



## **Policy and Procedures for Recoupment & Coordination of Benefits: Workers' Compensation Payment**

**Effective Date: September 1, 2013**

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### **I. Authority**

- A. The James Zadroga 9/11 Health and Compensation Act of 2010 ("Zadroga Act").<sup>1</sup>
- B. Social Security Act ("SSA").<sup>2</sup>

### **II. Effective Date**

- A. The effective date of this *Policy and Procedures for Recoupment & Coordination of Benefits: Work-Related Health Conditions* is September 1, 2013.
- B. Contracts between the World Trade Center (WTC) Health Program and the Centers for Clinical Excellence (CCEs) require the CCEs to seek recoupment from workers' compensation (WC) insurers when such insurers have been identified by the CCE. This requirement will remain in effect until July 31, 2013. Beginning on September 1, 2013, the new requirements for CCEs to bill workers' compensation (WC) insurers, or recoup payments from WC insurers, will apply to avoid unfairly changing the obligations of affected parties without adequate notice.
- C. Preceding the effective date, the Administrator of the WTC Health Program (Administrator) will provide notice of the new requirement by publicizing the policy through notices posted on the WTC Health Program website and through notices posted by the New York State (NYS) Workers' Compensation Board (WCB) on its website.

### **III. Background Information**

#### **A. Administrator's Statutory Authority to Recoup Payment for Treatment**

- 1. The Zadroga Act<sup>3</sup> grants the Administrator the authority to "reduce or recoup" a payment for treatment of an individual's WTC-related health condition that is work-

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<sup>1</sup> 42 U.S.C. §300mm et seq.

<sup>2</sup> 42 U.S.C. §301 et seq.

related “to the extent that the Administrator determines that payment has been made, or can reasonably expected to be made, under a workers’ compensation law....”<sup>4</sup>

2. The Act provides that certain provisions of Section 1862(b) of the Social Security Act (“SSA”) shall apply to the Administrator’s recoupment under the Zadroga Act.<sup>5</sup>

3. Section 1862(b)(2)(B)(iii) of the SSA authorizes recoupment actions against “any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment . . . under a primary plan.”

## **B. General Recoupment Scheme**

1. The WTC Health Program will seek to recoup from medical providers of the WTC Health Program and from WC insurers. The Program does not anticipate that it will be necessary to seek recoupment directly from individual WTC responders,<sup>6</sup> unless the Responder accepts a lump sum settlement from WC and the settlement either releases or has the effect of releasing the WC insurer from its obligation to pay future medical expenses.

2. If the primary payer<sup>7</sup> seeks to shift costs onto the WTC Health Program, and the Program cannot recover WC payments voluntarily, it may seek double damages from the payer in a recoupment action.<sup>8</sup> This means that if either a medical provider or a Responder receives payment from a WC insurer for services already paid for by the WTC Health Program, the Program has a duty to reduce further payments or recoup funds from that medical provider who received funds from the WC insurer.<sup>9</sup>

3. If evidence suggests that a WC insurer has improperly shifted WC costs onto the WTC Health Program, the Program may recommend that a recoupment action be filed against an insurer, even if the insurer has already paid the claim.<sup>10</sup>

## **C. Differences in Recoupment between the WTC Health Program and the Medicare Program**

Recoupment requirements included in the Zadroga Act are similar, but not identical, to the requirements of the secondary payer provisions of the SSA. In interpreting the Program’s statutory duty to recoup under the Act, the WTC Health Program is guided by

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<sup>3</sup> 42 U.S.C. §300mm-41(b)(1).

<sup>4</sup> 42 U.S.C. §300mm—41(b).

<sup>5</sup> *Id.*

<sup>6</sup> 42 U.S.C. . §300mm-22(a).

<sup>7</sup> “Primary payer” or “WC Insurer” refers to “a workers’ compensation law or plan of the United States, a state, or a locality, or other work-related injury or illness benefit plan of the employer of such individual.” See 42 U.S.C. §300mm-41(b). It does not include any “workers’ compensation law or plan, including line of duty compensation, to which New York City is obligated to make payments.” See 42 U.S.C. §300mm-41(b)(2).

<sup>8</sup> 42 U.S.C. . §1395y(b)(2)(B)(iii) incorporated in 42 U.S.C. . §300mm-41(b)(1).

