

**UNGARETTI  
& HARRIS**

The Fourth Annual Ungaretti & Harris  
Healthcare Conference:  
Property Tax Exemption in Illinois  
*Post-Provena*

April 19, 2010

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**UNGARETTI  
& HARRIS**

**Agenda**

**2:30 - 3:00 The *Provena* Decision: Findings, Precedential Impact and Guidance for Providers**

- Thomas M. Fahey - Managing Partner  
Ungaretti & Harris LLP
- Lynn Gordon - Partner  
Ungaretti & Harris

**3:00 - 3:30 Panel Discussion: The Government's Perspective**

- David F. Buysse - Deputy Chief, Public Interest Division  
Office of the Illinois Attorney General
- Patrick J. Hanlon - Counsel  
Ungaretti & Harris LLP

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**UNGARETTI  
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**Agenda**

**3:30 - 4:45 Panel Discussion: Best Practices, Procedural Issues and Strategic Choices**

- John Durso - Partner  
Ungaretti & Harris LLP
- Floyd D. Perkins - Partner  
Ungaretti & Harris LLP
- Sam Vinson - Partner  
Ungaretti & Harris LLP
- Michael A. Stone - Chief Deputy Assessor  
Cook County Assessor's Office

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The *Provena* Decision:  
Findings, Precedential Impact and  
Guidance for Providers

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Presentation Overview

- + Procedural History
- + Issue & Test for Property Tax Exemption in Illinois
- + Standard of Review Applied
- + Issues Addressed
- + Precedential Value
- + Analysis
- + Implications

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Provena Covenant Medical  
Center

- + One of two general acute care hospitals in Champaign/  
Urbana.
- + Approximately 265 licensed beds.
- + 10,000 inpatient and 100,000 outpatient admissions  
each year.
- + Approximately 1,000 employees, 400 volunteers and  
200 physicians.
- + Part of Provena Health, with PCMC operating as a  
division of Provena Hospitals.

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## Procedural History

- + Illinois Department of Revenue (IDOR) denied Provena Covenant Medical Center property tax exemption on the purported basis that the owner was not an institution of public charity, and that the property was not in charitable or religious use.
- + First nonprofit hospital in Illinois ever to be denied property tax exemption for its hospital campus.

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## Procedural History

- + Board of Review recommends denial of property tax exemption (2002).
- + IDOR initially denies exemption.
- + Provena timely appeals to Administrative Law Judge (ALJ) who recommends that 94.4% of parcels be found exempt as charitable no findings on religious use (2005).
- + IDOR Director Hamer rejects the ALJ's recommendation on charitable exemption and religious use exemption.

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## Procedural History

- + Provena appeals to Circuit Court which finds Provena entitled to both a charitable use and a religious use exemption (2007).
- + IDOR appeals to the 4<sup>th</sup> District Appellate Court which reverses lower court decision and reinstates decision of Director (2008).
- + Provena appeals to the Illinois Supreme Court which deems IDOR's decision not clearly erroneous (2010).

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## Fundamental Issue

- + Whether Provena Hospitals established that it was entitled to a charitable exemption under section 15-65 or a religious use exemption under section 15-40 of the Property Tax Code for the 2002 tax year for various parcels owned in Urbana, Illinois.
- + Issues addressed:
  - Ownership by an institution of public charity.
  - Charitable Use.
  - Religious Use.

Case available at:  
<http://www.state.il.us/court/Opinions/SupremeCourt/2010/March/107328.pdf>

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## Test for Exemption in Illinois: Ownership and Use

- + Two prong test whether property is:
  - *Owned* by an institution of public charity (or certain other 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)

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## 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*, No. 107328, slip op. at 12 (March 18, 2010).
- + Mixed questions of law and fact will only be set aside if clearly erroneous.  
*Swank v. Department of Revenue*, 336 Ill. App. 3d 851, 861 (2003).
- + 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).

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## 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)  
*Provena*, No. 107328, slip op. at 18.
- + **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)  
*Provena*, No. 107328, slip op. at 19.
- + **Religious:** "We likewise find no error in the IDOR's rejection of Provena Hospitals' request for a religious exemption..." (Court Holding)  
*Provena*, slip op. at 30.

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## Precedential Value

- + 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.
- + 5 of 7 Justices found IDOR denial of **religious exemption** not clearly erroneous.

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## 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..."  
*Provena*, slip op. at 33.
- + "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*..."  
*Provena*, slip op. at 37.

