

## OFCCP Extends TRICARE Moratorium to 2021

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According to a [May 18, 2018, press release](#), the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has extended its moratorium on enforcing the affirmative action obligations of TRICARE providers (a health care program of the U.S. Department of Defense that pays for the medical benefits of active duty and retired military personnel and their families). According to a new [OFCCP directive](#), the moratorium, which has been in effect since 2014, will now expire on May 7, 2021. In a footnote, Directive 2018-02 also amends the moratorium to include Veterans Affairs Health Benefits Program providers in addition to TRICARE subcontractors.

### Background

On March 7, 2014, OFCCP issued Directive 2014-01, TRICARE Subcontractor Enforcement Activities, concerning the affirmative action obligations of subcontractors of TRICARE. The directive established a five-year moratorium on the enforcement of affirmative action obligations of health care entities deemed by OFCCP to be TRICARE subcontractors and provided for technical outreach and assistance to those entities about their obligations under the laws administered by OFCCP. In addition to the moratorium, OFCCP closed any open and scheduled compliance evaluations for TRICARE health care entities covered by the moratorium within 30 business days of the effective date of the directive.

### Purpose of the Moratorium

OFCCP noted the uncertainty over the extent to which [Executive Order 11246](#), Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) apply to TRICARE subcontractors. This uncertainty has contributed to the difficulties that "active-duty and retired service members and their families" already face when accessing healthcare services, the directive notes. "[T]he approaching expiration of the moratorium and accompanying uncertainty further exacerbate the difficulty," stated the directive, which concluded that "it would be beneficial to the national interest and the health of veterans and their families to extend the moratorium."

According to the directive, the moratorium will "provide additional time to receive feedback from

stakeholders.” The directive also states that the moratorium extension is further supported by OFCCP’s need to evaluate and address any legislative changes “that Congress may enact . . . affecting this area in the near future.”

OFCCP Director Ondray T. Harris commented that “[b]y providing greater regulatory certainty to TRICARE providers and Veterans Affairs Health Benefits Program providers, the Administration can help ensure that America’s veterans and their families can access quality health care.”

## Key Takeaways

While not unanticipated, the extension of this moratorium is welcome news for health care providers affiliated with TRICARE and the Veterans Affairs Health Benefits Program. Although the moratorium does not exempt health care providers from federal contractor obligations imposed by non-insurance contracts and subawards—such as those with the Bureau of Prisons and some Department of Health and Human Services grants—this directive ensures that OFCCP will not seek to establish subcontractor jurisdiction through TRICARE and the Veterans Affairs Health Benefits Program until at least May 2021, if then.

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