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Provena Covenant Medical Center and Its Unresolved Tax-Exempt Status - It's Time for the Illinois Supreme Court to Revise the Methodist Old People's Home Test

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I. Introduction

Hospitals serving the poor have been provided with an exemption from federal taxation since the late 1800’s.¹ The policy behind granting an exemption was essentially a *quid pro quo* between the government and the charity hospital. The government recognized that charitable hospitals provided uncompensated medical care, viewed the hospitals’ actions as relieving the federal government’s burden of caring for the sick and the poor, and in exchange, the hospitals were provided with an exemption from the federal income tax.² The charity care hospital of the late nineteenth century had a largely impoverished, non-paying patient base.³ The cost of providing care to this population was funded primarily by contributions from private philanthropy and religious donations, not from government funding.⁴

On the other hand, many states had enacted laws or constitutional amendments prior to the federal action and granted charities exemptions from certain types of state taxation.⁵ Illinois provided corporations an exemption from taxation under Article IX, Section 3 of Illinois’ 1870 state constitution which provided for an exemption from property taxation if the property was used exclusively for charitable purposes.⁶ However, this constitutional language was not applicable to not-for-profit hospitals until 1907 when the Illinois Supreme Court determined not-

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² *Id.* at 76.
³ *Id.*
⁴ *Id.*
⁵ *Id.* at 77.
⁶ *Sisters of the Third Order v. Bd. of Review of Peoria County*, 83 N.E. 272 (Ill. 1907).
for-profit hospitals were considered institutions for charitable purposes under the auspices of the state constitution and tax laws.\(^7\)

The modern not-for-profit hospital is unrecognizable when compared to the charity hospitals of the late nineteenth century.\(^8\) Not-for-profit hospitals have become big businesses that serve a dramatically different patient base; that is, not-for-profit hospitals have a greater proportion of paying patients and a declining number of patients who require uncompensated care.\(^9\) The decline is largely the result of Medicare and Medicaid; programs passed into law in 1965 that were designed to provide health care to poor and aging Americans.\(^10\) As a result, the burden of caring for the sick and poor was largely transferred back to the government.\(^11\) The typical not-for-profit hospital gradually transformed itself to appear quite similar to its for-profit competitors; serving a larger number of well-paying, insured patients and a decreased percentage of patients in need of charity care.\(^12\) The modern not-for-profit hospital, as described by former United States House of Representatives Ways and Means Committee Chairman Bill Thomas, has become “increasingly commercial” in its operations.\(^13\) Modern-day not-for-profit hospitals have even expanded into for-profit ventures such as health insurance, assisted living facilities, and venture funds.\(^14\)

In just the past few years many not-for-profit hospitals have come under attack from elected officials on the national and state level for providing too little uncompensated care while

\(^{7}\) Id.

\(^{8}\) Aitsebaomo, *The Nonprofit Hospital, supra* note 1, at 76.

\(^{9}\) Id.

\(^{10}\) Id. at 86.

\(^{11}\) Id.

\(^{12}\) Id.


\(^{14}\) Id.
still retaining the benefit of the tax exemption.\textsuperscript{15} These officials have questioned whether the benefit gained by the exemption is commensurate with the provision of charity care given to the community.\textsuperscript{16} Consequently, the political pressure appears to be having an impact because a recent national report indicated that not-for-profit hospitals have been reporting less bad-debt and have been dedicating a greater percentage of their revenue towards charity care programs.\textsuperscript{17} Nevertheless, it should be noted that neither the federal or state tax codes have been amended to quantify the exact amount of a not-for-profit hospital’s revenue that must be directed towards uncompensated care in order to maintain a tax exemption.\textsuperscript{18}

Despite the breadth of coverage regarding the history of the not-for-profit hospital tax exemption at the federal and state levels, for the sake of completeness, this article will first explore the federal and state tests used to determine how a hospital qualifies for charitable tax-exempt status. Then, this article will shift to its primary purpose, which is to discuss the ongoing case of \textit{Provena Covenant Medical Center v. Illinois Department of Revenue} where the Illinois Department of Revenue initially removed Provena Covenant Medical Center’s property tax charitable exemption\textsuperscript{19} but was then subsequently reversed by the Circuit Court of the Seventh Judicial District in Sangamon County, Illinois.\textsuperscript{20} The ongoing legal challenge between the State of Illinois and Provena provides an excellent illustration of the flaws in the \textit{Methodist} test adopted by the Illinois Supreme Court in the case \textit{Methodist Old People’s Home v. Korzen},

\begin{itemize}
\item \textsuperscript{15} See generally Press Release, Illinois Attorney General Lisa Madigan, Madigan Proposes Two Bills to Hold Hospitals Accountable for Charity Care: Stop Unfair Billing and Collection Practices (Jan. 23, 2006), http://www.illinoisattorneygeneral.gov/pressroom/2006_01/20060123.html; see also Kane, \textit{Tax-Exempt Hospitals}, at 459-60 (highlighting the ongoing oversight of not-for-profit hospitals by United States Senator Charles Grassley and United States Congressman Bill Thomas questioning the value and possible reconsideration of the not-for-profit hospital tax exemption).
\item \textsuperscript{16} Id.
\item \textsuperscript{17} \textit{Hospitals Writing Off Less Bad Debt: Charity Up Slightly}, 21 No. 2 HEALTH CARE COLLECTOR 1 (July 2007).
\item \textsuperscript{19} Department of Revenue of the State of Illinois v. Provena Covenant Medical Center, 04-PT-0014, available at http://www.revenue.state.il.us/legalinformation/hearings/pt/pt06-26.pdf.
\item \textsuperscript{20} Order Granting Mot. J. (Aug. 8, 2007).
\end{itemize}
which provides the current test used in the courts to determine whether a not-for-profit entity uses its property exclusively for charitable purposes and is entitled to a property tax-exemption.\textsuperscript{21} This comment will demonstrate that the \textit{Methodist} test must be substantially revised to meet the realities of the modern-day not-for-profit hospital.

II. History & Background Information

A. Federal Law

Not-for-profit hospitals are provided with an exemption from federal taxation in the Internal Revenue Code (“Code”) at Sections 501(a) and 501(c)(3).\textsuperscript{22} Under Section 501(a), the Code provides that “[a]n organization described in subsection (c) . . . shall be exempt from taxation under this subtitle.”\textsuperscript{23} Section 501(c)(3) provides that tax exempt entities are “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . [and have] no part of the net earnings of which inures to the benefit of any private shareholder or individual.”\textsuperscript{24} In addition to the Code, federal regulation expands on this language and highlights that an entity claiming tax exempt status must “be both organized and operated exclusively for one or more of the permissible exempt purposes.”\textsuperscript{25}

The language of the Code does not specifically mention not-for-profit hospitals as an exempt entity.\textsuperscript{26} However, experts in federal tax law state that “the specific language or words that place a [not-for-profit] hospital within the ambit of I.R.C. Section 501(c)(3) is the phrase

\textsuperscript{21} Methodist Old People’s Home v. Korzen, 233 N.E.2d 537 (Ill. 1968).
\textsuperscript{25} Treas. Reg. § 1.501(c)(3)-1(a) (2004).
‘organized exclusively for . . . charitable . . . purposes.’”  

27 Aitsebaomo, The Nonprofit Hospital, supra note 1, at 80-81.


31 Id.
were limited to situations where the hospital “lacked a substantial charity care program.”32 However, it was not uncommon for I.R.S. auditors to deny exemptions when the amount of funding for a charity care program was less than 5 percent of a hospital’s revenue despite the fact the ruling called for a complete examination of the hospital’s efforts.33 Thus, Revenue Ruling 56-185 was a broad standard that recognized a hospital could provide other community services but in practice agents tended to focus on charity care programs.34 Nevertheless, the 1956 ruling was a broadly written standard that did recognize a not-for-profit hospital’s efforts beyond established charity care programs; therefore, it was not difficult to achieve tax exemption under this ruling.

Thirteen years later, the I.R.S. issued Revenue Ruling 69-545, which modified the standard used in Revenue Ruling 56-185, and remains the principle standard used today by the I.R.S. to determine whether or not a not-for-profit hospital will qualify for the federal tax exemption (this ruling is referred to as the “Community Benefit Standard”).35 Under this ruling, the I.R.S. tests whether the not-for-profit hospital: (1) has a governing board with community membership where no person achieves personal financial gain from the hospital nor are any private interests being served, (2) promotes health, one of the purposes of charity, that is broad enough to benefit the community by providing care for all people in the community able to pay the cost of their care and by having a generally accessible emergency room, (3) maintains an open medical staff with privileges being granted to qualified physicians, and (4) applies profits only towards the furtherance of the hospital’s exempt purposes.36 In addition, the ruling provides

32 Colombo, Hospital Property Tax Exemption, supra note 29, at 497.
33 Id.
34 Id.
that an entity is not “organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest.”

The ruling essentially “abandoned charity care as the touchstone of exemption at the federal level,” recognizing that not-for-profit hospitals would have reduced amounts of low-income patients due to Medicare and Medicaid and, as a result, these hospitals would need flexibility to show its charitable mission and retain an exemption under 501(c)(3).

Under the 1969 ruling, the I.R.S. adopted a broader test to determine if a not-for-profit hospital was operating for charitable purposes because it moved away from mandating that a charity care program was essential for tax exemption. Similar to the 1956 ruling, the modified ruling recognized that not-for-profit hospitals could provide a community benefit even if a charity care program was minimal; thus, the modern federal test correctly examines the aggregate effort that a not-for-profit hospital makes for promoting the health of the community it serves.

By 1983 the I.R.S. recognized that the requirement of an emergency room was precluding specialty hospitals from receiving tax-exempt status because many of these institutions did not have emergency room services available. In response, the I.R.S. issued Revenue Ruling 83-157 which provided that hospitals without emergency facilities could remain exempt from taxation as long as the hospital remained in compliance with all of the remaining requirements of the 1969 ruling. The removal of the requirement for an emergency room was another common sense approach adopted by the I.R.S. because it allowed specialty hospitals, such as cancer centers, to

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37 Id.
38 Id.; see also Colombo, Hospital Property Tax Exemption, supra note 29, at 497.
39 See, e.g., Colombo, Hospital Property Tax Exemption, supra note 29, at 497.
40 Aitsebaomo, The Nonprofit Hospital, supra note 1, at 89-90.
achieve tax-exempt status.\textsuperscript{42} This action was clearly an expansion of the community benefits test and removed more hospitals from taxpaying status, an action that surely aggravated local taxing bodies due to declining revenue from property owned by not-for-profit institutions.

Accounting for the considerations provided above, the federal test for charity care has been summarized as follows:

\begin{quote}
[T]he federal test for exempting health care providers requires an exempt provider to have a community board, treat Medicare and Medicaid patients along with privately insured patients (an “open door” policy), and engage in some significant community ‘plus’ such as community outreach programs, health education, health research, and/or charity care (of which free emergency room care may be a part). Moreover, despite recent emphasis in the case law on charity care as the biggest “plus” factor in the “health care plus” formulation of the community benefit test, there is still no absolute requirement in federal law that a hospital engage in free care for the poor . . . in order to be exempt under federal law.\textsuperscript{43}
\end{quote}

\textbf{B. Illinois Law}

The State of Illinois has an independent method for granting a not-for-profit hospital an exemption from state taxation; as a result, the granting of a federal exemption is not dispositive of the State’s determination.\textsuperscript{44} In Illinois, the question of whether a not-for-profit hospital will be granted a tax exemption begins with an examination of the “controlling principles” in the state constitution, specifically Article IX, Section 6 of the 1970 Illinois Constitution.\textsuperscript{45} The relevant language states “[t]he General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.”\textsuperscript{46}

\begin{footnotes}
\item[42] Aitebaomo, \textit{The Nonprofit Hospital}, supra note 1, at 89-90.
\item[43] Colombo, \textit{Hospital Property Tax Exemption}, supra note 29, at 498.
\item[44] Eden Retirement Ctr. v. Ill. Dep’t of Revenue, 821 N.E.2d 240, 250 (Ill. 2004).
\item[45] \textit{Id.} at 247.
\item[46] \textit{I.L. CONST. ART IX, § 6}; \textit{see also} Eden Retirement Ctr. v. Ill. Dep’t of Revenue, 821 N.E.2d 240, 247 (Ill. 2004) (wherein the Illinois Supreme Court noted that the language used in this Article was a simple rephrasing of the exemption provision from the replaced 1870 Constitution and that any cases based on this section are “equally relevant” to the 1970 Constitution).
\end{footnotes}
Therefore, two questions are raised by this language: (1) whether a not-for-profit hospital is considered an entity that is organized for “charitable purposes” and (2) what is meant by property “exclusively used” for charitable purposes.

The language of the Illinois Constitution clearly does not require the legislature to grant any tax exemptions; the only exemptions given are those which are provided by an express act of the legislature.47 Therefore, it is also necessary to ascertain what state laws explicitly require for a not-for-profit hospital to secure tax exemptions. The exemption from property taxes for organizations existing for a charitable purpose is found in the Illinois Property Tax Code which provides for an exemption “for property ‘actually and exclusively used for charitable or beneficent purposes’ by institutions of public charity.”48 To ultimately be granted a tax exemption, a not-for-profit hospital must prove that its property met the standards set by the state constitution and state law.49 In order to meet both standards, two elements must be satisfied: the ownership of the property must be by a charitable organization and the property must be used exclusively for charitable purposes.50

Three landmark cases were decided in the early 1900’s and set forth the precedent that not-for-profit hospitals were “charitable organizations” as defined under the constitution and state law.51 In the controlling case of *Sisters of the Third Order v. Board of Review of Peoria*

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47 *Eden*, 821 N.E.2d at 247.

49 Eden Retirement Ctr. v. Ill. Dep’t of Revenue, 821 N.E.2d 240, 249 (Ill. 2004)  
50 Chicago Patrolmen’s Assn v. Ill. Dep’t of Revenue, 664 N.E.2d 52, 55-56 (Ill. 1996).  
51 Colombo, *Hospital Property Tax Exemption, supra* note 29, at 506; *see also* Sisters of the Third Order v. Bd. of Review, 83 N.E. 272 (Ill. 1907) (holding that not-for-profit hospital in question was an institution of public charity and not used for profit); Bd. of Review v. Provident Hosp. & Training Sch. Assn., 84 N.E. 216 (Ill. 1908) (finding the facts of the case indistinguishable from the Sisters of the Third Order and held the hospital exempt from taxation); German Hosp. v. Bd. of Review, 84 N.E. 215 (Ill. 1908) (comparing the similarity of the hospitals in the Sister’s case, held that the present hospital was a public charity and not liable to taxation).
County, the Illinois Supreme Court held that not-for-profit charity hospitals would be deemed a charitable organization and retain a tax exemption even if some individuals were charged for medical care as long as anyone who presented a need for uncompensated care was given such care and the hospital did not discriminate among the varying types of patients.\textsuperscript{52} The holding in this case is important because it recognizes that a not-for-profit hospital can accept patients that pay for their own care, even profit from them, without jeopardizing their tax exemption if the hospital also provides care for the poor. But, it is also important because the language of the decision does not place a ceiling on how much uncompensated care must be provided.\textsuperscript{53}

The question of whether property was exclusively used for charitable purposes was addressed in the 1968 landmark case \textit{Methodist Old People’s Home v. Korzen}.\textsuperscript{54} In this case, the court addressed whether the property of a home for senior citizens was exempt from taxation under the constitution and state law.\textsuperscript{55} Methodist Old People’s Home was a not-for-profit organization that operated senior housing for persons who were able to pay a large entry fee and monthly rent.\textsuperscript{56} The home did not have a policy allowing the admission of persons who could not pay the fees, nor did the home provide for residents who became insolvent during their residency.\textsuperscript{57} The City of Evanston, Illinois challenged the Methodist Home’s tax exemption, claiming the home was not a charitable organization, and declared the property taxable.\textsuperscript{58} Methodist filed a suit requesting a declaratory judgment finding the home exempt from taxation.\textsuperscript{59} Methodist’s bylaws, which precluded entry to low-income seniors and did not provide for resident retention in the event of financial insolvency, provided the basis for Evanston’s
claim that the home was not used exclusively for charitable purposes. The Methodist argued that homes serving the elderly population were clearly exempt from property taxation pursuant to Section 19.7 of the Revenue Act of 1939 which provided an exemption for “all property of old people’s homes, when all property is actually and exclusively used for such charitable or beneficent purposes, and not . . . used with a view to profit.” To make this determination, the court developed a six-factor test to determine whether the home’s tax exempt status could be retained.

The Methodist test stated that the following must be met:

1. The property in question must be used “for the benefit of an indefinite number of persons . . . for their general welfare – or in some way reducing the burdens of government;
2. The charitable institution must have the “distinctive characteristics” of a charitable institution, thus, it has no capital, capital stock or shareholders, and earns no profits or dividends;
3. It must derive its funds mainly from public and private charity;
4. The institution must “dispense charity to all who need and apply for it;
5. The institution “does not appear to place obstacles of any character in the way of those who need and would use” the charitable services; and
6. The institution has the burden of proving that its property actually and factually is so used. [T]he term ‘exclusively used’ means the primary purpose for which property is used and not any secondary or incidental purpose.

The court applied the test to the facts of the case and held that the Methodist Home’s bylaws, which did not provide for the acceptance or retention of residents who were insolvent or sick, were not consistent with a charitable purpose. The result of this decision meant the property was not used exclusively for charitable purposes within the meaning of the constitution; therefore, the Methodist Home was not entitled to a property tax exemption.

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60 Methodist, 233 N.E.2d at 538.
61 Id. at 540.
62 Id. at 541.
63 Id. at 541-42.
64 Id. at 542-43.
65 Id. at 543.
Nearly forty years later, the *Methodist* test remains the state’s method for determining whether an institution is entitled to an exemption from state property taxation.\(^{66}\) The test remains even though it was adopted when the federal programs Medicare and Medicaid were just beginning (both becoming law in 1965) and have evolved extensively over the last four decades.\(^{67}\) Furthermore, the provision of health care in the United States has changed dramatically since the *Methodist* decision, especially the delivery of care in a hospital setting. Nevertheless, no Illinois court since 1968 has ever questioned whether the test was still applicable to the modern not-for-profit healthcare provider.

Another significant result of the *Methodist* holding is that it moved in a remarkably different direction than the federal Community Benefits Test that would be adopted just one year later in 1969.\(^{68}\) On the one hand, the federal government moved to a broader test: a not-for-profit hospital could show how its efforts generally benefited the community, that it accepted Medicare and Medicaid patients, and provided emergency room services; it was not essential to offer a charity care program.\(^{69}\) Conversely, Illinois adopted the antithesis of the Community Benefits Test when the Illinois Supreme Court created its detailed checklist in *Methodist* that focused on the specific activities of the provider including an analysis to evaluate how much free or reduced-cost care was provided to the poor.\(^{70}\) The disparate directions chosen by the federal government and Illinois meant that not-for-profit hospitals would have a system that required

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\(^{66}\) *See* Eden Retirement Ctr. v. Ill. Dep’t of Revenue, 821 N.E.2d 240, 248 (Ill. 2004).


