

Committee MA Plan Oversight: 7 Agency Recommendations

RADV Rules Coming: June 21 Supreme Court Catalyst Overlooked By Many

As the House Energy & Commerce Oversight Committee (Chairman DeGette, D-CO) takes up Medicare Advantage plan practices today ([here](#)), we provide the main takeaways from agency testimony posted last evening.

- **We believe that today's hearing will focus on MA plan payments, HRA (health risk assessments), as well as other MA practices related to risk score growth, coding intensity, prior auth denials as well as MA conversions to FFS in the final years of life** (assuming costly care). We also point to a catalyst last week that was overlooked by many due to the volume of Supreme Court cases released in the final month of session. The Overpayment court case can be found [here](#), and leads us to believe that RADV will be sooner rather than later.
- **(1) The GAO and OIG will testify this morning, along with MedPAC, with the following 7-8 recommendations.** Based on testimony released last evening (OIG [here](#), GAO [here](#) and MedPAC [here](#)), the organizations will recommend the following.
 - **GAO** (Government Accountability Office) focuses on high rates of MA disenrollment in the last year of life. Key recommendations: (1) monitor disenrollments from MA plans by beneficiaries in the last year of life; (2) validate MA encounter data; and (3) strengthen audits used to identify and recover improper payments to MA plans (i.e., RADV).
 - **OIG** (Office of the Inspector General) provides data points indicating that \$9.2 B in payments were received by MAOs, with dx info solely reported on chart reviews or HRAs. This is not new data; we wrote about this in 2021 upon OIG report release. OIG also focuses on denied care. Although MA plans approve the vast majority of requests for services and payment, they issue millions of denials each year. In 2018, MAOs denied 1.5 M prior authorization requests (5% of all PA requests) and 56.2 M payment requests overall (9.5 % of all payment requests) in the MA program.
 - **MedPAC** focuses on Trust Fund issues and provides three areas where the Commission contends current MA policy is falling short and needs to be changed: (1) how MA plans' diagnostic coding practices inflate their Medicare payments; (2) the program to incentivize and reward plan quality increases plan payments for nearly all enrollees but does not provide the Medicare program, policy makers, or beneficiaries with the necessary information to evaluate plan quality; and (3) plan-submitted data about beneficiaries' health care encounters are incomplete.
- **(2) RADV Rules are likely coming.** Lost in the noise of another high profile Supreme Court decision (DVA-dialysis) on June 21, the SC decided not to take up a case about Medicare Advantage overpayments ([here](#)). Specifically, the SCOTUS rejected an appeal by United Health Group, leaving in place rules that allow the government to dollars from MA insurers.
 - **The Biden administration actually urged SCOTUS not to take the case (which is what happened).** HHS demonstrated that 40% of the risk scores that UnitedHealth filed were inaccurate. This resulted in payments >\$500M. In 2016 alone, CMS estimates that the government paid \$16 B in overpayments to MA plans.
 - **Controversial MA RADV (Risk Adjustment Data Validation) rules have not been implemented despite regulations being issued and clawed back, before moving to**

the courts. In 2014, based on a 2010 law, CMS created a rule that required MA plans to return overpayments to the agency within 60 days. This rule was not made for traditional Medicare, resulting in people arguing that this is now a situation of comparing apples-to-oranges, and it threatens the affordability aspect of MA plans. UnitedHealth, as well as other providers of MA plans, challenged the Overpayment Rule. The District court agreed with UnitedHealth, but the D.C. Circuit reversed this rule on Aug 13, 2021, and sided with CMS. On June 21, 2022, SCOTUS rejected to hear the case, leaving the rules in place.

- **RADV has had a decade+ long journey, but the SCOTUS refusal to take the case may be a sign that the RADV final rules are coming.** UnitedHealth has historically won cases against CMS/DOJ about RADV, but on Aug 13, 2021, the tide turned in favor of CMS on the overpayment rule.
- **WHAT'S NEXT/OUR TAKE:** (1) We expect RADV audits to come up in the hearing today (11 am [here](#)) June 28, in the House Committee on Energy & Commerce on Oversight of Private Sector MA Plans. We expect to hear discussion on HRA, Risk Score growth, Risk adjusted payments, and other policies such as prior authorization & disenrollment. (2) We expect the prior auth (MA) bill to pass in 2022; plans do not overtly oppose it (3) We view this as a pre-election hearing teeing up the issue for further investigation in 2023+. (4) We do not see MA plans taking any material reductions in pay for 2023, and look to RADV rules Summer/Fall 2022. According to the HHS regulatory agenda, RADV rules are due by Nov 2022, but with the recent action of SCOTUS not taking up the case of overpayments, they may be released sooner than expected. Of course, we don't know what policy may be included in final rules, and the devil is in the details.