NONPROFIT HOSPITAL TAX EXEMPTION SUFFERS YET ANOTHER BLOW IN ILLINOIS [1]

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Introduction

The recent victory (August 8, 2007) in an Illinois state court by Provena Covenant Medical Center ("Provena" or "Covenant") against the Illinois Department of Revenue ("IDR") was cause for celebration, not only for non-profit hospitals in Illinois, but for non-profit hospitals across the country.[2] The Illinois court refused to support the IDR's determination that Provena was not a charitable organization and therefore not eligible for property tax exemption.[3] Given the lower circuit court's decision, many hospitals had thought that the IDR's argument over whether Provena was "charitable" and eligible for real estate property tax exemption in Illinois was just an anomaly and without merit in Illinois, attributable to the current political climate and the aggressive assessment practices of a local county and the IDR. However, on August 26, 2008, the Appellate Court overturned the lower court's decision and upheld the decision of the IDR's Director, which stated that Provena was, in fact, not entitled to its property tax exemption, raising concern in Illinois of exactly what the test is for state tax exemption, and raising questions for nonprofit hospitals, once again, as to what they can do to maintain their tax-exempt status.[4]

The original Provena decision was analyzed in some detail in a previous article, including the lengths that the IDR's Director, Brian Hamer, went to overturn the administrative law judge's ("ALJ") decision which upheld Provena's tax-exempt status.[5] Now, a year later, the Illinois Court, Fourth District on appeal has decided against Provena, stating that the Director's decision to overturn the ALJ's recommendation was not clearly erroneous, and, therefore, should be upheld.

The Decision

In its 55-page decision, the Illinois Appellate Court (the "Court"), outlined existing elements of tax exemption law in Illinois, and went into some detail as to why those vague elements under Illinois law were not met. Before doing so however, the Court decided the important issue of the proper standard of review for the actual appeal. The IDR argued that the Court should review the IDR's decision, not the circuit court's decision. Provena argued that the Court should review the IDR's decision *de novo*. In the end, after rationalizing several pages of case law in its decision, the Court concluded that it should review the IDR's decision for clear error. Even the Court admitted that this standard of review issue was critical because "it is crucial, at the outset, to identify the applicable standards of review, for they often determine the results on appeal ..."[6] With the standard of review decided, it became apparent that it would be difficult for Provena to win this case based on the high level of deference that would be afforded to Director Hamer's decision.

The Court started by identifying that Section 15-65(a) of the Illinois Property Tax Code requires that the property in question, in this case Covenant, must be the property of an institution of public charity.[7] That statute provides:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes and not leased or otherwise used with a view to profit:
>
> (a) Institutions of public charity.[8]

The Court also noted that Section 6 of Article IX of the Illinois Constitution, on its face, requires that a property "be used exclusively for ... charitable purposes."[9] The Illinois Constitution provides:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts, and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery, and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.[10]

The Court held that the General Assembly is empowered to restrict or limit any exemption over and above the restrictions or limitations set forth in Section 6 of Article IX of the Illinois Constitution. Therefore, in addition to the constructional requirement that property has to be used exclusively for charitable purposes, the General Assembly established a further requirement for the exemption: that the property must be owned by an institution of public charity.[11] According to the Court, under Section 15-65(a), it will not suffice that the property is "exclusively used for charitable or beneficent purposes;" the owner of the property must be a charitable organization under Illinois law.[12]

The Court then went through the Illinois Supreme Court's time-honored six "distinctive characteristics of a charitable institution" as set forth in *Methodist Old People's Home v. Korzen*.[13] That test, which has been iterated over and over in Illinois tax-exemption cases, is comprised of six characteristics or factors to be used in determining whether a property is, in fact, charitable and subject to state property tax exemption:

1. The institution bestows benefits on an indefinite number of persons for their general welfare, or the benefits in some way reduce the burdens on government;
2. The institution has no capital, capital stock, or shareholders and does not

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profit from the enterprise;

3. The funds of the institution are derived mainly from private and public charity and are held in trust for the purposes expressed in the charter;
4. The charity is dispensed to all who need it and apply for it;
5. The institution puts no obstacles in the way of those seeking the charitable benefits; and
6. The primary use of the property is for charitable purposes.[14]

