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## OFCCP Rescinds Medical Providers Directive, But Still Leaves Uncertainty for Some

May 1, 2012

By Louise Davies, AAP Specialist  
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The Office of Federal Contract Compliance Programs announced April 25, 2012 the immediate rescission of Enforcement Directive 293 regarding coverage of health-care providers.

As we mentioned in a **previous AA Alert**, the OFCCP issued Directive 293 to explain its rationale for jurisdictional coverage of healthcare providers based on an affiliation with federal health care programs. One of the bases for possible coverage involved participation in a network of TRICARE providers. However, on December 31, 2011, President Obama signed the National Defense Authorization Act, **which provides that a TRICARE agreement is not considered a federal contract.**

As a result of the NDAA, the OFCCP rescinded its prior Directive and has “put on hold” all compliance evaluations where the only basis for jurisdiction is participation in TRICARE. The Agency will notify those entities by mail of their status. For those entities that participate in TRICARE but also hold contracts with other agencies, such as the Department of Justice, the Veterans Administration, or the Department of Health and Human Services, the compliance reviews will go forward. In those cases, the OFCCP will also notify the organizations by letter of their status, and the organizations will have 30 days to submit their affirmative action plans and requested documentation. Those letters are expected to be sent by May 4, 2012.

In responding to questions regarding OFCCP jurisdiction over healthcare providers participating in Medicare Parts C & D, Thomas Dowd, Director of the OFCCP’s Division of Program Operations, said that the Agency will continue to evaluate jurisdiction on a case-by-case, contract-by-contract, basis. Thus, the OFCCP provided no clear guidance on whether it continues to consider Medicare Parts C & D to be covered contracts.

The determination of whether a healthcare provider is subject to OFCCP jurisdiction is a complicated and time-consuming task, requiring a review of various contracts and agreements. Constangy recommends that healthcare providers with any relationship to a federal program review the relevant agreements and consult with counsel. If you would like assistance in this area, or with any other affirmative action matters, please contact any member of Constangy’s **Affirmative Action Practice Group**, or the Constangy attorney of your choice.

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