

amendment to the table takes effect on the date of the promulgation of the final rule that makes the amendment, and applies to all requests for benefits or compensation under this part that are filed on or after such date or are pending as of such date. In addition, the amendment applies retroactively to an individual who was not with respect to the injury involved an eligible individual under the table as in effect before the amendment but who with respect to such injury is an eligible individual under the table as amended. With respect to a request for benefits or compensation under this part by an individual who becomes an eligible individual as described in the preceding sentence, the Secretary may not provide such benefits or compensation unless the request (or amendment to a request, as applicable) is filed before the expiration of one year after the effective date of the amendment to the table in the case of an individual to whom the vaccine was administered and before the expiration of two years after such effective date in the case of a request based on accidental vaccinia inoculation.

(July 1, 1944, ch. 373, title II, §263, as added Pub. L. 108-20, §2, Apr. 30, 2003, 117 Stat. 641.)

### § 239c. Medical benefits

#### (a) In general

Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual, including the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.

#### (b) Benefits secondary to other coverage

Payment or reimbursement for services or benefits under subsection (a) shall be secondary to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

(July 1, 1944, ch. 373, title II, §264, as added Pub. L. 108-20, §2, Apr. 30, 2003, 117 Stat. 641.)

### § 239d. Compensation for lost employment income

#### (a) In general

Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income (based on such income at the time of injury) incurred as a result of a covered injury, at the rate specified in subsection (b).

#### (b) Amount of compensation

##### (1) In general

Compensation under subsection (a) shall be at the rate of 66⅔ percent of the relevant pay period (weekly, monthly, or otherwise), except as provided in paragraph (2).

#### (2) Augmented compensation for dependents

If an eligible individual has one or more dependents, the basic compensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of 8⅓ percent.

#### (3) Consideration of other programs

##### (A) In general

The Secretary may consider the provisions of sections 8114, 8115, and 8146a of title 5, and any implementing regulations, in determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

##### (B) Minors

With respect to an eligible individual who is a minor, the Secretary may consider the provisions of section 8113 of title 5, and any implementing regulations, in determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

#### (4) Treatment of self-employment income

For purposes of this section, the term “employment income” includes income from self-employment.

#### (c) Limitations

##### (1) Benefits secondary to other coverage

##### (A) In general

Any compensation under subsection (a) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability or retirement benefits.

##### (B) Relation to other obligations

Compensation under subsection (a) shall not be made to an eligible individual to the extent that the total of amounts paid to the individual under such subsection and under the other obligations referred to in subparagraph (A) is an amount that exceeds the rate specified in subsection (b)(1). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this paragraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

##### (2) No benefits in case of death

No payment shall be made under subsection (a) in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible individual, of benefits under section 239e of this title for death.

##### (3) Limit on total benefits

##### (A) In general

Except as provided in subparagraph (B)—

(i) total compensation paid to an individual under subsection (a) shall not exceed \$50,000 for any year; and

(ii) the lifetime total of such compensation for the individual may not exceed an amount equal to the amount authorized to be paid under section 239e of this title.

**(B) Permanent and total disability**

The limitation under subparagraph (A)(ii) does not apply in the case of an eligible individual who is determined to have a covered injury or injuries meeting the definition of disability in section 416(i) of this title.

**(4) Waiting period**

**(A) In general**

Except as provided in subparagraph (B), an eligible individual shall not be provided compensation under this section for the first 5 work days of loss of employment income.

**(B) Exception**

Subparagraph (A) does not apply if the period of loss of employment income of an eligible individual is 10 or more work days.

**(5) Termination of benefits**

No payment shall be made under subsection (a) in compensation for loss of employment income once the eligible individual involves<sup>1</sup> reaches the age of 65.

**(d) Benefit in addition to medical benefits**

A benefit under subsection (a) shall be in addition to any amounts received by an eligible individual under section 239c of this title.

(July 1, 1944, ch. 373, title II, §265, as added Pub. L. 108–20, §2, Apr. 30, 2003, 117 Stat. 642.)

**§ 239e. Payment for death**

**(a) Death benefit**

**(1) In general**

The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under paragraph (2) to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.)<sup>1</sup> with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

**(2) Benefit amount**

**(A) In general**

The amount of the death benefit under paragraph (1) in a fiscal year shall equal the amount of the comparable benefit calculated under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.)<sup>1</sup> in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to subparagraph (B).

**(B) Reduction for payments for lost employment income**

The amount of the benefit as determined under subparagraph (A) shall be reduced by the total amount of any benefits paid under section 239d of this title with respect to lost employment income.

**(3) Limitations**

**(A) In general**

No benefit is payable under paragraph (1) with respect to the death of an eligible individual if—

(i) a disability benefit is paid with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.);<sup>1</sup> or

(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).<sup>1</sup>

**(B) Exception in the case of a limitation on appropriations for disability benefits under PSOB**

In the event that disability benefits available to an eligible individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.)<sup>1</sup> are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under subparagraph (A) without regard to this subparagraph, benefits shall be available under paragraph (1) to the extent necessary to ensure that the survivor or survivors of such individual receives a total amount equal to the amount described in paragraph (2).

**(b) Election in case of dependents**

**(1) In general**

In the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, if the individual had one or more dependents under the age of 18, the legal guardian of the dependents may, in lieu of the death benefit under subsection (a), elect to receive on behalf of the aggregate of such dependents payments in accordance with this subsection. An election under the preceding sentence is effective in lieu of a request under subsection (a) by an individual who is not the legal guardian of such dependents.

**(2) Amount of payments**

Payments under paragraph (1) with respect to an eligible individual described in such paragraph shall be made as if such individual were an eligible individual to whom compensation would be paid under subsection (a) of section 239d of this title, with the rate augmented in accordance with subsection (b)(2) of such section and with such individual considered to be an eligible individual described in subsection (c)(3)(B) of such section.

<sup>1</sup> So in original. Probably should be "involved".

<sup>1</sup> See References in Text note below.