

MEMORANDUM

August 25, 2010

To: The Honorable Carolyn Maloney
Attention: Benjamin Chevat

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Subject: **The New York State Disaster Relief Medicaid Program Established After the Terrorist Attacks of September 11, 2001**

This memorandum responds to your request for information about the New York State Disaster Relief Medicaid (DRM) program established after the terrorist attacks of September 11, 2001, and how it differs from the World Trade Center Medical Monitoring and Treatment Program (MMTP) administered by the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH). As you requested, this memorandum also provides an update of the status of the DRM program, including the resolution of New York State's appeal to the Federal Emergency Management Agency (FEMA) for reimbursement of the state's share of Medicaid costs, as described in CRS Report RL33083, *Hurricane Katrina: Medicaid Issues*, by Evelyne P. Baumrucker et al. (p. 17).

This memorandum first describes the Medicaid and State Children's Health Insurance (CHIP) program waivers approved for New York State following the 2001 attacks (i.e., the DRM program). Next, it discusses New York State's request for full federal funding of DRM program costs (which required a state contribution of matching funds), and FEMA's denial of this request. Next, it briefly describes the MMTP, with which you are familiar. Finally, it compares selected aspects of the MMTP and the DRM program in text and in **Table 1**.

For background information about the Medicaid and CHIP programs, and the authorities and processes by which certain requirements of the programs may be waived, please see the following CRS Reports:

- CRS Report RL33202, *Medicaid: A Primer*, by Elicia J. Herz;
- CRS Report R40444, *State Children's Health Insurance Program (CHIP): A Brief Overview*, by Elicia J. Herz, Chris L. Peterson, and Evelyne P. Baumrucker; and
- CRS Report RS21054, *Medicaid and SCHIP Section 1115 Research and Demonstration Waivers*, by Evelyne P. Baumrucker.

For background information about the MMTP, please see the following CRS Reports:

- CRS Report R41292, *Comparison of the Current World Trade Center Medical Monitoring and Treatment Program and the World Trade Center Health Program Proposed by Title I of H.R. 847*, by Scott Szymendera and Sarah A. Lister; and
- CRS Report RL33927, *Selected Federal Compensation Programs for Physical Injury or Death*, coordinated by Sarah A. Lister and C. Stephen Redhead.

Please contact us with any questions.

The New York State Medicaid and CHIP Waiver (Disaster Relief Medicaid)

The September 11 attacks hampered the state Medicaid agency's ability to process eligibility records in the New York City area. Federal and state officials have looked to New York's Disaster Relief Medicaid (DRM) program as precedent for the Secretary of HHS to use the authority under Section 1115 of the Social Security Act to respond to emergency situations.¹ Details on eligibility criteria, benefit packages, provider agreements, financing arrangements, and other issues outlined in the terms and conditions of New York's temporary waiver program provide an example of how this state used the flexibility under Section 1115 to address specific health care needs in the wake of an emergency situation.²

Following the terrorist attacks on September 11, 2001, New York requested and received CMS approval for two waivers—one granted under Medicaid authority and the second granted under State Children's Health Insurance, or CHIP, program authority—collectively known as "Disaster Relief Medicaid" (DRM).³ The Medicaid waiver allowed most Medicaid applicants who were residents of New York City to receive four months of coverage if they met the eligibility requirements of the Medicaid or Family Health Plus (FHP) program, and they applied for DRM between September 11, 2001, and January 31, 2002. The FHP program was a separate waiver that had been approved, and scheduled for implementation in October 2001. FHP significantly expanded Medicaid eligibility to certain groups; for example, the income standard for childless adults went from about 50% to 100% of the federal poverty level. Medicaid applicants who did not receive coverage under the DRM program included those who were pregnant, had a disability, or required institutional services (e.g., nursing facility). These individuals were processed through the traditional Medicaid application process.⁴

The DRM program also extended eligibility for individuals eligible for Medicaid prior to September 11, 2001, who were residing in New York City and Westchester County and were scheduled to have their eligibility annual re-certification normally required by Medicaid law. These individuals were permitted to receive coverage for one year if their re-certification would have occurred during the period from September 11, 2001 through September 30, 2001 (for New York City beneficiaries) and from September

¹ Medicaid and CHIP are administered by the Centers for Medicare and Medicaid Services (CMS). Medicaid and CHIP program requirements may be waived pursuant to Section 1115 of the Social Security Act. Such waivers are often referred to as "Section 1115 waivers." See CRS Report RS21054, *Medicaid and SCHIP Section 1115 Research and Demonstration Waivers*, by Evelyne P. Baumrucker.

