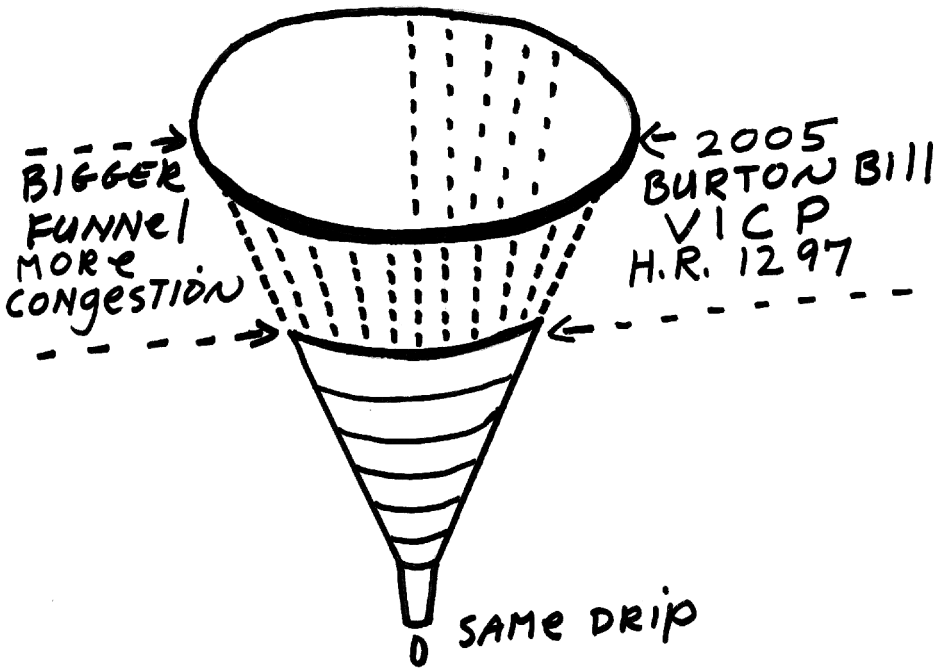

The new Dan Burton Bill, H.R. 1297 NVICP Improvement Act

Helps you in, but doesn't help you out.

July 30th, 2005 is the last day to send comments to the Advisory Commission on Childhood vaccines (ACCV) Send to: Clee@hrsa.gov (copy Cong. Dan Burton)

Analysis: Effectively, the changes proposed in HR 1297 will further slow an already glacially slow program by its **FUNNEL EFFECT**, thereby missing the mark of the program's purpose, which purportedly is a "fair and user-friendly venue for those damaged to seek compensation."

In layman's terms, Burton's bill would:

1) Provide increased compensation.

a) It would provide an increase in the dollar amount of compensation to those few who happen to receive compensation.

b) However, under the current statutes, effectively, no more than 150 claims per year (on average 12.5 per month, or 37 or 38 per quarter) can be favorably adjudicated and awarded compensation. **New information, June 2005: It is argued by Congressman Burton's office that this restriction only applied to the years 1987 – 1992 in order to make sure that there was enough money in the fund to pay claimants. However, from 1992- 2005 rather than rising once the restrictions expired in 1992, positive adjudications sharply DECREASED to an average of approximately 58 per year. (not per quarter).** There is now 2.1 Billion dollars in the Trust fund, most of which has been transferred to the general fund for general use by the administration.

c) If you increase the number of incoming claimants but not the outgoing compensated adjudications, you get a larger backlog…hence the Funnel effect.

2) Be good for the attorneys.

It permits attorneys adjudicating NVIC petitions to, in some cases, receive attorney fees before the case is actually settled.

3) Allow more claimants into the program.

a) It effectively requires that all those who missed the filing deadlines or who filed but their petitions were thrown out of the program for missing the filing deadlines to have "another opportunity" to file a petition and sets a 2-year window for filing such "statute of limitation" and "statute of limitation rejected" claims.

b) It allows for new claimants; those who think they have a claim have up to six years (6) to file a petition.

c) Because the favorable outcomes per quarter continue to be restricted (38 claims per quarter), this provision effectively opens up the incoming "inbound" claims but continues to restrict the outgoing adjudicated "outbound" cases. Hence, the entrapped, congested "FUNNEL EFFECT".

