



## MEMORANDUM

July 6, 2010

**To:** Honorable Carolyn B. Maloney  
Attention: Anna Cielinski

**From:** Scott Szymendera (7-0014)  
Sarah A. Lister (7-7320)  
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Domestic Social Policy Division

**Subject:** **Summary of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2010, as Amended and Ordered to be Reported by the House Committees on the Judiciary and Energy and Commerce**

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This memorandum responds to your request for a summary of the provisions of **H.R. 847**, the *James Zadroga 9/11 Health and Compensation Act of 2010*, as amended and ordered reported by the House Committees on the Judiciary and Energy and Commerce.<sup>1</sup>

On July 29, 2009, the House Committee on the Judiciary considered, marked up, and ordered reported an amended version of **H.R. 847**. Changes made by the Judiciary Committee were limited to provisions in Title II of the bill. On May 25, 2010, the House Committee on Energy and Commerce considered, marked up, and ordered reported an amended version of **H.R. 847**. Changes made by the Energy and Commerce Committee were limited to provisions in Title I of the bill.

This memorandum does not provide analysis of the summarized provisions. Unless otherwise stated, all references to subtitles or sections refer to subtitles or sections as established by this Act. Italics are used when needed for emphasis. Please contact Scott Szymendera or Sarah Lister with questions regarding Title I, and Celinda Franco with questions regarding Title II.

## Introductory Material

**Section 1.** This section establishes the title of the bill as the *James Zadroga 9/11 Health and Compensation Act of 2010*, and provides a table of contents.

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<sup>1</sup> For the purposes of this memorandum, the following versions of H.R. 847 are used: for Title I, the Amendment in the Nature of a Substitute offered by Rep. Henry Waxman which, as amended, was ordered to be favorably reported by the House Committee on Energy and Commerce and which is available, along with its amendments, on the Energy and Commerce Committee webpage at: [http://energycommerce.house.gov/index.php?option=com\\_content&view=article&id=2025:full-committee-markup-of-hr-847-the-james-zadroga-911-health-and-compensation-act-of-2010&catid=141:full-committee&Itemid=85](http://energycommerce.house.gov/index.php?option=com_content&view=article&id=2025:full-committee-markup-of-hr-847-the-james-zadroga-911-health-and-compensation-act-of-2010&catid=141:full-committee&Itemid=85). For Title II, the version marked "F:\R11\1ST\RH\H847JUD\_RH.XML" which was provided to CRS by your office via electronic mail on June 18, 2010.

# Title I. World Trade Center Health Program

*Section 101* establishes the World Trade Center (WTC) Health Program as a new Title XXXIII in the Public Health Service Act, as follows:

## Subtitle A. Establishment of Program; Advisory Committee

*Section 3301* establishes the *World Trade Center Health Program* within the Department of Health and Human Services (HHS) to provide: (1) medical monitoring and treatment benefits to eligible emergency responders and recovery and clean-up workers (including federal employees) who responded to the terrorist attacks on the WTC in New York City (NYC) on September 11, 2001 (9/11); and (2) initial health evaluation, monitoring, and treatment benefits to eligible residents and other building occupants and area workers in NYC who were affected by such attacks.

The WTC Health Program includes the following components:

- *Medical monitoring* for responders under Section 3311, without any cost-sharing by the eligible beneficiary, including clinical examinations and long-term health monitoring for individuals who were likely to have been exposed to airborne toxins that were released or other hazards as a result of the September 11, 2001 terrorist attacks on the WTC;
- *Initial health evaluation* for survivors (generally non-responders or members of the community), as defined under Section 3321, without any cost-sharing by the eligible beneficiary, including an evaluation to determine eligibility for treatment;
- Provision for responders and survivors, under Sections 3312, 3322 and 3323, for *follow-up monitoring, treatment and payment*, without any cost-sharing by the eligible beneficiary, for all medically necessary health and mental health care expenses (including necessary prescription drugs) of individuals with a WTC-related health condition;
- Establishment under Section 3303 of a program of *outreach* to potentially eligible individuals concerning the benefits under this title;
- *Clinical data collection and analysis* of health and mental health data on individuals receiving monitoring or treatment benefits, in a uniform manner in collaboration with the collection of epidemiological data under Section 3342;
- Establishment under Subtitle C of a *research program* on health conditions resulting from the 9/11 terrorist attacks on the WTC.

The HHS Inspector General is required to develop and implement a fraud prevention program to review the WTC Health Program's health expenditures to detect fraudulent or duplicate billing or payment for inappropriate services. The WTC Health Program is considered a federal health care program and a health plan for the purposes of applying Sections 1128 through 1128E of the Social Security Act. The HHS Inspector General is also required to develop and implement a program to review the WTC Health Program for unreasonable administrative costs.

The WTC Health Program Administrator (the Administrator) is required to work with Clinical Centers of Excellence to establish a quality assurance program for medical monitoring and treatment services provided by the WTC Program.

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The Administrator is required annually, not more than six months after the end of each fiscal year in which the WTC Health Program is in operation, to report to Congress with respect to the operations of the program, including information regarding:

1. The number of individuals who applied for certification under subtitle B, and the number who were certified;
2. The number of certified individuals who received medical monitoring and/or treatment services;
3. For those treated, the WTC-related health conditions for which they were treated;
4. A projected number of individuals who would be certified in the subsequent fiscal year and the succeeding 10-year period;
5. The costs of initial health evaluation, monitoring, and treatment services provided in the applicable fiscal year, and estimated costs for the subsequent fiscal year;
6. An estimate of the costs paid or reimbursed by workers' compensation plans, health plans, or the City of New York under Section 3331;
7. Administrative costs, including program support, data collection and analysis, and research;
8. Information on program performance;
9. A list of the Clinical Centers of Excellence and other providers participating in the program;
10. A summary of new scientific reports or findings regarding WTC-related health effects, including findings of research conducted pursuant to Section 3341(a); and
11. A list of recommendations of the WTC Health Program Scientific/Technical Advisory Committee, and actions by the Administrator in response.

