

**TESTIMONY**

**Before**

**The United States House of Representatives**

**Committee on Energy and Commerce**

**Subcommittee on Health**

**Hearing on**

**9/11 Health and Compensation Act of 2009**

**Washington, DC**

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**Presented by**

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Honorable Chairman Pallone and other members of the Subcommittee on Health. I greatly appreciate the opportunity to appear before you at this hearing.

I am James Melius, an occupational health physician and epidemiologist. I currently work as Administrator for the New York State Laborers' Health and Safety Trust Fund, a labor-management organization focusing on health and safety issues for union construction laborers in New York State. During my career, I spent several years working for the National Institute for Occupational Safety and Health (NIOSH) and later for the New York State Department of Health. I currently serve on the federal Advisory Board on Radiation and Worker Health which oversees part of the federal compensation program for former Department of Energy nuclear weapons production workers.

I have been involved in health issues for World Trade Center responders since shortly after September 11th. Over 3,000 of our union members were involved in response and clean-up activities at the site. One of my staff spent nearly every day at the site for the first few months helping to coordinate health and safety issues for our members who were working there. When the initial concerns were raised about potential health problems among responders at the site, I became involved in ensuring that our members participated in the various medical and mental health services that were being offered. For the past five years, I have served as the chair of the Steering Committee for the World Trade Center Medical Monitoring and Treatment Program. This committee includes representatives of responder groups and the involved medical centers (including the NYC Fire Department) who meet monthly to oversee the program and to ensure that the program is providing the necessary services to the many people in need of medical follow-up and treatment. I also serve as co-chair of the Labor Advisory Committee for the WTC Registry operated by the New York City Department of Health. These activities provide me with a good overview of the benefits of the current programs and the difficulties encountered by responders seeking to address their medical problems and other needs.

I believe that other physicians involved in the medical programs for World Trade Center responders and community residents have already presented (or will present) more detail on the medical findings from their respective medical programs. The pulmonary disease, mental health difficulties, and other health problems among both the responders and community residents are occurring among large numbers of these people, and many of these have developed serious illness leading to disability and long term health damage. All of the medical programs have done an outstanding job in providing high quality medical care for the many thousands of people whose health has been damaged by their exposures at the World Trade Center. Without their excellent work and the federal support for these programs, their patients would have had great difficulty in obtaining the expert medical care that is critical for their diagnosis and treatment. Given the focus of these hearings, I believe that it may be helpful to examine the reasons why so many of the participants need assistance for paying for their medical treatment and why HR 847 is necessary to address this problem.

#### HEALTH INSURANCE COVERAGE

The people who were exposed in the initial response to the September 11th disaster and the later recovery activities represented many different types of workers with varying types of health insurance coverage. However, it is important to note that for everyone in the program who became ill because of job-related exposures (i.e., all of the rescue, recovery, and clean-up workers), their health insurance plans will not cover work-related health problems. Medical cost for work-related injuries and health problems are routinely excluded in all health insurance including Medicare. Even if their health insurance did cover these illnesses, many of the most ill people have lost their health insurance coverage because they are unable to work or would have difficulty covering the co-pays and deductibles if they continue to have some coverage.

## WORKERS' COMPENSATION COVERAGE

One alternative to health insurance coverage for WTC-related conditions is workers' compensation insurance. Workers' compensation is supposed to be a no fault insurance system to provide workers who are injured or become ill due to job-related factors with compensation for their wage loss as well as full coverage for the medical costs associated with the monitoring and treatment of their condition. Similar to health insurance, the WTC program participants are covered by a variety of state, federal, and local programs with different eligibility requirements, benefits, and other provisions. Most private and city workers are covered under the New York State Workers' Compensation system. New York City fire fighters and police are covered by line of duty disability system that is administered by the fire and police departments and their respective pension systems.

As I testified at the September 2007 hearing held by this subcommittee, the major difficulty with these compensation systems is the long delays in obtaining coverage. For example, the NYS Workers' Compensation system is very bureaucratic. The insurer may challenge every step of the compensation process including even diagnostic medical testing. This challenge usually requires a hearing before a Workers' Compensation Board (WCB) administrative judge to evaluate the case, and this hearing may often be delayed for months. Even once the case is established, the insurer can still challenge treatments recommended for that individual even for a medication that the individual may have been taking for many months for a chronic work-related condition. Thus, it may be many years before the case of a person with a WTC-related condition is fully recognized and adjudicated by the compensation system. Meanwhile, the claimant may not be receiving any medical or compensation benefits or may have had their benefits disrupted many times.