<sup>9</sup> 42 U.S.C. . §300mm-41(b)(1).

<sup>10</sup> 42 U.S.C. . §1395y(b)(2)(B)(iii) incorporated in 42 U.S.C. . §300mm-41(b)(1).

policies of the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS), which administers the Medicare Program. However, the Administrator does not expect to follow CMS policies in all cases because: (1) the nature and purpose of the WTC Health Program differ from those of the Medicare Program; and (2) the WTC Health Program is much smaller than the Medicare Program and cannot achieve the same economies of scale in its recoupment activities as CMS can in the Medicare Secondary Payer (MSP) program.

#### **D. State Worker's Compensation Procedures**

1. In many state jurisdictions, workers must file a WC claim for an accident within two years from the date of its occurrence. For occupational disease claims, often defined as diseases unique to the worker's occupation, the time for filing is often two years from the date of disablement.<sup>11</sup> Many workers made ill by exposures at the WTC have been unable to file an occupational disease claim because the ailments from which they suffer are not unique to their occupation. They have also been time-barred from filing accident claims because they became ill more than two years after their last exposure.

2. In 2006, NY amended its WC law to allow eligible rescue workers to register with the NYS WCB before September 2010.<sup>12</sup> Approximately 38,000 people registered under this provision. Rescue workers registered with NYS WCB have two years from the date of disablement to file a WC claim, without regard to whether their claim is for an accident or an occupational disease. The WTC Health Program assumes that few timely, new WC claims can be filed, except by individuals who have previously registered with NYS WCB. Therefore, the WTC Health Program's recoupment policy is designed to coordinate closely with NYS workers' compensation law. For claims from state jurisdictions other than NYS, the WTC Health Program will handle any future WC claims on a case-by-case basis.

### **IV. General Policies and Procedures**

#### **A. Cases Where WTC Health Program is the Primary Payer**

1. In all cases where a final decision on a Responder's workers' compensation claim has been reached, and WC is determined to *not* be available to the Responder, the WTC Health Program is the primary payer.

2. In all cases where a Responder is eligible for WC, or another illness or injury benefit plan funded by New York City, the WTC Health Program is the primary payer.<sup>13</sup> See 42 U.S.C. 300mm-41(b)(2).

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<sup>11</sup> WORLD TRADE CENTER CASES IN THE NEW YORK WORKERS' COMPENSATION SYSTEM, NYS WC 2009 <http://www.wcb.ny.gov/content/main/TheBoard/WCBWTCReport2009.pdf>

<sup>12</sup> New York Workers' Compensation Law §8A

<sup>13</sup> 42 U.S.C. §300mm-41(b)(2).

## **B. Cases Where WTC Health Program is Not the Primary Payer**

1. In all cases where a condition is covered by WC that is not funded by New York City, WC is the primary payer and the WTC Health Program will not pay treatment claims until the primary payer has either paid or reasonably rejected the claim.
2. A WC insurer may reasonably reject a claim, and the WTCHP will be the primary payer on the claim, even though the Responder has qualified for WC, if:
  - a. The condition for which the Responder receives WC benefits is different than the condition that was certified as eligible for treatment under the WTCHP;
  - b. The medical provider providing treatment under the WTC Health Program is not authorized to receive reimbursement under NYS WC law; or
  - c. The treatment or medication prescribed by a WTC Health Program medical provider is not covered by WC insurance.
2. Under NYS WC law, approved WC medical providers are reimbursed at rates established in a fee schedule. Reimbursement rates under NYS workers' compensation law, in almost all cases, will be lower than the FECA reimbursement rates specified in the Zadroga Act for WTC Health Program treatment. The WTC Health Program will pay the difference between the NYS WC fee schedule rate and the FECA rate, when requested by a CCE.
3. With the exception of lump sum settlements discussed in sections III.B.1 and V.A., the WTC Health Program does not foresee circumstances in which it would expect to seek recoupment directly from Responders. Under NYS WC law, WC insurers must directly reimburse medical providers for medical services provided for any work-related condition covered by WC.<sup>14</sup> WC claimants may not be directly billed for services by a WC medical provider and do not receive cash awards from WC for past medical expenses.<sup>15</sup> Therefore, if the WTC Health Program recovers all WC payments received by a medical provider in payment for service rendered to a Responder, the Program will have fully recouped WC payments for medical services.

