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Insights

We May Finally Know Whether Being a Tricare Provider Makes One a Federal Contractor

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The U.S. Department of Labor (DOL) recently announced plans to clarify application of federal anti-discrimination requirements on health care providers with Tricare enrollment agreements. The DOL and Tricare providers have long been at odds over whether a Tricare enrollment agreement made one a federal "subcontractor" and thus subject to the Office of Federal Contract Compliance Program (OFCCP), the DOL office that monitors and enforces federal anti-discrimination laws. The OFCCP took the position that Tricare providers were federal subcontractors by virtue of the enrollment agreement, and as such, they were obligated to audit for compliance with equal opportunity and affirmative action obligations applicable to federal contractors. Facing mounting criticism, and in the aftermath of a lawsuit, the OFCCP issued a 5-year moratorium on enforcement activities and closed its open cases effective May 7, 2014. The OFCCP intends to publish a proposed rule in April of 2019 that includes "limiting and otherwise altering the obligations of TRICARE and other healthcare providers covered by these authorities."

A link to the proposed rule is available here.

The OFCCP moratorium is also available here.

The moratorium remains in effect but could expire prior to the DOL's rule adoption unless it is extended. Please contact Brandon W. Shirley at bshirley@kdlegal.com or Amy J. Adolay at aadolay@kdlegal.com if you have questions regarding your compliance with these requirements.