



Requirement to E-Verify: Does It Apply to Your Practice?

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Are health care providers who provide services to participants of Medicare or the Federal Employees Health Benefits Program (FEHBP) considered subcontractors for the purposes of FAR E-Verify? If so, those providers would have to E-Verify their new employees and employees providing services in performance of those contracts with the federally-based insurers.

FAR E-Verify for federal contractors and subcontractors, which covers all contracts entered into between federal agencies and contractors for goods or services of \$100,000 or more and subcontracts of \$3,000 or more in performance of federal contracts, was implemented on September 8, 2009. The definition of "subcontract" in FAR E-Verify is quite broad and provides "any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract." Under FAR E-Verify, covered contractors and subcontractors must verify all newly-hired employees, regardless of whether they are assigned to the federal contract, and all existing employees assigned to the federal contract.

Many health care insurers enter into federal contracts to provide health care services, for example Medicare and the FEHBP. Those insurers then contract with thousands of providers to render services to the patients covered under the health plans and reimburses them for the services rendered. The health care providers are providing services which allow the insurers to fulfill their contractual obligations under their federal contracts. Are those providers required to FAR E-Verify?

There is support for the position that FAR E-Verify is not required. The Office of Federal Contract Compliance Programs (OFCCP) which administers the rules for federal contract compliance issued a directive in March 17, 2003, prior to implementation of FAR E-Verify, which states that "health care providers having a relationship with FEHBP participants are not covered under OFCCP's programs based solely on that relationship." The Directive was issued following an Administrative Review Board decision that the FEHBP contract between the Office of Personnel Management and the insurance companies obligated health insurance, not medical services, to be provided. Under this argument, physicians, hospitals and other health care providers do not provide services that are necessary to the performance of the contractor's contracts with the federal government; thus, they are exempt from OFCCP requirements.

Hopefully, the federal government will apply this same logical interpretation to the words "for performance of the contract" under FAR E-Verify. If not, the administrative burden of ensuring



immigration compliance will be costly to health care providers, who have subcontracts with Medicare and insurance plans for federal employees.

It may be that U.S. Customs and Immigration Services (USCIS) or the FAR regulatory council will be asked to provide clarification or amend the regulation to limit its scope to only those subcontracts that are necessary for the prime contractor to perform its duties under its federal contract. Hopefully any unintended consequences of the FAR E-Verify can be avoided.

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