

116TH CONGRESS
2^D SESSION

H. R. 7686

To amend the Public Health Service Act to establish a program to provide full compensation to any essential COVID–19 frontline worker who was seriously injured or died as a result of having COVID–19, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2020

Mr. KENNEDY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to establish a program to provide full compensation to any essential COVID–19 frontline worker who was seriously injured or died as a result of having COVID–19, 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 “COVID–19 Essential
5 Workers Compensation Fund Act of 2020”.

1 **SEC. 2. COMPENSATING ESSENTIAL COVID-19 FRONTLINE**
2 **WORKERS WHO ARE SERIOUSLY INJURED OR**
3 **DIE.**

4 Title II of the Public Health Service Act (42 U.S.C.
5 202 et seq.) is amended by adding at the end the fol-
6 lowing:

7 **“PART E—COMPENSATING COVID-19 FRONTLINE**
8 **WORKERS WHO ARE SERIOUSLY INJURED OR**
9 **DIE AS A RESULT OF HAVING COVID-19**
10 **“SEC. 275. DEFINITIONS.**

11 “In this part, the following definitions apply:

12 “(1) CLAIMANT.—The term ‘claimant’ means
13 an individual filing a claim for compensation under
14 section 275D(a)(1).

15 “(2) COLLATERAL SOURCE.—The term ‘collat-
16 eral source’ means all collateral sources, including
17 life insurance, pension funds, death benefit pro-
18 grams, and payments by Federal, State, or local
19 governments related to injury or death as a result of
20 having COVID-19.

21 “(3) ECONOMIC LOSS.—

22 “(A) The term ‘economic loss’ means any
23 pecuniary loss resulting from harm (including
24 the loss of earnings or other benefits related to
25 employment, replacement services loss, loss due
26 to death, burial costs, loss of business or em-

1 employment opportunities, past and anticipated
2 out-of-pocket medical expense loss) to the ex-
3 tent recovery for such loss is allowed under ap-
4 plicable State law.

5 “(B) Notwithstanding subparagraph (A),
6 in calculating economic loss for purposes of a
7 claim for compensation under section
8 275C(a)(1), the total loss of earnings related to
9 employment shall not exceed \$200,000 for any
10 12-month period.

11 “(4) ELIGIBLE ESSENTIAL COVID–19 FRONT-
12 LINE WORKER.—The term ‘eligible essential
13 COVID–19 frontline worker’ means an essential
14 COVID–19 frontline worker determined to be eligi-
15 ble for compensation under section 275C(d).

16 “(5) ESSENTIAL COVID–19 FRONTLINE WORK-
17 ER.—The term ‘essential COVID–19 frontline work-
18 er’ means a worker whose job—

19 “(A) is included in the ‘healthcare/public
20 health’ category of essential critical infrastruc-
21 ture workers in version 3.0 of the guidance of
22 the Department of Homeland Security issued
23 on April 17, 2020, and titled ‘Guidance on the
24 Essential Critical Infrastructure Workforce:

1 Ensuring Community and National Resilience
2 in COVID–19 Response’;

3 “(B) is included in another category of es-
4 sential critical infrastructure workers in version
5 3.0 of such guidance;

6 “(C) is to deliver goods or transport people
7 during the COVID–19 public health emergency,
8 but is not included in any of the categories de-
9 scribed in subparagraphs (A) and (B); or

10 “(D) is determined by the Eligibility Com-
11 mittee to warrant treating such a worker as an
12 essential COVID–19 frontline worker.

13 “(6) NONECONOMIC LOSSES.—The term ‘non-
14 economic losses’ means losses for physical and emo-
15 tional pain, suffering, inconvenience, physical im-
16 pairment, mental anguish, disfigurement, loss of en-
17 joyment of life, loss of society and companionship,
18 loss of consortium (other than loss of domestic serv-
19 ice), hedonic damages, injury to reputation, and all
20 other nonpecuniary losses of any kind or nature.

