

104TH CONGRESS
1ST SESSION

S. 1189

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 SENATE OF THE UNITED STATES

AUGUST 11 (legislative day, JULY 10), 1995

Mr. DEWINE (for himself and Mr. GRAHAM) introduced the following bill;
which was read twice and 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.

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.**

4 This Act may be cited as the “Ricky Ray Hemophilia
5 Relief Fund Act of 1995”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

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

1 (1) the Federal Government through the Sec-
2 retary of Health and Human Services has the au-
3 thority to protect the safety of the blood supply and
4 blood products sold in this country;

5 (2) according to the 1995 Institute of Medicine
6 Study entitled “HIV and the Blood Supply”, the
7 failure of the Federal Government to use its author-
8 ity with regard to the safety of the blood supply and
9 the blood products led to missed opportunities to
10 prevent the spread of the human immunodeficiency
11 virus (HIV) through blood and blood products;

12 (3) blood-clotting agents, called antihemophilic
13 factor, that are used in the treatment of hemophilia
14 are manufactured from the blood plasma of 10,000
15 to 20,000 or more donors, placing persons with he-
16 mophilia at particularly high risk for HIV during
17 the period of 1980 to 1987;

18 (4) the failure of the Federal Government and
19 the blood products industry to develop and imple-
20 ment known viral hepatitis inactivation processes
21 prior to 1983 resulted in the exposure of the blood
22 supply and blood products to HIV;

23 (5) although heat treatment of blood-clotting
24 products became available in 1983, the Federal Gov-

1 ernment did not require the recall of nonheat treated
2 products until 1989;

3 (6) as evidence became available concerning the
4 transmission of HIV through the blood supply and
5 blood products, the Federal Government did not
6 take necessary and prompt action; failing to either
7 require the blood industry to implement donor
8 screening and deferral practices or to require the
9 automatic recall of products linked to donors with or
10 suspected of having AIDS;

11 (7) the Federal Government did not require the
12 blood products industry to communicate directly
13 with individuals with blood-clotting disorders regard-
14 ing treatment options and the risks associated with
15 contaminated blood products, nor did the Federal
16 Government attempt to communicate fully to such
17 individuals regarding these risks and possible treat-
18 ment options;

19 (8) although a blood test for HIV became avail-
20 able in 1985, the Federal Government did not ap-
21 propriately propose recommendations for a
22 “lookback”, the process of tracing recipients of pos-
23 sibly infected blood products, until 1991;

24 (9) individuals with blood-clotting disorders,
25 such as hemophilia, who have HIV infections incur

1 annual medical costs that often exceed \$150,000,
2 due to the expense of the necessary medications and
3 the complications caused by the combination of the
4 2 illnesses;

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

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

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

17 (b) PURPOSE.—It is the purpose of this Act to estab-
18 lish a procedure to make partial restitution to individuals
19 who were infected with HIV after treatment, during the
20 period beginning in 1980 and ending in 1987, with con-
21 taminated blood products.

22 **SEC. 3. TRUST FUND.**

23 (a) ESTABLISHMENT.—There is established in the
24 Treasury of the United States a trust fund to be known

1 as the “Ricky Ray Hemophilia Relief Fund”, which shall
2 be administered by the Secretary of the Treasury.

3 (b) INVESTMENT OF AMOUNTS IN FUND.—Amounts
4 in the Fund shall be invested in accordance with section
5 9702 of title 31, United States Code, and any interest on
6 and proceeds from any such investment shall be credited
7 to and become part of the Fund.

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

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

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

1 **SEC. 4. CLAIMS RELATING TO BLOOD-CLOTTING DIS-**
2 **ORDERS AND HIV.**

3 Any individual who submits to the Attorney General
4 written medical documentation that the individual has an
5 HIV infection shall receive \$125,000, from amounts avail-
6 able in the Fund, if each of the following conditions is
7 met:

8 (1) CHARACTERISTICS OF INDIVIDUAL.—The
9 individual is described in 1 of the following subpara-
10 graphs:

11 (A) The individual has any form of blood-
12 clotting disorder, such as hemophilia, and was
13 treated with blood-clotting agents (in the form
14 of blood components or blood products) at any
15 time during the period beginning on January 1,
16 1980, and ending on December 31, 1987.

17 (B) The individual—

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

20 (ii) is the former lawful spouse of an
21 individual described in subparagraph (A)
22 and was the lawful spouse of the individual
23 at any time after a date, within the period
24 described in such subparagraph, on which
25 the individual was treated as described in
26 such subparagraph.

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

5 (2) CLAIM.—A claim for the payment is filed
6 with the Attorney General by or on behalf of the in-
7 dividual.

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

11 **SEC. 5. DETERMINATION AND PAYMENT OF CLAIMS.**

12 (a) ESTABLISHMENT OF FILING PROCEDURES.—The
13 Attorney General shall establish procedures under which
14 individuals may submit claims for payment under this Act.
15 The procedures shall include a requirement that each
16 claim filed under this Act include written medical docu-
17 mentation that the relevant individual described in section
18 4(1)(A) has a blood-clotting disorder, such as hemophilia,
19 and was treated as described in such section.

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

23 (c) PAYMENT OF CLAIMS.—

24 (1) IN GENERAL.—The Attorney General shall
25 pay, from amounts available in the Fund, each claim

1 that the Attorney General determines meets the re-
2 quirements of this Act.

