**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

Minnesota et al.

Plaintiffs. Civil File No. 26-cv-1701-ECT-DTS

Dr. Mehmet Oz, et al.,

Defendants.

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**DEFENDANTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO MINNESOTA'S MOTION FOR A TEMPORARY RESTRAINING ORDER**

Defendants respectfully submit this supplemental brief "regarding the impact of ongoing administrative proceedings" pursuant to the Court's March 24, 2026 Minute Entry.

**There's No Final Agency Action**

The ongoing nature of the deferral process emphasizes why the deferral notice is not and cannot be reviewable final agency action. The notice began a process; it did not end one. *See* Mem. of Law in Opp. to Minnesota's Mot. for a TRO at 16, ECF No. 22 (citing *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (two-part test)). As one court explained decades ago in a disallowance case, a deferral "is nothing more than a setoff which occurs prior to a hearing"—it becomes a disallowance only "[a]fter the State has been heard and the decision to set off has been affirmed by final agency action." *State of Georgia, Dep't of Human Resources v. Califano*, 446 F. Supp. 404, 412 n.11 (N.D. Ga. 1977).

Nor did the deferral notice change any legal rights or obligations. The burden to establish allowability under the regulatory scheme has always rested with the State. *See id.* at 410 ("[T]he state is ultimately charged with the duty of proving the allowability of deferred claims.").

Minnesota has suffered no legal injury or consequences. *See Sisseton-Wahpeton Oyate of Lake Traverse Rsrv. v. United States Corps of Eng'rs*, 888 F.3d 906, 915 (8th Cir. 2018).

The Howe Declaration (Ex. A) confirms neither *Bennett* condition is met. CMS has been in continuous discussions with Minnesota, meeting with it ten times since the beginning of this year—both *before* and *after* issuing the deferral notice. Five meetings have taken place since the deferral notice. Howe Decl. ¶¶ 7-8. This process is ongoing, not final, and proceeding in the normal course. CMS cannot determine allowability until the State provides sufficient documentation. That documentation has not been provided. Howe Decl. ¶¶ 9-12.

Minnesota has represented that it's actively working to provide the requested documentation. It also indicated that it plans to seek a 60-day extension as permitted under 42 C.F.R. § 430.40. *See* Howe Decl. ¶ 9 (noting that CMS routinely grants states' extension requests at this stage). With that extension, Minnesota has until mid-to-late June to submit materials to CMS. *Id.* After Minnesota has provided the requested documentation, CMS will have 90 days to make its final determination on the allowability of the deferred funds. *Id.* ¶ 11. If CMS cannot meet that deadline, it must release the deferred funds. 42 C.F.R. § 430.40(c)(5), (6).

The scheme thus contains a built-in remedy for the very harm Minnesota claims. If CMS takes too long, the State gets paid. That is the answer to the concern Minnesota raises—not a federal lawsuit.

**The Deferral is Regular**

There's no dispute Minnesota made improper payments to fraudulent actors. Given that, CMS reasonably initiated a deferral to protect expenditures of federal funds. In the deferral process, CMS has requested detailed documentation on a sample of 490 claims—330 fee-for-

service and 160 managed care encounters. ECF No. 25, Supp. Decl. of Patrick Hultman ¶¶ 10–11. Auditing claims is a normal way to protect federal funds.

Minnesota emphasizes the size of the deferral as unusual. Compl. ¶¶ 2–3, 32–39, ECF No. 1. But this is not unusual. CMS has deferred comparable or greater amounts from California, New York, Louisiana, and Connecticut during the last decade. *See* Howe Decl. ¶ 13 (listing deferrals between 2014 and 2025 that range from $249 million to $429 million). No lawsuits challenging the deferrals resulted. Here, the size of the deferral is commensurate with the seriousness of Minnesota's struggles with Medicaid fraud. The deferral isn't anomalous; the lawsuit is.

Minnesota also conflates two distinct processes. CMS initiated a retrospective deferral to determine the allowability of past claims and a prospective compliance action to address systemic deficiencies. But the two address different questions. A deferral looks backward at past *claims* to determine allowability. *See Califano*, 446 F. Supp. at 412 n.11. A withholding (or "compliance") action, in contrast, looks forward at *systemic adequacy*. Because they address different questions, Minnesota's theory that the deferral is an end run around the compliance process fails.[1]

There's no end run around a process that asks a different question.[2]

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[1] There is an ongoing administrative process challenging CMS's compliance action. Because CMS approved Minnesota's CAP, the agency intends to seek a stay of that administrative process to allow Minnesota to execute the CAP, which would render that administrative appeal moot.

[2] Because the deferral and the compliance action address different regulatory questions—one retrospective, one prospective—there is no categorization decision to review. CMS did not choose between alternative enforcement paths. It used both because both were warranted. To the extent Minnesota challenges CMS's decision to defer rather than disallow, that decision is committed to agency discretion by law. 5 U.S.C. § 701(a)(2). No standard in the statute or regulation tells CMS when to defer versus when to disallow. Section 430.40 says CMS "may" defer. Section 430.42 governs disallowances. Nothing governs the choice between them. The selection of an enforcement tool where no standard constrains the choice is the paradigmatic case of action committed to agency discretion. *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985). Minnesota conceded at the March 12 hearing that no law prohibits CMS from pursuing parallel proceedings.

Dated: March 30, 2026

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*/s/ Matthew C. Zorn*
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2026, I electronically filed the foregoing Notice of Subsequent Event with the Clerk of Court using the CM/ECF system, which will send notify all counsel of record.

