

TESTIMONY BY

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PRESIDENT

HEALTH NET FEDERAL SERVICES

BEFORE THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE EDUCATION AND THE WORKFORCE COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

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Biography of RADM Thomas Carrato, USPHS (Ret.)

Thomas Carrato is President of Health Net Federal Services, responsible for the daily leadership and management of Health Net's Government Services Division. His responsibilities include the management and oversight of Health Net's Department of Defense and Department of Veterans Affairs lines of business including the DoD's TRICARE program for the North Region and the worldwide Military & Family Life Counseling contract.

Mr. Carrato has over 30 years of experience, success and accomplishments in both the public and private health care sector as senior executive, chief operating officer and clinician. He served as Assistant Surgeon General of the United States, Regional Health Administrator for the U.S. Department of Health and Human Services, Deputy Assistant Secretary of Defense for Health Plan Administration, and Group Vice President for a publicly traded government services company. Mr. Carrato joined Health Net in March 2006 as Vice President and DoD Program Executive.

Previously, Mr. Carrato served as Deputy Assistant Secretary of Defense for Health Plan Administration and Executive Director of the TRICARE Management Activity where he directed and managed worldwide operations and performance of the TRICARE health plan. In an earlier role as the Department of Health and Human Services' Regional Health Administrator for Region IV, Mr. Carrato was the Department's principal representative, providing advice and participating in policy development and implementation of key health care initiatives in the southeastern United States. He managed regionally based programs of the Office of Public Health and Science including the Offices of Emergency Preparedness, Minority Health, Women's Health, and Population Affairs.

Mr. Carrato holds a Master of Science in Accounting from Georgetown University and is a licensed Certified Public Accountant. In addition, he holds a Master of Social Work from the University of South Carolina and is a licensed clinical social worker.

Mr. Carrato, retired as a Rear Admiral in the Commissioned Corps of United States Public Health Service. His decorations include the Defense Distinguished Service Medal and the Public Health Service Distinguished Service Medal.

Health Net Federal Services, LLC Corporate Profile

In partnership with DoD, Health Net Federal Services, LLC serves as the Managed Care Support Contractor in the TRICARE North Region, providing health care and administrative support services for three million active-duty family members, military retirees and their dependents in 23 states. We also deliver a broad range of customized behavioral health and wellness services to military services members and their families, including Guardsmen and reservists. These services include the Military and Family Life Counseling (MFLC) Program providing non-medical, short-term problem solving counseling, rapid response counseling to deploying units, embedded counselors in military units, and reintegration counseling.

In collaboration with VA, Health Net supports Veterans' physical and behavioral health care needs through Community Based Outpatient Clinics (CBOCs) and the Patient-Centered Community Care (PCCC) Program. PCCC provides eligible veterans with coordinated, timely access to health care through a comprehensive network of approved non-VA specialty care providers. Health Net administers PCCC in three of the six PCCC regions covering all or parts of 37 states; Washington, DC; Puerto Rico; and the U.S. Virgin Islands.

Testimony of Mr. Thomas Carrato

Chairman Walberg, Ranking Member Courtney, Members of the committee, thank you for the opportunity to testify on efforts to expand the jurisdiction of the Office of Federal Contract Compliance Programs (OFCCP). Classifying TRICARE network providers as federal subcontractors poses significant issues for the TRICARE program, our TRICARE network providers and the beneficiaries we jointly serve. I appreciate the opportunity to address this issue in this forum.

Health Net Inc. (Health Net) is a publicly traded company delivering health care insurance and health care coverage in the public and private sectors to over 5.3 million beneficiaries in 39 states, the District of Columbia, and multiple U.S. territories. Health Net Federal Services, LLC, a wholly owned subsidiary of Health Net, has been a managed care support (MCS) contractor for Department of Defense (DoD) programs for 26 years. Through our programs, Health Net Federal Services provides physical and behavioral health care services to the Department of Defense and the Department of Veterans Affairs (VA), among others, including TRICARE, the DoD Military & Family Life Counseling program, VA's Patient Centered Community Care program, and several VA Community Based Outpatient Clinics (CBOCs).

