

42 USC 300aa-15: Compensation

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From Title 42-THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A-PUBLIC HEALTH SERVICE

SUBCHAPTER XIX-VACCINES

Part 2-National Vaccine Injury Compensation Program

subpart a-program requirements

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§300aa–15. Compensation**(a) General rule**

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, shall include the following:

(1)(A) Actual unreimbursable expenses incurred from the date of the judgment awarding such expenses and reasonable projected unreimbursable expenses which-

- (i) result from the vaccine-related injury for which the petitioner seeks compensation,
- (ii) have been or will be incurred by or on behalf of the person who suffered such injury, and
- (iii)(I) have been or will be for diagnosis and medical or other remedial care determined to be reasonably necessary, or

(II) have been or will be for rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(B) Subject to section 300aa–16(a)(2) of this title, actual unreimbursable expenses incurred before the date of the judgment awarding such expenses which-

- (i) resulted from the vaccine-related injury for which the petitioner seeks compensation,
- (ii) were incurred by or on behalf of the person who suffered such injury, and
- (iii) were for diagnosis, medical or other remedial care, rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(2) In the event of a vaccine-related death, an award of \$250,000 for the estate of the deceased.

(3)(A) In the case of any person who has sustained a vaccine-related injury after attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded, compensation for actual and anticipated loss of earnings determined in accordance with generally recognized actuarial principles and projections.

(B) In the case of any person who has sustained a vaccine-related injury before attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded and whose vaccine-related injury is of sufficient severity to permit reasonable anticipation that such person is likely to suffer impaired earning capacity at age 18 and beyond, compensation after attaining the age of 18 for loss of earnings determined on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.

(4) For actual and projected pain and suffering and emotional distress from the vaccine-related injury, an award not to exceed \$250,000.

(b) Vaccines administered before effective date

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) and may also include an amount, not to exceed a combined total of \$30,000, for-

- (1) lost earnings (as provided in paragraph (3) of subsection (a)),
- (2) pain and suffering (as provided in paragraph (4) of subsection (a)), and
- (3) reasonable attorneys' fees and costs (as provided in subsection (e)).¹

(c) Residential and custodial care and service

The amount of any compensation for residential and custodial care and service expenses under subsection (a)(1) shall be sufficient to enable the compensated person to remain living at home.

(d) Types of compensation prohibited

Compensation awarded under the Program may not include the following:

- (1) Punitive or exemplary damages.
- (2) Except with respect to compensation payments under paragraphs (2) and (3) of subsection (a), compensation for other than the health, education, or welfare of the person who suffered the vaccine-related injury with respect to which the compensation is paid.

(e) Attorneys' fees

(1) In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover-

- (A) reasonable attorneys' fees, and
- (B) other costs,

incurred in any proceeding on such petition. If the judgment of the United States Court of Federal Claims on such a petition does not award compensation, the special master or court may award an amount of compensation to cover petitioner's reasonable attorneys' fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

(2) If the petitioner, before October 1, 1988, filed a civil action for damages for any vaccine-related injury or death for which compensation may be awarded under the Program, and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed and to file a petition for compensation under the Program, in awarding compensation on such petition the special master or court may include an amount of compensation limited to the costs and expenses incurred by the petitioner and the attorney of the petitioner before October 1, 1988, in preparing, filing, and prosecuting such civil action (including the reasonable value of the attorney's time if the civil action was filed under contingent fee arrangements).

(3) No attorney may charge any fee for services in connection with a petition filed under section 300aa–11 of this title which is in addition to any amount awarded as compensation by the special master or court under paragraph (1).

(f) Payment of compensation

(1) Except as provided in paragraph (2), no compensation may be paid until an election has been made, or has been deemed to have been made, under section 300aa–21(a) of this title to receive compensation.

(2) Compensation described in subsection (a)(1)(A)(iii) shall be paid from the date of the judgment of the United States Court of Federal Claims under section 300aa–12 of this title awarding the compensation. Such compensation may not be paid after an election under section 300aa–21(a) of this title to file a civil action for damages for the vaccine-related injury or death for which such compensation was awarded.

(3) Payments of compensation under the Program and the costs of carrying out the Program shall be exempt from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be determined on the basis of the net present value of the elements of the compensation and shall be paid from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26 in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner.

(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, the compensation shall be determined on the basis of the net present value of the elements of compensation and shall be paid from appropriations made available under subsection (j) in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum. If the appropriations under subsection (j) are insufficient to make a payment of an annual installment, the limitation on civil actions prescribed by section 300aa–21(a) of this title shall not apply to a civil action for damages brought by the petitioner entitled to the payment.