21 “(7) SECRETARY.—Except as inconsistent with
22 this section, the term ‘Secretary’ means the Sec-
23 retary of Health and Human Services.

24 “(8) SERIOUSLY INJURED.—The term ‘seriously
25 injured’ means having injuries that—

1 “(A) give rise to a substantial risk of
2 death; or

3 “(B) cause serious, permanent disfigure-
4 ment or prolonged loss or impairment of the
5 function of any body part or organ.

6 “(9) SPECIAL MASTER.—The term ‘Special
7 Master’ means the Special Master appointed under
8 section 275B(a).

9 **“SEC. 275A. COMPENSATION PROGRAM.**

10 “The Secretary shall carry out a program to provide
11 full compensation to any essential COVID–19 frontline
12 worker (or one or more representatives acting on behalf
13 of a deceased essential COVID–19 frontline worker) who
14 was seriously injured or died as a result of having
15 COVID–19.

16 **“SEC. 275B. ADMINISTRATION.**

17 “(a) IN GENERAL.—The Secretary, acting through a
18 Special Master appointed by the Secretary, shall—

19 “(1) administer the compensation program es-
20 tablished under this part;

21 “(2) promulgate all procedural and substantive
22 rules for the administration of this part; and

23 “(3) employ and supervise hearing officers and
24 other administrative personnel to perform the duties
25 of the Special Master under this part.

1 “(b) APPOINTMENT OF SPECIAL MASTER AND DEP-
2 UTY SPECIAL MASTERS.—The Secretary may appoint a
3 Special Master and no more than two Deputy Special
4 Masters without regard to the provisions of title 5, United
5 States Code, governing appointments in the competitive
6 service. Any such employee shall serve at the pleasure of
7 the Secretary. The Secretary shall fix the annual salary
8 of the Special Master and the Deputy Special Masters.

9 “(c) ELIGIBILITY COMMITTEE.—

10 “(1) ESTABLISHMENT.—The Secretary shall es-
11 tablish a committee, to be known as the Eligibility
12 Committee.

13 “(2) COMPOSITION.—The Eligibility Committee
14 shall be composed of seven members, of which—

15 “(A) five shall be appointed by the Sec-
16 retary of Health and Human Services, of
17 which—

18 “(i) at least two shall be mental
19 health professionals; and

20 “(ii) at least one shall be an infectious
21 disease clinician; and

22 “(B) two shall be appointed by the Sec-
23 retary of Labor.

1 “(3) DUTIES.—The Eligibility Committee, in
2 consultation with the Special Master, shall deter-
3 mine—

4 “(A) as described in section 275(5)(C), the
5 jobs, in addition to those described in section
6 275(5)(A), warranting treatment of workers
7 performing such jobs as essential COVID–19
8 frontline workers;

9 “(B) in accordance with section 275C, any
10 other requirements needing to be met to be eli-
11 gible for compensation under this part; and

12 “(C) hear and decide appeals brought pur-
13 suant to section 275C(b)(3)(A).

14 **“SEC. 275C. DETERMINATION OF ELIGIBILITY FOR COM-**
15 **PENSATION.**

16 “(a) FILING OF CLAIM.—

17 “(1) IN GENERAL.—A claimant may file a claim
18 for compensation under this part with the Special
19 Master. The claim shall be on the form developed
20 under paragraph (2) and shall state the factual basis
21 for eligibility for compensation and the amount of
22 compensation sought.

23 “(2) CLAIM FORM.—

24 “(A) IN GENERAL.—The Special Master
25 shall develop a claim form that claimants shall

1 use when submitting claims under paragraph
2 (1). The Special Master shall ensure that such
3 form can be filed electronically, if determined to
4 be practicable.