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## Illinois Supreme Court's Holding on Charitable Exemption

- + **Ownership:** "As the Director of Revenue expressly concluded, however, "the record contains no information as to Provena Hospitals' charitable expenditures in 2002...The Director reasoned that without such information, it is simply "not possible to conclude that the true owner of the property is a charitable institution as required by Illinois law...We fully agree. The appellate court was therefore correct when it concluded that this aspect of the Department's decision was not clearly erroneous."

*Provena*, No. 107328, slip op. at 18.

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## Ownership – Five *Korzen* factors Identifying an Institution of Public Charity

1. No capital, capital stock, or shareholders.
2. Earns no profits or dividends; rather derives its funds mainly from private and public charity.
3. Dispenses charity to all who need and apply for it.
4. Does not provide gain or profit in a private sense to any person connected with it.
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.

*Methodist Old Peoples Home v. Korzen*, 233 N.E.2d 537, 541-42 (1968).

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## Ownership – Provena Hospitals Satisfies First and Fourth *Korzen* Factors

- + **First Factor:**
  - Satisfies criteria - no capital, capital stock, or shareholders.
- + **Fourth Factor:**
  - Does not provide gain or profit in a private sense to any person connected with it.
  - Contracting with for-profit entities to provide services does not preclude finding as a charitable institution.
  - "The real concern is whether any portion of the money received by the organization is permitted to inure to the benefit of any private individual engaged in *managing* the organization."

*Provena*, slip op. at 16-17.

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### Ownership – Provena Hospitals Fails to Meet the Second *Korzen* Factor

- + **Second Factor:** “Provena Hospitals plainly fails to meet the second criterion...funds are not derived mainly from private and public charity...funds are generated overwhelmingly by providing medical services for a fee.”

*Provena*, No. 107328, slip op. at 17 (March 18, 2010).

- + Only PCMC’s \$6,938 in charitable contributions listed in record; no mention of contributions to other Provena Hospitals divisions.

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### Ownership – Record Insufficient to Indicate Provena Hospitals Met Third *Korzen* Factor

- + **Third Factor:** Record is insufficient to show Provena Hospitals dispensed charity to all who need it.
  - “PCMC is but one of numerous institutions owned and operated by Provena Hospitals.”
  - “the record contains no information as to Provena Hospitals charitable expenditures in 2002.”
  - “without such information it is simply not possible to conclude that the true owner of the property is a charitable institution as required by Illinois law.”

*Provena*, slip op. at 17 (emphasis added).

**Note:** There was some discussion of PCMC’s charity.

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### Ownership – Record Insufficient to Indicate Provena Hospitals Met Fifth *Korzen* Factor

- + **Fifth Factor:** Record is insufficient to show Provena Hospitals did not place obstacles in the way of those who needed it.
  - “While the record is filled with details regarding PCMC’s operations, PCMC is but one of numerous institutions owned and operated by Provena Hospitals.”

*Provena*, slip op. at 17 (emphasis added).

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## Charitable Use-Plurality Opinion Not Binding Precedent

- + When the law says “exclusively used” for charitable purposes it means the “primary” purpose must be charitable or beneficent.  
*Provena*, slip op. at 18.
- + “In explaining what constitutes charity, *Methodist Old Peoples Home v. Korzen*...applied the definition adopted by our court more than a century ago in *Crerar v. Williams*... We held there that ‘charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite numbers of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burthens of government.”

*Provena*, slip op. at 19.

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## Charitable Use – Relief of Government Burden

- + The appropriate test is whether the activity lessens the burden of the government.  
*Provena*, slip op. at 20.
- + 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.
- + Court contrasts *People ex rel. Cannon v. Southern Illinois Hospital Corp.*, 404 Ill. 66 (1949):
  - Hospital introduced evidence which showed they charged the County deeply discounted rates to undertake treatment of indigent patients.
  - Hospital alleviated burden because it was the only hospital in the area.

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## Charitable Use – Relief of Government Burden

- + *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*, slip op. at 37.

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## Charitable Use – Dollar Value

Court's finding: 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.

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## Charitable Use – Dollar Value

- + *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."

*Provena*, slip op. at 37.

- + "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*, slip op. at 35.

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## Charitable Use – Dollar Value Calendar Year 2008

	All Hospitals (including Stroger)	Stroger Hospital	Other Hospitals
Net Revenue	29,312,000,000	285,377,418	29,026,622,582
Charity Care	732,800,000	176,648,622	556,151,378
Charity Care %	2.5%	61.9%	1.9%

Source: IDPH Annual Hospital Profile Reports 2008

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## Charitable Use – Discounts

- + “Even where patients were granted discounts at the 25% and 50% levels, the hospital was still...able to generate a surplus.”

*Provena, slip op. at 23.*

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## Charitable Use - Advertising

Court's finding: Provena did not advertise charity care during the period in question.

