

111TH CONGRESS
1ST SESSION

H. R. 2459

To amend the Public Health Service Act with respect to the National Vaccine Injury Compensation Program.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2009

Mr. BURTON of Indiana (for himself and Mr. WEXLER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act with respect to the National Vaccine Injury Compensation Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Vaccine In-
5 jury Compensation Program Improvement Act of 2009”.

6 **SEC. 2. BASIS FOR CALCULATING PROJECTED LOST EARN-**
7 **INGS.**

8 Section 2115(a)(3)(B) of the Public Health Service
9 Act (42 U.S.C. 300aa–15(a)(3)(B)) is amended by strik-
10 ing all that follows “for loss of earnings” and inserting

1 the following: “determined on the basis of the annual esti-
2 mate of the average (mean) gross weekly earnings of full-
3 time wage and salary workers age 18 and over in the pri-
4 vate nonfarm sector (which includes all industries other
5 than agricultural production of crops and livestock), as
6 calculated annually by the Bureau of Labor Statistics
7 from the quarter sample data of the Current Population
8 Survey, or as calculated by such similar method as the
9 Secretary may prescribe by regulation, less appropriate
10 taxes and the average cost of a health insurance policy,
11 as determined by the Secretary.”.

12 **SEC. 3. INCREASE OF AWARD IN THE CASE OF A VACCINE-**
13 **RELATED DEATH.**

14 Section 2115(a)(2) of the Public Health Service Act
15 (42 U.S.C. 300aa–15(a)(2)) is amended by striking
16 “\$250,000” and inserting “\$300,000”.

17 **SEC. 4. ALLOWING COMPENSATION FOR FAMILY COUN-**
18 **SELING EXPENSES AND EXPENSES OF ESTAB-**
19 **LISHING GUARDIANSHIP.**

20 (a) FAMILY COUNSELING EXPENSES IN POST-1988
21 CASES.—Section 2115(a) of the Public Health Service Act
22 (42 U.S.C. 300aa–15(a)) is amended by adding at the end
23 the following:

24 “(5) Actual nonreimbursable expenses that have
25 been or will be incurred for family counseling deter-

1 mined to be reasonably necessary and that result
2 from the vaccine-related injury for which the peti-
3 tioner seeks compensation.”.

4 (b) EXPENSES OF ESTABLISHING GUARDIANSHIPS IN
5 POST-1988 CASES.—Section 2115(a) of the Public Health
6 Service Act (42 U.S.C. 300aa–15(a)) is further amended
7 by adding at the end the following paragraph:

8 “(6) Actual and nonreimbursable expenses that
9 have been or will be incurred to establish and main-
10 tain a guardianship, conservatorship, or trust for an
11 individual who has suffered a vaccine-related injury,
12 including attorneys’ fees and other costs incurred in
13 a proceeding to establish and maintain such a
14 guardianship, conservatorship, or trust.”.

15 (c) CONFORMING AMENDMENT FOR CASES FROM
16 1988 AND EARLIER.—Section 2115(b) of the Public
17 Health Service Act (42 U.S.C. 300aa–15(b)) is amend-
18 ed—

19 (1) in paragraph (2), by striking “and” at the
20 end of the paragraph;

21 (2) by redesignating paragraph (3) as para-
22 graph (5) and by inserting a closing parenthesis be-
23 fore the period in that paragraph; and

24 (3) by inserting after paragraph (2) the fol-
25 lowing paragraphs:

1 “(3) family counseling expenses (as provided in
2 paragraph (5) of subsection (a)),

3 “(4) expenses of establishing and maintaining
4 guardianships, conservatorships, or trusts (as pro-
5 vided in paragraph (6) of subsection (a)), and”.

6 **SEC. 5. ALLOWING PAYMENT OF INTERIM ATTORNEYS’**
7 **FEES AND COSTS.**

8 Section 2115(e) of the Public Health Service Act (42
9 U.S.C. 300aa–15(e)) is amended by adding at the end the
10 following:

11 “(4) Upon completion of a conference required
12 by Rule 5 of Appendix J of the Rules of the United
13 States Court of Federal Claims, a special master
14 may make an interim award of attorneys’ fees and
15 costs if—

16 “(A) the case involves a vaccine adminis-
17 tered on or after October 1, 1988,

18 “(B) in tentative findings and conclusions,
19 the special master determines that the peti-
20 tioner’s claim has a reasonable basis,

21 “(C) the award is limited to reasonable at-
22 torneys’ fees and other costs (within the mean-
23 ing of paragraph (1)(B)) incurred in the pro-
24 ceeding, and

1 “(D) the petitioner provides documentation
2 verifying the expenditure of the amount for
3 which compensation is sought.

