

VETERANS NONPROFIT RESEARCH AND EDUCATION
CORPORATIONS ENHANCEMENT ACT OF 2009

JULY 23, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 2770]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2770) to amend title 38, United States Code, to modify and update provisions of law relating to nonprofit research and education corporations, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Nonprofit Research and Education Corporations Enhancement Act of 2009”.

SEC. 2. GENERAL AUTHORITIES ON ESTABLISHMENT OF CORPORATIONS.

(a) AUTHORIZATION OF MULTI-MEDICAL CENTER RESEARCH CORPORATIONS.—

(1) IN GENERAL.—Section 7361 of title 38, United States Code, is amended—

(A) by redesignating subsection (b) as subsection (e); and

(B) by inserting after subsection (a) the following new subsection (b):

“(b)(1) Subject to paragraph (2), a corporation established under this subchapter may facilitate the conduct of research, education, or both at more than one medical center. Such a corporation shall be known as a ‘multi-medical center research corporation’.

“(2) The board of directors of a multi-medical center research corporation under this subsection shall include the official at each Department medical center concerned who is, or who carries out the responsibilities of, the medical center director of such center as specified in section 7363(a)(1)(A)(i) of this title.

“(3) In facilitating the conduct of research, education, or both at more than one Department medical center under this subchapter, a multi-medical center research corporation may administer receipts and expenditures relating to such research, education, or both, as applicable, performed at the Department medical centers concerned.”.

(2) EXPANSION OF EXISTING CORPORATIONS TO MULTI-MEDICAL CENTER RESEARCH CORPORATIONS.—Such section is further amended by adding at the end the following new subsection:

“(f) A corporation established under this subchapter may act as a multi-medical center research corporation under this subchapter in accordance with subsection (b) if—

“(1) the board of directors of the corporation approves a resolution permitting facilitation by the corporation of the conduct of research, education, or both at the other Department medical center or medical centers concerned; and

“(2) the Secretary approves the resolution of the corporation under paragraph (1).”.

(b) RESTATEMENT AND MODIFICATION OF AUTHORITIES ON APPLICABILITY OF STATE LAW.—

(1) IN GENERAL.—Section 7361 of such title, as amended by subsection (a) of this section, is further amended by inserting after subsection (b) the following new subsection (c):

“(c) Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State in which the applicable Department medical center is located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State. In the case of any multi-medical center research corporation that facilitates the conduct of research, education, or both at Department medical centers located in different States, the corporation shall be established in accordance with the nonprofit corporation laws of the State in which one of such Department medical centers is located.”.

(2) CONFORMING AMENDMENT.—Section 7365 of such title is repealed.

(c) CLARIFICATION OF STATUS OF CORPORATIONS.—Section 7361 of such title, as amended by this section, is further amended—

(1) in subsection (a), by striking the second sentence; and

(2) by inserting after subsection (c) the following new subsection (d):

“(d)(1) Except as otherwise provided in this subchapter or under regulations prescribed by the Secretary, any corporation established under this subchapter, and its officers, directors, and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives that apply generally to private nonprofit corporations.

“(2) A corporation under this subchapter is not—

“(A) owned or controlled by the United States; or

“(B) an agency or instrumentality of the United States.”.

(d) REINSTATEMENT OF REQUIREMENT FOR 501(C)(3) STATUS OF CORPORATIONS.—Subsection (e) of section 7361 of such title, as redesignated by subsection (a)(1) of this section, is further amended by inserting “section 501(c)(3) of” after “exempt from taxation under”.

SEC. 3. CLARIFICATION OF PURPOSES OF CORPORATIONS.

(a) CLARIFICATION OF PURPOSES.—Subsection (a) of section 7362 of title 38, United States Code, is amended in the first sentence—

(1) by striking “Any corporation” and all that follows through “facilitate” and inserting “A corporation established under this subchapter shall be established to provide a flexible funding mechanism for the conduct of approved research and education at one or more Department medical centers and to facilitate functions related to the conduct of”; and

(2) by inserting before the period at the end the following: “or centers”.

(b) MODIFICATION OF DEFINED TERM RELATING TO EDUCATION AND TRAINING.—Subsection (b) of such section is amended in the matter preceding paragraph (1) by striking “the term ‘education and training’” and inserting “the term ‘education’ includes education and training and”.

