

-CITE-

42 USC Sec. 300aa-12

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-EXPCITE-

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

-HEAD-

Sec. 300aa-12. Court jurisdiction

-STATUTE-

(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 annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316, title 5.

(6) The chief special master shall be responsible for the following:

(A) Administering the office of special masters and their staff, providing for the efficient, expeditious, and effective handling of petitions, and performing such other duties related to the Program as may be assigned to the chief special master by

a concurrence of a majority of the United States Claims Courts
(!1) judges.

(B) Appointing and fixing the salary and duties of such administrative staff as are necessary. Such staff shall be subject to removal for good cause by the chief special master.

(C) Managing and executing all aspects of budgetary and administrative affairs affecting the special masters and their staff, subject to the rules and regulations of the Judicial Conference of the United States. The Conference rules and regulations pertaining to United States magistrate judges shall be applied to the special masters.

(D) Coordinating with the United States Court of Federal Claims the use of services, equipment, personnel, information, and facilities of the United States Court of Federal Claims without reimbursement.

(E) Reporting annually to the Congress and the judges of the United States Court of Federal Claims on the number of petitions filed under section 300aa-11 of this title and their disposition, the dates on which the vaccine-related injuries and deaths for which the petitions were filed occurred, the types and amounts of awards, the length of time for the disposition of petitions, the cost of administering the Program, and recommendations for changes in the Program.

(d) Special masters

(1) Following the receipt and filing of a petition under section

300aa-11 of this title, the clerk of the United States Court of Federal Claims shall forward the petition to the chief special master who shall designate a special master to carry out the functions authorized by paragraph (3).

(2) The special masters shall recommend rules to the Court of Federal Claims and, taking into account such recommended rules, the Court of Federal Claims shall promulgate rules pursuant to section 2071 of title 28. Such rules shall -

(A) provide for a less-adversarial, expeditious, and informal proceeding for the resolution of petitions,

(B) include flexible and informal standards of admissibility of evidence,

(C) include the opportunity for summary judgment,

(D) include the opportunity for parties to submit arguments and evidence on the record without requiring routine use of oral presentations, cross examinations, or hearings, and

(E) provide for limitations on discovery and allow the special masters to replace the usual rules of discovery in civil actions in the United States Court of Federal Claims.

(3)(A) A special master to whom a petition has been assigned shall issue a decision on such petition with respect to whether compensation is to be provided under the Program and the amount of such compensation. The decision of the special master shall -

(i) include findings of fact and conclusions of law, and

(ii) be issued as expeditiously as practicable but not later

than 240 days, exclusive of suspended time under subparagraph (C), after the date the petition was filed.

The decision of the special master may be reviewed by the United States Court of Federal Claims in accordance with subsection (e) of this section.

(B) In conducting a proceeding on a petition a special master -

(i) may require such evidence as may be reasonable and necessary,

(ii) may require the submission of such information as may be reasonable and necessary,

(iii) may require the testimony of any person and the production of any documents as may be reasonable and necessary,

(iv) shall afford all interested persons an opportunity to submit relevant written information -

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

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

(v) may conduct such hearings as may be reasonable and necessary.

There may be no discovery in a proceeding on a petition other than the discovery required by the special master.

(C) In conducting a proceeding on a petition a special master shall suspend the proceedings one time for 30 days on the motion of

either party. After a motion for suspension is granted, further motions for suspension by either party may be granted by the special master, if the special master determines the suspension is reasonable and necessary, for an aggregate period not to exceed 150 days.

(D) If, in reviewing proceedings on petitions for vaccine-related injuries or deaths associated with the administration of vaccines before October 1, 1988, the chief special master determines that the number of filings and resultant workload place an undue burden on the parties or the special master involved in such proceedings, the chief special master may, in the interest of justice, suspend proceedings on any petition for up to 30 months (but for not more than 6 months at a time) in addition to the suspension time under subparagraph (C).

(4)(A) Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

(B) A decision of a special master or the court in a proceeding shall be disclosed, except that if the decision is to include information -

(i) which is trade secret or commercial or financial information which is privileged and confidential, or

(ii) which are medical files and similar files the disclosure

of which would constitute a clearly unwarranted invasion of
privacy,

and if the person who submitted such information objects to the
inclusion of such information in the decision, the decision shall
be disclosed without such information.

(e) Action by United States Court of Federal Claims

(1) Upon issuance of the special master's decision, the parties
shall have 30 days to file with the clerk of the United States
Court of Federal Claims a motion to have the court review the
decision. If such a motion is filed, the other party shall file a
response with the clerk of the United States Court of Federal
Claims no later than 30 days after the filing of such motion.

(2) Upon the filing of a motion under paragraph (1) with respect
to a petition, the United States Court of Federal Claims shall have
jurisdiction to undertake a review of the record of the proceedings
and may thereafter -

(A) uphold the findings of fact and conclusions of law of the
special master and sustain the special master's decision,

(B) set aside any findings of fact or conclusion of law of the
special master found to be arbitrary, capricious, an abuse of
discretion, or otherwise not in accordance with law and issue its
own findings of fact and conclusions of law, or

(C) remand the petition to the special master for further
action in accordance with the court's direction.

