



One Minute Memo[®]

ALJ Rules That OFCCP Has Jurisdiction Over TRICARE Providers

The Office of Federal Contract Compliance Programs (OFCCP) has been interested in expanding the scope of its jurisdiction over health care providers for some time. And now, based on a decision issued on October 18, 2010, it has gotten a step closer to its goal.

In a highly anticipated decision, *OFCCP v. Fla. Hosp. of Orlando*, DOL OALJ, No. 2009-OFC-00002, 10/18/10, which can be accessed [here](#), an Administrative Law Judge held that Florida Hospital of Orlando is a federal subcontractor by virtue of its participation in a health care provider network administered by Humana Military Healthcare Services, Inc. (“HMHS”) for TRICARE, the Department of Defense’s health care program for active and retired military members and their families.

Florida Hospital’s Agreement with HMHS

HMHS contracted with TRICARE to provide networks of health care providers for TRICARE beneficiaries “through contractual arrangements.” Florida Hospital entered into a “Hospital Agreement” with HMHS, thereby agreeing to become a participating network hospital and provide health care services for beneficiaries deemed eligible for benefits under the contract between HMHS and TRICARE. The ALJ found that pursuant to the Hospital Agreement, Florida Hospital performed part of HMHS’ obligation under its contract with TRICARE and therefore is a federal subcontractor under applicable federal regulations.

Notably, the Hospital Agreement between Florida Hospital and HMHS did not contain a provision requiring compliance with the Equal Opportunity Clauses under Executive Order 11246, Section 503 of the Rehabilitation Act, or the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA).

Distinguishing Prior Decisions

The ALJ distinguished Florida Hospital’s arrangement to provide services as a TRICARE network provider from *OFCCP v. Bridgeport Hospital*, ARB No. 00-034, 2003 WL 244810 (Jan. 31, 2003), in which a hospital that contracted to provide health care insurance was found not to be subject to OFCCP jurisdiction. The ALJ analogized Florida Hospital’s situation to *OFCCP v. UMPC Braddock*, ARB No. 08-048 (May 29, 2009), in which a health maintenance organization that contracted to provide medical services to federal employees was found to be a covered subcontractor. OFCCP previously has conceded that Medicare and Medicaid do not trigger jurisdiction.

Implications for TRICARE Network Providers

Federal subcontractors must comply with the affirmative action obligations enforced by OFCCP under Executive Order 11246, Section 503 of the Rehabilitation Act, and VEVRAA, unless an exemption applies. These obligations range from developing affirmative action programs (AAPs); to conducting outreach to recruit qualified minorities, women, covered veterans, and individuals with disabilities; to posting jobs with state employment delivery services; to filing annual EEO-1 and VETS-100A reports.

The *Florida Hospital* decision was issued by an ALJ and is subject to appeal by filing exceptions with the Administrative Review Board on or before November 1, 2010. OFCCP has not indicated whether it will consider *Florida Hospital* to be binding precedent.

TRICARE network providers should consult with counsel to assess whether to comply with federal contractor and subcontractor obligations such as:

- Developing an affirmative action plan for each establishment with 50 or more employees (and including employees at smaller establishments in an appropriate AAP);
- Conducting adverse impact analysis on hires, promotions and terminations;
- Performing mandatory compensation analysis;
- Acknowledging that the employer is a federal subcontractor in response to question C3 on annual EEO-1 reports (many employers received extensions of the September 30 deadline);
- Filing an annual VETS-100A report (deadline was September 30);
- Engaging in meaningful outreach to recruit minorities, women, covered veterans, and individuals with disabilities; and
- Complying with other obligations such as recordkeeping, soliciting race and gender information, inviting post-offer applicants to self-identify as covered veterans or disabled individuals, mandatory posting obligations, and more.

Additional information about the implications of the *Florida Hospital* decision will follow soon, along with a date for a webinar about OFCCP jurisdiction over health care providers.

If you have questions about this One Minute Memo, please contact the Seyfarth Shaw attorney with whom you work or [any attorney on our OFCCP & Affirmative Action Compliance Team.](#)



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