



Legislative Bulletin.....May 21, 2003

Contents:

- H.R. 1298—United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003
- H.R. 1170—Child Medication Safety Act of 2003

H.R. 1298—United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Hyde)

Order of Business: The bill is scheduled to be brought up under a unanimous consent agreement on Thursday, May 21, 2003. No amendments will be made in order.

The House passed H.R. 1298 on May 1, 2003, by a vote of 375-41, <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2003&rollnumber=158>. The Senate passed the bill by voice vote on May 16 with one amendment on debt relief. **We are unaware of any objections to the Senate's one modification.**

The portions **bolded and in blue** were adopted by amendment on the House floor on May 1, 2003. The portion **bolded and in red** at the end of the summary section is the only new provision from the Senate.

Summary: H.R. 1298 authorizes \$15 billion over five years for international programs to fight HIV/AIDS, Tuberculosis, and Malaria. In the out-years, FY06-08, H.R. 1298 earmarks: 1) not less than 55% of the appropriated funds for therapeutic medical care for those with HIV, of which at least 75% should be for antiretroviral pharmaceuticals and at least 25% should be for related care; **2) not less than 10% for orphans and vulnerable children affected by HIV/AIDS; and 3) of the funds appropriated for prevention efforts, “not less than 33%” for “abstinence-until-marriage programs.”**

The bill contains a Sense of Congress that an effective distribution of HIV/AIDS funds authorized under H.R. 1298 would be:

- 55 percent of such amounts for treatment of individuals with HIV/AIDS;
- 15 percent of such amounts for palliative care of individuals with HIV/AIDS;
- 20 percent of such amounts for HIV/AIDS prevention, **of which 33% should be for abstinence-until-marriage programs.**
- 10 percent of such amounts for orphans and vulnerable children.

(The abstinence portions were added by Rep. Pitts' (R-PA) and Rep. Hyde's (R-IL) amendment adopted on the House floor (220-197, Roll No. 157). The orphans' earmark was added by Rep. McCollum (D-MN) by voice vote on the House floor.)

The bill has 28 findings regarding the worldwide status of these three diseases, the death and destruction they have wrought, and the successes in fighting the spread of HIV/AIDS in countries such as Uganda, which implemented an “Abstain, Be faithful, use Condoms” model, in that order of priority, and saw its HIV/AIDS rate drop from 21% in 1991 to 6% in 2002. The findings also note that it should be the policy of the United States to eradicate prostitution and other sexual victimization, such as sex trafficking, things that are degrading to women.

TITLE I—POLICY PLANNING AND COORDINATION

H.R. 1298 requires the President to establish a 5-year strategy to combat global HIV/AIDS and submit this strategy to Congress within 270 days after enactment, including detailed descriptions about how this strategy will be implemented and how success will be determined. The bill outlines **eight ten** specific requirements that the strategy must include, for example:

- Treating those with HIV/AIDS and preventing its spread focusing specifically on mother-to-child transmission, women and young people, and
- Reducing HIV/AIDS behavioral risks through prevention efforts including by promoting abstinence from sexual activity and substance abuse, encouraging monogamy and faithfulness, promoting the effective use of condoms, and eradicating prostitution, the sex trade, rape, sexual assault and sexual exploitation of women and children.
- **Establishing priorities for the distribution of resources based on certain criteria.**

Creation of HIV/AIDS Coordinator and HIV/AIDS Fund at Treasury:

The bill establishes the new HIV/AIDS Coordinator within the Department of State, appointed by the President and confirmed by the Senate to have primary responsibility for the oversight and coordination of all international federal activities for combating HIV/AIDS. The new Coordinator is authorized to:

- operate internationally to carry out prevention, care, treatment, support, capacity development, and other activities for combating HIV/AIDS;
- transfer and allocate funds to relevant executive branch agencies; and
- provide grants to, and enter into contracts with, nongovernmental organizations (including faith-based and community-based organizations) to implement activities authorized under the bill.

The bill details eight specific duties the Coordinator must perform, including “[r]esolving policy, program, and funding disputes among the relevant executive branch agencies” and coordinating activities between executive branch agencies. Within 90 days of enactment, the President must specify how much of the funds authorized under this bill shall be assigned to the direct control of the new Coordinator.

