



# AFSCME

*American Federation of State, County and Municipal Employees, AFL-CIO*

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November 15, 2005

Members of the Senate Health, Education, Labor and Pensions Committee  
United States Senate  
Washington, DC 20510

Dear Senator:

I am writing on behalf of the 1.4 million members of the American Federation of State, County and Municipal Employees (AFSCME), including police officers, emergency medical workers, nurses, doctors, public health personnel and other health care professionals in the public and private sector who would be called upon to receive and administer countermeasures during terrorist attack or in response to pandemic flu. We are writing to express our grave concerns about a plan by Senator Gregg and others to attach broad liability protections for manufacturers to a conference report this week, in the absence of any compensation program for individuals harmed by countermeasures. We urge that liability protections not be sought without the addition of an adequate compensation program.

As we understand, the liability protections being considered would provide unprecedented immunity for manufacturers of vaccines and other pandemic and epidemic products and countermeasures. In the past, when lesser protections have been provided to vaccine manufacturers, Congress has coupled protections with programs to compensate individuals for health care costs and lost income resulting from serious injury. As a result, recipients of vaccines have been provided some assurance that they will not face economic catastrophe should they be harmed by a vaccine. In advancing liability protections for makers of countermeasures, the Senate must not deny access to compensation through the courts without providing an alternative mechanism for addressing health care needs and financial hardship brought on by the receipt of a countermeasure.

As we have previously communicated to the HELP Committee, AFSCME opposes the provision in S. 1873 that would model a compensation program after the Smallpox Emergency Personnel Protection Program. While special provisions must be made for first responders who may be asked to receive a countermeasure prior to an actual threat and before it is fully evaluated for harmful side effects, AFSCME also supports the establishment of a compensation program that would cover all injured citizens. Any compensation program must have a guaranteed source of funding. Furthermore, because the Smallpox Emergency Personnel Protection Program was designed for a very narrow purpose, it is inadequate for broader application and would provide compensation under extremely limited circumstances. For example, it would not apply to a countermeasure developed for avian flu or anthrax because both infections have already occurred in the human population. We are also concerned that in the draft language under consideration state and local government agencies and health care providers, including health care workers, administering a countermeasure may be liable for harm caused by a countermeasure.

Until these liability questions can be addressed and an adequate compensation program be designed, AFSCME urges that the liability provision not be rushed to the Senate floor.

Sincerely,

Charles M. Loveless  
Director of Legislation

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