



ILLINOIS STATE
BAR ASSOCIATION

TAX TRENDS

The newsletter of the ISBA's Section on State & Local Taxation

A note from the co-editor

By Mary Ann Connelly & Stanley R. Kaminski

This edition of *Tax Trends* features the second part of the two articles on the *Provena* decision by the Illinois Department of Revenue. This decision denied a property tax exemption to Provena Covenant Medical Center. The Director of Revenue, rejecting the recommendation of his hearing officer, found that Provena did not qualify for the Charitable exemption. The case is noteworthy for a number of reasons, but primarily as to whether being primarily

charitable is a percentage test or a purpose test. As to the articles, they look at the decision from two different viewpoints. The author of the first article was Joanne Petty and not Fred Lane, as was mistakenly represented in our February newsletter. We apologize to Joanne Petty for the mistake. Joanne Petty is an attorney with the law firm of Robbins, Schwartz, Nicholas, Lifton, & Taylor. Their firm represents a number of local government bodies. The author of this month's article is Bill Seitz, a former

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Department of Revenue attorney, who now represents taxpayers. Due to the length of both articles we were unable to present them in the same newsletter. Both articles do a good job of explaining the case; reading them both will give you a better view of the underlying controversy.

What is "charity care": Qualifying for property tax exemptions

By William Seitz, Associate Editor

Nonprofit healthcare institutions have historically qualified for a 100 percent property tax exemption as "charitable institutions" under section 15-65 of the Property Tax Code.

Two recent decisions from the Illinois Department of Revenue (IDOR) involving health care applicants have applied

high standards to qualify as "charity care": Community Health Care (CHC), a non-profit, community-based primary care clinic in Rock Island, and Provena Covenant Medical Center (Provena Covenant), a general acute care, non-profit hospital located in Urbana. In both cases, the IDOR denied the property tax exemptions.

In *Community Health Care, Inc. v. Illinois Department of Revenue*, 369 Ill. App.3d 353, 859 N.E.2d 1196, (3rd Dist. 2006), the Third District Appellate Court affirmed an IDOR administrative law judge (ALJ) decision that denied CHC's application for a property tax exemption for the 2003 tax year.

In a long-anticipated decision, in *Department of Revenue v. Provena Covenant Medical Center*, 04-PT-0014

(September 29, 2006), the IDOR denied Provena Covenant's application for the 2002 tax year. The IDOR denial was a Director's decision (the Decision) rejecting the ALJ's recommendation that Provena Covenant had satisfied the qualifications for a charitable exemption. The *Provena Covenant* decision can be viewed on the IDOR Web site at: <www.iltax.com/legalinformation/hearings/pt06-26.pdf>.

The IDOR reviewed CHC and Provena Covenant's charity care practices and policies, the charity care actually provided, and other aspects of the manner in which their services were provided to their community served. Neither was found to have sufficient charity to qualify for a property tax exemption.

Whether the IDOR is applying the

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proper standard in determining the qualification for charitable property tax exemptions will be the subject of further litigation. Provena Covenant has filed an administrative review complaint challenging the IDOR's decision. See *Provena Covenant Medical Center v. Illinois Department of Revenue*, Seventh Judicial Circuit of Sangamon County, 06 MR 597 (October 26, 2006).

I. Significance of these cases

The IDOR decisions in these "charitable" exemption cases are important to those seeking exemptions and those who are currently exempt:

A. Pending Exemption Applications

Exemption applicants currently before the IDOR Office of Administrative Hearings must seek to satisfy the high burden from these cases to qualify for a charitable purposes exemption. The IDOR will resolve all facts and all debatable questions in favor of taxation and will deny an exemption application that does not address the deficiencies it found in *Community Health Care* and in *Provena Covenant*.

In preparing for the IDOR administrative hearing, the applicant must be prepared to present clear and convincing evidence of their charitable operations, directed to the particular property for which an exemption is sought.

B. Currently Exempt Property Owners Based on Charity

The IDOR found that Provena Covenant had insufficient charitable forms of revenue (grants, charitable gifts, etc.) and concluded that the primary use of the property was the exchange of services for payment.