For the first time in Illinois, the Court discussed the *Methodist Old People's Home* factors and criticized them for being difficult to decipher.[15] It also mentioned that some courts in Illinois had held these factors to be guidelines rather than definitive requirements.[16] The Court held these prior courts' findings incorrect because some of the factors were more than mere guidelines. It did, however, acknowledge that one of the factors at issue, "charitable funding of the institution," has waned in importance. The Court stated that the other factors remain on point today despite the fact that the Court called these factors "old" and that the Supreme Court decision in *Methodist* relied on cases going back 75 years. Despite this criticism of *Methodist*, the Court nonetheless chose to follow only the *Methodist* factors in determining whether Provena was charitable enough to maintain tax exemption in Illinois.

Benefiting an indefinite number of people for their general welfare so as to reduce the burdens on government

The Court found that this tax exemption factor is more than a guideline, because it defines charity. According to the Court, Provena argued that its existence as a hospital lessened the burden of government. If it were not for Provena, the government would have to provide a hospital in the county. The Court did not agree, stating that providing medical services alone does not relieve the state of its burden. Rather, the Court took a very narrow view from the outset, stating that "it is unclear to what extent Provena exercises 'general benevolence' as opposed to doing what a for-profit hospital does: selling medical services."[17] The Court disregarded Provena's argument that nonprofit hospitals relieve the government by treating Medicaid patients.

Funds derived mainly from private and public charity

The Court skipped the second factor, that the institution does not have any capital, capital stock or shareholders and does not profit from the enterprise. The Department had already stipulated to that fact, stating that this was the only requirement of the six *Methodist* test factors that Provena could meet. As such, the Court moved on to the third factor, and once again, noted that requiring funding to be derived mainly from private and public charity would "effectively end the charitable exemption for non-profit hospitals."[18] The Court also acknowledged that very few non-profit hospitals receive anywhere near 50 percent of their revenues from private or public donations. The Court cited to a case from 1907 in which the Illinois Supreme Court "seemed" to approve of a hospital subsidizing medical care of the poor by charging patients who were able to pay.[19] Citing to two law review articles, the Court held that "having an operating income derived almost entirely from contractual charges goes against a charitable identity."[20] The Court held that Provena, with only 3.4 percent of its revenue being derived from public and private charity, would not have the requisite "charitable identity."

Providing charity to all who need it and apply for it and preventing any obstacles to charity

The fourth factor from *Methodist* is that charity is dispensed to all who need it and apply for it, and the fifth factor prohibits an institution from placing any obstacles in the way of those seeking benefits. In his decision, Director Hamer found that there was insufficient information regarding Provena's expenditures for charitable care, and therefore, it was not possible to conclude that Provena was a "charitable institution" under Illinois law.[21] First, Provena argued, along with the Illinois Hospital Association, that "charity" is different from "a charity." In essence, "a charity" is an organization and "charity" is what the organization dispenses. The Court showed its impatience with the argument that a hospital is a charitable organization because it provides medical care, which has a charitable purpose of relieving disease and suffering. The Court went on to say that a charity is a gift and a gift cannot be the mere establishment of the hospital:

> If a patient, like virtually all of the other patients, must agree to pay for his or her medical care, the patient receives a gift only in the rarified form of an opportunity to purchase medical care locally. A new Wal-Mart would be a gift in a comparable sense – with the added bonus that it would pay property taxes.[22]

After citing to several cases in an attempt to distinguish them in favor of the IDR, the Court concluded that the Illinois cases "do not leave us with the impression that the Supreme Court is indifferent about the number of impoverished persons an allegedly charitable organization serves free of charge. If as Provena and the Illinois Association of Hospitals maintain, medical care is, per se, charity and the medical care does not have to be free because the only gift that matters is the gift establishing the hospital, the Supreme Court would not have distinguished the line of cases by observing that in those cases, 'many' patients were 'cared for without charge." The Court then went on to state, "we conclude that not only is a charity a gift, but that charity is a gift."[23]

The Court found that nothing is kind, benevolent or giving about selling someone medical services. The Court took a very narrow interpretation of charity, stating that it includes generosity and helpfulness toward the needy or suffering. It even looked at the Webster's Dictionary definition of charity and noted that charity also means giving generously and not just giving. With this support, the Court ruled that to be charitable, an institution must give liberally, not just give.[24] Finally, the Court ruled that dispensing charity to all who need it and apply for it and placing no obstacles in their way are more than mere guidelines but are "essential criteria" going to the heart of what it means to be a charitable hospital. According to the Court, the Director correctly observed that because there was no hard evidence of the actual amount of charity Provena provided in 2002, neither the fourth nor the fifth factors of *Methodist* were satisfied. Based on the facts before it, the Court only ruled that the Director's decision was not mistaken.

