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by separate handling of various aspects of the project.

§ 87.7 For what period of time will grants be awarded?

(a) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3–5 years.

(b) Generally, the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 87.8 How may a grantee use grant funds?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, the terms and conditions of the grant award, the applicable cost principles specified in subpart Q of 45 CFR part 74, and the regulations of this part.

§ 87.9 Which other HHS regulations apply?

Several other regulations apply to grants under this part. These include, but are not limited to:

- 42 CFR part 50, subpart D—Public Health Service grant appeals procedure
- 45 CFR part 16—Procedures of the Departmental Grant Appeals Board
- 45 CFR part 46—Protection of human subjects
- 45 CFR part 74—Administration of grants
- 45 CFR part 75—Informal grant appeals procedures

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45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81—Practice and procedure for hearing under part 80 of this Title

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

[49 FR 38117, Sept. 27, 1984]

PART 88—WORLD TRADE CENTER HEALTH PROGRAM

Sec.

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AUTHORITY: 42 U.S.C. 300mm to 300mm–61.

SOURCE: 81 FR 90938, Dec. 15, 2016, unless otherwise noted.

§ 88.1 Definitions.

Act means Title XXXIII of the Public Health Service Act, as amended, 42 U.S.C. 300mm through 300mm-61 (codifying Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. 111-347, as amended by Pub. L. 114-113), which created the World Trade Center (WTC) Health Program.

Aggravating means a health condition that existed on September 11, 2001, and that, as a result of exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, requires medical treatment that is (or will be) in addition to, more frequent than, or of longer duration than the medical treatment that would have been required for such condition in the absence of such exposure.

Certification means WTC Health Program review of a health condition in a particular WTC Health Program member for the purpose of identification and approval of a WTC-related health condition, as defined in this section and included on the List of WTC-Related Health Conditions in 42 CFR 88.15, or a health condition medically associated with a WTC-related health condition.

Certified-eligible survivor means (1) an individual who has been identified as eligible for medical monitoring and treatment as of January 2, 2011; or (2) a screening-eligible survivor who is eligible for follow-up monitoring and treatment pursuant to § 88.12(b).

Clinical Center of Excellence (CCE) means a center or centers under contract with the WTC Health Program. A CCE:

- (1) Uses an integrated, centralized health care provider approach to create a comprehensive suite of health services that are accessible to enrolled WTC responders, screening-eligible survivors, or certified-eligible survivors;
- (2) Has experience in caring for WTC responders and screening-eligible survivors, or includes health care providers who have received WTC Health Program training;
- (3) Employs health care provider staff with expertise that includes, at a minimum, occupational medicine, environmental medicine, trauma-related psy-

chiatry and psychology, and social services counseling; and

- (4) Meets such other requirements as specified by the Administrator of the WTC Health Program.

Data Center means a center or centers under contract with the WTC Health Program to:

- (1) Receive, analyze, and report to the Administrator of the WTC Health Program on data that have been collected and reported to the Data Center by the corresponding CCE(s);

- (2) Develop monitoring, initial health evaluation, and treatment protocols with respect to WTC-related health conditions;

- (3) Coordinate the outreach activities of the corresponding CCE;

- (4) Establish criteria for credentialing of medical providers participating in the Nationwide Provider Network;

- (5) Coordinate and administer the activities of the WTC Health Program Steering Committees; and

- (6) Meet periodically with the corresponding CCE(s) to obtain input on the analysis and reporting of data and on development of monitoring, initial health evaluation, and treatment protocols.

Designated representative means an individual selected by an applicant, WTC responder, or a screening-eligible or certified-eligible survivor to represent his or her interests to the WTC Health Program.

Ground Zero means a site in Lower Manhattan bounded by Vesey Street to the north, the West Side Highway to the west, Liberty Street to the south, and Church Street to the east in which stood the former World Trade Center complex.

Health condition medically associated with a WTC-related health condition means a condition that results from treatment of a WTC-related health condition or results from progression of a WTC-related health condition.

Initial health evaluation means assessment of one or more symptoms that may be associated with a WTC-related health condition and includes a medical and exposure history, a physical examination, and additional medical testing as needed to evaluate whether the individual has a WTC-related

health condition and is eligible for treatment under the WTC Health Program.

Interested party means a representative of any organization representing WTC responders, a nationally recognized medical association, a WTC Health Program CCE or Data Center, a State or political subdivision, or any other interested person.

List of WTC-Related Health Conditions means those conditions eligible for coverage in the WTC Health Program as identified in § 88.15 of this part.

Medical emergency means a physical or mental health condition for which immediate treatment is necessary.

Medically necessary treatment means the provision of services to a WTC Health Program member by physicians and other health care providers, including diagnostic and laboratory tests, prescription drugs, inpatient and outpatient hospital services, and other care that is appropriate, to manage, ameliorate, or cure a WTC-related health condition or a health condition medically associated with a WTC-related health condition, and which conforms to medical treatment protocols developed by the Data Centers, with input from the CCEs, and approved by the Administrator of the WTC Health Program.

Monitoring means periodic physical and mental health assessment of a WTC responder or certified-eligible survivor in relation to exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks and which includes a medical and exposure history, a physical examination and additional medical testing as needed for surveillance or to evaluate symptom(s) to determine whether the individual has a WTC-related health condition.

Nationwide Provider Network (NPN) means a network of providers throughout the United States under contract with the WTC Health Program to provide an initial health evaluation, monitoring, and treatment to enrolled WTC responders, screening-eligible survivors, or certified-eligible survivors who live outside the New York metropolitan area.

New York City disaster area means an area within New York City that is the area of Manhattan that is south of Houston Street and any block in Brooklyn that is wholly or partially contained within a 1.5-mile radius of the former World Trade Center complex.

New York metropolitan area means the combined statistical areas comprising the Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area; Kingston, NY Metropolitan Statistical Area; New Haven-Milford, CT Metropolitan Statistical Area; New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area; Poughkeepsie-Newburgh-Middletown, NY Metropolitan Statistical Area; Torrington, CT Micropolitan Statistical Area; Trenton-Ewing, NJ Metropolitan Statistical Area, as defined in OMB Bulletin 10–02, December 1, 2009.