Many currently exempt organizations similarly derive most of their revenue from sources other than from donations from public and private charities. Examples of such revenues are admissions and tickets, used to sustain the organization. Two such examples of organizations whose primary sources of revenues are other than donations are the Lyric Opera and the Chicago Symphony Orchestra.

The primary use of these properties could also conceivably not satisfy the IDOR analysis as to what constitutes charitable use. This raises the general issue of what is required for all types of charitable organizations to qualify for an exemption. Thus, even if a property

owner is not a nonprofit hospital or clinic, they should continue to monitor the issue in *Provena Covenant* for its potential impact on their exemption.

C. Currently Exempt Not-For-Profit Hospitals and Clinics

The IDOR decision in *Provena Covenant* is not legally binding upon other county assessors and boards of review. Nonetheless, under the standards the IDOR applied in *Community Health Care* and in *Provena Covenant*, all currently exempt, not-for-profit hospital owners and clinics are at risk for the loss of their exemption.

All not-for-profit hospitals and clinics should be prepared if the chief county assessment officer in their jurisdiction raises their continued qualification for an exemption. Anticipating the potential of a request by assessment officials, currently exempt nonprofit hospital should review their charity care policies, and be prepared to document the charity care actually provided at the property.

This request by the assessor could be prompted by outside forces, such as taxing districts looking for additional sources of revenue or by parties in interest (e.g., union members seeking to organize hospital employees at non-profit hospitals).

II. Property tax exemption - Charitable purposes

Most not-for-profit organizations claim an exemption from property taxes as "charitable institutions."

Under section 15-65 of the Property Tax Code, such property may be exempt if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes.

Since a property must be used for a tax-exempt purpose as specified in article IX, section 6 of the Illinois Constitution, the Supreme Court in *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 156-57, 233 N.E.2d 537, 541-42 (1968) has set forth criteria to be applied to resolve the constitutional issue of charitable use.

See also, *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill.2d 273, 821 N.E.2d 240 (2004) (independent living units in duplex buildings found not primarily used for charitable purposes under *Methodist Old Peoples Home* criteria).

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OFFICE

Illinois Bar Center
424 S. 2nd Street
Springfield, IL 62701
Phones: (217) 525-1760 OR 800-252-8908
Web site: www.isba.org

Co-Editors

Mary Ann Connelly
180 N. LaSalle St., Ste. 2901
Chicago, IL 60601

Stanley Kaminski
227 W. Monroe St., Ste. 3400
Chicago, IL 60606

Associate Editors

Marc Craig Smith
David J. Kupiec
Hon. Alexander P. White

Managing Editor/Production

Katie Underwood
kunderwood@isba.org

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A. Methodist Old Peoples Home Guidelines

The following six guidelines or criteria from the *Methodist Old Peoples Home* case are indicative of charitable ownership and use:

- 1. No benefit for a particular group or person.** The benefits derived are for an indefinite number of persons for their general welfare, or in some way reduces the burdens on government. Usually this is set out in the organization's charter or bylaws.
- 2. No private profit.** The organization has no capital, capital stock, or shareholders, and does not profit from the enterprise. An organization does not lose its charitable status when it generates a margin (an excess of revenues over expenses) as long as this margin does not inure to any individual owner or member.
- 3. Funds derived mainly from charity.** The organization derives its funds primarily from public and private charity, and holds those funds in trust for the objectives and purposes expressed in the organization's charter. Funds are considered used for a charitable purpose if they are reinvested into the facility to further the institution's charitable purpose. This focus is on the purpose and the use of the funds, rather than upon the funding source.
- 4. No discrimination.** The organization dispenses charity to all who need and apply for it.
- 5. No obstacles to free care.** No obstacles are placed in the way of those who need and would avail themselves of the charitable benefits the organization dispenses.
- 6. Primary purpose.** The exclusive, i.e. primary, use of the property is for charitable purposes. Charity use is the primary purpose for the property, not a secondary or incidental purpose. A property used primarily for charitable purposes retains its tax-exempt status, even though it may incidentally produce income.

