



MEMORANDUM

September 17, 2009

To: Honorable Carolyn B. Maloney
Attention: Anna Cielinski

From: Sarah A. Lister (7-7320)
Scott Szymendera (7-0014)
Celinda Franco (7-7360)
Domestic Social Policy Division

Subject: **Summary of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2009, as Amended**

This memorandum responds to your request for an updated summary of the provisions of **H.R. 847**, the *James Zadroga 9/11 Health and Compensation Act of 2009*, to reflect recent action taken by the House Judiciary Committee. On July 29, 2009, the Committee considered, marked up, and ordered reported an amended version of **H.R. 847**. This updated summary of the bill's provisions is based on a draft copy of the ordered-reported bill that you provided to us for this purpose. We compared the provisions of Title I and found that there were no differences between the ordered-reported version of **H.R. 847** and the introduced version of the bill. The provisions in Title II have been revised to reflect amendments included in the ordered-reported version of the bill. This memorandum does not provide analysis of the summarized provisions. Unless otherwise stated, all references to subtitles or sections refer to subtitles or sections as established by this Act. Italics are used when needed for emphasis. Please contact Sarah Lister or Scott Szymendera with questions regarding Title I, and Celinda Franco with questions regarding Title II.

Introductory Material

Section 1. Short Title and Table of Contents

Section 2. Findings

Title I. World Trade Center Health Program

Section 101 establishes the World Trade Center (WTC) Health Program as a new Title XXX in the Public Health Service Act, as follows:

Subtitle A. Establishment of Program; Steering and Advisory Committees

Section 3001 establishes the *World Trade Center Health Program* (the WTC Program) within the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), to provide: (1) medical monitoring and treatment benefits to eligible emergency responders and recovery and clean-up workers (including federal employees) who responded to the terrorist attacks on the WTC in New York City (NYC) on September 11, 2001 (9/11); and (2) initial health evaluation, monitoring, and treatment benefits to eligible residents and other building occupants and area workers in NYC who were affected by such attacks. The Director of NIOSH or his or her designee shall serve as the WTC Program Administrator (the Administrator).

The WTC program includes the following components:

- *Medical monitoring* for responders under section 3011, without any cost-sharing by the eligible beneficiary, including clinical examinations and long-term health monitoring for individuals who were likely to have been exposed to airborne toxins that were released as a result of the 9/11 terrorist attacks on the WTC;
- *Initial health evaluation* for community members under section 3021, without any cost-sharing by the eligible beneficiary, including an evaluation to determine eligibility for treatment;
- Provision for responders and community members, under sections 3012, 3022 and 3023, for *follow-up monitoring, treatment and payment*, without any cost-sharing by the eligible beneficiary, for all medically necessary health and mental health care expenses (including necessary prescription drugs) of individuals with a WTC-related health condition;
- Establishment under section 3004 of a program of *outreach* to potentially eligible individuals concerning the benefits under this title;
- Collection under section 3005 of health and mental health data on individuals receiving monitoring or treatment benefits, using a *uniform system of data collection*;
- Establishment under subtitle C of a *research program* on health conditions resulting from the 9/11 terrorist attacks on the WTC.

In general, all costs of covered initial health evaluation, medical monitoring, and treatment benefits for eligible individuals shall be paid for by the WTC Program, except for any costs that are paid by a workers' compensation program, health insurance plan, or the matching program required under section 3012. Payment for *treatment* of a WTC-related health condition (as defined in section 3012(a)) that is *work-related* shall be reduced or recouped by any amounts paid under a workers' compensation law or plan for such treatment. (This requirement is waived for any such payment obligations of the City of New York, so long as the City has complied with the matching requirement under section 3006(a).) A WTC-related condition is considered *work-related* if: (1) it is diagnosed in an eligible WTC responder, or in an individual who qualifies as an eligible WTC community member on the basis of being a rescue, recovery, or clean-up worker; or (2) with respect to the condition, the individual has filed and had established a claim under a workers' compensation law or plan of the United States or a State, or other work-related injury or illness benefit plan of the employer of such individual.