For items 1 through 6 above, information must be provided for each of the following clinical programs:

- Benefits provided for fire fighters and related personnel described in Section 3311(a)(2)(A);
- Benefits for other eligible WTC responders not described in Section 3311(a)(2)(A); and
- Benefits provided for screening-eligible WTC survivors and certified-eligible survivors in Section 3321(a).

The Secretary of HHS shall promptly notify the Congress if the number of enrollments of eligible WTC responders, or the number of certifications for certified-eligible WTC survivors reaches 80% of the limits for either group, as established under Sections 3311 or 3321, respectively.

The Administrator shall engage in ongoing outreach efforts regarding program implementation and improvements with relevant stakeholders, including the WTC Health Program Steering Committees and the Advisory Committee established under Section 3302.

**Section 3302** requires the Administrator to establish the WTC Health Program Scientific/Technical Advisory Committee (the Advisory Committee), subject to the Federal Advisory Committee Act, to review scientific and medical evidence and make recommendations to the Administrator on additional WTC Program eligibility criteria and additional WTC-related health conditions. This section establishes

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committee membership, and requirements for meetings and public reporting. The Advisory Committee shall continue in operation during the period in which the WTC Program is in operation.

The Administrator also is required to establish and consult with two WTC Program steering committees—the WTC Responders Steering Committee, and the WTC Survivors Steering Committee—to facilitate the coordination of initial health evaluation, medical monitoring, and treatment programs for eligible WTC responders (under Part 1 of Subtitle B) and survivors (under Part 2 of Subtitle B). For each committee, requirements and procedures are established for membership, and management of vacancies.

**Section 3303** requires the Administrator to establish a program to provide education and outreach regarding services available under the WTC Program. The program shall include the development of a public website and phone information services, meetings with potentially eligible populations, and outreach materials. The education and outreach program must be conducted in a manner intended to reach all affected populations and include materials for culturally and linguistically diverse populations.

**Section 3304** requires the Administrator to provide for the uniform collection, analysis, and reporting of data on the prevalence of WTC-related health conditions and the identification of new WTC-related medical conditions. Data shall be collected for all persons receiving monitoring or treatment services under Subtitle B regardless of their place of residence or the location at which services are provided. Clinical Centers of Excellence shall collect and report such data to the corresponding Data Center. The Administrator shall provide for collaboration between the Data Centers and the WTC Health Registry described in Section 3342. The data collection and analysis must be conducted in a manner that protects the confidentiality of health information in accordance with applicable statutes and regulations including the Health Insurance Portability and Accountability Act (HIPAA).

**Section 3305** requires the Administrator to establish, by entering into contracts, Clinical Centers of Excellence and Data Centers. Specific Clinical Centers of Excellence and Data Centers are termed *corresponding* if they serve the same population. Contracts with Clinical Centers of Excellence and Data Centers may be specific with respect to one or more classes of enrolled WTC responders, screening-eligible WTC survivors, or certified-eligible WTC survivors.

*Clinical Centers of Excellence* shall provide: monitoring, initial health evaluation, and treatment benefits under Subtitle B; outreach activities and benefits counseling to eligible individuals; translational and interpretive services for eligible individuals, if needed; and collection and reporting of data pursuant to Section 3304. Clinical Centers are defined as Centers that meet the following requirements:

1. They use an integrated, centralized approach to create a comprehensive suite of health services, which are accessible to WTC responders and survivors;
2. They have experience in caring for WTC responders and community cohorts or include health care providers trained pursuant to Section 3313(c);
3. They employ health care provider staff with expertise in, at a minimum: occupational medicine, environmental medicine, trauma-related psychiatry and psychology, and social services counseling; and
4. They meet other requirements specified by the Administrator.

The Administrator shall not enter into a contract with a Clinical Center unless such center agrees to: (1) establish a formal mechanism for consultation with the eligible population groups that it serves; (2) coordinate covered monitoring and treatment benefits with medical care provided for non-WTC-related health conditions; (3) collect and report program data to its corresponding Data Center; (4) have in place

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satisfactory safeguards against fraud; (5) treat or refer for treatment all eligible beneficiaries who present for treatment; (6) have in place safeguards for the confidentiality of medical information; (7) use amounts received for non-monitoring and non-treatment services solely for the authorized purposes; (8) utilize health care providers with occupational and environmental medicine expertise to conduct physical and mental health assessments, in accordance with protocols established under Section 3305(a)(2)(A)(ii); (9) communicate with patients and community members in appropriate languages and conduct outreach to stakeholder worker and community groups; and (10) meet all the other applicable requirements of this title, including regulations implementing such requirements.

The Administrator shall, to the maximum extent feasible, ensure continuity of care during transitions between services provided through a Clinical Center of Excellence and through the nationwide network.

Clinical Centers of Excellence shall be reimbursed by the Administrator for fixed infrastructure costs, at negotiated rates. Such costs are defined as costs incurred by the Center that are not reimbursable as health care services under Section 3312(c).

*Data Centers* shall provide: data analysis and reporting to the Administrator; development of initial health evaluation, medical monitoring, and treatment protocols for WTC-related conditions; coordination of outreach activities; criteria for the credentialing of providers in the nationwide clinical network established under Section 3313; coordination and administration of the activities of the steering committees; and meeting periodically with the corresponding Clinical Centers of Excellence to obtain input on the analysis and reporting of data and the development of monitoring and treatment protocols.

The credentialed medical providers in the national clinical network shall be selected by the Administrator on the basis of their expertise treating or diagnosing medical conditions included in the list of identified WTC-related health conditions for responders and identified conditions for survivors.