- + None of the 2002 \$813,694 advertising budget went to advertising charity care.

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## Charitable Use: Low Demand Argument Unconvincing

- + “...the argument that there really was no demand for additional charity care in Champaign County is one that Provena Hospitals cannot comfortably make.”

Court responds:

- If low demand for charity care, then serving that market does not serve charitable mission.
- “The only plausible explanation would be that its principle purposes in operating PCMC were, in reality, more temporal than it professes.”
- Census data reflects high demand:
  - Approximately 20,000 uninsured persons in coverage area;
  - 13.4% of County residents below the Federal Poverty Level.

*Provena, slip op. at 23.*

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## Charitable Use – Bad Debt

Court's finding: Little to distinguish 2002 PCMC charity care policy from another organization's bad debt policy:

- + Patients billed as a matter of course; only referred to charity care after determining no Medicare / Medicaid eligibility or other source of payment.
- + "PCMC believed that its charity care program should be the payer of last resort."

*Provena*, slip op. at 7.

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## Charitable Use – Medicare and Medicaid Shortfalls Not Charitable Use

- + Medicare and Medicaid shortfalls are not charity.
- + Court quotes Catholic Health Association position on the issue.
- + Notes that Provena itself had adopted this position.
- + 2002 Medicaid shortfall: \$3,105,217.
- + 2002 Medicare shortfall: \$7,418,150.

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## Charitable Use – Community Benefit

- + Community benefit is not the test for Illinois property tax exemption.
- + Page 26 n 13 distinguishes the Illinois test from the IRC 501(c) test: "Although our General Assembly now requires certain hospitals in Illinois to file annual 'community benefits plans' with the Illinois Attorney General's office that requirement is not part of the Property Tax Code and does not purport to alter Illinois law with respect to property tax exemptions."
- + Therefore, subsidizing ambulance and behavioral health services (*e.g.*) bestows a benefit but is not a charitable use.

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## Charitable Use – Medical Residency

- + Medical Residency not a charitable purpose because PCMC is compensated and nothing in record documents the extent of any shortfall.
- + Medical Residency actually increases the prestige of PCMC.

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## Illinois Supreme Court's Holding on Religious Exemption

- + **Religious:** "As with the claim for a charitable exemption, it was Provena Hospital's burden to show, by a clear and convincing evidence, that it satisfied these requirements. As with its claim for a charitable exemption, it failed to do so..."  
Provena, slip op. at 30.
- + "In the case, the record clearly established that the primary purpose for which the PCMC property was used was providing medical care to patients for a fee. Although the provision of such medical services may have provided an opportunity for various individuals affiliated with the hospital to express and to share their Catholic principles and beliefs, medical care, while potentially miraculous, is not intrinsically, necessarily, or even normally religious in nature. We note, moreover, that no claim has been made that operation of a fee-based medical center is in any way essential to the practice of observance of the Catholic faith."  
Provena, slip op. at 32.

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## Implications

- + 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).

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**Panel Discussion:  
The Government's Perspective**

**David F. Buysse**  
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**Panel Discussion:  
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**David F. Buysse**  
Deputy Chief, Public Interest Division  
Office of the Illinois Attorney General

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*Provena Covenant Medical Center v. Department of Revenue*  
Background

The Director of the Illinois Department of Revenue issued a decision revoking Provena Covenant Medical Center's property tax exemption for 2002 tax year in September 2006.

- Only .7% of 2002 revenues applied to "charity care" – free and discounted care.
- Held Medicare/Medicaid shortfalls do not constitute charity care
- At most, 97.7% hospital revenue derived from patient services rather than charitable contributions.

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*Provena Covenant Medical Center v. Department of Revenue*  
Background

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- ❑ On August 8, 2007, Circuit Court of Sangamon County entered an order reversing the decision of the Director. Department of Revenue filed a notice of appeal September 7, 2007.
  - ❑ Appellate Court decision August 26, 2008, reversed the circuit court's judgment - no clear error in the Director's decision.
  - ❑ Supreme Court issued its decision affirming the Director's decision on March 18, 2010.
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*Provena Covenant Medical Center v. Department of Revenue*  
Constitutional basis for charitable exemption

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The Supreme Court again noted that the question of charitable property tax exemption is, at its root, constitutional:

"Authority to exempt certain real property from taxation emanates from article IX, section 6 of the 1970 Illinois Constitution (Ill. Const. 1970, art. IX, sec. 6). Section 6 provides that the General Assembly may, by law, exempt from taxation property owned by 'the state, units of local government and school districts' and property 'used exclusively for agricultural and horticultural societies, religious, cemetery and charitable purposes.' Ill. Const. 1970, art.IX, sec. 6."

