

111th CONGRESS

1st Session

# 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.

## 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](#)

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## 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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### 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—

(1) in the first sentence—

(A) 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

(B) by inserting before the period at the end the following: “or centers”; and

(2) in the second sentence, by inserting “or centers” after “medical center”.

(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) 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 \$300,000 for any year shall obtain an audit of the corporation for that year.

“(B) A corporation with annual revenues between \$10,000 and \$300,000 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) Confirmation of Application of Conflict of Interest Regulations to Appropriate Corporation Positions.—Subsection (c) of such section is amended—

(1) by striking “laws and” each place it appears;

(2) in paragraph (1)—

(A) by inserting “each officer and” after “under this subchapter,”; and

(B) by striking “, and each employee of the Department” and all that follows through “during any year”; and

(3) in paragraph (2)—

(A) by inserting “, officer,” after “verifying that each director”; and

(B) by striking “in the same manner” and all that follows before the period at the end.

(c) Establishment of Appropriate Payee Reporting Threshold.—Subsection (d)(3)(C) of such section is amended by striking “\$35,000” and inserting “\$50,000”.