

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

March 12, 2010

To: Members of the Subcommittee on Health

Fr: Committee on Energy and Commerce Democratic Staff

Re: Subcommittee Markup of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2009

On Tuesday, March 16, 2010, at 10:00 a.m., in 2123 Rayburn House Office Building, the Subcommittee on Health will meet in open markup session to consider H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2009. The Committee on Energy and Commerce has exclusive jurisdiction over Title I, which would authorize health programs to provide monitoring and treatment of first responders and community members who were affected by the September 11, 2001, attacks on the World Trade Center in New York City (NYC), and authorize research into health conditions associated with those attacks. The other title of the bill, which would re-open the Victims Compensation Fund (VCF) established after the September 11 attacks, is under the jurisdiction of the Committee on the Judiciary, which ordered the bill reported on July 29, 2009.

I. BACKGROUND

A. First Responder Program

Soon after the September 11, 2001, attacks on the World Trade Center (WTC), the City of New York Fire Department (FDNY) and Mount Sinai School of Medicine received federal funding to perform medical screening and surveillance of first responders living in the New York City/New Jersey Metropolitan Area. In addition, the New York City Department of Health and Mental Hygiene (NYC DoHMH) began the World Trade Center Health Registry, a list of the individuals at risk for possible near- and

long-term physical and mental health effects from the disaster. The registry was initially established with funding from the Agency for Toxic Substances and Disease Registry (ATSDR). In FY2009, the administration of the WTC Health Registry was transferred within the Centers for Disease Control and Prevention (CDC) from ATSDR to the National Institute for Occupational Safety and Health (NIOSH). By the 2004 deadline for new registrants, the WTC Health Registry had enrolled more than 70,000 residents, workers, students, and responders.

In FY2003, Congress began appropriating funds for what is now called the WTC Medical Monitoring and Treatment Program. The FY2003 appropriation provided funds for medical monitoring of WTC responders. This program provided and collected data on periodic physical and mental health assessments designed to identify acute and latent health effects that are related to response efforts. In FY2006, Congress appropriated additional funds to expand the program to include treatment, as well as monitoring, of conditions related to response efforts. Until that point, treatment for first responders had been funded by FDNY and the American Red Cross.

There are six centers of excellence in the NYC/NJ metropolitan area where first responders receive treatment and monitoring under the WTC Medical Monitoring and Treatment Program. These centers are: Bellevue/New York University; City of New York/Queens College; FDNY; Mt. Sinai; State University of New York at Stony Brook; and University of Medicine and Dentistry of New Jersey. In addition to the six clinical centers, FDNY and Mt. Sinai each host a data and coordination center for research on and monitoring of the patient population.

As of September 30, 2009, 55,331 responders throughout the United States have met the eligibility criteria for the program and have enrolled on the rosters for the WTC Medical Monitoring and Treatment Program. Most of the enrolled responders reside within the greater New York/New Jersey metropolitan vicinity. There are, however, 4,491 enrolled responders who reside across the United States. Of the 55,331 responders, 44,754 have received an initial monitoring examination.

B. Community Program

In September 2006, the City of New York established the WTC Environmental Health Center at Bellevue Hospital to provide comprehensive physical and mental health treatment to all individuals with suspected WTC-related health problems. The program absorbed a pre-existing WTC-related program that was started in 2005 with a grant from the American Red Cross. In September 2007, the Center was expanded to two additional locations at Gouverneur Healthcare Services in Lower Manhattan and Elmhurst Hospital Center in Queens.

On September 30, 2008, CDC awarded a three-year grant (\$10 million per year) to the New York City Health and Hospitals Corporation (HHC), which oversees Bellevue Hospital and Gouverneur Healthcare Services to provide screening, monitoring, referral, and treatment for lower Manhattan workers, residents, students, and others in the

community directly affected by the 2001 WTC disaster. These people had similar exposure to the toxic dust and the emotional devastation associated with the World Trade Center disaster. They are suffering from conditions similar to the conditions affecting the first responders, including upper- and lower-respiratory illnesses, sinus and gastrointestinal problems, and mental health conditions such as Post Traumatic Stress Disorder, anxiety, and depression. At the time federal funding began, there were 2,759 people enrolled in the community program. There are currently 4,500 people enrolled in the community program as of February 12, 2010.

The President's FY2011 Budget requests \$150 million to continue these programs.

II. SUMMARY OF THE LEGISLATION

A. Overview

H.R. 847 would make the current responder and community treatment and monitoring programs entitlement programs, which would make them permanent and not subject to annual appropriations. The bill would require that the City of New York contribute 10% of the costs of the program, not to exceed \$500 million over 10 years. The bill would also reopen the September 11th Victim Compensation Fund for people who became ill or suffered losses after the fund's original closure date of December 22, 2003. The bill would also provide liability protections for the World Trade Center contractors and the City of New York.

The Congressional Budget Office (CBO) prepared a score for H.R. 7174, the version of the legislation that was introduced in the 110th Congress. The overall cost of the legislation over 10 years was \$11 billion. \$4.6 billion of those costs were from the healthcare provisions of the legislation. H.R. 874 has been changed slightly from H.R. 7174 and therefore the CBO score may be different.

The Subcommittee held a hearing on H.R. 847 on April 22, 2009.

B. Section-by-Section Description of Title I of H.R. 847

TITLE I—WORLD TRADE CENTER HEALTH PROGRAM

Title I amends the Public Health Service Act to create the World Trade Center Health Program.

