§ 239. General provisions

(a) Definitions

For purposes of this part:

(1) Covered countermeasure

The term ‘covered countermeasure’ means a covered countermeasure as specified in a Declaration made pursuant to section 233(p) of this title.

(2) Covered individual

The term ‘covered individual’ means an individual—

(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties; \(^1\)

(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan (as defined in paragraph (7) approved by the Secretary;

(C) who has volunteered and been selected to be a member of a smallpox emergency response plan described in subparagraph (B) prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified either within or outside of the United States; and

(D) to whom a smallpox vaccine is administered pursuant to such approved plan during the effective period of the Declaration (including the portion of such period before April 30, 2003).

(3) Covered injury

The term ‘covered injury’ means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 239a of this title, to have been sustained by an individual as the direct result of—

(A) administration to the individual of a covered countermeasure during the effective period of the Declaration; or

(B) accidental vaccinia inoculation of the individual in circumstances in which—

(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

(ii) smallpox vaccine has not been administered to the individual; and

(iii) the individual has been in contact with an individual who is (or who was accidentally inoculated by) a covered individual.

(4) Declaration


(5) Effective period of the Declaration

The term ‘effective period of the Declaration’ means the effective period specified in

(6) Eligible individual

The term ‘eligible individual’ means an individual who is (as determined in accordance with section 239a of this title)—

(A) a covered individual who sustains a covered injury in the manner described in paragraph (3)(A); or

(B) an individual who sustains a covered injury in the manner described in paragraph (3)(B).

(7) Smallpox emergency response plan

The term ‘smallpox emergency response plan’ or ‘plan’ means a response plan detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

(b) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to vaccinate individuals that is approved by the Secretary establishes procedures to ensure, consistent with the Declaration and any applicable guidelines of the Centers for Disease Control and Prevention, that—

(1) potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part;

(2) there is voluntary screening provided to potential participants that can identify health conditions relevant to contraindications; and

(3) there is appropriate post-inoculation medical surveillance that includes an evaluation of adverse health effects that may reasonably appear to be due to such vaccine and prompt referral of, or the provision of appropriate information to, any individual requiring health care as a result of such adverse health event.

\(^{1}\)So in original. Probably should be ‘specialties’.

§ 239a. Determination of eligibility and benefits

(a) In general

The Secretary shall establish procedures for determining, as applicable with respect to an individual—

(1) whether the individual is an eligible individual;

(2) whether an eligible individual has sustained a covered injury or injuries for which medical benefits or compensation may be available under sections 239c and 239d of this title, and the amount of such benefits or compensation; and

(3) whether the covered injury or injuries of an eligible individual caused the individual’s death for purposes of benefits under section 239e of this title.

(b) Covered individuals

The Secretary may accept a certification, by a Federal, State, or local government entity or
private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is a covered individual.

(e) Criteria for reimbursement

(1) Injuries specified in injury table

In any case where an injury or other adverse effect specified in the injury table established under section 239b of this title as a known effect of a vaccine manifests in an individual within the time period specified in such table, such injury or other effect shall be presumed to have resulted from administration of such vaccine.

(2) Other determinations

In making determinations other than those described in paragraph (1) as to the causation or severity of an injury, the Secretary shall employ a preponderance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

(d) Deadline for filing request

The Secretary shall not consider any request for a benefit under this part with respect to an individual unless—

(1) in the case of a request based on the administration of the vaccine to the individual, the individual files with the Secretary an initial request for benefits or compensation under this part not later than one year after the date of administration of the vaccine; or

(2) in the case of a request based on accidental vaccinia inoculation, the individual files with the Secretary an initial request for benefits or compensation under this part not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

(e) Structured settlements at Secretary’s option

In any case in which there is a reasonable likelihood that compensation or payment under section 239c, 239d, or 239e(b) of this title will be required for a period in excess of one year from the date an individual is determined eligible for such compensation or payment, the Secretary shall have the discretion to make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits or compensation that the individual is eligible to receive under such section or sections.

(f) Review of determination

(1) Secretary’s review authority

The Secretary may review a determination under this section at any time on the Secretary’s own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate. The Secretary shall develop a process by which an individual may file a request for reconsideration of any determination made by the Secretary under this section.

(2) Judicial and administrative review

No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).


§ 239b. Smallpox vaccine injury table

(a) 1 Smallpox vaccine injury table

(1) Establishment required

The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed to result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

(2) Amendments

The Secretary may by regulation amend the table established under paragraph (1). An amendment to the table takes effect on the date of the promulgation of the final rule that makes the amendment, and applies to all requests for benefits or compensation under this part that are filed on or after such date or are pending as of such date. In addition, the amendment applies retroactively to an individual who was not with respect to the injury involved an eligible individual under the table as in effect before the amendment but who with respect to such injury is an eligible individual under the table as amended. With respect to a request for benefits or compensation under this part by an individual who becomes an eligible individual as described in the preceding sentence, the Secretary may not provide such benefits or compensation unless the request (or amendment to a request, as applicable) is filed before the expiration of one year after the effective date of the amendment to the table in the case of an individual to whom the vaccine was administered and before the expiration of two years after such effective date in the case of a request based on accidental vaccinia inoculation.


