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# FEHB Program Carrier Letter

## All Carriers

U.S. Office of Personnel Management  
Healthcare and Insurance

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**Letter No. 2014-22**

**Date:** September 10, 2014

Fee-for-service [18]    Experience-rated HMO [18]    Community-rated HMO [20 ]

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**SUBJECT:** Health Benefit Exchange Authority Financial Sustainability Temporary Amendment Act of 2014

This is to advise you that the Federal Employees Health Benefits Act (FEHBA) preempts a recent amendment to the District of Columbia law, authorizing an assessment on the direct gross receipts of health insurance carriers. The assessment was enacted in order to fund the operation of the DC Health Benefit Exchange Authority. See DC Code § 31-3171.01 *et seq.*

FEHBA 5 USC § 8909(f)(1) provides: “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.” Because the assessment is a monetary payment imposed on a carrier with respect to the direct gross receipts that are paid by the Employees Health Benefits Fund, the assessment is preempted. Section 8909(f)(2) allows states to assess a monetary payment on a carrier’s net income or profit as long as it is applicable to a broad range of business activity. However, with respect to this specific District of Columbia law, the assessment is not imposed on the carrier’s net income or profit, and is solely applicable to health carriers, and therefore is not allowed under § 8909(f)(2).

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 District of Columbia. We have notified the District of Columbia of this FEHBA preemption.

Please note that FEHBA § 8909(f) does NOT preempt this assessment for health insurance issuers operating in the DC Health Link Small Business Market (DC SHOP) with respect to plans that provide health benefits coverage to Members of Congress and congressional staff under the Office of Personnel Management’s final regulations at 78 FR 60653-60656. These issuers are not carriers of an “*approved* health benefits plan” for purposes of § 8909(f), and therefore, the portion of the assessment attributable to Members of Congress and congressional staff is not preempted. While plans covering Members of Congress and congressional staff are considered “health benefits plans under this chapter” for purposes of 5 U.S.C. § 8905(b) and 5

U.S.C. § 8906 under OPM regulations, they have not been “approved” because they are not offered through an OPM contract under 5 U.S.C. § 8902.

If you have any questions concerning the preemption, please contact Marguerite Martel at 202.606.0004.

Sincerely,

John O'Brien, Director  
Healthcare and Insurance