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SENATE

REPORT
107–229

DEPARTMENT OF VETERANS AFFAIRS EMERGENCY PREPAREDNESS ACT OF 2002

JULY 31, 2002.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany S. 2132]

The Committee on Veterans' Affairs, to which was referred the bill S. 2132, to amend title 38, United States Code, to provide for the establishment of medical emergency preparedness centers in the Veterans Health Administration, to provide for the enhancement of the medical research activities of the Department of Veterans Affairs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

INTRODUCTION

On October 16, 2001, the Committee held a hearing to consider VA's readiness and capacity to care for veterans, active duty servicemembers, and the public during conflicts and national emergencies, and its role in the Federal response to disasters. Those testifying at the hearing included: The Honorable Anthony J. Principi, Secretary, Department of Veterans Affairs (hereinafter, "VA"); The Honorable Claude A. Allen, Deputy Secretary of Health and Human Services; The Honorable David Chu, Ph.D., Under Secretary of Defense for Personnel and Readiness; and Bruce P. Baughman, Director, Planning and Readiness Division, Readiness, Response, and Recovery Directorate, Federal Emergency Management Agency.

99–010

On April 16, 2002, Committee Chairman John D. Rockefeller IV introduced S. 2132. S. 2132, as introduced, would have amended provisions of title 38, United States Code, to authorize the establishment of four medical emergency preparedness centers in VA's Veterans Health Administration (hereinafter, "VHA"); to modify the authorities of VA non-profit research and education corporations to transfer appropriated funds and to act as affiliated institutions for sharing of health care resources; and to allow employees of these corporations assigned to approved VA projects to be considered VA employees for the purposes of Federal Tort Claims Act and medical malpractice coverage.

On April 17, 2002, Chairman Rockefeller introduced S. 2186 at the request of the Administration. S. 2186 would have amended title 38 to establish a new Assistant Secretary to coordinate functions relating to emergency preparedness, continuity of operations, security, and law enforcement.

On April 17, 2002, Chairman Rockefeller introduced S. 2187 with the co-sponsorship of Committee member Daniel K. Akaka. Ranking Member Arlen Specter later cosponsored the bill. S. 2187 would have authorized the Secretary of Veterans Affairs to furnish hospital care and medical services to affected individuals during and immediately following a disaster or emergency declared by the President or in which the National Disaster Medical System is activated.

On May 2, 2002, Chairman Rockefeller held a hearing to receive testimony on the aforementioned bills and other measures. Those testifying at the hearing included the following VA witnesses: The Honorable Tim McClain, General Counsel; The Honorable Claude M. Kicklighter, Assistant Secretary for Policy and Planning and Acting Director, Office of Operations, Security and Preparedness; Frances M. Murphy, MD, Deputy Under Secretary for Health, Veterans Health Administration; Robert Epley, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration; John Thompson, Deputy General Counsel; and Vincent Barile, Deputy Under Secretary for Management, National Cemetery Administration. Also testifying were James Fischl, Director, National Veterans Affairs and Rehabilitation Commission, The American Legion; Joseph Violante, National Legislative Director, Disabled American Veterans; David Tucker, Associate Legislative Director, Paralyzed Veterans of America; and Dennis Cullinan, Director, National Legislative Service, Veterans of Foreign Wars.

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on June 6, 2002, and voted unanimously to report favorably S. 2132, with an amendment in the nature of a substitute incorporating provisions from S. 2132, S. 2186, and S. 2187. Present were Chairman Rockefeller, Ranking Member Specter, and Senators Jeffords, Wellstone, Murray, Miller, Nelson, Thurmond, Murkowski, Hutchinson, and Hutchison.

SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 2132 as reported (hereinafter, "Committee bill") contains various amendments to title 38 of United States Code and other free-standing provisions that would:

(a) create four medical emergency preparedness research and education centers within VHA to prepare for the potential medical consequences of terrorism;

(b) authorize an additional Assistant Secretary for Operations, Preparedness, Security, and Law Enforcement;

(c) increase the number of authorized deputy assistant secretaries from 18 to 20;

(d) authorize VA to furnish medical care to any individual affected by a major disaster or emergency declared by the President under the Stafford Act, or by a medical crisis that requires the activation of the National Disaster Medical System;

(e) permit VA to transfer appropriated research funding to a VA nonprofit research corporation in order to conduct research, training, or education;

(f) allow VA to treat these nonprofit corporations as affiliated institutions when negotiating the sharing of health care resources for VA-approved projects;

(g) allow employees of these nonprofit corporations assigned to VA-approved projects to be considered VA employees for the purposes of Federal Tort Claims Act and medical malpractice coverage; and

(h) permanently extend VA's authority to establish nonprofit research and education corporations.

COMMITTEE BILL

TITLE I: MEDICAL EMERGENCY PREPAREDNESS

In 1982, Congress assigned a new responsibility to VA that built upon its three primary duties—caring for our nation's veterans, training health care personnel, and fostering scientific and clinical research to improve future medical care. Public Law 97–174 defined VA as the primary medical back-up system to the Department of Defense during conflicts or domestic emergencies, and required that VA maintain a state of readiness to care for a large number of active duty military casualties with little notice.

