

## **A Little Too Late: The Public Health Response to the World Trade Center Attack**

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Six years after the fires are out and the dust has settled responders to the World Trade Center (WTC) attack are still feeling its effects. Many still suffer from devastating health conditions while others are just discovering that their health has been affected by the time they spent at Ground Zero.

Thousands of responders to the WTC attack were exposed to a unique mixture of toxic chemicals and debris, including, but not limited to, burning jet fuel, PCBs from fluorescent lighting, cement dust, glass fibers, lead, asbestos, chromium, pesticides, diesel fumes, and smoke from the lingering fires.<sup>1</sup> Now many responders suffer from various health issues: asthma, upper respiratory infections, reactive airway disease, pneumonia, bronchial infections, bloody noses, skin rashes, persistent cough (called “WTC cough”), gastrointestinal disease, and mental health issues.<sup>2</sup> It also has been reported that responders have an increased risk of developing a sarcoid like granulomatous pulmonary disease.<sup>3</sup> A recent study of the New York City firefighters concluded that their lung function decreased – consistent with 12 years of aging – due to their exposure to the noxious dust at Ground Zero.<sup>4</sup> Further, there is the concern of long-term effects including asbestosis, mesothelioma, and cancer.<sup>5</sup> Without proper monitoring and screening, the various health effects and the possible long-term effects may go undocumented and untreated.

The Federal Government’s response to the WTC attacks and its effects on the responders has been lackluster. Even though the Government has provided funding through emergency appropriations in excess of \$778 million,<sup>6</sup> no comprehensive system or coordinated effort has been developed to provide screening and monitoring to 9/11 responders. Instead, the funds have been distributed to six different WTC Health

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<sup>1</sup> Bill Cahir, *Health Issues Linger for 9/11 Responders*, available at <http://www.EMSResponder.com> (last accessed Sept. 11, 2007). See also Laura Anthony, *Health Problems Linger for 9/11 Responders, Congress Tries to Address Long-Term Health Issues*, available at <http://www.abc7news.com>, (last accessed Sept. 11, 2007).

<sup>2</sup> Ridgely Ochs, *NY Metro: 9/11 Health and Compensation Act*, available at <http://www.newsday.com>, (last accessed Sept. 10, 2007). See also Anthony DePalma and Serge F. Kovaleski, *Accuracy of 9/11 Health Reports Is Questioned*, N.Y. TIMES, Sept. 7, 2007, available at <http://www.nytimes.com> (last accessed Sept. 21, 2007).

<sup>3</sup> Gabriel Izbicki, et al, *World Trade Center “Sarcoid-Like” Granulomatous Pulmonary Disease in New York City Fire Department Rescue Workers*, 131 CHEST, 1414-1423 (2007).

<sup>4</sup> Gisela I. Banauch, *Pulmonary Function After Exposure to the World Trade Center Collapse in the New York City Fire Department*, 774 AMERICAN JOURNAL OF RESPIRATORY AND CRITICAL CARE MEDICINE, 312-319 (2006).

<sup>5</sup> Ridgely Ochs, *NY Metro: 9/11 Health and Compensation Act*, at <http://www.newsday.com>, (last accessed Sept. 10, 2007). See also Cahir, *supra* note 1.

<sup>6</sup> Cahir, *supra* note 1.

Programs,<sup>7</sup> and only two of the six programs provide screening and monitoring, including follow up examinations and treatment of the WTC-related conditions.<sup>8</sup>

The most comprehensive and effective program has been the FDNY WTC Program, which provides initial screening, follow-up medical monitoring, and treatment of WTC-related conditions for FDNY firefighters and EMS technicians.<sup>9</sup> As of June 2007, this Program screened 14,500 responders and conducted follow up examinations on 13,500 responders.<sup>10</sup> Another program, the NJ/NY WTC Consortium provides the same services to all responders except FDNY firefighters, EMS responders, and current federal employees, as these responders are meant to be covered by other programs.<sup>11</sup> The Consortium has screened 20,000 responders and conducted follow up examinations of 8,000 responders.<sup>12</sup> While these programs implemented by various New York City entities have worked well, the other WTC health programs have not.

