



## **Making a Determination about Exposure Aggravating Pre-Existing Aerodigestive Disorders**

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**Note:** As new scientific information becomes available, the Administrator of the World Trade Center Health Program may modify time intervals for new onset aerodigestive disorders.

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### **I. Introduction**

The James Zadroga 9/11 Health and Compensation Act of 2010 (“Act”)<sup>1</sup> authorizes treatment for enrolled responders and survivors whose health conditions are certified by the World Trade Center (WTC) Health Program as a WTC-related health condition. For a health condition to be certified, a Clinical Center of Excellence (CCE) or Nationwide Provider Network (NPN) physician must first make a determination that the individual’s exposure to airborne toxins, other hazards, or adverse conditions resulting from the September 11, 2001, terrorist attacks (“9/11 exposure”), is substantially likely to be a significant factor in “aggravating, contributing to, or causing” that health condition.<sup>2</sup>

The physician’s determination is transmitted to the Administrator of the WTC Health Program; if the Administrator finds that the condition is included in the List of WTC-Related Health Conditions<sup>3</sup> and concurs that the 9/11 exposure is substantially likely to be a significant factor in aggravating, contributing to, or causing the condition, then the Administrator will certify the individual’s health condition as eligible for treatment by the WTC Health Program.<sup>4</sup>

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<sup>1</sup> Pub. L. 111-347, codified at 42 U.S.C. §§ 300mm to 300mm-61.

<sup>2</sup> 42 U.S.C. § 300mm-22(b)(1)(A).

<sup>3</sup> 42 C.F.R. § 88.1.

<sup>4</sup> 42 U.S.C. § 300mm-22(b)(1)(B)(ii).

The Act provides that “the term ‘aggravating’ means, with respect to a health condition, 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<sup>5</sup> 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 ... [the individual’s 9/11] exposure.”<sup>6</sup>

## II. Scope

This document, *Making a Determination about Exposure Aggravating Pre-Existing Aerodigestive Disorders*, provides information for CCE and NPN physicians about making a determination that 9/11 exposure resulted in *aggravating* an aerodigestive disorder<sup>7</sup> that existed on September 11, 2001. Aggravating the pre-existing health condition results in the aerodigestive disorder requiring 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 the individual’s 9/11 exposure.

**Note:** *Making a Determination about Exposure Aggravating Pre-Existing Aerodigestive Disorders* does not address any other WTC-related health conditions, including mental health conditions, musculoskeletal disorders (MSDs), or types of cancer.<sup>8</sup> At this time, the WTC Health Program has not issued any guidance regarding aggravating a pre-existing mental health condition. An MSD<sup>9</sup> qualifies for certification only if the specified MSD is “caused by” heavy lifting or repetitive strain, and only if the MSD occurs in the “aftermath of September 11, 2001.”<sup>10</sup> Finally, the Administrator has found no scientific evidence to support that 9/11 exposures may aggravate a pre-existing cancer resulting in a change in medical treatment.

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<sup>5</sup> The WTC Health Program has defined medically necessary treatment as “the provision of services by physicians and other health care providers, 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... .” 42 C.F.R. § 88.1.

<sup>6</sup> 42 U.S.C. § 300mm-5(1).

<sup>7</sup> The term “aerodigestive disorder” includes the following specific types of health conditions: (1) Interstitial lung diseases; (2) chronic respiratory disorder—fumes and vapors; (3) asthma; (4) reactive airways dysfunction syndrome (RADS); (5) WTC-exacerbated 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); and (12) sleep apnea exacerbated by or related to a health condition mentioned in (1) through (11). See 42 U.S.C. §§ 300mm-22(a)(3)(A) and 300mm-32(b)(1).

<sup>8</sup> See 42 C.F.R. § 88.1 for complete list of WTC-Related Health Conditions.

