

Union Calendar No. 123

111TH CONGRESS
1ST SESSION

H. R. 2770

[Report No. 111-225]

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2009

Mr. FILNER (for himself and Mr. BUYER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

JULY 23, 2009

Additional sponsors: Ms. CORRINE BROWN of Florida, Mr. WALZ, Mr. BURTON of Indiana, Mr. PETERSON, Mr. COURTNEY, Mr. LAMBORN, and Mr. MICHAUD

JULY 23, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 9, 2009]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Veterans Nonprofit Re-*
5 *search and Education Corporations Enhancement Act of*
6 *2009”.*

7 **SEC. 2. GENERAL AUTHORITIES ON ESTABLISHMENT OF**
8 **CORPORATIONS.**

9 *(a) AUTHORIZATION OF MULTI-MEDICAL CENTER RE-*
10 *SEARCH CORPORATIONS.—*

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

13 *(A) by redesignating subsection (b) as sub-*
14 *section (e); and*

15 *(B) by inserting after subsection (a) the fol-*
16 *lowing new subsection (b):*

17 *“(b)(1) Subject to paragraph (2), a corporation estab-*
18 *lished under this subchapter may facilitate the conduct of*
19 *research, education, or both at more than one medical cen-*
20 *ter. Such a corporation shall be known as a ‘multi-medical*
21 *center research corporation’.*

22 *“(2) The board of directors of a multi-medical center*
23 *research corporation under this subsection shall include the*
24 *official at each Department medical center concerned who*
25 *is, or who carries out the responsibilities of, the medical*

1 center director of such center as specified in section
2 7363(a)(1)(A)(i) of this title.

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

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

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

17 “(1) the board of directors of the corporation ap-
18 proves a resolution permitting facilitation by the cor-
19 poration of the conduct of research, education, or both
20 at the other Department medical center or medical
21 centers concerned; and

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

24 (b) *RESTATEMENT AND MODIFICATION OF AUTHORI-*
25 *TIES ON APPLICABILITY OF STATE LAW.*—

1 (1) *IN GENERAL.*—Section 7361 of such title, as
2 amended by subsection (a) of this section, is further
3 amended by inserting after subsection (b) the fol-
4 lowing new subsection (c):

5 “(c) Any corporation established under this subchapter
6 shall be established in accordance with the nonprofit cor-
7 poration laws of the State in which the applicable Depart-
8 ment medical center is located and shall, to the extent not
9 inconsistent with any Federal law, be subject to the laws
10 of such State. In the case of any multi-medical center re-
11 search corporation that facilitates the conduct of research,
12 education, or both at Department medical centers located
13 in different States, the corporation shall be established in
14 accordance with the nonprofit corporation laws of the State
15 in which one of such Department medical centers is lo-
16 cated.”.

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

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

22 (1) in subsection (a), by striking the second sen-
23 tence; and

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

1 “(d)(1) *Except as otherwise provided in this sub-*
2 *chapter or under regulations prescribed by the Secretary,*
3 *any corporation established under this subchapter, and its*
4 *officers, directors, and employees, shall be required to com-*
5 *ply only with those Federal laws, regulations, and executive*
6 *orders and directives that apply generally to private non-*
7 *profit corporations.*

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

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

10 *or*

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

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

18 **SEC. 3. CLARIFICATION OF PURPOSES OF CORPORATIONS.**

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

22 (1) *by striking “Any corporation” and all that*
23 *follows through “facilitate” and inserting “A corpora-*
24 *tion established under this subchapter shall be estab-*
25 *lished to provide a flexible funding mechanism for the*

1 *conduct of approved research and education at one or*
2 *more Department medical centers and to facilitate*
3 *functions related to the conduct of”;* and

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

6 (b) *MODIFICATION OF DEFINED TERM RELATING TO*
7 *EDUCATION AND TRAINING.—Subsection (b) of such section*
8 *is amended in the matter preceding paragraph (1) by strik-*
9 *ing “the term ‘education and training’ ” and inserting “the*
10 *term ‘education’ includes education and training and”.*

11 (c) *REPEAL OF ROLE OF CORPORATIONS WITH RE-*
12 *SPECT TO FELLOWSHIPS.—Paragraph (1) of subsection (b)*
13 *of such section is amended by striking the flush matter fol-*
14 *lowing subparagraph (C).*

15 (d) *AVAILABILITY OF EDUCATION FOR FAMILIES OF*
16 *VETERAN PATIENTS.—Paragraph (2) of subsection (b) of*
17 *such section is amended by striking “to patients and to the*
18 *families” and inserting “and includes education and train-*
19 *ing for patients and families”.*

20 **SEC. 4. MODIFICATION OF REQUIREMENTS FOR BOARDS OF**
21 **DIRECTORS OF CORPORATIONS.**

22 (a) *REQUIREMENTS FOR DEPARTMENT BOARD MEM-*
23 *BERS.—Paragraph (1) of section 7363(a) of title 38, United*
24 *States Code, is amended to read as follows:*

1 “(1) with respect to the Department medical cen-
2 ter—

3 “(A)(i) the director (or directors of each De-
4 partment medical center, in the case of a multi-
5 medical center research corporation);

6 “(ii) the chief of staff; and

7 “(iii) as appropriate for the activities of
8 such corporation, the associate chief of staff for
9 research and the associate chief of staff for edu-
10 cation; or

11 “(B) in the case of a Department medical
12 center at which one or more of the positions re-
13 ferred to in subparagraph (A) do not exist, the
14 official or officials who are responsible for car-
15 rying out the responsibilities of such position or
16 positions at the Department medical center;
17 and”.

