Summary of H.R. 847, the 9/11 Health and Compensation Act in the 111th Congress
Prepared by the Office of Rep. Carolyn B. Maloney
February 24, 2009

The 9/11 Health and Compensation Act would do the following:

Establish the World Trade Center Health Program, within the National Institute for Occupational Safety and Health (NIOSH), to provide medical monitoring and treatment for WTC-related conditions to WTC responders and community members. The program will be administered by the Director of NIOSH or his designee. The bill would also establish the WTC Health Program Scientific/Technical Advisory Committee to review and make recommendations on scientific matters and the World Trade Center Health Program Steering Committees to facilitate the coordination of the medical monitoring and treatment programs for responders and the community.

The WTC Program Administrator is required to develop and implement a program to ensure the quality of medical monitoring and treatment and a program to detect fraud; to submit an annual report to Congress on the operation of the program; and to provide notification to the Congress if program participation has reached 80 percent of the program caps.

Establish a medical monitoring and treatment program for WTC responders and a medical monitoring/screening and treatment program for the community to be delivered through Clinical Centers of Excellence and coordinated by Coordinating Centers of Excellence. The bill identifies the Centers of Excellence with which the program administrator enters into contracts, and provides for additional clinical centers and providers to be added. The specified Clinical Centers of Excellence, which provide monitoring and treatment, are FDNY, all members of the Mt. Sinai coordinated consortium (currently Mt. Sinai, Queens College, Bellevue, SUNY Stony Brook, University of Medicine and Dentistry of New Jersey), the WTC Environmental Health Center at Bellevue Hospital, and other facilities identified by the program administrator in the future. All of these clinical centers participate in the responder program, and the Bellevue Hospital participates in the community program.

In addition to monitoring and treatment, Clinical Centers of Excellence provide the following non-monitoring, non-treatment core services: outreach and education; counseling for monitoring and treatment benefits; counseling to help individuals identify and obtain benefits from workers' compensation, health insurance, disability insurance, or public or private social service agencies; translation services; and collection and reporting of data.

The Coordinating Centers of Excellence collect and analyze uniform data, coordinate outreach, develop the medical monitoring and treatment protocols, and oversee the steering committees for the responder and community health programs. The coordinating centers designated in the bill are FDNY and Mt. Sinai, which help coordinate the responder program, and the WTC Environmental Health Center at Bellevue Hospital which helps to coordinate the community program.

Provide Monitoring and Treatment for WTC Responders in the NY area: If a responder is determined to be eligible for monitoring based on the monitoring eligibility

criteria provided for in the bill, then that responder has a right to medical monitoring that is paid for by the program. Once a responder is in monitoring, the condition that an experienced physician diagnoses must be on the list of Identified WTC-related conditions in the bill. In addition, the physician must find that exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness. The physician's determination must be evaluated and characterized through the use of appropriate questionnaires and clinical protocols approved by the NIOSH Director. Last a federal employee designated by the Program Administrator shall review the determination and provide certification for treatment if appropriate. If the physician diagnoses a condition that is not on the current list of identified conditions and finds that the substantially likely to be related to exposure at Ground Zero, then the program administrator, after review by an independent expert physician panel, can determine if the condition can be treated as a WTC-related condition. Additional conditions can be added to the list of conditions by regulations promulgated by the Program Administrator.

The program pays for the costs for medical treatment for certified WTC-related health conditions at a payment rate based on Federal Employees Compensation Act (FECA) rates (FECA rates are used in all federal compensation systems, like Energy Workers, Black Lung, Longshoremen, and compensation for Members of Congress). Treatment is limited to what which is medically necessary. The administrator reviews the determination of medical necessity and decides if payment will be made.

Workers' Compensation and public or private insurance are primary payors, followed by the government, if there are no worker's compensation benefits or private or public insurance.

The bill sets a cap of 15,000 additional participants in the responder medical monitoring and treatment program, over the number of current participants certified (about 40,000) as eligible by the WTC program administrator, for a total of 55,000 responders.

