
FEHB Program Carrier Letter

All Carriers

U.S. Office of Personnel Management
Insurance Services Programs

Letter No. 2004-03

Date: March 22, 2004

Fee-for-service [2] Experience-rated HMO [3] Community-rated [2]

SUBJECT: The Colorado High Risk Health Insurance Act

This is to advise you that the Federal Employees Health Benefits (FEHB) Act preempts a Colorado health insurance assessment. On May 5, 2001, the Colorado High Risk Health Insurance Act (CHRHIA) was signed into law. The CHRHIA, Colo. Rev. Stat. §10-8-501 et seq., establishes the CoverColorado Program. Moreover, the CHRHIA, Colo. Rev. Stat. §10-8-502, declares that CoverColorado is designed to provide access to health insurance coverage for “high risk” Colorado residents unable to obtain reasonable health insurance coverage. Significantly, the bill increases the maximum benefit coverage under CoverColorado and establishes a new way to fund the program by mandating assessment of special fees against insurers, including FEHB carriers, doing business in Colorado as of July 1, 2001.

The special fees are designed to relieve the financial hardship faced by the State funding pool in Colorado due to rising health care costs for eligible individuals. The CoverColorado assessments are regulated by section 6 of the CHRHIA, and fees are imposed against insurers, including FEHB carriers, with a per capita charge imposed for each individual enrollee served by the plan. To date, CoverColorado has issued assessment notices totaling \$9.8 million to Colorado insurers to make up for a shortfall in the state’s funding of the program.

In accordance with the FEHB Act, Colorado 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 Colorado.

The FEHB Act, 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 the portion of the assessment attributable to FEHB enrollees is preempted. 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,



Frank D. Titus
Assistant Director
for Insurance Services Programs

Enclosure