

## STATEMENT

of the  
AMERICAN MEDICAL ASSOCIATION

to the  
Subcommittee on Select Revenue Measures  
Committee on Ways and Means  
U.S. House of Representatives

Presented by

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RE: Funding of the Vaccine Injury Compensation Program

March 5, 1987

Mr. Chairman and Members of the Committee:

My name is M. Roy Schwarz, M.D. I am Assistant Executive Vice President for Medical Education and Science of the American Medical Association.

The AMA is pleased to testify before this Committee concerning funding of the vaccine injury compensation program established under P.L. 99-660.

AMA and Vaccine Injury Compensation

For a number of years, the AMA has been very interested in the issue of vaccine injury compensation. In 1983, the AMA convened a special Ad Hoc Commission on Vaccine Injury Compensation. The Ad Hoc Commission issued a report recommending that a federal, no-fault compensation program be established as the exclusive remedy for persons seriously injured as a result of mandated pediatric immunizations. The AMA then developed draft federal legislation to implement the Commission's recommendations.

Over the past three years, the AMA has testified before Congressional committees concerning the issue of vaccine injury compensation on six occasions. We have expressed support for the establishment of an equitable vaccine compensation system that achieves the following five goals:

1. the assurance of appropriate vaccination of all children;
2. the development of safer vaccines;
3. the equitable compensation of persons severely injured by reactions to mandated pediatric vaccines;
4. the assurance of the continued development and availability of mandated pediatric vaccines; and
5. the assurance of continued participation by physicians and other qualified persons in the administration of mandatory pediatric vaccines.

The AMA supported the enactment of the modified no-fault vaccine compensation program created by P.L. 99-660. We believe that the program meets many of the goals I have just discussed. It should ensure that seriously injured persons are promptly and fairly compensated. It should also result in reduced liability costs for vaccine manufacturers and thus

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help assure a continued adequate supply of vaccines. Finally, the research and coordination provisions of the law should work to encourage the development of improved pediatric vaccines. Since P.L. 99-660 does not include a funding mechanism, further Congressional action is needed to activate the compensation program.

#### Funding for the Compensation Program

We believe strongly that Congress should expeditiously pass legislation to fund the vaccine compensation program. Until Congress acts, the on-going crisis of vaccine availability, cost and liability will persist.

Funding for the compensation program should come from the broadest source possible. The entire population, not just those immunized, benefits from full participation in pediatric immunization programs and should bear these costs. Spread over the entire population, the cost per capita for a compensation fund would be low. The smaller the taxing base, the higher the cost per individual. Use of a broad-based financing plan, such as general federal revenues, would also obviate the need for an added surcharge on each vaccine. Such a surcharge could discourage full participation in childhood immunization programs by increasing the cost of vaccines.

The AMA recognizes, however, that due to serious federal budgetary constraints, Congress may not rely on general federal revenues to fund the compensation program. As an alternative financing mechanism, a premium could be added to the purchase price of each dose of each mandatory childhood vaccine. Revenue raised could be deposited in a vaccine compensation trust fund and used to pay claims under the program. (Until an adequate fund reserve is established, the program could be funded by a loan from the federal government.) The premium could be set at an amount equal to the total estimated benefits and administrative costs of the program for that year. In addition, the premium could be adjusted each year to reflect differences between the projected costs and premium collections in the previous calendar year.

The premium imposed should be the same for all mandatory childhood vaccines. Distributing the cost equally over all such vaccines should ensure that the surcharge on each dose would be relatively modest and thus not significantly discourage participation in immunization programs.

The premium should also be payable by all purchasers of mandatory pediatric vaccines, including the Centers for Disease Control. Again, since all of society benefits from immunization programs, the cost of compensating injured persons should be spread over as broad a base as possible.

#### AMA - Recommended Modifications

As I stated earlier, the AMA supported the enactment of the vaccine compensation program created by P.L. 99-660. However, modifications in the law are needed to ensure that the compensation program is equitable and results in more predictable costs.

As enacted, P.L. 99-660 prohibits direct tort actions against vaccine manufacturers, but not against those who administer vaccines. Without such protection, health professionals may be viewed as the new "deep pocket" and thereby face an increased number of liability suits. Such suits would discourage the continued participation by physicians and other qualified persons in the administration of mandatory pediatric vaccines.

The AMA, therefore, urges strongly that the law be amended to offer the same protections to those who administer vaccines as are available to those who manufacture them. The act should be modified to require a vaccine-injured person to pursue recovery under the compensation program prior to any tort action.

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We also believe that the vaccine compensation law should be amended to include a reasonable limit on awards for pain and suffering under the tort system. As enacted, the law includes such a limit only on pain and suffering awards under the compensation program. A reasonable limit is needed on awards for pain and suffering to ensure that vaccine manufacturers' costs are predictable.

Conclusion

We urge Congress to promptly pass legislation to fund the vaccine compensation program. Funding for the program should come from the broadest possible source since all of society benefits from full participation in pediatric immunization programs. In addition, we urge you to recommend modifications to the vaccine compensation law to protect health professionals who administer vaccines and to establish a reasonable limit on awards for pain and suffering under the tort system.

Mr. Chairman, I want to commend you for your interest in the important issue of funding for the vaccine injury compensation program. The AMA would be happy to work with this Committee in developing an equitable funding mechanism for the program. I would be pleased to answer any questions Members of the Committee may have.