

Public Health in Emergency Medicine

UPDATE ON THE NATIONAL VACCINE INJURY COMPENSATION PROGRAM

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□ **Abstract**—The National Childhood Vaccine Injury Act of 1986, as amended, established the Vaccine Injury Compensation Program (VICP). The VICP went into effect on October 1, 1988 and is a Federal “no-fault” system designed to compensate individuals, or families of individuals, who have been injured by covered vaccines. From 1988 until July 2006, a total of 2531 non-autism/thimerosal and 5030 autism/thimerosal claims were made to the VICP. The compensation paid for the non-autism/thimerosal claims from 1988 until 2006 was \$902,519,103.37 for 2542 awards. There was no compensation for any of the autism/thimerosal claims. On the basis of the deaths and extensive suffering to patients and families from the adverse reactions to vaccines, all physicians must provide detailed information in the Vaccine Information Statement to the patient or the parent or legal guardian of the child about the potential dangers of vaccines as well as the VICP. © 2007 Elsevier Inc.

□ **Keywords**—Vaccine Injury Compensation Program; thimerosal

INTRODUCTION

The National Childhood Vaccine Injury Act of 1986 established the Vaccine Injury Compensation Program

(VICP). The VICP went into effect on October 1, 1988 and is a Federal “no-fault” system designed to compensate individuals or families of individuals who have been injured by covered childhood vaccines, whether administered in the private or public sector. The U.S. Court decides who will be paid. Three Federal government offices have a role in managing the VICP to include U.S. Department of Health and Human Services (HHS), the U.S. Department of Justice (DOJ), and the U.S. Court of Federal Claims (the Court). The VICP is located in the Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Health Resources and Services Administration, HHS.

This article reflects the current thinking of the United States Department and of HHS on the topics to be addressed. This article does not create or confer any rights for or on any person and does not operate to bind the Department or the public. The ultimate decision about the scope of the statutes authorizing the VICP is within the authority of the United States Court of Federal Claims, which is responsible for resolving claims for compensation under the VICP. For the consumer, health care professional, as well as attorney, it is important to refer to the following website: <http://www.hrsa.gov/vaccinecompensation/>.

United States Law requires that immunization providers use Centers for Disease Control Vaccine Information Statements (VISs) and inform parents or legal representative about vaccine risks and benefits before every immunization. A recent national survey done by Davis et al. found that public health clinics (PHCs) reported high compliance with this Law (1). To further investigate these findings, they conducted an immunization time-motion study in two PHCs in Kansas and Louisiana. Research assistants observed a sample of 246 child immunization visits to record distribution of the VISs and content and time of vaccine communication. Thirty percent of parents read below a ninth grade level, 53% had Medicaid insurance, and 56% were Black. VISs were given with every dose of vaccine administered in 89% of visits. Public health nurses (PHNs) frequently discussed potential vaccine side effects (91%), treatment of side effects (91%), and the vaccine schedule (93%). Contraindications were screened in 71% of visits. Benefits were discussed in 48% of visits and severe risks in 29%. The National Vaccine Injury Compensation Program (VICP) was never discussed. The immunization visits lasted for a mean of 20 min. Vaccine communication of side effects, risks, benefits, screening for contraindications, and the next visit lasted for an average of 16 s for all vaccines. PHC compliance with mandated VIS distribution and practical vaccine communication was high. Room for improvement exists in discussion of benefits, serious risks, and the VICP. In 2005, Dr. Marcus L Martin, Chairman of the Department of Emergency Medicine at the University of Virginia Health System, joined a team of gifted clinicians and scientists to write a review article on Vaccine Information Statements (2). More importantly, he introduced the Vaccine Information Statement into his own Emergency Department and required that it be given to all patients or their parents or legal guardians when vaccines were administered in his Emergency Department.

Consequently, we have included information in this report that outlines pertinent information taken from the website <http://www.hrsa.gov/vaccinecompensation/> that should be understood by all health care providers who immunize their patients. This outline of the information on the website includes the following important components: 1) Information about filing claims, program statistics and other pertinent issues; 2) How to file a Vaccine Injury Compensation Program claim; 3) How is the eligibility for the Vaccine Injury Compensation Program determined? 4) What is the amount of an award under the Vaccine Injury Compensation Program? 5) Can claims from injuries from thimerosal (mercury) be filed with the Vaccine Injury Compensation Program? 6) How does the Vaccine Injury Compensation Program work? 7) Are there any age restrictions on who may file a claim with

the Vaccine Injury Compensation Program? 8) What is the deadline to file a Vaccine Injury Compensation Program claim? 9) What vaccines are covered by the Vaccine Injury Compensation Program? 10) What adverse events are health care providers required to report?

INFORMATION ABOUT FILING CLAIMS, PROGRAM STATISTICS AND OTHER PERTINENT ISSUES

The VICP has included a comprehensive table that outlines the adverse events to vaccine as well as the time intervals to the occurrence of these adverse events (Appendix 1) (3).

HOW TO FILE A VACCINE INJURY COMPENSATION PROGRAM CLAIM

On October 1, 1988, the National Vaccine Injury Compensation Program (VICP), Subtitle 2 of Title XXI of the Public Health Service Act (the Act), became effective. The VICP is a Federal “no-fault” system designed to compensate individuals thought to be injured by childhood vaccines. Vaccines currently covered under the VICP are: diphtheria, tetanus, pertussis, (DTP, DTaP, DT, TT, Tdap, or Td), measles, mumps, rubella (MMR or any components), polio (OPV or IPV), hepatitis B, *Haemophilus influenzae* type b, varicella (chicken pox), rotavirus, pneumococcal conjugate, and hepatitis A, whether administered individually or in combination. As of July 1, influenza is also covered by the VICP. Effective as of December 1, 2004, the Secretary added hepatitis A vaccines to the Vaccine Injury Table (Appendix 1), under category XIV, New Vaccine. When a new vaccine is added to the VICP, people who think that they have been injured have 2 years from the date the vaccine is covered to file a claim for injuries that occurred up to 8 years before the date the vaccine is covered. For the hepatitis A vaccine, people would have to file claims by December 1, 2006 for injuries or deaths that occurred on or after December 1, 1996.

A claim may be made for any injury or death thought to be the result of a covered vaccine. Claims may be filed by the injured individual, or a parent, legal guardian, or trustee may file on behalf of a child or an incapacitated person. Compensable injuries are either those listed in the Vaccine Injury Table, which is found in the Code of Federal Regulations, Section 2114 of the Act, or those that petitioners can demonstrate were caused by the vaccine.

The VICP is administered jointly by the Department of Health and Human Services (HHS), the U.S. Court of

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