

AMENDMENTS

1989—Subsec. (c), Pub. L. 101-239 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6601(s) of Pub. L. 101-239, as amended by Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa-11 to 300aa-17, 300aa-21, 300aa-23, 300aa-26, and 300aa-27 of this title] shall apply as follows:

“(A) Petitions filed after the date of enactment of this section [Dec. 19, 1989] shall proceed under the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act [this subchapter] as amended by this section.

“(B) Petitions currently pending in which the evidentiary record is closed shall continue to proceed under the Program in accordance with the law in effect before the date of the enactment of this section, except that if the United States Court of Federal Claims is to review the findings of fact and conclusions of law of a special master on such a petition, the court may receive further evidence in conducting such review.

“(C) Petitions currently pending in which the evidentiary record is not closed shall proceed under the Program in accordance with the law as amended by this section.

All pending cases which will proceed under the Program as amended by this section shall be immediately suspended for 30 days to enable the special masters and parties to prepare for proceeding under the Program as amended by this section. In determining the 240-day period prescribed by section 2112(d) of the Public Health Service Act [42 U.S.C. 300aa-12(d)], as amended by this section, or the 420-day period prescribed by section 2121(b) of such Act [42 U.S.C. 300aa-21(b)], as so amended, any period of suspension under the preceding sentence shall be excluded.

“(2) The amendments to section 2115 of the Public Health Service Act [42 U.S.C. 300aa-15] shall apply to all pending and subsequently filed petitions.”

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99-660, as amended, set out as a note under section 300aa-1 of this title.

§ 300aa-11. Petitions for compensation**(a) General rule**

(1) A proceeding for compensation under the Program for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition containing the matter prescribed by subsection (c) of this section with the United States Court of Federal Claims. The clerk of the United States Court of Federal Claims shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa-12(d)(1) of this title.

(2)(A) No person may bring a civil action for damages in an amount greater than \$1,000 or in an unspecified amount against a vaccine administrator or manufacturer in a State or Federal court for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, and no such court may award damages in an amount greater than \$1,000 in a civil action for damages for such a vaccine-related injury or death, unless a petition has been filed, in accordance with section 300aa-16 of this title, for compensation

under the Program for such injury or death and—

(i)(I) the United States Court of Federal Claims has issued a judgment under section 300aa-12 of this title on such petition, and

(II) such person elects under section 300aa-21(a) of this title to file such an action, or

(ii) such person elects to withdraw such petition under section 300aa-21(b) of this title or such petition is considered withdrawn under such section.

(B) If a civil action which is barred under subparagraph (A) is filed in a State or Federal court, the court shall dismiss the action. If a petition is filed under this section with respect to the injury or death for which such civil action was brought, the date such dismissed action was filed shall, for purposes of the limitations of actions prescribed by section 300aa-16 of this title, be considered the date the petition was filed if the petition was filed within one year of the date of the dismissal of the civil action.

(3) No vaccine administrator or manufacturer may be made a party to a civil action (other than a civil action which may be brought under paragraph (2)) for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988.

(4) If in a civil action brought against a vaccine administrator or manufacturer before October 1, 1988, damages were denied for a vaccine-related injury or death or if such civil action was dismissed with prejudice, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(5)(A) A plaintiff who on October 1, 1988, has pending a civil action for damages for a vaccine-related injury or death may, at any time within 2 years after October 1, 1988, or before judgment, whichever occurs first, petition to have such action dismissed without prejudice or costs and file a petition under subsection (b) of this section for such injury or death.

(B) If a plaintiff has pending a civil action for damages for a vaccine-related injury or death, such person may not file a petition under subsection (b) of this section for such injury or death.

(6) If a person brings a civil action after November 15, 1988 for damages for a vaccine-related injury or death associated with the administration of a vaccine before November 15, 1988, such person may not file a petition under subsection (b) of this section for such injury or death.

(7) If in a civil action brought against a vaccine administrator or manufacturer for a vaccine-related injury or death damages are awarded under a judgment of a court or a settlement of such action, the person who brought such action may not file a petition under subsection (b) of this section for such injury or death.

(8) If on October 1, 1988, there was pending an appeal or rehearing with respect to a civil action brought against a vaccine administrator or manufacturer and if the outcome of the last appellate review of such action or the last rehearing of such action is the denial of damages for a vaccine-related injury or death, the person who brought such action may file a petition under

subsection (b) of this section for such injury or death.

(9) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program.

(10) The Clerk of the United States Claims Court² is authorized to continue to receive, and forward, petitions for compensation for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1992.

(b) Petitioners

(1)(A) Except as provided in subparagraph (B), any person who has sustained a vaccine-related injury, the legal representative of such person if such person is a minor or is disabled, or the legal representative of any person who died as the result of the administration of a vaccine set forth in the Vaccine Injury Table may, if the person meets the requirements of subsection (c)(1) of this section, file a petition for compensation under the Program.

