Congressional Research Service

MEMORANDUM September 14, 2010

To: The Honorable Carolyn Maloney
Attention: Elizabeth Darnall

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

Subject: **Comparison of S. 1334, the James Zadroga 9/11 Health and Compensation Act and the Amendment in the Nature of a Substitute to H.R. 847**

This memorandum is in response to your request for a comparison of **S. 1334** the James Zadroga 9/11 Health and Compensation Act and the Amendment in the Nature of a Substitute to **H.R. 847**. This memorandum does not provide an analysis of the summarized provisions. Unless otherwise stated, all references to subtitles or sections refer to subtitles or sections as would be established by these acts. Specifically, this memorandum compares the following bill and amendment:

- **S. 1334**, the James Zadroga 9/11 Health and Compensation Act of 2009, as introduced by Senator Kirsten Gillibrand on June 24, 2009; and
- The Amendment in the Nature of a Substitute to **H.R. 847**, the James Zadroga 9/11 Health and Compensation Act of 2010, as released by Rep. Frank Pallone on July 29, 2010 (hereafter referred to as "AINS to H.R. 847").[1]

S. 1334 is used as the referent, meaning that this memorandum generally presents the sections of **S. 1334** in order, along with comparable House material that is not necessarily presented in consecutive order by section number. The write-up of each section of **S. 1334** notes whether material in a related section of **H.R. 847** is strictly comparable, and notes any key differences in AINS to **H.R. 847** in blue. *Italics* are used when needed for emphasis. We did not make note of minor differences in wording that do not appear to have any practical effect on the substance of the legislation.

Please contact Scott Szymendera or Sarah Lister with questions regarding Title I and Celinda Franco with questions regarding Title II of the amendment or bill. Please contact Erika Lunder (7-4538) with questions regarding Title III and Bill Heniff (7-8646) with questions regarding Title IV of the amendment.

[1] The text of the amendment in the nature of a substitute to H.R. 847 is available in the *Congressional Record* at "James Zadroga 9/11 Health and Compensation Act of 2010," *Congressional Record*, daily edition, vol. 113 (July 29, 2010), pp. H6382-H6394.

Introductory Material

S. 1334, Section 1, AINS to H.R. 847, Section 1. Short Title and Table of Contents

S. 1334, Section 2. Findings. ***AINS to H.R. 847*** does not provide a list of findings.

Title I – World Trade Center Health Program

S. 1334, Section 101 and ***AINS to H.R. 847 Section 101*** establish the World Trade Center (WTC) Health Program (WTCHP). ***S. 1334*** establishes the WTCHP as a new Title XXXI in the Public Health Service Act (PHSA). ***AINS to H.R. 847*** establishes the WTCHP as a new Title XXXIII in the PHSA. Sections in the bill and amendment (which reflect proposed new PHSA sections) are summarized and compared below.

Subtitle A. Establishment of Program; Steering and Advisory Committees

Establishment of World Trade Center Health Program

S. 1334, Section 3101(a) and ***AINS to H.R. 847, Section 3301(a)*** establish the World Trade Center Health Program (WTCHP) 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) (*the **AINS to H.R. 847** references the 9/11 attacks, not just the attack on NYC*); 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.

S. 1334 establishes the WTCHP within the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH).

AINS to H.R. 847 establishes the WTCHP within HHS.

S. 1334, Section 3101(b) and ***AINS to H.R. 847, Section 3301(b)*** provide that the WTCHP is to include the following components:

- Medical monitoring for responders 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 as a result of the 9/11 terrorist attacks on the WTC;
- Initial health evaluation for community members (*referred to as survivors in **AINS to H.R. 847***) without any cost-sharing by the eligible beneficiary, including an evaluation to determine eligibility for treatment;
- Provision for responders and community members 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 of a program of outreach to potentially eligible individuals concerning the benefits under this title;
- Collection of health and mental health data on individuals receiving monitoring or treatment benefits, using a uniform system of data collection; and
- Establishment of a research program on health conditions resulting from the 9/11 terrorist attacks on the WTC.

S. 1334, Section 3101(c) and ***AINS to H.R. 847, Section 3301(c)*** provide that monitoring, treatment, and initial health evaluation benefits shall be provided without any deductibles, copayments, or other cost sharing.

S. 1334, Section 3101(d) and ***AINS to H.R. 847, Section 3331(a-c)*** provide that in general, all costs of covered initial health evaluation, medical monitoring, and treatment benefits for eligible individuals shall be paid for by the WTCHP, 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 requirement is waived for any such payment obligations of the City of New York, so long as the City has complied with the matching requirement under Section 3106(a)(3)* (***AINS to H.R. 847*** *provides that this requirement is waived for any such payment obligations of the City of New York in any quarter in which the City has made full payment of its obligation under Section 3331(d)(1)(A)).*

A WTC-related health 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 community member 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 health condition that is not work-related, the WTCHP shall be a secondary payer of all uninsured costs (such as co-pays and deductibles) related to services covered by the WTCHP, according to the authority used when Medicare is a secondary payer.[2] 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.

AINS to H.R. 847, Section 3331(c)(3) provides that 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).[3]

[2] Social Security Act, Section 1862(b). See, also, CRS Report RL33587, *Medicare Secondary Payer - Coordination of Benefits*, by Hinda Chaikind.

[3] 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.

S. 1334, Section 3101(e)(1) and ***AINS to H.R. 847, Section 3301(e)*** require the WTCHP Administrator to work with Centers of Excellence to establish a quality assurance program for medical monitoring and treatment services provided by the WTCHP.

S. 1334, Section 3101(e)(2) requires the Administrator to establish a program, *similar to that for the Medicare program*, to review WTCHP expenditures in order to detect fraud, duplicate billing, and payments for inappropriate services.

AINS to H.R. 847, Section 3301(d) requires the *HHS Inspector General* to establish a program to review WTCHP expenditures in order to detect fraud, billing errors, payments for inappropriate services, *and unreasonable administrative costs*.

S. 1334, Section 3101(f) provides the WTCHP shall be administered by the Director of NIOSH or his or her designee.

AINS to H.R. 847, Section 3306(14) defines the WTCHP Administrator as an HHS official designated by the Secretary of HHS for the purposes of administering the enrollment, benefit, and payer provisions of the Act and the Director of NIOSH for all other purposes.

S. 1334, Section 3101(g) and ***AINS to H.R. 847, Section 3301(f)*** provide that the Administrator is required annually, not later than six months after the end of each fiscal year, to report to Congress with respect to the operations of the WTCHP, including the following information regarding each of the clinical programs for firefighters and related personnel, other WTC responders, and WTC community members (referred to as survivors in ***AINS to H.R. 847***)*:*

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 under **AINS to H.R. 847**, 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;
7. administrative costs, including program support, data collection and analysis, and research;
8. information on program performance and a list of Clinical Centers of Excellence and other providers participating in the program;
9. a summary of new scientific reports or findings regarding WTC-related health effects; and
10. a list of recommendations of the WTC Health Program Scientific/Technical Advisory Committee, and actions by the Administrator in response.

