

108TH CONGRESS  
1ST SESSION

# H. R. 1349

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2003

Mr. BURTON of Indiana (for himself, Mr. PALLONE, Mr. SESSIONS, Mr. PAUL, Mrs. JO ANN DAVIS of Virginia, Mrs. MALONEY, Mr. FORD, Mr. MOORE, Mr. RYUN of Kansas, Mr. DUNCAN, Mr. STENHOLM, Mr. THORNBERRY, Mr. NADLER, Mr. WAMP, Mr. ALLEN, Mr. LATOURETTE, Mr. NORWOOD, Mr. ACKERMAN, Mr. PLATTS, Ms. WATSON, Mrs. CUBIN, Mr. SHAYS, Mr. GUTKNECHT, Mr. HOSTETTLER, Mr. HOEKSTRA, Mr. TANCREDO, Mr. TOOMEY, Mr. TURNER of Ohio, Mr. SMITH of Michigan, Mr. BARTLETT of Maryland, and Mr. JONES of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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 2003”.

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

3 Section 2115(a)(3)(B) of the Public Health Service  
4 Act (42 U.S.C. 300aa-15(a)(3)(B)) is amended by strik-  
5 ing all that follows “for loss of earnings” and inserting  
6 the following: “determined on the basis of the annual esti-  
7 mate of the average (mean) gross weekly earnings of full-  
8 time wage and salary workers age 18 and over in the pri-  
9 vate nonfarm sector (which includes all industries other  
10 than agricultural production of crops and livestock), as  
11 calculated annually by the Bureau of Labor Statistics  
12 from the quarter sample data of the Current Population  
13 Survey, or as calculated by such similar method as the  
14 Secretary may prescribe by regulation, less appropriate  
15 taxes and the average cost of a health insurance policy,  
16 as determined by the Secretary.”.

17 **SEC. 3. INCREASE OF AWARD IN THE CASE OF A VACCINE-**  
18 **RELATED DEATH.**

19 Section 2115(a)(2) of the Public Health Service Act  
20 (42 U.S.C. 300aa-15(a)(2)) is amended by striking  
21 “\$250,000” and inserting “\$300,000”.

22 **SEC. 4. ALLOWING COMPENSATION FOR FAMILY COUN-**  
23 **SELING EXPENSES AND EXPENSES OF ESTAB-**  
24 **LISHING GUARDIANSHIP.**

25 (a) FAMILY COUNSELING EXPENSES IN POST-1988  
26 CASES.—Section 2115(a) of the Public Health Service Act

1 (42 U.S.C. 300aa–15(a)) is amended by adding at the end  
2 the following:

3 “(5) Actual nonreimbursable expenses that have  
4 been or will be incurred for family counseling deter-  
5 mined to be reasonably necessary and that result  
6 from the vaccine-related injury for which the peti-  
7 tioner seeks compensation.”.

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

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

19 (c) CONFORMING AMENDMENT FOR CASES FROM  
20 1988 AND EARLIER.—Section 2115(b) of the Public  
21 Health Service Act (42 U.S.C. 300aa–15(b)) is amend-  
22 ed—

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

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

4           (3) by inserting after paragraph (2) the fol-  
5           lowing paragraphs:

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

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

11 **SEC. 5. ALLOWING PAYMENT OF INTERIM ATTORNEYS’**  
12 **FEES AND COSTS.**

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

16          “(4) Upon completion of a conference required  
17          by Rule 5 of Appendix J of the Rules of the United  
18          States Court of Federal Claims, a special master  
19          may make an interim award of attorneys’ fees and  
20          costs if—

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

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

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

5           “(D) the petitioner provides documentation  
6           verifying the expenditure of the amount for  
7           which compensation is sought.

8           “(5) An interim award of attorneys’ fees and  
9           costs by a special master under paragraph (4) shall  
10          be promptly paid by the Secretary pursuant to the  
11          special master’s order and without need of a judg-  
12          ment. The special master’s order for interim attor-  
13          neys’ fees and costs is not subject to review under  
14          sections 2112(e) and 2112(f) until after the special  
15          master has made a determination regarding an  
16          award of attorneys’ fees and costs under paragraph  
17          (1).

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

1       ify the amounts awarded for fees and costs under  
2       paragraph (4).”.

3       **SEC. 6. PROCEDURE FOR PAYING ATTORNEYS’ FEES.**

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

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

11               “(A) the petitioner expressly consents, or

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

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

23               “(ii) there are other exceptional cir-  
24      cumstances and good cause for paying

1           such fees and costs solely to the peti-  
2           tioner’s attorney.”.