(C) In purchasing an annuity under subparagraph (A) or (B), the Secretary may purchase a guarantee for the annuity, may enter into agreements regarding the purchase price for and rate of return of the annuity, and may take such other actions as may be necessary to safeguard the financial interests of the United States regarding the annuity. Any payment received by the Secretary pursuant to the preceding sentence shall be paid to the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26, or to the appropriations account from which the funds were derived to purchase the annuity, whichever is appropriate.

(g) Program not primarily liable

Payment of compensation under the Program shall not be made for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (other than under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]), or (2) by an entity which provides health services on a prepaid basis.

(h) Liability of health insurance carriers, prepaid health plans, and benefit providers

No policy of health insurance may make payment of benefits under the policy secondary to the payment of compensation under the Program and-

- (1) no State, and
- (2) no entity which provides health services on a prepaid basis or provides health benefits,

may make the provision of health services or health benefits secondary to the payment of compensation under the Program, except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(i) Source of compensation

(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, shall be made by the Secretary from appropriations under subsection (j).

(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1988, shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(j) Authorization

For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, there are authorized to be appropriated to the Department of Health and Human Services \$80,000,000 for fiscal year 1989, \$80,000,000 for fiscal year 1990, \$80,000,000 for fiscal year 1991, \$80,000,000 for fiscal year 1992, \$110,000,000 for fiscal year 1993, and \$110,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B). Amounts appropriated under this subsection shall remain available until expended.

(July 1, 1944, ch. 373, title XXI, §2115, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3767 ; amended Pub. L. 100-203, title IV, §§4302(b), 4303(a)-(d)(1), (e), (g), 4307(5), (6), Dec. 22, 1987, 101 Stat. 1330-221 to 1330-223, 1330-225; Pub. L. 100-360, title IV, §411(o)(1), July 1, 1988, 102 Stat. 808 ; Pub. L. 101-239, title VI, §6601(c)(8), (l), Dec. 19, 1989, 103 Stat. 2286 , 2290; Pub. L. 101-502, §5(d), Nov. 3, 1990, 104 Stat. 1287 ; Pub. L. 102-168, title II, §201(e), (f), Nov. 26, 1991, 105 Stat. 1103 ; Pub. L. 102-531, title III, §314, Oct. 27, 1992, 106 Stat. 3508 ; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516 ; Pub. L. 103-66, title XIII, §13632(b), Aug. 10, 1993, 107 Stat. 646 .)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (f)(3), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038 . Part C of the Act is classified generally to subchapter I (§900 et seq.) of chapter 20 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

The Social Security Act, referred to in subsecs. (g) and (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620 , as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsecs. (a), (b), (e)(2), (f)(4)(B), (i), and (j), "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-15, act July 1, 1944, §2116, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

A prior section 2115 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238l of this title.

AMENDMENTS

1993-Subsec. (j). Pub. L. 103–66 substituted "\$110,000,000 for each succeeding fiscal year" for "\$80,000,000 for each succeeding fiscal year".

1992-Subsecs. (e)(1), (f)(2). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (j). Pub. L. 102–531 increased authorization for fiscal year 1993 from \$80,000,000 to \$110,000,000.

1991-Subsec. (f)(4)(A). Pub. L. 102–168, §201(e)(1)(A), (2), struck out "of the proceeds" after "portion" and substituted "Vaccine Injury Compensation Trust Fund established under section 9510 of title 26" for "trust fund".

Subsec. (f)(4)(B). Pub. L. 102–168, §201(e)(1)(B), which directed substitution of "shall be paid from appropriations made available under subsection (j) in a lump sum of which all or a portion" for "paid in 4 equal installments of which all or portion of the proceeds" was executed by making the substitution for "paid in 4 equal annual installments of which all or a portion of the proceeds" to reflect the probable intent of Congress.

Subsec. (f)(4)(C). Pub. L. 102–168, §201(f), added subpar. (C).

1990-Subsec. (e)(2). Pub. L. 101–502, §5(d)(1), inserted "of compensation" before "limited to the costs".

Subsec. (f)(2). Pub. L. 101–502, §5(d)(2)(A), substituted "section 300aa–21(a)" for "section 300aa–21(b)".

Subsec. (f)(4)(B). Pub. L. 101–502, §5(d)(2)(B), substituted "subsection (j)" for "subsection (i)" and "the limitation on civil actions prescribed by section 300aa–21(a) of this title" for "section 300aa–11(a) of this title".

Subsec. (j). Pub. L. 101–502, §5(d)(3), inserted before period at end of first sentence ", and \$80,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B)".

1989-Subsec. (b). Pub. L. 101–239, §6601(l)(1), substituted "may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) and may also include an amount, not to exceed a combined total of \$30,000, for-" and cls. (1) to (3) for "may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed \$30,000."

Subsec. (e)(1). Pub. L. 101–239, §6601(l)(2)(A), substituted "In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover" for "The judgment of the United States Claims Court on a petition filed under section 300aa–11 of this title awarding compensation shall include an amount to cover".

