

111TH CONGRESS
1ST SESSION

H. R. 2722

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 4, 2009

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

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
5 Research and Education Corporations Enhancement Act
6 of 2009”.

1 **SEC. 2. GENERAL AUTHORITIES ON ESTABLISHMENT OF**
2 **CORPORATIONS.**

3 (a) AUTHORIZATION OF MULTI-MEDICAL CENTER
4 RESEARCH CORPORATIONS.—

5 (1) IN GENERAL.—Section 7361 of title 38,
6 United States Code, is amended—

7 (A) by redesignating subsection (b) as sub-
8 section (e); and

9 (B) by inserting after subsection (a) the
10 following new subsection (b):

11 “(b)(1) Subject to paragraph (2), a corporation es-
12 tablished under this subchapter may facilitate the conduct
13 of research, education, or both at more than one medical
14 center. Such a corporation shall be known as a ‘multi-med-
15 ical center research corporation’.

16 “(2) The board of directors of a multi-medical center
17 research corporation under this subsection shall include
18 the official at each Department medical center concerned
19 who is, or who carries out the responsibilities of, the med-
20 ical center director of such center as specified in section
21 7363(a)(1)(A)(i) of this title.

22 “(3) In facilitating the conduct of research, edu-
23 cation, or both at more than one Department medical cen-
24 ter under this subchapter, a multi-medical center research
25 corporation may administer receipts and expenditures re-

1 lating to such research, education, or both, as applicable,
 2 performed at the Department medical centers concerned.”.

3 (2) EXPANSION OF EXISTING CORPORATIONS TO
 4 MULTI-MEDICAL CENTER RESEARCH CORPORA-
 5 TIONS.—Such section is further amended by adding
 6 at the end the following new subsection:

7 “(f) A corporation established under this subchapter
 8 may act as a multi-medical center research corporation
 9 under this subchapter in accordance with subsection (b)
 10 if—

11 “(1) the board of directors of the corporation
 12 approves a resolution permitting facilitation by the
 13 corporation of the conduct of research, education, or
 14 both at the other Department medical center or
 15 medical centers concerned; and

16 “(2) the Secretary approves the resolution of
 17 the corporation under paragraph (1).”.

18 (b) RESTATEMENT AND MODIFICATION OF AUTHORI-
 19 TIES ON APPLICABILITY OF STATE LAW.—

20 (1) IN GENERAL.—Section 7361 of such title,
 21 as amended by subsection (a) of this section, is fur-
 22 ther amended by inserting after subsection (b) the
 23 following new subsection (c):

24 “(c) Any corporation established under this sub-
 25 chapter shall be established in accordance with the non-

1 profit corporation laws of the State in which the applicable
2 Department medical center is located and shall, to the ex-
3 tent not inconsistent with any Federal law, be subject to
4 the laws of such State. In the case of any multi-medical
5 center research corporation that facilitates the conduct of
6 research, education, or both at Department medical cen-
7 ters located in different States, the corporation shall be
8 established in accordance with the nonprofit corporation
9 laws of the State in which one of such Department medical
10 centers is located.”.

11 (2) CONFORMING AMENDMENT.—Section 7365
12 of such title is repealed.

13 (c) CLARIFICATION OF STATUS OF CORPORATIONS.—
14 Section 7361 of such title, as amended by this section,
15 is further amended—

16 (1) in subsection (a), by striking the second
17 sentence; and

18 (2) by inserting after subsection (c) the fol-
19 lowing new subsection (d):

20 “(d)(1) Except as otherwise provided in this sub-
21 chapter or under regulations prescribed by the Secretary,
22 any corporation established under this subchapter, and its
23 officers, directors, and employees, shall be required to
24 comply only with those Federal laws, regulations, and ex-

1 ecutive orders and directives that apply generally to pri-
 2 vate nonprofit corporations.

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

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

5 or

6 “(B) an agency or instrumentality of the

7 United States.”.

8 (d) REINSTATEMENT OF REQUIREMENT FOR
 9 501(C)(3) STATUS OF CORPORATIONS.—Subsection (e) of
 10 section 7361 of such title, as redesignated by subsection
 11 (a)(1) of this section, is further amended by inserting
 12 “section 501(c)(3) of” after “exempt from taxation
 13 under”.

