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*FEATURE ARTICLE*

**CHARITY CARE: HOW MUCH  
OF A GOOD THING?**

*by* GRAHAM BOWMAN

If there is one lesson that Illinois hospital administrators have learned lately, it has been not to take their tax-exempt status for granted. Historically, many not-for-profit hospitals in Illinois have been exempted from paying property tax. In return, they are required to provide a loosely defined amount of free or discounted healthcare to the poor, known as “charity care.”<sup>1</sup>

Low-income Illinois residents rely on charity care to obtain healthcare they cannot otherwise afford. In addition, non-hospital providers of healthcare to

the uninsured rely on free or discounted care from hospitals to provide testing, inpatient and specialty care that is beyond their capability to provide.<sup>2</sup>

Recently, however, the Illinois Department of Revenue has signaled that some hospitals may not be providing enough charity care to justify their generous tax exemptions, estimated to be worth nearly \$490 million annually in total.<sup>3</sup> Illustrating this is a 2009 study of 27 not-for-profit hospitals in the Chicago area, which showed these hospitals received “annual tax breaks worth nearly three times the cost of charity care provided.”<sup>4</sup>

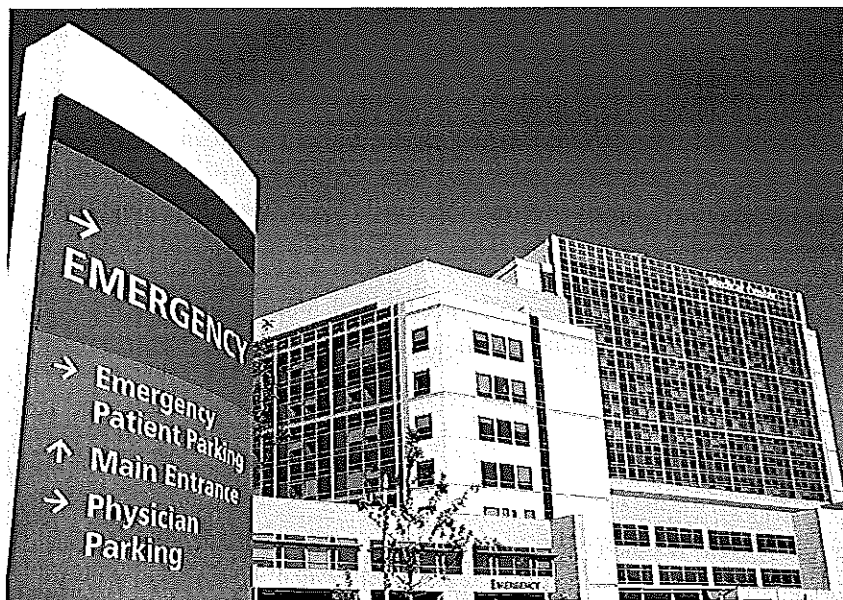
A year later, the Illinois Supreme Court upheld the Department’s decision to revoke Urbana-based Provena Health’s tax-exempt status for failing to provide enough charity care.<sup>5</sup> The Provena case – and its aftermath – leaves an uncertain future for free healthcare for those who need it most.

#### CHARITABLE IN NAME ONLY?

Provena Covenant Medical Center is a 205-bed medical facility<sup>6</sup> offering a variety of medical services ranging from an emergency department to cancer treatment.<sup>7</sup> In 2002, Provena applied for an exemption from paying property tax under Section 15–65(a) of the Illinois Property Tax Code, which states, “All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: (a) Institutions of public charity. (b) Beneficent and charitable organizations.”<sup>8</sup> In 2004, the Department denied the tax exemption, forcing Provena to pay \$1.1 million in property taxes.<sup>9</sup>

