

VA and NPCs: A Legal Oddity

With passage of PL 100-322 in 1988, the Department of Veterans Affairs Health Administration's Medical, Prosthetic and Rehabilitation, and Health Services Research program entered a new phase. This legislation dramatically broadened VA's ability to conduct research by authorizing the establishment of nonprofit research corporations affiliated with VA medical centers and, through these corporations, opening the door to new sources of research funding.

Legally, the corporation has traditionally been a creature of the state. With the arrival of federalism and privatization in government, however, many variations have arisen and a number of federally chartered corporations have been formed to serve specific purposes. Congress broke new ground in establishing a unique arrangement at the Department of Veterans Affairs. Other federal agencies have congressional authority to establish or manage corporations; only VA has separate, state-chartered corporations scattered throughout the country, each of which can be scrutinized by several levels of federal investigators at any time.

Congress establishes the statutory missions of the Department of Veterans Affairs, as well as its organization and mechanisms for carrying out those missions. Congress specifically prohibits executive branch departments from establishing or acquiring a corporation to act as an agency of the government except pursuant to statutory authority.

The 1988 legislation allowed state chartered nonprofit research corporations to provide flexible funding mechanisms to administer non-VA research funds. These organizations replaced such ill-suited mechanisms such as the General Post Fund, established primarily to give gifts to veterans and to administer their bequests, which has restrictive policies regarding transfers of funds. Making these corporations separate, state-chartered entities was important in delineating the separation between VA and the corporations, and in providing the convenience and oversight of local management. Making them subject to federal oversight provided assurance that they would be operated in accordance with the highest standards of fiscal and administrative management.

NPCs are based loosely on the Henry M. Jackson Foundation for the Advancement of Military Medicine which carries out cooperative research projects with the Uniformed Services University of the Health Sciences (USUHS); allows interaction between military and civilian personnel; and encourages medical professionals to participate in work that benefits both military and civilian medicine. Some federal agencies sponsor Federally Funded research and Development Centers (FFRDCs) which are actually contractors to the government. FFRDCs are administered by universities, nonprofit organizations or industrial firms, and are established to meet a special long-term R&D need of an agency that cannot be met as effectively by existing government or private resources.

In comparison, the initial purpose of the VA affiliated NPCs was to facilitate research at the VA medical centers where they have been established. Subsequently, Congress expanded their authority to include supporting VA's patient and staff education and training missions.

To keep the statute brief, Congress left it up to VA to develop appropriate regulations for the VA NPCs. To date, VA has avoided the regulatory route and has instead laid out its interpretation of the NPC authorizing statute in VHA Handbook 1200.17.

Conclusion

As government moves toward privatization, the VA-affiliated nonprofit research corporations continue to make a substantial contribution to the success of the VA research program. This unique partnership of a public agency and private nonprofits has already proven its worth and has demonstrated a value that exceeds the amount they administer each year on behalf of VA research.