGRAMS**

7 **SEC. 201. TREATMENT OF CERTAIN PRIVATE SETTLEMENT**
 8 **PAYMENTS IN HEMOPHILIA-CLOTTING-FAC-**
 9 **TOR SUIT UNDER THE MEDICAID AND SSI**
 10 **PROGRAMS.**

11 (a) IN GENERAL.—Notwithstanding any other provi-
 12 sion of law, a settlement payment shall not be considered
 13 income or resources in determining a class member’s eligi-
 14 bility for, or the amount of—

15 (1) medical assistance under title XIX of the
 16 Social Security Act, or

17 (2) supplemental security income benefits under
 18 title XVI of such Act.

19 (b) DEFINITIONS.—For purposes of this section:

20 (1) CLASS MEMBER.—The term “class mem-
 21 ber” means a member of the Settlement Class in the
 22 settlement in In Re Factor VIII or IX Concentrate
 23 Blood Products Litigation (United States District
 24 Court, Northern District of Illinois, Eastern Divi-
 25 sion; Civil Action No. 96–C–5024).

1 (2) SETTLEMENT PAYMENT.—The term “settle-
2 ment payment” means a payment to a class member
3 under the settlement described in paragraph (1).

○