For eligible beneficiaries who have health insurance coverage and have been diagnosed with a WTC-related condition that is *not work-related*, the WTC Program shall be a secondary payer of *all* uninsured

costs (such as co-pays and deductibles) related to services covered by the WTC program, according to the authority used when Medicare is a secondary payer.¹ This provision does not require an entity that provides monitoring and treatment under this title to seek reimbursement from a health plan with which it does not have a contract for reimbursement.

The Administrator is required to (1) work with Centers of Excellence to establish a quality assurance program for medical monitoring and treatment services provided by the WTC Program; and (2) establish a program, similar to that for the Medicare program, to review WTC Program expenditures in order to detect fraud, billing errors, and payments for inappropriate services.

The Administrator is required annually, following each fiscal year, to report to Congress with respect to the operations of the WTC Program, including information regarding:

1. the number of individuals who applied for certification under subtitle B, and the number who were certified;
2. the number of certified individuals who received medical monitoring and/or treatment services;
3. for those treated, the WTC-related health conditions for which they were treated;
4. a projected number of individuals who would be certified in the subsequent fiscal year;
5. the costs of initial health evaluation, monitoring, and treatment services provided in the applicable fiscal year, and estimated costs for the subsequent fiscal year;
6. an estimate of the costs paid or reimbursed by workers' compensation plans, health plans, or the City of New York under section 3012;
7. administrative costs, including program support, data collection and analysis, and research;
8. information on program performance;
9. a summary of new scientific reports or findings regarding WTC-related health effects, including findings of research conducted pursuant to section 3041; and
10. a list of recommendations of the WTC Health Program Scientific/Technical Advisory Committee, and actions by the Administrator in response.

The Administrator shall promptly notify the Congress if the number of certifications of eligible WTC responders, or of eligible WTC community members, reaches 80% of the certification limits for either group, as established under sections 3011 or 3021, respectively.

The Comptroller General shall report to Congress regarding the costs of the monitoring and treatment programs provided under this title, not later than three years after enactment. The City of New York may make recommendations to the Administrator on ways to improve the monitoring and treatment programs under this title for both eligible WTC responders and eligible WTC community members.

Section 3002 requires the Administrator to establish the WTC Health Program Scientific/Technical Advisory Committee (the Advisory Committee), subject to the Federal Advisory Committee Act, to review scientific and medical evidence and make recommendations to the Administrator on additional

¹ Social Security Act, section 1862(b). See, also, CRS Report RL33587, *Medicare Secondary Payer - Coordination of Benefits*, by Hinda Chaikind.

WTC Program eligibility criteria and additional WTC-related health conditions. Establishes committee membership, and requirements for meetings and public reporting. The Advisory Committee shall continue in operation during the period in which the WTC Program is in operation. Authorizes the appropriation of such sums as may be necessary, up to \$100,000, for each fiscal year beginning with FY2009.

Section 3003 requires the Administrator to establish two WTC Program steering committees—the WTC Responders Steering Committee, and the WTC Community Program Steering Committee—to facilitate the coordination of initial health evaluation, medical monitoring, and treatment programs for eligible WTC responders (under Part 1 of subtitle B) and community members (under Part 2 of subtitle B). Neither committee is subject to the Federal Advisory Committee Act. For each committee, requirements and procedures are established for membership, management of vacancies, and quarterly meetings (some of which shall be held jointly by the two committees). The committees shall continue in operation during the period in which the WTC Program is in operation.

Section 3004 requires the Administrator to establish a program to provide education and outreach regarding services available under the WTC Program. The program shall include the development of a public website and phone information services, the use of culturally and linguistically diverse content, and the use of community partnerships in conducting outreach.

