Responding to First Responders: A Proposal for a Smallpox Vaccine Injury Compensation Program

Abstract
In December 2002, President Bush announced a plan to provide smallpox vaccinations to first responders—individuals who would be on the front lines in the event of a biological attack. To date, the plan has been unsuccessful because many first responders are unsatisfied with the protections provided for adverse reactions. In particular, a new federal statute exempts manufacturers from liability and only permits negligence claims against the United States. Additionally, many states have not determined the scope of their workers’ compensation coverage. As a result, there is a rising demand for a federal program to compensate for smallpox vaccine injuries. This Article analyzes three federal compensation programs and recommends a smallpox compensation program based on lessons from these programs. Finally, it outlines two new proposals by Representative Waxman and by the Department of Health and Human Services.
Covered Injuries. Smallpox (Vaccinia) Vaccine Injury Table. Injury (illness, disability, injury, or condition). Time interval for first symptom or manifestation of onset of injury after: (1) administration of smallpox (vaccinia) vaccine in recipients (R); or (2) exposure to vaccinia in contacts (C). 1. Significant Local Skin Reaction. R or C: 1-21 days. 12. Death resulting from an injury referred to above in which the injury arose within the time interval referred to above (except as specifically provided in specified paragraph of the Table Definitions and Requirements). R or C: No time interval specified. A Covered Injury is defined as an injury that the Secretary determines