

111TH CONGRESS  
1ST SESSION

# H. R. 2770

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IN THE SENATE OF THE UNITED STATES

JULY 28, 2009

Received; read twice and referred to the Committee on Veterans' Affairs

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Veterans Nonprofit  
3 Research and Education Corporations Enhancement Act  
4 of 2009”.

5 **SEC. 2. GENERAL AUTHORITIES ON ESTABLISHMENT OF**  
6 **CORPORATIONS.**

7       (a) AUTHORIZATION OF MULTI-MEDICAL CENTER  
8 RESEARCH CORPORATIONS.—

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

11           (A) by redesignating subsection (b) as sub-  
12 section (e); and

13           (B) by inserting after subsection (a) the  
14 following new subsection (b):

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

20       “(2) The board of directors of a multi-medical center  
21 research corporation under this subsection shall include  
22 the official at each Department medical center concerned  
23 who is, or who carries out the responsibilities of, the med-  
24 ical center director of such center as specified in section  
25 7363(a)(1)(A)(i) of this title.

1       “(3) In facilitating the conduct of research, edu-  
 2 cation, or both at more than one Department medical cen-  
 3 ter under this subchapter, a multi-medical center research  
 4 corporation may administer receipts and expenditures re-  
 5 lating to such research, education, or both, as applicable,  
 6 performed at the Department medical centers concerned.”.

7           (2) EXPANSION OF EXISTING CORPORATIONS TO  
 8 MULTI-MEDICAL CENTER RESEARCH CORPORA-  
 9 TIONS.—Such section is further amended by adding  
 10 at the end the following new subsection:

11       “(f) A corporation established under this subchapter  
 12 may act as a multi-medical center research corporation  
 13 under this subchapter in accordance with subsection (b)  
 14 if—

15           “(1) the board of directors of the corporation  
 16 approves a resolution permitting facilitation by the  
 17 corporation of the conduct of research, education, or  
 18 both at the other Department medical center or  
 19 medical centers concerned; and

20           “(2) the Secretary approves the resolution of  
 21 the corporation under paragraph (1).”.

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

24           (1) IN GENERAL.—Section 7361 of such title,  
 25 as amended by subsection (a) of this section, is fur-

1       ther amended by inserting after subsection (b) the  
2       following new subsection (c):

3       “(c) Any corporation established under this sub-  
4 chapter shall be established in accordance with the non-  
5 profit corporation laws of the State in which the applicable  
6 Department medical center is located and shall, to the ex-  
7 tent not inconsistent with any Federal law, be subject to  
8 the laws of such State. In the case of any multi-medical  
9 center research corporation that facilitates the conduct of  
10 research, education, or both at Department medical cen-  
11 ters located in different States, the corporation shall be  
12 established in accordance with the nonprofit corporation  
13 laws of the State in which one of such Department medical  
14 centers is located.”.

15               (2) CONFORMING AMENDMENT.—Section 7365  
16       of such title is repealed.

17       (c) CLARIFICATION OF STATUS OF CORPORATIONS.—  
18 Section 7361 of such title, as amended by this section,  
19 is further amended—

20               (1) in subsection (a), by striking the second  
21 sentence; and

22               (2) by inserting after subsection (c) the fol-  
23 lowing new subsection (d):

24       “(d)(1) Except as otherwise provided in this sub-  
25 chapter or under regulations prescribed by the Secretary,

1 any corporation established under this subchapter, and its  
 2 officers, directors, and employees, shall be required to  
 3 comply only with those Federal laws, regulations, and ex-  
 4 ecutive orders and directives that apply generally to pri-  
 5 vate nonprofit corporations.

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

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

8 or

9 “(B) an agency or instrumentality of the  
 10 United States.”.

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

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

18 (a) CLARIFICATION OF PURPOSES.—Subsection (a)  
 19 of section 7362 of title 38, United States Code, is amend-  
 20 ed in the first sentence—

21 (1) by striking “Any corporation” and all that  
 22 follows through “facilitate” and inserting “A cor-  
 23 poration established under this subchapter shall be  
 24 established to provide a flexible funding mechanism  
 25 for the conduct of approved research and education

1 at one or more Department medical centers and to  
 2 facilitate functions related to the conduct of”; and

3 (2) by inserting before the period at the end the  
 4 following: “or centers”.

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

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

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

20 **SEC. 4. MODIFICATION OF REQUIREMENTS FOR BOARDS**  
 21 **OF DIRECTORS OF CORPORATIONS.**

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

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

3           “(A)(i) the director (or directors of each  
4       Department medical center, in the case of a  
5       multi-medical center research corporation);

6           “(ii) the chief of staff; and

7           “(iii) as appropriate for the activities of  
8       such corporation, the associate chief of staff for  
9       research and the associate chief of staff for  
10      education; or

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

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

20          (1) by inserting “not less than two” before  
21      “members”; and

22          (2) by striking “and who” and all that follows  
23      through the period at the end and inserting “and  
24      who have backgrounds, or business, legal, financial,

1        medical, or scientific expertise, of benefit to the op-  
 2        erations of the corporation.”.