In developing evaluation, monitoring, and treatment protocols, Data Centers shall engage in discussions across the program to guide treatment approaches for individuals with WTC-related health and mental health conditions. In addition, Data Centers shall be required to make any data collected and reported available to health researchers and others as provided in the CDC/ATSDR Policy on Releasing and Sharing Data.<sup>2</sup>

**Section 3306** provides numerous definitions for Title I. Among them, the term *NYC disaster area* is defined as the area within New York City that is in Manhattan south of Houston St.; and any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former WTC site.

The term *WTC Program Administrator* is defined as follows:

- An HHS official designated by the Secretary of HHS for the purposes of enrollment of WTC responders; the payment for initial health evaluation, monitoring, and treatment; the determination or certification of screening-eligible or certified-eligible WTC responders; and the payor provisions of Part 3 of Subtitle B.; and
- The Director of the National Institute for Occupational Safety and Health (NIOSH) or a designee of such director for the purposes of all other provisions of Title I.

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<sup>2</sup> CDC/ATSDR Policy on Releasing and Sharing Data, September 2005, <http://www.cdc.gov/od/foia/policies/sharing.htm>.

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The term *September 11, 2001 terrorist attacks* is defined as the terrorist attacks that occurred on September 11, 2001 in New York City; Shanksville, Pennsylvania; and the Pentagon and the aftermath of such attacks.

## **Subtitle B. Program of Monitoring, Initial Health Evaluations, and Treatment**

### **Part 1. WTC Responders**

*Section 3311* defines eligibility criteria for WTC responders, provides an application and certification process, sets limits on the number of eligible participants, and describes available monitoring benefits. No person who is on a terrorist watch list maintained by the Department of Homeland Security may qualify as a WTC responder.

A *currently identified responder* is an individual who has been identified as eligible for medical monitoring under the arrangements between NIOSH and the consortium coordinated by Mt. Sinai hospital, or between NIOSH and the Fire Department of New York City (FDNY).

A *responder who meets current eligibility criteria* is an individual who meets one of the following conditions:

- For FDNY and related persons:
    - was a member, active or retired, of the FDNY who participated for at least one day in the rescue or recovery effort at Ground Zero, the Staten Island land fill, or the NYC Chief Medical Examiner's Office during the period between September 11, 2001 and July 31, 2002; or
    - is a surviving immediate family member of an FDNY member, retired or active, who was killed at the WTC on September 11, 2001, and who received any treatment for a WTC-related mental health condition on or before September 1, 2008.
  - For law enforcement, rescue, recovery, and clean-up workers:
    - worked or volunteered in rescue, recovery, or debris cleanup or related support services in lower Manhattan below Canal St., the Staten Island Landfill, or the barge loading piers, for at least 4 hours between September 11 and September 14, 2001; for at least 24 hours between September 11, 2001 and September 30, 2001; or for at least 80 hours between September 11, 2001 and July 31, 2002;
    - was a member, active or retired, of the Police Department of New York City (NYPD) or the Port Authority of New York and New Jersey Police, and participated in rescue, recovery, debris cleanup, or related services in lower Manhattan below Canal St., the Staten Island Landfill, or the barge loading piers, for at least 4 hours between September 11, 2001 and September 14, 2001;
    - was a member, active or retired, of the NYPD or the Port Authority of New York and New Jersey Police, and participated in rescue, recovery, debris cleanup, or related services at Ground Zero, the Staten Island Landfill, or the barge loading piers for at least one day between September 11, 2001 and July 31, 2002;
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- was a member, active or retired, of the NYPD or the Port Authority of New York and New Jersey Police, and participated on-site in rescue, recovery, debris cleanup, or related services in lower Manhattan (south of Canal St.) for at least 24 hours between September 11, 2001, and September 30, 2001;
- was a member, active or retired, of the NYPD or the Port Authority of New York and New Jersey Police, and participated in rescue, recovery, debris cleanup, or related services in lower Manhattan below Canal St. for at least 24 hours between September 11, 2001 and September 30, 2001 or for at least 80 hours between September 11, 2001 and July 31, 2002;
- was an employee of the Office of the Chief Medical Examiner of New York City involved in the examination and handling of human remains from the WTC attacks, or other morgue worker who performed similar functions, between September 11, 2001 and July 31, 2002;
- was a worker in the Port Authority Trans-Hudson Corporation (PATH) tunnel for at least 24 hours between February 1, 2002 and July 1, 2002; or
- was a vehicle maintenance worker who was exposed to debris from the former WTC while working on vehicles contaminated by airborne toxins from the September 11, 2001 attacks during work between September 11, 2001 and July 31, 2002.
- For responders to the Pentagon and Shanksville, Pennsylvania aircraft crash sites:
  - was an active member of a fire or police department, or performed rescue, recovery, demolition, debris cleanup, or other related services at the terrorist-related aircraft crash site at the Pentagon or in Shanksville, Pennsylvania beginning on September 11, 2001 and ending on a date established by the Administrator; and is determined by the Administrator to be at an increased risk of developing a WTC-related condition as a result of exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks, and meets such eligibility criteria related to such exposures, as the Administrator determines are appropriate, after consultation with the WTC Scientific/Technical Advisory Committee.

*A responder who meets modified eligibility criteria* is an individual who performed rescue, recovery, or clean-up services in the NYC disaster area in response to the September 11, 2001 attacks on the WTC, regardless of whether such services were performed by a state or federal employee or member of the National Guard; and who meets eligibility criteria established by the Administrator in consultation with the WTC Scientific/Technical Advisory Committee. No modifications of eligibility criteria may be made after the number of certifications for eligible responders has reached 80% of the limit established in Section 3311(a)(4) or after the number of certifications for certified-eligible survivors has reached 80% of the limit established in Section 3321(a)(3).