As Federal plans to protect public health during disasters have evolved over the last two decades, this "Fourth Mission" has grown to encompass more than just supporting the military during crises. Through the National Disaster Medical System—formed as an interagency agreement by VA, the Federal Emergency Management Agency (hereinafter, "FEMA"), the Department of Defense (hereinafter, "DOD"), and the Department of Health and Human Services (hereinafter, "HHS") in 1984 and recently codified in Public Law 107–188—VA conducts training exercises and coordinates a network of Federal and community health care providers to prepare for domestic disasters. VA provides medical and logistical support through the Federal Response Plan for domestic disasters, developed according to the amended Robert T. Stafford Disaster Relief and Assistance Act, Public Law 93–288, and maintains a deployable Medical Emergency Radiological Response Team as part of the Federal Radiological Emergency Response Plan. Presidential Decision Directive 62 on combating terrorism (May 1998) tasked VA to provide medical support to HHS, including management of the National Pharmaceutical Stockpile.

The assets that VA, the Nation's largest integrated health care system, brings to domestic emergency preparedness include its clinical infrastructure, its medical education programs, and its basic and clinical research programs. VA operates medical facilities in every State, the District of Columbia, and Puerto Rico, staffed by over 14,000 physicians and 37,000 registered nurses. More than half of the physicians practicing in the United States received part of their professional education in the VA health care system through affiliations with 107 medical schools and more than 1,200 other schools across the country. VA's Medical and Prosthetic Research Program—which funded more than 15,000 projects last year—includes large multi-center clinical trials, studies in clinical outcomes and health care delivery methods, rehabilitation development, and investigator-initiated research in areas that include mental illnesses, chronic disorders, aging, and the long-term consequences of exposures to chemical and biological hazards.

The Committee strongly believes that these considerable resources should be efficiently incorporated into Federal strategies to protect the Nation during domestic disasters, including potential terrorist attacks. Through its geographic reach, education programs, and research capacity, VA stands ready to make a significant contribution to protecting veterans and the public from the medical consequences of a terrorist attack. At the same time, VA must receive the recognition and the resources necessary to accomplish its "Fourth Mission" without sacrificing its capacity to serve veterans and their families. The provisions incorporated in the Committee bill would create a new VA function within the nation's preparedness plans, strengthen VA's existing emergency response mission, and help VA preserve its ability to serve veterans during crises.

SECTION 101: MEDICAL EMERGENCY PREPAREDNESS CENTERS IN VHA

Background

The attacks of September 11th and the subsequent anthrax assaults on media and government figures demonstrated our national vulnerability to asymmetric warfare by terrorists willing to employ weapons of mass destruction against civilian targets. Fortunately, the anthrax exposures resulted in relatively few casualties. However, their aftermath illustrated vividly that the nation's public health and medical communities would be quickly overwhelmed in the face of a larger attack with biological, chemical, radiological, or even explosive or incendiary weapons. In addition, the anthrax incidents highlighted the dearth of knowledge regarding best medical practices—or even accurate diagnostic tools—to detect and cope with deliberately induced disease outbreaks.

Although other research entities, such as the National Institutes of Health, also incorporate the talent and resources necessary to develop diagnostic, preventive, and therapeutic modes to counter the medical effects of biological or chemical attacks, VA possesses unparalleled strength in large-scale clinical management research. VA's Medical and Prosthetic Research Program has developed clinical practice models for many diseases, ranging from treatments for tuberculosis following World War II to a recently launched study

to determine the best way to treat HIV/AIDS. Successful multi-center VA clinical trials have yielded improved treatment for conditions that include schizophrenia, diabetes, cancer, depression, heart disease and stroke. VA's Centers of Excellence allow researchers from different disciplines to concentrate their research, education, and clinical programs on a single focus, such as hepatitis, geriatric medicine, mental illnesses, or Parkinson's disease.

The military history of the last century has required VA to develop expertise in the consequences of exposure to radiological and chemical agents. In addition to long-standing research and clinical programs in these areas, Public Law 105–368—passed subsequent to the Persian Gulf War—charged VA to investigate potential long-term health effects of biological and chemical warfare agents, including one-time and low-dose exposures. This program is currently divided between two VA research centers and an interagency collaboration with the Departments of Defense and Health and Human Services.

VA demonstrated its ability to disseminate clinical information quickly after the September 11th attacks, using its powerful telemedicine network to bring a DOD-sponsored course on medical management of biological and chemical casualties to professionals throughout the VA healthcare system, and to its military and community partners. Three-quarters of VA researchers are practicing clinicians who can efficiently translate their research findings into general clinical practice through collaborations with researchers in other Federal agencies, academia, and the private sector.

The medical emergency preparedness centers authorized by the Committee bill would build upon VA's expertise in both health care delivery and biological, chemical, and radiological exposures to ready VA health care professionals, and the medical community, for the potential medical consequences of a terrorist attack. Further, the centers would enable VA researchers to explore new technologies and medical applications that could be used to care for victims of such exposures, such as the use of umbilical cord stem cells to treat neural damage or the blood cell disorders that frequently occur in individuals exposed to large doses of radiation.

