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Americans Injured by the COVID-19 Vaccine Have to Prove Causation to Receive Compensation

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The Countermeasures Injury Compensation Program (CICP) provides some benefits to Americans who have experienced injuries or deaths as a result of a COVID-19 shot and other countermeasures recommended to prevent, diagnose, or treat the disease.

But without the development of a vaccine injury table by the Health Resources and

Services Administration (HRSA), the burden of proof lies with the petitioner and not the government to prove causation in order to establish eligibility.

That's because an injury table is the standard of proof in determining compensation, according to Wayne Rohde, an author who has written extensively on the National Vaccine Injury Compensation Program (NVICP) that covers injuries from the recommended vaccines routinely administered to children and/or pregnant women.

"The standard of proof is a way to determine whether the petition measures up to a certain standard to award compensation," Rohde told The Epoch Times.

HRSA, an agency under the Department of Health & Human Services (HHS), is in charge of the CICP.

A vaccine injury table lists the injuries and conditions caused by the vaccine and the "time periods in which the first symptom of these injuries and conditions must occur after receiving the vaccine," the Centers for Disease and Prevention (CDC) explains (pdf). If both the injury or condition and the specified timeframe are met, "it is presumed that the vaccine was the cause" and compensation would be awarded.

However, if an individual does not meet the requirements listed on the injury table, it then falls on the person filing the claim to prove that the vaccine caused the injury or condition.

Such a table eliminates the extra burden put on petitioners who are already suffering severe adverse reactions or have lost a loved one, according to Mark Sadaka, a vaccine lawyer who's helped more than 60

people file a COVID-19 injury claim.

“If there’s a vaccine injury table, that burden shifts from the person to the other side,” Sadaka, told The Epoch Times, adding that the purpose of the table is the government acknowledging “that this vaccine can cause the injury and then puts the burden on the other party to disprove it.”

Mark Sadaka, a medical litigations lawyer. (Courtesy of Mark Sadaka)

All four COVID-19 injections administered in

the United States under emergency use authorization, and the federally approved Pfizer (Comirnaty) and Moderna (Spikevax) shots, are covered under the CICP.

The federal agency did not reply to queries about the injury table. But in August and December 2021, HRSA spokespersons told The Epoch Times in an email that the "CICP has not yet developed an injury table for COVID-19 countermeasures" and that "an injury table for COVID-19 medical countermeasures will be developed when there is sufficient data to meet the 'compelling, reliable, valid, medical, and scientific evidence' standard."

The compensation program has received over 9,000 complaints in the two years since COVID-19 appeared compared to the 500 claims filed between 2010 and 2020, where 30 claims were compensated, totaling over

$6 million.

Yet none of the 7,084 claims alleging injury or death from the vaccines or the 2,804 claims related to drugs and devices have been paid compensation. Three claims have been found eligible for compensation but are still awaiting a medical benefits review, according to HRSA.

“One eligible claim is the result of anaphylaxis, and two claims are the result of myocarditis,” the federal agency wrote on Sept. 1.

Sadaka said that many of the claims he’s helped file have still not been assigned to someone in the agency although it’s been over a year since the necessary paperwork was submitted.

“So far, they’ve gone nowhere. They’re not even assigned to anybody. There’s some

sort of procedural hellhole and that no one knows what's happening with it," Sadaka said.

HRSA Reveals No Plans for Injury Table

Rohde said he began submitting Freedom of Information Act (FOIA) requests to HHS and HRSA at the beginning of the year to find out whether the agency had developed or planned to develop a COVID-19 vaccine injury table.

"HRSA states that they do not have any records or documents of any existing injury table specific to the COVID-19 jab nor have any plans to develop one," Rohde wrote in an article.

In a Sept. 14 email reply to Rohde's FOIA request for "copies of discussions regarding

the COVID-19 vaccine table, or development of the table," the HHS said, "Upon receipt, your request was sent to HRSA's Division of Injury Compensation Programs who informed our office that they do not have records responsive to your request."

