



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

The State of Colorado
Division of Insurance
Commissioner's Office
1560 Broadway, Suite 850
Denver, CO 80202

Attention: Doug Dean, Commissioner of Insurance

Dear Mr. Dean:

It has come to our attention that the Colorado High Risk Health Insurance Act ("CHRHIA"), Colo. Rev. Stat. § 10-8-501 et seq., establishes the CoverColorado program, which imposes an assessment upon insurers, including FEHB carriers, providing group or individual health benefit plans in Colorado. The purpose of the assessment is to help relieve the financial hardship faced by the State funding pool designed to give access to health insurance for "high risk" Colorado residents unable to obtain reasonable health insurance coverage. The CHRHIA became effective July 1, 2001, and is a new approach to funding rising medical care costs for persons enrolled in the program. The CoverColorado assessments are regulated by section 6 of the CHRHIA, and fees are levied with a per capita charge imposed for each individual enrollee served by the plan.

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts this assessment. In accordance with the FEHBA, Colorado may not impose the assessment on insurance carriers to the extent the assessment would be imposed indirectly on FEHB carriers. When presented with bills that incorporate this assessment, FEHB carriers will deduct that portion of the assessment attributable to their FEHB enrollee population when calculating their payment to the Colorado Department of Insurance.

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 the portion of the assessment attributable to FEHB enrollees is preempted. We would appreciate it if you would disseminate this information to those responsible for collecting the assessment so that they do not charge the fees to FEHB carriers.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank D. Titus".

Frank D. Titus
Assistant Director
for Insurance Services Programs