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

15 (a) CLARIFICATION OF PURPOSES.—Subsection (a)
 16 of section 7362 of title 38, United States Code, is amend-
 17 ed—

18 (1) in the first sentence—

19 (A) by striking “Any corporation” and all

20 that follows through “facilitate” and inserting

21 “A corporation established under this sub-

22 chapter shall be established to provide a flexible

23 funding mechanism for the conduct of approved

24 research and education at one or more Depart-

1 ment medical centers and to facilitate functions
2 related to the conduct of”; and

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

5 (2) in the second sentence, by inserting “or cen-
6 ters” after “medical center”.

7 (b) MODIFICATION OF DEFINED TERM RELATING TO
8 EDUCATION AND TRAINING.—Subsection (b) of such sec-
9 tion is amended in the matter preceding paragraph (1)
10 by striking “the term ‘education and training’” and in-
11 serting “the term ‘education’ includes education and train-
12 ing and”.

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

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

1 **SEC. 4. MODIFICATION OF REQUIREMENTS FOR BOARDS**
2 **OF DIRECTORS OF CORPORATIONS.**

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

6 “(1) with respect to the Department medical
7 center—

8 “(A)(i) the director (or directors of each
9 Department medical center, in the case of a
10 multi-medical center research corporation);

11 “(ii) the chief of staff; and

12 “(iii) as appropriate for the activities of
13 such corporation, the associate chief of staff for
14 research and the associate chief of staff for
15 education; or

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

23 (b) REQUIREMENTS FOR NON-DEPARTMENT BOARD
24 MEMBERS.—Paragraph (2) of such section is amended—

25 (1) by inserting “not less than two” before
26 “members”; and

1 (2) by striking “and who” and all that follows
 2 through the period at the end and inserting “and
 3 who have backgrounds, or business, legal, financial,
 4 medical, or scientific expertise, of benefit to the op-
 5 erations of the corporation.”.

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

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

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

13 **“§ 7364. General powers**

14 “(b) IN GENERAL.—(1) A corporation established
 15 under this subchapter may, solely to carry out the pur-
 16 poses of this subchapter—

17 “(A) accept, administer, retain, and spend
 18 funds derived from gifts, contributions, grants, fees,
 19 reimbursements, and bequests from individuals and
 20 public and private entities;

21 “(B) enter into contracts and agreements with
 22 individuals and public and private entities;

23 “(C) subject to paragraph (2), set fees for edu-
 24 cation and training facilitated under section 7362 of

1 this title, and receive, retain, administer, and spend
2 funds in furtherance of such education and training;

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

9 “(E) employ such employees as the corporation
10 considers necessary for such purposes and fix the
11 compensation of such employees.

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

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

23 “(c) TRANSFER AND ADMINISTRATION OF FUNDS.—
24 (1) Except as provided in paragraph (2), any funds re-
25 ceived by the Secretary for the conduct of research or edu-

1 cation at a Department medical center or centers, other
2 than funds appropriated to the Department, may be trans-
3 ferred to and administered by a corporation established
4 under this subchapter for such purposes.

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

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

17 “(d) 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
21 project is approved in accordance with procedures pre-
22 scribed by the Under Secretary for Health for research
23 carried out with Department funds. Such procedures shall
24 include a scientific review process.

1 “(e) 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 “(f) POLICIES AND PROCEDURES.—The Under Sec-
8 retary for Health may prescribe policies and procedures
9 to 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 execu-
13 tive orders, circulars, and directives that apply generally
14 to the receipt and expenditure of funds by nonprofit orga-
15 nizations exempt from taxation under section 501(c)(3) of
16 the Internal 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
19 further 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
24 such title.

1 (b) CLERICAL AMENDMENTS.—The table of sections
 2 at 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 Sec-
 13 retary each year a report providing a detailed statement
 14 of the operations, activities, and accomplishments of the
 15 corporation during that year.

16 “(2)(A) A corporation with revenues in excess of
 17 \$300,000 for any year shall obtain an audit of the cor-
 18 poration for that year.

19 “(B) A corporation with annual revenues between
 20 \$10,000 and \$300,000 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) CONFIRMATION OF APPLICATION OF CONFLICT
8 OF INTEREST REGULATIONS TO APPROPRIATE CORPORA-
9 TION POSITIONS.—Subsection (c) of such section is
10 amended—

11 (1) by striking “laws and” each place it ap-
12 pears;

13 (2) in paragraph (1)—

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

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

19 (3) in paragraph (2)—

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

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

24 (c) ESTABLISHMENT OF APPROPRIATE PAYEE RE-
25 PORTING THRESHOLD.—Subsection (d)(3)(C) of such sec-

1 tion is amended by striking “\$35,000” and inserting
2 “\$50,000”.

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