

RICKY RAY HEMOPHILIA RELIEF FUND ACT OF 1998

MARCH 25, 1998.—Ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1023]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

TABLE OF CONTENTS

	<i>Page</i>
The Amendment	1
Purpose and Summary	5
Background and Need for the Legislation	5
Hearings	8
Committee Consideration	9
Committee Oversight Findings	9
Committee on Government Reform and Oversight Findings	9
New Budget Authority and Tax Expenditures	9
Congressional Budget Office Cost Estimate	9
Constitutional Authority Statement	13
Section-by-Section Analysis and Discussion	13
Agency Views	16

The amendment is as follows:
Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Ricky Ray Hemophilia Relief Fund Act of 1998”.

(b) **TABLE OF CONTENTS.**—The table of contents of 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.

TITLE I—HEMOPHILIA RELIEF FUND**SEC. 101. RICKY RAY HEMOPHILIA RELIEF 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 Secretary of Health and Human Services under section 103.

(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 title \$750,000,000.

SEC. 102. COMPASSIONATE PAYMENT RELATING TO INDIVIDUALS WITH BLOOD-CLOTTING DISORDERS AND HIV.

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

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

(2) The individual —

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

(B) is the former lawful spouse of an individual described in paragraph

(1) 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 paragraph and through medical documentation can assert reasonable certainty of transmission of HIV from individual described in paragraph (1).

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

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

(1) **SUBMISSION OF MEDICAL DOCUMENTATION OF HIV INFECTION.**—The individual submits to the Secretary written medical documentation that the individual has an HIV infection.

(2) **PETITION.**—A petition for the payment is filed with the Secretary by or on behalf of the individual.

(3) DETERMINATION.—The Secretary determines, in accordance with section 103(b), that the petition meets the requirements of this title.

SEC. 103. DETERMINATION AND PAYMENT.

(a) ESTABLISHMENT OF FILING PROCEDURES.—The Secretary of Health and Human Services shall establish procedures under which individuals may submit petitions for payment under this title. The procedures shall include a requirement that each petition filed under this Act include written medical documentation that the relevant individual described in section 102(a)(1) has (or had) a blood-clotting disorder, such as hemophilia, and was treated as described in such section.

(b) DETERMINATION.—For each petition filed under this title, the Secretary shall determine whether the petition meets the requirements of this title.

(c) PAYMENT.—

(1) IN GENERAL.—To the extent there are sufficient amounts in the Fund to cover each payment, the Secretary shall pay, from the Fund, each petition that the Secretary determines meets the requirements of this title in the order received.

(2) PAYMENTS IN CASE OF DECEASED INDIVIDUALS.—

(A) IN GENERAL.—In the case of an individual referred to in section 102(a) who is deceased at the time that payment is made under this section on a petition filed by or on behalf of the individual, the payment shall be made 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.

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

(B) FILING OF PETITION BY SURVIVOR.—If an individual eligible for payment under section 102(a) dies before filing a petition under this title, a survivor of the individual may file a petition for payment under this title 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 at the time of death.

(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 Secretary may not make a payment on a petition under this title before the expiration of the 120-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.

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

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

(f) ADMINISTRATIVE COSTS NOT PAID FROM FUND.—No costs incurred by the Secretary in carrying out this title 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 SECRETARY.—The duties of the Secretary 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—

(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;

(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, and such benefits shall not be secondary to, conditioned upon reimbursement from, or subject to any reduction because of receipt of, any such payment; and

(3) shall not be treated as a third party payment or payment in relation to a legal liability with respect to such benefits and shall not be subject (whether by subrogation or otherwise) to recovery, recoupment, reimbursement, or collection with respect to such benefits (including the Federal or State governments or any entity that provides such benefits under a contract).

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

(j) TIME OF ISSUANCE OF PROCEDURES.—The Secretary shall, through the promulgation of appropriate regulations, guidelines, or otherwise, first establish the procedures to carry out this title not later than 120 days after the date of the enactment of this Act.

SEC. 104. LIMITATION ON TRANSFER OF RIGHTS AND NUMBER OF PETITIONS.

(a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—Any right under this title shall not be assignable or transferable.

(b) 1 PETITION WITH RESPECT TO EACH VICTIM.—With respect to each individual described in paragraph (1), (2), or (3) of section 102(a), the Secretary may not make payment with respect to more than 1 petition filed in respect to an individual.