Although VA might be able to identify enough established scientific programs at one site to constitute a single-field—e.g., radiological response—center, the medical community generally accepts that strategies to manage mass casualties will most likely overlap and benefit from an all-hazards approach. As stated in a medical policy paper co-authored by VA's Deputy Under Secretary for Health:

> In order to combat acts of mass terror, contingency planning has to involve more than just emergency response. An effective strategy will have to consider a broader array of immediate and long-term consequences, which will arise regardless of the type of toxic exposure or number of casualties.[1]

As the Nation's public health and medical communities struggle with the dual problems of measuring and maintaining surge capacity, research into the best way to manage mass casualties is des-

[1] Hyams, K.C., Murphy, F.M., and S. Wessely. (2002) Responding to Chemical, Biological, or Nuclear Terrorism: The Indirect and Long-Term Health Effects May Present the Greatest Challenge. *Journal of Health Politics, Policy, and Law* 27(2):273-291.

perately needed. Regardless of the agency finally appointed to oversee homeland security research, the Committee expects that VA's valuable research and clinical resources will be integrated productively into national preparedness strategies.

Committee Bill

Section 101 of the Committee bill is based on S. 2132 as introduced. This section would authorize VA to establish four centers for medical emergency preparedness research, training, and clinical activities. These centers would develop strategies to detect, diagnose, prevent, and treat the injuries or illnesses that could arise from a terrorist attack with chemical, biological, radiological, incendiary, or other explosive weapons.

Section 101 would direct the Secretary to select sites for centers through a peer-reviewed competitive process open to VA medical centers affiliated with at least one accredited school of medicine, school of public health, and graduate program in epidemiology, in order to select sites with considerable resident expertise and potential to train health care professionals. The Committee bill does not limit each center to a specific topic of study (e.g., radiological incidents), but leaves the appropriate mix of research in this new and interdisciplinary field of medical preparedness to VA, peer reviewers, and researchers.

Section 101 would direct that techniques or practices identified at these centers be used to educate and train health care professionals within VHA. Section 101 would also allow VA to extend these training activities, at the direction of the Secretary and through interagency agreements such as the National Disaster Medical System, to non-VA care providers.

Section 101 would also authorize VA to offer laboratory, epidemiological, medical, or other appropriate assistance to other agencies—whether Federal, State, or local—that request assistance during a medical emergency. This mission is consistent with VA's current role as a support agency to the Federal response to disasters, and would still allow individual VA medical centers to respond to local disasters as an integral part of the communities they serve.

The Committee bill would require that research and response activities undertaken under this section be compatible with research strategies coordinated by the Office of Homeland Security (or equivalent agency) and similar research undertaken by the Departments of Defense and Health and Human Services.

Cost: CBO estimates that enacting this provision would increase spending by $12 million in 2003 and by $87 million over the 2003–2007 period.

SECTION 201: AUTHORIZED FUNCTIONS OF ASSISTANT SECRETARIES FOR VETERANS AFFAIRS

Background

In the wake of the September 11th terrorist attacks, senior staff representing VA's three administrations and other major offices identified a pressing need for a single office within VA headquarters to coordinate all preparedness and Federal response activities.

On October 26, 2001, the Secretary authorized assignment of detailed employees from other VA offices to an office charged with ensuring department-wide operational readiness. VA then requested authorization of a new office to carry out operations, preparedness, security, and law enforcement functions on a dedicated basis. This new office would be directed by an Assistant Secretary responsible for providing appropriate executive leadership and accountability, and for representing VA in interagency homeland security planning efforts.

The Committee intends that the new Assistant Secretary of Operations, Preparedness, and Security would coordinate department-wide planning, training, and exercises to ensure that VA can effectively serve veterans during emergencies. Critical tasks would include planning to protect veterans and staff within VA facilities, integrating emergency preparedness and consequence management strategies within VA, and developing and maintaining effective relationships with other agencies responsible for homeland security. This office should build upon, rather than supplant, existing medical preparedness programs within VA.

Committee Bill

Section 201 would increase the number of authorized VA assistant secretaries from six to seven, and expand authorized functions to include operations, preparedness, security, and law enforcement.

Cost: CBO did not estimate any cost to be associated with section 201.

SECTION 202: ADDITIONAL DEPUTY ASSISTANT SECRETARIES FOR VETERANS AFFAIRS

Background

VA's internal assessment of its readiness to respond to disasters and the experience of staff responsible for emergency preparedness have established the need for an office dedicated to preparedness activities, as described in Section 201. In order to provide appropriate executive level assistance, the Committee bill would authorize two new deputy assistant secretaries for this office. To the existing Deputy Assistant Secretary for Security and Law Enforcement, whose authorities will be transferred to the new office, Section 202 would authorize VA to add a Principal Deputy Assistant Secretary to support the Assistant Secretary and a Deputy Assistant Secretary to assist in contingency and mass care planning.

Committee Bill

Section 202 would increase the number of authorized deputy assistant secretaries from 18 to 20.

Cost: CBO did not estimate any cost to be associated with section 202.

SECTION 301: AUTHORITY TO FURNISH HEALTH CARE DURING MAJOR DISASTERS

Background

The Federal Response Plan for domestic disasters outlines specific "emergency support functions" that may be required during

and following a national emergency and assigns primary responsibility for each of these functions to a specific agency or entity. VA's tasks under this plan include supporting several emergency functions, most significantly Emergency Support Function #8 (ESF #8), the Health and Medical Services Annex. Under this plan, HHS "coordinates the provision of Federal health and medical assistance to fulfill the requirements identified by the affected State and local authorities having jurisdiction. Included in ESF #8 are overall public health response; triage, treatment, and transportation of victims of the disaster; and evacuation of patients out of the disaster area, as needed, into a network of Military Services, Veterans Affairs, and pre-enrolled non-Federal hospitals located in the major metropolitan areas of the United States."