NIOSH means the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

One (1) day means the length of a standard work shift, or at least 4 hours but less than 24 hours.

Pentagon site means any area of the land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles, vehicle access, and other areas immediately adjacent to the land or improvements previously described that were affected by the terrorist-related aircraft crash on September 11, 2001; and those areas at Fort Belvoir in Fairfax County, Virginia and at the Dover Port Mortuary at Dover Air Force Base in Delaware involved in the recovery, identification, and transportation of human remains for the incident.

Police department means any law enforcement department or agency, whether under Federal, state, or local jurisdiction, responsible for general police duties, such as maintenance of public order, safety, or health, enforcement of laws, or otherwise charged

with prevention, detection, investigation, or prosecution of crimes.

Scientific/Technical Advisory Committee means the WTC Health Program Scientific/Technical Advisory Committee whose members are appointed by the Administrator of the WTC Health Program to review scientific and medical evidence and to make recommendations to the Administrator on additional WTC Health Program eligibility criteria and on additional WTC-related health conditions.

Screening-eligible survivor means an individual who is not a WTC responder and who claims symptoms of a WTC-related health condition and meets the eligibility criteria for a survivor specified in § 88.8 of this part.

September 11, 2001, terrorist attacks means the terrorist attacks that occurred on September 11, 2001, in New York City, at Shanksville, Pennsylvania, and at the Pentagon, and includes the aftermath of such attacks.

Shanksville, Pennsylvania site means the property in Stonycreek Township, Somerset County, Pennsylvania, which is bounded by Route 30 (Lincoln Highway), State Route 1019 (Buckstown Road), and State Route 1007 (Lambertsville Road); and those areas at the Pennsylvania National Guard Armory in Friedens, Pennsylvania involved in the recovery, identification, and transportation of human remains for the incident.

Staten Island Landfill means the landfill in Staten Island, NY called “Fresh Kills.”

Terrorist watch list means the lists maintained by the Federal government that will be utilized to screen for known terrorists.

WTC means World Trade Center.

WTC Health Program means the program established by Title XXXIII of the Public Health Service Act as amended, 42 U.S.C. 300mm to 300mm-61 (codifying Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. 111-347, as amended by Pub. L. 114-113) to provide medical monitoring and treatment benefits for eligible responders to the September 11, 2001, terrorist attacks and initial health evaluation, monitoring, and treatment benefits for residents and other building occupants and area

workers in New York City who were directly impacted and adversely affected by such attacks.

WTC Health Program member means any responder, screening-eligible survivor, or certified-eligible survivor enrolled in the WTC Health Program.

WTC Program Administrator (Administrator of the WTC Health Program, or Administrator) means, for the purposes of this part, the Director of the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, or his or her designee.

WTC-related acute traumatic injury means a health condition eligible for coverage in the WTC Health Program as described in § 88.15(e)(1) of this part.

WTC-related health condition means 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, based on an examination by a medical professional with expertise in treating or diagnosing the health conditions in the List of WTC-Related Health Conditions, is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition, including a mental health condition. Only those conditions on the List of WTC-Related Health Conditions codified in 42 CFR 88.15 may be considered WTC-related health conditions.

WTC-related musculoskeletal disorder means a health condition eligible for coverage in the WTC Health Program as described in § 88.15(c)(1) of this part.

WTC responder means an individual who has been identified as eligible for monitoring and treatment as described in § 88.3 or who meets the eligibility criteria in § 88.4.

§ 88.2 General provisions.

(a) *Designated representative.* (1) An applicant or WTC Health Program member may appoint one individual to represent his or her interests under the WTC Health Program. The appointment must be made in writing and consistent with all relevant Federal laws and regulations in order for the designated representative to receive personal health information.

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(2) There may be only one designated representative at any time. After one designated representative has been properly appointed, the WTC Health Program will not recognize another individual as the designated representative until the appointment of the previously designated representative is withdrawn in a signed writing.

(3) A properly appointed designated representative who is recognized by the WTC Health Program may make a request or give direction to the WTC Health Program regarding the eligibility, certification, or any other administrative issue pertaining to the applicant or WTC Health Program member under the WTC Health Program, including appeals. Any notice requirement contained in this part or in the Act is fully satisfied if sent to the designated representative.

(4) An applicant or WTC Health Program member may authorize any individual to represent him or her in regard to the WTC Health Program, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 or 18 U.S.C. 208) or is otherwise prohibited by WTC Health Program policies and procedures or contract provisions.

(5) A Federal employee may act as a representative only on behalf of the individuals specified in, and in the manner permitted by, 18 U.S.C. 203 and 18 U.S.C. 205.

(6) If an applicant or screening-eligible or certified-eligible survivor is a minor, a parent or guardian may act on his or her behalf.

(7) If an applicant or WTC Health Program member is a mentally incompetent adult, an individual authorized under state or other applicable law to act on the applicant's or member's behalf may act as his or her designated representative as described in this section.

(b) *Transportation and travel expenses.* The WTC Health Program may provide for necessary and reasonable transportation and expenses incident to the securing of medically necessary treatment through the NPN, involving travel of more than 250 miles.

§ 88.3 Eligibility—currently identified responders.

(a) Responders who were identified as eligible for monitoring and treatment under the arrangements as in effect on January 2, 2011, between NIOSH and the consortium administered by Mount Sinai School of Medicine in New York City and the Fire Department, City of New York, are enrolled in the WTC Health Program.

(1) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government will be considered to be enrolled in the WTC Health Program.

(2) [Reserved]

(b) WTC responders identified as enrolled under this section are not required to submit an application to the WTC Health Program.

§ 88.4 Eligibility criteria—WTC responders.

(a) Responders to the New York City disaster area who have not been previously identified as eligible as provided for under § 88.3 of this part may apply for enrollment in the WTC Health Program on or after July 1, 2011. Such individuals must meet the criteria in one of the following categories to be considered eligible for enrollment:

(1) Firefighters and related personnel must meet the criteria specified in paragraph (a)(1)(i) or (ii) of this section:

(i) The individual was an active or retired member of the Fire Department, City of New York (whether firefighter or emergency personnel), and participated at least 1 day in the rescue and recovery effort at any of the former World Trade Center sites (including Ground Zero, the Staten Island Landfill, or the New York City Chief Medical Examiner's Office), during the period beginning on September 11, 2001, and ending on July 31, 2002; or

(ii) The individual is:

(A) A surviving immediate family member of an individual who was an active or retired member of the Fire Department, City of New York (whether firefighter or emergency personnel), who was killed at Ground Zero on September 11, 2001, and

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(B) Received any treatment for a WTC-related mental health condition on or before September 1, 2008.

