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THE REGION'S MONTHLY HEALTHCARE NEWSPAPER

## Health Care Insurance Reform and Illinois' Provena Decision: What's Next for Hospitals' Charity Property Tax Exemption?

**D**oes the passage of the new federal health care insurance reform legislation make it almost impossible for hospitals to keep their charitable property tax exemption after the Illinois Supreme Court's Provena decision?

For decades, not for profit charitable hospitals have flourished in Illinois, and based on their charitable policies and activities (i.e. being open to all and providing health care to the needy) have routinely received real property tax exemptions for their hospital property. In the recent Illinois Supreme Court case *Provena Covenant Medical Center v. The Department of Revenue*, Docket No. 107328, decided March 18, 2010, this tax exemption is now in limbo for Illinois hospitals. The Illinois Supreme Court has held in a plurality decision (3 to 2, out of 7 justices) that in determining the charitable use of the property, the acceptance of Medicare and Medicaid patients cannot be considered in determining if a hospital is providing charity care, even if the hospital payment received for services rendered is substantially less than the charges that a private insurance company or non-



BY PATRICIA HOFSTRA  
AND STANLEY KAMINSKI

insured paying patient would incur. Now, if we add to the mix the new Patient Protection and Affordable Care Act (Pub. L. No. 111-148), (the "Act") that purports to assure coverage for everyone under Medicare, Medicaid or private insurance, it raises the obvious question of whether any charitable hospital can now ever qualify for a charitable property tax exemption in Illinois.

The Act expands Medicaid to millions of additional individuals, and requires

that all persons not covered by Medicaid or Medicare have private medical insurance. By doing this, charitable hospitals generally should never have to worry about receiving some payment for their services. While these payments may be substantially less than needed to cover the hospital's costs, especially the Medicaid payments, this factor is irrelevant to whether it is providing charity care, per the Provena decision. But what does this mean? Will charitable hospitals ever be entitled to a property tax exemption in the future? This is an open question.

Surely, other factors will now become more important. For example, in rural areas where there may be a shortage of hospitals, the availability of the hospital itself may lessen the burden on government and thus be a charitable basis to give a tax exemption. See *People ex rel. Cannon v. Southern Illinois Hospital Corp.*, 404 Ill. 66 (1949) Other charitable hospitals may have to offer charity care not normally covered by Medicare,

Medicaid or private insurance to qualify for the tax exemption.

Undoubtedly, the impact of the Provena decision along with the passage of the Act has put Illinois' property tax exemption for charitable hospitals on life support. Whether the Illinois legislature can help cure the problem or hospitals can modify their practices to keep their exemption is questionable. However, unless something is done, with higher taxes and less revenues, many hospitals necessary to the health of Illinois will have a more difficult time surviving while providing the same quality of care that patients are used to in Illinois.

*Patricia Hofstra is a partner in the Health Law Practice Group of law firm Duane Morris in Chicago. She can be reached at (312) 499-0180 or PSHofstra@duanemorris.com.*

*Stanley Kaminski is a partner in the Corporate Practice Group of law firm Duane Morris in Chicago. He can be reached at (312) 499-0105 or SRKaminski@duanemorris.com.*