This plan gives HHS authority to call upon VA for assistance directly following a Presidentially declared emergency or major disaster, or after activation of the National Disaster Medical System (hereinafter, "NDMS"), a network of Federal and non-Federal care providers. VA has responded quickly when called, working within the NDMS to provide care and supplies during every major domestic disaster of the last two decades, including in New York and at the Pentagon following the September 11th attacks.

VA's NDMS obligations were undertaken subsequent to its assignment as primary contingency medical back-up system to the military in Public Law 97–174. Under 38 U.S.C. § 1784, the Secretary is authorized to "furnish hospital care or medical services as a humanitarian service in emergency cases, but the Secretary shall charge for such care and services at rates prescribed by the Secretary." Neither of these authorities acknowledges VA's considerable commitment and obligation to providing emergency care and support to the public as part of its Federal response plan duties, which may be expected to escalate in light of the Nation's increasing commitment to homeland security.

In addition to the role VA fills as a Federal resource during disasters, VA medical centers contribute to disaster management within their communities. Even before September 11th, more than 80 percent of VA medical centers had been included in local community emergency response plans. At the Committee's May 2, 2002, hearing on pending legislation, Deputy Under Secretary for Health Murphy stated:

> I would just add that one of the misperceptions is that because we are a Federal agency and an executive branch department, that we are not part of the local communities. In fact, VA is different than many of the departments, in that we are integrated into every city, every community in the country, and VA needs to be there to be part of that Federal public health infrastructure, and we can play a very valuable role if we are given the mission to do so.

The dual obligation of VA's medical facilities—serving collectively as the major pre-deployed Federal clinical resource and individually as an integral part of the communities in which they are placed—demands appropriate authority not now explicit in law.

Committee Bill

Section 301 authorizes VA to extend medical services to individuals affected by a Presidentially declared major disaster or a public health emergency in which the National Disaster Medical System is activated. VA would be authorized to offer care at VA medical facilities, including hospital treatment, to veterans (regardless of enrollment status), active duty military personnel, local and community emergency response providers, or other individuals responding to or involved in the disaster. Veterans with service-connected disabilities would retain the highest priority for care and services, followed by active duty military casualties during activation of the VA/DOD contingency medical system, after which VA could grant the next level of priority to individuals affected by a disaster.

This section would also allow VA to receive reimbursement for the cost of services provided to employees of other Federal agencies or departments, to be credited to the facility that provided care. VA would not be required to charge other individuals for emergency care offered during a disaster.

Cost: CBO was unable to provide a cost estimate associated with section 301.

SECTIONS 401–403: RESEARCH CORPORATIONS

Background

VA-affiliated nonprofit research and education corporations (hereinafter, "NPCs") were established under 38 U.S.C. §§ 7361–7368 to facilitate VA's research and education missions. In 2001, non-profit corporations at 84 VA medical centers (hereinafter, "VAMCs") reported previous-year revenues of nearly $174 million. These revenues would never have been available to VA without the special rules under which these corporations operate.

Currently, VAMCs are prohibited from entering into contracts, or other agreements involving payments, with their affiliated NPCs. Further, a 1989 VA Office of General Counsel opinion ruled that VAMCs and NPCs may not enter into sharing agreements. However, two later opinions, dated April 4, 1990, and February 16, 1996, concluded that agreements were permissible. The result of this web of conflicting legal opinions and statutory prohibitions is that VAMCs cannot acquire services that they may need from the NPCs, even when it could be cost-effective and efficient to do so.

Several VA researchers described examples of possible VA-NPC contracting opportunities to the Committee. In one example, a project funded through a VA merit review award in VISN 3 required patients to travel long distances to the VAMC to participate in the study. The grant included funding for such travel; however, the principal investigator lacked the staff and the expertise to provide for such travel arrangements. Hence, the investigator sought to enter into a contract with the affiliated NPC to make all the necessary arrangements. This arrangement, however, was prohibited. Other examples highlighted the benefits for VA researchers to contract with NPCs for conference management; technical services; use of expensive, high-tech equipment; and organization of training programs.

VA's inability to contract with NPCs is not the only limitation under the current statutory scheme. A recent legal interpretation by the Department of Justice determined that certain employees of NPCs are not covered under the Federal Tort Claims Act (hereinafter, "FTCA"). The opinion noted that physicians employed by the VA-affiliated NPCs cannot be considered Federal employees for purposes of FTCA even though they have VA "without compensation" (WOC) appointments. Prior to this opinion, the common understanding had been that corporation employees were covered by FTCA, subject to the Attorney General's certification that their work was within the scope of government employment. In order to assure such certification, NPC employees have been required to have VA WOC appointments, to work only on VA-approved research and education, and to work under the supervision of VA personnel.

On October 15, 2001, the VA Office of General Counsel requested reconsideration of the conclusion reached by the Department of Justice in its March 29, 2000, letter. However, the Committee understands that such a reconsideration, if it is granted at all, might take up to four years to be resolved. In the meantime, NPC physicians, nurses, technicians, and allied health care professionals are personally liable for suits alleging negligence or malpractice while working on VA-approved research.

Authority for VA to establish nonprofit research and education corporations expires on December 31, 2003.

