
FEHB Program Carrier Letter

All Carriers

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

Letter No. 2003- 1

Date: January 9, 2003

Fee-for-service [1] Experience-rated HMO [1] Community-rated [1]

SUBJECT: The State of Massachusetts Assessment on Pharmacies

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts a newly effective Massachusetts pharmacy assessment. Massachusetts General Laws 118G § 26 and proposed regulations 114.5 CMR 13.00 impose an assessment on pharmacies for each non-Medicare and non-Medicaid prescription dispensed as of January 1, 2003. The annual prescription assessment is \$0.65 per prescription dispensed. However as the assessment will be collected for six months effective January 1, 2003, the assessment is adjusted to \$1.30 for prescriptions dispensed until June 30, 2003.

The purpose of the assessment is to generate revenue each fiscal year to be used to pay MassHealth expenditures and qualify for Federal Medicaid matching funds. Pharmacies subject to the assessment include retail drug businesses registered by the Massachusetts Board of Registration in Pharmacy and licensed by the Commonwealth, such as retail and hospital outpatient pharmacies but do not include inpatient hospital pharmacies.

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 should 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 encourage 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 have notified the state of our position and have enclosed a copy of our letter.

If you have any questions concerning the preemption, please contact your contract representative.

Sincerely,

A handwritten signature in black ink that reads "Abby L. Block". The signature is written in a cursive style with a long horizontal stroke at the end.

Abby L. Block
Assistant Director
for Insurance Programs