CMS Manual System	**Department of Health & Human Services (DHHS)**
Pub 100-20 One-Time Notification	**Centers for Medicare & Medicaid Services (CMS)**
Transmittal 442	**Date: February 13, 2009**
	Change Request 6334

Subject: Modifier 79

I. SUMMARY OF CHANGES: Contractors Should Strengthen Program Safeguards To Prevent Improper Payment For Modifier 79.

New / Revised Material
Effective Date: March 16, 2009
Implementation Date: March 16, 2009

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	

III. FUNDING:
SECTION A: For Fiscal Intermediaries and Carriers:
No additional funding will be provided by CMS; Contractor activities are to be carried out within their operating budgets.

SECTION B: 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 obligated 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 should 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

**Unless otherwise specified, the effective date is the date of service.*

Attachment – One-Time Notification

Pub. 100-20	Transmittal: 442	Date: February 13, 2009	Change Request: 6334

SUBJECT: Modifier 79

Effective Date: March 16, 2009

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I. GENERAL INFORMATION

A. Background:

The Office of the Inspector General recently issued a Management Implication Report on the Misuses of the Modifier 79.

CMS's global surgical package (GSP) was established, in part, to ensure that all of the components of surgery (including pre and post-operative services) were bundled into one payment. The GSP's components, payment rules, billing procedures, edits, claims review, adjudication, and post-payment instructions can be found in the Medicare Claims Processing Manual, Pub. 100-04, Chapter 12, Section 40ff. CMS established Modifier 79 to simplify billing for services provided to a patient during the post-operative period that were unrelated to the original surgical procedure. CMS established pre-payment edits to detect services that were unbundled from the GSP; however, services billed with Modifier 79 were excluded from those pre-payment edits.

The OIG initiated an investigation after receiving allegations that a provider was billing for podiatry surgeries that were never performed. The investigation substantiated the allegations and revealed that the provider billed for surgeries for his patients every 5 to 6 days. To avoid detection, nearly every time the provider billed for surgery the Modifier 79 was used. The provider's abuse of the Modifier 79 enabled him to defraud the Medicare program of a significant amount of dollars between 1994 through 2000. The lack of an edit to identify the overuse of Modifier 79 allowed this fraud to occur undetected. Also, the lack of an edit to detect an extraordinarily high number of surgeries provided to each beneficiary also contributed to the loss of these funds.

B. Policy:

The GSP's components, payment rules, billing procedures, edits, claims review, adjudication, and post-payment instructions can be found in the Medicare Claims Processing Manual, Pub. 100-04, Chapter 12, Section 40ff. Contractors should use the information in the background above to follow the processes and procedures already in the Program Integrity Manual concerning data analysis, contractor strategies and the PCA process.

II. BUSINESS REQUIREMENTS TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				Other
							FISS	MCS	VMS	CWF	
6334.1	Contractors should review their Modifier 79 claims data.	X		X	X						

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				Other
							FISS	MCS	VMS	CWF	
6334.2	Contractors should take appropriate action consistent with their individual prioritized strategy (e.g., establish prepayment edit, develop pre- and postpayment reviews, educate supplier), if the data warrants any action.	X		X	X						

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				Other
							FISS	MCS	VMS	CWF	
	None.										

IV. SUPPORTING INFORMATION

Section A: For any recommendations and supporting information associated with listed requirements, use the box below: 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

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Post-Implementation Contact(s): Debbie Skinner, Debbie.skinner@cms.hhs.gov, 410-786-7480

VI. FUNDING

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