SEC. 105. TIME LIMITATION.

The Secretary may not make any payment with respect to any petition filed under this title unless the petition is filed within 3 years after the date of the enactment of this Act.

SEC. 106. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.

A payment made under section 103(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 title shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

SEC. 107. LIMITATION ON AGENT AND ATTORNEY FEES.

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the petition of an individual under this title, more than 2 percent of a payment made under this title on the petition. Any such representative who violates this section shall be fined not more than \$50,000.

SEC. 108. DEFINITIONS.

For purposes of this title:

(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.

(4) Unless otherwise provided, the term "Secretary" means Secretary of Health and Human Services.

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.

(a) IN GENERAL.—Notwithstanding any other provision of law, a settlement payment shall not be considered income or resources in determining a class member's eligibility for, or the amount of—

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

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

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

(1) CLASS MEMBER.—The term “class member” means a member of the Settlement Class in the settlement in *In Re Factor VIII or IX Concentrate Blood Products Litigation* (United States District Court, Northern District of Illinois, Eastern Division; Civil Action No. 96-C-5024).

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

Amend the title so as to read:

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 antihemophilic factor, and for other purposes.

PURPOSE AND SUMMARY

H.R. 1023, the “Ricky Ray Hemophilia Relief Fund Act of 1997,” provides “compassionate payments” to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) due to the contaminated blood product anti-hemophilic factor (AHF).

H.R.1023 establishes a \$750 million “Ricky Ray Hemophilia Relief Fund,” which will fund the payments. Each eligible individual would receive a \$100,000 payment. The following persons would be eligible for this payment: (1) an individual with a blood-clotting disorder who used anti-hemophilic factor at any time between July 1, 1982 and December 31, 1987; (2) a lawful spouse or former lawful spouse during the stated time period; or (3) an individual who acquired HIV from the mother during pregnancy. In the case of a deceased individual, payment would be made to the surviving spouse, children, or parents, in that order. If the individual is not survived by any of these individuals the payment will revert back to the fund.

BACKGROUND AND NEED FOR THE LEGISLATION

In the late 1970s and early 1980s, half of all people with hemophilia (approximately 7,200 individuals, the majority of which are male) were infected with HIV due to their use of anti-hemophilic factor (AHF) blood-clotting products. Before the identification of and tests to detect its presence, HIV entered the blood supply. During this period, because people with blood-clotting disorders needed to use these products to live a relatively normal life, and each dose came from a pool of thousands of blood donors, it was almost certain that they would become HIV-infected. People with blood-clotting disorders were already financially burdened by the medical costs of treating that disorder. With yearly medical costs of over \$150,000, and a lack of legal remedy available to them, these families have been financially devastated.

Chronology of Events

In June 1981, the *Morbidity & Mortality Weekly Report* noted cases of *Pneumocystis carinii* pneumonia (PCP) in previously healthy homosexual men. In July 1982, the first three cases of *Pneumocystis carinii* pneumonia were reported in individuals with hemophilia A. That same month, the Department of Health and Human Services held a forum to discuss whether the three cases

of PCP in persons with hemophilia were related to the infections occurring in the gay community. The participants in that forum included government agencies, the National Hemophilia Foundation, the American Red Cross, the National Gay Task Force, blood banking organizations and public health organizations. At that time, because of insufficient data, there was no consensus about whether individuals with hemophilia were in a similar situation to that of the gay community.

In the spring of 1983, heat-treated anti-hemophilic factor became available in the United States. The original approval was based upon the belief that the heat process would neutralize non-A/non-B hepatitis.

In December 1983, the first individuals with hemophilia B were reported to have AIDS-like symptoms. At that time, there were approximately 25 cases of AIDS identified in individuals with hemophilia.

In April 1984, the causative agent responsible for transmission of AIDS was isolated and identified, making it possible to expand scientific knowledge about the disease and its mode of transmission.

In 1985, the National Hemophilia Foundation recommended that only heat-treated AHF be used to treat hemophilia, and heat-treated AHF was widely accepted as effective in deactivating HIV. In March 1985, a test to screen blood products for the AIDS virus became available.

In April 1993, Senators Kennedy and Graham and Congressman Goss requested that the Department of Health and Human Services (HHS) open an investigation into the events leading to the transmission of HIV to individuals with hemophilia from contaminated blood products. HHS requested that the Institute of Medicine (IOM) establish a Committee to study the transmission of HIV through the blood supply.