§ 239c. Medical benefits

(a) In general

Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual, including the services, appliances, and supplies prescribed or

1 So in original. No subsec. (b) has been enacted.
recommended by a qualified physician, which
the Secretary considers likely to cure, give re-
lief, reduce the degree or the period of disabil-
ity, or aid in lessening the amount of monthly
compensation.

(b) Benefits secondary to other coverage
Payment or reimbursement for services or ben-
efits under subsection (a) of this section shall be secondary to any obligation of the
United States or any third party (including any State or local governmental entity, private in-
urance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

(74 July 1, 1944, ch. 373, title II, § 264, as added Pub.

§ 239d. Compensation for lost employment in-
come

(a) In general
Subject to the succeeding provisions of this section, the Secretary shall provide compensa-
tion to an eligible individual for loss of employ-
ment income (based on such income at the time
of injury) incurred as a result of a covered in-
jury, at the rate specified in subsection (b) of
this section.

(b) Amount of compensation
(1) In general
Compensation under subsection (a) of this section shall be at the rate of 66 2/3 percent of the relevant pay period (weekly, monthly, or
otherwise), except as provided in paragraph (2).

(2) Augmented compensation for dependents
If an eligible individual has one or more de-
pendents, the basic compensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of 8% per-
cent.

(3) Consideration of other programs
(A) In general
The Secretary may consider the provisions of sections 8114, 8115, and 8146a of title 5, and any implementing regulations, in determin-
ing the amount of payment under subsection (a) of this section and the circumstances
under which such payments are reasonable and necessary.

(B) Minors
With respect to an eligible individual who is a minor, the Secretary may consider the provisions of section 8113 of title 5, and any implementing regulations, in determin-
ing the amount of payment under subsection (a) of this section and the circumstances under which such payments are reasonable and necessary.

(4) Treatment of self-employment income
For purposes of this section, the term “em-
ployment income” includes income from self-
employment.

c) Limitations
(1) Benefits secondary to other coverage
(A) In general
Any compensation under subsection (a) of this section shall be secondary to the obliga-
tion of the United States or any third party
(including any State or local governmental
entity, private insurance carrier, or em-
ployer), under any other law or contractual
agreement, to pay compensation for loss of employment income or to provide disability or retirement benefits.

(B) Relation to other obligations
Compensation under subsection (a) of this section shall not be made to an eligible indi-
vidual to the extent that the total of amounts paid to the individual under such sub-
section and under the other obligations referred to in subparagraph (A) is an amount
that exceeds the rate specified in subsection (b)(1) of this section. If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this
paragraph, be deemed to be received over multiple years rather than received in a sin-
gle year. The Secretary may, in the discre-
tion of the Secretary, determine how to ap-
portion such payment over multiple years.

(2) No benefits in case of death
No payment shall be made under subsection (a) of this section in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible indi-
vidual, of benefits under section 239e of this title for death.

(3) Limit on total benefits
(A) In general
Except as provided in subparagraph (B)—
(i) total compensation paid to an individ-
ual under subsection (a) of this section shall not exceed $50,000 for any year; and
(ii) the lifetime total of such compensa-
tion for the individual may not exceed an
amount equal to the amount authorized to
be paid under section 239e of this title.

(B) Permanent and total disability
The limitation under subparagraph (A)(ii) does not apply in the case of an eligible indi-
vidual who is determined to have a covered injury or injuries meeting the definition of disability in section 416(i) of this title.

(4) Waiting period
(A) In general
Except as provided in subparagraph (B), an
eligible individual shall not be provided compensation under this section for the first
5 work days of loss of employment income.

(B) Exception
Subparagraph (A) does not apply if the pe-
riod of loss of employment income of an eli-
gible individual is 10 or more work days.

(5) Termination of benefits
No payment shall be made under subsection (a) of this section in compensation for loss of employment income once the eligible indi-
vidual involves 1 reaches the age of 65.

(d) Benefit in addition to medical benefits
A benefit under subsection (a) of this section shall be in addition to any amounts received by

1 So in original. Probably should be “involved”.

§ 239d.
§ 239e Payment for death

(a) Death benefit

(1) In general

The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under paragraph (2) to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers’ Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

(2) Benefit amount

(A) In general

The amount of the death benefit under paragraph (1) in a fiscal year shall equal the amount of the comparable benefit calculated under the Public Safety Officers’ Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to subparagraph (B).

(B) Reduction for payments for lost employment income

The amount of the benefit as determined under subparagraph (A) shall be reduced by the total amount of any benefits paid under section 239d of this title with respect to lost employment income.