3        (c) CLARIFICATION THAT DEPARTMENT EMPLOYEES  
 4 MAY SERVE AS EXECUTIVE DIRECTORS.—Subsection (b)  
 5 of section 7363 of such title is amended in the first sen-  
 6 tence, by inserting after “executive director who” the fol-  
 7 lowing: “may be an employee of the Department and  
 8 who”.

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

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

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

16 **“§ 7364. General powers**

17        “(a) IN GENERAL.—(1) A corporation established  
 18 under this subchapter may, solely to carry out the pur-  
 19 poses of this subchapter—

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

24                “(B) enter into contracts and agreements with  
 25 individuals and public and private entities;



1           “(C) subject to paragraph (2), set fees for edu-  
2           cation and training facilitated under section 7362 of  
3           this title, and receive, retain, administer, and spend  
4           funds in furtherance of such education and training;

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

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

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

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

1       “(b) TRANSFER AND ADMINISTRATION OF FUNDS.—

2   (1) Except as provided in paragraph (2), any funds re-  
3   ceived by the Secretary for the conduct of research or edu-  
4   cation at a Department medical center or centers, other  
5   than funds appropriated to the Department, may be trans-  
6   ferred to and administered by a corporation established  
7   under this subchapter for such purposes.

8       “(2) A Department medical center may reimburse the  
9   corporation for all or a portion of the pay, benefits, or  
10   both of an employee of the corporation who is assigned  
11   to the Department medical center if the assignment is car-  
12   ried out pursuant to subchapter VI of chapter 33 of title  
13   5.

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

20       “(c) RESEARCH PROJECTS.—Except for reasonable  
21   and usual preliminary costs for project planning before its  
22   approval, a corporation established under this subchapter  
23   may not spend funds for a research project unless the  
24   project is approved in accordance with procedures pre-  
25   scribed by the Under Secretary for Health for research

1 carried out with Department funds. Such procedures shall  
2 include a scientific review process.

3 “(d) EDUCATION ACTIVITIES.—Except for reason-  
4 able and usual preliminary costs for activity planning be-  
5 fore its approval, a corporation established under this sub-  
6 chapter may not spend funds for an education activity un-  
7 less the activity is approved in accordance with procedures  
8 prescribed by the Under Secretary for Health.

9 “(e) POLICIES AND PROCEDURES.—The Under Sec-  
10 retary for Health may prescribe policies and procedures  
11 to guide the spending of funds by corporations established  
12 under this subchapter that are consistent with the purpose  
13 of such corporations as flexible funding mechanisms and  
14 with Federal and State laws and regulations, and execu-  
15 tive orders, circulars, and directives that apply generally  
16 to the receipt and expenditure of funds by nonprofit orga-  
17 nizations exempt from taxation under section 501(c)(3) of  
18 the Internal Revenue Code of 1986.”.

19 (b) CONFORMING AMENDMENT.—Section 7362(a) of  
20 such title, as amended by section 3(a)(1) of this Act, is  
21 further amended by striking the last sentence.

1 **SEC. 6. REDESIGNATION OF SECTION 7364A OF TITLE 38,**  
2 **UNITED STATES CODE.**

3 (a) REDESIGNATION.—Section 7364A of title 38,  
4 United States Code, is redesignated as section 7365 of  
5 such title.

6 (b) CLERICAL AMENDMENTS.—The table of sections  
7 at the beginning of chapter 73 of such title is amended—

8 (1) by striking the item relating to section  
9 7364A; and

10 (2) by striking the item relating to section 7365  
11 and inserting the following new item:

“7365. Coverage of employees under certain Federal tort claims laws.”.

12 **SEC. 7. IMPROVED ACCOUNTABILITY AND OVERSIGHT OF**  
13 **CORPORATIONS.**

14 (a) ADDITIONAL INFORMATION IN ANNUAL RE-  
15 PORTS.—Subsection (b) of section 7366 of title 38, United  
16 States Code, is amended to read as follows:

17 “(b)(1) Each corporation shall submit to the Sec-  
18 retary each year a report providing a detailed statement  
19 of the operations, activities, and accomplishments of the  
20 corporation during that year.

21 “(2)(A) A corporation with revenues in excess of  
22 \$500,000 for any year shall obtain an audit of the cor-  
23 poration for that year.

1       “(B) A corporation with annual revenues between  
2 \$100,000 and \$500,000 shall obtain an audit of the cor-  
3 poration at least once every three years.

4       “(C) Any audit under this paragraph shall be per-  
5 formed by an independent auditor.

6       “(3) The corporation shall include in each report to  
7 the Secretary under paragraph (1) the following:

8               “(A) The most recent audit of the corporation  
9 under paragraph (2).

10              “(B) The most recent Internal Revenue Service  
11 Form 990 ‘Return of Organization Exempt from In-  
12 come Tax’ or equivalent and the applicable schedules  
13 under such form.”.

14       (b) CONFLICT OF INTEREST POLICIES.—Subsection  
15 (c) of such section is amended to read as follows:

16       “(c) Each director, officer, and employee of a cor-  
17 poration established under this subchapter shall be subject  
18 to a conflict of interest policy adopted by that corpora-  
19 tion.”.

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

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

Passed the House of Representatives July 27, 2009.

Attest: LORRAINE C. MILLER,  
*Clerk.*