

105TH CONGRESS  
1ST SESSION

# H. R. 1023

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1997

Mr. GOSS (for himself, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ARCHER, Mr. BAKER, Mr. BALDACCI, Mr. BARCIA, Mr. BARRETT of Nebraska, Mr. BENTSEN, Mr. BERMAN, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BLAGOJEVICH, Mr. BONIOR, Mr. BORSKI, Mr. BOUCHER, Ms. BROWN of Florida, Mr. BUNNING, Mrs. CARSON, Mr. CASTLE, Mr. CLAY, Mr. COBLE, Mr. COBURN, Mr. CONDIT, Mr. CONYERS, Mr. COYNE, Mr. CUNNINGHAM, Mr. DAVIS of Virginia, Mr. DEFazio, Mr. DELAHUNT, Ms. DELAURO, Mr. DELLUMS, Mr. DEUTSCH, Mr. DIAZ-BALART, Ms. DUNN, Mr. EHLERS, Mr. ENGLISH of Pennsylvania, Mr. ENSIGN, Ms. ESHOO, Mr. EVANS, Mr. FALOMAVAEGA, Mr. FARR of California, Mr. FATTAH, Mr. FAZIO of California, Mr. FILNER, Mr. FLAKE, Mr. FOGLETTA, Mr. FOLEY, Mr. FORBES, Mr. FOX of Pennsylvania, Mr. FRANK of Massachusetts, Mr. FROST, Ms. FURSE, Mr. GALLEGLY, Mr. GEJDENSON, Mr. GEKAS, Mr. GILCHREST, Mr. GINGRICH, Mr. GONZALEZ, Mr. GREEN, Mr. GUTIERREZ, Mr. HALL of Ohio, Mr. HASTERT, Mr. HASTINGS of Florida, Mr. HAYWORTH, Mr. HEFNER, Mr. HINCHEY, Mr. HOLDEN, Mr. HORN, Ms. JACKSON-LEE of Texas, Mr. JENKINS, Mrs. JOHNSON of Connecticut, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KANJORSKI, Mrs. KELLY, Mrs. KENNELLY of Connecticut, Mr. KILDEE, Mr. KING, Mr. KNOLLENBERG, Mr. KOLBE, Mr. LAFALCE, Mr. LAHOOD, Mr. LANTOS, Mr. LARGENT, Mr. LATHAM, Mr. LEWIS of Georgia, Mr. MALONEY of Connecticut, Mrs. MALONEY of New York, Mr. MANTON, Mr. MARTINEZ, Mr. MATSUI, Mr. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCHALE, Mr. MCHUGH, Mr. MCKEON, Ms. MCKINNEY, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MILLER of California, Mr. MILLER of Florida, Mrs. MINK of Hawaii, Mr. MOAKLEY, Ms. MOLINARI, Mrs. MORELLA, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. NORWOOD, Mr. OLVER, Mr. OWENS, Mr. OXLEY, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Ms. PRYCE of Ohio, Mr. RAHALL, Mr. ROMERO-BARCELÓ, Mr. RUSH, Mr. SABO, Mr. DAN SCHAEFER of Colorado, Mr. SCHUMER, Mr. SHAW, Mr. SHAYS, Mr. SHU-

STER, Mr. SISISKY, Mr. SKELTON, Mr. SMITH of New Jersey, Mr. STARK, Mr. STEARNS, Mr. STOKES, Mr. STUPAK, Mr. TALENT, Mr. TAYLOR of North Carolina, Mrs. THURMAN, Mr. TIERNEY, Mr. TORRES, Mr. TOWNS, Mr. VISCLOSKY, Mr. WALSH, Mr. WATT of North Carolina, Mr. WAXMAN, Mr. WELDON of Pennsylvania, Mr. WOLF, Mr. WYNN, Mr. YATES, Mr. WELLER, Mr. SCHIFF, Mr. BISHOP, Mr. BOEHLERT, Mr. BROWN of California, and Mr. SPRATT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Commerce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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:

Sec. 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 the Medicaid and SSI programs.