5 “(B) CONTENTS.—The form developed
6 under subparagraph (A) shall request—

7 “(i) information from the claimant
8 concerning the serious injury that the
9 claimant suffered, or in the case of a claim
10 filed with respect to a decedent informa-
11 tion confirming the decedent’s death, as a
12 result of having COVID–19;

13 “(ii) in the case of a claim concerning
14 such serious injury, information concerning
15 any economic and noneconomic losses that
16 the claimant suffered as a result of the se-
17 rious injury; and

18 “(iii) information regarding collateral
19 sources of compensation the claimant has
20 received or is entitled to receive as a result
21 of such injury or death.

22 “(3) LIMITATION.—No claim may be filed
23 under paragraph (1) after calendar year 2029.

24 “(b) REVIEW AND DETERMINATION.—

1 “(1) REVIEW.—The Special Master shall review
2 a claim submitted under subsection (a) and, with re-
3 spect to a claimant determined to be an eligible indi-
4 vidual, determine—

5 “(A) in the case of a claim concerning seri-
6 ous injury, the extent of the economic and non-
7 economic losses that the claimant suffered as a
8 result of the injury; and

9 “(B) in the case of a claim concerning seri-
10 ous injury or death, the amount of compensa-
11 tion to which the claimant is entitled under this
12 part.

13 “(2) NEGLIGENCE.—With respect to a claim-
14 ant, the Special Master shall not consider negligence
15 or any other theory of liability.

16 “(3) DETERMINATION.—

17 “(A) PROCESS.—Not later than 120 days
18 after that date on which a claim is filed under
19 subsection (a), the Special Master shall com-
20 plete a review, make a determination, and pro-
21 vide written notice to the claimant, with respect
22 to the matters that were the subject of the
23 claim under review. Such a determination shall
24 be final and not subject to judicial review, ex-
25 cept that a claimant may appeal the Special

1 Master’s determination to the Eligibility Com-
2 mittee established under section 275B(c).

3 “(B) AMOUNT OF COMPENSATION FOR SE-
4 RIOUSLY INJURED CLAIMANTS.—The amount of
5 the compensation awarded under this part to a
6 claimant who was seriously injured as a result
7 of having COVID–19 shall be equal to the
8 amount of—

9 “(i) the economic losses and non-
10 economic losses of the claimant as a result
11 of having COVID–19; less

12 “(ii) the collateral source compensa-
13 tion the claimant has received or is entitled
14 to receive as a result of having COVID–19.

15 “(C) ADDITIONAL COMPENSATION FOR DE-
16 CEDENTS.—In lieu of any compensation de-
17 scribed in subparagraph (B), the amount of the
18 compensation awarded under this part in the
19 case of a claimant who died as a result of hav-
20 ing COVID–19 shall be—

21 “(i) full payment of any outstanding
22 educational loans of the decedent, includ-
23 ing private loans, including principal and
24 interest;

1 “(ii) a death benefit of \$250,000 paid
2 to the estate of the decedent; and

3 “(iii) an additional death benefit of
4 \$100,000 paid to the spouse and each de-
5 pendent of the decedent.

6 “(4) RIGHTS OF CLAIMANT.—A claimant in a
7 review under paragraph (1) shall have—

8 “(A) the right to be represented by an at-
9 torney;

10 “(B) the right to present evidence, includ-
11 ing the presentation of witnesses and docu-
12 ments; and

13 “(C) any other due process rights deter-
14 mined appropriate by the Special Master.

15 “(5) NO PUNITIVE DAMAGES.—The Special
16 Master may not include amounts for punitive dam-
17 ages in any compensation paid under a claim under
18 this part.

19 “(6) NO CAP.—The Special Master—

20 “(A) shall, with respect to each claimant,
21 award the full amount of the compensation cal-
22 culated under paragraph (3); and

23 “(B) may not impose a cap on the total
24 amount of such compensation.