Committee Bill

Section 401 of the Committee bill clarifies that VA medical centers may use VA's existing contracting authorities to acquire research or education services from NPCs. In testimony before the Committee on May 2, 2002, VA General Counsel Tim McClain objected to these clarifications on "the grounds that they would alter the fundamental nature of the relationship between VA and the non-profits, which is analogous to that created in a trust." While the Committee agrees that the relationship between NPCs and VAMCs would change, the Committee believes such changed would be for the better—the NPCs will be able to do more for VA, not less, and only after potential agreements are approved by VA. As a result, VA will retain full responsibility for the conduct of NPC research assistance.

Section 402 provides FTCA coverage for certain employees of VA-affiliated NPCs. Since 1989, both VA and the NPCs have operated under the belief that corporation employees with WOC appointments, working on VA-approved research under the supervision of VA employees, would be covered under FTCA. While no negligence or malpractice suits have been filed against a corporation employee, prudence dictates that these employees with VA appointments be covered by the FTCA. VA strongly supports this provision.

Section 403 permanently extends the authority to establish nonprofit VA research and education corporations.

Cost: CBO did not estimate any cost to be associated with sections 401–403.

AGENCY REPORT

On May 2, 2002, the Honorable Tim McClain, General Counsel, Department of Veterans Affairs, appeared before the Committee and submitted testimony on, among other things, S. 2132, S. 2186, and S. 2187. Excerpts from this statement are reprinted below:

STATEMENT OF TIM MCCLAIN, GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, Thank you for the opportunity to testify on a number of legislative items of interest to veterans.

* * * * * * *

S. 2132

Section 1 of S. 2132 would require the Secretary to establish four Emergency Medical Preparedness Centers within the Veterans Health Administration (VHA). VA employees would staff the proposed Centers, and the Centers would be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

The Centers would have four specific purposes. First, they would carry out research and develop methods in detection, diagnosis, vaccination, protection, and treatment of injuries arising from the use of chemical, biological, radiological agents or incendiary or other explosive weapons or devices. Second, they would provide education, training, and advice on the medical consequences of the use of CBR agents or incendiary or other explosive weapons or devices. Third, the Centers would provide that same education, training, and advice to non-VA health-care professionals. These activities would be accomplished through either the National Disaster Medical System or interagency agreements. Fourth, in the event of a national emergency, they would provide laboratory, epidemiological, medical, or other assistance, as the Secretary considers appropriate, to Federal, State, and local health care agencies and personnel involved in, or responding to, the national emergency.

Each Center would be authorized to solicit and accept contributions of funds and other resources, including grants, to carry out their purposes and activities, subject to the Secretary's approval. Section 1 of this bill would also authorize to be appropriated $20 million for these Centers for each of fiscal years 2003 through 2007. By the bill's terms, such authorization is valid only for funds appropriated separately and solely for purposes of the Centers; otherwise, the authorization is null and void.

Section 1 of S. 2132 is similar to H.R. 3253 on which the Deputy Secretary testified on April 10, 2002, before the House Committee on Veterans' Affairs, Subcommittee on Health. However, it incorporates the recommendations VA suggested in its April testimony concerning H.R. 3253 and adds a number of improvements to the House version of the bill. We are grateful to this Committee for having incorporated our recommendations. We strongly support the goals of section 1 of S. 2132 and prefer it to H.R. 3253. However, the Executive Office of the President, through the Homeland Secu-

rity Council (HSC), is currently crafting a comprehensive coordinated Federal policy on Homeland Security. VA is actively participating in this HSC effort. It is expected that HSC will deliver this policy to the President this July. The precise roles and responsibilities VA will be assigned in the area of Homeland Security will be reflected in that policy. We expect that we will have much to contribute in this area based on our depth of expertise and infrastructure, as alluded to above.

Because the President's Homeland Security Policy is forthcoming, we would like to work with the Committee to ensure that section 1 of S. 2132 is consistent with the comprehensive Federal plan.

In addition, S. 2132 contains two provisions that would expand the purpose and operations of VA non-profit corporations. VA non-profit corporations function as flexible funding mechanisms that support VA research and education. VA non-profits receive and administer funds from outside sources, e.g., NIH grants and donations made by private sponsors, in support of approved VA research projects and education activities. However, the current statute expressly provides that VA may not transfer appropriated funds to the corporations. Section 2(a) of the bill would amend section 7362 of title 38 to permit the transfer of appropriated dollars from VA to a corporation pursuant to a contract or other agreement, including an agreement for actual research. In addition, section 2(b) of the bill would amend VA's sharing authority to treat VA non-profits like affiliated institutions for the purpose of sharing health-care resources related to research, education and training. These changes would broadly enable the corporations to sell services to the Department. The bill also provides that these arrangements would be outside the scope of Federal procurement law and, therefore, would not be subject to full and open competition.

VA objects to these proposals on the grounds that they would alter the fundamental nature of the relationship between VA and the non-profits, which is analogous to that created in a trust. Under current law the corporations exist as a flexible funding mechanism solely to support approved VA research and education. The amendments in section 2 of the bill would make the relationship between Department health-care facilities and VA non-profits more like that with outside contractors or university affiliates; more of an arms-length negotiation rather than one of incontrovertible fiduciary support. This change would also shift the emphasis of VA non-profits away from the primary focus of providing flexible funding support for VA research, education and training to conducting and selling these services to VA. This shift would present a troubling risk of ceding Department control of VA approved research or education to the non-profits.

