

# EXHIBIT 2



**Blue Cross  
Blue Shield  
Of Michigan**

600 E. Lafayette Blvd.  
Detroit, Michigan 48226-2998

October 6, 2020

Bond Pharmacy Inc. d/b/a Advanced Infusion Solutions (AIS)  
c/o John Finley  
18451 Dallas Parkway, Suite 150  
Dallas, TX 75287  
[jfinley@aiscaregroup.com](mailto:jfinley@aiscaregroup.com)

**VIA FIRST CLASS MAIL & EMAIL**

RE: AIS's Improper Use of the S9238 Per Diem Billing Code

Dear Mr. Finley:

I am an attorney for Blue Cross Blue Shield of Michigan ("BCBSM"). I write regarding improper billing practices by Bond Pharmacy Inc. d/b/a Advanced Infusion Solutions (AIS), specifically, AIS's use of the S9238 per diem billing code from April 1, 2018 to present.

#### The Agreement

AIS and BCBSM are parties to a Home Infusion Therapy (HIT) Facility Participation Agreement dated April 1, 2018. The HIT Facility Participation Agreement incorporates, among other things, BCBSM's Provider Manual and Medical Policy (collectively, "Agreement").

Under the Agreement, for HIT Covered Services, BCBSM pays for three components: (i) Pharmaceuticals, (ii) nursing visits, and (iii) durable medical equipment, medical supplies, and solutions. The third component is a catch-all and includes all services *not* included in the pharmaceutical or nursing components for each date of service. It is the only category that BCBSM pays at a bundled per diem rate.

Per the Medical Policy, the billing code at issue here – "S9238 – HIT, pain mgt., implanted pump, per diem" – is used for "[h]ome infusion therapy, implanted pump pain management infusion; administrative services, professional pharmacy services, care coordination, and all necessary supplies and equipment (drugs and nursing visits coded separately), per diem."

Under the HIT chapter of the Provider Manual, "[t]o qualify for payment of an S code, in addition to dispensing medication you must provide ongoing services, such as: Medical supervision, Nursing, Patient or caregiver training, [and] Patient support."

The HIT chapter of the Provider Manual also outlines billing requirements. Among other things, it provides that before billing HIT services, you must obtain a signed and dated CMN (certificate of medical necessity)

“for each therapy category provided.”<sup>1</sup> In addition, you must update the physician about the patient’s condition at least once every 30 days, or more often if necessary, and documentation of the update must be in the clinical record.

The HIT chapter of the Provider Manual also states that when billing for HIT services, you must “[e]nter the total number of days the patient infused for the therapy” because “S codes are quantity-processed or quantity-paid,” meaning “[w]e pay them as many times as you indicate they were performed, subject to limitations imposed by the code explanation.”

Together, these provisions limit the use of the S9238 per diem billing code to the administration and management of pain medication, including necessary supplies and equipment other than pharmaceuticals. Dispensing medication and the provision of ongoing services are essential components, as is a proper CMN.

#### AIS’s Improper Use of the S9238 Per Diem Billing Code

In 2019, BCBSM’s Corporate and Financial Investigations (CFI) unit began receiving complaints about AIS’s use of the S9238 per diem billing code and initiated an investigation. BCBSM learned that AIS, in Mississippi, supplies the pharmaceutical component to the overseeing provider in Michigan, who administers the drug and manages the patient’s care. Nevertheless, AIS was charging BCBSM for the S9238 per diem billing code in addition to a J- billing code for the pharmaceutical component.

On December 20, 2019, BCBSM placed AIS on Pre-payment Utilization Review (PPUR). For every claim submitted, before BCBSM would issue payment, AIS was required to provide documentation to substantiate the claim. To date, AIS has failed to substantiate any of the claims submitted with the S9238 per diem billing code. The documentation AIS provided includes only pharmaceutical prescriptions, directions for the use of medications, billing notes, prescription labels, compounding instructions, delivery tickets, and papers from the National Home Infusion Association. It does not include a CMN or other evidence to support the dispensing of medication and provision of ongoing services such as patient care coordination, pharmacy consulting, or supplies beyond the medication mailed to the overseeing provider. Administrative costs of pharmaceutical components, like refrigeration and pharmacy testing, are not payable under the S9238 per diem billing code. Accordingly, the claims have all been denied, and AIS remains on PPUR.

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<sup>1</sup> The CMN must include all the following information:

- Prescribing physician’s name, address, and telephone number
- Patient’s full name, address, gender, and birth date
- Detailed diagnosis related to the infusion therapy using standard billing guidelines
- Description of the patient’s condition, detailed enough to substantiate the necessity of services or items
- Dosage, infusion time, fluids, frequency, and duration (start and stop dates [MM/DD/YY] of medication)
- Type or route of infusion administration, required equipment, and supplies
- Estimated date of duration of need and frequency of use
- Nursing orders
- Physician’s signature and date.

On February 13, 2020, BCBSM requested medical records for an audit of paid claims. AIS mailed hard copies to BCBSM's office in Detroit, but they were inaccessible due to government-mandated COVID-19 restrictions. After some delay, in July 2019, AIS provided BCBSM electronic records. BCBSM reviewed a sample of 618 claims with the S9238 per diem billing code, totaling \$803,526.02 in payments. It determined that every single claim was unsupported by the medical record. The electronic records were comprised of the same types of documents that AIS provided as a part of PPUR, again confirming that AIS solely supplies the pharmaceutical component.

The extent of overpayments, of course, extends beyond the sampled claims. BCBSM believes that every claim AIS submitted with the S9238 per diem billing code was improper and violates the Agreement. From April 1, 2018 to present, BCBSM has paid AIS \$6,406,792.13 for claims with the S9238 per diem billing code.

In discussions with BCBSM, AIS has asserted that it does perform services that are payable under the S9238 per diem billing code and referenced a January 2015 National Home Infusion Association article regarding the definition of "per diem." That article proposes a standard definition because "reimbursement is often based upon a per diem approach, yet frequently this term is left undefined." The proposed definition in an article does not override the plain language of AIS's and BCBSM's Agreement. The article itself states that the contract controls. (Not included in the definition of per diem are "[s]ervices and products not considered part of the per diem compensation as may be agreed to by provider and payer"). Even if the article controlled over the Agreement, the proposed definition limits the duration to every 72 hours, and AIS has been billing for more than that.

Simply put, AIS cannot justify payment of the S9238 per diem billing code. There are separate billing codes for the pharmaceutical component for which AIS is already being paid. AIS is not entitled to double payment.

#### Demand

BCBSM is committed to providing our members access to quality, affordable healthcare. Improper billing practices jeopardize our ability to do so. In this case, AIS has been enriched at the expense of BCBSM and our members by billing for the dispensing of medication and provision of ongoing services when it does nothing more than supply the drug. Therefore, we demand that you repay us \$6,406,792.13 for claims that were submitted with the S9238 per diem billing code and paid by BCBSM. In the event you do not repay us \$6,406,792.13, we reserve all rights and legal remedies to pursue recovery.

Sincerely,

DocuSigned by:  
  
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Maria L. Martinez  
Assistant General Counsel