



Special Investigative Report

By Wendy Vogenitz

December 2005

Denied claims, audits, bankruptcy

Misleading coding advice causes financial troubles, liabilities for unsuspecting anesthesia, pain offices

Beware of medical device companies selling spinal decompression tables with the promise that Medicare and private payers will reimburse the services.

At least 1,000 of the physical therapy tables are in operation nationwide. They're often sold with the assurance they can generate hundreds of thousands in annual revenue, in part from insurance reimbursement. But Medicare and most private insurers don't cover the therapy – a fact many coders and doctors don't know.

So practices bill for the services anyway, using codes meant for physical therapy and in some cases, surgery. The claims they wrongly submit for payment could cost the Medicare program and private insurance companies more than \$67 million this year, according to an exclusive Coder's Pink Sheet analysis.

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Private payers have launched probes into the billing practices of offices that own the tables. And if recent audits and carrier updates are any indication, Medicare is more interested in the tables today than it was a year ago. Anesthesia and pain practices that bill for the services run the risk of expensive Medicare audits, repayments, penalties, and even criminal prosecution, the Coder's Pink Sheet investigation found.

"Our whole focus here is not to go on witch hunts, but to identify people who are trying to beat the system," says Karl Krieger, a Montana Blue Cross Blue Shield investigator. The Montana BC/BS investigative unit recently issued a "fraud alert" for physicians who use any code besides S9090 (vertebral axial decompression) when billing therapy services with the VAX-D, DRS, DRX-9000 or Accu-Spina decompression tables. The insurer denies payment for this code.

In August, federal prosecutors in Georgia indicted two chiropractors on health care fraud charges after they allegedly used "inapplicable codes" to submit \$1 million in claims to BC/BS for patients who used the VAX-D machine.

The Centers for Medicare & Medicaid Services issued a coverage decision denying payment for vertebral axial decompression (VAX-D) in 1997, based on an informal discussion at a federal advisory committee meeting. But as new devices hit the market, CMS never updated its policy, leading to confusion over whether it applies to one trademarked device or a type of therapy. (See page 9 for ways to stay current on your Medicare carrier's stance on the national policy.)

Still, CMS officials say decompression therapy is not reimbursable. "It is absolutely not supposed to be billed," a CMS spokesperson says.

But three quarters of practices that answered a Coder's Pink Sheet survey say they were given advice on how to bill Medicare when they purchased the tables, which can cost as much as \$150,000.

The device companies all deny wrongdoing, saying they don't give out specific codes to bill (see related story on page 6).

The coding advice often comes from third-party contractors who say they are working on behalf of the vendors, the Coder's Pink Sheet found. Customers say

they receive faxes, letters and even phone calls about how to bill for the procedures – either before they buy the table or after they sign the sales contract.

In Florida, attorney Robert Rappel of Rappel & Rappel, Vero Beach, says he has been contacted by 10 doctors across the country who purchased machines after being told by vendors that Medicare would cover spinal decompression services. Much to their surprise, their claims are being rejected.

“They’re upset at the companies that are selling the machines,” says Rappel, who is an osteopathic physician as well as an attorney. “It’s fraudulent inducement,” he alleges. (Rappel is also defending a former independent sales agent of the DRX-9000 decompression table, who was sued by the manufacturer in October.)

Dubbed VAX-D, the therapy consists of a month’s worth of daily physical therapy sessions on a computer-controlled table. It treats back pain by alternating between cycles of tension and relaxation, which supposedly “decompress” damaged vertebral discs and release pressure on spinal nerves.

According to the CMS’s Coverage Issues Manual (35-97) and National Coverage Determinations Manual (160.16), “There is insufficient scientific data to support the benefits of this technique. Therefore, VAX-D is not covered by Medicare.”

Major private payers, including Aetna, Cigna, Oxford, Wellpoint and the BC/BS Assn., have also issued national policies calling the therapy “investigational” and not medically necessary, regardless of the name of the particular device used.

“For efficiency’s sake, we consider them similar,” explains Robert McDonough MD, senior medical director of Aetna’s Clinical Policy Unit, Hartford, Conn. “There may in fact be differences between the machines,” but it’s “the burden of manufacturers to prove those differences. We’re at a point where none of them have that evidence.”

The Coder’s Pink Sheet investigation, which was launched after a coding inquiry from a subscriber, found that some vendors are distributing information that appears to disregard those policies. The investigation included interviews with lawyers, doctors, insurers and vendors and a review of lawsuits, audits, internal company documents and correspondence, and government records obtained through the Freedom of Information Act. ▽

Anesthesiologist audited after billing Medicare

Vendors stand to profit when potential customers believe that Medicare and other payers reimburse for services using the decompression tables. Few physicians could afford to recoup the cost of investing in these machines without receiving insurance reimbursement.

Indiana anesthesiologist and pain management specialist Carolyn Kochert MD bought a \$125,000 machine in 2003 from Atlanta-based manufacturer North American Medical Corp. The company’s distributor, Adagen Medical International, told her in writing that she would be reimbursed by Medicare, according to a letter from Adagen in court files. The same Adagen employee who sent that letter also told her orally to bill Medicare for physical therapy codes 97110, 97112 and 97140, a complaint filed in court on Kochert’s behalf later alleged.

But after paying these claims in error, Medicare carrier AdminaStar Federal conducted an audit, concluded she had a “billing error rate of 100%” for the services, and demanded more than \$26,000 in repayments and penalties.

