

# Issue Brief

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## Supreme Court Decides Medicare Does Have Authority to Reduce Hospital Payments for DSH Patient Days Count

On June 24, the United States Supreme Court said, that “Congress, recognizing complexity in healthcare, provided for various hospital-specific rate adjustments—including the one for treating low-income patients. The “disproportionate share hospital” (DSH) adjustment gives hospitals serving an ‘unusually high percentage of low-income patients’ enhanced Medicare payments.” This case involves Becerra, Secretary of Health and Human Services V. Empire Health Foundation, for Valley Hospital Medical Center.

To calculate a hospital’s DSH adjustment, HHS adds together two statutorily described fractions, usually called the Medicare fraction and the Medicaid fraction.

The Medicare fraction represents the proportion of a hospital’s Medicare patients who have low incomes, as identified by their entitlement to supplementary security income (SSI) benefits. The numerator is the number of patient days attributable to Medicare patients who are poor. The denominator is the number of patient days attributable to **all** Medicare patients. Divide the former by the latter to get the fraction “expressed as a percentage.”

The Medicaid fraction represents the proportion of a hospital’s patients who are not entitled to Medicare and have low incomes, as identified by their eligibility for Medicaid. “The numerator of which

is the number of [a] hospital’s patient days for [the fiscal year] which consist of patients who (for such days) were eligible for medical assistance under[Medicaid], but who were not entitled to benefits under part A of [Medicare], and the denominator of which is the total number of the hospital’s patient days for such[fiscal year].”

This case is about how to count patients who qualify for Medicare Part A—because they are over 65 or disabled—at times when the program is **not paying** for their hospital treatment. The question presented here: “Are patients whom Medicare insures but does not pay for on a given day ‘entitled to [Medicare Part A] benefits,’ for purposes of computing a hospital’s disproportionate-patient percentage?”

According to HHS, a person is “entitled to [Part A] benefits” under the statute if he qualifies for the Medicare program—essentially, if he is over 65 or disabled. The Court upholds HHS’ definition here.

Under Empire’s reading, that statement makes no sense: A patient is not, Empire argues, “entitled to benefits” when the statute precludes payment. “But the statute says otherwise. It considers those who have exhausted their coverage (and so cannot receive further payments for a hospital stay) still entitled to [Part A] benefits.” “Empire’s only response is to insist that its interpretation has to be right because it usually (though not always) leads to

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higher DSH payments for hospitals. But the point of the DSH provisions is not to pay hospitals the most money possible; it is instead to compensate hospitals for serving a disproportionate share of low-income patients. And Empire's reading excels only by the former measure, not by the latter one."

"We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion."