BROWN GOLDSTEIN LEVY

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BY ECF

The Honorable Catherine C. Blake
United States District Judge
101 West Lombard Street
Chambers 7D
Baltimore, MD 21201

Re: *Planned Parenthood of Maryland, Inc., et al. v. Alex M. Azar II, et al.*, Civil Action No. CCB-20-00361

Dear Judge Blake:

Plaintiffs respectfully submit this letter to advise the Court of a recent decision in *Department of Homeland Security v. Regents of the University of California*, No. 18-587, 2020 WL 3271746 (U.S. June 18, 2020) and the denial of certiorari in *Department of Homeland Security, et al. v. Casa de Maryland, et al.*, No. 18-1469, 2020 WL 3492650 (U.S. June 29, 2020).

In *Regents*, the U.S. Supreme Court held that the Department of Homeland Security ("DHS") violated the Administrative Procedure Act ("APA") when it issued a memorandum to rescind the Deferred Action for Childhood Arrivals ("DACA") immigration program. Under DACA, individuals who are undocumented and who entered the United States as children may apply for a two-year forbearance of removal and become eligible for work authorization and various federal benefits.

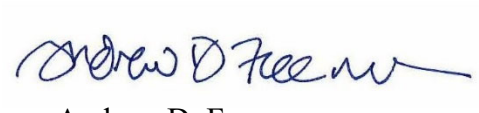
DHS asserted in litigation that the memorandum establishing DACA was a non-enforcement policy "equivalent to the individual non-enforcement decision" held unreviewable in *Heckler v. Chaney*, 470 U.S. 821 (1985), and it argued that the rescission of DACA was likewise unreviewable under the APA. *Regents*, 2020 WL 3271746, at *8. The Supreme Court concluded that it had no need to "test [DHS's] chain of reasoning" in this respect "because DACA is not simply a non-enforcement policy." *Id.* As the Court explained, DACA "established a clear and efficient process for identifying individuals who [meet] the enumerated criteria" for non-enforcement, and it confers benefit eligibility on individuals who receive deferred action. *Id.* "The creation of [DACA]—and its rescission—is an 'action [that] provides a focus for judicial review.'" *Id.* (quoting *Chaney*, 470 U.S. at 832).

The Court also recently denied the government's petition for certiorari in *Casa de Maryland*, a case out of the United States Court of Appeals for the Fourth Circuit that

presented identical questions to those posed in *Regents*, including whether the Fourth Circuit properly concluded that DHS's decision to rescind DACA was judicially reviewable under the APA as a "broad or general enforcement policy," that is "more likely to be [a] direct interpretation[] of the commands of the substantive statute rather than the sort of mingled assessments of fact, policy, and law that drive an individual enforcement decision." *See Casa de Maryland v. U.S. Dep't of Homeland Sec.*, 924 F.3d 684, 698–700 (4th Cir. 2019), *cert. denied sub nom. Dep't of Homeland Sec., et al. v. Casa de Maryland, et al.*, No. 18-1469, 2020 WL 3492650 (U.S. June 29, 2020).

The Court's decision in *Regents* and its denial of certiorari in *Casa de Maryland* support Plaintiffs' position that the Separate-Billing Rule's Opt-Out Policy is judicially reviewable under the APA. As Plaintiffs have explained, the Opt-Out Policy establishes a clear process for identifying issuers who meet the criteria for non-enforcement, *see* Pls.' Opp'n to Defs.' Cross-Mot. for Summ. J. 24–27, ECF No. 42, and changes the rights and obligations of issuers and enrollees, *id.* at 31–32.

Sincerely,



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cc: All counsel of record (by ECF)