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July 9, 2024

**By CM/ECF**

Lyle W. Cayce  
Clerk of Court  
U.S. Court of Appeals for the Fifth Circuit  
600 S. Maestri Place, Suite 115  
New Orleans, LA 70130

Re: Case No. 23-40605, *Tex. Med. Ass'n et al. v. HHS et al.*

Dear Mr. Cayce:

Pursuant to Rule 28(j), I write to respond to the Departments' letter regarding *Loper Bright Enterprises v. Raimondo*, 603 U.S. —, 2024 WL 3208360 (June 28, 2024), which overruled the deference doctrine of *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

*Loper* makes clear that courts may no longer “afford *binding* deference to agency interpretations.” *Loper Bright* at \*15. Instead, the Court must “exercise [its] independent judgment in deciding whether [the Departments have] acted within [their] statutory authority.” *Id.* at \*22. This is true even when “the best reading of a statute is that it delegates discretionary authority to an agency.” *Id.* at \*14. Even then, a court must still “independently interpret the statute” to “fix the boundaries of the delegated authority” and “ensur[e] the agency has” acted “within those boundaries.” *Id.* (cleaned up).

The NSA delegates authority to the Departments to establish a QPA calculation methodology. 42 U.S.C. § 300gg-111(a)(2)(B)(i)–(ii); *see also* Departments' Letter at 1 (claiming “express delegations”). But the Departments' QPA calculation rule defies the NSA's command to calculate the QPA as “the median of the *contracted rates* recognized by the plan or issuer.” 42 U.S.C. § 300gg-111(a)(3)(E) (emphasis added). Single-case agreements are “contracts,” and the case-specific rates that they set are “contracted rates” under the plain

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language of the statute. The Departments' rules for calculating the QPA exclude these "contracted rates" and therefore exceed the boundaries of the authority delegated by Congress. *See Br. of LifeNet, Inc. et al.*, Doc. No. 75-1 (Mar. 13, 2024), at 21-42.

The NSA does *not* delegate authority to the Departments to alter the critical deadline by which the plan or issuer must send its "initial payment" or "notice of denial of payment" to the provider. *Id.* at 54-56. The statute says that the plan or issuer must do this within 30 calendar days after the provider "transmit[s]" its "bill" to the plan or issuer. *Id.* at 46-53. The Court's decision in *Loper* makes clear that the Departments' interpretation of this statutory text is not entitled to binding deference.

Respectfully,

Sincerely,

/s/ Steven M. Shepard  
Steven M. Shepard

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and East Texas Air One, LLC***

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cc: All Counsel (via ECF)