
FEHB Program Carrier Letter

All Carriers

U.S. Office of Personnel Management
Office of Insurance Programs

Letter No. 1999-04

Date: January 22, 1999

Fee-for-service [4] Experience-rated HMO [4] Community-rated [4]

SUBJECT: Surcharges and Taxes on Connecticut Hospital Services

The purpose of this Letter is to advise FEHB plans of their obligation to pay an outstanding sales tax on certain patient care services, pursuant to a recent decision in the lawsuit *State of Connecticut v. United States of America*. In that lawsuit, the State of Connecticut sought to compel FEHB plans to pay certain surcharges and taxes on hospital services imposed by the State.

As you know, all FEHB carriers are exempted from certain State-imposed fees, taxes, and assessments. The FEHB Act, as amended by the Omnibus Reconciliation Act of 1990 and codified at 5 U.S.C. ' 8909(f), provides:

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 [Employee Health Benefit] 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 activity.

In 1991, the Connecticut legislature enacted Conn. Pub. Act 91-2 (codified at Conn. Gen. Stat. ' 19a-168 *et. seq.*), pursuant to which Connecticut hospitals imposed an uncompensated care assessment upon the hospital bills of patients with private health insurance. In 1992, we determined that FEHBA preempted Conn. Pub. Act 91-2 and instructed FEHB plans not to pay the assessment. The United States District Court for the District of Connecticut has agreed with our determination.

In 1993, the State amended Conn. Pub. Act 91-2 with Conn. Pub. Acts 93-44 and 93-229. These amendments eliminated the uncompensated care assessments and

replaced them with a two-part plan for funding the State=s uncompensated care pool (UCP). First, the State extended its 6% sales tax to hospital charges for patient care. Second, the State levied an assessment (or Aprovider tax@) upon hospital revenues generated from patient care services. The funds collected from the sales tax and the

provider tax were transmitted to the UCP, from which they were in turn redistributed to hospitals based on their level of uncompensated care. In 1993, we determined that FEHBA preempted these amendments and directed FEHB plans not to pay either the sales tax or the provider tax. The district court has agreed with our preemption of the sales tax. The issue involving the provider tax under Conn. Pub. Act 93-229 remains in litigation.

In 1994, the State again amended the uncompensated care reimbursement system by enacting Conn. Pub. Act 94-4. This amendment retained the 6% sales tax on hospital services, but provided that the proceeds of the sales tax were to be paid into the State's general fund rather than into the UCP. The 1994 amendment also reconfigured the provider tax. Instead of taxing hospitals' patient care revenues, the State imposed a 1% tax on hospitals' gross earnings, and instead of the proceeds being deposited in the UCP, the provider tax proceeds were paid into the State's general fund.

The district court has determined that FEHBA does not preempt the 6% sales tax required under Conn. Pub. Act 94-4. Therefore, FEHB plans that have not already done so should make arrangements to pay Connecticut hospitals the 6% sales tax for patient care services rendered to their members on and after January 1, 1995. The issue of the 1% provider tax under Conn. Pub. Law 94-4 remains in litigation.

Community-rated HMOs in Connecticut whose premiums were adjusted to take the sales tax into account may contact Nancy Kichak, director of the Office of Actuaries, (202) 606-0722, for assistance.

Thank you for your attention to this matter. We will write you about the remaining provider tax issues as soon as the ongoing litigation is resolved. If you have any questions, please contact Abby L. Block, chief of the Insurance Policy and Information Division, on (202) 606-0004.

Sincerely,

[Signed]

Frank D. Titus
Assistant Director
for Insurance Programs