CLALLAM COUNTY BOARD OF HEALTH

AGENDA of October 17, 2023 @ 1:30 – 3:30 pm
Clallam County Courthouse
Board of Commissioners Meeting Room 160
223 E. 4th Street
Port Angeles, WA 98362

Board of Health meeting will also be available virtually at:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and join with Meeting ID: 935 7343 5754 and Passcode: 095863

If you would like to participate in the meeting via Zoom video conference, visit https://zoom.us/j/93573435754 join with Meeting ID: 935 7343 5754 and Passcode: 095863

This meeting can be viewed on a live stream at this link: http://www.clallam.net/features/meetings.html

Public comment and questions can be directed to the Clerk of the Board at 360-417-2276 or nan.furford@clallamcountywa.gov

- Call to Order
- Roll Call
- Request for Modifications/Approval of Agenda
- Approval of Draft Meeting Minutes for September 19, 2023
- Public Comment for Agenda Items – *Please limit comments to three minutes*
- Health Officer: Infectious Disease Update
- Board of Health Public Hearings: None
- Board of Health Presentations:
    1. Clallam County Sheriff's Office - Health Needs of Incarcerated – Amy Bundy & Linsey Monaghan
    2. Environmental Health Food Program/Safety – Jessica Pankey
- Discussion Items: None
- Old Business and Information Items: None
- Environmental Health Director
- HHS Director
- Future meeting agenda items:
    1. Vaccination Rates
    2. Air Quality and Noise Ordinance
    3. Climate Change
    4. Update on Behavioral Health Organization (BHO)
    5. Olympic Peninsula Healthy Communities Coalition

- Public Comment – *Please limit comments to three minutes*
- Adjournment

NEXT MEETING – November 21, 2023

INSTRUCTIONS FOR SPEAKING AT A BOARD OF HEALTH MEETING:

- Members of the public wishing to address the Board on general items may do so during the designated times on the agenda.
- Members of the public wishing to comment at the public hearing are asked to sign in on the sheet provided giving their name and place of residence.
- The Chair may limit the comment period to 3 minutes for each speaker subject to Board concurrence.
- Speakers, generally, will be heard in the order they signed up. All comments must be made from the speaker's rostrum and any individual making comments shall first state their name and address for the official record.
- General comments, applause, booing from members of the audience are inappropriate and may result in removal.

These guidelines are intended to promote an orderly system for conducting a public meeting/hearing so that each person has an opportunity to be heard and to ensure that exercising their right of free speech embarrasses no one.

Note: Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board. Copies of public documents from Board meetings are available by contacting the Public Records Department.

Members:

Chair, Mike French; Vice-Chair, Shahida Shahrir; Dr. Gerald Stephanz; Helen Kenoyer; Tia Skerbeck; Paul Cunningham; Jeff Gingell; Mark Ozias and Randy Johnson

Health and Human Services Staff:

Dr. Allison Berry, Health Official; Kevin LoPiccolo, Director; Jenny Oppelt, Deputy Director; Jennifer Garcelon, Environmental Health Director; Nan Furford, Clerk of the Board

BOARD OF HEALTH
SEPTEMBER 19, 2023 DRAFT
MINUTES

CLALLAM COUNTY BOARD OF HEALTH

MINUTES of September 19, 2023 @ 1:30 pm – 3:30 pm
Clallam County Courthouse
Board of Commissioners Meeting Room 160
223 E. 4th Street Port Angeles, WA 98362
Meeting was held via Zoom (Video conference)

REGULAR MEETING OF THE CLALLAM COUNTY BOARD OF HEALTH

Call to Order: The meeting was called to order at 1:30 p.m.

Roll Call: Members present were Chair, Mike French; Commissioner Randy Johnson; Vice-Chair, Shahida Shahrir; Jamestown S'Klallam Tribe, Paul Cunningham; Lower Elwha Klallam Tribe, Tia Skerbeck; Community Stakeholder, Dr. Gerald Stephanz; Consumer of Public Health, Helen Kenoyer; Health Officer, Dr. Allison Berry; HHS Director, Kevin LoPiccolo; HHS Deputy Director, Jennifer Oppelt; Environmental Health Director, Jennifer Garcelon

Members excused: Commissioner Mark Ozias; City Council Member Representative, Jeff Gingell

Request for Modifications/Approval of Agenda
Dr. Stephanz made a motion to approve the agenda, Commissioner Johnson seconded, agenda approved.

ACTION TAKEN: The Board had unanimous consent to approve the agenda.

Approval of Draft Meeting Minutes for August 15, 2023
Paul Cunningham made a motion to approve the meeting minutes, Gerald Stephanz seconded, minutes approved.

Public Comment for Agenda Items:
Kathy Zelenka spoke about Covid-19 vaccinations.

Board of Health Hearings: None

Health Officer – Infectious Disease Update – Dr. Berry
Dr. Berry reported that there is a resurgence in Covid-19 and an increase in outbreaks in healthcare and school settings. The primary driver is not taking the necessary Covid-19 precautions. There is a rise in hospitalization, especially those individuals over 70. The Covid-19 new vaccine variant will be coming in the next few weeks and will be available through one's primary care provider or pharmacy. Flu shots and RSV vaccine will also be available, and you can take all of them at the same time. Dr. Berry encourages individuals to get the vaccine update and mask in crowded indoor spaces. Discussion followed.

Board of Health Presentations:

1. **Clallam County Housing Issues – Timothy Dalton**
   Timothy Dalton shared a presentation on current housing issues and what the Housing Solution Committee is doing to address all housing types within Clallam County. Discussion followed.

2. **Food Supply/Food Safety – Clea Rome and Jessica Pankey**
   Clea Rome and Danielle Carson from Washington State University/Clallam County Extension program shared a presentation on SNAP-ED and Community Health. Discussion followed. Jessica Pankey will report on Food Safety next month.

Discussion Items:
None.

Old Business and Information Items:
None.

Environmental Health Director - Jennifer Garcelon
Jennifer Garcelon announced they hired Abbey Kindall for the Drinking Water Lab position. They are filling the currently empty Customer Service position. It is Septic Smart week, and in-person DIY Septic classes are filling up for this month and next month.

HHS Director- Kevin LoPiccolo
Kevin introduced Madison Gallentine as the new Public Health Nurse Manager. The Board welcomed her. Two new Public Health Support Specialists were also recently hired.

Public Comment
None.

Adjournment
Meeting was adjourned at 3:35 p.m.

Next Meeting – October 17, 2023

PASSED AND ADOPTED this ____ day of _____, 2023

CLALLAM COUNTY BOARD OF HEALTH

_____
Mike French, Chair

_____
Allison Berry, MD, MPH, Health Officer

ATTEST:

_____
Nan Furford, Clerk of the Board

PUBLIC TESTIMONY

COVID -19 INFORMATION PACKET

KATHY ZELENKA

Public Comment Clallam County Board of Health Meeting 9/19/23

Kathy Zelenka

My name is Kathy Zelenka and I live here in Port Angeles.