S. 1334, Section 3101(h) and ***AINS to H.R. 847, Section 3301(g)*** provide that the Administrator shall promptly notify the Congress if the number of certifications of eligible WTC responders, or of eligible

WTC community members (referred to as survivors in ***AINS to H.R. 847***), reaches 80% of the certification limits for either group.

S. 1334, Section 3101(i-j) provides that the Comptroller General shall report to Congress regarding the costs of the monitoring and treatment programs provided under this title, not later than three years after enactment and the City of New York may make recommendations to the Administrator on ways to improve the monitoring and treatment programs under this title for both eligible WTC responders and eligible WTC community members.

AINS to H.R. 847, Section 3301(h) requires the Administrator to engage in ongoing outreach and consultation with relevant stakeholders, including the Steering Committees and the Advisory Committee regarding the implementation and improvement of programs under this title.

World Trade Center Health Program Scientific/Technical Advisory Committee

S. 1334, Section 3102 and ***AINS to H.R. 847, Section 3302(a)*** 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 WTCHP eligibility criteria and additional WTC-related health conditions. Establishes committee membership, and requirements for meetings and public reporting. The Advisory Committee shall continue in operation during the period in which the WTCHP is in operation. *Authorizes the appropriation of such sums as may be necessary, up to $100,000, for each fiscal year beginning with FY2009* (***AINS to H.R. 847*** does not provide for this authorization of appropriations).

World Trade Center Health Program Steering Committee

S. 1334, Section 3103(a) and ***AINS to H.R. 847, Section 3302(b)(1)*** require the Administrator to establish a WTC Responders Steering Committee and a WTC Community Program Steering Committee (referred to as the Survivors Steering Committee in ***AINS to H.R. 847***) for the purpose of facilitating the coordination of medical monitoring and treatment programs.

S. 1334, Section 3103(b)(1) provides the following membership of the WTC Responders Steering Committee:

- Members of the WTC Monitoring and Treatment Program Steering Committee in existence the day before enactment of the Act;
- A representative of the following: the Police Commissioner of the City of New York; Department of Health, City of New York; and another agency of the City of New York, selected by the Mayor, which had a large number of non-uniformed workers who responded to the terrorist attack on the WTC; and
- Three eligible WTC responders such that eligible WTC responders constitute half of the members of the Steering Committee.

AINS to H.R. 847, Section 3302(b)(2)(A) provides the following membership of the WTC Responders Steering Committee:

- Members of the WTC Monitoring and Treatment Program Steering Committee in existence the day before enactment of the Act;

- Representatives of the following: Centers of Excellence providing services to WTC responders; labor organizations representing firefighters, police, other NYC employees, and WTC recovery and clean-up workers; and NYC, with one selected by the Police Commissioner, one by the Health Commissioner, and one by the Mayor.

S. 1334, Section 3103(b)(2) provides the following membership of the WTC Community Program Steering Committee:

- Members of the WTC Environmental Health Center Community Advisory Committee in existence the day before enactment of the Act;
- Eleven representatives of the affected populations of residents, students, area workers, and other community members, nominated by the WTC Environmental Health Center Community Advisory Committee. This group must reflect the broad and diverse affected population and no organization may have more than one representative in this group.
- Medical Director and Executive Director of the WTC Environmental Health Center;
- Three physicians representing Bellevue Hospital Center, Gouverneur Healthcare Services, and Elmhurst Hospital Center, nominated by the New York City Health and Hospitals Corporation;
- Five specialists with expertise in treating non-responder WTC diseases, nominated by the New York City Health and Hospitals Corporation; and
- Representative of the Department of Health and Mental Hygiene of the City of New York.

Nominations made by the WTC Environmental Health Center Community Advisory Committee and the New York City Health and Hospitals Corporation must be made within 60 days of enactment of the Act and the Administrator must appoint members of the WTC Community Program Steering Committee within 90 days of enactment of the Act.

AINS to H.R. 847, Section 3302(b)(2)(B) provides the following membership of the WTC *Survivors* Steering Committee:

- Members of the WTC Environmental Health Center *Survivor* Advisory Committee in existence the day before enactment of the Act;
- Representatives of: Centers of Excellence providing services to survivors; affected population of residents, students, and area and other workers; survivors receiving services and organizations advocating on their behalf; and NYC.

S. 1334, Section 3103(b)(3) and ***AINS to H.R. 847, Section 3302(b)(2)(C)*** provide that each steering committee may recommend, if approved by a majority of committee members, additional members to the committee.

S. 1334, Section 3103(b)(4) provides that a vacancy on a steering committee shall be filled by the steering committee, subject to the approval of the Administrator, provided that:

- For the Responders Steering Committee the membership includes representatives of the responders and each Clinical Center of Excellence and Coordinating Center of Excellence, and that responders make up half of the committee; and

- For the Community Members Steering Committee the membership includes representatives of eligible community members and each Clinical Center of Excellence and Coordinating Center of Excellence, and that all nominations are made in accordance with the provisions in the Act.

AINS to H.R. 847, Section 3302(b)(2)(D) provides that a vacancy in a steering committee shall be filled by an individual recommended by the steering committee.

S. 1334, Section 3103(b)(5) provides the rules regarding the selection of chairs and co-chairs of the steering committees. There is no comparable provision in ***AINS to H.R. 847.***

S. 1334, Section 3103(c-e) provides that each steering committee must meet at least four times per year, with at least two such meetings being joint meetings with the other committee to facilitate information sharing; that the steering committees are not subject to the Federal Advisory Committee Act; and that the committees shall operate at long as the program is in operation. There is no comparable provision in ***AINS to H.R. 847.***

Community Education and Outreach

S. 1334, Section 3104 and ***AINS to H.R. 846, Section 3303*** require the Administrator to establish a program to provide education and outreach regarding services available under the WTCHP. The program shall include the development of a public website, phone information services, outreach materials, meetings with potentially eligible populations, the use of culturally and linguistically diverse content, *and the use of community partnerships with groups experienced in conducting outreach* (***AINS to H.R. 847*** does not include this provision on the use of community partnerships).

Uniform Data Collection

S. 1334, Section 3105 and ***AINS to H.R. 847, Section 3304*** requires the Administrator to provide for the uniform collection, analysis and reporting of data, consistent with applicable privacy requirements, on the utilization of monitoring and treatment benefits provided throughout the WTCHP (regardless of their place of residence or the location at which services are provided), the prevalence of WTC-related health conditions, and the identification of new WTC-related health conditions. Clinical Centers of Excellence shall collect and report such data to the corresponding Coordinating Center of Excellence for analysis. The data collection and analysis must be conducted in a manner that protects the confidentiality and privacy of health information.

AINS to H.R. 847 also provides that the Administrator must also provide for the integration of this data into the monitoring and treatment programs and shall provide for the collaboration between the Data Centers and the WTC Health Registry.

