106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
106–851

FEDERAL PRISONER HEALTH CARE COPAYMENT ACT OF 2000

SEPTEMBER 14, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1349]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1349) to amend title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Prisoner Health Care Copayment Act of 2000".

SEC. 2. HEALTH CARE FEES FOR PRISONERS IN FEDERAL INSTITUTIONS.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"§ 4048. Fees for health care services for prisoners

"(a) DEFINITIONS.—In this section—

"(1) the term 'account' means the trust fund account (or institutional equivalent) of a prisoner;

"(2) the term 'Director' means the Director of the Bureau of Prisons;

"(3) the term 'health care provider' means any person who is—

"(A) authorized by the Director to provide health care services; and

"(B) operating within the scope of such authorization;

"(4) the term 'health care visit'—

"(A) means a visit, as determined by the Director, by a prisoner to an institutional or noninstitutional health care provider; and

"(B) does not include a visit initiated by a prisoner—

"(i) pursuant to a staff referral; or

"(ii) to obtain staff-approved follow-up treatment for a chronic condition; and

"(5) the term 'prisoner' means—

"(A) any individual who is incarcerated in an institution under the jurisdiction of the Bureau of Prisons; or

"(B) any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

"(b) FEES FOR HEALTH CARE SERVICES.—

"(1) IN GENERAL.—The Director, in accordance with this section and with such regulations as the Director shall promulgate to carry out this section, may assess and collect a fee for health care services provided in connection with each health care visit requested by a prisoner.

"(2) EXCLUSION.—The Director may not assess or collect a fee under this section for preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment, as determined by the Director.

"(c) PERSONS SUBJECT TO FEE.—Each fee assessed under this section shall be collected by the Director from the account of—

"(1) the prisoner receiving health care services in connection with a health care visit described in subsection (b)(1); or

"(2) in the case of health care services provided in connection with a health care visit described in subsection (b)(1) that results from an injury inflicted on a prisoner by another prisoner, the prisoner who inflicted the injury, as determined by the Director.

"(d) AMOUNT OF FEE.—Any fee assessed and collected under this section shall be in an amount of not less than $1.

"(e) NO CONSENT REQUIRED.—Notwithstanding any other provision of law, the consent of a prisoner shall not be required for the collection of a fee from the account of the prisoner under this section. However, each such prisoner shall be given a reasonable opportunity to dispute the amount of the fee or whether the prisoner qualifies under an exclusion under this section.

"(f) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this section may be construed to permit any refusal of treatment to a prisoner on the basis that—

"(1) the account of the prisoner is insolvent; or

"(2) the prisoner is otherwise unable to pay a fee assessed under this section.

"(g) USE OF AMOUNTS.—

"(1) RESTITUTION OF SPECIFIC VICTIMS.—Amounts collected by the Director under this section from a prisoner subject to an order of restitution issued pur-

suant to section 3663 or 3663A shall be paid to victims in accordance with the order of restitution.

"(2) ALLOCATION OF OTHER AMOUNTS.—Of amounts collected by the Director under this section from prisoners not subject to an order of restitution issued pursuant to section 3663 or 3663A—

"(A) 75 percent shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601); and

"(B) 25 percent shall be available to the Attorney General for administrative expenses incurred in carrying out this section.

"(h) NOTICE TO PRISONERS OF LAW.—Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this section and the applicability of this section to the prisoner. Notwithstanding any other provision of this section, a fee under this section may not be assessed against, or collected from, such person—

"(1) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and

"(2) for services provided before the expiration of such period.

"(i) NOTICE TO PRISONERS OF REGULATIONS.—The regulations promulgated by the Director under subsection (b)(1), and any amendments to those regulations, shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of those regulations (or amendments, as the case may be). A fee under this section may not be assessed against, or collected from, a prisoner pursuant to such regulations (or amendments, as the case may be) for services provided before the expiration of such period.

"(j) NOTICE BEFORE PUBLIC COMMENT PERIOD.—Before the beginning of any period a proposed regulation under this section is open to public comment, the Director shall provide written and oral notice of the provisions of that proposed regulation to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed regulation.

"(k) REPORTS TO CONGRESS.—Not later than 1 year after the date of the enactment of the Federal Prisoner Health Care Copayment Act of 2000, and annually thereafter, the Director shall transmit to Congress a report, which shall include—

"(1) a description of the amounts collected under this section during the preceding 12-month period;

"(2) an analysis of the effects of the implementation of this section, if any, on the nature and extent of heath care visits by prisoners;

"(3) an itemization of the cost of implementing and administering the program;

"(4) a description of current inmate health status indicators as compared to the year prior to enactment; and

"(5) a description of the quality of health care services provided to inmates during the preceding 12-month period, as compared with the quality of those services provided during the 12-month period ending on the date of the enactment of such Act.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"4048. Fees for health care services for prisoners.".