In March 2021, my husband's colleague suffered a near-fatal reaction to her COVID shot. You can read about it in the British Medical Journal: "Covid-19: Is the US compensation scheme for vaccine injuries fit for purpose?"

Well, no, it's a total failure. 97% of claims are rejected, often because bureaucracy hasn't caught up with new side effects to a new technology. It's paid a pittance to four people, while thousands wait and suffer. And Pharma's humanitarian spirit ends where their profits begin.

An advisor to vaccine manufacturers and an injury lawyer call for reform in this article: "Insult To The Injured: The Case For Modernizing Vaccine Injury Compensation."

For over two years, I've pleaded for help and submitted study after study on adverse events to my representatives and to public health. Rare responses say "Don't believe misinformation" or just point me to the dysfunctional system. But mostly, it's crickets.

Why are these tragedies ignored? Remember the WA mom who didn't want it? But there was a mandate if she wanted to keep volunteering at school. She died of an adverse reaction.

Neither her death nor plentiful data changed the unscientific, unethical, untrue messaging or stopped bad policies that hurt people. There was no humility. Her obituary drew hate mail.

So much pain could've been avoided if the injured were not censored, shamed, and abandoned; if policies reflected reality.

One doctor at the last ACIP meeting voted not to approve the new booster because there's not enough data. The rest recommended it down to babies, fully aware that we have no safety net. We're outliers: Europe cautiously restricts it to elderly and the high risk.

React19, a nonprofit that speaks for over 30,000 injured Americans, has compiled over 3000 studies on serious side effects.

Heavy personal and professional costs come with advocating for survivors and the bereaved, but Steadfast Love will break the stigma.

Why does asking for help get us labeled as "anti-vaxxers?" I'm anti-cruelty. I used to trust public health. But I've witnessed devastation and unconscionable indifference from those who assured us of safety.

Millions got vaccinated. Some are disabled, including kids. Some died, including suicides of despair, when physical misery became unendurable, coupled with abandonment.

Help is finally in sight: the bipartisan H.R. 5142, Vaccine Injury Compensation Modernization Act. It'll create a functioning system, raise payment caps that haven't changed since 1986, and automatically add future vaccines.

I keep thinking of the little boy who gave Jesus his lunch and it was multiplied as a blessing to many. Along with others across the globe, I offer my heart and my words and I believe it's time for the miracle. My voice is small and it's faithful: Will you ask Derek Kilmer and our senators to support this?

Sydney, Australia
maryannedemasi@hotmail.com
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Published:

VACCINE INJURY

Covid-19: Is the US compensation scheme for vaccine injuries fit for purpose?

Patients and lawyers say that America's system for covid vaccine injury claims is costly, opaque, and yet to issue a single payout. Maryanne Demasi reports

Maryanne Demasi *investigative reporter*

"My toes move constantly, 24 hours a day, uncontrollably back and forth," says Chris Dreisbach, a 44 year old attorney who was admitted to hospital with debilitating neurological symptoms after a second dose of Pfizer's mRNA vaccine in March 2021. "I often spend at least four hours a day in my bathtub, because a hot bath is the only way I can turn down this electrical sensation that pulses through me. The cognitive issues are worse. I used to pride myself on being able to get up in a courtroom and think on my feet. Now, I have this brain fog. It's embarrassing."

From his hospital bed Dreisbach began researching compensation schemes, only to discover that the US's national Vaccine Injury Compensation Program (VICP) was not available to people injured by covid-19 vaccines. Instead he was forced to lodge a claim with a more costly, opaque, and less generous system that has yet to pay out on a single claim for covid vaccines. Senators, lawyers, doctors, and others such as Dreisbach are questioning why patients injured by vaccines are being routed into a scheme they view as inferior.

Two different schemes

The VICP was established as the result of a federal law known as the National Childhood Vaccine Injury Act of 1986, designed to provide compensation in the rare instances where an injury results from vaccination, while also shielding manufacturers from liability so that they continue to make the products. Funded by a $0.75 excise tax on each dose, this law is thought to have contributed to historically high levels of vaccine uptake in the US.[1] It covers the majority of vaccines including routine childhood immunisations, but it is not available to people injured by covid vaccines.

When the US secretary of the Department of Health and Human Services declared a public health emergency in early 2020[2] this triggered the 2005 Public Readiness and Emergency Preparedness Act, meaning that any injuries arising from covid countermeasures—including ventilators, antivirals, and vaccines—would instead have to be filed with the Countermeasures Injury Compensation Program (CICP).

Critics say that the CICP is inferior to the VICP in terms of its payouts and the way claims are assessed. Only the most serious injuries and death are compensated, claims have to be made within a year after vaccination, and it has a higher burden of proof than the VICP. Loss of income under the CICP is limited to $50 000 (£38 250; €45 900) a year, and no compensation is included for pain or emotional distress. Under the VICP, payouts for lost wages are not capped, and compensation for pain and suffering is awarded up to $250 000.[3]

Since 1988 compensation has been awarded in 36% of the 24 909 claims filed under the VICP, with around $4.7bn paid out.[4] In contrast, compensation has been awarded for just 0.4% of the 7547 claims filed under the CICP, with around $6m paid out.[5] The vast majority (93%) of the claims handled by the CICP have been filed during the covid pandemic, of which 4097 relate to injuries or deaths from covid vaccines and 2959 relate to other covid countermeasures.

To date, only one of the covid claims has been deemed compensable,[5] although no money has been paid yet. In contrast, Thailand's National Health Security Office reports compensating over 14 000 people around $50m to settle covid vaccine injury claims through a process that promises quick financial assistance.[6]

Critics also say that the CICP is less transparent. The CICP is a "horrible programme," says Peter Meyers, emeritus professor at George Washington University Law School in Washington, DC. "You basically submit your application for compensation, it's then dealt with secretly, and you don't have a right to have a lawyer paid for by the programme. You don't have a right to a hearing. We have no idea how these cases are being processed . . . There is such a lack of transparency in this programme that it's frightening."

Unlike CICP claims, which are resolved by an administrative process, VICP claims are resolved by a judicial process. Meyers says, "Those are open proceedings: you have a right to a hearing before an independent special master [adjudicator], the court will pay for your lawyer, the court will pay for an expert witness to support you, and if you don't like the result of that decision you can appeal to a court with judges—none of which you can do in the CICP."

The CICP also has a higher burden of proof than the VICP. There must be "compelling, reliable, valid, medical and scientific evidence" that the vaccine directly caused the injury. As an attorney, Dreisbach knows that meeting this standard is virtually unattainable, especially as he has not received a definitive diagnosis. "If we don't know what my medical condition exactly is, there is no possible way

that I can prove that vaccination caused an unknown," he says.

