UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HMO LOUISIANA, INC.,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Civil Action No. 24-2931 (CRC)

REPLY IN SUPPORT OF
DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants, by and through undersigned counsel, respectfully submit this reply in further support of their cross-motion for summary judgment (Defs. Mot., ECF No. 20).

INTRODUCTION

In its opposition (Pl. Opp'n, ECF No. 21), Plaintiff HMO Louisiana ("HMOLA") fails to acknowledge that it asked the Centers for Medicare & Medicaid Services ("CMS") to include Special Needs Plan data for its consumed contract, H5576, in calculating the C05 measure for its surviving contract, H6453. CMS agreed to do so, finding that granting HMOLA's request was consistent with its regulations, which require CMS to assign Star Ratings for the first and second years following the consolidation based on the enrollment-weighted mean of available measure scores of the surviving and consumed contracts. CMS's recalculation of the overall rating for HMOLA's contract H6453, the consolidated contract, resulted in no change, i.e., including the C05 Special Needs Plan measure resulted in an overall rating of 3.5 stars, the same as when CMS excluded this measure. Now in this litigation, HMOLA does an about-face, contending that CMS should not have followed HMOLA's requested approach. This Court should reject HMOLA's

attempt to manipulate H6453's Star Rating; the approach CMS used—which HMOLA specifically requested—is entirely consistent with its regulations and not arbitrary or capricious.

ARGUMENT

HMOLA contends that CMS "reduced HMOLA's Star Ratings from 4.0 to 3.5 stars." Pl. Opp'n (ECF No. 21) at 1. This is incorrect. The 2025 Star Rating for contract H6453 was 3.5 stars before HMOLA requested that CMS make any corrections. A.R. 215. HMOLA expected that if CMS made three changes (including two changes not relevant to the Special Needs Plan measure C05), its overall score would increase from 3.74957 to 3.80839, *i.e.*, from 3.5 to 4.0 stars. *Id.*; *see also* Vicidomina Decl. (ECF No. 17-2) ¶ 27 ("CMS determined a 2025 Star Ratings of 3.5 stars for HMOLA—a significant drop from the 4.0 stars it *expected*" (emphasis added)). In short, HMOLA's overall rating was 3.5 stars before CMS added the additional data that HMOLA requested that CMS include. After adding those data, the overall rating remained at 3.5 stars. This lawsuit is HMOLA's effort to pick and choose which data CMS should add with the only purpose of increasing its contract score to 4.0 stars.

CMS included the data that HMOLA specifically requested be included, and now it claims that CMS's resulting Star Ratings calculation was arbitrary and capricious. On September 12, 2024, a representative of HMOLA wrote to CMS that "to accurately calculate the Star Rating for contract H6453, CMS *must include* data from both contract H5576 [the consumed contract] and H6453 [the surviving contract] in its calculations. However, only data from H6453 was considered in the calculation of C05 [measure score]." A.R. 216 (emphasis added). This assertedly was because "HMOLA was unable . . . to submit measurement information relating to measurement . . . C05 'Special Needs Plan (SNP) Care' for contract H6453." A.R. 217. Consequently, HMOLA argued that "CMS used only partial information for these measures and, in doing so, failed to

adhere to its own regulations." *Id.* HMOLA contended that "[b]oth the regulations governing contract consolidation and CMS's Technical Notes require CMS to include all relevant data for the consumed contract when calculating the Star Rating for the surviving contract." *Id.*

CMS agreed that inclusion of the data in the 2025 Star Ratings calculation for H6453 was consistent with the applicable regulations. On October 23, 2024, CMS notified HMOLA that it was providing an alternative method to allow submission of H5576's Special Needs Plan data, as well as submission of the validation of those data. A.R. 254-57. CMS received the relevant data and data validation on October 30, 2024. A.R. 315-16. When CMS recalculated H6453's score for the C05 measure using the H5576 data, it found that the score for C05 for H6453 was updated to 70%—a 3-star measure rating. However, this caused a different measure, the Part C improvement measure score—that is, the measure derived through comparisons of a contract's current and prior year Part C measure scores, A.R. 13—to "decrease[] from 4 to 3 stars since there was a significant decline in the [C05] measure score from the prior year, decreasing from 76% to 70%." A.R. 316. CMS calculated the overall rating for H6453 to be "3.603658, which rounds to 3.5 stars." *Id.*

