

future medical services and items, the Secretary will consider statements by health care practitioners with expertise in the medical issues involved (for example, a statement by a treating neurologist concerning services and items likely to be needed to address neurological issues) concerning those services and items that appear likely to be needed in the future to diagnose or treat the covered injury or its health complications.

In order for a requester to receive medical benefits for a health complication, the health complication must have resulted from the covered injury and not be more likely due to other factors or conditions. Examples of health complications include complications of a covered injury that occur as part of the natural course of the underlying disease, an adverse reaction to a prescribed medication or diagnostic test used in connection with a covered injury, or a complication of a surgical procedure used to treat the injury.

If a smallpox vaccine recipient or vaccinia contact dies before filing for, or being paid, benefits for the cost of medical services or items accrued during his or her lifetime as a result of a covered injury or its health complications, the deceased person's estate may be paid such medical benefits. Because such payments are for medical expenses accrued as a result of a covered injury while the injured person was alive, the cause of death does not have to be related to the covered injury for these medical benefits to be paid.

The calculation of medical benefits is described in § 102.80. There are no caps on medical benefits. However, the Secretary may limit the payment of such benefits to the amounts he considers reasonable for those services and items he considers reasonable and necessary. In addition, payment of medical benefits or reimbursement of costs for medical services and items by the program is secondary to the obligations of any third-party payor, such as the United States (except for payment of benefits under this program), State or local government entities, private insurance carriers, employers, or any other third-party payors that may have a statutory or contractual obligation to pay for or provide medical benefits.

When the Secretary has determined that the requester is eligible for medical benefits and that all of the documentation is available by which he can compute the amount, he will do the following, consistent with the calculations described in § 102.80:

(1) Determine which medical expenses that have been submitted are

reasonable and necessary to diagnose or treat a covered injury or its health complications.

(2) Compute all those reasonable medical expenses, including medical services and items provided in the past, and anticipated future medical expenses.

(3) Deduct from his computation the total amount paid, or payable, by all other third-party payors. This will be the basis for the program's payment. For example: An eligible, injured individual incurred \$5,000 in reasonable and necessary medical expenses. If the individual's insurance company paid \$3,000, and the individual is responsible for the \$2,000 balance (due to deductibles and co-payments), then the Secretary will pay a medical benefit of \$2,000.

As explained elsewhere in the preamble, the Secretary may make a payment of medical benefits and later pursue such a payment from a third-party payor with an obligation to pay for or provide the medical services or items.

Lost Employment Income—Summary and Calculation (§ 102.32 and § 102.81)

Lost employment income benefits that may be available under the program are set out in § 102.32. The program will provide benefits for lost employment income (secondary to other benefits that may be available to the requester) based on the number of days of work that the injured person lost as a result of the covered injury or its health complications (including diagnosis and treatment). These benefits are a percentage of the employment income lost and are based on the number of eligible work days for which such income was lost. Employment income includes the injured person's gross employment income. The lost work days do not have to be consecutive, and partial days of lost work are included in the calculation. For example, if an individual's workday is eight hours and he or she missed four hours a day for doctors' appointments on two different days, the eight hours of work missed will be considered one total day of lost work. As described in § 102.32(c), a day in which an individual used paid leave (e.g., sick leave or vacation leave) in order to be paid for lost work will not be considered a day for which employment income was lost and will not be used in calculating benefits for lost employment income. The only exception to this rule is in a case in which the injured person's employer restores the paid leave taken and puts the requester in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, treats the employee

as if he or she did not take paid leave by taking back the payments made when the leave was used and giving back the leave to the employee for future use).

Under the SEPPA, the program cannot pay for the first five days of lost employment income resulting from a covered injury or its health complications, unless the injured individual lost employment income for 10 or more work days (in which case, all of the lost work days will be included in the calculation). For this reason, if an individual lost a total of four days of employment income as a result of a covered injury, he or she will not be eligible for any benefits for lost employment income.

The calculation of benefits for lost employment income is described in § 102.81. The annual cap on benefits for lost employment income for a requester is \$50,000. A requester may use documents such as pay slips, earning and leave statements, and other documents concerning the injured individual's salary and benefits, to document his or her employment income. The benefit terminates once the requester reaches the age of 65. Benefits that represent future lost employment income will be adjusted to account for inflation. It is important to remember that future lost employment income will be calculated based on an individual's employment income at the time the covered injury was sustained (except for the inflation adjustment provided for in this regulation) and will not be based on an individual's anticipated future employment income. The lifetime cap for this benefit is equal to the amount of the death benefit available under the PSOB Program in the same fiscal year in which the lifetime cap is reached (currently approximately \$262,100, but subject to change). However, this lifetime limitation does not apply if the Secretary determines that an individual has a covered injury considered to be a total and permanent disability under section 216(i) of the Social Security Act. For this reason, a requester deemed to have a permanent and total disability by the Secretary may be eligible to receive up to \$50,000 a year until he or she reaches the age of 65.

As with medical benefits, if a smallpox vaccine recipient or vaccinia contact dies before filing for, or being paid, benefits for lost employment income incurred during his or her lifetime as a result of a covered injury or its health complications, the representative of that person's estate may file for such benefits on behalf of the estate. Because this payment is made for loss of employment income that accrued while the injured person