Several cases were filed against the industry by HIV-infected individuals with hemophilia. In September of 1993, the case of *Wadleigh v. Rhone-Poulenc, Rorer, Inc.* was filed. On August 17, 1994, the U.S. District Court for the Northern District of Illinois ordered the certification of that case as a class action. In March 1995, the U.S. Court of Appeals for the Seventh Circuit granted a writ of mandamus and directed the district judge to decertify the class in part because allowing the certification of the class could have resulted in the bankruptcy of the industry.

On July 13, 1995, the IOM Committee's 1995 study, entitled "HIV and the Blood Supply," was released.

On May 1, 1997, the U.S. District Court for the Northern District of Illinois approved a private settlement between the four pharmaceutical companies that made anti-hemophilic factor and HIV-infected individuals with hemophilia who used their product. Under the terms of the settlement, the companies created a \$600 million settlement fund for persons infected with HIV through their use of AHF. Each member of the settlement class can receive \$100,000 from that fund.

Basis for Humanitarian Payments

A federal Maternal and Child Health Bureau ongoing cost and utilization study for 1996–97 placed the average annual medical costs for an HIV-positive person with severe hemophilia at \$168,480.

In reviewing the 1995 Institute of Medicine Study in its entirety, this Committee found that there were many things that could have been done differently based on the knowledge available today. However, based on the accepted standards during that period, the actions taken were reasonable when considering all the uncertainty surrounding the AIDS virus. Therefore, rather than basing assistance to the hemophilia community on any one interpretation of the past, this Act provides needed humanitarian assistance to these individuals without conflicting with current law and precedent on government liability.

The majority of cases brought by other blood users, such as transfusion and cryoprecipitate victims, have been litigated or settled. In transfusion cases where a primary provider or small child was infected, settlements usually were for several hundred thousands of dollars. The majority of HIV-infected people with hemophilia (approximately 84%) were males under 45, and 34% of those were under the age of 25. After many years of litigation, the industry which produced the blood-clotting products containing HIV has set up a fund which provides \$100,000 to HIV-infected individuals with hemophilia and their families, if they sign waivers relieving the industry of any liability. However, when considering the incredible financial burden placed on these families due to medical costs and, in many cases, loss of the primary provider in the family, this amount will not sufficiently lift this community out of the financial crisis that has developed. While no amount will completely alleviate the losses felt by this community, H.R. 1023 provides an additional payment equal to that provided by the industry. The amount available to these devastated families would then be comparable to that potentially realized by other HIV-infected blood victims through separate individual settlements.

Summary of Changes in H.R. 1023 as Recommended by the Committee

The amendment in the nature of a substitute adopted by the Committee removed the findings provisions of the original bill. An extensive review of the historical background upon which this legislation was based has not led to any consensus. As stated earlier, these payments, made pursuant to the legislation, are not based on any one interpretation of the past. The amendment in the nature of a substitute provides this assistance based on the belief that this community needs humanitarian assistance.

H.R. 1023, as introduced, conflicted with law and precedent because it required government compensation for claims based upon the regulatory actions of the Government. The discretionary function exception¹ to the Federal Tort Claims Act bars suits based on the discretionary acts of the Government. That provision has been consistently interpreted by the courts to bar claims against the

¹ 28 U.S.C. 2680(a).

Federal government growing out of their regulatory activities. As a practical matter, the Government regulates many things. If the bar on these claims was eliminated, the enormous amount of potential suits would interfere with the fair and efficient governance of the country.

In the amendment in the nature of a substitute, all references to blood/blood products have been changed to anti-hemophilic factor for conformity and to indicate the Committee intends to address only users of this particular type of blood product.

The original bill authorized \$900,000,000 because the individual payments would have been \$125,000. The amendment in the nature of a substitute authorizes \$750,000,000 because the individual payments will be \$100,000 to match the industry's contribution to the community.

The reference to an estate being the primary recipient of the funds should the person be deceased in the original bill was deleted. In the case of a deceased individual, payment can only go first to a spouse, then to children and finally to parents. If none of those survivors exists, the money goes back to fund. This change reflects the intent to assist only the immediate family of those infected.

Time periods for the Secretary to establish regulations and review applications were changed to 120 days instead of 90 days. These changes were made at the request of the Department of Health and Human Services.

The original bill provided an option of a series of payments. The bill now provides only for a lump sum payment.

