UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAREFIRST ADVANTAGE PPO, INC.,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 26-0150 (AHA)

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

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As "the largest health care insurer in the Mid-Atlantic region" with millions of members, CareFirst Advantage PPO, Inc. ("CareFirst") is a well-resourced, sophisticated corporation that understands that "[t]he financial implications of Medicare plan's Star Ratings in a given year are enormous." *See* Pl.'s Complaint ¶¶ 1, 12, ECF No. 1 ("Compl."). On September 30, 2024, before publication of CareFirst's Star Rating for 2025 and well before the 2026 Star Ratings at issue in this case, CMS, through its contractor Acumen, notified CareFirst that it corrected a minor technical issue that may have impacted measure scores for some plans' contracts. Yet representatives for CareFirst, having undisputedly received this notice and engaged in the plan preview process, decided not to check its underlying data to see if it was impacted by the correction. CareFirst claims that CMS's notice gave it insufficient reason "to be curious" about the potentially changed data. CareFirst, consequently, claims it did not know that the correction caused its measure D09 score to *improve* slightly from 90.014705 to 90.071628 for the 2025 Star Ratings. CareFirst is responsible for any supposed harm its lack of diligence caused it.

ARGUMENT

In its opposition, CareFirst concedes that CMS had legal authority to correct the data error at issue in this matter. CareFirst only takes issue with the way CMS corrected the data error: "the central question for the Court is not whether CMS was within its right to correct for erroneous data, but whether it did so in a lawful and procedurally fair manner." Pl.'s Combined Memo. in Opposition to Defs.' Mot. for Summ. J. and Reply ("Pl.'s Reply") at 12; *id.* at 8 ("[t]he central issue is CMS's failure of process in announcing the error correction."). CMS's correction of erroneous patient safety data was lawful and procedurally adequate.[1]

[1] CMS maintains that the Medicare statute requires that CMS use accurate, available data when calculating Star Ratings. Additionally, CMS's inherent authority to correct errors is not

I. CMS Gave CareFirst Adequate Notice that Data Released Before Publication of the 2025 Star Ratings Was Non-Final and Subject to Revision.

CMS gave CareFirst sufficient notice that the patient safety data released in July 2024 could be corrected. CareFirst concedes that "incorrect data can be corrected." Pl.'s Reply at 4. CareFirst questions, however, why CMS would "'commit' itself [in its April 2023 memorandum] to the 'release' of 'final' data to plans by July of every year if it does not intend plans to plan and prepare in reliance on that commitment[.]" *Id.* CareFirst's arguments miss the mark. CMS uses "final" here to distinguish between the full year of data released in July and the monthly reports plans receive up to this point. But at no point did CMS indicate that these data could not be changed. Instead, CMS releases patient safety data in July so that Medicare Advantage organizations can confirm the accuracy of the data to be used in the Star Ratings issued in October: "The purpose of the plan preview is for [Medicare Advantage organizations] to review and raise any questions about their own plan's data prior to the public release of data," which "allows for necessary corrections to be made prior to the Star Ratings data being public." Medicare Program; Contract Year 2019 Policy & Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program, 83 Fed. Reg. 16,440, 16,520 (Apr. 16, 2018). The July deadline set out in the April 2023 memorandum was therefore not "meaningless," Pl.'s Reply at 4; it is meant to give plans ample time to confirm the accuracy of the patient safety data before the Star Ratings are released.

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limited to "typographical errors," as CareFirst contends. Pl.'s Reply at 10. An agency has inherent authority to correct "inadvertent errors," *Am. Trucking Ass'ns, Inc. v. Frisco*, 358 U.S. 133, 145 (1958), that are "ministerial" or "clerical" in nature, *Howard Sober, Inc. v. ICC*, 628 F.2d 36, 40–41 (D.C. Cir. 1980). The error here—incorrectly linking beneficiary information with claims across a measurement period—was inadvertent and clerical. Additionally, CareFirst does not address whether CMS would have acted arbitrarily and capriciously if it failed to correct data it determined to be inaccurate before issuing final Star Ratings.

