

## Report on Medicare Compliance Volume 33, Number 29. August 12, 2024 Loper Bright Decision May Affect 'Health Care Oversight Complex'

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By Nina Youngstrom

Although the overturning of Chevron deference in a June 28 U.S. Supreme Court decision has created fear of “destabilization” in the regulatory environment, it’s also possible things could go the other way, attorneys said. With courts now deciding the “best interpretation” of an ambiguous statute if it’s challenged, perhaps health care and other organizations will experience more certainty in some ways because regulations won’t be revamped when presidential administrations turn over.

“So, there’s the potential of a stabilizing effect that can be favorable” in the wake of the Supreme Court decision, *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al.*, said attorney Paul Hughes, with McDermott, Will & Emery, at a webinar sponsored by the firm.<sup>[1]</sup> “But we also need to acknowledge the potential destabilizing effect of not having agencies provide all the answers regulated agencies need to have. There’s more emphasis on courts making these decisions.”

In another ripple effect of the 6-3 court opinion, organizations may want to adjust the way they respond to audits and False Claims Act (FCA) lawsuits, the attorneys said.

“There is a significant opportunity for challenge to huge swaths of the health care oversight complex, but it is an issue-by-issue analysis,” said attorney Emily Cook with McDermott Will & Emery. Organizations should run contractor audits and FCA lawsuits “through a *Loper Bright* analysis” because maybe they should challenge the rule they allegedly violated instead of trying to defend their actions in terms of the rule as it stands, she said.

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