Centers of Excellence

S. 1334, Section 3106(a)(1-2) and ***AINS to H.R. 847, Section 3305(a)*** require the Administrator to establish, by entering into contracts, Clinical Centers of Excellence and Coordinating Centers of Excellence (the latter are referred to as *Data Centers* in ***AINS to H.R. 847***).

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 to the corresponding Coordinating Center.

Coordinating Centers of Excellence or 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 national clinical network, to be selected by the Administrator based on their experience with WTC-related health conditions; and coordination and administration of the activities of the steering committees.

AINS to H.R 847 also provides that in carrying out the development of monitoring, evaluation, and treatment protocols, the Data Center shall engage in discussions across the WTCHP to guide treatment approaches.

A contract with a Data Center shall require the Data Center to make any data collected available as provided in the CDC/ATSDR Policy on Releasing and Sharing Data. Contracts with Clinical Centers or Data Centers may be class-specific and may be in the form of a cooperative agreement.

S. 1334, Section 3106(a)(3) provides that in order for NYC, any agency or department thereof, or the New York City Health and Hospitals Corporation to qualify for a contract for the provision of monitoring and treatment benefits and other services under this section, NYC is required to contribute a matching amount of *20% of the amount of covered monitoring or treatment services* provided to eligible individuals under the three programs established under Subtitle B of this Act. The matching amount shall be reduced by any payment made by NYC, its agencies, or departments under a workers' compensation plan or other work-related injury or illness benefit plan for covered treatment benefits. *The matching amount is limited to a total of $250 million over any 10-year period.*

AINS to H.R. 847, Section 3331(d) provides that in order for any funds to be disbursed from the World Trade Center Health Program Fund, NYC must enter into a contract with the Administrator under which NYC agrees to pay, for the last calendar quarter in FY2011 and each calendar quarter in FYs *2012 through 2018*, an amount equal to *10% of total WTCHP costs* for that quarter; and for each calendar quarter in FYs *2019 and 2020*, an amount equal to *1/9 of total WTCHP costs for that quarter*.

NYC's contribution may not be paid with federal funds, paid before the enactment of the Act, or paid with money used to satisfy a judgment or settlement related to injuries or illnesses arising out of the terrorist attack on the WTC on September 11, 2001.

The payment obligation for each calendar quarter shall be paid not later than the last day of the second succeeding calendar quarter. If NYC fails to make its contribution on time, the amount of its contribution will accrue interest at the rate (determined by the Administrator) based on the average yield to maturity, plus 1 percentage point on certain bonds issued by NYC. The federal government will have the authority to recover amounts owed in the same manner that payments are recovered under Medicare.

The Administrator shall bill NYC 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 NYC has paid the required amount.

S. 1334, Section 3106(b)(1) defines Clinical Centers of Excellence as: (1) the Fire Department of the City of New York (FDNY) or its contractors, for its employees and others as defined (FDNY employees may also be served at other Clinical Centers); (2) for other eligible WTC responders, whether or not they reside in the New York metropolitan area (as defined), the Mt. Sinai-coordinated consortium (as defined

in Section 3108), Queens College, State University of New York at Stony Brook, University of Medicine and Dentistry of New Jersey, and Bellevue Hospital; (3) for WTC community members, whether or not they reside in the New York metropolitan area, the WTC Environmental Health Center at Bellevue Hospital and such hospitals or other facilities, including, but not limited to, those within the New York City Health and Hospitals Corporation, as identified by the Administrator; and (4) for all eligible WTC responders and community members, such other hospitals or other facilities as are identified by the Administrator, but the Administrator shall limit the number of these additional Clinical Centers to ensure that they have adequate experience in the treatment and diagnosis of identified WTC-related health conditions.

AINS to H.R. 847, Section 3305(b)(1)(A) defines a Clinical Center of Excellence as a center that meets the following requirements:

- Uses an integrated approach to providing services to WTC responders and survivors;
- Has experience in caring for WTC responders and survivors, or includes providers trained pursuant to Section 3313(c);
- Employs healthcare staff with expertise in, at minimum: occupational medicine, environmental medicine, trauma-related psychiatry and psychology, and social services counseling; and
- Meets other requirements set by the Administrator.

S. 1334, Section 3106(b)(2) defines Coordinating Centers of Excellence as: (1) for the FDNY program, the Fire Department of the City of New York; (2) for other eligible WTC responders, the Mt. Sinai-coordinated consortium; and (3) for WTC community members, the WTC Environmental Health Center at Bellevue Hospital.

AINS to H.R. 847, Section 3305(b)(2) defines a Data Center as a center that the Administrator determines has the capacity to carry out the responsibilities of a Data Center.

S. 1334, Section 3106(b)(3) and ***AINS to H.R. 847, Section 3305(b)(3)*** provide that Clinical Centers of Excellence and Coordinating Centers of Excellence or Data Centers are termed corresponding if they serve the same population.

S. 1334, Section 3106(c) provides that Clinical or Coordinating Centers are entitled to payment to carry out required activities. Centers shall be reimbursed for required or contracted non-monitoring and non-treatment costs (such as outreach and data collection activities) as follows:

- In the first year of the program, for the FDNY Clinical Center and Clinical Centers serving other eligible responders, $600 per treatment participant, and $300 per monitoring participant; and for subsequent years, rates as revised by the Administrator to reflect medical care inflation.
- For Clinical Centers serving WTC community members in New York, in the first year of the program: for eligible participants in a medical treatment program enrolled at a non-hospital-based facility, $600 per participant; and, for those enrolled at a hospital-based facility, $300 per participant. For subsequent years, rates are as revised by the Administrator to reflect medical care inflation.
- For other Clinical Centers and other providers not described above, and Coordinating Centers, rates to be set by the Administrator.

The Administrator shall conduct a review of rates before the end of the third contract year, and may, by rule, modify rates, beginning in the fourth contract year. Thereafter, the Administrator shall conduct periodic reviews of rates, and may make modifications accordingly. The Comptroller General shall review the Administrator's determinations regarding fair and appropriate reimbursement for program services.

AINS to H.R. 847, Section 3305(c) provides that 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).

S. 1334, Section 3106(d) provides that the Administrator may not enter into a contract with a Clinical Center of Excellence unless it agrees to do the following:

- Establish a formal mechanism for consulting with and receiving input from representatives of responders and survivors;
- Coordinate monitoring and treatment under the Act with routine medical care;
- Collect and report data to the corresponding Coordinating Center of Excellence;
- Have in place safeguards against fraud that are satisfactory to the Administrator;
- Treat or refer for treatment all individuals who are enrolled or eligible and who present themselves for treatment;
- Have in place safeguards to protect personal medical information;
- Use amounts paid for infrastructure costs, only for infrastructure expenses;
- Meet all other requirements of this title, including implementing regulations.