## **C. Electronic File**

1. To implement the *Policy and Procedures for Recoupment & Coordination of Benefits: Work-Related Conditions*, the WTC Health Program will create and maintain an electronic working file for each Responder that will indicate whether another payer, primary to WTC Health Program, is available. As government records, these may be made publicly available unless protected from disclosure by law.

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<sup>14</sup> New York State Workers' Compensation Law §13(g).

<sup>15</sup> New York State Workers' Compensation Law §13(a).

2. The Responder working file will be used to aid in claims adjudication. The WTC Health Program will obtain information on WC status from two sources: CCEs and the NYS WCB
  - a. CCEs are required by contract to ask Responders about WC status and to provide the information to the WTCHP. The WTC Health Program will provide CCEs access to the electronic file it creates, consistent with applicable privacy protections, so the CCEs know which Responders have primary payers other than the WTC Health Program.
  - b. The WTC Health Program will data match against NYS WCB records periodically.

## V. Specific Policies and Procedures

### A. Section 32 Agreements and Set Asides for Future Medicals

1. In NYS, WC claimants, including WTC Health Program Responders, may settle their WC cases by accepting a lump-sum payment for any or all issues in a WC case. The NYS WCB calls such settlements Section 32 (waiver agreements) awards.<sup>16</sup> Section 32 agreements must be approved by the NYS WCB.
2. Recoupment issues arise when a WC settlement releases, or has the effect of releasing, the WC insurers' obligation to pay future medical expenses.<sup>17</sup>
3. Under Medicare, when a claimant settles a WC claim within 30 months of becoming eligible for Medicare, and that settlement waives the WC insurers obligation to pay for future medical care, in CMS' view, the claimant "has been paid" for WC related medical services and Medicare reimbursement is not available for such services.<sup>18</sup>
4. CMS requires that in reaching the settlement, all parties protect CMS' interests.<sup>19</sup> CMS has established a formal, but voluntary process, where it will review settlement agreements and determine how much money must be set aside to meet future medical expenses. CMS grants beneficiaries/individuals safe harbor from recoupment actions if they set aside and use an agreed-upon amount of their settlement for future medical expenses covered by Medicare. Beneficiaries often establish Medicare Set Aside (MSA) accounts to meet CMS' requirements.
5. The WTC Health Program will look to CMS policy for guidance on how to recoup money for future medical expenses from Section 32 agreements that release the WC insurer from paying future medical expenses. However, recouping money from WTC Health Program Responders who have received payment for all future WC medical expenses poses practical difficulties for the Program that Medicare does not face. These include, among other concerns, the time-limited nature of the WTC Health Program's

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<sup>16</sup> New York State Workers' Compensation Law §32.

<sup>17</sup> 77 Fed. Reg. 35917 (June 15, 2012)("Medicare Program; Medicare Secondary Payer and "Future Medicals"). Available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-15/pdf/2012-14678.pdf>.

<sup>18</sup> CMS. Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide. Available at <http://www.cms.gov/Medicare/Coordination-of-Benefits/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSAP-Overview.html>

<sup>19</sup> *Id.*

statutory authorization, which terminates in 2016. Therefore, WTC Health Program will only require that money be set aside for future medical expenses to be incurred while the Program is authorized. Responders may have a responsibility to protect CMS' interest in the settlement for future medical expenses expected to be incurred after 2016.

6. The WTC Health Program pays for treatments not covered by NYS WC, reimburses medical providers at rates higher than NYS WC, and relies on medical providers not approved by NYS WC. Each of these factors mean that any settlement under NYS WC law will not fully cover the expenses the WTC Health Program incurs when treating a Responder.

7. CMS has published an *Advance Notice of Proposed Rulemaking* indicating that it may change how it calculates what part of a settlement must be set aside for future medical expenses. CCEs do not have systems in place at WTC Health Program clinics to bill patients directly for treatment. Each of these factors means that while the WTC Health Program will look to CMS policy for guidance, the Program will develop its own policies compatible with the Zadroga Act.