While Pfizer and Moderna's covid vaccines are now both fully approved by the US Food and Drug Administration, the Public Readiness and Emergency Preparedness Act governing the CICP does not distinguish between the vaccines that are fully approved and those authorised only for emergency use, says Katharine Van Tassel, professor of law at Case Western Reserve University in Cleveland, Ohio. Covid vaccine injury claims will be considered under the VICP only after the secretary of the Department of Health and Human Services declares an end to the public health emergency—and by then it will be too late for many people, she says.

Structural racism is built into the system, Van Tassel adds. "The majority of essential workers, who had to be vaccinated quickly, were individuals with low income, people of colour, your most vulnerable populations—and they are the very people who will not have access to the VICP," she says.

The BMJ contacted the US Department of Health and Human Services and the Health Resources Administration for a response to these criticisms, but neither has responded.

Campaign for reform

A small group of US senators has been working towards reforming the CICP. On 11 March 2022 Senator Mike Lee introduced the Countermeasure Injury Compensation Amendment Bill co-sponsored by Senators Mike Braun, Ron Johnson, and Cindy Hyde-Smith. It suggests reforming the CICP so that its processes and payouts are comparable to the VICP. It also proposes creating a commission to identify injuries caused directly by a covid countermeasure and to allow previously rejected claims to be resubmitted.[7]

However, Van Tassel believes that a simpler solution exists: to route all covid vaccine injury claims through the existing VICP system. Meyers agrees, having called for a reform of the CICP for over a decade.

"It's a mess, in my opinion," he says. "I think the best thing that could happen is to transfer all the covid-19 cases out of the CICP and put them in the vaccine court [VICP], which is far superior, and add to the number of special masters who are deciding these cases to deal with the inevitable backlog of cases."

Even with a move to the VICP, some argue that it will take considerable time for the system to function smoothly. Cody Meissner, professor of Paediatrics at Tufts University School of Medicine in Boston and former chair of the federal advisory committee that provides oversight of the VICP, calls it a "wonderful programme" but is concerned that it may become clogged with claims that ultimately are not vaccine related.

"Poorly understood but unrelated adverse events may occur after any vaccine administration," he explains. "Many post-vaccine events are not related to the vaccine and occur simply by coincidence."

Usually, when vaccines are added to the VICP it relies on a body of literature about known adverse events to decide on compensation, says Meissner, adding, "I don't know that we're there yet with covid-19 vaccines."

He also worries that lawyers with conflicts of interest are behind the push to move covid vaccine claims to the VICP, for their fees can be paid under the programme even if the claim is denied.

Still, Dreisbach is hoping for change. He is campaigning as a board member of React 19, a non-profit organisation creating a network of patients, doctors, and scientists to research the underlying causes of vaccine injury and advocate for legislative changes to achieve fair compensation for vaccine injury.[8]

"The covid vaccines have been fully approved by the FDA, recommended for children as young as 5 by the CDC [Centers for Disease Control and Prevention], and mandated by employers across the country," he says. "It's past time for our elected lawmakers to support the covid vaccine injured, just as they have those injured by other routine vaccinations covered by the VICP."

"The system is broken"

After being vaccinated with the Johnson & Johnson covid vaccine on 14 March 2021 Michelle Zimmerman (fig 1), from Seattle, developed severe pain, loss of movement in her left arm, and problems with her cognition, memory, speech, and eyesight. Different specialists gave a primary diagnosis of a "severe vaccine reaction" (fig 2).

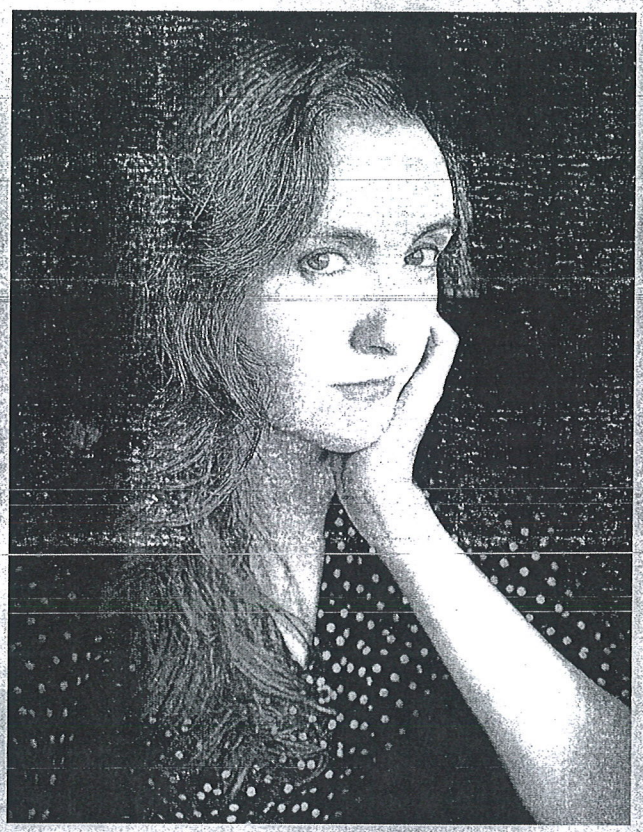

Fig 1 | Michelle Zimmerman

Unable to return to work as a high school leader, teacher, and education researcher and aided by parents who were taking care of her, she submitted medical reports to her insurance company. The insurer granted her claim, agreeing that the evidence proved that her disability began on the day she was vaccinated.

Zimmerman then prepared to apply for compensation through the CICP. Before submitting, she called administrators for clarity on what standards of proof were needed to show that her injuries were vaccine related. The CICP was unable to provide an answer, she tells *The BMJ*. "So, that was the first part that really concerned me," she says. "If you don't have a high level education or, like me, are going through severe cognitive vision problems, it's incredibly excruciating and difficult to try to even get through the instructions of how you would establish proof—what would count and what doesn't count."