To summarize, HMOLA asked CMS to include Special Needs Plan data for its consumed contract, H5576, in calculating the C05 measure for its consolidated contract. CMS agreed to do so, finding that HMOLA's requested approach was consistent with its regulations. *See* 42 C.F.R. § 422.162(b)(3)[1] (when two plans consolidate, CMS assigns Star Ratings for the first and second years following the consolidation "based on the enrollment-weighted mean of the measure scores of the surviving and consumed contracts"). HMOLA's approach resulted in its overall rating to

[1] For ease of reference, this brief omits reference to the parallel citations in 42 C.F.R. § 423.182 *et seq*.

stay the same, at 3.5 stars. In this litigation, HMOLA now contends that CMS should not have followed HMOLA's preferred approach. This Court should reject HMOLA's attempt to manipulate H6453's overall Star Rating.

In its opposition, HMOLA contends that because CMS initially determined that "[d]ata are not collected and validated for contracts that terminate prior to July 1," CMS should not have considered the H5576 data that HMOLA requested be submitted. Pl. Opp'n (ECF No. 21) at 3. In contrast to its argument before this Court, HMOLA argued in October 2024 that "CMS failed to collect data for [the C05 measure] based on the mistaken premise that the Consumed Contract was terminated prior to July 1 and that terminated contracts are not required to report data for the reporting period and the following years." A.R. 241. "The consumed contract was not terminated, however; it was consumed during a consolidation, and its measure data is necessary for evaluation of the performance of the surviving contract, as required by 42 CFR § 422.162(b)(3)(ii)." *Id.* As HMOLA recognized in October 2024, the consolidation process "aims to prevent [Medicare Advantage Organizations] from consolidating a low performing contract into a higher performing contract in order to shed the low scores." A.R. 242. The approach HMOLA advocates in this litigation would be at odds with the approach it originally insisted that CMS take and the one that CMS ultimately took. As established previously, Defs. Mot. (ECF No. 20) at 12-15, 42 C.F.R. § 422.162(b)(3) mandates that CMS determine the enrollment-weighted average of process measures—including C05—when calculating the 2025 Star Ratings for the surviving contract.

HMOLA contends that CMS does not cite any regulations in support of the requirement that it must include measure C05 in the consolidated contract's overall rating if the surviving contract is offering any Special Needs Plans. Pl. Opp'n (ECF No. 21) at 4. Not so. CMS points to 42 C.F.R. § 422.162(b)(1), which states that "CMS includes the Star Ratings measures in the

overall and summary ratings that are associated with the contract type for the Star Ratings year." Defs. Mot. (ECF No. 20) at 12-13. HMOLA renews its argument that, consistent with the statute, 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.'" Pl. Opp'n (ECF No. 21) at 4. But as discussed in CMS's summary judgment brief, "[a]ccounting for HMOLA's consumed contract provides beneficiaries with a truer reflection of plan quality and enrollee experience for the 2023 measurement period than excluding it from measure C05." Defs. Mot (ECF No. 20) at 15-16; *see also* 42 C.F.R. § 422.162(b)(3).

CMS's regulations do not require the surviving contract to be the contract that offered Special Needs Plans in the 2023 measurement year to determine the rating for the surviving, consolidated contract in 2025. *See* 42 C.F.R. § 422.162(b)(3) (CMS assigns Star Ratings for the first and second years following the consolidation "based on the enrollment-weighted mean of the measure scores of the surviving and consumed contracts."). It is sufficient that the consumed contract, H5576, offered a Special Needs Plan in the 2023 measurement year and that the relevant data were available. *See id.* That is what happened here. As a result, HMOLA is not entitled to injunctive relief because its claims fail on the merits.

CONCLUSION

For the reasons herein and in Defendants' cross-motion for summary judgment, Defendants respectfully request that the Court grant Defendants' cross-motion for summary judgment and deny Plaintiffs' motion for summary judgment.

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Respectfully submitted,

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