



**American Hospital  
Association**

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December 8, 2011

The Honorable Howard P. McKeon  
Chairman  
Committee on Armed Services  
US House of Representatives  
2120 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman McKeon:

On behalf of the American Hospital Association's (AHA) 5,000 member hospitals, health care systems and other health care organizations, and 42,000 individual members, I am writing to express our strong support for language included in the Senate-passed National Defense Authorization Act for Fiscal Year (FY) 2012 (S. 1867/H.R. 1540) that will help ensure the availability of hospital care to TRICARE participants. The Senate passed the bill on December 1 by a vote of 93-7 and the legislation must now be conferenced with the House-passed version.

Specifically, Title VII, Subtitle A, Sec. 702 authorizes the secretary of the Department of Defense (DOD) to maintain adequate networks of providers, including institutional, professional, and pharmacy for TRICARE recipients. The language further excludes network providers under such provider network agreements from being considered subcontractors for purposes of the Federal Acquisition Regulation or any other law.

The AHA strongly supports the inclusion of this language in the Senate-passed bill and urges you to retain it in your conference agreement.

The Office of Federal Contract Compliance (OFCCP) has recently taken the position that hospitals and health systems that serve as TRICARE providers to DOD personnel and their dependents are federal contractors or subcontractors for purposes of Executive Order 11246. This position is contrary to the position taken by the DOD, the agency charged with administering the TRICARE program.

Hospitals are currently subject to a myriad of laws and regulations, including anti-discrimination regulations that are appropriately enforced by many agencies. Subjecting hospitals to OFCCP regulations that now apply to federal contractors and subcontractors would impose additional burdensome and costly requirements that are unnecessary. At a time when hospitals are being



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asked to do more with less reimbursement, it makes little sense to divert financial resources from patient care in order to satisfy administrative requirements.

The issue of whether a TRICARE provider is a federal contractor or subcontractor is currently being litigated. However, the continuing uncertainty surrounding this issue is causing hospitals that care for TRICARE patients to carefully weigh whether to continue their participation in the program. As a consequence, TRICARE patients may have fewer health care options available to them. Retaining Section 702, as contained in the Senate-passed bill, will help remove the uncertainty surrounding this issue and ensure continuity of care for TRICARE patients.

Thank you for your consideration of this important issue. Again, the AHA strongly urges you to retain the Senate-passed Section 702 in your conference agreement in the National Defense Authorization Act for FY 2012.

Sincerely,

Rick Pollack  
Executive Vice President