(2) Law enforcement officers and WTC rescue, recovery, and cleanup workers must meet the criteria specified in paragraph (a)(2)(i) or (ii) of this section:

(i) The individual worked or volunteered onsite in rescue, recovery, debris cleanup, or related support services in lower Manhattan (south of Canal Street), the Staten Island Landfill, or the barge loading piers, for at least:

(A) 4 hours during the period beginning on September 11, 2001, and ending on September 14, 2001; or

(B) 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001; or

(C) 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002.

(ii) The individual was an active or retired member of the New York City Police Department or an active or retired member of the Port Authority Police of the Port Authority of New York and New Jersey who participated onsite in rescue, recovery, debris cleanup, or related support services, for at least:

(A) 4 hours during the period beginning September 11, 2001, and ending on September 14, 2001, in lower Manhattan (south of Canal Street), including Ground Zero, the Staten Island Landfill, or the barge loading piers; or

(B) 1 day beginning on September 11, 2001, and ending on July 31, 2002, at Ground Zero, the Staten Island Landfill, or the barge loading piers; or

(C) 24 hours during the period beginning on September 11, 2001, and ending on September 30, 2001, in lower Manhattan (south of Canal Street); or

(D) 80 hours during the period beginning on September 11, 2001, and ending on July 31, 2002, in lower Manhattan (south of Canal Street).

(3) Office of the Chief Medical Examiner of New York City employee. The individual was an employee of the Office of the Chief Medical Examiner of New York City involved in the examination and handling of human remains from the WTC attacks, or other morgue worker who performed similar

post-September 11 functions for such Office staff, during the period beginning on September 11, 2001, and ending on July 31, 2002.

(4) Port Authority Trans-Hudson Corporation Tunnel worker. The individual was a worker in the Port Authority Trans-Hudson Corporation Tunnel for at least 24 hours during the period beginning on February 1, 2002, and ending on July 1, 2002.

(5) Vehicle-maintenance worker. The individual was a vehicle-maintenance worker who was exposed to debris from the former World Trade Center while retrieving, driving, cleaning, repairing, and maintaining vehicles contaminated by airborne toxins from the September 11, 2001, terrorist attacks; and conducted such work for at least 1 day during the period beginning on September 11, 2001, and ending on July 31, 2002.

(b) Responders to the Pentagon site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program on or after April 29, 2013. Individuals must meet the criteria below to be considered eligible for enrollment:

(1) The individual was an active or retired member of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or was a volunteer; and

(2) Performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the September 11, 2001, terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on November 19, 2001.

(c) Responders to the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program on or after April 29, 2013. Individuals must meet the criteria below to be considered eligible for enrollment:

(1) The individual was an active or retired member of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or was a volunteer; and

(2) Performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania site of the September 11, 2001,

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terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on October 3, 2001.

(d) [Reserved]

(e) The WTC Health Program will maintain a list of WTC responders.

§ 88.5 Application process—WTC responders.

(a) An application to the WTC Health Program based on the criteria in § 88.4 must be submitted with documentation of the applicant's employment affiliation (if relevant) and work activity during the dates, times, and locations specified in § 88.4

(1) Documentation may include but is not limited to a pay stub; official personnel roster; a written statement, under penalty of perjury by an employer; site credentials; or similar documentation.

(2) An applicant who is unable to submit the required documentation must instead offer a written explanation of how he or she tried to obtain proof of presence, residence, or work activity and why the attempt was unsuccessful. The applicant must attest, under penalty of perjury, that he or she meets the criteria specified in § 88.4.

(b) The application and supporting documentation must be submitted to the WTC Health Program for consideration.

(c) The WTC Health Program will notify the applicant in writing (or by email if an email address is provided by the applicant) of any deficiencies in the application or the supporting documentation.

§ 88.6 Enrollment decision—WTC responders.

(a) *Enrollment priority.* The WTC Health Program will prioritize applications in the order in which they are received.

(b) *Enrollment eligibility.* The WTC Health Program will decide if the applicant meets the eligibility criteria provided in § 88.4.

(c) *Denial of enrollment.* (1) The WTC Health Program will deny enrollment if the applicant fails to meet the applicable eligibility requirements.

(2) The WTC Health Program may deny enrollment of a responder who is otherwise eligible and qualified if the

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Act's numerical limitations for newly enrolled responders have been met.

(i) No more than 25,000 WTC responders, other than those enrolled pursuant to §§ 88.3 and 88.4(a)(1)(ii), may be enrolled at any time. The Administrator of the WTC Health Program may decide, based on the best available evidence, that sufficient funds are available under the WTC Health Program Fund to provide treatment and monitoring only for individuals who are already enrolled as WTC responders at that time.

(ii) [Reserved]

(3) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be enrolled or be determined to be eligible for the WTC Health Program.

(d) *Notification of enrollment decision.*

(1) The WTC Health Program will decide if the applicant meets the current eligibility criteria for WTC responders in § 88.4 and is qualified, and notify the applicant of the enrollment decision in writing within 60 calendar days of the date of receipt of the application. The 60-day time period will not include any days during which the applicant is correcting deficiencies in the application or supporting documentation.

(2) If the WTC Health Program decides that an applicant is denied enrollment, the written notification will include an explanation, as appropriate, for the decision to deny enrollment and inform the applicant of the right to appeal the initial denial of eligibility and provide instructions on how to file an appeal.

§ 88.7 Eligibility—currently identified survivors.

(a) Survivors who have been identified as eligible for medical treatment and monitoring as of January 2, 2011, are considered certified-eligible in the WTC Health Program.

(1) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government will be considered to be a certified-eligible survivor in the WTC Health Program.

(2) [Reserved]

(b) Survivors identified as certified-eligible under this section are not required to submit an application to the WTC Health Program.

