DEPARTMENT OF HEALTH & HUMAN SERVICES **Health Resources and Services Administration**

Advisory Commission on Childhood Vaccines **Rockville, Maryland 20857**

DEC 0 3 2013

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Recommendation of the Advisory Commission on Childhood Vaccines

Dear Secretary Sebelius:

In accordance with the provisions of the charter for the Advisory Commission on Childhood Vaccines (ACCV or Commission) and pursuant to its obligations under § 300aa-19 of the National Childhood Vaccine Injury Act of 1986 (the Act, 42 U.S.C. §§ 300aa-1 *et seq.*), I respectfully submit for your consideration a recommendation relative to the implementation of the National Vaccine Injury Compensation Program (VICP).

At its June 2012 quarterly meeting, the ACCV formed the Process Workgroup consisting of seven members to examine prior ACCV recommendations to the Secretary and to consolidate and present the ACCV's consensus recommendations for immediate changes to improve the functioning of the Program. This Workgroup is chaired by an ACCV member, a representative of the general public who is also the parent of a vaccine-injured child. Other ACCV members on the Workgroup include one health care provider representative; one representative of the general public who is also the parent of a vaccine-injured child; one representative who is an attorney representing petitioners; and one representative who is a non-affiliated attorney. A former ACCV member who represents petitioners; and liaison representatives from the Division of Vaccine Injury Compensation and the Department of Health and Human Services (HHS) Office of the General Counsel are also members of the Workgroup.

The Process Workgroup met monthly by telephone from June 2012 to March 2013. It carefully studied and discussed issues related to the functioning of the Program and proposals for improvement. During these same meetings, the Workgroup considered and is recommending increasing the statutory benefit cap for pain and suffering, and for death, and agreed that the cap for both should be tied to the Consumer Price Index for Urban Consumers (CPI-U). This legislation would restore the original intent of Congress, set forth in the authorizing legislation of 1986, to provide for automatic annual inflationary adjustments to these benefit caps.

The ACCV proposes the recommendation below developed by the Process Workgroup. The ACCV voted unanimously to support the following recommendation at its meeting on June 7, 2013.

Recommendation to Increase Benefits Caps for Pain and Suffering and Death

The ACCV recommends that the Secretary propose legislation to amend the Act, to permit increases of the $250,000 benefit cap for pain and suffering, and death to account for inflation. This legislation would restore the original intent of Congress, set forth in the authorizing legislation of 1986, to provide for automatic annual inflationary adjustments to these benefit caps. Repeal of this provision in 1987 has precluded any adjustments to the benefit caps, which have remained at the original levels since the Act's inception.

The ACCV recommends increasing the $250,000 benefit cap for pain and suffering and the $250,000 benefit cap for death to account for inflation. Both benefit caps would be retroactively increased since 1986 to account for inflation and would increase annually to account for inflation using the Consumer Price Index - All Urban Wage Earners (CPI-U), as envisioned by Congress in the original National Childhood Vaccine Injury Act of 1986. The revised amount of the pain and suffering and death benefits applies to all cases pending when this provision is enacted and to all cases filed on and after that date. The *pain and suffering benefit amount* is based on the year that the case is resolved. The *death benefit amount* is based on the year that the death occurred. If *pain and suffering is provided as part of a death case, then the pain and suffering amount* is based on the year that the death occurred.

Pain and Suffering and Death Benefits Projected Increases Based on Consumer Price Index
- All Urban Consumers (CPI-U) for 1986 through 2012 (December to December Percent Change)

Year	CPI-U Percent Change	Benefit Amount
1986	----------	$250,000
1987	4.4%	$261,000
1988	4.4%	$272,484
1989	4.6%	$285,018
1990	6.1%	$302,404
1991	3.1%	$311,779
1992	2.9%	$320,821
1993	2.7%	$329,483
1994	2.7%	$338,379
1995	2.5%	$346,838
1996	3.3%	$358,284
1997	1.7%	$364,375
1998	1.6%	$370,205
1999	2.7%	$380,200
2000	3.4%	$393,127
2001	1.6%	$399,417
2002	2.4%	$409,003
2003	1.9%	$416,774
2004	3.3%	$430,528
2005	3.4%	$445,166
2006	2.5%	$456,295
2007	4.1%	$475,003

2008	0.1%	$475,478
2009	2.7%	$488,316
2010	1.5%	$495,640
2011	3.0%	$510,510
2012	1.7%	$519,188

Note: The projected benefit was determined by multiplying the prior year's benefit by the Consumer Price Index - All Urban Consumers (CPI-U) for that year and adding that amount to the prior year's benefit.

This recommendation is for your consideration. We look forward to you receiving your response.

Very truly yours,

David King
Chair, ACCV

Michelle A. Williams
Co-Chair, ACCV