We have watched with great interest and concern as the legal action between OFCCP and Florida Hospital of Orlando has progressed through the administrative law process. The issues addressed by the Administrative Law Judge and Administrative Review Board have focused on two questions: 1) whether the providers in the networks of TRICARE managed care support contractors are performing the tasks or functions necessary to the performance of the TRICARE contract and 2) whether TRICARE is a Federal Financial Assistance (FFA) program. Those issues are currently the subject of litigation, and I don't want to focus on the legal arguments in that litigation. The issue that I would like to address is "How will the OFCCP's position affect TRICARE beneficiaries and our ability to provide military members and their families access to high quality providers, especially in rural areas and areas far from military treatment facilities (MTF)?" The primary concern for us is not a legal point or an argument about the limits of an agency's jurisdiction, but simply how we can best serve our customer and our beneficiaries.

OFCCP has asserted that the providers who make up our managed care networks and provide health care services to TRICARE beneficiaries are federal subcontractors. We firmly believe that they are not subcontractors and, more importantly for my comments today, that any attempt to classify them as such will have significant negative impact on the ability of TRICARE beneficiaries to obtain high quality, accessible medical care.

We build networks of providers for the TRICARE program. Those providers see patients and provide treatment and medical care. We build these networks in areas that are urban and rural, densely populated and sparsely populated. Many of our providers are large hospitals and medical groups. There are also several thousand providers in our network that may fit into the category of smaller providers for whom compliance with OFCCP requirements would be cost prohibitive. We fear, and legitimately so, that these providers may be forced to stop providing services to military beneficiaries under the TRICARE program because they cannot bear the administrative costs and burdens associated with providing that service if they are deemed "subcontractors" for OFCCP purposes.

The risk for TRICARE providers and, by extension, TRICARE beneficiaries and the TRICARE program is twofold. The first risk is that managed care support contractors will have difficulty getting providers to join our networks. Providers execute provider agreements with us for the provision of health care services and not the federal government; they may not be willing or prepared to shoulder the additional burdens of federal contractor compliance. The second risk is the real possibility that providers will leave TRICARE contractor networks instead of assuming the burden of OFCCP compliance. There are 55 sole community hospitals (SCH) and 151 critical access hospitals in our TRICARE network. If any of those hospitals left our network, it would leave a significant gap in access that would impact military members and their families.

In addition to the two risks to the TRICARE program, there potentially is a third risk: expansion of OFCCP regulation, or even simply the threat of expansion, to other health care programs in other agencies. As an example of these risks, a large hospital group that is part of our TRICARE network has approached us with concerns over OFCCP regulation. That same hospital group has not joined our preferred provider network designed to support other government programs, including Department of Veterans Affairs programs that provide access to care for veterans, due to concerns about potential OFCCP regulation there as well.

The American Hospital Association did an excellent job of detailing what compliance entails in their previous testimony before this committee. The AHA also has done an excellent job detailing the costs of OFCCP compliance, both in terms of time and capital, something with which we are intimately familiar as a federal contractor.

Notwithstanding the issue of OFCCP compliance, we require our providers as part of their contract with us to adhere to any and all state, federal, and local laws that apply to them and their operations, which would include any applicable affirmative action laws. For example, private employers with 15 or more employees are subject to the stringent anti-discrimination laws of Section 504 of the Rehabilitation Act and Title VI of the Civil Rights Act of 1964, enforced by the Office of Civil Rights of the Department of Health and Human Services. The TRICARE regulation (32 CFR 199) explains that payment will not be made to a provider found to “practice discrimination in the admission of patients to its services on the basis of race, color, or national origin.”

We believe expanding OFCCP’s jurisdiction over TRICARE will make it much more difficult to build and retain provider networks. Ultimately, this will mean fewer options for the military members, families, and retirees who rely on TRICARE. We believe it will limit their ability to obtain the level of care they need from a provider of their choice. As the administrative burdens of participating in TRICARE outpace the benefits, it will become increasingly difficult to recruit and retain highly qualified practitioners in-network. This effect will be felt most prominently in rural and sparsely populated regions where there already are shortages of providers and managed care support contractors already face difficulty with recruitment and retention. It will also have significant impact on our ability to provide services that are already in critically short supply such as psychiatry, neurosurgery, and dermatology. Programs such as

VA's Patient-Centered Community Care program that employ a similar model to TRICARE could face similar difficulties attracting and retaining providers.

Health Net believes that in order to ensure military beneficiaries have ready access to needed health care services providers in TRICARE networks must be exempted from OFCCP regulation. While we believe that ultimately the courts will agree with the position that industry and the Department of Defense have taken – that TRICARE providers do not satisfy the OFCCP's definition of a subcontractor – the uncertainty that currently exists in the law continues to negatively affect our ability to provide high-quality, accessible health care for millions of our nation's most deserving citizens, the men and women of our armed forces and their families. Thank you for your time. I am prepared to answer any questions that you might have for me.