² K. Haslanger, "Radical Simplification: Disaster Relief Medicaid in New York City," *Health Affairs*, pp 252-258, Jan./Feb. 2003.

³ Centers for Medicare and Medicaid Services (CMS), waiver approval letter to Dr. Antonia Novello, New York State Department of Health, September 16, 2002, and letter of clarification, also to Dr. Novello, December 31, 2002 (hereafter cited as "Waiver approval letters").

⁴ Personal communication with Betty Rice, Director, Division of Community and Local District Relations, New York Department of Health, September 2005. (Hereafter cited as "Personal communication, B. Rice.")

11, 2001 through January 31, 2002 (for Westchester County beneficiaries).⁵ For such individuals, Medicaid eligibility expired the earlier of the determination of a DRM enrollee's Medicaid eligibility or September 30, 2002.

The waiver also included temporary eligibility for children under CHIP if they had applied or were enrolled with health plans that had operations in New York City that were disrupted by the World Trade Center (WTC) attacks. New CHIP applicants for child health coverage between October 1, 2001 and February 28, 2002 received four months of CHIP eligibility, and individuals who were already in a period of presumptive eligibility⁶ that was scheduled to end September 30, 2001, received an additional two months of eligibility. Similar to the Medicaid waiver provisions above, CHIP enrollees in New York City who were scheduled to have an annual re-certification between September 30, 2001 and January 31, 2002 were allowed to continue with CHIP coverage for one year.

The Secretary of HHS announced tentative approval of the DRM program in a September 19, 2001 press release.⁷ On September 16, 2002, CMS articulated the agreement with New York in an award letter and terms and conditions. CMS awarded final approval for the DRM waiver on December 31, 2002.⁸

The streamlined eligibility process established by the DRM program was intended to facilitate enrollment of new applicants into Medicaid and CHIP. Applicants were required to fill out a one-page application for the program, prove who they were, and attest to their income and resources. Individuals did not have to be direct victims of the WTC attacks to receive services. Services provided under the DRM Medicaid program included all fee-for-service benefits provided to non-institutionalized Medicaid beneficiaries.⁹ CHIP enrollees were eligible for child health services under the CHIP component of the waiver. In addition to the four months of coverage, the DRM waiver also allowed individuals several additional months of eligibility to provide sufficient time for an individual to complete a standard Medicaid or CHIP application form.¹⁰

The DRM program ended on January 31, 2003. An estimated 342,000 beneficiaries enrolled in the program over the duration of the waiver, and *federal* funding for the program was estimated at \$331 million over the waiver period.¹¹ Generally, New York receives federal reimbursement for 50% of its total Medicaid service expenditures. New York requested that FEMA cover the state share of Medicaid expenditures for the DRM program through FEMA's Disaster Relief Fund. FEMA denied that request, however, as discussed below.

⁵ Waiver approval letters.

⁶ Presumptive eligibility permits states to enroll individuals for a limited period of time, before completed Medicaid applications are filed and processed, based on a preliminary determination by Medicaid providers of likely Medicaid eligibility.

⁷ U.S. Department of Health and Human Services, "Department Offers Expedited Health Care Coverage for Low-Income New Yorkers," press release, September 19, 2001, <http://www.hhs.gov/news/>.

⁸ Waiver approval letters. CMS did not apply its usual Medicaid cost neutrality requirements to this waiver because of the unusual circumstances of September 11, 2001. However, the CHIP allotment neutrality requirements were applied to the CHIP waiver. For information about these neutrality requirements, see CRS Report RS21054, *Medicaid and SCHIP Section 1115 Research and Demonstration Waivers*, by Evelyne P. Baumrucker.

⁹ Under fee-for-service (FFS), beneficiaries can seek services from any Medicaid participating provider. The State (directly, or through a fiscal intermediary) pays each participating provider for each covered service received by a Medicaid beneficiary. That is, each individual service (or group of interrelated services) is paid a specified amount or rate set by the State.

¹⁰ Waiver approval letters.