AINS to H.R. 847, Section 3305(b)(1)(B) provides that the Administrator may not enter into a contract with a Clinical Center of Excellence unless it agrees to do the following:

- Establish a formal mechanism for consulting with and receiving input from representatives of responders and survivors;
- *Coordinate monitoring and treatment under the Act with medical care for non WTC-related conditions;*
- Collect and report data to the corresponding *Data Center;*
- Have in place safeguards against fraud that are satisfactory to the Administrator, *in consultation with the HHS Inspector General;*
- Treat or refer for treatment all individuals who are enrolled or eligible and who present themselves for treatment;
- Have in place safeguards to protect personal medical information;
- Use amounts paid for infrastructure costs, only for infrastructure expenses;
- *Utilize health care providers with occupational and environmental medicine expertise to conduct physical and mental health assessments, in accordance with established protocols;*
- *Communicate with responders and survivors in appropriate languages and conduct outreach to stakeholder groups;* and
- Meet all other requirements of this title, including implementing regulations.

The Administrator shall ensure continuity of care between providers and Clinical Centers of Excellence or health providers in the national network.

S. 1334, Section 3106(e) provides that for any program under this Title for which NYC contributes matching funds, NYC shall have the right to, independently but in coordination with the Administrator; (A) inspect or otherwise evaluate the quality, appropriateness, and timeliness of services provided under contract; and (B) audit and inspect any books and records of any Clinical or Coordinating Center that pertain to services provided or expenditures made utilizing NYC funds. The Administrator shall enter into a memorandum of understanding with NYC, setting forth the terms and conditions of how such inspections and audits shall be carried out, to include provisions requiring that any such audits will be done in a manner to protect the confidentiality of program participants and in accordance with the Health Insurance Portability and Accountability Act of 1996 and other applicable federal and state medical confidentiality requirements. There is no comparable provision in ***AINS to H.R. 847.***

Entitlement Authorities

S. 1334, Section 3107 provides that for payment for initial health evaluation, monitoring, and treatment services under Subtitle B, and the costs of non-treatment and non-monitoring activities under Section 3106, the Act provides a permanent and indefinite appropriation. That is, it would authorize the payment of funds without further legislative action (i.e., without separate enactment of budget authority in a subsequent appropriations act). Moreover, the total amount of payments would not be limited to a specific dollar amount. Such an appropriation is referred to as direct spending, or mandatory spending. However, payment by the Administrator for the processing of claims under this title is limited to the amounts provided in advance in appropriations acts.

There is no comparable provision in ***AINS to H.R. 847.*** However, ***AINS to H.R. 847, Section 3351***, summarized later in this memorandum, would establish the World Trade Center Health Fund, with specified annual appropriations from FY2011 through FY2020, to finance benefits, administrative costs, and other activities authorized under the WTCHP.

Definitions

S. 1334, Section 3108 and ***AINS to H.R. 847, Section 3306*** provide definitions for Title I. Among other definitions, the bill and amendment both define the term *New York City disaster area* as the area within NYC that is in Manhattan south of Houston Street; and any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former WTC site. The bill and amendment both refer to the September 11, 2001 terrorist attack and crash sites as including the WTC site, as well at the Pentagon and Shanksville, Pennsylvania sites.

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

Part 1 – For WTC Responders

Identification of Eligible WTC Responders and Provision of WTC-Related Monitoring Services

S. 1334, Section 3111 and ***AINS to H.R. 847, Section 3311*** define eligibility criteria for eligible WTC responders, provide an application and certification process, set limits on the number of eligible participants, and describe available monitoring benefits. The sections of the two bills are generally similar. Some key differences are noted as appropriate.

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 associated persons:
  - was a member, active or retired, of the FDNY who participated 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 clean-up services in lower Manhattan south of Canal Street, the Staten Island land fill, 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, or clean-up services in lower Manhattan south of Canal Street, the Staten Island land fill, 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, or clean-up services at Ground Zero, the Staten Island land fill, or the barge loading piers for at least one day between September 11, 2001 and July 31, 2002;
  - 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 clean-up, or

related services in lower Manhattan south of Canal Street 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, or clean-up services in lower Manhattan south of Canal Street 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.
- In addition, ***AINS to H.R. 847*** provides that a responder meets current eligibility criteria if he or she, as a member of a fire or police department (whether fire or emergency personnel, active or retired), worked for a recovery or cleanup contractor, or was a volunteer; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon or Shanksville, Pennsylvania sites of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on the date on which the cleanup of the site was concluded, as determined by the Administrator, so long as the Administrator determines, in consultation with the Advisory Committee, that such individual is at increased risk of developing a WTC-related health condition as a result of such exposure.

A responder who meets *modified eligibility criteria* is an individual who performed rescue, recovery, or cleanup services in the "New York City disaster area" (as defined in Subtitle A) 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 WTCHP Administrator in consultation with the WTC Scientific/Technical Advisory Committee established by the legislation. No modifications of eligibility criteria may be made after the number of certifications for eligible responders has reached 80% of the established program limit or after the number of certifications for eligible community members (referred to as survivors in ***AINS to H.R. 847***) has reached 80% of the established program limit.

There is no application fee. The Administrator must make a determination on an application within 60 days of the application being filed. Denied applicants shall have the right to appeal their denial through a process established by the Administrator (***S. 1334*** *requires that this process include a decision by an Administrative Law Judge*).

Responders previously identified as eligible under the current consortium arrangements (i.e., *currently identified responders*) are deemed eligible and need not apply. (***S. 1334*** *requires the Administrator to certify these individuals within 60 days of enactment.* ***AINS to H.R. 847*** *requires the Administrator to enroll them in the program not later than July 1, 2011*.) The WTC responder program is limited to 15,000 new eligible responders under ***S. 1334***, or 25,000 new eligible responders under ***AINS to H.R. 847*** (for which, in both cases, no more than 2,500 may be certified based on modified eligibility criteria), in

addition to currently identified responders. The Administrator shall not deny certification unless individual eligibility criteria have not been met, or the WTC responder program limit has been met. Under ***S. 1334,*** the cap (i.e., 15,000 newly eligible responders) may be raised by the Administrator, according to a formula, if program costs under this title are less than 90% of costs previously estimated by the Congressional Budget Office. The Administrator shall review applications in the order received, make a determination regarding applications within 60 days of their filing, and, when making such a determination, certify that the individual is eligible. ***AINS to H.R. 847*** does not contain a comparable provision regarding adjustment of the cap.

AINS to H.R. 847 prohibits eligibility for benefits under the WTC Health Program to any individual who is on a terrorist watch list maintained by the Department of Homeland Security (DHS), and requires the Administrator to consult with DHS to determine, before enrollment, if an individual is on such list.

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

Treatment of Eligible Responders for WTC-Related Health Conditions

S. 1334, Section 3112 and ***AINS to H.R. 847, Section 3312*** provide similar definitions of a *WTC-related health condition,* for which eligible responders may receive benefits. These definitions include the following:

- an illness or health condition for which the exposure to airborne toxins, any other hazard, or an other adverse condition resulting from the 9/11 attacks on the WTC (***AINS to H.R. 847*** references the 9/11 attacks, not just the attacks on the WTC) is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition; based on the examination of a medical professional with experience in treating conditions on the applicable list of identified WTC-related health conditions; or
- a mental condition in which such attacks is substantially likely to be a significant aggravating, contributing, or causal factor; based on the examination of a medical professional with experience in treating conditions on the applicable list of identified WTC-related health conditions

Eligible responders may receive treatment benefits for health conditions described in the first paragraph above. Eligible responders and, under specified conditions, immediate family members of firefighters who were killed as a result of the attack on the WTC, may also receive mental health treatment benefits for conditions described in the second paragraph above.