Slip op. at 15

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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Justice Burke begins by forthrightly stating:

"I join that portion of the plurality opinion affirming the Director's decision that Provena failed to demonstrate it was a charitable institution based on the inadequacy of the record in this case. Slip op. at 16-18."

Justice Freeman joined in Justice Burke's partial concurrence and partial dissent.

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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What does the plurality opinion hold about Provena's failure to demonstrate that it was a charitable institution?

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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The plurality sets forth five factors from *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 233 N.E.2d 537 (1968) to identify "the distinctive characteristics of a charitable institution."

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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- "...(1) it has no capital, capital stock, or shareholders;
- (2) it earns no profits or dividends but rather derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter;

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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- (3) it dispenses charity to all who need it 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 any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses."

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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- "...(1) it has no capital, capital stock, or shareholders;
- (2) it earns no profits or dividends but rather derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter;

**The Court unanimously held that Provena Hospitals satisfied No. 1, but failed to prove No. 2.**

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

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"Provena Hospitals plainly fails to meet the second criterion: its funds are not derived mainly from private and public charity and held in trust for the purposes expressed in the charter. They are generated, overwhelmingly, by providing medical services for a fee. While the corporation's consolidated statement of operations for 2002 ascribes \$25,282,000 of Provena Hospitals' \$739,293,000 in total revenue to 'other revenue,' that sum represents a mere 3.4% of the Provena's income, and no showing was made as to how much, if any, of it was derived from charitable contributions."

Slip op. at 16-17

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*Provena Covenant Medical Center v. Department of Revenue*  
Ownership By an Institution of Public Charity

(3) it dispenses charity to all who need it 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 any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses.”

**The Court unanimously held that Provena Hospitals satisfied No. 4, but failed to prove No. 3 or No. 5.**

*Provena Covenant Medical Center v. Department of Revenue*  
Charity as gift

Another point of congruence among the Court concerns the concept that charity must be in some sense a “gift.”

Justice Karmeier noted that charity is defined as a “gift” in *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 233 N.E.2d 537 (1968), while Justice Burke cited the definition of charity as gift in the Michigan case, *Wexford Medical Group v. City of Cadillac*, 474 Mich. 192, 713 N.W. 2d 734 (2006).

*Provena Covenant Medical Center v. Department of Revenue*  
Charity as gift

Justice Karmeier highlighted a long established definition of “gift”:

“It is a fundamental principle of law, however, that a gift is ‘a voluntary, gratuitous transfer of property by one to another,’ and that ‘[i]t is essential to a gift that it should be without consideration.’ *Martin v. Martin*, 202 Ill. 382, 388 (1903). When patients are treated for a fee, consideration is passed. The treatment therefore would not qualify as a gift. If it were not a gift, it could not be charitable.”

Slip op. at 24

*Provena Covenant Medical Center v. Department of Revenue*  
Hospital performance

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Many Illinois tax-exempt hospitals file “Community Benefits Plan Reports” with the Office of the Attorney General pursuant to the Community Benefits Act, 210 ILCS 76/1, *et seq.*

These reports contain information relevant to the analysis of charitable tax exemption for such hospitals. However, the Act permits hospital systems to file the report for a system as a whole at the election of the system. Where systems file a single report, it is often difficult or impossible to isolate information about individual hospital performance.

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*Provena Covenant Medical Center v. Department of Revenue*  
Hospital performance

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Fortunately, Illinois hospitals provide data to the Illinois Department of Public Health for its annual Hospital Profiles. For example, hospital charity care as a percentage of net revenue is available from IDPH for 2007 and 2008 at:

<http://www.idph.state.il.us/about/hfpb/pdf/2007State%20Summary%20Report.pdf>

and

<http://www.idph.state.il.us/about/hfpb/pdf/2008%20Hospital%20Profile.pdf>

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Panel Discussion:  
The Government’s Perspective

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### The Provena Decision: IDOR and Local Assessing Officials' Perspective

- + IDOR
- + Chief County Assessment Officer
- + Local Board of Review
- + Township Assessor

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### Illinois Department of Revenue Perspective

- + Responsibility to the taxpayers of the State of Illinois
- + Non-homestead property tax exemptions shift the tax burden onto other property owners
- + 2 Prong Test (35 ILCS 200/15-65)
  - Is the owner of the property a charitable organization?
    - 501 (c)(3) is not enough
    - Application of *Methodist Old People's Home* factors
  - Does the charitable organization primarily use the property for charitable purposes?

