



HEALTH LAW

BY FRANCIS J. SERBAROLI

Revoking a Hospital's Property Tax Exemption

For generations, most not-for-profit hospitals in the United States have been accorded exemptions from almost all forms of taxation. As charitable organizations, their revenues were not taxed, and the real estate occupied by the institution has been free of property taxes. The simple purpose behind these exemptions was to enable the hospital to devote 100 percent of its resources to fulfilling its charitable mission without the burden of paying levies to federal, state and local governments.

In recent years, as they have been buffeted by dramatic changes in Medicare and Medicaid reimbursement, managed care, competitive market forces, as well as increased government mandates, hospitals have attempted to function more along the lines of a business. While this has enabled many facilities to become more effective in controlling costs and improving their bottom lines, some facilities have lost sight of their fundamental charitable purpose and mission. The media have featured stories about prestigious not-for-profit hospitals that have overcharged uninsured patients for medical services and then pursued them with overly aggressive collection practices. Some facilities have delayed providing care until the patient has obtained health insurance or become qualified for Medicaid. Others have focused on providing high-profit services as opposed to focusing on core services needed in their communities. Still others have misrepresented the amount of so-called "charity care" they provide by including uncollectible deductibles and co-pays, care provided free or at a discount to employees' families, and so on.

Provena Covenant Medical Center

Excessive executive compensation at some

Francis J. Serbaroli is a partner at Cadwalader, Wickersham & Taft. He is the author of "The Corporate Practice of Medicine Prohibition in the Modern Era of Health Care," published as part of the BNA Health Law and Business Portfolio Series. Note: For disclosure purposes, Cadwalader represents not-for-profit hospitals and health care providers on a variety of matters, including tax-exemption issues.



not-for-profits hospitals has triggered Senate hearings, as have conflicts of interests involving executives and board members. Moreover, Medicaid expenditures—partly driven by escalating hospital costs—are skyrocketing, thereby placing greater pressures on localities to collect more real estate taxes to pay their share of the Medicaid budget and other municipal expenses. As a result, the formerly sacrosanct tax-exempt status of hospitals is now being scrutinized at the federal level, while at the local level, property tax-exemptions are being successfully challenged. A recent determination revoking the property tax exemption of Provena Covenant Medical Center (Provena), a Roman Catholic hospital in Illinois, has provoked a good deal of concern on the part of not-for-profit hospitals across the nation.

Provena had applied to the County Board of Review to renew its property tax exemption for 2002. The board recommended that Provena's application be denied. In February 2004, the Illinois Department of Revenue (DOR) denied Provena's request. Provena appealed, and a DOR administrative law judge recommended granting the renewal of the property-tax exemption. However, when the matter came before DOR's Director, Brian Hamer, he rejected the ALJ's recommendation and found that Provena's property did not qualify for the "religious purpose" exemption since it was not used exclusively for charitable purposes as defined in the Illinois Property Tax Code.¹

In his decision, Mr. Hamer reviewed Illinois

statutes and cases, noting that charitable institutions are not exempt from taxes simply by virtue of their ownership or sponsorship. The party claiming the exemption has the burden of proving entitlement to the exemption by clear and convincing evidence, he wrote, and all facts considered and all debatable questions must be resolved in favor of taxation. While Illinois law requires that the property be used exclusively for charitable purposes, Mr. Hamer acknowledged that "exclusively" does not mean the entity's sole purpose, but its "primary" purpose, rather than an incidental or secondary one.

Tax-Exempt Status

He then reviewed the factors justifying tax-exempt status:

1. the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
2. the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter;
3. the organization dispenses charity to all who need and apply for it;
4. it does not provide gain or profit in a private sense to any person connected with it; and
5. it does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Moving from his analysis of applicable Illinois law to Provena's eligibility for continued property tax exemption, Mr. Hamer first noted that although Provena's 2002 revenues were \$113 million, it waived only \$1,758,940 of potential revenue pursuant to its charity care policy. Moreover, Provena's actual cost of providing this care was only \$831,724, representing less than 1 percent of Provena's total revenues.

Mr. Hamer cited the fact that Provena had outsourced a number of services including