The Administrator shall establish an *enrollment process* for persons other than currently identified responders to apply to become eligible WTC responders. There will be no fee for this application; a decision on each application shall be made within 60 days of the date it was filed; and persons denied will have the right to appeal in a manner established by the Administrator. The Administrator shall enroll currently identified responders by July 1, 2011. Other persons shall be enrolled at the time they are determined to be eligible WTC responders.

There is a *numerical limit on eligible WTC responders*. This limit excludes currently identified responders. This limit shall not exceed 25,000, of which no more than 2,500 may be certified based on

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modified eligibility criteria. The Administrator will limit certifications to ensure sufficient funds are available to provide treatment and monitoring and will provide priority in certifications based on the order in which a person applies.

The *monitoring benefits* (which are available to eligible responders, but not to family members) are defined as initial health evaluation, clinical examinations, and long-term health monitoring and analysis, to be provided by the FDNY, the appropriate Clinical Center of Excellence, or other providers designated under Section 3313 for eligible individuals outside New York.

**Section 3312** provides procedures for determining whether an eligible individual has a WTC-related health condition, whether the condition is WTC-related for that individual, and whether proposed treatments for such condition are medically necessary.

The section defines a *WTC-related health condition* for which eligible responders shall receive the treatment benefit, as:

(i) an illness or health condition for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks on the World Trade Center, based on an examination by a medical professional with experience in treating or diagnosing the medical conditions included in the applicable list of identified WTC-related conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition,....;

or

(ii) a mental health condition for which such attacks, based on an examination by a medical professional with experience in treating or diagnosing the medical conditions included in the applicable list of identified WTC-related conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition, ....

and that is either on the applicable list of WTC-related conditions or is provided certification of coverage under Section 3312(b)(2)(B)(iii).

Eligible responders may receive treatment benefits for conditions described in subparagraph (i) or (ii) of this definition. Immediate family members of firefighters who were killed as a result of the attack on the WTC may only receive mental health treatment benefits for conditions described in subparagraph (ii).

The *determination* of whether the September 11, 2001 terrorist attacks on the WTC were *substantially likely to be a significant factor in aggravating, contributing to, or causing an individual's illness or health condition* shall be made based on an assessment of: (A) the individual's exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the attacks as evaluated and characterized through the use of a standardized, population-appropriate questionnaire approved by the director of NIOSH and assessed and documented by a medical professional with experience treating or diagnosing health conditions included on the list of WTC-related health conditions; or (B) the type and temporal sequence of symptoms as assessed through the use of a standardized, population-appropriate medical questionnaire approved by the director of NIOSH and diagnosed and documented by a medical professional with experience treating or diagnosing health conditions on the list of WTC-related health conditions.

The *list of WTC-related health conditions* for WTC responders is provided in **Table 1**.

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**Table I. List of World Trade Center-Related Health Conditions for Responders and Survivors**

Category	Conditions
Aerodigestive disorders	(1) Interstitial lung diseases; (2) Chronic Respiratory Disorder –Fumes/Vapors; (3) Asthma; (4) Reactive Airways Dysfunction Syndrome (RADS); (5) WTC-exacerbated chronic obstructive pulmonary disease (COPD); (6) Chronic Cough Syndrome; (7) Upper airway hyperreactivity; (8) Chronic rhinosinusitis; (9) Chronic nasopharyngitis; (10) Chronic laryngitis; (11) Gastro-esophageal Reflux Disorder (GERD); and (12) Sleep apnea exacerbated by or related to the above conditions.
Mental health conditions	(1) Post Traumatic Stress Disorder (PTSD); (2) Major Depressive Disorder; (3) Panic Disorder; (4) Generalized Anxiety Disorder; (5) Anxiety Disorder (not otherwise specified); (6) Depression (not otherwise specified); (7) Acute Stress Disorder; (8) Dysthymic Disorder; (9) Adjustment Disorder; and (10) Substance Abuse

**Source:** Section 3312(a)(3) of the Public Health Service Act as proposed by H.R. 847.

In addition, the *musculoskeletal disorders* low back pain, carpal tunnel syndrome, or other musculoskeletal disorders are included only for WTC responders who received treatment for a WTC-related musculoskeletal disorder, defined as a chronic or recurrent musculoskeletal disorder caused by heavy lifting or repetitive strain on the joints or musculoskeletal system occurring during rescue or recovery efforts in the New York City disaster area in the aftermath of the terrorist attacks on the WTC, on or before September 11, 2003.

The Administrator shall periodically determine if *cancer or a type of cancer* should be included on the list of WTC-related medical conditions. This determination shall be based on a review of published evidence. The first such review must be conducted within 180 days of enactment. If it is determined that cancer or a type of cancer should be added to the list, then the Administrator shall make this addition via regulation. If it is determined that cancer or a type of cancer should not be added to the list, then the Administrator shall publish an explanation for this decision in the Federal Register. Such a determination will not preclude the addition of cancer or a type of cancer to the list at a later date.

If the Administrator determines that a proposed rule should be promulgated to *add a condition to the list of WTC-related conditions*, he or she may request a recommendation of the Advisory Committee or publish a proposed rule in the Federal Register. If the Administrator receives a petition from an interested party to add a condition to the list, then he or she shall, within 60 days, request a recommendation of the Advisory Committee; publish a proposed rule in the Federal Register; publish a notice in the Federal Register of the determination not to add a condition to the list of WTC-related conditions; or publish in the Federal Register a determination that insufficient evidence exists to take action on the recommendation.