"Without a specific injury table, then how will the petitions be measured regarding if the jab could have induced or created a specific medical condition?" Rohde asked, adding "that is what is called a 'standard of proof.'"

John Howie, a trial lawyer focused on vaccine and personal injuries, told The Epoch Times in an earlier interview that the compensation program is only a ""feel good" program where there "is no transparency like a true judicial process" nor a "provision for attorney's fees, thus making it difficult for any injured individual to even retain a lawyer." Furthermore, "any appeals are handled by

[three] people hand-selected by HHS to review the claim."

The CICP is the payer of last resort, meaning only medical expenses that have not been paid by insurance, lost wages, and a death benefit for people who've died are compensated. The program doesn't allow payment for pain and suffering, or attorney's fees like in a traditional compensation program, regardless if an individual is severely disabled following the administration of a vaccine or other countermeasures.

Unlike a traditional program, people only have one year "from the date that the covered countermeasure was received" to file and there is "no public disclosure of decisions," according to Rohde.

Smallpox Vaccine Injury Table

On Aug. 16, 2021, it was announced in the Federal Register (pdf) that the HHS had established and adopted a smallpox countermeasures injury table even though the "last naturally occurring case of smallpox was reported in 1977" and monkeypox was not declared a public health emergency until August 2022.

The injury table "includes a list of covered smallpox countermeasures, required time intervals for the first symptom or manifestation of onset of injuries, and the accompanying Qualifications and Aids to Interpretation (QAI), which set forth definitions and other requirements necessary to establish Table injuries," the HHS wrote.

"The Table informs the public about serious physical injuries known to be directly caused by covered countermeasures and creates a rebuttable presumption of causation for

eligible individuals whose injuries are listed on the Table and meet the Table's requirements," the agency added.

Rohde said that HRSA sent him the smallpox injury table in a response to a FOIA requesting "true and accurate copies of the records, documents relating to the definition and decision-making process for the standard of proof on all countermeasures injury petitions."

In a Sept. 21, 2022, email reply, HRSA said its Division of Injury Compensation Programs (DICP) had "located 34 pages containing a copy of The Federal Registry Countermeasures Injury Compensation Program, Final Rule, that explains the standard of proof that DICP uses, released in its entirety."

The federal government had quietly snuck the table in without letting the public know,

Rohde said.

“There was no announcement,” he added. “I looked everywhere, if there was an announcement in August of 2021. There was no press, no press release, there’s nothing in the HRSA website, the CICP website, nothing!”

TABLE 2 TO PARAGRAPH (c)

Covered countermeasures under declarations	Serious physical injury (illness, disability, injury, or condition) [1]	Time interval (for first symptom or manifestation of onset of injury after administration or use of covered countermeasure, unless otherwise specified)
I. Smallpox Vaccines Replication-Deficient	A. Anaphylaxis	A. 0–4 hours.
	B. Vasovagal Syncope	B. 0–1 hour.
II. Smallpox Vaccines Replication-Competent	A. Anaphylaxis	A. 0–4 hours.
	B. Vasovagal Syncope	B. 0–1 hour.
	C. Significant Local Skin Reaction	C. 1–21 days.
	D. Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis.	D. 4–28 days.
	E. Inadvertent Autoinoculation	E. 1–21 days.
	F. Generalized *Vaccinia*	F. 6–9 days.
	G. Eczema *Vaccinatum*	G. 3–21 days.
	H. Progressive *Vaccinia*	H. 3–21 days.
	I. Post-*vaccinial* Encephalopathy, Encephalitis or Encephalomyelitis (PVEM).	I. 5–14 days.
	J. *Vaccinial* Myocarditis, Pericarditis, or Myopericarditis (MP).	J. 0–21 days.
III. *Vaccinia* Immunoglobulin Intravenous (VIGIV).	A. Anaphylaxis	A. 0–4 hours.
	B. Transfusion-Related Acute Lung Injury (TRALI).	B. 0–72 hours.
	C. Acute Renal Failure (ARF)	C. 0–10 days.
	D. Drug-Induced Aseptic Meningitis (DIAM)	D. Within 48 hours after the first dose and up to 48 hours after the last dose of VIGIV.
	E. Hemolysis	E. 12 hours to 14 days.
IV. Cidofovir	A. No Condition Covered [2]	A. Not Applicable.
V. Tecovirimat	A. No Condition Covered [2]	A. Not Applicable.
VI. Brincidofovir	A. No Condition Covered [2]	A. Not Applicable.
VII. Smallpox Infection Diagnostic Testing Devices.	A. No Condition Covered [2]	A. Not Applicable.