SEC. 3. HEALTH CARE FEES FOR FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.

Section 4013 of title 18, United States Code, is amended by adding at the end the following:

"(c) HEALTH CARE FEES FOR FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.—

"(1) IN GENERAL.—Notwithstanding amounts paid under subsection (a)(3), a State or local government may assess and collect a reasonable fee from the trust fund account (or institutional equivalent) of a Federal prisoner for health care services, if—

"(A) the prisoner is confined in a non-Federal institution pursuant to an agreement between the Federal Government and the State or local government;

"(B) the fee—

"(i) is authorized under State law; and

"(ii) does not exceed the amount collected from State or local prisoners for the same services; and

"(C) the services—

"(i) are provided within or outside of the institution by a person who is licensed or certified under State law to provide health care services and who is operating within the scope of such license;

"(ii) constitute a health care visit within the meaning of section 4048(a)(4) of this title; and

"(iii) are not preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment.

"(2) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this subsection may be construed to permit any refusal of treatment to a prisoner on the basis that—

"(A) the account of the prisoner is insolvent; or

"(B) the prisoner is otherwise unable to pay a fee assessed under this subsection.

"(3) NOTICE TO PRISONERS OF LAW.—Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this subsection and the applicability of this subsection to the prisoner. Notwithstanding any other provision of this subsection, a fee under this section may not be assessed against, or collected from, such person—

"(A) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and

"(B) for services provided before the expiration of such period.

"(4) NOTICE TO PRISONERS OF STATE OR LOCAL IMPLEMENTATION.—The implementation of this subsection by the State or local government, and any amendment to that implementation, shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of that implementation (or amendment, as the case may be). A fee under this subsection may not be assessed against, or collected from, a prisoner pursuant to such implementation (or amendments, as the case may be) for services provided before the expiration of such period.

"(5) NOTICE BEFORE PUBLIC COMMENT PERIOD.—Before the beginning of any period a proposed implementation under this subsection is open to public comment, written and oral notice of the provisions of that proposed implementation shall be provided to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed implementation.".

SEC. 4. COMPREHENSIVE HIV/AIDS SERVICES REQUIRED TO BE INCLUDED IN HEALTH CARE SERVICES FOR WHICH HEALTH CARE FEES MAY BE ASSESSED.

Any health care services for which a person may be assessed a fee under section 4048 of title 18, United States Code (as added by section 2) or section 4013(c) of such title (as added by section 3) shall include comprehensive coverage for services relating to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS).

PURPOSE AND SUMMARY

H.R. 1349, the "Federal Prisoner Health Care Copayment Act of 2000," authorizes the Federal Bureau of Prisons to collect a fee from any person who has been charged with or convicted of a Federal crime each time that person visits a health care professional at his or her request and receives health care services. The amount of the fee is to be determined by the Director of the Bureau of Prisons through regulation, but would be at least $1 per visit. The fee would be assessed and deducted from any account maintained on behalf of the prisoner receiving the services. The fee would not be assessed or collected for preventative health care services, emergency services, prenatal care, diagnosis or treatment for chronic infectious diseases, mental health care, or substance abuse treatment. The bill further provides that when a Federal prisoner is housed in a non-Federal facility (e.g., pursuant to an agreement between the Federal Government and a State or local government) the State or local facility may assess a fee for health care services, provided that such a fee is authorized under the law of the State

where the Federal prisoner is housed and that State prisoners are charged no greater a fee.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1349 amends title 18 of the United States Code to authorize the Director of the Bureau of Prisons (BOP) to assess and collect a fee from prisoners for health care services provided to them. The intent of the bill is to impose a type of "copayment fee" of a nominal amount on prisoners, similar to the nominal fee paid by many Americans when they visit a health care provider under a managed health care plan.

Currently, inmates incarcerated in the Federal prison system and persons who are detained pending trial receive free medical care from BOP employees (physicians, physician assistants, and nurses) and Public Health Service (PHS) personnel (generally physician assistants, dentists, and pharmacists) assigned to each institution. Additionally, the BOP maintains contracts with medical specialists in private practice who provide care that cannot be provided by the BOP employees and PHS personnel. For the most seriously ill inmates, the BOP operates seven Federal Medical Centers at which are located fully accredited hospitals and facilities to care for long-term chronically and terminally ill inmates. In fiscal year 1999, the BOP spent $372.1 million in health care costs.[1]

All inmates[2] in the BOP system are required to work if medically able, and all who work are paid for their labor.[3] Persons detained while awaiting trial are not required to work. Wages paid to inmates are retained in an inmate account, which inmates can use to pay for telephone calls and purchases from the prison commissary. A prisoner's family may deposit money into his or her account for his or her use as well.