Payment for non-monitoring, non-treatment core programs will be paid at a rate of $300 per person in monitoring and $600 per person in treatment.

Provide Treatment and Monitoring for eligible community members: The bill establishes a community program to provide initial health screenings, medical treatment, and follow-up monitoring to eligible community members. It sets forth geographic and exposure criteria for defining the potential population who may be eligible for the program (i.e. those who lived, worked or were present in lower Manhattan, South of Houston Street or in Brooklyn within a 1.5 mile radius of the WTC site for certain defined time periods). The criteria and procedures for determinations of eligibility, diagnosing WTC-related health conditions and certification are the same as for those in the responder health program.

For those WTC-related health conditions certified for medical treatment that are not work-related, the WTC program is the secondary payor to any applicable public or private health insurance. For those costs not covered by other insurance, the program pays for the costs for medical treatment for certified WTC-related health conditions at a payment rate based on FECA rates.

The bill sets a cap of 15,000 additional participants in the community program for residents and non-responders, over the number of current participants (about 2,700) certified as eligible by the WTC program administrator, for a total of around 17,700.

Payment for non-monitoring, non-treatment core programs will be paid at a rate of $300 per person for treatment in a hospital-based facility and $600 per person for treatment in a non-hospital based facility.

There is a contingency fund of $20 million per year established to pay the cost of WTC-related health claims that may arise in individuals who fall outside the more limited definition of the population eligible for the community program included in the revised bill.

Provide Monitoring and Treatment for eligible individuals outside of the NY area: The program administrator will establish a nationwide network of providers so that eligible individuals who live outside of the NY area can reasonably access monitoring and treatment benefits near where they live. These eligible individuals are included in the caps on the number of participants in the responder and community programs.

Cost Share for the City of New York:
The City of New York is required to contribute a 10 percent matching cost share, but not more than $500 million over 10 years. Each year the program administrator will certify whether the City has paid their 10% for the year. If it is certified that the City has paid their 10%, then the program will pay the cost of medical care that would have been otherwise be covered by workers' compensation or line of duty for City employees. If the City does not pay their share, then the City is responsible for payments under workers' compensation and line of duty like any other employer and insurer.

Provide for Research into Conditions: In consultation with the Program Steering Committee and under all applicable privacy protections, HHS will conduct or support research about conditions that may be WTC-related, and about diagnosing and treating WTC-related conditions.

Extend support for NYC Department of Health and Mental Hygiene programs: NIOSH would extend and expand support for the World Trade Center Health Registry and provide grants for the mental health needs of individuals who are not otherwise eligible for services under this bill.

Reopen the September 11 Victim Compensation Fund (VCF): The fund would be reopened until December 22, 2031 to provide compensation for economic damages and loss for individuals who did not file before or became ill after the original December 22, 2003 deadline. Because the bill links the VCF to the limitation on liability, this long date allows protection for victims with latent claims while extending limitation on liability period.

Requires the Special Master to update regulations consistent with revisions to VCF under this Act.

Defines the geography of the WTC site to include area under original VCF and debris removal routes. Defines debris removal comprehensively to cover vast majority of

claims. Defines Immediate Aftermath (time of exposure) as being from 9/11/01 until August 30, 2002.

Provide liability protections for the WTC Contractors and the City of New York: Limits liability of defendants for claims previously resolved, currently pending or filed through December 22, 2031. It limits liability to the sum of the amounts of: 1) the WTC Captive Insurance Co.; 2) Insurance identified in the WTC Captive Insurance Co.; 3) the City's liability limit of $350 million; 4) the Port Authority's insurance; and 5) the contractors' insurance. There is no limitation on liability for intentional torts or other acts for which punitive damages are awarded. With respect to settlements or judgments obtained for claims under this section, the section establishes a priority of claims payments from which plaintiffs may satisfy those judgments or settlements. The priority requires exhaustion of the Captive and its insurance, followed by exhaustion of City's $350 million, followed by exhaustion of Port Authority's insurance, followed finally by the contractors' insurance.