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### Illinois Department of Revenue Perspective

- + What is the value of the property tax exemption?
  - Revenues vs. charitable activities
- + Mark-up for patient charges
  - Sliding scale vs. financial burden patients incur
- + Annual non-profit hospital community benefits plan report
  - Non-profit vs. for-profit

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## Chief County Assessment Officer Perspective

- + Responsibility to the taxpayers of the county
- + Property tax pressures
  - Share of the property tax burden
- + Use of their discretionary authority to place property onto the tax rolls
  - Lease / loaned / otherwise made available for profit
  - Ownership change
  - Use change
- + Revise assessment as appears to be just
- + Provide research for IDOR

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## Local Board of Review/ Township Assessor Perspective

- + Responsibility to the taxpayers of the county
- + Property tax pressures
  - Share of the property tax burden
- + Revise the assessment as appears to be just

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## Final Thoughts

- + If the property is placed onto the tax rolls
  - Continue the exemption appeal process
  - Engage in the assessment appeal process
  - Review other property tax options
    - TIF's
    - Abatements
    - Incentives

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Panel Discussion:  
Best Practices, Procedural Issues  
and Strategic Choices

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<p><b>John Durso</b> Partner – Ungaretti &amp; Harris LLP 312.977.4440 jdurso@uhlaw.com</p>	<p><b>Michael A. Stone</b> Chief Deputy Assessor Cook County Assessor's Office</p>

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Best Practices

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Best Practices

In the Application and at the Hearing:  
+ Make a Thorough Record

Ongoing Best Practices:  
+ Prepare and Document

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## Provena: Background

- + Both charitable ownership and exclusive charitable use of the property must be shown to prove entitlement to charitable exemption.
- + Financial and operational facts considered in detail.
- + Patient service billing paid by insurance, Medicaid and Medicare questioned as charity.
- + Cost shortfalls in Medicaid and Medicare questioned as charity.
- + Community benefit and other charitable programs questioned as charity, as well as, their connection to the use of the property.
- + Charity care percentage requirement discussed.

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## Provena: Take Aways

- + The plurality of justices in reviewing the Director's findings against real estate tax exemption determined that the facts of record do not show "clear error."
- + The dissenting justices recognized that the petitioner proved **"that it 'reliev(es) their bodies from disease, suffering or constraint,' which is by its nature, a lessening of the burdens of government... a component of the definition of charity."**
- + Not new precedent, the 100+ years of precedent stands.
- + It is more critical than ever to prepare, document and make a thorough record.

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## The Application and Hearing

- + Detailed proof of exclusive religious and/or educational 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.

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## Illustrative List of Programs & Services

<ul style="list-style-type: none"> <li>Community Based Health Care</li> <li>Emergency Room services</li> <li>Charity Care</li> <li>Unreimbursed Costs of Medicaid</li> <li>Unreimbursed Costs of Medicare</li> <li>Research</li> <li>Professional Education/Training</li> <li>Subsidized Health Services</li> <li>Community Health Training</li> <li>Government Sponsored Indigent Health Care</li> <li>Health Fairs</li> <li>Nurse Training</li> <li>Medical Van programs</li> <li>Subsidized community services</li> <li>Language Assistance</li> <li>Diabetes service programs</li> <li>Pediatric programs</li> <li>Substance Abuse counseling &amp; programs</li> <li>Blood Drive</li> </ul>	<ul style="list-style-type: none"> <li>Patient Transportation</li> <li>Pharmaceutical Assistance program</li> <li>Behavioral Health Screening &amp; Services</li> <li>First Aid Program</li> <li>Community/Family Health Center</li> <li>Young Patients schooling services</li> <li>Pregnancy Counseling</li> <li>Anxiety Disorder Programs</li> <li>Birthing Mother's Support Group</li> <li>Student Internships</li> <li>Anorexia and Associated Disorders Support</li> <li>Infant Car Seat Safety Checks Program</li> <li>Caregivers Workshops</li> <li>General Community Outreach</li> <li>Crisis Response Team</li> <li>Obesity prevention</li> <li>Facilities Use</li> <li>Overhead &amp; Labor</li> <li>Volunteer Services (employee, nonemployee, ambulance)</li> </ul>
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## Ongoing Best Practices

- + Develop a comprehensive Mission Statement.
- + Govern with the Mission as the primary purpose.
- + Meet evolving statutory requirements.
- + Implement proper charity care policy.
- + Document.
- + Be prepared for application/hearing.

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## 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

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## Governance

- + 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

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## Governance

- + The Board (or its committees) must regularly guide, monitor and determine compliance with the Mission.
  - + The Board (or its committees) must regularly guide, monitor and determine compliance with the programs, such as:
    - 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.**

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## Evolving Statutory Requirements: State and Federal Laws

Both State and Federal laws impose limits on billing and collection procedures and require documentation, posting and disclosure of charity care policies.

