

TESTIMONY
OF
CONGRESSMAN HENRY A. WAXMAN
CHAIRMAN, SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

Good morning, Mr. Chairman. I am delighted to appear before this Subcommittee today to discuss funding proposals for the National Vaccine Injury Compensation Program.

Before I begin my comments on the this program, I would like to take the opportunity to thank you and the Members of the Subcommittee on Select Revenue Measures for holding these hearings.

This is a busy Committee. Your time is limited and your work is complex. But there is today no more pressing or more difficult public health problem than the question of compensation for vaccine-related injuries. Its resolution holds the key to the continued success of the public health miracle we have created in this country through our childhood immunization programs. In holding these hearings so early in the 100th Congress, the Subcommittee has recognized the significance of our past public health success, the seriousness of the current problem, and the importance of its quick determination. Thank you, Mr. Chairman, for this clear demonstration of interest and concern. I know you are as committed as I am to putting our national vaccine injury compensation program into place. And these hearings are an important first step in making that happen.

Background and Need for Legislation

Childhood immunization programs have transformed public health in this country. In 1952, there were 57,000 cases of paralytic polio; last year there were four. In 1941, there were over 2,200 deaths from measles in a single year; last year there were only two.

Every State requires that children be immunized before they start school. With vaccines, we have avoided thousands of deaths, hundreds of thousands of disabilities, and millions of dollars in medical costs.

But these vaccines, which we take for granted now, are not completely safe. Some children will have adverse side effects for a few days. Some will have severe reactions, even mental retardation, permanent disability, or death. There will not be many such reactions (for polio vaccine, for example, it is literally a one-in-a-million chance), but some children will be hurt.

The particular tragedy and the paradox of vaccine injuries is that these children really are hurt in the line of public duty. They are required to receive vaccinations not just for their own protection but also for the group immunity necessary to protect the population from disease and from the catastrophic medical costs of epidemics.

But unlike veterans who are injured in war or workers injured on the job, these children have no place to file their grievances or turn for care if they are hurt. The schools and clinics and private pediatricians that administer the shots are not prepared to take care of lifetime injury.

Many of the families of these children have been turning to the courts for relief. They have brought suits for negligence, for failure to warn, for design defect, for breach of warranty, for inadequate research.

Some of these families have won and they sometimes win millions of dollars. Many more have lost.

But the litigation costs and the occasional million-dollar award have made pharmaceutical firms nervous about the vaccine market. They say that it is less profitable to prevent illness than to treat it. They say that affordable insurance is increasingly hard to find. They say that they make the best vaccine they know how and they still lose lawsuits. They say that they will increase prices again and again and perhaps leave the market altogether.

These are difficult arguments, but it is clear that the vaccine injury controversy has slowed progress in the development of preventive health care. It is clear that there have been shortages already, resulting in rationing of vaccine. And it is clear that a number of vaccine-injured children are left to fend for themselves on Medicaid or disability or whatever else may be available.

Many of these arguments have been made about other liability fights. But vaccines are a unique product. They are required of all children. They are regulated before, during, and after production. They are inherently unsafe. And we cannot afford to be without them.

National Childhood Vaccine Injury Program

During the 99th Congress, a broad spectrum of conservatives and liberals, consumer advocates and pharmaceutical lobbyists, crafted a compromise bill to deal with these complex issues. The result -- the National Childhood Vaccine Injury Compensation Act -- was enacted at the end of the last Congress after years of study and debate. It passed the review of doctors and parents and manufacturers and lawyers. As you recall, however, the bill did not contain a mechanism to fund the compensation provision of the Act.

When it is funded, the Act will establish a no-fault compensation system to pay for the medical, rehabilitation, and education costs of those children who are injured. If the injury is particularly severe, the program would pay for lost earnings of the disabled child and for the pain and suffering that he or she endures.

In turn, the Act also will limit that child's ability to sue the manufacturer of the vaccine. If an injury is the result of a bad vaccine or one inadequately researched or warned of, then the courts could still make awards. But those children who are the innocent statistics of the necessary war on infectious disease will not be forced to play the courtroom game of chance to get their medical bills paid.

Funding

As originally drafted, the compensation fund was to be paid for by an excise tax on vaccines. The tax was to be set by how dangerous each type of vaccine is known to be. The final price of a shot would thus reflect its true cost to society, and those children who avoid the dangers of whooping cough, for example, would help pay for those children who react to the whooping cough vaccine.

But whatever form of financing this Committee arrives at, one criterion must be met. The funding mechanism for the compensation program must be reliable. We are, through this Act, asking some families with injured children to waive their rights to sue forever. We cannot expect these people to give up such fundamental rights if they cannot depend on the compensation payments. And if they do not give these rights, the National Vaccine Injury Compensation Program will not work as it is designed to do. The results of such a failure would be a continuation of the courtroom lottery for compensation and a genuine threat of vaccine shortages and disease epidemics.

Conclusion

The Act was no one's first choice. The parents group wanted fewer restrictions on litigation and more children eligible for compensation. The manufacturers wanted more protections from tort action and less specificity about awards. The doctors wanted to close off malpractice suits.

But almost everyone agrees that the Compensation Act would be better than the current problems. No one wants to return to the terrors of epidemics of crippling and killing disease.

This year the Congress must finish this ounce of preventive work. We cannot afford the pounds of cure.