(c) REPEAL OF ROLE OF CORPORATIONS WITH RESPECT TO FELLOWSHIPS.—Paragraph (1) of subsection (b) of such section is amended by striking the flush matter following subparagraph (C).

(d) AVAILABILITY OF EDUCATION FOR FAMILIES OF VETERAN PATIENTS.—Paragraph (2) of subsection (b) of such section is amended by striking “to patients and to the families” and inserting “and includes education and training for patients and families”.

SEC. 4. MODIFICATION OF REQUIREMENTS FOR BOARDS OF DIRECTORS OF CORPORATIONS.

(a) REQUIREMENTS FOR DEPARTMENT BOARD MEMBERS.—Paragraph (1) of section 7363(a) of title 38, United States Code, is amended to read as follows:

“(1) with respect to the Department medical center—

“(A)(i) the director (or directors of each Department medical center, in the case of a multi-medical center research corporation);

“(ii) the chief of staff; and

“(iii) as appropriate for the activities of such corporation, the associate chief of staff for research and the associate chief of staff for education; or

“(B) in the case of a Department medical center at which one or more of the positions referred to in subparagraph (A) do not exist, the official or officials who are responsible for carrying out the responsibilities of such position or positions at the Department medical center; and”.

(b) REQUIREMENTS FOR NON-DEPARTMENT BOARD MEMBERS.—Paragraph (2) of such section is amended—

(1) by inserting “not less than two” before “members”; and

(2) by striking “and who” and all that follows through the period at the end and inserting “and who have backgrounds, or business, legal, financial, medical, or scientific expertise, of benefit to the operations of the corporation.”.

(c) CLARIFICATION THAT DEPARTMENT EMPLOYEES MAY SERVE AS EXECUTIVE DIRECTORS.—Subsection (b) of section 7363 of such title is amended in the first sentence, by inserting after “executive director who” the following: “may be an employee of the Department and who”.

(d) CONFLICTS OF INTEREST.—Subsection (c) of section 7363 of such title is amended by striking “, employed by, or have any other financial relationship with” and inserting “or employed by”.

SEC. 5. CLARIFICATION OF POWERS OF CORPORATIONS.

(a) IN GENERAL.—Section 7364 of title 38, United States Code, is amended to read as follows:

“§ 7364. General powers

“(a) IN GENERAL.—(1) A corporation established under this subchapter may, solely to carry out the purposes of this subchapter—

“(A) accept, administer, retain, and spend funds derived from gifts, contributions, grants, fees, reimbursements, and bequests from individuals and public and private entities;

“(B) enter into contracts and agreements with individuals and public and private entities;

“(C) subject to paragraph (2), set fees for education and training facilitated under section 7362 of this title, and receive, retain, administer, and spend funds in furtherance of such education and training;

“(D) reimburse amounts to the applicable appropriation account of the Department for the Office of General Counsel for any expenses of that Office in providing legal services attributable to research and education agreements under this subchapter; and

“(E) employ such employees as the corporation considers necessary for such purposes and fix the compensation of such employees.

“(2) Fees charged pursuant to paragraph (1)(C) for education and training described in that paragraph to individuals who are officers or employees of the Department may not be paid for by any funds appropriated to the Department.

“(3) Amounts reimbursed to the Office of General Counsel under paragraph (1)(D) shall be available for use by the Office of the General Counsel only for staff and training, and related travel, for the provision of legal services described in that paragraph and shall remain available for such use without fiscal year limitation.

“(b) TRANSFER AND ADMINISTRATION OF FUNDS.—(1) Except as provided in paragraph (2), any funds received by the Secretary for the conduct of research or education at a Department medical center or centers, other than funds appropriated to the Department, may be transferred to and administered by a corporation established under this subchapter for such purposes.

“(2) A Department medical center may reimburse the corporation for all or a portion of the pay, benefits, or both of an employee of the corporation who is assigned to the Department medical center if the assignment is carried out pursuant to subchapter VI of chapter 33 of title 5.

“(3) A Department medical center may retain and use funds provided to it by a corporation established under this subchapter. Such funds shall be credited to the applicable appropriation account of the Department and shall be available, without fiscal year limitation, for the purposes of that account.

“(c) RESEARCH PROJECTS.—Except for reasonable and usual preliminary costs for project planning before its approval, a corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Under Secretary for Health for research carried out with Department funds. Such procedures shall include a scientific review process.

