

## **60 - Examples of Federal Preemption Scenarios**

**(Rev. 101, Issued: 08-19-11, Effective: 08-19-11, Implementation: 08-19-11)**

The following table presents example scenarios in which a question of Federal preemption is present and answers whether or not Federal law would preempt State law in each.

<b>Example Scenario</b>	<b>Preemption by Federal Law?</b>
An MA organization applies to a State to offer a new MA PPO plan in the State. The organization offering the proposed PPO plan indicates that it will offer its plan to Medicare beneficiaries in the entire State. The State denies the license on the basis that the organization lacks the financial solvency to serve the entire state.	No – Federal law does not preempt State solvency requirements. States may decline to license an MA plan to operate in a State if the State determines that the organization offering the MA plan does not meet State solvency requirements. The State may also elect to limit the service area for which the plan is licensed based on the financial resources (i.e., solvency) of the MA organization proposing to offer the MA plan.
An MA HMO plan currently being offered in a State seeks to expand its service area	Yes – In this case, Federal law preempts State law. The State has already licensed

<p>from 6 counties to all counties in the State. The MA organization requests that the State certify that the scope of its license allows it to be offered in the entire State. The State denies the service area expansion request on the basis that the plan has not demonstrated to the State that it has adequate network and organizational systems capacity to serve the entire State.</p>	<p>the MA organization as a risk-bearing entity, and CMS has comprehensive network and organizational capacity standards. An MA plan is only required to meet Federal standards. States may not review or impose State standards for network or organizational capacity.</p>
<p>An MA organization that is currently offering an MA HMO plan requests certification from a State to offer an MA private fee-for-service (PFFS) plan to serve Medicare beneficiaries in the entire State under its existing State license. The State denies the request on the basis that the PFFS product must be licensed as an indemnity insurance product and cannot be offered by the MA organization under a State HMO license.</p>	<p>No – A State may require that an MA plan offered in the State operate within the scope of its license. In this case the MA organization seeking to offer an MA PFFS plan in the State must meet the licensure requirements for an indemnity insurance product.</p> <p><b>NOTE:</b> The scope of State licensure requirements is restricted by Federal preemption authority as described in section 30 of this chapter.</p>
<p>An MA HMO plan currently being offered in a State is out of compliance with the State's licensure solvency standards, has a negative net worth (liabilities exceed assets), and the State is allowing the plan to continue to operate under its license and a corrective action plan.</p>	<p>No and Yes – The State's solvency standards are applied to determine licensure by a State. CMS has a requirement, separate from State licensure requirements, that plans must demonstrate that the MA organization has a fiscally sound operation which, at the very least, maintains a positive net worth (total assets exceed total liabilities). In this example, any CMS action would be based on contract compliance and would not be licensure related.</p>