The U.S. Treasury is directed to create a new account entitled “Activities to Combat HIV/AIDS Globally Fund” administered by the Coordinator and funded with amounts authorized under H.R. 1298, except for the funds going to the Global Fund.

TITLE II— SUPPORT FOR MULTILATERAL FUNDS, PROGRAMS, AND PUBLIC-PRIVATE PARTNERSHIPS

Global Fund to Fight AIDS, Tuberculosis and Malaria:

H.R. 1298 authorizes the U.S to participate in the Global Fund to Fight AIDS, Tuberculosis and Malaria, and authorizes “**up to \$1 billion**” in FY04, and such sums as may be necessary for FY05-08. The funds will remain available until expended. \$150 million (\$50 million of which was for orphan programs) authorized for FY01 in the Global AIDS and Tuberculosis Relief Act of 2000 (Public Law No: 106-264) are transferred in H.R. 1298 to the Global Fund. H.R. 1298 requires an annual report from the President to Congress on the Global Fund.

Global Fund Limitations:

(Note: The President may waive all these provisions for national security interests.)

- The U.S. contribution may not exceed 33% of the total amount of funds contributed worldwide to the Global Fund (not including International Bank and IMF contributions).
- A provision offered as an amendment by Rep. Flake (R-AZ) and adopted in committee stipulates that if the Global Fund gives money to a government that the U.S. has designated as a state sponsor of terrorism, the U.S. will withhold an equal amount from its next year contribution to the Global Fund. Three of the seven countries the U.S. lists as a **state sponsor of terrorism** currently have been approved for Global Fund grants (Iran has been approved for \$15,922,855 from the Global Fund; North Korea has been approved for \$4,891,000; Sudan has been approved for \$76,319,734).
- **A provision offered as an amendment by Rep. Tauzin (R-LA) and Rep. Brown (D-OH) and adopted on the House floor by voice vote stipulates that if the Global Fund spends more than 10% of its funds on administrative expenses, that there be a deduction of the same amount from the next year's appropriation to the Global Fund.**
- **Another provision offered as an amendment by Rep. Stearns (R-FL) and adopted on the House floor (276-154, Roll no. 155) requires that for every dollar paid to any individual Global Fund staffer that is over the amount of the U.S. Vice President's salary (currently \$192,600), that there be a deduction of the same amount from the next year's appropriation to the Global Fund. In both cases, the deducted amount would continue to go to HIV/AIDS programs, but through U.S. bilateral programs instead.**

The bill directs the Coordinator to create a new interagency technical review panel made up of personnel from HHS, State, and USAID to serve as a “shadow” panel to the Global Fund and requires a biennial GAO report on the Global Fund. **Further Global Fund accountability and transparency provisions were added by the Tauzin/Brown amendment on the House floor. Through an amendment offered by Rep. Biggert (R-IL) and adopted by voice vote on the House floor, a Sense of Congress was added that the President should conduct an outreach campaign to inform the public of the existence of the Global Fund and encourage private contributions to the Global Fund by establishing and operating an Internet website and making public service announcements.**

International Vaccine Efforts:

The bill reauthorizes funds at “such sums as may be necessary” for FY04-FY08 for the international Vaccine Fund and for development of an AIDS vaccine. For FY01 and FY02 the Vaccine Fund was authorized to receive \$50 million per year and the AIDS vaccine initiative was authorized to receive

\$10 million per year. A new authorization also at “such sums” for FY04-08 is established for U.S. contributions to malaria vaccine development programs.

TITLE III — BILATERAL EFFORTS

Subtitle A—General Assistance and Programs

H.R. 1298 creates, and authorizes at such sums, a new structure for U.S. bilateral assistance to foreign aid programs for the prevention, treatment, and control of HIV/AIDS in sub-Saharan Africa, the Caribbean, and other countries affected by the HIV/AIDS pandemic, particularly with activities focused on women and youth. A new annual report is required to be submitted to Congress on the implementation and progress of objectives laid out under Title III.

