

NPC Authorizing Statute – Redlined for Changes Made by Title VI of S. 252 and H.R. 2770

Note: Title VI of S. 252 and H.R. 2770 Include changes 1) proposed in 2008 in S. 2926 (later Title VI of S. 2969); and 2) the House 2008 Discussion Draft. Title VI of S. 252 and H.R. 2770 also include a new clause regarding VA reimbursement retention authority and two other minor additions. These are highlighted in yellow below.

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
- §7364A5. 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)(1) Subject to paragraph (2), a corporation established under this subchapter may facilitate the conduct of research, education, or both at more than one Department 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 required 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.

~~(be)~~ 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) Any 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. ~~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”~~ 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) with respect to the Department medical center-~~

~~(A)(i) the director (or directors of each 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~~

~~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), 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 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~~ 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.

§7364. General powers

(a)(1) A corporation established under this subchapter may, solely to carry out the purposes of this subchapter-

~~(1)(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, spend funds in furtherance of such education and training;~~

~~(D) reimburse amounts to the applicable Department appropriation 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~~

~~(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~~

~~(E2) employ such employees as it considers necessary for such purposes and fix the compensation of such employees.~~

~~(2) Fees charged under 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 General Counsel only for staff and training and related travel for the provision of legal services described in that paragraph and shall remain available without fiscal year limitation.~~

~~(b)(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 the corporation for these 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 such assignment is carried out pursuant to subchapter IV 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 Department appropriation account and shall be available, without fiscal year limitation, for the purposes of that account.

(b)(c) 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 peerscientific review process.

(e)(1)(d) 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.

(2)(e) The Under Secretary for Health shall may prescribe policies and procedures to guide the expenditurespending of funds by corporations under paragraph (1) 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.

§7364A5. 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) (1) Each such corporation shall submit to the Secretary ~~each year a an annual~~ report providing a detailed statement of ~~its~~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 independent audit of the corporation at least once every three years.

(C) Any audit under ~~the preceding sentence~~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 ~~such~~ audit ~~of in~~ the corporation's report to the Secretary for that year 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)(1) Each member of the board of directors of a corporation established under this subchapter, ~~each officer and~~ 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 officer, director, officer 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 \$3550,000, 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.