Section 3 of the bill would amend the title 38 authorities related to VA non-profits by adding a new section 7364A to specifically state that corporation employees assigned to work on approved VA research or education and training shall be considered employees for purposes of Federal tort claim and medical malpractice coverage. VA strongly favors this provision. We note, however, that the phrase, "carried out with Department funds" in the proposed section 7364A(b)(2) might be interpreted to limit this coverage.

Much of VA-approved research, or education and training is supported by external funds.

S. 2186

Mr. Chairman, thank you for introducing S. 2186 at our request. This legislation would establish a new Assistant Secretary to perform operations, preparedness, security and law enforcement and a new VA office of Operations Security and Preparedness. We believe this new office is essential if we are to meet our responsibilities of protecting veterans, employees, and visitors to our facilities.

S. 2187

S. 2187 would permit VA, on its own initiative, to care for those affected by a disaster or emergency and those responding to the emergency. The disaster or emergency must be either declared by the President or involve activation of the National Defense Medical System. The bill would also require other Federal agencies to reimburse VA for care provided to their officers, employees, and active duty members at rates agreed upon by the agencies. VA would not be required to charge for care provided to other individuals. Finally, the bill would allow VA to provide care in response to disasters and emergency situations before caring for all other beneficiaries except service-connected veterans and active duty military members referred during war or national emergency or who are responding or involved in a disaster or emergency.

We are very interested in this measure, but we need to work with both the committee and other Federal departments and agencies to fully understand the implications of the bill. We anticipate providing further views on the measure at a later time. We would note, however, that the bill also proposes to amend 38 U.S.C. § 1711(b). That provision is now codified at 38 U.S.C. § 1784. Finally, the bill would conflict with an administrative provision that appears in VA's annual appropriation act that requires reimbursement of costs except in specified situations. For the provision to be effective that provision of the appropriations act will also need amendment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 13, 2002.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2132, the Department of Veterans Affairs Emergency Preparedness Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss.

Sincerely,

BARRY B. ANDERSON,
for DAN L. CRIPPEN, *Director.*

Enclosure.

S. 2132, Department of Veterans Affairs Emergency Preparedness Act of 2002

SUMMARY

S. 2132 would establish four centers for medical emergency preparedness that would carry out research and development, provide education and training, and provide assistance in the case of a national emergency with regard to chemical, biological, radiological, incendiary or other explosive weapons threats. These emergency centers would be located in hospitals operated by the Department of Veterans Affairs (VA). S. 2132 would authorize appropriations of $20 million a year over the 2003–2007 period to operate the centers. S. 2132 also would allow VA to provide medical care to individuals who are affected by a major disaster or emergency.

In addition, S. 2132 would increase the number of assistant secretaries within the VA from six to seven with the new assistant secretary being responsible for operations, preparedness, security, and law enforcement functions. The bill also would increase the number of deputy assistant secretaries within VA from 18 to 20. Finally, S. 2132 would allow research corporations established under current law by the Secretary of VA to use appropriated funds to conduct their research and would consider some employees of those research corporations to be employees of the federal government for purposes of certain federal tort claims laws.

CBO estimates that implementing S. 2132 would cost $12 million in 2003 and $87 million over the 2003–2007 period, assuming appropriation of the authorized amounts, for establishing and operating the new emergency centers. CBO cannot estimate the potential additional discretionary spending that could occur under S. 2132 for providing VA medical care to individuals needing assistance in a national emergency. CBO also expects that enacting this bill could increase direct spending for settlement of tort claims over the 2003–2012 period but we cannot provide a specific estimate. Because the bill could affect direct spending, pay-as-you-go procedures would apply.

S. 2132 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2132 is shown in the following table. The costs of this legislation fall within budget functions 700 (veterans benefits and services) and 800 (general government).

Changes in Spending Subject to Appropriation [a, b]

[By Fiscal Year, in Millions Dollars]

	2003	2004	2005	2006	2002
Spending for VA Emergency Preparedness Centers Under S. 2132:					
Authorization Level	20	20	20	20	20
Estimated Outlays	12	16	19	20	20

[a] No funds were appropriated for these purposes in 2002.

[b] In addition to the bill's impact on discretionary spending, CBO estimates that S. 2132 could increase direct spending for settlement of tort claims over the 2003–2012 period but is unable to provide a specific estimate given the uncertain events and the nature of these claims.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted by October 1, 2002, and that the authorized amounts will be appropriated for each year. In addition to the bill's discretionary cost, enacting S. 2132 could affect direct spending; but CBO cannot estimate those potential effects, if any.

Spending Subject to Appropriation

EMERGENCY PREPAREDNESS CENTERS. VA has some limited responsibilities to provide assistance in the event of a chemical, biological, radiological, incendiary or other explosive weapons threat under current law. Under section 101, VA would have expanded responsibility to assist with these threats with the creation of four medical emergency preparedness centers that would carry out VA's responsibilities. S. 2132 would specifically authorize appropriations of $20 million a year over the 2003–2007 period for the operation of these centers. Assuming normal delays in beginning new programs and appropriation of the authorized amounts, CBO estimates that implementing S. 2132 would increase spending by $12 million in 2003 and by $87 million over the 2003–2007 period.

The bill would require VA to establish four centers for medical emergency preparedness that would have three different responsibilities. The first would be to conduct research and development on detection, diagnosis, protection, and treatment for the specified threats to the public health and safety. The second responsibility would be to provide training and advice to health care professionals outside of VA with regard to these threats. The third responsibility would be to provide contingent rapid response assistance including laboratory assistance in the event of national emergencies.

