



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

New York State Department of Health
Bureau of Financial Management and Information Support
Room 984, Corning Tower
Albany, New York 12237-0719

Attention: Richard Pellegrini, Director

Dear Mr. Pellegrini:

It has come to our attention that the New York Health Care Reform Act of 2000 imposes certain surcharges and assessments on the net patient service revenues of state health care providers. These provider assessments, largely reimbursed through payor surcharges, vary by payor type and, for certain payors, by whether they voluntarily elected to submit surcharge payments directly to the state's pool administrator.

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts this assessment. In accordance with the FEHBA, New York may not impose the assessment on health care providers 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 New York health care providers.

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 New York to notify their providers that health care services covered 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 health care providers so that they do not pay or charge the assessment on services for FEHB enrollees.

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

Sincerely,

A handwritten signature in black ink, reading "Abby L. Block". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Abby L. Block, Senior Advisor
for Employee and Family Support
Strategic Human Resources Policy Division