



Legal Alert: Will Congress Exempt Health Care Providers from Affirmative Action Obligations?

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Executive Summary: On December 1, 2011, the Senate passed a bill (S. 1867) which exempts TRICARE network providers from the jurisdiction of the Office of Federal Contract Compliance Programs (OFCCP). The current House version does not contain a similar exemption; thus, the two bills must be reconciled. The Senate's action is in response to enforcement actions taken by the OFCCP against health care entities based solely on those entities' reimbursement agreements with TRICARE, the government health care program providing benefits to active and retired military personnel and their families.

Background

OFCCP's efforts to assert jurisdiction over healthcare providers based solely on the providers' participation in the TRICARE network has been challenged by a number of providers, and is currently the subject of enforcement action brought by the OFCCP against Florida Hospital in Orlando, Florida. On October 18, 2010, a Department of Labor Administrative Law Judge ruled that receipt of TRICARE payments was sufficient to subject the hospital to OFCCP's jurisdiction as a federal government subcontractor. That case has been appealed.

In the meantime, OFCCP's assertions of coverage based on TRICARE drew the attention of Congress. In the National Defense Authorization bill, passed by the Senate on December 1, 2011, the Senate included the following language:

In establishing rates and procedures for reimbursement of providers and other administrative requirements, including those contained in provider network agreements, the Secretary shall to the extent practicable maintain adequate networks of providers, including institutional, professional, and pharmacy. Network providers under such provider network agreements are not considered subcontractors for purposes of the Federal Acquisition Regulation or any other law.

The next step is for the House and Senate versions of the bill to be reconciled.

Ford & Harrison will continue to monitor this important legislation as it makes its way through the halls of Congress.

If you have any questions regarding this Alert or other labor or employment issues affecting government contractors, please contact the author of this Alert, Karen Tyner, a partner in our Spartanburg office at kytyner@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.