The original provision titled "Satisfaction of Claims Against the Government" was replaced by "Humanitarian Nature of Payment" with a portion of the original language incorporated in that section to fully protect the Government. This more clearly shows the intent of the Committee that this assistance is humanitarian, and that this assistance is not based on any valid claim against the Government.

The provision for "Judicial Review" was deleted. Because this is a required payment, judicial review is already available to these individuals in the Court of Federal Claims.

The language "to receive compensation under this title for harm suffered by the individual" was deleted and replaced with "in respect to an individual." The original language did not reflect the humanitarian nature of payment.

The bill now provides that 2 percent of the money is allowed for attorney fees, instead of the 5 percent allowed in the original bill.

HEARINGS

The Committee's Subcommittee on Immigration and Claims held one day of hearings on H.R. 1023 on September 19, 1996. Testimony was received from the Honorable Mike DeWine; the Honorable Porter J. Goss; Philip R. Lee, M.D., Assistant Secretary for Health, Department of Health and Human Services; Eva M. Plaza, Deputy Assistant Attorney General, Civil Division, Department of Justice; Dana A. Kuhn, Ph.D.; Louise Ray; Deborah K. Noriega; Loras J. Goedken; Joyce Lawson; Michael A. Stoto, Ph.D., Director, Division of Health Promotion and Disease Prevention, Institute of

Medicine, National Academy of Sciences; Jay Tidmarsh, Associate Professor of Law, Notre Dame Law School; Andrew R. Klein, Associate Professor of Law, Samford University, Cumberland School of Law; Robert W. Reilly, Executive Director, International Plasma Products Industry Association; Mark Meyer, Cunningham, Meyer & Vedrine, Representing the National Hemophilia Foundation; and Thomas F. Zuck, M.D., Director, Hoxworth Blood Center, University of Cincinnati Medical Center, Representing the American Association of Blood Banks, with additional material submitted by Lynn Martin of Oakland, Michigan; John A. Lanzon of Southfield, Michigan; Mr. Bob Baldwin; Warren P. Ingram of Lawrenceville, Georgia; Robert P. Falkenstein of Philadelphia, Pennsylvania; the American Blood Resources Association; and James B. Reed, Esquire.

COMMITTEE CONSIDERATION

On October 29, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1023 with an amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1023, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 20, 1997.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Anne Cappabianca, who can be reached at 226-9010, and Eric Rollins, who can be reached at 226-2820.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.,
Ranking Minority Member.

H.R. 1023—Ricky Ray Hemophilia Relief Fund Act of 1998

Summary

H.R. 1023 would authorize \$750 million to make compensatory payments to hemophiliacs who contracted HIV from an antihemophilic factor, and to certain of their family members. By accepting payments, individuals would agree that any claim they have against the federal government would be fully satisfied. The bill also would exclude from eligibility determinations for Medicaid and Supplemental Security Income (SSI) benefits settlement payments from a private class action lawsuit by hemophiliacs who contracted HIV.

Assuming the authorized amounts would be appropriated, CBO estimates that H.R. 1023 would result in additional discretionary spending of \$767 million over the 1998-2003 period. The bill would also increase direct spending by \$17 million and therefore be subject to pay-as-you-go procedures. H.R. 1023 does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995.

Estimated Cost to the Federal Government

The estimated budgetary impact of H.R. 1023 is shown in the following table. For the purposes of this estimate, CBO assumes an enactment date of July 1, 1998.

[By Fiscal Year, In Millions Of Dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	752	3	3	3	3	2
Estimated Outlays	2	116	228	228	116	77
DIRECT SPENDING						
Estimated Budget Authority	1	4	4	3	3	2
Estimated Outlays	1	4	4	3	3	2

The costs of this legislation fall within budget functions 550 (Health) and 600 (Income Security).

Basis of Estimate

Title I

H.R. 1023 would authorize \$750 million to be placed in a trust fund, from which compensatory payments would be made to qualified claimants. Eligible claimants include individuals with blood-clotting disorders who contracted HIV from contaminated antihemophilic factor between July 1, 1982, and December 1, 1987. Spouses of these patients also qualify as claimants, provided they demonstrate that they contracted HIV from their infected spouse. Finally, any children of these couples who contracted HIV perinatally could petition for payments. Claimants must be able to submit medical documentation of their HIV status, a hemophilia diagnosis, and the date of the antihemophilic factor treatment.