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## State Law

The Illinois **Fair Patient Billing Act**, 210 ILCS 88/10, *et seq.*, requires posting of the charity care policy:

- Mandated language: "You may be eligible for financial assistance ... contact (hospital financial rep)."
- Posted and made conspicuously available in the admissions area and on the website and in multiple languages.
- Must have a brochure, application for assistance or materials in admissions office.
- The charity care application procedures must accompany an invoice to an uninsured patient.

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## State Law

The Illinois **Hospital Uninsured Patient Discount Act**, 210 ILCS 89/1, *et seq.*, imposes mandated limits on collections from the uninsured:

- Generally applies to uninsured in families with annual incomes less than 600% of the FPL.
- Collection limited to 25% of family income in a 12 month period.
- Limited billing to 135% of costs.

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## Federal Law

- + Section 9007 of The Federal **Patient Protection And Affordable Care Act, Additional Requirements For Charitable Hospitals.**
- + Enacted March 2010, it promulgates new IRC Code Section 501(r), which provides four requirements for tax exempt hospitals to maintain tax exempt status, as well as promulgates Code 4959 which imposes excise tax on hospitals failing to meet the standards in 501(r).
- + Section 9007 requires a tax exempt charitable hospital to:
  - Conduct a community health needs assessment every two years.
  - Adopt and widely publicize a written financial assistance policy which includes eligibility criteria for free and discounted care, the basis for calculating amounts charged, the method for applying for financial assistance and billing and collection actions policies.
  - Limit charges under the financial assistance policy to an invoice amount of no more than the amount generally billed.
  - Make efforts to determine eligibility for the financial assistance policy before engaging in extraordinary collection actions.

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## 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.

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## Charity Care Policy

- + Provide assistance on a sliding scale:
  - According to family income compared to the FPL.
  - Assistance based upon a percentage of the original patient invoice.
  - Must meet Illinois law's limitation of 135% of costs.
- + Timing is key in advising of the financial assistance program.
  - Detail the process and steps.
  - Document cooperation or lack thereof.
  - Actions/steps under the policy depending on cooperation.
  - Line of authority.
  - Mission-based.
- + Board Monitoring.
  - Reporting back to the board on policy use and process.

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## Charity Care Policy

A well-designed, properly-implemented Charity Care Policy will aid in charity care financial assistance being recorded as Charity Care and not as Bad Debt.

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## Prepare and Document

- + Create a comprehensive Mission Statement.
- + Perform community needs assessments.
- + Involve the Board.
- + Assure proper policies, including charity care.
- + Perform audits to determine and track all community benefit and charitable programs for Mission and proof purposes.
- + Compliance reviews of charity care policy.
- + Document real property use.
- + Document assistance to the community.
- + Analyze actual-to-budget.

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## Strategies and Procedures

Procedural Issues - Challenges to Tax Exemption  
for Currently Exempt Property and Acquired  
Non-Exempt Property

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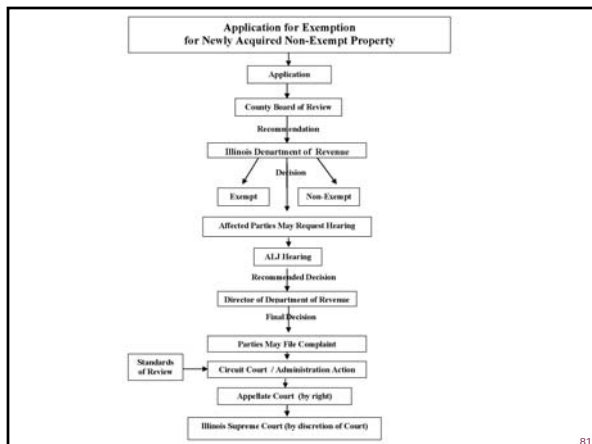
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## Currently Exempt Property

- + 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).

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## 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."