(3) Limitations

(A) In general

No benefit is payable under paragraph (1) with respect to the death of an eligible individual if—

(i) a disability benefit is paid with respect to such individual under the Public Safety Officers’ Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers’ Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

(B) Exception in the case of a limitation on appropriations for disability benefits under PSOB

In the event that disability benefits available to an eligible individual under the Public Safety Officers’ Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under subparagraph (A) without regard to this subparagraph, benefits shall be available under paragraph (1) to the extent necessary to ensure that the survivor or survivors of such individual receives a total amount equal to the amount described in paragraph (2).

(b) Election in case of dependents

(1) In general

In the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, if the individual had one or more dependents under the age of 18, the legal guardian of the dependents may, in lieu of the death benefit under subsection (a) of this section, elect to receive on behalf of the aggregate of such dependents payments in accordance with this subsection. An election under the preceding sentence is effective in lieu of a request under subsection (a) of this section by an individual who is not the legal guardian of such dependents.

(2) Amount of payments

Payments under paragraph (1) with respect to an eligible individual described in such paragraph shall be made as if such individual were an eligible individual to whom compensation would be paid under subsection (a) of section 239d of this title, with the rate augmented in accordance with subsection (b)(2) of such section and with such individual considered to be an eligible individual described in subsection (c)(3)(B) of such section.

(3) Limitations

(A) Age of dependents

No payments may be made under paragraph (1) once the youngest of the dependents involved reaches the age of 18.

(B) Benefits secondary to other coverage

(i) In general

Any payment under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability benefits, retirement benefits, life insurance benefits on behalf of dependents under the age of 18, or death benefits.

(ii) Relation to other obligations

Payments under paragraph (1) shall not be made to with respect to an eligible individual to the extent that the total of amounts paid with respect to the individual under such paragraph and under the other obligations referred to in clause (i) is an amount that exceeds the rate of payment that applies under paragraph (2). If

1 So in original.
under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this subparagraph, be deemed to be received over multiple years rather than received in a single year. The Secretary, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(c) Benefit in addition to medical benefits

A benefit under subsection (a) or (b) of this section shall be in addition to any amounts received by an eligible individual under section 239e of this title.


REFERENCES IN TEXT


§ 239f. Administration

(a) Administration by agreement with other agency or agencies

The Secretary may administer any or all of the provisions of this part through Memorandum of Agreement with the head of any appropriate Federal agency.

(b) Regulations

The head of the agency administering this part or provisions thereof (including any agency head administering such Act1 or provisions through a Memorandum of Agreement under subsection (a) of this section) may promulgate such implementing regulations as may be found necessary and appropriate. Initial implementing regulations may be interim final regulations.


§ 239g. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2007, to remain available until expended, including administrative costs and costs of provision and payment of benefits. The Secretary’s payment of any benefit under section 239c, 239d, or 239e of this title shall be subject to the availability of appropriations under this section.


§ 239h. Relationship to other laws

Except as explicitly provided herein, nothing in this part shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.


1 So in original. Probably should be “part”.

PART D—UNITED STATES PUBLIC HEALTH SCIENCES TRACK

§ 239f. Establishment

(a) United States Public Health Services Track

(1) In general

There is hereby authorized to be established a United States Public Health Sciences Track (referred to in this part as the “Track”), at sites to be selected by the Secretary, with authority to grant appropriate advanced degrees in a manner that uniquely emphasizes team-based service, public health, epidemiology, and emergency preparedness and response. It shall be so organized as to graduate not less than—

(A) 150 medical students annually, 10 of whom shall be awarded studentships to the Uniformed Services University of Health Sciences;

(B) 100 dental students annually;

(C) 250 nursing students annually;

(D) 100 public health students annually;

(E) 100 behavioral and mental health professional students annually;

(F) 100 physician assistant or nurse practitioner students annually; and

(G) 50 pharmacy students annually.

(2) Locations

The Track shall be located at existing and accredited, affiliated health professions education training programs at academic health centers located in regions of the United States determined appropriate by the Surgeon General, in consultation with the National Health Care Workforce Commission established in section 294q of this title.

(b) Number of graduates

Except as provided in subsection (a), the number of persons to be graduated from the Track shall be prescribed by the Secretary. In so prescribing the number of persons to be graduated from the Track, the Secretary shall institute actions necessary to ensure the maximum number of first-year enrollments in the Track consistent with the academic capacity of the affiliated sites and the needs of the United States for medical, dental, and nursing personnel.

(c) Development

The development of the Track may be by such phases as the Secretary may prescribe subject to the requirements of subsection (a).

(d) Integrated longitudinal plan

The Surgeon General shall develop an integrated longitudinal plan for health professions continuing education throughout the continuum of health-related education, training, and practice. Training under such plan shall emphasize patient-centered, interdisciplinary, and care coordination skills. Experience with deployment of emergency response teams shall be included during the clinical experiences.

(e) Faculty development

The Surgeon General shall develop faculty development programs and curricula in decentralized venues of health care, to balance urban, tertiary, and inpatient venues.