

# Strategic Playbook: Legal Challenges



## Potential Legal Challenges Available to Medicare Advantage Organizations

In May 2025, the Centers for Medicare and Medicaid Services (CMS) announced a substantial divergence from the agency's past practice and approach for Risk Adjustment Data Validation (RADV) audits. In part, rather than reviewing a selection of contracts, CMS now plans to audit all eligible contracts for Payment Year (PY) 2020 and beyond.

As CMS ramps up its auditing capabilities, Medicare Advantage (MA) organizations may benefit from complementing their immediate plans for short-term RADV audit compliance with long-term strategies for navigating – and potentially challenging – the increasingly strict regulatory landscape. Types of legal challenges may include:

- **Facial Challenges:** Broad challenges to the agency's new policy as inconsistent with law in all applications.
- **As-Applied Challenges:** Challenges to the agency's action as impermissible in an organization's specific circumstances.

### Potential Bases for Challenging RADV Audits

Certain federal agency actions have been found impermissible by courts, including those which are:

- **Arbitrary and capricious.** Under the Administrative Procedure Act (APA), a court may set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Agency actions have been held to be arbitrary and capricious if they depart from agency precedent without explanation.
- **In violation of procedural requirements.** A court may invalidate agency actions that should have proceeded through notice-and-comment rulemaking, which affords an opportunity for public comment. Plans may want to consider whether CMS's new policy of conducting RADV audits on all contracts is a new rule that requires notice-and-comment rulemaking.
- **Action contrary to law.** Agencies must act in accordance with statutory and regulatory requirements. Courts will not defer to an agency's statutory interpretation. In addition, CMS cannot engage in retroactive rulemaking absent certain stringent requirements. Plans may be able to challenge CMS's new RADV policy in light of statutory and regulatory requirements for RADV audits.

### Recommendations and Next Steps

As part of an MA organization's fulsome response to the new RADV audit landscape – including timely response to audit notices and, in the case of adverse audit findings, consideration of appeal rights – potential legal challenges to CMS's new policy may be worth pursuing. **Crowell attorneys can help MA organizations assess potential bases for challenging CMS's new approach to RADV audits.**

For additional information on processing audit notices and appeal rights, review Crowell's other RADV thought leadership resources, including our [Strategic Playbook: RADV Audits and Appeals](#).

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