“(d) EDUCATION ACTIVITIES.—Except for reasonable and usual preliminary costs for activity planning before its approval, a corporation established under this subchapter may not spend funds for an education activity unless the activity is approved in accordance with procedures prescribed by the Under Secretary for Health.

“(e) POLICIES AND PROCEDURES.—The Under Secretary for Health may prescribe policies and procedures to guide the spending of funds by corporations established under this subchapter that are consistent with the purpose of such corporations as flexible funding mechanisms and with Federal and State laws and regulations, and executive orders, circulars, and directives that apply generally to the receipt and expenditure of funds by nonprofit organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.”.

(b) CONFORMING AMENDMENT.—Section 7362(a) of such title, as amended by section 3(a)(1) of this Act, is further amended by striking the last sentence.

SEC. 6. REDESIGNATION OF SECTION 7364A OF TITLE 38, UNITED STATES CODE.

(a) REDESIGNATION.—Section 7364A of title 38, United States Code, is redesignated as section 7365 of such title.

(b) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 73 of such title is amended—

(1) by striking the item relating to section 7364A; and

(2) by striking the item relating to section 7365 and inserting the following new item:

“7365. Coverage of employees under certain Federal tort claims laws.”.

SEC. 7. IMPROVED ACCOUNTABILITY AND OVERSIGHT OF CORPORATIONS.

(a) ADDITIONAL INFORMATION IN ANNUAL REPORTS.—Subsection (b) of section 7366 of title 38, United States Code, is amended to read as follows:

“(b)(1) Each corporation shall submit to the Secretary each year a report providing a detailed statement of the operations, activities, and accomplishments of the corporation during that year.

“(2)(A) A corporation with revenues in excess of \$500,000 for any year shall obtain an audit of the corporation for that year.

“(B) A corporation with annual revenues between \$100,000 and \$500,000 shall obtain an audit of the corporation at least once every three years.

“(C) Any audit under this paragraph shall be performed by an independent auditor.

“(3) The corporation shall include in each report to the Secretary under paragraph (1) the following:

“(A) The most recent audit of the corporation under paragraph (2).

“(B) The most recent Internal Revenue Service Form 990 ‘Return of Organization Exempt from Income Tax’ or equivalent and the applicable schedules under such form.”.

(b) CONFLICT OF INTEREST POLICIES.—Subsection (c) of such section is amended to read as follows:

“(c) Each director, officer, and employee of a corporation established under this subchapter shall be subject to a conflict of interest policy adopted by that corporation.”.

(c) ESTABLISHMENT OF APPROPRIATE PAYEE REPORTING THRESHOLD.—Subsection (d)(3)(C) of such section is amended by striking “\$35,000” and inserting “\$50,000”.

PURPOSE AND SUMMARY

H.R. 2770 was introduced by Representative Bob Filner of California, the Chairman of the Committee on Veterans’ Affairs, on June 9, 2009. H.R. 2770, as amended, would modernize and clarify the original 1988 statute governing nonprofit research and education corporations (NPCs), based on 20 years of experience operating under the old statute. These updates would also help NPCs better meet their mandate to support research and education at the U.S. Department of Veterans Affairs (VA).

BACKGROUND AND NEED FOR LEGISLATION

The VA research programs serve to advance medical knowledge by discovering new or improved treatments for diseases and disabilities affecting veterans. In support of this mission, Public Law 100–322 (102 Stat. 501), the Veterans’ Benefits and Services Act of 1988, authorized VA medical centers to establish NPCs as independent, state-chartered, nonprofit corporations. NPCs serve as a flexible funding mechanism to accept and administer private sector and Federal research and education funds. Today, there are 82 NPCs and last year they reported securing \$250 million to support over 4,000 research and education programs at the VA.

NPCs enhance VA research in many ways. For example, NPCs are recognized for their low administrative overhead charges which result in more resources being available for research. They also improve veterans’ medical care, since much of the corporate-funded research is clinically focused with a direct effect on patient care. In addition, several NPCs support clinical research centers within their VA medical centers to increase efficient management of clinical trials. Others hire clinical research nurses who assist principal investigators with all aspects of the research studies, help identify research sponsors and grant-making organizations, provide seed funding and bridge money to attract high-caliber researchers, and sponsor internships and mentoring programs for local college students.