AINS to H.R. 847 also requires that a condition either be on the applicable list of WTC-related health conditions or be provided certification under Section 3312(b)(2)(B)(iii).

An *identified WTC-related condition* is one of many listed aerodigestive or mental health conditions for which coverage of medically necessary treatment will be provided, so long as it is determined that any such health condition (or conditions) in a given eligible responder is WTC-related. ***S. 1334*** includes musculoskeletal conditions on the list of identified WTC-related conditions. ***AINS to H.R. 847*** lists these musculoskeletal conditions, but provides that they would only be covered if an eligible responder began receiving treatment for them on or before September 11, 2003 and if they were caused by heavy lifting or repetitive strain on the joints or musculoskeletal system during rescue or recovery work in the NYC

disaster area. In addition, under listed mental health conditions, ***S. 1334*** includes "V codes," which involve treatments not specifically related to psychiatric disorders, such as marital problems and parenting problems. ***AINS to H.R. 847*** would not provide services for V code conditions.

The determination of whether the 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 the individual's exposures resulting from the terrorist attacks, and the type and timing of symptoms. Exposures and symptoms shall be evaluated through the use of standardized, population appropriate questionnaires approved by the NIOSH Director, and assessed, diagnosed and documented by a medical professional with experience in treating or diagnosing medical conditions included on the list of identified WTC-related health conditions.

AINS to H.R. 847 provides that 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. ***S. 1334*** does not require the Administrator to make periodic assessments regarding the addition of cancer or any other conditions to the list.

S. 1334 and ***AINS to H.R. 847*** provide that 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 publish a proposed rule in the Federal Register.

- **S. 1334** requires that the Administrator provide for public hearing and at least 90 days of public comment before promulgating such a rule and must take into account the findings and recommendations of Clinical Centers of Excellence published in peer reviewed journals. In addition, unless the regulation was recommended by the Advisory Committee, the Administrator may not propose such a rule unless he or she has first provided a copy of the proposed rule to the Advisory Committee, requested a recommendation and comments from the Advisory Committee, and given the Advisory Committee 90 days to make such a recommendation or comments.
- ***AINS to H.R. 847*** requires that the Administrator provide for 30 days of public comment before promulgating such a rule. This comment period may be extended by the Administrator. The Administrator may also request a recommendation from the Advisory Committee before proposing a rule. In such a case, the Advisory Committee must submit their recommendation to the Administrator not later than 60 days after it was requested or by another such date, within 180 days of the request, provided by the Administrator. Not later than 60 days after receiving the recommendation, the Administrator shall either publish a proposed rule based on the recommendation or publish in the *Federal Register* a determination not to propose a such a rule.

S. 1334 and ***AINS to H.R. 847*** include procedures by which certain parties may *petition* for a condition to be added to the list of WTC-related medical conditions.

- ***S. 1334*** provides that any person, or the Advisory Committee, may submit such a petition. Unless clearly frivolous, or from the Advisory Committee, the petition shall be forwarded to the Advisory Committee for a recommendation. Upon receipt of such a

recommendation, or 180 days after requesting such a recommendation, whichever comes first, the Administrator shall either begin the rulemaking procedure to add the condition or publish in the *Federal Register* reasons for not adding the condition.

- ***AINS to H.R. 847*** provides that any interested party, including units of government and Clinical and Data Centers, may submit such a petition. Within 60 days of receipt of such a petition, the Administrator must:
  - Request a recommendation of the Advisory Committee;
  - Publish a proposed rule to add the condition;
  - Publish in the *Federal Register* the decision not to add the conditions and the reasons for this decision; or
  - Publish in the *Federal Register* that insufficient evidence exists to take action.

S. 1334 provides that any addition of conditions to the list of WTC-related health conditions shall only apply with respect to applications for benefits filed after the effective date of the regulation. ***AINS to H.R. 847*** does not include such a provision.

S. 1334 and ***AINS to H.R. 847*** provide that if a physician at a Clinical Center that is providing monitoring benefits for an eligible WTC responder determines that the responder has an *identified WTC-related health condition*, 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 the Administrator or his or her designee, and 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 WTCHP shall provide for payment for medically necessary treatment for such condition. Otherwise, the Administrator shall provide a process for the appeal determinations in which certification is denied (***S. 1334*** *requires that this process include a decision by an Administrative Law Judge*).

S. 1334 and ***AINS to H.R. 847*** provide that if a physician at a Clinical Center that is providing monitoring benefits for an eligible WTC responder determines that a responder has a WTC-related health condition that is *not an identified WTC-related health condition*, the physician shall promptly transmit that determination and supporting evidence to the Administrator. The condition shall be reviewed by a physician panel which shall make a recommendation to the Administrator. The Administrator shall make a decision on coverage for the condition within 60 days of the panel's recommendation. There shall be a process to appeal the decision of the Administrator to deny coverage (***S. 1334*** *requires that this process include a decision by an Administrative Law Judge*).

AINS to H.R. 847 provides that the Administrator may not certify an individual's coverage for a condition for which the Administrator has previously published a decision not to include such condition on the list, but individuals certified based on such condition before such publication would remain entitled to benefits.

S. 1334 and ***AINS to H.R. 847*** require that only *medically necessary* treatment be provided by the WTC Health Program. The determination of whether treatment is *medically necessary* for a WTC-related health condition shall be made by physicians, considering treatment protocols established under this section, generally accepted standards of medical practice, and other factors. The Administrator may, upon review of claims, withhold payment for treatment that he or she determines is not medically necessary. The Administrator shall provide a process for the appeal of such a determination. ***S. 1334*** requires that a

physician panel with appropriate expertise hear such appeals. ***AINS to H.R. 847*** requires that standards for determining medical necessity in the provision of services, the conduct of appeals, and related matters, be promulgated through regulation.

Covered treatment services include 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.[4]

WTC responders who are currently receiving treatment but have not yet been evaluated for eligibility or enrolled in the monitoring program shall continue to receive treatment services while such application is pending. (***AINS to H.R. 847*** requires that a process for this must be established through rulemaking.) ***S. 1334*** provides that non-emergency inpatient hospital services for conditions (in eligible individuals) that have not been certified as WTC-related are not covered unless they are pre-approved as medically necessary, according to procedures to be established by the Administrator. ***AINS to H.R. 847*** is silent on this matter.

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 Employees Compensation Act. The Administrator shall establish a program to pay for medically necessary outpatient prescription pharmaceuticals prescribed for WTC-related health 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, ***S. 1334*** allows the Administrator to designate a reimbursement rate for each such service, and ***AINS to H.R. 847*** requires that this be done through rulemaking.

