



WHATCOM COUNTY  
EXECUTIVE ORDER 02-04

**Authorization to Approve Special Benefits for Smallpox Team**

**WHEREAS**, the County desires to encourage health employees to volunteer to serve on the Smallpox Team pursuant to the Homeland Security Act and for protection of the public's health; and

**WHEREAS**, the County desires to remove potential obstacles and mitigate potential financial risks for employees who volunteer,

**NOW, THEREFORE BY VIRTUE OF THE POWER VESTED IN ME BY THE HOME RULE CHARTER FOR WHATCOM COUNTY, I HEREBY ORDER, EFFECTIVE IMMEDIATELY, THE FOLLOWING SPECIAL BENEFITS BE ALLOWED:**

1. If an employee who volunteers to serve on the Smallpox Team becomes ill from the vaccine, and does not have sick leave to cover the first three days, that employee can apply for up to three days paid administrative leave:
2. If a dependent covered by the County's medical plan becomes ill as a result of exposure to the vaccinated employee, that dependent may submit to the County any legitimate out-of-pocket medical expenses resulting from that exposure for reimbursement, to cover co-pay and deductible expenses, up to the limits of the plan coverage for that dependent.

DATED this 26<sup>th</sup> day of December, 2002.

Pete Kremen, Whatcom County Executive

**1) Which would apply if an employee becomes ill after getting the vaccine – sick leave, workers' compensation and/or disability leave? What if the employee does not have enough sick leave?**

An employee could make a claim for any illness resulting from this voluntary vaccination program under the County's workers' compensation program. Workers' compensation provides coverage for medical care and time loss for work-related injuries and illnesses. The employee is free to see any physician for care. The County self-insures its workers' compensation program and uses Johnston and Culberson, Inc. (JCI) to administer its claims 1-800-579-1260.

An employee would charge his or her time off to sick leave for the first three days off (this would later be changed back to time loss if more than 14 days are missed from work). Time loss coverage starts after the first three days, is paid by JCI at rates set by statute [RCW 51.32.090(5)], and will equal roughly 60% of pay (but NOT taxed). County policy (AD 43500Z) allows, but does not require, employees to use paid leave (sick, compensatory, personal holiday, vacation) to augment time loss payments so that no loss in pay results. An employee who volunteers to serve on the Smallpox Team and becomes ill from the vaccine who does NOT have sick leave to cover the first three days can apply for special administrative leave.

Your department's Human Resources Representative, Jennifer Dubrow (50554) would work with the employee and the department to answer questions about filing claims and receiving time loss.

In the unlikely event an illness resulting from this vaccination program leads to disability, the employee would have access to benefits through workers' compensation, the long-term disability plan, federal SSI, and/or the retirement system as applicable.

An employee contracting vaccinia as a secondary contact would likely qualify for workers' compensation if there were evidence that the employee was exposed during the course of employment.

**2) What will health insurance cover (e.g. Vaccina Immune Globulin)? What about co-pays and deductibles?**

An illness resulting from a workplace exposure would be covered under workers' compensation with no co-pay or deductible required.

**3) What if a dependent becomes ill because a vaccinated employee passed vaccinia on to them? Who pays for their health care and lost wages?**

If the dependent is covered by employee's health plan, then any illness would be covered under the terms of that plan. If the dependent incurs out-of-pocket medical expenses due to exposure to the employee, the dependent can submit a claim to the County for reimbursement. The County would not pay lost wages for dependents.

**4) What if a household member who is not a dependent becomes ill because a vaccinated employee passed vaccinia on to them? Who pays for their care and lost wages?**

A household member who is not a dependent would receive health care under the terms of his or her own health plan. The County would not pay lost wages for household members. The CDC states that household members could file a section 304 claim for reimbursement: "Individuals who are not inoculated, but who nonetheless contract vaccinia ... who reside or resided with an individual who was inoculated ... may submit claims."

(<http://www.bt.cdc.gov/agent/smallpox/vaccination/pdf/section-304-qa.pdf>)

**5) Would the County provide a written statement to employees who are considering voluntary vaccination that explains health coverage, etc. for them, their dependents and household members?**

This Q&A document explains the health coverage and time loss provisions related to voluntary smallpox vaccination.

**6) Can the Prosecutor's office review Sec. 304 of the Homeland Security Act and give interpretation of liability coverage for county and employees. Also would payments to claimants made under this be made for anticipated complications or does it only cover claims related to negligence and omission.**

CDC states "section 304 provides an exclusive remedy against the United States for injury or death attributable to smallpox vaccine, other substances used to treat or prevent smallpox, or vaccinia immune globulin. This means that no claim for liability for injury or death attributable to a smallpox countermeasure could be brought against entities or individuals who are covered by section 304's protections."

(<http://www.bt.cdc.gov/agent/smallpox/vaccination/pdf/section-304-qa.pdf>)

Under section 304 of the Act, any claims arising from the administration of the smallpox vaccine if administered under the provisions of this section are to be resolved under the Federal Tort Claims Act. This provides liability protection for those who administer the vaccine if they are a "qualified person" and the vaccine is administered during the effective period of a declaration issued by the Secretary of Health and Human Services. The declaration must "conclude that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration" of the vaccine to a category or categories of individuals. The liability protection under section 304 is limited to the contraction of vaccinia during and up to 30 days after the duration of the declaration issued by the Secretary of HHS.

There is no special effective date for section 304, which means it is effective 60 days after the signing by the President. The President signed this law on November 25, 2002, so the liability coverage in section 304 does not take effect until January 24, 2003. The Secretary of HHS does not have the authority to issue a declaration under section 304 until January 24, 2003 and any vaccinations administered prior to that date would not be covered by section 304.