Kochert said North American Medical told her to appeal the audit, and referred her to Mark Sullivan, an attorney in Indianapolis.

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Sullivan later acknowledged that he could not produce documentation that Medicare was paying for the therapy in other states and suggested she get it from North American Medical. "I have been informed on numerous occasions by representatives of NAM that such reimbursements have been made," Sullivan wrote her, according to a letter from him in court files.

"I wasted that money," Kochert said in an interview.

She says she has spent about \$100,000 in repayments, additional penalties, appeals and legal fees. She feels misled by the vendors. "I specifically asked for coding information. They gave me that information. It turned out to be false. Obviously the company has to know there's an issue."

Since many of her practice's patients are elderly or out of work, Kochert adds that "I would not have bought it if I had to charge everyone cash." She is debating whether or not to sell the machine.

See *Anesthesiologist audited*, page 11





Look inside the spinal decompression industry

"The spinal and cervical decompression market has proven to be a very cut-throat industry," wrote James J. Gibson, Jr., president of DRX-9000 manufacturer Axiom Worldwide, in an affidavit sworn on Nov. 8 as part of a \$5 million breach of contract suit recently filed against a former employee.

In the affidavit, Gibson blamed the industry at large for using such "unscrupulous business practices" as encouraging salespeople to defect to rival vendors, where they disclose trade secrets.

In fact, major vendors of decompression tables are connected by executive insiders whose business relationships span a decade and often end in litigation.

The following table provides inside info about the major players in the spinal decompression industry – including corporate insiders, annual sales figures and treatment recommendations.

 <p>VAX-D</p>	<p>Manufacturer VAX-D Medical Technologies Oldsmar, Fla.</p> <p>Distributors DVAD USA</p>	<p>Insiders, past & present Dr. Allan Dyer <i>Pres., VAX-D</i> Steven Brown <i>CEO, DVAD</i> Dr. Nicholas Exarhos <i>Former dir., National Spine Institute (VAX-D distributor, 1994 -1996)</i></p>	<p>Business info.</p> <ul style="list-style-type: none"> • Approx. 200 machines currently in use in US • 2005 sales: \$1-2.5 million • Sales began in 1991 • Manufacturer has 11 employees • Sales price of machine: \$116,400 	<p>Treatment instructions</p> <ul style="list-style-type: none"> • 15-20 sessions per patient • Each session: 45 minutes on machine
 <p>DRS</p>	<p>Manufacturer Cluster Technology Corporation Sarasota, Fla.</p> <p>Distributors Professional Distribution Systems Universal Pain Technology</p>	<p>Insiders, past & present Carlos Becerra <i>Pres. and CEO, Cluster</i> James J. Gibson, Jr. <i>Former pres. and CEO, Cluster and former dir., Univ. Pain</i> Dr. Nicholas Exarhos <i>Former dir., Univ. Pain</i></p>	<p>Business info.</p> <ul style="list-style-type: none"> • Filed for Chapter 11 bankruptcy in Sept. 2000 and Chapter 7 bankruptcy in Feb. 2005 • Assets: \$4,001; liabilities: \$3.9 million • Sales price of machine: \$125,000 	<p>Treatment instructions</p> <ul style="list-style-type: none"> • 15-20 sessions per patient • Each session: 30-45 minutes on machine
 <p>Accu-Spina</p>	<p>Manufacturer North American Medical (NAM) Corporation Atlanta, Ga.</p> <p>Distributors Adagen Medical International Spina Systems International</p>	<p>Insiders Carlos Becerra <i>Pres., NAM</i> Gidgette Rubin <i>Vice Pres., NAM</i> Terence A. Harvey <i>Pres., Adagen</i> Donald E. Rhoades <i>Pres., Spina Systems</i></p>	<p>Business info.</p> <ul style="list-style-type: none"> • Approx. 300 machines currently in use in US • 2005 sales: \$10-20 million • Sales began in 2001 • Manufacturer has 25 employees • Sales price of machine: \$149,000 	<p>Treatment instructions</p> <ul style="list-style-type: none"> • 20 sessions per patient • Each session: 25 minutes on machine, plus thermal applications (1 hour total)
 <p>DRX-9000</p>	<p>Manufacturer Axiom Worldwide Tampa, Fla.</p> <p>Distributors Independently licensed distributors</p>	<p>Insiders James J. Gibson, Jr. <i>Pres., Axiom</i> Dr. Nicholas Exarhos <i>Vice Pres., Axiom</i></p>	<p>Business info.</p> <ul style="list-style-type: none"> • Approx. 500 machines currently in use in US • 2005 sales: \$2.5-5 million • Sales began in 2001 • Manufacturer has 20 employees • Sales price of machine: \$95,000 	<p>Treatment instructions</p> <ul style="list-style-type: none"> • 16 sessions per patient • Each session: 30-45 minutes on machine

Sources: Insider information compiled from business filings with the Fla. Division of Corporations and the Ga. Secretary of State Corporations Division, and court documents; business information compiled from interviews, literature from vendors, court documents and infoUSA US Business Directory; treatment instructions reproduced from manufacturers' literature and Web sites.

Prosecutors seek 150-year prison term for 2 chiropractors

Blues launch fraud probes into billing for VAX-D, related devices

When a pain management physician called BlueCross BlueShield of Florida this spring to ask about coverage for Accu-Spina/IDD Therapy, he chalked up the ensuing confrontation to a bad day in customer service.