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 4 who is deceased
7 at the time that payment is made under this
8 section on a claim filed by or on behalf of the
9 individual, the payment shall be made to the es-
10 tate of the individual, if such an estate exists.
11 If no such estate exists, the payment may be
12 made only as follows:

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

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

22 (iii) If the individual is not survived
23 by a person described in clause (i) or (ii),
24 the payment shall be made in equal shares

1 to the parents of the individual who are
2 living at the time of payment.

3 (B) FILING OF CLAIM BY ESTATE OR SUR-
4 VIVOR.—If an individual eligible for payment
5 under section 4 dies before filing a claim under
6 this Act—

7 (i) the estate of the individual, if such
8 an estate exists, may file a claim for pay-
9 ment under this Act on behalf of the indi-
10 vidual; or

11 (ii) if no such estate exists, a survivor
12 of the individual may file a claim for pay-
13 ment under this Act on behalf of the indi-
14 vidual if the survivor may receive payment
15 under subparagraph (A).

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

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

21 (ii) The term “child” includes a recog-
22 nized natural child, a stepchild who lived
23 with the relevant individual in a regular
24 parent-child relationship, and an adopted
25 child.

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

3 (3) TIMING OF PAYMENT.—The Attorney Gen-
4 eral may not make a payment on a claim under this
5 Act before the expiration of the 90-day period begin-
6 ning on the date of the enactment of this Act or
7 after the expiration of the 5-year period beginning
8 on the date of the enactment of this Act.

9 (4) CHOICE OF PAYMENT METHODS.—An indi-
10 vidual whom the Attorney General determines to be
11 entitled to a payment under subsection (c)(1) may
12 choose to receive the payment in the form of—

13 (A) a lump sum of \$125,000, which shall
14 be paid not later than 90 days after the Attor-
15 ney General determines that the individual is
16 entitled to receive payment under subsection
17 (c)(1); or

18 (B) 4 subpayments, of which—

19 (i) the 1st subpayment shall consist of
20 \$50,000 and shall be paid not later than
21 90 days after the Attorney General deter-
22 mines that the individual is entitled to re-
23 ceive payment under subsection (c)(1); and

24 (ii) the 2d, 3d, and 4th subpayments
25 shall each consist of \$25,000 and shall

1 each be paid upon the expiration of the 6-
2 month period beginning on the date of the
3 preceding subpayment.

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

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

19 (f) ADMINISTRATIVE COSTS NOT PAID FROM
20 FUND.—No costs incurred by the Attorney General in car-
21 rying out this Act may be paid from the Fund or set off
22 against, or otherwise deducted from, any payment made
23 under subsection (c)(1).

1 (g) TERMINATION OF DUTIES OF ATTORNEY GEN-
2 ERAL.—The duties of the Attorney General under this sec-
3 tion shall cease when the Fund terminates.

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

7 (1) shall be treated for purposes of the internal
8 revenue laws of the United States as damages re-
9 ceived on account of personal injuries or sickness;
10 and

11 (2) shall not be included as income or resources
12 for purposes of determining the eligibility of the in-
13 dividual to receive benefits described in section
14 3803(c)(2)(C) of title 31, United States Code, or the
15 amount of such benefits.

16 (i) USE OF EXISTING RESOURCES.—The Attorney
17 General should use funds and resources available to the
18 Attorney General to carry out the functions of the Attor-
19 ney General under this Act.

20 (j) REGULATORY AUTHORITY.—The Attorney Gen-
21 eral may issue regulations necessary to carry out this Act.

22 (k) TIME OF ISSUANCE OF REGULATIONS, GUIDE-
23 LINES, AND PROCEDURES.—The initial regulations, guide-
24 lines, and procedures to carry out this Act shall be issued

1 not later than 90 days after the date of the enactment
2 of this Act.

3 (l) JUDICIAL REVIEW.—An individual whose claim
4 for compensation under this Act is denied may seek judi-
5 cial review solely in a district court of the United States.
6 The court shall review the denial on the administrative
7 record and shall hold unlawful and set aside the denial
8 if the denial is arbitrary, capricious, an abuse of discre-
9 tion, or otherwise not in accordance with law.

10 **SEC. 6. LIMITATION ON TRANSFER AND NUMBER OF**
11 **CLAIMS.**

12 (a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—
13 A claim under this Act shall not be assignable or transfer-
14 able.

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

20 **SEC. 7. LIMITATIONS ON CLAIMS.**

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

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

2 A payment made under section 5(c)(1) shall not be
3 considered as any form of compensation, or reimburse-
4 ment for a loss, for purposes of imposing liability on the
5 individual receiving the payment, on the basis of such re-
6 ceipt, to repay any insurance carrier for insurance pay-
7 ments or to repay any person on account of worker's com-
8 pensation payments. A payment under this Act shall not
9 affect any claim against an insurance carrier with respect
10 to insurance or against any person with respect to work-
11 er's compensation.

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

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

19 **SEC. 10. DEFINITIONS.**

20 For purposes of this Act:

21 (1) The term "AIDS" means acquired immune
22 deficiency syndrome.

23 (2) The term "Fund" means the Ricky Ray
24 Hemophilia Relief Fund.

1 (3) The term “HIV” means human
2 immunodeficiency virus.

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