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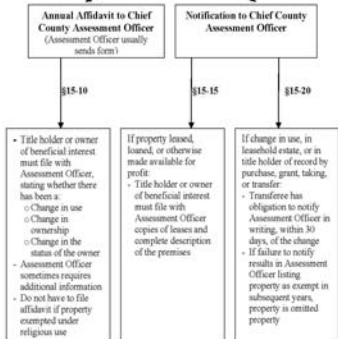
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### Maintenance of Exemption for Currently Owned Exempt Property




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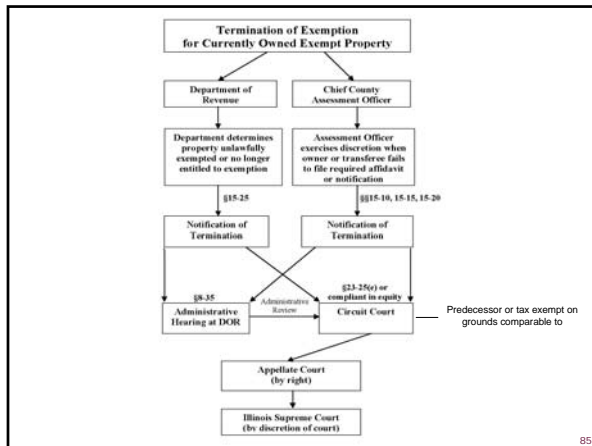
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- + Critical Initial Decisions
  - IDOR – Administrative Hearing Process
  - Circuit Court under §23-25(e)
- + How to Prepare for IDOR Hearings
  - The ALJ – (e.g., Disqualification of the ALJ)
  - The Record

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Narrowed Definition of “Charitable” Exemption Expands Importance of “Religious Use” Exemption

- + Statutory basis of religious use §15-40.
- + Provena case – insufficient evidence led to “rejection of religious use.”
- + Expanded importance and viability of religious use exemption.

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## Illinois Supreme Court's Holding on Religious Exemption

- + **Religious:** "As with the claim for a charitable exemption, it was Provena Hospital's burden to show, by a clear and convincing evidence, that it satisfied these requirements. As with its claim for a charitable exemption, it failed to do so..."  
Provena, slip op. at 30.
  
- + "In the case, the record clearly established that the primary purpose for which the PCMC property was used was providing medical care to patients for a fee. Although the provision of such medical services may have provided an opportunity for various individuals affiliated with the hospital to express and to share their Catholic principles and beliefs, medical care, while potentially miraculous, is not intrinsically, necessarily, or even normally religious in nature. We note, moreover, that no claim has been made that operation of a fee-based medical center is in any way essential to the practice of observance of the Catholic faith."  
Provena, slip op. at 32.

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## Other Considerations and Issues

- + Assessed Value – Concurrent Appeal Process
  - Procedural Issues
  - Substantive Issues
  
- + Caution: Sales Tax – 5 Year Renewals after Initial Applications – Methodist Old Peoples Home Test
  
- + Importance of "Record" on Religious Use and Charitable Use
  
- + Conclusions

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## Fixing the Problem

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### Can the Legislature Establish a Fair, Efficient, Exemption System for Charity Hospitals?

- + **"The legislature could not** declare that property used by an old peoples home ... is ipso facto property used exclusively for charitable purposes and therefore tax exempt. **It is the province of the courts, and not the legislature,** to ascertain whether or not the property... is 'used exclusively for charitable purposes'..."

*Methodist Old Peoples Home v. Karzen*, 39 Ill. 2d 149 (1968).

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### Can the Legislature Establish a Fair, Efficient, Exemption System for Charity Hospitals?

- + **"The legislature cannot** add to or broaden the exemptions that section 6 of Article IX specifies."

*Eden Retirement Center v. Dep't of Revenue*, 213 Ill. 2d 273 (2004).

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### Can the Legislature Establish a Fair, Efficient, Exemption System for Charity Hospitals?

- + "While the General Assembly has no authority to grant exemptions beyond those ... authorized by section 6, **it may place restrictions, limitations, and conditions on exemptions** ... the legislature has elected to impose additional restrictions ... that it be owned by an institution of public charity..."

*Provena v. Dep't of Revenue* (Karmier, J. for the plurality).

- + "By imposing a quantum of care requirement and monetary threshold, the plurality is injecting itself into **matters best left to the legislature.**"

*Provena v. Dep't of Revenue* (Burke, J. concurring in part).

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## Legislative Proposals The General Assembly Could Consider

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## Powers of the Attorney General

"It will be observed that the Constitution confers no express powers upon the Attorney General and prescribes no express duties for him to perform. . . .

The office of Attorney General was one known to the common law, and under the common law the Attorney General had well-known and well-defined powers, and it was incumbent upon him to perform well-known and clearly prescribed duties. It is not necessary, and indeed it would be difficult, to enumerate all the powers vested in the Attorney General at common law. . . .

The Attorney General is vested with many powers and duties, and these appertain to his office under the Constitution. **He cannot be deprived of these common-law functions by the Legislature, but new duties may be imposed."**

*Fergus v. Russel*, 270 Ill. 304 (1915).