The President is authorized to furnish assistance on such terms and conditions as he may determine through coordination with various international bodies (such as UNICEF, WHO, the Global Fund, UNAIDS, and the International Bank), governments, and non-governmental organizations (NGO).

To “the maximum extent practicable” bilateral funds shall be used on the following seven categories: prevention, treatment, prevention intervention education and technologies, monitoring, pharmaceuticals, related activities, and public-private partnerships. H.R. 1298 outlines in further detail what qualifies as activities in these categories.

Prevention includes: integrating HIV/AIDS prevention information into other health programs including providing “information on methods of avoiding infection of HIV, including delaying sexual debut, abstinence, fidelity and monogamy, reduction of casual sexual partnering, **reducing sexual violence and coercion, including child marriage, widow inheritance, and polygamy**, and where appropriate, use of condoms.” It also includes 1) “culturally appropriate HIV/AIDS education” through NGOs, faith-based, and community-based organizations, 2) voluntary testing and counseling, 3) preventing mother-to-child transmission, 4) ensuring a safe blood supply and sterile medical equipment, 5) assistance in avoiding drug abuse and intravenous drug use leading to the spread of HIV, **6) assistance to help men be responsible and respectful, and 7) economic assistance for women including microfinance programs.** *(New portions added by Rep. Crowley’s amendment adopted by voice vote on House floor.)*

Treatment includes: HIV/AIDS drugs, training health care staff and hospice and palliative care programs. For high-risk populations, prevention intervention items authorized include, “bulk purchases” of HIV/AIDS test kits, condoms, and, “when proven effective,” microbicides. Care for children orphaned by HIV/AIDS, vaccine research programs, and public-private partnerships, and nutrition programs for those affected by HIV/AIDS are all other categories outlined for funding under bilateral aid.

The United States Agency for International Development (USAID), which is likely to implement much of the HIV/AIDS funds, has its administrative expenses capped at 7%.

Prostitution and Sex Trafficking:

The bill has two limitations relating to prostitution and sex trafficking. The first states that, “No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking.” The second, a provision offered as an amendment in committee by Rep. Chris Smith and adopted, reads, “**No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.**”

Faith-Based Group Protection:

A Smith (NJ)/Hyde/Stupak/Renzi amendment was adopted on the House floor by voice vote that ensures that a qualified grantee is not disqualified from receiving HIV/AIDS funds because the grantee has a “religious or moral objection” to participating in some types of HIV/AIDS prevention or treatment, such as condoms.

Tuberculosis:

H.R. 1298 authorizes “such sums as may be necessary” for FY04-08 to achieve this “major objective of the foreign assistance program of the United States to control tuberculosis,” including the detection of at least 70 percent of the cases of infectious tuberculosis, and the cure of at least 85 percent of the cases detected, not later than December 31, 2005, in countries classified by the WHO as among the highest tuberculosis burden, and not later than December 31, 2010, in all countries in which the USAID has established development programs. Not less than 75% of funds for tuberculosis shall go to antituberculosis drugs, supplies, patient services, training in diagnosis and treatment, including “substantially increased funding for the Global Tuberculosis Drug Facility” (a new worldwide initiative, to increase access to high-quality tuberculosis drugs). Funds remaining in international tuberculosis programs from FY01-03 shall be transferred to activities authorized under H.R. 1298.

Malaria:

H.R. 1298 authorizes “such sums as may be necessary” for FY04-08 to achieve this “major objective of the foreign assistance program of the United States to provide assistance for the prevention, control, and cure of malaria.” Funds remaining in international malaria programs from FY01-03 shall be transferred to activities authorized under H.R. 1298.

Pilot Program:

The bill authorizes “such sums as may be necessary” for a program to demonstrate the feasibility of sending U.S. health care professionals to parts of the world severely affected by HIV/AIDS, tuberculosis, and malaria. A report within 18 months is required on the progress is establishing this pilot program. To be eligible a participant must be a retired commissioned officer of the Public Health Service Corps or be a trained and licensed health care professional. **The President is authorized to provide financial incentives**, “such as partial payment of principal, interest, and related expenses on government and commercial loans for educational expenses relating to professional health training and, where possible, deferment of repayments on such loans, the provision of retirement benefits that would otherwise be jeopardized by participation in the program.”

