

106TH CONGRESS
2D SESSION

H. R. 5330

To amend the Vaccine Injury Compensation Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2000

Mr. NADLER introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To amend the Vaccine Injury Compensation Program, and
for other purposes.

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 “Vaccine Injury Com-
5 pensation Program Corrective Amendments of 2000”.

6 **SEC. 2. PURPOSE OF PROGRAM.**

7 Section 2110(a) of the Public Health Service Act (42
8 U.S.C. 300aa–10(a)) is amended by adding the following

1 sentence: “This compensation program is a remedial pro-
2 gram that is to be liberally construed, both as to causation
3 and damages, in a fashion that gives broad effect to the
4 remedial purpose of this statute. Concepts of sovereign im-
5 munity do not apply in this program.”

6 **SEC. 3. THE BURDEN OF PROOF.**

7 The following changes shall be effective for all pend-
8 ing claims and all claims hereinafter filed:

9 (1) Section 2113(a)(1)(A) of such Act (42
10 U.S.C. 300aa–13(a)(1)(A)) is amended by striking
11 “a preponderance of the evidence”, and inserting in
12 its place to following: “submitting evidence sufficient
13 to justify a belief by a fair and impartial individual
14 that petitioner’s claims are well grounded as to”.

15 (2) Section 2113(a)(1) of such Act (42 U.S.C.
16 300aa–13(a)(1)) is amended by adding the following
17 new subparagraph: “(C) When, after consideration
18 of all evidence and material of record in a case,
19 there is an approximate balance of positive and neg-
20 ative evidence, while applying the burdens of proof
21 as amended, regarding the merits of an issue mate-
22 rial to the determination of the matter, the benefit
23 of the doubt in resolving each such issue shall be
24 given to petitioner.

1 (3) Section 2113(a)(2)(B) of such Act (42
2 U.S.C. 300aa–13(a)(2)(B)) is amended by inserting
3 after “or other material in the record,” the following
4 word “only” and by inserting a comma (,) following
5 the term “metabolic disturbances”.

6 (4) Section 2113(a)(2) of such Act (42 U.S.C.
7 300aa–13(a)(2)) is amended by adding the following
8 additional subparagraph:“(C) any defense raised by
9 respondent that the illness, disability, injury, condi-
10 tion, or death described in the petition was in fact
11 due to factors unrelated to the administration of the
12 vaccine must be proved by clear and convincing evi-
13 dence and may not be made on the basis of a repu-
14 diation of the Vaccine Injury Table.”

15 (5) Section 2113(b)(1) of such Act (42 U.S.C.
16 300aa–13(b)(1)) is amended by inserting a period
17 “.” after “the special master or court shall consider
18 the entire record”. Immediately after the newly in-
19 serted period, the section is further amended by
20 striking the word “and” and inserting the language
21 between the newly inserted period and “the course
22 of the injury”, as follows: “In the evaluation of dam-
23 ages and future needs, the special master shall con-
24 sider”.

1 **SEC. 4. COMPENSATION ISSUES.**

2 (a) Section 2115(a)(1)(A) of such Act (42 U.S.C.
3 300aa–15(a)(1)(A)) is amended by adding the following
4 additional clause: “(iv) are necessary for the establishment
5 and maintenance of a trust to receive program funds.”.

6 (b) Section 2115(a)(4) of such Act (42 U.S.C.
7 300aa–15(a)(4)) is amended by adding the following addi-
8 tional sentence: “No reduction to net present value shall
9 be applied to this portion of a petitioner’s award.”.

10 (c) Section 2115(a) of such Act (42 U.S.C. 300aa–
11 15(a)) is amended by adding the following additional para-
12 graph: “(5) Actual unreimbursable expenses that have
13 been or will be incurred for family counseling and/or train-
14 ing determined to be reasonably necessary and that result
15 from the vaccine-related injury for which the petitioner
16 seeks compensation.”.

17 (d) Section 2115(b)(3) of such Act (42 U.S.C.
18 300aa–15(b)(3)) is amended by striking this subsection.