If the Administrator requests a recommendation of the Advisory Committee, the Committee shall submit its recommendation within 60 days or within another time period, not to exceed 180 days, as specified by the Administrator. Upon receipt of a recommendation from the Advisory Committee, the Administrator shall, within 60 days, publish a proposed rule in the Federal Register; or publish a notice in the Federal Register of the determination not to add a condition to the list of WTC-related conditions. Any rule proposed pursuant to this section shall provide for a written comment period of at least 30 days. For the purposes of this section, an *interested party* includes a representative of an organization representing WTC responders, a medical association, a Clinical Center of Excellence or Data Center, a state or political subdivision of a state, or any other interested person.

If a physician at a Clinical Center that is providing monitoring benefits for an eligible WTC responder determines that the responder *has a condition on the list of WTC-related health conditions*, and that *the condition in that individual is WTC-related*, the physician shall promptly transmit that determination and supporting evidence to the Administrator. Such determinations shall be reviewed by a federal employee designated by the Administrator. The Administrator shall provide certification of coverage for the condition unless he or she determines that the responder's condition is not an identified WTC-related health condition, or that it was not WTC-related in that individual. Upon the Administrator's certification of coverage, the WTC Program shall provide for payment for medically necessary treatment for such condition. Otherwise, the Administrator shall provide, by rule, a process for appeal of determinations in which certification is denied.

If a physician at a Clinical Center that is providing monitoring benefits for an eligible WTC responder determines that the responder has a WTC-related health condition that is *not on the list of WTC-related health conditions* but which is medically associated with a WTC-related health condition, the physician shall promptly transmit that determination and supporting evidence to the Administrator. The Administrator shall, by rule, provide a process for the review of such determinations by a physician panel with appropriate expertise and provide certification of coverage for the condition within 60 days, unless the Administrator determines that the condition is not WTC-related. Upon the Administrator's certification of coverage, the WTC Program shall provide for payment for medically necessary treatment for such condition. Otherwise, the Administrator shall provide, by rule, a process for the appeal of determinations in which certification is denied.

If the Administrator provides certification for a condition not on the list of WTC-related health conditions, then the Administrator may, in accordance with the procedures established in Section 3312(a)(6), add this condition to the list of WTC-related health conditions.

If the Administrator has previously declined to add a condition to the list of WTC-related health conditions, then the Administrator may not provide certification for that condition. This does not apply in cases in which such certification occurred before the determination of the Administrator not to add the condition to the list of WTC-related health conditions.

The determination of whether treatment is *medically necessary* for a WTC-related health condition shall be made by the Administrator in accordance with regulations he or she establishes. Payment shall be withheld if the Administrator determines that a treatment is not medically necessary. The determination that a treatment or service is not medically necessary may be appealed through a process established by regulation.

The *scope of treatment* services covered by the WTC Health Program includes physician services, diagnostic and laboratory tests, inpatient and outpatient prescription drugs, inpatient and outpatient hospital services, and other medically necessary treatment. The Administrator may cover necessary and reasonable transportation and related expenses for medically necessary treatment involving travel of more than 250 miles, in the same manner that persons are reimbursed for transportation expenses under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

A WTC responder who has been determined by a physician to have an identified WTC-related health condition, but for whom an eligibility determination has not yet been made may be eligible for treatment through a process established, by rule, by the Administrator.

Except for pharmaceuticals, the Administrator shall reimburse costs for medically necessary treatment for WTC-related health conditions according to the payment rates that would apply under the Federal

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Employees Compensation Act. The Administrator shall establish a program to pay for medically necessary outpatient prescription pharmaceuticals prescribed for WTC-related conditions through a specified competitive bidding process to award contracts to outside vendors. The Administrator may select a different vendor to serve the FDNY responder program, if he or she deems it necessary and beneficial. For any treatment services not covered above, the Administrator shall establish by regulation a reimbursement rate for each such service. The Administrator shall set rates to reimburse the costs of medical monitoring and initial health evaluation services provided under this title.

The Administrator may modify the amounts and methodologies for making payments for initial health evaluations, treatment, and monitoring if, taking into account utilization and quality data from the Clinical Centers, he or she determines that bundling, capitation, pay for performance, or other payment methodologies would better ensure high-quality and efficient delivery of services.

The Data Centers shall develop medical treatment protocols for the treatment of WTC-related health conditions, and the Administrator shall approve the treatment protocols.

*Section 3313* provides that the Administrator shall establish a *nationwide network* of health providers to provide benefits to persons outside of the New York metropolitan area. To be included in this network, a provider must meet the criteria for credentialing established by the Data Centers, follow medical protocols established under Section 3305(a)(2)(A)(ii), collect and report data in accordance with Section 3304, and meet fraud and other requirements established by the Administrator. The Administrator may provide training and technical assistance to nationwide network providers.

## Part 2. WTC Survivors

*Section 3321* defines eligibility criteria for eligible WTC survivors (generally non-responders or members of the community), provides an application and certification process, sets limits on the number of eligible participants, and describes available monitoring benefits. No person who is on a terrorist watch list maintained by the Department of Homeland Security may qualify as a screening-eligible or certified-eligible WTC survivor.

A *screening-eligible survivor* is a currently identified survivor, survivor who meets current eligibility criteria, or survivor who meets modified eligibility criteria.

A *currently identified survivor* is a person, including a responder, who has been identified as eligible for treatment and monitoring by the WTC Environmental Health Center as of the date of enactment.

A *survivor who meets current eligibility criteria* is an individual who is not a WTC responder, who claims symptoms of a WTC-related health condition, and who meets one of the following criteria:

- was present in the NYC disaster area in the dust or dust cloud on September 11, 2001;
  - worked; resided; or attended school, child care, or adult day care in the NYC disaster area for at least 4 days between September 11, 2001 and January 10, 2002; or at least 30 days between September 11, 2001 and July 31, 2002;
  - worked as a clean-up worker in the NYC disaster area between September 11, 2001 and January 10, 2002 and had extensive exposure to WTC dust as a result of such work;
  - was deemed eligible to receive a grant from the Lower Manhattan Development Corporation Residential Grant Program, who possessed a lease for a residence or
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purchased a residence in the NYC disaster area, and who resided in such residence during the period between September 11, 2001 and May 31, 2003; or

- worked at a place of employment that at any time between September 11, 2001 and May 31, 2003 was in the NYC disaster area, and that place of employment was deemed eligible for a grant from the Lower Manhattan Development Corporation WTC Small Firms Attraction and Retention Act program, or similar program to revitalize the lower Manhattan economy.