\(^{70}\) *See Methodist* 233 N.E.2d at 542-43.
different requirements for federal and state tax exemptions. The variance created the possibility that a not-for-profit hospital could qualify for a federal tax exemption but fail to qualify for a state or local property tax.

Beginning in the late 1980’s, Illinois courts began to address issues related specifically to charity care programs operated by not-for-profit healthcare providers. Three different Illinois appellate court districts addressed cases regarding charity care and each decision added additional burdens upon not-for-profit hospitals and healthcare providers trying to qualify for tax exemptions. In every case, the court used the Methodist test to decide the fate of the entity’s tax exemption.

The first case was *Highland Park Hospital v. Illinois Department of Revenue*. In this litigation, the Second District Court of Appeals used the six-factor Methodist test to evaluate whether a hospital was able to retain its tax exempt status. In *Highland Park*, the court addressed a situation where Highland Park Hospital sought an exemption for a portion of one of its buildings that was being used as a clinic. Litigation ensued when a decision was made by the Illinois Department of Revenue to deny a partial tax exemption granted by the Lake County Board of Review. The decision was appealed by the hospital and the circuit court granted administrative review; however, in its holding the circuit court affirmed the Department’s

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72 Id.
74 Id.
76 Id. at 1333.
77 Id. at 1336.
78 Id.
decision. The Court of Appeals affirmed the circuit court’s decision and held that Highland Park Hospital violated the fourth component of the Methodist test noting that all of the clinic’s patients were billed despite payor status, a charity care program was never mentioned to patients at the onset of care, nor did the facility dispense charity care for all people who needed or applied for such care. Furthermore, the Highland Park court held that uncollectible bills (bad-debt) could not constitute charity care. Consequently, the court ruled the hospital was not allowed to treat the clinic as a tax exempt entity due to its billing practices.

The court’s intensive examination of the hospital’s charity care program is what makes the holding in Highland Park significant. This case provides an illustration on how the Second Circuit Appellate Court applied the Methodist test and how a court can find for the removal of a not-for-profit hospital’s property tax exemption. The case is also noteworthy because it is a leading example of a court finding that uncollectible debt could not count as charitable care. The court’s holding sent a clear message - a provider cannot intend to charge for health care services at the moment care is provided but then reclassify the service as charitable only because the patient ultimately did not pay. Based on this holding, not-for-profit hospitals needed to do a better job of screening potential charity care patients at the earliest possible moment.

The First District Court of Appeals entered the discussion when it addressed the charity care issue in 1993 upon hearing the case Alivio Medical Center v. Illinois Department of Revenue. In Alivio, the court examined the medical center’s billing practices that required all patients to be billed up front and then claimed all unrecoverable costs as charity care. The

79 Id.
80 Id. at 1336.
81 Highland Park Hosp., 507 N.E.2d at 1336.
82 Id.
83 Id.
85 Id. at 191.
Illinois Department of Revenue agreed with the findings of an administrative law judge and held that Alivio was not a charity because its billing practices violated the *Methodist* test. The First District, also applying the *Methodist* test, upheld the ruling of the state agency and noted that the medical center failed several of the elements of the *Methodist* test. This case added two more holdings that are noteworthy. First, the Appellate court held that, according to *German Hospital v. Board of Review of Cook County*, a charity hospital cannot make a profit on charity care patients who are receiving reduced cost care. Second, the court held that “writing off bad debt is not tantamount to providing charity” and the amount of money that was lost from uncollectible portions of bills could not be counted towards charity care totals. This court’s holding began a trend among Illinois appellate courts, that is, not-for-profit healthcare providers could not count uncollectible debt towards charity care totals when attempting to justify the receipt of a property tax exemption.

In 1998, the Third District Court of Appeals addressed the question of whether a medical center should be entitled to a charitable exemption from property taxes for clinics which provided free care when it heard the case *Riverside Medical Center v. Illinois Department of Revenue*. In this case, the Department of Revenue and the Kankakee County Board of Review challenged the circuit court’s ruling that granted Riverside Medical Center a tax exemption. On appeal, the issue turned upon questionable billing practices again, and similarly to Alivio Medical Center’s billing practices, Riverside provided a bill to all of its patients up front.

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86 *Id.*
87 *Id.* at 192.
88 *Id.* (citing *German Hosp. v. Bd. of Review of Cook County*, 845 N.E. 215 (1908)) (As paraphrased by the Alivio court, *German Hospital* held a charitable hospital which can be tax exempt is one that “treats all of its patients alike; charges no fee where the patient is unable to pay; charges a graduated fee according to its ability to pay but in no case makes a profit; is open to all without distinction as to race, religion, or color; and is maintained by voluntary contributions of charitably inclined persons”).
89 *Id.* at 193.
91 *Id.* at 362.
not advertise that a charity care program was available, nor were any clients screened for potential usage of Riverside’s charity care program.\textsuperscript{92} Furthermore, the court examined the facts related to the third component of the \textit{Methodist} test, noted that 97 percent of Riverside’s revenues came from patient billings, and highlighted that only 0.05 percent of its 1998 revenue was generated from charitable contributions.\textsuperscript{93} The appellate court held the insignificant amount of charitable contributions was not adequate to demonstrate the center was operating for charitable purposes.\textsuperscript{94} This was an important development because the court was now exploring exactly how much money a not-for-profit provider raised from charitable contributions and it never defined what amount of fundraising would be adequate.

The \textit{Riverside} case also included two other important developments. First, the court held Riverside Medical Center’s reservation of three percent of its budget for charity care was inadequate under the fourth factor in the \textit{Methodist} test because the level of charity care was minimal when compared to the overall revenues of the center.\textsuperscript{95} But, the holding failed to address what minimum percentage of revenue was required to be directed towards charity care to maintain a tax exemption – it simply stated that three percent was not enough. Thus, the court began to move towards the position that in order to achieve the tax exemption, a hospital would have to demonstrate that it offered charity care to a substantial amount of patients.

Second, the court’s holding is significant because it held that shortfalls from treating government sponsored clients in Medicaid and Medicare could not be counted as charity care.\textsuperscript{96} The court failed to recognize that when a not-for-profit hospital accepts a Medicare or Medicaid patient, just as when the hospital instantly knows a patient will need charity care coverage, the

\textsuperscript{92} Id. at 364-65.
\textsuperscript{93} Id. at 365.
\textsuperscript{94} Id.
\textsuperscript{95} Id. at 366-67.
\textsuperscript{96} Riverside Med. Ctr., 795 N.E.2d at 367.
hospital has voluntarily absorbed a financial loss from the onset of care. The only difference between these two categories is that the federal government bears some of the costs for the Medicare or Medicaid patient. In either case, the hospital takes a financial loss by accepting the patient. Instead, the court in Riverside compared Medicare and Medicaid to other large insurers and decided that the hospital’s “negotiated” rate for reimbursement was accepted to ensure a patient stream and not in pursuit of its charitable mission and would not be counted towards charity care totals.\(^\text{97}\) The court never investigated whether the reimbursement rate for government-sponsored programs was comparable to other insurance payors; nor did the court recognize that not-for-profit hospitals do not “negotiate” a reimbursement rate with the government.

The Illinois Supreme Court and various appellate courts continue to use the forty-year-old *Methodist* test to determine whether or not a not-for-profit provider’s tax exemption is justifiable. Since the *Methodist* test was created, government-sponsored health care programs grew to offer more services to more people.\(^\text{98}\) The cost of providing health care has risen dramatically; in 2004, national health expenditures were approximately $1.9 trillion, representing sixteen percent of the Gross Domestic Product, an amount three times larger than the industry’s share in 1960.\(^\text{99}\) The time has come to determine whether the *Methodist* test is the correct analysis to determine whether a modern not-for-profit hospital meets the definition of charitable


purpose. The ongoing case, *Provena Covenant Medical Center v. Illinois Department of Revenue*, will provide the perfect opportunity for the court to confront this question.\(^{100}\)

C. Provena

As the charity care debate resurfaced, it caught the attention of the Champaign County Board of Review (“County Board of Review”).\(^{101}\) Under Illinois law, when an organization applies for a property tax exemption, it must apply for the exemption to the County Board of Review where the property is located.\(^{102}\) Furthermore, once an exemption is granted, it can removed by a process between the County Board of Review and the Illinois Department of Revenue.\(^{103}\) Illinois law provides that a tax exemption challenge must be heard by the Department of Revenue before any judicial action is allowed.\(^{104}\)

In 2004, the County Board of Review examined two local hospitals in the Champaign-Urbana area: Provena Covenant Medical Center (“Provena”) and Carle Hospital.\(^{105}\) Upon completion of its review, the Board referred its case against Provena to the Illinois Department of Revenue (“Revenue”) and recommended removal of Provena’s charitable purposes tax exemption on several of the hospital’s properties.\(^{106}\) The County Board of Review recommended the removal of Provena’s tax exemption based on evidence it determined was inconsistent with a

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\(^{100}\) Bruce Japsen, *State to Appeal Ruling on Provena*, CHICAGO TRIBUNE, Sept. 8, 2007, at 1 (noting that the Circuit Court’s restoration of Provena Covenant Medical Center’s tax exempt status, that was removed by the Illinois Department of Revenue at the request of the Champaign County Board of Review, will be appealed to the Illinois Appellate Court, Fourth District, by Illinois Attorney General Lisa Madigan) [hereinafter Japsen, *Provena Appeal*].

