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H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2010

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Summary

In responding to the terrorist attacks of September 11, 2001, thousands of first responders and other Americans were exposed to toxins and are now in need of treatment and compensation. **H.R. 847** builds upon the current World Trade Center (WTC) Medical Monitoring and Treatment Program (MMTP) to provide full medical screening, treatment benefits, and compensation to eligible WTC responders and community members.

The Senate is expected to vote on the motion to invoke cloture on the motion to proceed to **H.R. 847** during the week of December 6, 2010.

Major Provisions

Title I – World Trade Center Health Program

Establishment of World Trade Center Health Program. **H.R. 847** would authorize the World Trade Center Health Program (WTCHP), 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. This program currently exists but is funded every year through discretionary spending. Since its inception in Fiscal Year 2002, the program has received approximately \$475 million in federal funds, and over 57,000 responders and community members have met initial eligibility requirements for the program. The program will be administered by the Director of NIOSH or his designee. **H.R. 847** would also establish the WTCHP Scientific/Technical Advisory Committee to review and make recommendations on scientific matters and the WTCHP Steering Committees to facilitate the coordination of the medical monitoring and treatment programs for responders and the survivors.

The WTCHP Administrator would be 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. **H.R. 847** would limit funding for the 10-year health program to \$3.348 billion, an amount that CBO estimates would sufficiently fund the program for eight years. The City of New York would be required to contribute a 10 percent matching cost share, limited to \$500 million over 10 years. In addition to persons already receiving services, the program would serve up to 25,000 new responders and 25,000 new community members. Medical benefits would be limited to the 22 respiratory, gastrointestinal, or mental health diseases that have been medically certified to be associated with breathing the toxins and other hazards at Ground Zero.

Program of monitoring, initial health evaluations, and treatment. **H.R. 847** would establish a medical monitoring and treatment program for WTC responders and a medical monitoring/screening and treatment program for WTC survivors, to be delivered through Clinical Centers of Excellence and coordinated by Coordinating Centers of Excellence. **H.R. 847** identifies criteria for designating the Centers of Excellence with which the program administrator would enter into contracts, and provides for the addition of clinical centers and providers.

In addition to monitoring and treatment, Clinical Centers of Excellence would 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 would 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 responder program. If a responder is determined to be eligible for monitoring, then that responder has a right to medical monitoring paid for by the program. Once a responder is in monitoring, the patient may 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, may determine if the condition can be treated as a WTC-related condition in that individual. Additional conditions may be added to the list of conditions through regulations promulgated by the Program Administrator.

The program would pay for the costs of medical treatment for certified WTC-related health conditions at a payment rate based on Federal Employees Compensation Act (FECA) rates. 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 public or private insurance.

As of March 31, 2010, 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. H.R. 847 would establish a survivor program to provide initial health screenings, medical treatment, and follow-up monitoring to eligible survivors. **H.R. 847** would set 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 would be the secondary payor to any applicable public or private health insurance. For those costs not covered by other insurance, the program would pay for the costs of 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 would establish a cap of 15,000 additional survivors, for a total cap of around 19,000.

H.R. 847 would establish a contingency fund of \$20 million 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 **H.R. 847**.

WTC national responder program. Under **H.R. 847**, the program administrator would establish a nationwide network of providers so that eligible individuals who live outside of the New York area may 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.

Research into conditions. **H.R. 847** would require the Department of Health and Human Services (HHS), in consultation with the WTCHP Steering Committee and under all applicable privacy protections, to conduct or support research about conditions that may be WTC-related, and about diagnosing and treating WTC-related conditions.

World Trade Center Health Registry. Under **H.R. 847**, 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 – September 11th Victim Compensation Fund of 2001

Extended and expanded eligibility for compensation. **H.R. 847** would reopen the September 11 Victim Compensation Fund (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. **H.R. 847** 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 percent in most cases.

Limited liability for certain claims. **H.R. 847** would provide protection from liability to the WTC contractors that participated in recovery efforts and debris removal. **H.R. 847** would provide 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. **H.R. 847** would also provide that the liability of the City of New York is limited to the City's insurance coverage or \$350,000,000, whichever is greater.

H.R. 847 would establish 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.

Funding. 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, **H.R. 847** would 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 percent of the total compensation paid out from both sources. Under the pending potential settlement, lawyers' fees are capped at 25 percent. Under a reopened VCF, lawyers' fees would be capped at 10 percent. The provision that would allow those who received a settlement to file a claim from the VCF would also cap lawyers' fees at 10 percent of total compensation (settlement award +VCF).

Legislative History

On February 4, 2009, **H.R. 847** was introduced in the House of Representatives. **H.R. 847** is substantially similar to **S. 1334**, introduced on June 24, 2009 by Senators **Gillibrand**, **Lautenberg**, **Menendez**, and **Schumer**, and which now has 11 total cosponsors. **H.R. 847** passed the House on September 29, 2010 by a vote of 268-160 (Roll no. [550](#)) and was placed on the Senate calendar on November 15, 2010. On December 6, 2010, Senator **Reid** filed cloture on the motion to proceed to **H.R. 847**.

Expected Amendments

The DPC will circulate information on amendments to staff listservs as it becomes available.

Administration Position

On September 29, 2010, the White House issued a [Statement of Administration Policy](#) in advance of the House vote on **H.R. 847**:

The Administration supports House passage of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2009. Like all Americans, the Administration has the deepest respect and gratitude for all of the Nation's 9/11 heroes. The President is committed to ensuring that rescue and recovery workers, residents, students, and others suffering from health consequences related to the World Trade Center disaster have access to the monitoring and treatment they need. The President looks forward to signing a 9/11 health bill into law to help those whose health and livelihood were devastated by the terrorist attacks of September 11th.

The Administration looks forward to continuing to work with the Congress to meet the needs of our 9/11 heroes and to strengthen the World Trade Center Health program.

Resources

Congressional Budget Office, James Zadroga 9/11 Health and Compensation Act of 2010, July 28, 2010, available by clicking [here](#).

Congressional Research Service, 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, October 15, 2010, available by clicking [here](#).