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SCOTUS Ruling Upends Chevron Deference

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The Chevron doctrine, also referred to as *Chevron* deference, is an administrative law principal established in response to a 1984 Supreme Court case addressing the court's use of a regulatory agency's understanding of an ambiguous statute. This ruling advocated for agencies to utilize their own judgement when drafting regulations to implement various laws. After the *Chevron* ruling, courts were required to accept an agency's interpretation of a statute if the statutory language was not clear. On June 28, 2024, the U.S. Supreme Court overturned the 1984 *Chevron* ruling, eliminating federal agencies' ability to impose their own interpretation of ambiguous statutes. This ruling will impact all federal regulatory agencies as the power shifts back to the court system when it comes to interpreting legislative intent. It may also force congressional lawmakers to be more precise and specific when drafting legislation.

What is Chevron Deference?

"*Chevron* deference" refers to a doctrine of judicial deference that was developed as a result of the *Chevron U.S.A Inc. v. Natural Resources Defense Council, Inc.* case. The case featured a challenge to the Environmental Protection Agency's ("EPA") interpretation of the word "source" in a law that regulated air pollution emissions. The definition of "source" greatly impacted the permitting process for new industrial plants. The EPA implemented regulations using its own interpretation of the statute's requirements, but legal challenges arose questioning how the EPA defined this term. The Supreme Court ultimately settled these challenges by concluding that the EPA's definition was a reasonable interpretation of the term, and thus relied on the EPA's conclusion to guide its decision on the case¹. Relying on a regulatory agency's interpretation of a law came to be known as "*Chevron* deference," and precedent was set for lower courts to rely on an agency's interpretation of language rather than developing their own interpretation of a statute in instances where the intent of the law was vague.

Overturing Chevron Deference

For a long time, there has been debate surrounding *Chevron* deference, and in more recent years the Supreme Court seldom relied on this doctrine. The recent ruling has a more significant impact on lower courts, which have cited *Chevron* deference in over 18,000 opinions² over the forty years since the case that established it.

The 2024 Supreme Court ruling addressed two court cases, *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*. Both cases involved commercial fishing companies that challenged the Department of Commerce's rule that held fishing vessels responsible for the cost of federal observers used to monitor potential overfishing. These commercial fishing companies sued the National Marine Fisheries Service after the agency implemented a rule requiring the industry to fund an at-sea monitoring program. The fishermen claimed that the agency did not have authority to create this industry-funded requirement. The Supreme Court sided with the fishermen and overturned the use of *Chevron* deference, ruling that "the Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous."³ The ruling still allows courts to *consider* the agency's interpretation, but requires them to apply their own judgment in determining whether the interpretation is appropriate.

¹ National Constitution Center. (n.d.) *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984), 467 U.S. 837 (1984). <https://constitutioncenter.org/the-constitution/supreme-court-case-library/chevron-v-natural-resources-defense-council-inc>

² Howe, Amy. (2024, June 28.) *Supreme Court strikes down Chevron, curtailing power of federal agencies*, SCOTUSblog. <https://www.scotusblog.com/2024/06/supreme-court-strikes-down-chevron-curtailing-power-of-federal-agencies/>

³ *Loper Bright Enterprises et al. V. Raimondo, Secretary of Commerce, et al.* 603 U. S. ____ (2024). https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

Legislative and Judicial Impact

The overturning of *Chevron* deference will have both short and long-term implications. Lawmaking will likely become even more challenging, as legislators will need to be more precise in crafting the language of laws. More work will be required to ensure definitions and legislative intent are clear. Already, it takes a long time for bills to be drafted and work their way through the legislative process to become law. The extra precision that will be required going forward will likely stretch that timeline even longer and invite more legislative bickering over the details. Once laws are finally passed, government agencies will be more cautious about applying their own judgment and will need to be meticulous in justifying their reasoning anytime clarification of statutory intent is required in rulemaking. This will elongate the time for agencies to issue rules, leaving a longer period of uncertainty for those impacted by new laws.

In addition to challenges regarding implementation of future legislation, this ruling is also widely expected to lead to lawsuits challenging existing regulations. While the *Chevron* ruling specifically did “not call into question prior cases that relied on the *Chevron* framework,” legal experts still expect a wave of challenges to regulations that have been in place for decades. Lower courts could be overwhelmed in the process, leaving companies in limbo. In the event Congress does not provide timely clarity on regulations, courts or state governments may step in to fill the void. Courts in different jurisdictions could rule differently, leading to a patchwork of conflicting regulations throughout the country.

Effect on the Healthcare Industry

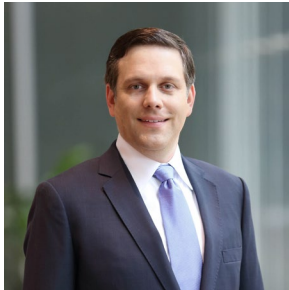
The court’s decision will increase scrutiny on healthcare agencies such as the Department of Health and Human Services (“HHS”) and the Centers for Medicare and Medicaid Services (“CMS”). Both agencies administer the Medicare and Medicaid program, and ambiguous language in Medicare and Medicaid regulations may need to be addressed by the courts. Medicare reimbursement to healthcare providers is controlled by CMS, which publishes multiple reimbursement rules each year. However, in light of the *Chevron* ruling, physicians and other healthcare providers may have greater ability to successfully challenge the CMS rules. In fact, on the same day of the *Chevron* ruling, a New Jersey health system challenged the formula for disproportionate share hospital payments in federal court⁴. Other rules likely facing challenges include minimum staffing ratios for nursing homes and a requirement for home health agencies to pass 80% of Medicaid revenue to workers providing direct patient care. Medicare payment rules are so complex that any number of provisions could face increased attention in light of this new judicial framework.

Additionally, various laws addressing fraud and abuse in the healthcare industry – including the Anti-Kickback Statute, the physician self-referral law (commonly referred to as the “Stark Law”), the Civil Monetary Penalties Law, and the False Claims Act – may now be called into question. Historically, HHS has had wide latitude to interpret and enforce these laws. However, following the Supreme Court’s decision, the power to interpret these statutes and implement effective regulations has now shifted away from agency regulators and back to the court. This could lead to modification in litigation and compliance strategies utilized by physicians and health systems, since the courts’ interpretation of laws could impact enforcement actions and related penalties. Furthermore, interpretations of key terms such as “fair market value” and “commercial reasonableness” have been refined and clarified through years of regulatory rulemaking. It is possible that the definition of these terms may be adjusted if new legal challenges are mounted.

⁴ Nielsen, Marci. (2024, July 17). *Impact of Supreme Court Chevron decision on health policy*. Milbank Memorial Fund. <https://www.milbank.org/2024/07/impact-of-supreme-court-chevron-decision-on-health-policy/>

Final Thoughts

The Supreme Court's decision to remove the requirement for courts to defer to agency interpretations shifts responsibility back to Congress to provide adequate specificity when enacting legislation, and to the courts to decide whether various agencies' interpretation of the laws is consistent with Congressional intent. There are specific and significant implications to the healthcare industry, particularly given the level of detail required in Medicare payment rules. With the upcoming election and an evenly divided Congress already having difficulty passing laws, it is widely anticipated that the pace of legislation will slow as a result of this ruling. Further, the overturning of *Chevron* deference allows an opportunity for challenging existing regulations that rely on interpretation of law, which introduces tremendous uncertainty. Since judges are not necessarily subject matter experts in healthcare, they may have difficulty discerning the intent of law and the significant implications of certain interpretations. In short, the future of the healthcare regulatory environment could shift drastically as the repercussions of this ruling reverberate through the industry.



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