§ 88.8 Eligibility criteria—WTC survivors.

(a) Criteria for status as a screening-eligible survivor. An individual who is not a WTC responder, claims symptoms of a WTC-related health condition, and who has not been previously identified as eligible under § 88.7 may apply to the WTC Health Program on or after July 1, 2011, for a determination of eligibility for an initial health evaluation.

(1) The WTC Health Program will determine an applicant's eligibility for an initial health evaluation based on one of the following criteria:

(i) The screening applicant was present in the dust or dust cloud in the New York City disaster area on September 11, 2001.

(ii) The screening applicant worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area, for at least:

(A) 4 days during the period beginning on September 11, 2001, and ending on January 10, 2002; or

(B) 30 days during the period beginning on September 11, 2001, and ending on July 31, 2002.

(iii) The screening applicant worked as a cleanup worker or performed maintenance work in the New York City disaster area during the period beginning on September 11, 2001, and ending on January 10, 2002, and had extensive exposure to WTC dust as a result of such work.

(iv) The screening applicant:

(A) Was deemed eligible to receive a grant from the Lower Manhattan Development Corporation Residential Grant Program;

(B) Possessed a lease for a residence or purchased a residence in the New York City disaster area; and

(C) Resided in such residence during the period beginning on September 11, 2001, and ending on May 31, 2003.

(v) The screening applicant is an individual whose place of employment—

(A) At any time during the period beginning on September 11, 2001, and ending on May 31, 2003, was in the New York City disaster area; and

(B) Was deemed eligible to receive a grant from the Lower Manhattan Development Corporation WTC Small Firms Attraction and Retention Act program or other government incentive program designed to revitalize the lower Manhattan economy after the September 11, 2001, terrorist attacks.

(2) [Reserved]

(b) Criteria for status as a certified-eligible survivor. Survivors who have been determined to have screening-eligible status under § 88.10(a), may seek status as a certified-eligible survivor. Status as a certified-eligible survivor is based on a certification by the WTC Health Program that, pursuant to an initial health evaluation, the screening-eligible survivor has a WTC-related health condition and is eligible for follow-up monitoring and treatment.

(c) The WTC Health Program will maintain a list of screening-eligible and certified-eligible survivors.

§ 88.9 Application process—WTC survivors.

(a) *Application for status as a screening-eligible survivor.* An application to the WTC Health Program based on the criteria in § 88.8(a) must be submitted with documentation of the applicant's location, presence or residence, and/or work activity during the relevant time period.

(1) Documentation may include but is not limited to: Proof of residence, such as a lease or utility bill; attendance roster at a school or daycare; or pay stub, other employment documentation, or written statement, under penalty of perjury, by an employer indicating employment location during the relevant time period; or similar documentation. The applicant must also attest to symptoms of a WTC-related health condition.

(2) An applicant who is unable to submit the required documentation must instead offer a written explanation of how he or she tried to obtain proof of location, presence, or residence, and/or work activity and why the attempt was unsuccessful. The applicant must attest, under penalty of perjury, that he or she meets the criteria specified in § 88.8.

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(3) The applicant will be notified of any deficiencies in the application or the supporting documentation.

(b) *Status as a certified-eligible survivor.* No additional application is required for status as a certified-eligible survivor. If, based upon the screening-eligible survivor's initial health evaluation (see § 88.11), the WTC Health Program certifies the diagnosis of a WTC-related health condition, then the survivor will automatically receive the status of a certified-eligible survivor.

§ 88.10 Enrollment decision—screening-eligible survivors.

(a) The WTC Health Program will decide if the applicant meets the screening-eligible survivor criteria pursuant to § 88.8(a) and is qualified, and notify the applicant of the enrollment decision in writing within 60 calendar days of the date of receipt of the application. The 60-day time period will not include any days during which the applicant is correcting deficiencies in the application or supporting documentation.

(b) If the WTC Health Program decides that an applicant is denied enrollment, the written notification will include an explanation for the decision to deny enrollment and inform the applicant of the right to appeal the enrollment denial and provide instructions on how to file an appeal.

(1) The WTC Health Program may deny screening-eligible survivor status if the applicant is ineligible under the criteria specified in § 88.8(a).

(2) The WTC Health Program may deny screening-eligible survivor status if the numerical limitation on certified-eligible survivors in § 88.12(b)(3)(i) has been met.

(3) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be a screening-eligible survivor in the WTC Health Program.

§ 88.11 Initial health evaluation for screening-eligible survivors.

(a) A CCE or an NPN-affiliated physician will provide the screening-eligible survivor an initial health evaluation to determine if the individual has a WTC-related health condition.

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(b) The WTC Health Program will provide only one initial health evaluation per screening-eligible survivor. The individual may request additional health evaluations at his or her own expense.

(c) If the physician determines that the screening-eligible survivor has a WTC-related health condition, the physician will promptly transmit to the WTC Health Program his or her determination, consistent with the requirements of § 88.17(a).

§ 88.12 Enrollment decision—certified-eligible survivors.

(a) The WTC Health Program will prioritize certification requests in the order in which they are received.

(b) The WTC Health Program will review the physician's determination, render a decision regarding certification of the individual's WTC-related health condition, and notify the individual of the decision and the reason for the decision in writing, pursuant to §§ 88.17 and 88.18.

(1) If the individual is a screening-eligible survivor and the individual's condition is certified as a WTC-related health condition, the individual will automatically receive the status of a certified-eligible survivor.

(2) If a screening-eligible survivor's condition is not certified as a WTC-related health condition pursuant to §§ 88.17 and 88.18, the WTC Health Program will deny certified-eligible status. The screening-eligible survivor may appeal the decision to deny certification, as provided under § 88.21.

(3) The WTC Health Program may deny certified-eligible survivor status of an otherwise eligible and qualified screening-eligible survivor if the Act's numerical limitations for certified-eligible survivors have been met.

(i) No more than 25,000 individuals, other than those described in § 88.7, may be determined to be certified-eligible survivors at any time. The Administrator of the WTC Health Program may decide, based on the best available evidence, that sufficient funds are available under the WTC Health Program Fund to provide treatment and monitoring only for individuals who have already been certified as

certified-eligible survivors at that time.

