



## The OFCCP Calls a Moratorium on Enforcement Activities Against TRICARE Providers

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On May 7, 2014, a Directive of the Office of Federal Contract Compliance Programs (OFCCP) placed a five-year moratorium on enforcement activities regarding health care providers that are TRICARE subcontractors. TRICARE is the Department of Defense health care program for military families. The OFCCP is the division of the U.S. Department of Labor that enforces affirmative action and equal employment opportunity requirements for federal contractors and subcontractors. The OFCCP has taken the position that hospitals and other providers that subcontract with TRICARE's prime contractors are subject to "flow-down" OFCCP requirements, either by implication or by specific "flow-down" subcontract provisions.

Under Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRA), and Section 503 of the Rehabilitation Act of 1973 (Section 503), government contractors and subcontractors (depending on their size, although most TRICARE subcontractors would be of sufficient size) are subject to various additional requirements including but not limited to preparing affirmative action plans (and maintaining supporting personnel records), including equal opportunity language in subcontracts, purchase orders and job advertisements; filing forms with the government regarding the racial, gender and veteran's status of their workforce; and posting additional posters. Effective January 1, 2015, government contractors and subcontractors are subject to a new minimum wage of \$10.10 per hour.

As part of the moratorium, the OFCCP withdrew from a long-running case against Florida Hospital of Orlando regarding the OFCCP's jurisdiction. The OFCCP is expected to close all open and scheduled compliance reviews of TRICARE subcontract providers in the 30 days following the announcement. The OFCCP has announced that it will conduct outreach to TRICARE providers during the five-year moratorium to explain the affirmative action and equal employment opportunity obligations under Executive Order 11246, VEVRA and Section 503, which means that the OFCCP has not abandoned its legal position. Rather, it has put enforcement on hold.

The hospital industry has come out strongly against the OFCCP's position that it has jurisdiction over health care providers by virtue of their status as TRICARE subcontractors. Prior to the announced moratorium, the hospital industry had gained substantial political support for legislation that would have clarified the status of health care providers who provide their services by subcontract to federal health care programs.

In recognition of that political reality, OFCCP has gone beyond TRICARE subcontracts with its five-year moratorium. The moratorium also applies to all of the TRICARE subcontractor's other subcontracts with federal health care programs such as the Federal Employees Health Plan, Medicare Advantage and the Medicare Part D Prescription Drug Program.

The moratorium does not apply to health care providers who hold prime contracts with a federal agency or non-health care related federal contracts or subcontracts.

## **Related People**

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