



TO: Victoria Romero, President and CEO, San Luis Valley Behavioral Health Group
FROM: Mindy Klowden, Managing Director for Behavioral Health, Third Horizon Strategies
Lindsay Reeves, Director
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SUBJECT: Implications of the Chevron decision on health care

Overview

The Supreme Court's recent decision to overturn the Chevron deference doctrine marks a significant change in the landscape of administrative law, with profound implications for the health care sector. The ruling eliminates a nearly 40-year precedent that required courts to defer to federal agencies' interpretation of ambiguous statutes, provided those interpretations were reasonable. This memo explores the background of the Chevron doctrine, the reasons behind its overturning, and the potential impacts on health care, with a particular focus on community behavioral health clinics.

Background on Chevron Deference

The Supreme Court established Chevron deference in the 1984 case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* The doctrine provided that courts should defer to the agency charged with administering that statute when a federal statute was ambiguous as long as the agency's interpretation was reasonable. This principle was grounded in the notion that agencies possessing technical expertise were better suited to make decisions in complex regulatory environments (Modern Healthcare, 2024).

Over time, Chevron deference became a critical tool for federal agencies, including those overseeing health care, such as the Centers for Medicare & Medicaid Services (CMS) and the Department of Health and Human Services (HHS). These agencies relied on Chevron to implement and enforce regulations that were often intricate and required specialized knowledge (Advisory, 2024).

The Supreme Court's Decision

On June 28, 2024, the Supreme Court by a vote of 6 to 3 overturned the Chevron doctrine in a decision driven by concerns over the balance of power between the judiciary and federal agencies. The court held that statutory interpretation is fundamentally a judicial responsibility, and therefore, courts should not defer to agencies' interpretations, even in cases of statutory ambiguity. The decision represents a significant shift in how federal regulations will be interpreted and enforced going forward (New York Times, 2024).

According to the ruling, going forward, courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."

The ruling was influenced by arguments that Chevron deference allowed federal agencies to wield too much power, often expanding their authority beyond what Congress intended. Critics of Chevron, including several current justices, argued that the doctrine undermined the separation of powers by

enabling agencies to effectively create laws rather than enforce them (CNN, 2024). Justice Elena Kagan dissented, in an opinion joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. Kagan predicted that Friday's ruling "will cause a massive shock to the legal system." Congress often enacts regulatory laws that contain ambiguities and gaps, Kagan observed, which agencies must then interpret. The question, as she framed it, is "[w]ho decides which of the possible readings" of those laws should prevail?"

A group of health care organizations including the Bazelon Center for Mental Health Law, the American Cancer Society and the American Public Health Association wrote a [letter](#) defending Chevron in January.

Impacts on Health Care

The health care sector, which federal agencies heavily regulate, is expected to feel the impact of this ruling acutely. Eliminating the Chevron deference introduces a new level of uncertainty into the regulatory environment. Previously, health care providers could generally rely on the stability of agency regulations, knowing that courts would defer to the agency's expertise. Without Chevron, this stability is undermined, as courts may now interpret statutes differently from the agencies that enforce them, leading to potentially conflicting rulings and an unpredictable regulatory landscape (Fierce Healthcare, 2024).

Analysts have noted the immediate and long-term impacts as follows:

Increased Judicial Scrutiny of Agency Decisions

Without Chevron deference, federal agencies such as the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) will face increased scrutiny from the courts. This shift means that any regulatory decision made by these agencies could be more easily challenged in court, leading to a more fragmented and potentially inconsistent regulatory environment. This is particularly concerning in health care, where the consistency and predictability of regulations are crucial for providers and patients alike (Holland Knight, 2024; Frier Levitt, 2024).

Potential for Slower Rulemaking Processes

Agencies may become more cautious and deliberate in issuing new regulations, knowing that their interpretations of the law are more likely to be challenged in court. This could slow the implementation of important health care policies, including those related to reimbursement rates, coverage determinations, and enforcing health care standards. This slowdown could hinder innovation and adaptation to new care models for health care providers, especially those in rapidly evolving fields like telehealth or personalized medicine (Holland Knight, 2024; Frier Levitt, 2024).

Implications for Medicare and Medicaid Programs

The ruling could have profound effects on how Medicare and Medicaid are administered. These programs, which form the backbone of funding for many health care providers, particularly community behavioral health clinics, could see shifts in how regulations are interpreted and enforced. For example, CMS's decisions on reimbursement rates or coverage criteria, which previously might have been shielded by the Chevron deference, could now be subject to more frequent and varied legal challenges. This could lead to delays in payments, changes in coverage policies, and a general sense of uncertainty for providers who rely on these funds to operate (Holland Knight, 2024; Frier Levitt, 2024).

Impact on Health Care Stakeholders and Lobbying

The decision has already sparked significant concern among health care stakeholders, including providers, insurers, and advocacy groups. There is a growing recognition that the loss of Chevron deference could lead to a power shift, where courts, rather than agencies, become the primary interpreters of health care laws. This shift may lead to increased lobbying efforts to influence judicial interpretations or,

alternatively, to push Congress to pass more precise and unambiguous legislation. In either case, health care stakeholders must adapt their strategies to this new reality (Holland Knight, 2024; Frier Levitt, 2024).