(ii) [Reserved]

(4) No individual who is determined to be a positive match to the terrorist watch list maintained by the Federal government may qualify to be a certified-eligible survivor in the WTC Health Program.

§ 88.13 Disenrollment.

(a) The disenrollment of a WTC Health Program member may be initiated by the WTC Health Program in the following circumstances:

(1) The WTC Health Program mistakenly enrolled an individual under § 88.4 (WTC responders) or § 88.8 (screening-eligible survivors) who did not provide sufficient proof of eligibility consistent with the required eligibility criteria; or

(2) The WTC Health Program member's enrollment was based on incorrect or fraudulent information.

(b) The disenrollment of a WTC Health Program member may be initiated by the enrollee for any reason.

(c) A disenrolled WTC Health Program member will be notified in writing by the WTC Health Program of a disenrollment decision, provided an explanation, as appropriate, for the decision, and provided information on how to appeal the decision. A disenrolled WTC Health Program member disenrolled pursuant to paragraph (a) may appeal the disenrollment decision in accordance with § 88.14.

(d) A disenrolled WTC Health Program member who has been disenrolled in accordance with paragraphs (a) or (b) of this section may seek to re-enroll in the WTC Health Program using the application and enrollment procedures, provided that the application is supported by new information.

§ 88.14 Appeal of enrollment or disenrollment decision.

(a) *Right to appeal.* An applicant denied WTC Health Program enrollment, a disenrolled WTC Health Program member, or the applicant's or member's designated representative (appointed pursuant to § 88.2(a)) may appeal the enrollment denial or disenrollment decision.

(b) *Appeal request.* (1) A letter requesting an appeal must be postmarked within 120 calendar days of the date of the letter from the Administrator notifying the denied applicant or disenrolled WTC Health Program member of the adverse decision. Electronic versions of a signed letter will be accepted if transmitted within 120 calendar days of the date of the Administrator's notification letter.

(2) A valid request for an appeal must:

(i) Be made in writing and signed;

(ii) Identify the denied applicant or disenrolled WTC Health Program member and designated representative (if applicable);

(iii) Describe the decision being appealed and state the reasons why the denied applicant, disenrolled WTC Health Program member, or designated representative believes the enrollment denial or disenrollment was incorrect and should be reversed. The appeal request may include relevant new information not previously considered by the WTC Health Program; and

(iv) Be sent to the WTC Health Program at the address specified in the notice of denial or disenrollment.

(3) Where the denial or disenrollment is based on information from the terrorist watch list, the appeal will be forwarded to the appropriate Federal agency.

(c) *Appeal process.* Upon receipt of a valid appeal, the Administrator will appoint a Federal Official independent of the WTC Health Program to review the case. The Federal Official will review all available records relevant to the WTC Health Program's decision not to enroll the applicant or to disenroll the WTC Health Program member and assess whether the appeal should be granted. In conducting the review, the Federal Official's consideration will include the following: Whether the WTC Health Program substantially complied with all relevant WTC Health Program policies and procedures; whether the information supporting the WTC Health Program's decision was factually accurate; and whether the WTC Health Program's decision was reasonable as applied to the facts of the case.

(1) The Federal Official may consider additional relevant new information submitted by the denied applicant, disenrolled WTC Health Program member, or designated representative.

(2) The Federal Official will provide his or her recommendation regarding the disposition of the appeal, including his or her findings and any supporting materials, to the Administrator.

(d) *Final decision and notification.* The Administrator will review the Federal Official's recommendation and any relevant information and make a final decision on the appeal. The Administrator will notify the denied applicant or disenrolled WTC Health Program member and/or designated representative of the following in writing:

(1) The recommendation and findings made by the Federal Official as a result of the review;

(2) The Administrator's final decision on the appeal;

(3) An explanation of the reason(s) for the Administrator's final decision on the appeal; and

(4) Any administrative actions taken by the WTC Health Program in response to the Administrator's final decision.

§ 88.15 List of WTC-Related Health Conditions.

WTC-related health conditions include the following disorders and conditions:

(a) Aerodigestive disorders:

(1) Interstitial lung diseases.

(2) Chronic respiratory disorder—fumes/vapors.

(3) Asthma.

(4) Reactive airways dysfunction syndrome (RADS).

(5) WTC-exacerbated and new-onset chronic obstructive pulmonary disease (COPD).

(6) Chronic cough syndrome.

(7) Upper airway hyperreactivity.

(8) Chronic rhinosinusitis.

(9) Chronic nasopharyngitis.

(10) Chronic laryngitis.

(11) Gastroesophageal reflux disorder (GERD).

(12) Sleep apnea exacerbated by or related to a condition described in preceding paragraphs (a)(1) through (11) of this section.

(b) Mental health conditions:

(1) Posttraumatic stress disorder (PTSD).

(2) Major depressive disorder.

(3) Panic disorder.

(4) Generalized anxiety disorder.

(5) Anxiety disorder (not otherwise specified).

(6) Depression (not otherwise specified).

(7) Acute stress disorder.

(8) Dysthymic disorder.

(9) Adjustment disorder.

(10) Substance abuse.

(c) Musculoskeletal disorders:

(1) WTC-related musculoskeletal disorder is a chronic or recurrent disorder of the musculoskeletal system caused by heavy lifting or repetitive strain on the joints or musculoskeletal system occurring during rescue or recovery efforts in the New York City disaster area in the aftermath of the September 11, 2001, terrorist attacks. For a WTC responder who received any treatment for a WTC-related musculoskeletal disorder on or before September 11, 2003, such a health condition includes:

(i) Low back pain.

(ii) Carpal tunnel syndrome (CTS).

(iii) Other musculoskeletal disorders.

(2) [Reserved].

(d) Cancers:

(1) Malignant neoplasms of the lip; tongue; salivary gland; floor of mouth; gum and other mouth; tonsil; oropharynx; hypopharynx; and other oral cavity and pharynx.

(2) Malignant neoplasm of the nasopharynx.

(3) Malignant neoplasms of the nose; nasal cavity; middle ear; and accessory sinuses.

(4) Malignant neoplasm of the larynx.

(5) Malignant neoplasm of the esophagus.

(6) Malignant neoplasm of the stomach.

(7) Malignant neoplasms of the colon and rectum.