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

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

4             (a) FINDINGS.—The Congress finds that—

5                     (1) approximately one-half of all individuals in  
 6             the 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)  
 16            donors, placing persons with hemophilia at particu-  
 17            larly high risk for HIV and other blood-borne dis-  
 18            eases;

19                    (3) the Centers for Disease Control, in a weekly  
 20            morbidity and mortality report (MMWR) issued on  
 21            July 16, 1982, first identified individuals with hemo-

1       philia who had contracted illnesses now known to be  
2       associated with HIV infection and suggested the  
3       possible transmission of an infectious agent through  
4       blood-clotting agents;

5               (4) the National Blood Policy, published by the  
6       Secretary of Health, Education, and Welfare on Sep-  
7       tember 10, 1974, outlined the authority of the Fed-  
8       eral Government, through the Public Health Service,  
9       to protect the safety of the blood supply and blood-  
10      clotting agents sold in this country and an imple-  
11      mentation plan to carry out this policy;

12              (5) the process by which antihemophilic factor  
13      is commercially manufactured, marketed, and sold  
14      for use by people with blood-clotting disorders, such  
15      as hemophilia, is governed by Federal regulations;

16              (6) in its review of the events surrounding the  
17      HIV infection of thousands of people with blood-clot-  
18      ting disorders, such as hemophilia, a 1995 study, en-  
19      titled “HIV and the Blood Supply”, of the Institute  
20      of Medicine found “a failure of leadership and inad-  
21      equate institutional decision-making processes” in  
22      the system responsible for ensuring blood safety,  
23      concluding that “a failure of leadership led to less  
24      than effective donor screening, weak regulatory ac-

1 tions and insufficient communication to patients  
2 about the risk of AIDS”;

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

9 (8) 26 other countries have established govern-  
10 ment compensation programs to assist individuals  
11 with blood-clotting disorders, such as hemophilia,  
12 who are infected with HIV;

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

17 (10) Ricky Ray and his family have brought na-  
18 tional attention to the suffering of the individuals  
19 with blood-clotting disorders, such as hemophilia,  
20 and their families who have been devastated by HIV;  
21 and

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

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

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

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

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

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

19           (d) TERMINATION.—The Fund shall terminate upon  
20 the expiration of the 5-year period beginning on the date  
21 of the enactment of this Act. If all of the amounts in the  
22 Fund have not been expended by the end of the 5-year  
23 period, investments of amounts in the Fund shall be liq-  
24 uidated, the receipts of such liquidation shall be deposited  
25 in the Fund, and all funds remaining in the Fund shall

1 be deposited in the miscellaneous receipts account in the  
2 Treasury of the United States.

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

6 **SEC. 103. COMPASSIONATE PAYMENT RELATING TO INDI-**  
7 **VIDUALS WITH BLOOD-CLOTTING DISORDERS**  
8 **AND HIV.**

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

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

20 (2) The individual—

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

23 (B) is the former lawful spouse of an indi-  
24 vidual described in paragraph (1) and was the  
25 lawful spouse of the individual at any time after

1 a date, within the period described in such sub-  
2 paragraph, on which the individual was treated  
3 as described in such paragraph.

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

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

9 (1) SUBMISSION OF MEDICAL DOCUMENTATION  
10 OF HIV INFECTION.—The individual submits to the  
11 Secretary of Health and Human Services written  
12 medical documentation that the individual has an  
13 HIV infection.

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

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

20 **SEC. 104. DETERMINATION AND PAYMENT.**

21 (a) ESTABLISHMENT OF FILING PROCEDURES.—The  
22 Secretary of Health and Human Services shall establish  
23 procedures under which individuals may submit petitions  
24 for payment under this title. The procedures shall include  
25 a requirement that each petition filed under this Act in-

1 clude written medical documentation that the relevant in-  
2 dividual described in section 103(a)(1) has (or had) a  
3 blood-clotting disorder, such as hemophilia, and was treat-  
4 ed as described in such section.

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

8 (c) PAYMENT.—

9 (1) IN GENERAL.—The Secretary shall pay,  
10 from amounts available in the Fund, each petition  
11 that the Secretary determines meets the require-  
12 ments of this title.

13 (2) PAYMENTS IN CASE OF DECEASED INDIVID-  
14 UALS.—

15 (A) IN GENERAL.—In the case of an indi-  
16 vidual referred to in section 103(a) who is de-  
17 ceased at the time that payment is made under  
18 this section on a petition filed by or on behalf  
19 of the individual, the payment shall be made to  
20 the estate of the individual, if such an estate  
21 exists. If no such estate exists, the payment  
22 may be made only as follows:

23 (i) If the individual is survived by a  
24 spouse who is living at the time of pay-

1           ment, the payment shall be made to such  
2           surviving spouse.

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

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

13          (B) FILING OF PETITION BY ESTATE OR  
14          SURVIVOR.—If an individual eligible for pay-  
15          ment under section 103(a) dies before filing a  
16          petition under this title—

17               (i) the estate of the individual, if such  
18               an estate exists, may file a petition for  
19               payment under this title on behalf of the  
20               individual; or

21               (ii) if no such estate exists, a survivor  
22               of the individual may file a petition for  
23               payment under this title on behalf of the  
24               individual if the survivor may receive pay-  
25               ment under subparagraph (A).