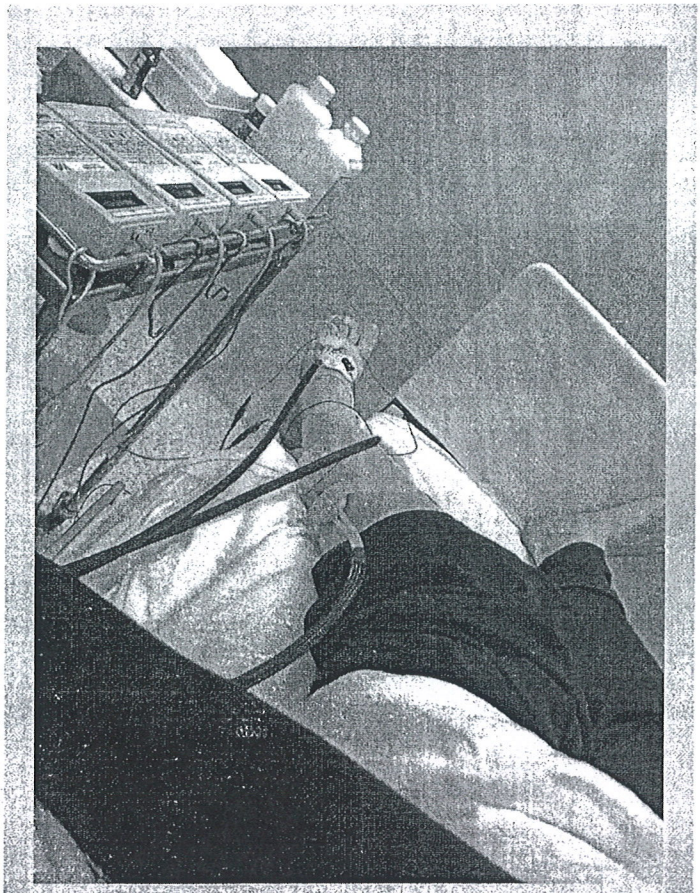

Fig 2 | Zimmerman in hospital after vaccination

No record

Zimmerman submitted her application on 1 October 2021 and received an automatic confirmation email. She then emailed administrators to get written confirmation of her submission, but she says that she was then left in limbo because the CICP does not provide a timeline for when claimants should expect to hear a response. After calling repeatedly to check the status of her claim, in November she received a phone call from a CICP administrator who told her that there was no record of her application.

She was horrified. As a researcher and author, she knew the importance of good governance around people's medical records. "You don't just lose things like that," she says. She was told that it was not possible to talk to any supervisors and that the only route available was to resubmit her application.

But the CICP has a time limit: it accepts claims only if filed within a year of receiving a covid vaccine. "Had I not called and written so often, I would not have known that they lost all record of me until it was too late to resubmit," she says. She has still not received a case number or written confirmation of her submission.

The experience has left her with little confidence in the system and with concern for others, especially disadvantaged groups. "If I can't navigate the system with a PhD, what hope is there for someone else?" she asks. "You have no resources for attorney support. You have no one who has expertise who can go through medical journals for you. If I didn't have disability insurance, I don't know what I would do."

Zimmerman believes that the system is "broken" and is calling for covid vaccines to be added to the VICP. She says, "So many of us who are injured received vaccines to protect others, for civic duty, and to decrease load on medical professionals, and now we are being called collateral damage because the CICP is not a functioning safeguard."

Competing interests: None declared.

Provenance and peer review: Commissioned; externally peer reviewed.

1 Van Tassel K, Shachar C, Hoffman S. Covid-19 vaccine injuries—preventing inequities in compensation. *N Engl J Med* 2021;384:e34. doi: 10.1056/NEJMp2034438. https://www.nejm.org/doi/full/10.1056/NEJMp2034438. pmid: 33471973

2 Department of Health and Human Services, Office of the Secretary. Declaration under the Public Readiness and Emergency Preparedness Act for medical countermeasures against covid-19. *Fed Regist* 2020;85:52. https://www.govinfo.gov/content/pkg/FR-2020-03-17/pdf/2020-05484.pdf.

3 Health Resources and Services Administration. Comparison of Countermeasures Injury Compensation Program (CICP) to the National Vaccine Injury Compensation Program (VICP). Last reviewed Apr 2021. https://www.hrsa.gov/cicp/cicp-vicp

4 Health Resources and Services Administration. National Vaccine Injury Compensation Program: monthly statistics report. Updated 1 Mar 2022. https://www.hrsa.gov/sites/default/files/hrsa/vaccine-compensation/data/vicp-stats-03-01-22.pdf

5 Health Resources and Services Administration. Countermeasures Injury Compensation Program (CICP) data. Table 1: Alleged covid-19 countermeasure claims filed as of March 1, 2022. Mar 2022. https://www.hrsa.gov/cicp/cicp-data#table-1

6 B1.7bn for adverse jab effects. *Bangkok Post* 2022 Apr 9. https://www.bangkokpost.com/thailand/general/2292514/b1-7bn-for-adverse-jab-effects

7 Senate of the United States. A bill to amend the Countermeasure Injury Compensation Program with respect to covid–19 vaccines. 117th Congress 2nd session. 2022. https://www.lee.senate.gov/services/files/E0BE5897-F0C7-4E09-A043-42D976C0C717

8 React 19. Patient-led research. https://www.react19.org

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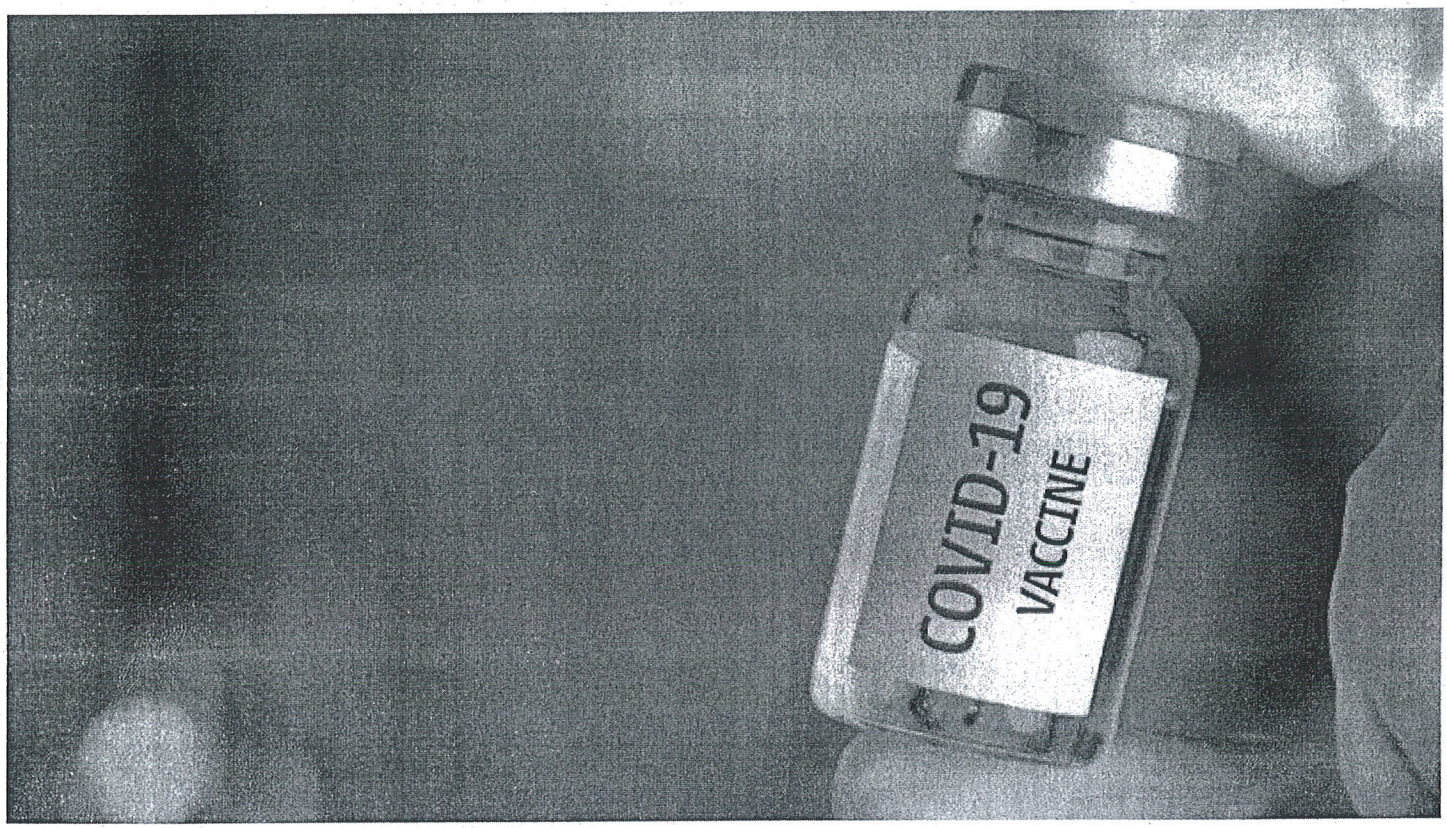
RELATED TOPICS:
VACCINES | LIABILITY | COVID-19 | PUBLIC HEALTH | LEGAL AND REGULATORY ISSUES | PANDEMICS | CHILDREN'S HEALTH | TAXES | LEGISLATION