Specifically, the WTC Federal Responder Screening Program has only screened 1,305 as of June 2007.<sup>13</sup> This program provides one-time screenings and referrals to employee assistance programs, and referrals to specialty diagnostic services to current federal employees who responded to the WTC attack in an official capacity.<sup>14</sup> Because of its on again off again approach this program has had difficulty in providing screenings.<sup>15</sup> This program is administered by the Department of Health and Human Services (HHS) and the National Institute for Occupational Safety and Health (NIOSH), who have placed the program on hold and suspended scheduling health screenings for responders on several occasions since 2003.<sup>16</sup> Providing consistent monitoring and diagnostic care to responders has also been troublesome for the WTC Federal Responder Screening Program because its contracts with network providers did not cover specific services.<sup>17</sup>

There are three other programs: 1) WTC Health Registry, 2) PROJECT COPE, and 3) Police Organization Providing Peer Assistance (POPPA) Program.<sup>18</sup> These programs do not provide screening, diagnostic care, or monitoring.<sup>19</sup> Essentially, these programs offer

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<sup>7</sup> *Improvements Needed in Availability of Health Screening and Monitoring Services for Responders: Testimony Before the House of Representatives SubComm. On Gov't Management, Organization, and Procurement, Comm. on Oversight and Gov't Reform.*, 110<sup>th</sup> Cong. 1 -14 (Sept. 10, 2007) (statement of Cynthia A. Bascetta, Director, Health Care, U.S. Gov't Accountability Office).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 11 – 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 8.

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

hotlines, mental health counseling, referral services, and monitoring through surveys.<sup>20</sup> Over 70,000 responders have registered with the WTC Health Registry.<sup>21</sup>

The six programs mentioned above do not provide services, screening, or monitoring for non-federal responders residing outside of New York City, unless a non-resident responder travels to New York City at his or her own expense to receive screening and monitoring services.<sup>22</sup> Since 2002, NIOSH has contracted with only 10 clinics in seven states to provide screening and monitoring services.<sup>23</sup> And as of June 2007, these clinics were monitoring 180 responders.<sup>24</sup> Even though in 2006 NIOSH considered expanding the WTC health programs to reach responders who reside outside New York City, its efforts have been ineffective.<sup>25</sup>

Although two of these programs have successfully implemented systems to screen and monitor responders, it is clear that there has been no coordinated effort outside New York City to make sure all responders to the WTC attacks are identified, screened and monitored. The Federal Government's apathetic response is enhanced by the fact that over the last six years several bills that addressed the health effects of the 9/11 responders failed to get through Congress.<sup>26</sup> These failures came despite the fact that WTC responders reside in every state and in 431 of the 435 congressional districts.<sup>27</sup>

It is only now, six years after the tragedy on September 11, 2007, a group of representatives joined forces to seek passage of H.R. 1638, The James Zadroga 9/11 Health Compensation Act.<sup>28</sup> As proposed, this Act would establish the WTC Health Program, which, among other things, would provide medical monitoring and treatment of WTC-related conditions to all responders.<sup>29</sup> It would also broaden the scope of the current WTC health programs by providing the same benefits to residents and to other non-responders who were in Lower Manhattan on 9/11.<sup>30</sup> Additionally, it would direct the creation of a nationwide network of health care providers in order to screen, monitor, and treat responders who reside outside New York City.<sup>31</sup>

The Act also would direct HHS to conduct research on the diagnosis and treatment of mental and physical health effects of the WTC attack.<sup>32</sup> This ensures that the public health effects of the WTC attack will be tracked, gathered, and studied.

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<sup>20</sup> *Id.*

<sup>21</sup> Cahir, *supra* note 1.

<sup>22</sup> *Improvements Needed in Availability of Health Screening and Monitoring Services for Responders: Testimony Before the Sub Comm. On Gov't Management, Organization, and Procurement, Comm. on Oversight and Gov't Reform, supra* note 7.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 15.

