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. The Workgroup is recommending that the statute of limitations (SOL) for filing an injury and a death claim be extended. The SOL for filing a petition in the Program is three years from the date of the first symptoms of the injury, even if the petitioner reasonably would not have known at the time that the vaccine caused the first symptom. Thus, the Program stands in stark contrast to most state SOL's which do not run against a plaintiff until he is aware of both the injury and its cause and which suspend the SOL for minors and the disabled. Also, the Act includes a provision which allows individuals 2 years from the date that a new vaccine or a new injury is added to the Vaccine Injury Table (Table) to file a petition. These petitions can be for vaccine-related injuries or deaths that occurred up to 8 years prior to the date of the Table change (i.e., an 8–year look back period).

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 Extend the Statute of Limitations

For vaccine-related injuries:

The ACCV recommends that the Secretary propose legislation to amend the Act to extend the SOL from 3 to 8 years after the first symptom of the injury, but make the Program the exclusive remedy for any petitioner who files during the extended 5-year period from years 3-8 and petitioners could not opt out of the Program to pursue a claim in state or federal court. *This provision would be effective the date that it is enacted and apply to all petitions, alleging injuries from covered vaccines, filed on and after that date.*

For vaccine-related deaths:

The ACCV recommends that the Secretary propose legislation to amend the Act to extend the SOL from 2 to 8 years following a death, with the Program being the exclusive remedy for the extended 6-year period (no opt out); and extend the SOL from 4 to 8 years after the first symptom of the injury, with the Program being the exclusive remedy for any petition filed during the extended 4-year period from years 4-8 and petitioners could not opt out of the Program to pursue a claim in state or federal court. *This provision would be effective the date that it is enacted and apply to all petitions, alleging death from covered vaccines, filed on and after that date.*

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