*A survivor who meets modified eligibility criteria* is an individual who is not an eligible WTC responder and who meets such eligibility criteria as determined by the Administrator in consultation with the Data Centers, the Advisory Committee and the steering committees. No modifications of eligibility criteria may be made after the number of certifications for eligible survivors has reached 80% of the limit established in Section 3321(a)(3), or after the number of certifications for eligible responders has reached 80% of the limit established in Section 3311(a)(4).

The Administrator in consultation with the Data Centers shall establish an *application process* for a person other than a currently identified survivor to apply to become a *screening-eligible WTC survivor*. There will be no fee for this application; a decision on each application shall be made within 60 days of the date it was filed; and persons denied will have the right to appeal in a manner established by the Administrator. Applications may be denied if applicants do not meet eligibility criteria, or if the cap on the number of program participants has been reached. The Administrator shall provide a *written documentation of screening-eligibility* to any person determined to be an eligible survivor. Such documentations will be provided to currently identified survivors no later than July 1, 2011 and for all others at the time of their eligibility determinations.

*A certified-eligible WTC survivor* is an eligible survivor who is certified by the Administrator to be eligible for follow-up monitoring and treatment. The Administrator shall provide a *certification of eligibility* to any person determined, upon screening, to be a certified-eligible WTC survivor. Such certifications will be provided to currently identified survivors no later than July 1, 2011 and for all others at the time of their eligibility determinations.

There is a *numerical limit on certified-eligible WTC survivors*. This limit excludes currently identified survivors and shall not exceed 25,000 at any time. The Administrator will limit certifications to ensure sufficient funds are available to provide treatment and monitoring, and will prioritize certifications based on the order in which a person applies.

A screening-eligible WTC survivor shall be eligible for a single health evaluation, performed by a Clinical Center of Excellence, to determine eligibility for follow-up monitoring or treatment.

**Section 3322** states that the provisions of Sections 3311 and 3312 shall apply to follow-up monitoring and treatment of WTC-related health conditions for certified-eligible WTC survivors in the same manner as such provisions apply to WTC responders.

The list of WTC-related health conditions for survivors is the same as the list of WTC-related health conditions for responders provided in Section 3312, with the exception that musculoskeletal conditions are not included on the list for survivors (see **Table 1**). Conditions, including cancer, may be added to this list in the same manner that conditions are added to the list of WTC-related health conditions for responders.

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**Section 3323** establishes that treatment services shall be provided to individuals who are not certified as WTC responders or survivors if any such individual is diagnosed at a Clinical Center of Excellence with an identified WTC-related condition for WTC survivors. The Administrator shall limit the total amount of benefits provided to such individuals in a given fiscal year so that program payments for that year do not exceed \$5 million for the last calendar quarter of FY2011; \$20 million for FY2012; and, for subsequent fiscal years, the previous fiscal year's amount increased by the annual percentage increase in the medical care component of the Consumer Price Index for all urban consumers.

### Part 3. Payor Provisions

**Section 3331** provides that all costs of covered initial health evaluation, medical monitoring, and treatment benefits for eligible individuals shall be paid for by the WTC Program from the WTC Health Program Fund, except for any costs that are paid by a workers' compensation program or health insurance plan. Payment for *treatment* of a WTC-related health condition that is *work-related* shall be reduced or recouped by any amounts paid under a workers' compensation law or plan for such treatment. This provision does not apply to any workers' compensation or similar plan in which New York City is required to make payments if, in accordance with the terms of the contract specified in Section 3331(d)(1)(A), New York City has made full payment required for that quarter.

A WTC-related condition is considered work-related if: (1) it is diagnosed in an eligible WTC responder, or in an individual who qualifies as an eligible WTC survivor on the basis of being a rescue, recovery, or clean-up worker; or (2) with respect to the condition, the individual has filed and had established a claim under a workers' compensation law or plan of the United States or a state, or other work-related injury or illness benefit plan of the employer of such individual.

For eligible beneficiaries who have health insurance coverage and have been diagnosed with a WTC-related condition that is *not work-related*, the WTC Program shall be a secondary payer of *all* uninsured costs (such as co-pays and deductibles) related to services covered by the WTC program, according to the authority used when Medicare is a secondary payer.<sup>3</sup> This provision does not require an entity that provides monitoring and treatment under this title to seek reimbursement from a health plan with which it does not have a contract for reimbursement.

No payment for monitoring or treatment may be made for any individual for any month, beginning with July 2014, in which he or she does not have the applicable *minimum essential health coverage* required under Section 5000A(a) of the Internal Revenue Code as established by the Patient Protection and Affordable Care Act (PPACA).<sup>4</sup>

There shall be a *required contribution by New York City*. No funds may be disbursed from the WTC Health Program Fund under Section 3351 unless New York City has entered into a contract with the Administrator to pay the full contribution on a timely basis. The *full contribution amount* for each calendar quarter of FYs 2012 through 2020 shall be equal to 10% of the expenditures in carrying out Title I for the respective quarter.

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<sup>3</sup> Social Security Act, section 1862(b). See also CRS Report RL33587, *Medicare Secondary Payer - Coordination of Benefits*, by Hinda Chaikind.

<sup>4</sup> For additional information on the minimum essential health coverage required by Section 5000A(a) of the Internal Revenue Code see CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, by Hinda Chaikind et al.