At a hearing on H.R. 1349 held by the Subcommittee on Crime, a representative of the Bureau of Prisons testified that some portion of the inmates who seek medical treatment at any given time do so for the purpose of avoiding work or other rehabilitative programming which is imposed on them. Inmates know that while they are waiting for treatment they are excused from all programming. Inmates who seek treatment without a legitimate medical complaint waste the time of medical staff and force truly sick inmates to wait to receive the care they need. The BOP supports imposing a nominal health care co-payment fee on all prisoners for the same reason that managed health care plans impose them on their customers, namely, it will help deter overuse of health care services (i.e., use of those services by people who do not really need them).

A recent General Accounting Office report found that co-payment fees for prison inmates have been adopted in 36 States.[4] Among States and localities that have imposed these fees, reductions in

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[1] *Federal Prisons: Containing Health Care Costs for an Increasing Inmate Population*, No. GAO/T–GGD–00–112, at 3 (April 6, 2000)(hereinafter "GAO Report").

[2] In this report, the term "inmate" is used to describe a person who has been convicted of a Federal crime and has been incarcerated for that offense, while the term "prisoner" is used to describe both inmates as well as persons who are detained pending trial.

[3] Approximately, 75% of BOP inmates are paid between 12 cents and 40 cents per hour, with the majority of BOP inmates making less than 17 cents per hour. The highest paid inmates make approximately $1.15 per hour.

[4] GAO Report, at 3.

sick call visits of from 16 to 50 percent have been realized. In its report, the GAO concluded that use of a health care co-payment fee system would reduce the number of unnecessary medical visits in the Federal prison system, perhaps reducing overall visits by as much as 25 percent.[5]

HEARINGS

The committee's Subcommittee on Crime held 1 day of hearings on H.R. 1349 on September 30, 1999. Testimony was received from 3 witnesses, representing 2 organizations. No additional material was submitted.

COMMITTEE CONSIDERATION

On March 16, 2000, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 1349, as amended, by a voice vote, a quorum being present. On July 19, 2000, the committee met in open session and ordered favorably reported the bill H.R. 1349 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

Rollcall No. 1 (6/27/00). Mr. Scott offered an amendment to prohibit the assessment and collection of a fee for health care services if prisoners have a "reasonable basis" for seeking health care services. By a rollcall vote of 9 yeas to 14 nays, the amendment was defeated.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Gallegly			
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Barr			
Mr. Jenkins			
Mr. Hutchinson		X	
Mr. Pease			
Mr. Cannon			
Mr. Rogan		X	
Mr. Graham			
Ms. Bono		X	
Mr. Bachus		X	
Mr. Scarborough			
Mr. Vitter		X	
Mr. Conyers	X		
Mr. Frank			
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		

[5] *Id*. at 12.

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Rothman		X	
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Hyde, Chairman		X	
Total	9	14	

Rollcall No. 2 (7/19/00). Mr Scott offered an amendment to delete the word "chronic" with respect to the prohibition on collecting a health care services fee for the treatment of chronic infectious diseases. By a rollcall vote of 9 yeas to 20 nays, the amendment was defeated.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Gallegly		X	
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease			
Mr. Cannon		X	
Mr. Rogan		X	
Mr. Graham		X	
Ms. Bono			
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Vitter		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Rothman		X	
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Hyde, Chairman		X	
Total	9	20	

Rollcall No. 3 (7/19/00). Mr. Scott offered an amendment to strike that portion of the bill that authorizes State and local governments to assess and collect a health care services fee from Federal prisoners housed in non-Federal institutions in certain circumstances. By a rollcall vote of 7 yeas to 21 nays, the amendment was defeated.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Gallegly			
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease			
Mr. Cannon		X	
Mr. Rogan		X	
Mr. Graham		X	
Ms. Bono			
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Vitter		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler			
Mr. Rothman		X	
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Hyde, Chairman		X	
Total	7	21	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII 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 FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 1349, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 2000.

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. 1349, the Federal Prisoner Health Care Copayment Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Keith (for federal costs), who can be reached at 226–2860, Shelley Finlayson (for the state and local impact), who can be reached at 225–3220, and John Harris (for the private-sector impact), who can be reached at 226–2618.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 1349—Federal Prisoner Health Care Copayment Act of 2000.

SUMMARY

Enacting H.R. 1349 would permit the Bureau of Prisons (BOP) to assess and collect a copayment fee of at least $1 for each health care visit initiated by a prisoner (excluding those for preventative health care services, emergency services, prenatal care, treatment of chronic infectious diseases, mental health, or substance abuse services). Fees collected from prisoners who are subject to an order of restitution would be paid to victims. Of the remaining fees, 75 percent would be deposited into the Crime Victims Fund and 25 percent would be available to the Attorney General for spending on administrative expenses incurred in carrying out the copayment program.

