



**Legislative Bulletin.....September 27, 2008**

**Contents:**

**H.R. 6594**—James Zadroga 9/11 Health and Compensation Act

---

**H.R. 6594—James Zadroga 9/11 Health and Compensation Act  
(Maloney, D-NY)**

**Please note the Conservative Concerns beginning on page 8, and those highlighted throughout the bulletin.**

**Order of Business:** Reports indicate the bill is expected to be considered on Saturday, September 27, or Sunday, September 28, under floor procedures that have yet to be determined.

**Summary:** H.R. 6594 would amend the Public Health Service Act to establish new federal entitlement programs for 9/11 workers related to health monitoring and treatments, and expand eligibility for the 9/11 victim compensation fund. Specific details of the legislation include the following:

**World Trade Center Health Program:** The bill would establish within the National Institute for Occupational Safety and Health (NIOSH) a new program to provide medical monitoring, screening, and treatment to workers (including federal employees) who responded to the 9/11 attacks on the World Trade Center (WTC), and residents of New York City “who were directly impacted and adversely affected by such attacks.” The program is intended to provide:

- Medical monitoring for those exposed to airborne toxins or other hazards;
- Screening for community members;
- Treatment for “all medically necessary health and mental health care expenses (including necessary prescription drugs;)”
- Outreach to potentially eligible individuals to inform them of benefits available;
- Uniform data collection and monitoring; and
- Research on health conditions arising from the World Trade Center attacks.

Specific details of the program include:

*Payments:* H.R. 6594 provides that all health benefits provided under the program will be provided “without any deductibles, co-payments, or other cost-sharing.” In cases where a worker is eligible for workman’s compensation, or holds other public or private health insurance coverage, the bill provides that the federal government’s WTC program shall serve as a secondary payer for such claims, similar to the Medicare Secondary Payer (MSP) program for Medicare beneficiaries with end-stage renal disease. The bill provides for the creation of quality control and anti-fraud elements within the new program, and incorporates existing anti-fraud penalties to the WTC program.

*Advisory and Steering Committees:* The bill creates a scientific and technical advisory committee to provide expertise on eligibility criteria and WTC-related health conditions, and two steering committees—one for WTC responders, the other for community members—to co-ordinate the screening and treatment of eligible members.

*Outreach:* The bill includes language requiring the Program Administrator—either the NIOSH Director or his designee—to establish a website, create partnerships with local agencies, and take other measures necessary to inform potentially eligible beneficiaries of the existence of the WTC program.

*Centers of Excellence:* The bill directs the Administrator to enter into contracts with “Clinical Centers of Excellence” with respect to monitoring, treating, and counseling individuals related to WTC-related health conditions, and separate contracts with “Co-ordinating Centers of Excellence” with respect to analyzing and reporting on relevant data and medical protocols. The bill names the Clinical Centers of Excellence:

- New York City Fire Department;
- Mount Sinai co-ordinated consortium;
- Queens College;
- State University of New York at Stony Brook;
- University of Medicine and Dentistry of New Jersey;
- Bellevue Hospital; and
- Other hospitals identified by the Administrator.

The bill designates the New York Fire Department, the Mount Sinai co-ordinated consortium, and Bellevue Hospital as Co-ordinating Centers of Excellence.

H.R. 6594 would reimburse Clinical Centers of Excellence \$600 annually per eligible participant in the treatment program, and an additional \$300 annually per eligible participant in the monitoring program—amounts subject to an inflation index reflecting increases in medical costs in future years. The bill provides that the payments will be made “regardless of the volume or cost of services required.” The bill permits the Administrator to authorize payment levels for Co-ordinating Centers of Excellence, and requires a review and GAO study on payment levels within five years.