(8) Malignant neoplasms of the liver and intrahepatic bile duct.

(9) Malignant neoplasms of the retroperitoneum and peritoneum; omentum; and mesentery.

(10) Malignant neoplasms of the trachea; bronchus and lung; heart, mediastinum and pleura; and other ill-defined sites in the respiratory system and intrathoracic organs.

- (11) Mesothelioma.
- (12) Malignant neoplasms of the peripheral nerves and autonomic nervous system; and other connective and soft tissue.
- (13) Malignant neoplasms of the skin (melanoma and non-melanoma), including scrotal cancer.
- (14) Malignant neoplasm of the female breast.
- (15) Malignant neoplasms of corpus uteri and uterus, part unspecified.
- (16) Malignant neoplasm of the ovary.
- (17) Malignant neoplasm of the prostate.
- (18) Malignant neoplasm of the urinary bladder.
- (19) Malignant neoplasm of the kidney.
- (20) Malignant neoplasms of the renal pelvis; ureter; and other urinary organs.
- (21) Malignant neoplasms of the eye and orbit.
- (22) Malignant neoplasm of the thyroid.
- (23) Malignant neoplasms of the blood and lymphoid tissues (including, but not limited to, lymphoma, leukemia, and myeloma).
- (24) \leq Childhood cancers: any type of cancer diagnosed in a person less than 20 years of age.
- (25) Rare cancers: any type of cancer¹ that occurs in less than 15 cases per 100,000 persons per year in the United States.

(e) Acute traumatic injuries:

(1) WTC-related acute traumatic injury is physical damage to the body caused by and occurring immediately after a one-time exposure to energy, such as heat, electricity, or impact from a crash or fall, resulting from a specific event or incident. For a WTC responder or screening-eligible or certified-eligible survivors who received any medical treatment for a WTC-related acute traumatic injury on or before September 11, 2003, such a health condition includes:

- (i) Eye injury.
- (ii) Burn.
- (iii) Head trauma.
- (iv) Fracture.
- (v) Tendon tear.
- (vi) Complex sprain.
- (vii) Other similar acute traumatic injuries.
- (2) [Reserved]

[81 FR 90938, Dec. 15, 2016, as amended at 88 FR 2858, Jan. 18, 2023]

§ 88.16 Addition of health conditions to the List of WTC-Related Health Conditions.

(a) Any interested party may submit a request to the Administrator of the WTC Health Program to add a condition to the List of WTC-Related Health Conditions in § 88.15. The Administrator will evaluate the submission to decide whether it is a valid petition.

(1) Each valid petition must include the following:

- (i) An explicit statement of an intent to petition the Administrator to add a health condition to the List of WTC-Related Health Conditions;
- (ii) Name, contact information, and signature of the interested party petitioning for the addition;
- (iii) Name and/or description of the condition(s) to be added;
- (iv) Reasons for adding the condition(s), including the medical basis for the association between the September 11, 2001, terrorist attacks and the condition(s) to be added.

(2) Not later than 90 calendar days after the receipt of a valid petition, the Administrator will take one of the following actions:

- (i) Request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee;
- (ii) Publish in the FEDERAL REGISTER a proposed rule to add such health condition;
- (iii) Publish in the FEDERAL REGISTER the Administrator's decision not to publish a proposed rule and the basis for that decision; or
- (iv) Publish in the FEDERAL REGISTER a decision that insufficient evidence exists to take action under paragraph (a)(2)(i) through (iii) of this section.

¹Based on 2005–2009 average annual data age-adjusted to the 2000 U.S. population. See Glenn Copeland, Andrew Lake, Rick Firth, *et al.* (eds), *Cancer in North America: 2005–2009. Volume One: Combined Cancer Incidence for the United States, Canada and North America*, Springfield, IL: North American Association of Central Cancer Registries, Inc., June 2012.

(3) The 90-day time period will not include any days during which the Administrator is consulting with the interested party to clarify the submission.

(4) The Administrator may consider more than one petition simultaneously when the petitions propose the addition of the same health condition. Scientific/Technical Advisory Committee recommendations and FEDERAL REGISTER notices initiated by the Administrator pursuant to paragraph (a)(2) of this section may respond to more than one petition.

(5) The Administrator will be required to consider a submission for a health condition previously reviewed by the Administrator and found not to qualify for addition to the List of WTC-Related Health Conditions as a valid new petition only if the submission presents a new medical basis (*i.e.*, a basis not previously reviewed) for the association between the September 11, 2001, terrorist attacks and the condition to be added. A submission that provides no new medical basis and is received after the publication of a response in the FEDERAL REGISTER to a petition requesting the addition of the same health condition will not be considered a valid petition and will not be answered in a FEDERAL REGISTER notice pursuant to paragraph (a)(2), above. The interested party will be informed of the WTC Health Program's decision in writing.

(b) The Administrator may propose to add a condition to the List of WTC-Related Health Conditions in § 88.15 of this part by publishing a proposed rule in the FEDERAL REGISTER and providing interested parties a period of 30 calendar days to submit written comments. The Administrator may extend the comment period for good cause.

(1) If the Administrator requests a recommendation from the WTC Health Program Scientific/Technical Advisory Committee, the Advisory Committee will submit its recommendation to the Administrator no later than 90 calendar days after the date of the transmission of the request or no later than a date specified by the Administrator (but not more than 180 calendar days after the request). The Administrator will publish a proposed rule or a deci-

sion not to publish a proposed rule in the FEDERAL REGISTER no later than 90 calendar days after the date of transmission of the Advisory Committee recommendation.

(2) Before issuing a final rule to add a health condition to the List of WTC-Related Health Conditions, the Administrator will provide for an independent peer review of the scientific and technical evidence that would be the basis for issuing such final rule.

§ 88.17 Physician's determination of WTC-related health conditions.

(a) A physician affiliated with either a CCE or NPN will promptly transmit to the WTC Health Program a determination that a member's exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks is substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition, including a mental health condition. The transmission will also include the basis for such determination. The physician's determination will be made based on an assessment of the following:

(1) The individual's exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks.

(2) The type of symptoms experienced by the individual and the temporal sequence of those symptoms.

