
FEHB Program Carrier Letter

All Carriers

U.S. Office of Personnel Management

Healthcare and Insurance

Letter No. 2013-14

Date: May 13, 2013

Fee-for-service [10] Experience-rated HMO [10] Community-rated HMO [12]

Subject: Health Insurance Providers Fee under the Affordable Care Act (ACA)

This Carrier Letter provides guidance on the ACA § 9010 Health Insurance Providers Fee (Providers Fee) established under the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152.

Section 9010 of the ACA imposes an annual fee on health insurance providers requiring all covered entities engaged in the business of providing health insurance to make an annual payment each calendar year to the Department of Treasury as outlined in subsection (b) of section 9010. OPM expects FEHB carriers to assess their status as “covered entities,” and if they are covered entities, to make the required payment. Carriers should review IRS proposed regulations and future regulations regarding this provision here:

<https://www.federalregister.gov/articles/2013/03/04/2013-04836/health-insurance-providers-fee>. Section 9010(f)(2) of the ACA states that this fee is considered to be a non-deductible tax.

OPM has determined that the portion of the section 9010 Providers Fee paid that is attributable to its FEHB business will be an allowable cost to the FEHB Program as an expense to the “overall operation of the business” of providing health insurance according to the FEHB Contract Section 3.2(b)(2)(iii). For the FEHB Program, the fee will be applied for the first time for plan year 2014.

Community Rated Carriers

Community-rated (CR) plans may include this fee in the community rate purchased by the FEHB Program. If a community rated carrier’s rating methodology includes adding a load for these fees, the carrier is allowed to include the load in the rate build up for FEHB in accordance with the methodology. If a carrier does not load the rate for other groups subject to the fees, the carrier cannot load the FEHB rate.

Experience Rated Carriers

The Providers Fee is an allowable cost and may be included in the rates.

Experience-rated (ER) plans will account for these administrative expenses in the calculation of premium rates and report it on the annual accounting statement (AAS). Plans will certify the accuracy of the new administrative expense beginning with the AAS for 2014. This expense will be considered in the plan’s contract expense limit (CEL). If the added expense exceeds the CEL, the plan must submit a request and justification to increase the CEL in writing to its contracting officer.

Federal income tax on amounts charged to the FEHB contract for the Providers Fee is not an allowable cost and may not be included in the rates. The amount that a covered entity is reimbursed by its FEHB contract for its allowable cost representing the Providers Fee may be subject to federal income tax. Federal income tax on this reimbursement income, attributable to the allowed fee, may not be charged to the FEHB contract

because the FAR [48 C.F.R. § 31.205-41(b)(1)] provides that a contractor's federal income tax is not an allowable cost.

Questions

If you have any questions regarding this carrier letter please contact Wen Fu at Wenjiong.Fu@opm.gov or Rachel Royster at Rachel.Royster@opm.gov or (202)-606-0004. For specific questions regarding the substance of IRS regulation of section 9010, please contact Charles J. Langley at (202) 622-3130.

Sincerely,

John O'Brien
Director
Healthcare and Insurance