The Secretary of Health and Human Services would administer the trust fund, which would pay \$100,000 to each approved claimant. Claims would be paid in the order received until the fund is depleted. However, the Secretary could make payments for only five years after enactment of the bill. For the purposes of this estimate, CBO assumes that payments would equal the amount authorized.

If a claimant died before filing a petition, his survivors could submit a petition in his name. If the claimant died before the claim was settled, payment would be made to his spouse, children, or parents, in that order. In accepting these payments, petitioners would agree that any claims they have against the government or its agents are fully satisfied.

The bill provides that all claims must be filed within three years of its enactment. Therefore, CBO assumes that the majority of payments from the fund would occur during the first four years of the program's operation. We also assume that payments would not start until fiscal year 1999, when outlays would total \$113 million.

H.R. 1023 specifies that, for tax purposes, payments from the fund would be considered damages received on account of personal injuries or sickness. However, this provision would not affect federal revenues since, under current law, there would be no compensatory payments that could be taxed. The bill also stipulates that, in determining eligibility for Medicaid or other entitlement benefits under section 3803(c)(2)(C) of title 31 of the United States Code, payments to claimants could not be counted as income or resources.

Under the proposal, individuals accepting payments from the fund agree not to pursue any further claim against the federal government. These claims might have taken the form of individual lawsuits against the federal government, or of a class-action lawsuit. CBO cannot estimate the amount of the government's liability, if any, under current law. However, it is possible that this provision of the bill could yield some savings to the federal government.

Finally, the bill would require that administrative costs not be paid from the fund's appropriation. Based on the administrative costs of other, similar federal trust funds, CBO estimates that the

fund’s administrative costs would be \$2 million in 1998, and \$16 million over the 1998–2003 period.

Title II

H.R. 1023 would exempt settlement payments arising from the 1997 class action lawsuit *In Re Factor VIII or IX Concentrate Blood Products Litigation* from consideration as income or resources in determining eligibility for Medicaid or SSI benefits. The *In Re Factor VIII or IX* settlement resolves claims by hemophiliacs who contracted HIV through contaminated blood products against the manufacturers of those blood products. Under the settlement, hemophiliacs or their survivors would receive a payment of \$100,000 per case of HIV infection. These settlement payments have already been exempted from Medicaid eligibility determinations by the Balanced Budget Act of 1997.

Under current law, settlement payments are treated as income in SSI eligibility determinations. The size of the payments in the *In Re Factor VIII or IX* settlement would almost certainly make individuals currently receiving SSI ineligible. H.R. 1023 thus preserves SSI eligibility for a group of people who would otherwise become ineligible.

Approximately 3,250 hemophiliacs who have contracted HIV through tainted blood products are currently alive. Of this total, CBO estimates that 1,250 people are receiving SSI benefits. A small number of these individuals would not be affected by the bill because they will place their settlement payments in a special needs trust, which preserves their SSI eligibility. The estimated cost of preserving SSI eligibility for the remaining beneficiaries will be \$1 million in 1998, \$4 million in 1999, and less in subsequent years.

Pay-As-You-Go Considerations

The provisions of Title II of this bill would affect direct spending and would therefore be subject to pay-as-you-go procedures. The pay-as-you-go effects of the bill are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

[By Fiscal Year, In Millions Of Dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Change in outlays	1	4	4	3	3	2	2	2	1	1	1
				Change in receipts Not applicable							

Estimated Impact on State, Local, and Tribal Governments

H.R. 1023 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). By excluding payments from the *In Re Factor VIII or IX* settlement from being used to consider SSI eligibility, some SSI recipients would remain eligible for state benefits. However, CBO estimates that the cost of these benefits would be less than \$500,000 annually and that

states have sufficient authority to amend their financial or programmatic responsibilities to offset these costs.

Estimated Impact on the Private Sector

None.

Estimate Prepared By:

Federal Costs: Anne Cappabianca (Title I) (226–9010), Eric Rollins (Title II) (226–2820); Impact on State, Local, and Tribal Governments: Leo Lex (225–3220); Impact on the Private Sector: Julia Matson (226–2674);

Estimate Approved By:

Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, section 1, clause 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of Contents

Section 1 provides that the short title of this bill will be the “Ricky Ray Hemophilia Relief Fund Act of 1998.” A technical amendment to change “1997” to “1998” was added to reflect the year the act is anticipated to be enacted. This section also contains the table of contents.