Within 15 months, the President is required to submit a report on the programs and activities of the relevant executive branch agencies that are directed to the treatment of individuals in foreign countries infected with HIV or living with AIDS.

A provision regarding the development of needle safety in vaccine programs was added by the Tauzin/Brown amendment. Also added was a Congressional study including recommendations, to be submitted within 180 days, on the illegal diversion into the US of drugs donated or sold for humanitarian purposes (i.e. AIDS drugs for Africa sold on the black market in the U.S.).

Subtitle B—Assistance for Children and Families

H.R. 1298 sets a 5-year strategy to (1) provide for meeting or exceeding the goal to reduce the rate of mother-to-child transmission of HIV by 20 percent by 2005 and by 50 percent by 2010; (2) include programs to make available testing and treatment to HIV-positive women and their family members, including drug treatment and therapies to prevent mother-to-child transmission; and (3) expand programs designed to care for children orphaned by AIDS. Every year for the next 6 years, the President is required to submit a report on the executive branch activities to prevent mother-to-child transmission of HIV.

Pilot Programs:

A new pilot program through USAID is authorized at such sums for FY04-08 to “demonstrate the feasibility of the provision of care and treatment to orphans and other children and young people affected by HIV/AIDS in foreign countries,” **with a significant percent to go toward inheritance rights of women heading households due to AIDS deaths** (*added by Rep. Millender-McDonald (D-CA) amendment on the House floor*).

The bill authorizes at such sums for FY04-08, another new pilot program through a public-private partnership, “medical care and support services to HIV positive parents and their children identified through existing programs to prevent mother-to-child transmission of HIV in countries with or at risk for severe HIV epidemic with particular attention to resource constrained countries.” The pilot would authorize the awarding of grants and subgrants, and would cap administrative expenses *per grant* at 7%.

Debt Relief for Heavily Indebted Poor Countries:

Note: This debt-relief provision is not limited merely to countries suffering with HIV/AIDS pandemic, but applies to all heavily indebted poor countries in the Enhanced HIPC Initiative (an effort first presented at the G-7 meeting in June 1999).

Senator Biden’s (D-DE) amendment on debt relief was adopted by voice vote. The provision modifies current law (22 U.S.C. 262p) to add a provision on the multilateral debt initiative for heavily indebted poor countries and direct that the Secretary of the Treasury “should immediately” begin efforts with the IMF and other international monetary agencies to reduce for heavily indebted poor countries: 1) the net value of outstanding debt and 2) the annual payments.

For three years after H.R. 1298 is enacted or three years from the date countries qualified for debt relief (whichever is later):

- 1) The net value of the outstanding public and privately guaranteed debt shall be reduced to not more than 150% of the annual value of exports.
- 2) The annual payments shall not be more than 10% (5% for countries suffering a public health crisis) of the amount of annual current revenues from internal resources or a percentage of the GNP or other benchmark substantially equivalent to 1) above. “Suffering a public health crisis” is defined as having an HIV/AIDS infection rate of 5% of pregnant women and 20% of high-risk behavior individuals.

Savings to HIV/AIDS and poverty programs: To receive debt relief, countries have to agree to ensure that the financial benefits of debt cancellation are applied to HIV/AIDS and poverty programs and applied as a supplement to, not a replacement for, previous efforts.

Conditions: Under the provision, debt relief should not be conditioned on the country's implementation or compliance with policies "that deepen poverty or degrade the environment." Countries are ineligible for debt relief if the government 1) has an "excessive level" of military expenditures; 2) is on the U.S. list of state sponsors of terrorism; 3) fails to cooperate on international narcotics control; or 4) engages in a "consistent pattern of gross violations of internationally recognized human rights."

Administration Position: The Administration supports passage of H.R. 1298 as amended by the Senate.

Cost to Taxpayers: The bill authorizes \$3 billion a year over the 2004-2008 period (\$15 billion total). CBO estimates implementing H.R. 1298 would cost \$568 million in 2004 and \$11 billion over the 2004-2008 period, subject to appropriations.

According to the Congressional Research Service (CRS), Congress appropriated \$1.471 Billion in FY03 for international HIV/AIDS programs. The President's FY04 Budget Request is \$1.92 billion. H.R. 1298 authorizes \$3 billion in FY04.