*Eligibility for Responders Entitlement:* H.R. 6594 includes several categories of 9/11-related responders eligible for the new federal health care entitlement. The bill would expand eligibility for the new entitlement to persons who “performed rescue, recovery, demolition, debris cleanup, or other related services in the New York City disaster area” and meet certain criteria with respect to airborne toxins. H.R. 6594 also specifies categories of currently eligible individuals in line to receive the new health care entitlement, including:

- New York City Fire Department employees who “participated at least one day in the rescue and recovery effort at any of the former World Trade sites (including Ground Zero, Staten Island landfill, and the New York City Chief Medical Examiner’s office” at any point between September 11, 2001 and July 31, 2002;
- Surviving immediate family members of New York City firefighters killed on September 11 at the World Trade Center who received mental health treatment related to their loss—but such individuals are only subject to the new entitlement with respect to mental health treatments;
- Participants in the WTC cleanup efforts in Lower Manhattan, the Staten Island landfill, or the barge loading piers who worked:
  - At least 4 hours between September 11 and September 14, 2001;
  - At least 24 hours between September 11 and September 30, 2001; or
  - At least 80 hours between September 11, 2001, and July 31, 2002;
- Workers in the New York City Medical Examiner’s office;
- Workers in the Port Authority Trans-Hudson Corporation tunnel who worked at least 24 hours between February 1, 2002, and July 1, 2002; and
- Vehicle maintenance workers exposed to debris “while maintaining vehicles contaminated by airborne toxins” related to the WTC attacks during the time periods outlined above.

The bill includes provisions for an application process lasting no more than 60 days, and an appeal to an administrative law judge in cases where applications are initially denied.

The bill includes a 15,000-person limit on eligible WTC responders, of whom no more than 2,500 may be individuals meeting the expanded eligibility criteria noted above. H.R. 6594 includes language providing that, **in the event that the program’s expenditures are less than 90% of Congressional Budget Office projections as of December 1, 2011, and January 1, 2015, the Administrator may increase the number of eligible participants to meet the CBO expenditure estimates.**

*Conditions Eligible for Treatment:* The bill defines a WTC-related health condition as “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 attacks on the World Trade Center...is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition,” or a mental health condition “substantially likely to be a significant factor in aggravating, contributing to, or causing the condition.” The bill includes a list of aerodigestive (i.e. asthma and other pulmonary conditions), musculoskeletal, and mental health diseases (including post-traumatic stress disorder) that qualify for treatment.

H.R. 6594 also includes an application process to add additional illnesses subject to review by the Administrator and the Advisory Committees, and permits physicians at Clinical Centers of Excellence to receive federal payments for treatments for WTC-related diseases not yet identified as such under the provisions above, subject to a subsequent determination by the Administrator as to whether or not the condition will be added to the eligible list of diseases.

*Standards for Treatment:* The bill limits treatments paid for by the federal government to medically necessary standards, including those that are “not primarily for the convenience of the patient or physician...and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results.”

The bill provides for review by “a federal employee designated by the WTC Program Administrator” with respect to determinations of WTC-related health conditions, and includes provisions requiring an appeals process before an administrative law judge with respect to the Administrator’s certification of individuals’ claims for treatment, and a separate appeals process before a physician panel with respect to medical necessity determinations.

*Payment Levels:* H.R. 6594 provides that payments to physicians and other medical providers shall generally be based upon reimbursement levels under the Federal Employees Compensation Act (FECA), which governs federal workman’s compensation claims. The bill also includes language establishing a competitive bidding process among vendors to govern pharmaceutical purchases by eligible beneficiaries, and permits the Administrator to designate reimbursement rates for other services not referenced in the bill language. The bill requires New York City and its public hospitals to contribute a 10% match in order to be eligible to receive payment for treatment services rendered.

*Eligibility for Community Entitlement:* H.R. 6594 creates a separate entitlement for various segments of the community affected by the World Trade Center attacks. Eligible groups of individuals include:

- “A person who was present in the New York City disaster area in the dust or dust cloud on September 11, 2001;”
- Individuals who “worked, resided, or attended school, child care, or adult day care in the New York City disaster area” for at least four days between September 11, 2001 and January 10, 2002—or at least 30 days between September 11, 2001 and July 31, 2002;
- “Any person who worked as a clean-up worker or performed maintenance work in the New York City disaster area” between September 11, 2001 and January 10, 2002 “and had extensive exposure to WTC dust as a result of such work;”
- Individuals residing or having a place of employment in the New York City disaster area between September 11, 2001 and May 31, 2003, and deemed eligible to receive grants from the Lower Manhattan Development Corporation; and
- Any individuals receiving treatment at the World Trade Center Environmental Health Center as of the date of the bill’s enactment.