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

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

22 (2) by striking “and who” and all that follows
23 through the period at the end and inserting “and who
24 have backgrounds, or business, legal, financial, med-

1 *ical, or scientific expertise, of benefit to the operations*
 2 *of the corporation.”.*

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

8 *(d) CONFLICTS OF INTEREST.—Subsection (c) of sec-*
 9 *tion 7363 of such title is amended by striking “, employed*
 10 *by, or have any other financial relationship with” and in-*
 11 *serting “or employed by”.*

12 **SEC. 5. CLARIFICATION OF POWERS OF CORPORATIONS.**

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

15 **“§ 7364. General powers**

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

19 *“(A) accept, administer, retain, and spend funds*
 20 *derived from gifts, contributions, grants, fees, reim-*
 21 *bursments, and bequests from individuals and public*
 22 *and private entities;*

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

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

5 “(D) reimburse amounts to the applicable appro-
6 priation account of the Department for the Office of
7 General Counsel for any expenses of that Office in
8 providing legal services attributable to research and
9 education agreements under this subchapter; and

10 “(E) employ such employees as the corporation
11 considers necessary for such purposes and fix the com-
12 pensation of such employees.

13 “(2) Fees charged pursuant to paragraph (1)(C) for
14 education and training described in that paragraph to in-
15 dividuals who are officers or employees of the Department
16 may not be paid for by any funds appropriated to the De-
17 partment.

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

24 “(b) TRANSFER AND ADMINISTRATION OF FUNDS.—(1)
25 Except as provided in paragraph (2), any funds received

1 *by the Secretary for the conduct of research or education*
2 *at a Department medical center or centers, other than funds*
3 *appropriated to the Department, may be transferred to and*
4 *administered by a corporation established under this sub-*
5 *chapter for such purposes.*

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

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

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

1 “(d) *EDUCATION ACTIVITIES.*—*Except for reasonable*
2 *and usual preliminary costs for activity planning before*
3 *its approval, a corporation established under this sub-*
4 *chapter may not spend funds for an education activity un-*
5 *less the activity is approved in accordance with procedures*
6 *prescribed by the Under Secretary for Health.*

7 “(e) *POLICIES AND PROCEDURES.*—*The Under Sec-*
8 *retary for Health may prescribe policies and procedures to*
9 *guide the spending of funds by corporations established*
10 *under this subchapter that are consistent with the purpose*
11 *of such corporations as flexible funding mechanisms and*
12 *with Federal and State laws and regulations, and executive*
13 *orders, circulars, and directives that apply generally to the*
14 *receipt and expenditure of funds by nonprofit organizations*
15 *exempt from taxation under section 501(c)(3) of the Inter-*
16 *nal Revenue Code of 1986.”.*

17 “(b) *CONFORMING AMENDMENT.*—*Section 7362(a) of*
18 *such title, as amended by section 3(a)(1) of this Act, is fur-*
19 *ther amended by striking the last sentence.*

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

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

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

3 (1) *by striking the item relating to section*
4 *7364A; and*

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

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

7 **SEC. 7. IMPROVED ACCOUNTABILITY AND OVERSIGHT OF**
8 **CORPORATIONS.**

9 (a) *ADDITIONAL INFORMATION IN ANNUAL RE-*
10 *PORTS.*—*Subsection (b) of section 7366 of title 38, United*
11 *States Code, is amended to read as follows:*

12 “(b)(1) *Each corporation shall submit to the Secretary*
13 *each year a report providing a detailed statement of the*
14 *operations, activities, and accomplishments of the corpora-*
15 *tion during that year.*

16 “(2)(A) *A corporation with revenues in excess of*
17 *\$500,000 for any year shall obtain an audit of the corpora-*
18 *tion for that year.*

19 “(B) *A corporation with annual revenues between*
20 *\$100,000 and \$500,000 shall obtain an audit of the cor-*
21 *poration at least once every three years.*

22 “(C) *Any audit under this paragraph shall be per-*
23 *formed by an independent auditor.*

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

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

3 “(B) *The most recent Internal Revenue Service*
4 *Form 990 ‘Return of Organization Exempt from In-*
5 *come Tax’ or equivalent and the applicable schedules*
6 *under such form.’.*”

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

9 “(c) *Each director, officer, and employee of a corpora-*
10 *tion established under this subchapter shall be subject to a*
11 *conflict of interest policy adopted by that corporation.’.*”

12 **(c) ESTABLISHMENT OF APPROPRIATE PAYEE RE-**
13 **PORTING THRESHOLD.**—*Subsection (d)(3)(C) of such sec-*
14 *tion is amended by striking “\$35,000” and inserting*
15 *“\$50,000”.*

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