*/s/ Matthew C. Zorn*
MATTHEW C. ZORN

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**DECLARATION OF RORY HOWE**

I, Rory Howe, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that my testimony below is true and correct:

1. I am the Director of the Financial Management Group (FMG) within the Centers for Medicaid and CHIP Services (CMCS) at the Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services (HHS). I have served in this capacity since 2021. In this role, I supervise FMG's activities overseeing states' financial management of their State Medicaid and CHIP programs. Those activities include providing technical assistance to states on review of institutional and non-institutional state plan amendments and reviewing state funding mechanisms to verify that they are appropriate and allowable non-Federal sources of funding. Specifically, FMG manages the applications that enable states to electronically submit their actual expenditures and budget estimates to CMS. It also reviews states' Medicaid and CHIP quarterly estimates and statements of expenditures for Medicaid program administration (CMS-64), reconciles state budget estimates and actual expenditures, and recommends appropriate actions, including issuing quarterly and ad hoc Medicaid and CHIP grant awards; it conducts focused reviews of selected claims for federal financial participation (FFP) to

ensure federal payments to states are allowable; along with many other financial management activities.

2. The statements set forth in this declaration are based on my personal knowledge, information obtained in the course of performing my official duties, information provided to me by federal government employees acting within the scope of their employment, and my review of relevant government records maintained in the ordinary course of business.

3. I submit this declaration to provide the Court background and to update the Court on the current status of ongoing administrative proceedings related to CMS's decision to defer paying Minnesota approximately $244 million in Medicaid funding to determine whether those claims constitute allowable Medicaid expenses (hereinafter "the deferral").

4. To qualify for federal payments, states upload a quarterly statement of expenditures to Medicaid and CHIP Budget and Expenditure System (MBES/CBES), which CMS uses to reconcile advances received by the state at the beginning of the quarter with actual expenditures. The state must be able to support the allowability of each claimed each expenditure through documentation identifying the specific Medicaid or CHIP claim and the relevant source documentation. A State executive officer must certify that those expenditures are allowable under all applicable federal, state, and local statutes, regulations, policies, and the state plan approved by the Secretary and in effect during the quarter under Title XIX of the Social Security Act and, if applicable, Title XXI.

5. Under CMS's longstanding regulations, a deferral is proper where CMS has questions concerning the allowability of a state's expenditures, including unexplained variances that call into question whether claimed amounts constitute allowable medical assistance expenditures.

6. For the quarter ending September 30, 2025, CMS initiated a deferral after finding significant variances in quarterly expenditures within certain categories of Medicaid services. Among other issues, these variances raised concerns about the allowability of $243,790,260 in claims paid by the Federal Government during that quarter, including for the 14 high-risk medical service areas.
7. Following standard agency practice, CMS formally notified the State of the deferral on February 25, 2025. The letter explained the basis for the deferral and requested documentation necessary to support the allowability of the claims.
8. Both before and after issuing the deferral notice, CMS and Minnesota have been in continuous communication regarding the deferral and information needed to support the allowability of the deferred claims. During these meetings, CMS has articulated what documents CMS needs from the state to determine the allowability of the deferred claims, and Minnesota has provided relevant information to give CMS additional context to assist in its claims review process. CMS has met with Minnesota on the following dates:
    - January 22, 2026 (on-site)
    - January 29, 2026
    - February 5, 2026
    - February 12, 2026
    - February 19, 2026
    - February 26, 2026
    - March 5, 2026
    - March 12, 2026

- March 19, 2026
- March 26, 2026

9. Since issuing its deferral notice to Minnesota on February 25, 2026, the state has indicated that it is actively working to provide the requested supporting documentation. During a March 12, 2026, meeting with the state, Patrick Hultman, Deputy Medicaid Director at the Minnesota Department of Human Services, advised CMS staff that the state is working on CMS's document requests and anticipates requesting a 60-day extension of the deadline to provide CMS with the requested documentation, as permitted under 42 C.F.R. § 430.40. CMS routinely grants such extension requests and anticipates granting Minnesota's request once the state requests it. Assuming the state requests and CMS grants Minnesota's request, Minnesota would be required to submit the requested documentation by mid-to-late June 2026.
10. CMS has requested detailed documentation on a sample of 490 claims—330 fee-for-service and 160 managed care encounters. This requested documentation includes care plans, provider licensure information, provider background check documentation, encounter/visit notes, among other information.
11. Once CMS determines that Minnesota has submitted the required documentation in a readily reviewable form, the agency would have 90 days to determine whether to pay the deferred claims, subject to a later CMS determination of allowability if CMS pays all or a portion of the deferred claims.
12. The process CMS is following in this deferral is consistent with the usual process CMS has historically used in these types of actions. That includes a collaborative back-and-forth with the state to identify the types of documents CMS needs to determine the

allowability of the deferred claims, extension requests from states, and a continuous narrowing of the issues relevant to the deferred claims.

13. The amount of deferred funds at issue in this case is not unusual. In the past ten years, CMS has deferred comparable amounts and, in some cases, higher amounts. Some examples of past deferral actions involving the same amount or more as the Minnesota deferral at issue in this case are as follows:

- In 2014, CMS deferred $307 million in FFP from Louisiana.
- In 2014, CMS deferred $249 million in FFP from Connecticut.
- In 2016, CMS deferred $401 million in FFP from New York.
- In 2016, CMS deferred $429 million in FFP from California.
- In 2025, CMS deferred $346 million in FFP from California.

Executed on this 27th day of March, 2026.

Rory C. Howe -S

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**RORY HOWE**
Director
Financial Management Group, Center for Medicaid & CHIP Services
Centers for Medicare & Medicaid Services