

was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

(b) Administrative review

The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this part are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this part the regulations applicable to recommended decisions under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3677], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s-7. Physicians services

(a) In general

The Secretary may utilize the services of physicians for purposes of making determinations under this part.

(b) Physicians

Any physicians whose services are utilized under subsection (a) of this section shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

(c) Arrangement

The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3678], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

§ 7385s-8. Medical benefits

A covered DOE contractor employee shall be furnished medical benefits specified in section 7384t of this title for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3679], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s-9. Attorney fees

Section 7385g of this title shall apply to a payment under this part to the same extent that it applies to a payment under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3680], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

§ 7385s-10. Administrative matters

(a) In general

The Secretary shall administer this part.

(b) Contract authority

The Secretary may enter into contracts with appropriate persons and entities to administer this part.

(c) Records

(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this part, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this part, including employment records, records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

(d) Information

At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

(e) Regulations

The Secretary shall prescribe regulations necessary for the administration of this part. The initial regulations shall be prescribed not later than 210 days after October 28, 2004. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this part.

(f) Transition provisions

(1) The Secretary shall commence the administration of the provisions of this part not later than 210 days after October 28, 2004.

(2) Until the commencement of the administration of this part, the Department of Energy Physicians Panels appointed pursuant to part D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before October 28, 2004.

(3) The Secretary shall take such actions as are appropriate to identify other activities under part D that will continue until the commencement of the administration of this part.

(g) Previous applications

Upon the commencement of the administration of this part, any application previously

filed with the Secretary of Energy pursuant to part D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3681], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2183.)

REFERENCES IN TEXT

Part D, referred to in subsecs. (f)(2), (3) and (g), was repealed by Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s-11. Coordination of benefits with respect to State workers compensation

(a) In general

An individual who has been awarded compensation under this part, and who has also received benefits from a State workers compensation system by reason of the same covered illness, shall receive compensation specified in this part reduced by the amount of any workers compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers compensation system.

(b) Waiver

The Secretary may waive the provisions of subsection (a) if the Secretary determines that the administrative costs and burdens of implementing subsection (a) with respect to a particular case or class of cases justifies such a waiver.

(c) Information

Notwithstanding any other provision of law, each State workers compensation authority shall, upon request of the Secretary, provide to the Secretary on a quarterly basis information concerning workers compensation benefits received by any covered DOE contractor employee entitled to compensation or benefits under this part, which shall include the name, Social Security number, and nature and amount of workers compensation benefits for each such employee for which the request was made.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3682], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s-12. Maximum aggregate compensation

For each individual whose illness or death serves as the basis for compensation or benefits under this part, the total amount of compensation (other than medical benefits) paid under this part, to all persons, in the aggregate, on the basis of that illness or death shall not exceed \$250,000.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3683], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s-13. Funding of administrative costs

There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and there-

after such sums as may be necessary to carry out this part.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3684], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2184.)

§ 7385s-14. Payment of compensation and benefits from compensation fund

The compensation and benefits provided under this subchapter, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3685], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2185.)

§ 7385s-15. Office of Ombudsman

(a) Establishment

There is established in the Department of Labor an office to be known as the "Office of the Ombudsman" (in this section referred to as the "Office").

(b) Head

The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

(1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

(c) Duties

The duties of the Office shall be as follows:

(1) To provide information on the benefits available under this part and part B and on the requirements and procedures applicable to the provision of such benefits.

(2) To make recommendations to the Secretary regarding the location of centers (to be known as "resource centers") for the acceptance and development of claims for benefits under this part and part B.

(3) To carry out such other duties with respect to this part and part B as the Secretary shall specify for purposes of this section.

(d) Independent Office

The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this part and part B.

(e) Annual report

(1) Not later than July 30 each year, the Ombudsman shall submit to Congress a report on activities under this part and part B.

(2) Each report under paragraph (1) shall set forth the following: