**STATE OF ILLINOIS**
**DEPARTMENT OF REVENUE**
**ADMINISTRATIVE HEARINGS DIVISION**
**SPRINGFIELD, ILLINOIS**

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| **THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS,** | ) | |
| **v.** | ) | **Docket # 04-PT-0014** |
| **PROVENA COVENANT MEDICAL CENTER,** | ) | |
| **Applicant.** | ) | |

**BRIEF OF *AMICI CURIAE*, ILLINOIS HOSPITAL ASSOCIATION, ILLINOIS CATHOLIC HEALTH ASSOCIATION, CATHOLIC CONFERENCE OF ILLINOIS, METROPOLITAN CHICAGO HEALTHCARE COUNCIL, AMERICAN HOSPITAL ASSOCIATION, AND THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES IN SUPPORT OF PROVENA COVENANT MEDICAL CENTER**

## INTRODUCTION

The Illinois Hospital Association ("IHA"), Illinois Catholic Health Association ("ICHA"), Catholic Conference of Illinois ("CCI"), Metropolitan Chicago Healthcare Council ("MCHC"), American Hospital Association ("AHA"), and The Catholic Health Association of the United States ("CHA") (collectively the "Associations") on behalf of their member institutions submit this *amici* brief in support of the applicant, Provena Covenant Medical Center (the "Hospital" or "Provena Covenant").

The IHA is a statewide non-profit association with a membership of approximately 200 hospitals and health systems. The Illinois Catholic Health Association is a statewide non-profit association connecting Catholic organizations in the

health and social service ministries of the Roman Catholic Church, including dioceses, religious congregations, hospitals, nursing homes, health systems, elderly housing and medical clinics. The Catholic Conference of Illinois is the public policy voice of the Roman Catholic Church in Illinois. It is led by a board consisting of the bishops of the Illinois dioceses, along with other appointed religious and lay Catholics. The Metropolitan Chicago Healthcare Council is a non-profit association of approximately 100 hospitals located primarily in the Chicago metropolitan area. The AHA is a not-for-profit association of health care provider organizations committed to health improvement in their communities. The AHA is the national advocate for its members, which include all types of hospitals and health care networks that serve individual patients and communities by providing care to those in need regardless of ability to pay. The AHA educates and informs its members on health care issues. It also advocates on behalf of its member hospitals and health systems to ensure that its members' perspectives are heard and their needs addressed in the development of national health care policy. The Catholic Health Association of the United States is the national leadership organization representing the Catholic health care ministry in this country. Founded in 1915, the CHA now has a total of over 2000 members from all 50 states, forming the nation's largest group of nonprofit health care systems, sponsors, facilities, health plans and related organizations.

For years, the Associations have served as representatives and advocates for their members, addressing the social, economic, political and legal factors affecting the delivery of high quality health care in Illinois and throughout the nation. As the

representatives of virtually every hospital in not only Illinois, but across the nation, the Associations have a profound interest in this case.

The outcome of this case will have a dramatic effect on the ability of hospitals throughout the State and the nation to serve their communities. Denying Provena Covenant its property tax exemption potentially brings into question the exempt status of nearly every Illinois non-profit hospital. The resulting financial drain on those hospitals if their tax exemptions, too, subsequently were revoked would seriously jeopardize access to quality hospital services for every Illinois resident. Nor is this proceeding taking place in a vacuum: the rationale applied in this case will likely influence the views of local and state taxing authorities throughout the nation.

For nearly 100 years, the Illinois Supreme Court has found that non-profit hospitals are charitable organizations that qualify for property tax exemption. Like other states, Illinois has recognized the partnership that exists between the government and non-profit hospitals to provide health care to their communities. Without non-profit hospitals, the burden on the government to provide for the health of the people would be much greater. A cornerstone of this public-private partnership has been the government's conferring tax-exempt status on non-profit hospitals. Revoking hospitals' tax exempt status will effectively dissolve that partnership. Illinois courts, like policymakers throughout the nation, have recognized the compelling public policy arguments in favor of granting tax-exempt status to non-profit hospitals as a means of preserving and strengthening the partnership between non-profit hospitals and the government. The Department should uphold that precedent and find that the hospital property owned by Provena Covenant is exempt from taxation.

## ARGUMENT

Without question, the health care delivery system has changed significantly in the last century. There have been tremendous advances in science and technology as well as substantial growth in public and private insurance programs. Yet for sound reasons of public policy, the states and the federal government continue to recognize the substantial benefit to the public of preserving and promoting the partnership between government and non-profit hospitals. Tax-exempt status enables hospitals to operate in the non-profit structure; all of the earnings of a non-profit hospital must be re-invested in the hospital's community in the form of providing services (including many that are not themselves profitable), enhancing access to care, improving quality, purchasing new technology, upgrading facilities, conducting research, and educating health care professionals. It is this fundamental rationale for hospital tax exemption that is at the core of the legal principles of this case. Because of the challenges currently facing our health care system, it is more important than ever for the Department to reaffirm the longstanding partnership that exists between state government and non-profit hospitals by preserving the tax-exempt status of non-profit hospitals.

### I. Public Policy Supports Exempting Non-Profit Hospital Property That Is Used For Charitable Purposes From Property Taxes.

#### A. By Their Presence, Modern Non-Profit Hospitals Relieve The Burden of Government.

The Illinois Supreme Court recognized a hundred years ago that non-profit hospitals are charitable organizations whose property is exempt from taxation. Sisters of Third Order of St Francis v. Board of Review of Peoria County, 231 Ill. 317, 83 N.E. 272, 273 (Ill. 1907). This policy is rooted in the fact that by their mere existence these

hospitals benefit their communities, thereby relieving government of a significant burden. Hospitals are there 24 hours a day, 7 days a week to provide health care to anyone, regardless of their ability to pay. When a heart attack strikes or a car accident happens, speedy access to a hospital is critical. In short, hospitals are the health care safety net in this country. Revoking hospital tax-exempt status will shred that safety net.

The financial challenge facing hospitals in today's environment is enormous:

- Almost 3.6 million Illinoisans – 32.6% of those under the age of sixty-five – were without health insurance for all or part of 2003 and 2004. Of these 3.6 million, 63% (or 2,259,000) were uninsured for six months or more. *Health Care: Are You Better Off than You Were Four years Ago?* Families USA, September 2004. See http://www.familiesusa.org.

- In 2002, Illinois hospitals provided over $1.2 billion in care for which they were not paid (measured based on the cost of providing the care). (IHA Analysis of American Hospital Association Annual Survey, 2002.)

- In 2002, for the average Illinois hospital, over 40% of its revenue was derived from the federal Medicare program, which paid on average 94% of the *cost* of providing such care. (IHA Analysis of American Hospital Association Annual Survey, 2002 and Medicare Cost Reports.)

- In 2002, for the average Illinois hospital, about 12% of its revenue was paid by the State Medicaid program, which paid on average 81% of the *cost* of providing such care. (IHA Analysis of American Hospital Association Annual Survey, 2002 and Medicaid Cost Reports.)

- In 2002, over 40% of Illinois hospitals were losing money on their operations. In 2002, the average Illinois hospital had a patient margin of negative 5.9%. This means they were losing money on their core business of providing patient care. (IHA Analysis of American Hospital Association Annual Survey, 2002.) Since 1994, 21 of the 220 community hospitals in Illinois have closed.

Thus, the growing number of uninsured combined with underpayment by government programs has only increased hospitals' contributions to their communities.

The partnership between Illinois hospitals and the State does not end there. Recently, the Illinois Department of Public Aid announced the federal government's approval of the Hospital Assessment Plan. Under this Plan, which involves Illinois hospitals making assessment payments to the State, an additional $430 million in federal funds will be received from the federal government to strengthen the Illinois health care system. *Public Aid and Illinois Hospital Association Team Up,* IDPA Press Release, December 21, 2004. **See** http://www.dpaillinois.com/media/122104.html, attached as **Exhibit 1.** Consequently, Illinois hospitals are now directly responsible for partially financing the State's health care program that provides for health care to approximately 1.8 million Illinoisans.

Thus, in many respects, private non-profit hospitals do more to relieve the burden on government today than they did 100 years ago. The Illinois Supreme Court recognized a simple reality in its 1907 decision – that by its mere existence, a hospital that treats patients regardless of their ability to pay and does not provide a profit to private individuals, is charitable and merits an exemption from property taxes, without regard to the amount of free care it provides.

This longstanding precedent is even more applicable today than it was then. In 1907, as the Supreme Court explained in its opinion, 5% of the hospital's patients were charity care and another 6% were paid for by the government. In 2002, the average Illinois hospital still did not receive payment for about 5% of the care it provided, while over *50*% of its care was paid for by the government at rates that were less than cost. (IHA Analysis of American Hospital Association Annual Survey, 2002 and Medicare and

Medicaid Cost Reports.) Consequently, the modern non-profit hospital continues to play an essential role in assuring access to health care for all in the community.

B. A Tax On Hospital Property Will Increase Health Care Costs For Patients, Employers And The Government And May Jeopardize Access to Critical Health Care Services.

If the Department imposes property taxes on non-profit hospitals, it is the community – and particularly those in need of care – who will be most adversely affected. Hospitals confronted with substantial tax bills must fund those payments from somewhere. Accordingly, hospitals will likely try to pass their increased costs on in the form of higher charges for services. These increased charges will be paid by insurance companies, who, in turn, will pass them on to the employers and employees who purchase health insurance. Hospitals will also seek reimbursement for their increased tax costs from the Medicare and Medicaid programs operated by the State and federal governments, thereby increasing the costs of those government programs.

The financial drain on non-profit hospitals if their tax exemptions were revoked also may seriously jeopardize access to quality hospital services for every Illinois resident. Hospitals that predominantly serve Medicare and Medicaid patients (e.g., where Medicare and Medicaid comprise 60% to 80% of their business) will have limited ability to pass the increased tax liability on to commercial insurers. As a consequence, there will be greater pressure on the state and federal governments to increase Medicare and Medicaid payments, in order to cover these additional costs, thereby increasing the costs of those programs to the state and federal governments. Assuming that Medicare and Medicaid fail to cover the full cost of the added tax liability (a likely outcome given state and federal budget shortfalls), these hospitals will be forced to reduce services in order to

cut costs. Similarly, hospitals that are not as dependent on government programs may find it difficult to pass the added tax costs on to large commercial health plans because of the substantial bargaining power those plans yield in the increasingly competitive health care marketplace. So these hospitals will also be forced to cut costs to make up for the tax liability.

Those cost-cutting measures are likely to come in the form of reduced services, and the services most likely to be reduced will logically be those whose revenues fail to cover their costs. Typically, this would include services such as trauma care, burn care, indigent care clinics, neonatal intensive care, and mental health services. For those hospitals that are already on the edge – that is, the 40% who are already losing money on operations – the additional property tax costs may force them to close, which will have a catastrophic effect on access to health care throughout the state. Indeed, in just the past 10 years, 21 Illinois community hospitals – about ten percent of them – closed their doors. In addition to the loss of services, the closure of a local hospital is devastating in many communities because the hospital is often the major employer; its closure thus extinguishes an economic engine critical to the economic vitality of the community. [1] Additionally, the presence of a hospital is a key factor in being able to attract new business and economic development in the community.

Hospitals that are not as financially fragile will cover tax costs by delaying purchases of new technology or facility improvements. Many of these expenditures are for technology that will improve the quality of patient care and patient safety, such as

[1] In 2003, Illinois hospitals provided meaningful job opportunities for more than 237,000 workers and paid them more than $10 billion in wages and salaries. Hospitals are the largest employer in many communities, and among the top 3 employers in 48 of the State's 102 counties. (IHA Analysis of American Hospital Association Annual Survey, 2003, See www.ihatoday.org/about/hospitals/ilhosp.html).

computerized medical record systems, computerized physician order entry systems, etc. Hospitals will also likely be forced to reduce or not increase staffing levels for nurses and other health care professionals. This will undermine the improvements that many hospitals are currently pursuing in order to improve patient care.

Imposing taxes on hospitals may even prompt some hospitals to reevaluate their being organized as non-profit organizations, since tax exemption is one of the primary incentives for hospitals to operate as non-profits. It is only logical that hospitals confronting substantial tax liabilities will apply a different calculus when analyzing issues such as: whether to locate new facilities or services in a prosperous suburb or a low income inner city; whether to continue services that are vital to a community but not themselves financially profitable (e.g., trauma units, mental health care, neonatal intensive care); whether to participate in educating new health care professionals; or whether to sponsor indigent care clinics. If a non-profit hospital cannot devote resources, or as many resources as previously, to these vital services, it will fall to the State to provide them.

In sum, imposing property taxes on non-profit hospitals will not only increase health care costs, but will also likely harm access to quality hospital services for all. Moreover, it will jeopardize the financial viability of some hospitals and thereby harm the economic condition of those communities.

