



Employment Practices **ALERT**

Federal Court Holds that Hospitals Providing HMO Services to Federal Employees are Federal Contractors at the Same Time the OFCCP Appears to Increase Its Focus on Auditing Health Care Providers

April 10, 2013

Several years ago, the Federal Office of Contract Compliance Programs (OFCCP) requested that three Pennsylvania hospitals provide copies of affirmative action plans and other materials required of Federal Contractors. Each hospital had a Health Maintenance Organization (HMO) contract with the UPMC Health Plan to provide medical products and services to United States Government employees pursuant to a contract between the Health Plan and the United States Office of Personnel Management (OPM). The hospitals resisted the audits by the OFCCP arguing that their provision of medical care through the HMO plans did not render the hospitals government contractors or subcontractors and that their contracts specifically stated that the hospitals were not to be considered subcontractors. The Department of Labor's Administrative Review Board ruled in favor of the OFCCP. On March 30, 2013, the District Court of the District of Columbia affirmed the decision of the ARB. The Court ruled that because the Plan agreed to provide direct medical services to federal employees through an HMO, as opposed to simply insurance reimbursement, the hospitals were government subcontractors who provided services necessary for the Plan to meet its obligations under its Federal Contract. The Court further held that the language of the contract stating that the hospitals were not subcontractors was not enforceable and could not overcome the applicable Executive Order. The Court's decision could have far-reaching effects on health care providers who do not otherwise hold federal contracts. Not only can the OFCCP require compliance and conduct audits of providers contracting with HMO Plans serving federal employees, but the health care provider's contract does not have to address such obligations and the parties do not have to explicitly consent to the OFCCP's jurisdiction.

In addition to this decision, it appears as if the OFCCP may be increasing its focus on audits of health care providers by sending warning letters to health care systems. In light of these developments, all health care providers should consider identifying and reevaluating their contracts with HMO Plans that provide services to federal employees. Health care employers who receive either a warning notice from the OFCCP in Washington DC or a desk audit notification letter from their local OFCCP office should immediately contact their legal counsel to organize a response in the limited time frame provided. For more information, contact [Eileen M. Caver](#) or your regular [Hinshaw attorney](#).

[UPMC Braddock v. Solis, No. 2009-1210 \(D.D.C. Mar. 30, 2013\)](#)

Hinshaw & Culbertson LLP prepares this publication to provide information on recent legal developments of interest to our readers. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. We would be pleased to provide such legal assistance as you require on these and other subjects if you contact an editor of this publication or the firm.

Copyright © 2013 Hinshaw & Culbertson LLP. All Rights Reserved. No articles may be reprinted without the written permission of Hinshaw & Culbertson LLP, except that permission is hereby granted to subscriber law firms or companies to photocopy solely for internal use by their attorneys and staff.

ATTORNEY ADVERTISING pursuant to New York RPC 7.1. The choice of a lawyer is an important decision and should not be based solely upon advertisements.