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## The Charitable Trust Act, 760 ILCS 55

- + The Charitable Trust Act: is it a traditional common law power? Originally, it exempted hospitals. Why not today?
- + Will any taxation trigger intervention by the Attorney General to replace the officers and board under the Charitable Trust Act?
- + Is it necessary to amend the Charitable Trust Act?
- + Exempt Hospitals?

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## Federal Health Care Reform

- + If substantially universal coverage is accomplished where does that leave the obligation to provide charity?
- + If the federal taxation of 501(c)(3) hospitals that fail to satisfy the new IRS requirements results in some Illinois hospitals being taxed, how will the Attorney General utilize her Charitable Trust Act and common law powers?

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## If Taxation, Then Valuation

- + Is it possible to establish a statutory valuation rule for not for profit hospitals that lose their tax exemption?

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## Some Existing Special Valuation Rules

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|--------------------------------------|--|
| + Open space land                    | + Supportive living centers              |
| + Undeveloped coal                   | + Low sulfur dioxide coal fueled devices |
| + Nurseries                          | + Wind energy property                   |
| + Electric power generating stations | + Pollution control facilities           |
| + Veterans organization property     | + Regional water treatment facilities    |
| + Fraternal organization property    | + Low-income housing                     |

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## Judicial Review

- + Can the General Assembly constitutionally change the standard of review so that mixed questions of fact and law may be reviewed under the *de novo* standard, rather than the "clearly erroneous" standard as they are now?

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## Illinois Constitution, Art. VI, Sec. 9 Circuit Courts – Jurisdiction

- + Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. **Circuit Courts shall have such power to review administrative action as provided by law.**

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## The Cook County Assessor TIF Proposal

**Michael A. Stone**  
Chief Deputy Assessor  
Cook County Assessor's Office

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## The Cook County Assessor TIF Proposal

- + Is it possible to create a TIF-like mechanism whereby if a not for profit hospital loses exemption, it is paid back to the extent it performs whatever may be defined as charity?

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## Public Opinion

- + Emotional reaction to births, deaths, disability
- + Lower residential taxes
- + Higher health care costs
- + "Our" hospital v. complicated billing
- + Do you want to treat health care like buying shoes?

**Cost of a Poll v. Cost of Losing Exemption**  
**\$25,000 v. \$1,000,000**

- + If so, and if voters think the activists threaten competent health care, can voters be mobilized?

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## Can The Education Exemption Work for Teaching Hospitals?

- + "Also exempt is: . . . ( c ) property . . . used for . . . university, or other educational purposes . . ." 35 ILCS 15-35
- + Constitutional requirement of exclusive use, defined as primary use by the courts. Can any teaching hospital prove that primary use is educational?
- + Ownership—the exemption permits ownership in trust. Can most teaching hospitals ever devise a relationship with a medical school that makes this exemption useful?
- + Curriculum—course of study which fits into the general scheme of education established by the state.

*Oasis Midwest Center for Human Potential, 55 Ill. App. 3d 861 (1st Dist. 1977)*

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## Can The Religious Exemption Work For Hospitals?

- + "Property used exclusively for . . . religious purposes . . . qualifies for exemption as long as it is not used with a view to a profit."

35 ILCS 200/15-40

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## Religious Use Cases

- + Fourth District Appellate Court

". . . operation of the nursing home was not necessary for these religious purposes, which could have been accomplished through other means."

". . . the practice of all virtues are encouraged by religious organizations; however, it cannot be stated that they are religious purposes within the commonly accepted definitions of the word."

*Fairview Haven v. Dep't of Revenue*, 153 Ill. App. 3d 763 (4th Dist. 1987)

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## Religious Use Cases

- + United States Supreme Court

"The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if these doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious views of any sect. When the triers of fact undertake that task, they enter a forbidden domain."

*United States v. Ballard*, 322 U.S. 78 (1944)

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## Can the Illinois General Assembly Rein in the Courts?

- + “[the General Assembly] may place restrictions, limitations, and conditions on exemptions . . .”  
Provena v. Dep’t of Revenue
- + Is an Illinois Restoration of Free Exercise of Religion Act a method for helping the judiciary recognize the Constitution?
- + How does a congregation of believers establish its faith in order to protect it from the judiciary and the tax collector?

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## Politics of a Legislative Solution

- + SEIU, left-wing interest groups, and Democratic control of the General Assembly.
- + Remember Speaker Madigan and medical malpractice reform.
- + Critical mass: How do you get enough Democrats interested in solving the problems?
- + Remember the polling issue—does anyone know what voters believe?
- + Is anyone defining the issue?

WHO?

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## The Fourth Annual Ungaretti & Harris Healthcare Conference: Property Tax Exemption in Illinois *Post-Provena*

Questions & Answers

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