CareFirst argues that "[t]he final patient safety report is released in July—after plans' deadline for submitting final Prescription Drug Event (PDE) data at the end of June—precisely because that July release is meant to reflect final data." Pl.'s Reply at 4-5. Insofar as CareFirst means to argue that "final" means year-end, complete data as compared with monthly, incomplete data, it is correct. But to the extent CareFirst means that the data are released in July because they cannot be subsequently corrected, it fails to provide any basis for this conclusion. CMS releases patient safety data in July, months in advance of the release of final Star Ratings, so that plans can identify errors and CMS can correct them, as happened here.

CareFirst contends that "[i]f CMS really intends that data released in July can be readily swapped for another data set 'at any time' before plans' final Star Ratings are released to the public, . . . then basic principles of fair notice dictate that it must state that in advance." Pl.'s Reply at 4. But, as established, CMS gave CareFirst sufficient notice that the data it makes available as part of the Star Ratings plan preview process, including the July 2024 patient safety data, are not final until public release of Star Ratings and underlying data. *See* Defs.' Memo in Opp'n. ("Defs.' Br.") at 23-25.

In arguing that CMS's correction of patient safety data in September 2024 was too late, CareFirst misapprehends the plan preview process. CareFirst contends that CMS "carefully constructed" a "calendar of key events . . . to govern the Star Ratings process," and that during the first plan preview period in August, Medicare Advantage organizations are meant to "review CMS's methodology and data and raise questions with CMS." Pl.'s Reply at 5. During the second plan preview period in September, CareFirst contends that "CMS makes any necessary revisions to its calculations." *Id.* CareFirst asks why CMS would "require plans to 'closely review' the data and raise questions in the first plan period so as to allow CMS sufficient time to incorporate any

revisions in the second period if that data could afterward be swapped for another set of data without adequate notice to plans." *Id.*

There is an answer to CareFirst's question: CMS uses both opportunities to make data corrections before the issuance of the Star Ratings. CMS makes this clear when it instructs Medicare Advantage organizations to "again closely review the methodology and their posted data for each measure, as well as their preliminary Star Rating assignment" during the second plan preview period. 83 Fed. Reg. at 16,588. The end of the second preview period is the deadline to submit comments and questions in the ordinary course. A.R. 68 ("Comments and questions must be received no later than 5:00 p.m. ET on September 13, 2024 and will be addressed on a rolling basis."). Following the close of the comment window, CMS considers comments and questions—some of which lead to error corrections and other Star Ratings calculation changes—until the publication of Star Ratings and underlying data later in October. CMS continues to make changes in the calculation of Star Ratings subsequent to the close of the plan preview windows. Here, other plans identified an error in the patient safety data and raised that error with CMS and Acumen; the plan preview process worked exactly as intended. Indeed, there are additional opportunities after the Star Ratings are issued to correct errors. *See, e.g.*, 42 C.F.R. § 422.260 (quality bonus payment appeals). CareFirst's claimed expectation that CMS would not send communications notifying it of error corrections after September 13, 2024 was unfounded.

II. CareFirst Received Adequate Notice of the Data Correction.

CareFirst contends that CMS was required to issue any notice of data correction through the Health Plan Management System ("HPMS"). In support of this assertion, CareFirst contends that "HPMS is the platform through which CMS communicates *all* important messages about Medicare Advantage, including matters relating to Star Ratings." Pl.'s Reply at 6 (emphasis added). This is flatly wrong. CMS communicates updates pertaining to patient safety data through

its contractor Acumen and the Patient Safety Analysis Web Portal and did so throughout 2023 and 2024. CMS explained the availability of patient safety data reports on the Patient Safety Analysis Web Portal in its April 2023 memorandum: "The purpose of this memorandum is to announce the availability of the 2023 Patient Safety Reports on the Patient Safety Analysis Web Portal on April 28, 2023, updates to measure calculations, changes to measure specifications, new measures, and archiving of older reports." A.R. 1-12. CMS explained that "[t]he Patient Safety Analysis Web Portal facilitates communication between CMS, Part D contracts, and our contractor, Acumen, LLC." *Id.* CareFirst's position is that by correcting the patient safety data released in July 2024, "CMS tries to subvert that explicit language" of its April 2023 memorandum, Pl.'s Reply at 3, but also that CMS was required to announce its correction of patient safety data through HPMS, at odds with the plain language of the April 2023 memorandum, *id.* at 6-7.[2] CareFirst cannot have it both ways.

