

SUPREME COURT AGREES TO HEAR GROUP APPEAL CHALLENGING DSH REIMBURSEMENT POLICY

On June 10, 2024, the Supreme Court of the United States (“Supreme Court”) agreed to consider an appeal on behalf of more than 200 hospitals* in *Advocate Christ Medical Center, et al v. Becerra*, challenging the manner in which the Centers for Medicare and Medicaid Services (“CMS”) calculates a hospital’s Disproportionate Share Hospital (“DSH”) payments. Hall Render sought review before the Supreme Court following an adverse decision from the Federal Court of Appeals in Washington, D.C. The Supreme Court’s agreement to review that decision is a positive step for the 450 hospitals in this group initiative, and many more who have also appealed this issue.

The DSH payment appeal the Supreme Court will consider this fall concerns the manner in which CMS calculates the Medicare Fraction of the DSH payment formula. Congress chose two fractions as proxies for measuring indigency under the DSH statute, and this case involves the Medicare/SSI fraction which calculates the number of Medicare Part A beneficiaries “entitled” to Supplemental Security Income (“SSI”) benefits. CMS has always interpreted entitlement to SSI very narrowly, such that it will not include SSI patients in the Medicare Fraction numerator unless they actually received an SSI payment for the month of their hospitalization.

In contrast, beginning in 2004 CMS implemented a very broad interpretation of Medicare Part A entitlement to include patients with Medicare Part C plans, patients who exhausted Medicare benefits and patients whose Medicare coverage is secondary to another payer source.

Providers have been challenging this illogical payment policy for many years, most recently before the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”).

Before the D.C. Circuit heard the case, the Supreme Court issued its decision in *Beccera v. Empire Health Foundation* (“*Empire*”), which upheld CMS’s broad view of Medicare entitlement, that once a patient is “entitled” to Medicare Part A, they remain entitled to Part A benefits even if Medicare does not pay for the hospital stay at issue. The Supreme Court reasoned that conditions of payment for particular services, which are embedded in the Medicare Act and CMS’s regulations, do not negate the person’s basic entitlement to Medicare. The Supreme Court specifically reserved the question of whether this decision about entitlement to Medicare Part A benefits had any effect on what it meant to be entitled to SSI benefits.

Despite the Supreme Court’s holding that Medicare entitlement had a broad meaning in *Empire*, the D.C. Circuit upheld the lower court’s ruling that SSI entitlement had a narrower meaning because of differences between those two programs.

The Supreme Court’s decision to review the issue of SSI entitlement gives hospitals the opportunity to finally align CMS’s treatment of SSI entitlement with its treatment of Medicare Part A entitlement. If this appeal is successful, the Supreme Court’s decision may bar CMS from applying this contradictory statutory interpretation that has had a substantial negative impact on reimbursement for the care hospitals provide to low-income patients. The case is expected to be heard during the Supreme Court’s Fall Term.

**Hall Render represents the parties to this litigation.*

If you have any questions on this topic or would like further assistance, please contact:

- **Dan Miller** at (414) 721-0463 or dmiller@hallrender.com;
- **Maureen Griffin** at (317) 977-1429 or mgriffin@hallrender.com;
- **Heather Mogden** at (414) 721-0457 or hmogden@hallrender.com;
- **Sara MacCarthy** at (414) 721-0478 or smacCarthy@hallrender.com; or
- Your primary Hall Render contact.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside

of an attorney-client relationship—answer specific questions that would be legal advice.