Insult To The Injured: The Case For Modernizing Vaccine Injury Compensation

Renée J. Gentry, Richard Hughes IV

JULY 19, 2023 **DOI:** 10.1377/forefront.20230718.324863



We are an unlikely alliance—Gentry represents vaccine-injured claimants in seeking compensation, and Hughes represents and advises vaccine manufacturers—but we can easily agree that our nation's approach to compensating vaccine-related injuries is disjointed, cumbersome, and glacial. It is certainly falling short of its commitment to balancing patient safety and public health needs.

Born out of two laws enacted two decades apart, the National Vaccine Injury Compensation Program <https://www.hrsa.gov/vaccine-compensation> (VICP) and the Countermeasures Injury Compensation Program <https://www.hrsa.gov/cicp> (CICP) were intended to preserve vaccine manufacturer participation in the market by insulating

them from legal liability in exchange for compensating vaccine-related injuries. Providing these alternatives to civil litigation better facilitates both vaccine supply and public demand, allowing our nation to accomplish public health goals in both an everyday and pandemic context.

Following the 1976 swine flu pandemic and injuries stemming from the nation's mass vaccination campaign, the number of vaccine manufacturers dwindled dramatically because of aversion to legal liability. Recognizing that potential erosion of the nation's vaccine supply, uncompensated injuries, and weakened vaccine confidence could pose substantial danger to public health, Congress enacted the National Childhood Vaccine Injury Act of 1986 <https://www.hrsa.gov/sites/default/files/hrsa/vicp/title-xxi-phs-vaccines-1517.pdf> (NCVIA); it created the VICP. In 2005, after President George W. Bush recognized similar concerns should the nation face a SARS or influenza threat <https://georgewbush-whitehouse.archives.gov/news/releases/2005/11/20051101-1.html> , Congress passed the Public Readiness and Emergency Preparedness <https://www.congress.gov/109/plaws/publ148/PLAW-109publ148.pdf#page=140> (PREP) Act; it created the CICP.

Distinguishing The VICP And CICP

The VICP and the CICP share some core characteristics: Injury claims under both programs are not lawsuits but claims for compensation, and both programs are supported administratively by the Health Resources and Services Administration <https://www.hrsa.gov> (HRSA), which pays awards to claimants. Otherwise, the programs differ greatly <https://www.hrsa.gov/cicp/cicp-vicp> in terms of persons, injuries, and products covered, as well as compensation level, processes, and appeal rights.

Under the NCVIA, the VICP compensates injuries from vaccines on the childhood vaccination schedule <https://www.hrsa.gov/sites/default/files/hrsa/vicp/vaccine-injury-table-01-03-2022.pdf> with funding through a manufacturer excise tax. Although called the Childhood Vaccine Injury Compensation Program, adults who were injured by covered vaccines could also file for compensation, but vaccines only recommended for adults (for example, the shingles vaccine) are not covered by the VICP.

Under the PREP Act, the CICP provides broad immunity from liability and compensation for injuries related to virtually the entire medical countermeasures enterprise during a public health emergency. The secretary of the Department of Health and Human Services (HHS) determines the scope of "Covered Countermeasures" and "Covered Persons. "

Today, COVID-19 vaccines are not covered under the VICP but are covered under the CICP.

Under the CICP, claims are filed directly with the HRSA, while VICP claims are filed in the US Court of Federal Claims <https://www.uscfc.uscourts.gov/> in Washington, DC. Within the Court of Federal Claims is the Office of Special Masters, known as the Vaccine Court, consisting of eight special masters who adjudicate cases. Similar to trial judges, they hear the evidence and make determinations as to whether or not the individual was injured by the vaccine; they also make a determination of damages if needed. Injury claimants are barred from bringing suit against a vaccine manufacturer until they have exhausted their claims in the VICP.

Under the VICP, approved claims and some expenses for administering the program are paid from a manufacturer excise tax (75 cents per vaccine antigen) held in a Vaccine Injury Fund <https://treasurydirect.gov/government/funds-management-program-reports/monthly-financial-reporting/> . Vaccine-injured children and adults are compensated out of the currently $4 billion fund <https://treasurydirect.gov/ftp/dfi/tfmb/dfivi0423.pdf> . Unlike the VICP, the CICP is funded through congressional appropriations.

Collectively, however, the above programs lack consistency, do not provide comprehensive or adequate compensation for the vaccine-injured, and need modernization and strengthening of their underlying legal authority.

After A Strong Run, VICP Challenges Are Pushing The Program To A Breaking Point

While imperfect, the NVICP was tremendously successful in its first 30 years. New vaccines were developed at a rate that the program grew from six covered vaccines to 16 <https://www.hrsa.gov/sites/default/files/hrsa/vicp/vaccine-injury-table-01-03-2022.pdf> . Few petitioners rejected the decision of the Vaccine Court and filed suit against a manufacturer. Fewer still opted out of the program at the 240-day mark when they are permitted to pursue civil litigation if their claim has not been processed. This is reflective of Congress' intent that petitioners be compensated quickly and generously by making the NVICP a reasonable and meaningful alternative to civil litigation.