¹¹ Personal communication with Paul Boben of CMS' Family and Children's Health Program Group on July 14, 2010 indicates that expenditure estimates associated with the Medicaid component of New York's Disaster Relief Waiver totaled \$658,548,474 with the federal share totaling \$331,484,250. The state did not submit claims under the CHIP component of the waiver.

New York's Request for Federal Reimbursement of the State Share of DRM Costs

Pursuant to a presidential declaration of emergency or major disaster, FEMA administers a program of financial assistance to states and others, drawn from a Disaster Relief Fund, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act).¹² Typically, state and local recipients of assistance under the Act must pay a portion of the costs of approved response activities, although the President is authorized to reduce or waive these cost-sharing requirements. Following the terrorist attacks of September 11, 2001, President George W. Bush declared a major disaster in affected areas, and waived New York State's cost-sharing requirements for any response activities funded under the Stafford Act's authority to render public assistance.¹³

In 2002 and 2003, the New York State Department of Health (DOH) and the New York State Emergency Management Office submitted several requests and appeals to FEMA asking that it reimburse the state's share of costs under the DRM program. FEMA denied the request, citing Stafford Act regulations at 44 CFR § 13.24(b)(1), which provide that a cost sharing or matching requirement for one federal grant may not be met by costs borne by another federal grant.¹⁴ The state had argued that the administrative simplification plan implemented through the DRM waiver was the most expedient way to assure continuity of health services for Medicaid beneficiaries, in the face of substantial disruption to, and loss of, health care and administrative infrastructure and beneficiary documentation. The state argued, unsuccessfully, that had it chosen a different approach, one that did not use another federal/state matching program but that was also not as timely for beneficiaries, the state would have been eligible for full federal reimbursement under the Stafford Act.

FEMA did not address a different matter regarding how much, if any, of the state's share under the DRM program would have been reimbursable even absent the prohibition at 44 CFR § 13.24(b)(1). The bulk of these costs would presumably have involved health care services not directly related to the September 11 disaster. FEMA does not typically provide reimbursement for health care services except those of an emergency nature rendered as a direct result of a declared emergency or major disaster.¹⁵

The World Trade Center Medical Monitoring and Treatment Program (MMTP)

In the wake of the September 11, 2001, terrorist attack on New York City, Congress provided appropriations to provide limited health screening, monitoring, and treatment services to persons involved in rescue, recovery, and cleanup operations around the former site of the World Trade Center. This program, now known as the World Trade Center (WTC) Medical Monitoring and Treatment Program

¹² CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

¹³ Federal Emergency Management Agency, "New York; Amendment No. 1 to Notice of a Major Disaster Declaration," 66 *Federal Register* 49674, September 28, 2001.

¹⁴ 44 CFR § 13.24(b)(1). The final determination is provided in the second appeal letter FEMA-1391-DR-NY from FEMA to the New York State Governor's office, May 8, 2003, http://www.fema.gov/appeals/letter.jsp?Appeal_ID=992.

¹⁵ FEMA, Disaster Assistance Policy (DAP) 9525.4, "Emergency Medical Care and Medical Evacuations," July 16, 2008, <http://www.fema.gov/pdf/government/grant/pa/policy.pdf>, which says, "Sections 403 and 502 of the Stafford Act authorize Federal agencies to provide assistance, including emergency medical care, essential to meeting immediate threats to life and property resulting from a major disaster or emergency, respectively."

(MMTP), is not authorized in statute but rather relies on discretionary appropriations, used to provide grants to designated clinics that provide services to eligible individuals.¹⁶ The MMTP is administered by the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH).

Through appropriations, Congress has expanded eligibility several times since the MMTP began, most notably to include residents and other non-responders. In addition, Congress has expanded the suite of covered services. Initially, the program provided baseline screenings, then expanded benefits to include regular medical monitoring. Finally, coverage for treatment was first established with FY2006 funds. At this time, for the diagnosis and treatment of specified conditions related to the disaster in eligible responders, the program covers all costs, without cost-sharing, including inpatient and outpatient medical procedures and prescribed medications. The non-responder (“community”) program is more recent—established for the first time with FY2008 funds—and its treatment benefits are more limited. At this time, the non-responder program provides health screenings and assessments, health monitoring and tracking, and referral to treatment services. MMTP funds may be used to help cover gaps when individuals’ public or private insurance is insufficient to fully cover the costs associated with care or treatment. The MMTP does not cover the costs of care for health conditions unrelated to the WTC attacks.

