



What's Next for Healthcare Employers After Chevron Overturned? 5 Practical Tips

Insights

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The Supreme Court's recent landmark ruling that gives employers a powerful tool to fight back against regulatory overreach will have a broad impact on just about every area of workplace law – and every industry. We're looking at the way industries will be specifically impacted now that federal agency rules and positions are more susceptible to attack after SCOTUS ditched the decades-old *Chevron* doctrine. This edition focuses on what healthcare employers can expect in the post-*Chevron* world and provides five steps these employers can take to stay ahead of the curve.

What Happened?

SCOTUS rocked the legal world on June 28 when it overturned the famous *Chevron* doctrine, holding that that courts may not defer to an agency's interpretation of an ambiguous federal statute. Instead, the Court said that from now on judges "must exercise their independent judgment" when ruling on cases involving agency rules, regulations, guidance, or other actions. In plain English, this ruling gives the courts – not administrative agencies – the power to say what the law actually is. [You can read all about it here, including all the different ways that the workplace law landscape may soon change.](#)

How Does This Impact Healthcare Employers?

As part of a highly regulated industry subject to significant federal agency oversight, healthcare employers must adhere to complex rules and regulations, including those issued by federal agencies such as the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS). This is in addition to the many federal workplace regulations applicable to all employers, including those in the healthcare industry. We've previously covered how different workplace rules, such as [wage and hour](#), [labor relations](#), and [workplace safety](#) rules, could be impacted in the post-*Chevron* era.

Under *Chevron*, CMS, HHS, and other agencies have had significant latitude to promulgate rules, among other things, specifically governing healthcare providers, including for example, rules on certain Medicare reimbursement rates, conditions of participation, billing requirements, prescription drug pricing, transgender care, and abortion care, among many others. And failure to comply with those rules can result in significant consequences for employers – from the inability to

participate in government programs to imposition of penalties that can often result in disastrous monetary implications and, in certain cases, criminal implications. The end of *Chevron* means:

- **Less Regulatory Power.** HHS, CMS, and other agencies will likely have less unchecked power to mold their own agendas because courts will have the final say on whether an agency's interpretation of the law should be upheld or struck down. Note, though, that unless a specific regulatory action is successfully challenged in court, nothing is stopping these agencies from continuing vigorous enforcement measures.
- **More Employer Leverage.** This change likely empowers employers to challenge agency actions more effectively in court. Healthcare employers and their advocates are now in a better position to challenge overly burdensome, vague, or problematic regulations and government overreach that could hinder business operations. For example, government enforcement actions, investigations, and whistleblower suits may diminish to due to a court's potential unwillingness to defer to agency interpretation of various fraud and abuse laws.

Are There Any Downsides?

While the death of *Chevron* is largely viewed as a win for healthcare employers, employers could see some negative consequences stemming from this change, including:

- **Regulatory Uncertainty:** The transition away from the *Chevron* doctrine may lead to a period of regulatory flux, as courts reassess existing agency interpretations. And not every agency action will be susceptible to the same kind of attack, as the laws that created the agencies and gave them power to issue rules are not necessarily synonymous. This uncertainty can complicate compliance efforts and strategic planning for healthcare employers.
- **Inconsistent Jurisdictions:** Without a uniform deference standard, different courts in different states may interpret statutes in wildly varied ways, creating a patchwork of compliance requirements across the country. This, of course, can be challenging for employers in the healthcare industry operating across multiple states.
- **Strategic Rulemaking.** Going forward, federal agencies could craft rules and regulations more carefully to ensure that they could survive judicial scrutiny in the post-*Chevron* era.

[Read more about how the end of Chevron deference could come at a cost.](#)

5 Practical Tips for Healthcare Employers

We encourage healthcare employers to take these five steps to remain agile during this period of uncertainty.

1. Stay Informed and Proactive – Ensure your legal team or external counsel provides regular updates on significant court decisions and regulatory changes ([sign up for FP Insights here](#)). Staying ahead of the curve will allow you to anticipate and prepare for potential impacts.

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2. Strengthen Compliance Frameworks – Conduct a thorough review of your current compliance policies and procedures while updating your managerial training materials.

3. Foster Agility and Flexibility – Adjust your business model as necessary to quickly adapt to changing regulatory requirements. Consider engaging in scenario planning exercises to anticipate various regulatory outcomes and develop strategic responses.

4. Enhance Legal and Compliance Resources – Consider expanding your in-house legal team or increasing collaboration with external legal counsel. Actively foster compliance by assigning a member of your team to review resources, identify areas where changes are proposed, and ensure real-time tracking of regulatory changes. Legal counsel can also help determine if you have any new arguments to challenge agency actions (such as HHS or CMS positions) and advise you on the level of risk associated with taking different stances under certain rules.

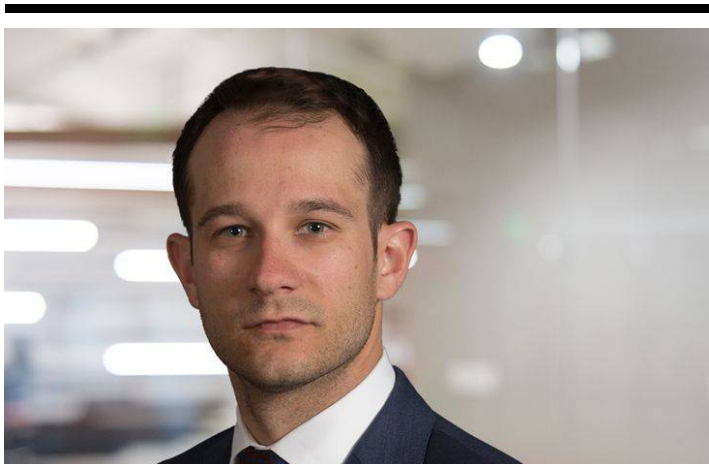
5. Advocate for Clarity and Fairness – Actively participate in industry and trade associations, which will lead the way in providing resources and advocacy support to help navigate the shifting regulatory landscape. Hand in hand with these organizations, you can engage with policymakers and advocate for clear, fair, and predictable regulatory frameworks. Effective advocacy can help shape regulations that support the growth and stability of the healthcare industry.

Conclusion

The Supreme Court's blockbuster decision marks a significant shift in the regulatory landscape, presenting both challenges and opportunities for employers in the healthcare industry. By staying informed and actively engaging in advocacy, employers can effectively navigate this period of change.

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