Section 101. Ricky Ray Hemophilia Relief Fund

This section lays out the structure of the fund.

Subsection (a) establishes the fund in the Treasury and indicates the fund will be administered by the Secretary of the Treasury.

Subsection (b) directs that the amounts in the fund will be invested in accordance with law concerning investment of trust funds held by the Government (they shall be invested in Government obligations, and earn interest of at least 5% annually) and any proceeds shall become part of the Fund.

Subsection (c) indicates that the funds will only be available for disbursement by the Secretary of Health and Human Services.

Subsection (d) directs that the fund shall terminate 5 years after enactment, and that at that time all funds remaining will be deposited into the miscellaneous receipts account of the Treasury.

Finally, subsection (e) authorizes \$750,000,000 to be appropriated to the fund. This legislation does not create any entitlement. The payments may be made only to the extent that sums are appropriated for this purpose.

Section 102. Compassionate Payment Relating To Individuals With Blood-clotting Disorders and HIV

This section lays out the amount of the payment; the type of individuals who qualify; and the conditions for payment. A technical amendment was included in this section at the request of the Congressional Budget Office.

Subsection (a) states that if conditions of this section are met by an individual with HIV, a single payment of \$100,000 will be made to that individual. This section defines individuals who are eligible to be: (1) a HIV-infected individual who was treated with anti-hepatic factor at any time during the period beginning on July 1, 1982 and ending on December 31, 1987; (2) a HIV-infected individual who was the lawful spouse of a person as described in (1) or a former lawful spouse who was a lawful spouse of a person as described in (1) during the above mentioned time period; or (3) an individual who acquired the HIV infection through perinatal transmission from a parent who is an individual described in (1) or (2).

Subsection (b) sets out the conditions under which an individual may receive payment. Those conditions are: 1) submission of medical documentation of HIV infection; 2) filing of a petition for payment with the Secretary of HHS; and 3) a determination by the Secretary that the petition meets the requirements of this title.

Section 103. Determination and Payment

This section states that the Secretary shall pay from the Fund each petition which meets the requirements in Title I of the Act. A technical amendment was included in this section at the request of the Congressional Budget Office.

Subsection (a) directs the Secretary of HHS to set up procedures for submission of petitions for payments. It specifically directs that those procedures include written medical documentation.

Subsection (b) directs the Secretary of HHS to make a determination for each petition filed.

Subsection (c) directs the Secretary to pay each petition that meets the requirements of the Act. In the case of deceased individual, this subsection directs that payment be made first to a surviving spouse, then to all children, and lastly to parents of the deceased. If there are no survivors within those categories, the payment reverts back to the Fund. This subsection also provides definitions for purposes of this section. The term "spouse" means an individual lawfully married to the deceased at the time of death. The term "child" includes a natural child, a step-child who lived with the deceased in a regular parent/child relationship, and an adopted child. The term "parent" shall include fathers and mothers through adoption. Finally, this subsection directs that the Secretary cannot make payment on petitions before 120 days after enactment or 120 days after the 5-year period beginning on the date of enactment.

Subsection (d) restricts the time the Secretary of HHS has to consider a petition to 120 days after the date the petition is filed.

Subsection (e) states that payment under this bill will be humanitarian in nature. It further states that this act does not create or admit any claim and that any alleged claim by an individual would be satisfied by this payment.

Subsection (f) states that no costs incurred by HHS in carrying out the act will be deducted from the Fund.

Subsection (g) states that the duties of the Secretary end when the Fund terminates.

Subsection (h) lays out the way that the payments are to be interpreted under other laws. First, the payments are to be tax exempt. Second, the payments are not to be considered income when

determining a person's eligibility for benefits such as SSI, Medicaid, food stamps, etc. Third, it provides that a state government, the federal government, or an entity which provides those benefits cannot seek reimbursement from the payments to reimburse funds expended for an individual.

Subsection (i) indicates the Secretary may issue regulations necessary to carry out this legislation.

Subsection (j) directs the Secretary to establish all regulations and procedures to carry out the Act within 120 days of enactment.

Section 104. Limitation On Transfer Of Rights And Number Of Petitions

Subsection (a) states that no rights given in this bill are transferrable.

Subsection (b) states that only one payment made be made on a petition for an individual.

Section 105. Time Limitation

This section restricts payment by the Secretary to only petitions filed within three years of enactment.

