

## **Frequently Asked Questions**

### **Regarding World Trade Center (WTC) Health Program's Policy and Procedures for Recoupment & Coordination of Benefits: Workers' Compensation Payment**

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#### **When am I required to get WTC Health Program's approval of a lump sum settlement agreement?**

Any proposed settlement agreement entered into on or after October 1, 2013 that will pay a lump sum to a workers' compensation (WC) claimant and that will release all or part of an employer or insurer's obligation to pay future medical expenses for illnesses or injuries arising from response activities resulting from the terrorist attacks of September 11, 2001, must be reviewed by the WTC Health Program. Any proposed settlement agreement filed with a WC agency before October 1, 2013, even if not approved by it before October 1, 2013, is not covered by this recoupment policy.

#### **How much money must be allocated to future medical expenses in a lump sum settlement?**

The WTC Health Program expects the parties to allocate a reasonable amount toward future medical expenses for World Trade Center (WTC)-related conditions through 2016 in a lump sum settlement. Currently, Congress has funded the WTC Health Program only through 2016, so the WTC Health Program does not require a WC claimant to set aside funds for future medical expenses after that date. Future medical expenses should be calculated based on reimbursement rates under state WC law.

#### **What expenses must be considered when deciding how much money to set aside for future medical expenses?**

The WTC Health Program will require that money be set aside to cover the reasonably anticipated costs of medical treatment and medications for illnesses or injuries arising from activities in responding to the terrorist attacks of September 11, 2001. WC claimants are not required to set aside money to cover the cost of screening or monitoring exams or diagnostic testing provided by the WTC Health Program.

Note: The Centers for Medicare and Medicaid Services (CMS) may impose separate and additional requirements relating to lump sum settlements. Additional information regarding CMS policies on lump sum settlements for future medical expenses can be found at <http://www.cms.gov/Medicare/Coordination-of-Benefits/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSAP-Overview.html>

#### **How do I get approval from the WTC Health Program for a settlement agreement (and/or settlement agreement set-aside) for a workers' compensation claim?**

The claimant, or the claimant's authorized representative, must submit the following information to the Administrator, WTC Health Program at 395 E Street, S.W., Suite 9200, Washington, D.C. 20201:

1. A copy of the proposed settlement agreement showing the amount allocated for future medical expenses.
2. An explanation of how the amount allocated for future medical expenses was calculated. If the amount is based on the actuarial estimate of an outside expert, attach the expert's report.
3. An indication of whether the settlement represents a compromise of a WC claim or a commutation to present value of an established claim.
4. The name and address of the custodian of the funds to be set aside for future medical expenses. This custodian must be the person or entity that will pay any medical expenses on behalf of the WC claimant.

### **How do I know whether the WTC Health Program has approved the settlement?**

If the WTC Health Program agrees that the amount set aside for future medical expenses through 2016 is reasonable, or that no set aside is required, it will send a letter to the party submitting the agreement indicating its approval. Approval by the WTC Health Program of a lump sum settlement agreement satisfies the requirements for recoupment under the Zadroga Act.

Note: CMS may impose separate and additional requirements under the Social Security Act.

### **What happens if the money set aside is not adequate to cover all future medical expenses through 2016?**

If the WTC Health Program approves the amount of money for future medical expenses, and the WC claimant establishes a set-aside account funded with the agreed-upon amount, the parties to the settlement agreement have a safe harbor that protects them from having to pay the WTC Health Program for any medical expenses in excess of the approved amount for future medical expenses. The WTC Health Program will bill the set-aside account periodically, up to the agreed-upon amount. If medical expenses exceed the amount in the WTC Health Program-approved set-aside account, the parties are not responsible for those future medical expenses and they will be paid by the WTC Health Program.

### **What happens if the WTC Health Program does not approve my lump sum settlement?**

If a WC claimant receives a settlement that releases the WC insurer or employer from legal responsibility for future medical expenses and does not obtain WTC Health Program approval of the amount of that settlement to be allocated to future medical expenses, the WC claimant and/or the WC insurer may be legally responsible for up to two times the amount of future medical costs incurred by the WTC Health Program on behalf of the WC claimant.