For most of its first three decades, most cases moved through the program at a reasonable pace, and most conceded cases and settled cases resolved damages quickly for reasonable amounts that were consistent with previously decided cases (accounting for new treatments and health care growth rates, although some elements of compensation

remain at 1986 dollar values—see 42 U.S.C. Sect. 300aa-15(a)(2) and 15(a)(4) <https://www.govinfo.gov/app/details/USCODE-2021-title42/USCODE-2021-title42-chap6A-subchapXIX-part2-subparta-sec300aa-15/summary>).

A perfect storm of three events have now pushed the VICP to point of collapse:

An Influx of Claims—With the addition of the influenza vaccination in 2005, which is recommended for adults and children every year (rather than to children for a limited time period in their life, as with childhood vaccines), the pool of potential petitioners increased exponentially and filed cases tripled to today's numbers—3,801 as of April 2023, according to the Office of Special Masters. Despite this, the program may well have been able to survive this addition, as the bulk of the injuries coming from the influenza vaccination are Table injuries, which are injuries listed on a predetermined table for which causation is presumed and compensation is more easily awarded. Cases involving Table injuries should be processed rapidly; prior to 2015, Table cases were being resolved in approximately one year.

Non-Table Injuries Barriers—Non-Table injuries, however, require a claimant to demonstrate causation. In 2015, the tenor of proceedings changed when HHS moved aggressively to delegitimize all non-Table vaccine injuries. Demands that would have previously been settled reasonably faced increasing briefing, oral argument, and full-blown damages trials. Despite considerable efforts by the special masters to bring parties to settlement, HHS either refused to participate in settlement discussions or offered nuisance value amounts—including in cases in which the injuries were profound and life-long—which resulted in failed settlement.

Cases were increasingly defended with multiple experts. Even damages proceedings were aggressively prosecuted, with HHS ignoring vast numbers of comparable cases and proffering compensation amounts substantially below the comparables. At times, the difference between what was proffered and what was awarded in comparable prior cases was by a factor of three. Even Table injuries were met with often frivolous challenges, despite losing these same arguments repeatedly in the Court (see for example, *Meagher v. HHS* <https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2018vv1572-70-0>).

Attorney's Fees—This additional litigation resulted in excessively prolonged proceedings (by years) and ratcheted up litigation costs, including inevitably increased attorney's fees as well. HHS further stopped cooperating with petitioners' counsel to resolve attorney's fees—something it had done from the beginning of the program. As such, the special masters were required to issue full, reasoned decisions awarding attorney's fees and costs.

The average time for obtaining a decision awarding fees and costs exploded from one to three days to five to six months in cases in which the fees were unchallenged by HHS, even to upwards of a year in some circumstances. HHS also continued to object to fees in which they felt a reasonable basis challenge existed. These fees decisions took even longer.

The collective effect of the above was to double the workload of the special masters, the number of which remains statutorily restricted to eight. Typical wait times for petitioners in 2023 are now as follows: HHS's initial review (12–16 months), trial dates (18–24 months after however many years petitioners have waited for the record to be complete and ready for trial), and decisions of special masters on entitlement (12–18 months after the parties have submitted their final written legal briefs after the trial).

The effect on petitioners who file in the program is substantial and devastating. The delays in proceedings hamper petitioners' ability to hire experts for their cases and lengthen the time to compensation. This has created intensifying anger and frustration among the general public. Moreover, it has denied children medical treatment that they need and deserve.

Despite these challenges and the nearly tripling of the number of covered vaccines and cases, Congress has failed to modernize the critical infrastructure of the program or increase the number of special masters, medical reviewers, or attorneys in the Vaccine Division of the Department of Justice, which defends these cases on behalf of the government.

The CICP's Struggles To Compensate And Shaky Legal Foundation Threaten Vaccine Confidence

Likewise, the CICP faces its own challenges. As a purely administrative program outside of the courts, it is overwhelmed in its ability to process COVID-19 vaccine claims and the very legality of its legal liability shield has been called into question.

Congress did not replicate many of the VICP's robust features when it created the CICP. Claimants are not entitled to counsel and have no right of appeal. In addition to substantial limits on compensatory damages, it provides no pain and suffering damages. While the VICP provides a two- and three-year statute of limitations for injury and death claims, respectively, the CICP imposes a scant 12 months to bring a claim.

Prior to the COVID-19 pandemic, the program received only around 500 claims <https://www.hrsa.gov/cicp/cicp-data> and had compensated three. Because of the

sheer scale of the COVID-19 response, including a mass vaccination effort, the program has received 11,806 COVID-19-related claims <https://www.hrsa.gov/cicp/cicp-data> . As of June 1, 2023, only 919 of these claims had been adjudicated <https://www.hrsa.gov/cicp/cicp-data> . Twenty-five of those claims are eligible for compensation but pending benefits determination <https://www.hrsa.gov/cicp/cicp-data> . Paltry settlements were recently announced <https://www.reuters.com/legal/government/covid-19-vaccine-claims-yield-small-payouts-us-government-2023-04-18/> for the first three compensated COVID-19 vaccine injury claims—the highest was $2,019.55 for anaphylaxis, and two others for myocarditis were $1,582.65 and $1,032.69.

The slow pace of the program and relatively low rates of compensation has generated public frustration and media coverage that does no favors for vaccine confidence <https://www.cnbc.com/2020/12/16/covid-vaccine-side-effects-compensation-lawsuit.html> . In essence, as one of us (Gentry) wrote in a 2022 article on *Bloomberg Law*, the CICP gives the vaccine-injured "little more than the right to file and lose." <https://news.bloomberglaw.com/product-liability-and-toxics-law/national-vaccine-injury-program-needs-modernizing>

Additionally, the very legal underpinning of the CICP has been called into question by multiple US courts of appeal. With the PREP Act, Congress intended to preempt all state-level tort claims for injuries associated with covered countermeasures except for those involving willful misconduct. However, courts have held that the PREP Act cannot preempt state claims because the CICP does not provide an adequate alternative to bringing a civil suit. None of these decisions has involved vaccine-related claims, but the door is open to such future cases.

The application of these decisions will similarly mean that vaccine injury claims brought under state tort law are not preempted by the PREP Act. The protracted and inadequate resolution of CICP claims is all but certain to fuel state tort claims in the absence of a manufacturer liability shield.

Looking Ahead

The above challenges jeopardize the integrity of programs Congress created to sustain public confidence, the vaccine development and manufacturing enterprise, and public health protection. Despite a Government Accountability Office report in 2014 <https://www.gao.gov/products/gao-15-142> sounding the alarm on the VICP's problematic workload and delays, Congress has failed to remedy its core challenges.

That is not to say that efforts have not been made to modernize the VICP. Two bills introduced in the last Congress would have made significant reforms.

