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Burden higher for nonprofit hospitals, Illinois Supreme Court says

Court backs withdrawal of tax exempt status for Provena Covenant Medical Center

By Bruce Japsen and Jason Grotto, Tribune reporters

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An Illinois Supreme Court decision Thursday puts nonprofit hospitals on notice that they must provide an adequate amount of charity care to patients or risk losing significant tax exemptions.

The decision, closely watched at a time when medical centers and the government are straining to cover health care costs for the poor, is a blow to the state's hospital industry. It sets the stage for a potential debate about exactly how charitable hospitals must be, with some experts predicting that Springfield could seek to pass a law mandating the amounts.

In the meantime, state officials indicated they could incorporate the court ruling into their assessments of whether to renew hospital tax exemptions. In its decision upholding a lower court ruling, the high court found that the Illinois Department of Revenue was correct in withdrawing Provena Covenant Medical Center's property tax exemption in 2004 because the Urbana hospital failed to justify adequately the exemption through charitable giving.

Illinois Attorney General Lisa Madigan called the ruling "good news" for the state's nearly 2 million uninsured residents "who lack access to affordable health care."

The Illinois Hospital Association, which represents 200 hospitals in the state, described the ruling as "disturbing" because of the way it reverses precedent.

"A hospital that treats patients regardless of their ability to pay and that does not provide profits to private individuals is charitable and merits an exemption from property taxes, without regard to the specific amount of free care it provides," association President MaryJane Wurth said in a statement. She warned that imposing new tax burdens could force a hospital to reduce services and increase health care costs

For years, state lawmakers have debated whether to require hospitals to provide a set level of charity care to qualify for tax exemptions but have never been able to put a standard in place.



Legal experts said Thursday's ruling sets up a confusing and unpredictable standard for nonprofit hospitals, which make up about three out every four hospitals in the state.

"I don't think it brings clarity or much direction to the exemption issue," said John Durso, an attorney in the health care practice at Ungaretti & Harris in Chicago. "It's not the end of the debate. It's the beginning of the debate."

It's also unclear how national health care reform, which Congress is expected to vote on as early as Sunday, could impact the issue of charity care. Under provisions currently being considered, about 32 million of the nation's 48 million uninsured could receive some type of coverage.

In the meantime, the ruling was seen as a warning to nonprofit hospitals that aggressive collection practices and weak charity policies could jeopardize their tax exemptions.

"The record showed that during the period in question here, Provena did not advertise the availability of charity care," Justice Lloyd Karmeier wrote for the majority. "Patients were billed as a matter of course and unpaid bills were automatically referred to collection agencies."

In deciding the case, the justices focused on two tests required for property tax exemptions in Illinois: whether the institution that owns the property is charitable and whether the property is used for charitable purposes.

On both counts, the court ruled against Provena Covenant, one of six Catholic hospitals owned by Mokena-based Provena Health, which also has facilities in Aurora, Danville, Elgin, Joliet and Kankakee. It is sponsored by three religious orders.

The justices found that Provena Covenant is not a charitable organization because the vast bulk of its income comes from charging for medical services, not from charitable donations; because it didn't dispense charity care to all who needed and applied for it; and because it placed obstacles in the way of those seeking charity by not advertising its charity program while aggressively pursuing unpaid bills.

The justices also found the hospital's campus was not used for charitable purposes because both the number of patients and the dollar value of the free care those patients received were minuscule compared to the hospital's revenues and patient population.

In 2002, Provena provided charity care to 302 patients, or less than one-half of 1 percent of the total number of patients it served. The value of that care, meanwhile, was 0.7 percent of the hospital's revenues. The court also noted that even under parts of its charity care program, Provena made a profit despite giving discounts of 25 to 50 percent.

State records show that 13 nonprofit hospitals in Cook County posted similar charity care numbers in 2008, the most recent year for which numbers are available.

The largest hospital among that pool is the University of Chicago Medical Center, which provided 0.8 percent of its \$1.1 billion in revenue for charity care while receiving tens of millions in tax breaks. The university hospital's charity care figures dropped by 30 percent between 2007 and 2008.

Northwestern Memorial Hospital and Rush University Medical Center, which along with U. of C. make up the three largest nonprofit hospitals in the county, had increases in their charity care figures.

Northwestern provided 2.4 percent of its total revenues for charity care in 2008, a 24 percent increase from 2007, while Rush saw a 65 percent increase, bringing its charity care figure to just above 1 percent of its total revenues, according to state records.

Many nonprofit hospitals, including the University of Chicago Medical Center, have maintained that care provided under Medicare and Medicaid should be considered charity because government reimbursements under the programs fall far short of hospitals' costs.

"When you take a careful look at the charitable provision of medical services to the poor — including pure charity care, losses due to unpaid hospital bills, and underpayment by Medicaid and Medicare — the Medical Center contributes about \$200 million each year, which equals nearly 20 percent of total operating revenues," the U. of C. said in a statement. "State officials are aware of this substantial annual contribution. In addition, as an academic institution the medical center provides more than \$70 million a year to subsidize medical education and research."

The court rejected this argument, pointing out that the Medicare and Medicaid programs are optional and that hospitals reap federal tax breaks by participating in them. The justices also pointed out that facilities and equipment are more fully utilized by accepting patients insured under the federal programs.

Being owned by a religious institution and providing education for graduate medical studies are also not enough to qualify for property tax breaks, the court found, in part because exemptions from property taxes in Illinois have stricter standards than federal standards, which take those things into account.

Legal experts say the case could be appealed to U.S. Supreme Court.

Provena Covenant Medical Center maintained that it is charitable, saying it provided "more than \$38 million in free care and other community benefits."

Provena executives also encouraged state lawmakers to examine how charity care is defined but did not advocate a specific level.

"We can only hope this troubling ruling prompts a dialogue among hospitals and elected officials about not only how we define charity care but also how we better ensure that the people who need financial assistance get it," said David Bertauski, Provena Covenant's president and chief executive.

bjapsen@tribune.com

jgrotto@tribune.com

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