CICP, VICP and the Covid Vaccines

“The countermeasures program has yet to pay anything to anyone hurt by a COVID-19 vaccine, and its largely invisible decisions are ‘an inscrutable enigma,’ said Brian Abramson, an expert on vaccine law.” – L.A. Times

As a general principle, COVID vaccines are safe for most individuals and have served a purpose to help quell the spread and severity of the disease. However, as is the case with any pharmaceutical product, adverse events will occur. If an individual is harmed by a commercial product, he/she has a right to due process to bring a lawsuit against the company that manufactured that product. Unfortunately, for those injured by any of the COVID vaccines, our current government legislation provides total immunity for pharmaceutical manufacturers of these vaccines, such as Pfizer and Moderna, with the only exception of vaccine trial participants.

Instead, the COVID vaccine injured are forced to lodge claims with an inefficient, inadequate, secretive program known as the Countermeasures Injury Compensation Program (CICP). One of the program’s most significant problems is that its standard of proof is nearly impossible to meet. The CICP website openly lists multiple claims that have been filed citing an allergic reaction to their COVID vaccine, a rare adverse reaction that is openly recognized by the CDC, FDA, and WHO, yet they are listed as denied cases for compensation.

To date, the CICP has yet to pay out on a single claim for COVID vaccines. As of August 1st 2022, for the fiscal years of 2010-2022, 9,657 claims were filed to CICP and only 29 of them have been compensated in the history of the program. Further, CICP determinations cannot be appealed.

Not surprisingly, the CICP program has been described by vaccine legal scholars as a “horrible program” and a “black hole.” Essentially, the injured have a right to file and a right to lose.

COVID vaccines are NOT included on the Vaccine Injury Compensation Fund (VICP).
CICP Shortfalls

Available Benefits: The CICP does not provide for attorneys’ fees, pain and suffering, or punitive damages.

Filing Deadline: CICP claims must be filed within one year of vaccine administration. It often takes over a year for the vaccine injured to understand the nature and extent of their injuries. In addition, many of the vaccine injured are unaware of the program’s existence until after the one-year deadline has passed.

Standard of Proof: The CICP program requires the vaccine injured to prove with “compelling, reliable, valid, medical and scientific evidence” that the vaccine directly caused their injury. As COVID vaccine injuries are novel in nature, sufficient evidence simply does yet exist for the injured to prove their case. And as highlighted above, even the few adverse reactions that are listed on the vaccine package insert have been denied claims by this program.

Finder of Fact and Law: The CICP, as a delegate of the Secretary of Health and Human Services (HHS), determines the merit of vaccine injured claims. In addition, HHS has actively supported mandating vaccines in numerous contexts and downplayed adverse effects in a purported effort to combat “vaccine hesitancy.” As such, HHS essentially serves as judge, jury, and interested party. Such a system is inherently unjust to the vaccine injured.

Appeals and Judicial Review: The CICP provides no judicial or administrative review.

The Congressional Research Service has provided an excellent detailed summary of the CICP as well as the more effective Vaccine Injury Compensation Program (VICP). It is available for review at: https://crsreports.congress.gov/product/pdf/LSB/LSB10584.
Inequities of COVID-19 consequences create a burden on the poor and minority communities. These communities cannot wait until the vaccine is on the VICP table and therefore rely more on CICP than anyone else. The CICP fund is not capable of addressing the needs of those who are in our most vulnerable populations.

Repairing Programs, Restoring Lives

React19’s position is that the CICP program is simply too broken to fix. This conclusion was reached after extensive consultation with some of the top vaccine legal scholars in the nation. It is our position that those injured by the COVID vaccines should receive retroactive coverage under the VICP.

Unfortunately, current attempts at legislative reform, including the Vaccine Injury Compensation Modernization Act of 2021 (H.R. 3655) and the Vaccine Access Improvement Act of 2021 (H.R.3656), fail to provide for retroactivity.

Below, we discuss potential pathways forward.
Two Pathways Forward

Track A: VICP & Retroactivity

1) **Require the DHHS Secretary to define the COVID vaccines** (including those authorized and already administered under the EUA) and move them to the VICP table of covered vaccines.

2) **Modify the filing deadline** for COVID vaccines after transfer to the VICP.

3) **Exempt COVID vaccines from the CICP’s exclusive remedy clause.**

4) **Exempt COVID vaccines from prior VICP eligibility requirements** including routine administration to women and children and excise tax subjectivity.

5) **Supplement the VICP fund with additional Congressional appropriations.**

Track B: CICP Reform

1) **Initiate comprehensive CICP Reform,** Permit **judicial review** of CICP claims. Eliminate the conflict of interest in which DHHS serves as both the defendant and adjudicator for CICP claims.

2) **Remove the Injury table** and move to a **preponderance of evidence** standard for claim adjudication.

3) **Increase lifetime compensation cap of lost wages** that adjusts for inflation.

