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Supreme Court Ruling Could Be 'Sea Change' for Healthcare

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Bracewell partner **Brett Rector** recently examined with *Healthcare Risk Management* the effect the Supreme Court's ruling reversing Chevron deference will have on the healthcare industry.

Rector said that the Loper Bright decision affects all federal rulemaking, with a significant impact on healthcare. He noted that Justice Elena Kagan wrote a long dissent in which she offered five examples of regulations in which Chevron deference had been applied over the last four decades. Of those five examples, two of them involved healthcare.

"[One of] the two examples she offered was a particular reimbursement program under Medicare having to do with how differences in hospital wage levels were analyzed by geographic area. And then she also pointed to an FDA rule regulating biological products," Rector said. "The dissent identified examples of what Chevron's overruling would do, and almost 50 percent of them were healthcare. That just shows you how important it is."

Rector suggested that healthcare organizations should consider the Supreme Court ruling when contesting federal rule compliance.

"Healthcare entities need to take a hard look at potential challenges to new rules and regulations. Under the old Chevron regime, the chances of succeeding with litigation were often lower because there was a thumb on the scale in favor of agency interpretation in many instances," he said. "Now, under Loper Bright, that thumb is off the scale. Where, in past cases, a healthcare entity may not have elected to pursue litigation because they didn't think they would succeed, now there needs to be a rethinking among healthcare entities about what litigation is worth pursuing."

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