

Program for vaccine-injured helps some

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WASHINGTON -- Several nights after Carol McFarland's healthy 1-year-old son received a routine measles vaccination, his arms began shaking and his eyes rolled back. Next came spells of limpness. The boy had brain damage -- the result, doctors said, of a rare reaction to the shot.

After struggling with Brent's care for years, the McFarlands applied to a program created by Congress to compensate people in the unusual instance when a vaccine, a cornerstone of preventive care, does harm.

The McFarlands waited six years before the government conceded in 1996 that Brent was entitled to compensation. It took another two years of legal wrangling before a special judge decided on an amount.

Since the vaccine injury compensation program began 10 years ago, about 5,300 claims have been filed. More than 3,200, or 60 percent, have been rejected. The program has awarded \$900 million to 1,300 families. Many other cases remain unresolved.

The program receives \$110 million per year from taxpayers to pay older cases like the McFarland's and now has \$1.3 billion for new cases. Yet the McFarlands felt squeezed.

"They treated us like we were stealing from them," said Dale McFarland, a retired oil company worker in Corpus Christi, Texas.

Parents, applicants' lawyers and activists who lobbied for compensation say the program, which pits government lawyers against claimants, has turned unnecessarily adversarial and even stingy. They blame poor administration, lack of congressional oversight and modifications that make it harder to win aid.

Officials staunchly defend the program, saying the process is more respectful and easier for families than a lawsuit, has helped stabilize vaccine prices, and fosters new vaccine development by deflecting suits away from drug companies.

"It has really done what it was intended to do," said Dr. Claude Earle Fox, head of the Health Resources and Services Administration, the division of the Department of Health and Human Services that administers the program.

Older cases like the McFarlands were delayed as the program struggled to handle the flood of claims filed in the early years, officials said.

By law, people injured by vaccines must apply for compensation before suing drug companies or physicians who administered the shots. Those who lose can sue, but few do.

A tax on vaccines, paid by consumers, goes into an award fund, which has grown to a record \$1.3 billion. The fund took in \$160 million last year and paid \$43 million in benefits. Awards average around \$600,000 to \$700,000.

About 200 million vaccines are given each year. Serious reactions, such as seizures, brain damage or death, are extremely rare. They are more likely to be caused by an illness or abnormality already present, but unrecognized, before the vaccine was given, the program's doctors say.

Since it began, the program's annual administrative costs have nearly doubled to \$9.5 million with the largest share going to lawyers. Officials attribute the added expense to more cases than expected.

The vaccine cases are decided by special masters working in the U.S. Court of Federal Claims. The process is streamlined, rules of evidence are relaxed, and hearings are often held by teleconference.

But John Euler, head of the vaccine lawyers at the Department of Justice, said parents should realize it's still an adversarial system. "The perception is that it may be kind of a walk through," he said.

The government is well-armed to litigate cases, with 17 lawyers and 100 expert witness physicians.

Maurine Sweet, a Kansas woman whose infant daughter died two days after receiving a diphtheria-pertussis-tetanus shot, said the government's expert witness "took our testimony and riddled it with doubt."

"No parent should have to plead with this government the story of their child's death," said Sweet. After Sweet won, the government appealed the ruling but eventually settled, awarding her \$125,000. Death claims are capped at \$250,000.

Euler said sometimes the parents' testimony is inconsistent with medical records and must be challenged. "We have an obligation, we take an oath, to examine those assertions," he said.

But Dr. Marcel Kinsbourne, a pediatric neurologist and professor at New School University in New York City who is an expert witness for applicants, said applicants are entitled to compensation if their injuries meet a series of criteria and there is no clear evidence that something other than the vaccine caused the problem.

Kinsbourne said government lawyers often argue against compensation even when there's insufficient evidence of an underlying illness. Euler said the government relies on solid evidence.

Critics say the government has put up another stumbling block -- making it harder to prove injuries from the diphtheria-pertussis-tetanus shot, or DPT, which accounts for three-fourths of all vaccine claims.

Eligibility rules were changed after a four-year review of a medical study that found insufficient evidence to blame the vaccine for permanent neurological damage.

Since the change in 1995, DPT cases have become more difficult, time-consuming and expensive to prove and fewer are being compensated, said Gary Golkiewicz, chief special master.

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