4) **Provide up to $850,000 in CICP death benefit or pain and suffering compensation** that adjusts for inflation.

5) **Increase the statute of limitations to 3-years.**

6) **Allow for appeals and extended deadlines** based on new pharmacovigilance information and research.

7) **Provide flexibility in special master or staff appointments** to provide prompt review of claims.

Conclusion

Reforming existing federal compensation programs for the COVID vaccine injured is a moral imperative. We rolled up our sleeves, did our part to protect the vulnerable, and now need that support ourselves. These everyday Americans are in need of assistance now. With bills piling up monthly, those injured by the Covid vaccines under React19’s membership have lost their health, their jobs, their homes; they cannot wait another month or years for promised support to come.
References

Existing Bills in the House of Representatives:
Vaccine Injury Compensation Modernization Act of 2021 (H.R. 3655)
Vaccine Access Improvement Act of 2021 (H.R. 3656)

Congressional Research Service:
https://crsreports.congress.gov/product/pdf/LSB/LSB10584/4
https://crsreports.congress.gov/product/pdf/LSB/LSB10443/18

CICP Fund Considerations - Pubmed: https://pubmed.ncbi.nlm.nih.gov/35382431/

H.R. 3655 - Vaccine Injury Compensation Modernization Act of 2021

1. Increases the minimum number of special masters from not more than eight to not less than ten.
2. Increases the compensation for a vaccine-related death and the maximum compensation for pain, suffering, and emotional distress from a vaccine-related injury from $250,000 to $600,000.
3. Extends from 36 months to five years the period of time after the onset of symptoms of a vaccine injury during which an individual may file a claim for compensation.
4. Requires that the CDC must update the Vaccine Injury Table within six months of recommending a vaccine for routine administration to children, adults, or pregnant women.
5. Does NOT include existing injuries from Covid vaccines.

H.R. 3656 - Vaccine Access Improvement Act of 2021

1. Modifies the excise tax on certain vaccines to (1) automatically impose the tax on vaccines that HHS adds to the Vaccine Injury Table, and (2) requires HHS to notify the Department of the Treasury and Congress when new vaccines are added to the Vaccine Injury Table.

TRACK A

Supplemental Information to repair the existing broken VICP program

1. Amend the NCVIA to provide for a minimum of eighteen (18) special masters and allow the chief special master authority to appoint additional special masters should it be required for swift justice to be carried out for victims who suffer from vaccine injuries;
2. Amend the NCVIA to increase the statutory cap on pain and suffering and for the death benefit in vaccine injury cases to $850,000 with continued increases to adjust with inflation;
3. Amend the NCVIA to provide for pre-judgment interest on all awards and fees;
4. Amend the NCVIA to **increase the statute of limitations to five (5) years** for adults and include a tolling provision for minors which would allow them to file up to one year after they reach the age of eighteen (18);

5. Amend the NCVIA to **allow HHS only up to six (6) months** to add a new vaccine to the vaccine injury table following the recommendation by the CDC for routine use of that vaccine for pregnant women or children; and

6. Amend the excise tax statute to allow any vaccine recommended for routine administration to children or pregnant women to be **automatically subject to the excise tax and therefore eligible for the VICP**.

**TRACK B Supplemental Information for Adequate CICP Reform**


1. Permit **judicial review** of DHHS administrative adjudication of CICP claims **OR**, Relocate CICP from DHHS to the Federal Claims Court eliminating the conflict of interest in which DHHS serves as both the **defendant and adjudicator** for CICP claims.

2. Remove the Injury table and move to a **preponderance of evidence** standard for claim adjudication.

3. Increase **lifetime compensation cap of lost wages** that adjusts with inflation (cumulative inflation of 35.82% since 2010 when CICP was created)

4. Provide up to $850,000 in CICP **pain and suffering compensation or death benefit** that adjusts for inflation going forward.

5. Provide a **3-year statute of limitations** to file an injury or death claim.

6. Allow for **appeals and extended deadlines** based on new pharmacovigilance information and research.

7. Provide flexibility in **special master or staff** appointments to provide for reasonable claims processing time frames.
In The News

The British Medical Journal
Covid-19: Is the US compensation scheme for vaccine injuries fit for purpose?

Politico
Vaccine injury compensation programs overwhelmed as congressional reform languishes

Forbes
Feds Pay Zero Claims For Covid-19 Vaccine Injuries/Deaths

Reuters
COVID-19 era highlights U.S. ‘black hole’ compensation fund for pandemic vaccine injuries

L.A. Times
Federal vaccine court hasn’t helped those whose lives were altered by COVID-19 shots

CNBC
Compensation for victims of Covid vaccine injuries is limited

Contact Us

Working in government policy? Contact our Legal Director: Christopher Dreisbach @ Chris@react19.org

Injured? Want to get involved? Contact us at: info@react19.org