
FEHB Program Carrier Letter

All Carriers

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

Letter No. 2004-12

Date: October 4, 2004

Fee-for-service [9] Experience-rated HMO [10] Community-rated [10]

SUBJECT: The West Virginia Health Care Provider Tax Act of 1993

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) provision 5 U.S.C. § 8909(f) does not preempt the West Virginia Health Care Provider Tax Act of 1993 pursuant to a ruling of the United States Court of Appeals for the Fourth Circuit, *United States v. West Virginia*, 339 F.3d 212 (4th Cir. 2003). We will evaluate whether 5 U.S.C. § 8909(f) preempts taxes in other states in the Fourth Circuit in accordance with the rationale set forth in that opinion.

The West Virginia Health Care Provider Tax Act of 1993, W. Va. Code § 11-27 et seq., imposes a tax of 1.75% to 5.5% of the gross receipts of various categories of health care providers in West Virginia. Health care providers in the State may pass the economic costs of the tax to FEHB carriers as a result of the Court of Appeals ruling. FEHB carriers should pay the tax as part of the providers' billed charges. Health care providers in West Virginia should include gross receipts attributable to their FEHB enrollee population when calculating their payments to the Department of Tax and Revenue for the State of West Virginia. Enclosed is a copy of our letter to the State concerning our position.

If you have any questions concerning this matter, please contact your contract representative.

Sincerely,

Abby L. Block
Deputy Associate Director
Employee and Family Support Policy