The Taxation of Illinois Not for Profit Hospitals:  
The Current Landscape

First Illinois HFMA

December 15, 2011 Treasury Program
Agenda

Where Things Stand

• Status Snapshot
• The Provena Decision: Precedential Impact
• Best Practices
• Procedural Issues

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Possible Solutions

- Challenges Created By Illinois Law
- IHA Principles

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For decades Illinois not for profit hospitals were found exempt from sales tax and property tax.

Provena Hospitals becomes the first not for profit hospital in Illinois to be denied property tax exemption for its main hospital campus (Department of Revenue (DOR action taken in 2004).

The Illinois Supreme Court affirms the denial by upholding an Appellate Court decision that the DOR was not clearly erroneous (March 2010).
• DOR in review of over 100 property tax exemption applications. It also sends 26 question sales tax exemption renewal forms to hospitals seeking to renew five year exemptions

• The exemption applications of three Illinois hospitals are denied by DOR (August 2011)

• Gov. Quinn requests a moratorium on further DOR decisions and asks that stakeholders work to a legislative solution (September 2011)

• Hospitals are left with unprecedented uncertainty concerning their continued reliance on sales and property tax exemptions
Provena Decision: Precedential Impact

- It is critical for hospitals to understand what Provena does and does not stand for

- Why?

  - DOR and Attorney General continue to push a “charity care only” interpretation of charitable use requirement; hospitals must be emboldened in declaring that to be too narrow of a standard
  
  - Assessors across the state may attempt to put hospitals back on tax rolls based on this erroneous interpretation
For example, on September 30, 2011, the Bureau County Supervisor of Assessments issued a letter to Concerned Taxing Bodies stating:

“In accordance with General Reassessment Year duties and in recognition of both provisions for reassessment of exempt hospital property as well as the results of the Provena Hospital decision of the Illinois Supreme Court, who plans to assess [2 exempt hospitals in Bureau County] for the 2011 assessment year. The hospitals will have the option of protesting the amount of the assessment through normal appeal procedures as well as the option of reapplying for their exempt status (“emphasis” added)”
Two prong test whether property is:

- **Owned** by an institution of public charity; and

- “actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit”

Property Tax Code (35 ILCS 200/15-65)
Provena

Standard of Review Applied by Supreme Court

- “...it is the decision of the administrative agency, not the judgment of the circuit court, which is under consideration”

  Provena Covenant Medical Center v. Department of Revenue.

- An administrative decision will be set aside as clearly erroneous only when the reviewing court is left with the definite and clear conviction that a mistake has been committed

  Exelon Corp. v. Department of Revenue, 234 Ill. 2d 266, 273 (2009).
Provena

Issues Addressed

- **Ownership**: “The appellate court was therefore correct when it concluded that this [charitable ownership] aspect of the Department’s decision was not clearly erroneous.” (Court Holding)

- **Use**: “As with the issue of charitable ownership, the appellate court correctly concluded that this aspect [charitable use] of the Department’s decision was not clearly erroneous. Again we agree.” (Plurality Position)
2 of 7 Justices recused themselves

5 of 7 Justices found that the record was insufficient to prove ownership by an institution of public charity (Narrow: insufficient evidence per the record)

3 of 7 Justices found IDOR denial of charitable use not clearly erroneous

Court turnover issues
Provena
Discussion of Charitable Use Portion of the Opinion is Not Binding Precedent

- Justice Burke and Freeman: “I write separately, however, because I cannot join that portion of the plurality opinion addressing charitable use...”

- “That the court [Wexford] specifically held that “petitioner does not have to prove that its actions lessen the burden of government. Rather, it has to prove, as it did, that it ‘reliev[es] their bodies from disease, suffering or constraint,’ which is by its nature, a lessening of the burden of government...For the above reasons, I cannot join in the charitable use portion of the plurality opinion. I note that the discussion of charitable use does not command a majority of the court and, therefore, is not binding under the doctrine of *stare decisis*.”
Ownership – Five Korzen factors Identifying an Institution of Public Charity

1. No capital, capital stock, or shareholders.\(^{(1)}\)

2. Earns no profits or dividends; rather derives its funds mainly from private and public charity.\(^{(2)}\)

3. Dispenses charity to all who need and apply for it.\(^{(3)}\)

4. Does not provide gain or profit in a private sense to any person connected with it.\(^{(1)}\)

5. Does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefit it dispenses.\(^{(3)}\)


\(^{(1)}\) Satisfied \\
\(^{(2)}\) Failed \\
\(^{(3)}\) Insufficient evidence
General