4 “(5) An interim award of attorneys’ fees and
5 costs by a special master under paragraph (4) shall
6 be promptly paid by the Secretary pursuant to the
7 special master’s order and without need of a judg-
8 ment. The special master’s order for interim attor-
9 neys’ fees and costs is not subject to review under
10 sections 2112(e) and 2112(f) until after the special
11 master has made a determination regarding an
12 award of attorneys’ fees and costs under paragraph
13 (1).

14 “(6) The attorneys’ fees and costs awarded as
15 compensation on a petition under paragraph (1)
16 shall be for the total attorneys’ fees and costs in-
17 curred in any proceeding on such petition, less the
18 amount awarded for interim attorneys’ fees and
19 costs. In determining fees and costs under para-
20 graph (1), a special master may reconsider and mod-
21 ify the amounts awarded for fees and costs under
22 paragraph (4).”.

1 **SEC. 6. PROCEDURE FOR PAYING ATTORNEYS' FEES.**

2 Section 2115(e) of the Public Health Service Act (42
3 U.S.C. 300aa-15(e)), as amended by section 5, is amend-
4 ed by adding at the end the following:

5 “(7) When a special master or court awards at-
6 torneys’ fees or costs under paragraph (1) or (4), it
7 may order that such fees and costs be payable solely
8 to the petitioner’s attorney if—

9 “(A) the petitioner expressly consents, or

10 “(B) the special master or court, after af-
11 fording to the Secretary and all interested per-
12 sons the opportunity to submit relevant infor-
13 mation, determines that—

14 “(i) the petitioner cannot be located
15 or refuses to respond to a request by the
16 special master or court for information,
17 and there is no practical alternative means
18 to ensure that the attorney will be reim-
19 bursed for such fees and costs expedi-
20 tiously, or

21 “(ii) there are other exceptional cir-
22 cumstances and good cause for paying
23 such fees and costs solely to the peti-
24 tioner’s attorney.”.

1 **SEC. 7. EXTENSION OF STATUTE OF LIMITATIONS.**

2 (a) GENERAL RULE.—Section 2116(a) of the Public
3 Health Service Act (42 U.S.C. 300aa–16(a)) is amend-
4 ed—

5 (1) in paragraph (2), by striking “36 months”
6 and inserting “6 years”; and

7 (2) in paragraph (3)—

8 (A) by striking “24 months” and inserting
9 “6 years”; and

10 (B) by striking “48 months” and inserting
11 “6 years”.

12 (b) ADDITIONAL EXTENSION.—

13 (1) LIMITATION PERIOD.—Notwithstanding sec-
14 tion 2116(a) of the Public Health Service Act (42
15 U.S.C. 300aa–16(a)), in the case of a vaccine set
16 forth in the Vaccine Injury Table that is adminis-
17 tered after September 30, 1988, and before the date
18 of the enactment of this Act, if a vaccine-related in-
19 jury or death occurred as a result of the administra-
20 tion of such vaccine, the end of the limitation period
21 for filing a petition is the later of—

22 (A) the applicable date under section
23 2116(a) of the Public Health Service Act (42
24 U.S.C. 300aa–16(a)); or

25 (B) the date that is 2 years after the date
26 of the enactment of this Act.

1 (2) EFFECT OF PREVIOUS DISMISSAL.—Not-
2 withstanding section 2111(b)(2) of the Public
3 Health Service Act (42 U.S.C. 300aa–11(b)(2)), if a
4 petition is filed within the limitation period applica-
5 ble under paragraph (1), the petition may not be
6 dismissed on the basis of a previous dismissal for
7 untimely filing.

8 (c) CLAIMS BASED ON REVISIONS TO TABLE.—Sec-
9 tion 2116(b) of the Public Health Service Act (42 U.S.C.
10 300aa–16(b)) is amended by striking all that follows “file
11 a petition for such compensation” and inserting the fol-
12 lowing: “if—

13 “(1) the vaccine-related death or injury with re-
14 spect to which the petition is filed occurred no more
15 than 8 years before the effective date of the revision
16 of the table; and

17 “(2)(A) the petition satisfies the conditions
18 stated in subsection (a); or

19 “(B) the date of occurrence of the first symp-
20 tom or manifestation of onset of injury occurred
21 more than 4 years before the petition is filed, and
22 the petition is filed no more than 2 years after the
23 effective date of the revision of the table.”.