“They were pretty nasty about it,” says the Coder’s Pink Sheet subscriber, a board-certified pain management physician whose central Florida practice owns an Accu-Spina table. “They said they won’t pay for it – that no insurance company should be paying for it.”

The physician asked not to be identified because he says he “is already in enough trouble with this machine” and fears audits may come next. BC/BS of Fla. and other insurers recently started to demand repayments, he says. “I don’t want to be out there in the public, because I could draw more destruction and devastation to my practice.”

His experience may provide an early glimpse into behind-the-scenes crackdowns on doctors who bill for decompression therapy.

Some Blues insurers are tapping special investigation units and even working with the FBI to investigate fraudulent billing of therapy provided with the VAX-D, Accu-Spina, DRS and other non-covered devices, the Coder’s Pink Sheet has learned.

In Georgia, FBI agents investigated two brothers who allegedly billed BC/BS of Georgia over \$1 million for non-covered VAX-D services between 2003 and 2005. The federal probe resulted in a 10-count indictment this August against chiropractors Christopher and Eric Topel, who face a combined 150 years in prison on allegations of health care fraud. Both defendants pleaded not guilty and currently await trial in the U.S. District Court for the Northern District of Georgia.

Don't bill decompression therapy except for denial, fraud unit warns


20 THE CAPSULE NEWS

FRAUD

NEWS AND REMINDERS
Karl Krieger, CFE, AHFI

PHARMACEUTICAL ABUSE
Prescription drugs account for 25 to 30% of all drug abuse in the United States. The BCBSMT Special Investigations

FIRST QUARTER 2005




BlueCross BlueShield of Montana

investigational for treatment of Arteriosclerosis, Multiple Sclerosis, Arthritis, Hypoglycemia, and Diabetes. Treatment of these conditions should be billed under procedure code M0300. Review Medical Policy at www.bluecrossmontana.com for more information.

- VAX-D, IDD, or DRS is identified by a number of names, including Orthopedic Decompression Therapy, ...

Karl Krieger currently serves as a BCBSMT Special Investigator, is a Certified Fraud Examiner, and an Accredited Health Care Fraud Investigator. Karl has been employed by BCBSMT for over 15 years, has received the DPHHS Inspector General's Integrity Award for his work in health care fraud, and currently serves as Vice-President on the Board of Directors for the Big Sky Chapter of the Association of Certified Fraud Examiners. Karl can be reached at 1-800-447-7828, extension 8211, or by email at kkrieger@bcbsmt.com. For more information, refer to the BCBSMT anti-fraud website at www.stopfraud.bcbsmt.com.

VAX-D, IDD, or DRS is identified by a number of names, including Orthopedic Decompression Therapy, but is considered *investigational* regardless of what it is called or who manufactures the machine used to render the service. Treatment using these devices should be billed under the procedure code S9090. Review Medical Policy at www.bluecrossmontana.com for more information.



1-800-621-0992
stopfraud.bcbsmt.com

IT AFFECTS ALL OF US!

The SIU is currently monitoring the following activities for fraudulent billing:

- Chelation Therapy is considered

Please contact me if you have any questions or suspect someone may be committing fraud.

Although prosecutors decline to comment, they offered a brief look at the case when the indictment was unsealed on Aug. 18. In announcing the indictment, the prosecutors alleged that the Topels “knew that Blue Cross and other insurers did not cover VAX-D procedures” and then instructed their employees “to conceal from the insurers that the procedures at issue were based on the use of VAX-D, and to alter documents in the patient files to further conceal the use of VAX-D.” The Topels also allegedly “instructed their employees to submit bills to Blue Cross for the VAX-D procedures, using inapplicable codes pertaining to different procedures, including surgical procedures, that the Topels believed would be covered.”

The U.S. Attorney’s Office in Atlanta offers “a giant no comment” as to how the investigation originated. Defense attorneys likewise declined to discuss the case.

But developments elsewhere indicate that some Blues are beginning to devote significant investigative resources to monitoring therapeutic services provided with the VAX-D table and other, similar devices.

BC/BS of Illinois in April, for instance, recently told a Skokie physician that “listing the incorrect code” for VAX-D “can result in an audit of your claims by the Special Investigations Department,” according to a letter to the doctor. The letter stressed that the procedure would not be covered, but if a patient insisted that the physician bill anyway, he should “*be very careful to use only the appropriate procedure code, HCPCS Code S9090.*”

And BC/BS of Montana warned physicians in March that its Special Investigations Unit would monitor all forms of decompression therapy for fraudulent billing.

“If it’s an educational issue, we’ll deal with it that way. If it’s an intentional issue, we’d have to deal with it differently,” says Karl Krieger, a BC/BS Montana special investigator and certified fraud examiner.

The unit is beginning to look at providers whose practices advertise the therapy online. “We decided to target the billing patterns of those individuals” and are “in the process of doing that now,” according to Krieger. ▽

Payout on decompression claims may top \$67 million in 2005

Claims for decompression services, which are considered experimental and non-payable by Medicare and most private payers, could cost taxpayers and insurers more than \$67 million a year, according to data collected last month in an exclusive *Anesthesia & Pain Coder's Pink Sheet* survey. The Coder’s Pink Sheet is the first source to project the magnitude of these erroneously paid claims.

