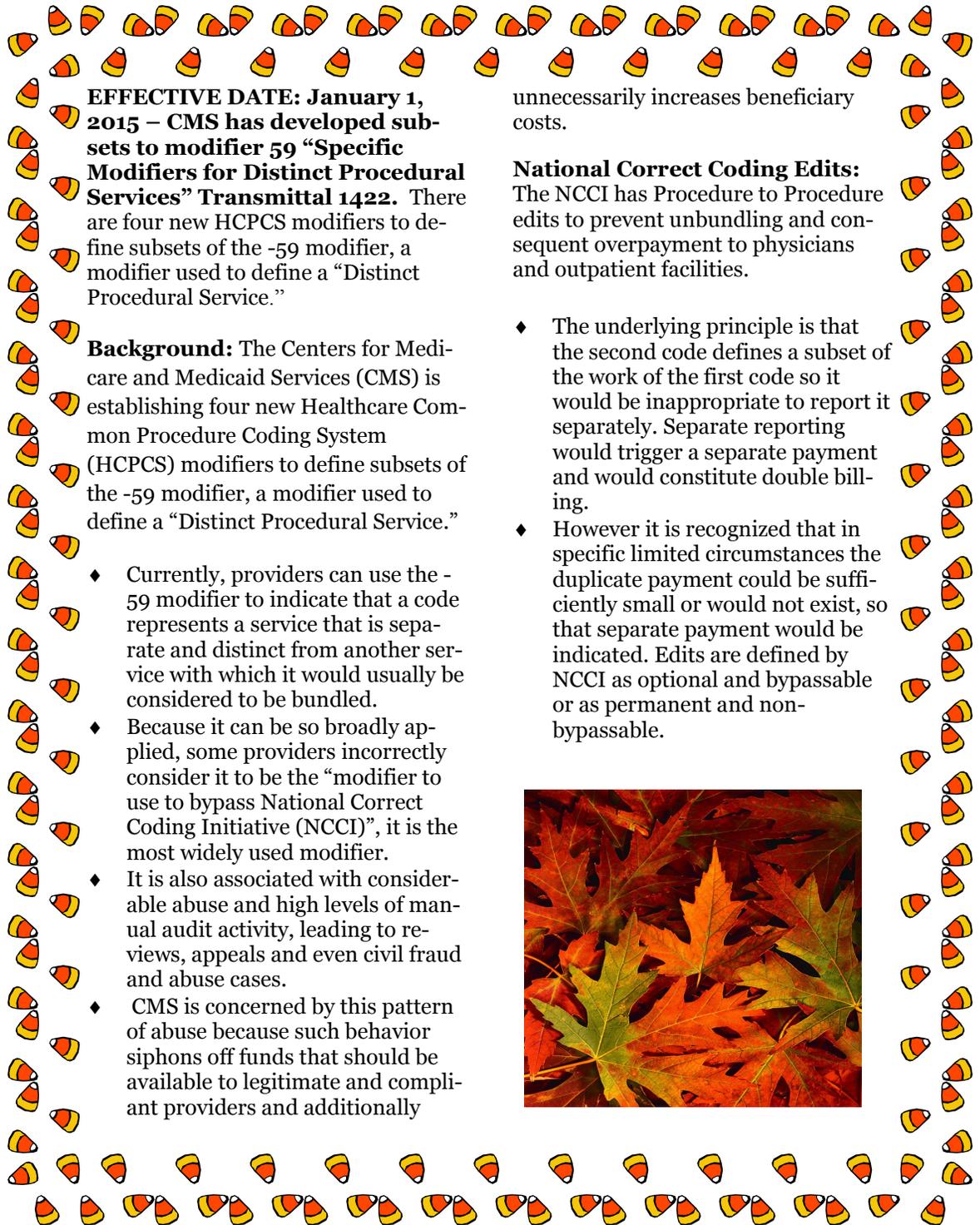




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MEDICAL PRACTICE CONSULTANTS, INC.



EFFECTIVE DATE: January 1, 2015 – CMS has developed subsets to modifier 59 “Specific Modifiers for Distinct Procedural Services” Transmittal 1422. There are four new HCPCS modifiers to define subsets of the -59 modifier, a modifier used to define a “Distinct Procedural Service.”

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.

National Correct Coding Edits: 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.



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◆ 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 OPSS, 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.

Primary Issue With Modifier 59 - Modifier 59 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.

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

1. **XE Separate Encounter**, A Service That Is Distinct Because It Occurred During A Separate Encounter
2. **XS Separate Structure**, A Service That Is Distinct Because It Was Performed On A Separate Organ/Structure
3. **XP Separate Practitioner**, A Service That Is Distinct Because It Was Performed By A Different Practitioner
4. **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.

The above is a paraphrase of the new CMS guidelines for modifier-59. For full detail go to: <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/R1422OTN.pdf>

"Autumn..The year's last, loveliest smile."

William Cullen Bryant

On July 30, 2014, Renee Brown of MPC along with Rick Mullins and Patricia Rogers of McAfee & Taft presented a healthcare industry webinar titled, "Critical Response — What you need to know when facing government healthcare investigations." Please visit the link <http://www.mcafeetaft.com/?t=40&an=31108&format=xml&p=5917>