ASSISTANCE IN A NATIONAL EMERGENCY. Section 301 would allow VA to provide medical care to individuals needing assistance, regardless of their VA enrollment status, in the event of a major disaster or medical emergency. Depending on the scope of the assistance provided in response to a major disaster or emergency, CBO believes that implementing this provision could prove costly. CBO cannot estimate the cost of implementing this provision, however, because we cannot predict the frequency or seriousness of national emergencies, nor the extent to which VA assistance would be used in any such emergency.

Direct Spending

Under current law, there is a question whether or not employees of research corporations established by the VA who do research are considered employees of the federal government for purposes of certain federal tort claims laws. Section 402 would resolve this question by specifying that these employees would be considered federal employees for purposes of tort claims. Consequently, any judgments against these employees would be paid by the federal government. The allowable tort claims are for injury, loss of property, personal injury, or death caused by negligence, wrongful acts, or omissions by a federal employee acting within the scope of the em-

ployee's office or employment. Those payments would be considered direct spending.

If these employees are, on the one hand, already covered under the relevant federal tort claims laws, then this section would have no cost. If, on the other hand, these employees are not covered under the relevant tort claims laws, then the federal government would face a potential increase in its liability under these laws upon enactment of this bill. Given the uncertainty surrounding future events and the nature of tort claims, CBO cannot estimate the cost—if any—of future tort claims against the federal government.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting this bill could increase direct spending for settlement of tort claims, but we cannot provide a specific estimate.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 2132 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On May 10, 2002, CBO transmitted a cost estimate for H.R. 3253, the Department of Veterans Affairs Emergency Preparedness Research, Education, and Bio-Terrorism Prevention Act of 2002, as ordered reported by the House Committee on Veterans' Affairs on May 9, 2002. H.R. 3253 and S. 2132 would both establish four centers for medical emergency preparedness and authorize $20 million a year over the 2003–2007 period to operate those centers. Both bills would increase the number of VA assistant secretaries from six to seven, but only S. 2132 would increase the number of deputy assistant secretaries from 18 to 20. Finally, S. 2132 contains provisions affecting research corporations established by VA and assistance in a national emergency, while H.R. 3253 does not.

Estimate prepared by: Federal Costs: Sam Papenfuss; Impact on State, Local, and Tribal Governments: Elyse Goldman; Impact on the Private Sector: Sally S. Maxwell.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE COMMITTEE BILL, AS REPORTED

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * * * *

§ 308. Assistant Secretaries; Deputy Assistant Secretaries

(a) There shall be in the Department not more than [six] *seven* Assistant Secretaries. Each Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Secretary shall assign to the Assistant Secretaries responsibility for the administration of such functions and duties as the Secretary considers appropriate, including the following functions:

* * * * * * *

(11) Operations, preparedness, security, and law enforcement functions.

* * * * * * *

(d)(1) There shall be in the Department such number of Deputy Assistant Secretaries, not exceeding [18] *20*, as the Secretary may determine. Each Deputy Assistant Secretary shall be appointed by the Secretary and shall perform such functions as the Secretary prescribes.

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1785. Care and services during major disasters and medical emergencies.

§ 1784. Humanitarian care

The Secretary may furnish hospital care or medical services as a humanitarian service in emergency cases, but *, except as provided in section 1785 of this title with respect to a disaster or emergency covered by that section,* the Secretary shall charge for such care and services at rates prescribed by the Secretary.

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CHAPTER 11—COMPENSATION FOR SERVICE–CONNECTED DISABILITY OR DEATH???

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SUBCHAPTER II—WARTIME DISABILITY COMPENSATION????

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CHAPTER 11—COMPENSATION FOR SERVICE–CONNECTED DISABILITY OR DEATH???

SUBCHAPTER I—GENERAL???

Sec.

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SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

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§ 7320A. Medical emergency preparedness centers

(a) The Secretary shall establish and maintain within the Veterans Health Administration four centers for research and activities on medical emergency preparedness.

(b) The purposes of each center established under subsection (a) shall be as follows:

(1) To carry out research on the detection, diagnosis, prevention, and treatment of injuries, diseases, and illnesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices, including the development of methods for the detection, diagnosis, prevention, and treatment of such injuries, diseases, and illnesses.

(2) To provide to health-care professionals in the Veterans Health Administration education, training, and advice on the treatment of the medical consequences of the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices.

(3) Upon the direction of the Secretary, to provide education, training, and advice described in paragraph (2) to health-care professionals outside the Department through the National Disaster Medical System or through interagency agreements entered into by the Secretary for that purpose.

(4) In the event of a national emergency, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the national emergency.

(c)(1) Each center established under subsection (a) shall be established at an existing Department medical center, whether at the Department medical center alone or at a Department medical center acting as part of a consortium of Department medical centers for purposes of this section.

(2) The Secretary shall select the sites for the centers from among competitive proposals that are submitted by Department medical centers seeking to be sites for such centers.