H.R. 2770 would help NPCs better support VA research and education by making key improvements to the governing statute. First, the legislation would allow two or more VA medical centers to share one NPC, thereby permitting higher-revenue NPCs to provide research and education services for facilities with programs too small to generate the revenue stream necessary to sustain a NPC. These multi-medical center research corporations would allow economies of scale with the pooling of resources to ensure an appropriate level of administrative staffing. It is anticipated that as many as 20 existing low-revenue NPCs may take advantage of the opportunity to close down and merge with larger NPCs or simply merge with larger NPCs.

This legislation would amend the requirement that all of the senior management officials who comprise the statutory VA board at each VA medical center serve on the NPC board. The current re-

quirement adds a significant burden, especially for those VA medical centers with just a few active research projects. H.R. 2770 would require that, at a minimum, the medical center director or the person carrying out such duties at each VA medical facility serve on the board of the multi-medical center research corporation. In addition, H.R. 2770 would modify the requirements to serve on the board of directors of NPCs in order to attract individuals with legal and financial expertise to foster sound governance and financial management.

H.R. 2770 would refine the purpose of the NPCs so that funds may be spent to support activities which cannot be tied directly to an approved research project but would benefit general VA research. Such expenditures may include travel to scientific conferences, improvements in laboratories such as equipment purchases, and support for institutional review boards.

In addition, this legislation would provide clarification on the financial practices governing the treatment of fees and reimbursements. Specifically, it would allow NPCs to charge registration fees for education and training programs, and to use such funds to offset program expenses for future educational programs. H.R. 2770 would permit NPCs to reimburse the Office of General Counsel (OGC) for legal services related to the review and approval of Cooperative Research and Development Agreements (CRADAs). CRADAs are forms used to establish terms and conditions for industry-funded studies performed at VA medical centers but administered by NPCs. This would enable OGC to accommodate the substantial workload associated with CRADAs and provide training to VA attorneys on CRADA requirements. The VA would also be authorized to reimburse NPCs for the salary and benefits of NPC employees loaned to the VA under Intergovernmental Personnel Act (IPA) assignments. While this has been an accepted practice since the inception of NPCs, there have been varying opinions of the appropriateness of reimbursements pursuant to IPAs over the years. As such, this legislation would make clear that such reimbursements are authorized. This legislation would also allow VA medical centers to accept funds provided by NPCs which may fall outside of VA's gift acceptance authority. This means that the VA medical centers are authorized to retain the funds locally and deposit them in the appropriate VA account, thereby avoiding the cumbersome process of going through the U.S. Department of Treasury to bring the funds back to the VA medical center.

H.R. 2770 would provide improved accountability and oversight of NPCs by requiring new annual reports and the submission of documents NPCs may file with the Internal Revenue Service (IRS). Specifically, it would require each NPC to submit an annual report to the Secretary of the VA on operations, activities, and accomplishments. H.R. 2770 also would provide stronger audit requirements. For example, NPCs with revenues between \$100,000 and \$500,000 are required to have an audit every three years, while NPCs with revenues over \$500,000 require an annual audit. This is consistent with OMB Circular A-133, which provides government-wide guidance on audits of states, local governments, and non-profit organizations. As for NPCs with revenues below the IRS threshold of \$25,000, they would be required to complete and submit to the VA an IRS Form 990 and the applicable schedules. IRS

Form 990 provides a great deal of information about a nonprofit's operations regardless of revenues, which will be useful for the VA in conducting oversight of the smaller NPCs. Next, it would increase from \$35,000 to \$50,000 the threshold for reporting compensation by an NPC to help the VA scrutinize compensation for higher paid individuals, consistent with the threshold used in IRS Form 990. This threshold is increased to focus on those who are paid significant compensation by an NPC, instead of capturing a large number of low-paid employees. Finally, employees of NPCs, as independent private-sector organizations, would be held to a conflict-of-interest policy adopted by the corporation.