Section 3005 requires the Administrator to provide for the uniform collection, analysis and reporting of data, consistent with applicable privacy requirements, on the utilization of monitoring and treatment benefits provided throughout the WTC Program (regardless of the location at which services are provided), the prevalence of WTC-related health conditions, and the identification of new WTC-related health conditions. Clinical Centers of Excellence shall collect and report such data to the corresponding Coordinating Center of Excellence (as established in section 3006) for analysis.

Section 3006 requires the Administrator to establish, by entering into contracts, Clinical Centers of Excellence and Coordinating Centers of Excellence. Specific Clinical Centers of Excellence and Coordinating Centers of Excellence are termed *corresponding* if they serve the same population.

Clinical Centers of Excellence shall provide: monitoring, initial health evaluation, and treatment benefits under subtitle B; outreach activities and benefits counseling to eligible individuals; translational and interpretive services for eligible individuals, if needed; and collection and reporting of data to the corresponding Coordinating Center. Clinical Centers are defined as: (1) the Fire Department of the City of New York (FDNY) or its contractors, for its employees and others as defined (FDNY employees may also be served at other Clinical Centers); (2) for other eligible WTC responders, whether or not they reside in the New York metropolitan area (as defined), the Mt. Sinai coordinated consortium, Queens College, State University of New York at Stony Brook, University of Medicine and Dentistry of New Jersey, and Bellevue Hospital; (3) for WTC community members, whether or not they reside in the New York metropolitan area, the WTC Environmental Health Center at Bellevue Hospital and such hospitals or other facilities, including, but not limited to, those within the New York City Health and Hospitals Corporation, as identified by the Administrator; and (4) for all eligible WTC responders and community members, such other hospitals or other facilities as are identified by the Administrator, but the Administrator shall limit the number of these additional Clinical Centers to ensure that they have adequate experience in the treatment and diagnosis of identified WTC-related medical conditions.

The Administrator shall not enter into a contract with a Clinical Center unless such clinic: (1) establishes a formal mechanism for consultation with the eligible population groups that it serves; (2) provides for the coordination of covered monitoring and treatment benefits with medical care provided for non-WTC-related health conditions; (3) collects and reports program data to its corresponding Coordinating Center;

(4) has in place safeguards against fraud that are satisfactory to the Administrator; (5) agrees to treat or refer for treatment all eligible beneficiaries who present for treatment; (6) has in place safeguards for the confidentiality of medical information; (7) provides assurances that amounts received for non-monitoring and non-treatment services (as described below) are used solely for the authorized purposes; and (8) agrees to meet all the other applicable requirements of this title, including regulations implementing such requirements.

Coordinating Centers of Excellence shall provide: data analysis and reporting to the Administrator; development of initial health evaluation, medical monitoring, and treatment protocols for WTC-related conditions; coordination of outreach activities; criteria for the credentialing of providers in the national clinical network established under section 3031; and coordination and administration of the activities of the steering committees. Coordinating Centers are defined as: (1) for the FDNY program, the Fire Department of the City of New York; (2) for other eligible WTC responders, the Mt. Sinai coordinated consortium (as defined in section 3009); and (3) for WTC community members, the WTC Environmental Health Center at Bellevue Hospital.

Clinical or Coordinating Centers are entitled to payment to carry out required activities. Centers shall be reimbursed for required or contracted *non-monitoring* and *non-treatment costs* (such as outreach and data collection activities) as follows:

- In the first year of the program, for the FDNY Clinical Center and Clinical Centers serving other eligible responders, \$600 per treatment participant, and \$300 per monitoring participant. For subsequent years, rates as revised by the Administrator to reflect medical care inflation.
- For Clinical Centers serving WTC community members in New York, in the first year of the program: for eligible participants in a medical treatment program enrolled at a non-hospital-based facility, \$600 per participant; and, for those enrolled at a hospital-based facility, \$300 per participant. For subsequent years, rates as revised by the Administrator to reflect medical care inflation.
- For other Clinical Centers and other providers not described above, and Coordinating Centers, rates to be set by the Administrator.

