

make payments in accordance with § 102.83.

§ 102.74 Disapproval of benefits.

(a) If the Secretary determines that a requester is not eligible for payments under the Program, the Secretary will disapprove the request and provide the requester, or his or her representative, with a written notice of the basis for the disapproval and the options available to the requester, including reconsideration.

(b) The Secretary may disapprove a request at any time, even before the requester has submitted required documentation (e.g., the Secretary may determine that a requester did not meet the filing deadline, even before required documentation is submitted or reviewed).

Subpart I—Calculation and Payment of Benefits

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

§ 102.80 Calculation of medical benefits.

In calculating medical benefits, the Secretary will take into consideration all reasonable costs for those medical items and services that are reasonable and necessary to diagnose or treat a smallpox vaccine recipient or vaccinia contact's covered injury or its health complications, as described in § 102.31. The Secretary will consider and may rely upon benefits documentation submitted by the requester (e.g., bills, Explanation of Benefits, and cost-related documentation to support the expenses relating to the covered injury or its health complications), as required by § 102.60. The Secretary will make such payments only to the extent that such costs were not, and will not be, paid by any third-party payor and only if no third-party payor had or has an obligation to provide such services or items to the requester, except as provided in § 103.83(c) and § 103.84. There are no caps on medical benefits that may be provided under the Program.

§ 102.81 Calculation of benefits for lost employment income.

(a) *Primary calculation.* Benefits under this section may be paid for days of work lost as a result of a covered injury or its health complications if the smallpox vaccine recipient or vaccinia contact lost employment income for the lost work days. As described in § 102.32(c), days in which an individual used paid leave (including vacation and sick leave) for lost work days will not be considered days for which the individual lost employment income (unless the individual's employer restores the leave taken by putting the employee in the same position as if he or she had not used paid leave).

(1) The Secretary will calculate the rate of benefits to be paid for the lost work days based on the smallpox vaccine recipient or vaccinia contact's gross employment income, which includes income from self-employment, at the time he or she sustained the covered injury. The Secretary may not, except with respect to injured individuals who are minors, consider projected future earnings in this calculation.

(i) For a smallpox vaccine recipient or vaccinia contact with no dependents at the time the covered injury was sustained, the benefits are 66% of the individual's gross employment income at the time the covered injury was sustained.

(ii) For a smallpox vaccine recipient or vaccinia contact with one or more dependents at the time the covered injury was sustained, the benefits are 75% of the individual's gross employment income at the time the covered injury was sustained; and

(2) In the case of a smallpox vaccine recipient or vaccinia contact who is a minor, the Secretary may consider the provisions of 5 U.S.C. 8113 (part of the statute authorizing the FECA Program), and any implementing regulations, in determining the amount of payments under this section and the circumstances under which such payments are reasonable and necessary.

(b) *Adjustment for inflation.* Benefits for lost employment income paid under the Program that represent future lost employment income will be adjusted annually to account for inflation.