No. 25-5269

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HMO LOUISIANA, INC.,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES et al.,

Defendant-Appellees.

On Appeal from the United States District Court
for the District of Columbia

SUPPLEMENTAL BRIEF FOR APPELLEES

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ARGUMENT

In a February 17, 2026 Order, this Court directed the parties to file supplemental briefs addressing the following question: "Did CMS correctly apply [42 U.S.C. § 1395w-23(o)(4)(D)(i) and 42 C.F.R. § 422.162(b)(3)(i)] when it determined that the enrollment-weighted mean of the Measure C05 score for the consumed contract (three stars) and the surviving contract (no score) was three stars?" The Centers for Medicare & Medicaid Services ("CMS") correctly applied § 1395w-23(o)(4)(D)(i), § 422.162(b)(3)(i), and other applicable regulatory and guidance provisions to determine that the enrollment-weighted mean of measure C05 for HMO Louisiana's ("HMOLA") consolidated contract was three stars. Because the surviving contract did not offer Special Needs Plans in 2023 and was not evaluated on measure C05, CMS's regulations and guidance barred CMS from considering any value for the surviving contract's measure score or enrollment for the measure C05 measurement year.

I. CMS Implemented Congress's Mandate That Star Ratings for Consolidated Contracts Reflect an Enrollment-weighted Average of Scores from Consumed and Surviving Contracts by Using Measure-level Scores.

Before 2018, CMS assigned consolidated contracts the Star Rating that the surviving contract would have earned without regard to whether a consolidation took place. Medicare Program; Contract Year 2019 Policy & Technical Changes to Medicare Advantage, 82 Fed. Reg. 56,336, 56,380 (Nov. 28, 2017). Concerned that this practice masked low-quality contracts under higher-rated surviving contracts and did not provide beneficiaries with accurate and reliable information for enrollment decisions, CMS proposed to assign Star Ratings based on the enrollment-weighted mean of the measure scores of the surviving and consumed contracts. *Id.* Following publication of CMS's proposed rule, Congress enacted the Bipartisan Budget Act of 2018. Consistent with CMS's proposal, Section 53112 of the Act amended 42 U.S.C. § 1395w-23(o) to require an adjustment to Star Ratings to "prevent the artificial inflation" of Star Ratings after consolidation. 42 U.S.C. § 1395w-23(o)(4)(D). In the event of a contract consolidation, CMS "shall adjust the quality rating" of "the continuing contract . . . under the 5-star rating system . . .

to reflect an enrollment-weighted average of scores or ratings for the continuing and closed contracts, as determined appropriate by the Secretary." *Id.* § 1395w-23(o)(4)(D)(i). In 2018, following the enactment of the Bipartisan Budget Act, CMS finalized its rule as proposed with minor exceptions. Medicare Program; Contract Year 2019 Policy & Technical Changes to Medicare Advantage, 83 Fed. Reg. 16,440, 16,530 (Apr. 16, 2018).

CMS implemented the statute's mandate that Star Ratings for consolidated contracts reflect an enrollment-weighted average of scores of the surviving and consumed contracts by taking a measure-specific approach. CMS explained that "the process of weighting the enrollment of each contract and applying this general rule will vary depending on the specific types of measures involved in order to take into account the measurement period and data collection processes of certain measures." 83 Fed. Reg. at 16,528. CMS's regulations direct CMS to "assign[] 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 contract(s)." § 422.162(b)(3)(i). "For the second year after consolidation, CMS uses the enrollment-weighted measure scores using

the July enrollment of the measurement year of the consumed and surviving contracts for all measures except HEDIS, CAHPS, and HOS." § 422.162(b)(3)(iv)(B)(1). Because CMS "includes the Star Ratings measures in the overall and summary ratings that are associated with the contract type for the Star Ratings year," § 422.162(b)(1), CMS includes Part C, Part D, and Special Needs Plan-type measures in a contract's Star Ratings if that contract offers at least one plan of that given type.

When calculating the 2025 Star Ratings enrollment-weighted measure score for a consolidated contract on which both the surviving and consumed contract were evaluated in 2023, CMS took into account both the measure score values and July 2023 enrollment. *See* JA271 (Table B-2: Example of Calculating the Measure Score for the Surviving Contract of a Consolidation). CMS first multiplied the value for the measure (in the example table, the raw percentage score on measure C01) by the July 2023 enrollment for the surviving contract. *Id.* (fraction beneath Table B-2). CMS performed this step again for the consumed contract. *Id.* Next, CMS added these two values together. *Id.* Finally, CMS divided this added sum by the combined July 2023 enrollment for

both the surviving and consumed contract. *Id.* Thus, in CMS's enrollment-weighted measure score fraction, the numerator is the surviving and consumed contracts' measure scores multiplied by enrollment and added together. *Id.* The denominator is the surviving and consumed contracts' enrollment added together. *Id.*

II. When Calculating Measure C05 for HMOLA's Consolidated Contract, CMS's Regulations Required It to Use Only the Measure Score and Enrollment of the Consumed Contract.

CMS correctly determined that the enrollment-weighted mean of measure C05 for HMOLA's consolidated contract was three stars. When CMS determines the enrollment-weighted mean of measure scores for consolidated contracts where the consumed contract was evaluated on a measure but the surviving contract was not, CMS's regulations effectively require it calculate the consolidated contract's measure score as the score for the consumed contract.

