



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

**Effective Date: September 1, 2013**  
**Effective Date for Section 32 Agreements: October 1, 2013**  
**Revised: December 16, 2013**  
**August 3, 2016**

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### **I. Authority**

- A.** James Zadroga 9/11 Health and Compensation Act of 2010 ("Zadroga Act")<sup>1</sup>
- B.** James Zadroga 9/11 Health and Compensation Reauthorization Act<sup>2</sup>
- C.** Social Security Act ("SSA")<sup>3</sup>

### **II. Effective Dates**

- A.** The effective date of this *Policy and Procedures for Recoupment & Coordination of Benefits: Workers' Compensation Payments* is August 3, 2016. This *Policy* supersedes an earlier *Policy and Procedures for Recoupment and Coordination of Benefits* that went into effect on September 1, 2013 and was revised on December 16, 2013.
- B.** Contracts between the World Trade Center (WTC) Health Program and the Clinical Centers of Excellence (CCEs) and the Nationwide Provider Network (NPN) require the CCEs and NPN to seek recoupment from workers' compensation (WC) insurers when such insurers have been identified by the CCE and the NPN. CCEs and the NPN will no longer have a duty to bill

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<sup>1</sup> Public Law 111-347, codified at 42 U.S.C. § 300mm et seq.

<sup>2</sup> Public Law 114-113

<sup>3</sup> 42 U.S.C. § 301 et seq.

primary WC insurers. The WTC Health Program will rely on the Health Insurers' Match Program (HIMP), authorized under New York State (NYS) law to recover payments from WC insurers. To facilitate recoupment, the WTC Health Program has entered into a contract to recover money retrospectively from NYS WC insurers.

### **III. Background Information**

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

1. The Zadroga Act<sup>4</sup> grants the Administrator the authority to "reduce[] or recoup[]" a payment for treatment of an individual's WTC-related certified health condition that is work-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>5</sup>The Zadroga Act further 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>6</sup>
2. In interpreting the WTC Health Program's statutory duty to recoup under the Zadroga Act, the WTC Health Program is guided by policies of the U.S. Department of Health and Human Services' (HHS) Centers for Medicare and Medicaid Services (CMS), which administers the Medicare Secondary Payer (MSP) 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 – the WTC Health Program is a limited care program which only provides care for a specific set of health conditions; 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 MSP program.

#### **B. General Recoupment Scheme**

1. The WTC Health Program will seek to recoup from WC insurers that have the primary responsibility to pay for health care for members using the NYS HIMP. See <http://www.wcb.ny.gov/content/main/wclaws/HIMPRegs.jsp>.

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<sup>4</sup> 42 U.S.C. § 300mm-41(b)(1).

<sup>5</sup> 42 U.S.C. § 300mm-41(b).

<sup>6</sup> *Id.*

2. If the primary payer<sup>7</sup> seeks to shift costs onto the WTC Health Program, or the Program cannot recover WC payments under HIMP, the Administrator may file a recoupment action against a primary payer.<sup>8</sup>

### **C. State Workers' Compensation Procedures**

1. The recoupment policy of the WTC Health Program is designed to operate in accordance with NYS WC law (if there is a conflict between NYS and Federal law, however, Federal law shall be used). The WTC Health Program expects that few new WC claims will be filed in jurisdictions outside NYS for two reasons. First, most work-related WTC exposures occurred in NYS. Second, in most jurisdictions workers must file a WC claim for an accident or occupational disease within two years from the date of its occurrence.<sup>9</sup>
2. New claims may still be filed in NYS notwithstanding the usual two year filing deadline. In 2006, NYS amended its WC law to allow eligible rescue, recovery, and clean-up workers to register with the NYS Workers' Compensation Board (WCB) before September 2010.<sup>10</sup> Approximately 38,000 people registered under this provision. In 2012, NYS enacted legislation to reopen the registry through September 11, 2014 to allow more eligible workers to sign up.<sup>11</sup> The eligible 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. Thus rescue, recovery, and clean-up workers in NYS may still be eligible to file WC claims for WTC-related health conditions.

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

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

1. 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 WC or another illness or injury benefit plan to which New York City is obligated to pay, the WTC Health Program is the primary payer.

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

<sup>9</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>10</sup> See NY WCL, §8-A.

<sup>11</sup> See NY WCL, §162

2. Where a WTC Health Program member has filed a WC 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 WCB, the WC 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.
3. Where a WTC Health Program member has filed a WC 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.

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

1. Where a WTC Health Program member has filed a WC claim for a WTC-related health condition or health condition medically associated with a WTC-related health condition with a WC plan to which New York City is not obligated to pay, the WC insurer is the primary payer. The WTC Health Program is the secondary payer and the WTC Health Program will seek to recoup its payments to health care providers under NYS HIMP.
2. A WC insurer may reasonably dispute a claim under the rules and regulations applicable to HIMP. The WTC Health Program will defer to the final decisions of the NYS WCB with respect to whether, and if so how much, a WC insurer must pay for each claim.
3. Under NYS WC law, insurers must pay claims at rates established in a NYS WCB fee schedule. Reimbursement rates under NYS WC law, in almost all cases, will be lower than the Federal Employee Compensation Act (FECA) reimbursement rates specified in the Zadroga Act. The WTC Health Program will seek recoupment only of fees payable under the NYS WCB fee schedule.

**V. Duties of WTC Health Program Members**

**A. Information Duties**

WTC Health Program members will be asked to provide accurate, up-to-date information on the status of their WC or other such claim(s) throughout their membership in the WTC Health Program.

1. Members must provide this information to their CCE or NPN at the time of their initial visit, at subsequent visits, or when requested.
2. Members must continue to provide up-to-date information regarding the status of their claims to their CCE or NPN.

**B. Pursuing WC Benefits**

1. Members are encouraged to pursue all WC benefits to which they are entitled by law.
2. For members who enter into a lump-sum settlement that releases an employer or WC insurer from paying for future medical care, see the WTC Health Program's *Policy and Procedures for Recoupment: Lump Sum Workers' Compensation Settlements*.

#### **VI. Duties of CCEs and the NPN**

- A.** The WTC Health Program CCEs and NPN provide assistance to members with applying for Workers' Compensation benefits and, if other sources of payment are available, the CCE [or NPN] may assist members in accessing those benefits.
- B.** For members who are receiving treatment from the WTC Health Program and who may be eligible for WC benefits, the CCEs and NPN encourage members to file WC claims.
- C.** CCEs and NPN must cooperate with the WTC Health Program's HIMP contractor.
- D.** If CCEs or NPN receive payment from the WTC Health Program and another source (including WC insurers), all monies from other sources must be credited to the WTC Health Program.

#### **VII. Duties of WC Insurers**

When coverage is available for a certified WTC-related health condition from a WC plan or another work-related illness or injury benefit plan of an employer, those plans are deemed "primary plans," and must pay for treatment services rendered by the WTC Health Program consistent with applicable laws.

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