The bill includes an application and certification process for community beneficiaries similar to that for responder beneficiaries discussed above. The bill limits the number of beneficiaries to a

maximum of 15,000 who at any time qualify for the program, but exempts from the numerical cap those beneficiaries receiving treatment for an identified WTC-related condition at the time of the bill's enactment.

Beneficiaries under the community-based entitlement would generally receive the same benefits and treatments as the WTC responders, except that the community-based entitlement does not include musculoskeletal disorders in the list of identified health conditions (although some or all of these could be added under the process described above).

*Treatment for Other Individuals:* H.R. 6594 establishes an additional capped entitlement fund to finance care for “WTC community members”—i.e. those living in the New York disaster area at the time of the September 11 attacks, but not meeting the criteria listed above—diagnosed with an identified WTC-related health condition. The bill caps such entitlement spending at \$20 million in Fiscal Year 2009, rising annually according to medical inflation rates.

*Care Outside New York:* The bill would require the Administrator to “establish a nationwide network of health care providers” to treat eligible recipients outside the New York City metropolitan area, subject to certain reporting and quality requirements.

*Research:* The bill would require the WTC Administrator to establish an epidemiological research program on health conditions arising from the World Trade Center attacks. The program would cover diagnosis and treatment of WTC-related health conditions among responders and in sample populations from Lower Manhattan and Brooklyn, “to identify potential for long-term adverse health effects in less exposed populations.” H.R. 6594 authorizes \$15 million annually for such research. In addition, the bill authorizes \$7 million annually for New York City to maintain a WTC Health Registry, as well as \$8.5 million for grants to the New York Department of Mental Health and Mental Hygiene for WTC-related mental health treatment.

Changes to September 11 Compensation Fund: In addition to establishing the new NIOSH program, H.R. 6594 would also make several changes to the September 11 victim compensation fund established in 2001 (Title IV of P.L. 107-42), as listed below.

*Extension for Applications:* H.R. 6594 would reopen applications to the September 11 compensation fund in cases where the Special Master for the compensation fund determines that the individual became aware of physical injuries suffered as a result of the September 11 attacks after applications to the compensation fund were closed. The bill would generally reopen applications for the reasons stated above (and for individuals subject to the expanded eligibility provisions noted below) for two years after the individual became aware of such injuries, provided the individual seeks treatment in a prompt manner and the claim can be verified. Additional claims applications under this extension would be accepted through December 22, 2031.

*Expansion of Eligibility Definitions:* The bill would modify the definition of eligibility for compensation to define the “immediate aftermath” of the September 11 attacks as including time through August 30, 2002. The bill would also expand eligibility to include workers handling

debris from the World Trade Center, including “any area contiguous to a site of [the 9/11] crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm” and “any area related to, or along, routes of debris removal,” including (but not limited to) the Fresh Kills landfill in Staten Island.

*Applicability to Pending Lawsuits:* H.R. 6594 would require debris workers or other individuals with pending legal claims relating to 9/11-related injuries, and wishing to seek compensation from the victim compensation fund, to withdraw those legal actions within 90 days after updated regulations regarding the fund application extension are promulgated. The bill would permit individuals whose applications are denied by the Special Master subsequently to reinstitute their legal claims without prejudice within 90 days of the ineligibility determination.

*Limited Liability:* H.R. 6594 limits the liability for construction and related contractors regarding workers’ claims to the sum of the funds available in the WTC Captive Insurance Company, an amount not exceeding \$350 million from New York City, and the amount of all available insurance held by the Port Authority of New York and New Jersey and the relevant contractors and sub-contractors. According to the Republican staff of the Judiciary Committee, this amount would total approximately \$2 billion in funds available to pay legal claims.

*Tax Increases:* H.R. 6594 includes several tax provisions designed to pay for the entitlement created in the bill, including

*Economic Substance Doctrine:* The bill codifies the “economic substance doctrine” used in certain court decisions, which prohibits businesses from making certain free-market business decisions (and from taking the related tax benefits) based solely on tax-lowering motives. The bill would also impose a 20% penalty on understatements attributable to a transaction lacking economic substance (40% in cases where certain facts are not disclosed). In other words, under this provision, companies could be assessed tax penalties for engaging in business transactions aimed primarily at lowering their tax bills beginning on the date of this bill’s enactment.