d) Further, claimants who are currently excluded from the program because of deadline issues and were, therefore, free to engage in private law suits would have to abandon their private lawsuits against the offending Drug companies and apply, forthwith, to the VICP where the petitioner is still the plaintiff, but the government (the Department of Justice [DOJ]), and not vaccine maker, is the defendant.

d) This section of the bill, would, if enacted, further protect the vaccine companies from lawsuits, liabilities, and transparency since evidence and discovery are limited to issues concerning the injury itself and the vaccine court's proceedings are not open to public scrutiny. As Dan Burton's 3/16/2005 press release clearly stated "... and pharmaceutical companies will no longer be under the shadow of the threat of costly and potentially industry-crippling class-action lawsuits. Embracing this solution would be good for the industry as well as society." (Comment: but not good for the petitioners who have valid vaccine injury claims).

The following is a section-by-section overview of the bill, beginning with section 2:

SEC. 2. BASIS FOR CALCULATING PROJECTED LOST EARNINGS.

In the short term, this provision would increase the awards for lost wages for the few who are awarded "wage loss" compensation.

SEC. 3. INCREASE OF AWARD IN THE CASE OF A VACCINE-RELATED DEATH.

This provision would slightly increase the "death" award from $250,000 to $300,000 for some of the few (about 150) whose petitions can be granted each year. In real dollars, the increase only partially addresses the decline in the purchasing power of the dollar since 1987.

SEC. 4. ALLOWING COMPENSATION FOR FAMILY COUNSELING EXPENSES AND EXPENSES OF ESTABLISHING GUARDIANSHIP.

For the few petitioners who receive awards, this provision would help the petitioners pay the counselors and attorneys for these services benefiting the counselors and attorneys as much as, or more than, the petitioners.

SEC. 5. ALLOWING PAYMENT OF INTERIM ATTORNEYS' FEES AND COSTS.

The ultimate beneficiary of this provision would be the attorneys who work for the petitioner. The potential petitioners could benefit by being able to choose from a wider range of attorneys who might be willing to assist in the filing of petitions.

SEC. 6. PROCEDURE FOR PAYING ATTORNEYS' FEES.

Provides the procedure for paying fees and permits the fees that would be awarded to the petitioner's attorney to be paid directly to the petitioner's attorney even, in some cases, without the consent of the petitioner.

SEC. 7. EXTENSION OF STATUTE OF LIMITATIONS.

This is a "Venus Flytrap" Funnel provision since it would: a) ensnare more families in the program by granting all who missed the original filing dates a 2-year window to enter the program as well as b) extend all of the current limits for filing to 6 years. However, it would limit the scope of the Vaccine Injury Table Claims so that ONLY the current table will apply in most cases.

The effect of this provision will be to suck back into the NVIC program cases that are currently in litigation or filed for litigation because of a filing rejection thus reducing the financial exposure of the drug companies by ensnaring more cases in the program.

In addition, because the current legislation does not increase the number of cases for which awards may be granted each quarter, this change will also increase the delay in settling each case.

In effect, this "Venus Flytrap" Funnel provision would suck (force) more petitioners, including some who have been through the "program" before, into the "program" but do nothing to speed up the number of cases heard or settled in favor of the petitioner (limited to not more than about 38 in each quarter).

Obviously, the pharmaceutical industry (and perhaps the government) is worried about the risk that the cases being tried in the State and Federal courts (where pertinent company [and government] records can be "discovered") will uncover their apparently underhanded and possibly illegal actions, award punitive damages, or worse, if the results of discovery find evidence of wrongdoing in the cases tried in State of Federal court, public disclosure. [Note: In State and Federal court cases, the firms have to pay any judgment and are subject to discovery. In the "vaccine court," the government fund pays; and the companies' records are, in general, not subject to discovery and, if discovered, are sealed from the public and from being used in any subsequent cases.]

Moreover, as Burton's press release clearly states, *"... pharmaceutical companies will no longer be under the shadow of the threat of costly and potentially industry-crippling class-action lawsuits."* Clearly, the government and the industry know that this section would, if enacted, protect the pharmaceutical industry from impending class-action lawsuits.

In addition, the press release describes this bill as "tri-partisan legislation." [Comment: We know that our legislature is essentially bi-partisan. Who then is the third party being referred to here?]

SEC. 8. ADVISORY COMMISSION ON CHILDHOOD VACCINES.

