



U. S. Department of Justice

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June 15, 2026

VIA CM/ECF
Clifton Cislak, Clerk
United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., NW
Washington, DC 20001

RE: *HMO Louisiana, Inc. v. U.S. Dep't of Health and Human Services, No. 25-5269*

Dear Mr. Cislak:

Pursuant to Federal Rule of Appellate Procedure 28(j), the Government responds to HMOLA's Notice of Supplemental Authority noting a recent decision: *Clover Insurance Co. v. Department of Health & Human Services*, No. 2:25-cv-142, 2026 WL 1483515 (S.D. Ga. May 27, 2026).

The holding in *Clover* has no application to this case. In *Clover*, the district court concluded that CMS was required to promulgate certain challenged 2026 Star Ratings measures through notice-and-comment rulemaking. *Clover*, 2026 WL 1483515, at *22-25. HMOLA did not argue that CMS was required to promulgate the 2025 technical specifications of the measure at issue in this case, measure C05, through notice-and-comment rulemaking.

HMOLA argues that the *Clover* decision supports its position that CMS's Technical Notes are binding and that CMS must follow the measure C05 exclusion for terminated contracts set forth in CMS's Technical Notes. Br. for Appellant 22. That argument also has no impact on this case. The Government agreed that CMS is required to follow its Technical Notes. *See* Appellees' Br. 35. The Government's

argument is instead that CMS’s Technical Notes do not apply because HMOLA’s consumed contract did not terminate. CMS’s regulations governing consolidation and the exclusion for terminated contracts from measure C05 in its Technical Notes make clear that contract consolidations and contract terminations are distinct events. And CMS acted in accordance with both its regulations and guidance when it evaluated HMOLA’s consolidated contract measure C05 in the 2025 Star Ratings period. HMOLA also contends that the *Clover* court concluded that “CMS cannot change its interpretation of its Technical Notes on a whim.” Appellants’ Notice of Supp. Authority 1. CMS’s authority to interpret its Technical Notes, however, was not at issue in *Clover*. Regardless, CMS did not change its interpretation of its Technical Notes because CMS never articulated that it regarded consumed contracts as terminated contracts in determining whether to apply measure C05.

Accordingly, the decision of the district court in the Southern District of Georgia does not bear on the dispute in this case. This Court should affirm the judgment of the district court.

Sincerely,

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Assistant United States Attorney

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CERTIFICATE OF SERVICE

Today, June 15, 2026, the foregoing was served on the appellant through the Court’s CM/ECF system.

/s/ John J. Bardo
JOHN J. BARDO
Assistant United States Attorney