



MEMORANDUM

January 6, 2011

To: Honorable Carolyn Maloney
Attention: Elizabeth Darnall

From: Scott Szymendera, Analyst in Disability Policy, x7-0014

Subject: Summary of Titles I and II of P.L. 111-347, the James Zadroga 9/11 Health and Compensation Act of 2010

This memorandum is in response to your request for a summary, in plain language, of Titles I and II of P.L. 111-347, the James Zadroga 9/11 Health and Compensation Act of 2010 (the Act).

If you have any questions about the material in this memorandum or if you would like any additional information, please contact Scott Szymendera at x7-0014 or sszymendera@crs.loc.gov.

Title I – World Trade Center Health Program

Establishment and Administration

The Act establishes the World Trade Center Health Program (WTCHP) within the Department of Health and Human Services (HHS) to provide medical monitoring and treatment benefits to eligible World Trade Center (WTC) responders and residents of lower Manhattan and parts of Brooklyn (referred to as survivors). The WTCHP will begin providing benefits on July 1, 2011 and is funded by the Act through FY 2015, or FY 2016 if available federal funding has not been exhausted. The WTCHP will also support research into WTC-related health issues and data collection on program participants.

The WTCHP will be administered by the Program Administrator. For the purposes of program enrollment and the payment for benefits, the Program Administrator will be an HHS official designated by the Secretary of HHS. For all other purposes, the Program Administrator will be the Director of the National Institute for Occupational Safety and Health (NIOSH) or his designee. The Program Administrator will consult with two steering committees, one for responders and one for survivors, made up of representatives of medical providers and affected populations.

The HHS Inspector General will monitor the WTCHP for fraud or duplicate payments, payments for unnecessary services, and unreasonable administrative costs. The Government Accountability Office (GAO) will prepare several required reports on the implementation, effectiveness, and efficiency of the WTCHP.

Eligibility for Benefits

Responders

The following groups of responders are eligible for the WTCHP:

- Responders who are currently eligible for medical monitoring by either the New York City Fire Department (FDNY) or the consortium coordinated by Mt. Sinai Hospital and funded, in part, by NIOSH (referred to as *currently identified responders*).
- Responders who meet eligibility criteria provided in the Act relating to specific dates and locations of activities in response to the September 11, 2001 terrorist attacks on the WTC, Pentagon, and at Shanksville, Pennsylvania (referred to as *responders who meet current eligibility criteria*). A complete list of eligibility criteria for these responders is provided in **Appendix I** to this memorandum.
- Responders who meet additional eligibility criteria established by the Program Administrator (referred to as *responders who meet modified eligibility criteria*).

There is a limit of 25,000 responders who may enroll in the WTCHP, of which no more than 2,500 may be responders who meet modified eligibility criteria. This limit does not include currently identified responders.

Survivors

The following groups of survivors are eligible for the WTCHP:

- Persons currently eligible for medical treatment and monitoring by the WTC Environmental Health Center (referred to as *currently identified survivors*).
- Persons who claim symptoms of a WTC-related health condition and who meet eligibility criteria relating to specific dates and locations of activities on and after September 11, 2001 (referred to as *survivors who meet current eligibility criteria*). A complete list of eligibility criteria for these responders is provided in **Appendix II** to this memorandum.
- Survivors who meet additional eligibility criteria established by the Program Administrator (referred to as *survivors who meet modified eligibility criteria*).

A *certified-eligible WTC survivor* is an eligible survivor who is certified by the Program Administrator to be eligible for follow-up monitoring and treatment. There is a limit of 25,000 certified-eligible WTC survivors. This limit does not include currently identified survivors. The Program Administrator will also 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.

Others

Persons who are not eligible responders or survivors, but who are diagnosed with a WTC-related health condition at a Clinical Center of Excellence established by the WTCHP are eligible for follow-up monitoring and treatment. The cost of monitoring and treatment of these persons may not exceed \$5 million in FY 2011; \$20 million in FY 2012; and \$20 million, indexed to inflation, in later fiscal years.