<sup>26</sup> Cahir, *supra* note 1.

<sup>27</sup> *Id.*

<sup>28</sup> H.R. 1638, 110th Cong. (2007).

<sup>29</sup> *Id.* at § 371T.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at § 409J.

Under the Act, NIOSH would administer the entire program, with HHS being charged with convening the 9/11 Health Emergency Coordinating Council to examine the adequacy of the Program's effectiveness and to formulate recommendations as necessary.<sup>33</sup>

Further, as proposed, the Act would re-open the 9/11 Victim Compensation Fund, that originated to compensate victims' families, by expanding the deadline to file a claim and amending the eligibility requirements.<sup>34</sup> This would allow responders who have had a financial loss because of their illness to recover monetarily.

The James Zadroga 9/11 Health Compensation Act appears to be the overdue solution for the WTC responders and others. However, one wonders if NIOSH is capable of handling what the Act proscribes as its responsibilities – especially, in light of NIOSH's failure to implement a continuous and effective health screening program over the last six years. Further, the Act does not set forth specific procedures for establishing the nationwide network of health care providers. As we have seen, the WTC Federal Responder Screening Program has worked since 2002 to set up a nationwide program and has failed. Furthermore, the role of HHS in the Act causes concerns as HHS has disregarded the urgings of the Government Accountability Office to “take expeditious action to ensure that health screening and monitoring services are available to all people who responded to the attack on the WTC, regardless of whom their employer was or where they reside.”<sup>35</sup> Without further direction and oversight, NIOSH and HHS may fail again. However, one redeeming factor for the agencies is that the Act recognizes the success of the FDNY WTC Program and the NJ/NY WTC Consortium and would require the formation of the coordinating consortium body which includes representatives from these programs to assist in directing the monitoring and treatment of responders.<sup>36</sup>

Further, one wonders if there is enough funding to provide comprehensive medical coverage to all responders, residents, and non-responders with WTC-related health conditions. For the next five years, the Act appropriates \$1.9 billion to fund the WTC Health Program.<sup>37</sup> However, it has been estimated that approximately 400,000 people might have been exposed to the noxious dust.<sup>38</sup> A recent NIOSH study found that it is currently costing \$195,000,000 to screen, monitor and treat the known responders with WTC-related health conditions – approximately 36,000 responders.<sup>39</sup> Therefore, it is likely that more money from the federal budget will be needed to implement the proposed bill.

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<sup>33</sup> *Id.* at § 201.

<sup>34</sup> *Id.* at § 301.

<sup>35</sup> *Improvements Needed in Availability of Health Screening and Monitoring Services for Responders: Testimony Before the Sub Comm. On Gov't Management, Organization, and Procurement, Comm. on Oversight and Gov't Reform, supra note 7.*

<sup>36</sup> H.R. 1638 at § 317T.

<sup>37</sup> *Id.*

<sup>38</sup> Anthony DePalma, *Representatives Join Forces to Push New 9/11 Medical Bill*, N.Y. TIMES, Sept. 8, 2007 available at <http://www.nytimes.com> (last accessed Sept. 9. 2007).

<sup>39</sup> *Id.*

Despite some of its apparent weaknesses, H.R. 1638, The James Zadroga 9/11 Health Compensation Act, is a much-needed response. A quote from Representative Maloney says it all:

The fact that men and women are ill and not being helped here is a national disgrace. We are the wealthiest nation on earth; the least we can do is provide healthcare for the men and women who were there on 9/11. They were here for us. We need to be here for them.<sup>40</sup>

However, our recent history as a nation providing health care to our troops and citizens may prove too strong, and the WTC responders and their illnesses may go untreated and forgotten.

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<sup>40</sup> Ray Rivera, *Rally at Ground Zero Aims to Build Support for 9/11 Health Care Legislation*, N.Y. TIMES, Sept. 9, 2007 available at <http://www.nytimes.com> (last accessed Sept. 11, 2007).