HEARINGS

On June 18, 2009, the Subcommittee on Health held a legislative hearing on several bills introduced during the 111th Congress, including H.R. 1293. The following witnesses testified: The Honorable Harry Mitchell of Arizona; The Honorable Phil Hare of Illinois; The Honorable Deborah L. Halvorson of Illinois; The Honorable Jerry McNerney of California; The Honorable Thomas S.P. Perriello of Virginia; The Honorable Harry Teague of New Mexico; and, Fred Cowell, Senior Health Policy Analyst, Paralyzed Veterans of America. Those submitting statements for the record included: The Honorable Steve Buyer of Indiana; The Honorable Jerry Moran of Kansas; Joy J. Ilem, Deputy National Legislative Director, Disabled American Veterans; Joseph L. Wilson, Deputy Director, Veterans Affairs and Rehabilitation Commission, The American Legion; Chris Needham, Senior Legislative Associate, Veterans of Foreign Wars of the United States; Bernard Edelman, Deputy Director for Policy and Government Affairs, Vietnam Veterans of America; the American Academy of Physician Assistants; the National Association of Veterans' Research and Education Foundation; the Wounded Warrior Project; Barbara Cohoon, Ph.D., RN, Government Relations Deputy Director, National Military Family Association; and, Robert A. Petzel, M.D., Acting Principal Deputy Under Secretary for Health, Veterans Health Administration, U.S. Department of Veterans Affairs.

SUBCOMMITTEE CONSIDERATION

On July 9, 2009, the Subcommittee on Health met in open markup session and ordered favorably forwarded to the full Committee H.R. 2770, as amended, by voice vote. During consideration of the bill, the following amendment was considered:

An amendment by Mr. Michaud of Maine to clarify that the executive director of the NPC may be an employee of the VA; to modify the thresholds for audits to be in line with OMB Circular A-133; and to hold employees of NPCs to a conflict-of-interest policy adopted by the corporation was agreed to by voice vote.

COMMITTEE CONSIDERATION

On July 15, 2009, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 2770, as amended, reported favorably to the House of Representatives, by voice vote. During consideration of the bill, the following amendment was considered:

An amendment by Mr. Michaud of Maine to further modify the audit threshold from \$10,000 to \$100,000 was agreed to by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 2770 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 2770, as amended, reported favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 2770 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 2770 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 2770 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 2009.

Hon. BOB FILNER,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2770, the Veterans Non-profit Research and Education Corporations Enhancement Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2770—Veterans Nonprofit Research and Education Corporations Enhancement Act of 2009

H.R. 2770 would amend current law pertaining to certain VA research and education facilities. Those facilities are private non-profit entities that are prohibited from using appropriated funds and rely solely on cash or in-kind donations to conduct medical research and provide training. Nonetheless, such facilities would undertake activities on behalf of the federal government.

Section 5 would authorize the facilities to charge fees for their education and training programs. Those fees would be retained and spent by the facilities, and CBO estimates that enacting this provision would not have a significant net effect on direct spending. Enacting the bill would not affect spending subject to appropriation or revenues.

H.R. 2770 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On July 16, 2009, CBO transmitted a cost estimate for S. 252, the Veterans Health Care Authorization Act of 2009, as ordered reported by the Senate Committee on Veterans' Affairs on May 21, 2009. Title VI of S. 252 is similar to H.R. 2770, as are their estimated costs.

The CBO staff contact for this estimate is Sunita D'Monte. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 2770 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 2770.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 2770 is provided by Article I, section 8 of the Constitution of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of H.R. 2770, as amended, as the “Veterans Nonprofit Research and Education Corporations Enhancement Act of 2009.”

Section 2. General authorities on establishment of corporations

This section authorizes the creation of multi-medical center research corporations to allow two or more VA medical centers to share one nonprofit research corporation (NPC), subject to board and VA approval. This section also requires the medical center director or one carrying out such duties to serve on the board of the multi-medical center research corporation. This would replace the requirement that all statutory VA board members (medical center director, chief of staff, associate chief of staff for research, and associate chief of staff for education) serve on the board.

Section 3. Clarification of purposes of corporations

This section enables NPCs to support functions related to the conduct of research and education, including such expenditures as travel to scientific conferences, laboratory improvements such as equipment purchase, and support for the institutional review board (IRB). It also repeals the role of NPCs with regard to fellowships because supporting residencies and fellowships raises the possibility of the NPC conferring a problematic personal benefit on the recipients.

Section 4. Modification of requirements for boards of directors of corporations

This section broadens the qualifications for the two mandatory non-VA board members beyond their familiarity with medical research and education. This would enable NPCs to acquire board members with legal and financial expertise to improve sound governance and financial management. It also clarifies that the executive director of the NPC may be an employee of the VA.

Section 5. Clarification of powers of corporations

This section provides clarifications on a wide range of financial issues. NPCs may charge registration fees for education and training programs and to use such funds to offset program expenses or for future educational purposes. However, it sustains the existing

prohibition against NPCs from accepting fees derived from VA appropriations.