*Increased Taxes on Domestic Subsidiaries of Multinational Corporations:* H.R. 6594 denies certain U.S. subsidiaries of multinational companies the benefits of tax treaties in certain circumstances. When a U.S. subsidiary of a foreign-owned company makes certain tax-deductible payments (like interest, rents, and royalties) to a related party located in another country, the U.S. imposes a tax on those payments. The default rate is 30%, but this rate can be reduced, sometimes down to 0%, by tax treaties. The U.S. has 58 tax treaties with 66 different countries. This bill would deny the U.S. subsidiary the benefits of the negotiated treaty rate when those tax-deductible payments are made by the subsidiary to a related foreign company, if the ultimate parent of the multinational company is based in a country that does not have a tax treaty with the U.S.

*Corporate Estimated Tax Timing Gimmick.* This provision would increase the estimated tax payments that certain corporations must remit to the federal government. Under current law, corporations with assets of at least \$1 billion must make equally divided estimated tax payments for each quarter. This legislation would increase the payment due for the third quarter of calendar-year 2013 by 5 percentage points. (If each regular quarterly payment is 100% of what

is owed, this additional payment would be 105% of what would otherwise be owed.) The payment due for the fourth quarter of calendar-year 2013 (i.e. the 1<sup>st</sup> quarter of fiscal-year 2014) would be reduced accordingly so that the corporations pay no net increase in estimated payments in calendar-year 2013. This provision is merely a revenue timing shift, a gimmick used to comply with the House's PAYGO rules, yet would have real-world implications, as it forces certain companies to pay more of their tax payments earlier. Given the time value of money, there's little doubt that requiring bigger, earlier payments would harm the bottom lines of qualified corporations.

**Additional Background on 9/11 Compensation Fund:** As noted above, Title IV of Public Law 107-42 authorized payments by the federal government to individuals injured or killed as a result of the September 11 attacks. While the process created under the law, and administered by Special Master Kenneth Feinberg, was praised by many victims' families, Members of Congress, and outside experts as fair and judicious, proponents of H.R. 6594 assert that first responders who worked at the World Trade Center site have incurred respiratory and other injuries as a result of the toxins inhaled at Ground Zero—but that these conditions only became manifest after the application period provided for in P.L. 107-42 expired. Title II of H.R. 6594 would therefore seek to reopen the compensation fund to allow these workers, and other individuals, to make claims for compensation.

However, asked by Judiciary Committee Republican staff to comment on a proposed draft of Title II, former Special Master Feinberg responded with an e-mail noting several concerns with the approach taken by the bill sponsors and the majority. These concerns included:

- An extension of the eligibility definition of “immediate aftermath” from the first four days following September 11 (as prescribed in regulations creating the compensation fund) to August 30, 2002— which could result in “a huge influx of additional claims” and could cause some individuals to re-apply for compensation;
- Language that “vastly extends [the fund’s] geographic scope,” potentially leading to “thousands and thousands of additional claimants” and causing additional individuals to re-apply for compensation;
- An extension of the filing period until 2031—“no latent claims need such an extended date;”
- Provisions requiring the Special Master to determine when an individual first knew or should have known about their injuries—“how can the Special Master possibly make that determination?” and
- Language permitting individuals denied eligibility for compensation to return to the tort system and re-file their claims—a right which was specifically denied as a pre-condition for initial applicants of the 9/11 fund, but which some who were denied compensation by the Special Master may now attempt to exercise.

Republican Committee staff notes that, to the extent the 9/11 compensation fund is re-opened at all, Mr. Feinberg recommends that it be done solely to allow first responders with diseases not manifest at the time of the initial application period to receive compensation—language that would be much narrower in scope than the provisions discussed above. Particularly given that payments made pursuant to the 9/11 compensation fund constitute mandatory spending,

conservatives may agree with the former Special Master that any potential changes considered by Congress should be narrow in scope and designed to ensure that first responders receive reasonable compensation in a manner that uses federal taxpayer dollars prudently.

**Committee Action:** H.R. 6594 was introduced on July 24, 2008 and referred to the Committees on Energy and Commerce, Judiciary, and the Budget, none of which took official action.

**Possible Conservative Concerns:** Several aspects of H.R. 6594 may raise concerns for conservatives, including, but not necessarily limited to, the following:

- **Tax Increase.** In order to pay for the more than \$10 billion cost of this new federal entitlement, H.R. 6594 would codify the economic substance doctrine, under which companies could be assessed tax penalties for engaging in legitimate business transactions aimed primarily at lowering their tax bills. Some conservatives may therefore be concerned that this provision increases taxes on Americans in order to pay for new federal entitlement spending.
- **Creates Multiple New Federal Entitlements.** H.R. 6594 establishes several new federal entitlement programs to provide health benefits, and re-opens the 9/11 compensation fund to additional mandatory spending. Some conservatives may be concerned that, with Congress contemplating a \$700 billion bailout of the financial sector, now is not an appropriate time to be creating new mandatory spending programs.
- **Mandatory Spending Earmarks to New York Hospitals.** The bill establishes “Centers of Excellence” related to treatment of WTC-related conditions, and provides for payment of up to \$900 annually per eligible beneficiary to certain named New York City hospitals and institutions as Clinical Centers of Excellence, “regardless of the volume or cost of services required.” Some conservatives may be concerned first that this language constitutes a **legislative earmark for mandatory spending**, and second that the hospitals named could receive federal payments under this earmark without performing a single service for WTC victims.
- **No Restrictions on Trial Lawyers.** While H.R. 6594 does cap liability for legal claims arising from the September 11 cleanup at the sum of all available insurance funds, the bill does not include language placing restraints on attorney contingency fees or other legal expenses. Some conservatives may be concerned that this absent provision may lead to additional funds flowing to trial lawyers as opposed to 9/11 victims awarded compensation.
- **Overly Broad Eligibility Standards.** H.R. 6594 includes expansive definitions of eligibility for the entitlements under the bill, including individuals who worked or volunteered in the New York City Medical Examiner’s Office for as little as one day, or who were present along “routes of debris removal.” Some conservatives may agree with former Special Master Kenneth Feinberg, who when discussing the expansion of eligibility for the 9/11 compensation fund expressed concern that the bill provisions “will



result in a huge influx of additional claims of individuals...including perhaps thousands and thousands of additional claimants.”

- **Overly Generous Health Benefits.** H.R. 6594 explicitly states that all health care provided shall not include any form of cost-sharing for beneficiaries, and reimburses providers at rates established by the Federal Employee Compensation Act—which according to Administration sources pays providers at much higher rates than Medicare. These provisions, coupled with the additional earmarked *per capita* payments to hospitals discussed above, may cause some conservatives concern that the bill lacks any meaningful cost-containment mechanisms for this new federal entitlement, which could encourage providers and patients alike to spend taxpayer money extravagantly.
- **Process.** This 120-page bill creating a new federal entitlement includes matter under the jurisdiction of at least four congressional committees. Yet, apart from two hearings, no committee has taken action on this legislation. Some conservatives may be concerned that these new federal entitlement programs deserve proper consideration under regular order—not a rushed proceeding as the House prepares to conclude its work for the year.

**Administration Position:** A Statement of Administration Policy (SAP) on H.R. 6594 was not available at press time; however, reports indicate the White House has numerous concerns with the bill.

**Cost to Taxpayers:** A Congressional Budget Office (CBO) score of H.R. 6594 was not available at press time. However, reports indicate the bill will increase mandatory spending by more than \$10 billion over ten years, paid for by tax increases due to the codification of the economic substance doctrine and other provisions explained above.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill would create two new health entitlement programs for 9/11 workers and community members, and expand eligibility for—and re-open applications to—the September 11 compensation fund, further increasing mandatory spending.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** A committee report citing compliance with clause 9 of rule XXI was unavailable.

**Constitutional Authority:** A committee report citing Constitutional authority was unavailable.

**RSC Staff Contact:** Chris Jacobs, [christopher.jacobs@mail.house.gov](mailto:christopher.jacobs@mail.house.gov), (202) 226-8585

---

---