CMS Manual System	**Department of Health & Human Services (DHHS)**
Pub 100-20 One-Time Notification	**Centers for Medicare & Medicaid Services (CMS)**
Transmittal 1422	**Date: August 15, 2014**
	Change Request 8863

SUBJECT: Specific Modifiers for Distinct Procedural Services

I. SUMMARY OF CHANGES: CMS is establishing four new HCPCS modifiers to define subsets of the -59 modifier, a modifier used to define a "Distinct Procedural Service."

EFFECTIVE DATE: January 1, 2015
**Unless otherwise specified, the effective date is the date of service.*
IMPLEMENTATION DATE: January 5, 2015

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)
R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
N/A	N/A

III. FUNDING:
For Medicare Administrative Contractors (MACs):
The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC statement of Work. The contractor is not obliged to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

One Time Notification

Attachment - One-Time Notification

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I. GENERAL INFORMATION

A. Background: The Centers for Medicare and Medicaid Services (CMS) is establishing four new Healthcare Common Procedure Coding System (HCPCS) modifiers to define subsets of the -59 modifier, a modifier used to define a "Distinct Procedural Service." Currently, providers can use the -59 modifier to indicate that a code represents a service that is separate and distinct from another service with which it would usually be considered to be bundled. Because it can be so broadly applied, some providers incorrectly consider it to be the "modifier to use to bypass National Correct Coding Initiative (NCCI)", it is the most widely used modifier. It is also associated with considerable abuse and high levels of manual audit activity, leading to reviews, appeals and even civil fraud and abuse cases. CMS is concerned by this pattern of abuse because such behavior siphons off funds that should be available to legitimate and compliant providers and additionally unnecessarily increases beneficiary costs.

The NCCI has Procedure to Procedure edits to prevent unbundling and consequent overpayment to physicians and outpatient facilities. The underlying principle is that the second code defines a subset of the work of the first code so it would be inappropriate to report it separately. Separate reporting would trigger a separate payment and would constitute double billing.

However it is recognized that in specific limited circumstances the duplicate payment could be sufficiently small or would not exist, so that separate payment would be indicated. Edits are defined by NCCI as optional and bypassable or as permanent and non-bypassable. Modifiers are used to bypass edits when they are set by NCCI as optional edits. The -59 modifier is both commonly used and commonly abused. According to the 2013 CERT Report data, a projected $2.4 Billion in MPFS payments were made on lines with modifier -59, with a $320 Million projected error rate. In facility payments, primarily OPPS, a projected $11 Billion was billed on lines with a -59 modifier with a projected error of $450 Million. This is a projected 1 year error of $770 Million.

NOTE: that this is not entirely due to incorrect -59 modifier usage as other errors can and do exist on a -59 line. However, it has been observed that incorrect modifier usage was a major contributor although error code definitions do not allow an exact breakdown. If 10% of the errors on -59 lines are attributable to incorrect -59 modifier usage, that still amounts to a $77 Million per year overpayment.

The primary issue associated with the -59 modifier is that it is defined for use in a wide variety of circumstances, such as a use to identify different encounters, different anatomic sites, and distinct services. Usage to identify a separate encounter is infrequent and usually correct; usage to define a separate anatomic site is less common and problematic; usage to define a distinct service is common and not infrequently overrides the edit in the exact circumstance for which CMS created the edit in the first place. CMS believes that more precise coding options coupled with increased education and selective editing is needed to reduce the errors associated with this overpayment.

B. Policy:
CMS has defined four new HCPCS modifiers to selectively identify subsets of Distinct Procedural Services (-59 modifier) as follows:

- XE Separate Encounter, A Service That Is Distinct Because It Occurred During A Separate Encounter

- XS Separate Structure, A Service That Is Distinct Because It Was Performed On A Separate Organ/Structure

- XP Separate Practitioner, A Service That Is Distinct Because It Was Performed By A Different Practitioner

- XU Unusual Non-Overlapping Service, The Use Of A Service That Is Distinct Because It Does Not Overlap Usual Components Of The Main Service

These modifiers, collectively referred to as -X{EPSU} modifiers, define specific subsets of the -59 modifier. CMS will not stop recognizing the -59 modifier but notes that CPT instructions state that the -59 modifier should not be used when a more descriptive modifier is available. CMS will continue to recognize the -59 modifier in many instances but may selectively require a more specific - X{EPSU} modifier for billing certain codes at high risk for incorrect billing. For example, a particular NCCI PTP code pair may be identified as payable only with the -XE separate encounter modifier but not the -59 or other -X{EPSU} modifiers. The -X{EPSU} modifiers are more selective versions of the -59 modifier so it would be incorrect to include both modifiers on the same line.

The combination of alternative specific modifiers with a general less specific modifier creates additional discrimination in both reporting and editing. As a default, at this time CMS will initially accept either a -59 modifier or a more selective - X{EPSU} modifier as correct coding, although the rapid migration of providers to the more selective modifiers is encouraged. However, these modifiers are valid modifiers even before national edits are in place, so contractors are not prohibited from requiring the use of selective modifiers in lieu of the general -59 modifier when necessitated by local program integrity and compliance needs.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
8863.1	Shared System Maintainers and individual contractors shall accept and process claims containing lines reporting HCPCS codes with the new modifiers, XE, XP, XS and XU.	X	X			X				IOCE
8863.2	Shared System Maintainers and individual contractors shall apply or bypass edits to lines containing a - X{EPSU} modifier in the same manner as the edits would apply to a line containing a -59 modifier. Any edit that currently evaluates modifiers, such as a multiple procedure edit, should react to a - X{EPSU} in the same manner that it does to a -59.	X	X			X	X		X	IOCE
8863.3	Shared System Maintainers and individual contractors shall recognize each of the - X{EPSU} modifiers as a separate modifier. The system shall allow multiple lines to be reported with the -59 and different -	X	X			X	X			

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
	X{EPSU} modifiers. However, the system shall aggregate lines with any of the - X{EPSU} modifiers with lines containing -59 modifiers whenever it aggregates lines containing the -59 modifier.									
8863.4	Shared System Maintainers and individual contractors shall retain the - X{EPSU} modifiers in systems records and claims histories as valid and active modifiers.	X	X							

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			DME MAC	CEDI
		A	B	HHH		
8863.5	MLN Article: A provider education article related to this instruction will be available at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/ shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web sites and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in the contractor's next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X	X			

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A
"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Valeria Allen, 410-786-7443 or valeria.allen@cms.hhs.gov

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR) or Contractor Manager, as applicable.

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):
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ATTACHMENTS: 0