

Services

Government
Contracts

OFCCP Compliance

OFCCP Jurisdiction Extends to Hospitals Participating in TRICARE Program

On October 18, 2010, a long-anticipated ruling extended the Office of Federal Contract Compliance Program's (OFCCP) jurisdiction over hospitals that provide medical services under subcontracts with TRICARE, the Department of Defense's (DOD) third-party healthcare administrator. This ruling expands the recent trend towards increasing OFCCP's jurisdiction over hospitals and healthcare providers.

The law regarding what is a federal contract or subcontract may be shifting for hospitals and healthcare providers in light of a decision issued last week, *OFCCP v. Fla. Hosp. of Orlando* (DOL OALJ No. 2009-OFC-00002, 10/18/10). This decision continues a trend that began with last year's ruling in *OFCCP v. UPMC Braddock* (DOL ARB No. 08-048, 5/29/09). These decisions reflect a clear expansion in OFCCP jurisdiction in the healthcare industry.

In *Fla. Hosp. of Orlando*, a hospital's subcontract to deliver medical services to active and retired military members in furtherance of a prime contract between a healthcare provider network and TRICARE (the DOD's third-party administrator) was sufficient to subject the hospital to OFCCP jurisdiction as a federal subcontractor. Regardless that the primary contract between the provider network and TRICARE did not contain the requisite EEO or affirmative action clause obligations and that DOD itself considered the payments to be federal financial assistance, the hospital was found to be a federal subcontractor subject to the OFCCP's jurisdiction and full investigative authority. The ruling expressly rejected the hospital's argument that TRICARE – like Medicare or Medicaid – is purely a form of federal financial assistance

that falls outside of OFCCP's jurisdiction, rather than a contract to provide medical services which comes within OFCCP's authority.

In upholding OFCCP's jurisdiction, the ruling in *Fla. Hosp. of Orlando* went one step beyond the holding in *UMPC Braddock*. In this instance, the contact with TRICARE (the government's third-party administrator) was sufficient to satisfy the governmental contract requirement. Previously, in *UMPC Braddock*, the subject contract was directly between a federal agency, the Office of Personnel Management (OPM), and the healthcare provider.

Under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act, OFCCP requires federal contractors and subcontractors to comply with various affirmative action and equal employment opportunity obligations depending on the amount of federal contracts or subcontracts they enter into each year. Contractors and subcontractors with any single annual contract of \$50,000 or more are required to prepare affirmative action plans, conduct discrimination analyses on hiring and compensation practices, and submit to audits by the OFCCP.

What This Means to You

Undeniably, OFCCP's jurisdiction and investigative authority is on the rise. To determine whether your contracts or subcontracts are subject to OFCCP jurisdiction, all providers of goods or services – and especially hospitals and healthcare providers – should develop appropriate practices to follow the original source of their contracts or subcontracts. Simply because a federal office or agency is not a party to a contract or subcontract does not exclude such contract from falling under OFCCP's jurisdiction.

Contact Info

In light of this recent expansion of OFCCP jurisdiction, Husch Blackwell's OFCCP Compliance Group is scheduling a series of compliance training sessions focusing on healthcare and related industries. If you are interested in learning more about these training sessions or how these OFCCP developments may impact your company, please contact your Husch Blackwell attorney.

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