Covered Conditions

The Act provides the following list, in **Table 1**, of WTC-related health conditions for responders and survivors that are covered by the WTCHP.

Table 1. List of World Trade Center-Related Health Conditions for Responders and Survivors

Category	Conditions
Aerodigestive disorders	(1) Interstitial lung diseases; (2) Chronic Respiratory Disorder –Fumes/Vapors; (3) Asthma; (4) Reactive Airways Dysfunction Syndrome (RADS); (5) WTC-exacerbated chronic obstructive pulmonary disease (COPD); (6) Chronic Cough Syndrome; (7) Upper airway hyperreactivity; (8) Chronic rhinosinusitis; (9) Chronic nasopharyngitis; (10) Chronic laryngitis; (11) Gastroesophageal Reflux Disorder (GERD); and (12) Sleep apnea exacerbated by or related to the above conditions.
Mental health conditions	(1) Post Traumatic Stress Disorder (PTSD); (2) Major Depressive Disorder; (3) Panic Disorder; (4) Generalized Anxiety Disorder; (5) Anxiety Disorder (not otherwise specified); (6) Depression (not otherwise specified); (7) Acute Stress Disorder; (8) Dysthymic Disorder; (9) Adjustment Disorder; and (10) Substance Abuse

Source: Sections 3312 and 3322 of P.L. 111-347.

In addition, low back pain, carpal tunnel syndrome, or other musculoskeletal disorders are included only for WTC responders who received treatment for these conditions on or before September 11, 2003.

The Act provides a process for the Program Administrator to add to the list of covered conditions. The Program Administrator is required to periodically determine if cancer or a type of cancer should be added to the list of covered conditions, with the first such determination required within 180 days of the enactment of the Act.

Medical Benefits

Eligible responders are entitled to all medically-necessary treatment related to their covered conditions. Eligible survivors are entitled to an initial health evaluation to determine eligibility for follow-up monitoring and treatment and certified-eligible WTC survivors are eligible for medically necessary follow-up and treatment of covered conditions.

Medical services for responders in the New York metropolitan area and all survivors will be provided by Clinical Centers of Excellence selected by the Program Administrator. Responders outside of the New York metropolitan area may receive medical services from a national network of providers selected by the Program Administrator.

The WTCHP will, with two exceptions, act as a secondary payor to all private and public insurance programs. In the case of a program participant with Medicare, the WTCHP will be the primary payor. In the case of a work-related condition, the WTCHP will serve as the only payor if the program participant is covered by a workers' compensation plan administered by the New York City government.

Program Financing

The Act establishes the World Trade Health Program Fund (the Fund), financed by the federal government and New York City, to pay for the WTCHP. The Act specifies limits on program spending for certain activities such as providing health benefits to the families of FDNY personnel, outreach, research, and data collection.

Federal Share

The federal government will deposit into the Fund for each specified fiscal year an amount equal to the lesser of 90% of the costs of carrying out the WTCHP or the following amounts:

- Last calendar quarter of FY2011: \$71 million;
- FY 2012: \$318 million;
- FY 2013: \$354 million;
- FY 2014: \$382 million;
- FY 2015: \$431 million; and
- FY2016: an amount equal to any unexpended amounts in the previous fiscal years, provided that the total amount for FY2011 through FY2016 does not exceed \$1.556 billion.

New York City Share

New York City will deposit into the Fund for each fiscal year through FY2015 an amount equal to 10% of the costs of carrying out the WTCHP. If the program continues into FY2016, New York City's share for that fiscal year will be 1/9 of the federal expenditures for that fiscal year.

Title II - September 11th Victim Compensation Fund of 2001

Reopening of the September 11th Victims Compensation Fund of 2001

The Act reopens the September 11th Victims Compensation Fund of 2001 (VCF) which was previously closed to new applications on December 22, 2003. The Special Master of the VCF must update the VCF regulations within 180 days of the enactment of the Act.