The Administrator shall conduct a review of rates before the end of the third contract year, and may, by rule, modify rates, beginning in the fourth contract year. Thereafter, the Administrator shall conduct periodic reviews of rates, and make modifications accordingly. The Comptroller General shall review the Administrator's determinations regarding fair and appropriate reimbursement for program services.

In order for New York City, any agency or Department thereof, or the New York City Health and Hospitals Corporation to qualify for a contract for the provision of monitoring and treatment benefits and other services under this section, New York City (NYC) is required to contribute a matching amount of 10% of the amount of covered *monitoring or treatment services* provided to eligible individuals under the three programs established under Subtitle B of this Act. The matching amount shall be reduced by any payment made by NYC, its agencies, or departments under a workers' compensation plan or other work-related injury or illness benefit plan for covered treatment benefits. The matching amount is limited to a total of \$500 million over any 10-year period.

Section 3007. For payment for initial health evaluation, monitoring, and treatment services under Subtitle B, and the costs of non-treatment and non-monitoring activities under section 3006, the Act provides a permanent and indefinite appropriation. That is, it would authorize the payment of funds without further legislative action (i.e., without separate enactment of budget authority in a subsequent appropriations act).

Moreover, the total amount of payments would not be limited to a specific dollar amount. Such an appropriation is referred to as direct spending, or mandatory spending. However, payment by the Administrator for the processing of claims under this title is limited to the amounts provided in advance in appropriations acts.

Section 3008 provides definitions for Title I.

Subtitle B. Program of Monitoring and Treatment

Part 1. For WTC Responders

Section 3011 defines eligibility criteria for active or retired WTC responders (including immediate family members of firefighters who were killed as a result of the attack on the WTC in certain circumstances). Criteria include specified types of workers, work locations and time frames. The Administrator, in consultation with the Coordinating Centers, shall establish an application process to determine the eligibility of individuals for monitoring and treatment benefits. There is no application fee. *Responders previously identified* as eligible under the current consortium arrangements are deemed eligible and need not apply. The WTC responder program is limited to 15,000 *new* eligible responders, in addition to those previously identified. This cap may be raised by the Administrator, according to a formula, if program costs under this title are less than 90% of costs previously estimated by the Congressional Budget Office. The Administrator shall review applications in the order received, make a determination regarding applications within 60 days of their filing, and, when making such a determination, certify that the individual is eligible. The Administrator shall not deny certification unless individual eligibility criteria have not been met, or the WTC responder program limit has been met.

The monitoring benefit (which is available to eligible responders, but not to family members) is defined as initial health evaluation, clinical examinations, and long-term health monitoring and analysis, to be provided by the FDNY, the appropriate Clinical Center, or other providers designated under section 3031 for eligible individuals outside New York.

Section 3012 defines a *WTC-related health condition* for which eligible responders shall receive the treatment benefit, as:

(A) an illness or health condition for which exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks on the World Trade Center, based on an examination by a medical professional with experience in treating or diagnosing the medical conditions included in the applicable list of identified WTC-related conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition,....;

or

(B) a mental health condition for which such attacks, based on an examination by a medical professional with experience in treating or diagnosing the medical conditions included in the applicable list of identified WTC-related conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition,

Eligible responders may receive treatment benefits for conditions described in subparagraph (A). Eligible responders and, under specified conditions, immediate family members of firefighters who were killed as a result of the attack on the WTC, may receive mental health treatment benefits for conditions described in subparagraph (B).