CBO expects that imposing such fees would reduce the demand for health care services from federal prisoners. We estimate that the reduction in demand would result in net savings of less than $5 million annually over the 2001–2005 period, assuming that future appropriations are reduced to reflect the lower health care costs. Also, we estimate that the proposed health care copayment would generate about $2 million in offsetting receipts (a credit

against direct spending) over the 2001–2005 period. Those collections would be available for spending without appropriation action. CBO expects that there would be a lag between the collection and the spending of such receipts, but we estimate that the net change in direct spending would be less than $500,000 a year. Because enacting this bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 1349 contains no intergovernmental mandates as defined in that Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. H.R. 1349 would impose a new private sector-mandate, but CBO estimates that the direct cost of the mandate would fall well below the annual threshold established in UMRA ($109 million in 2000, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Collecting and spending the copayment fees under H.R. 1349 would constitute direct spending, but have no significant net budgetary impact. The reduction in demand for health care services that would likely stem from imposing those copayments would in turn reduce the need for discretionary appropriations. CBO estimates that potential savings would be less than $5 million a year.

Direct Spending

Based on information from the BOP, CBO estimates that under this bill, about 400,000 health care visits by prisoners in federal prisons would be subject to a $1 fee in fiscal year 2001. We estimate some indigent prisoners could not pay the fee, and that assessing such a fee would deter some prisoners from initiating some visits, but we also expect that the overall prison population will continue to increase each year. Assuming that the bill would reduce nonpreventative health care visits by between 10 percent and 25 percent, and that the prison population will increase by about 10 percent annually, CBO estimates that about $350,000 in copayments would be collected each year. Most or all such amounts would be spent, resulting in little or no net budgetary impact.

Spending Subject to Appropriation

Based on the results of programs in some states that require health care copayments from prisoners, CBO expects that the copayment program would reduce the number of health care visits initiated by prisoners. As a result, the BOP would realize some savings in health care costs. Savings would not be directly proportionate to the reduction in the number of visits because much of the BOP's $350 million annual spending on health services would not be affected by this reduction. In addition, CBO estimates that the BOP would spend about $170,000 a year to administer the copayment program and only about half of such costs would be offset by the portion of collections made available to the Attorney General.

CBO estimates that net savings of about $1 million could be realized in fiscal year 2001. Savings could be as high as $5 million annually in subsequent years because some costs that are fixed in the near term might be eliminated in future years. Savings in health

care services would be realized only to the extent that appropriations were reduced accordingly.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. H.R. 1349 would affect direct spending, but CBO estimates that the net changes in direct spending (accounting for some lag between collections and spending) would be less than $500,000 a year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1349 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Under certain circumstances, the bill would allow state and local correctional institutions to charge federal prisoners in their facilities a copayment for certain health care services. While the fees charged by these institutions vary, CBO estimates that total receipts to state and local governments would increase by less than $400,000 per year.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1349 would create a new private-sector mandate by requiring federal prisoners to make copayments for some health care visits. Based on data from the Bureau of Prisons, CBO estimates that prisoners in federal facilities would pay about $350,000 annually in such fees. Federal prisoners housed in state or local institutions would also be required to pay fees in cases where those institutions choose to charge them; such fees would amount to less than $400,000 annually over the next five years. CBO therefore expects that the direct cost of the federal mandate would be well below the annual threshold established in UMRA ($109 million in 2000, adjusted for inflation) for any of the first five years that the mandate is in effect.

PREVIOUS CBO ESTIMATE

On May 25, 1999, CBO transmitted a cost estimate for S. 704, the Federal Prisoner Health Care Copayment Act of 1999, as reported by the Senate Committee on the Judiciary on April 29, 1999. S. 704 would set the minimum copay charge for health services in federal prisons at $2 per visit. H.R. 1349 would set the minimum charge at $1 per visit, and our cost estimates reflect this difference.

ESTIMATE PREPARED BY:

Federal Costs: Lanette J. Keith (226–2860)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
Impact on the Private Sector: John Harris (226–2618)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title. Section 1 of the bill states the short title of the act as the "Federal Prisoner Health Care Copayment Act of 2000."

Section 2. Health Care Fees for Prisoners in Federal Institutions. Section 2 of the bill enacts new section 4048 to title 18 of the United States Code. New section 4048 authorizes the collection of a fee for health care services from persons in the custody of the Bureau of Prisons or who have been charged with or convicted of an offense against the United States. Thus, the fee may be assessed and collected from persons awaiting trial as well as from convicted offenders.

Under new section 4048, the Director of the Bureau of Prisons is authorized to assess and collect a fee for health care services provided to a prisoner. The amount of the fee is to be determined by the Director pursuant to regulations promulgated by her, but in no event may the fee be less than $1. The committee understands that the Director plans to establish a sliding scale of fees that take into account a prisoner's ability to pay the fee assessed.

