

TRICARE PROVIDER AFFIRMATIVE ACTION EXEMPTION CLEARS CONGRESS

Both the House and the Senate have now approved language in the National Defense Authorization Act, which, if it becomes law, appears to exempt TRICARE network providers from having to comply with burdensome affirmative action obligations. (This article is a follow-up to the December 9, 2011 Employment Law News, available [here](#).)

HOUSE AND SENATE VERSIONS RECONCILED

Last week, the House and Senate reconciled the differences in their respective versions of the National Defense Authorization Act. The new version, which has been passed by both houses, includes the following new language:

Section 715, Maintenance of the adequacy of provider networks under the TRICARE program:

In establishing rates and procedures for reimbursement of providers and other administrative requirements, including those contained in provider network agreements, the Secretary shall, to the extent practicable, maintain adequate networks of providers, including institutional, professional, and pharmacy. For the purpose of determining whether network providers under such 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.

If the President signs the bill into law, it is expected to substantially shrink the number of health care providers that are covered by the OFCCP's jurisdiction. It would not, however, end OFCCP's relationship with the health care industry. Indeed, this bill only applies to certain contractual relationships under the Department of Defense's TRICARE program and does not affect whether OFCCP has jurisdiction over health care providers based on other types of contracts.

We will continue to monitor and report new developments in connection with this legislation.

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