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VIA CM/ECF

Peter R. Marksteiner
Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: *Blue Cross & Blue Shield of Vermont v. United States*
No. 2021-1380
Supplemental Authority Pursuant to Fed. R. App. P. 28(j)

Dear Mr. Marksteiner:

Plaintiff-appellee Blue Cross and Blue Shield of Vermont (BCBSVT) submits this supplemental authority letter in further support of its motion for summary affirmance (ECF Doc. No. 8) and its opposition to the Government's motion to hold the appeal in abeyance (ECF Doc. No. 12).

On December 18, 2020, BCBSVT moved for summary affirmance based on this Court's ruling in *Sanford Health Plan v. United States*, Nos. 19-1290, 19-1302, 969 F.3d 1370 (Fed. Cir. Aug. 14, 2020). ECF Doc. No. 8. The Government does not dispute that *Sanford* controls the outcome in this case. In opposing summary affirmance, however, the Government represented that the "time to file petitions for a writ of certiorari" in a group of cases that includes *Sanford* "has not yet elapsed." ECF Doc. No. 10. The Supreme Court extended the time for filing petitions for a writ of certiorari to 150 days due to the special circumstances of the pandemic. Supreme Court Order (March 19, 2020), https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf. Because no petitions for rehearing were filed in *Sanford*, the 150-day period runs from August 14, 2020 and has now elapsed. Counsel for the Government advised undersigned counsel that the Government did not file any document with the Supreme Court in *Sanford*.

This Court's decision in *Sanford* finding the Government liable for unpaid cost-sharing reduction (CSR) payments is accordingly final and not subject to further review. BCBSVT's motion for summary affirmance should be granted. As explained in BCBSVT's other filings, *see* ECF Doc. Nos. 8, 12, 13, the Government has stipulated that BCBSVT did not silver-load in

2017 or 2018. The damages-mitigation issue presented in other CSR cases is not part of this case, and the possibility of Supreme Court review in those cases should not delay finality in this case.

Sincerely,

/s/ Bridget Asay

Bridget Asay

/s/ Michael Donofrio

Michael Donofrio