I

104TH CONGRESS
1ST SESSION

H. R. 1023

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1995

Mr. GOSS (for himself, Mr. QUILLEN, Mr. ENGEL, Mr. MILLER of Florida, Mrs. MEEK of Florida, Mr. TRAFICANT, Mr. STEARNS, Mr. ENGLISH of Pennsylvania, Mr. DEUTSCH, Mr. GEJDENSON, Mr. CALVERT, Ms. FURSE, Mr. BARTLETT of Maryland, Mr. STUDDS, Mrs. FOWLER, Mr. RAHALL, Mr. HASTINGS of Florida, Mr. NADLER, Mr. SHAYS, Mr. BECERRA, Mrs. SEASTRAND, and Mr. MCHALE) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ricky Ray Hemophilia Relief Fund Act of 1995''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

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

(2) the Federal Government has a shared responsibility with the blood-products industry for protecting the safety of the blood supply of the Nation and for regulating the safety of blood-clotting agents;

(3) blood and blood derivatives (including blood-clotting agents) are subject to more stringent regulation by the Federal Government than are most products regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), because blood and blood derivatives are subject to regulation under the Public Health Service Act (42 U.S.C. 201 et seq.) as well as the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(4) individuals with blood-clotting disorders, such as hemophilia, were at an unusually high and largely preventable risk of contracting HIV during

the period beginning in 1980 (when technology became available to pasteurize blood-clotting agents) and ending in 1987 (when the last mass recall of contaminated anti-hemophilic factor (AHF) occurred);

(5) during the period beginning in 1980 and ending in 1987, despite growing concerns about blood-borne viruses such as hepatitis and HIV, the Federal Government did not require the blood-products industry to use available technology to ensure the safety of blood products that were allowed on the market for sale to individuals with blood-clotting disorders, such as hemophilia;

(6) the Federal Government did not require that, to allow for fully informed decisionmaking regarding treatment options, the blood-products industry provide directly to individuals with blood-clotting disorders, such as hemophilia, all available information about the risks of contaminated blood products;

(7) the Federal Government failed to fulfill its responsibility to properly regulate the blood-products industry, and thus exposed individuals with blood-clotting disorders, such as hemophilia, and their families to potential infection with a fatal disease;

(8) 17 other developed countries have established government compensation programs to assist individuals with blood-clotting disorders, such as hemophilia, who were infected with HIV;

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

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

(11) Ricky Ray and his family have brought national attention to the suffering of individuals with blood-clotting disorders, such as hemophilia, and their families, who have been devastated by HIV; and

(12) Ricky Ray died at the age of 15 on December 13, 1992, of hemophilia-associated AIDS, and this Act should bear his name.

(b) PURPOSE.—It is the purpose of this Act to establish a procedure to make partial restitution to individuals who were infected with HIV after treatment, during the

period beginning in 1980 and ending in 1987, with contaminated blood products.

SEC. 3. TRUST FUND.

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

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

(c) AVAILABILITY OF FUND.—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 5.

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

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund to carry out this Act $1,000,000,000.

SEC. 4. CLAIMS RELATING TO BLOOD-CLOTTING DISORDERS AND HIV.

Any individual who submits to the Attorney General written medical documentation that the individual has an HIV infection shall receive $125,000, from amounts available in the Fund, if each of the following conditions is met:

(1) CHARACTERISTICS OF INDIVIDUAL.—The individual is described in 1 of the following subparagraphs:

(A) The individual has any form of blood-clotting disorder, such as hemophilia, and was treated with blood-clotting agents (in the form of blood components or blood products) at any time during the period beginning on January 1, 1980, and ending on December 31, 1987.

(B) The individual—

(i) is the lawful spouse of an individual described in subparagraph (A); or

(ii) is the former lawful spouse of an individual described in subparagraph (A) and was the lawful spouse of the individual

at any time after a date, within the period described in such subparagraph, on which the individual was treated as described in such subparagraph.

(C) The individual acquired the HIV infection through perinatal transmission from a parent who is an individual described in subparagraph (A) or (B).

(2) CLAIM.—A claim for the payment is filed with the Attorney General by or on behalf of the individual.

(3) DETERMINATION.—The Attorney General determines, in accordance with section 5(b), that the claim meets the requirements of this Act.

SEC. 5. DETERMINATION AND PAYMENT OF CLAIMS.

(a) ESTABLISHMENT OF FILING PROCEDURES.—The Attorney General shall establish procedures under which individuals may submit claims for payment under this Act. The procedures shall include a requirement that each claim filed under this Act include written medical documentation that the relevant individual described in section 4(1)(A) has a blood-clotting disorder, such as hemophilia, and was treated as described in such section.

(b) DETERMINATION OF CLAIMS.—For each claim filed under this Act, the Attorney General shall determine whether the claim meets the requirements of this Act.

(c) PAYMENT OF CLAIMS.—

(1) IN GENERAL.—The Attorney General shall pay, from amounts available in the Fund, each claim that the Attorney General determines meets the requirements of this Act.

