

Office of Federal Contract Compliance Programs

Directive (DIR) 2021-01



U.S. DEPARTMENT OF LABOR Office of Federal Contract Compliance Programs

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Effective Date: October 19, 2020

1. **SUBJECT:** Extending the Scheduling Moratorium for Veterans Affairs Health Benefits Program (VAHBP) Providers
2. **PURPOSE:** To maintain access to health care for veterans by extending a moratorium on the enforcement of affirmative obligations required of VAHBP providers.¹
3. **REFERENCES:** This DIR includes references to the following:
 - a. [DIR 2014-01](#), TRICARE Subcontractor Enforcement Activities (May 7, 2014).
 - b. [DIR 2018-02](#), TRICARE Subcontractor Enforcement Activities (May 18, 2018).
 - c. Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors: TRICARE Providers, [85 FR 39834](#) (July 2, 2020).
4. **AFFECTED POLICY:** This directive amends DIR 2018-02 and DIR 2014-01.

5. **BACKGROUND:**

The Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order (E.O.) 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). Collectively, these laws prohibit federal contractors and subcontractors from discriminating in employment and require them to take affirmative action to ensure equal opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, and status as a protected veteran. Contractors are also prohibited from discriminating against applicants and employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

On May 7, 2014, OFCCP issued DIR 2014-01, establishing a moratorium to suspend enforcement of the affirmative obligations required of all TRICARE subcontractors for a period of five years.² OFCCP subsequently extended the moratorium until May 7, 2021, under DIR 2018-02, which also amended the moratorium to include VAHBP providers. The extension was intended to provide time to sufficiently address additional stakeholder feedback and prevent protected veterans and their families from encountering further difficulty accessing healthcare.

OFCCP addressed the stakeholder feedback through rulemaking. In a final rule that took effect on August 31, 2020, Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors: TRICARE Providers, OFCCP reconsidered its legal position and determined that the agency lacks authority to regulate health care providers solely because they participate in TRICARE. In the alternative, OFCCP established a national interest exemption that improves access to healthcare for active and retired service members and their families by removing OFCCP's regulatory burdens. Though the final rule did not release VAHBP providers from complying with OFCCP's laws, OFCCP committed to providing further sub regulatory guidance on VAHBP providers.

6. POLICY:

OFCCP is concerned that the current expiration of the VAHBP enforcement moratorium, in addition to the lack of a regulatory exemption for VAHBP providers, may cause health care providers to decide against contracting with the U.S. Department of Veterans Affairs, thereby reducing access to health care, including long term care, for protected veterans and their families.

Accordingly, OFCCP will exercise its prosecutorial discretion to extend the moratorium as it applies to VAHBP providers by two years, until May 7, 2023, which OFCCP believes will provide sufficient time to consider whether a national interest exemption for VAHBP providers is warranted.

The moratorium serves as an exemption to enforcement of affirmative obligations and being neutrally scheduled for a compliance evaluation, but does not relieve VAHBP providers as to enforcement of nondiscrimination obligations or being subject to discrimination complaint investigations.

7. ATTACHMENTS: None.

SIGNATURE:

/S/

CRAIG E. LEEN

Director

Office of Federal Contract Compliance Programs

1. OFCCP uses "VAHBP providers" as an umbrella term to encompass health care providers that contract with the U.S. Department of Veterans Affairs, including those in Veterans Affairs Community Care Networks, as well as Veterans Care Agreements created pursuant to 2018 VA MISSION Act.
2. Except for the investigation of discrimination complaints, DIR 2014-01 stopped OFCCP enforcement of all obligations under E.O. 11246, Section 503, and VEVRAA effective from the date of its issuance, including the enforcement of obligations related to affirmative action programs and recordkeeping, for TRICARE subcontractors.

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