Subtitle A—Establishment of Program; Advisory and Steering Committees

Section 3001. Establishes the World Trade Center Health Program (the WTC Program) within the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, 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 on September 11, 2001; and (2) initial health evaluation, monitoring, and treatment benefits to eligible residents and other building occupants and area workers in NYC affected by such attacks. The Director of NIOSH or his or her designee shall serve as the WTC Program Administrator (the Administrator).

In general, all costs of covered initial health evaluation, medical monitoring, and treatment benefits for eligible individuals shall be paid for by the WTC Program, except for any costs that are paid by a workers' compensation program, health insurance plan, or the matching program required under section 3012. 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.

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. 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.

Section 3002. Requires the Administrator to establish the WTC Health Program Scientific Technical Advisory Committee to review scientific and medical evidence and make recommendations to the Administrator on additional WTC Program eligibility criteria and additional WTC-related health conditions. The Advisory Committee shall continue in operation during the period in which the WTC Program is in operation. This section authorizes the appropriation of such sums as may be necessary, up to \$100,000, for each fiscal year beginning with FY2009.

Section 3003. Requires the Administrator to establish two WTC Program steering committees – the WTC Responders Steering Committee and the WTC Community Program Steering Committee – to facilitate the coordination of initial health evaluation, medical monitoring, and treatment programs for eligible WTC responders and community members. The committees shall continue in operation during the period in which the WTC Program is in operation.

Section 3004. 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; the use of culturally and linguistically diverse content; and the use of community partnerships in conducting outreach.

Section 3005. 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 WTC Program (regardless of the location at which services are provided), the prevalence of WTC-related health conditions, and the identification of new WTC-related health conditions.

Section 3006. Requires the Administrator to establish, by entering into contracts, Clinical Centers of Excellence and Coordinating Centers of Excellence. 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.

Clinical Centers are defined as: (1) the Fire Department of the City of New York 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, the Mt. Sinai coordinated consortium, 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 medical conditions.

In order for any NYC department or agency, 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 10% of the amount of covered monitoring or treatment services provided to eligible individuals. 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 \$500 million over any 10-year period.

Section 3007. Provides a permanent and indefinite appropriation 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 3006.

Section 3008. Provides definitions for Title I.

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

PART 1—FOR WTC RESPONDERS

Section 3011. Defines eligibility criteria for active or retired WTC responders (including immediate family members of firefighters who were killed as a result of the attack on the WTC in certain circumstances). The WTC responder program is limited to 15,000 new eligible responders, in addition to those previously identified. This cap 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 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 under section 3031 for eligible individuals outside New York.

Section 3012. Defines a WTC-related health condition for which eligible responders shall receive the treatment benefit as: (A) 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 (B) 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.

Eligible responders may receive treatment benefits for conditions described in subparagraph (A). Eligible responders and, under specified conditions, immediate family members of firefighters who were killed as a result of the attack on the WTC, may receive mental health treatment benefits for conditions described in subparagraph (B). An identified WTC-related condition is one of many listed aerodigestive, mental health, and musculoskeletal conditions for which coverage of medically necessary treatment will be provided, so long as it is determined that any such condition (or conditions) in a given eligible responder is WTC-related. 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.

The Administrator may by regulation add additional identified WTC-related health conditions, such as cancer, to the list for eligible WTC responders. 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. To the extent provided in advance in appropriations, the Administrator may cover necessary and reasonable transportation and related expenses for medically necessary treatment, involving travel of more than 250 miles.

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 conditions through a specified competitive bidding process to award contracts to outside vendors.

PART 2—COMMUNITY PROGRAM

Section 3021. Defines WTC community members who are eligible for health monitoring and treatment benefits, including individuals currently receiving treatment at the WTC Environmental Health Center; individuals who meet specified criteria regarding locations of residence, work, or schooling under specified time frames; and individuals meeting other criteria that the Administrator may establish.

The Administrator shall provide certified eligible WTC community members with one initial health evaluation to determine the presence of a WTC-related health condition and the need for follow-up monitoring or treatment benefits. The WTC community program is limited to 15,000 new certified community members, in addition to those currently receiving benefits. The Administrator shall report to Congress if he or she determines that the number of individuals eligible to be certified is likely to exceed the numerical limitation.

Section 3022. Establishes that, in general, treatment of WTC-related health conditions shall be provided to certified eligible WTC community members in the same manner that such provisions apply to the treatment of WTC-related health conditions for eligible WTC responders under section 3012. The bill lists a number of identified WTC-related conditions for community members, 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 under section 3012 for the responder program.

Section 3023. Establishes that treatment services shall be provided through the community program to individuals who are not responders and who do not meet the certification criteria for the community program, for any such individual who is diagnosed at a Clinical Center with an identified WTC-related condition for WTC community members. Treatment for such individuals shall be provided regardless of location or residence.

PART 3—NATIONAL ARRANGEMENT FOR BENEFITS FOR ELIGIBLE INDIVIDUALS OUTSIDE NEW YORK

Section 3031. Requires 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, near such individuals' areas of residence.

SUBTITLE C—RESEARCH INTO CONDITIONS

Section 3041. Requires the Administrator to develop a research program on physical and mental health conditions that may be related to the 911 terrorist attacks.

**SUBTITLE D—PROGRAMS OF THE NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

Section 3051. 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 World Trade Center Health Registry. The appropriation of \$7 million is authorized for each fiscal year to carry out this section.

Section 3052. 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 911 terrorist attacks on the WTC. Authorizes the appropriation of \$8.5 million for each fiscal year to carry out this section.