In addition, according to the Illinois Supreme Court, “[E]ligibility for a charitable exemption under section 15–65 of the Property Tax Code requires not only charitable ownership, but charitable use.”<sup>10</sup> This use requirement stems from the Illinois Constitution, which authorizes the General Assembly to exempt only property used exclusively for charitable purposes from paying property tax.<sup>11</sup> The ownership requirement, on the other hand, is imposed by the Illinois Property Tax Code, which adds the requirement that property be owned by “beneficent and charitable organizations.”<sup>12</sup>

Unfortunately for Provena, it was unable to demonstrate that it qualified as a charitable organization for three essential reasons: it does not receive its funds



mainly from private and public charity, it did not dispense charity to all who needed and applied for it and it placed obstacles in the way of those who needed free care.<sup>13</sup>

In addition to failing the ownership requirement, Provena could not show that it was used exclusively for charitable purposes.<sup>14</sup> As the Court explained, “[t]he reason for exempting certain property from public taxes arises from the fact that such property, in its use for charitable purposes, tends to lessen the burdens of government and to affect the general welfare of the public.”<sup>15</sup> Therefore, any reduction in the clinic’s taxes must be offset by “some compensatory benefit in exchange.”<sup>16</sup> This exchange must be the primary purpose for which the property is used.<sup>17</sup>

Like most hospitals, Provena served three kinds of patients: those with private insurance, those with Medicare or Medicaid and the uninsured.<sup>18</sup> The Supreme Court found that care provided to either publicly or privately insured patients did not count as charitable, even if Medicare and Medicaid did not adequately compensate the provider.<sup>19</sup> Services to insured patients were provided for a fee, not as a benefit to the public that offset an exemption from property tax.<sup>20</sup>

The Court also failed to find the uncompensated care Provena provided charitable.<sup>21</sup> Rather than being forgiven by Provena, uninsured patients' bills were typically sent to collection agencies and only eventually written off as bad debt.<sup>22</sup> Nor did the hospital advertise the possibility of free care to uninsured patients.<sup>23</sup>

Although some care was offered at a reduced rate, that discounted care was still profitable for Provena.<sup>24</sup> The Illinois Supreme Court was clear: profitable care is not charitable care.<sup>25</sup>

#### THE NEXT TO FALL

After the Provena decision was handed down, other hospitals were next in line. Northwestern Memorial's Prentice Women's Hospital in Chicago, Edward Hospital in Naperville and Decatur Memorial Hospital were all denied property tax exemptions in 2010.<sup>26</sup>

In September 2011, Governor Quinn issued a moratorium on further revocations of hospital tax exemptions to allow the Illinois General Assembly time to pass legislation better defining what constitutes charity care.<sup>27</sup> However, the deadline for the moratorium lapsed on March 1, 2012, and the Department resumed scrutinizing hospitals' exemption applications in accordance with the Provena decision.<sup>28</sup>

#### LITTLE ROOM TO MANEUVER

According to Margaret Stapleton of the Sargent Shriver National Center on Poverty Law, the General Assembly is still attempting to find a legislative solution, as more than 16 hospitals are in danger of having their tax exemptions denied.<sup>29</sup> If denied, these hospitals will lose a major financial incentive to provide free health care to the poor and uninsured.

With no resolution in sight, five Illinois hospitals withdrew their applications for exemptions during the final week of March 2012.<sup>30</sup>

According to Stapleton, "It will be very hard for the legislature to find a solution that fits within the Provena decision's parameters. Modern healthcare does not fit the 1970 Illinois Constitution."<sup>31</sup> As Stapleton sees it, the inherent

problem with a legislative solution is that the General Assembly has limited authority to change hospitals' obligations. The charitable ownership requirement is imposed by the tax code, which the General Assembly is free to amend.<sup>32</sup> However, the General Assembly cannot redefine the charitable purpose requirement that is imposed by the Illinois Constitution.<sup>33</sup>

Absent a constitutional amendment, hospitals will be forced to adhere to the Provena decision's directive that free care be provided in greater amounts. Care provided below market rate or the write-off of bad debt will not suffice. Low-income patients may find themselves with fewer options if hospitals find these new rules too burdensome and decide instead to pay property taxes, freeing themselves of the requirement to provide charity care.