\(^{101}\) Champaign County Board of Review Recommendation to the Illinois Department of Revenue to remove Provena Covenant Medical Center’s tax exempt status, http://www.co.champaign.il.us/BOR/PROVENA.pdf [hereinafter County Board of Review Recommendation].

\(^{102}\) See 35 ILL. COMP. STAT. ANN. 200/15-5 (West 2006).

\(^{103}\) See 35 ILL. COMP. STAT. ANN. 200/15-25 (West 2006); ILL. ADM. CODE tit. 86 § 110.140 (2006).

\(^{104}\) See 35 ILL. COMP. STAT. ANN. 200/8-35 (West 2006).


\(^{106}\) County Board of Review Recommendation, supra note 101.
not-for-profit organization. For example, the report indicated: (1) the hospital used many outside, for-profit entities to provide services within the hospital, (2) information contained within the hospital’s community benefits report did not demonstrate an adequate amount of charity care, (3) financial statements requested by the Board and provided by the hospital were for the entire hospital network, not the specific hospital in question, (4) the hospital’s payment agreement and surrounding policies on charity care included debt collection practices, (5) and how monies were transferred between Provena’s not-for-profit and for-profit entities. The Board determined that the evidence, when examined under the requirements of the Illinois Property Tax Code, existing state case law, and prior Revenue decisions, led to the conclusion that Provena was not entitled to its property tax exemption.

In an initial opinion issued in 2006, an Administrative Law Judge (“ALJ”) found that Provena could retain its tax exempt status. However, exercising a seldom used power, Brian Hamer, the Director of the Illinois Department of Revenue, overruled the position of the ALJ and removed the tax exempt status from Provena. In response to the Director’s action, Provena appealed to the circuit court for judicial review and the case was heard by the court in July 2007. At the circuit court level in Sangamon County, Seventh Judicial Circuit, trial Judge Patrick Londrigan ruled in favor of Provena and held that its tax exempt status should be

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107 Id.
108 Id.
109 Id.
112 Order Granting Mot. J. (Aug. 8, 2007); see also Japsen, Provena Appeal supra note 100, at 1.
reinstated.\textsuperscript{113} In his August 8, 2007 ruling, Judge Londrigan held that “the uncontested evidence,” as found by the ALJ, “established by clear and convincing proof” that Provena met the “relevant factors” for determining whether the not-for-profit hospital could retain its tax-exempt status.\textsuperscript{114} Judge Londrigan’s ruling did not articulate any further reasoning of how or why Provena met the factors of the test.\textsuperscript{115}

In a statement following Judge Londrigan’s ruling, Illinois Attorney General Lisa Madigan and Illinois Department of Revenue Director Brian Hamer, both vowed to take the circuit court’s decision to the Illinois Appellate Court.\textsuperscript{116} The President and CEO of the Provena hospital system also vowed in the press to take this case as far as it can go to see that the tax exemption can be reinstated.\textsuperscript{117} On December 4, 2007, Attorney General Madigan filed a brief with the Illinois Appellate Court, Fourth District, and thereby officially started the appeal of the circuit court’s ruling.\textsuperscript{118} As of the writing of this article, the plaintiff-appellee had not filed a brief with the appellate court.

There are several items at issue in the Provena case that are raised in Attorney General Madigan’s brief which directly relate to Provena’s tax exempt status. First, the Attorney General’s brief concludes that Provena failed to prove by clear and convincing evidence that it was a charitable organization that used its property “exclusively” for charitable purposes; therefore, Provena was not entitled to a charitable purposes tax exemption under the Illinois

\textsuperscript{114}Order Granting Mot. J. (Aug. 8, 2007).
\textsuperscript{115}Id.
\textsuperscript{117}Id.
Constitution and the Property Tax Code. The Attorney General reached this conclusion by applying the *Methodist* test; a test that was reaffirmed by the Illinois Supreme Court in *Eden Retirement Center v. Illinois Department of Revenue.* The brief asserts that Provena failed all but one of the elements of the test.

The brief highlights that the first element of the *Methodist* test was not met because Provena did not provide benefits to an indeterminate number of people in some way that confers a gift and reduces the burdens on government. To support this contention, the brief first notes that charity is a gift and as a gift the recipient must not incur costs. The Attorney General’s brief explained that Provena’s limited charity care policy was not a “gift” because expecting payment from patients does not equate to gift giving. In support of this assertion, the Attorney General points out that 0.7 percent of Provena’s 2002 revenue ($831,724 spent compared to $113 million in income) was spent on charity care and that such a low percentage was “a pretense of charity” and could not justify an exemption. Furthermore, Provena sent individuals who were given discounted care to collection agencies, pressed many people with legal action, and/or confronted them with other aggressive tactics. This action demonstrated that the hospital did not make a gift since it expected payment from almost all people who received reduced-cost care.

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119 *Id.* at 7-8.
120 *Id.* at 9; *see also* Eden Ret. Ctr. v. Ill. Dep’t of Revenue, 821 N.E.2d 240 (Ill. 2004).
121 *Id.*
122 *Id.* at 10.
123 *Id.*
124 *Brief of Defendant-Appellant, supra* note 118, at 10.
125 *Id.* at 10-11.
126 *Id.*
127 *Id.*
Second, the brief also notes that the first element was not met because Provena failed to show that it could provide charity care to “an indefinite number of individuals.”\textsuperscript{128} The Attorney General asserted that Provena claimed it “provided care to the extent that it [was] financially able” and that its ability to give uncompensated care was limited due to other financial imperatives proved that the hospital could not offer an indefinite amount of charity.\textsuperscript{129} Under this part of the argument, the Attorney General appears to infer that a not-for-profit hospital must offer unlimited charity care. If so, this argument is unrealistic because not-for-profit hospitals should not be required to shoulder the burden of the entire uninsured population, only the number of patients it can afford to support.

Finally, the Attorney General argues that the first element of the \textit{Methodist} test was not met by Provena because the hospital could not show it reduced a burden on the government.\textsuperscript{130} To support this position, the brief infers that the amount of the property tax must be equal to the amount of charity care provided.\textsuperscript{131} The brief reports that Provena’s property tax relief totaled $1.1 million but only $831,724 was provided in charity care.\textsuperscript{132} However, the brief narrowly focuses on simply the property tax amount and does not account for any other relief that Provena has given the government such as the financial losses incurred from voluntarily treating Medicare and Medicaid patients.

The brief does not comment on the second element of the \textit{Methodist} test. On the third element of the test, the brief contends that Provena’s funding was not derived mainly from private and public charity.\textsuperscript{133} This assertion is supported by Provena only raising $6,938 in

\begin{flushright}
\textsuperscript{128} \textit{Id.} at 11.
\textsuperscript{129} \textit{Id.} at 11-12.
\textsuperscript{130} \textit{Id.} at 12.
\textsuperscript{131} \textit{Brief of Defendant-Appellant, supra} note 118, at 12.
\textsuperscript{132} \textit{Id.}
\textsuperscript{133} \textit{Id.} at 15.
\end{flushright}
charitable contributions; that is, only 0.006 percent of its revenue came from charitable contributions with 98.7 percent coming from patient billings.\textsuperscript{134} The brief does not make any comment regarding how difficult it is for not-for-profit hospitals to fundraise in the United States today.\textsuperscript{135}

The brief also argues that Provena did not dispense charity to all patients who need and apply for it, as required by the fourth element of the \textit{Methodist} test.\textsuperscript{136} The Attorney General argues the facts show many more patients needed charity care than Provena actually treated.\textsuperscript{137} Further, the brief highlights that Provena regarded all charity care cases “as debtors” and not as a true charity care patients.\textsuperscript{138} In fact, the brief points out that in many cases where care was discounted by 25 or 50 percent, the hospital was still able to recover the full cost of providing that care since the hospital simply discounted marked up charges.\textsuperscript{139} Because Provena authorized collection efforts against the very patients it deemed as having financial challenges, the brief asserts that the hospital stood “in stark contrast” to dispensing charity to all those in need.\textsuperscript{140} Not-for-profit hospitals will find this argument difficult to overcome because it is hard to argue that charity care should not be based on the hospital’s actual costs versus a usual and customary billing charge. It appears reasonable to base the cost of care on the amount that it actually costs a hospital to provide the care and not a higher cost figure.

\begin{itemize}
\item[$\textsuperscript{134}$] Id.
\item[$\textsuperscript{135}$] \textit{See generally} Gary A. Tobin & Aryeh K. Weinberg, \textit{Mega-Gifts in American Philanthropy: Giving Patterns 2001-2003}, Report by the Institute for Jewish and Community Research, at 6-9 (showing that health and medicine causes received only 19 percent of overall contributions, being the second largest contribution group, but noting higher education as the dominant category for giving, receiving three-times the amount given to all health care causes); \textit{available at} http://www.jewishresearch.org/PDFs/MegaGift.Web.07.pdf.
\item[$\textsuperscript{136}$] Id.
\item[$\textsuperscript{137}$] Id. at note 118, at 16.
\item[$\textsuperscript{138}$] Id.
\item[$\textsuperscript{139}$] Id. at 19.
\item[$\textsuperscript{140}$] Id.
\end{itemize}
According to the brief, Provena failed the fifth element of the *Methodist* test because the hospital placed obstacles in the way of those in need of charity care.\(^1\) To support this argument, the Attorney General noted that Provena did not provide notice of its charity care policy to patients in need, the application was cumbersome, and the charity care program was viewed as a “last resort” under the hospital’s policy.\(^2\) In short, these facts resulted in the Attorney General arguing that Provena’s policy was inadequate. From a policy perspective, this argument is a reasonable requirement to place on a not-for-profit hospital because providing charity openly is consistent with the mission of a not-for-profit healthcare provider.

