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Rethinking Star Ratings in the Wake of Clover

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Medicare Advantage Organizations (MAOs) have a chance to rethink their Star Ratings strategies following the recent rebuke of the Centers for Medicare & Medicaid Services (CMS) in *Clover Insurance Co. v. HHS*.[1] The decision has shaken up the Star Ratings program, the annual score that CMS assigns to each MAO contract based on up to 45 measures of quality and performance for the benefits the MAO provides enrollees under Medicare Parts C and D. While a good Star Ratings score can provide significant advantages, including to MAO payments, a bad one can put MAOs at a disadvantage and even threaten their ability to offer particular health plans. Though CMS has appealed the decision, the Star Ratings program will likely remain in flux. When the dust settles, some MAOs will emerge financially and competitively better off than others. Consequently, MAOs should develop an affirmative strategy to maximize the benefit of the *Clover* decision and minimize the risk of harm.

In *Clover*, the U.S. District Court for the Southern District of Georgia vacated Clover Insurance Company's 2026 Star Ratings score, concluding that nearly half the measures CMS used were invalid.[2] The district court held that ten Part C and Part D measures exceeded CMS' statutory authority because the measures relied on data not collected through the quality-improvement data systems that CMS used as of November 1, 2003.[3] Another ten Part C measures had been adopted without satisfying the Medicare statute's requirement that CMS engage in notice-and-comment rulemaking.[4]

CMS appealed the decision to the Eleventh Circuit, and if upheld, it will upend the Star Ratings program. Though the district court considered only the 20 measures that Clover challenged and did not opine on the remaining Part C and Part D measures that can affect an MAO's Star Rating, many—or even all—of those additional measures might now be unlawful under the district court's logic. For example, the district court invalidated data measure C32 (Reviewing Appeals Decision) because it relied on data from an independent review entity rather than CMS' quality-improvement data

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systems.[5] Since Clover did not challenge measure C31 (Plan Makes Timely Decisions about Appeals), the district court did not opine on its validity, even though it relies on data from the same independent review entity.[6] In addition, CMS recently conceded in its Eleventh Circuit brief that *none* of the 2026 Star Ratings measures—for Part C and Part D alike—were adopted pursuant to notice and comment.[7] It could thus be argued that the entire program violates the Medicare statute's procedural requirements.

CMS could have responded to the district court's decision in a variety of ways. On one extreme, CMS could have recalculated only Clover's 2026 Star Rating without changing any other MAO's Star Rating while prosecuting its appeal to the Eleventh Circuit. On the other extreme, CMS could have declined to appeal the district court's decision and simply recalculated the 2026 Star Ratings for all MAOs without the 20 challenged measures. Instead, CMS pursued a middle ground: appealing the *Clover* decision to the Eleventh Circuit and giving all MAOs the option of having their 2026 Star Rating recalculated based on some, but not all, aspects of the district court ruling.[8] Specifically, MAOs could (i) keep their original 2026 Star Rating, or (ii) use a new Star Rating calculated without 18 of the original measures, including the 10 Part C and Part D measures rejected in *Clover* based on their data source plus an additional eight Part D measures to which CMS concluded the district court's rationale applies. Notably, CMS neither addressed why measures like C31 should not be excluded based on the district court's rationale nor proposed excluding any of the measures invalidated by the district court solely on notice-and-comment grounds.

CMS' approach to implementing *Clover* was bound to be controversial, both because the district court's decision can be construed to exclude *all* the measures and because excluding any subset of them will benefit MAOs that perform poorly on those measures and harm MAOs that perform well on them. In its pending appeal to the Eleventh Circuit, CMS highlighted this point by questioning the district court's decision to permit Clover to eliminate 20 "cherry-pick[ed] . . . measures on which it did poorly . . . while leaving the measures on which it did better."[9]

It is therefore unsurprising that CMS' effort to implement the *Clover* decision has given rise to further litigation: one MAO brought a lawsuit (so far unsuccessful) to compel CMS to recalculate its 2026 Star Ratings score without the 20 measures that Clover challenged, and two other MAOs are seeking to force CMS to exclude the ten measures that the district court invalidated on notice-and-comment grounds—in addition to the 18 measures that CMS has already offered to exclude.[10] Many MAOs have filed no lawsuit at all. Additional MAOs could seek the same—or different—relief in the coming months. CMS has likely disincentivized at least some MAOs from suing by allowing them to retain their original 2026 Star Ratings, but CMS may not afford MAOs the same flexibility in the 2027 Star Ratings cycle, for which CMS has already completed the first plan preview and will complete the second plan preview September 15. The Eleventh Circuit's resolution of CMS' appeal—which the government has requested be decided by April 2027—could complicate matters even further.

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With so much in flux, there are opportunities and risks that MAOs should consider, and a range of actions that they can take to further their interests. Among the options, MAOs might still bring litigation against CMS challenging their own 2026 Star Ratings, advocate to CMS and courts for an interpretation of *Clover* that would exclude a new set of measures in the 2027 Star Ratings process, or participate as *amici* in CMS' appeal. Most importantly, given the significant financial and competitive impact that Star Ratings will continue to have on Medicare Advantage, MAOs should expeditiously determine their optimal legal position in the wake of the *Clover* decision, CMS' response to it, and the potential outcomes of the Eleventh Circuit appeal.

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[1] No. 2:25-cv-142, 2026 WL 1483515 (S.D. Ga. May 27, 2026) *denying reconsideration in relevant part*, 2026 WL 1510382 (S.D. Ga. May 29, 2026) *appeal docketed* 26-12553 (11th Cir. July 22, 2026).

[2] *See id.* at *25.

[3] *Id.* at *14, *20 (citing 42 U.S.C. § 1395-23(o)(4)(A) and § 1395-22(e)(3)(B)).

[4] *Id.* at *22–25 (citing 42 U.S.C. § 1395hh(a)(2)).

[5] *Id.* at *9, *14 (citing 83 Fed. Reg. 16440, 16,531–32 (Apr. 16, 2018)).

[6] *See* Medicare 2026 Part C & D Star Ratings Technical Notes, at 70 (Sept. 25, 2025), https://www.cms.gov/files/document/2026-star-ratings-technical-notes.pdf.

[7] *Clover Ins. Co. v. HHS*, Opening Br. for Appellant at 60, Case No. 26-12553 Doc. 14 (11th Cir. Aug. 31, 2026) ("Plaintiff's notice-and-comment argument would mean that *all* 42 measures [on which Clover's 2026 Star Rating was based] were invalidly applied, because CMS did not implement the technical specifications for any of those measures 'by regulation.'" (emphasis in original)).

[8] CMS, Memorandum re: Update to 2027 Quality Bonus Payment Determinations (June 17, 2026), https://www.cms.gov/about-cms/information-systems/hpms/hpms-memos-archive-weekly/hpms-memos-wk-3-june-15-19.

[9] *Clover Ins. Co. v. HHS*, Opening Br. for Appellant at 61.

[10] *See Elevance Health v. HHS*, 2:26-cv-61, 2026 WL 2531796, at *5–6 (S.D. Ga. Aug. 27, 2026); *Scan Health Plan v. HHS*, 1:26-cv-2391-CRC, Dkt. 12 at 31 (D.D.C. July 31, 2026); *Alignment Healthcare, Inc. v. HHS*, 1:26-cv-2441-CRC, Dkt. 13 at 30 (D.D.C. July 31, 2026).

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