(b) For a health condition medically associated with a WTC-related health condition, the physician's determination must contain information establishing how the health condition has resulted from treatment of a previously certified WTC-related health condition or how it has resulted from progression of the certified WTC-related health condition.

§ 88.18 Certification.

(a) *WTC-related health condition.* The WTC Health Program will review each physician determination and render a decision regarding certification of the condition as a WTC-related health condition. The WTC Health Program will

notify the WTC Health Program member of the decision and the reason for the decision in writing.

(b) *Health condition medically associated with a WTC-related health condition.* The WTC Health Program will review each physician determination and render a decision regarding certification of the condition as a health condition medically associated with a WTC-related health condition. The WTC Health Program will notify the WTC Health Program member in writing of the decision and the reason for the decision within 60 calendar days after the date the physician's determination is received.

(1) In the course of review, the WTC Health Program may seek a recommendation about certification from a physician panel with appropriate expertise for the condition.

(2) [Reserved]

(c) *Appeal right.* If certification of a condition as a WTC-related health condition or a health condition medically associated with a WTC-related health condition is denied, the WTC Health Program member may appeal the WTC Health Program's decision to deny certification, as provided under § 88.21.

§ 88.19 Decertification.

(a) The decertification of a WTC Health Program member's certified WTC-related health condition or health condition medically associated with a WTC-related health condition may be initiated by the WTC Health Program in the following circumstances:

(1) The WTC Health Program finds that the member's exposure is inadequate or is otherwise not covered;

(2) The WTC Health Program finds that the member's certified WTC-related health condition was certified in error or erroneously considered to have been aggravated, contributed to, or caused by exposure to airborne toxins, any other hazard, or any other adverse condition resulting from the September 11, 2001, terrorist attacks, pursuant to § 88.17(a); or

(3) The WTC Health Program finds that the member's health condition was erroneously determined to be medically associated with a WTC-related health condition, pursuant to § 88.17(b).

(b) A WTC Health Program member will be notified in writing by the WTC Health Program of a decertification decision, provided an explanation, as appropriate, for the decision, and provided information on how to appeal the decision. A WTC Health Program member whose WTC-related health condition or health condition medically associated with a WTC-related health condition is decertified may appeal the decertification decision in accordance with § 88.21 of this part.

§ 88.20 Authorization of treatment.

(a) *Generally.* Medically necessary treatment of certified WTC-related health conditions and certified health conditions medically associated with WTC-related health conditions will be provided through the CCEs or the NPN as permitted under WTC Health Program treatment protocols and in accordance with all applicable WTC Health Program policies and procedures.

(b) *Standard for determining medical necessity.* All treatment provided under the WTC Health Program will adhere to a standard which is reasonable and appropriate; based on scientific evidence, professional standards of care, expert opinion or any other relevant information; and which has been included in the medical treatment protocols developed by the Data Centers, with input from the CCEs, and approved by the Administrator of the WTC Health Program.

(c) *Treatment pending certification.* While certification of a condition is pending, authorization for treatment of a WTC-related health condition or a health condition medically associated with a WTC-related health condition must be obtained from the WTC Health Program before treatment is provided, except for the provision of treatment for a medical emergency.

§ 88.21 Appeal of certification, decertification, or treatment authorization decision.

(a) *Right to appeal.* A WTC Health Program member or the member's designated representative (appointed pursuant to § 88.2(a)) may appeal the following four types of decisions made by the WTC Health Program:

(1) To deny certification of a health condition as a WTC-related health condition;

(2) To deny certification of a health condition as medically associated with a WTC-related health condition;

(3) To decertify a WTC-related health condition or a health condition medically associated with a WTC-related health condition; or

(4) To deny authorization of treatment for a certified health condition based on a finding that the treatment is not medically necessary.

(b) *Appeal request.* (1) A letter requesting an appeal must be postmarked within 120 calendar days of the date of the letter from the Administrator of the WTC Health Program notifying the member of the adverse decision. Electronic versions of a signed letter will be accepted if transmitted within 120 calendar days of the date of the Administrator's notification letter.

(2) A valid request for an appeal must:

(i) Be made in writing and signed;

(ii) Identify the member and designated representative (if applicable);

(iii) Describe the decision being appealed and the reason(s) why the member or designated representative believes the decision is incorrect and should be reversed. The description may include, but is not limited to, the following: Scientific or medical information correcting factual errors that may have been submitted to the WTC Health Program by the CCE or NPN; information demonstrating that the WTC Health Program did not correctly follow or apply relevant WTC Health Program policies or procedures; or any information demonstrating that the WTC Health Program's decision was not reasonable given the facts of the case. The basis provided in the appeal request must be sufficiently detailed and supported by information to permit a review of the appeal. Any new information not previously considered by the WTC Health Program must be included with the appeal request, unless later requested by the WTC Health Program; and

(iv) Be sent to the WTC Health Program at the address specified in the notice of denial.

(3) The appeal request may also state an intent to make a 15-minute oral statement by telephone. The WTC Health Program member or designated representative will have a second opportunity to schedule an oral statement after being contacted by the WTC Health Program regarding the appeal.

(c) *Appeal process.* Upon receipt of a valid appeal, the Administrator will appoint a Federal Official independent of the WTC Health Program to review the case. The Federal Official will review all available records relevant to the WTC Health Program's decision to deny certification of a health condition as a WTC-related health condition, deny certification of a health condition as medically associated with a WTC-related health condition, decertify the WTC-related health condition or health condition medically associated with a WTC-related health condition, or deny treatment authorization, and assess whether the appeal should be granted. The Federal Official's consideration will include the following: Whether the WTC Health Program substantially complied with all relevant WTC Health Program policies and procedures; whether the information supporting the WTC Health Program's decision was factually accurate; and whether the WTC Health Program's decision was reasonable as applied to the facts of the case.

(1) In conducting his or her review, the Federal Official will review the case record, including any oral statement made by the WTC Health Program member or the member's designated representative, as well as additional relevant new information submitted with the appeal request or provided by the WTC Health Program member or the member's designated representative at the request of the WTC Health Program.

(2) The Federal Official may consult one or more qualified experts to review the WTC Health Program's decision and any additional information provided by the WTC Health Program member or the member's designated representative. The expert reviewer(s) will submit their findings to the Federal Official.

