

(C) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(July 1, 1944, ch. 373, title III, § 319F-3, as added Pub. L. 109-148, div. C, § 2, Dec. 30, 2005, 119 Stat. 2818; amended Pub. L. 113-5, title IV, § 402(g)(2), (3), Mar. 13, 2013, 127 Stat. 196; Pub. L. 116-127, div. F, § 6005, Mar. 18, 2020, 134 Stat. 207; Pub. L. 116-136, div. A, title III, § 3103, Mar. 27, 2020, 134 Stat. 361.)

Editorial Notes

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(8)(B), (c)(5)(A), (B)(i), (ii)(I), (C)(i), and (i)(7)(B)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. Chapter V of the Act is classified generally to subchapter V (§ 351 et seq.) of chapter 9 of Title 21. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e)(6)(B), (9), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Public Readiness and Emergency Preparedness Act, referred to in subsec. (h), is div. C of Pub. L. 109-148, Dec. 30, 2005, 119 Stat. 2818, which enacted this section, section 247d-6e of this title, and provisions set out as a note under section 201 of this title. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

2020—Subsec. (i)(1)(D). Pub. L. 116-136 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “a personal respiratory protective device that is—

“(i) approved by the National Institute for Occupational Safety and Health under part 84 of title 42, Code of Federal Regulations (or successor regulations);

“(ii) subject to the emergency use authorization issued by the Secretary on March 2, 2020, or subsequent emergency use authorizations, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb-3] (authorizing emergency use of personal respiratory protective devices during the COVID-19 outbreak); and

“(iii) used during the period beginning on January 27, 2020, and ending on October 1, 2024, in response to the public health emergency declared on January 31, 2020, pursuant to section 247d of this title as a result of confirmed cases of 2019 Novel Coronavirus (2019-nCoV).”

Pub. L. 116-127 added subpar. (D).

2013—Subsec. (i)(1)(C). Pub. L. 113-5, § 402(g)(3)(A), inserted “, 564A, or 564B” after “564”.

Subsec. (i)(7)(A)(iii). Pub. L. 113-5, § 402(g)(2), added cl. (iii).

Subsec. (i)(7)(B)(iii). Pub. L. 113-5, § 402(g)(3)(B), inserted “, 564A, or 564B” after “564”.

§ 247d-6e. Covered countermeasure process

(a) Establishment of Fund

Upon the issuance by the Secretary of a declaration under section 247d-6d(b) of this title, there is hereby established in the Treasury an emergency fund designated as the “Covered Countermeasure Process Fund” for purposes of providing timely, uniform, and adequate compensation to eligible individuals for covered injuries directly caused by the administration or

use of a covered countermeasure pursuant to such declaration, which Fund shall consist of such amounts designated as emergency appropriations under section 402 of H. Con. Res. 95 of the 109th Congress, this emergency designation shall remain in effect through October 1, 2006.

(b) Payment of compensation

(1) In general

If the Secretary issues a declaration under 247d-6d(b) of this title, the Secretary shall, after amounts have by law been provided for the Fund under subsection (a), provide compensation to an eligible individual for a covered injury directly caused by the administration or use of a covered countermeasure pursuant to such declaration.

(2) Elements of compensation

The compensation that shall be provided pursuant to paragraph (1) shall have the same elements, and be in the same amount, as is prescribed by sections 239c, 239d, and 239e of this title in the case of certain individuals injured as a result of administration of certain countermeasures against smallpox, except that section 239e(a)(2)(B) of this title shall not apply.

(3) Rule of construction

Neither reasonable and necessary medical benefits nor lifetime total benefits for lost employment income due to permanent and total disability shall be limited by section 239e of this title.

(4) Determination of eligibility and compensation

Except as provided in this section, the procedures for determining, and for reviewing a determination of, whether an individual is an eligible individual, whether such individual has sustained a covered injury, whether compensation may be available under this section, and the amount of such compensation shall be those stated in section 239a of this title (other than in subsection (d)(2) of such section), in regulations issued pursuant to that section, and in such additional or alternate regulations as the Secretary may promulgate for purposes of this section. In making determinations under this section, other than those described in paragraph (5)(A) as to the direct causation of a covered injury, the Secretary may only make such determination based on compelling, reliable, valid, medical and scientific evidence.

(5) Covered countermeasure injury table

(A) In general

The Secretary shall by regulation establish a table identifying covered injuries that shall be presumed to be directly caused by the administration or use of a covered countermeasure 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. The Secretary may only identify such covered injuries, for purpose of inclusion on the table, where the Secretary determines, based on compelling, reliable, valid, medical and

scientific evidence that administration or use of the covered countermeasure directly caused such covered injury.

(B) Amendments

The provisions of section 239b of this title (other than a provision of subsection (a)(2) of such section that relates to accidental vaccinia inoculation) shall apply to the table established under this section.

(C) Judicial review

No court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this paragraph.

(6) Meanings of terms

In applying sections 239a, 239b, 239c, 239d, and 239e of this title for purposes of this section—

(A) the terms “vaccine” and “smallpox vaccine” shall be deemed to mean a covered countermeasure;

(B) the terms “smallpox vaccine injury table” and “table established under section 239b of this title” shall be deemed to refer to the table established under paragraph (4); and

(C) other terms used in those sections shall have the meanings given to such terms by this section.

(c) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to administer or use a covered countermeasure is consistent with any declaration under 247d-6d of this title and any applicable guidelines of the Centers for Disease Control and Prevention and that 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.

(d) Exhaustion; exclusivity; election

(1) Exhaustion

Subject to paragraph (5), a covered individual may not bring a civil action under section 247d-6d(d) of this title against a covered person (as such term is defined in section 247d-6d(i)(2) of this title) unless such individual has exhausted such remedies as are available under subsection (a), except that if amounts have not by law been provided for the Fund under subsection (a), or if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of this section within 240 days after such request was filed, the individual may seek any remedy that may be available under section 247d-6d(d) of this title.

(2) Tolling of statute of limitations

The time limit for filing a civil action under section 247d-6d(d) of this title for an injury or death shall be tolled during the pendency of a claim for compensation under subsection (a).

(3) Rule of construction

This section shall not be construed as superseding or otherwise affecting the application

of a requirement, under chapter 171 of title 28, to exhaust administrative remedies.

(4) Exclusivity

The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this section encompasses, except for a proceeding under section 247d-6d of this title.

(5) Election

If under subsection (a) the Secretary determines that a covered individual qualifies for compensation, the individual has an election to accept the compensation or to bring an action under section 247d-6d(d) of this title. If such individual elects to accept the compensation, the individual may not bring such an action.

(e) Definitions

For purposes of this section, the following terms shall have the following meanings:

(1) Covered countermeasure

The term “covered countermeasure” has the meaning given such term in section 247d-6d of this title.

(2) Covered individual

The term “covered individual”, with respect to administration or use of a covered countermeasure pursuant to a declaration, means an individual—

(A) who is in a population specified in such declaration, and with respect to whom the administration or use of the covered countermeasure satisfies the other specifications of such declaration; or

(B) who uses the covered countermeasure, or to whom the covered countermeasure is administered, in a good faith belief that the individual is in the category described by subparagraph (A).

(3) Covered injury

The term “covered injury” means serious physical injury or death.

(4) Declaration

The term “declaration” means a declaration under section 247d-6d(b) of this title.

(5) Eligible individual

The term “eligible individual” means an individual who is determined, in accordance with subsection (b), to be a covered individual who sustains a covered injury.

(July 1, 1944, ch. 373, title III, §319F-4, as added Pub. L. 109-148, div. C, §3, Dec. 30, 2005, 119 Stat. 2829.)

Editorial Notes

REFERENCES IN TEXT

H. Con. Res. 95 of the 109th Congress, referred to in subsec. (a), is H. Con. Res. 95, Apr. 28, 2005, 119 Stat. 3633, which is not classified to the Code.

§ 247d-6f. Provision of medical countermeasures to Indian programs and facilities

In the event that the Secretary deploys the contents of the Strategic National Stockpile