



United States
**Office of
Personnel Management** Washington, DC 20415-0001

The State of Missouri
Division of Medical Services
Pharmacy Director
615 Howerton Court
Post Office Box 6500
Jefferson City, Missouri 65102-6500

Attention: George Oestreich, Pharmacy Director

Dear Mr. Oestreich:

It has come to our attention that 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, signed into law June 19, 2002, is due to expire June 30, 2003.

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts this assessment. 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 will 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 have advised 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 would appreciate it if you would disseminate this information to the various pharmacies so that they do not pay or charge the assessment on prescriptions for FEHB enrollees.

If you have any questions concerning the preemption, please contact us.

Sincerely,

A handwritten signature in black ink, reading "Abby L. Block". The signature is written in a cursive style with a long horizontal flourish at the end.

Abby L. Block, Senior Advisor
for Employee and Family Support
Strategic Human Resources Policy Division