The fee is to be assessed and collected with respect to each "health care visit," which is defined in the bill to mean any visit to a health care provider, but not visits initiated by a prisoner pursuant to a staff referral or to obtain staff-approved follow-up treatment for a chronic condition. The bill also provides that no fee is to be assessed or collected for preventative health care services, emergency services, prenatal care, diagnosis or treatment for chronic infectious diseases, mental health care, or substance abuse treatment. The Director is to determine which specific health care treatments fall into these broad categories. In the event that an inmate receives health care services as a result of an injury inflicted on that prisoner by another prisoner, the bill requires that the prisoner who inflicted the injury is to be assessed the fee that otherwise would have been assessed against the prisoner receiving the health care services.

Fees assessed under this section are to be collected by the Director from the account of the prisoner receiving the health care services. However, a prisoner may not be refused health care services solely on the basis that the prisoner's inmate account is insolvent or that the prisoner is otherwise unable to pay a fee assessed under this section. The committee expects that when medically appropriate, health care services will be provided to all prisoners regardless of their ability to pay the fee required under section 4048.

Subsection (e) of new section 4048 requires that prisoners be given a reasonable opportunity to dispute the amount of the fee and to dispute whether the prisoner qualifies under an exclusion set forth in section 4048. The committee notes that the Bureau of Prisons has an existing administrative remedy process whereby prisoners may raise grievances and request official action. The committee expects that prisoners will use this procedure to raise issues

under subsection (e) of section 4048. If so, that process satisfies the requirements of subsection (e).

Subsection (g) of section 4048 provides for the manner in which health care fees collected under that section are to be used. If a fee is collected from a prisoner who is subject to an order of restitution, the amount collected is to be paid to the prisoner's victim or victims in accordance with that order. Of the fees collected from prisoners who are not subject to restitution orders, 75% of those fees collected are to be deposited in he Federal Crime Victims Fund and 25% are to be made available to the Attorney General to be used to offset the administrative expenses incurred in carrying out the requirements of section 4048.

Subsection (h) of new section 4048 requires that all prisoners receive written and oral notice of the provisions of section 4048 before any fee is collected from them under it. That subsection also prohibits the collection of such a fee from a prisoners until 30 days after date on which the prisoner receives the notices. This provision simply prohibits the assessment or collection of the fee authorized under this act during that 30 day period. The committee expects that medically appropriate health care services will continue to be provided during this period, notwithstanding the fact that no fee may be assessed.

Subsection (i) provides that any regulations promulgated by the Director of the Bureau of Prisons implementing the provisions of section 4048 may not take effect for 30 days after the date on which all prisoners in the prison system are provided with written and oral notice of the provisions of the regulations, or any amendments to them, as the case may be. The subsection also prohibits the assessment or collection of any fee under section 4048 for health care services provided within the 30 day period after notice of the regulations (or amendments to them) are given to prisoners. In the case of amendments, this subsection should not be interpreted to mean that no fee may be assessed during the 30 day period, but rather that no increase in the fees to be collected resulting from the amendment may be assessed or collected for services performed during the 30 day period. Fees may still be assessed and collected during that period in accordance with the regulations then in effect during that period.

Subsection (j) of new section 4048 requires that prior to the start of any period in which the public may comment on regulations implementing section 4048, or amendments to them, the Director of the Bureau of Prisons must give notice of the proposed regulation to each prisoner subject to the regulation and to groups that advocate on behalf of Federal prisoners. With respect to advocacy groups, the committee intends that this notice requirement be deemed satisfied if the Director mails a copy of the proposed regulations or amendments thereto to the national headquarters office of the following organizations: the American Civil Liberties Union, Justice Fellowship, and Citizens United for the Rehabilitation of Errants, or any successor organization to them.

Section 4048 also requires the BOP Director to submit annual reports to Congress concerning the implementation of section 4048, including the amounts collected under that section, the cost of administering it, and an analysis of the effects of the section on the nature and extent of health care visits by prisoners. Section 4048

also defines certain terms used in the new section, including "prisoner," "health care visit," and "health care provider."

Section 3. Health Care Fees for Federal Prisoners in Non-Federal Institutions. Section 3 amends existing section 4013 of title 18 (relating to support of Federal prisoners in non-Federal institutions) by adding new subsection (c) to that section.

New subsection (c) of section 4013 authorizes a State or local government to assess and collect a reasonable fee from a Federal prisoner for health care services provided to that prisoners when the prisoner is confined in a non-Federal institution pursuant to an agreement between the Federal Government and the State or local government, such a fee is authorized to be collected under the law of the State in which the Federal prisoners is housed, and the fee does not exceed that collected from State or local prisoners for the same services. Unlike the fee to be collected under section 4048, the bill does not require that any minimum fee be assessed and collected. The fee may only be assessed and collected for health care services that are provided by health care providers who are licensed or certified under State law, that constitute a "health care visit" under new section 4048, and that are not the types of services described in subsection (b)(2) of new section 4048. As in the case of fees assessed under section 4048, health care services may not be withheld under section 4013(c) if the prisoner's account from which the fee would be deducted is insolvent, or if the prisoner is otherwise unable to pay the fee assessed.