The deadline for filing new VCF claims, with the exception of claims filed in the extended filing period, is two years after updated regulations are published. After this two-year period, claims may be filed under the extended filing period for an additional three years, provided the claimant received medical treatment for his or her injury and files within two years of the date updated regulations are published or within two-years of when he or she knew, or should have known, that the injury was related to the September 11, 2001, terrorist attacks.

Eligibility for the VCF

The Act expands eligibility for the VCF to include persons who suffered physical harm during debris removal and related activities at the WTC, Pentagon, and Shanksville, Pennsylvania after the September 11, 2001, terrorist attacks.

No person may be eligible for the VCF if he or she is a party to a civil action, unless he or she withdraws from such action within 90 days of the date the VCF regulations are updated.

Offset of Additional Collateral Source Payments

The Act expands the type of collateral source payments which offset the amount of VCF benefits to include any payments related to debris removal at a September 11, 2001 crash site and any money received through a settlement of any civil case filed after December 20, 2003. Persons who settled any civil case filed on or before December 20, 2003 may not receive a VCF payment. This provision offsets any VCF payment by the amount received from the settlement of the civil suit against the World Trade Center Captive Insurance Company.

Limitation on Funding

The Act limits the total amount of new VCF payments to \$2.775 billion, of which \$875 million may be spent in the first five years. The remainder would be used for payments in the sixth and final year of the VCF.

Limitations on Liability

The Act 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. The applicable liability limits may not exceed the sum of:

- 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;
- As it relates to the City of New York, the amount that is the greater of the City of New York's insurance coverage or \$350 million, not including any of the amounts related to the WTC Captive Insurance Company;
- As it relates to any entity, including the Port Authority of New York and New Jersey, with any property interest in the WTC on September 11, 2001, the amount of all available liability insurance coverage maintained by any such entity; and,
- As it relates to any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such entities on September 11, 2001.

Claim payments are to be made, until the funds of each payor 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 amount that is the greater of the City of New York's insurance coverage or \$350 million;
- From funds available through liability insurance coverage maintained by entities, including the Port Authority of New York and New Jersey, 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.

Limitation on Attorneys Fees

The Act limits the fees that may be paid to an attorney in connection with the filing of a VCF claim to 10% of the VCF award. The Special Master may further limit attorneys fees if he or she feels that 10% constitutes excessive compensation for services rendered on a claim.

Appendix I

Eligibility Requirements for Responders Who Meet Current Eligibility Criteria

For FDNY and related persons:

- was a member, active or retired, of the FDNY who participated for at least one day in the rescue or recovery effort at Ground Zero, the Staten Island Landfill, or the New York City 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 debris cleanup or related support services in lower Manhattan below Canal Street, the Staten Island Landfill, 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, debris cleanup, or related services in lower Manhattan below Canal Street, the Staten Island Landfill, 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, debris cleanup, or related services at Ground Zero, the Staten Island Landfill, 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 cleanup, or related services in lower Manhattan below 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, debris cleanup, or related services in lower Manhattan below Canal Street 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 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;
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- 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.

For responders to the Pentagon and Shanksville, Pennsylvania aircraft crash sites:

- was an active member of a fire or police department, or performed rescue, recovery, demolition, debris cleanup, or other related services at the terrorist-related aircraft crash site at the Pentagon or in Shanksville, Pennsylvania beginning on September 11, 2001 and ending on a date established by the Administrator; and is determined by the Administrator to be at an increased risk of developing a WTC-related condition as a result of exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks, and meets such eligibility criteria related to such exposures, as the Administrator determines are appropriate, after consultation with the WTC Scientific/Technical Advisory Committee.

Appendix II

Eligibility Requirements for Survivors Who Meet Current Eligibility Criteria

- was present in the New York city disaster area, defined as Lower Manhattan south of Houston Street and any block in Brooklyn within a 1.5 mile radius of the WTC site, in the dust or dust cloud on September 11, 2001;
 - worked; resided; or attended school, child care, or adult day care in the New York city 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 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;
 - 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 New York city 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 New York city 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.
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