- Plurality position: When the law says “exclusively used” for charitable purposes it means the “primary” purpose must be charitable or beneficent

“Charity, in a legal sense, may be more fully defined as a gift...for the benefit of an indefinite numbers of persons...by relieving their bodies from disease, suffering or constraint...or otherwise lessening the burdens of government”
Charitable Use Arguments

- Relief of Government Burden
- Amount of Charity Care
- Discounts
- Advertising
- Low Demand

- Bad Debt
- Medicare and Medicaid Shortfalls
- Community Benefit
- Medical Residency
Plurality position: the appropriate test is whether the activity lessens the burden of the government.

Record does not detail how these taxing bodies spend their dollars; therefore, the Court has no way to determine the extent to which PCMC lessened governmental burdens.

C.f., Burke, J. dissent: “Implicit in the definition is that relieving bodies from disease or suffering is lessening the burden of government.”

“The plurality errs here in requiring Provena Hospitals to specifically demonstrate some burden of the government it relieved. There is no such requirement.”
Provena

Amount of Charity Care

- **PLURALITY POSITION**: Number of uninsured patients treated and dollar value of care were *de minimus*

- **Number of patients**: Only 302 of the 10,000 inpatients and 100,000 outpatients participated in the charity care program

- **Dollars**: Hospital waived $1,758,940 in charges; $831,724 in actual costs (.0723% of revenue)

- This is $268,276 less than the $1.1 million Provena stood to gain from tax exemption
• C.f., Burke, J. dissent: “Setting a monetary or quantum standard is a complex decision that should be left to our legislature, should it so choose”

• “Another problem that would be encountered if a quantum approach is imposed-uncertainty. Specifically, taxability would necessarily be determined on a year to year basis, depending upon economic factors which are not in the control of an organization”
# Provena
## Charitable Use – Dollar Value

<table>
<thead>
<tr>
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<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
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<tbody>
<tr>
<td><strong>Net Revenue</strong></td>
<td>$29,472.1</td>
<td>$29,272.0</td>
<td>$30,668.6</td>
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<tr>
<td>(millions)</td>
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<tr>
<td><strong>Charity Care</strong></td>
<td>582.36</td>
<td>732.88</td>
<td>788.63</td>
<td>857.40</td>
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<tr>
<td>(millions)</td>
<td></td>
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<tr>
<td>**Charity Care %</td>
<td>1.98%</td>
<td>2.50%</td>
<td>2.57%</td>
<td>2.72%</td>
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**Source**: IDPH Annual Hospital Profile Reports
• Continue to improve and follow best practices

• Review and revise charity care policies and focus on documentation of *all* forms of charity

• Supports a legislative initiative (e.g., looking at burden of proof in property tax cases)

• Local taxing authorities (e.g., Board of Review) likely will be encouraged in their efforts

• Other exemptions at risk (e.g., sales, use)
Best Practices

- Develop a comprehensive Mission Statement
- Govern with the Mission as the primary purpose
- Implement proper charity care policy
- Document all that you do
Best Practices: Mission Development

- The Board must establish and adopt a comprehensive Mission Statement, incorporating (as appropriate):
  - Charitable
  - Educational
  - Religious
  - Research
  - Community healthcare
  - Lessening the burdens of government
  - Detail of community benefit programs
  - Detail of other charitable activities
The Board (or its committees) must have regular involvement and demonstrate governance over:

- The Mission
- Charity care policy and its budget
- Community benefit programs
- Subsidized health services programs
- Education programs
- Training programs
- Research
- Others
Best Practices: Governance

- The Board (or its committees) must regularly guide, monitor and determine compliance with the Mission
  - Compare charity care budget to actual
  - Compare community benefit budget to actual
  - Compare other charitable programs budget to actual
  - Compare all charitable programs budget to actual
  - Discuss and review real property use in meeting programs

- The Board must periodically adjust guidance and direction

ALL SHOULD BE DOCUMENTED IN THE MINUTES
Best Practices: Charity Care Policy

- Must be charitable, comprehensive, well publicized, and rigorous in determining eligibility
- Must be posted and implemented to ensure there are no barriers to assistance or access
- Must meet state and federal statutory requirements
- Must be written to stress that ascertaining the appropriateness of providing financial assistance is a primary mission
- Must stress that financial assistance will be provided immediately upon a patient satisfying non-barrier requirements
- Must be made available to the public: posted, online and its existence stated on billing materials
Procedural Issues
Procedural Issues: Provena Decision Standards of Review-Administrative Appeal versus Direct Appeals to Circuit Court

- Administrative review – questions of fact – standard is “manifest weight of evidence.”