The court shall complete its action on a petition within 120 days

of the filing of a response under paragraph (1) excluding any days the petition is before a special master as a result of a remand under subparagraph (C). The court may allow not more than 90 days for remands under subparagraph (C).

(3) In the absence of a motion under paragraph (1) respecting the special master's decision or if the United States Court of Federal Claims takes the action described in paragraph (2)(A) with respect to the special master's decision, the clerk of the United States Court of Federal Claims shall immediately enter judgment in accordance with the special master's decision.

(f) Appeals

The findings of fact and conclusions of law of the United States Court of Federal Claims on a petition shall be final determinations of the matters involved, except that the Secretary or any petitioner aggrieved by the findings or conclusions of the court may obtain review of the judgment of the court in the United States court of appeals for the Federal Circuit upon petition filed within 60 days of the date of the judgment with such court of appeals within 60 days of the date of entry of the United States Claims Court's (!2) judgment with such court of appeals.

(g) Notice

If -

(1) a special master fails to make a decision on a petition within the 240 days prescribed by subsection (d)(3)(A)(ii) of this section (excluding (A) any period of suspension under

subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section), or

(2) the United States Court of Federal Claims fails to enter a judgment under this section on a petition within 420 days (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section) after the date on which the petition was filed,

the special master or court shall notify the petitioner under such petition that the petitioner may withdraw the petition under section 300aa-21(b) of this title or the petitioner may choose under section 300aa-21(b) of this title to have the petition remain before the special master or court, as the case may be.

-SOURCE-

(July 1, 1944, ch. 373, title XXI, Sec. 2112, as added Pub. L. 99-660, title III, Sec. 311(a), Nov. 14, 1986, 100 Stat. 3761; amended Pub. L. 100-203, title IV, Secs. 4303(d)(2)(A), 4307(3), 4308(a), (b), Dec. 22, 1987, 101 Stat. 1330-222, 1330-224; Pub. L. 100-360, title IV, Sec. 411(o)(2), (3)(A), July 1, 1988, 102 Stat. 808; Pub. L. 101-239, title VI, Sec. 6601(d)-(i), Dec. 19, 1989, 103 Stat. 2286-2290; Pub. L. 101-502, Sec. 5(b), Nov. 3, 1990, 104 Stat. 1286; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102-168, title II, Sec. 201(c), (d)(1), (h)(2),

(3), Nov. 26, 1991, 105 Stat. 1103, 1104; Pub. L. 102-572, title IX, Sec. 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-66, title XIII, Sec. 13632(c), Aug. 10, 1993, 107 Stat. 646.)

-COD-

CODIFICATION

In subsec. (c)(4), "on December 19, 1989," substituted for "upon the date of the enactment of this subsection" and "on the date of the enactment of this subsection".

In subsec. (d)(3)(D), "October 1, 1988," substituted for "the effective date of this part".

-MISC1-

PRIOR PROVISIONS

A prior section 300aa-12, act July 1, 1944, Sec. 2113, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

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

AMENDMENTS

1993 - Subsec. (d)(3)(D). Pub. L. 103-66 substituted "30 months (but for not more than 6 months at a time)" for "540 days".

1992 - Subsecs. (a), (c) to (g). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court" and "Court of Federal Claims" for "Claims Court", wherever appearing.

1991 - Subsec. (d)(3)(D). Pub. L. 102-168, Sec. 201(c), (h)(2), realigned margin and substituted "540 days" for "180 days".

Subsec. (g). Pub. L. 102-168, Sec. 201(h)(3), made technical amendment to underlying provisions of original Act.

Pub. L. 102-168, Sec. 201(d)(1), substituted "or the petitioner may choose under section 300aa-21(b) of this title to have the petition remain before the special master or court, as the case may be" for "and the petition will be considered withdrawn under such section if the petitioner, the special master, or the court do not take certain actions" before period at end.

1990 - Subsec. (d)(3)(D). Pub. L. 101-502, Sec. 5(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 101-502, Sec. 5(b)(2), added subsec. (g).

1989 - Subsec. (a). Pub. L. 101-239, Sec. 6601(d), substituted "and the United States Claims Court special masters shall, in accordance with this section, have jurisdiction" for "shall have jurisdiction (1)", ". The United States Claims Court may issue" for ", and (2) to issue", and "deems" for "deem".

Subsec. (b)(1). Pub. L. 101-239, Sec. 6601(f), substituted "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." for "The Secretary shall be named as the respondent in all proceedings brought by the filing of a petition under section 300aa-11(b) of this title.

Except as provided in paragraph (2), no other person may intervene in any such proceeding."

Subsec. (c). Pub. L. 101-239, Sec. 6601(e)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101-239, Sec. 6601(e)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 101-239, Sec. 6601(g)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"Following receipt of a petition under subsection (a) of this section, the United States Claims Court shall designate a special master to carry out the functions authorized by paragraph (2)."

