

# Now & Next

## Healthcare Alert

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### **Trends in charity-care legislation and litigation**

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Recent developments in federal and state law could affect nonprofit hospitals' eligibility for tax exemptions based on the level of charity care they provide.



#### **What's the impact?**

- Some federal lawmakers are advocating for additional IRS scrutiny of charity-care spending, and several states have increased their oversight of nonprofit hospitals' tax exemptions.
- Given these trends, hospitals that receive tax exemptions in return for providing charitable care to the community should consider reviewing their financial assistance policies and practices and scrutinizing the evidence they submit to apply for their exemptions.

Historically, many nonprofit hospitals have provided charity care or discounted health services to patients as a condition of receiving exemptions from the Internal Revenue Service and applicable state agencies. Over the last decade, some legislators and executive officials have challenged those exemptions through legislation, agency decisions, and litigation. The trend is clear: federal and state oversight of charity-based tax exemptions for hospitals is increasing. Hospitals that want to maintain their exemptions need to closely monitor this trend.

## Federal legislative action

The tax-exempt status of hospitals has recently come under congressional scrutiny. In August 2023, Senators Elizabeth Warren, Raphael Warnock, Chuck Grassley, and Bill Cassidy, M.D., wrote a [letter to the IRS](#) expressing concerns that hospitals may not be doing enough charity care to justify their tax exemptions. Their letter urged the IRS to provide greater transparency into nonprofit hospitals and to update Form 990, Schedule H, to better identify the community benefits hospitals provide.

At the federal level, there currently are no minimum charity-care spending requirements. Requirements are more conceptual, such as the Affordable Care Act's directive that hospitals make a reasonable effort to [determine whether an individual qualifies for assistance](#) under the hospital's financial-assistance policy. The ACA also contains [reporting requirements for hospitals' community-benefit spending](#).

Although the recent push for additional IRS scrutiny does not include a proposal for imposing quantitative requirements on charity care, this does not mean a quantitative proposal is off the table. Time will tell how this issue evolves.

## State legislative action

Since 2020, states have increased their oversight of nonprofit hospitals' tax exemptions. For example, Oregon, Washington, and Minnesota have all passed legislation requiring additional accountability for charitable-care contributions.

### OREGON

In 2020, Oregon enacted legislation that includes minimum spending requirements for charity care based on a nonprofit hospital's annual income and community-benefit spending, as well as the needs of the community. Recently, in July 2023, Oregon further enhanced its efforts to promote charity-care contributions by hospitals through [legislation that requires hospitals to make any charity-care deductions](#) before billing patients. The legislation also includes measures to screen patients for discounted care and simplify the sign-up process.

### MINNESOTA

Minnesota, for its part, enacted legislation in May 2023 that includes much [stricter requirements for hospitals](#) screening patients for financial-assistance eligibility. In particular, patients screened and eligible for assistance or whose insurance status is unknown must schedule an appointment with a certified application counselor. The legislation also requires a hospital to post notices regarding charity care in the hospital and on the hospital's website in a manner accessible to patients. In addition, the legislation limits the amount hospitals may charge uninsured patients with annual household incomes under \$125,000.

## WASHINGTON

Washington has also recently [amended its charity-care law](#). Washington's legislation, passed in 2022, increases screening requirements and expands qualifications for charity care. The new charity-care law requires hospitals to help patients apply for charity care and lays out the qualifications based on the federal poverty level.

## CHARITY-CARE LITIGATION IN ILLINOIS

In Illinois, charity-care developments for hospitals have been driven by two decades of intense litigation. In August 2023, a noteworthy case spanning over fifteen years was decided in favor of a hospital seeking charitable-use tax exemptions for 2005 through 2011.

That case, [Carle Foundation v. Department of Revenue](#), originally began under section 15–65 of the Illinois Property Tax Code, which allowed exemptions for property owned by an “institution[] of public charity.”<sup>iii</sup> While the *Carle* case was pending, a decision in another case narrowly construed what constituted “charity” and “charitable use” for purposes of granting a charitable property-tax exemption under Illinois law.<sup>iii</sup> That decision prompted the legislature to enact section 15–86 of the Property Tax Code.<sup>iv</sup>

Section 15–86 imposes a quantifiable service- and activity-based standard as a precondition to property-tax exemption for hospitals. A hospital qualifies for the exemption if its qualified services and activities equal or exceed its estimated property-tax liability for the given year.

In addition to section 15–86, charitable property-tax exemption for Illinois hospitals depends on the Illinois constitution's requirement that exempt property be “used exclusively for . . . charitable purposes.”<sup>v</sup> Whether a hospital satisfies this requirement involves considering five factors Illinois courts have developed as guidelines for evaluating charitable use, several of which overlap with the factors in section 15–86.<sup>vi</sup>

In *Carle*, after reviewing the evidence presented on the statutory and constitutional exemption factors, the appellate court affirmed the trial court's ruling that the plaintiff was entitled to the exemptions it requested for 2005 through 2011. The court's decision illustrates the fact-intensive nature of charitable property-tax exemptions for hospitals under Illinois law.

## Conclusion

With the charity-care landscape continuing to change, hospitals that receive tax exemptions in return for providing charitable care to the community should consider reviewing their financial assistance policies, their billing practices, and their applications for financial assistance. Applications for financial assistance should be readily available in plain language to patients in the hospital and on the hospital's website. Hospitals may also want to consider how they communicate with patients regarding the availability of financial assistance, ensuring that all

eligible patients are properly screened and that qualified patients have the resources to apply for assistance.

For hospitals intent on protecting their exemptions, litigation may be necessary at the administrative level and even, as in the *Carle* case, in court. Because exemption determinations are highly fact-intensive and case-specific, hospitals may wish to consult with litigation counsel to ensure that the record they make to support their exemptions is sufficiently detailed. Hospitals also may wish to consult with litigation counsel to evaluate potential state-law constitutional challenges to new laws and regulations that attempt to make it more difficult for hospitals to qualify for charity-based exemptions.

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<sup>ii</sup> 35 ILCS 200/15–65(a).

<sup>iii</sup> *Provena Covenant Med. Ctr. v. Dep’t of Revenue*, 236 Ill. 2d 328 (2010).

<sup>iv</sup> 35 ILCS 200/15–86.

<sup>v</sup> Ill. Const. 1970. art. IX § 6.

<sup>vi</sup> *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156–57 (1968); *Carle*, 2023 IL App (4th) 200121, ¶ 148.