

or severity of an injury, the Secretary shall employ a preponderance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

**(d) Deadline for filing request**

The Secretary shall not consider any request for a benefit under this part with respect to an individual, unless—

(1) in the case of a request based on the administration of the vaccine to the individual, the individual files with the Secretary an initial request for benefits or compensation under this part not later than one year after the date of administration of the vaccine; or

(2) in the case of a request based on accidental vaccinia inoculation, the individual files with the Secretary an initial request for benefits or compensation under this part not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

**(e) Structured settlements at Secretary's option**

In any case in which there is a reasonable likelihood that compensation or payment under section 239c, 239d, or 239e(b) of this title will be required for a period in excess of one year from the date an individual is determined eligible for such compensation or payment, the Secretary shall have the discretion to make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits or compensation that the individual is eligible to receive under such section or sections.

**(f) Review of determination**

**(1) Secretary's review authority**

The Secretary may review a determination under this section at any time on the Secretary's own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate. The Secretary shall develop a process by which an individual may file a request for reconsideration of any determination made by the Secretary under this section.

**(2) Judicial and administrative review**

No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).

(July 1, 1944, ch. 373, title II, §262, as added Pub. L. 108–20, §2, Apr. 30, 2003, 117 Stat. 640.)

**§ 239b. Smallpox vaccine injury table**

**(a)<sup>1</sup> Smallpox vaccine injury table**

**(1) Establishment required**

The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed to result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

**(2) Amendments**

The Secretary may by regulation amend the table established under paragraph (1). An 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.

<sup>1</sup> So in original. No subsec. (b) has been enacted.