Section 106. Certain Claims Not Affected By Payment

This section states that a payment will not be considered compensation or reimbursement for a loss for purposes of repayments to insurance carriers or entities which have provided workman's compensation. Nor shall it affect any claim an individual has against an insurance carrier or against a person with respect to workman's compensation.

Section 107. Limitation on Agent and Attorney Fees

This section directs that no more than 2% of this payment can be paid for attorney fees. Any violators of this section may be fined up to \$50,000.

Section 108. Definitions

This section sets out the definitions for terms used in the Act. "AIDS" is defined as meaning acquired immune deficiency syndrome. "Fund" is defined as meaning the Ricky Ray Hemophilia Relief Fund. "HIV" is defined as meaning human immunodeficiency virus. "Secretary" is defined as meaning the Secretary of Health and Human Services unless otherwise provided.

Section 201. Treatment Of Certain Private Settlement Payments In Hemophilia-Clotting-Factor Suit Under The Medicaid And SSI Programs.

Subsection (a) of this section directs that any monies received by an individual from the private settlement with industry will not affect that individual's eligibility for Medicaid or supplemental security income benefits.

Subsection (b) defines "class member" as a member of the settlement class in *In Re Factor VIII or IX Concentrate Blood Products Litigation* (United States District Court, Northern District of Illinois, Eastern Division; Civil Action No. 96-C-5024); and "settle-

ment payment” as a payment to a class member described in this subsection.

AGENCY VIEWS

The comments of the Department of Health and Human Services on H.R. 1023, as introduced in the 104th Congress, are as follows:

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, June 5, 1996.

Hon. LAMAR SMITH, *Chairman,*
Subcommittee on Immigration and Claims
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Health and Human Services on H.R. 1023, the “Ricky Ray Hemophilia Relief fund Act of 1995.” The Department of Justice concurs with these views.

H.R. 1023 would create a compensation fund for individuals (or the estates or survivors of individuals) who have HIV infection and who either (i) have hemophilia or a similar blood-clotting disorder and were treated with blood-clotting agents during the period from January 1, 1980, through December 31, 1987, or (ii) are the spouses or children of such individuals. The bill would authorize appropriations to the fund of \$1 billion, and would entitle each individual who demonstrated eligibility to receive \$125,000 from amounts available in the fund. The program would terminate five years after enactment.

On behalf of the Administration, let me first express our deep concern about the tragedy that has so affected the hemophilia community with respect to HIV transmission through blood and blood products. We have great sympathy for the victims and their families who suffered and continue to suffer from consequences of the contamination of antihemophilic factors in the 1980s.

In recognition of this tragedy, in July 1993 this Department asked the National Academy of Sciences; Institute of Medicine (IOM) to conduct a rigorous review of Federal blood regulation during the 1980s. The IOM reported back to us in July 1995. As a result of information gained in that review, we have instituted several blood safety reforms, including the establishment of an inter-agency Blood Safety Committee to monitor the safety at blood products. As you know, however, the IOM review found no negligence in the Federal Government’s regulation of blood products in the 1980s. Rather, the IOM determined that during a period of tremendous scientific uncertainty, our scientists made good-faith decisions based on available data. These same Federal government scientists later discovered that heat treatment of blood products kills HIV. By March 1995, FDA approved tests to identify HIV in blood. These tests were rapidly put into widespread use. Additionally, between 1983 and 1985, FDA approved heat treatment methods of viral inactivation for manufacturers of clotting factor concentrates to address the risk of HIV contamination. The implementation of the test and heat treatment has combined to virtually eliminate the threat of HIV contamination of people with hemophilia through blood products.

We share your concern about the individuals with hemophilia and their families who suffered as a result of the events of the 1980s. Although the IOM found no negligence on the part of U.S. Government officials, the IOM did conclude that the entire public health system, including both the private and public sectors, may have missed opportunities to reduce the risk of HIV infection from blood products.

The Administration will be pleased to work with the Congress to develop an appropriate way to assist those infected with HIV through the use of blood and blood products in the 1980s. In developing a bipartisan program to assist people with hemophilia who were infected by HIV, a number of important issues of policy as well as numerous technical and statutory issues will need to be addressed, including the ramifications of the precedent that would be set and how to pay for the benefits.

We look forward to working with you to address this tragedy. We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

DONNA E. SHALALA.

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