



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

The State of Tennessee
Department of Commerce and Insurance
Commissioner's Office
500 James Robertson Pkwy
Davy Crockett Tower
Nashville, TN 37243-0565

Attention: Julie Mix McPeak, Commissioner of Insurance

Dear Ms. Mix McPeak:

It has come to our attention 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 is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts this assessment. In accordance with the FEHBA, Tennessee may not impose the assessment on insurance carriers to the extent the assessment would be imposed indirectly on FEHBP carriers for lives covered under the FEHBP. When presented with bills that incorporate this assessment, FEHBP carriers will deduct that portion of the assessment attributable to their FEHBP enrollee population when calculating their payment.

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 the portion of the assessment attributable to FEHBP enrollees is preempted.

We would appreciate it if you would disseminate this information to those responsible for collecting the assessment so that they do not assess FEHBP carriers for lives covered under the FEHBP.

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

Sincerely,

John O'Brien
Director
Healthcare and Insurance