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## CONGRESS GRANTS RELIEF TO TRICARE PROVIDERS

January 3, 2012

By Cara Crotty  
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In a move aimed to divest the Office of Federal Contract Compliance Programs of jurisdiction over hundreds of potential federal subcontractors, Congress passed Section 715 of the National Defense Authorization Act on December 15, 2011, and President Obama signed it into law on December 31, 2011. This portion of the NDAA provides as follows:

For the purpose of determining whether network providers under [TRICARE] provider network agreements are subcontractors for purposes of the Federal Acquisition Regulation or any other law, a TRICARE managed care support contract that includes the requirement to establish, manage, or maintain a network of providers may not be considered to be a contract for the performance of health care services or supplies on the basis of such requirement.

As our readers recall, an Administrative Law Judge **ruled** in October 2010 that health care providers that contract to be part of a network of TRICARE providers (as opposed to just being reimbursed for treating TRICARE beneficiaries) are subcontractors within the meaning of federal affirmative action laws and regulations. Shortly thereafter, the OFCCP issued a **Directive** outlining its approach to determining whether health care providers are covered subcontractors. The NDAA negates the effect of the ALJ decision and the OFCCP's Directive.

Although the legislation appears to eliminate any doubt or ambiguity regarding coverage of TRICARE providers, OFCCP Director Patricia Shiu is reportedly assessing the agency's policies and has stated, "This isn't over yet." She claims that the NDAA provision is "likely to create confusion and will unfairly deny many workers the benefits and protections that our laws ensure."

Of course, Constangy will keep you apprised of any agency action on this new law. In the meantime, health care providers that were considered covered subcontractors only because of TRICARE network agreements should reassess their status as affirmative action employers. This law does not affect other bases for coverage, such as contracts with the Veterans Administration, the Department of Defense, or other federal agencies.

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If you have questions about coverage, please contact a member of Constangy's **Strategic Affirmative Action Practice Group** or the Constangy attorney of your choice.

Also, don't forget to **join us** for our Strategic Affirmative Action training series on January 12 or 18, 2012.

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