1 “(c) NO CONSIDERATION OF RACE, ETHNICITY,
2 GENDER, RELIGION, OR SEX.—Notwithstanding any
3 other provision of law, the Special Master and Eligibility
4 Committee may not award damages to a claimant as part
5 of any compensation under this part using a calculation
6 of the projected future earning potential of that claimant
7 that takes into account race, color, ethnicity, national ori-
8 gin, religion, disability, or sex (including gender, gender
9 identity, and sexual orientation).

10 “(d) ELIGIBILITY.—

11 “(1) IN GENERAL.—A claimant shall be deter-
12 mined to be an eligible essential COVID–19 front-
13 line worker for purposes of this subsection if the
14 Special Master determines that such claimant, dur-
15 ing the COVID–19 emergency period, is an essential
16 COVID–19 frontline worker (or is a representative
17 acting on behalf of a deceased essential COVID–19
18 frontline worker) who was seriously injured or died
19 as a result of having (including being presumed to
20 have) COVID–19, including an essential COVID–19
21 frontline worker who committed suicide because of a
22 mental health condition that was exacerbated or con-
23 tributed to by COVID–19.

24 “(2) SINGLE CLAIM.—Not more than one claim
25 may be submitted under this part with respect to

1 compensation arising from the death of an eligible
2 essential COVID–19 frontline worker.

3 “(3) DEFINITION.—In this subsection, the term
4 ‘COVID–19 emergency period’ has the meaning
5 given to the term ‘emergency period’ in section
6 1135(g)(1)(B) of the Social Security Act.

7 **“SEC. 275D. PAYMENTS TO ELIGIBLE INDIVIDUALS.**

8 “(a) IN GENERAL.—Not later than 20 days after the
9 date on which a determination is made by the Special Mas-
10 ter regarding the amount of compensation due a claimant
11 under this part, the Special Master shall authorize pay-
12 ment to such claimant of the amount determined with re-
13 spect to the claimant.

14 “(b) PAYMENT AUTHORITY.—This part constitutes
15 budget authority in advance of appropriations Acts and
16 represents the obligation of the Federal Government to
17 provide for the payment of amounts for compensation
18 under this part.

19 **“SEC. 275E. REGULATIONS.**

20 “Not later than 90 days after the date of enactment
21 of this part, the Secretary, in consultation with the Special
22 Master, shall promulgate regulations to carry out this
23 part, including regulations with respect to—

24 “(1) forms to be used in submitting claims
25 under this part;

1 “(2) the information to be included in such
2 forms;

3 “(3) procedures for hearing and the presen-
4 tation of evidence;

5 “(4) procedures to assist an individual in filing
6 and pursuing claims under this part; and

7 “(5) other matters determined appropriate by
8 the Secretary.

9 **“SEC. 275F. RIGHT OF SUBROGATION.**

10 “The United States shall have the right of subroga-
11 tion with respect to any claim paid by the United States
12 under this part.

13 **“SEC. 275G. REPORT ON HEALTH OUTCOMES.**

14 “Not later than 2 years after the date of enactment
15 of this part, the Secretary of Health and Human Services
16 shall submit to the Congress and make publicly available
17 a report on—

18 “(1) whether the duration for which a health
19 care provider or other worker is exposed to individ-
20 uals with COVID–19 impacts health outcomes; and

21 “(2) whether the number of essential COVID–
22 19 frontline workers residing in a community im-
23 pacted the spread of COVID–19 in the community.

1 **“SEC. 275H. FUNDING.**

2 “(a) COMPENSATION.—To pay the compensation
3 owed to claimants under this part, there is authorized to
4 be appropriated, and there is appropriated, out of amounts
5 in the Treasury not otherwise obligated, such sums as may
6 be necessary.

7 “(b) ADMINISTRATIVE AND SUPPORT COSTS.—For
8 the administrative and support costs of carrying out this
9 part, there are authorized to be appropriated such sums
10 as may be necessary.

11 **“SEC. 275I. SUNSET DATE.**

12 “The program under this part shall terminate on
13 January 1, 2035.”.

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