Finally, the Attorney General’s brief finds that the sixth element of the *Methodist* test was not met by Provena because the hospital did not use its property exclusively for charitable purposes as required by the constitution and the Property Tax Code.\(^3\) In support of this argument, the brief again highlights that Provena only dedicated 0.7 percent of its revenue to charity care.\(^4\) Additionally, the brief points out that the Illinois appellate court held in the *Riverside* case that 3.0 percent of revenue was insufficient.\(^5\) The sixth element was also in jeopardy, according to the brief, because of Provena’s reliance on third parties to provide healthcare, many of which were for-profit providers, and did not adequately inform patients of the hospital’s charity care program.\(^6\)

The Attorney General argues that losses from Medicare and Medicaid should not count towards a charity care total; a holding supported by two appellate court districts in the *Riverside* and *Alivio Medical Center* cases.\(^7\) Other community benefits, such as donations to other not-

\(^{1}\) *Id.* at 20.
\(^{2}\) *Id.* at 20-22.
\(^{3}\) *Id.* at 23.
\(^{4}\) *Id.* at 24.
\(^{5}\) *Id.* at 25.
\(^{6}\) *Id.* at 26.
\(^{7}\) *Id.* at 26.
for-profits or support of behavioral health facilities and shelters, are also argued to be outside of countable charity care totals because they do not relate specifically to the property seeking the property tax exemption.\textsuperscript{148} The Attorney General’s position clearly contrasts with the federal Community Benefits Test that accounts for all activities that benefit the community when determining whether a not-for-profit hospital should receive a tax exemption, including Medicare, Medicaid, and other programs that benefit the community.

D. House Bill 5000 – 94\textsuperscript{th} General Assembly

Responding to the charity care issues presented in the Provena tax exemption challenge, Attorney General Lisa Madigan introduced legislation in early 2006 in an effort to set forth charity care standards in Illinois law.\textsuperscript{149} Ultimately, the legislature did not act upon Madigan’s proposal.\textsuperscript{150} The legislature’s decision to not act upon the charity care issue may impact the analysis given by the appellate court upon review of Provena’s case.\textsuperscript{151} In light of the legislature’s inaction, a court could draw the inference that the legislature was satisfied with the additional mandates being placed upon not-for-profit hospitals in the \textit{Highland Park, Alivio Medical Center}, and \textit{Riverside Medical Center} decisions.\textsuperscript{152} However, a court could also draw the inference that the legislature would not be upset if the court remodeled its approach for

\begin{footnotes}
\item[148] \textit{Id.} at 26-27.
\item[151] But see 210 ILL. COMP. STAT. ANN. 88/1 (West 2006) (passed by the 94\textsuperscript{th} General Assembly, H.B. 4999, becoming Public Act 94-0885, created the Fair Patient Billing Act which mandated standards for hospital debt collection practices).
\end{footnotes}
determining charitable status of a not-for-profit hospital because if the issue was a priority, the legislature would have acted.

House Bill 5000, as introduced, proposed a very detailed plan that not-for-profit hospitals would have been required to follow. First, not-for-profit hospitals would have been obligated to provide free care to any uninsured Illinois resident with a family income equal to or less than 150 percent of the Federal Poverty Level ("FPL"). Second, the legislation provided that any person with a family income between 150 percent and 250 percent FPL must be offered charity care on a sliding scale basis. The bill further provided that bills or invoices could not be sent to patients who qualified for full charity care. Next, the proposal created an obligation for not-for-profit hospitals to dedicate an amount of charity care no less than 8 percent of the hospital’s total costs as reported on its Medicaid cost reports which are required to be filed each year with the Illinois Department of Healthcare and Family Services (the State’s Medicaid agency). House Bill 5000 also provided that bad debt amounts are not allowed to be counted towards uncompensated or charity care amounts, only costs where the not-for-profit hospital does not expect payment from the onset, qualify as charitable amounts. However, directly conflicting

154 Id. at 5; see generally Annual Update of the HHS Poverty Guidelines, 72 Fed. Reg. 3147 (Jan. 24, 2007), available at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi (referring to the Federal Register wherein the federal Department of Healthcare and Human Services posted its 2007 Federal Poverty Guidelines that provided the poverty level for varying family sizes. To determine Madigan’s minimum level for full charity care funding, the analysis would involve a determination of the potential patient’s family size, finding that annual dollar figure on the appropriate chart, that is for all 48 contiguous states or Alaska or Hawaii, and then multiplying the family size dollar amount by 1.50. The dollar amount would indicate the charity care threshold. For example, a single mother with two children would be a family size of three. In Illinois, multiply $17,170 by 1.50 and this would result in a maximum family income of $25,755 that would qualify for full charity care under this proposal).
156 Id. at 5.
157 Id. at 5-6.
160 Id.
with the *Riverside* court decision examined previously in this article that did not allow losses from Medicaid and Medicare to be counted towards charity care,\(^{161}\) the proposed law allowed for losses incurred due to shortfalls in Medicaid (not Medicare) reimbursement to count towards an overall charity care amount.\(^ {162}\) As a final component, the legislation allowed contributions to community health centers to count towards charity care totals as well.\(^ {163}\)

House Bill 5000 was very important in the charity care fight because it could have provided a test even more specific than the test used in the *Methodist* case. *Methodist* or its progeny never specified an exact level of required charity care when compared to a hospital’s revenue. Under Attorney General Madigan’s legislation, at least eight percent of a hospital’s costs would have been required to be directed towards charity care whereas the most specific a court decision ever reached was in *Riverside Medical Center v. Illinois Department of Revenue* where it only held that 3 percent of revenue was insufficient.\(^ {164}\)

This legislation also obligated not-for-profit hospitals to provide charity care to all families making less than 250 percent of the FPL, but allowing for a sliding scale contribution for families above 150 percent of FPL.\(^ {165}\) The legislation was not clear if a hospital was required to continue providing charity care if it had reached the eight percent threshold but a need still existed for charity care patients, nor did the legislation account for hospitals that were operating under financial constraints. Although this legislation would have provided a bright line for not-for-profit hospitals to meet, it would have been even stricter than the *Methodist* test. Furthermore, mandating a minimum threshold of eight percent could have removed many not-

\(^{161}\) *Riverside Med. Ctr.*, 795 N.E.2d at 367.


\(^{163}\) Id. at 11; *but cf.* Brief of Defendant-Appellant, *supra* note 117, at 26-29 (where the Attorney General argues that Provena cannot claim nearly $1.3 million in funding given to community programs).


for-profit hospitals tax exemptions because hospitals with large losses, such as disproportionate share facilities that serve a significant amount of Medicaid patients, likely cannot commit such a large amount of revenue to charity care.

The legislation was notable because it also allowed a not-for-profit hospital to record financial losses incurred due to insufficient Medicaid reimbursements and count those losses towards charity care totals. This component of the legislation is in direct conflict with the appellate court in Riverside that clearly held Medicaid losses were not considered charity. In any future litigation, the court should note the opposing positions taken by the Attorney General. Oddly, the Attorney General’s brief in the Provena appeal argues that the Riverside standard should be used by the courts, yet her legislation proposed the opposite, that not-for-profit hospitals should be given credit for the amount of loss due to Medicaid shortfalls.

As previously indicated, House Bill 5000 was introduced but never made it through the Illinois legislature during the 94th General Assembly. Illinois is now in the 95th General Assembly and a similar proposal has not been presented to the legislature; therefore, one may infer that legislative action on this issue has been abandoned. Because the legislature has not made a clear statement of its position by passing legislation, the Illinois appellate court may not want to consider the contents of this legislation when it hears the Provena case. Nevertheless, the proposal could still be persuasive authority if the Methodist test is rewritten.

166 Id. at 366.
III. Why The Methodist Test Needs to be Dramatically Revised for Provena

A. The *Methodist Old People’s Home v. Korzen* six-factor test is outdated and should be given a dramatic revision.

A hospital that is not-for-profit in name only should not be given a tax exemption if it has abandoned its mission to serve the poor and cannot demonstrate a commitment to those who need but cannot afford health care services. The question is at what point would an individual hospital reach this point? The current analysis used by the Illinois courts is the six-factor test from the Illinois Supreme Court case *Methodist Old People’s Home v. Korzen* decided in 1968.\(^{169}\) This test, created nearly forty years ago, has not been changed in any way despite the fact that the provision of health care has changed remarkably in the last four decades. The test was created just three years after the beginning of the Medicare and Medicaid programs (programs aimed at providing comprehensive health care coverage for the poor and aging populations) and since the late 1960’s, these programs have gone through dramatic changes in the scope of covered services and the adequacy of provider reimbursement.\(^{170}\) Managing a hospital, in general, has become quite different as well over this same period of time and not-for-profit hospitals have copied many of the concepts started by their for-profit competitors. Many hospitals have privatized services such as lab work and administration of emergency departments.\(^{171}\) The advent of managed care affected the cost and provision of care at hospitals.\(^{172}\) To keep up with their for-profit competitors, not-for-profit hospitals found it


\(^{171}\) Brief for Illinois Hospital Association at 15, as Amici Curiae Supporting Plaintiff, Provena Covenant Medical Center v. Illinois Department of Revenue, No. 2006-MR-00597 (7th Cir., Sept. 2007).