(3) The Federal Official will provide his or her recommendation regarding

the disposition of the appeal, including his or her findings and any supporting materials (including the transcript of any oral statement and any expert reviewers' findings), to the Administrator.

(d) *Final decision and notification.* The Administrator will review the Federal Official's recommendation and any relevant information and make a final decision on the appeal. The Administrator will notify the WTC Health Program member and/or the member's designated representative of the following in writing:

(1) The recommendation and findings made by the Federal Official as a result of the review;

(2) The Administrator's final decision on the appeal;

(3) An explanation of the reason(s) for the Administrator's final decision on the appeal; and

(4) Any administrative actions taken by the WTC Health Program in response to the Administrator's final decision.

§ 88.22 Reimbursement for medical treatment and services.

(a) *Review of claims.* Each claim for reimbursement for treatment will be reviewed by the WTC Health Program. Claims that cannot be validated by that process will be further assessed by the Administrator of the WTC Health Program.

(b) *Initial health evaluations, medical monitoring, and medically necessary treatment.* (1) The costs incurred by a CCE or NPN-affiliated provider for providing a WTC Health Program member an initial health evaluation, medical monitoring, and/or medically necessary treatment or services for a WTC-related health condition or a health condition medically associated with a WTC-related health condition will be reimbursed according to the payment rates that apply to the provision of such treatment and services under the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, 20 CFR part 10.

(i) The Administrator will reimburse a CCE or NPN-affiliated provider for treatment for which FECA rates have not been established pursuant to the applicable Medicare fee for service

rate, as determined appropriate by the Administrator.

(ii) The Administrator will reimburse a CCE or NPN-affiliated provider for treatment for which neither FECA nor Medicare fee for service rates have been established, at rates as determined appropriate by the Administrator.

(2) If the treatment is determined not to be medically necessary or is inconsistent with WTC Health Program protocols, the Administrator will withhold reimbursement.

(c) *Outpatient prescription pharmaceuticals.* Payment for costs of medically necessary outpatient prescription pharmaceuticals for a WTC-related health condition or health condition medically associated with a WTC-related health condition will be reimbursed by the WTC Health Program under a contract with one or more pharmaceutical benefit management services.

§ 88.23 Appeal of reimbursement denial.

After exhausting procedural and/or contractual administrative remedies, a CCE or NPN medical director or affiliated provider may submit a written appeal of a WTC Health Program decision to withhold reimbursement or payment for treatment found to be not medically necessary or not in accordance with approved WTC Health Program medical treatment protocols pursuant to § 88.20 of this part. Appeal procedures are published on the WTC Health Program Web site.

§ 88.24 Coordination of benefits and recoupment.

The WTC Health Program will attempt to recover the cost of payment for treatment, including pharmacy benefits, for a WTC Health Program member's certified WTC-related health condition or health condition medically associated with a WTC-related health condition by coordinating benefits with any workers' compensation insurance available² for members'

²As described in PHS Act, sec. 3331(b). To the extent that payment for treatment of the member's work-related condition has been made, or can reasonably be expected to

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work-related health conditions, and with any public or private health insurance available³ for members' non-work-related health conditions.

(a) Where a WTC Health Program member's WTC-related health condition or health condition medically associated with a WTC-related health condition is eligible for workers' compensation or another illness or injury benefit plan to which New York City is obligated to pay, the WTC Health Program is the primary payer.

(b) Where a WTC Health Program member has filed a workers' compensation claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition and the claim is pending, the WTC Health Program is the primary payer; however, if the claim is ultimately accepted by the workers' compensation board, the workers' compensation insurer in question is responsible for reimbursing the WTC Health Program for any treatment provided and/or paid for during the pendency of the claim.

(c) Where a WTC Health Program member has filed a workers' compensation claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition, but a final decision is issued denying the compensation for the claim, the WTC Health Program is the primary payer.

(d) Where a WTC Health Program member has filed a workers' compensation claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition with a workers' compensation plan to which New York City

is not obligated to pay, the workers' compensation insurer is the primary payer. The WTC Health Program is the secondary payer.

(1) If a WTC Health Program member settles a workers' compensation claim by entering into a settlement agreement that releases the employer or insurance carrier from paying for future medical care, the settlement must protect the interests of the WTC Health Program. This may include setting aside adequate funds to pay for future medical expenses, as required by the WTC Health Program, which would otherwise have been paid by workers' compensation. In such situations, the WTC Health Program may require reimbursement for treatment services of a WTC-related health condition or health condition medically associated with a WTC-related health condition directly from the member.

(2) The WTC Health Program will pay providers for treatment in accordance with § 88.22(b); to the extent that the workers' compensation insurance pays for treatment at a lower rate, the WTC Health Program will recoup treatment costs at the workers' compensation insurance rate.

(e) Where a WTC Health Program member's WTC-related health condition or health condition medically associated with a WTC-related health condition is not work-related, the WTC Health Program member's public or private health insurance plan is the primary payer. The WTC Health Program will pay costs not reimbursed by the public or private health insurance plan due to the application of deductibles, co-payments, co-insurance, other cost sharing arrangements, or payment caps up to and in accordance with the rates described in § 88.22(b).

(f) Any coordination of benefits or recoupment situation not described in paragraphs (a) through (e) of this section will be handled pursuant to WTC Health Program policies and procedures, as found on the WTC Health Program Web site.

§ 88.25 Reopening of WTC Health Program final decisions.

At any time, and without regard to whether new evidence or information is

be made, under any other work-related injury or illness benefit plan of the member's employer, the WTC Health Program will also attempt to recover the costs associated with treatment, including pharmacy benefits, for the member's certified WTC-related health condition or health condition medically associated with a WTC-related health condition. See PHS Act, sec. 3331(b)(1). For purposes of this regulation, "workers' compensation law or plan" or "workers' compensation insurance" includes any other work-related injury or illness benefit plan of the WTC Health Program member's employer.

³ As described in PHS Act, sec. 3331(c).

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provided or obtained, the Administrator of the WTC Health Program may reopen any final decision made by the WTC Health Program pursuant to the

provisions of this part. The Administrator may affirm, vacate, or modify such decision, or take any other action he or she deems appropriate.