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

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

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

9           (2) in paragraph (3)—

10           (A) by striking “24 months” and inserting  
11           “6 years”; and

12           (B) by striking “48 months” and inserting  
13           “6 years”.

14           (b) ADDITIONAL EXTENSION.—

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

1 (A) the applicable date under section  
2 2116(a) of the Public Health Service Act (42  
3 U.S.C. 300aa–16(a)); or

4 (B) the date that is 2 years after the date  
5 of the enactment of this Act.

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

13 (c) CLAIMS BASED ON REVISIONS TO TABLE.—Sec-  
14 tion 2116(b) of the Public Health Service Act (42 U.S.C.  
15 300aa–16(b)) is amended by striking all that follows “file  
16 a petition for such compensation” and inserting the fol-  
17 lowing: “if—

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

22 “(2)(A) the petition satisfies the conditions  
23 stated in subsection (a); or

24 “(B) the date of occurrence of the first symp-  
25 tom or manifestation of onset of injury occurred

1 more than 4 years before the petition is filed, and  
2 the petition is filed no more than 2 years after the  
3 effective date of the revision of the table.”.

4 (d) REPORTS.—

5 (1) TRANSMISSION.—The Secretary of Health  
6 and Human Services shall transmit to the Congress  
7 2 annual reports that shall each include the fol-  
8 lowing:

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

14 (B) Describe the effects of subsection (b)  
15 on the ability of the Secretary to administer the  
16 National Vaccine Injury Compensation Program  
17 and adjudicate petitions under such Program in  
18 a timely manner.

19 (2) DATES OF SUBMISSION.—In carrying out  
20 this subsection, the Secretary of Health and Human  
21 Services shall transmit—

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

1 (B) the second report not later than 2  
2 years after the date of the enactment of this  
3 Act.

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

5 (a) SELECTION OF INDIVIDUALS INJURED BY VAC-  
6 CINES AS PUBLIC MEMBERS.—Section 2119(a)(1)(B) of  
7 the Public Health Service Act (42 U.S.C. 300aa-  
8 19(a)(1)(B)) is amended by striking all that follows the  
9 comma and inserting the following: “of whom 1 shall be  
10 the legal representative of a child who has suffered a vac-  
11 cine-related injury or death, and at least 1 other shall be  
12 either the legal representative of a child who has suffered  
13 a vaccine-related injury or death or an individual who has  
14 personally suffered a vaccine-related injury.”.

15 (b) MANDATORY MEETING SCHEDULE ELIMI-  
16 NATED.—Section 2119(c) of the Public Health Service Act  
17 (42 U.S.C. 300aa-19(c)) is amended by striking “not less  
18 often than four times per year and”.

19 **SEC. 9. CONFORMING AMENDMENT TO TRUST FUND PROVI-**  
20 **SION.**

21 Section 9510(c)(1)(A) of the Internal Revenue Code  
22 of 1986 is amended by striking “(as in effect” and all  
23 that follows through “for vaccine-related injury or death”  
24 and inserting “(as in effect on the effective date of the

1 National Vaccine Injury Compensation Program Improve-  
2 ment Act of 2003) for vaccine-related injury or death”.

3 **SEC. 10. INCREASE IN LIMIT ON ADMINISTRATIVE EX-**  
4 **PENSES.**

5 (a) INCREASE IN LIMIT ON ADMINISTRATIVE EX-  
6 PENSES.—Section 9510(c)(1)(B) of the Internal Revenue  
7 Code of 1986 is amended by striking “(but not in excess  
8 of \$9,500,000 for any fiscal year)” and inserting “(but  
9 not in excess of \$10,000,000 for any fiscal year)”.

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

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

16 (2) in subparagraph (B), by striking the period  
17 at the end and inserting “, and”; and

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

19 “(C) the payment of administrative and  
20 personnel expenses that the Bureau of the Pub-  
21 lic Debt incurs for financial services for the  
22 Trust Fund.”.

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

24 Section 2110(c) of the Public Health Service Act (42  
25 U.S.C. 300aa–10(c)) is amended by striking the period at

1 the end and inserting “, including by conducting a public  
2 service announcement campaign.”.

3 **SEC. 12. APPLICATION.**

4       The provisions of and amendments made by sections  
5 2, 3, 4, 5, 6, 7, and 9 apply to a petition filed under sec-  
6 tion 2111 of the Public Health Service Act (42 U.S.C.  
7 300aa–11) if the petition is pending on or filed after the  
8 date of the enactment of this Act.

○