



Ending *Chevron* Deference

Impacts on Health Care and Public Health

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Should the U.S. Supreme Court overrule the *Chevron* doctrine, agencies tasked with implementing public health insurance programs, regulating the safety of pharmaceuticals and medical devices, and protecting Americans' public health could face significant hurdles to effectively serving the public. The following highlights some of the benefits that health care regulations provide to everyday Americans, and what the Supreme Court is putting at risk.

Regulatory health care benefits to everyday Americans:

- Public health insurance programs, including Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), provide coverage to 65 million Americans—nearly 40 percent of the population.¹ Federal agency experts administer Medicare and, together with states, jointly administer Medicaid and CHIP with the required speed, flexibility, and technical expertise to serve the wide-reaching programs effectively.
- Guidance provided by federal agencies, such as the Centers for Disease Control and Prevention, and standards set by the Food and Drug Administration (FDA) and the Environmental Protection Agency, are also vital to effective public health management. For example, in January 2023, the FDA released draft guidance setting new action levels for industry actors to reduce lead in food marketed for babies and young children.² These agencies conduct public health surveillance, support pandemic preparedness and response, ensure the safety and efficacy of medications, and safeguard a healthy food supply.

Regulations at stake:

- **Medicare drug price negotiations:** The Inflation Reduction Act authorized the secretary of the U.S. Department of Health and Human Services (HHS) to directly negotiate prescription drug prices for the Medicare program to set fair prices of some of the most expensive prescription drugs, with the goal of increasing access to lifesaving care for Medicare recipients without harming them financially.³ Drug price negotiations will save users of 5 of the 10 negotiated medications an average of more than \$4,000 per year, and some will save more than \$100,000 per year in out-of-pocket expenses.⁴ The program is also predicted to reduce the federal

deficit by \$287 billion through 2031. The program already faces numerous lawsuits by the pharmaceutical industry.⁵ Should the court overrule *Chevron*, the Centers for Medicare and Medicaid Services will face a further uphill battle to implement the statute.⁶

- **Surprise medical billing rules:** Corporate health care plaintiffs, including insurers and pharmaceutical companies, are more likely to succeed in challenging regulatory guidelines should *Chevron* be overturned.⁷ For example, insurers successfully challenged a rule derived from the No Surprises Act, which was enacted to close surprise medical billing loopholes and protect Americans from unfair medical bills beyond their control.⁸ Disregarding *Chevron* will allow the industry to more easily challenge agency rules meant to protect the American people from excessive health care costs.
- **Coverage for preventive health care services:** The HHS promulgated rules under the Affordable Care Act that require insurance companies to cover preventive services such as HIV prevention, mental health screenings, and sexual transmitted infections tests for tens of millions of people.⁹ These types of rules are already being challenged in the extreme 5th Circuit Court of Appeals and will likely be at further risk should the Supreme Court choose to overrule *Chevron*.¹⁰

Endnotes

- 1 Katherine Keisler-Starkey, Lisa N. Bunch, and Rachel A. Lindstrom, "Health Insurance Coverage in the United States: 2022" (Washington: U.S. Census Bureau, 2023), available at <https://www.census.gov/content/dam/Census/library/publications/2023/demo/p60-281.pdf>.
- 2 Jill Rosenthal, Hailey Gibbs, Allie Schneider, "5 Actions the FDA Can Take To Reduce Heavy Metal Toxins in Baby Food" (Washington: Center for American Progress, 2023), available at <https://www.americanprogress.org/article/5-actions-the-fda-can-take-to-reduce-heavy-metal-toxins-in-baby-food/>; Lisa L. Gil, "Schnucks, WanaBana, and Weis Cinnamon Apple Purée and Applesauce Products Recalled Due to Lead Contamination," Consumer Reports, October 30, 2023, available at <https://www.consumerreports.org/health/food-recalls/wanabana-fruit-puree-pouch-recall-for-lead-contamination-a5540551942/>.
- 3 The Inflation Reduction Act of 2022, Public Law 169, 17th Cong., 2nd sess. (August, 16, 2022), available at <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>; Centers for Medicare and Medicaid Services, "Medicare Price Negotiation," available at <https://www.cms.gov/inflation-reduction-act-and-medicare/medicare-drug-price-negotiation> (last accessed January 2024).
- 4 Nicole Rapfogel, "5 Facts To Know About Medicare Drug Price Negotiation," Center for American Progress, August 30, 2023, available at <https://www.americanprogress.org/article/5-facts-to-know-about-medicare-drug-price-negotiation/>.
- 5 Georgetown University O'Neill Institute for National and Global Health Law, "Healthcare Litigation Tracker: Inflation Reduction Act," available at <https://litigationtracker.law.georgetown.edu/issues/inflation-reduction-act/> (last accessed January 2024).
- 6 Leslie Small, "SCOTUS Cases Could Create 'Fractured' Health Care Policy Landscape," AIS Health, October 20, 2023, available at <https://aishealth.mmitnetwork.com/blogs/health-plan-weekly/scotus-cases-could-create-fractured-health-care-policy-landscape>.
- 7 Ibid.
- 8 Tanya Albert Henry, "Court: No Surprises Act final rule favors insurers, must be revamped," American Medical Association, March 1, 2023, available at <https://www.ama-assn.org/delivering-care/patient-support-advocacy/court-no-surprises-act-final-rule-favors-insurers-must-be>; IRS, Employee Benefits Security Administration, and U.S. Department of Health and Human Services, "Requirements Related to Surprise Billing," Federal Register 87 (165) (2022): 52618–52655, available at <https://www.federalregister.gov/documents/2022/08/26/2022-18202/requirements-related-to-surprise-billing>.
- 9 Centers for Medicare and Medicaid Services, "Coverage of Certain Preventive Services Under the Affordable Care Act: Proposed Rules," January 30, 2023, available at <https://www.cms.gov/newsroom/fact-sheets/coverage-certain-preventive-services-under-affordable-care-act-proposed-rules>; GovInfo, "124 Stat. 119 - Patient Protection and Affordable Care Act," available at <https://www.govinfo.gov/app/details/STATUTE-124/STATUTE-124-Pg119/context> (last accessed January 2024); Alice Miranda Ollstein and Lauren Gardner, "Why health care experts are so concerned about fishing boats," Politico, October 5, 2023, available at <https://www.politico.com/news/2023/10/05/supreme-court-cases-health-care-00119996>.
- 10 Alice Miranda Ollstein, "Compromise struck to preserve Obamacare's preventive care mandate," Politico, June 12, 2023, available at <https://www.politico.com/news/2023/06/12/compromise-struck-to-preserve-obamacares-preventive-care-mandate-00101595>.