An *identified WTC-related condition* is one of many listed aerodigestive, mental health, and musculoskeletal conditions for which coverage of medically necessary treatment will be provided, so long as it is determined that any such condition (or conditions) in a given eligible responder is WTC-related. The determination of whether the terrorist attacks on the WTC were *substantially likely to be a significant factor in aggravating, contributing to, or causing an individual's illness or health condition* shall be made based on an assessment of the individual's exposures resulting from the terrorist attacks, and the type and timing of symptoms. Exposures and symptoms shall be evaluated through the use of standardized, population appropriate questionnaires approved by the NIOSH Director, and assessed, diagnosed and documented by a medical professional with experience in treating or diagnosing medical conditions included on the list of identified WTC-related conditions.

The Administrator may by regulation add additional *identified WTC-related health conditions*, such as cancer, to the list for eligible WTC responders. In promulgating such regulations, the Administrator must provide public notice and opportunity for comment, and take into account the findings and recommendations of Clinical Centers of Excellence published in peer reviewed journals. Any person (including the Advisory Committee) may petition the Administrator to propose such regulations. Unless clearly frivolous or initiated by the Committee, petitions shall be referred to the Committee for its recommendations, and the Administrator shall act on such referrals and any recommendations according to specified procedures. Program coverage for any conditions added by regulation shall apply upon the effective date of such regulation, and not retroactively. The Administrator shall not self-initiate regulations under this section without first consulting with the Committee.

If a physician at a Clinical Center that is providing monitoring benefits for an eligible WTC responder determines that the responder has an *identified WTC-related health condition*, and that the condition in that individual is WTC-related, the physician shall promptly transmit that determination and supporting evidence to the Administrator. Such determinations shall be reviewed by the Administrator or his or her designee, and the Administrator shall provide certification of coverage for the condition unless he or she determines that the responder's condition is not an identified WTC-related health condition, or that it was not WTC-related in that individual. Upon the Administrator's certification of coverage, the WTC Program shall provide for payment for medically necessary treatment for such condition. Otherwise, the Administrator shall provide a process for the appeal before an administrative law judge of determinations in which certification is denied.

If a physician at a Clinical Center that is providing monitoring benefits for an eligible WTC responder determines that the responder has a WTC-related health condition that is *not an identified WTC-related health condition*, the physician shall promptly transmit that determination and supporting evidence to the Administrator. The Administrator shall provide for the review of such determinations by a physician panel and, based on the panel's recommendation, provide certification of coverage for the condition within 60 days, unless the Administrator determines that the condition is not WTC-related. Upon the Administrator's certification of coverage, the WTC Program shall provide for payment for medically necessary treatment for such condition. Otherwise, the Administrator shall provide a process for the appeal, before an administrative law judge, of determinations in which certification is denied.

The determination of whether treatment is *medically necessary* for a WTC-related health condition shall be made by physicians at the appropriate Clinical Center considering treatment protocols established under this section, generally accepted standards of medical practice, and other factors. The Administrator may, upon review of claims, withhold payment for treatment that he or she determines is not medically necessary. The Administrator shall provide a process for providers to appeal such a determination. Appeals shall be reviewed by a physician panel with appropriate expertise.

Covered treatment services include physician services, diagnostic and laboratory tests, inpatient and outpatient prescription drugs, inpatient and outpatient hospital services, and other medically necessary treatment. To the extent provided in advance in appropriations, the Administrator may cover necessary and reasonable transportation and related expenses for medically necessary treatment, involving travel of more than 250 miles.² WTC responders who are currently receiving treatment but have not yet been evaluated for eligibility or enrolled in the monitoring program shall continue to receive treatment services while such application is pending. Non-emergency inpatient hospital services for conditions (in eligible individuals) that have not been certified as WTC-related are not covered unless determined to be medically necessary, according to procedures to be established by the Administrator.

Except for pharmaceuticals, the Administrator shall reimburse costs for medically necessary treatment for WTC-related health conditions according to the payment rates that would apply under the Federal Employees Compensation Act. The Administrator shall establish a program to pay for medically necessary outpatient prescription pharmaceuticals prescribed for WTC-related conditions through a specified competitive bidding process to award contracts to outside vendors. The Administrator may select a different vendor to serve the FDNY responder program, if he or she deems it necessary and beneficial. For any treatment services not covered above, the Administrator shall designate a reimbursement rate for each such service. The Administrator shall set rates to reimburse the costs of medical monitoring and initial health evaluation services provided under this title. He or she may enter into arrangements with other government agencies, insurance companies, or other third-party administrators to provide for timely and accurate processing of claims under this section.

