

VETERANS' OMNIBUS HEALTH CARE AMENDMENTS OF  
1987

OCTOBER 15, 1987.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3449]

BACKGROUND AND DISCUSSION

*Independent Research Corporations*

The Veterans' Administration Department of Medicine and Surgery is required by statute to conduct a program of medical research "in order to carry out more effectively the primary function of the Department . . . and . . . to contribute to the Nation's knowledge about disease and disability." (38 U.S.C. 4101(c)(1)). The importance of research in improving the medical care available to veterans cannot be overstated. The ability to undertake research on a part-time basis makes the Department of Medicine and Surgery an attractive employer to many distinguished clinicians. Their presence as care-givers improves the quality of care which veterans receive. Moreover, the use of innovative techniques and therapies which result from research by such clinicians often means that care provided to veterans is more effective than care available at other medical facilities.

The VA has developed significant internal controls governing the conduct of research at VA medical centers. These controls are comparable to those used at the National Institutes of Health (NIH) and major universities. In addition, a VA researcher must obtain approval from concerned officials at the medical center where he or she is employed before proposing to undertake an application for research funds. Once an application is filed, it undergoes rigorous

scrutiny through a research peer review process to examine the scientific merit and progress made in conducting the research.

Many VA researchers are able to obtain support for research which benefits veteran patients from sources other than appropriations made to the Veterans' Administration for medical research. These sources include the NIH, private foundations, and for-profit companies. However the Veterans' Administration has never received explicit authorization to administer research funds from non-VA sources. Consequently, there are awkward and occasionally ill-suited mechanisms in place to channel contributed funds for such research. At present, most research funds obtained from outside sources are channeled through an affiliated medical school. Some funds are donated to the VA General Post Fund, a trust fund which was originally established to deal with the personal property of veterans who die while in VA facilities. There are disadvantages to both of these funding mechanisms. Disbursements from the Post Fund may only be made "for the benefit of members and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital" (38 U.S.C. 5223). The Fund normally functions as a funding mechanism for the general welfare of such patients, and the use of the Fund for handling funds contributed for the cost of VA research is an unintended adaptation of the Fund's purpose. Funds that are channeled through affiliated medical schools are subject to the terms and conditions which the school applies to funds obtained by researchers employed by the school. In many cases, this means that a percentage, which varies from 15 to 40 per cent or more, of the funds obtained is retained by the medical school for "overhead" and related expenses of the school.

During the subcommittee's hearing on September 9, 1987, these facts were brought out in testimony by the Chief Medical Director and the Assistant Chief Medical Director for Research. In addition, the subcommittee heard testimony describing an alternative funding mechanism which had been independently established in connection with research undertaken at the Washington, D.C., VA Medical Center as well as certain other facilities. According to Dr. Richard Levine, the Associate Chief of Staff for Research and Development at this medical center, VA regulations regarding the acceptance and expenditure of private and corporate funds through the General Post Fund are too cumbersome or even inappropriate to use for a substantial amount of research activity. Restrictions on the authority to hire employees necessary to carry out research also hinder the conduct of important research.

In 1976, in response to an identified need to create a mechanism to support research associated with the Armed Forces Institute of Pathology (AFIP), the Congress created the American Registry of Pathology. Section 811(b), Public Law 94-361, codified at 10 U.S.C. 177. The purposes of the American Registry of Pathology include cooperative enterprises with the AFIP to promote education and research into pathology and to accept grants from private foundations and professional societies relating to research and maintenance of pathology registries. A similar foundation to enhance the research capability of the Uniformed Services University of the Health Sciences (USUHS) was created in 1983 (10 U.S.C. 178). Subsequently renamed as the Henry M. Jackson Foundation for the



Advancement of Military Medicine, the primary purpose of this Foundation is to carry out medical research and education projects under cooperative arrangements with USUHS, and to serve as a focus for interchange between military and civilian medical personnel. Like the American Registry of Pathology, the Foundation is authorized to accept gifts and grants in order to foster medical research and medical education activities at the University.

Section 2 of the reported bill would authorize the establishment of independent nonprofit corporations at each Veterans' Administration medical center at which significant medical or scientific research is carried out. These corporations would not be considered for any purposes as corporations owned or controlled by the United States, except for the limitations made applicable to these corporations by this Act. The significant requirements applicable to these corporations are as follows:

— Any corporation established under this subchapter would be required to conform to the applicable nonprofit corporation law of the jurisdiction in which it is organized. An exception recognizing the supremacy of Federal law is included in the event that Federal laws preempt State laws in a particular area.

— The corporation would be prohibited from carrying out any research which has not been approved in accordance with procedures prescribed by the Chief Medical Director for research carried out with Veterans' Administration funds.

— A corporation would be required to seek and obtain recognition from the Internal Revenue Service as a nonprofit corporation which is exempt from taxes under section 501(c)(3) of the Internal Revenue Code.

— The Inspector General of the Veterans' Administration has an unfettered right to review corporate records at any time. Such records may also be reviewed by the General Accounting Office.

— Each corporation would be required to submit a detailed annual statement to the Administrator on its operations during the preceding year. The committee expects that the annual statement will include information concerning any funds which are paid to a Veterans' Administration employee.

— The records of the corporation would be reviewed by an independent auditor annually, and a copy of the auditors' report included with the corporation report.

— Each person who serves as a member of the board of directors or who is involved in or employed by the corporation must annually certify their understanding of Federal laws and regulations applicable to Federal employees with respect to conflicts of interest.

The committee believes that there are substantial advantages to be gained by the formation of corporations authorized by this bill. The committee expects the Department of Medicine and Surgery to carefully examine and monitor the operation of these corporations and that the Inspector General will also schedule regular audits of

their operations with a particular emphasis on insuring compliance with VA conflict-of-interest regulations.