As in the case of fees to be assessed under section 4048, Federal prisoners in State or local facilities must also be provided with 30 days oral and written notice of the fee to be imposed under section 4013(c). The State or local government is not required to provide this notice to prisoners other than those who are Federal prisoners, and thus subject to section 4013(c). If a State or local government promulgates regulations or other written guidance to implement section 4013(c), 30 days notice of the provisions of those regulations, and any amendments thereto, must be given to a prisoners before a fee under section 4013 may be assessed against him or her. In the case of amendments, the provision should not be interpreted to mean that no fee may be assessed during the 30 day notice period, but rather that no increase in the fees to be collected resulting from an amendment may be assessed or collected for services performed during the 30 day notice period. As in the case with section 4048, in no event may a State refuse to treat a Federal prisoner on the basis that the prisoner's inmate account is insolvent or that the prisoner is otherwise unable to pay the fee to be assessed under section 4013.

Section 4. Comprehensive HIV/AIDS Services Required to be Included in Health Care Services for Which Health Care Fees May Be Assessed. Section 4 of the bill requires that as a condition of assessing fees under section 4048 or 4013(c), the Director of the Bureau of Prisons, or the State or local government, as the case may be, must ensure that comprehensive coverage for services relating to the virus known as HIV and the condition known as AIDS is included as part of the total program of heath care services provided to Federal prisoners. The committee notes that the Bureau of Prisons currently provides medically appropriate treatment for the virus and the syndrome that results from it and that, absent

changes in the standard of care generally accepted by the medical community for HIV and AIDS, no additional treatment need be provided by the Bureau of Prisons to impose the fee authorized under section 4048.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 24, 1999.

Hon. MATT SALMON,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN SALMON: Thank you for requesting our views on H.R. 1349, the "Federal Prisoner Health Care Copayment Act." The Department of Justice strongly supports allowing federal prisoners to pay fees for certain medical services. We do, however, recommend that the terminology in Section 3 of the bill be clarified so that it is consistent with Section 2 of the bill. We would recommend that language be added similar to that in the substitute amendment adopted by the Senate Judiciary Committee.

Thank you again for the opportunity to comment on this important legislation. Please do not hesitate to contact us if we may be of further assistance. The Office of Management and Budget has advised that it has no objection to submission of this letter from the standpoint of the Administration's program.

Sincerely,

JON P. JENNINGS, *Acting Assistant Attorney General.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART III—PRISONS AND PRISONERS

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CHAPTER 301—GENERAL PROVISIONS

* * * * * * *

§ 4013. Support of United States prisoners in non-Federal institutions

(a) * * *

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(c) HEALTH CARE FEES FOR FEDERAL PRISONERS IN NON-FEDERAL INSTITUTIONS.—

(1) IN GENERAL.—Notwithstanding amounts paid under subsection (a)(3), a State or local government may assess and collect a reasonable fee from the trust fund account (or institutional equivalent) of a Federal prisoner for health care services, if—

(A) the prisoner is confined in a non-Federal institution pursuant to an agreement between the Federal Government and the State or local government;

(B) the fee—

(i) is authorized under State law; and

(ii) does not exceed the amount collected from State or local prisoners for the same services; and

(C) the services—

(i) are provided within or outside of the institution by a person who is licensed or certified under State law to provide health care services and who is operating within the scope of such license;

(ii) constitute a health care visit within the meaning of section 4048(a)(4) of this title; and

(iii) are not preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment.

(2) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this subsection may be construed to permit any refusal of treatment to a prisoner on the basis that—

(A) the account of the prisoner is insolvent; or

(B) the prisoner is otherwise unable to pay a fee assessed under this subsection.

(3) NOTICE TO PRISONERS OF LAW.—Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this subsection and the applicability of this subsection to the prisoner. Notwithstanding any other provision of this subsection, a fee under this section may not be assessed against, or collected from, such person—

(A) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and

(B) for services provided before the expiration of such period.

(4) NOTICE TO PRISONERS OF STATE OR LOCAL IMPLEMENTATION.—The implementation of this subsection by the State or local government, and any amendment to that implementation, shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of that implementation (or amendment, as the case may be). A fee under this subsection may not be assessed against, or collected from, a prisoner pursuant to such implementation (or amendments, as the case may be) for services provided before the expiration of such period.

(5) NOTICE BEFORE PUBLIC COMMENT PERIOD.—Before the beginning of any period a proposed implementation under this subsection is open to public comment, written and oral notice of the provisions of that proposed implementation shall be pro-

vided to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed implementation.