Additionally, in its 2024 Technical Notes, CMS explained that "Part D sponsors currently have access to monthly Patient Safety Reports via the Patient Safety Analysis Web Portal to compare their performance to overall rates and monitor their progress in improving the Part D patient safety measures over time." A.R. 421. On July 31, 2024, Acumen emailed six representatives for CareFirst, notifying them that the final patient safety reports were available for download through the Patient Safety Analysis Web Portal. A.R. 13-18. On July 31, 2025, Acumen sent substantially identical emails to five representatives for CareFirst. A.R. 688-97. When, on September 30, 2024, Acumen issued its message concerning the corrected 2023 patient safety data to seven CareFirst representatives—almost all of whom received the earlier July 31, 2024 notice

[2] The only way CareFirst would have known that its D09 measure score for its 2025 Star Ratings was initially 90.014705 in July 2024 before correction is by logging on to the Patient Safety Analysis Web Portal.

(A.R. 125-31)—CareFirst was on notice that it could expect to receive updates pertaining to patient safety data from Acumen and not through HPMS.

Whatever CareFirst's actual expectations regarding the time and manner in which it might receive notifications pertaining to data correction, there is no record evidence to suggest that Acumen's messages provided CareFirst insufficient notice of the data correction. The email subject line to the seven CareFirst recipients stated, "Patient Safety—Updated Year of Service (YOS) 2023 Reports Available." A.R. 125-31. In conspicuous bolded and underlined text, the heading stated: "Notice Regarding Update to the YOS 2023 Reports." *Id.* Acumen explained that "[t]he YOS 2023 Patient Safety Report Package zip files have been re-uploaded to replace the zip files that were uploaded on July 31, 2024" because Acumen "identified and corrected a minor technical issue in the process that assigns and links PDE and Common Working File (CWF) claims to beneficiaries that impacted a small fraction of beneficiaries." *Id.* Acumen apprised CareFirst that "[t]he updated 2025 Part C and D Star Ratings data will be available from CMS in HPMS in early October." *Id.* CareFirst does not argue that its representatives did not receive Acumen's September 30, 2024 messages pertaining to the patient safety data correction. Instead, CareFirst argues that Acumen's September 30, 2024 notice was insufficient because it gave CareFirst "no reason . . . to be curious." Pl.'s Reply at 13. Whether Acumen's notice generated sufficient curiosity on the part of CareFirst is not relevant to whether CareFirst received actual notice that the patient safety data had been updated. CareFirst contends that CMS's notice should have included "contract-specific information," *id*. at 19, but fails to explain why Acumen's notice was insufficient. Acumen's notice on behalf of CMS that patient safety data had been updated was more than sufficient.

III. CareFirst Did Not Avail Itself of Its Opportunity to Raise Questions and Comments with Regard to the Corrected Patient Safety Data.

CareFirst argues that Acumen's notice of the data correction "deprived plans of their opportunity to raise any questions and comments" earlier in the plan preview process. Pl.'s Reply at 6. CMS explicitly requested in its September 30, 2024 data error correction notice that Medicare Advantage organizations reach out to CMS with regard to the patient safety data correction "if you have any questions or concerns." A.R. 125-31. Following the close of the comment window for the second plan preview period on September 13, 2024, A.R. 68, CMS considers comments and questions—some of which lead to error corrections and other Star Ratings calculation changes—until the publication of Star Ratings and underlying data later in October. Had CareFirst raised questions or comments pursuant to CMS's invitation in its September 30, 2024 notice, CMS would have considered them. But CareFirst did not avail itself of this opportunity. Instead, it did not bother to download the corrected patient safety data. Haynes Decl. (ECF No. 10.2) ¶ 10 ("[W]e did not download the September 2024 Report at that time to do further diligence"); *see also* A.R. 132.

IV. CMS's Reopening Regulation Is Inapposite.

CareFirst cites CMS's "reopening regulation," 42 C.F.R. § 422.260(d), for the proposition that when CMS corrects errors, it should do so only to the benefit of Medicare Advantage organizations, *i.e.*, when correcting an error would increase payment to the plan. Pl.s' Reply at 9. As CareFirst recognizes, "the reopening regulation does not apply on all fours to this case." *Id.* at 10. In fact, this regulation does not apply to the calculation of Star Ratings; it applies to the calculation of quality bonus payments. 42 C.F.R. § 422.260(d). And it only applies in an instance where an error in calculating the quality bonus payment determination was identified after release of the quality bonus payment determination in November through April 1 of the following year.

