



March 26, 2020

Andrea Willis, M.D.  
Vice President and Chief Medical Officer  
Blue Cross Blue Shield of Tennessee, Inc.  
1 Cameron Cir  
Chattanooga, TN 37402

Re: Mandatory Mail-Order Pharmacy Utilization

Dear Dr. Willis:

Aimed Alliance is a 501(c)(3) nonprofit health policy organization that seeks to protect and enhance the rights of health care consumers and providers. On February 5, 2020, we sent a letter expressing our concern over a recent policy that Blue Cross Blue Shield of Tennessee (“BCBST”) adopted. More specifically, on November 6, 2019, Blue Cross Blue Shield of Tennessee (“BCBST”) sent a letter (“Letter”) to health care providers notifying them of a new policy, effective January 1, 2020, for provider-administered specialty drug acquisition.<sup>1</sup> The policy requires providers to purchase these medications through the BCBST Preferred Specialty Pharmacy Network, which will ship medications to providers (i.e., “white bagging”) instead of allowing providers to purchase medications in bulk through a specialty distributor and then bill the payer (i.e., “buy and bill”).

Since then, we have learned that BCBST intends to expand this policy from some self-funded groups to all group customers. We would like to reiterate our concerns and urge you to modify this policy because it may violate a Tennessee law that prohibits health plans from requiring plan enrollees to obtain prescription drugs from a mail-order pharmacy.<sup>2</sup> Additionally, it may result in disruptions in care and administrative waste, which is especially troublesome in light of the COVID-19 outbreak. Instead, we recommend allowing practitioners to have the option of choosing between buy and bill and white bagging.

## I. Legal Concerns

BCBST should not require health care practitioners to purchase medications through BCBST’s Preferred Specialty Pharmacy Network because such a mandate may violate Sec. 56-7-117 of Tennessee law, which states that health plans may not require any plan enrollee “to obtain prescription drugs from a mail-order pharmacy in order to obtain benefits for the drugs, or to pay an additional fee or be subjected to any other penalty for failing to utilize any mail-order pharmacy” designated by the health plan.<sup>3</sup> Yet, the policy included in the Letter requires physicians to obtain physician-administered specialty drugs from BCBST’s Preferred Specialty Pharmacy Program.<sup>4</sup> BCBST’s Preferred Specialty Pharmacy Network is comprised solely of mail-order pharmacies, and BCBST’s website states that “[w]hen your doctor sends your prescription to the

<sup>1</sup> <https://aimedalliance.org/wp-content/uploads/2019/12/BCBST-LETTER.pdf>

<sup>2</sup> Tenn. Code Ann. §56-7-117 (2019)

<sup>3</sup> Tenn. Code Ann. §56-7-117(a) (2019)

<sup>4</sup> <https://beta.bcbst.com/manage-my-plan/pharmacies-and-prescriptions/specialty-medications-program.page>

specialty pharmacy, they'll send your drugs to your home or provider's office.”<sup>5</sup> BCBST appears to violate Sec. 56-7-117 of Tennessee law by requiring patients to obtain specialty medications from the Preferred Specialty Pharmacy Network, a network of mail-order pharmacies, either directly or through their health care provider in order for the medication to be covered.

Additionally, in the event that Sec. 56-7-117 does not apply, BCBST should be aware that Tennessee legislators have introduced a bill to expressly prohibit white-bagging and brown-bagging. Senate Bill No. 2847 explicitly states that health plans and pharmacy benefit managers “shall not require a person covered under a group medical benefit contract, or a pharmacy benefit contract, that provides coverage for prescription drugs to: (1) obtain prescription drugs from a specialty pharmacy in order to receive benefits for the prescription drugs; or (2) pay an additional fee second copay, second coinsurance, or any other penalty for failing to utilize a designated specialty pharmacy.” As such, it would block BCBST's white-bagging policy if passed.

In light of existing law and current legislation, BCBST's white bagging policy should not be mandated.

## **II. Policy Concerns**

Aimed Alliance is concerned that BCBST's white bagging policy will have a negative impact on patients. Buy and bill is the most commonly used distribution method for specialty medications because it allows health care practitioners to administer the treatment during the patient's first visit.<sup>6</sup> Additionally, health care practitioners can make any necessary dosing adjustments because they have sufficient stock available.<sup>7</sup> In contrast, white bagging requires the health care practitioner to order the patient's medication after the first visit, and for the patient to then return to the office for a second visit for the medication to be administered. This process can result in delays in care, especially if the patient is unable to return to the health care practitioner's office right away.<sup>8</sup> This is especially problematic amidst the COVID-19 outbreak in which Americans are advised to stay home and shelter in place to the extent possible. Yet, white-bagging and brown-bagging policies require those who are already immunocompromised to make multiple trips to their health care provider rather than a single trip.

White bagging also provides less flexibility to change medications or dosing regimens because the medication is not in stock, resulting in increased administrative complexity.<sup>9</sup> Between the time that the medication is ordered and the time the patient returns to the health care provider's office to receive the drug, the required dosage or strength may have changed or the patient may have been transitioned to a different class of medication.<sup>10</sup> Such an instance, in which the medication is no longer needed, results in waste. While white bagging may be beneficial to some practices, many practices prefer buy and bill for the reasons mentioned herein. As such, BCBST

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<sup>5</sup> <https://www.bcbst.com/docs/pharmacy/specialty-pharmacy-network.pdf>

<sup>6</sup> <https://www.managedhealthcareconnect.com/article/alternative-distribution-strategies-buy-and-bill-and-white-bagging>

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> <http://www.hematology.org/Advocacy/ASH-Testimony/2018/9096.aspx>

should allow practitioners to choose between buy and bill and white bagging rather than mandating a white bagging policy.

### **III. Conclusion**

Considering the potential violations of Tennessee law and policy considerations, we urge you to redesign the Preferred Specialty Pharmacy Program to no longer require white bagging and refrain from expanding the scope of the current policy to additional health plans. Thank you for considering our request. If you have any questions, please contact me at (202) 559-0380 or [policy@aimedalliance.org](mailto:policy@aimedalliance.org).

Sincerely,

A handwritten signature in cursive script that reads "John A. Wylam".

John A. Wylam, Esq.  
Staff Attorney