We asked subscribers who currently own decompression tables, or who have owned them in the past, to tell us how much yearly revenue their tables generate. We also asked how much of that revenue comes from Medicare or private payers. On average, each table generates \$111,875 per year, of which 60% – or \$67,125 – comes from claims paid by Medicare and private insurers. Multiply that by the estimated 1,000 machines currently in use, and paid insurance claims could add up to \$67.1 million a year.

CMS officials were unable to provide national paid claims data for the Medicare program. And it’s hard for Medicare’s carriers to estimate local costs because so many codes (physical medicine codes 97001-97755, as well as surgical decompression code 64722) are used to report the services, explains Bruce Quinn MD, the Calif. medical director of National Heritage Insurance Co., the Part B Medicare carrier for Calif., Maine, Mass., N.H. and Vt. Private insurance companies face the same problem, says investigator Karl Krieger of BC/BS Montana.

The Coder’s Pink Sheet distributed its survey to subscribers via e-mail in mid-November, guaranteeing anonymity. Of the respondents, 25% currently own VAX-D tables, 33% own Accu-Spina tables and 8% own DRX-9000 tables.

Vendors say decompression therapy still offers a cost-effective alternative to surgery. Treating patients with VAX-D saves “an awful lot of money on back surgeries, from an insurance company’s perspective,” says Steven Brown, CEO of distributor DVAD USA in Carlsbad, Calif. A pain practice administrator answering the Coder’s Pink Sheet survey agrees, saying, “It does not make sense to turn down this inexpensive procedure and replace it with an expensive surgery.”

But the potential costs of the therapy are enormous. As much as \$825 million may be at stake in annual payments for the therapy, according to proforma revenue figures the device companies provide to customers:

VAX-D: \$240 million

(\$1.2 million/table x 200 tables)

Per-machine revenue figures come from a “Back Clinic Proforma” prepared by DVAD USA. The company **assumes that insurers pay the bill.** According to the proforma, “National average reimbursement for Treatment: Physical Medicine, 97530, \$160 to \$250 + per treatment, \$185 assumed for this study,” times 24 treatments per patient, times 20 patients per month, plus additional charges of \$575 per patient for consults, yields the yearly figures.

DRX-9000: \$210 million

(\$420,000/table x 500 tables)

Per-machine revenue figures are from an ad faxed by manufacturer Axiom Worldwide to a potential customer this spring. The ad claimed average monthly revenue per table of \$35,000. It did not specify the source of income.

Accu-Spina: \$375 million

(\$1.25 million/table x 300 tables)

Per-machine revenue figures **count on insurance reimbursement.** Manufacturer North American Medical Corp. prepared a “Return on Investment Overview” in Nov. 2003. The document says annual billable revenue of \$1.248 million per table is “based on an average maximum reimbursable of \$300” per session. Actual reimbursement may vary by state and method of billing.” The document multiplies that amount by a rate of 2 sessions an hour, 16 sessions a day and 4,160 sessions a year, to get the yearly total.

Those revenue projections easily outstrip combined costs for all pain management services provided to Medicare patients in a single year. Last year, all claims that pain physicians submitted to Medicare totaled \$678 million, of which Medicare reimbursed only \$152 million, according to CMS claims utilization data for 2004. ▽

One vendor urges feds to swoop in, but all deny wrongdoing

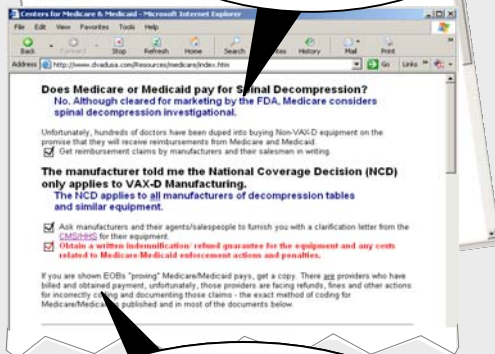
Three major device companies sell the spinal decompression tables. Each denies giving coding, billing or reimbursement advice to customers. But one of the companies, in a surprise move, recently warned customers that its competitors are breaking the law by telling lies about insurance reimbursement which result in fraudulent Medicare claims. Here's what each of the three companies has to say.

Don't get duped into billing Medicare, distributor warns doctors

Though DVAD USA's home page posted a link to its public warnings in mid-December, the link's small font (several sizes smaller than others on the home page) and generic title ("Physician's Resources") means that visitors to the site may have trouble finding the page. The direct address is: www.dvadusa.com/Resources/medicare/index.htm.



Does Medicare or Medicaid pay for Spinal Decompression?
No.



...providers are facing refunds, fines and other actions for incorrectly coding and documenting those claims...

DVAD USA – distributor, VAX-D table

“Hundreds of doctors have been duped into buying non-VAX-D equipment on the promise that they will receive reimbursements from Medicare and Medicaid,” warns DVAD USA, a distributor for VAX-D Medical Technologies based in Carlsbad, Calif., in a new page prepared for its Web site late last month.

“The decompression industry is plagued with overly aggressive sales tactics, false representations, ‘replacement’ and other kickback schemes, and misleading or fraudulent reimbursement advice,” the page reads.

“It’s incredibly predatory,” explains Steven Brown, CEO of DVAD USA. “None of the government agencies are coming to swoop in on the bogus advertising. This is a group the feds should consider going after.”

Brown created the page after an interview with the Coder’s Pink Sheet about his own advice to customers. In that interview, Brown said that he told customers that “most carriers are paying” for services with the VAX-D table. He said Medicare was the big exception.