Exclusive Use of the Property for Charitable Purposes

The Court spent a great deal of time discussing the factor of the exclusive use of the property for charitable purposes, and used the following headings to discuss this issue:

> *The impossibility of making a gift, and thereby performing charity, without foregoing compensation for the thing given*

The Court reasoned that for a gift to occur, and, therefore, for an entity to be considered charitable, the gift has to be given for free. The court used the analogy of a drinking fountain. If someone donates a drinking fountain to a park, one could argue the charitable nature of the gift. But analogizing to Provena, the Court said if that drinking fountain were coin operated, the word "charity" cannot describe it: "It is nonsensical to say one has given a gift to that person, or that one has been charitable by billing that person for the full cost of the goods or services-whether the goods or services be medical or otherwise. For a gift (and, therefore, charity) to occur, something of value must be given for free."[25] The Court did not explain where the concept of giving charity equates to the giving of free care came from.

The Court then cited to the case of *Quad Cities Open, Inc. v. City of Silvis*[26] and discussed how even a small amount of charity could constitute and meet the charitable purpose requirement. In that case, a nonprofit entity operated an annual golf tournament and the proceeds from the tickets went to charity. Even though only 0.7 percent of the corporation's revenue over two years went to charity, it was ruled that this was enough to make the entity charitable. The *Provena* Court distinguished this case by stating that percentages do not define charity (while still stating that percentages are not irrelevant). The Court went on to say that the *Quad Cities* decision was reasonable because the 93 percent overhead was used to generate the 0.7 percent charity. Absent from the Court's decision was a clearer explanation of why *Quad Cities* would not apply to Provena, wherein all of its money arguably is used (as overhead) to produce charitable results. Instead, the Court said that it was acceptable for the Director of IDR to be skeptical of the 0.7 percent of revenue that Provena devoted to charity care. It is hard to see why *Quad Cities* was also not seen as a pretext for charity by the Court with its similar and arguably less charitable facts compared to Provena's circumstances.

> *The relevance of the percentages, despite the impossibility of an across-the-board "quantitative test"*

With regard to percentages, the Court ruled that percentages of charity care need not be developed to determine whether a hospital is charitable. The Court acknowledged that different hospitals in different socio-economic areas may by necessity dispense different amounts of charity.[27] However, the Court did rule that a percentage of charity care compared to revenue is not irrelevant when determining whether a hospital meets its charitable purpose. The Court then concluded that the 0.7 percent of Provena's revenues spent on charity care was not enough, and that the Director was not incorrect when he determined that Provena did not dispense charity to all those who needed it.

But what is interesting about this portion of the Court's decision was the Court's dicta, which lashed out against the U.S. healthcare system in general, and indirectly against Provena. Many have pointed out that the debate over charity care and hospitals in Illinois is less about legal standards and is more a function of dire economic times, the rising number of uninsured, and rising healthcare costs.[28] In the face of these healthcare woes, nonprofit hospitals, the flagships of America's healthcare system, make easy targets. Some would argue that the public has chosen hospitals to be the cause celebre of these healthcare woes. The *Provena* Court pointed out the insurance crisis in the U.S. healthcare system, and in this context, claimed Provena was not charitable:

> As millions of Americans who cannot afford health insurance would attest, hospitals afford ample opportunities for "some work of practical philanthropy"— and nothing is more practical than numbers. Medical care has become ruinously expensive. The cost of a hospital stay has been outpacing inflation for many years. Between 1971 and 1981, the cost of a hospital day increased 15% annually. . . . Estimated health care costs for 2005 exceeded $1.9 trillion, a 48% increase over the $1.3 trillion spent in 2000. These costs are nearly 4.3 times higher than our national defense spending and have been rising at least 50% faster than the rate of inflation. Further, inpatient hospital costs have increased almost 50% in the last decade. . . . In 2001, 1,458,000 Americans filed for bankruptcy, and according to a