The MMTP does not recoup costs from other potential payers, such as health insurers or workers’ compensation programs. Since its inception in FY2002, the program has received approximately \$475 million in federal funds. As of March 2010, over 57,000 responders and community members have met initial eligibility requirements for the program.¹⁷

Relationship Between the NYS DRM Program and the World Trade Center Medical Monitoring and Treatment Program

The New York State DRM waiver program and the MMTP are independent programs with fundamentally different designs. Some key distinctions between the programs are discussed below, and summarized in **Table 1**. In general, Medicaid and CHIP provide federal matching funds to states and territories to provide health insurance to individuals that meet specified eligibility requirements. By contrast, the MMTP provided health screening services to certain specified individuals. It is worth noting that during the time that the DRM program was in effect, the MMTP was in its initial implementation phase. MMTP eligibility and benefits have been expanded since then. However, when the DRM program was in effect, the MMTP funded services only for WTC responders and certain other workers. It did not provide services for non-workers. Also, MMTP benefits were limited initially to health screening services. These were expanded to monitoring services in 2003, but treatment services were not provided for any eligible group during the time that the DRM program was in effect.

The programs use different financing mechanisms. The Medicaid program, which was modified under the DRM waiver, is a mandatory individual entitlement program, which reimburses Medicaid providers for services furnished to eligible individuals. CHIP, also modified under the DRM waiver, does not establish an individual entitlement to benefits. Instead, it entitles states with approved state CHIP plans to pre-

¹⁶ The MMTP is further described in CRS Report R41292, *Comparison of the Current World Trade Center Medical Monitoring and Treatment Program and the World Trade Center Health Program Proposed by Title I of H.R. 847*, by Scott Szymendera and Sarah A. Lister; and CRS Report RL33927, *Selected Federal Compensation Programs for Physical Injury or Death*, coordinated by Sarah A. Lister and C. Stephen Redhead.

¹⁷ CDC, NIOSH, Number of Participants in the WTC Health Programs, <http://www.cdc.gov/niosh/topics/wtc/participants.html>.

determined federal allotments based on a distribution formula set in the law. In contrast, the MMTP is a grant program, funded through discretionary appropriations, in which grants are provided to specific clinics that furnish care to eligible individuals.

Eligibility for the Medicaid program is based on categorical (i.e., an individual must be a member of a covered group such as children, pregnant women, families with dependent children, the elderly, or the disabled), and financial eligibility requirements. CHIP provides health care coverage to certain low-income, uninsured children in families with income able Medicaid income standards. Except in limited circumstances, eligibility for these programs is generally not based on an exposure, disease, or other health condition. In contrast, eligibility for the MMTP is based on exposure to the WTC site, either as a responder or clean-up worker, or as a resident or student near the site. (As noted above, only workers were eligible while the DRM program was in effect.)

The types of covered health services differed significantly between the programs. Initially, when the DRM program was in effect, the MMTP offered only screening and monitoring services, not treatment. For individuals eligible under the DRM program, necessary treatment services would generally have been covered under the Medicaid and CHIP state plan services. Also, Medicaid and CHIP services are, in general, oriented toward the type of service (e.g., inpatient hospital care, occupational therapy, pharmaceuticals) and are generally not limited by a recipient's health condition. In contrast, services provided under the MMTP are generally limited to the screening, monitoring, and treatment of conditions determined to be related to exposures at the WTC site.¹⁸

It is possible that some individuals who received Medicaid services under the DRM program also received services under the nascent MMTP, although there is no data source through which this could be confirmed. Neither program precluded eligibility for the other. However, it is likely that most MMTP participants were not participants in the DRM program, and vice versa. Supporting this presumption, in 2007 CDC reported to CRS that based on a survey of MMTP responder participants at the time, only a small proportion (1.3%) reported also having Medicaid coverage.¹⁹ Also, as noted earlier, an estimated 342,000 beneficiaries enrolled in the DRM program over the duration of the waiver, while the current (and highest) enrollment for the MMTP is 57,000 (which includes both WTC responders and non-responders). Hence, most individuals covered under the DRM program would not appear to have also been covered under the MMTP.