The *Methodist Old Peoples Home* guidelines are not to be applied mechanically or technically. Those guidelines are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See, *DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare*

Organizations, 274 Ill. App. 3d 461, 468-469, 654 N.E.2d 240, 245 (2nd Dist. 1995).

B. Charitable Purpose – Percentage vs. Purpose Test

In both *Community Health Care* (percentage of use) and *Provena Covenant* (percentage of amount), the *Methodist Old Peoples Home* guideline of whether charity use was the primary purpose for which the properties were used was reviewed by using a percentage test for charitable.

In *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill.2d 498, 804 N.E.2d 499 (2004), the Supreme rejected use of percentages to determine whether an organization operates for a charitable purpose. Instead a purpose test was applied.

The *Community Health Care* court reviewed percent of use of the property, i.e., that approximately 27 percent of CHC's patients received some level of discounted services for the 2003 tax year. In reviewing the charity, the Court found that property was used for CHC's "charitable purpose" of providing discounted or free medical service to a medically underserved community only 27 percent of the time. The court held that a 27 percent use is insufficient to find the property is used primarily for a charitable purpose.

In *Provena Covenant*, the IDOR reviewed financial figures, i.e., that Provena Covenant's charitable activities cost about 0.7 percent of their total revenues for the 2002 tax year. The IDOR concluded these financial figures for providing charity care fell far short of proving that its primary purpose was charitable care. (see, IDOR decision at pages 1-2).

In *Quad Cities*, the court found that a golf tournament was operated for a charitable purpose and thus its gross receipts were not subject to a municipal amusement tax. The City of Silvis argued that the "exceedingly small fraction" of actual revenue donated to charity—7 percent of the revenue raised between 1998 and 2000—renders the charitable purpose incidental such that it is not "operated" for a charitable purpose.

The *Quad Cities* court disagreed, concluding:

A charity is not defined by percentages, and a charity does not lose its charitable character because it intends to generate a

profit. Although a charity may be profit-driven, the relevant inquiry is who profits: "distinctive features of a charitable organization are that it has no capital stock and no provision for making dividends or profits for private gain.(emphasis added)" See, *Quad Cities Open*, 208 Ill.2d at 516, 804 N.E.2d at 509-510 (citing *People v. Y.M.C.A. of Chicago*, 365 Ill. 118, 226 N.E.2d 166 (1937), a personal property tax exemption case).

Instead of using percentages, the *Quad Cities* court reviewed other factors such as evidence of the purpose of the organization in its articles of incorporation, and whether the Open did, in fact, contribute net revenue to recognized charities. Finding no profit for private gain, the court held that the Open was operated for a charitable purpose, and Silvis may not tax its gross receipts.

Irrespective of what analysis of charitable purpose is applied for a particular property tax exemption (a percentage test, a purpose test, or some other factor), it should be conducted with the overall focus upon whether and how the organization and use of the property serves the public interest and lessens the State's burden.

III. Rationale for hospital property tax exemptions

Most not-for-profit hospitals in Illinois are currently considered to be charitable based on a line of Supreme Court cases dating back to 1907, *Sisters of Third Order of St. Francis v. Board of Review of Peoria County*, 231 Ill. 317, 83 N.E. 272 (1907), which provided that hospital facilities are exempt when:

1. All funds received are devoted to their charitable purposes; and
2. No part of the money received by the hospitals is permitted to inure to the benefit of any private individuals engaged in managing the charities.

See, also, *Board of Review of Cook County v. Provident Hospital & Training School Ass'n*, 233 Ill. 242, 84 N.E. 216 (1908), *German Hospital of Chicago v. Board of Review of Cook County*, 233 Ill. 246, 84 N.E. 215 (1908), *Board of Review of Cook County v. Chicago Polyclinic*, 233 Ill. 268, 84 N.E. 220 (1908), *People ex rel. Cannon v. Southern Illinois Hospital Corp.*, 404 Ill. 66, 88 N.E.2d 20 (1949).

