

Calendar No. 707

105TH CONGRESS
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IN THE SENATE OF THE UNITED STATES

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OCTOBER 7 (legislative day, OCTOBER 2), 1998

Reported by Mr. JEFFORDS, without amendment

AN ACT

To provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated antihemophilic factor, 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 relating to individuals with blood-clotting disorders and HIV.

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.

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

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

13 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to the Fund to carry out
15 this title \$750,000,000.

16 **SEC. 102. COMPASSIONATE PAYMENT RELATING TO INDI-**
17 **VIDUALS WITH BLOOD-CLOTTING DISORDERS**
18 **AND HIV.**

19 (a) IN GENERAL.—If the conditions described in sub-
20 section (b) are met and if there are sufficient amounts
21 in the Fund to make each payment, the Secretary shall
22 make a single payment of \$100,000 from the Fund to any
23 individual who has an HIV infection and who is described
24 in one of the following paragraphs:

1 (1) The individual has any form of blood-clot-
2 ting disorder, such as hemophilia, and was treated
3 with antihemophilic factor at any time during the
4 period beginning on July 1, 1982, and ending on
5 December 31, 1987.

6 (2) The individual—

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

9 (B) is the former lawful spouse of an indi-
10 vidual described in paragraph (1) and was the
11 lawful spouse of the individual at any time after
12 a date, within the period described in such sub-
13 paragraph, on which the individual was treated
14 as described in such paragraph and through
15 medical documentation can assert reasonable
16 certainty of transmission of HIV from individ-
17 ual described in paragraph (1).

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

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

23 (1) SUBMISSION OF MEDICAL DOCUMENTATION
24 OF HIV INFECTION.—The individual submits to the

1 Secretary written medical documentation that the in-
2 dividual has an HIV infection.

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

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

9 **SEC. 103. DETERMINATION AND PAYMENT.**

10 (a) ESTABLISHMENT OF FILING PROCEDURES.—The
11 Secretary of Health and Human Services shall establish
12 procedures under which individuals may submit petitions
13 for payment under this title. The procedures shall include
14 a requirement that each petition filed under this Act in-
15 clude written medical documentation that the relevant in-
16 dividual described in section 102(a)(1) has (or had) a
17 blood-clotting disorder, such as hemophilia, and was treat-
18 ed as described in such section.

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

22 (c) PAYMENT.—

23 (1) IN GENERAL.—To the extent there are suf-
24 ficient amounts in the Fund to cover each payment,
25 the Secretary shall pay, from the Fund, each peti-

1 tion that the Secretary determines meets the re-
2 quirements of this title in the order received.

3 (2) PAYMENTS IN CASE OF DECEASED INDIVID-
4 UALS.—

5 (A) IN GENERAL.—In the case of an indi-
6 vidual referred to in section 102(a) who is de-
7 ceased at the time that payment is made under
8 this section on a petition filed by or on behalf
9 of the individual, the payment shall be made as
10 follows:

11 (i) If the individual is survived by a
12 spouse who is living at the time of pay-
13 ment, the payment shall be made to such
14 surviving spouse.

15 (ii) If the individual is not survived by
16 a spouse described in clause (i), the pay-
17 ment shall be made in equal shares to all
18 children of the individual who are living at
19 the time of the payment.

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

1 (iv) If the individual is not survived
2 by a person described in clause (i), (ii), or
3 (iii), the payment shall revert back to the
4 Fund.

5 (B) FILING OF PETITION BY SURVIVOR.—
6 If an individual eligible for payment under sec-
7 tion 102(a) dies before filing a petition under
8 this title, a survivor of the individual may file
9 a petition for payment under this title on behalf
10 of the individual if the survivor may receive
11 payment under subparagraph (A).

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

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

17 (ii) The term “child” includes a recog-
18 nized natural child, a stepchild who lived
19 with the relevant individual in a regular
20 parent-child relationship, and an adopted
21 child.

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

24 (3) TIMING OF PAYMENT.—The Secretary may
25 not make a payment on a petition under this title

1 before the expiration of the 120-day period begin-
2 ning on the date of the enactment of this Act or
3 after the expiration of the 5-year period beginning
4 on the date of the enactment of this Act.

5 (d) ACTION ON PETITIONS.—The Secretary shall
6 complete the determination required by subsection (b) re-
7 garding a petition not later than 120 days after the date
8 the petition is filed under this title.

