

June 11, 2021

Chairwoman Anna G. Eshoo (D-CA-18)
House Committee on Energy and Commerce
Health Subcommittee
2125 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Brett Guthrie (R-KY-2)
House Committee on Energy and Commerce
Health Subcommittee
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: Letter of Support: H.R. 3655, the Vaccine Injury Compensation Modernization Act

Dear Chairwoman Eshoo and Ranking Member Guthrie:

As the Director of the Vaccine Injury Litigation Clinic at The George Washington University Law School, I urge you to support H.R. 3655, the Vaccine Injury Compensation Modernization Act (H.R. 3655). This legislation provides critical updates to the National Vaccine Injury Compensation Program (NVICP) ensuring the public has a vibrant safety net for all those who protect their families and communities by getting vaccinated. Specifically, the increase in the number of special masters will dramatically reduce the overburdened dockets currently plaguing the Court.

The National Childhood Vaccine Injury Act of 1986 established the NVICP. The NVICP is a no-fault compensation program whereby petitions for monetary compensation may be brought by or on behalf of persons suffering injury or death as a result of the administration of certain vaccines. Congress intended that the NVICP provide individuals (petitioners) a swift, flexible, and non-adversarial alternative to often costly and lengthy traditional civil tort litigation.

Currently, all vaccine claims from across the United States are adjudicated by eight special masters who are appointed by the Court of Federal Claims. These special masters weigh evidence and render final, enforceable decisions regarding reimbursement of medical costs, pain and suffering, and loss of quality of life. Special masters also actively and regularly interact with petitioners to ensure that the case progresses effectively and efficiently. The NVICP adjudication process references a vaccine injury table (VIT) that lists specific injuries commonly associated with a growing list of vaccines (referred to as table injuries). The VIT is meant to promote swift resolution of claims for specific vaccine and injury couplings, by removing petitioners' burden of having to prove causation. The remaining non-Table NVICP cases proceed on a causation in fact basis.

Unfortunately, the number of cases being filed with the NVICP over the last decade has been and is currently increasing. In Fiscal Year (FY) 2011, 386 petitions were filed, and this increased to 1,120 petitions in FY 2016, and 1,237 petitions in FY 2018 and so on.

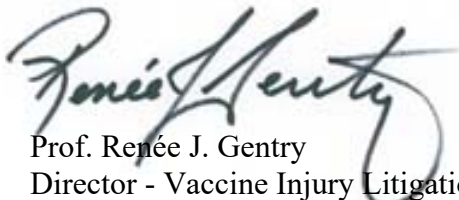
Currently, there are 4,122 open cases in the Vaccine Court. Yet, the number of special masters remains at eight.

While the Office of Special Masters has been operating valiantly under these circumstances, severe inefficiencies exist which continue to delay justice and the speedy delivery of justice to injured petitioners. Presently, hearing dates on most matters are not being set since the earliest available dates are in 2022 or 2023. The two-to-three year waiting times and the insufficient number of overworked special masters results in numerous difficulties to petitioners. This is especially evident in cases where, for example, a small child with a severe brain injury might miss critical periods of time in his/her life where treatments would have been available if payments were made following normal speedier resolutions of cases. When the long wait for decisions in a backlogged system deprives a child of potentially life-changing treatment, justice delayed is indeed justice denied.

The tremendous workload already placed on the shoulders of the current eight special masters can only be alleviated by increasing their numbers. H.R. 3655 accomplishes this in a measured fashion by setting a floor of ten special masters at all times, as opposed its current ceiling of eight. With additional special masters on the bench, the NVICP's purpose can again be fulfilled to promptly and fairly reimburse petitioners when a vaccine-related injury occurs. This urgent and time-sensitive issue must be addressed without further delay to maintain the NVICP's philosophy of guidance, cooperative effort, informality, and reasonable speed in presenting and deciding cases.

On behalf of myself and the Vaccine Injury Litigation Clinic, I fully support the bipartisan H.R. 3655 and hope that it will be swiftly signed into law. Please feel free to contact us to discuss this issue further.

Sincerely,



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