

# Illinois Court of Appeals Deals Potentially Fatal Blow to Illinois Hospital Property Tax Exemption

After a long, hard fight to create a workable property tax exemption for hospitals in Illinois, the Illinois Court of Appeals has struck down the statute providing exemption for hospitals, finding it unconstitutional and unenforceable since its inception.

## Background

The Illinois Constitution allows for the enactment of a statute providing exemption for "property used exclusively for . . . charitable purposes." Ill. Const. 1970, Art. IX, § 6. Such a statute was enacted, providing property tax exemption for property "actually and exclusively used for charitable or beneficent purposes," including property of "institutions of public charity." 35 ILCS 200/15 65.

This charitable property tax exemption statute (and its prior versions) did not specifically identify nonprofit hospitals as exempt entities. Nevertheless, for some years, Illinois courts treated nonprofit hospitals as exempt "institutions of public charity."

In more recent years, the standard to apply when determining if a nonprofit hospital qualifies as a charitable institution for property tax exemption has become unclear. This uncertainty resulted in an Illinois Supreme Court decision in 2010, in which the Court denied property tax exemption, holding that the nonprofit hospital did not meet the standards to be considered an exempt "charitable" institution. *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E.2d 1131, 236 Ill. 2d 368 (2010). After *Provena*, property tax exemption was denied for other hospitals. This only led to further uncertainty about nonprofit hospitals' tax exempt status. In an attempt to create a workable standard, key stakeholders took this problem to the state legislature.

As a result of these efforts, Property Tax Code section 15 86 (35 ILCS 200/15 86) (the "Hospital Exemption Statute") was enacted in 2012, and provides in pertinent part:

A **hospital applicant** satisfies the conditions for an exemption under this Section with respect to the subject property, and **shall be issued a charitable exemption** for that property, **if the value of services or activities** listed in subsection (e) for

### POSTED:

Jan 21, 2016

### RELATED PRACTICES:

#### [Health Care](#)

<https://www.reinhartlaw.com/practices/health-care>

#### [Tax](#)

<https://www.reinhartlaw.com/practices/tax>

### RELATED SERVICES:

#### [State and Local Tax \(SALT\)](#)

<https://www.reinhartlaw.com/services/state-and-local-tax>

### RELATED PEOPLE:

#### [Kristina E. Somers](#)

<https://www.reinhartlaw.com/people/kristina-somers>

#### [Sara Stellpflug Rapkin](#)

<https://www.reinhartlaw.com/people/sara-stellpflug-rapkin>



the hospital year ***equals or exceeds the relevant hospital entity's estimated property tax liability***, as determined under subsection (g), for the year for which exemption is sought.

(Emphasis added.)

The Hospital Exemption Statute compares the value of services and activities a hospital applicant provides to low income or underserved individuals in a year with the estimated property tax liability for the same year. If the value of the services and activities provided equals or exceeds the estimated property tax liability, the hospital applicant satisfies the conditions for property tax exemption.

## ***The Carle Foundation v. Cunningham Township, et al.—Decided January 2016***

In *The Carle Foundation v. Cunningham Township, et al.*, the defendants challenged the Hospital Exemption Statute, contending it was unconstitutional because it did not require *exclusive* charitable use, as specifically delineated in the Illinois Constitution. 2016 IL App (4th) 140795 (full decision is available [here](#)).

The Illinois Court of Appeals agreed, finding that the Hospital Exemption Statute was based on an "unconstitutional criterion, *i.e.*, providing services or subsidies equal in value to the estimated property tax liability (35 ILCS 200/15-86(c) (West 2014)), without requiring that the subject property be 'used exclusively \* \* \* for charitable purposes.'"

In other words, the Illinois Court of Appeals interpreted the Hospital Exemption Statute as granting property tax exemption to Illinois nonprofit hospitals without ensuring that the hospitals were "used exclusively for . . . charitable purposes," as required by the Illinois Constitution. The Illinois Court of Appeals flatly rejected this approach, stating: "A property owner cannot buy a charitable exemption."