A. Property Tax Exemptions Under Sisters of Third Order

Most not-for-profit hospitals met the charitable purposes standard by providing services such as emergency treatment, treating patients 24 hours a day, seven days a week, regardless of their ability to pay. The rationale behind the exemption is that otherwise, the burden would be placed on the government to provide for the health of the people and communities served by those hospitals.

Not-for-profit hospitals met the charitable benefit standard by re-investing its earnings in the hospitals' community. Such charitable benefits could be providing services, enhancing access to care, improving quality, purchasing new technology, upgrading facilities, educating physicians and other health care professionals, and conducting research. The specific amount of free care provided by the hospital or the value of the property tax exemption were not a significant consideration for charitable status under the line of cases under *Sisters of Third Order*.

B. IDOR Distinguishes Sisters of Third Order

In *Provena Covenant*, the IDOR distinguishes *Sisters of Third Order* by stating that the "facts presented in *Sisters of Third Order* are of a very different hospital model than that of *Covenant*." (see, IDOR decision at page 17). Instead of following *Sisters of Third Order*, the IDOR noted three appellate court cases that it considered to be "much more current and clearly are more on point concerning their business practices." (Id).

In each of the three cases cited by the IDOR, charity use was found to not be the primary purpose for which the property was used. It should be noted that none of the cases involved a general acute care hospital, as presented in *Provena Covenant*. See, *Riverside Medical Center v. Department of Revenue*, 342 Ill.App.3d 603, 795 N.E.2d 361 (3rd Dist. 2003) which involved three clinics in Kankakee County. *Alivio Medical Center v. Illinois Department of Revenue*, 299 Ill.App.3d 647, 702 N.E.2d 189 (1st Dist. 1998), which involved a community health center serving the Hispanic community in Chicago. *Highland Park Hospital v. Department of Revenue*, 155 Ill.App.3d 272, 507 N.E.2d 1331 (2nd Dist. 1987), which involved a hospital-owned professional center used by physicians who rented space.

The applicability of *Sisters of Third Order*, and the correct legal standard required to be applied in reviewing whether a hospital is charitable will be important to the merits of *Provena Covenant's* exemption on administrative review.

C. Other Grounds For Property Tax Exemptions on Hospitals

In addition to "charitable purposes," not-for-profit hospitals have also qualified for property tax exemptions under the Property Tax Code on other grounds, such as educational or religious.

Many hospitals have a religious institution component, and have alternatively qualified under section 15-40 under the "religious purposes" property tax exemption. *Provena Covenant* is part of a Catholic health system that includes six hospitals, *Provena Hospitals*. Religious congregations sponsor each hospital. In the alternative, *Provena Covenant* argued for exemption qualification on this basis. The IDOR found that that *Provena Covenant's* requested exemption did not qualify as religious use. (see, IDOR decision at page 1).

Many hospitals have a teaching purpose component, and have alternatively qualified under section 15-35 for a property tax exemption as "school property."

IV. The Community Health Care decision: Clinic in Rock Island

Community Health Care (CHC) is a non-profit, community-based primary care clinic in Rock Island. The appellate court affirmed the IDOR's denial of their property tax exemption application.

CHC argued that it met the definition of "charity" because it provides free or reduced-fee health care to any patient who presents him or herself to its facility and it does not set a limit on the number of people who can receive free or reduced-fee health care services. Because it uses the property primarily for this purpose and only uses the property for the provision of medical and dental care, CHC argued that it qualified for the charitable exemption.

A. Sling Scale For Fees Not Sufficient Charity

The *Community Health Care* court found that CHC's primary use of its facility is not for a "charitable purpose," finding the following facts significant in reaching this conclusion:

A CHC patient with an income at or below the poverty level receives a

100 percent discount. The clinic offers a sliding scale for fees whereby patients receive a discount of 25 percent, 50 percent, 75 percent, or 100 percent depending on their income. The discount is offered to any person with an income at or below 200 percent of the poverty level and CHC advertises its availability through a variety of media.