“Take a hard look at what’s going on in your particular area,” he said. “It does get paid for in many, many jurisdictions by many, many insurance companies.”

However, when asked by the Coder’s Pink Sheet to specify those insurance companies, Brown documented only two: Alaska Medicaid and South Dakota workers’ compensation.

Brown says he decided to go public with his warnings because he felt it was hurting his business. “I was sick of getting my butt kicked by salesmen lying, saying their

machines are reimbursable by Medicare. Out of frustration, I stuck my neck on the chopping block” by drawing attention to sales tactics in the industry, he says.

Manufacturer VAX-D Medical Technologies, Oldsmar, Fla., also maintains a “very informal” list tracking insurance reimbursement, which it supplies to providers upon request, Brown adds. But Brown says he can’t share this list with the Coder’s Pink Sheet because “we’re not supposed to be in the business of telling guys what to bill. You’re responsible for your own coding, as always.”

North American Medical – manufacturer, Accu-Spina table

“Why would you think we know about reimbursement?” asks Gidgette Rubin, vice president of corporate affairs at manufacturer North American Medical Corp., Atlanta, Ga. “We make the device. We don’t deal with reimbursement, nor do we make billing recommendations.”

But a December 2003 letter obtained by the Coder’s Pink Sheet shows that Rubin assured physicians that the “North American Medical team is working aggressively behind the scenes to establish billing and reimbursement levels for all IDD Therapy providers.” IDD therapy is the company’s name for services provided with its Accu-Spina decompression table.


“We have committed direct budget allocations to pay billing consultant firms,” Rubin wrote.

Rubin referred the Coder’s Pink Sheet to Karen Ault, a consultant it hired to give billing advice to customers. “Yes, North American Medical Corporation gives coding and billing advice,” Ault says. “They give you choices of codes that will be utilized.” She recommended that practices report codes 97010, 97112 and 97530 x 2, adding that her clinic, Arkansas Pain Medicine in Little Rock, hasn’t had “any difficulty getting paid by Medicare and other payers, using these codes.”

Ault says that recommending codes is a common practice in the industry, adding, “It’s up to the physician or coder to decide what code is actually best.”

Manufacturer works “behind the scenes” to change billing levels

Although manufacturer North American Medical tells the Coder’s Pink Sheet it is not involved in insurance billing or reimbursement, a letter sent to customers in late 2003 says the company is working to improve billing and reimbursement levels for IDD therapy providers.



December 3, 2003

Dear Dr. Carolyn Kochev,

...the North American Medical team is working aggressively behind the scenes to establish stronger billing and reimbursement levels for all IDD Therapy® providers. We have committed direct budget allocations to pay billing consultant firms, we are in the process of retaining lobby professionals with Medicare experience...


As you know, Medicare has recently implemented several new billing restrictions and reimbursement initiatives including some annual updates to the Medicare reimbursement schedule. While these new billing restrictions may impact your current reimbursement, the North American Medical team is working aggressively behind the scenes to establish stronger billing and reimbursement levels for all IDD Therapy® providers. We have committed direct budget allocations to pay billing consultant firms, we are in the process of retaining lobby professionals with Medicare experience and we have organized various studies aimed at further substantiating the argument for interventional IDD treatment as a cost effective alternative to surgery. This is not a short battle. We will be waging this campaign on many battlefronts, including workers compensation in difficult states, as well as with regional health insurance carriers.

Please help us as we work to help increase your practice revenues by taking a minute of your time to answer the following survey questions. Your answers will be used to add to the arsenal of information that is critical to raising the awareness and understanding of this valuable therapy at the insurance provider level.

Thank you for your participation. Please check our website in the clinician secured section for continual updates on these initiatives.

Sincerely,

Gidgette Rubin
Vice President Corporate Affairs



Axiom Worldwide – manufacturer, DRX-9000 table

Axiom Worldwide of Tampa, Fla., which manufactures the DRX-9000 decompression table, says it does not give coding advice to doctors. “There are all kinds of codes out there, but Axiom right now tells you just to charge cash,” says Axiom’s vice president Dr. Nicholas Exarhos.

However, Axiom pays a third party to answer its customers’ coding and insurance questions over the phone. The “Doctor on Call” service, provided by Peer Review Network (PRN), River Forest, Ill., is a toll-free number where callers who identify themselves as customers of a participating manufacturer can get answers to their coding questions. Axiom pays for 10 hours of the service a month, according to PRN owner Anne Gose.

The same third party also published an article on coding and reimbursement for the DRX-9000 in the April-May 2005 *PRN Newsletter*, which Axiom posts on its Web site. The article noted some health care payers issue “unreasonable” denials and present “reimbursement obstacles to providers” because they misunderstand the therapy. It therefore suggested that coders report code 97799 (unlisted physical medicine/rehabilitation), with supporting documentation, at a recommended allowable fee of \$284.

PRN says that its financial relationship with Axiom had no bearing on the article. “When we write about a technology, it’s because we think it’s worth writing about. People don’t pay us to write newsletters,” says Gose.

Promotional literature on the DRX-9000 says Axiom’s decompression table is “covered by most insurance companies including Medicare,” according to statements by a former third-party sales contractor, Gregory Westfall, posted on a marketing Web site earlier this year.