¹⁸ For a list of aerodigestive, musculoskeletal, and mental health conditions covered under the MMTP, see Table 2 in CRS Report R41292, *Comparison of the Current World Trade Center Medical Monitoring and Treatment Program and the World Trade Center Health Program Proposed by Title I of H.R. 847*, by Scott Szymendera and Sarah A. Lister.

¹⁹ CDC Washington Office, November 26, 2007, based on health insurance status of program participants from July 1, 2007, through September 30, 2007.

Table I. Comparison of the World Trade Center Medical Monitoring and Treatment Program (MMTP) and the New York State Disaster Relief Medicaid (DRM) Waiver

(Reflects design of the MMTP while the DRM waiver was in effect)

Feature	MMTP ^a	New York State Disaster Relief Section 1115 Waiver	
		Medicaid Component	CHIP Component
Financing	For FY2002, \$12 million in supplemental appropriations to the CDC for a baseline medical screening program for WTC responders. ^c For FY2003, \$90 million to continue baseline screenings and to provide long-term medical monitoring of program participants. ^d	The federal share of expenditures under the Medicaid component of the waiver totaled \$331 million over the life of the waiver.	The state did not submit claims under the CHIP component of the waiver.
Individual eligibility	Limited to responders at the World Trade Center (WTC) site and associated sites such as the Staten Island landfill, regardless of residence. The program was not authorized to serve non-responders at the time. No means testing.	(1) Low income non-disabled residents of New York City or Westchester County, NY not enrolled in Medicaid prior to September 11, 2001. Such individuals did not need to be directly affected by the September 11 attacks. (2) Medicaid beneficiaries enrolled in Medicaid prior to September 11, 2001 who were residing in New York City and scheduled for redetermination during the period between September 11, 2001 and September 30, 2002, or who were residing in Westchester County and were scheduled for redetermination during the period between September 11, 2001 and January 31, 2002.	(1) Targeted low-income children who submitted a CHIP application to a New York City Health Plan between October 1, 2001 and February 28, 2002. (2) Targeted low-income children enrolled in CHIP prior to September 11, 2001 who were residing in New York City and Westchester County and were scheduled to have their CHIP eligibility annual re-certification normally required by CHIP law.
Covered services	Screening and monitoring services for certain health conditions thought related to the WTC response, e.g., respiratory, gastrointestinal, musculoskeletal, and mental health conditions. The program was not authorized to provide treatment services at the time.	Time-limited access to Medicaid state plan services. ^b	Time-limited access to CHIP state plan services.

		New York State Disaster Relief Section 1115 Waiver	
Reimbursement	Funding was provided from CDC to a selected group of occupational medicine and other clinics in the New York City area that provided screening and monitoring services. ^e	In general, states follow program rules to receive federal reimbursement that offsets about half of their Medicaid costs, and states establish their own rates under broad federal rules to pay Medicaid providers for services.	For CHIP the federal share is higher than it is for Medicaid (i.e., New York receives a 65% matching rate as compared to 50% under Medicaid). Like Medicaid, states establish their own payment rates under broad federal rules to pay CHIP providers for services,

Source: Congressional Research Service, based on sources referenced below or elsewhere in this memorandum.

- a. Funds for the MMTP first became available in July 2002. U.S. Government Accountability Office, *September 11: Monitoring of World Trade Center Health Effects Has Progressed, but Not for Federal Responders*, GAO-05-1020T, September 10, 2005, p. 9, <http://www.gao.gov/new.items/d051020t.pdf>.
- b. As of September 2003, it was reported that the New York State Medicaid program covered, for all beneficiaries, psychologist services, mental health rehabilitation/stabilization, and physical therapy, among other services, and did not cover respiratory care for those who were ventilator dependent. Some covered services were subject to limitations. CMS, "Medicaid at a Glance 2003," pp. 7-11, [https://www.cms.gov/MedicaidEligibility/downloads/Medicaid At A Glance 2003.pdf](https://www.cms.gov/MedicaidEligibility/downloads/Medicaid%20At%20A%20Glance%202003.pdf).
- c. P.L. 107-117, 115 Stat. 2313. The amount was to be obligated from funds already appropriated in P.L. 107-38, the original \$40 billion appropriation to support the nation's response to the September 11, 2001, terrorist attacks.
- d. P.L. 108-7, 117 Stat. 517. At least \$25 million of this amount was to be used to provide screening and monitoring services to current and retired firefighters.
- e. CDC has not published information explaining how services were reimbursed.