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> recent study, "about half of these filings had a medical debt cause, meaning that about 729,000 bankruptcy filings were caused by medical debt. . . . The number of uninsured Americans rose to 45 million in 2003, up 1.4 million from 2002.[29]

Against this backdrop of statistics, the Court ruled that the Director was justified in stating the 0.7 percent of revenue for charity care was not a high enough percentage without establishing what percentage would be high enough. While the Court's reasoning that a specific percentage cannot apply to every hospital seems relevant and sound, it provides no consolation for hospitals looking for guidance to meet this ever-illusive charitable purpose requirement.

Covenant's charity care policy

At the initial administrative hearing, the ALJ agreed with Provena, stating that its charity care policy was adequate and supported Provena's claim that Provena did provide charity care for all those who needed and applied for it. Director Hamer, however, was critical of the hospital's policy, and the Court found his criticism persuasive. One of Hamer's criticisms, which the *Provena* Court acknowledged, criticized Provena for referring patients that should have qualified for charity care reductions to collection agencies. Both Hamer and the Court said that practically speaking, the charity care policy would still be burdensome for those that met its guidelines and who were still faced with significant medical bills, at least theoretically. Much of the Court's criticism hinged on the charity policy example used by Director Hamer in his decision. The Court pointed to hypothetical examples of certain patients without insurance and how the policy could be unfair in these hypothetical situations: "The prospect of a crushing financial liability could well have been an obstacle in some people's minds; it could have deterred them from undergoing medical treatment."[30]

In the end, the Court held against Provena, finding that its charity care policy was an obstacle, despite the fact that this decision was not supported by any actual evidence:

> The critique of Covenant's charity care policy strikes us as reasonable. In its disregard of liabilities, the charity care policy could have posed an obstacle to the dispensation of charity to the needy. . . . Basically, the charity care policy lacked nuance. In simple terms of the dollar amount of assets, an elderly retired person might have the means of paying for a medical procedure, but he might have to liquidate his house and the investments upon which he depends for basic survival [citing to a law review article].[31]

The Court also addressed the ALJ's very different determination which acknowledged that Provena never used the charity care policy as an obstacle, and that the policy was merely a guideline, not one that actually imposed burdens on Provena's patients. The Court dismissed this argument and held that the record was not clear about how often Provena departed from its "guidelines," how often it assessed them, or how often a reassessment made any difference to a particular patient. The Court then pointed out that of 110,000 admissions, Provena gave free or discounted care to only 302 patients, and that it was therefore hard to infer from such statistics that Provena actually made a difference in swaying from its own "guidelines" for patients in need.[32]

The illusory nature of much of Provena's "charity care costs"

The Court also pointed out the illusive nature of reporting charity care in terms of average cost versus the amount the hospital actually charges. The Court acknowledged that measuring charity care based on charges yields a higher dollar figure than measuring it by cost. The Court sided with a law journal article, stating that depending on how a hospital reports its charity care costs, even the most charitable policy on its face could still result in a windfall for the hospital.[33]

Shortfalls in Medicare and Medicaid

The debate over Medicare and Medicaid shortfalls has been one that has plagued the charity care debate for some time.[34] After all, if taken into account, the treatment of these shortfalls can be critical to a charitable analysis. Provena claimed over $10 million in shortfalls from the Medicare and Medicaid programs, and argued that this shortfall should be included in its 2002 charitable contributions. The Court was not swayed by this argument:

> [F]rom a legal point of view, we disagree with the reasoning that just because the end result of bad debt and charity is the same (lack of payment to the hospital), bad debt should be considered charity. If an organization could acquire a tax exemption for giving up on collecting from deadbeat customers, nearly every business in Illinois would be tax-exempt.[35]

The Court reasoned that charity care is more than writing off a debt.

