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When a Vaccine Injures a Child

A no-fault way to compensate.

Childhood immunization programs have created a public health miracle in this country. In 1952 there were 57,000 cases of paralytic polio; last year there were four. In 1941 there were more than 2,200 deaths from measles in a single year; last year there were 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 suffer adverse side effects for a few days. Some will face 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. The schools and clinics and private pediatricians who 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—sometimes 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. These firms say that this sort of thing can make it less profitable to prevent illness than to treat it. They say that affordable insurance is increasingly hard to find and that they make the best vaccine they know how to and still lose lawsuits. One result, they say, is that they are forced to increase prices drastically, or simply to get out of the market.

These are complex arguments, but it is clear that the vaccine injury controversy has slowed progress in the development of preventive health care. And it is clear that a number of vaccine-injured children are being left to fend for themselves on Medicaid or disability or whatever else may be available.

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

A broad array of conservatives and liberals, consumer advocates and pharmaceutical lobbyists has crafted a compromise bill—the National Childhood Vaccine Injury Compensation Act—that is now either almost law or almost history. It has passed the review of doctors and parents and manufacturers and lawyers, but it has not yet passed Congress.

The bill would establish a generous no-fault compensation system to pay for the medical, rehabilitation and education costs of those children who are injured. If the injury were 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 bill would 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

would not have to go to court to get their medical bills paid.

The compensation fund would be paid for by an excise tax on vaccines. The tax would differ on each vaccine, according to how dangerous it is known to be. The final price of a shot would thus reflect its true cost to the society, and those children who avoid the dangers of whooping cough would help pay for those children who reacted to the whooping cough vaccine.

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

But almost everyone agrees that the compensation bill is better than the current situation. No one wants to return to the terrors of epidemics of crippling and killing disease.

Congress is dealing with the tax bill and with the budget. Before we leave, we must also finish this ounce of preventive work. We cannot afford the pounds of cure.

The writer, a Democratic representative from California, is chairman of the House subcommittee on health.