Id. There is no similar regulation pertaining to CMS's correction of Star Ratings calculation errors during the plan preview process, prior to publication of the Star Ratings. This is because CMS has made clear—and it is well understood—that it has authority to correct errors in the Star Ratings.

Nevertheless, the principle underlying the reopening regulation that plans should only benefit from error corrections accords with CMS's actions here. The patient safety data correction *increased* CareFirst's measure D09 performance in 2024. CareFirst's measure D09 score "marginally improved . . . to [90.071628]." A.R. 206-07. But the principle underlying the reopening regulation—even if it did apply—is year-specific. *See* § 422.260(d) ("CMS may . . . revise an [Medicare Advantage] organization's [quality bonus payment] status at any time after the initial release of the [quality bonus payment] determinations through April 1 of each year."). A Medicare Advantage organization's score that changes due to a systemic calculation error "will only be updated if it results in a higher [quality bonus payment] rating" for the given year, not for future years. *Id.* CMS's reopening regulation does not apply, and even if it did, CMS's data correction accords with the regulation because it increased CareFirst's D09 measure score for its 2025 Star Rating.

V. CMS's Process for the Correction of Errors Is Committed to Its Discretion.

While CareFirst concedes that CMS had legal authority to correct the data error, Pl's Reply at 8, it claims that the "linchpin" of the case is CMS's "failure of process in announcing the error correction" and asks then this Court to impose CareFirst's preferred process on CMS. CareFirst's attempt should be rejected as none of it is required by the Medicare statute or its regulations. CareFirst argues that CMS could only correct the July 2024 patient safety data if it had previously established "a plan" for correcting such data. Pl.'s Reply at 14. CMS, according to CareFirst, is required to communicate data corrections through the HPMS. *Id.* at 6. CMS, CareFirst contends, is not permitted to correct data following the first plan preview. *Id.* at 5. CMS, per CareFirst, is

required to provide "individualized notification" to the specific contracts that were affected by the data correction. *Id.* at 19. But CareFirst points to no statutory or regulatory requirements for its desired process, nor does CareFirst establish that CMS acted arbitrarily or capriciously in violation of the APA in following the process it did.

Instead, the Medicare statute is silent on CMS's preview of Star Ratings in advance of publication. *See* 42 U.S.C. § 1395w-23(o)(4). CMS's regulations state only that "CMS will have plan preview periods before each Star Ratings release during which [Medicare Advantage] organizations can preview their Star Ratings data in HPMS prior to display on the Medicare Plan Finder." 42 C.F.R. § 422.166(h)(2). How CMS corrects Star Ratings data errors before publication of the Star Ratings is therefore committed to CMS's discretion. For the reasons set forth in the government's opening brief, Defs.' Br. at 30-32, *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260 (1954), does not circumscribe CMS's discretion.

VI. CMS's Calculation of Measure Scores Using Fractions of Beneficiaries Was Not Unreasonable.

CareFirst argues that to achieve "significant improvement" for measure D09, it needed 0.64 of an additional member who sufficiently filled their blood pressure medication. Pl.'s Reply at 22-23. CareFirst appears to contend that basing a determination of significant improvement on a fraction of a member is inherently arbitrary. As courts have recognized, "the complex process by which CMS collects data and produces Star Ratings" involves line drawing. *See Elevance Health, Inc. v. Kennedy*, 795 F. Supp. 3d 861, 880 (N.D. Tex. 2025) ("it is virtually guaranteed that there will be contracts that fall a hair's breadth short of the next-highest rating"). Requiring CMS to base its system for calculating Star Ratings on achieving whole numbers for each plan and for each measure calculation would introduce arbitrariness at odds with CMS's goal of "provid[ing] information to the beneficiary that is a true reflection of the plan's quality and

encompasses multiple dimensions of high-quality care." 83 Fed. Reg. at 16,520. CMS has explained that generally, "[t]he improvement measures, summary, and overall ratings are calculated with at least six digits of precision after the decimal whenever the data allow it." A.R. 287. The approach CareFirst advocates would, among other things, thwart CMS's commitment to calculating accurate and precise Star Ratings.