NPCs may reimburse the VA's Office of General Counsel (OGC) for legal services related to the review and approval of Cooperative Research and Development Agreements (CRADAs), which is a NPC-administered form used to establish terms and conditions for industry-funded studies performed at VA medical centers.

The VA is authorized to reimburse NPCs for the salary and benefits of NPC employees loaned to the VA under Intergovernmental Personnel Act (IPA) assignments.

VA medical centers may accept funds provided by NPCs that may fall outside of VA's gift acceptance authority. This is because many NPC payments to VA medical centers are more accurately described as reimbursements or payments for services, which may not be consistent with the VA's gift acceptance authority. With this provision, VA medical centers can accept the funds directly from NPCs and no longer need to send these payments from NPCs to the U.S. Department of Treasury, thereby avoiding a cumbersome administrative process to bring the funds back to the medical centers.

NPCs may spend funds for purposes of "project planning" without violating the requirement that they may spend funds on a research project only after it has been approved by the facility Research and Development Committee. Examples of project planning expenditures include hiring a grant writer or a study coordinator to help the VA's Principal Investigator prepare a grant proposal.

Section 6. Redesignation of section 7364A of title 38, United States Code

This section redesignates section 7364A of title 38, United States Code as section 7365 of title 38, United States Code.

Section 7. Improved accountability and oversight of corporations

This section requires each NPC to submit an annual report to the Secretary of the VA on operations, activities, and accomplishments. It would also require NPCs with revenues in excess of \$500,000 in any given year to obtain an audit. For NPCs with revenues between \$100,000 and \$500,000, an audit is required at least every three years. It also requires all NPCs, even those that fall below the IRS threshold of \$25,000 in revenues, to complete and submit to the VA an IRS Form 990 and the applicable schedules. Next, it increases from \$35,000 to \$50,000 the threshold for reporting payees making this VA reporting requirement consistent with the threshold used in IRS Form 990 to scrutinize compensation for higher-paid individuals. Finally, this section holds the employees of NPCs to a conflict of interest policy adopted by the corporation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

* * * * *

CHAPTER 73—VETERANS HEALTH ADMINISTRATION - ORGANIZATION AND FUNCTIONS

SUBCHAPTER I—ORGANIZATION

Sec.

7301. Functions of Veterans Health Administration: in general.

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SUBCHAPTER IV—RESEARCH CORPORATIONS

* * * * *

§ 7364A. Coverage of employees under certain Federal tort claims laws.

§ 7365. Applicable State law.

7365. Coverage of employees under certain Federal tort claims laws.

* * * * *

SUBCHAPTER IV—RESEARCH CORPORATIONS

§ 7361. Authority to establish; status

(a) The Secretary may authorize the establishment at any Department medical center of a nonprofit corporation to provide a flexible funding mechanism for the conduct of approved research and education at the medical center. Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations. Such a corporation may be established to facilitate either research or education or both research and education.

(b)(1) Subject to paragraph (2), a corporation established under this subchapter may facilitate the conduct of research, education, or both at more than one medical center. Such a corporation shall be known as a "multi-medical center research corporation".

(2) The board of directors of a multi-medical center research corporation under this subsection shall include the official at each Department medical center concerned who is, or who carries out the responsibilities of, the medical center director of such center as specified in section 7363(a)(1)(A)(i) of this title.

(3) In facilitating the conduct of research, education, or both at more than one Department medical center under this subchapter, a multi-medical center research corporation may administer receipts and expenditures relating to such research, education, or both, as applicable, performed at the Department medical centers concerned.

(c) Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State in which the applicable Department medical center is located and shall, to the extent not inconsistent with any Federal law, be

subject to the laws of such State. In the case of any multi-medical center research corporation that facilitates the conduct of research, education, or both at Department medical centers located in different States, the corporation shall be established in accordance with the nonprofit corporation laws of the State in which one of such Department medical centers is located.

(d)(1) Except as otherwise provided in this subchapter or under regulations prescribed by the Secretary, any corporation established under this subchapter, and its officers, directors, and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives that apply generally to private nonprofit corporations.

(2) A corporation under this subchapter is not—

(A) owned or controlled by the United States; or

(B) an agency or instrumentality of the United States.

ε(b) (e) If by the end of the four-year period beginning on the date of the establishment of a corporation under this subchapter the corporation is not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

(f) A corporation established under this subchapter may act as a multi-medical center research corporation under this subchapter in accordance with subsection (b) if—

(1) the board of directors of the corporation approves a resolution permitting facilitation by the corporation of the conduct of research, education, or both at the other Department medical center or medical centers concerned; and

(2) the Secretary approves the resolution of the corporation under paragraph (1).