\(^{172}\) Tufts Managed Care Institute, *A Brief History of Managed Care*, 1998, http://www.tmci.org/downloads/BriefHist.pdf (shortly after the Methodist decision, HMO’s boomed in the United States which increased from 30 in 1970 to 1,700 by 1976, enrolling 40 million people, and 90 percent of the
necessary to procure rapidly advancing and costly technology that created an even greater reliance on paying patients. Over this same period of time, charitable giving in the United States has been on the decline and not-for-profit organizations have been challenged to find new ways to secure the revenue necessary to continue functioning as a quality hospital. Because health care delivery has dramatically changed in the United States, the Methodist test must be revised to reflect the realities of providing health care in the modern not-for-profit hospital. This section analyzes each of the six-factors in the Methodist test in conjunction with the ongoing Provena case. Ultimately, this article will demonstrate that the Methodist test must be replaced with a new test that recognizes the not-for-profit hospital’s aggregate commitment to the community it serves.

Factor 1: The Property in Question Must be Used for the Benefit of an Indefinite Number of Persons in Some Way That Confers a Gift . . . or in Some Way Reduces the Burdens of Government.

The first factor of the Methodist test was generally thought to be uncontroversial because it was viewed to simply be the restatement of a principle from the federal community benefits test that required not-for-profit hospitals to have an open door policy in treating all patients able to pay for services. The federal government’s intention under this part of the community benefits test was to make sure that a hospital was not serving a limited class of beneficiaries and excluding other classes of people. Under this interpretation, the tax exemption would be in jeopardy if the hospital was discriminating against cancer patients or against minorities, not if the hospital was limiting the amount of patients who received free or reduced cost care. Without

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173 Aitsebaomo, The Nonprofit Hospital, supra note 1, at 91.
174 Colombo, Hospital Property Tax Exemption, supra note 29, at 519.
175 Id. at 510.
176 Aitsebaomo, The Nonprofit Hospital, supra note 1, at 84.
question, a not-for-profit hospital should have an open door policy for those able to pay in order to receive a tax exemption because it is consistent with providing charity to the entire community, a concept that should be central to a tax exemption analysis. In Provena Covenant Medical Center’s case, the hospital was never questioned about turning away those able to pay but, alternatively, it was the hospital’s practices towards charity care patients and bill collection practices towards those unable to pay that raised the tax exemption challenge.177

Despite the traditional approach taken regarding the first factor, Attorney General Lisa Madigan’s brief to the Illinois appellate court interpreted the first factor quite differently by analyzing the language in three components.178 The analysis in the Attorney General’s brief makes the first factor controversial in the Provena case. The brief separates the first element into an analysis of whether the not-for-profit hospital (1) dispensed charity as a gift, (2) used the property for an indefinite number of persons, and (3) in some way relieved a burden from the government.179

For the first part of the brief’s first element analysis, the Attorney General took the position that a gift is a benefit where the recipient does not incur any costs and that Provena’s operations were the antithesis of gift giving.180 It was argued that Provena could not have been providing a gift to its charity patients because the hospital expected payment from and pursued aggressive debt collection efforts against many charity care recipients.181 This analysis appears to be flawed because requiring a not-for-profit hospital to give the “gift” of charity care that does not cost the patient anything covers only one part of the charity care spectrum; that is, it only addresses uncompensated care. It does not account for sliding scale reductions in the hospital’s

177 County Board of Review Recommendation, supra note 101.
179 Id. at 10.
180 Id.
181 Id. at 10-11.
charges for those who are uninsured but have higher incomes than those people and families that would need completely free care. Under the Attorney General’s view, a hospital that reduces the cost of care by fifty percent is not giving a gift because the patient will still receive a bill for the other fifty percent of the service’s cost. Providing reduced-cost care should be credited towards a not-for-profit hospital’s charity care totals because the hospital still incurs a loss and the person was provided a service. Furthermore, a hospital cannot identify every person in need of relief prior to the delivery of care, nor does it account for patients who intended to pay but then later were unable to pay.

On the other hand, it does not appear to be consistent with the mission of a not-for-profit hospital to aggressively pursue unpaid charges because such tactics are not consistent with a mission to serve the poor in the community. Therefore, any test that a court would develop to determine whether a not-for-profit hospital is serving its charitable mission must take into account that reduced-cost care can be a gift and that voluntarily abandoning the collection of unpaid charges (bad-debt) also serves a community interest. The point in time where a hospital loses money should be irrelevant. What should matter is whether the loss was attributable to the provision of patient care and the patient was unable to pay.

The Attorney General also argues in her brief that the first element of the Methodist test requires the provision of benefits to an indeterminate number of individuals. The argument states that a charity care program must be offered to all those who need free or reduced-cost care. The contention made by the Attorney General is that Provena did not provide an indefinite amount of charity because the hospital provided only $831,724 to its charity care

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182 Id. 11-12.
183 Id.
program, an amount that equaled only 0.7 percent of the hospital’s overall revenue.\textsuperscript{184} This analysis is problematic because it focuses too narrowly upon the hospital’s charity care program and does not look at the overall benefits that the hospital provides to the community. For example, a not-for-profit hospital may have a large number of Medicaid patients for which its costs are not adequately reimbursed by the State of Illinois and the deficit created by this large population may preclude or severely limit how much uncompensated care can be provided. For the sake of argument, if a hospital had forty percent of its patients on Medicare and forty percent of its patients on Medicaid, it is quite likely that the hospital would have a large operational deficit. Should this hospital, in order to keep its tax exemption, also be required to have a charity care program despite the fact that 80 percent of its patients are on government-sponsored programs that do not provide adequate reimbursement? The answer is that such a hospital is clearly providing a community benefit and should be able to retain its tax exemption despite the fact it has a limited or non-existent charity care program.

In addition, a strict reading of the phrase “indefinite” could lead a court to infer that charity care must be offered to all who enter the hospital and need such care. However, this would not be a sound conclusion because not-for-profit hospitals should not be made to cover the costs of the entire uninsured population – a number which has reached nearly 1.8 million people in Illinois.\textsuperscript{185} Not-for-profit hospitals cannot bear the burden of the entire cost of the providing care to the uninsured. The courts should only look to see whether a not-for-profit hospital made a reasonable effort, within its financial ability, to provide free or reduced cost care to the uninsured.

\textsuperscript{184} Brief for Defendant-Appellant, \textit{supra} note 118, at 12.
\textsuperscript{185} \textsc{United States Census Bureau, Current Population Survey: Annual Social and Economic Supplement}, \url{http://pubdb3.census.gov/macro/032007/health/h06_000.htm}.\n
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The Methodist test’s first element, according to the Attorney General, also required that a not-for-profit hospital should in some way reduce the burdens on government to be able to justify the receipt of a property tax exemption. Her argument asserts that Provena failed to meet this goal because the hospital provided $831,724 towards charity care but saved $1.1 million due to its property tax exemption; inferring that a sufficient charity care program must, at a minimum, be equal in value to the amount of money saved to adequately relieve the government’s burden. Using this logic, the argument again only focuses on the hospital’s charity care program and fails to examine the overall efforts of the not-for-profit hospital. A more reasonable approach would be to have a court examine the total efforts that a not-for-profit hospital provides towards its community. After all, the test calls for the “reduction” and not the “elimination” of the government’s burden. Furthermore, no court opinion to date has ever held that the amount of the tax exemption must automatically be the amount dedicated to a charity care program. Nevertheless, it should be generally accepted that a clear mandate on not-for-profit hospitals should require the institution to relieve some burden from the government because this was a key component from the quid pro quo rationale that resulted in the initial creation of the charitable tax exemption.

In sum, any test that would be developed by the court to determine whether a not-for-profit hospital should receive a property tax exemption due to its charitable work, should include an examination into the hospital’s overall efforts to ascertain whether the provider had an open door policy that did not discriminate with admissions into the hospital, that aggressive debt collection practices were not in place, and whether the overall commitment to Medicaid,

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186 Id. at 12.
187 Id.

Medicare, charity care and losses due to bad-debt were in a reasonable balance that, in some way, reduced a burden on the government.

Factor 2: The Not-for-profit Hospital Must Have No Capital, Capital Stock or Shareholders, and Earns No Profits or Dividends.

The second factor of the Methodist test has never been considered controversial. This part of the test relates to the requirement that a not-for-profit have a specific corporate makeup designed under the framework of a not-for-profit, necessitating the establishment of a Board of Directors made up of community leaders that do not receive any financial gain from their activities related to the not-for-profit corporation. In analyzing whether an organization is truly set up as a charitable organization, one must look to see if either “private inurement” or a “private benefit” is being conferred in the business arrangement.