Under § 422.162(b)(3)(i), CMS assigns Star Ratings following a consolidation based on the "enrollment-weighted mean of the measure scores of the surviving and consumed contract(s) as provided in paragraph (b)(3)(iv)." "Measure score" means "the numeric value of the measure or an assigned 'missing data' message." 42 C.F.R. § 422.162(a).

CMS's 2025 Technical Notes list ten possible missing data messages. JA335. One message, "Not Applicable," applies when "a measure does not apply for a contract." *Id.*

Under 42 C.F.R. § 422.162(b)(3)(iv), for the second year after consolidation, "CMS uses the enrollment-weighted measure scores using the July *enrollment of the measurement year* of the consumed and surviving contracts for all measures [with exceptions]." 42 C.F.R. § 422.162(b)(3)(iv)(B)(1) (emphasis added). "Measurement period" (which CMS's regulations and guidance use interchangeably with "measurement year") means "the period for which data are collected for a *measure* or the performance period that a *measure* covers." § 422.162(a) (emphasis added). Thus, the measurement year is measure specific. If a contract was not evaluated on a measure at all because it received a score of "Not Applicable," there is no related "July enrollment of the measurement year" for that measure to include.

When determining the measure scores under these provisions, HMOLA's surviving contract received a score of "Not Applicable" on measure C05 because its surviving contract did not offer Special Needs Plans in 2023. JA017. When CMS calculated the measure C05 score for

HMOLA's consolidated contract in accordance with its methodology, JA271, CMS included no value for measure C05 for the surviving contract in the numerator of its enrollment-weighted measure score fraction.

When determining the enrollment-weighted mean of these measure scores, in accordance with its regulations, CMS did not consider any July 2023 enrollment for the surviving contract. The surviving contract did not offer Special Needs Plans in 2023 as indicated by its score of "Not Applicable" on measure C05. There was, therefore, no enrollment for measure C05 for CMS to include. Consequently, when CMS calculated the measure C05 score for HMOLA's consolidated contract in accordance with its methodology, JA271, CMS included no enrollment value for the surviving contract in the denominator of its enrollment-weighted measure score fraction.

In 2023, HMOLA's consumed contract scored 70 percent on measure C05. JA376. Because HMOLA's surviving contract received a "Not Applicable" score on measure C05 and did not have enrollment data associated with measure C05's measurement year, the consolidated contract's enrollment-weighted average resulted in the score of 70 percent, the measure C05 score achieved by the consumed contract. The

consolidated contract's 70 percent score converted to three stars. JA196, JA367. Because the consolidated contract's measure C05 score decreased from the consolidated contract's 2024 measure C05 score—70 percent from 76 percent—HMOLA's consolidated contract earned three stars on the Health Plan Quality Improvement measure.[1]

Had CMS considered enrollment data for the surviving contract with no corresponding measure score, it would have had the effect of further lowering the C05 measure score for the consolidated contract. And to do so would be to penalize HMOLA in the same way the regulations penalize contracts that have data integrity issues in contract consolidations. If a measure score for a consumed or surviving contract "is missing due to a data integrity issue," CMS "assigns a score of zero for the missing measure score in the calculation of the enrollment-weighted measure score." *See* 42 C.F.R. § 422.162(b)(3)(iv)(B)(2). Data integrity issues arise when "CMS determines that a contract's measure data are inaccurate, incomplete, or biased." § 422.164(g)(1). This may be because

[1] The Health and Drug Plan Quality Improvement measures are derived through comparisons of a contract's current and prior year measure scores. JA162, JA283-289. Measure C05 is included in the Health Plan Quality Improvement measure. JA288.

data were mishandled, inappropriately processed, or impacted by incorrect practices that cause inaccuracy, partiality, or incompleteness of the data. *Id.* In this situation, in accordance with its methodology, JA271, CMS would include a zero in the numerator as the measure score for the surviving or consumed contract with the data integrity issue, § 422.162(b)(3)(iv)(B)(2), and—to impose a penalty—also include the enrollment for that contract in the denominator. HMOLA's surviving contract did not have a data integrity issue.

CMS's goal in calculating HMOLA's consolidated contract's Star Rating was to create a "true reflection of the quality and experience of beneficiaries enrolled in the contract," not to penalize HMOLA. 83 Fed. Reg. at 16,560; *see also id.* at 16,530 ("We do not believe that a more accurate reflection of performance can be fairly termed a 'reward' or a 'disadvantage' of contract consolidation."). CMS uses measure-specific enrollment-weighted means to provide a more accurate snapshot of the performance of the underlying contracts in a consolidation. CMS's policy of calculating the consolidated contract's measure score as the score for the consumed contract where the consumed contract was evaluated on a measure but the surviving contract was not, is consistent with this

approach. CMS correctly applied its regulations when it determined that the enrollment-weighted measure C05 score for the consumed contract, 70 percent, and the surviving contract, Not Applicable, resulted in 70 percent for HMOLA's consolidated contract, which converted to three stars.

Respectfully submitted,

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March 2026

CERTIFICATE OF COMPLIANCE

This brief complies with this Court's February 17, 2025 briefing order because it contains 1,704 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ John J. Bardo

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

/s/ John J. Bardo