Westfall was not an employee and “never had the authority to speak on behalf of Axiom,” Axiom’s attorney L. Joseph Shaheen, Gardner Wilkes Shaheen, Tampa, Fla., told the Coder’s Pink Sheet in a letter. But Westfall’s attorney, Robert Rappel of Rappel & Rappel, Vero Beach, Fla., says any coding advice his client ever gave came directly from Axiom. Axiom filed a \$5 million breach-of-contract lawsuit against Westfall in October, alleging that he disclosed trade secrets to an unnamed rival. ▽

“Don’t tell” patients about insurance coverage, script instructs

Here’s how a telephone script faxed to doctors suggests that office staffs deal with patients who ask if insurance pays for decompression therapy:

“Q: Does my insurance cover this?”

A: Most insurance companies will cover the majority of the treatment. Whatever insurance doesn’t cover, the Doctor will work with you on paying the balance. Come in for your free evaluation and we’ll be able to determine the cost and handle your financial arrangements.”

The advice comes from an undated 6-page telephone script called, “Enrolling Patients – Overcoming Objections,” provided to pain practices by distributor Spina Systems International, Aventura, Fla., with the purchase of an Accu-Spina machine. It was given to the Coder’s Pink Sheet by one of the vendor’s current customers, who received it from the company by fax in May. It’s part of a “Patient Generation Program” that purports to bring each practice “an extra \$50,000-\$60,000 each and every month.”

“IF THE PATIENT DOESN’T ASK, DON’T TELL,” it warns. “Only answer their questions based on the above responses. Don’t provide additional information or try to explain things in your own words.”

The document claims to outline “the best responses for the most common objections and questions” patient have about the therapy. “Initially read the answers until you have the script mentally programmed to respond spontaneously,” Spina Systems instructs.

The president of Spina Systems International, Donald E. Rhoades, did not return phone calls seeking his comment.

In December 2000, the Securities & Exchange Commission alleged that one of Rhoades’ companies was a Miami Beach telemarketing “boiler room” with only minimal legitimate business activities. The company, Web Hosting Headquarters Partnership, allegedly used “hard-sell tactics” to defraud 132 investors, many of them doctors, out of at least \$2.5 million, SEC records state.

Rhoades neither admitted nor denied the allegations. He settled the complaint in April 2003 by paying the SEC \$1.05 million in fines and penalties. ▽

Medicare policy leads to confusion among coders, insurance carriers

Although it has had national implications for nearly a decade, Medicare's policy to not cover VAX-D wasn't even on the agenda when a federal advisory committee first raised the issue in the summer of 1996.

The final decision, which came eight months later, carried so little accompanying guidance that carriers to this day are struggling to decipher its scope and intent. In two short sentences, the national policy states: "There is insufficient scientific data to support the benefits of this technique. Therefore, VAX-D is not covered by Medicare."

Insurers say the policy could be interpreted two ways: Medicare won't pay for a specific machine, the one known as VAX-D, or it won't pay for all therapy associated with similar machines. As a result of the confusion, carriers have written their own local coverage determinations, decided policy on a case-by-case basis, or issued articles clarifying the national guidelines, the Coder's Pink Sheet found.

Stay current on Medicare's VAX-D policy

Local carriers are conducting their own reviews of Medicare's 1997 policy on VAX-D. To date, they all uphold CMS's decision not to cover the services.

- **Tip: Check CMS's online Medicare Coverage Database to see if your carrier has updated the 1997 policy.** Set your Web browser to this address: www.cms.hhs.gov/mcd/search.asp. Then search under "local coverage."
- **Another tip: Regularly scan bulletins and newsletters for updates.** This year, at least two carriers (Palmetto and WPS) issued special advisories that you cannot access through CMS's Medicare Coverage Database. You can access them online, however, by searching for "VAX-D" from the carrier's homepage.
- **A final tip: Call the medical director of your state's carrier, if you can't find a policy in writing.** At least one carrier (AdminaStar) audits physicians based on an unpublished interpretation of CMS's VAX-D policy. Find your carrier's medical director at www.cms.hhs.gov/mcd/index_contacts.asp?orgtype=A.

But many pain management physicians and coders are still confused. They may never have heard of VAX-D and, even then, may have little reason to suspect that a Medicare policy on "vertebral axial decompression" would relate to machines that provide therapy services with such different names as "decompression, reduction and stabilization" or "intervertebral differential dynamics."

National Heritage Insurance Company, the Part B Medicare carrier for Calif., noted the different interpretations of the VAX-D policy in a Nov. 24 article, but then said the company would not cover any machine – including the Accu-Spina, DRS or DRX-9000 – that either provides decompression therapy or tells the Food & Drug Admin. that its table is substantially similar to the VAX-D. (NHIC also carries Part B Medicare for Maine, Mass., N.H. and Vt., but the article applies only to Calif.)

"We had anomalous providers who were billing high levels of certain codes for 'spinal axial decompression,' and we pointed out Medicare's NCD to them" before publishing

the article, says Bruce Quinn MD, the carrier's medical director in Calif. "We take the approach that this is a type of therapy, not a device or brand," Quinn says. "It wouldn't make sense to apply the decision to exactly one model, or one machine, at one point in time. Otherwise, a company could come up with the 'VAX-D 2,' or the 'VAX-E,' and the coverage decision wouldn't apply. That would be just silly."

The Accu-Spina table's manufacturer changed the name of its prescribed treatment regimen from "internal disk *decompression*" therapy to "intervertebral differential *dynamics*" therapy earlier this year.

"The name changed, but not the protocol. They're really the same thing anyway," says Norman Shealy, MD, the chair of North American Medical's Scientific Advisory Board.