8. The WTC Health Program and NYS WCB will provide NYS WC claimants with information alerting them to the legal complexities that accompany a decision to take a lump-sum settlement of a WTC-related WC claim and the duty (imposed on the WC insurer and claimant) to ensure that the interests of both the WTC Health Program and CMS are protected in any settlement. The WTC Health Program anticipates that these alerts may discourage many future Section 32 agreements. Because this policy will apply prospectively, the WTC Health Program will not inquire about whether an agreement entered into prior to the effective date of this policy sets money aside for future medical care.

9. If a WTC Health Program Responder settles his/her WTC-related WC case by entering into a Section 32 agreement *after* the effective date of the *Policy and Procedures for Recoupment & Coordination of Benefits: Work-Related Health Conditions*, the Program will review each such settlement to determine whether the Responder "has been paid" for WTC Health Program covered services. NYS WCB's administrative law judge should, prior to approving a settlement, ask the parties whether they have taken steps to protect the WTC Health Program's interest in the settlement. If these steps have not been taken, NYS WCB will not approve the settlement until it has been reviewed by the WTC Health Program. The WTC Health Program will review each settlement agreement on a case-by-case basis to determine whether an adequate amount of any settlement has been allocated to future medical expenses. The WTC Health Program will defer to any reasonable actuarial estimate of future medical expenses.

10. Once the WTC Health Program, the WC insurer, and the Responder have agreed on the amount to be allocated for future medical expenses, the Responder will have two choices to satisfy the repayment obligation. Either the WTC Health Program will bill the Responder annually for the cost of treatment, but if the Responder does not pay the

amount due, the WC insurer will be billed for any unpaid amount.<sup>20</sup> Or, the Responder can establish an MSA funded with the predetermined amount needed to fund future treatment, , and the WTC Health Program will annually bill the MSA for treatment up to the agreed-upon amount.

**Note:** The WTC Health Program may decide that Responders who settle WC claims for an amount below a certain dollar threshold are not responsible to separately pay for future medical expenses. If the administrative costs to review such settlements and the WTC Health Program personnel resources necessary to oversee them outweigh any benefit of such a program, the Program will decline to review future medical expenses from certain settlements.

## **B. Conditional Payments in Work-Related Injury Cases**

1. If a primary payment has not been made or cannot reasonably be expected to be made promptly, Medicare is permitted to make conditional payments with the expectation that it will be repaid if the beneficiary obtains a settlement.<sup>21</sup> CMS defines promptly to mean within 120 days.<sup>22</sup> The Zadroga Act does not expressly grant the Administrator the right to pay conditionally, but the Administrator interprets the Act as implicitly granting it the right to pay claims presented by CCEs while a contested WC claim is pending, and then to recover from them any monies paid to the CCE for treatment for a WTC-related health condition if the claim is accepted.

2. If the WTC Health Program recovers all monies paid to a CCE for medical services under WC, it will have fully recouped its payments because under NYS WC law, a medical provider must bill any potential WC insurer directly for all covered medical services (other than medications). The medical provider is prohibited from billing the injured worker for medical services potentially covered by WC. When a contested case is resolved, NYS WCB directs the WC insurer to pay medical providers directly. Under NYS law, the WC insurer is required to pay medical claims at the rate approved by the NYS WCB. The WTC Health Program will not fully recoup the full costs of services it provides to Responders with established WC cases because: (1) WTC Health Program reimbursement rates are higher than the rates under WC; (2) the WTC Health Program pays for a wider range of treatments and medications than does WC; and (3) the WTC Health Program may rely on medical providers who are not WC-approved medical providers.

3. Before it will pay conditional claims, the WTC Health Program will require that a CCE have systems in place that allow it to show a credit to the WTC Health Program for any monies it receives when a WC claim contested by an insurer is finally resolved. The WTC Health Program will pay conditional claims where a CCE provides documentation that the claim is in dispute or the claim has not been paid by the WC insurer within 120 days. In commercial cases, medical providers routinely bill health insurers, show

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<sup>20</sup> The WTCHP has the authority to bill each member and/or the primary payer under 42 U.S.C. §1395y(b)(2)(B)(iii) incorporated by reference in 42 U.S.C. §300mm-41.

<sup>21</sup> 42 U.S.C. §1395y(b)(2)(B)(i)-(iii).