## **Next Step**

The implications of this recent decision remain to be seen. The Carle Foundation may seek reconsideration or appeal to the Illinois Supreme Court. In the meantime, the Illinois Department of Revenue's position is that *The Carle Foundation* decision is under review. If *The Carle Foundation* decision is appealed, it may be likely that the Illinois Department of Revenue will neither deny nor grant exemption to nonprofit hospitals until the Illinois Supreme Court rules. In the

meantime, new facilities may want to consider filing exemption applications providing support for exemption under both the Hospital Exemption Statute and the charitable institution exemption statute.

The Illinois Health and Hospital Association ("IHA"), which played a key role in drafting the Hospital Exemption Statute, has stated it believes the statute is constitutional. In a recent memorandum to its members, the IHA explained that hospital tax exemption requires two tests: (1) a constitutional test (called the "use test") and (2) a statutory test (called the "ownership test"). IHA further explained that the Hospital Exemption Statute was intended to only satisfy the "ownership test," and nothing in the statute's language or history suggests that the "use" test could be ignored.

In any event, there is a chance the state legislature may, once again, need to get involved and amend the Hospital Exemption Statute with an exemption that will be in sync with modern, nonprofit health care systems and still comply with the Illinois Constitution. Or the state legislature could initiate the process to amend the Illinois Constitution. If an appeal, legislative amendment or constitutional amendment is unsuccessful, hospitals might again be forced to rely on the complicated, unclear and subjective property tax exemption standards that prevailed after the *Provena* decision. The effect of returning to the charitable institution standard may be further compounded, as the Hospital Exemption Statute criteria also applied in determining whether a nonprofit hospital qualified for Illinois sales/use tax exemption.

## **Decision Compounds Existing Charity Care Confusion**

The *Carle Foundation* decision comes at a time when many hospital charity care policies are in a state of flux. In addition to 2016 marking the final deadline for a number of nonprofit hospital requirements under Internal Revenue Code section 501(r), many nonprofit hospitals have begun to experience the impact of increased insurance coverage under the Affordable Care Act ("ACA") and the difficulty it is creating with respect to giving discounts under their charity care programs.

Under current Illinois law, state hospitals are required to provide free and/or discounted care to certain uninsured patients. Similarly, as part of the ACA, nonprofit hospitals offering financial assistance to their patients for medically



necessary care must also provide a discount to qualifying patients equal to or greater than the amount the hospital generally bills its insured patients (*i.e.*, Amounts Generally Billed). In some cases, this requirement has led to required minimum discounts of nearly 75% for any patients qualifying under the charity care program. This new requirement, among a handful of others, has required many nonprofit hospitals to extensively revise their charity care programs, requiring a large investment of time and resources.

Simultaneously, expansion of coverage under the ACA has caused a number of nonprofit hospitals to experience difficulty generating sufficient community benefit for continued property tax exemption. A central goal of the ACA was to significantly reduce the number of uninsured patients by expanding Medicaid and providing low cost coverage options through insurance marketplaces. In states that have chosen to expand Medicaid, including Illinois, the expansion and low cost insurance options have led to a significant decrease in uninsured patients who would have otherwise qualified for charity care. Some reports estimate that overall charity care spending has decreased by over 40% among hospitals in Medicaid expansion states. In states where tax exemption is tied to community benefit, including Illinois, hospitals with large Medicaid patient bases are scrambling to reevaluate their approach to charity care to ensure they generate sufficient community benefit for continued property tax exemption.

If your hospital or health system has any questions regarding the *Carle Foundation* decision, or is preparing to file for or renew its property or sales tax exemption status, the professionals at Reinhart Boerner Van Deuren s.c. are available to assist you. Please feel free to contact [Kristina Somers](#), [Sara Stellpflug](#), [Larri Broomfield](#), or your Reinhart attorney, to discuss any questions or concerns related to your health care organization.

*These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.*