Despite implementing legislative changes to help address problems with WTC claims, WTC claimants still experience major delays in pursuing their claims. I recently served on an advisory committee evaluating potential problems with WTC claims in New York.

We found there continued to be major problems with delays and recommended additional legislative changes in order to alleviate those problems.

In summary, we cannot rely on workers' compensation or line of duty disability programs to provide medical coverage for WTC rescue and recovery workers in a timely and responsive fashion. Patients with WTC-related health conditions need comprehensive and often complex medical management. Medical reimbursement provided through worker's compensation is not administered in a manner that facilitates such care. Rather, it would obstruct and delay the medical care for many of the responders and only aggravate their medical conditions rather than help them to get better.

#### COMPREHENSIVE SOLUTION

A comprehensive solution is needed to address the health needs of the 9/11 rescue and recovery workers. We cannot rely on a fragmented system utilizing private philanthropy, health insurance, line of duty disability retirement, and workers' compensation to support the necessary medical monitoring and treatment for the thousands of people whose health may have been impacted by their WTC exposures. This fragmented approach will inevitably leave many of the ill and disabled rescue and recovery workers without needed medical treatment and will only worsen their health conditions. The delays and uncertainty about payments would discourage many of the ill rescue and recovery workers from seeking necessary care and discourage medical institutions from providing that care.

**HR 847** The James Zadroga 9/11 Health and Compensation Act of 2009 would provide the comprehensive framework needed for the WTC medical program and ensure that adequate funding was available to cover the needed medical care for thousands of rescue, recovery, and clean-up workers, and community residents whose health has been damaged as a result of September 11. By building on the current medical programs already in place for rescue and recovery workers and for community residents, the Act provides for continuity for the thousands of patients being treated in those programs.

However, it also adds many provisions that will improve the program. I would like to briefly describe some of the key provisions:

**Centers of Excellence.** The medical program will utilize the existing Centers of Excellence as the major source of medical care for the responders and community residents participating in the program. All of these centers have extensive experience in caring for these patients. This will help to ensure that high quality care is provided by physicians familiar with the medical problems being experienced by these patients. The Centers will also be collecting and analyzing the medical data on these groups which will help to ensure that any new pattern of illness is recognized at an early stage. The Centers of Excellence will also work with NIOSH to help ensure that additional medical providers recruited to provide care in the program (e.g., for responders living outside of the NYC metropolitan area) will have the proper background and experience to also provide high quality medical care.

**Certification** The legislation also provides for the federal government to have significant involvement and oversight over the program. The government will make final decisions on program and treatment eligibility. There are also provisions for government oversight over health care reimbursement for care provided in the program and for quality assurance efforts.

**Recovery of health insurance and workers' compensation costs.** The legislation also provides for recovery of program medical expenditures from health insurance (for non work related health problems) and from workers' compensation and similar programs for patients with work-related medical problems. These provisions will help to reduce the costs of the program without unnecessarily delaying the medical care for the participants.

This is a critical time for these programs. We need legislation that will ensure the long term continuation of this medical care. Discontinuing or disrupting this high quality, coordinated medical treatment would only exacerbate the health consequences of the 9/11 disaster. Most of the participants in the monitoring and treatment program have medical conditions (asthma, mental health problems, etc.) that should be responsive to medication and other treatments. Hopefully, many of these people will gradually recover and not become disabled due to their WTC-related medical conditions. To the extent, that we can prevent worsening of the medical conditions and prevent many of these people from becoming too disabled to work, we can not only help these individuals, but we can also lower the long term costs of providing care and assistance to this population.

HR 847 recently introduced by Representatives Maloney, Nadler, King, and McMahon addresses provides the comprehensive framework needed to address the serious medical problems being experienced by thousands of people in the aftermath to the September 11 terrorist attacks. Too often in the past, we have neglected to properly monitor the health of groups exposed in extraordinary situations only to later spend millions of dollars trying to determine the extent to which their health has been impacted. Agent Orange exposure in Vietnam and the current compensation program for nuclear weapons workers are only two examples of this problem. We have left those people to suffer, often without proper medical care and facing financial hardship due to their illnesses. We should learn the lessons from these past mistakes and make sure that we provide comprehensive medical monitoring, treatment, and compensation for those potentially impacted by the WTC disaster. We should also recognize that the WTC attack was an attack on our nation, and the federal government should play a major role in supporting our recovery from that attack.

I would strongly urge you to take immediate steps to pass HR 847 and provide the necessary medical care for the thousands of rescue and recovery workers and community residents whose health has been damaged by the aftermath of the WTC attacks.

I would be glad to answer any questions.