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Area lawyers discuss implications of high court's Provena decision

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Attorney Patrick J. Hanlon warned area health-care providers Monday that the recent Illinois Supreme Court decision in *Provena Covenant Medical Center v. Department of Revenue* — a case marking the first time the state denied a property tax exemption for a nonprofit hospital campus — could soon threaten their own tax exemptions.

“You may be exempt right now, but there is going to be pressure on these local [taxing] bodies that your use is no longer charitable,” said Hanlon, of counsel for Ungaretti & Harris LLP, during the firm’s fourth annual health-care conference.

During “Property Tax Exemption in Illinois Post-Provena,” Hanlon and other members of the Healthcare and Government Practice Groups at Ungaretti & Harris advised providers on how to maintain these charitable use exemptions.

In 2002, the Department of Revenue denied Provena Covenant Medical Center property tax exemption for land in Urbana, Ill., on the basis that its owner, Provena Hospitals, was not an institution of public charity, and that its property was not in charitable use. Property must meet both criteria to earn a charitable use exemption, according to the state’s property tax code,

In March, the Illinois Supreme Court ruled that the Department of Revenue’s

decision was “not clearly erroneous.” Additionally, the court held that the department’s denial of Provena’s religious use exemption was “not clearly erroneous.”

Attorneys at Ungaretti & Harris agreed that the decision remains open to interpretation and debate, as two justices recused themselves and two justices partially dissented, but recommended that health-care providers prepare to defend their charitable ownership and charitable use in the future.

Partner Floyd D. Perkins said it’s critical for providers to prepare thorough financial and operational records that detail proof of exclusive religious or educational purposes, mission, use and activities.

The evidence should explain each of the hospital’s charitable or community-benefit programs, such as health fairs, blood drives and pregnancy counseling, in multi-page mission statements, he said.

“These programs need to be detailed in your submission,” he said. “The Illinois Department of Revenue needs to know your mission.”

Perkins also recommended that providers connect their property to the importance of their charitable mission, improve board of directors’ involvement and create and advertise a charity care policy that treats as many patients of possible — all of which should be documented.

Partner John J. Durso agreed that the best time to win property tax exemptions from the Department of Revenue is during the initial application phase. In addition to detailing charitable use policies and practices, providers should document the importance of religious use in their applications.

Provena didn’t raise the issue on appeal, Durso said, but the denial of a religious use exemption could violate the First Amendment.

“I would take the position — look at everything,” he said. “Put it all in before administrative review or circuit court.”

Partner Sam Vinson noted that Provena, for the first time, invited the legislature to get involved in the issue. New legislation could create “loopholes,” he said, or restrictions or conditions on exemptions.

Vinson concluded the conference with a discussion of potential proposals, including the establishment of a statutory valuation rule for nonprofit hospitals that lose their tax exemptions, or the creation of a special tax-increment financing mechanism, which would collect and return funds to hospitals that lose their exemptions.

He suggested that providers poll voters and use their opinions on health-care and the potential for rising costs to call political representatives to action.

“Think about how that will affect legislators in your district,” Vinson said.