(B) No person may file a petition for a vaccine-related injury or death associated with a vaccine administered before October 1, 1988, if compensation has been paid under this part for 3500 petitions for such injuries or deaths.

(2) Only one petition may be filed with respect to each administration of a vaccine.

(c) Petition content

A petition for compensation under the Program for a vaccine-related injury or death shall contain—

(1) except as provided in paragraph (3), an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died—

(A) received a vaccine set forth in the Vaccine Injury Table or, if such person did not receive such a vaccine, contracted polio, directly or indirectly, from another person who received an oral polio vaccine,

(B)(i) if such person received a vaccine set forth in the Vaccine Injury Table—

(I) received the vaccine in the United States or in its trust territories,

(II) received the vaccine outside the United States or a trust territory and at the time of the vaccination such person was a citizen of the United States serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or a dependent of such a citizen, or

(III) received the vaccine outside the United States or a trust territory and the vaccine was manufactured by a vaccine manufacturer located in the United States and such person returned to the United States not later than 6 months after the date of the vaccination,

(ii) if such person did not receive such a vaccine but contracted polio from another person who received an oral polio vaccine, was a citizen of the United States or a dependent of such a citizen,

(C)(i) sustained, or had significantly aggravated, any illness, disability, injury, or con-

dition set forth in the Vaccine Injury Table in association with the vaccine referred to in subparagraph (A) or died from the administration of such vaccine, and the first symptom or manifestation of the onset or of the significant aggravation of any such illness, disability, injury, or condition or the death occurred within the time period after vaccine administration set forth in the Vaccine Injury Table, or

(ii)(I) sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referred to in subparagraph (A), or

(II) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in subparagraph (A),

(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine, or (ii) died from the administration of the vaccine, or (iii) suffered such illness, disability, injury, or condition from the vaccine which resulted in inpatient hospitalization and surgical intervention, and

(E) has not previously collected an award or settlement of a civil action for damages for such vaccine-related injury or death,

(2) except as provided in paragraph (3), maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and

(3) an identification of any records of the type described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability.

(d) Additional information

A petition may also include other available relevant medical records relating to the person who suffered such injury or who died from the administration of the vaccine.

(e) Schedule

The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

(July 1, 1944, ch. 373, title XXI, §2111, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 100-203, title IV,

² See Change of Name note below.

§§ 4302(b), 4304(a), (b), 4306, 4307(1), (2), Dec. 22, 1987, 101 Stat. 1330-221, 1330-223, 1330-224; Pub. L. 101-239, title VI, § 6601(c)(1)-(7), Dec. 19, 1989, 103 Stat. 2285, 2286; Pub. L. 101-502, § 5(a), Nov. 3, 1990, 104 Stat. 1286; Pub. L. 102-168, title II, § 201(h)(1), Nov. 26, 1991, 105 Stat. 1104; Pub. L. 102-572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-43, title XX, § 2012, June 10, 1993, 107 Stat. 214; Pub. L. 105-277, div. C, title XV, § 1502, Oct. 21, 1998, 112 Stat. 2681-741; Pub. L. 106-310, div. A, title XVII, § 1701(a), Oct. 17, 2000, 114 Stat. 1151.)

CODIFICATION

In subsecs. (a)(2)(A), (3), (4), (5)(A), (8), and (b)(1)(B), "October 1, 1988" substituted for "the effective date of this subpart" on authority of section 323 of Pub. L. 99-660, as amended, set out as an Effective Date note under section 300aa-1 of this title.

PRIOR PROVISIONS

A prior section 300aa-11, act July 1, 1944, § 2112, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

A prior section 2111 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

AMENDMENTS

2000—Subsec. (c)(1)(D)(iii). Pub. L. 106-310 added cl. (iii).

1998—Subsec. (c)(1)(D)(i). Pub. L. 105-277 struck out "and incurred unreimbursable expenses due in whole or in part to such illness, disability, injury, or condition in an amount greater than \$1,000" before ", or (ii) died".

1993—Subsec. (a)(10). Pub. L. 103-43 added par. (10).

1992—Subsec. (a)(1), (2)(A)(i)(I). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court" wherever appearing.

1991—Subsec. (a)(2)(A)(i), (ii). Pub. L. 102-168 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A). Pub. L. 101-502, § 5(a)(1), substituted "unless a petition has been filed, in accordance with section 300aa-16 of this title, for compensation under the Program for such injury or death and—" and cls. (i) and (ii) for "unless—

"(i) a petition has been filed, in accordance with section 300aa-16 of this title, for compensation under the Program for such injury or death.

"(ii) the United States Claims Court has issued a judgment under section 300aa-12 of this title on such petition, and

"(iii) such person elects under section 300aa-21(a) of this title to file such an action."

