

parties for such services or items (e.g., an Explanation of Benefits from the individual's health insurance company). If no third-party payor has an obligation to pay for or provide such services or items, the requester must certify to that fact and submit an itemized list of the services or items provided (including the total cost of such services or items). To assist the Secretary in making a determination as to whether such services or items were reasonable and necessary to diagnose or treat a covered injury or its health complications, the requester may submit, in addition to the required medical records, documentation showing that a health care practitioner prescribed or recommended such services or items. The medical records must support the requested services and items;

(c) *Documents for medical services and items expected to be provided in the future.* A requester seeking payments for medical services or items expected to be provided in the future must submit a statement from one or more health care practitioner(s) (e.g., a treating neurologist for neurologic issues and a treating cardiologist for cardiologic issues) describing those services and items that appear likely to be needed to diagnose or treat the covered injury or its health complications in the future. The medical records must support the requested services and items. A requester must submit documentation, if available, concerning the likely cost of, and the amount expected to be paid by third-party payors for, such services or items.

**§ 102.61 Documentation an eligible requester seeking benefits for lost employment income must submit.**

A requester deemed eligible by the Secretary who seeks benefits for lost employment income from the Program must submit, in addition to the documentation submitted under subpart F, documentation describing:

(a) The number of days (including partial days) of work missed by the smallpox vaccine recipient or vaccinia contact as a result of the covered injury or its health complications for which employment income was lost (e.g., time sheet from pay period reflecting work days missed). As stated

in §102.32(c), days for which an individual used paid leave in order to be paid for lost work will be considered days of work for which employment income was received (unless the individual's employer restores the leave that was used by putting the individual in the same position as if he or she had not used paid leave);

(b) The smallpox vaccine recipient or vaccinia contact's gross employment income at the time the covered injury was sustained (e.g., the individual's most recent Federal tax return or a pay stub from the time of the covered injury);

(c) Whether the smallpox vaccine recipient or vaccinia contact had one or more dependents at the time the covered injury was sustained (e.g., the individual's most recent Federal tax return); and

(d) All third-party payors that have paid for or that may be required to pay the requester benefits for loss of employment income or provide disability and retirement benefits for which payment or reimbursement is being sought under this Program (e.g., State workers' compensation programs, disability insurance programs, etc.). A requester must submit documentation, if available, concerning the amount of such payments or benefits expected to be paid by third-party payors. If the requester knows of no such third-party payor, he or she must certify to that fact. If, at any time, the requester becomes aware that a third-party payor may have such an obligation, the requester must inform the Secretary within 10 business days of becoming aware of this information.

**§ 102.62 Documentation an eligible requester seeking a death benefit must submit.**

(a) A requester deemed an eligible survivor by the Secretary who seeks a death benefit under §102.82(c) must submit, in addition to the documentation submitted under subpart F, a certification informing the Secretary whether a disability or death benefit was paid under the PSOB Program with respect to the deceased smallpox vaccine recipient or vaccinia contact. If such a benefit(s) was provided, the requester must submit documentation showing

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the amount of the benefit(s) provided by the PSOB Program. If no such benefits were provided, the certification must explain whether any survivors are eligible for a death benefit under the PSOB Program and, if so, whether death benefits have been sought under the PSOB Program.

(b) A representative seeking a death benefit under §102.82(d) on behalf of a dependent requester younger than the age of 18 deemed an eligible survivor by the Secretary must submit, in addition to the documentation submitted under subpart F, the following:

(1) Documentation showing that the deceased smallpox vaccine recipient or vaccinia contact is survived by one or more dependents younger than the age of 18. Such documentation must show the date of birth of all such dependents (e.g., copies of birth certificates);

(2) A written selection by each legal guardian, on behalf of all of the dependents described in paragraph (b)(1) of this section for whom he or she is the legal guardian, to receive proportional death benefits under the alternative calculation as described in §102.82(d), in place of proportional benefits available under the standard calculation as described in §102.82(c). Written selections are described in §102.82(d)(1).

(3) Documentation showing that the requester is the legal guardian of all of the dependents described in paragraph (b)(1) of this section, as required under §102.63(b). If multiple dependents have different legal guardians, the legal guardian of each dependent(s) must submit such documentation;

(4) Documentation showing the deceased smallpox vaccine recipient or vaccinia contact's gross employment income at the time the covered injury was sustained (e.g., the decedent's most recent Federal tax return or a pay stub from the time of the covered injury); and

(5) A description of all third-party payors that have paid for or that may be required to pay for the benefits described in §102.82(d)(3)(A). This description must include the amount of such benefits that have been paid or that may be authorized to be paid in the future. If the representative knows of no such third-party payor, he or she must

certify to that fact. If, at any time, the representative becomes aware that a third-party payor may have such an obligation, he or she must inform the Secretary within 10 business days of becoming aware of this information.

### **§ 102.63 Documentation a representative filing on behalf of an eligible requester who is a minor or a legally incompetent adult must submit.**

Before benefits will be paid under by the Program to an eligible requester who is a minor or legally incompetent adult, his or her representative must submit, in addition to the documentation submitted under subpart F and under §§102.60–102.62, the following:

(a) Documentation showing that the requester is:

- (1) A minor (e.g., birth certificate); or
- (2) A legally incompetent adult (e.g., court decree of incompetency); and

(b) Documentation showing that:

(1) In the case of a minor, the requester is the legal guardian of the minor (e.g., birth certificates for parents who are legal guardians or, for other legal guardians, a decree by a court of competent jurisdiction establishing the legal guardianship of a person other than the minor's parents under applicable State law). If a minor has more than one legal guardian, this information is required only of one legal guardian; or

(2) In the case of a legally incompetent adult, a decree by a court of competent jurisdiction establishing a guardianship or conservatorship of the requester's estate under applicable State law.

### **Subpart H—Secretarial Determinations**

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

### **§ 102.70 Determinations the Secretary must make before benefits can be paid.**

(a) Before reviewing a Request Package, the Secretary will assign a Program number to the Request Package and so inform the requester (or his or her representative) in writing. All correspondence to the requester (or his or