Pub. L. 101–239, §6601(l)(2)(B), (C), substituted "the special master or court may award an amount of compensation to cover" for "the court may include in the judgment an amount to cover" and "the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition" for "the court determines that the civil action was brought in good faith and there was a reasonable basis for the claim for which the civil action".

Subsec. (e)(2). Pub. L. 101–239, §6601(l)(2)(D), which directed amendment of par. (2) by substituting "the special master or court may also award an amount of compensation" for "the judgment of the court on such petition may include an amount", could not be executed because of the prior amendment by Pub. L. 101–239, §6601(c)(8)(B), see Amendment note below.

Pub. L. 101–239, §6601(c)(8), substituted "and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed" for "and elected under section 300aa–11(a)(4) of this title to withdraw such action" and "in awarding compensation on such petition the special master or court may include" for "the judgment of the court on such petition may include".

Subsec. (e)(3). Pub. L. 101–239, §6601(l)(2)(E), substituted "awarded as compensation by the special master or court under paragraph (1)" for "included under paragraph (1) in a judgment on such petition".

Subsec. (f)(3). Pub. L. 101–239, §6601(l)(3)(A), inserted "under the Program and the costs of carrying out the Program" after "Payments of compensation".

Subsec. (f)(4)(A). Pub. L. 101–239, §6601(l)(3)(B), struck out "made in a lump sum" after "the Program shall be" and inserted "and shall be paid from the trust fund in a lump sum of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner" after "elements of the compensation".

Subsec. (f)(4)(B). Pub. L. 101–239, §6601(l)(3)(C), substituted "determined on the basis of the net present value of the elements of compensation and paid in 4 equal annual installments of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be

in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum" for "paid in 4 equal annual installments".

Subsec. (g). Pub. L. 101–239, §6601(l)(4)(A), inserted "(other than under title XIX of the Social Security Act)" after "State health benefits program".

Subsec. (h). Pub. L. 101–239, §6601(l)(4)(B), inserted before period at end ", except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act".

Subsec. (i)(1). Pub. L. 101–239, §6601(l)(5), which directed amendment of par. (1) by substituting "(j)" for "(i)", could not be executed because "(i)" did not appear.

Subsec. (j). Pub. L. 101–239, §6601(l)(6), struck out "and" after "fiscal year 1991," and inserted ", \$80,000,000 for fiscal year 1993" after "fiscal year 1992".

1988-Subsec. (i)(1). Pub. L. 100–360, §411(o)(1)(A), substituted "by the Secretary from appropriations under subsection (j)" for "from appropriations under subsection (i)".

Subsec. (j). Pub. L. 100–360, §411(o)(1)(B), inserted "to the Department of Health and Human Services".

1987-Subsec. (a). Pub. L. 100–203, §4302(b)(1), substituted "effective date of this subpart" for "effective date of this part".

Pub. L. 100–203, §4303(d)(1)(A), struck out last two sentences which read as follows: "Payments for projected expenses shall be paid on a periodic basis (but no payment may be made for a period in excess of 1 year). Payments for pain and suffering and emotional distress and incurred expenses may be paid in a lump sum."

Subsec. (a)(1). Pub. L. 100–203, §4303(c), struck out last sentence of subpars. (A) and (B) each of which read as follows: "The amount of unreimbursable expenses which may be recovered under this subparagraph shall be limited to the amount in excess of the amount set forth in section 300aa–11(c)(1)(D) (ii) of this title."

Subsec. (b). Pub. L. 100–203, §4303(e), substituted "may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed \$30,000" for "shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section".

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

Subsec. (e)(1). Pub. L. 100–203, §4307(5), substituted "of the United States Claims Court" for "of a court" in two places.

Subsec. (e)(2). Pub. L. 100–203, §4302(b), substituted "effective date of this subpart, filed a" for "effective date of this subchapter, filed a" and "effective date of this subpart in preparing" for "effective date of this part in preparing".

Subsec. (f). Pub. L. 100–203, §4303(d)(1)(B), (g), added par. (4) and redesignated a second subsec. (f), relating to the Program not being primarily liable, as subsec. (g).

Subsec. (f)(2). Pub. L. 100–203, §4307(6), substituted "United States Claims Court" for "district court of the United States".

Subsecs. (g), (h). Pub. L. 100–203, §4303(g), redesignated a second subsec. (f), relating to the Program not being liable, as (g) and redesignated former subsec. (g) as (h).

Subsecs. (i), (j). Pub. L. 100–203, §4303(a), (b), added subsecs. (i) and (j).

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

Amendment by section 201(f) of 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

Amendment by Pub. L. 101–239 applicable to all pending and subsequently filed petitions, see section 6601(s)(2) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

¹ So in original. Probably should be preceded by another closing parenthesis.