
Countermeasure Injury Compensation Amendment Act

Currently, federal law has two distinct compensation programs for individuals who have experienced serious adverse reactions to vaccines. The first program, the National Vaccine Injury Compensation Program (VICP), was established to provide compensation for injuries or deaths associated with most vaccines routinely administered in the United States for pregnant women and children. The Countermeasure Injury Compensation Act (CICP), by contrast, is meant to provide compensation for injuries experienced due to products delivered during certain public health emergencies. CICP specifically compensates individuals for injuries and deaths that result from “covered countermeasures” under the Public Readiness and Emergency Preparedness Act (PREP Act).

Under the PREP Act Declaration for COVID-19, injuries obtained due to the receipt of COVID-19 vaccines are covered under the CICP while the public health emergency persists and the Declaration remains in force.¹ However, it is extremely difficult to obtain awards under the CICP, particularly related to COVID-19 countermeasures. As of February 2022, only 29 claims have been compensated of the 7,033 total claims ever filed under CICP.² Additionally, Health Resources Services Administration (HRSA) data reveals that 6,540 COVID-19 countermeasure claims have been filed, making up approximately 93% of all CICP claims made – and ***none*** have received any compensation.³

Senator Lee’s bill would make necessary adjustments to the CICP to ensure those injured by countermeasures deployed during the historic COVID-19 pandemic are served.

Bill Specifics

- Would reform the CICP to provide claimants the same framework for adjudication,⁴ award determination,⁵ and statute of limitations⁶ as exists under the VICP.
- Would create a commission tasked with identifying the injuries that were directly caused as a result of receipt of a COVID-19 covered countermeasure.
- Would require the Secretary of HHS to amend the covered countermeasure injury table for COVID-19 to include injuries determined by the Commission.
- Would allow previously submitted claims that have not been compensated to be resubmitted and approved claims to be compensated the same as new claims.

¹ The HHS PREP Act Declaration determined COVID-19 countermeasures are “any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.” See: <https://www.govinfo.gov/content/pkg/FR-2020-03-17/pdf/2020-05484.pdf>

² Health Resources & Services Administration, United States. *Countermeasures Injury Compensation Program (CICP) Data*. (Accessed February 28, 2022). See: Table 2. CICP Claims Compensation (Fiscal Years 2010 – 2022) As of February 1, 2022. See: <https://www.hrsa.gov/cicp/cicp-data#table-2>

³ Ibid. (See: Table 1. Alleged COVID-19 Countermeasure Claims Filed as of February 1, 2022)

⁴ General process: petitioner files with the U.S. Court of Federal Claims showing receipt of the covered countermeasure resulting in an illness or injury listed on the covered countermeasure injury table during a particular timeframe and that lasted for more than six months, required hospitalization or surgery, or resulted in death; petition is sent to a special master to evaluate whether the petition merits compensation and, if so, how much; within 240 days a decision is made with factual findings and legal conclusions with an opportunity for appeal; after final judgement, the petitioner has 90 days to accept the judgement or file a civil action for damages in court.

⁵ Actual and reasonably projectable unreimbursable expenses directly related to the vaccine-related injury including the cost of diagnosis, medical care, rehabilitation, and vocational training; actual and anticipated loss of earnings; actual and projected pain and suffering, capped at \$250,000; \$250,000 for death; reasonable attorneys’ fees and other costs associated with proceeding on the petition.

⁶ Within three years from onset of injury; two years of death or four years of onset of injury prior to death; or two years from the date of changes to the countermeasure injury table.