CMS officials say that all forms of decompression therapy are not reimbursable. "It is absolutely not

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supposed to be billed,” a CMS spokesperson tells the Coder’s Pink Sheet. If you do bill, you won’t get paid. But if health care providers want to file claims for denial anyway, they must do three things, CMS says:

1. **Use S9090**, the HCPCS code for “vertebral axial decompression;”
2. **Obtain an advance beneficiary notice (ABN) waiver** from the Medicare beneficiary indicating that the procedure isn’t covered; and
3. **If the patient refuses to sign the waiver, attach a GZ modifier.** This modifier indicates you expect Medicare to deny the service as “not medically necessary.”

When a patient signs the ABN waiver, CMS instructs you to attach a GA modifier to the code. This modifier also indicates you expect a denial.

Confusion originated with impromptu CMS decision

The dearth of formal guidance may stem from the informal circumstances surrounding the agency’s original decision. When the Technology Advisory Committee of the Health Care Financing Administration (now CMS) met in Baltimore Aug. 6 and Aug. 7, 1996 to make national coverage recommendations, vertebral axial decompression was even not on the agenda, according to minutes from the meeting.

Nonetheless, committee members began discussing VAX-D as an “informational item.” Like the other informational item discussed at the meeting – an experimental Brazilian heart surgery that committee members had recently seen featured in the *New York Times* and on the television show “20/20” – that casual conversation resulted in national policy.

“Although not on the agenda, the subject of Vertebral Axial Decompression was mentioned. TAC members were convinced that the absence of scientific data rendered this item not covered by Medicare. They asked that a CIM [Coverage Issues Manual] instruction be prepared to emphasize the point that it should not be covered to assist carriers in defending their noncoverage policy,” the minutes state.

A Freedom of Information request to CMS for “all documents or records the agency generated or used to arrive at its 1996 coverage determination” yielded only those minutes.

Minutes from the committee’s next meeting on Nov. 6 and Nov. 7, 1996 did not mention VAX-D except to note policy instructions on both it and the Brazilian heart surgery were already “in the early developmental stage as a result of discussions and recommendations” from the previous meeting. The coverage decision went into effect in April 1997. ▽

Practices share codes recommended by vendor reps, lessons learned, in survey

Seventy-five percent of practices that answered an exclusive survey say that vendor representatives gave them coding information when they leased or purchased a decompression table. The majority of practices say vendor reps also informed them that all major insurers, including Medicare, pay for services performed with the tables.

Those who say they received codes include purchasers of every major brand of decompression table: VAX-D, Accu-Spina, DRX-9000 and DRS.

Of the practices that received codes, many say vendor representatives told them that Medicare, BC/BS and all commercial carriers reimburse for decompression therapy. One was told by a VAX-D vendor rep that only BC/BS

Is Medicare’s VAX-D policy outdated?

While the Medicare program’s coverage decision was valid in 1997, it deserves reconsideration today, the VAX-D table’s inventor tells the Coder’s Pink Sheet.

“The decision back then was based on a lack of published evidence, and that was valid. But the only lack of published evidence today is on other equipment,” says Allan Dyer MD, former deputy health minister in Ontario, Canada and president of VAX-D Medical Technologies, Oldsmar, Fla.

“I don’t think Medicare interpreted the scientific literature right,” says Karen Ault, consultant for manufacturer North American Medical. “Nobody bothered to follow up, and nobody bothered to read the studies, and Medicare hasn’t looked at new studies since then.”

Parties who believe there has been a substantial advance in the published evidence may apply for a review of the CMS decision, says Bruce Quinn MD, medical director of NHIC in Calif.

pays for the services. Another was instructed by a DRX-9000 vendor rep that it should try to have patients pay \$3,500 up front before receiving treatment.

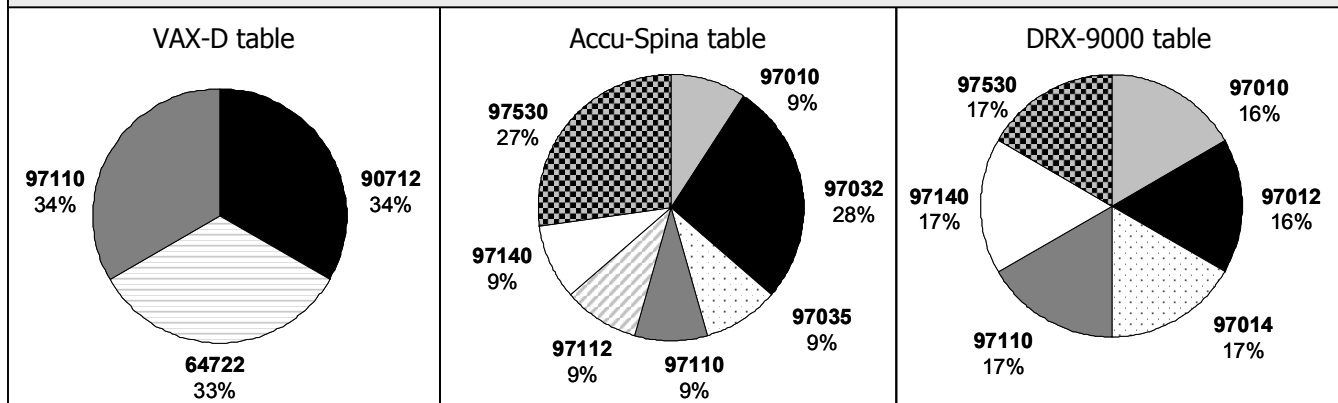
Practices also used the survey to share lessons drawn from their experiences with the machines:

