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# Federal program for vaccine-injured children is failing, Stanford scholar says

A Stanford professor has found that the federal Vaccine Injury Compensation Program has not lived up to its original goals of providing "simple justice" to children injured by vaccines. Lengthy delays and an adversarial tone characterize the program.

BY CLIFTON B. PARKER

The safety net that Congress created to protect children who suffer from vaccine injury is not working as intended, a Stanford law professor has found.



A Stanford law scholar says a no-fault alternative dispute resolution system for resolving vaccine injury claims is not working as intended.

“The bottom line is that the Vaccine Injury Compensation Program was supposed to offer ‘simple justice’ to vaccine-injured children. But it has largely failed to do so,” wrote Stanford law Professor Nora Freeman Engstrom (<http://www.law.stanford.edu/profile/nora-freeman-engstrom>) in a new research article ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2623756](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2623756)).

## Outside the court system

Created by Congress in 1986 as the problem of vaccine injury hit crisis proportions, the Vaccine Injury Compensation Program, or VICP, is a no-fault compensation system housed within the U.S. Court of Claims and funded by a 75-cent tax on each vaccine dose administered across the country.

Vaccines are given to reduce the threat of common diseases, such as measles, chicken pox, smallpox and polio, and they save the lives of tens of thousands of Americans each year. However, vaccines also cause a very small proportion of those inoculated to sustain serious and sometimes fatal injuries, according to Engstrom.

She said the VCIP uses a no-fault alternative dispute resolution system for resolving vaccine injury claims. Known as an “alternative compensation mechanism,” it is similar to workers’ compensation funds or the September 11th Victim Compensation Fund in providing payment to injured individuals outside the traditional court system.

Engstrom, who also recently wrote an **op-ed** (<http://stanfordlawyer.law.stanford.edu/2015/07/heeding-vaccine-courts-failures/>) on this issue, noted the vaccine fund has adjudicated more than 14,000 petitions for vaccine injury since its beginning in 1986. In her research, she analyzed nearly three decades’ worth of data concerning the program’s operation.

“The results are discouraging,” she said. “Despite initial optimism in Congress and beyond that such a fund could resolve claims efficiently and amicably, in operation the program has been astonishingly slow and surprisingly combative.”

For example, Congress originally established a 240-day deadline for all adjudication decisions. But Engstrom reported that, in reality, the average adjudication takes over five years. “This is years longer than similar claims resolved by court judgment or trial verdict within the traditional tort system,” she said.

The tone and nature of the experience is also disillusioning, she noted. Though claims within the system are supposed to be amicably resolved, in reality “the resolution of petitions is frequently antagonistic,” she said.

Engstrom found that even when children are found to be entitled to compensation, governmental lawyers have sometimes hassled petitioners over relatively piddling amounts. For example, in one case, a dispute arose whether a 14-year-old girl with profound mental retardation was or was not entitled to a \$40 pair of high-top tennis shoes.

Perhaps as a result, Engstrom said, the vaccine program has heavily relied on lawyers. Early on, some hoped that procedures would be straightforward and collaborative enough to make it unnecessary to hire counsel. But Engstrom discovered that petitioners need counsel – and often highly specialized legal help – to have any chance at successfully resolving their claims.

## **Lessons learned**

Engstrom said her findings serve as a cautionary tale in two aspects. First, child vaccination rates in the United States are lower than they should be, she said, adding, “With the recent measles outbreak, the effects of this comparatively low vaccine rate seem to be coming home to roost.”

Originally, she said, the vaccine compensation program was supposed to represent a simple and effective safety net that would encourage more parents to immunize their children.

Applying that logic, she said, “If we want to convince more American parents to vaccinate their children, improving the VICP could help.”

Second, the findings, she said, shed light on the effectiveness of health courts and other options for resolving disputes beyond traditional courts, which are often suggested as possible solutions to medical malpractice litigation problems.

Engstrom calls health courts the “tort reform *du jour*.” In fact, legislation to enact health courts has been introduced in several state legislatures and both houses of Congress.

She said health courts would take medical malpractice cases out of the traditional court system and relocate them to a specialized venue. Health court supporters suggest that this relocation would promote faster, more predictable and less adversarial resolutions of disputes.

But Engstrom wrote that the vaccine fund example is cause for great concern: “Moving cases outside the court system in no way guarantees that claim resolution will be fast, simple or straightforward.”

She noted, “Before we charge forward in creating new compensation systems, we ought to make sure we understand how our past experiments with tort reform have fared – and we’ve got to learn the sometimes bitter lessons that come from our past mistakes.”

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