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CHAPTER 303—BUREAU OF PRISONS

§ 4048. Fees for health care services for prisoners

(a) DEFINITIONS.—In this section—

(1) the term "account" means the trust fund account (or institutional equivalent) of a prisoner;

(2) the term "Director" means the Director of the Bureau of Prisons;

(3) the term "health care provider" means any person who is—

(A) authorized by the Director to provide health care services; and

(B) operating within the scope of such authorization;

(4) the term "health care visit"—

(A) means a visit, as determined by the Director, by a prisoner to an institutional or noninstitutional health care provider; and

(B) does not include a visit initiated by a prisoner—

(i) pursuant to a staff referral; or

(ii) to obtain staff-approved follow-up treatment for a chronic condition; and

(5) the term "prisoner" means—

(A) any individual who is incarcerated in an institution under the jurisdiction of the Bureau of Prisons; or

(B) any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

(b) FEES FOR HEALTH CARE SERVICES.—

(1) IN GENERAL.—The Director, in accordance with this section and with such regulations as the Director shall promulgate to carry out this section, may assess and collect a fee for health care services provided in connection with each health care visit requested by a prisoner.

(2) EXCLUSION.—The Director may not assess or collect a fee under this section for preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment, as determined by the Director.

(c) PERSONS SUBJECT TO FEE.—Each fee assessed under this section shall be collected by the Director from the account of—

(1) the prisoner receiving health care services in connection with a health care visit described in subsection (b)(1); or

(2) in the case of health care services provided in connection with a health care visit described in subsection (b)(1) that results from an injury inflicted on a prisoner by another prisoner,

the prisoner who inflicted the injury, as determined by the Director.

(d) AMOUNT OF FEE.—Any fee assessed and collected under this section shall be in an amount of not less than $1.

(e) NO CONSENT REQUIRED.—Notwithstanding any other provision of law, the consent of a prisoner shall not be required for the collection of a fee from the account of the prisoner under this section. However, each such prisoner shall be given a reasonable opportunity to dispute the amount of the fee or whether the prisoner qualifies under an exclusion under this section.

(f) NO REFUSAL OF TREATMENT FOR FINANCIAL REASONS.—Nothing in this section may be construed to permit any refusal of treatment to a prisoner on the basis that—

(1) the account of the prisoner is insolvent; or

(2) the prisoner is otherwise unable to pay a fee assessed under this section.

(g) USE OF AMOUNTS.—

(1) RESTITUTION OF SPECIFIC VICTIMS.—Amounts collected by the Director under this section from a prisoner subject to an order of restitution issued pursuant to section 3663 or 3663A shall be paid to victims in accordance with the order of restitution.

(2) ALLOCATION OF OTHER AMOUNTS.—Of amounts collected by the Director under this section from prisoners not subject to an order of restitution issued pursuant to section 3663 or 3663A—

(A) 75 percent shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601); and

(B) 25 percent shall be available to the Attorney General for administrative expenses incurred in carrying out this section.

(h) NOTICE TO PRISONERS OF LAW.—Each person who is or becomes a prisoner shall be provided with written and oral notices of the provisions of this section and the applicability of this section to the prisoner. Notwithstanding any other provision of this section, a fee under this section may not be assessed against, or collected from, such person—

(1) until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with such notices; and

(2) for services provided before the expiration of such period.

(i) NOTICE TO PRISONERS OF REGULATIONS.—The regulations promulgated by the Director under subsection (b)(1), and any amendments to those regulations, shall not take effect until the expiration of the 30-day period beginning on the date on which each prisoner in the prison system is provided with written and oral notices of the provisions of those regulations (or amendments, as the case may be). A fee under this section may not be assessed against, or collected from, a prisoner pursuant to such regulations (or amendments, as the case may be) for services provided before the expiration of such period.

(j) NOTICE BEFORE PUBLIC COMMENT PERIOD.—Before the beginning of any period a proposed regulation under this section is

open to public comment, the Director shall provide written and oral notice of the provisions of that proposed regulation to groups that advocate on behalf of Federal prisoners and to each prisoner subject to such proposed regulation.

(k) REPORTS TO CONGRESS.—Not later than 1 year after the date of the enactment of the Federal Prisoner Health Care Copayment Act of 2000, and annually thereafter, the Director shall transmit to Congress a report, which shall include—

(1) a description of the amounts collected under this section during the preceding 12-month period;

(2) an analysis of the effects of the implementation of this section, if any, on the nature and extent of heath care visits by prisoners;

(3) an itemization of the cost of implementing and administering the program;

(4) a description of current inmate health status indicators as compared to the year prior to enactment; and

(5) a description of the quality of health care services provided to inmates during the preceding 12-month period, as compared with the quality of those services provided during the 12-month period ending on the date of the enactment of such Act.