The Coordinating Centers shall develop medical treatment protocols for the treatment of WTC-related health conditions, and the Administrator shall approve the treatment protocols, in consultation with the WTC Health Program Steering Committees.

Part 2. Community Program

Section 3021 defines WTC *community members* who are eligible for health monitoring and treatment benefits, including: individuals currently receiving treatment at the WTC Environmental Health Center; individuals who meet specified criteria regarding locations of residence, work, or schooling under specified time frames; and individuals meeting other criteria that the Administrator may establish. (The Administrator shall not modify eligibility criteria after enrollment has reached 80% of established program limits in either the responder program or the community program.³) Individuals who are eligible for WTC responder benefits are not eligible for benefits under the community program. With respect to any such individuals currently receiving benefits under the community program, the New York City Health and Hospitals Corporation (which administers the WTC Environmental Health Center) is required, within six months of enactment, to arrange with the Mt. Sinai Data and Clinical Coordination Center to transmit information about such individuals, in a manner consistent with federal and state confidentiality laws, in order that they may receive benefits under the responder program.

The Administrator, in consultation with the Coordinating Centers, shall establish an application process to determine the eligibility of individuals for benefits in the community program, and certify those found eligible. There is no application fee. (Individuals currently receiving treatment are not required to apply,

² Payment for transportation and related expenses is made in the same manner as per regulations implementing section 3629(c) of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384t(c)].

³ The text of provision 3021(a)(1)(C) suggests this interpretation, but appears to refer in error to section 3021(a)(5), which applies to the community program, rather than to section 3011(a)(5), which applies to the responder program.

and the Administrator must provide certification to these individuals within 60 days of enactment.) The Administrator shall review applications in the order received, make a determination regarding applications within 60 days of their filing, and, when making such a determination, certify that the individual is eligible. The Administrator shall not deny certification unless individual eligibility criteria have not been met, or the WTC community program limit (below) has been met. An individual who is determined not to be eligible shall have an opportunity to appeal such determination before an administrative law judge.

The Administrator shall provide certified eligible WTC community members with one initial health evaluation to determine the presence of a WTC-related health condition and the need for follow-up monitoring or treatment benefits. Initial health evaluation protocols shall be approved by the Administrator, in consultation with the WTC Environmental Health Center at Bellevue Hospital and the WTC Community Program Steering Committee, and evaluations shall be provided through a Clinical Center of Excellence.

The WTC community program is limited to 15,000 *new* certified community members, in addition to those currently receiving benefits. The Administrator shall report to Congress if he or she determines that the number of individuals eligible to be certified is likely to exceed the numerical limitation.

Section 3022 establishes that, in general, treatment of WTC-related health conditions shall be provided to certified eligible WTC community members in the same manner that such provisions apply to the treatment of WTC-related health conditions for eligible WTC responders under section 3012. The bill lists a number of *identified WTC-related conditions for community members*, including aerodigestive and mental health conditions, but not including musculoskeletal conditions as listed for the responder program. The Administrator may add new conditions to the list for the community program in accordance with the process established under section 3012 for the responder program.

Section 3023 establishes that treatment services shall be provided through the community program to individuals who are not responders and who do not meet the certification criteria for the community program, for any such individual who is diagnosed at a Clinical Center with an identified WTC-related condition for WTC community members. Treatment for such individuals shall be provided regardless of location or residence. The Administrator shall limit the total amount of benefits provided to such individuals in a given fiscal year so that program payments for that year don't exceed \$20 million for FY2009, and, for subsequent years, that amount adjusted by the annual percentage increase in the medical care component of the Consumer Price Index for all urban consumers.

