

Hospitals Urge SCOTUS To Correct HHS Undercounting Of SSI-Eligible Recipients In DSH Formula

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(Inside Health Policy)

Hospital lobby groups, including the American Hospital Association (AHA), [filed an amicus brief](#) Wednesday (Aug. 14) urging the Supreme Court to correct what they view as HHS' undercounting of supplemental security income (SSI) eligible recipients in the formula used to calculate Disproportionate Hospital Share (DSH) payments. The formula, which is set by Congress, includes a fraction that counts SSI-eligible beneficiaries in the numerator and the total Medicare-eligible population in the denominator.

The lobby groups -- which also include the Association of American Medical Colleges, America's Essential Hospitals, Catholic Health Association, Federation of American Hospitals and National Rural Health Association -- filed the brief in the suit *Advocate Christ Medical Center, et al. v. Becerra*. The groups claim HHS is undercounting SSI eligible recipients by arguing patients are only entitled to SSI benefits if they receive said benefits. This decreases the formula's numerator, which in turn decreases payment size.

AHA argues HHS' policy undermines the DSH program and is inconsistent with an earlier SCOTUS ruling in *Becerra v. Empire Health Foundation*. In this case, the high court ruled with HHS, which argued patients are entitled to Medicare under the DSH formula if they qualify for Medicare, regardless of whether Medicare paid for the hospital stay.

The brief warns that if the HHS interpretation is not corrected, hospitals will lose an estimated more than \$1 billion annually in DSH payments. Losing out on these payments could also affect a hospital's entitlement to other federal benefits aimed at helping provide services to vulnerable populations, the lobby groups add.

In February, the same lobbyists filed a brief at the cert petition stage advocating for SCOTUS to take the issue up for review.