19 (e) Section 2115(e) of such Act (42 U.S.C. 300aa–
20 15(e)) is amended by adding the following additional para-
21 graph: “(4) A petitioner, and/or an attorney representing
22 a petitioner may file applications for payment of fees and/
23 or reimbursement of costs associated with the representa-
24 tion of a petitioner during the pendency of a pre or post
25 October 1, 1988, injury claim. Each such application for
26 payment of fees and/or costs may not be made more fre-

1 quently than once every 90 days. Payment of fees and
2 costs, whether interim or final, shall be made directly to
3 the party claiming the fee and/or cost.”.

4 **SEC. 5. LIMITATIONS OF ACTIONS.**

5 (a) Section 2116(a)(2) of such Act (42 U.S.C.
6 300aa–16(a)(2)) is amended by striking the number
7 “36” and inserting in its place the number “72”.

8 (b) Section 2116(a)(3) of such Act (42 U.S.C.
9 300aa–16(a)(3)) is amended by striking the number
10 “24” and inserting in its place the number “36” and by
11 striking the number “48” and inserting in its place the
12 number “72”.

13 (c) Section 2116(a) of such Act (42 U.S.C. 300aa–
14 16(a)) is amended by adding the following new paragraph:
15 “(4) Notwithstanding the limitations contained in sections
16 1 through 3 above, the time period for filing a petition
17 shall be extended an additional 36 months from the date
18 the petitioner/or their legal representative first knew or
19 reasonably should have known that petitioner may have
20 been eligible for compensation under this program. (This
21 includes knowledge not only that the injuries and/or death
22 may have been caused by the vaccine, but also that a peti-
23 tion under this program was a potential remedy).

1 (d) Section 2116(b) of such Act (42 U.S.C. 300aa–
2 16(b)) is amended by striking “2 years” and inserting in
3 its place the following: “72 months”.

4 (e) Section 2116 of such Act (42 U.S.C. 300aa–16)
5 is amended by adding the following new subsection: “(d)
6 The statute of limitations for filing a petition in this pro-
7 gram shall be tolled until petitioner reaches the age of 18,
8 and, if a petitioner is incompetent, until 24 months after
9 a guardian is appointed or otherwise qualified by a court
10 of competent jurisdiction.”.

11 (f) Section 2116 of such Act (42 U.S.C. 300aa–16)
12 is amended by adding the following new subsection: “(e)
13 Notwithstanding the provisions of Section 2114(c)(4) (42
14 U.S.C. 300aa–14(c)(4)) or Section 2111(b)(2) (42 U.S.C.
15 300aa–11(b)(2)), if a petitioner who previously filed a pe-
16 tition under this program was denied compensation be-
17 cause of: (1) failure to satisfy the former \$1,000 unreim-
18 bursed expenses requirement of section 300aa–
19 11(c)(1)(D) (I); (2) failure to prove causation of an injury
20 which would now fit under the Table of Injuries as set
21 forth in Section 300aa–14 (a), as amended; (3) failure to
22 satisfy the filing deadlines set forth in Section 300aa–14,
23 if the petitioner would have satisfied the limitations of ac-
24 tions provisions as herein amended; or (4) failure to com-
25 ply with any other requirement of the program, if the peti-

1 tioner would have received compensation if the statute, as
2 now amended, had been in effect, the petitioner shall have
3 the right to refile his/her claim within 72 months after
4 reaching the age of majority or within 72 months after
5 the effective date of these amendments, which ever is
6 greater.

7 (g) Section 2115(e) of such Act (42 U.S.C. 300aa-
8 15(e)) is amended by adding the following additional para-
9 graph: “(4) A petitioner, and/or an attorney representing
10 a petitioner may file applications for payment of fees and/
11 or reimbursement of costs associated with the representa-
12 tion of a petitioner during the pendency of a pre or post
13 October 1, 1988, injury claim. Each such application for
14 payment of fees and/or costs may not be made more fre-
15 quently than once every 90 days. Payment of fees and
16 costs, whether interim or final, shall be made directly to
17 the party claiming the fee and/or cost.”

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