

**Special points of interest:**

- **Claim Procedures – Modifier 26**
- **Massachusetts Health Care Reform Section 125 Plan Requirement Extended to January 1, 2009**

**Claim Procedures – Modifier 26**

We recently became aware of several claim incidents in which Modifier 26 is being used inappropriately by providers. Modifier 26 is a billing modifier that is added to CPT codes for laboratory tests. It is used to denote the professional component of laboratory tests and results in an additional payment to pathologists beyond the standard technical charge for performance of the test by the lab.

**This modifier should only be used when the pathologist has been asked by the attending physician for a specific interpretation or medical judgment of the results.** The results are then reported in a written narrative that is included in the patient's medical record.

The definition of the appropriate use of Modifier 26 is established by Medicare's payment guidelines and is accepted as the standard industry practice. These guidelines and industry practices indicate that payers may deny benefits for the professional component of a service billed under Modifier 26 if the service was actually performed solely by technicians and computers.

In some locations, pathologists have been billing for this service inappropriately by adding the Modifier 26 to what are really automated tests. The providers often claim that this represents a fee for their oversight of the lab. We deny this charge and do not pay it. In some cases, however, the pathologists will balance bill the charge to the patient.

Please advise your Plan Participants that if they receive an EOB for a claim for lab charges with a denial code of +4 (inappropriate use of modifier) and the provider bills them for these services to contact BAS at the phone number shown on their ID Card.

We are notifying our PPO Networks to reiter-

ate the conditions under which Modifier 26 should be used. If additional action is required, we are prepared to notify the PPO Networks about providers who inappropriately bill for this professional fee because it is a violation of the providers contract with the PPO. If necessary, we will urge the networks to terminate providers who persist in this improper billing practice.

Please make a copy of the attached letter and distribute it to the employees covered under the Health Benefit Plan.

**Massachusetts Health Care Reform Section 125 Plan Requirement Extended to January 1, 2009**

**Source: SPBA Update July 2, 2007**  
**[www.spbatpa.org](http://www.spbatpa.org)**

Many of your clients located in Massachusetts have no doubt by now heard about the Massachusetts Health Care Reform Law that calls for employers to create a bridge between employers, individuals and insurers to "connect" individuals with quality, affordable health insurance. The "Connector" was created to identify Massachusetts health plans which offer coverage options that satisfy the requirements of the law. The plans vary by price and cost sharing, but all offer comprehensive medical coverage and are marketed under the name "Commonwealth Choice". Massachusetts passed legislation to ensure that all state residents have health insurance in 2006 and promises that every person in the Commonwealth will have health care access by 2009.

If your clients do not live in Massachusetts, they may wonder, "what does this have to do with me?" If the participant and the employer are located in Massachusetts, this requirement will apply to them. **Employers doing business in other states that employ individuals living in Massachusetts are not sub-**

**ject to any employer mandates under the Act unless they have a location or office in the state.**

Several outstanding questions about the Act have not been finalized and additional information is forthcoming on the Massachusetts website including whether the Act may be subject to an ERISA pre-emption challenge.

The Massachusetts regulation imposed certain requirements on employers; the fair-share contribution requirement, the free-rider surcharge/cafeteria plan requirement and the reporting requirements. The Fair-Share Contribution Requirement requires employers with 11 or more full-time employees to make a "fair and reasonable contribution" toward the cost of their employees' health coverage. Employers who do not meet this requirement will be required to pay an annual amount, up to \$295, for each of their full-time employees. The Free-Rider Surcharge/Cafeteria Plan Requirement is aimed at employers who do not provide health insurance to employees. It provides that Massachusetts employers with 11 or more full-time employees can avoid the free-rider surcharge if they adopt an Internal Revenue Code Section 125 cafeteria plan. The requirement requires that employers adopt and maintain a Section 125 Plan that offers eligible employees access to one or more health care coverage options. **The effective date for this rule is July 1, 2007. New changes in the rules will allow employees to avoid penalties for not having coverage. Additionally, under the new changes, if an employer does not offer such a plan and employees then receive free care in a hospital, the employer will receive a bill for the tab.**

Under the rules, the Section 125 Plan must satisfy both a Section 125 of the Internal Revenue Code and regulations established by the Commonwealth Health Care Connection. The reporting requirements, also effective on July 1, 2007, impose on employers with 11 or more employees a requirement to submit a Health Insurance Responsibility Disclosure (HIRD) form designed to help Massachusetts gather information to enforce the provisions of the Act. Employers are required to file the HIRD form by November 15 of each year with penalties for failure to file ranging from \$1000 to \$5000. HIRD forms and several other outstanding questions about the Act have not been finalized and additional information is forthcoming.

To meet the Connector's requirements, a plan must, at a minimum, provide access to one or more health coverage options on a pre-tax basis. Also, a copy of the Section 125 Plan document that covers participants working in Massachusetts must be filed with the Connector at a later date. It is not required to be filed with the IRS. For employers satisfying the Section 125 Plan requirement, it exempts them from the Free Rider Surcharge which is a penalty that may be assessed against employers that do not comply with the Section 125 Plan requirement.

**The original effective date for this Act was July 1, 2007 but has been extended to January 1, 2009 for**

**most state residents to be enrolled in health care plans that meet state design requirements, known as minimum creditable coverage criteria.**

You may want to get additional information on the Massachusetts Health Care Reform Law at Chapter 58 of the Acts of 2006. Additional information is available at the website [www.MAhealthconnector.org](http://www.MAhealthconnector.org) or [Connector@state.ma.us](mailto:Connector@state.ma.us)