Approximately 27 percent of CHC's patients received some level of discounted services. Of those, 58 percent received a 100 percent discount. Regardless of the sliding scale, CHC requires all patients, excluding homeless persons, to pay at least a \$10 co-payment for medical services or \$20 for dental services. CHC will not turn away a patient who cannot provide the co-pay.

Reviewing these facts, the *Community Health Care* court found that CHC's 27 percent use for discounted or free medical service was insufficient to prove that charity use was not the primary purpose for which the property is used and not a secondary or incidental purpose.

B. Failure to Sustain Burden of Proof

The *Community Health Care* court cited the lack of concrete data in the administrative record as supporting its decision to affirm the IDOR denial of CHC's exemption application. CHC had relied on "organization-wide financial data to extrapolate the patient and payor mix" to show the charity use at the Rock Island facility. The court found that the evidence as to the level of charitable operations at this specific facility was "speculative."

Finding "the question of how much CHC uses the Rock Island facility for its 'charitable purpose' is, at best, 'debatable,'" the *Community Health Care* court concluded that CHC had failed to provide clear and convincing evidence proving a right to an exemption at the Rock Island facility.

V. The Provena Covenant decision: Hospital in Urbana

Provena Covenant Medical Center (*Provena Covenant*) is a general acute care, non-profit hospital located in Urbana. After being exempt for many years, due to a change in the hospital's ownership, *Provena Covenant* reapplied for a property tax exemption for the 2002 tax year.

A. Procedural Background

The Champaign County Board of

Review recommended that the IDOR not renew Provena Covenant's application. The property was placed on the tax rolls, beginning with the 2002 tax year.

The IDOR denied the exemption application. Provena Covenant filed a protest with the IDOR. An administrative hearing was conducted in December 2004. On September 29, 2006, the IDOR found that Provena Covenant's volume of charity care did not qualify for a property tax exemption.

Provena Covenant has filed for administrative review of the IDOR decision. The administrative review record in *Provena Covenant* is far more extensive than was the case in *Community Health Care*. It is comprised of eight volumes, with nearly 600 pages of testimony from witnesses and experts and 157 exhibits.

The proper charitable legal standard is likely to determine the merits of Provena Covenant's exemption, whereas CHC's failure to satisfy the clear and convincing burden of proof was an important consideration in the denial of its exemption application.

What follows are the key issues raised by the IDOR in *Provena Covenant*:

B. Public Interest: For-Profit vs. Not-For-Profit

Under the *Methodist Old Peoples Home* guidelines, the overall focus is upon whether and how the organization and the use of the property serve the public interest and lessen the State's burden.

The IDOR decision did not give any weight to Provena Covenant's contributions to its community. The Director stated that :

No one disputes the fact that a hospital and the services it offers may improve the well-being of the communities within which it operates. But that general proposition holds true for for-profit hospitals as well as for not-for-profit ones. Property tax exemptions do not turn on these general propositions.

(See, IDOR decision at pages 16-17).

The IDOR's statement is significant because it rejects the rationale for which hospitals have historically been granted property tax exemptions. Those exemptions have been based upon the general proposition that not-for-profit owned hospitals have a social obligation to the community that investor-owned hospitals do not have:

1. Providing care to nonpaying patients;
2. Providing historically unprofitable medical services;
3. Providing a facility for graduate medical education and research.

Unless the hospital is heavily subsidized (e.g., a county hospital), not-for-profit and investor-owned hospitals both require a profit or margin to operate, maintain or expand plant and equipment, and cover the cost of capital. To be self-sustaining, sufficient margins are needed to support the charitable services that benefit community members and local governments.

Under *Sisters of Third Order*, funds are considered used for a charitable purpose if they are reinvested into the facility to further the institution's charitable purpose. The focus is on the purpose and the use of the funds, rather than upon the funding source.

Not-for-profit hospitals significantly differ from investor-owned hospitals due to the limitations on the distribution of those profits or margin, and the party that benefits from that profit or margin. If the social responsibilities between the two types of hospitals are considered to be equivalent by the IDOR, there is no rationale for a property tax exemption for not-for-profit hospitals.

