IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HMO LOUISIANA, INC., *Plaintiff,* v. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al., *Defendants.*	)	Case No. 24-2931-CRC

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

HMOLA brought this case to correct CMS's arbitrary and unlawful calculation of its Medicare Advantage Plan's ("MA Plan's") Star Ratings. As CMS explained in its opening brief, CMS's Star Ratings calculation violates its own regulations and assigns HMOLA's surviving H6453 contract Star Ratings for a program *it never even provided*. That agency action caused dramatic adverse consequences. It reduced HMOLA's Star Ratings from 4.0 to 3.5 stars, causing HMOLA – and its members – substantial harm by depriving it of hundreds of millions of dollars in funds and harming its reputation and goodwill in the marketplace.

CMS's opposition and cross motion to HMOLA's motion makes clear that CMS fundamentally agrees with HMOLA on key facts and the proper understanding and applications of its regulations. Critically, CMS does not dispute that:

- CMS must use the *July enrollment* data for the measurement period of the consumed and final contracts to calculate enrollment-weighted measure scores;
- Data related to plan quality are "not collected and validated for contracts that terminate prior to July 1";
- If a contract did not offer a Special Needs Plan ("SNP") during the measurement year, "CMS does not include measure C05 in a contract's overall score";
- "[I]f a contract was not evaluated on a particular quality measurement for a measurement year, there would be no score for that measure and it would not factor into the mean for that measure score Star Ratings";
- HMOLA's surviving H6453 contract "did not receive a score because it did not offer [an SNP] in 2023"; and
- CMS did not originally assign HMOLA's consumed contract any score because it has no July enrollment data.

Despite these critical concessions that support HMOLA's challenge and demonstrate how unreasonable CMS's action is, the agency continues to argue it properly followed its own regulations when it combined the Measure C05 scores for both the consumed and surviving

contracts. It did not, and it cannot support that unlawful action with belated rationalizations as it attempts on brief. Rather, CMS disregards its own regulations and policies when it combined HMOLA's "no score" for Measure C05 with the 3.0 Stars associated with the SNP of the consumed H5573 contract. That arbitrary and capricious action is unsupported by the text of CMS's regulations and Technical Notes, unjustified by CMS's impermissible *post hoc* arguments now, and makes no sense. The agency's action further obviously violates the purpose of the Star Ratings program to provide current and prospective beneficiaries with an accurate assessment of a plan's quality.

HMOLA is therefore entitled to injunctive relief requiring CMS to recalculate its Star Ratings for Measure C05 in compliance with the agency's regulations and to take remedial action to ensure HMOLA does not continue to be competitively harmed by CMS's unlawful actions. Accordingly, the Court should grant HMOLA's motion for summary judgment and deny CMS's cross-motion.

ARGUMENT

1. CMS argues that, because HMOLA's "contract termination did not prevent it from submitting data," it is improper to exclude the data. Opp. at 14. But the Star Ratings regulations do not "mea[n]" what CMS now "says." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 392 (2024). Rather – as CMS concedes on brief – its regulations and Technical Notes say that if a contract – like HMOLA's surviving contract – "was not evaluated on a particular quality measurement for a measurement year, there would be no score for that measure and it *would not factor* into the mean for that measure score Star Rating." Opposition to Plaintiff's Motion for Summary Judgment And Defendants' Cross Motion for Summary Judgment ("Opp."), ECF No. 19, at 9 (emphasis added). For a consumed contract – including HMOLA's consumed contract –

the Technical Notes require CMS to collect data "us[ing] enrollment-weighted measure scores using the *July enrollment* of the measurement period of the consumed and final contracts for all measures." Opp. at 9 (emphasis added); 42 C.F.R. § 422.162(b)(3)(iv)(B)(1).

Here, CMS initially applied its regulations as written, explaining to HMOLA via email that HMOLA's consumed contract effectively terminated at its merger on January 1, 2024, and therefore had no "July enrollment" data for consideration. AR 224 (CMS stating "[d]ata are not collected and validated for contracts that terminate prior to July 1"). And HMOLA's surviving contract did not offer an SNP at all. AR 224. Thus, as CMS initially explained to HMOLA, since it "did not receive data for [the consumed contract] to use for these measures in the 2025 Star Ratings," and the surviving contract "did not offer SNP plans during the measurement year, there are no data" for the SNP measure. AR 224.

Despite this acknowledgment, CMS ultimately issued Star Ratings based on measuring services not actually offered by the surviving H6453 contract anyway. That is the textbook definition of arbitrary and capricious agency action, and no amount of pleading "defer[ence]" for a "complex[ ] . . . statute" should be allowed to cure it. Opp. at 11; *see Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 60 (D.C. Cir. 2015) (explaining, even in complex regulatory schemes, "deference 'is not unlimited' . . . if [CMS] fails to apply its 'expertise in a reasoned manner' "); *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979) (holding agency does not have authority to "play fast and loose with its own regulations").