Part 3. National Arrangement for Benefits for Eligible Individuals Outside New York

Section 3031 requires the Administrator to establish a nationwide network of health care providers to provide benefits to eligible individuals who reside outside the New York metropolitan area (as defined), near such individuals' areas of residence. Any provider participating in this network shall: meet criteria for credentialing established under section 3006; follow monitoring, initial health evaluation, and treatment protocols established under section 3006; collect and report data in accordance with section 3005; and meet such fraud, quality assurance, and other requirements as the Administrator establishes. Eligible individuals who reside outside the New York metropolitan area may also receive initial health evaluation, monitoring, and treatment benefits through any Clinical Center.

Subtitle C. Research Into Conditions

Section 3041 requires the Administrator to develop a research program on physical and mental health conditions that may be related to the 9/11 terrorist attacks (and, if needed, on their diagnosis and treatment), in consultation with the WTC Advisory Committee and steering committees, and subject to applicable privacy and human research subjects protections. The research program shall include epidemiologic studies on WTC-related conditions, including controlled studies on specified less-exposed populations. The Administrator shall report annually to Congress regarding the research program. The Administrator may support the continuation and expansion of research that was initiated before the date of the enactment of this title. The appropriation of \$15 million is authorized for each fiscal year, in addition to any other authorizations of appropriations that are available for such purpose.

Subtitle D. Programs of the New York City Department of Health and Mental Hygiene

Section 3051 requires the Administrator to extend and expand the arrangements in effect as of January 1, 2008, with the NYC Department of Health and Mental Hygiene that provide for the World Trade Center Health Registry. The appropriation of \$7 million is authorized for each fiscal year to carry out this section.

Section 3052 authorizes the Administrator to make grants to the NYC Department of Health and Mental Hygiene to provide mental health services to address mental health needs relating to the 9/11 terrorist attacks on the WTC. Authorizes the appropriation of \$8.5 million for each fiscal year to carry out this section.

Title II. September 11 Victim Compensation Fund of 2001

Title II would re-open the September 11 Victim Compensation Fund, which was established by 49 U.S.C. 40101 note, and which was closed to new claims as of December 22, 2003. It adds new categories of beneficiaries and sets new filing deadlines. In particular:

Section 201 amends the definitions to include:

- “contractor and subcontractor” defined as any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated or allied company, affiliated company, corporation, firm, organization, or joint venture that participated in debris removal at any 9/11 crash site. The definition excludes any entity with a property interest in the WTC on September 11, 2001 (9/11), including the Port Authority of New York and New Jersey, whether fee simple, leasehold or easement, direct or indirect.
 - “debris removal” defined as rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of 9/11.
 - “immediate aftermath” defined as any period beginning with the terrorist-related aircraft crashes of 9/11, and ending on August 30, 2002;
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- “9/11 crash site” defined as: (1) the WTC site, Pentagon site, and Shanksville, PA site; (2) the buildings or portions of buildings destroyed as a result of the 9/11 aircraft crashes; (3) any area contiguous to a site of such crashes that the Special Master determines are sufficiently close to the site so that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses; and (4) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

Section 202(a) requires that the eligibility claim form for compensation benefits be amended to also request information from claimants, or representatives of decedents, concerning physical harm or death resulting from debris removal related to the 9/11 aircraft crashes.

Section 202(b) provides an exception allowing claims related to physical harm or death from debris removal at the crash sites to be filed beginning on the date on which the regulations are updated to reflect the provisions of this Act and ending on December 22, 2031.

Section 202(c) establishes timing requirements for claims filed during the extended filing period. Specifically, individuals or a representative for the deceased can file a claim during the following periods:

- In cases that the Special Master determines the individual knew, or reasonably should have known, that they had suffered physical harm at a 9/11 crash site or as a result of debris removal, and the individual knew or should have known before the original deadline for filing a claim, the deadline for filing would be up to two years after the date specified in the bill (90 days after enactment); and
- In cases that the Special Master determines the individual first knew, or reasonably should have known, on or after the date specified in the bill (90 days after enactment), the filing deadline is up to two years after the date the Special Master determines the individual first knew, or should have known, that they had suffered a harm from debris removal related to the 9/11 aircraft crashes.

Section 202 further provides that individuals are permitted to file a claim during the extended filing period only if:

- The individual was treated by a medical professional for suffering from a physical harm as described within a reasonable time from the date of discovering the harm; and
- The individual’s physical harm is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care.

The bill specifies that the date referred to in this section is the deadline for the promulgation of updated regulations for claims related to debris removal, 90 days after enactment.

Section 202(d) makes a technical amendment adding that claimants can include individuals who were present at *any other* 9/11 aircraft crash sites at the time, or in the immediate aftermath, of the 9/11 aircraft crashes.

Section 202(e) amends the eligibility requirements for claimants to include individuals who suffered physical harm resulting from debris removal.

Section 202(f) requires individuals or personal representatives filing a claim for compensation related to 9/11-crash site debris removal to waive their right to file a civil action or be party to such an action in any

federal or state court for damages sustained as the result of the 9/11 terrorist attacks. Individuals who are a party to a civil action are prohibited from submitting a claim during the basic extension period provided under the bill (two years after the date updated regulations are promulgated) unless they withdraw from such action within 90 days of the promulgation of updated regulations. Similarly, individuals who are a party to a civil action are prohibited from submitting a claim under the extended filing deadline provided under the bill (the period between the promulgation of updated regulations and December 22, 2031) unless they withdraw from such action within 90 days of the promulgation of updated regulations.

In addition, individuals who were a party to a civil action, withdrew from such an action in order to submit a claim for compensation, and were found ineligible, are permitted to “reinstitute” such action without prejudice during the 90-day period after their ineligibility determination.

Section 203 requires the Special Master to update the regulations originally promulgated for the 9/11 Victims Compensation program to reflect the changes made by this Act within 90 days of enactment.

Section 204 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 through December 22, 2031. These claims can include compensatory damages, contribution or indemnity, or any other form or type of relief arising from or related to debris removal filed against the City of New York (including the Port Authority of New York and New Jersey), any entity with a property interest in the WTC on September 11, 2001, and any contractors and subcontractors. 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 (specified above);
- 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.

Priorities are established for payments awarded to plaintiffs of these claims or actions. Claim payments are to be made, until the funds of each payer 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, up to \$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
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- Lastly, from funds available through liability insurance coverage maintained by contractors and subcontractors.

In addition, the Act specifies that any party to a claim or action related to harms from debris removal can either file an action for a declaratory judgment for insurance coverage or bring a direct action against the insurance company involved.

Section 205 amends section 406 of the Air Transportation Safety and System Stabilization Act to limit the total compensation payments provided under this title to \$8.4 billion. The limit would apply to claims for compensation filed on or after the date on which updated regulations are promulgated, as required under section 203 of the bill.

Notwithstanding any contract, the bill establishes a limit for the amount a claimant's representative would be allowed to charge an individual for legal services rendered in connection to a claim. Under this section of the bill, attorneys' fees would be limited to not more than 10% of an award made for a claim filed under this Title. However, the bill provides an exception for attorneys' fees related to claims made on behalf of individuals who filed a lawsuit in the Southern District of New York prior to January 1, 2009. In these cases, if the claimant's representative believes in good faith that the 10% limit would not provide adequate compensation for a substantial amount of legal services already rendered on behalf of the claimant, the representative could apply to the Special Master for greater compensation. The Special Master is authorized to use his or her discretion to award an amount in excess of the 10% limit to provide reasonable compensation for legal services rendered. The bill further provides that the Special Master's attorneys' fee awards would be final, binding, and not subject to appeal.