
FEHB Program Carrier Letter

All Carriers

U.S. Office of Personnel Management
Insurance Services Programs

Letter No. 2012-06

Date: 03-20-2012

Fee-for-service [6]

Experience-rated HMO [6]

Community-rated HMO [6]

SUBJECT: Tennessee High Risk Assessment Tax (AccessTN Program)

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts a Tennessee health insurance assessment. Specifically, the State of Tennessee is assessing health insurance carriers participating in the Federal Employees Health Benefits Program (FEHBP) to fund Tennessee's AccessTN program. See Tenn. Code Ann. 56-7-2911 (2010). This assessment is specifically preempted under the FEHBA 5 USC 8909(f)(1).

Section 8909(f)(1) provides as follows:

“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 any political subdivision or other governmental authority thereof, with respect to any payment made by the Fund.”

Section 8909(f)(2) does allow states to assess taxes on a carrier's net income or profit as long as it is applicable to a broad range of business activity. In the case of Tennessee, however, the assessment falls under Section 8909(f)(1) and is therefore preempted.

In accordance with the FEHB Act, Tennessee may not impose the assessment on health insurers to the extent the assessment would be imposed indirectly on FEHB carriers. If presented with bills that incorporate this assessment, FEHB carriers should deduct that portion of the assessment attributable to their FEHB enrollee population when calculating their payments to the Commissioner of Insurance for the State of Tennessee. We have notified the state of our position and enclosed is a copy of our letter.

If you have any questions concerning the preemption, please contact your Contract Specialist.

Sincerely,

John O'Brien, Director
Healthcare and Insurance

Enclosure