2. Ignoring its own regulation and Technical Notes, CMS on brief puts forward a new *post hoc* rationalization for its improper calculation, inventing a two-step process for calculating a plan's Star Ratings. *See* Opp. at 12–13; *Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 539 (1981) (holding agency's post hoc rationalizations "cannot serve as a sufficient predicate for

agency action"); *Thornton v. Wormuth*, Case No. 23-3665, 2025 WL 27351, at *3 (D.D.C. Jan. 3, 2025) (same). As part of that process, CMS now asserts it "must include measure C05 in the consolidated contract's overall rating," Opp. at 13, if the "surviving, consolidated contract is offering any Special Needs Plans," *id.* at 12. CMS does not cite any statute or regulations in support of its new requirement – because there are none. Instead, CMS generically cites the regulations that establish the Star Ratings and set forth the methodology for calculating them. *Id.* at 12–13; 42 C.F.R. §§ 422.162(b) & 422.166(d). But those regulations do not require (or even reference) CMS using current offerings to decide whether to use data from prior years. 42 C.F.R. §§ 422.162(b) & 422.166(d). CMS cannot now in this litigation – as it blatantly is attempting – "rewrite the regulation to reach its desired outcome in this case." *Scott & White Health Plan v. Becerra*, 693 F. Supp. 3d 1, 14 (D.D.C. 2023) (Cooper, J.).

3. Nor does CMS's reading or application of the regulation comply with its statutory mandate. In issuing Star Ratings, CMS must ensure its ratings are a "true reflection of plan quality and enrollee experience" and provide real "information about plan quality and performance indicators." 83 Fed. Reg. 16,440, 16,520–21 (2018). Assigning a Star Ratings based on ratings for plans HMOLA did *not even offer* during the measuring period flouts that mandate. *See Beaty v. Food & Drug Admin.*, 853 F. Supp. 2d 30, 41 (D.D.C. 2012) (quoting *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981)). And conflating the current offerings of an MA Plan with those offered by a different contract or in different measuring periods would only serve to confuse Medicare beneficiaries, who cannot be expected to parse through the individual data points to understand how differing measuring periods affect the quality of each program offered and the resulting Star Ratings. CMS's flawed calculations are seriously misleading, were calculated in violation of the controlling regulations, and are

properly vacated.[1] *See Bureau of Alcohol, Tobacco & Firearms v. Fed. Lab. Rels. Auth.*, 464 U.S. 89, 97 (1983) (explaining courts may not "rubber-stamp" administrative decisions, especially where they are "inconsistent with a statutory mandate" or "frustrate the congressional policy underlying a statute").

4. HMOLA is plainly entitled to injunctive relief ordering CMS to recalculate HMOLA's 2025 Star Ratings related to Measure C05 and to take remedial action to ensure it is no longer competitively harmed by CMS's unlawful actions. Mot. at 11–14. CMS in fact concedes – as it must – that HMOLA has suffered irreparable harm and the balance of equities and public interest support injunctive relief. *See* Opp. at 17; *Hopkins v. Women's Div., Gen. Bd. Of Glob. Ministries*, 284 F. Supp. 2d 15, 25 (D.D.C. 2003) (holding party concedes arguments it "fail[s] to address"). CMS's flawed Star Ratings calculation has cost HMOLA approximately $23 million in quality bonus payments and seriously harmed HMOLA's reputation in the marketplace. *See* ECF No. 17 ("Mot.") at 7–8 & 11–12; *Bell Helicopter Textron, Inc. v. Airbus Helicopters*, 78 F. Supp. 3d 253, 274–75 (D.D.C. 2015). And CMS does not have a public interest in "the perpetuation of unlawful agency action," while the public has a strong interest in "having governmental agencies abide by the federal laws." *League of Women Voters v. Newby*, 838 F. 3d 1, 12 (D.C. Cir. 2016).

CMS nevertheless argues that HMOLA has "conflate[d]" the standards for preliminary and permanent injunctive relief through its analysis of its likelihood of success on the merits.

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[1] Because it cannot support its position with regulatory or statutory support, CMS attempts to create confusion by raising issues with other CMS measures that are not properly before the Court. *See* Opp. at 17. HMOLA's Amended Complaint and the relief it seeks are limited to the consideration of Measure C05 in calculating HMOLA's H6453 consolidated 2025 Star Rating. *See* ECF No. 12. Because HMOLA does not challenge measures other than C05 in this action, other measures are not properly before this Court. *See* Mot. at 13–14.

Opp. at 17. Not so. As explained in HMOLA's motion for summary judgment and here, HMOLA is likely to succeed on the merits of its claims because CMS's actions are arbitrary and unlawful. *See supra* at 1–4; ECF No. 17; *Am. C.L. Union v. Mineta*, 319 F. Supp. 2d 69, 87 (D.D.C. 2004) ("In determining whether to enter a permanent injunction, the Court considers a modified iteration of the factors it utilizes in assessing preliminary injunctions.").

CONCLUSION

For the foregoing reasons, this Court should:

(1) Deny Defendants' motion for summary judgment;

(2) Grant HMOLA summary judgment;

(3) Set aside CMS's determination of HMOLA's 3.5-star Star Rating;

(5) Order CMS to redetermine HMOLA's 2025 Star Rating; and

(6) Order Defendants to take remedial action to ensure HMOLA does not continue to be competitively harmed by CMS's actions.

Dated: April 18, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2025, I electronically filed the foregoing document and the accompanying exhibits with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Paul Werner
Paul Werner