

Stat. 1287; Pub. L. 102-168, title II, §201(d)(2), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 103-66, title XIII, §13632(a)(1), Aug. 10, 1993, 107 Stat. 645.)

CODIFICATION

In subsec. (a)(1) to (3), "October 1, 1988" and "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 2116 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-66 substituted "or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa-11(b)(2) of this title, file" for "such person may file".

1991—Subsec. (c). Pub. L. 102-168 substituted "or (2)" for " (2)" and struck out " , or (3) the petition is considered withdrawn under section 300aa-21(b) of this title."

1990—Subsec. (a)(1). Pub. L. 101-502, §5(e)(1), substituted "28 months" for "24 months" and inserted before comma at end "and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine".

Subsec. (c). Pub. L. 101-502, §5(e)(2), substituted "and ending on the date (1) an election is made under section 300aa-21(a) of this title to file the civil action, (2) an election is made under section 300aa-21(b) of this title to withdraw the petition, or (3) the petition is considered withdrawn under section 300aa-21(b) of this title" for "and ending on the date a final judgment is entered on the petition".

1989—Subsec. (c). Pub. L. 101-239 substituted "300aa-11 of this title" for "300aa-11(b) of this title".

1987—Subsec. (a). Pub. L. 100-203 substituted "effective date of this subpart" for "effective date of this subchapter" in pars. (1) to (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102-168, set out as a note under section 300aa-11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101-502, set out as a note under section 300aa-11 of this title.

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-17. Subrogation

(a) General rule

Upon payment of compensation to any petitioner under the Program, the trust fund which has been established to provide such compensation shall be subrogated¹ to all rights of the pe-

tioner with respect to the vaccine-related injury or death for which compensation was paid, except that the trust fund may not recover under such rights an amount greater than the amount of compensation paid to the petitioner.

(b) Disposition of amounts recovered

Amounts recovered under subsection (a) shall be collected on behalf of, and deposited in, the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(July 1, 1944, ch. 373, title XXI, §2117, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3770; amended Pub. L. 100-203, title IV, §4307(7), Dec. 22, 1987, 101 Stat. 1330-225; Pub. L. 101-239, title VI, §6601(m)(2), Dec. 19, 1989, 103 Stat. 2291.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 substituted "the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26" for "the trust fund which has been established to provide compensation under the Program".

1987—Subsec. (a). Pub. L. 100-203 struck out par. (1) designation before "Upon" and struck out par. (2) which read as follows: "In any case in which it deems such action appropriate, a district court of the United States may, after entry of a final judgment providing for compensation to be paid under section 300aa-15 of this title for a vaccine-related injury or death, refer the record of such proceeding to the Secretary and the Attorney General with such recommendation as the court deems appropriate with respect to the investigation or commencement of a civil action by the Secretary under paragraph (1)."

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-18. Repealed. Pub. L. 100-203, title IV, § 4303(d)(2)(B), Dec. 22, 1987, 101 Stat. 1330-222

Section, act July 1, 1944, ch. 373, title XXI, §2118, as added Nov. 14, 1986, Pub. L. 99-660, title III, §311(a), 100 Stat. 3771, provided for annual increases for inflation of compensation under subsections (a)(2) and (a)(4) of section 300aa-15 of this title and civil penalty under section 300aa-27(b) of this title.

§ 300aa-19. Advisory Commission on Childhood Vaccines

(a) Establishment

There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:

(1) Nine members appointed by the Secretary as follows:

(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.

¹ So in original. Probably should be "subrogated".

(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.

(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.

(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs (or the designees of such officials), each of whom shall be a nonvoting ex officio member.

The Secretary shall select members of the Commission within 90 days of October 1, 1988. The members of the Commission shall select a Chair from among the members.

(b) Term of office

Appointed members of the Commission shall be appointed for a term of office of 3 years, except that of the members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years, as determined by the Secretary.

(c) Meetings

The Commission shall first meet within 60 days after all members of the Commission are appointed, and thereafter shall meet not less often than four times per year and at the call of the chair. A quorum for purposes of a meeting is 5. A decision at a meeting is to be made by a ballot of a majority of the voting members of the Commission present at the meeting.

(d) Compensation

Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment. Members of the Commission who are not officers or employees of the Federal Government shall be compensated at a rate not to exceed the daily equivalent of the rate in effect for grade GS-18 of the General Schedule for each day (including travel-time) they are engaged in the performance of their duties as members of the Commission. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5 for employees serving intermittently.

(e) Staff

The Secretary shall provide the Commission with such professional and clerical staff, such information, and the services of such consultants as may be necessary to assist the Commission in carrying out effectively its functions under this section.

(f) Functions

The Commission shall—

(1) advise the Secretary on the implementation of the Program,

(2) on its own initiative or as the result of the filing of a petition, recommend changes in the Vaccine Injury Table,

(3) advise the Secretary in implementing the Secretary's responsibilities under section 300aa-27 of this title regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) survey Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 300aa-25(b) of this title, and advise the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) recommend to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out this part.

