

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).

(July 1, 1944, ch. 373, title II, § 262, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 640.)

**§ 239b. Smallpox vaccine injury table**

**(a)<sup>1</sup> 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.

(July 1, 1944, ch. 373, title II, § 263, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 641.)

**§ 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 recommended by a qualified physician, which the Secretary considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.

**(b) Benefits secondary to other coverage**

Payment or reimbursement for services or benefits under subsection (a) shall be secondary

<sup>1</sup> So in original. No subsec. (b) has been enacted.

to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

(July 1, 1944, ch. 373, title II, § 264, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 641.)

**§ 239d. Compensation for lost employment income**

**(a) In general**

Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income (based on such income at the time of injury) incurred as a result of a covered injury, at the rate specified in subsection (b).

**(b) Amount of compensation**

**(1) In general**

Compensation under subsection (a) shall be at the rate of 66⅔ 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 dependents, the basic compensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of 8⅓ percent.

**(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 determining the amount of payment under subsection (a) 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 determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

**(4) Treatment of self-employment income**

For purposes of this section, the term “employment income” includes income from self-employment.

**(c) Limitations**

**(1) Benefits secondary to other coverage**

**(A) In general**

Any compensation under subsection (a) 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 or retirement benefits.

**(B) Relation to other obligations**

Compensation under subsection (a) shall not be made to an eligible individual to the

extent that the total of amounts paid to the individual under such subsection and under the other obligations referred to in subparagraph (A) is an amount that exceeds the rate specified in subsection (b)(1). 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 single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

**(2) No benefits in case of death**

No payment shall be made under subsection (a) in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible individual, 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 individual under subsection (a) shall not exceed \$50,000 for any year; and

(ii) the lifetime total of such compensation 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 individual 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 period of loss of employment income of an eligible individual is 10 or more work days.

**(5) Termination of benefits**

No payment shall be made under subsection (a) in compensation for loss of employment income once the eligible individual involves<sup>1</sup> reaches the age of 65.

**(d) Benefit in addition to medical benefits**

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

(July 1, 1944, ch. 373, title II, § 265, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 642.)

**§ 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

<sup>1</sup> So in original. Probably should be “involved”.