C. Taxing Hospitals Is Not The Answer To The Health Care Crisis Facing Illinois.

Illinois, like the rest of the nation, is facing a health care crisis. The number of people without health insurance continues to skyrocket. Health care costs – fueled by an aging population, health care worker shortages, medical liability increases, and

prescription drug costs – continue to soar. An increasingly global economy is forcing employers to contain health care costs in order to remain competitive. These pressures are real and they are the root cause of the health care crisis.

It is no solution to this crisis to levy taxes on non-profit hospitals and the patients and employers who pay the hospital bill. The solution lies in finding a means to provide health care coverage to the 1.8 million people in Illinois and the 45 million people nationwide who lack health insurance. Unfortunately, the hospital community cannot fix this problem by itself. It will take the concerted effort of business, labor, consumers, government and the health care community to find the solution to this challenge. Attempting to make non-profit hospitals the scapegoat for the health care crisis will do more harm than good.

D. Taxation of Non-Profit Hospitals Will Endanger Critically Needed Catholic Hospitals Both in Illinois and the Rest of the Nation.

Catholic hospitals in Illinois admitted more than 475,000 patients in 2003, accounted for almost 25% of all Illinois hospitals and almost 30% of all Illinois hospital beds. (ICHA Analysis of American Hospital Association Annual Survey, 2003). They therefore provide a critical and an irreplaceable share of hospital care in this State. Moreover, by their very nature as religious organizations, Catholic hospitals are charitable, non-profit organizations, guided by their religious mission to heal the sick and care for the poor.

As the United States Supreme Court has held, our society has long recognized the need for and the benefit of exempting religious organizations from real property taxation:

> Government has two basic secular purposes for granting real property tax exemptions to religious organizations. First, these organizations are exempted because they, among a range of other private, nonprofit organizations contribute

> to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the community.***Second, government grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities.

Walz v. Tax Commission of the City of New York, 397 U.S. 664, 687,689 (1970) (Brennan, J. concurring). See also Crerar v. Williams, 145 Ill. 625, 642 (1893) (recognizing that a charity can be "for the benefit of an indefinite number of persons . . . by bringing their hearts under the influence of . . . religion").

If the Department adopts the standards urged by the State, the tax exemptions of even this indisputably charitable subset of non-profit hospitals will be put at risk. More importantly, the vital care provided by a quarter of Illinois hospitals will be put at risk because Catholic hospitals do not have the resources to absorb the additional cost of property taxes. If Catholic hospitals are denied real estate tax exemption, some may have to close, and virtually all will have to curtail needed services.

1. Catholic Hospitals Are Inherently "Charitable" Because They Are Religious Institutions Devoted To Healing The Sick And Caring For the Poor.

Catholic hospitals function as health care providers in a secular world, but the reason for their existence is to live out the Gospel value of charity taught by Jesus and preached by the Roman Catholic Church for two millennia. In particular, Catholic hospitals serve as a concrete means by which the Church works to heal the sick and care for the poor. They stand not only as health care institutions, but also as living witnesses to the gospel on behalf of the Catholic Church. "Catholic sponsored health ministry, like the church itself, must not only proclaim the gospel but commit to transform the social order according to gospel norms" of love and justice. National Coalition on Catholic Health Ministry, Catholic Health Ministry in Transition 4 (1995). "The Church has

always sought to embody our Savior's concern for the sick***In faithful imitation of Jesus Christ, the Church has served the sick, suffering and dying in various ways throughout history." Ethical and Religious Directives for Catholic Health Care Services, Fourth Edition (General Introduction).

Many Catholic hospitals in Illinois began as ministries of particular religious orders and societies. Catholic religious orders each have a distinct mission, or focus. This is referred to as the "charism" of the order. The charism of the order describes its nature, its motivating mission; in lay terms, its "personality." Some orders are devoted to contemplative prayer; some to education. Many have devoted themselves to the ministry of providing medical care, with a special emphasis on care to the poor. Thus, Catholic hospitals were created as the direct product of this religious inspiration to render charity: to build hospitals to care for all in need. The land for Catholic hospitals was often acquired by donation for this purpose, or purchased with funds raised for this purpose; and the hospitals were built with the charitable funds raised by the religious order, with the support of the local community.

In an earlier time, much of the staff and management of Catholic hospitals consisted of the members of the sponsoring religious congregation. Although the number of religious men and women providing service in the hospitals has decreased, Catholic hospitals retain the charism of their founders and continue to perform their original religious mission: to provide medical care to all in need, and to give life to the gospel values that originally inspired the sponsoring religious orders to found the hospitals.

Catholic hospitals are religious, and therefore charitable institutions in another respect. As institutions of the Roman Catholic Church, they are part of the Church's

religious ministry and function subject to the moral and ethical teachings of the Church. For example, in order to be considered "Catholic," Catholic hospitals must operate in compliance with the "Ethical and Religious Directives for Catholic Health Care Services" promulgated by the National Conference of Catholic Bishops (the "Ethical Directives"). As the bishops state, "the biblical mandate to care for the poor requires us to express this in concrete action at all levels of Catholic health care***In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured, and the underinsured." Ethical Directives (Part I, Introduction). All of the Ethical Directives, individually and taken together, make clear that the Church's health care institutions are part and parcel of the Church's religious and charitable mission, but two directives in particular make clear that religious ministry and care for the poor are at the foundation of Catholic health care:

> A Catholic institutional health care service is a community that provides health care to those in need of it. This service must be animated by the Gospel of Jesus Christ and guided by the moral tradition of the Church.
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> In accord with its mission, Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable to discrimination: the poor; the uninsured and the underinsured; children and the unborn; single parents; the elderly; those with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees. . . .

Ethical Directives, Directives 1, 3. Catholic hospitals are purely charitable organizations that were originally created, and exist today, to fulfill the religious mission of the Roman Catholic Church to provide medical care to all in need. This is an inherently charitable enterprise, benefiting patients and the community alike.

2. Catholic Hospitals Function According to Charitable, Not Commercial Standards.

As Catholic institutions, Catholic hospitals exist to reach out to the poor and underserved communities of Illinois. As non-profit hospitals, they have no shareholders and thus do not distribute profits to investors or other private parties. Rather, they seek to do the most good for the most people with increasingly scarce resources. Of course, they generate revenues, but their revenues are often less than their expenses, forcing them to make up the difference by fundraising or seeking support from other Church entities. When a service or a program at a Catholic hospital generates a positive income, that money is available to subsidize the remaining operations of the hospital, in order to fund the charitable care the hospital provides.

Although Catholic hospitals must be fiscally responsible stewards of their charitable assets (Ethical Directives, Directive 6), Catholic hospitals are not organized around the principle of making money; they exist to provide care to those in need. For example, Catholic hospitals do not locate exclusively in areas likely to produce full-paying patients or profitable lines of business. They welcome the opportunity to serve poor, or underserved communities. Ethical Directives, Directive 3; Ministry Engaged: Catholic Healthcare in the United States (March, 2004) at 2 (26% of Catholic hospitals are located in rural areas).

In addition, Catholic hospitals attempt to offer all of the services that their patient community needs, regardless of whether those services are profitable. For example, of Catholic hospitals in Illinois, 77% offer community outreach services; 51% offer geriatric services; 38% offer HIV/AIDS services; 60% offer pain management services; and 85%

offer social work services. (ICHA Analysis of American Hospital Association Annual Survey of Hospitals, 2003.)

Catholic hospitals in Illinois are religious institutions, organized as non-profit entities to serve the poor and needy. They provide care to all in need, irrespective of ability to pay. They are the quintessential charitable organizations, and precisely what the Illinois Supreme Court had in mind as a "charity" when it set forth the factors for charitable tax exemption discussed in the next section of this brief. The Department should not disregard the essential contribution of our State's Catholic hospitals. To do so would endanger generations of charitable work by the Catholic faithful and the Church, and would risk the health of more than 475,000 patients per year admitted to Illinois Catholic hospitals. (ICHA Analysis of American Hospital Association Annual Survey of Hospitals, 2003.) In addition, Catholic hospitals serve as an important safety net for our most vulnerable citizens throughout the country, with more than 15.5 million emergency room visits and 84 million outpatients in a typical year. An adverse decision in this case could imperil this vital ministry not only in Illinois, but across the nation, thereby jeopardizing critical access to health care for those people who need it most.

## II. Property Of A Non-Profit Hospital That Is Exclusively Used For Charitable Purposes Is Exempt From Property Taxes.

Reflecting the public policy reasons articulated above, Illinois courts over the last century have clearly found non-profit hospitals to be charitable, and therefore, exempt from property taxes. See Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968), (articulating six guidelines for resolving the question of charitable use); Eden Retirement Center v. Department of Revenue, 213 Ill. 2d 273 (2004) (reaffirming Methodist

guidelines). By going back to the roots of the charitable use exemption, it becomes clear that today's non-profit hospitals, in general, and Provena Covenant in particular, deserve their exemption from property taxes.

The Methodist Court articulated six guidelines or criteria for determining charitable use, and Provena's post-trial submission addresses each. *Amici* accordingly will limit their discussion to a few criteria of particular relevance to this matter. [2]

A. A Charity Is A Gift To Be Applied For The Benefit Of An Indefinite Number Of Persons For Their General Welfare Or In Some Way Reducing The Burdens Of Government.

The Illinois Supreme Court articulated the following definition of charity in 1893:

> A 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 number of persons, either by bringing their hearts under the influence of education, 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 burdens of government. (emphasis added)

Crerar v. Williams, 145 Ill. 625, 642 (1893).

Based on this precedent the relief of disease or suffering is the type of benefit for the general welfare that is eligible for exemption. Consequently, a hospital whose purpose is the relief of disease and suffering satisfies this aspect of the guideline. This benefit also must be provided to an indefinite number of persons. As long as a hospital's services are generally available to members of the community and it does not

[2] The *amici* adopt the arguments of Provena Covenant with respect to the fifth and sixth Methodist guidelines.

discriminate against patients based on race, religion, gender, or national origin, it has satisfied this prong of the guideline.[3]

Perhaps the most important aspect of this guideline, however, is the notion that a charity "lessen[s] the burden of government." Private non-profit hospitals are partners with government in serving as the foundation of our health care system. From rural communities to inner cities to growing suburbs, communities across Illinois recognize the critical benefits that accompany having a hospital nearby. Without the private hospital sector, state and local government would have to step in to directly meet communities' crucial needs for hospital care.

B. The Organization Has No Capital, Capital Stock, Or Shareholders, And Earns No Profit or Dividends.

This second Methodist guideline goes to the very heart of the distinction between for-profit and not-for-profit enterprises. Under this guideline, the issue is not whether the hospital's revenues exceed its expenses, but rather, what is done with that "profit." So long as the profits are reinvested in the organization to further its charitable purpose, this guideline has been satisfied.

Even a non-profit hospital has to generate enough revenue to pay its expenses – if it doesn't, it will go out of business. That is not just mere speculation: since 1994, twenty-one Illinois hospitals have closed. In many of those instances, especially in rural and inner city settings, the communities struggled to prevent the closure of their hospitals.

[3] Courts have recognized that a charity may restrict its benefits to a particular geographic region and still satisfy this criteria. Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696, 709 (4th Dist. 1988).

C. Funds Are Derived Mainly From Private Or Public Charity, And The Funds Are Held In Trust For Objects And Purposes Expressed In The Organization's Charter.

At first glance, it would appear that no modern hospital would satisfy this Methodist guideline, because their funds are not "mainly derived from public or private charity." But a review of the Illinois precedents articulating this guideline dispels that notion, revealing that this language simply restates previous guidelines. The Methodist court cited as its authority its 1919 decision in Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108 (1919). Methodist, 233 N.E. 2d at 541–542. In Congregational Sunday School, the Illinois Supreme Court explained more fully what it meant:

> "The principal and distinctive features of a charitable organization are that it has no capital stock and no provision for making dividends or profits, but derives its funds mainly from public and private charity, and holds them in trust for the objects and purposes expressed in its charter. In other words, the test whether an enterprise is charitable is whether it exists to carry out a purpose recognized in law as charitable, or whether it is maintained for gain, profit or private advantage. … The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens."

Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108, 125 N.E. 7, 10. (emphasis added.)

In short, an organization satisfies this guideline if: 1) it carries out a charitable purpose, e.g., the relief of sickness, and 2) it is not maintained for private gain or profit. Thus in order to qualify as charitable, an organization must derive its funds mainly from its charitable activities. For example, if a hospital were to derive a substantial portion of its funds from activities unrelated to its charitable purpose of relieving illness and suffering, it might lose its charitable nature.

Recent Illinois court decisions have, in any event, placed little weight on this guideline and have instead focused on the organization's use of its revenues and whether the organization provided services to those who were unable to pay. See, e.g., Lutheran General Health Care System, 231 Ill. App. 3d at 664, Hazelden Foundation v. Department of Revenue, Ill. App., 1 Dist., Slip Op. at 14 –17.

A review of the history of this guideline accordingly demonstrates that it is satisfied by non-profit hospitals in general, and Provena Covenant in particular.

D. The Organization Dispenses Charity To All Who Need And Apply For It, Does Not Provide Gain Or Profit In A Private Sense To Any Person Connected With It, And Does Not Appear To Place Obstacles Of Any Character In The Way Of Those Who Need And Would Avail Themselves Of The Charitable Benefits It Dispenses.

