

Payment of benefits for lost employment income is secondary to any obligation of any third-party payor to pay for lost employment income or to provide disability or retirement benefits to the requester. As provided in §102.84, the Secretary retains the right to recover benefits for lost employment income paid to requesters from third-party payors.

(c) The Secretary is not requiring an individual to use paid leave (e.g., sick leave or vacation leave) to be paid for lost work days. However, if an individual uses such paid leave in order to be paid for lost work days, the Secretary will not consider the days in which such leave was used to be days of lost employment income, unless the individual's employer restores the leave that was used. By restoring paid leave, an employer puts the individual in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, takes back the payments made when the leave was taken and gives back the leave to the employee for future use).

(d) The Secretary may pay benefits for lost employment income to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid to the deceased person during his or her lifetime.

§ 102.33 Death benefits.

(a) Eligible survivors may be able to receive a death benefit under this Program if the Secretary determines that an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact sustained a covered injury and died as a direct result of the injury. Annual and lifetime caps may apply to the death benefits provided. The method and amount of death benefits are described in §102.82. As provided in §102.84, the Secretary retains the right to recover death benefits paid to requesters from third-party payors. Death benefits may be paid under two different calculations.

(b) The standard calculation, described in §102.82(c), is based upon the death benefit available under the PSOB

Program and is available to all eligible survivors (except for surviving dependents younger than the age of 18 who are not also surviving eligible children). In the event that death benefits were paid under the PSOB Program with respect to the deceased person, no death benefits may be paid under the standard calculation. In addition, death benefits under this standard calculation are secondary to disability benefits under the PSOB Program. Any death benefit paid under the standard calculation will be reduced by the total amount of benefits for lost employment income paid to the smallpox vaccine recipient or vaccinia contact during his or her lifetime and to his or her estate after death.

(c) The alternative calculation, described in §102.82(c), is calculated based on the person's employment income at the time of the covered injury. This calculation is only available to surviving dependents who are younger than the age of 18. The legal guardian(s) of such surviving dependents must select the death benefit as calculated under this alternative calculation before it will be paid. The payment of a death benefit as calculated under this alternative calculation is secondary to other benefits received (compensation for loss of employment income, death benefits (including PSOB Program death benefits), disability benefits, or retirement benefits on behalf of the dependent(s) or his or her legal guardian or life insurance benefits on behalf of the dependent(s)).

Subpart E—Procedures for Filing Request Packages

SOURCE: 68 FR 70096, Dec. 16, 2003, unless otherwise noted.

§ 102.40 How to obtain forms and instructions.

Interested parties may obtain copies of all necessary forms and instructions by sending a letter through the U.S. Postal Service, commercial carrier, or private courier service, by telephone, or by downloading them from the Program's website.

(a) If using the U.S. Postal Service, interested parties should send letters asking for forms and instructions to

Public Health Service, HHS

§ 102.42

the Smallpox Vaccine Injury Compensation Program Office, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C-06, 5600 Fishers Lane, Rockville, MD 20857.

(b) If using a commercial carrier or private courier service, interested parties should send letters asking for forms and instructions to the Smallpox Vaccine Injury Compensation Program Office, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C-06, 5600 Fishers Lane, Rockville, Maryland 20857.

(c) For forms and instructions, interested parties can call (888) 496-0338. This is a toll-free number.

(d) Interested parties can download forms and instructions from the Internet at <http://www.hrsa.gov/smallpoxinjury>. Click on the link to "Forms and Instructions."

[68 FR 70096, Dec. 16, 2003, as amended at 71 FR 29810, May 24, 2006]

§ 102.41 How to file a Request Package.

A Request Package comprises all the forms and documentation that are submitted to enable the Secretary to determine eligibility and calculate payments. Request Packages may be filed through the U.S. Postal Service, commercial carrier, or private courier service. The Smallpox Vaccine Injury Compensation Program Office will not accept Request Packages electronically or by hand-delivery.

(a) If using the U.S. Postal Service, requesters (or their representatives) should send all forms and documentation to the Smallpox Vaccine Injury Compensation Program Office, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C-06, 5600 Fishers Lane, Rockville, MD 20857.

(b) If using a commercial carrier or private courier service, requesters (or their representatives) should send all forms and documentation to the Smallpox Vaccine Injury Compensation Program Office, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building,

Room 11C-06, 5600 Fishers Lane, Rockville, Maryland 20857.

[68 FR 70096, Dec. 16, 2003, as amended at 71 FR 29810, May 24, 2006]

§ 102.42 Deadlines for filing request forms.

(a) *General.* Filing deadlines vary depending on whether the injured individual is a smallpox vaccine recipient or a vaccinia contact. In all cases, the filing date is the date the Request Form is postmarked. A legibly dated receipt from a commercial carrier, a private courier service, or the U.S. Postal Service (e.g., the date that a commercial carrier places on the package at the time of drop-off) will be considered equivalent to a postmark. A Request Form will not be considered filed unless it has been completed (to the fullest extent possible) and signed by the requester or his or her representative. After filing a Request Form within the governing filing deadline, a requester can and should update the Request Form to reflect new information.

(b) *Request forms not filed within deadline.* If the Secretary determines that a Request Form was not filed within the governing filing deadline set out in this section, the Request Form will not be processed and the requester will not be entitled to any benefits under this Program.

(c) *Smallpox vaccine recipients.* All Request Forms filed by, or on behalf of, a smallpox vaccine recipient must be filed within one year of the date of the administration of a smallpox vaccine to the smallpox vaccine recipient. This deadline also applies to a deceased smallpox vaccine recipient's survivor(s) and the representative of his or her estate. This deadline applies to Request Forms concerning injuries resulting from the administration of a smallpox vaccine or other covered countermeasures.

(d) *Vaccinia contacts.* All Request Forms filed by, or on behalf of, a vaccinia contact must be filed within two years after the date of the first symptom or manifestation of onset of the covered injury in the vaccinia contact. This deadline also applies to a deceased vaccinia contact's survivor(s)