<sup>22</sup> 42 C.F.R. §411.50(b).

payments made by the insurers, and then the medical provider bills the patient or secondary payer for the balance. Since all WC payments for WTC Health Program-related services covered by WC will be paid *directly* to a CCE, the WTC Health Program will fully recoup such payments if the CCE's billing system can track such payments and show credit to the WTC Health Program in appropriate cases. In cases where a CCE cannot track WC payments and show a credit to the WTC Health Program, the CCEs will be allowed to put any monies received from NYS WC in a separate account designated for WTC Health Program recoupment.

### **C. Expenses for Medications**

1. Under NYS WC law, WC claimants may be required to pay for their medications and seek cash reimbursement from a WC insurer later.<sup>23</sup> While claims are pending, to avoid paying the full cost of drugs, some WC claimants submit bills for drugs to their health insurer for reimbursement. NYS WCB has a fee schedule for prescription drugs, but WC law does not pay for any medications not on the fee schedule or at rates above the fee schedule. CCEs may prescribe drugs not reimbursable under NYS WC law. WTC Health Program Responders are encouraged to have their prescriptions filled by the WTC Health Program which has contracted with a benefits manager to fill prescriptions. Those bills are paid directly by the WTC Health Program.

2. Because Responders are not billed for prescriptions under the WTC Health Program, they incur no expense for such prescriptions and so there is no expense to recover under WC. Furthermore, if a health insurer pays for a medication that could have been obtained from the WTC Health Program, that insurer is not eligible for reimbursement from the WTC Health Program.

3. It is likely that most Responders will get their medication from the WTC Health Program's pharmacy plan and will not incur out-of-pocket medication costs for which they seek reimbursement in WC cases. If the WTC Health Program-certified health condition is covered by WC, some of those prescription medication expenses could be paid for by a WC insurer. The WTC Health Program may choose to determine which pharmacy expenses a WC insurer might be responsible for and bill the WC insurer directly. However, the WTC Health Program will wait to determine whether it is feasible to establish an internal audit and billing system to recoup prescriptions costs from WC insurers and whether such a process would recover more funds than the process costs. If the administrative costs of such a program, and the WTC Health Program personnel resources necessary to oversee it, would outweigh any recoupment benefit, the Program may decline to recoup pharmacy expenses.

## **VI. WTC Health Program Claims Adjudication & Recovery Procedures**

### **A. General Implementation**

1. To implement the *Policy and Procedures for Recoupment & Coordination of Benefits: Work-Related Health Conditions*, the WTC Health Program will assign to a contractor the

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<sup>23</sup> New York State Workers' Compensation Law §13(l).



responsibility to coordinate benefits. The Coordination of Benefits contractor (COBC) will gather and maintain information about whether another plan is the primary payer for services provided by the WTCHP. Primary payers other than WTCHP may include WC insurance, health insurance, and Medicare.

2. The COBC will build electronic files indicating which Responders have primary insurance coverage that must pay claims before the WTC Health Program pays those claims. In such cases, the WTC Health Program will be the secondary payer and will not pay for treatment claims until it has received confirmation that the primary payer has either denied the claims or paid its share. The COBC will rely on Responder self-reports, medical provider status updates, and periodic data matches with NYS WCB to update information in its electronic files.

## **B. Specific Claims Adjudication Procedures**

### **1. Accepted WC Claims, Not Funded by New York City**

a. WC insurer is the primary payer and the WTC Health Program is the secondary payer.

b. Claim Submission Requirement:

Confirmation that medical provider is not an authorized WC medical provider or primary payer, the WC Insurer, has either denied the claim or made partial payment, i.e. an explanation of benefits, is required.

c. If the WTC Health Program does not receive confirmation that the primary payer has either denied the claim or made partial payment, WTC Health Program may deny the claim due to an error in order of payment.

d. If the WTC Health Program receives confirmation of claim denial, then the WTC Health Program pays the claim.

I. If it is determined that the primary payer should have paid the claim, the WTC Health Program may seek to recoup from the primary payer directly.

II. If the medical provider receives payment from the primary payer, the contract between the WTC Health Program and the medical provider requires that the medical provider credit the WTC Health Program for those funds.

e. If the WTC Health Program receives confirmation of partial payment, then the WTC Health Program will pay the balance per the FECA rate due the medical provider.

