

Statement of Rep. Henry A. Waxman on the Introduction of the Smallpox Vaccine Compensation and Safety Act of 2003

February 13, 2003

Today, I am introducing legislation to enhance the ability of the United States to respond to a terrorist attack that uses the lethal smallpox virus. This legislation establishes a program to compensate those injured by the smallpox vaccine. It also contains provisions to assist state efforts against smallpox and to protect health care workers and their employers during the vaccination campaign.

I am introducing this bill today to begin a dialogue that I hope will culminate in the quick passage of legislation. This is not a partisan issue. I know that all members of the House and Senate are committed to protecting the American public from potential bioterrorist threats. I look forward to working with members from both the Republican and Democratic parties and with the Administration to develop a bipartisan solution. I hope that my ideas, as outlined in this legislation, can provide a starting place for discussion.

Three weeks ago, President Bush launched a national program to vaccinate millions of healthcare workers against smallpox in order to protect the United States in case of a bioterrorist attack. To date, the number of those vaccinated is far lower than anticipated. According to press accounts, about one thousand health care workers have been vaccinated, despite an initial goal of about 500,000 in the first month.

According to public health officials, one reason for this gap is that health care workers are concerned about the risks of the smallpox vaccine itself. About one out of every million people who receive the vaccine will die, and several others will suffer severe medical complications, including brain damage, blindness, and significant scarring. Serious injury can occur even among people who have never been vaccinated, but who come into close contact with someone who has recently received the vaccine.

The homeland security bill passed last fall limited the liability of hospitals, doctors, and vaccine manufacturers for injuries caused by the smallpox vaccine. However, the legislation did not provide compensation to those who are injured.

I have heard from public health officials and vaccination experts that many health care workers are understandably reluctant to accept a vaccine to protect the public while being forced to face the consequences of an adverse reaction alone. These consequences can include large medical bills, lost income, pain and suffering, and death. There can be no doubt that a compensation program is urgently needed.

Some have suggested that existing workers compensation programs can cover those vaccinated in case of injury. This approach is not adequate. It is clear that some state programs do not cover vaccine injuries at all, others provide insufficient compensation, and not one covers those who fall ill from contact with someone who has received the vaccine.

Health insurance may also fall short. Some insurers have threatened not to cover smallpox vaccine injuries. And some volunteers or contacts who get injured by the vaccine may not have health insurance at all.

Aside from the lack of compensation for vaccine injury, there are other impediments to the smallpox vaccination effort. States are straining under the weight of their usual public health responsibilities and need additional funding. Volunteers who need immediate medical care because of a smallpox vaccine reaction may not be able to afford it, and those volunteers who fall ill for a few days with common local reactions to the vaccine may lose wages while recovering.

The legislation I am introducing today addresses these problems. My goal is the same as the President's: to enhance the ability of the United States to defend against a bioterrorist attack. I believe that changes in the law are urgently needed to achieve this goal.

First, the bill establishes a no-fault compensation program for those injured by the smallpox vaccine modeled on the successful program for children injured by routine immunizations. This system is fair, efficient, and less litigious than the traditional court system. Most importantly, a compensation program will provide real security to health care workers and their families in case of injury and will remove a major impediment to the vaccination effort.

Second, the bill would provide grants to states to pay for their vaccination programs, including education and testing for medical conditions that are risk factors for severe reactions to the smallpox vaccine.

Third, the bill would provide states full funding to pay for the immediate medical care of any health care worker or first responder injured by the vaccine, or anyone injured by coming into contact with someone who has been recently vaccinated. Timely medical attention can help to prevent the most serious complications of adverse reactions from ever developing.

Fourth, the bill would prohibit discrimination against any worker who refuses to be vaccinated.

Fifth, the bill would permit up to four days of paid leave for health care workers who experience transient but significant local reactions. Employers can obtain reimbursement for this expense from the compensation program.

Each of these provisions will support our nation's preparations for a smallpox attack. In the coming days, I look forward to a productive legislative exchange to assure that these issues are quickly addressed.