§ 7362. Purpose of corporations

(a) εAny corporation established under this subchapter shall be established solely to facilitate A corporation established under this subchapter shall be established to provide a flexible funding mechanism for the conduct of approved research and education at one or more Department medical centers and to facilitate functions related to the conduct of research as described in section 7303(a) of this title and education and training as described in sections 7302, 7471, 8154, and 1701(6)(B) of this title in conjunction with the applicable Department medical center or centers. εAny funds received by the Secretary for the conduct of research or education at the medical center other than funds appropriated to the Department may be transferred to and administered by the corporation for these purposes.

(b) For purposes of this section, εthe term “education and training” the term “education” includes education and training and means the following:

(1) In the case of employees of the Veterans Health Administration, such term means work-related instruction or other learning experiences to—

(A) improve performance of current duties;

(B) assist employees in maintaining or gaining specialized proficiencies; and

(C) expand understanding of advances and changes in patient care, technology, and health care administration.

Such term includes (in the case of such employees) education and training conducted as part of a residency or other program designed to prepare an individual for an occupation or profession.

(2) In the case of veterans under the care of the Veterans Health Administration, such term means instruction or other learning experiences related to improving and maintaining the health of veterans to patients and to the families and includes education and training for patients and families and guardians of patients.

§ 7363. Board of directors; executive director

(a) The Secretary shall provide for the appointment of a board of directors for any corporation established under this subchapter. The board shall include—

(1) the director of the medical center, the chief of staff of the medical center, and as appropriate, the assistant chief of staff for research for the medical center and the assistant chief of staff for education for the medical center, or, in the case of a facility at which such positions do not exist, those officials who are responsible for carrying out the responsibilities of the medical center director, chief of staff, and, as appropriate, the assistant chief of staff for research and the assistant chief of staff for education; and

(1) with respect to the Department medical center—

(A)(i) the director (or directors of each Department medical center, in the case of a multi-medical center research corporation);

(ii) the chief of staff; and

(iii) as appropriate for the activities of such corporation, the associate chief of staff for research and the associate chief of staff for education; or

(B) in the case of a Department medical center at which one or more of the positions referred to in subparagraph (A) do not exist, the official or officials who are responsible for carrying out the responsibilities of such position or positions at the Department medical center; and

(2) subject to subsection (c), not less than two members who are not officers or employees of the Federal Government and who are familiar with issues involving medical and scientific research or education, as appropriate, and who have backgrounds, or business, legal, financial, medical, or scientific expertise, of benefit to the operations of the corporation.

(b) Each such corporation shall have an executive director who may be an employee of the Department and who shall be appointed by the board of directors with the concurrence of the Under Secretary for Health of the Department. The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

(c) An individual appointed under subsection (a)(2) to the board of directors of a corporation established under this subchapter may not be affiliated with, employed by, or have any other financial relationship with or employed by any entity that is a source of funding for research or education by the Department unless that source

of funding is a governmental entity or an entity the income of which is exempt from taxation under the Internal Revenue Code of 1986.

ε§ 7364. **General powers**

ε(a) A corporation established under this subchapter may—

ε(1) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purposes of this subchapter; and

ε(2) employ such employees as it considers necessary for such purposes and fix the compensation of such employees.

ε(b) A corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Under Secretary for Health for research carried out with Department funds. Such procedures shall include a peer review process.

ε(c)(1) A corporation established under this subchapter may not spend funds for an education activity unless the activity is approved in accordance with procedures prescribed by the Under Secretary for Health.

ε(2) The Under Secretary for Health shall prescribe policies and procedures to guide the expenditure of funds by corporations under paragraph (1) consistent with the purpose of such corporations as flexible funding mechanisms.

§ 7364. **General powers**

(a) *IN GENERAL.—(1) A corporation established under this subchapter may, solely to carry out the purposes of this subchapter—*

(A) accept, administer, retain, and spend funds derived from gifts, contributions, grants, fees, reimbursements, and bequests from individuals and public and private entities;

(B) enter into contracts and agreements with individuals and public and private entities;

(C) subject to paragraph (2), set fees for education and training facilitated under section 7362 of this title, and receive, retain, administer, and spend funds in furtherance of such education and training;

(D) reimburse amounts to the applicable appropriation account of the Department for the Office of General Counsel for any expenses of that Office in providing legal services attributable to research and education agreements under this subchapter; and

(E) employ such employees as the corporation considers necessary for such purposes and fix the compensation of such employees.