This fourth Methodist guideline itself contains three separate components, each of which is discussed below.

1. The Organization Dispenses Charity To Those Who Need And Apply For It.

In 1907, the Illinois Supreme Court ruled that St. Francis Hospital in Peoria was charitable and exempt from property taxes even though only 5% of its patients were charity patients. The Court stated in relevant part:

> "It is then argued that this hospital should not be held to be an institution of public charity by reason of the great disparity between the number of charity patients and those who pay for the care and attention they receive at this institution. This objection seems to us without merit, so long as charity was dispensed to all those who needed it and who applied therefore, and so long as no private gain or profit came to any person connected with the institution, and so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this institution, calculated to prevent such person making application or obtaining admission to the hospital. The institution could not extend its benefactions to those who did not need them, or to those who did not seek admission."

Sisters of Third Order of St Francis v. Board of Review of Peoria County, 231 Ill. 317 (emphasis added).

At the time the Illinois Supreme Court issued its ruling, 6% of St. Francis Hospital's patients were "county patients," for which the County of Peoria paid $7 per week, while the normal charge was $8 to $25 per week. Sisters of Third Order of St Francis v. Board of Review of Peoria County, 231 Ill. 317 . In contrast, as explained above, in 2002, the average Illinois hospital did not receive payment for about 5% of the health care it provided, while over 50% of its care was paid for by the government at rates below the *cost* of the services provided. (IHA Analysis of American Hospital Association Annual Survey, 2002 and Medicare and Medicaid Cost Reports.) Thus, Illinois hospitals are doing more to relieve the burden of government today, than they did in the early 1900's.

The Illinois Supreme Court's decision makes clear that the important inquiry is whether the hospital provided charity care to those who needed it and applied for it. Thus, any suggestion that a hospital may only receive an exemption if it provides a specified percentage or amount of free care has been expressly considered and rejected by the Illinois Supreme Court. The charitable exemption is based on the *availability* of, not the *quantity* of, free care.

2. The Hospital Does Not Place Obstacles In The Way Of Those Who Need And Would Avail Themselves Of Its Charitable Benefits.

The Illinois Supreme Court provided guidance on this subject when it stated that a hospital does not lose its tax exemption "by reason of the fact that those patients received by it who are able to pay are required to do so…" St. Francis, 83 N.E. 2d at 273. Additionally, in People v. Southern Illinois Hospital Corporation, 404 Ill. 66, (1949), the

Court considered whether a hospital had erected an obstacle when it required patients needing elective procedures who were unable to pay to wait while an investigation into whether the patient was eligible for relief from government agencies was conducted. The Illinois Supreme Court concluded that no such obstacle existed, stating, in relevant part:

> In view of the fact that all emergency or acute cases are immediately treated without question of their ability to pay, and of the fact that all elective cases are ultimately treated despite their inability to pay or secure relief, we cannot agree that the waiting period is an obstacle … Sound business dictates that hospitals inquire into the ability of a prospective patient to pay, and it is the generally accepted practice of all hospitals."

People v. Southern Illinois Hospital Corporation, 404 Ill. 66 (1949).

These cases provide several insights to the determination of whether a hospital has placed obstacles in the way of patients seeking charity care. First, if a patient is able to pay, the hospital may require him to do so without jeopardizing its tax exempt status.[4] Requiring payment in such cases is sound business practice; it helps assure the financial viability of the hospital and the community's continued access to hospital services.

Second, the hospital's obligation to collect from a patient who has an ability to pay carries with it the hospital's need to assess the patient's ability to pay before granting the patient a discount or waiving its charges. The hospital accordingly must be permitted to require the patient to cooperate with its reasonable efforts to verify the patient's financial status. A hospital does not jeopardize its property tax exemption by making "inquiries as to persons seeking admission and claiming to be indigent to verify the truthfulness of their statements" so long as no patient is "ever refused treatment or

[4] Some lower courts appear to suggest that the writing off of "bad debts" by medical clinics somehow creates an obstacle to patients receiving free care. *See e.g.*, Riverside Medical Center v. Department of Revenue, 795 N.E. 2d 361, 366 (3d Dist. 2003). However, the Illinois legislature has recognized that a hospital's bad debts are fundamentally different from those of other vendors because a hospital provides the services first regardless of the patient's ability to pay and then attempts to collect. Under the Illinois Community Benefits Act, Public Act 93-480, hospital bad debts are included as community benefits.

compelled to await the result of such inquiries before being accepted." German Hospital of Chicago, 233 Ill. 246 (1908).