(2) PAYMENTS IN CASE OF DECEASED INDIVIDUALS.—

(A) IN GENERAL.—In the case of an individual referred to in section 4 who is deceased at the time that payment is made under this section on a claim filed by or on behalf of the individual, the payment shall be made to the estate of the individual, if such an estate exists. If no such estate exists, the payment may be made only as follows:

(i) If the individual is survived by a spouse who is living at the time of payment, the payment shall be made to such surviving spouse.

(ii) If the individual is not survived by a spouse described in clause (i), the payment shall be made in equal shares to all

children of the individual who are living at the time of the payment.

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

(B) FILING OF CLAIM BY ESTATE OR SURVIVOR.—If an individual eligible for payment under section 4 dies before filing a claim under this Act—

(i) the estate of the individual, if such an estate exists, may file a claim for payment under this Act on behalf of the individual; or

(ii) if no such estate exists, a survivor of the individual may file a claim for payment under this Act on behalf of the individual if the survivor may receive payment under subparagraph (A).

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

(i) The term ''spouse'' means an individual who was lawfully married to the relevant individual.

(ii) The term ''child'' includes a recognized natural child, a stepchild who lived with the relevant individual in a regular parent-child relationship, and an adopted child.

(iii) The term ''parent'' includes fathers and mothers through adoption.

(3) TIMING OF PAYMENT.—The Attorney General may not make a payment on a claim under this Act before the expiration of the 90-day period beginning on the date of the enactment of this Act or after the expiration of the 5-year period beginning on the date of the enactment of this Act.

(4) CHOICE OF PAYMENT METHODS.—An individual whom the Attorney General determines to be entitled to a payment under subsection (c)(1) may choose to receive the payment in the form of—

(A) a lump sum of $125,000, which shall be paid not later than 90 days after the Attorney General determines that the individual is entitled to receive payment under subsection (c)(1); or

(B) 4 subpayments, of which—

(i) the 1st subpayment shall consist of $50,000 and shall be paid not later than

90 days after the Attorney General determines that the individual is entitled to receive payment under subsection (c)(1); and

(ii) the 2d, 3d, and 4th subpayments shall each consist of $25,000 and shall each be paid upon the expiration of the 6-month period beginning on the date of the preceding subpayment.

(d) ACTION ON CLAIMS.—The Attorney General shall complete the determination required by subsection (b) regarding a claim not later than 90 days after the claim is filed under this Act.

(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST UNITED STATES.—Payment under this Act, when accepted by an individual described in section 4 or by the estate of or a survivor of such an individual on behalf of the individual, shall be in full satisfaction of all claims of or on behalf of the individual against the United States (but not against any other person or entity) that arise out of both an HIV infection and treatment, at any time during the period beginning on January 1, 1980, and ending on December 31, 1987, with blood-clotting agents (in the form of blood components or blood products).

(f) ADMINISTRATIVE COSTS NOT PAID FROM FUND.—No costs incurred by the Attorney General in car-

rying out this Act may be paid from the Fund or set off against, or otherwise deducted from, any payment made under subsection (c)(1).

(g) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease when the Fund terminates.

(h) TREATMENT OF PAYMENTS UNDER OTHER LAWS.—A payment under subsection (c)(1) to an individual or an estate—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages received on account of personal injuries or sickness; and

(2) shall not be included as income or resources for purposes of determining the eligibility of the individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(i) USE OF EXISTING RESOURCES.—The Attorney General should use funds and resources available to the Attorney General to carry out the functions of the Attorney General under this Act.

(j) REGULATORY AUTHORITY.—The Attorney General may issue regulations necessary to carry out this Act.

(k) TIME OF ISSUANCE OF REGULATIONS, GUIDELINES, AND PROCEDURES.—The initial regulations, guidelines, and procedures to carry out this Act shall be issued not later than 90 days after the date of the enactment of this Act.

(l) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review solely in a district court of the United States. The court shall review the denial on the administrative record and shall hold unlawful and set aside the denial if the denial is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

SEC. 6. LIMITATION ON TRANSFER AND NUMBER OF CLAIMS.

(a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—A claim under this Act shall not be assignable or transferable.

(b) 1 CLAIM WITH RESPECT TO EACH VICTIM.—With respect to each individual described in subparagraph (A), (B), or (C) of section 4(1), the Attorney General may not pay more than 1 claim filed to receive compensation under this Act for the harm suffered by the individual.

SEC. 7. LIMITATIONS ON CLAIMS.

The Attorney General may not pay any claim filed under this Act unless the claim is filed within 3 years after the date of the enactment of this Act.

SEC. 8. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.

A payment made under section 5(c)(1) shall not be considered as any form of compensation, or reimbursement for a loss, for purposes of imposing liability on the individual receiving the payment, on the basis of such receipt, to repay any insurance carrier for insurance payments or to repay any person on account of worker's compensation payments. A payment under this Act shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

SEC. 9. LIMITATION ON AGENT AND ATTORNEY FEES.

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than 5 percent of a payment made under this Act on the claim. Any such representative who violates this section shall be fined not more than $50,000.

SEC. 10. DEFINITIONS.

For purposes of this Act:

(1) The term ''AIDS'' means acquired immune deficiency syndrome.

(2) The term ''Fund'' means the Ricky Ray Hemophilia Relief Fund.

(3) The term ''HIV'' means human immunodeficiency virus.

○