



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

Massachusetts Division of Health Care Finance and Policy
Two Boylston Street
Boston, MA 02116-4737

Attention: Linda Ruthardt, Commissioner

Dear Ms. Ruthardt:

It has come to our attention that a recent change in the Massachusetts General Laws 118G § 26 and proposed regulations 114.5 CMR 13.00 impose an assessment on Massachusetts pharmacies for each non-Medicare and non-Medicaid prescription dispensed as of January 1, 2003.

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts this assessment. In accordance with the FEHBA, Massachusetts 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 Massachusetts 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 Massachusetts 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 that reads "Abby L. Block". The signature is written in a cursive style with a long horizontal flourish at the end.

Abby L. Block
Assistant Director
for Insurance Programs