The Debt Relief provision authorizes "such sums as may be necessary" for FY04 and each fiscal year thereafter. CBO was not able to provide a cost estimate of this provision as of press time.

Does the Bill Create New Federal Programs or Rules?: Yes. The bill creates new international HIV/AIDS, tuberculosis, and malaria programs, strategies, and requirements. It authorizes the creation of three new pilot programs and mandates numerous reports to Congress. **It also authorizes a new effort at international debt relief for heavily indebted countries.**

Additional Background:

The Global Fund is an independent, public-private partnership designed to attract, manage, and disburse new resources to fight the global crises of AIDS, tuberculosis, and malaria. According to its website, "The Fund was created to fight the global HIV/AIDS, TB, and malaria epidemics by sharing resources and expertise across national boundaries, and between the private and public sectors" (<http://www.globalfundatm.org/>).

The concept for the Global Fund began at the Okinawa G8 Summit in July 2000. At the urging of UN Secretary General Kofi Annan and many national leaders, the concept of the Fund was unanimously endorsed in June 2001 at the first UN General Assembly Special Session to focus on HIV/AIDS. In July 2001 at its meeting in Genoa, G8 leaders committed \$1.3 billion to the Fund. Through fiscal year 2003, the United States has contributed \$640 million to the Global Fund and pledged (in the President's Budget request) an additional \$1 billion over five years beginning in FY04. **While the President requested \$200 million for the Global Fund in FY04, H.R. 1298 authorizes "up to \$1 billion" for the Global Fund.**

CRS Resources: The Congressional Research Service has updated two documents "AIDS in Africa" and "HIV/AIDS International Programs: Appropriations, FY2002 - FY2004" accessible to Congressional staff at

<http://www.congress.gov/erp/ib/html/IB10050.html> and
<http://www.congress.gov/erp/rs/html/RS21181.html>

Constitutional Authority: The International Relations Committee (In Report 108-060) finds constitutional authority in Article I, Section 8, Clause 18 of the Constitution (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the Government of the United States).

RSC Staff Contact: Sheila Moloney 202-226-9719; Sheila.Moloney@mail.house.gov

H.R. 1170 — Child Medication Safety Act of 2003 (Burns)

Order of Business: The bill is scheduled for consideration on Wednesday, May 21st, under a motion to suspend the rules and pass the bill.

Summary: H.R. 1170 requires each State, as a condition of receiving federal education funds, to develop policies and procedures prohibiting school personnel from requiring that a child be prescribed medication listed under the Controlled Substances Act as a condition of attending school or receiving services. The bill clarifies that this requirement does not prohibit school personnel from consulting or sharing classroom observations with parents regarding a child's academic performance, behavior, or need for an evaluation for special education services.

H.R. 1170 also requires a General Accounting Office (GAO) study of:

- (1) the variation among States in definitions of psychotropic medication as used in regard to State jurisdiction over public education;
- (2) the prescription rates of medications used in public schools to treat children diagnosed with attention deficit disorder, attention deficit hyperactivity disorder and other disorders or illnesses;
- (3) which medications used to treat such children in public schools are listed under the Controlled Substances Act, and
- (4) which medication used to treat such children in public schools are not listed under the Controlled Substances Act, including the properties and effects of any such medications and whether such medications have been considered for listing under the Controlled Substances Act.

Additional Background: Language similar to H.R. 1170, but applying only to special education programs, passed the House as part of H.R. 1350 on April 30, 2003.

Potential Concern: Some Members have expressed concern that the bill does not apply the prohibition to all psychotropic drugs, which includes medication not listed under the Controlled Substances Act such as Prozac and Strattera (used to treat ADD/ADHD). Approximately 14 psychotropic drugs are listed under the Controlled Substances Act, while about 36 are not.

Committee Action: The Committee on Education and the Workforce considered H.R. 1170 on May 15, 2003, and reported the bill (as amended) by voice vote.

Cost to Taxpayers: CBO estimates that the bill would have no cost to the federal government.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates a new federal requirement in order for States to receive federal education funds.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630
