

**NPC Authorizing Statute 38 USC §§7361-7366–**

**Existing Statute (as Modified by Title VIII, Section 806 of S. 2126 in 2008)**

**TITLE 38 – SUBCHAPTER IV - RESEARCH AND EDUCATION CORPORATIONS**

- **§7361. Authority to establish; status**
- **§7362. Purpose of corporations**
- **§7363. Board of directors; executive director**
- **§7364. General powers**
- **§7364A. Coverage of employees under certain Federal tort claims laws**
- **§7365. Applicable State law**
- **§7366. Accountability and oversight**

**§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) 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 the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

**§7362. Purpose of corporations**

- (a) Any corporation established under this subchapter shall be established solely to facilitate 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. Any 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, the term 'education and training' 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 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;
  - (2) subject to subsection (c), 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.
- (b) Each such corporation shall have an executive director who shall be appointed by the board of directors with 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 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.

**§7364. General powers**

- (a) A corporation established under this subchapter may-
  - (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
  - (2) employ such employees as it considers necessary for such purposes and fix the compensation of such employees.
- (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.
- (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.  
(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.

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

- (a) An employee of a corporation established under this subchapter who is described by subsection (b) shall be considered an employee of the Government, or a medical care employee of the Veterans Health Administration, for purposes of the following provisions of law:
  - (1) Section 1346(b) of title 28.
  - (2) Chapter 171 of title 28.
  - (3) Section 7316 of this title.
- (b) An employee described in this subsection is an employee who--
  - (1) has an appointment with the Department, whether with or without compensation;
  - (2) is directly or indirectly involved or engaged in research or education and training that is approved in accordance with procedures established by the Under Secretary for Health for

research or education and training; and  
(3) performs such duties under the supervision of Department personnel.

**§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)(1)(A) The records of a corporation established under this subchapter shall be available to the Secretary.  
(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.  
(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).
- (b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, 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.
- (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.  
(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.
- (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) The location of each corporation.  
(2) The amount received by each corporation during the previous year, including-  
(A) the total amount received;  
(B) the amount received from governmental entities for research and the amount received from governmental entities for education;  
(C) the amount received from all other sources for research and the amount received from all other sources for education; and  
(D) if the amount received from a source referred to in subparagraph (C) exceeded \$25,000, information that identifies the source.  
(3) The amount expended by each corporation during the year including-  
(A) the amount expended for salary for research staff, the amount expended for salary for education staff, and the amount expended for salary for support staff;

(B) the amount expended for direct support of research and the amount expended for direct support of education; and

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

(4) The amount expended by each corporation during the year for travel conducted in conjunction with research and the amount expended for travel in conjunction with education.