Finally, contained within the hospital's role in assessing a patient's ability to pay is whether the hospital is applying a reasonable standard for defining indigency. If a hospital applied a restrictive definition of indigency which resulted in no patient who requested charity ever being found eligible, there would be a reasonable basis to ask whether the hospital had erected an obstacle to patients seeking charity care. That, of course, is not the case here.

To assist Illinois hospitals in adopting reasonable charity care policies, IHA and MCHC adopted the *Report of the Task Force on Charity Care Policies and Collection Practices for the Uninsured* in September 2003. **See Exhibit 2.** Under the Charity Care Guidelines contained in this Report, an uninsured patient whose family income is less than the federal poverty level is to receive free care and an uninsured patient whose family income is between 100% to 200% of the federal poverty level, is to receive a discount from the hospital's usual charges for care. These guidelines were established based on input from hospitals throughout the state with regard to what is a reasonable basis for determining indigency. Any hospital that has adopted a policy consistent with these guidelines would be acting consistent with industry standard and practice. Many Illinois hospitals, including Provena Covenant, have adopted charity care standards that are more generous than the standard contained in the Charity Care Guidelines. Hospitals that have adopted definitions of indigency that are tied to the federal government's determination of poverty have not erected obstacles to patients seeking charity care.

3. The Organization Does Not Provide Gain Or Profit In A Private Sense To Any Person Connected With It.

In its recommendation to the Department, the Champaign County Board of Review claimed that Provena violated this principle by contracting with physician groups or service providers to furnish certain services to patients of the hospital, for example, emergency room physicians and neonatology and pediatric physicians. That is certainly not a basis for denying tax-exempt status.

To begin with, it is common practice for hospitals to enter into contracts with a wide range of service vendors ranging from food and custodial providers to exclusive contracts with a group of specialty physicians to provide necessary services to hospital patients. Indeed, with respect to exclusive physician arrangements, this practice has long been recognized and approved by the courts. See generally, Furrow, Greaney, et al., Health Law, 2nd Edition, pp. 726 – 730, (West, 2000). The Hospital Licensing Act also expressly authorizes hospitals to enter into exclusive contracts with physicians. 210 ILCS 85/10.4(b)(2)(C)(iii) (2002). Entering into such exclusive arrangements with physician groups benefits the patients served by the hospital because: 1) the hospital is better able to ensure that a physician will be available to render services; 2) limiting the number of physicians who can provide the service improves the quality of care because they develop greater experience and expertise; and 3) it improves efficiency by allowing for better scheduling of operating and procedure rooms.

Second, so long as these contracts have been entered into on an arm's-length basis, they are not benefiting private individuals in any way contrary to the hospital's charitable purpose. The fact that a private physician bills for his service or is paid

pursuant to a contract with the hospital does not jeopardize the hospital's charitable nature. As the Illinois Supreme Court observed:

> "The question whether or not this is an institution of public charity depends not at all upon what class of physicians are permitted to practice there, so long as the institution is not conducted for the purpose of benefiting the physicians of that class."

St. Francis, 83 N.E. at 274.

Thus, arm's length contracts with physicians and other vendors who supply services for the benefit of the hospital's patients do not render the hospital taxable.

## CONCLUSION

For over one hundred years, Illinois hospitals and the government have been significant partners in meeting the health care needs of all Illinoisans. This partnership has been forged for sound public policy reasons -- reasons that are just as relevant, if not more relevant, today as they were a century ago. Recognizing this reality, longstanding Illinois Supreme Court precedent holds that property of non-profit hospitals is entitled to exemption from property taxes. Denying a non-profit hospital such as Provena Covenant property tax exemption potentially raises questions about the tax-exempt status of nearly every non-profit hospital in Illinois, thereby jeopardizing access to quality health care for every resident of the State.

For all these reasons, the *amici curiae* respectfully urge the Department to reaffirm the charitable status of Illinois non-profit hospitals by granting the property tax exemption to Provena Covenant.

Respectfully submitted,

ILLINOIS HOSPITAL ASSOCIATION, ILLINOIS CATHOLIC HEALTH ASSOCIATION, CATHOLIC CONFERENCE OF ILLINOIS, METROPOLITAN CHICAGO HEALTHCARE COUNCIL, AMERICAN HOSPITAL ASSOCIATION, AND THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES as *amici curiae*

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