### **2. WC Claims with New Section 32 Agreements**

a. The WTC Health Program will review settlements on a case-by-case basis and determine set-aside amounts based on a variety of factors, including, the amount of the settlement, Responders' certified WTC-related conditions, actuarially estimated future medical expenses, and Responders' obligations to CMS.

b. The WTC Health Program will bill the Responder, or an MSA, annually for payments.

### **3. Pending or Contested WC Cases**

a. Where the CCE medical provider can credit the WTC Health Program for conditional payments, the Program pays conditionally after 120 days.

b. Where the CCE medical provider *cannot* credit the WTC Health Program for conditional payments, the CCEs are required by contract to hold, keeping these monies separate from other monies, and periodically report the amounts to the WTC Health Program.

c. Claim Submission Requirement

Confirmation that primary payer has denied the claim, or 120 days have passed since claim submission, and conditional payment has not been rendered is required.

d. If the WTC Health Program does not receive confirmation that the primary payer has either denied the claim, made partial payment, or the 120 days has not expired, the Program may deny the claim due to an error in order of payment.

e. If the WTCHP receives confirmation of claim denial, the WTC Health Program will pay any claim submitted to it by a provider.

f. If the WTC Health Program receives confirmation of partial payment, the WTC Health Program pays the balance per the FECA rate to the medical provider.

g. If the specified number of days has expired, the WTC Health Program pays the claim.

I. The WTC Health Program may seek to recoup from the primary payer directly.

II. If the medical provider receives payment from the primary payer, the medical provider will be asked to credit the WTC Health Program for funds received.

### **4. Recovery Actions**

- a. The WTC Health Program will first send a demand letter to the appropriate party.
- b. Even if an insurer has paid a claim, the WTC Health Program may pursue recovery against any or all entities required, or responsible, to make payment.
- c. A party against whom the WTC Health Program seeks recovery may seek a waiver of the claim. The WTC Health Program may grant waivers for good cause. See Section VI.B.5..
- d. The WTC Health Program intends to establish an internal appeals process to allow parties to challenge either the duty to pay or amount owed.
- e. If the debt is not paid within 120 days, the WTC Health Program will refer delinquent debt to U.S. Department of Treasury for recovery.

## 5. Waiver Policy and Procedures

### a. Waiver Policy

1. The Administrator of the World Trade Center Health Program is authorized to waive recoupment when the Administrator determines that “waiver is in the best interests of the program.”<sup>24</sup>

2. To guide the exercise of the Administrator’s waiver authority,<sup>25</sup> the Administrator has established specific procedures.

**Note:** There are likely to be very few cases where an individual requests a waiver, because the WTC Health Program will only recoup from an individual where there is a Section 32 settlement, and the WTC Health Program will review each of those on a case-by-case basis.

3. Relying on this authority, the Administrator may waive recoupment in two circumstances.

(a) The Administrator may waive recoupment if the probability of recovery or the amount involved does not justify the expenditure necessary to obtain recoupment; or

(b) The administrator may waive recoupment when doing so serves the interest of “equity and good conscience.”

4. When deciding whether to waive recoupment, the Administrator may waive recoupment in whole or in part and with respect to an individual claim or a class of claims.

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<sup>24</sup> 42 U.S.C. §1395y(b)(2)(B)(v).

<sup>25</sup> 42 U.S.C. §300mm-41(b)(1) incorporating 42 U.S.C. §1395y(b)(2)(b)(v).

## **b. Waiver Procedures**

1. Any individual or entity from whom the Administrator seeks recoupment may request a waiver. Such a request shall be made no later than 60 days after the date the individual or entity learns that the Administrator seeks recoupment for payments made on behalf of the individual or to the entity seeking a waiver.
2. A request for a waiver shall be in writing, addressed to the Administrator, and shall describe the circumstances suggesting that a waiver is appropriate. The Administrator may consider, among others, the following factors in deciding whether to waive recoupment: the degree, if any, to which the individual caused the overpayment; the degree to which recoupment would cause undue hardship; the degree to which recoupment is for payments or services unrelated to WTC health conditions; the degree to which the cost of collection does not justify the amount to be recovered; the degree of risk involved in seeking recoupment.
3. A person or entity who believes that the amount of recoupment requested is in error shall seek a partial waiver of recoupment and explain the reason why the amount requested is incorrect.
4. The Administrator may decide that recoupment should be waived even if no request to do so has been received.
5. Any decision by the Administrator to waive recoupment shall be in writing and shall explain the basis for the decision.
6. If a request for waiver of recoupment was made by an individual or entity, the person or entity making the request shall receive a copy of the Administrator's decision.