(July 1, 1944, ch. 373, title XXI, §2119, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3771; amended Pub. L. 100-203, title IV, §4302(b)(1), Dec. 22, 1987, 101 Stat. 1330-221; Pub. L. 102-168, title II, §201(g), Nov. 26, 1991, 105 Stat. 1104; Pub. L. 102-531, title III, §312(d)(14), Oct. 27, 1992, 106 Stat. 3505.)

CODIFICATION

In subsec. (a), "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.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-531 substituted "Centers for Disease Control and Prevention" for "Centers for Disease Control".

1991—Subsec. (c). Pub. L. 102-168 inserted "present at the meeting" before period at end.

1987—Subsec. (a). Pub. L. 100-203 substituted "effective date of this subpart" for "effective date of this part" in last sentence.

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93-641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organi-

zation and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SUBPART B—ADDITIONAL REMEDIES

§ 300aa-21. Authority to bring actions

(a) Election

After judgment has been entered by the United States Court of Federal Claims or, if an appeal is taken under section 300aa-12(f) of this title, after the appellate court's mandate is issued, the petitioner who filed the petition under section 300aa-11 of this title shall file with the clerk of the United States Court of Federal Claims—

(1) if the judgment awarded compensation, an election in writing to receive the compensation or to file a civil action for damages for such injury or death, or

(2) if the judgment did not award compensation, an election in writing to accept the judgment or to file a civil action for damages for such injury or death.

An election shall be filed under this subsection not later than 90 days after the date of the court's final judgment with respect to which the election is to be made. If a person required to file an election with the court under this subsection does not file the election within the time prescribed for filing the election, such person shall be deemed to have filed an election to accept the judgment of the court. If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered. For limitations on the bringing of civil actions for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988, see section 300aa-11(a)(2) of this title.

(b) Continuance or withdrawal of petition

A petitioner under a petition filed under section 300aa-11 of this title may submit to the United States Court of Federal Claims a notice in writing choosing to continue or to withdraw the petition if—

(1) a special master fails to make a decision on such petition within the 240 days prescribed by section 300aa-12(d)(3)(A)(ii) of this title (excluding (i) any period of suspension under section 300aa-12(d)(3)(C) or 300aa-12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa-12(e)(2)(C) of this title), or

(2) the court fails to enter a judgment under section 300aa-12 of this title on the petition within 420 days (excluding (i) any period of suspension under section 300aa-12(d)(3)(C) or 300aa-12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa-12(e)(2)(C) of this title) after the date on which the petition was filed.

Such a notice shall be filed within 30 days of the provision of the notice required by section 300aa-12(g) of this title.

(c) Limitations of actions

A civil action for damages arising from a vaccine-related injury or death for which a petition was filed under section 300aa-11 of this title shall, except as provided in section 300aa-16(c) of this title, be brought within the period prescribed by limitations of actions under State law applicable to such civil action.

(July 1, 1944, ch. 373, title XXI, § 2121, as added Pub. L. 99-660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3772; amended Pub. L. 100-203, title IV, §§ 4304(c), 4307(8), 4308(c), Dec. 22, 1987, 101 Stat. 1330-224, 1330-225; Pub. L. 100-360, title IV, § 411(o)(3)(A), July 1, 1988, 102 Stat. 808; Pub. L. 101-239, title VI, § 6601(n), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101-502, § 5(f), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102-168, title II, § 201(d)(3), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 102-572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

CODIFICATION

In subsec. (a), "October 1, 1988," and "October 1, 1988" substituted for "the effective date of this part".

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court" wherever appearing.

1991—Subsec. (b). Pub. L. 102-168 substituted "Continuance or withdrawal of petition" for "Withdrawal of petition" in heading, redesignated introductory provisions of par. (1) as introductory provisions of subsec. (b) and substituted "a notice in writing choosing to continue or to withdraw the petition" for "a notice in writing withdrawing the petition", redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, struck out at end of former par. (1) "If such a notice is not filed before the expiration of such 30 days, the petition with respect to which the notice was to be filed shall be considered withdrawn under this paragraph.", and struck out par. (2) which read as follows: "If a special master or the court does not enter a decision or make a judgment on a petition filed under section 300aa-11 of this title within 30 days of the provision of the notice in accordance with section 300aa-12(g) of this title, the special master or court shall no longer have jurisdiction over such petition and such petition shall be considered as withdrawn under paragraph (1)."

1990—Subsec. (a). Pub. L. 101-502, § 5(f)(1), in closing provisions, inserted after second sentence "If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered." and inserted "for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988" after "actions" in last sentence.

Subsec. (b). Pub. L. 101-502, § 5(f)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "If the United States Claims Court fails to enter a judgment under section 300aa-12 of this title on a petition filed under section 300aa-11 of this title within 420 days (excluding any period of suspension under section 300aa-12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa-12(e)(2)(C) of this title)