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

3 (i) The term “spouse” means an indi-  
4 vidual who was lawfully married to the rel-  
5 evant individual.

6 (ii) The term “child” includes a recog-  
7 nized natural child, a stepchild who lived  
8 with the relevant individual in a regular  
9 parent-child relationship, and an adopted  
10 child.

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

13 (3) TIMING OF PAYMENT.—The Secretary may  
14 not make a payment on a petition under this title  
15 before the expiration of the 90-day period beginning  
16 on the date of the enactment of this Act or after the  
17 expiration of the 5-year period beginning on the date  
18 of the enactment of this Act.

19 (4) CHOICE OF PAYMENT METHODS.—An indi-  
20 vidual whom the Secretary determines to be entitled  
21 to a payment under subsection (c)(1) may choose to  
22 receive the payment in the form of—

23 (A) a lump sum of \$125,000, which shall  
24 be paid not later than 90 days after the Sec-

1           retary determines that the individual is entitled  
2           to receive payment under subsection (c)(1); or

3                   (B) 4 subpayments, of which—

4                           (i) the 1st subpayment shall consist of  
5                           \$50,000 and shall be paid not later than  
6                           90 days after the Secretary determines  
7                           that the individual is entitled to receive  
8                           payment under subsection (c)(1); and

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

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

18           (e) PAYMENT IN FULL SETTLEMENT OF CLAIMS  
19           AGAINST UNITED STATES.—Payment under this title,  
20           when accepted by an individual described in section 103(a)  
21           or by the estate of or a survivor of such an individual on  
22           behalf of the individual, shall be in full satisfaction of all  
23           claims of or on behalf of the individual against the United  
24           States or against any officer, employee, or agent thereof  
25           acting within the scope of employment or agency (but not

1 against any other private person or entity) that relate to  
2 an HIV infection arising from treatment, at any time dur-  
3 ing the period beginning on July 1, 1982, and ending on  
4 December 31, 1987, with blood-clotting agents (in the  
5 form of blood components or blood products).

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

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

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

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

20 (2) shall not be included as income or resources  
21 for purposes of determining the eligibility of the in-  
22 dividual to receive benefits described in section  
23 3803(e)(2)(C) of title 31, United States Code, or the  
24 amount of such benefits, and such benefits shall not  
25 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 90 days after  
17 the date of the enactment of this Act.

18 (k) JUDICIAL REVIEW.—An individual whose petition  
19 for payment under this title is denied may seek judicial  
20 review solely in a district court of the United States. The  
21 court shall review the denial on the administrative record  
22 and shall hold unlawful and set aside the denial if the de-  
23 nial is arbitrary, capricious, an abuse of discretion, or oth-  
24 erwise not in accordance with law.

1 **SEC. 105. LIMITATION ON TRANSFER OF RIGHTS AND NUM-**  
2 **BER OF PETITIONS.**

3 (a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—  
4 Any right under this title shall not be assignable or trans-  
5 ferable.

6 (b) 1 PETITION WITH RESPECT TO EACH VICTIM.—  
7 With respect to each individual described in paragraph  
8 (1), (2), or (3) of section 103(a), the Secretary may not  
9 make payment with respect to more than 1 petition filed  
10 to receive compensation under this title for the harm suf-  
11 fered by the individual.

12 **SEC. 106. TIME LIMITATION.**

13 The Secretary may not make any payment with re-  
14 spect to any petition filed under this title unless the peti-  
15 tion is filed within 3 years after the date of the enactment  
16 of this Act.

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

18 A payment made under section 104(c)(1) shall not  
19 be considered as any form of compensation, or reimburse-  
20 ment for a loss, for purposes of imposing liability on the  
21 individual receiving the payment, on the basis of such re-  
22 ceipt, to repay any insurance carrier for insurance pay-  
23 ments or to repay any person on account of worker's com-  
24 pensation payments. A payment under this title shall not  
25 affect any claim against an insurance carrier with respect

1 to insurance or against any person with respect to work-  
2 er's compensation.

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

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

10 **SEC. 109. DEFINITIONS.**

11 For purposes of this title:

12 (1) The term "AIDS" means acquired immune  
13 deficiency syndrome.

14 (2) The term "Fund" means the Ricky Ray  
15 Hemophilia Relief Fund.

16 (3) The term "HIV" means human  
17 immunodeficiency virus.

18 (4) Unless otherwise provided, the term "Sec-  
19 retary" means Secretary of Health and Human  
20 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).

○