

Client Advisory | *March 2010*

## Not Charitable Enough: *Provena Covenant Medical Center v. Department of Revenue*

Nonprofit hospitals may need to provide more than a de minimus amount of charity care in order to maintain their property tax exemption. That's one lesson learned from the recent ruling of the Illinois Supreme Court in the case of *Provena Covenant Medical Center v. Department of Revenue*, Docket No. 107328 (Ill. 3/18/2010).



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In that case, the Court revoked, for property tax purposes, the tax-exempt status of Provena Covenant Medical Center, an Urbana, Illinois hospital run by three Roman Catholic religious orders, based in part on its failure to provide enough charity care to patients. The result is an approximately \$1.1 million property tax bill for the hospital.

The state Supreme Court's decision affirmed the 2002 decision of the state's Director of Revenue that Provena was not entitled to a charitable tax exemption under the Illinois Property Tax Code for any of the 43 parcels of real estate owned by it. The Court noted that one of the distinctive characteristics of a charitable institution is that it dispenses charity to all that need and apply for it and that eligibility for a charitable property tax exemption requires that the property be "actually and exclusively used for charitable or beneficent purposes". The Court found, however, that Provena did not mention its charity policies in advertisements, that the property was used for the care and treatment of patients in exchange for compensation, and that Provena utilized its charitable assistance program as one of last resort, looking first to private insurance, then to Medicare, Medicaid and other governmental sources of reimbursement, and finally to direct payment from the patient through collection agencies and legal action, if necessary. The Court focused particularly on the level of charitable care provided by the hospital and whether the hospital was able to demonstrate that its activities help to relieve some financial burden on, or otherwise benefit, the taxing

bodies affected by the exemption. While not establishing a dollar-for-dollar correlation with the value of the tax exemption or a minimum level of charitable care, the Court in this case called the level of charitable care provided by Provena "de minimus" and found no direct benefit from the charitable care program to any of the affected taxing bodies. The Court went on to specifically note that only 302 of Provena's 110,000 hospital admissions in 2002 were granted reductions in their hospital bills, that the charges waived by the hospital represented only 0.723% of revenues for that year, and that the actual costs of the charges waived by the hospital were \$268,276 less than the \$1.1 million in tax benefits that Provena stood to receive if its tax exempt property status was maintained.

The Court further ruled that Provena also didn't qualify for a religious purpose property tax exemption stating that "the primary purpose for which the [Provena] property was used was providing medical care to patients for a fee. Although the provision of such medical services may have provided an opportunity for various individuals affiliated with the hospital to express and to share their Catholic principles and beliefs, medical care, while potentially miraculous, is not intrinsically, necessarily, or even normally religious in nature."

While Illinois' highest Court addresses only the state property tax exemption and not federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code or other state tax exemptions available to nonprofit institutions, the decision is troubling

for not-for-profit hospitals and other institutions who rely on property tax exemptions, particularly in challenging economic times when government agencies and lawmakers are carefully monitoring sources of tax revenue and not-for-profit hospitals are trying to balance their charitable mission with remaining financially viable. However, the applicability of this decision to other cases may be limited because the portion of the Court's opinion dealing with charitable use and the level of charitable care to be provided was supported by only three of the Illinois Supreme Court's seven justices, with two justices dissenting on these issues and two justices not participating in this decision.

Finally, it should be noted that while the key component of the Illinois charitable property tax exemption is based on the amount of charitable care provided, federal 501(c)(3) tax exempt status instead measures a hospital's eligibility based on a broader "community benefit" standard, of which financial assistance to those who

cannot afford to pay is one, but not the only, consideration. Thus, not-for-profit hospitals may take comfort in the fact that the *Provena* decision applies solely to Illinois state property tax exemptions and has no impact on a 501(c)3 institution's eligibility for tax-exempt bond and other financing.

The *Provena* case may, however, create an impetus for cash-strapped states and municipalities nationwide to take a closer look at property tax exemptions granted to institutions traditionally considered "off-limits" due to their religious or charitable nature and therefore exempt from property taxes. Such not-for-profit institutions should carefully consider, among other available proactive alternatives, negotiating agreements for payments in lieu of taxes with their local taxing authorities rather than simply risk losing their property tax exemption.

If you have any questions about this case, please contact one of the authors listed below, or another member of the Edwards Angell Palmer & Dodge Healthcare practice.

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