

## **Summary of H.R. 847, The 9/11 Health and Compensation Act**

Thousands of first responders and others exposed to the toxins of Ground Zero are now sick and in need of treatment and compensation. H.R. 847 would build on the current WTC health programs to provide long-term, comprehensive health care and compensation for those in need. In order to bring the bill to the floor, the bill as amended would cost \$7.4 billion, which will be completely offset by closing a tax loophole on foreign companies, which will raise \$7.4 billion over 10 years. Specifically, the bill would do the following:

### **Title I - Health**

**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 survivors. 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 survivors.

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.

As amended the bill would limit the 10-year health program to \$3.5 billion, an amount that CBO estimates would sufficiently fund the program for 8 years.

**Establish a medical monitoring and treatment program for WTC responders and a medical monitoring/screening and treatment program for the survivors** to be delivered through Clinical Centers of Excellence and coordinated by Coordinating Centers of Excellence. The bill identifies criteria for designating the Centers of Excellence with which the program administrator enters into contracts, and provides for additional clinical centers and providers to be added.

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 survivor health programs.

**WTC Responders Medical Monitoring and Treatment Program:** 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 patient can receive treatment only if 1) their condition is on the list of Identified WTC-related conditions in the bill and 2) the physician determines 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. If the physician diagnoses a condition that is not on the current list of identified conditions, but finds that it is 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 in that individual. 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.

As of March 31, there were nearly 53,000 people enrolled in the current Responder Program. The bill sets a cap of 25,000 additional participants in the program, for a total cap of approximately 80,000 responders.

**WTC Survivor Program:** The bill establishes a survivor program to provide initial health screenings, medical treatment, and follow-up monitoring to eligible survivors. 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 process 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.

As of March 31, 2010, there were more than 4,000 individuals enrolled in the Survivor program. The bill sets a cap of 15,000 additional survivors, for a total cap of around 19,000.

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 survivor program included in the revised bill.

**WTC National Responder Program:** 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 survivor programs. There are more than 4,000 responders enrolled in the current National Responder Program, as of March 31, 2010.

**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.

**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.

## **Title II - Compensation**

**Reopen the September 11 Victim Compensation Fund (VCF):**

The bill reopens the VCF until 2031, allowing individuals who did not previously file a claim, or who became ill after the original deadline, to be compensated for economic damages and losses stemming from their injuries. The purpose behind reopening the fund for over 20 years is to protect to the greatest extent possible those persons who were exposed during the rescue and recovery operations, but whose resulting injuries are latent and will manifest over the next two decades. As amended, the bill would cap the reopened VCF at \$8.4 billion; \$4.2 billion in the first 10 years and another \$4.2 billion in the remaining years. It would also limit attorney fees to 10% in most cases.

**Provide liability protections for the WTC Contractors and the City of New York:**

The bill provides protection from liability to the WTC Contractors that participated in recovery efforts and debris removal. The bill provides that their liability is limited to the amount of funds held by the World Trade Center Captive Insurance Company, the amount of available insurance coverage identified by the Captive Insurance Company, and the amount of insurance coverage held by certain other entities. The bill also provides that the liability of the City of New York is limited to the City's insurance coverage or \$350,000,000, whichever is greater.

The bill establishes a priority of funds from which plaintiffs may satisfy judgments or settlements obtained in civil claims or actions related to recovery and cleanup efforts. The priority requires exhaustion of amounts held by the Captive Insurance Company and identified insurance policies, followed by exhaustion of the amount for which the City of New York is liable, followed by exhaustion of the available insurance coverage maintained by the Port Authority and other entities with a property interest in the World Trade Center on September 11, 2001, followed by exhaustion of the available insurance coverage maintained by individual contractors and subcontractors.

**Offset for Proposed Settlement:**

There is currently a proposed settlement to resolve more than 11,000 lawsuits by responders and clean-up workers for illnesses and injuries from exposure to toxins at the World Trade Center site. In order to prevent the uncertainty of legislation from impacting the pending potential settlement, the amended bill will allow individuals who settled with the Captive Insurance fund and the other defendants to then go to the reopened VCF. Any future VCF award would be reduced or offset by the amount of the settlement award.

The provision would also limit the possible compensation for attorneys' fees to 10% of the total compensation paid out from both sources. Under the pending potential settlement, lawyers' fees are capped at 25%. Under a reopened VCF as reported by the Judiciary Committee, lawyers' fees will be capped at 10%. The amended provision that would allow those who received a settlement to file a claim from the VCF would also cap lawyers' fees at 10% of total compensation (settlement award +VCF).

**Title III – Pay-for**

**Foreign company withholding tax provision**

In order to raise \$7.4 billion over 10 years, the bill would prevent foreign multinational corporations incorporated in tax haven countries from avoiding tax on income earned in the U.S.

Known as "treaty shopping," this occurs where a parent firm headquartered abroad routes its U.S.-source income through structures in which a U.S. subsidiary of the foreign multinational corporation makes a deductible payment to a country that is signatory to a tax-reducing treaty with the U.S. before ultimately sending these earnings to the tax haven country where the parent firm is located.

It does not violate U.S. tax treaties because the provision's restrictions would not apply where a tax-reducing treaty exists with a parent company's home country.

*Prepared by the Office of Rep. Carolyn B. Maloney  
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