In June 2021, Rep. Lloyd Doggett (D-TX) and Rep. Fred Upton (R-MI) introduced the Vaccine Injury Compensation Modernization Act of 2021 <https://www.congress.gov/bill/117th-congress/house-bill/3655> (H.R.3655). After a September 2022 markup, the House Energy and Commerce Health Subcommittee unanimously approved portions of the legislation that would expand the number of special masters from 8 to 10 and require a detailed annual report on their caseloads. Other provisions of the bill would have increased compensation levels, extended the statute of limitations, and required the Centers for Disease Control and Prevention to update the vaccine injury table.

A second bill sponsored by Doggett and Rep. Mike Kelly (R-PA), the Vaccine Access Improvement Act <https://www.congress.gov/bill/117th-congress/house-bill/3656?q=%7B%22search%22%3A%5B%22hr3656%22%5D%7D&s=1&r=1> (H.R.3656) would have streamlined the process for adding additional vaccines to the VICP. This would have permitted the addition of the COVID-19 vaccine to the VICP, allowing for more generous and ostensibly timely compensation vis-à-vis the CICP.

Unfortunately, Congress failed to pass either of these bills, although re-introduction is expected this term.

It is imperative that Congress enact legislation to accomplish the above changes to the VICP. Furthermore, it must address the PREP Act's legal flaws and shortcomings.

The assurance of adequate and timely compensation of vaccine-related injuries in exchange for legal liability protection for vaccine manufacturers is a cornerstone of routine and pandemic immunization programs. The success of these programs relies on public confidence in vaccines, which can be bolstered by addressing the above programmatic deficiencies.

Authors' Note

Reneé Gentry represents vaccine injury claimants before the Office of Special Masters, an office within the US Court of Federal Claims. Richard Hughes represents and regularly advises vaccine manufacturers.

Furford, Nan

From: K Zelenka S[redacted]h Meeting
Sent:
To:
Subject:

Hello, Nan.

Thanks for your assistance with making a comment today.

I'd like the record to reflect --and for the Board to be verbally informed-- that Dr. Berry was in error about European recommendations.

In the UK, only over 65's are recommended:

"the government's advisers on vaccines recommended that only over-65s and other "vulnerable groups" should be included automatically this year."
https://www.bbc.com/news/health-66818046

Also, it wasn't a rhetorical question in my comment. I'd actually like an answer and am happy to put as much time into helping as I can. There's an urgent humanitarian need and people are suffering. See more at React19.org.

Dr. Berry commented that vaccine injuries are rare. I didn't suggest otherwise. The problem is that the injured are not being helped and there's finally legislation that could do it, but politicians don't listen to people like me. They might listen to a Board of Health.

The legislation: https://doggett.house.gov/media/press-releases/rep-doggett-files-legislation-modernize-vaccine-injury-compensation-program

The call for reform: https://www.healthaffairs.org/content/forefront/insult-injured-case-modernizing-vaccine-injury-compensation

The need: https://www.bmj.com/content/377/bmj.o919

Thanks,
Kathy Zelenka

Furford, Nan

From: K Zelenka <[redacted]>
Sent: Tuesday, September 19, 2023 2:40 PM
To: Furford, Nan
Subject: Additional information on COVID vaccine injuries and UK testimony, for the record on today's BOH meeting

Also, for the record, Dr. Berry mentioned myocarditis, but there are many other post-vaccine conditions that have been recognized, including:

Bilateral Sequential Acute Macular Neuroretinopathy
Marginal keratitis
Reversible cytotoxic lesion of the corpus callosum
Vitreous Hemorrhage and Long-Lasting Priapis
A flare of Still's disease following COVID-19 vaccination
Vulvar Aphthous Ulcers
Immune Thrombocytopenia
SARS-CoV-2 vaccine-associated subacute thyroiditis
GBS Acute-onset polyradiculoneuropathy
Multisystem Inflammatory Syndrome
Cervical lymphadenopathy
IgA nephropathy
idiopathic sensorineural hearing loss, tinnitus, and/or vertigo
Guillain-Barre syndrome
thrombotic thrombocytopenic purpura
transverse myelitis

These are just a few, pulled from research papers and published case studies from the first few pages of a list --142 pages in length-- representing 3500+ studies found here: https://react19.org/science.

I hope that my local Board of Health will not downplay the lived misery of those who have been injured by their vaccines, and instead will help restore the credibility of Public Health by urging our representatives to enact long-overdue legislation to help them.

Before trust can be regained, there must be accountability, mercy, and justice.

Additionally for the record, I submit corroborating testimony from the UK COVID Inquiry: https://twitter.com/Nohj_85/status/1702263752911888449

Thank you,
Kathy Zelenka

Furford, Nan

From: K Zelenka <[redacted]>
Sent: Tuesday, September 19, 2023 3:04 PM
To: Furford, Nan
Subject: Additional European Fall 2023 booster recommendations, for the record re: today's BOH meeting

It took me a moment to put my finger on these, but here are two additional European recommendations about the new booster that verify my public comment (boosters are recommended for elderly and risk groups in Europe, in contrast to the US's blanket endorsement for everyone down to 6 months) and contradict Dr. Berry's claim that my statement was wrong.

It is important that the Board receives this information and that the meeting minutes are corrected with accurate information.

Thank you.

Denmark: https://www.regioner.dk/services/nyheder/2023/september/alle-over-65-aar-kan-vaccineres-mod-influenza-og-covid-19-hos-regionerne-og-apotekerne/

"Danes over the age of 65 and vulnerable groups can be vaccinated against influenza and covid-19 from 1 October 2023 to 15 January 2024"

Norway: https://www.fhi.no/en/id/corona/coronavirus-immunisation-programme/coronavirus-vaccine/

"The Norwegian Institute of Public Health (NIPH) recommends that the following groups should take a booster dose of coronavirus vaccine before the autumn/ winter season 2023/2024:

- adults aged 65 years and above, and residents in nursing homes
- adults aged 18-64 years who are in a risk group
- adolescents aged 12-17 years with severe underlying conditions
- children aged aged from 6 months up to, and including, 11 years with severe underlying conditions if the child's doctor considers it necessary
- pregnant women in their second and third trimesters. Vaccination in the first trimester can be considered if there are underlying conditions that give a significantly increased risk."

Furford, Nan

From: K Zelenka [redacted]>
Sent: Tuesday, September 19, 2023 3:43 PM
To: Furford, Nan
Subject: Text of public comment BOC

(Sorry the formatting is off-- I've got an old computer that has compatibility issues and I can't fix it within the email program.)

Public Comment Clallam County Board of Health Meeting 9/19/23

Kathy Zelenka

[redacted]

My name is Kathy Zelenka and I live here in Port Angeles.

In March 2021, my husband's colleague suffered a near-fatal reaction to her COVID shot. You can read about it in the British Medical Journal: "Covid-19: Is the US compensation scheme for vaccine injuries fit for purpose?"

Well, no, it's a total failure. 97% of claims are rejected, often because bureaucracy hasn't caught up with new side effects to a new technology. It's paid a pittance to four people, while thousands wait and suffer. And Pharma's humanitarian spirit ends where their profits begin.