New York City's contribution may not be satisfied through any amount derived from federal sources, any amount paid before enactment, or any amount paid to satisfy a judgment as part of a settlement related to injuries or illnesses arising out of the September 11, 2001 attacks on the WTC. New York City's contribution for each quarter must be paid no later than the last day of the second succeeding quarter.

If New York City *fails to make its full contribution by the required date*, interest shall accrue on the unpaid amount at the rate based on the average yield to maturity, plus 1%, on outstanding municipal bonds issued by New York City with a remaining maturity of at least one year. The federal government may recover any amounts owed in the same manner that payments under Title XVIII of the Social Security Act may be recovered under Section 1862(b)(2)(B)(iii) of such Act. The Administrator shall bill New York City directly for its costs and provide an estimate of the required contribution at the beginning of each quarter and an updated estimate at the beginning of each of the subsequent two quarters and shall certify periodically whether or not New York City has paid the required amount.

**Section 3332** provides that the Administrator shall enter into arrangements with other government agencies, insurance companies, or other third-party administrators to provide for timely and accurate processing of claims.

## Subtitle C. Research Into Conditions

**Section 3341** requires the Administrator, in consultation with the WTC Scientific/Technical Advisory Committee, to *conduct or support research* on: conditions that may be related to the WTC terrorist attacks, diagnoses of WTC-related health conditions for which there has been diagnostic uncertainty, and treatment of WTC-related health conditions for which there has been treatment uncertainty. The Administrator may provide such research support through continuation and expansion of research initiated before enactment and through the WTC Health Registry or through a Clinical Center or Data Center.

The research on conditions that may be related to the September 11, 2001 terrorist attacks on the WTC must include epidemiologic or other research studies on WTC-related health conditions or emerging conditions among enrolled WTC responders and certified-eligible WTC survivors under treatment and in sampled populations outside of the New York City disaster area as far north as 14<sup>th</sup> Street in Manhattan and in Brooklyn to *identify potential for long-term adverse health effects in less exposed populations*. Control groups must be used in this research. This research must have privacy and human subject protections at least as strong as those applicable to research conducted or funded by HHS.

**Section 3342** requires the Administrator to ensure the operation of a registry of victims of the WTC attacks that is at least as comprehensive as the World Trade Center Health Registry in effect as of April 2009 with the NYC Department of Health and Mental Hygiene.

## Subtitle D. Funding

**Section 3351** establishes a *World Trade Center Health Program Fund* (the Fund) and deposits into the Fund from the Treasury for each of FYs 2011 through 2020 an amount equal to the lesser of 90% of the expenditures in carrying out Title I or the following amounts:

- Last calendar quarter of FY2011: \$71 million;
  - FY2012: \$318 million;
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- FY2013: \$354 million;
- FY2014: \$382 million;
- FY2015: \$431 million;
- FY2016: \$481 million;
- FY2017: \$537 million;
- FY2018: \$601 million;
- FY2019: \$672 million;
- FY2020: \$743 million.

No funds may be disbursed from the Fund unless New York City has entered into contract with the Administrator to pay its contribution. If New York City fails to pay its full contribution, the amount not paid is recoverable by the federal government. Such failure shall not affect the disbursement of amounts from the Fund, and the federal share shall not be increased by the amount not paid by New York City.

The amounts deposited into the Fund shall be available, *without further appropriation*, to carry out Subtitle B and Sections 3302(a), 3303, 3304, 3305(a)(2), 3341, and 3342. There is no federal obligation for payment of amounts in excess of the amounts available from the Fund for such purpose and no authorization for appropriation of amounts in excess of the amounts available from the Fund.

There are *limits on the spending of federal funds* for certain purposes as listed in **Table 2**.

**Table 2. Limits on the Spending of Federal Funds as Provided in Section 335 I**

Activity	Maximum federal funds that may be spent		
	Last calendar quarter of FY2011	FY2012	Each subsequent fiscal year after FY2012
Services to FDNY family members	\$100,000	\$400,000	The amount for the previous fiscal year increased by the percentage increase in the Consumer Price Index for all urban consumers (all items, United States city average) as estimated by the Secretary of HHS for the 12-month period ending with March of the previous year.
WTC Health Program Scientific/Technical Advisory Committee	\$25,000	\$100,000	
Community education and outreach under Section 3303	\$500,000	\$2 million	
Uniform data collection	\$2.5 million	\$10 million	
Research regarding certain health conditions under Section 3341	\$3.75 million	\$15 million	
Operation of the WTC Health Registry	\$1.75 million	\$7 million	

**Source:** Section 3351(c) of the Public Health Service Act as proposed by H.R. 847.

## Title II. September 11 Victim Compensation Fund of 2001

Title II will re-open the *September 11 Victim Compensation Fund*, which was established by Title IV of P.L. 107-42, the *Air Transportation Safety and System Stabilization Act* and which was closed to new claims as of December 22, 2003. It adds new categories of beneficiaries and sets new filing deadlines. In particular:

**Section 201** amends the definitions to include:

- “*contractor and subcontractor*” defined as any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated or allied company, affiliated company, corporation, firm, organization, or joint venture that participated in debris removal at any “9/11 crash site.” The definition excludes any entity with a property interest in the WTC on September 11, 2001, including the Port Authority of New York and New Jersey, whether fee simple, leasehold or easement, direct or indirect.
- “*debris removal*” defined as rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of September 11, 2001.
- “*immediate aftermath*” defined as any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on August 30, 2002;
- “*9/11 crash site*” defined as: (1) the WTC site, Pentagon site, and Shanksville, PA site; (2) the buildings or portions of buildings destroyed as a result of the 9/11 aircraft crashes; (3) any area contiguous to a site of such crashes that the Special Master determines are sufficiently close to the site so that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses; and (4) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

**Section 202(a)** requires that the *eligibility claim form* for compensation benefits be amended to also request information from claimants, or representatives of decedents, concerning physical harm or death resulting from debris removal related to the 9/11 aircraft crashes.