CareFirst describes CMS as having "created an insurmountable barrier" through its calculations that required 1,695.64 adherent members to achieve "significant improvement" when comparing the number from the prior year. Achieving "significant improvement" for the D09 measure was not insurmountable; CareFirst could have had 1,696 adherent members. Calculating Star Ratings "involves advanced knowledge of data collection, statistics, and mathematics. In other words, it is not one which a federal court is well suited to second guess." *Elevance Health, Inc.*, 795 F. Supp. 3d at 880. This Court, like others, should reject CareFirst's claim that it was arbitrary and capricious for CMS to deny CareFirst a 4-Star D04 rating on allegedly "so thin a reed." Pl.s' Reply at 23.

VII. Any Notice Defect on the Part of CMS was Harmless Error.

Any claimed action CareFirst would have taken in response to its increased score is with the benefit of hindsight. *See* Haynes Decl. (ECF No. 10.2) ¶ 22 ("Our understanding changed a year a later, however, with CMS's 2026 Star Ratings preview periods, which began in August 2025."). Given that the error *increased* CareFirst's D09 measure score for the 2025 Star Ratings period, CareFirst would not have objected to the data correction in 2024 even if they had opened those notifications from Acumen and looked to see if its data were affected. CareFirst claims it "would have taken steps to address" the fact that its raw score for the D09 measure was changed only if it knew that the D09 measure changed "in such a way that it would have a downstream, Star Rating-level impact on the [D04 measure] for its 2026 Star Rating." Haynes (ECF No. 10.2)

Decl. ¶ 32. But CareFirst could have only known that the corrected data would impact its D04 improvement measure score for the 2026 Star Ratings in 2025, when the 2024 data used for the 2026 Star Ratings period were finalized, not in 2024.[3] To the extent the Court finds the process CMS used to notify CareFirst of the data error insufficient, that error was harmless.

VIII. Any Remand Should Be Without Instructions.

If the Court were to find that CMS's calculation of CareFirst's Star Rating using corrected data was improper, CareFirst asks that the Court enter an order specifically requiring CMS to "recalculate CareFirst's 2026 Star Rating for contract H7379 by either excluding the Medication Adherence for Hypertension Measure (D09) from the calculation of the Drug Plan Quality Improvement Measure (D04) rating, or by using the data contained in the July 2024 Report to calculate the D04 score." Pl.'s Reply at 23. In that event, the Court should decline to do so.

When a court "identifies an agency error," it "normally . . . remand[s] to the agency for further proceedings" consistent with its ruling. *N.C. Fisheries Ass'n, Inc. v. Gutierrez*, 550 F.3d 16, 20 (D.C. Cir. 2008). That is the normal practice because, "[u]nder settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court's inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards." *PPG Indus., Inc. v. United States*, 52 F.3d 363, 365 (D.C. Cir. 1995). For that reason, the D.C. Circuit has reversed a district court that "required the Secretary to affirmatively count Part C days under the Medicaid fraction" on remand, explaining that the district "court erred by directing the Secretary how to calculate the hospitals' reimbursements, rather than just remanding after identifying the error." *Allina Health Servs. v.*

[3] The D04 measure score for the 2026 Star Ratings is based on a comparison between the 2025 D09 measure score, which is based on 2023 measurement year data finalized in 2024, and the 2026 D09 measure score, which is based on 2024 measurement year data finalized in 2025.

Sebelius, 746 F.3d 1102, 1111 (D.C. Cir. 2014). If the Court concludes that CMS erred in correcting CareFirst's patient safety data, it should simply remand to the agency for further proceedings consistent with its ruling.

* * *

CONCLUSION

For these reasons, and those set forth in CMS's motion, CMS's actions were not arbitrary, capricious, contrary to law, or in violation of the APA. Therefore, the Court should grant Defendants' cross-motion for summary judgment and deny Plaintiff's motion for summary judgment.

Dated: April 17, 2026

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: */s/ Allison I. Brown*

ALLISON I. BROWN
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
202-252-7822

Attorneys for the United States of America

Of Counsel:

MICHAEL B. STUART
General Counsel

ELIZABETH C. KELLEY
Deputy General Counsel
Chief Legal Officer for CMS

BETSY M. PELOVITZ
Associate General Counsel

JOCELYN S. BEER
Acting Deputy Associate General Counsel for Litigation

KENNETH R. WHITLEY
Attorney
Department of Health and Human Services
Office of the General Counsel