<sup>9</sup> The musculoskeletal disorders specified by the Act are low back pain; carpal tunnel syndrome (CTS); and other musculoskeletal disorders. 42 U.S.C. § 300mm-22(a)(4)(A)(i) through (iii).

<sup>10</sup> “The term ‘WTC-related musculoskeletal disorder’ means 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.” 42 U.S.C. § 300mm-22(a)(4)(B) (emphasis added).

### III. Making a Determination that Exposure Is Substantially Likely to be a Significant Factor in Aggravating a Pre-Existing Aerodigestive Disorder

A CCE or NPN physician who is considering making a determination that the individual's 9/11 exposure is substantially likely to be a significant factor in *aggravating* a pre-existing aerodigestive disorder must provide qualitative information about the individual's exposure history in the WTC-3 Request for Certification form using the following questions as guidance:

- A. Is the aerodigestive disorder on the List of WTC-Related Health Conditions?
- B. Was the aerodigestive disorder diagnosed by a physician on or before September 11, 2001?
- C. Did the individual's 9/11 exposure result in a change in medical treatment for the aerodigestive disorder 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 exposure? See Section IV.
- D. When did the change in medical treatment occur?

**Note:** The WTC Health Program will use professional judgment to evaluate each certification request for exposure aggravating a pre-existing aerodigestive health condition on a case by case basis. However, the time interval between the last day of the individual's 9/11 exposure and the "...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 ... [the individual's 9/11] exposure" should not exceed the maximum time intervals established for new onset of the same condition as specified in the WTC Health Program's *Time Interval for New Onset Aerodigestive Disorders* policy.<sup>11</sup>

### IV. Exposure Resulting in a Change in Medical Treatment of an Aerodigestive Disorder

#### A. Medical Treatment that is in Addition to, More Frequent than, or of Longer Duration

In completing the WTC-3 narrative, the CCE or NPN physician must provide specific medical information and support for the position that the medical treatment of the pre-existing aerodigestive disorder changed as a result of the individual's 9/11 exposure in at least one of three ways:

1. As a result of the individual's 9/11 exposure, medical treatment of the aerodigestive disorder is *in addition to* the medical treatment that would have been required for the pre-existing health condition in the absence of the individual's exposure;

**Note:** Additional medical treatment for a pre-existing aerodigestive disorder also includes change from no medical treatment needed prior to 9/11 exposure to medical treatment becoming necessary as a result of the 9/11 exposure.

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<sup>11</sup> The WTC Health Program's policy titled *Time Intervals for New Onset Aerodigestive Disorders* is available at: <http://www.cdc.gov/wtc/policies.html>.

2. As a result of the individual's 9/11 exposure, medical treatment of the aerodigestive disorder *is more frequent than* the medical treatment that would have been required for the pre-existing health condition in the absence of the individual's 9/11 exposure; **or**
3. As a result of the individual's 9/11 exposure, medical treatment of the aerodigestive disorder *is of longer duration than* the medical treatment that would have been required for the pre-existing health condition in the absence of the individual's 9/11 exposure.

**B. Change in Medical Treatment Resulting from 9/11 Exposure**

1. The CCE or NPN physician must explain in the WTC-3 Request for Certification why the change in medical treatment occurred as a result of the individual's 9/11 exposure and not as a result of any expected progression of the aerodigestive disorder which may have occurred in the absence of the individual's 9/11 exposure. The CCE or NPN physician must clearly connect the individual's *actual* 9/11 exposure—not just 9/11 exposure in general—with the change in medical treatment.
2. A comparison must be provided by the CCE or NPN physician between the expected medical treatment for that aerodigestive disorder in the absence of the individual's 9/11 exposure and the change in medical treatment for the aerodigestive disorder as a result of the individual's 9/11 exposure.

**Note:** The CCE or NPN physician can use published scientific studies that contain expected treatment outcomes or treatment guidelines to establish a baseline for describing the natural course of medical treatment for a particular health condition.

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