Subsec. (a)(5)(A). Pub. L. 101-502, § 5(a)(2), struck out "without prejudice" after "without prejudice or costs".

Subsec. (a)(5)(B). Pub. L. 101-502, § 5(a)(3), substituted "plaintiff" for "plaintiff who".

Subsec. (d). Pub. L. 101-502, § 5(a)(4), struck out "(d) except as provided in paragraph (3)," before "(d) Additional information".

Subsec. (e). Pub. L. 101-502, § 5(a)(5), substituted "(e) Schedule" for "(e)(e) Schedule".

1989—Subsec. (a)(1). Pub. L. 101-239, § 6601(c)(1), substituted "filing of a petition containing the matter prescribed in subsection (c) of this section" for "filing of a petition" and inserted at end "The clerk of the United States Claims Court shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa-12(d)(1) of this title."

Subsec. (a)(2)(A)(i). Pub. L. 101-239, § 6601(c)(2), struck out "under subsection (b) of this section" after "section 300aa-16 of this title,".

Subsec. (a)(5)(A). Pub. L. 101-239, § 6601(c)(3)(A), substituted "petition to have such action dismissed without prejudice or costs" for "elect to withdraw such action".

Subsec. (a)(5)(B). Pub. L. 101-239, § 6601(c)(3)(B), substituted "has pending" for "on October 1, 1988, had pending" and struck out "does not withdraw the action under subparagraph (A)" after "vaccine-related injury or death".

Subsec. (a)(6). Pub. L. 101-239, § 6601(c)(4), substituted "November 15, 1988" for "the effective date of this subpart" in two places.

Subsec. (a)(8). Pub. L. 101-239, § 6601(c)(5), added par. (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 101-239, § 6601(c)(5), (7), redesignated par. (8) as (9) and realigned margin.

Subsec. (c)(1). Pub. L. 101-239, § 6601(c)(6)(A), inserted "except as provided in paragraph (3)," after "(1)" in introductory provisions.

Subsec. (c)(2). Pub. L. 101-239, § 6601(c)(6)(B), (C), added par. (2) and redesignated former par. (2) as subsec. (d).

Pub. L. 101-239, § 6601(c)(6)(A), inserted "except as provided in paragraph (3)," after "(2)".

Subsec. (c)(3). Pub. L. 101-239, § 6601(c)(6)(C), (D), added par. (3). Former par. (3) redesignated subsec. (e).

Subsec. (d). Pub. L. 101-239, § 6601(c)(6)(B), redesignated former subsec. (c)(2) as subsec. (d), expanded margin to full measure, inserted subsec. designation and heading, substituted "A petition may also include other available" for "all available", struck out "(including autopsy reports, if any)" after "relevant medical records", and substituted "administration of the vaccine." for "administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability, and".

Subsec. (e). Pub. L. 101-239, § 6601(c)(6)(D), redesignated former subsec. (c)(3) as subsec. (e), expanded margin to full measure, inserted subsec. designation and heading, and substituted "The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition" for "appropriate".

1987—Subsec. (a)(1). Pub. L. 100-203, § 4307(1), which directed that par. (1) be amended by substituting "with the United States Claims Court" for "with the United States district court for the district in which the petitioner resides or the injury or death occurred", was executed making the substitution for "with the United States district court for the district in which the petitioner resides or in which the injury or death occurred", as the probable intent of Congress.

Subsec. (a)(2)(A). Pub. L. 100-203, § 4306, substituted "vaccine administrator or manufacturer" for "vaccine manufacturer".

Pub. L. 100-203, § 4302(b)(1), substituted "effective date of this subpart" for "effective date of this part".

Subsec. (a)(2)(A)(ii). Pub. L. 100-203, § 4307(2), substituted "the United States Claims Court" for "a district court of the United States".

Subsec. (a)(3). Pub. L. 100-203, § 4306, substituted "vaccine administrator or manufacturer" for "vaccine manufacturer".

Pub. L. 100-203, § 4302(b)(1), substituted "effective date of this subpart" for "effective date of this part".

Subsec. (a)(4). Pub. L. 100-203, § 4306, substituted "vaccine administrator or manufacturer" for "vaccine manufacturer".

Pub. L. 100-203, § 4302(b)(1), substituted "effective date of this subpart" for "effective date of this part".

Subsec. (a)(5)(A). Pub. L. 100-203, § 4302(b)(2), substituted "after the effective date of this subpart" for "after the effective date of this subchapter".

Pub. L. 100-203, § 4302(b)(1), substituted "who on the effective date of this subpart" for "who on the effective date of this part".

Subsec. (a)(5)(B). Pub. L. 100-203, § 4302(b)(1), substituted "effective date of this subpart" for "effective date of this part".

