
FEHB Program Carrier Letter

All Carriers

U.S. Office of Personnel Management
Insurance Services Program

Letter No. 2003- 17

Date: April 30, 2003

Fee-for-service [17] Experience-rated HMO [17] Community-rated [16]

SUBJECT: The State of Missouri Pharmacy Assessment

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts a recently enacted Missouri pharmacy assessment. The Missouri Provider Tax for Prescriptions, Missouri Senate Bill No. 1248 (CCS HS HCS SS SB 1248), chapter 338, § 338.500 to 338.550, imposes a tax upon licensed retail pharmacies in Missouri for the privilege of providing outpatient prescription drugs. The tax is imposed upon the monthly gross retail prescription receipts earned from filling outpatient retail prescriptions multiplied by the tax rate established by the Missouri Department of Social Services. The tax rate is a graduated rate, not to exceed six percent per annum of gross retail prescription receipts, and not to exceed one-tenth of one percent per annum in the case of licensed pharmacies where 80 percent or more of gross receipts are attributable to prescription drugs delivered directly to the patient via common carrier, by mail, or by courier service. The tax, signed into law June 19, 2002, is due to expire June 30, 2003.

Taxes remitted to the State Department of Revenue are deposited into the state treasury to the credit of the Pharmacy Reimbursement Allowance Fund, created to provide payments for services related to the Medicaid Pharmacy Program. Pharmacies subject to the assessment include licensed retail pharmacies earning gross receipts from filling outpatient prescription drugs in the state of Missouri. Licensed pharmacy is defined any location where the practice of pharmacy occurs or such activities are offered or provided by a pharmacist or another acting under the supervision and authority of a pharmacist.

In accordance with the FEHBA, Missouri may not impose the assessment on pharmacies to the extent the assessment would be imposed indirectly on FEHB carriers. If presented with bills that incorporate this assessment, FEHB carriers should deduct the assessment when calculating their payments to Missouri pharmacies.

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

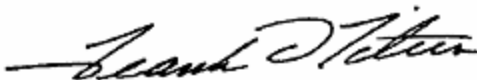
(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other 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 underwriting 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 Missouri to notify their providers that prescriptions dispensed 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