- Administrative review – questions of mixed fact and law standard is “clear error” – “definite and firm conviction that a mistake has been committed.”

- Administrative review – questions of law standard is “de novo review.”

- Circuit Court direct appeals standard is “preponderance of the evidence” – “more probably true than not.”
Procedural Issues: Currently Exempt Property

- Owner must file annual affidavits regarding “change in use,” “change in ownership,” or “lease with a view toward profit”

- Affirmative duty to notify by owner/lessor/lessee of “change in use,” “change in ownership,” or “lease with a view toward profit” or property may be treated as “omitted property”

- “Change in ownership” – Provena Case (corporate affiliation) – Richland Memorial Hospital (transfer from county to new not-for-profit to enable financing)

- Put back on tax rolls by County Assessor and/or County Board of Review-Carle Foundation/Riverside Senior Services/Apostolic Christian Home of Peoria

- Carle Foundation – Circuit Court direct appeal §23-25(e) or Apostolic Home complaint in equity (Assessor’s actions void)

- Illinois Department of Revenue §15-25 (no longer entitled to exemption)
Maintenance of Exemption for Currently Owned Exempt Property

Annual Affidavit to Chief County Assessment Officer
(Assessment Officer usually sends form)

§15-10

- Title holder or owner of beneficial interest must file with Assessment Officer, stating whether there has been a:
  - Change in use
  - Change in ownership
  - Change in the status of the owner
- Assessment Officer sometimes requires additional information
- Do not have to file affidavit if property exempted under religious use

Notification to Chief County Assessment Officer

§15-15

If property leased, loaned, or otherwise made available for profit:
- Title holder or owner of beneficial interest must file with Assessment Officer copies of leases and complete description of the premises

§15-20

If change in use, in leasehold estate, or in title holder of record by purchase, grant, taking, or transfer:
- Transferee has obligation to notify Assessment Officer in writing, within 30 days, of the change
- If failure to notify results in Assessment Officer listing property as exempt in subsequent years, property is omitted property
Termination of Exemption for Currently Owned Exempt Property

- Department of Revenue
  - Department determines property unlawfully exempted or no longer entitled to exemption
  - §15-25
  - Notification of Termination
  - §8-35
  - Administrative Hearing at DOR

- Chief County Assessment Officer
  - Assessment Officer exercises discretion when owner or transferee fails to file required affidavit or notification
  - §§15-10, 15-15, 15-20
  - Notification of Termination
  - §23-25(e) or compliant in equity
  - Administrative Review
  - Circuit Court

- Predecessor or tax exempt on grounds comparable to

- Appellate Court (by right)
- Illinois Supreme Court (by discretion of court)
Procedural Issues

- Critical Initial Decisions
  - IDOR – Administrative Hearing Process
  - Circuit Court under §23-25(e)

- How to Prepare for IDOR Hearings
  - The ALJ – (e.g., Disqualification of the ALJ)
  - The Record
The Application and Hearing

- Detailed proof of exclusive charitable purposes, mission, use and activities (financial details, governance documents, photos, testimony, data and program documentation) must be submitted and proven at the administrative hearing.

- The evidence should include the many charitable programs of the hospital in sufficient detail to show charity is the essence of the hospital’s very existence.
Possible Solutions

• Challenges Created By Illinois Law

• IHA Principles

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Challenges Created By Illinois Law

- *Eden* Supreme Court Case
- Exclusive Use
- Charitable Purposes / Charity Care
- How Much? Of What?
Challenges Created By Illinois Law


  - “It is for the courts, and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose.”

  - Legislature cannot declare property *ipso facto* exempt.
Challenges Created By Illinois Law

- Exclusive Use – Constitutional Test
  - General Assembly may exempt property
  - Used exclusively
  - For charitable purposes
- Exclusively means Primarily
Challenges Created By Illinois Law

- Charitable Purposes
  - Charitable Purposes
- Charity Care
- Free or Discounted Care for Poor People
Challenges Created By Illinois Law

- How Much?
  - Used exclusively / primarily
  - For charity care / free care
Challenges Created By Illinois Law
IHA Principles

- Principles for a Solution
  - Think outside the Rubic’s Cube
  - Support / follow health policy
  - Recognize diverse community needs
  - Do no harm