Subsec. (d)(2) to (4). Pub. L. 101-239, Sec. 6601(g)(2), added pars. (2) to (4) and struck out former par. (2) which prescribed functions of special masters.

Subsec. (e). Pub. L. 101-239, Sec. 6601(h), substituted "Action by United States Claims Court" for "Action by court" as heading and amended text generally. Prior to amendment, text read as follows:

"(1) Upon objection by the petitioner or respondent to the proposed findings of fact or conclusions of law prepared by the special master or upon the court's own motion, the court shall undertake a review of the record of the proceedings and may thereafter make a de novo determination of any matter and issue its judgment accordingly, including findings of fact and conclusions of law, or remand for further proceedings.

"(2) If no objection is filed under paragraph (1) or if the court

does not choose to review the proceeding, the court shall adopt the proposed findings of fact and conclusions of law of the special master as its own and render judgment thereon.

"(3) The court shall render its judgment on any petition filed under the Program as expeditiously as practicable but not later than 365 days after the date on which the petition was filed."

Pub. L. 101-239, Sec. 6601(e)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101-239, Sec. 6601(i), inserted "within 60 days of the date of entry of the United States Claims Court's judgment with such court of appeals" after "with such court of appeals".

Pub. L. 101-239, Sec. 6601(e)(1), redesignated subsec. (e) as (f).

1988 - Subsec. (c)(2). Pub. L. 100-360, Sec. 411(o)(3)(A), added Pub. L. 100-203, Sec. 4308(a), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100-360, Sec. 411(o)(2), made technical amendment to directory language of Pub. L. 100-203, Sec. 4307(3)(C), see 1987 Amendment note below.

Pub. L. 100-360, Sec. 411(o)(3)(A), added Pub. L. 100-203, Sec. 4308(b), see 1987 Amendment note below.

1987 - Subsec. (a). Pub. L. 100-203, Sec. 4307(3)(A), substituted "United States Claims Court" for "district courts of the United States" and "the court" for "the courts".

Subsec. (c)(1). Pub. L. 100-203, Sec. 4307(3)(B), substituted

"the United States Claims Court" for "the district court of the United States in which the petition is filed".

Subsec. (c)(2). Pub. L. 100-203, Sec. 4308(a), as added by Pub. L. 100-360, Sec. 411(o)(3)(A), inserted ", shall prepare and submit to the court proposed findings of fact and conclusions of law," in introductory provisions and struck out subpar. (E) which read as follows: "prepare and submit to the court proposed findings of fact and conclusions of law."

Subsec. (e). Pub. L. 100-203, Sec. 4308(b), as added by Pub. L. 100-360, Sec. 411(o)(3)(A), inserted "within 60 days of the date of the judgment" after "petition filed".

Pub. L. 100-203, Sec. 4307(3)(C), as amended by Pub. L. 100-360, Sec. 411(o)(2), substituted "the United States Claims Court" for "a district court of the United States" and "for the Federal Circuit" for "for the circuit in which the court is located".

Pub. L. 100-203, Sec. 4303(d)(2)(A), redesignated subsec. (g) as (e) and struck out former subsec. (e) relating to administration of an award.

Subsec. (f). Pub. L. 100-203, Sec. 4303(d)(2)(A), struck out subsec. (f) which related to revision of an award.

Subsec. (g). Pub. L. 100-203, Sec. 4303(d)(2)(A), redesignated subsec. (g) as (e).

-CHANGE-

CHANGE OF NAME

"United States magistrate judges" substituted for "United States

magistrates" in subsec. (c)(6)(C) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

-MISC2-

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(d)(1) 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

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, except that such suspension be excluded in determining the 240-day period prescribed in subsec. (d) of this section, see section 6601(s)(1) 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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(6)(E) of this section relating to reporting annually to the Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 13 of House Document No. 103-7.

REVIEW BY 3-JUDGE PANEL

Section 322(c) of Pub. L. 99-660, as added by Pub. L. 101-502, Sec. 5(g)(2), Nov. 3, 1990, 104 Stat. 1288, and amended by Pub. L. 102-572, title IX, Sec. 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: "If the review authorized by section 2112(f) [subsec. (f) of this section] is held invalid because the judgment of the United States Court of Federal Claims being reviewed did not arise from a case or controversy under Article III of the Constitution, such judgment shall be reviewed by a 3-judge panel of the United States Court of Federal Claims. Such panel shall not

include the judge who participated in such judgment."

[Enactment of section 322(c) of Pub. L. 99-660 by section 5(g)(2) of Pub. L. 101-502, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101-502, set out as an Effective Date of 1990 Amendment note under section 300aa-11 of this title.]

-FOOTNOTE-

(!1) So in original. Probably should be a reference to the United States Court of Federal Claims.

(!2) So in original. Probably should be a reference to the United States Court of Federal Claims.