An advisor to vaccine manufacturers and an injury lawyer call for reform in this article: "Insult To The Injured: The Case For Modernizing Vaccine Injury Compensation."

For over two years, I've pleaded for help and submitted study after study on adverse events to my representatives and to public health. Rare responses say "Don't believe misinformation" or just point me to the dysfunctional system. But mostly, it's crickets.

Why are these tragedies ignored? Remember the WA mom who didn't want it? But there was a mandate if she wanted to keep volunteering at school. She died of an adverse reaction.

Neither her death nor plentiful data changed the unscientific, unethical, untrue messaging or stopped bad policies that hurt people. There was no humility. Her obituary drew hate mail.

So much pain could've been avoided if the injured were not censored, shamed, and abandoned; if policies reflected reality.

One doctor at the last ACIP meeting voted not to approve the new booster because there's not enough data. The rest recommended it down to babies, fully aware that we have no safety net. We're outliers: Europe cautiously restricts it to elderly and the high risk.

React19, a nonprofit that speaks for over 30,000 injured Americans, has compiled over 3000 studies on serious side effects.

Heavy personal and professional costs come with advocating for survivors and the bereaved, but Steadfast Love will break the stigma.

Why does asking for help get us labeled as "anti-vaxxers?" I'm anti-cruelty. I used to trust public health. But I've witnessed devastation and unconscionable indifference from those who assured us of safety.

Millions got vaccinated. Some are disabled, including kids. Some died, including suicides of despair, when physical misery became unendurable, coupled with abandonment.

Help is finally in sight: the bipartisan HR 5142, Vaccine Injury Compensation Modernization Act. It'll created a functioning system, raise payment caps that haven't changed since 1986, and automatically add future vaccines.

I keep thinking of the little boy who gave Jesus his lunch and it was multiplied as a blessing to many. Along with others across the globe, I offer my heart and my words and I believe it's time for the miracle. My voice is small and it's faithful: Will you ask Derek Kilmer and our Senators to support this?

This is an urgent need, not a rhetorical question, and I hope for an answer and for your support.

Furford, Nan

From: K Zelenka <[redacted]>
Sent: Tuesday, September 19, 2023 4:59 PM
To: pcunningham@jamestownhealth.org; shahidafatin@gmail.com; gbsjrmd@sisna.com; Berry, Allison; Ozias, Mark; Johnson, Randy; French, Mike
Cc: Furford, Nan
Subject: Correction re: Public Comment at today's meeting, requesting help for vaccine-injured

Dear Clallam County Board of Health:

Thank you for the opportunity today. I wasn't sure of the procedure, or would have responded in person to Dr. Berry's comments on my comment. I didn't want to speak out of order and usually you're not supposed to interact other than to leave a comment. (This doesn't look like everyone who was at the meeting, but these are the emails I found on your website. I'd appreciate if this could be forwarded if someone's missing.)

Dr. Berry's was a typical response: to assert the rarity of vaccine injuries and move on. I'm not proposing to debate the relative rarity. Those rare people --whatever the number-- are in desperate need.

We currently have no safety net. The credibility and trustworthiness of Public Health hinges on its position towards the injured.

My question wasn't rhetorical. I AM asking for you to endorse this legislation to our representatives. A safety net is part of any functioning vaccination program. I'll do anything in my power to help because the one pandemic message I still hold onto is that we're all in this together.

Although I make mistakes just like the rest of us, I'm scrupulous in fact-gathering, staying non-partisan, and am careful in making claims because the space around vaccine injury advocacy is so fraught.

To Dr. Berry's second critique: Here are policies for the new booster in the UK, Norway, and Denmark, all recommended only for older and higher risk groups, as I said, not universally down to age 5, as Dr. Berry asserted. There may be other countries that I'm not aware of which follow the recommendation that Dr. Berry mentioned. I said "Europe" in the interest of keeping the comment short.

Given these examples, the US is, indeed, an outlier in universally recommending it to all people down to age 6 months:

- UK: https://www.bbc.com/news/health-66818046 "the government's advisers on vaccine recommend that only over-65's and other 'vulnerable groups' should be included automatically this year."

- Denmark: https://www.regioner.dk/services/nyheder/2023/september/alle-over-65-aar-kan-vaccineres-mod-influenza-og-covid-19-hos-regionerne-og-apotekerne/ "Danes over the age of 65 and vulnerable groups can be vaccinated against influenza and covid-19 from 1 October 2023 to 15 January 2024"

- Norway: https://www.fhi.no/en/id/corona/coronavirus-immunisation-programme/coronavirus-vaccine/ "The Norwegian Institute of Public Health (NIPH) recommends that the following groups should take a booster dose of coronavirus vaccine before the autumn/ winter season 2023/2024:
  - adults aged 65 years and above, and residents in nursing homes
  - adults aged 18-64 years who are in a risk group
  - adolescents aged 12-17 years with severe underlying conditions
  - children aged aged from 6 months up to, and including, 11 years with severe underlying conditions if the child's doctor considers it necessary
  - pregnant women in their second and third trimesters. Vaccination in the first trimester can be considered if there are underlying conditions that give a significantly increased risk."

Additionally, here is testimony submitted last week in the UK Covid Inquiry about vaccine injuries. I'm sorry, I haven't found a non-twitter-embedded version of it, so hope you can view the video. It's from the account of a vaccine-injured man who is one of the founders of the Scottish Vaccine Injury Group. The barrister's presentation to the Inquiry gives a good overview of similar problems UK vaccine-injured people are facing. https://twitter.com/Nohj_85/status/1702263752911888449

This is the proposed bipartisan legislation that I'm hoping you'll endorse to our representatives: https://doggett.house.gov/media/press-releases/rep-doggett-files-legislation-modernize-vaccine-injury-compensation-program

The call for reform: https://www.healthaffairs.org/content/forefront/insult-injured-case-modernizing-vaccine-injury-compensation

The need: https://www.bmj.com/content/377/bmj.o919

Thank you for listening. And I very much hope to work with you to help get this legislation passed. People's lives depend on it.

Kathy Zelenka
[redacted]

Furford, Nan

From: K Zelenka [redacted]
Sent: Tuesday, September 26, 2023 8:27 AM
To: pcunningham@jamestownhealth.org; shahidafatin@gmail.com; gbsjrmd@sisna.com; Berry, Allison; Ozias, Mark; Johnson, Randy; French, Mike
Cc: Furford, Nan
Subject: Follow-up on request to support our vaccine-injured neighbors

Dear Clallam County Board of Health,

I'm disappointed at your silence. Is there a reason you won't recommend to Derek Kilmer's office that he endorse HR 5142, which would finally create a functional safety net for people injured by covid vaccines?

Injuries may be rare, but how many destroyed lives does it take for them to matter to policymakers, public health, and politicians?

I know my answer to that question. What's yours?

Respectfully,

Kathy Zelenka