Subsec. (a)(6). Pub. L. 100-203, § 4302(b)(1), substituted "effective date of this subpart" for "effective date of this part" in two places.

Subsec. (a)(7). Pub. L. 100-203, § 4306, substituted "vaccine administrator or manufacturer" for "vaccine manufacturer".

Subsec. (a)(8). Pub. L. 100-203, § 4304(a), added par. (8).
 Subsec. (b)(1)(A). Pub. L. 100-203, § 4304(b)(1), substituted “may, if the person meets the requirements of subsection (c)(1) of this section, file” for “may file”.

Subsec. (b)(1)(B). Pub. L. 100-203, § 4302(b)(1), substituted “effective date of this subpart” for “effective date of this part”.

Subsec. (c)(1)(D). Pub. L. 100-203, § 4304(b)(2), substituted “for more than 6 months” for “for more than 1 year”, “and incurred” for “, (ii) incurred”, and “(ii)” for “(iii)”.

CHANGE OF NAME

References to United States Claims Court deemed to refer to United States Court of Federal Claims, see section 902(b) of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-310, div. A, title XVII, § 1701(b), Oct. 17, 2000, 114 Stat. 1151, provided that: “The amendment made by subsection (a) [amending this section] takes effect upon the date of the enactment of this Act [Oct. 17, 2000], including with respect to petitions under section 2111 of the Public Health Service Act [this section] that are pending on such date.”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 201(i) of Pub. L. 102-168 provided that:
 “(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa-12, 300aa-15, 300aa-16, 300aa-19, and 300aa-21 of this title and provisions set out as a note under section 300aa-1 of this title] shall take effect on the date of the enactment of this Act [Nov. 26, 1991].

“(2) The amendments made by subsections (d) and (f) [amending sections 300aa-12, 300aa-15, 300aa-16, and 300aa-21 of this title] shall take effect as if the amendments had been in effect on and after October 1, 1988.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5(h) of Pub. L. 101-502 provided that: “The amendments made by subsections (f)(1) and (g) [amending section 300aa-21 of this title and provisions set out as a note under section 300aa-1 of this title and enacting provisions set out as a note under section 300aa-12 of this title] shall take effect as of November 14, 1986, and the amendments made by subsections (a) through (e) and subsection (f)(2) [amending this section and sections 300aa-12, 300aa-13, 300aa-15, 300aa-16, and 300aa-21 of this title] shall take effect as of September 30, 1990.”

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101-239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101-239, set out as a note under section 300aa-10 of this title.

§ 300aa-12. Court jurisdiction

(a) General rule

The United States Court of Federal Claims and the United States Court of Federal Claims special masters shall, in accordance with this section, have jurisdiction over proceedings to determine if a petitioner under section 300aa-11 of this title is entitled to compensation under

the Program and the amount of such compensation. The United States Court of Federal Claims may issue and enforce such orders as the court deems necessary to assure the prompt payment of any compensation awarded.

(b) Parties

(1) In all proceedings brought by the filing of a petition under section 300aa-11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.

(2) Within 30 days after the Secretary receives service of any petition filed under section 300aa-11 of this title the Secretary shall publish notice of such petition in the Federal Register. The special master designated with respect to such petition under subsection (c) of this section shall afford all interested persons an opportunity to submit relevant, written information—

(A) relating to the existence of the evidence described in section 300aa-13(a)(1)(B) of this title, or

(B) relating to any allegation in a petition with respect to the matters described in section 300aa-11(c)(1)(C)(ii) of this title.

(c) United States Court of Federal Claims special masters

(1) There is established within the United States Court of Federal Claims an office of special masters which shall consist of not more than 8 special masters. The judges of the United States Court of Federal Claims shall appoint the special masters, 1 of whom, by designation of the judges of the United States Court of Federal Claims, shall serve as chief special master. The appointment and reappointment of the special masters shall be by the concurrence of a majority of the judges of the court.

(2) The chief special master and other special masters shall be subject to removal by the judges of the United States Court of Federal Claims for incompetency, misconduct, or neglect of duty or for physical or mental disability or for other good cause shown.

(3) A special master’s office shall be terminated if the judges of the United States Court of Federal Claims determine, upon advice of the chief special master, that the services performed by that office are no longer needed.

(4) The appointment of any individual as a special master shall be for a term of 4 years, subject to termination under paragraphs (2) and (3). Individuals serving as special masters on December 19, 1989, shall serve for 4 years from the date of their original appointment, subject to termination under paragraphs (2) and (3). The chief special master in office on December 19, 1989, shall continue to serve as chief special master for the balance of the master’s term, subject to termination under paragraphs (2) and (3).

(5) The compensation of the special masters shall be determined by the judges of the United States Court of Federal Claims, upon advice of the chief special master. The salary of the chief special master shall be the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315, title 5. The salaries of the other special masters shall not exceed the