(3) The Secretary may not select a Department medical center as the site of a center unless the proposal of the Department medical center under paragraph (2) provides for—

(A) an arrangement with an accredited affiliated medical school and an accredited affiliated school of public health (or a consortium of such schools) under which physicians and other health care personnel of such schools receive education and training through the Department medical center;

(B) an arrangement with an accredited graduate program of epidemiology under which students of the program receive education and training in epidemiology through the Department medical center; and

(C) the capability to attract scientists who have made significant contributions to innovative approaches to the detection, diagnosis, prevention, and treatment of injuries, diseases, and ill-

nesses arising from the use of chemical, biological, radiological, or incendiary or other explosive weapons or devices.

(4) In selecting sites for the centers, the Secretary shall—

(A) utilize a peer review panel (consisting of members with appropriate scientific and clinical expertise) to evaluate proposals submitted under paragraph (2) for scientific and clinical merit; and

(B) to the maximum extent practicable, ensure the geographic dispersal of the sites throughout the United States.

(d)(1) Each center established under subsection (a) shall be administered jointly by the offices within the Department that are responsible for directing research and for directing medical emergency preparedness.

(2) The Secretary and the heads of the agencies concerned shall take appropriate actions to ensure that the work of each center is carried out—

(A) in close coordination with the Department of Defense, Department of Health and Human Services, Office of Homeland Security, and other departments, agencies, and elements of the Federal Government charged with coordination of plans for United States homeland security; and

(B) in accordance with any applicable recommendations of the Working Group on Bioterrorism and Other Public Health Emergencies, or any other joint interagency advisory groups or committees designated to coordinate Federal research on weapons of mass destruction.

(e)(1) Each center established under subsection (a) shall be staffed by officers and employees of the Department.

(2) Subject to the approval of the head of the department or agency concerned and the Director of the Office of Personnel Management, an officer or employee of another department or agency of the Federal Government may be detailed to a center if the detail will assist the center in carrying out activities under this section. Any detail under this paragraph shall be on a non-reimbursable basis.

(f) In addition to any other activities under this section, a center established under subsection (a) may, upon the request of the agency concerned and with the approval of the Secretary, provide assistance to Federal, State, and local agencies (including criminal and civil investigative agencies) engaged in investigations or inquiries intended to protect the public safety or health or otherwise obviate threats of the use of a chemical, biological, radiological, or incendiary or other explosive weapon or device.

(g) Notwithstanding any other provision of law, each center established under subsection (a) may, with the approval of the Secretary, solicit and accept contributions of funds and other resources, including grants, for purposes of the activities of such center under this section.

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§ 7362. Purpose of corporations

(a) Any corporation established under this subchapter shall be established solely to facilitate 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. [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)(1) Any funds, other than funds appropriated for the Department, that are received by the Secretary for the conduct of research or education and training may be transferred to and administered by a corporation established under this subchapter for the purposes set forth in subsection (a).

(2) Funds appropriated for the Department are available for the conduct of research or education and training by a corporation, but only pursuant to the terms of a contract or other agreement between the Department and such corporation that is entered into in accordance with applicable law and regulations.

(3) A contract or agreement executed pursuant to paragraph (2) or section 8153 of this title may facilitate only research or education and training described in subsection (a). Such contract or agreement may not be executed for the provision of a health-care resource unless such health-care resource is related to such research or education and training.

[(b)] *(c)* For purposes of this section, the term "education and training" means the following:

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§ 8111A. Furnishing of health-care services to members of the Armed Forces during a war or national emergency

[(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty. The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.]

[(2) For the purposes of this section, the terms "hospital care", "nursing home care", and "medical services" have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively, and the term "medical services" includes services under sections 1782 and 1783 of this title.]

(a)(1) During and immediately following a period of war, or a period of national emergency declared by the President or Congress that involves the use of the Armed Forces in armed conflict, the Secretary may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty.

(2)(A) During and immediately following a disaster or emergency referred to in subparagraph (B), the Secretary may furnish hospital care and medical services to members of the Armed Forces on active

duty responding to or involved in such disaster or emergency, as the case may be.

(B) A disaster or emergency referred to in this subparagraph is any disaster or emergency follows:

(i) A major disaster or emergency declared by the President under the Robert B. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(ii) A disaster or emergency in which the National Disaster Medical System is activated.

(3) The Secretary may give a higher priority to the furnishing of care and services under this section than to the furnishing of care and services to any other group of persons eligible for care and services in medical facilities of the Department with the exception of veterans with service-connected disabilities.

(4) In this section, the terms "hospital care", "nursing home care", and "medical services" have the meanings given such terms by sections 1701(5), 101(28), and 1701(6) of this title, respectively.

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§ 8153. Sharing of health-care resources

(a)(1) * * *

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(3)(A) * * *

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(C) If the resource required is research or education and training (as that term is defined in section 7362(c) of this title) and is to be acquired from a corporation established under subchapter IV of chapter 73 of this title, the Secretary may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.

[(C)**]** *(D)* Any procurement of health-care resources other than those covered by subparagraph **[**(A) or (B)**]** *(A), (B), or (C)* shall be conducted in accordance with all procurement laws and regulations.

[(D)**]** *(E)* For any procurement to be conducted on a sole source basis other than a procurement covered by subparagraph **[**(A)**]** *(A) or (B)*, a written justification shall be prepared that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)).

[(E)**]** *(F)* As used in this paragraph, the term "commercial service" means a service that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

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§ 7364A. 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.

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§ 7368. [Repealed]

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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Sec. 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate de-

termined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

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[Assistant Secretaries, Department of Veterans Affairs (6).]
Assistant Secretaries, Department of Veterans Affairs (7)

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