

CLIENT ALERT

OFCCP Extends TRICARE Moratorium

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The Office of Federal Contract Compliance Programs (OFCCP) has extended its enforcement moratorium against health care providers who provide services pursuant to the TRICARE program. The five-year moratorium, instituted in 2014, has now been extended another two years until May 7, 2021. The OFCCP also expanded the moratorium to encompass Veterans Affairs Health Benefits Program (VAHBP) providers as well. The OFCCP instituted the initial moratorium after a lengthy battle with several TRICARE providers over the question of whether their provision of services established them as government subcontractors subject to the OFCCP's jurisdiction. The Trump Administration's Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions recently identified TRICARE provider obligations as the OFCCP's key regulatory focus, with a Notice of Proposed Rulemaking expected by Spring 2019. The OFCCP has now announced an extension of the moratorium to allow the OFCCP "time to receive feedback from stakeholders, relieve uncertainty, and give OFCCP an opportunity to evaluate and address legislation that may be enacted on this issue."

It is important to note that the moratorium extends only to providers whose sole source of government funding is through TRICARE and/or VAHBP. Health care providers who are otherwise government subcontractors remain subject to OFCCP compliance reviews. Further, while the moratorium extension is good news for TRICARE and VAHBP providers, the long-term uncertainty regarding their subcontractor status remains until the OFCCP or Congress takes further, definitive, actions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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