A screenshot of the smallpox countermeasures injury table adopted by HHS in August 2021. (federal registry/screenshot by The Epoch Times)

The injuries and conditions listed on the

smallpox injury table, according to Sadaka have “similarities between this document and what’s seen in the literature for COVID-19 adverse events.”

Some of the conditions listed on the table include anaphylaxis, syncope, and myocarditis, pericarditis, or myopericarditis.

Emails to HRSA inquiring about the reason for adopting the smallpox countermeasure injury table went unanswered, so The Epoch Times could not verify whether the table is being used to measure and decide on claims related to the COVID-19 injection.

Lack of Funding

The CICP was set up in 2010 to provide compensation for any injuries and deaths that resulted from the use of a covered countermeasure under the 2005 Public

Readiness and Emergency Preparedness (PREP) Act (pdf).

Under the PREP Act, COVID-19 vaccine manufacturers, providers, distributors, and program planners are immune from lawsuits related to vaccine injuries and death, unless it can be shown that there was willful misconduct in the production of the vaccine by the company.

The CICP was not really designed as a national compensation program, Rohde said, as it was more of a regional program "focused on disasters such as from hurricanes … the avian flu scare, anthrax, and regional emergencies."

Rohde said the compensation program lacks adequate funding to pay all of the claims filed so far. It doesn't have a funding mechanism or a trust fund like the traditional compensation program that is funded by

an excise tax of $0.75 per dose or disease that is prevented. For example, the measles, mumps, and rubella (MMR) vaccine is taxed at $2.25 because it prevents three diseases. The excise tax then goes into a trust fund that is managed by the Department of Treasury.

In a response to a different FOIA that Rohde submitted asking for the total compensation budget for fiscal year 2020 to 2024, HRSA revealed how underfunded the CICP is.

In 2021 and 2022, over $931,000 was budgeted for compensation under the CICP, with the budget increasing to $5 million for 2023. No estimate has been completed for 2024. Whereas, the traditional compensation program has $3.9 billion in the vaccine injury trust fund.

The 2021 and 2022 budget would only be able to pay out two claims of death each

year before running out of funds since the CICP pays a one-time maximum death benefit of over $370,000 (pdf). For lost wages, the annual compensation is capped at $50,000 per year.

"How can this be? Our government, more precisely, HRSA is planning to compensate only one possibly up to three petitions this year," Rohde wrote in August 2022."In the NVICP, the estimated dollar amount for compensation in FY 2022 could be around $225 million for a projected 850 damage awards."

Authors of a study published in the Journal of Law and the Biosciences calling for a reform to the CICP, said that the program "lacks accountability, transparency, and cost-effectiveness efficiency, with 94% of its total costs spent on administration rather than compensation. CICP's ability to compensate

is also questionable."

They added, "If COVID-19 claims were compensated at its historical rate, CICP would face around $21.16 million in compensation outlays and $317.94 million in total outlays, 72.1 times its current balance."

"To ensure just compensation for injured petitioners during COVID-19 and future public health emergencies, we recommend Congress (1) initiate a major reform by relocating CICP from DHHS to the Claims Court or (2) keep CICP within DHHS and make incremental changes by permitting judicial review of DHHS administrative adjudication of CICP claims. We further recommend Congress audit and adjust budgets for CICP and DHHS promptly propose an injury table for COVID-19 claims."