This provision would give the petitioners a representative on the Advisory Commission in place of one of the three legal representatives of a 9-person commission. But it would <u>not</u>: a) give the "petitioners" side more seats; b) address the conflict-of-interest issue for the Commission membership. However it does remove the mandatory requirement that the Commission must meet four times a year. The Net effect is to throw the petitioners an

"illusory bone" while, in actuality, reducing claimants' input by changing the requirements of the Advisory commission so that it doesn't have to meet at all except when the Chair calls a meeting (essentially called only when the administrative staff informs the Chair of a need to call a meeting [effectively, the commission's administrative staff will decide the scheduling of the meeting]).

SEC. 9. CONFORMING AMENDMENT TO TRUST FUND PROVISION.

Essentially, adds the two new vaccines (Hepatitis A and Influenza) to the IRS collection provisions.

SEC. 10. INCREASE IN LIMIT ON ADMINISTRATIVE EXPENSES.

Would raise the limit on the administrative expenses from $9.5 million to $10.0 million.

SEC. 11. PUBLIC SERVICE ANNOUNCEMENT CAMPAIGN.

Would permit the spending of trust funds for "conducting a public service campaigns," effectively allowing the government to advertise directly to the public its view of reality without providing any funding for those who hold any contrary views. It would allow the government to propagandize the NVIC Program using money "intended" for those injured.

SEC. 12. APPLICATION.

Would set coverage start time for sections 2, 3, 4, 5, 6, 7, and 9 to those petitions pending on or filed after the date of the enactment of this Act.

Closing Statement by National Coalition of Organized Women

The National Vaccine Injury Compensation Fund is made up of monies collected from a surcharge of 75 cents per vaccine dose. This accumulation of money collected by the IRS acts as a sort of self-paying insurance fund for those who get vaccine injured. Neither the government nor the vaccine manufacturers currently pay directly into this fund.

The billions of unspent dollars that remain in the fund year after year, from a lack of timely adjudication and the restriction of a payout of only 150 cases a year, is transferred to the government's general fund and is used by the government for other matters. Not only does this bill continue to protect the drug industry in the various ways mentioned in the body of this analysis, but it does little to ease the pain of the injured. **New information, June 2005: It is argued by Congressman Burton's office that this restriction only applied to the years 1987 – 1992 in order to make sure that there was enough money in the fund to pay claimants. However, from 1992- 2005 rather than rising once the restrictions expired in 1992, positive adjudications sharply DECREASED to an average of approximately 58 per year. (not per quarter).** There is now 2.1 Billion dollars in the Trust fund, most of which has been transferred to the general fund for general use by the administration.

On the contrary, this bill protracts the time of compensation by enlarging the funnel and by keeping the inordinately low governmental limits on yearly compensation as set in the original bill. This practice keeps the fund supplied with ample money for its use when it is transferred to the general fund. On balance, the NVICP is more of a *sub rosa* federal revenue-generating program than a "vaccine injury" compensation program. **New information, June 2005: Furthermore, it is our understanding that the compensation payments are restricted to standard of care medical models and therapies that work such as chelation therapy is not reimbursable.**

In conclusion, this bill, H.R. 1297, helps you in, but does not help you out. The National Coalition of Organized Women finds that this bill is unacceptable in its present form. H.R. 1297 will, if enacted, do little more than congest the program, frustrate the claimants, protect the industry and provide a revenue source for the government.

Many concerned organizations are working to improve this bill. Dr. Paul G. King of Co-Med is leading the effort. Dr. King has provided www.ProgressiveConvergence.com with a copy of the draft containing the proposed changes to be submitted to Congressman Burton for revision.

New, July 2005: The National Coalition of Organized Women also suggests that therapies that work, albeit not adherent to standard of care medical models, be reimbursable.

The National Vaccine Injury Compensation Act was ostensibly created to facilitate immediate relief and compensation for the vaccine injured and their caretakers. Instead the NVICP empowers the Dept. of Justice who is wedded to the CDC, FDA, NIH, IOM and ultimately serves to protect the Pharmacuetical companies.

CDC claims that there is no link between mercury and autism. Due to this complicity there has been zero awards paid by the Dept. of Justice on Thimerasol cases.

We urge all interested parties to demand Congressional Hearings on the National Vaccine Injury Compensation Program.

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