
FEHB Program Carrier Letter

All Carriers

U.S. Office of Personnel Management
Insurance Services Program

Letter No. 2003-16

Date: April 30, 2003

Fee-for-service [16] Experience-rated HMO [16] Community-rated [15]

SUBJECT: Surcharges and Assessments Under the New York Health Care Reform Act of 2000

This is to inform you that the Federal Employees Health Benefits Act (FEHBA) preempts certain surcharges and assessments imposed by the Health Care Reform Act of 2000 (HCRA) as those surcharges and assessments apply to payments made under the Federal Employees Health Benefits Program. HCRA statutory provisions extend from January 1, 2000 through June 30, 2003, and its provisions impose surcharges on payments to designated providers of services made by employee health benefits plans.

Surcharges under HCRA 2000 also subsidize indigent care and health care initiatives through pooled funds raised by assessments on the net patient service revenues of health care providers. These provider assessments, largely reimbursed through payor (e.g., FEHB) surcharges, vary by payor type and, for certain payors, by whether they voluntarily elected to submit surcharge payments directly to the state's pool administrator.

In accordance with the FEHBA, New York may not impose the assessment on health care providers to the extent the assessment would be imposed indirectly on FEHB carriers. If presented with bills that incorporate the assessment, FEHB carriers should deduct the assessment when calculating their payments to New York health care providers and hospitals.

The FEHBA, as codified and amended by the Omnibus Budget Reconciliation Act of 1990 at 5 U.S.C. §8909(f), provides that:

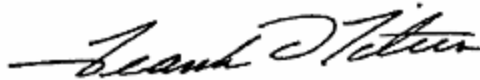
- (1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the [Employees Health Benefits] Fund.

- (2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriter or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activities.

Because this assessment is imposed by the State indirectly on FEHB carriers with respect to the Employees Health Benefits Fund, we have concluded that it is preempted. We encourage all participating carriers operating plans in the state of New York to notify their providers that health care services reimbursed under the Federal Employees Health Benefits Act are not subject to the assessment. We have notified the state of our position and have enclosed a copy of our letter.

If you have any questions concerning the preemption, please contact your contract representative.

Sincerely,



Frank D. Titus
Assistant Director
For Insurance Services

Enclosure