

# **FEHB Program Carrier Letter**

## All Carriers

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

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**Letter No. 1999- 060**

**Date: December 16, 1999**

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Fee-for-service [ 53 ]   Experience-rated HMO [51 ]   Community-rated HMO [51 ]

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**Subject: Tobacco Litigation**

As you may know, the United States has filed suit against various manufacturers of tobacco products to recover money paid by the Federal government to treat smoking-related medical conditions and diseases, and for equitable relief under the Racketeer Influenced and Corrupt Organizations Act. As part of the suit, the Federal government seeks to recover money paid under the Federal Employees Health Benefits Program (FEHBP) for smoking-related medical conditions and diseases.

As a routine part of the litigation, the federal district court judge presiding over this case issued an order directing the parties to the litigation to take various actions. As part of that order, the court explicitly directed that:

Each party shall preserve all documents and other records containing information potentially relevant to the subject matter of this litigation. Each party shall also preserve any physical evidence or potential evidence and shall not conduct any testing that alters the physical evidence without notifying opposing counsel and, unless counsel stipulate to the test, without obtaining the Court's permission to conduct the test.

Order at 4-5. The United States Department of Justice (DOJ) has asked the Office of Personnel Management (OPM) to preserve all records currently in existence (as well as those that are generated in the future) that fit the descriptions given below, regardless of the date of the document or when it was generated. Because you will have many, if not all, of these records for the FEHBP program, we are asking that you preserve any and all such documents in your possession or control. We recognize that in many cases this request may result in document retention that may exceed the 3-year records retention requirement under your FEHBP contract.

Accordingly, the Office of Personnel Management (OPM) is requesting that you preserve and not destroy or dispose of any documents or other records, including those recorded or stored electronically, that, in any way, relate to:

- Treating FEHBP enrollees for smoking-related conditions or diseases, including, but not limited to, patient medical records;
- Research on such conditions or diseases;
- Grants or other payments made for research in relation to smoking or the tobacco industry;
- Benefits provided and claims paid for smoking-related conditions or diseases;
- Youth smoking;
- Nicotine and addiction;
- Cigarette design, including attempts to develop or market a potentially safer cigarette;

- Contacts between any of your officials, employees, agents, or servants on the one hand, and any officials, employees, agents, or servants of any member of the cigarette-manufacturing industry, the Council for Tobacco Research (or its predecessor, the Tobacco Industry Research Committee), or the Tobacco Institute; and
- Any other records that may relate to the use of tobacco products.

Please ensure that these documents and other records, including those recorded or stored electronically, are not unintentionally or accidentally destroyed as part of normal business records retention and disposition procedures.

If you have questions about whether particular records are subject to this letter, please contact Sandy Scholar, an OPM staff attorney, at 202-606-1700. If records subject to this letter are inadvertently destroyed, please notify Ms. Scholar immediately. We will issue a letter to tell you when this document preservation order is no longer in effect.

We understand that your compliance may prove burdensome, and regret any inconvenience that such compliance may cause. We appreciate your assistance and cooperation in this matter.

Sincerely,

(signed)  
Frank D. Titus  
Assistant Director  
for Insurance Programs