AINS to H.R. 847 allows the Administrator to modify payment amounts and methodologies in order to improve the quality of services provided to all eligible individuals (including responders and survivors) in the WTCHP.

The Administrator shall set rates to reimburse the costs of medical monitoring and initial health evaluation services provided under this title. (Under ***AINS to H.R. 847***, this must be done through rulemaking.) ***S. 1334*** explicitly provides that the Administrator may enter into arrangements with other government agencies, insurance companies, or other third-party administrators to provide for timely and accurate processing of claims under this section.

The Coordinating Centers (referred to as Data Centers under ***AINS to H.R. 847***) shall develop medical treatment protocols for the treatment of WTC-related health conditions, which are subject to approval by the Administrator under specified conditions.

[4] Payment for transportation and related expenses is made in the same manner as per regulations implementing Section 3629(c) of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. § 7384t(c)].

Part 2. Community/Survivor Program

Identification and Initial Health Evaluation of Eligible WTC Community Members/ Survivors

S. 1334, Section 3121 defines *WTC community members* who are eligible for services under the WTCHP. ***AINS to H.R. 847, Section 3321*** refers to these individuals as *WTC survivors*. Both sections establish a process for determining the eligibility of individuals to receive an initial screening and health evaluation to determine the presence of a WTC-related health condition and the possible need for follow-up services, including treatment.

S. 1334 and ***AINS to H.R. 847*** provide the following eligibility categories for community members/survivors:

An *eligible WTC community member* or *screening-eligible WTC survivor* is a community member/survivor in one of the following categories:

- A *currently identified community member* or *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 *community member who meets current eligibility criteria* or 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 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 *community member who meets modified eligibility criteria* or 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 Coordinating Centers or Data Centers, the Advisory Committee and the steering committees. No modifications of eligibility criteria may be made after the number of

certifications for eligible community members or survivors has reached 80% of the established limit or after the number of certifications for eligible responders has reached 80% of the established limit.

The Administrator in consultation with the Coordinating Centers or Data Centers shall establish an *application process* for a person other than a currently identified community member or currently identified survivor to apply to become an *eligible WTC community member* or *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 (***S. 1334*** *requires that this process include a decision by an Administrative Law Judge*). 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 eligibility* to any person determined to be an eligible WTC community member or screening-eligible WTC survivor. Such documentations will be provided to currently identified community members or currently identified survivors no later than 60 days after enactment (***AINS to H.R. 847*** provides a deadline of 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.

Individuals who are eligible or screening-eligible are entitled to a single initial health evaluation, provided through a Center of Excellence according to protocols to be developed, in order to determine eligibility for follow-up and treatment services. Under ***S. 1334***, the Administrator is to certify an individual's eligibility for screening, monitoring, and treatment benefits through a single certification process. Under ***AINS to H.R. 847***, if screening-eligible WTC survivors are certified for additional services pursuant to the health evaluation, the Administrator must provide a separate certification, upon which an individual is termed *certified-eligible* and is entitled to follow-up monitoring and treatment services.

Under ***S. 1334***, the WTC community program is limited to 15,000 *new* certified community members, in addition to those currently receiving benefits, and the Administrator must report to Congress if he or she determines that the number of individuals eligible to be certified is likely to exceed this limit. Under ***AINS to H.R. 847***, the limit for *new* certified eligible survivors is 25,000. There is no limit for screening-eligible survivors. The Administrator is required to also limit certifications of certified eligible survivors in order to assure that individuals may be certified to receive services throughout the funded life of the program (i.e., through FY2020). Also, under ***AINS to H.R. 847, Section 3301***, the Administrator has a similar requirement to notify Congress if the number of certified eligible survivors reaches 80% of the 25,000 limit.

AINS to H.R. 847 prohibits eligibility for benefits under the WTC Health Program to any individual who is on a terrorist watch list maintained by the Department of Homeland Security (DHS), and requires the Administrator to consult with DHS to determine, before enrollment, if an individual is on such list.

Follow-up Monitoring and Treatment of Certified Eligible WTC Community Members/Survivors for WTC-Related Health Conditions

S. 1334, Section 3122 and ***AINS to H.R. 847, Section 3322*** establish that, in general, treatment of WTC-related health conditions shall be provided to certified eligible WTC community members/survivors in the same manner that such provisions apply to the treatment of WTC-related health conditions for eligible WTC responders. The amendment and bill list a number of *identified WTC-related health conditions for community members/survivors*, including aerodigestive and mental health conditions, but not including musculoskeletal conditions as listed for the responder program. The Administrator may add new conditions to the list for the community program in accordance with the process established for the responder program.

In addition, under listed mental health conditions, ***S. 1334*** includes "V codes," which involve treatments not specifically related to psychiatric disorders, such as marital problems and parenting problems. ***AINS to H.R. 847*** would not provide services for V code conditions under either the responder or survivor programs.

Follow-up Monitoring and Treatment of Other Individuals with WTC-Related Health Conditions

S. 1334, Section 3123 and ***AINS to H.R. 847, Section 3323*** establish that follow-up monitoring and treatment services shall be provided (through the community or survivor program, respectively) to individuals who are not responders and who do not meet the certification criteria for the community/survivor program, for any such individual who is diagnosed at a Clinical Center with an identified WTC-related condition for WTC community members/survivors. Services for such individuals shall be comparable to those provided for eligible responders, and provided regardless of location or residence. The Administrator shall limit the total amount of benefits provided to such individuals in a given fiscal year.

Under ***S. 1334***, program payments for this section may not exceed $20 million for FY2009, and, for subsequent fiscal years, that amount adjusted by the annual percentage increase in the medical care component of the Consumer Price Index for all urban consumers.[5] ***Under AINS to H.R. 847***, program payments for this section may not exceed $5 million for the last quarter of FY2011, $20 million for FY2012, and for subsequent fiscal years, the FY2012 amount adjusted by the annual percentage increase in the medical care component of the Consumer Price Index for all urban consumers.

Part 3. National Arrangement for Benefits for Eligible Individuals Outside New York

Nationwide Network

S. 1334, Section 3131 and ***AINS to H.R. 847, Section 3313*** require the Administrator to establish a nationwide network of health care providers to provide benefits to eligible individuals who reside outside the New York metropolitan area (as defined), near such individuals' areas of residence. Any provider participating in this network shall: meet required criteria for credentialing; follow required monitoring, initial health evaluation, and treatment protocols; collect and report program data; and meet such fraud,

[5] See Bureau of Labor Statistics, "Consumer Price Index," http://www.bls.gov/cpi/.

quality assurance, and other requirements as the Administrator establishes. Eligible individuals who reside outside the New York metropolitan area may also receive initial health evaluation, monitoring, and treatment benefits through any Clinical Center.

In addition, ***AINS to H.R 847*** specifies applicable fraud control provisions in Sections 1128 through 1128E of the Social Security Act, which provide, among other things, for civil and criminal penalties. It also authorizes the Administrator to provide, including through contracts, for training and technical assistance for health care providers participating in the program network.