Private inurement occurs when some economic benefit is “siphoned off” to managers, Board members, or others and it is typically not subtle. One analysis on the topic provided examples of private inurement as below-market loans, use of property at below-market rent, a sale of property at below-market value, or inflated charges for services or property provided. The inurement must be realized by an involved party, such as seen in Lorain Avenue Clinic v. Commissioner, where the court held an arrangement that provided profits from lab services to physicians related to the clinic was a violation of the private inurement prohibition. However, when a tax exempt entity enters an arrangement with an unrelated party at “an arm’s length” from the exempt entity, private inurement will not be found. A “private benefit” occurs when

189 Id.
191 Colombo, Hospital Property Tax Exemption, supra note 29, at 498-99.
192 Id.
193 Id.
195 Colombo, Hospital Property Tax Exemption, supra note 29, at 500.
“exempt organizations . . . engage[e] in certain economic transactions with individuals outside the charitable class” . . . and “such individuals receive economic benefits that are more than incidentally necessary to the performance of the exempt organization’s charitable mission.”\footnote{196}

In its case against \textit{Provena}, the Illinois Department of Revenue Director found two instances that were troubling under this element but stopped short, due to lack of evidence, from holding that Provena violated the prohibition against private inurement.\footnote{197} The Director first looked at the privatized contract between the not-for-profit hospital and the for-profit corporation that operated the hospital’s emergency room.\footnote{198} The Director noted the insufficient evidence to assess whether the emergency room contractor was complying with any of Provena’s charitable guidelines.\footnote{199} Secondly, the Director’s opinion commented that Provena had several other contracts with for-profit third parties such as pharmacy services, clinical lab services, and laundry services, in fact, the opinion noted that a for-profit corporation owned by Provena was the entity providing the clinical lab services.\footnote{200} Nevertheless, Revenue’s decision found that the evidence was insufficient to make a finding that Provena was violating the private inurement provision and did not base its ultimate holding to rescind the tax exempt status on this argument.\footnote{201} As a result, Attorney General Madigan’s brief to the appellate court is silent on whether Provena violated this element of the test.\footnote{202}

Although Provena appears to have avoided the inurement question at present, the court should still focus on this component of the analysis in the future in order to determine whether

\footnote{196} Id.
\footnote{198} Id.
\footnote{199} Id. at 8.
\footnote{200} Id. at 7-8.
\footnote{201} Id. at 8.
\footnote{202} \textit{See generally} Brief of Defendant-Appellant, \textit{supra} note 118.
other not-for-profit hospitals are truly organized for charitable purposes and not just organized with a pretextual charitable mission with the only goal being the receipt of the tax exemption. It is a logical analysis to make when assessing the not-for-profit hospital’s overall commitment to being a charitable organization because it can be a measure of a hospital’s real commitment to serving a charitable purpose. If a not-for-profit hospital organized for-profit entities for all its services through subcontracts and the not-for-profit hospital was ultimately organized solely for the purpose of gaining the tax exemption, the court should revoke the hospital’s charitable status. A hospital that has a minimal commitment to Medicare and Medicaid, a limited charity care program, and is lacking in other commitments to the community should not meet the test for being a charitable hospital and should be precluded from gaining any tax exemption.

However, a not-for-profit hospital making contracts with third-party vendors should not be instantly fatal, the analysis should explore whether the not-for-profit hospital has a legitimate reason for making a profit. For example, if a not-for-profit hospital is looking for areas to make profits in order to offset losses on another side of its business – such as shortfalls created by inadequate Medicare and Medicaid reimbursement – a court should not penalize a hospital for attempting to remain solvent. The salient question should be whether the profits are being directed to other charitable purposes such as other health care services or necessary building improvements or if they are being directed to purposes inconsistent with the hospital’s charitable mission. There is no reason why a not-for-profit hospital should not make profits, in fact, they are necessary. Some required modernizations or replacement of aging facilities can easily cost well above $200 million dollars.\footnote{\textit{See e.g.} Illinois Health Facilities Planning Board, State Agency Report No. 06-081 (May 1, 2007) (report indicating an estimated project cost for a major modernization of a hospital at $81.1 million), http://www.idph.state.il.us/about/hfpb/may07sars/06-081\%20Evanston\%20Hospital.pdf; \textit{see also} Illinois Health Facilities Planning Board, State Agency Report No. 07-053 (October 22, 2004) (report indicating an estimated project cost for a major modernization of a hospital at $81.1 million).}
Based on the above facts, the court should retain the second element of the *Methodist* test but should be encouraged to provide a thorough consideration of the not-for-profit hospital’s for-profit ventures. The test should consider the utilization of anticipated profits as a key component of its analysis under the second factor.

**Factor 3: The Not-for-profit Hospital Must Derive Its Funds From Public and Private Charity.**

The Illinois Supreme Court in *Methodist Old People’s Home v. Korzen* heard the case of a home for the aged where the majority of its revenue was derived from an entry fee and not from gifts or contributions. The court held that because the Methodist Home’s revenue was mainly generated by private financial contributions through an entry fee, and not through gifts, bequests, or donations, the plaintiff’s burden was not met on this factor. Although the Illinois Supreme Court never indicated exactly what percent of Methodist Home’s revenue was from charitable contributions, it can be inferred that the court was looking for a majority of the Home’s funding from contributions because the factor itself looks to see that the entity derives its funds “mainly” from public and private donations.

In the case *Riverside Medical Center v. Illinois Department of Revenue*, a similar rationale was used by the Third District Illinois Appellate Court, against the entity seeking exemption. In *Riverside* the court noted that the plaintiff did not have significant charitable contributions; but, that 97 percent of its revenue was provided through patient billings and rental income payments. In fact, the court pointed out that only 0.05 percent of Riverside’s revenue

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204 *Methodist Old People’s Home*, 233 N.E.2d at 539, 542.
205 *Id.* at 541.
206 *Id.* at 542.
207 *Id.* at 543.
208 *Id.* at 365.
came from charitable contributions.\textsuperscript{209} As a result, the court held that Riverside Medical Center was not a charity and would not be granted a tax exemption.\textsuperscript{210}

Both \textit{Methodist Old People’s Home} and \textit{Riverside Medical Center} failed to hold what amount of charitable contributions would be sufficient to meet this element. Despite this omission, it will be nearly impossible for Provena to overcome this element under the current view of the court. According to Attorney General Lisa Madigan’s brief, Provena Covenant Medical Center fails this element because it raised only $6,938 in charitable contributions, an amount that represents only 0.006 percent of the hospital’s overall revenue.\textsuperscript{211} If the court followed the \textit{Methodist} and \textit{Riverside} examples, Provena falls well below each of these provider’s contribution levels and plainly cannot meet this element. The only way Provena can survive this challenge is to have the court determine that requiring significant charitable contributions is no longer reasonable because people rarely donate sizable amounts to not-for-profit hospitals.

In a recent article examining the charitable contributions, the author noted that “very few not-for-profit hospitals receive significant donations . . . overall, not-for-profit hospitals receive less than two percent of their revenues from private philanthropy.”\textsuperscript{212} The author concluded that “[m]aking significant donations a central part of the test for property tax exemption . . . would be the equivalent of ending the exemption for most hospitals and other health care providers.”\textsuperscript{213} The author appears to advocate for some consideration by courts to retain this factor of the test;\textsuperscript{214} however, the best approach would be to simply eliminate the amount a not-for-profit

\begin{footnotes}{209} \textit{Id.}\textsuperscript{209}
\textsuperscript{210} \textit{Id.} at 367.
\textsuperscript{211} Brief of Defendant-Appellant, \textit{supra} note 118, at 15.
\textsuperscript{212} Colombo, \textit{Hospital Property Tax Exemption, supra} note 29, at 519-20.
\textsuperscript{213} \textit{Id.} at 520.
\textsuperscript{214} \textit{Id.}
hospital receives through contributions from the court’s consideration. The amount of funding that most not-for-profit hospitals raise is negligible in their overall revenue plan and it would add little to the analysis of determining whether a hospital is fulfilling a charitable purpose. Furthermore, it would be nearly impossible to require greater amounts of contributions, especially since charitable giving is outside of the hospital’s control. The reality today is that people give to high profile charities such as the Hurricane Katrina Relief Fund which rose over $4 billion, or to Tsunami relief that supported the victims of the unexpected tsunami in late 2004 which rose an estimated $1.9 billion. Not-for-profit hospitals will never be able to achieve significant levels of funding from contributions and will remain a minimal part of a not-for-profit hospital’s revenue. With this in mind, the court should investigate the level of contributions and the effort the hospital places on fundraising; however, the court should not mandate any minimum percentage that not-for-profit hospitals must achieve in order to maintain its tax exemption.

Factor 4: The Not-for-profit Hospital Must Dispense Charity to All Who Need and Apply for It.

The Illinois Supreme Court in Methodist Old People’s Home v. Korzen held that a not-for-profit hospital must dispense charity to all individuals who need and apply for it. In Methodist, the court examined two not-for-profit providers that were previously granted a charitable tax exemption so that comparisons could be drawn with the Methodist Home. The court found that these two not-for-profit providers exemptions were upheld because those two entities had “many persons who could not and did not pay anything [but] were admitted without

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216 Methodist Old People’s Home, 233 N.E.2d at 542.
217 Id.
The court held that the Methodist Home was distinguishable from the other two providers because the Methodist’s bylaws contained provisions that allowed the discharge of patients no longer able to pay for their care. However, in this decision the court never specifically said “all” patients in need must be served by a provider to receive the exemption. In fact, the court recognized that one of the hospitals it investigated served “many” patients who could not pay. The court viewed Methodist’s policy, where it had the potential to abandon some patients who would become unable to pay, as inconsistent with the goal of meeting a charitable purpose and therefore a tax exemption was not provided. However, based on the language of this case (“many”) one can infer that a substantial charity care program is required for a charitable tax exemption.

In her brief for the appellate court regarding the pending Provena case, Attorney General Lisa Madigan noted that “the facts establish that there were many more patients who needed charity care than Provena treated” and that the hospital should have provided free or discounted care to many more patients than it actually served. However, both the Methodist decision and the Attorney General’s argument do not provide any indication for not-for-profit hospital’s to determine just how much more free and discounted care is required to meet this element. But, the real question is, should the court even require such a rigid amount in order to qualify for a property tax exemption?

