

OFCCP Withdraws Claim Regarding TRICARE Jurisdiction - Office of Federal Contract Compliance Programs

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Last week, the **Office of Federal Contract Compliance Programs** (OFCCP) [dismissed](#) OFCCP's 2008 complaint against **Florida Hospital of Orlando**. In its Order of Dismissal, the Administrative Law Judge (ALJ) reported that OFCCP notified its office on March 28, 2014 of its intent to withdraw the agency's long-running enforcement proceeding against Florida Hospital. The ALJ granted the parties' joint request that the matter be dismissed with prejudice. The dismissal follows the **Department of Labor** (DOL)'s agreement to a five-year moratorium on compliance investigations and proceedings of providers for **TRICARE**, the Department of Defense's managed health care program for active duty and retired military members and their families, and proposed legislation (H.R. 3633) broadly exempting healthcare providers.

The DOL's Administrative Review Board (ARB) [previously ruled on July 22, 2013](#) that nothing in the plain text of Section 715 of the National Defense Authorization Act (NDAA) "categorically bans the ability to label a TRICARE network provider," such as Florida Hospital, as a subcontractor, or "categorically eliminates" OFCCP jurisdiction over TRICARE network providers. *OFCCP v. Florida Hospital*, ARB Case No. 11-011. In addition, the ARB ruled that Florida Hospital fell within OFCCP's jurisdiction under prong one of the agency's definition of "subcontract," which includes agreements for the "purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts." 41 C.F.R. § 60-1.3.

Having found that the NDAA did not bar OFCCP jurisdiction, however, the majority remanded the case to an administrative law judge for further proceedings to address whether Medicare payments made to TRICARE providers are "federal financial assistance" or are, as OFCCP contends, federal contract payments subject to OFCCP regulations. The ALJ did not rule on that issue prior to the case's dismissal. Because of the dismissal and the related moratorium, the OFCCP's jurisdiction authority over TRICARE providers will remain in limbo for the time being.

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