

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.

### § 300aa-16. Limitations of actions

#### (a) General rule

In the case of—

(1) a vaccine set forth in the Vaccine Injury Table which is administered before October 1, 1988, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury or death after the expiration of 28 months after October 1, 1988, 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,

(2) a vaccine set forth in the Vaccine Injury Table which is administered after October 1,

1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury, and

(3) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death and no such petition may be filed more than 48 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of the injury from which the death resulted.

**(b) Effect of revised table**

If at any time the Vaccine Injury Table is revised and the effect of such revision is to permit an individual who was not, before such revision, eligible to seek compensation under the Program, or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa-11(b)(2) of this title, file a petition for such compensation not later than 2 years after the effective date of the revision, except that no compensation may be provided under the Program with respect to a vaccine-related injury or death covered under the revision of the table if—

(1) the vaccine-related death occurred more than 8 years before the date of the revision of the table, or

(2) the vaccine-related injury occurred more than 8 years before the date of the revision of the table.

**(c) State limitations of actions**

If a petition is filed under section 300aa-11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition is filed and ending on the date (1) an election is made under section 300aa-21(a) of this title to file the civil action or (2) an election is made under section 300aa-21(b) of this title to withdraw the petition.

(July 1, 1944, ch. 373, title XXI, §2116, as added Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3769; amended Pub. L. 100-203, title IV, §4302(b)(2), Dec. 22, 1987, 101 Stat. 1330-221; Pub. L. 101-239, title VI, §6601(m)(1), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101-502, §5(e), Nov. 3, 1990, 104 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 subrogated<sup>1</sup> to all rights of the petitioner 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) of this section 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,

<sup>1</sup> So in original. Probably should be “subrogated”.