Specific Considerations for Behavioral Health

Community behavioral health clinics, which often operate on thin margins and rely heavily on Medicaid reimbursements and public funding such as federal block grant dollars may be particularly vulnerable to these changes. The overturning of Chevron could lead to:

Increased Legal Challenges

Clinics may face more frequent legal disputes over regulatory interpretations, which could lead to increased costs and administrative burdens. With courts taking a more active role in interpreting health care laws, clinics might find themselves involved in more litigation, either as plaintiffs or defendants, challenging or defending regulatory interpretations that affect their operations (Modern Healthcare, 2024; Brownstein Hyatt Farber Schreck, 2024).

Disruptions in Funding

The ruling could disrupt the flow of critical Medicaid and Medicare reimbursements if courts begin to overturn or reinterpret agency rules that govern these payments. (Healthcare Dive, 2024). Community behavioral health clinics often rely on Medicaid and Medicare for a significant portion of their funding. With the removal of the Chevron deference, these clinics could face more challenges securing favorable interpretations of reimbursement rules. For example, if CMS issues a rule that reduces reimbursement rates for mental health services, clinics may now have a better chance of challenging this rule in court. However, the lack of deference to CMS's expertise could also mean that courts could uphold reductions in reimbursements if they interpret the statutes differently, potentially leading to financial instability for clinics (Fierce Healthcare, 2024; Modern Healthcare, 2024).

In addition, behavioral health parity laws, which require insurers to cover behavioral health services at the same level as physical health services, are enforced by both federal and state agencies. With Chevron overturned, insurers may have more opportunities to challenge the interpretations of these laws in court. For clinics, this could result in reduced insurance coverage for mental health services, placing a greater financial burden on patients and potentially leading to decreased service utilization (Healthcare Dive, 2024; Fierce Healthcare, 2024).

Regulatory Uncertainty

The decision may slow down the rulemaking process as agencies become more cautious about issuing new regulations, knowing they are more likely to be challenged in court. This could delay the implementation of new policies that are essential for adapting to changes in health care needs and ensuring adequate funding and support for community behavioral health services. (Fierce Healthcare, 2024)

Many community behavioral health clinics have expanded their use of telehealth services, especially during the COVID-19 pandemic. CMS and HHS have issued numerous Medicare and Medicaid telehealth coverage guidelines and rules. With the Chevron deference overturned, there could be increased uncertainty about the future of these regulations. For instance, if a court decides that a statute does not support the current telehealth reimbursement policies, clinics may face disruptions in telehealth service delivery and funding (Advisory, 2024; Brownstein Hyatt Farber Schreck, 2024).

Implications for the Substance Abuse and Mental Health Services Administration (SAMHSA)

SAMHSA, like other agencies within HHS, has historically relied on its subject matter experts in the behavioral health field to interpret laws passed by Congress and implement programs and policies. For example, SAMHSA defined the certification requirements for Certified Community Behavioral Health Clinics and revised the criteria with public input in March, 2023. Similarly, SAMHSA defines allowable uses for federal block grant funds that go to states to support mental health and substance use treatment programs. The Supreme Court's decision on Chevron could impact the ability of SAMHSA to enforce these guidelines and interpret future laws.

Opportunities for Advocacy

On a positive note, the decision may empower clinics to challenge unfavorable regulations more effectively. Without the broad deference to agency interpretations, courts might be more receptive to arguments against regulations that are seen as unfair or overly burdensome. This could lead to more equitable regulatory outcomes, particularly in areas where clinics believe that current agency rules harm their operations (Advisory, 2024).

Steps Taken After the Supreme Court's Chevron Decision

Following the Supreme Court's decision to overturn the Chevron doctrine, lawmakers have taken significant actions to address the ruling's potential consequences. In reaction to the ruling, Democratic lawmakers introduced a bill to overturn the Supreme Court's decision. This legislative effort reflects the concern among some lawmakers that removing Chevron deference could lead to regulatory chaos and hinder the ability of federal agencies to enforce laws effectively. The proposed bill seeks to reinstate some form of deference to agencies, particularly in areas requiring technical expertise, like health care regulation (Healthcare Dive, 2024).

As expected, early court cases following the Chevron ruling are already testing the new limits of agency power. Courts have begun to exercise more independent judgment in cases involving health care regulations, with some rulings favoring plaintiffs who challenge agency decisions. This has led to a patchwork of legal interpretations across different jurisdictions, further complicating the regulatory environment for health care providers, including community behavioral health clinics (CNN, 2024).

Conclusion

The Supreme Court's decision to overturn Chevron deference is a landmark ruling that will reshape the regulatory framework within which health care providers operate. For community behavioral health clinics, this ruling presents both challenges and opportunities. Clinics must prepare for a more complex legal environment, where regulations are subject to greater judicial scrutiny and interpretation. By staying informed and engaging in proactive legal and policy advocacy, community behavioral health providers can navigate this new landscape and continue to serve their communities effectively.

About Third Horizon Strategies

Third Horizon Strategies is a boutique advisory firm focused on shaping a future system that actualizes a sustainable culture of health nationwide. The firm offers a 360° view of complex challenges across three horizons – past, present, and future– to help industry leaders and policymakers interpret signals and trends; design integrated systems; and enact changes so that all communities, families, and individuals can thrive. Learn more at www.thirdhorizonstrategies.com.

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