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#### NOTES

- 1 Provena Covenant Med. Ctr. v. Dep't of Revenue, 236 Ill.2d 368, 395 (2010).
- 2 Micah Maidenberg, *Neighborhood Health Centers Could Lose in Tax-Exempt Debate*, *Clinic Director Says*, CRAIN'S CHI. BUS., Mar. 6, 2012.
- 3 *Illinois Denies Property Tax Exemptions to Three Hospitals*, ADVISORY BOARD COMPANY (Aug. 17, 2011), <http://bit.ly/FPVVTT>; HEATHER O'DONNELL & RALPH MARTIRE, CTR. FOR TAX AND BUDGET ACCOUNTABILITY, AN UPDATE: AN ANALYSIS OF THE TAX EXEMPTIONS GRANTED TO NON-PROFIT HOSPITALS IN CHICAGO AND THE METRO AREA AND THE CHARITY CARE PROVIDED IN RETURN 4 (Apr. 2009), available at <http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Health%20Care/2009%20Charity%20Care%20and%20Non%20Profit%20Hospital%20Exemption%20Update...pdf>.
- 4 O'DONNELL & MARTIRE, *supra* note 3, at 4.
- 5 *Provena*, 236 Ill.2d at 373.
- 6 PROVENA COVENANT MEDICAL CTR.: ABOUT Us, <http://www.provena.org/covenant/body.cfm?id=15> (last visited Apr. 23, 2012).
- 7 *Provena*, 236 Ill.2d at 375.
- 8 *Id.* at 383.
- 9 *Id.*
- 10 *Id.* at 394.
- 11 ILL. CONST. art. IX, § 6; *Provena*, 236 Ill.2d at 389.
- 12 35 ILCS 200/15-65(a); *Provena*, 236 Ill.2d at 390.
- 13 *Provena*, 236 Ill.2d at 392-93.
- 14 *Id.* at 394.
- 15 *Id.* at 395 (quoting *People ex rel. Carr v. Alpha Pi of Phi Kappa Sigma Educ. Ass'n of the Univ. of Chi.*, 326 Ill. 573, 578 (1927)).
- 16 *Id.*
- 17 *Id.* at 394.
- 18 *Id.* at 397.
- 19 *Id.* at 392-93, 401-02.

20 *Id.*

21 *Id.* at 392-93.

22 *Id.* at 398.

23 *Id.*

24 *Id.* at 400.

25 *Id.* at 397.

26 Carla K. Johnson, *Quinn Lifts Hold on Illinois Hospital Tax Exemption Ruling*, ASSOCIATED PRESS (Mar. 1, 2012), <http://www.pjstar.com/freet/x297843719/Quinn-lifts-hold-on-Illinois-hospital-tax-rulings>.

27 Matt Brennan, *Potential Tax Hit For Hospitals Concerns Kane Board Members*, BEACON NEWS (Jan. 30, 2012), <http://beaconnews.suntimes.com/business/10324769-420/potential-tax-hit-for-hospitals-concerns-kane-board-members.html>.

28 Johnson, *supra* note 26.

29 Telephone interview with Margaret Stapleton, Director of Community Justice, Shriver Center, & Caitlin Padula, Staff Attorney, Shriver Center (Mar. 14, 2012).

30 Anthe Mitrakos, *Five Hospitals Drop State Tax-Exemption Requests*, CRAIN'S CHI. BUS., Apr. 17, 2012, available at <http://www.chicagobusiness.com/article/20120417/NEWS03/120419820/five-hospitals-drop-state-tax-exemption-requests>.

31 Stapleton & Padula, *supra* note 29.

32 *Provena*, 236 Ill.2d at 390.

33 *Id.*