9 (e) HUMANITARIAN NATURE OF PAYMENT.—This
10 Act does not create or admit any claim of or on behalf
11 of the individual against the United States or against any
12 officer, employee, or agent thereof acting within the scope
13 of employment or agency that relate to an HIV infection
14 arising from treatment with antihemophilic factor, at any
15 time during the period beginning on July 1, 1982, and
16 ending on December 31, 1987. A payment under this Act
17 shall, however, when accepted by or on behalf of the indi-
18 vidual, be in full satisfaction of all such claims by or on
19 behalf of that individual.

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

1 (g) TERMINATION OF DUTIES OF SECRETARY.—The
2 duties of the Secretary under this section shall cease when
3 the Fund terminates.

4 (h) TREATMENT OF PAYMENTS UNDER OTHER
5 LAWS.—A payment under subsection (c)(1) to an individ-
6 ual—

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

10 (2) shall not be included as income or resources
11 for purposes of determining the eligibility of the in-
12 dividual to receive benefits described in section
13 3803(e)(2)(C) of title 31, United States Code, or the
14 amount of such benefits, and such benefits shall not
15 be secondary to, conditioned upon reimbursement
16 from, or subject to any reduction because of receipt
17 of, any such payment; and

18 (3) shall not be treated as a third party pay-
19 ment or payment in relation to a legal liability with
20 respect to such benefits and shall not be subject
21 (whether by subrogation or otherwise) to recovery,
22 recoupment, reimbursement, or collection with re-
23 spect to such benefits (including the Federal or
24 State governments or any entity that provides such
25 benefits under a contract).

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

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

8 **SEC. 104. LIMITATION ON TRANSFER OF RIGHTS AND NUM-**
9 **BER OF PETITIONS.**

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

13 (b) ONE PETITION WITH RESPECT TO EACH VIC-
14 TIM.—With respect to each individual described in para-
15 graph (1), (2), or (3) of section 102(a), the Secretary may
16 not make payment with respect to more than one petition
17 filed in respect to an individual.

18 **SEC. 105. TIME LIMITATION.**

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

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

24 A payment made under section 103(c)(1) shall not
25 be considered as any form of compensation, or reimburse-

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

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

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

16 **SEC. 108. DEFINITIONS.**

17 For purposes of this title:

18 (1) The term "AIDS" means acquired immune
19 deficiency syndrome.

20 (2) The term "Fund" means the Ricky Ray
21 Hemophilia Relief Fund.

22 (3) The term "HIV" means human immuno-
23 deficiency virus.

1 (4) Unless otherwise provided, the term “Sec-
2 retary” means Secretary of Health and Human
3 Services.

4 **TITLE II—TREATMENT OF CER-**
5 **TAIN PAYMENTS IN HEMO-**
6 **PHILIA-CLOTTING-FACTOR**
7 **SUIT UNDER THE SSI PRO-**
8 **GRAM**

9 **SEC. 201. TREATMENT OF CERTAIN PAYMENTS IN HEMO-**
10 **PHILIA-CLOTTING-FACTOR SUIT UNDER THE**
11 **MEDICAID AND SSI PROGRAMS.**

12 (a) PRIVATE PAYMENTS.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, the payments described in para-
15 graph (2) shall not be considered income or re-
16 sources in determining eligibility for, or the amount
17 of—

18 (A) medical assistance under title XIX of
19 the Social Security Act; or

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

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

24 (A) payments made from any fund estab-
25 lished pursuant to a class settlement in the case

1 of Susan Walker v. Bayer Corporation, et al.,
2 96–C–5024 (N.D. Ill.); and

3 (B) payments made pursuant to a release
4 of all claims in a case—

5 (i) that is entered into in lieu of the
6 class settlement referred to in subpara-
7 graph (A); and

8 (ii) that is signed by all affected par-
9 ties in such case on or before the later
10 of—

11 (I) December 31, 1997; or

12 (II) the date that is 270 days
13 after the date on which such release is
14 first sent to the persons (or the legal
15 representative of such persons) to
16 whom the payment is to be made.

17 (b) GOVERNMENT PAYMENTS.—

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

24 (2) GOVERNMENT PAYMENTS DESCRIBED.—The
25 payments described in this subsection are payments

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