> To accomplish that gift [of charity], one surely would have to do more than write off the debt. Writing off a patient's bad debt involves only the hospital and its databases. . . . And so nothing really has changed between the patient and the hospital. The hospital merely has decided, for its own accounting purposes, that trying to enforce the debt would be futile or economically unrewarding—hardly a decision that exudes the "warmth and spontaneity indicative of [a] charitable impulse.[36]

This explanation by the Court is certainly one way to look at writing off bad debt, but its analysis lacked a

counter point of view, and how others might consider writing off of debts or shortfalls in the Medicare and Medicaid programs as part of a hospital's charity care, consistent with the hospital's charitable mission.

Significance of the stipulations

In an interesting point of the opinion, the Court dismissed a significant stipulation made by the IDR which could be grounds for reversal. The IDR stipulated that Provena "dispenses health care to all who apply for it, regardless of their ability or inability to pay for the service." Provena argued that this stipulation should be enough to establish at law that it provides charity to all those who are in need. The Court dismissed this stipulation by stating:

> This is a non sequitur. Just because Covenant never turns a patient away because of the patient's ability to pay, it does not follow that Covenant thereby provides charity. If, despite the patient's inability to pay, the patient is contractually liable to reimburse Covenant for the medical treatment, Covenant has extended no charity to that patient.[37]

Off-site charity

Provena also argued that part of its charitable contributions include certain community services, including crisis nursery services and support, volunteer activities, emergency medical services, a charitable subsidy on ambulance service, donations to other not-for-profits, behavioral health benefits, and subsidy for graduate medical education. The Court dismissed the dollar amount of these items as charitable because it was unclear to the Court whether these items were uses of the property in question or were uses of income from the property in question or other properties. For example, regarding ambulance services, the Court questioned whether the use of Provena's property was at play: "we do not know where the ambulances are garaged. Do they depart from Covenant and bring patients back, or are they dispatched from a separate address?"[38] The Court, again, acknowledged it did not have enough facts to support Provena's argument, but did not categorically state that the community benefits cited by Provena were actually impossible to include in its charitable contributions.

The Religious Exemption

The lower circuit court ruled that Provena was entitled to both a charitable and a religious exemption from property taxes. The Court, however, disagreed that Provena was allowed a religious exemption to its property taxation. Again, stipulations were admitted by the IDR stating that Provena's mission was an apostolic one and operated as a healthcare ministry of the Catholic Church.[39]

In this instance, too, the Court dismissed the stipulations, stating that the Court must decide whether Provena's actual practices meet the requisite statutory definition for religious exemptions in Illinois: that its property is used exclusively for religious purposes.[40] According to the Court, the stipulations did not completely address the issue:

> If "religious purpose" meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation the exception. . . . "Religious purpose" within the meaning of section 15-40(a) . . . has to be narrower than "Christian service," or else "religious purpose" would mean everything (and, therefore, nothing).[41]

The Court found that Provena was more business-like, operating more like a place of commerce than a facility used for religious purposes. As fuel for its argument, the Court used more numbers to show that Provena could not meet its religious purpose requirement, and, thus, that it should pay property taxes:

> Almost all [of Provena's] revenue came from insurance companies, persons paying for their own treatment, and other contractual sources. . . . Covenant sent 10,085 accounts to collection agencies in 2002. The record does not appear to reveal how often theological instruction was given during the 110,000 admissions that year, but Covenant spent $813,694 on advertising. Covenant more resembles a business with religious overtones than property used primarily for religious purposes.[42]

In the end, the Court acknowledged briefly arguments that its decision to tax nonprofit hospitals like Provena would have severe public policy implications, but dismissed these arguments as being concerns for the legislature, not the judiciary. In its final salvo, the Court specifically recognized the likelihood that its decision would be controversial, especially given its reliance on case law that some may consider to be outdated and not in line with modern medicine. Despite the changing times, the Court held that its hands were tied by the constraints of the laws before it:

> It is obvious that . . . [charitable purpose] language may be difficult to apply to the modern face of our nation's healthcare delivery systems. Even the seminal case in Illinois, *Methodist* . . . , was decided when Medicare was in its infancy and Medicaid did not yet exist. The capital needs of a properly equipped modern hospital were not even imaginable in 1965. It is of obvious public benefit for any community to have available one or more modern hospitals, but until such time as the legislature sees fit to either change or make definite the formula for the determination of the medical/charitable use of real property, Provena cannot, on the record before us here, prevail in its attempt to exempt itself from real estate taxation.[43]

Conclusion

On November 26, 2008, the Illinois Supreme Court accepted Provena's petition for leave to appeal. It will be interesting to see if the Illinois Supreme Court pays deference to the *Provena*

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Appellate Court's decision, or upholds the original ALJ and the State Circuit Court determinations that Provena is a charitable institution subject to property tax exemption. Much of this debate hinges on the public's perceptions of nonprofit hospitals, and it is unknown at this time whether this decision is the beginning of a trend. The Illinois Supreme Court is expected to rule on this case in 2009.

