



Welcome to *Washington Update*, the weekly e-newsletter on the latest health care happenings in the nation's capital that affect APG's members.

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## **Congress Grapples With Its Legislative And Rulemaking Roles In Wake Of Supreme Court's Rejection Of Chevron Doctrine**

Competing perspectives on how Congress should adapt to the apparent new legal order – when courts no longer defer to federal regulators to interpret ambiguous legislation – punctuated a House panel [hearing](#) this week about the “post-Chevron” world (see [Washington Update, June 28, 2024](#)). The discussion underscored how the consequences of the Court's decision could have a major impact on voluminous federal rulemaking involving programs and topics of interest to APG members, such as Medicare Advantage or prescription drugs.

At issue for the House Administration Committee were several key questions, ranging from Congress's capacity to review agencies' rulemaking to lawmakers' ability to write legislation specific enough so agencies would have less leeway to interpret it. Speaking from the perspective of the House Republican majority, Committee Chairman Bryan Steil (R-WI) welcomed the Supreme Court's Loper Bright [decision](#), arguing that it “sent a clear message that lawmaking authority rests with Congress” rather than unelected federal agency employees who write the regulations implementing laws.

**More precise legislating?** One witness, [Paul J. Ray](#) of the Heritage Foundation, agreed, and counseled that Congress needed to inject more “specificity in statutory texts” and more clearly spell out its desired outcomes to leave less regulatory discretion to agencies. Other lawmakers and witnesses discussed Congress’s current ability to ride herd on agencies’ rulemaking, which most found wanting. For example, lawmakers rarely respond to regulatory proposals during agencies’ notice and comment periods, noted [Kevin Kosar](#) of the American Enterprise Institute, who argued that they should.

Speaking from the Democratic perspective, the Committee’s ranking member, Rep. Joe Morelle (D-NY), argued that the Supreme Court decision would, if anything, “make it more difficult for Congress to exercise its power” given that courts would now have the upper hand in reviewing contested regulations and adjudicating subsequent lawsuits. “Corporations will bend over backwards to find cases to undo existing regulations” in such areas as food safety, even as the High Court’s decision inhibits “sensible regulation of especially technical policy areas,” such as artificial intelligence.

**Congressional staff reboot?** Lawmakers appeared to agree that Congress may need more resources to draft more technical legislation and manage new oversight responsibilities over federal agencies. Possibilities could include hiring more congressional staff with advanced degrees, or even creating a new [Congressional Regulation Office](#) that could conduct cost-benefit analyses of major regulatory proposals and perform retrospective analyses of regulatory impact. But consensus seems unlikely in the short term given the partisan divide over the post-Chevron direction.

In the Senate, for example, Sen. Bill Cassidy (R-LA) has proposed a [bill](#) that would require agency officials to work closely with Congressional leaders in the regulatory process, while Sen. Elizabeth Warren (D-MA) and other Democrats want the opposite: [legislation](#) that would empower agencies with more authority and bar Congress from overturning regulations.



## In Case You Missed It

- A [hearing on the transparency and accountability of pharmacy benefit management companies \(PBMs\)](#) left one House panel frustrated with the answers – and lack of answers – provided by leaders of the three largest PBMs: CVS Caremark, Express Scripts, and Optum Rx. They responded to lawmakers’ questions about topics including the PBMs’ role in drug price increases and the “steering” of patients to PBMs’ own pharmacies rather than others.
- The Office of the National Coordinator for Health Information Technology (ONC) is expanding its scope to encompass artificial

intelligence, cybersecurity, and health technology, according to [plans announced this week](#). The ONC's leader, Micky Tripathi, will become the Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (ASTP/ONC). The new office will also include the HHS-wide roles of Chief Technology Officer, Chief Data Officer, and Chief AI Officer.

- In the wake of President Joe Biden's announcement that he would not run for reelection, Avalere takes an early [look](#) at what the November elections might mean for health policy if Vice President Kamala Harris is in fact nominated and elected President. In that case, she might "continue the healthcare policy priorities of the Biden/Harris administration" – but "may also consider other areas to chart her own path."



## APG Announcements And Offerings

- The next APG **MSSP Coalition** webinar will take place on **Thursday, August 1, 12:00 - 1:00 pm EDT**. Members can register [here](#).
- APG will host an **educational webinar on CMS's Proposed Rule** for the 2025 Medicare Physician Fee Schedule on **Thursday, August 1**, from **3:00-4:00 pm EDT**. Register [here](#). APG will also host a **member-only focus group** to gather feedback on the proposed rule on **Tuesday, August 13**, from **12:00-1:00 pm EDT**. Members can register [here](#).
- The next APG Hosted Webinar, "**Unlock Cost Savings Via A Proven And Scalable Dementia Care Program,**" will take place on **Tuesday, August 13, 2:00-3:00 pm EDT**. The webinar will be presented by Ceresti Health. For more information, including the learning objectives and speakers, [click here](#). Members can register [here](#).
- Want to get more involved in APG's Federal advocacy efforts? [Join APG Advocates today](#).
- Mark your calendars now for **APG's Annual Fall Conference 2024**, which will be held November 11 – 13 in Washington, DC.

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