## **VII. Duties of WTC Health Program Responders**

### **A. Information Duties**

WTC Health Program Responders must provide accurate, up-to-date information on the status of their WC or Line of Duty Injury<sup>26</sup> (LODI) claim(s) in the application process and throughout their membership in the WTC Health Program.

1. When applying to the WTC Health Program, Responders must complete a WTC Health Program Application Form which asks about WC claim status. There

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<sup>26</sup> Certain employees are not covered by WC, but are covered by a "work-related injury or illness plan of the employer involved." 42 U.S.C. §300mm-41(b)(1). These are referred to as Line of Duty Injury Claims.

is no consequence for failing to complete the application, but providing false information or concealing facts is subject to general penalties for lying in an application for government benefits.<sup>27</sup>

2. If a Responder does not provide WC or LODI claim information in the application process, the Responder must provide this information to the WTC Health Program prior to or at the time of their next visit.

3. Responders must provide the WTC Health Program with up to date information regarding the status of their claim by informing their CCE or contacting the WTC Health Program Call Center.

#### **B. Pursuing WC Benefits**

1. Responders are encouraged to pursue WC benefits to which they are entitled by law.
2. Responders must take the WTC Health Program's interest into account when entering into settlements that include compensation for future medical expenses.

### **VIII. Duties of CCEs and Medical Providers**

#### **A. Counseling WTC Health Program Responders to File for WC benefits**

1. The WTC Health Program CCE contracts provide:

“The CCE shall provide assistance to Responders with applying for Workers’ Compensation benefits and to medical providers with completing Workers’ Compensation paperwork. Similarly, if other sources of payment are available, the CCE shall assist Responders in accessing those benefits.”

2. The WTCHP will randomly check files of WC-eligible Responders receiving treatment covered by the WTC Health Program to ensure that those eligible for WC file claims.

3. CCEs must inquire about WC coverage conditions and update the WTC Health Program regularly to ensure proper billing.

4. CCEs need to report this information in a manner that enables the COBC to access and track the information.

#### **B. Billing Primary Payers before Billing WTC Health Program**

1. The CCE contracts provide:

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<sup>27</sup> 18 U.S.C. §1001.

“The CCE shall submit bills for patient care rendered at its facilities to Medicaid; Medicare; commercial, employment-based (e.g., workers’ compensation), no-fault and liability insurances; and for self-pay **before** seeking reimbursement from the WTC Health Program.”

2. CCE must take reasonable steps to recover monies from a WC insurer.
3. CCEs should defer billing the WTC Health Program in contested cases for 120 days (or at least understand that the WTC Health Program will not pay until the specified number of days has expired).

#### **C. Payment from WTC Health Program and another Source**

1. If CCEs receive payment from the WTC Health Program and another source, monies must be credited to the WTC Health Program.
2. The CCE contracts provide:

“The CCE shall coordinate payment of benefits so that any money received from any other source for medical claims which have already been paid by the WTC Health Program will be reimbursed to the Government. This coordination will be made with the WTC Program Administrator. For ongoing healthcare that is paid by other sources, records of those services and the costs that are reimbursed shall be coordinated with the WTC Program Administrator.”

#### **IX. Duties of WC Insurers**

- A. When coverage is available for a WTC certified condition from WC or another illness or injury benefit plan of an employer, they are “primary plans,” and must pay for treatment services rendered by the WTC Health Program if the WTC Health Program medical provider is an authorized medical provider under the state’s WC law.
- B. For settlements below \$10,000, the WTC Health Program will assume the settlement does not include monies for future medical expenses after September 1, 2013.
- C. For settlements above \$10,000, the WTC Health Program expects that insurers and claimants will consult with the WTC Health Program to determine an appropriate amount of the settlement to be allocated to future medical expenses covered by the WTC Health Program. If the insurer does not ensure that such monies are set aside, the WTCHP may seek recoupment from the WC insurer, even if the insurer has already paid the Responder in settlement.

**Effective Date: September 1, 2013**