

**FOR IMMEDIATE RELEASE**  
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**\*\*EXECUTIVE SUMMARY OF REPORT AND FACT SHEET INCLUDED\*\***

**KENNEDY RELEASES “TOO LITTLE, TOO LATE” REPORT DETAILING THE  
INADEQUACIES OF BUSH ADMINISTRATION PANDEMIC FLU PLAN**

***OFFERS AMENDMENT TO STRENGTHEN FLU LIABILITY COMPENSATION***

WASHINGTON, DC— Today, Senator Kennedy released a report, “Too Little Too Late: The Bush Administration’s Record of Failure in Preparing for Pandemic Flu.” The report details the failures of the Administration to adequately prepare the United States for a potential pandemic flu outbreak, the need for a strong liability compensation program and the steps that must be taken—both on a local and a federal level—in order for this country to be adequately prepared.

The United States remains the only superpower without a comprehensive pandemic flu plan in place. Later today, the Bush Administration is introducing a revised plan initially introduced to the American public last fall. The plan to be released today is supposed to be the third and final part of the HHS plan, but still leaves us without a coherent overall national plan.

Today, Senator Edward M. Kennedy offered an amendment to the Emergency Supplemental bill to strengthen the compensation program for flu liability. Last December, a provision was inserted into a major spending bill to provide sweeping immunity from liability for manufacturers of experimental flu vaccines – as well as a broad range of other vaccines, drugs, and medical devices. The provision purported to provide compensation for first responders and others who might be injured by the products to which the legal immunity applied – but the promise of compensation was an empty one. Even though the provision was enacted as part of an appropriations bill, no funding was provided for the compensation program. As a result of this provision, drug companies can receive legal immunity even when they ignore basic safety precautions in the manufacture of their products, but injured patients have no access to compensation.

The Kennedy amendment provides \$289 million in funding available this year for the compensation program. These funds would give the assurance needed to health professionals, first responders, and others who will be first to receive experimental flu vaccines that they will be compensated if they are injured. If funds are not provided as part of this supplemental appropriation, there will be no further opportunity to assure that funds are available for the compensation program until next fiscal year.

Below are Senator Kennedy’s floor remarks, a summary of his flu liability amendment and an executive summary of his comprehensive report on pandemic flu in the United States. Full reports are available upon request.

**FLOOR STATEMENT OF SENATOR EDWARD M. KENNEDY ON FLU COMPENSATION  
AMENDMENT TO THE SUPPLEMENTAL  
(As Prepared for Delivery)**

The Administration seems to be suffering from a condition that could be called “CDD”— “Competence Deficit Disorder.” Whether it’s Iraq or Katrina or any other major crisis, the Administration’s incompetence has been appalling, and it’s cost the nation immensely at home and abroad.

Our HELP committee has analyzed the Administration’s record of failure to prepare for a flu pandemic, and today we are releasing a report showing that they have failed to take the steps needed to see that America is ready for this major national challenge.

They have failed to invest in hospital surge capacity, in needed information technology systems, in the public health surveillance and in the training programs that are needed for an effective response.

The endless changes in the pandemic flu plan are a symbol of this failure. The Administration’s preparations for avian flu have been in such prolonged disarray that they’re releasing their third new plan this week.

The Bush Administration has known of the need for a plan to prepare for a flu pandemic since the day it took office, but 2001 came and went without a plan, then 2002...and 2003...and 2004...and almost all of 2005 – and still no plan.

In each of those years, the warnings of a potential pandemic grew ever louder, but were ignored.

Finally, after years of delay, the President announced a plan last November – but that was just a glossy brochure.

Later, the Administration released what was billed as a comprehensive plan – but that was for just one agency, and even that lacked essential details. Referring to a draft of that plan, GAO reported in June 2005 that it “does not establish the actions the Federal government would take to purchase or distribute influenza vaccine during a pandemic.” That assessment came five years after GAO sounded the alarm that these plans were urgently needed.

A flu plan that doesn’t say how to distribute vaccine is about as useful as a hurricane plan that doesn’t say how to rescue people from a flood.

Today, the Administration is trying again. Let’s hope it’s third time lucky – but I fear that the new plan will repeat the Administration’s discredited policy of leaving states and communities and individuals on their own to face a crisis. That was a disaster in responding to Hurricane Katrina – and it would be a disaster in a flu pandemic too.