**Section 202(b)** provides an *exception* allowing claims related to physical harm or death from debris removal at the crash sites to be filed beginning on the date on which the regulations are updated to reflect the provisions of this Act and ending on December 22, 2031.

**Section 202(c)** establishes *timing requirements for claims filed during the extended filing period*. Specifically, individuals or a representative for the deceased can file a claim during the following periods:

- In cases that the Special Master determines the individual knew, or reasonably should have known, that they had suffered physical harm at a 9/11 crash site or as a result of debris removal, and the individual knew or should have known before the original deadline for filing a claim, the deadline for filing would be up to two years after the date specified in the bill (90 days after enactment); and

- In cases that the Special Master determines the individual first knew, or reasonably should have known, on or after the date specified in the bill (90 days after enactment), the filing deadline is up to two years after the date the Special Master determines the individual first knew, or should have known, that they had suffered a harm from debris removal related to the 9/11 aircraft crashes.

Section 202(c) further provides that individuals are permitted to file a claim during the extended filing period only if:

- The individual was treated by a medical professional for suffering from a physical harm as described within a reasonable time from the date of discovering the harm; and
- The individual's physical harm is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care.

The bill specifies that the date referred to in this section is the deadline for the promulgation of updated regulations for claims related to debris removal, 90 days after enactment.

**Section 202(d)** makes a technical amendment adding that claimants can include individuals who were present at *any other* 9/11 aircraft crash sites at the time, or in the immediate aftermath, of the 9/11 aircraft crashes.

**Section 202(e)** amends the eligibility requirements for claimants to include *individuals who suffered physical harm resulting from debris removal*.

**Section 202(f)** requires individuals or personal representatives filing a claim for compensation related to 9/11 crash site debris removal to *waive their right to file a civil action or be party to such an action* in any federal or state court for damages sustained as the result of the September 11, 2001 terrorist attacks. Individuals who are a party to a civil action are prohibited from submitting a claim during the basic extension period provided under the bill (two years after the date updated regulations are promulgated) unless they withdraw from such action within 90 days of the promulgation of updated regulations. Similarly, individuals who are a party to a civil action are prohibited from submitting a claim under the extended filing deadline provided under the bill (the period between the promulgation of updated regulations and December 22, 2031) unless they withdraw from such action within 90 days of the promulgation of updated regulations.

In addition, individuals who were a party to a civil action, withdrew from such an action in order to submit a claim for compensation, and were found ineligible, are permitted to “reinstitute” such action without prejudice during the 90-day period after their ineligibility determination.

**Section 203** requires the Special Master to update the regulations originally promulgated for the Victims Compensation program to reflect the changes made by this Act within 90 days of enactment.

**Section 204** establishes *specific limits for the liability of all claims and actions related to physical harm or death from debris removal*, including those claims or actions previously resolved, currently pending, and that may be filed through December 22, 2031. These claims can include compensatory damages, contribution or indemnity, or any other form or type of relief arising from or related to debris removal filed against the City of New York (including the Port Authority of New York and New Jersey), any entity with a property interest in the WTC on September 11, 2001, and any contractors and subcontractors. The applicable liability limits may not exceed the sum of:

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- The amount of funds of the WTC Captive Insurance Company, including the cumulative interest;
- The amount of all available insurance identified in schedule 2 of the WTC Captive Insurance Company's insurance policy;
- As it relates to the City of New York, the amount that is the greater of the City of New York's insurance coverage or \$350 million, not including any of the amounts related to the WTC Captive Insurance Company (specified above);
- As it relates to any entity, including the Port Authority of New York and New Jersey, with any property interest in the WTC on September 11, 2001, the amount of all available liability insurance coverage maintained by any such entity; and,
- As it relates to any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such entities on September 11, 2001.

*Priorities* are established for payments awarded to plaintiffs of these claims or actions. Claim payments are to be made, until the funds of each payer are exhausted, in the following order, as may be applicable:

- From funds in the WTC Captive Insurance Company or the WTC Captive Insurance Company's insurance policy;
- From funds available through the City of New York's insurance coverage, the amount that is the greater of the City of New York's insurance coverage or \$350 million;
- From funds available through liability insurance coverage maintained by entities, including the Port Authority of New York and New Jersey, with a property interest in the WTC on September 11, 2001; and
- Lastly, from funds available through liability insurance coverage maintained by contractors and subcontractors on September 11, 2001.

In addition, the Act specifies that any party to a claim or action related to harms from debris removal can either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.

**Section 205** amends Section 406 of the Air Transportation Safety and System Stabilization Act to *limit the total compensation payments provided under this title to \$8.4 billion*. The limit will apply to claims for compensation filed on or after the date on which updated regulations are promulgated, as required under Section 203 of the bill.

Notwithstanding any contract, the bill establishes a *limit for the amount a claimant's representative would be allowed to charge an individual for legal services rendered in connection to a claim*. Under this section of the bill, attorneys' fees will be limited to not more than 10% of an award made for a claim filed under this title. However, the bill provides an exception for attorneys' fees related to claims made on behalf of individuals who filed a lawsuit in the Southern District of New York prior to January 1, 2009. In these cases, if the claimant's representative believes in good faith that the 10% limit will not provide adequate compensation for a substantial amount of legal services already rendered on behalf of the claimant, the representative could apply to the Special Master for greater compensation. The Special Master is authorized to use his or her discretion to award an amount in excess of the 10% limit to provide reasonable compensation for legal services rendered. The bill further provides that the Special Master's attorneys' fee awards will be final, binding, and not subject to appeal.

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