(2) Fees charged pursuant to paragraph (1)(C) for education and training described in that paragraph to individuals who are officers or employees of the Department may not be paid for by any funds appropriated to the Department.

(3) Amounts reimbursed to the Office of General Counsel under paragraph (1)(D) shall be available for use by the Office of the General Counsel only for staff and training, and related travel, for the provision of legal services described in that paragraph and shall remain available for such use without fiscal year limitation.

(b) *TRANSFER AND ADMINISTRATION OF FUNDS.—(1) Except as provided in paragraph (2), any funds received by the Secretary for the conduct of research or education at a Department medical center or centers, other than funds appropriated to the Department, may be transferred to and administered by a corporation established under this subchapter for such purposes.*

(2) *A Department medical center may reimburse the corporation for all or a portion of the pay, benefits, or both of an employee of the corporation who is assigned to the Department medical center if the assignment is carried out pursuant to subchapter VI of chapter 33 of title 5.*

(3) *A Department medical center may retain and use funds provided to it by a corporation established under this subchapter. Such funds shall be credited to the applicable appropriation account of the Department and shall be available, without fiscal year limitation, for the purposes of that account.*

(c) *RESEARCH PROJECTS.—Except for reasonable and usual preliminary costs for project planning before its approval, a corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Under Secretary for Health for research carried out with Department funds. Such procedures shall include a scientific review process.*

(d) *EDUCATION ACTIVITIES.—Except for reasonable and usual preliminary costs for activity planning before its approval, a corporation established under this subchapter may not spend funds for an education activity unless the activity is approved in accordance with procedures prescribed by the Under Secretary for Health.*

(e) *POLICIES AND PROCEDURES.—The Under Secretary for Health may prescribe policies and procedures to guide the spending of funds by corporations established under this subchapter that are consistent with the purpose of such corporations as flexible funding mechanisms and with Federal and State laws and regulations, and executive orders, circulars, and directives that apply generally to the receipt and expenditure of funds by nonprofit organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.*

§ 7364A. 7365. Coverage of employees under certain Federal tort claims laws

(a) * * *

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§ 7365. Applicable State law

Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State in which the applicable medical center is located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State.

§ 7366. Accountability and oversight

(a) * * *

(b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activi-

ties, and accomplishments during that year. A corporation with revenues in excess of \$300,000 for any year shall obtain an audit of the corporation for that year. A corporation with annual revenues between \$10,000 and \$300,000 shall obtain an independent audit of the corporation at least once every three years. Any audit under the preceding sentences shall be performed by an independent auditor. The corporation shall include the most recent such audit in the corporation's report to the Secretary for that year.

ε(c)(1) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the Department who is involved in the functions of the corporation during any year shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions.

ε(2) Each corporation established under this subchapter shall each year submit to the Secretary a statement signed by the executive director of the corporation verifying that each director and employee has certified awareness of the laws and regulations referred to in paragraph (1) and of the consequences of violations of those laws and regulations in the same manner as Federal employees are required to so certify.

(b)(1) Each corporation shall submit to the Secretary each year a report providing a detailed statement of the operations, activities, and accomplishments of the corporation during that year.

(2)(A) A corporation with revenues in excess of \$500,000 for any year shall obtain an audit of the corporation for that year.

(B) A corporation with annual revenues between \$100,000 and \$500,000 shall obtain an audit of the corporation at least once every three years.

(C) Any audit under this paragraph shall be performed by an independent auditor.

(3) The corporation shall include in each report to the Secretary under paragraph (1) the following:

(A) The most recent audit of the corporation under paragraph (2).

(B) The most recent Internal Revenue Service Form 990 "Return of Organization Exempt from Income Tax" or equivalent and the applicable schedules under such form.

(c) Each director, officer, and employee of a corporation established under this subchapter shall be subject to a conflict of interest policy adopted by that corporation.

(d) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the corporations established under this subchapter. The report shall set forth the following information:

(1) * * *

* * * * *

(3) The amount expended by each corporation during the year, including—

(A) * * *

* * * * *

(C) if the amount expended with respect to any payee exceeded $\$35,000$ $\$50,000$, information that identifies the payee.

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