* * * * * * *

DISSENTING VIEWS

H.R. 1349, as amended authorizes the Bureau of Prisons (BOP) to assess and collect a fee from inmates for health care services provided to the inmate during a health care visit. The bill provides for the Director of the BOP to set the fee per visit, but further provides that it shall be in an amount not less than one dollar. H.R. 1349 prohibits an assessment for preventative health care services, staff referrals, staff approved follow-up treatment, emergency visits, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment, and further provides that BOP cannot refuse treatment to an inmate because of an inability to pay the designated fee. Funds collected under this bill are to be used to pay victim restitution. If there is no order of restitution, 75% goes to the Crime Victims Fund and 25% is available to BOP to defer administrative expense of the program.

The Supreme Court has recognized the government's obligation to provide health care. The U.S. Supreme Court, in *Estelle* v. *Gamble*[1] enunciated the principle that the government has an obligation to provide medicare to prisoners and this principle has been upheld in subsequent cases[2]. In *DeShaney* v. *Winnebago County DSS*, the court stated:

> When the State by affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on State actions set by the eight amendment and the due process clause.[3]

Given the limited amounts of money on hand in federal prisoner accounts at any given time, a health care co-payment requirement may impede their access to needed health care, particularly at the early treatment and intervention stage. BOP acknowledges that 75% of BOP inmates are paid between 12 cents and 40 cents per hour, with the majority of BOP inmates making less than 17 cents per hour. Further, BOP reports that more than half of all BOP inmates have no more than $60 in their accounts at any time, including the day immediately after their monthly pay period. Thus, even a minor co-pay would constitute a significant burden on them. Establishing such a prerequisite to health care treatment not only undermines the federal government's obligation to provide medical care to inmates, as discussed in *DeShaney*, it constitutes bad public policy. An inmate's failure to get timely treatment could result in

[1] 429 U.S. 97 (1976)
[2] *DeShaney* v. *Winnebago County DSS*, 489 U.S. 189 (1989)
[3] Ibid at 199–200.

minor problems becoming major problems, such as the spread of untreated infectious diseases.

There is also a significant question as to whether the cost of administering the program will be greater than any savings it projects. Proponents of the legislation point to States which have instituted inmate health care co-payments to suggest that co-pays work to discourage unnecessary use of health care services and save the States money without jeopardizing the health of inmates. However, this information appears anecdotal at best. The only study of the issue anyone has been able to identify is a study by the California State Auditor. This study found that the California Department of Corrections' annual co-pay program collections amounted to less than ⅓ ($654,000) of the estimated annual collections ($1.7 million) and that the estimated annual cost of administering the program ($3.2 million) amounted to almost five times the annual collections.

In addition, the proponents' argument that a co-pay will deter inmate abuse of health care services lacks merit. Obviously, inmates with substantial amounts of money on account will not be deterred by a dollar or so co-pay from seeking unnecessary health care and inmates have to pay a co-pay even if they are sick. Therefore, the more likely effect of H.R. 1349 is that ability to pay will be the determining factor as to whether inmates seek health care, not whether the prisoner truly needs medical attention. Thus, it was not surprising when the BOP witness acknowledged at the hearing on H.R. 1349 that there is no way to know how many truly sick inmates would be deterred because of the cost, as opposed to those abusing the system. Furthermore, since even those that are determined to be truly sick must pay, it appears that the real purpose of the bill is to simply deter inmates from seeking health care, regardless of whether they need it or not. Consistent with this goal, the majority opposed amendments which would require a co-payment only if the inmate is found to have had no reasonable basis for seeking health care services.

In conclusion, this bill will likely result in inmates having to choose between needed health care services and other crucial needs, and in more, as opposed to less, cost to taxpayers.

JOHN CONYERS, JR.
BARNEY FRANK.
HOWARD L. BERMAN.
ROBERT C. SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
MAXINE WATERS.

ADDITIONAL DISSENTING VIEWS

In addition to the concerns raised in our dissenting views, we would also like to note that the sponsors of this bill have argued that, if prisoners can pay for their health care, they should. They argue that taxpayers should not be subsidizing prisoners health care. Our concern is this sets up a double standard. If we are concerned about wasteful, taxpayer-supported health care subsidies, we should be asking: What about Members of Congress?

One floor down from the committee offices, we have a nurse on call whenever the House is in session. We receive medical attention, treatment and medicine for a small yearly fee, the rest of the expense is paid by the taxpayers.

Because of this discrepancy, at the committee markup, we offered an amendment requiring that Members of Congress pay a health care copay, in keeping with the Congressional Accountability Act that made Congress live by the laws it passes. The majority raised a point of order against the amendment and refused to even debate it. This was unfortunate. Why should a Member of Congress get medical evaluation compensated by taxpayers? Why should a Member of Congress get Tylenol without paying the same amount as working American families? Why should the taxpayer be any less concerned about subsidizing the health care of Members of Congress, who earn more than $100,000 a year, than they are about prisoners, who earn less than 50 cents an hour?

This double standard is yet another reason why we have expressed concerns about the underlying legislation.

JOHN CONYERS, JR.
MAXINE WATERS.

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