C. Charitable Contributions and Revenue Sources: Not from Public or Private Charities

The IDOR found that Provena Covenant did not satisfy the *Methodist Old Peoples Home* guideline that it derive its funds primarily from public and private charity and hold those funds in trust for the objectives and purposes expressed in the organization's charter.

Citing "minimal" charitable receipts, the Director noted that Provena Covenant had received \$6,938 in "unrestricted donations," or .00067 percent of collected revenue, whereas 97.7 percent of Provena Covenant's total revenue came from patient service revenue. (see, IDOR decision at pages 11-12).

The IDOR cited the cases of *Riverside Medical Center*, *Alivio Medical Center*, and *Highland Park Hospital* for the conclusion that the facts in *Provena Covenant* are "not a use of property that has ever been recognized by Illinois courts as 'charitable.'" The IDOR concluded that "it is clear that the primary use of the subject property in 2002 was for the exchange of services for payment." (see, IDOR decision at page 12).

The IDOR found that both Provena

Covenant and its not-for-profit parent, Provena Hospitals, had insufficient charitable forms of revenue (e.g., public and private donations, grants, charitable gifts). The IDOR concluded that under *Methodist Old Peoples Home v. Korzen*, it must derive its funds mainly from public and private charity. (see, IDOR decision at page 13).

Since patient services are the primary revenue for most modern hospitals, most would not satisfy this standard to qualify as charity.

D. Inadequate Charity Care Policy and Practices

The IDOR found that Provena Covenant's charity care policies and practices, as applied, did not provide charitable services to all who need and apply for it. Some key findings:

- **Sliding Scale for Services.** Provena Covenant did not dispense charity care when it reduced patient bills on a sliding scale basis depending upon the patient's financial status in relation to federal poverty income guidelines. The sliding scale is inconsistent with providing meaningful charity care because it fails to consider a patient's true ability to pay for services rendered in relation to the amount of the outstanding portion of the bill. (see, IDOR decision at pages 9-11).
- **Billing and Collection Practices.** Provena Covenant engaged third parties that collected unpaid patient charges. The use of collection agencies to collect unpaid portions of these bills was "inconsistent with charitable activities." (see IDOR decision at page 10).
- **Inadequate Charity Policy Publicity.** Provena Covenant failed to publicize the availability of charity care and discount policies to patients and the community in most need of it. (see, IDOR decision at page 11).
- **Charity Care Statement.** Provena Covenant's charity care policy's statement provides that it would dispense charity care "to the extent that it is financially able" to do so. Its financial prosperity should not be a consideration in determining how much charity care is provided. (Id).

E. Amount of Charity Care Provided in 2002 Insufficient

The IDOR found that Provena Covenant had failed to prove that the institution's "primary purpose" was providing charitable care.

Under the IDOR's analysis, the only hospital expenditures considered to be "charity" were those for patients who had applied for and used the financial assistance program. "Charity" did not include additional funds to cover care to people who cannot pay and chose not to use the financial-assistance program. Some key findings:

- **Primary Purpose Standard Not Met.** Reviewing the amount of charity care, and stating that this was the "primary basis" for his conclusion that the exemption should be denied, the Director focused upon Provena Covenant having spent \$831,724, or about 0.7 percent of Provena Covenant's \$113 million revenues for that year providing charity care.

The IDOR concluded that "[t]hese financial figures fall far short of meeting the primary purpose standard." (see IDOR decision at pages 2-3). The IDOR later found that "this small amount of charitable care is so seriously insufficient that it simply cannot withstand the constitutional scrutiny required to justify a property tax exemption." (see IDOR decision at pages 6-7).

- **Collection Activities: Un-reimbursed Costs.** Provena Covenant argued that the amount of charity care it provided in 2002 also included more than \$10 million of un-reimbursed costs from accepting Medicare and Medicaid patients. As permitted under these programs, Provena Covenant attempted to collect certain of these costs from these patients.