Subtitle C. Research Into Conditions

Research Regarding Certain Health Conditions Related to the September 11 Terrorist Attacks

S. 1334, Section 3141 requires the Administrator to develop a research program on physical and mental health conditions that may be related to the 9/11 terrorist attacks (and, if needed, on their diagnosis and treatment), in consultation with the WTC Advisory Committee and steering committees, and subject to applicable privacy and human research subjects protections. The research program shall include epidemiologic studies on WTC-related conditions, including controlled studies on specified less-exposed populations. The Administrator shall report annually to Congress regarding the research program. The Administrator may support the continuation and expansion of research that was initiated before the date of the enactment of this title. The appropriation of $15 million is authorized for each fiscal year, in addition to any other authorizations of appropriations that are available for such purpose.

AINS to H.R. 847, Section 3341 contains provisions that are largely similar, although it does not authorize appropriations for the research program. However, ***AINS to H.R. 847, Section 3351(e)(5)*** provides that from the WTC Health Program Fund established by that section, not more than the following amounts may be expended for research activities; $3.75 million for the last calendar quarter of FY2011; $15 million for FY2012; and for each subsequent fiscal year, a specified increase based on the Consumer Price Index for all urban consumers. In addition, (1) research would not be limited to WTC-related conditions, but could also include conditions related to the attacks on the Pentagon and in Shanksville, PA; and (2) consultation by the Administrator would be required only with the Scientific/Technical Advisory Committee.

Subtitle D. Programs of the New York City Department of Health and Mental Hygiene

World Trade Center Health Registry

S. 1334, Section 3151 requires the Administrator to extend and expand the arrangements in effect as of January 1, 2008, with the NYC Department of Health and Mental Hygiene that provide for the WTC Health Registry. The appropriation of $7 million is authorized for each fiscal year to carry out this section.

AINS to H.R. 847, Section 3342 is a comparable provision, except that it does not contain an authorization of appropriations. However, ***AINS to H.R. 847, Section 3351(e)(6)*** provides that from the WTC Health Program Fund established by that section, not more than the following amounts may be expended for the Registry; $1.75 million for the last calendar quarter of FY2011; $7 million for FY2012;

and for each subsequent fiscal year, a specified increase based on the Consumer Price Index for all urban consumers.

Mental Health Service Grants

S. 1334, Section 3152 authorizes the Administrator to make grants to the NYC Department of Health and Mental Hygiene to provide mental health services to address mental health needs relating to the 9/11 terrorist attacks on the WTC. The appropriation of $8.5 million is authorized for each fiscal year to carry out this section.

AINS to H.R. 847 does not contain a comparable provision.

World Trade Center Health Fund

AINS to H.R. 847, Section 3351 would establish the World Trade Center Health Fund (the Fund) to finance benefits, administrative costs, and other activities authorized under the WTCHP proposed by Title I of the legislation and would deposit into the Fund from the Treasury for the last calendar quarter in FY2011 and each succeeding fiscal year through FY2020 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;
- FY2013: $354 million;
- FY2014: $382 million;
- FY2015: $431 million;
- FY2016: $481 million;
- FY2017: $537 million;
- FY2018: $601 million;
- FY2019: $173 million; and
- For FY2019 an additional $499 million and for FY2020 $743 million provided that beginning in FY2019, in no case shall the share of federal funds deposited into the Fund exceed the sum of the amounts specified in ***AINS to H.R. 847, Section 3351(a)(2)(A)(ii)(I)*** (equal to $3.348 billion, which is the sum of the amounts specified above for the last calendar quarter of FY2011 through the $173 million in FY2019).

No funds may be disbursed from the Fund unless NYC has entered into contract with the Administrator to pay its contribution. If NYC 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 NYC.

The amounts deposited into the Fund shall be available, without further appropriation, to carry out ***AINS to H.R. 847, 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 1.

Table 1. Limits on Spending of Federal Funds as Provided in AINS to H.R. 857, Section 3351

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 AINS to H.R. 847.

There is no strictly comparable provision in ***S. 1334***. However, ***S. 1334, Section 3107***, described earlier in this memorandum, states that for payment for initial health evaluation, monitoring, and treatment services, and the costs of non-treatment and non-monitoring activities, the Act provides a permanent and indefinite appropriation, and authorizations of appropriations are provided within some additional sections of the bill. In addition, ***S. 1334, Section 3106(a)(3)***, described earlier in this memorandum, provides for a required 20% match by NYC for monitoring and treatment services provided under the WTCHP.

Title II. September 11 Victim Compensation Fund of 2001

S. 1334, Title II and ***AINS to H.R. 847, Title II*** would re-open the September 11 Victim Compensation Fund, which was established by 49 U.S.C. § 40101 note, and which was closed to new claims as of December 22, 2003. It would add new categories of beneficiaries and set new filing deadlines. In particular:

Definitions

S. 1334, Section 201 and ***AINS to H.R. 847, Section 201*** add the following statutory definitions:

- "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 (9/11), 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 9/11;
- "immediate aftermath" defined as any period beginning with the terrorist-related aircraft crashes of 9/11, and ending on August 20, 2002; and
- "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.

AINS to H.R. 847, Section 201 amends the definition of "collateral source" to read: "The term 'collateral source' means all collateral sources, including life insurance, pension funds, death benefit programs, and payments by federal, state, or local governments related to the terrorist-related aircraft crashes of September 11, 2001, or debris removal, including under the World Trade Center Health Program established under section 3001 of the Public Health Service Act, and *payments made pursuant to the settlement of a civil action described in Section 405(c)(3)(C)(iii).*"

By changing this definition, this section adds a provision that offsets the amount of a person's VCF payment by the amount received from the settlement of a civil action that commenced after December 22, 2003 and in which the release of all claims in such action was tendered prior to the date of enactment of this legislation, such as the proposed WTC Captive Insurance Company settlement.

S. 1334, Section 201, amends the definition of collateral source in the same manner, except that it *does not reference payments made pursuant to the settlement of a civil action described in Section 405(c)(3)(C)(iii).*

Extended and Expanded Eligibility for Compensation

S. 133, Section 202(a) and ***AINS to H.R. 847, Section 202(a)*** require 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.

S. 1334, Section 202(b) and ***AINS to H.R. 847, Section 202(b)*** provide a deadline of two years from the date on which the regulations are updated to reflect the provisions of this Act for claims related to physical harm or death from debris removal at the crash site; and an extended filing period deadline of December 22, 2031.

S 1334, Section 202(c) and ***AINS to H.R. 847, Section 202(c)*** establish 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.

This subsection 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 subsection 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.

S. 1334, Section 202(d) and ***AINS to H.R. 847, Section 202(d)*** make 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.

S. 1334, Section 202(e) and ***AINS to H.R. 847, Section 202(e)*** amend the eligibility requirements for claimants to include individuals who suffered physical harm resulting from debris removal.

S. 1334, Section 202(f) and ***AINS to H.R. 847, Section 202(f)*** require 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.