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Endnotes

1 Neither the author nor his firm represents Provena Covenant Medical Center. None of the remarks or commentary in this article should be construed as a criticism of Provena or the Illinois Department of Revenue, the amici parties, their counsel, or of the arguments in this case.

2 *Provena Covenant Medical Center v. Dep't of Revenue*, No. 2006-MR-597, 2007 WL 4913149 (Ill. Cir. 2007).

3 *Id.*

4 *See Provena Covenant Medical Center v. Dep't of Revenue*, 894 N.E.2d 452, 323 Ill. Dec. 685 (4th Dist. 2008) (decision issued August 26, 2008) (*appeal allowed* November 26, 2008).

5 *See* David M. Flynn, Neville M. Bilimoria, Patricia S. Hofstra, "Turning Hospital Tax Exemption on Its Head," *ABA Health Lawyer*, Vol. 19, No. 4 (February 2007).

6 *Provena v. Dep't of Revenue*, 894 N.E.2d at 457.

7 35 Ill. Comp. Stat. 200/15-65(a) (West 2002).

8 *Id.*

9 Ill. Const. 1970, Art. IX, § 6.

10 *Id.*

11 *Provena v. Dep't of Revenue*, p. 10; 35 Ill. Comp. Stat. 200/15-65(a) (West 2002).

12 *Chicago Patrolmen's Association v. Dep't of Revenue*, 171 Ill. 2d 263, 270, 664 N.E.2d 52, 55-56 (1996).

13 *Methodist Old People's Home v. Korzen*, 39 Ill. 2d 149, 157, 233 N.E.2d 537, 541-42 (1968).

14 *Methodist Old People's Home; see also Eden Retirement Center, Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 287, 821 N.E.2d 240, 248 (2004).

15 *Provena*, 894 N.E.2d at 460-462.

16 *Id.*

17 *Provena*, 894 N.E.2d at 462.

18 *Provena*, 894 N.E.2d at 463.

19 Sisters of the Third Order of St. Francis v. Board of Review, 231 Ill. 317, 321, 83 N.E. 272, 273 (1907).

20 *Provena*, 895 N.E.2d at 463.

21 *Provena*, 894 N.E.2d at 464.

22 894 N.E.2d at 465.

23 894 N.E.2d at 466-467.

24 894 N.E.2d at 467.

25 894 N.E.2d at 468.

26 *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill. 2d 498, 281 Ill.Dec. 534, 804 N.E.2d 499 (Ill. 2004).

27 894 N.E.2d at 470.

28 Bruce Japsen, "Tax Ruling May Affect Hospital's Free Care," Chicago Tribune, September 30, 2007.; Flynn, et al., "Turning Hospital Tax Exemption on Its Head," *ABA Health Lawyer*, Vol. 19, No. 4 (February 2007).

29 894 N.E.2d at 471.

30 894 N.E.2d at 473.

31 894 N.E.2d at 472-473.

32 894 N.E.2d at 473.

33 894 N.E.2d at 474-475.

34 The Medicare and Medicaid shortfall argument is premised on the fact that hospitals are never paid enough by Medicare or Medicaid to meet the costs of providing such care. For example, Medicare in certain circumstances may pay 75 percent of the hospital's charges, and for Medicaid, even less is paid to the hospital in certain circumstances.

35 894 N.E.2d at 475.

36 894 N.E.2d at 476.

37 894 N.E.2d at 477.

38 894 N.E.2d at 478.

39 894 N.E.2d at 479.

40 35 Ill. Comp. Stat. 200/15-40(a) (West 2002); *Provena*, 894 N.E.2d at 479.

41 894 N.E.2d at 479.

42 894 N.E.2d at 480.

43 894 N.E.2d at 481-482.

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