The IDOR cited *Riverside Medical Center* for the conclusion that un-reimbursed Medicare or Medicaid expenditures (i.e., where the reimbursement was less than what the hospital actually spent caring for those patients) does not qualify as charity. (see IDOR decision at pages 15-16).

- **Value of Exemption vs. Amount of Charity Provided.** Reviewing the "implications of the exemption request," the IDOR stated that the value of the \$1.1 million property tax exemption sought by Provena Covenant was worth more than the cost of the charity care provided under its charity policy.

After noting that there is no case law specifically identifying a minimum level of charity necessary to qualify for a charitable exemption, the IDOR stated

that the dollar amount of charitable services should be considered an "indication" of whether an organization's primary purpose is charitable. (see IDOR decision at page 14). Noting again that Provena Covenant spent \$831,724, or about 0.7 percent of its revenues for 2002 providing charity care and citing *Riverside Medical Center*, the IDOR stated that it would "defy logic" to find that this makes the primary use of the property charitable (see IDOR decision at pages 13-15).

- **Emergency Room Services Not Charity.** The federal Emergency Medical Treatment and Active Labor Act (EMTALA) impose specific obligations on Medicare-participating hospitals that offer emergency services. See, 42 U.S.C.A. §1395dd (Examination and treatment for emergency medical conditions and women in labor). By offering hospital admission and treatment, Provena Covenant's emergency services were beyond its requirements under EMTALA.

Particularly given that it offers more than it was required to do under EMTALA, Provena Covenant argued because all persons seeking treatment for emergency medical conditions actually received that care, regardless of ability to pay, this showed that its primary purpose was charitable. The IDOR was not persuaded, finding that "this contractual point is not a clear indication of applicant's charity, but instead may simply reflect compliance with federal law." (see IDOR decision at page 7).

F. Relationship and Use of Facilities By For-Profit Entities

The IDOR criticized Provena Covenant's contracts with for-profit vendors, a common practice for operations within a modern hospital. The IDOR found insufficient evidence concerning those for-profit entities:

- **Emergency Facilities.** A for-profit corporation operated Provena Covenant's emergency facilities under a contract. That corporation performed its own billing and collection activities. It was required to comply with Provena Covenant's ER policies and procedures of care to all without discrimination and regardless of ability to pay.

The IDOR concluded that the amount of ER charity care was not sufficiently broken down for proper allo-

cation between ER and other Provena Covenant activities. The IDOR stated that this was more important than Provena Covenant's obligation under the EMTALA to stabilize persons who arrive for emergency care, regardless of an individual's ability to pay. (see IDOR decision at page 7).

- **Third-Party Providers For Other Major Services.** Provena Covenant contracted with unrelated for-profit providers for pharmacy services, clinical laboratory services, MRI/CT services, neo-natal staff, medical residency program, laundry services, and the management, administration and staffing of a rehabilitation program and cardiovascular surgery program.

The IDOR found that there was "no competent evidence of record" that these "for-profit" entities complied with Provena Covenant's charity care policy to provide care for all who needed it. (see IDOR decision at page 7).

- **Laboratory Services.** Provena Covenant's parent, also a nonprofit (and tax-exempt) entity, Provena Health, had an exclusive arrangement for the provision of laboratory services to Provena Covenant.

The IDOR suggested that the payment by a nonprofit corporation to its parent nonprofit corporation in consideration for services rendered by the parent "raises the distinct possibility" that there is a private inurement flowing back to Provena Health (i.e., there is excessive consideration or compensation from Provena Covenant for services rendered by Provena Health). No case law was cited for how this constitutes private inurement (see IDOR decision at pages 7-8).

VI. Conclusion

The IDOR has set out and applied high standards in *Community Health Care* and in *Provena Covenant* in order to qualify as "charity care." In light of these cases, all charitable organizations should review their charity care policies.

The issue of the proper standard to apply in determining qualification for charitable property tax exemptions will be the subject of further litigation. While particularly true of nonprofit hospitals, charitable use property owners should continue to monitor these cases and determine the potential impact on their exemption.