24 (d) REPORTS.—

1 (1) TRANSMISSION.—The Secretary of Health
2 and Human Services shall transmit to the Congress
3 two annual reports that shall each include the fol-
4 lowing:

5 (A) Identification of the number of peti-
6 tions filed for compensation under the National
7 Vaccine Injury Compensation Program that
8 would have been time-barred absent the limita-
9 tion period provided by subsection (b).

10 (B) Describe the effects of subsection (b)
11 on the ability of the Secretary to administer the
12 National Vaccine Injury Compensation Program
13 and adjudicate petitions under such Program in
14 a timely manner.

15 (2) DATES OF SUBMISSION.—In carrying out
16 this subsection, the Secretary of Health and Human
17 Services shall transmit—

18 (A) the first report not later than 1 year
19 after the date of the enactment of this Act; and

20 (B) the second report not later than 2
21 years after the date of the enactment of this
22 Act.

23 **SEC. 8. ADVISORY COMMISSION ON CHILDHOOD VACCINES.**

24 (a) SELECTION OF INDIVIDUALS INJURED BY VAC-
25 CINES AS PUBLIC MEMBERS.—Section 2119(a)(1)(B) of

1 the Public Health Service Act (42 U.S.C. 300aa–
2 19(a)(1)(B)) is amended by striking all that follows the
3 comma and inserting the following: “of whom 1 shall be
4 the legal representative of a child who has suffered a vac-
5 cine-related injury or death, and at least 1 other shall be
6 either the legal representative of a child who has suffered
7 a vaccine-related injury or death or an individual who has
8 personally suffered a vaccine-related injury.”.

9 (b) MANDATORY MEETING SCHEDULE ELIMI-
10 NATED.—Section 2119(c) of the Public Health Service Act
11 (42 U.S.C. 300aa–19(c)) is amended by striking “not less
12 often than four times per year and”.

13 **SEC. 9. CONFORMING AMENDMENT TO TRUST FUND PROVI-**
14 **SION.**

15 Section 9510(c)(1)(A) of the Internal Revenue Code
16 of 1986 is amended by striking “(as in effect” and all
17 that follows through “for vaccine-related injury or death”
18 and inserting “(as in effect on the effective date of the
19 National Vaccine Injury Compensation Program Improve-
20 ment Act of 2009) for vaccine-related injury or death”.

21 **SEC. 10. INCREASE IN LIMIT ON ADMINISTRATIVE EX-**
22 **PENSES.**

23 (a) INCREASE IN LIMIT ON ADMINISTRATIVE EX-
24 PENSES.—Section 9510(c)(1)(B) of the Internal Revenue
25 Code of 1986 is amended by striking “(but not in excess

1 of \$9,500,000 for any fiscal year)” and inserting “(but
2 not in excess of \$10,000,000 for any fiscal year)”.

3 (b) ADMINISTRATIVE EXPENSES OF BUREAU OF
4 PUBLIC DEBT.—Section 9510(c)(1) of the Internal Rev-
5 enue Code of 1986, as amended by section 9 and sub-
6 section (a), is further amended—

7 (1) in subparagraph (A)(ii), by striking “or” at
8 the end;

9 (2) in subparagraph (B), by striking the period
10 at the end and inserting “, or”; and

11 (3) by adding at the end the following:

12 “(C) the payment of administrative and
13 personnel expenses that the Bureau of the Pub-
14 lic Debt incurs for financial services for the
15 Trust Fund.”.

16 **SEC. 11. PUBLIC SERVICE ANNOUNCEMENT CAMPAIGN.**

17 Section 2110(c) of the Public Health Service Act (42
18 U.S.C. 300aa–10(c)) is amended by striking the period at
19 the end and inserting “, including by conducting a public
20 service announcement campaign.”.

21 **SEC. 12. APPLICATION.**

22 The provisions of and amendments made by sections
23 2, 3, 4, 5, 6, 7, and 9 apply to a petition filed under sec-
24 tion 2111 of the Public Health Service Act (42 U.S.C.

1 300aa–11) if the petition is pending on or filed after the
2 date of the enactment of this Act.

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