No amount of revision can disguise the fact that other nations have been implementing their plans for years, while we are waiting to read ours for the first time today. The United States is at the back of the line in ordering essential flu medicines and we’re at the bottom of the international league in having a coordinated national strategy.

There is one area where the Administration acted swiftly – and that was to persuade its allies in Congress to slip a special favor for the drug industry into a major spending bill at the end of last year with no scrutiny and no debate. This lopsided provision gave drug companies a free pass to ignore even basic safety standards – but denied nurses, doctors, firefighters and other first responders compensation if they were injured by faulty vaccines. The provision included a sham of compensation, but had no funding.

When the nation has promised compensation but failed to deliver, the result has been a disaster.

Sending IOUs to downwinders instead of compensation was reprehensible. The failure to provide compensation for those injured by the smallpox vaccine doomed the smallpox vaccination campaign. Senator Frist recognized this, and we shouldn't ignore his words on this issue.

We can't afford to make the same mistake with avian flu. Our health care professionals on the front line should not face ruin if they're injured by an experimental flu vaccine.

I urge my colleagues to support this amendment to provide compensation for persons injured by flu vaccines, and to join in giving much higher priority to this massive looming threat. Other nations have been preparing their response for years, and we're far behind in planning ours. Time may not be on our side. We need to be much better prepared than we are today, and the clock is ticking.

## **FACT SHEET** **KENNEDY AMENDMENT ON COMPENSATION**

### **Background**

Last December, a provision was inserted into a major spending bill to provide sweeping immunity from liability for manufacturers of experimental flu vaccines – as well as a broad range of other vaccines, drugs, and medical devices. The provision purported to provide compensation for first responders and others who might be injured by the products to which the legal immunity applied – but the promise of compensation was an empty one. Even though the provision was enacted as part of an appropriations bill, no funding was provided for the compensation program. As a result of this provision, drug companies can receive legal immunity even when they ignore basic safety precautions in the manufacture of their products, but injured patients have no access to compensation.

This provision ignores the lessons of the botched smallpox vaccination campaign. Despite the advice of public health experts and representatives of first responders and health care workers, no compensation fund was provided at the outset of that campaign. The absence of compensation was a major reason that few decided to accept the vaccinations.

We should not repeat the mistakes of the past. A compensation program with no funding is an empty gesture, and the wrong course to take.

### **The Kennedy Amendment**

The Kennedy amendment provides \$289 million in funding *available this year* for the compensation program. These funds would give the assurance needed to health professionals, first responders, and others who will be first to receive experimental flu vaccines that they will be compensated if they are injured. If funds are not provided as part of this supplemental appropriation, there will be no further opportunity to assure that funds are available for the compensation program until next fiscal year. We should not ask nurses, doctors, health workers, and other first responders to wait for uncertain compensation if they are injured.

**TOO LITTLE, TOO LATE:**

**THE BUSH ADMINISTRATION'S RECORD OF FAILURE**

# **IN PREPARING FOR PANDEMIC FLU**

## **HELP Committee Minority Report**

**May 3, 2006**

### **Executive Summary**

Comprehensive flu pandemic preparedness will require a commitment of resources. While the Democrats have proposed significant new funding for important public health activities, the White House and Republican led Congress have not been willing to fund preparedness programs at the necessary level. And, in fact, the President's most recent budget would slash funding for important public health programs.

The 2006 Defense Appropriations Act included supplemental appropriations for pandemic preparedness. However, key areas of preparedness continue to be inadequately funded, including:

- Public health infrastructure;
- State and local preparedness activities;
- Disease surveillance;
- Vaccine capacity and stockpiling;
- Antiviral and other medical supply stockpiling;
- Workforce training and risk communication;
- Seasonal flu activities; and
- International activities.

The Republicans have also not addressed the issue of compensating people who may be harmed by an experimental pandemic flu vaccine. While the Defense Appropriations Act of 2006 did provide sweeping liability protection for a broad class of countermeasures, the legislation only included vague language establishing a compensation program for people harmed by these products, and it did not fund the compensation program.

The liability protections that were part of the Defense Appropriations Act would make it very difficult for a plaintiff to prevail even if a manufacturer engaged in reckless or even criminal conduct. The immunity potentially covers a poorly defined and extremely broad range of products, including products that are used every day to treat diabetes, obesity, low blood pressure, or pain. A broad class of persons, from vaccine manufacturers to health care providers, would be immune from suit and liability. While there is an exception from immunity for willful misconduct, the exception is very narrow and excludes any negligence or recklessness and even intentional criminal acts.

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