- **Don't bill insurance.** The billing administrator for a pain management practice advises, "Either get cash up front and stay away from insurance, or do not do this procedure!!" Though the office received coding and reimbursement information from its DRX-9000 vendor through a salesperson, fax and brochure, insurers have rejected the practice's claims for the services. Appeals have all failed, the billing administrator says.
- **Don't assume you're entitled to reimbursement just because an insurer pays your claims.** "I choose to remember the words of my first CMS auditor: Just because you got paid does not mean it was billed correctly!" relates one pain management billing manager in the Northeast, whose office used to own both an Accu-Spina table and a DRX-9000 table. The practice got rid of the machines after two of its largest insurers clarified that the services are not covered under their medical policies.
- **Don't expect vendors' claims to jibe with reality.** Take it from a Midwest billing service that specializes in anesthesia and pain management claims. The company ended up losing a client "because we could not produce the reimbursement as stated on the vendor's documents given to the practice when the equipment was purchased," says one of its billers. The biller did not complete the survey because the billing company did not own one of the tables, but shared its experience over e-mail in response to the survey invite.
- **Don't count on patients to foot the bill.** Their "resources are limited and they expect their insurance to cover" decompression therapy, explains the administrator of a pain management clinic that owns a VAX-D machine. While the administrator says results at the clinic are "tremendous," since "carriers will not pay, this limits many patients' ability to receive care." ▽

Practices say vendor reps recommend a wide variety of codes – including one for surgery

Physical therapy with computer-controlled decompression tables does not have a dedicated CPT code. Vendors' representatives therefore recommend that practices use a wide variety of procedure codes to report the services. The charts below show those recommended to practices responding to the Coder's Pink Sheet survey. Most of these codes represent physical therapy procedures (97001-97755). (The DRS table is not shown because, while recalling that a DRS salesperson provided codes over the phone and in a brochure, the respondent does "not recall" the specific codes suggested.)

However, one pain management practice that owns a VAX-D table relates that a vendor said in writing to report surgical code 64722 (incisional decompression of a nerve root). Practices should never follow this recommendation. Therapy sessions on the tables could not be considered surgical, according to a Nov. 2004 article on VAX-D therapy in *CPT Assistant*, the official coding organ of the American Medical Assn.



Anesthesiologist audited, continued from page 3

Payers ultimately place the legal responsibility for proper code submission with physicians, says her attorney Miles Zaremski of Kamensky Rubinstein Hochman & Delott in Lincolnwood, Ill.

In June, Zaremski filed a fraudulent inducement lawsuit against North American Medical and Adagen Medical International on Kochert's behalf in federal court in Indiana. The lawsuit alleged that the companies were

“reckless” when a sales agent assured Kochert that the therapy is a procedure “reimbursed by Medicare and private insurance.”

The case was dismissed in October, based on a clause in the contract that requires customers to settle contract-related disputes through mediation. Zaremski is appealing the dismissal.

When a manufacturer or its sales agents tell doctors to bill an insurer like Medicare for non-covered decompression services, “We can’t say to Medicare – ‘Look at the manufacturer’ – because the manufacturer doesn’t participate in Medicare,” says Zaremski.

Adagen, the distributor whose employees gave Dr. Kochert coding advice in writing, referred all questions from a reporter to North American Medical, the manufacturer. North American Medical says it does not give that kind of advice.

Given the price of the tables, claims denied by Medicare and other payers may contribute to a practitioner’s financial ruin – even without an audit. Consider what happened to chiropractor Richard Housewright, formerly of Lubbock, Texas. In 1996, less than a year after purchasing a VAX-D table, the chiropractor defaulted on his lease for the machine. He couldn’t afford the \$2,300 monthly payments, he said in a sworn statement, because Medicare and private payers denied every claim he submitted under codes recommended by the machine’s distributor and sales agents.

When the leasing company sued him for default, Housewright countered that, by being promised insurance reimbursement that never materialized, he was fraudulently induced into purchasing the machine.

The judge agreed that there were “genuine questions of material fact as to whether there was fraud in the inducement to enter the lease.” He nonetheless ruled against the chiropractor for \$171,697.

Housewright and his wife declared bankruptcy in 2001, and completed the process last year. Besides mortgages on two properties, the largest single debt the couple listed was for the VAX-D table, still owed in full to the leasing company, according to documents filed in federal bankruptcy court in Lubbock, Texas. After practicing in Texas since 1988, Housewright left his clinic in late 2004 and moved to Colorado to start a new practice. He did not return phone calls from the Coder’s Pink Sheet.

Just a few weeks after her case against the company was dismissed, Dr. Kochert was shocked to receive a document faxed to her office regarding the Accu-Spina table. Incredulous, she called and reached a different sales rep. She asked the salesperson to tell her how to bill for the services and which insurers pay.

“I kind of acted like I didn’t know.” The sales rep told her to bill Medicare for the same codes she was audited for last year, Kochert says. “I asked four times if Medicare paid. They said yes.”

Before she bought the table, she says a vendor also gave her the names of two other physicians who had been reimbursed by Medicare. She says she found out recently that each of those doctors has since been audited and asked to repay Medicare the money. ▽

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