AINS to H.R. 847, Section 202(f)(3) provides that individuals who settled civil actions for damages sustained as the result of the September 11, 2001 terrorist attacks, may not submit a claim under Title II unless the civil action was commenced after December 22, 2003 and the release of all claims in such action was tendered prior to the date of enactment of this legislation.

Requirement to Update Regulations

S. 1334, Section 203 and ***AINS to H.R. 847, Section 203*** require the Special Master to update the regulations originally promulgated for the 9/11 Victims Compensation program to reflect the changes made by this Act within 90 days of enactment.

Limited Liability for Certain Claims

S. 1334, Section 204 and AINS to H.R. 847, 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 any entity (including the Port Authority of New York and New Jersey), with a property interest in the WTC on September 11, 2001, and any contractors and subcontractors. The liability limits may not exceed the sum of the following, as applicable:

- 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;
- The amount that is the greater of the City of New York's insurance coverage or $350 million. Any amounts related to funds or amounts of available insurance identified in schedule 2 of the WTC Captive Insurance Company shall not be included in determining the City's liability limits (under ***AINS to H.R. 847,*** specifies that this provision relates to the limitation of liability of the City of New York);
- The amount of all available liability insurance coverage maintained by any entity, including the Port Authority of New York and New Jersey, with any property interest in the WTC on September 11, 2001 (under ***AINS to H.R. 847,*** specifies that this section relates to the limitation of liability of any entity, including the Port Authority of New York and New Jersey, with any property interest in the WTC on September 11, 2001); and
- The amount of all available liability insurance coverage maintained by contractors or subcontractors (under ***AINS to H.R. 847***, specifies that this provision relates to the liability of any individual contractor of subcontractor).

S. 1334 provides an exception to the liability limits established by the bill for claims or actions based on conduct that is held to be intentionally tortious in nature or to acts of gross negligence or other such acts, to the extent that punitive damages are awarded as a result of such conduct or acts. ***AINS to H.R. 847*** does not contain a comparable provision.

S. 1334, Section 204 and ***AINS to H.R. 847, Section 204*** also establish the priorities 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 greater of the City of New York's insurance coverage or $350 million;
- From funds available through liability insurance coverage maintained by entities 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, any party to a claim or action related to harms from debris removal may either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.

Limitations on Funding and Attorneys' Fees

S. 1334, Title II does not establish an aggregate limit on compensation provided under the program, or on compensation of attorneys' fees.

AINS to H.R. 847, 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*. Of this amount, *$4.2 billion* shall be available to pay claims during the ten-year period beginning on the date in which regulations are promulgated and *$4.2 billion* shall be available to pay claims after this period.

During the one-year period beginning on the date in which the first payment for claims filed pursuant to the updated regulations is paid, the Special Master shall examine the number and amount of such claims during this period and project the total number and amount of claims expected to be paid during the first 10-year period. If the Special Master determines that there will not be sufficient funds to pay such claims during the initial 10-year period, the Special Master shall ratably reduce the amount of compensation due to claimants in a manner that ensures that all claimants who would have been determined to be entitled to a payment receive a payment, and that the total amount of all such payments during the initial 10-year period does not exceed the $4.2 billion cap. For those claimants who have their payments reduced due to the cap, on or after the first day after the initial 10-year period, the Special Master shall pay such claimants the amount that equals the difference between what they would have been paid if there had not been a 10-year cap on total compensation, and the amount the claimant was actually paid during the initial 10-year period.

Notwithstanding any contract, the amendment limits 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, attorneys' fees would be limited to not more than 10% of an award made for a claim filed under this title. However, if an individual was charged a legal fee in connection with a civil action that was commenced after December 22, 2003, and the release of all claims in such action was tendered prior to the date of enactment of this legislation (such as the proposed WTC Captive Insurance Company settlement), the claimant's representative may not charge any amount for compensation for services rendered in connection with a claim filed under this title. If the legal fee charged in connection with such a settled civil action is less than 10% of the aggregate amount of compensation awarded though such settlement and a claim filed under this title, then a claimant's representative may charge an amount for compensation for services rendered in connection with a claim under this title, as long as the amount charged is not for such claim is not more than 10% of such aggregate amount of the civil settlement and the Title II claim, minus the total amount of all legal fees charged for services rendered in connection with such a settlement.

The amendment further 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 a 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 amendment further provides that the Special Master's attorneys' fee awards will be final, binding, and non-appealable.

Title III. Limitation on Treaty Benefits for Certain Deductible Payments; Time for Payment of Corporate Estimated Taxes

S. 1334 does not contain a Title III nor does it contain any provisions comparable to those found in ***Title III of AINS to H.R. 847***.

AINS to H.R. 847, Section 301 amends Section 894 of the Internal Revenue Code by adding a provision related to *income affected by treaty* to address a situation commonly referred to as "*treaty shopping*."[6] Under the provision the amount of U.S. withholding tax imposed on deductible related-party payments may not be reduced under any U.S. income tax treaty unless such withholding tax would have been reduced under a U.S. income tax treaty if the payment were made directly to the foreign parent corporation of the payee.

A *deductible related-party payment* is defined as a payment made directly or indirectly by any entity to any other entity, that is allowable as a deduction for U.S. tax purposes, and in which both entities are members of the same foreign controlled group of entities.

A *foreign controlled group of entities* is defined as a controlled group of entities in which the common parent is a foreign corporation.

A *controlled group of entities* has the same definition as in Section 1563(a)(1) of the Internal Revenue Code, with the following changes:

- the relevant ownership threshold is lowered from "at least 80 percent" to "more than 50 percent";
- certain members of the controlled group of corporations that would otherwise be treated as excluded members are not treated as excluded members;
- insurance companies are not treated as members of a separate controlled group of corporations; and
- a partnership or other noncorporate entity is treated as a member of a controlled group of corporations if such entity is controlled by members of the group.

[6] For additional information on "treaty shopping" see CRS Report R40468, *Tax Treaty Legislation in the 111th Congress: Explanation and Economic Analysis*, by Donald J. Marples.

The Secretary of Treasury may prescribe regulations or guidance to carry out this section, including regulations or guidance which provide for:

- the treatment of two or more persons as members of a foreign controlled group of entities if such persons would be the common parent of such group if treated as one corporation; and
- the treatment of any member of a foreign controlled group of entities as the common parent of such group if such treatment is appropriate taking into account the economic relationships among such entities.

The amendment made by this section shall apply to payments made after the date of enactment.

AINS to H.R. 847, Section 302 amends Section 561(2) of the Hiring Incentives to Restore Employment Act (P.L. 111-147) to increase the amount of any *required installment of corporate estimated tax* which is otherwise due in July, August, or September of 2015, for corporations with assets of at least $1 billion, from 121.5% to 124.5% of such amount.

Title IV. Budgetary Effects

S. 1334 does not contain a Title IV nor does it contain any provisions comparable to those found in ***Title IV of AINS to H.R. 847.***

AINS to H.R. 847, Section 401 provides that the budgetary effects of this legislation, for the purposes of complying with PAYGO rules, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this legislation, submitted to the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.