If the court were to use a rigid standard for determining whether a not-for-profit hospital could receive or retain a charitable property tax exemption, that is, if the court set a clear

218 Id. at 542.
219 Id. at 542-43.
220 Id. at 542.
221 Id.
222 Methodist Old People’s Home, 233 N.E.2d at 543.
223 Brief of Defendant-Appellant, supra note 118, at 16.
224 See generally Methodist Old People’s Home, 233 N.E.2d 537 (Ill. 1968); see also Brief of Defendant-Appellant supra note 118.
standard that all not-for-profit hospitals must dedicate at least eight percent of its revenue towards charity care (the specific minimum amount that was proposed in House Bill 5000225), such a policy could remove many hospital’s tax exemptions and threaten their continued existence. This position, supported by the Illinois Hospital Association, argues that the Illinois Supreme Court has never endorsed the concept that a simple mathematical formula can determine whether an organization is charitable.226 Furthermore, the Illinois Hospital Association pointed out in its amicus curiae brief that a rigid formula would be a one-size-fits-all approach that does not account for the myriad of differences between different types of Illinois hospitals.227 In addition, each hospital has a varying fiscal health and putting forth a rigid standard could likely jeopardize many hospitals that are in poor fiscal health. Hospitals that are fiscally unsound may not be able to meet a minimum threshold and place the institution in greater despair by adding a new burden of taxation. There is such a variance between rural and urban hospitals, and between general care and specialty care hospitals, any test used by a court must be flexible enough to determine, on a case-by-case basis, whether a hospital’s overall efforts meet a charitable purpose.

The Attorney General also argues that Provena did not dispense charity to all who need it because the hospital billed every patient without providing information on the charity care program228 and that many of those accounts were forwarded to outside collection agencies.229

The argument presented by the Attorney General is that the hospital charged people for its

226 Brief for Illinois Hospital Association at 3, as Amici Curiae Supporting Plaintiff, Provena Covenant Medical Center v. Illinois Department of Revenue, No. 2006 MR 00597 (7th Cir, Sept. 2007).
227 Id. at 9 (wherein the IHA points out the key differences between rural critical access hospitals, inner-city disproportionate share (safety net) hospitals, and specialty hospitals such as cancer centers or psychiatric care centers).
228 Brief of Defendant-Appellant, supra note 118, at 16.
229 Id. at 17.
charity care program and that type of practice is not consistent with a charitable purpose.\textsuperscript{230} This argument is reasonable because charity care is meant to be given to people who cannot afford to pay for their medical care.

However, a hospital should not be prohibited from any methods of debt collection when it provides discounted care because recovery of funding is essential to hospital revenue. It would be bad public policy to set a rule that non-payment of medical bills is acceptable by precluding any debt recovery. There are people who can afford some investment in their health care. Furthermore, finding people who can pay something will allow scarce funds to go further and perhaps be directed towards those who truly cannot afford any payment. A problem should arise only when a hospital becomes too aggressive in recovering unpaid medical bills, especially if the recovery efforts violate the Fair Patient Billing Act.\textsuperscript{231} It is at this point that the court should begin to question whether a hospital is pursuing a charitable mission or is solely interested in its bottom line. Thus, it is reasonable for a court to explore a hospital’s bill collection efforts and should hold that a tax exemption is not allowed when bill collection efforts become too aggressive. In addition, a court should continue to examine whether a hospital was open about having a charity care program.\textsuperscript{232}

The court should also reconsider whether bad-debt should count towards charity care totals. If a hospital initially approved a patient at a fifty percent reduction in costs and subsequently was unable to collect payment after sending a notice and offering a payment plan, it is not logical to then say a hospital that only planned on contributing fifty percent can only claim

\textsuperscript{230} Id. at 19.
\textsuperscript{231} See generally 210 ILL. COMP. STAT. ANN. 88/1 (West 1996 & Supp. 2003) (referring to the Fair Patient Billing Act, passed in the 94\textsuperscript{th} General Assembly, which created new standards for hospital bill collection practices. This law was proposed in direct response to the billing practices of Provena Covenant Medical Center).
\textsuperscript{232} See generally H.B. 5000 at 8-9, 94\textsuperscript{th} G.A. (2006) (wherein Attorney General Lisa Madigan’s legislation set forth reasonable standards for hospitals to provide notice to possible charity care patients such as posting signs, displaying a prominent icon on the hospital’s website, providing individual notice in an appropriate language, publishing the policy in a local newspaper, and providing information to community medical centers).
that amount even though the reality is the patient became a full-cost charity care patient due to non-payment. If the Fourth District Appellate Court in the *Provena* case were to accept the argument that bad-debt should be counted towards providing charity, the Fourth District would be in direct conflict with the First and Second Districts, that held in the *Alivio* and *Highland Park* cases respectively, writing off bad-debt is not charity care. Both the First and Second District Appellate Courts held this way because the judges believed that only charges waived up front could count as charity care.

The *Provena* case provides an example of how a not-for-profit hospital can be attacked for providing allegedly inadequate levels of charity care but has not been given due consideration for its losses on the government payor side under the Medicare and Medicaid programs. The Third District Appellate Court’s holding in *Riverside Medical Center v. Illinois Department of Revenue* is the reason why losses from these two government insurance programs have not been counted towards charity care totals. The court held that losses from Medicare and Medicaid could not be credited towards charity care programs. The court reasoned that the hospital negotiated “preferential rates” for these programs and that there was no indication the hospital agreed to accept these patients due to its charitable mission or to ensure an adequate flow of patients.

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235 See generally *Dep’t of Revenue of the State of Ill. v. Provena Covenant Med. Ctr.*, 04-PT-0014, at 6 (2006) (ruling by the Department of Revenue stating that Provena’s charity care at 0.723% of total revenues was “so seriously insufficient” that it cannot withstand the exemption challenge but Medicaid and Medicare losses were discounted).
236 Dep’t of Revenue of the State of Ill. v. Provena Covenant Med. Ctr., 04-PT-0014, at 15-16 (2006) (wherein the Revenue Director noted the 2002 losses on Medicare at $7.4 million and on Medicaid at $3.1 million but held they would not be countable).
238 Id.
239 Id.
The *Riverside* court’s analysis was incorrect for several reasons. First, Medicare and Medicaid cannot be compared to other large insurers because the government does not “negotiate” a reimbursement rate for covered services. Instead, the government sets a rate for the budget year and providers can choose to participate in the program or not.\(^\text{240}\) The system is not a negotiation, the provider either accepts the reimbursement rate and participates in the programs or the provider chooses to not accept any government-paying patients.\(^\text{241}\) Therefore, when a provider makes an affirmative choice to enter the program and accept patients, the provider accepts the reimbursement rate.\(^\text{242}\) In many cases this rate is below the cost of providing care, and the loss can be determined by examining the hospital’s cost reports.\(^\text{243}\) As a result, the hospital, at the onset of care, knowingly accepts a financial loss for Medicare and Medicaid patients just as if the hospital was accepting a charity care patient that was receiving discounted care. In addition, under these government systems, it is common for hospitals to experience late reimbursement payments from the government.\(^\text{244}\) The only difference between government programs and charity care is that in one case (discounted charity care) the patient is covering a portion of the cost of care and in the other case (Medicare or Medicaid) the government is covering a portion of the cost of care. If a hospital has a large number of Medicare and Medicaid patients that are not adequately covering the cost of care, it can cause severe operational difficulties for these hospitals.

The federal Community Benefits Test recognizes that hospitals participating in Medicare and Medicaid provide an important service to the community and that is why it is a requirement


\(^{241}\) *Id.*

\(^{242}\) *Id.*

\(^{243}\) *Id.*

\(^{244}\) *Id.*
of the federal tax exemption determination.\textsuperscript{245} Illinois should follow the lead of the federal government and recognize that provider participation in Medicare and Medicaid is vital because it relieves a burden from the government in that the hospitals absorb many financial losses that are directly related to the reimbursement levels of the government-sponsored programs. If hospitals did not choose to accept Medicare and Medicaid patients because the government did not pay the full cost of care, there would be a health care crisis in the United States. It is easy to see that not-for-profit hospitals do relieve a burden from the government when they accept government program patients.

In summary, under this element, the court should take into account the financial conditions of not-for-profit hospitals and clearly articulate a standard that charity care can be limited to the extent that a hospital is financially able and that there are limits to caring for “all” who apply for charity care, taking into account losses from bad-debt and government-sponsored insurance programs. But, the court should also look closely at how not-for-profit hospitals provide notice of their charity care programs and the aggressiveness of debt collection practices.

\textit{Factor 5: The Not-for-profit Hospital Cannot Place Obstacles in the Way of Those in Need of Charity.}

Under the fifth factor of the \textit{Methodist} test, a not-for-profit entity cannot place any obstacle in the way of patients who will need to apply for charity care.\textsuperscript{246} This reasonable requirement on not-for-profit hospitals should be continued in any future court test for determining tax exempt status. Allowing any other practice would be contrary to the provision of a charitable mission. However, the court should consider making an allowance for a hospital’s fiscal condition and make the requirement subject to available revenues for the purpose of care.

\textsuperscript{246} Methodist Old People’s Home v. Korzen, 233 N.E.2d 537, 542 (Ill. 1968).
Thus, a person could not claim that a lack of funding by the hospital for a charity care program was essentially an obstacle for receiving charity care.

In the Provena case, the Attorney General asserts that the hospital’s procedure placed obstacles in the way of potential charity care patients. As proof, the brief highlights that Provena did not provide any notice or publication of its charity care programs to needy patients, that the hospital viewed the program as “a last resort,” and that the application process was cumbersome and insufficient. Provena’s response, according to the brief, was that the hospital had outreach efforts to inform those in need of its charity care program.

The fifth factor should continue to be used to determine whether a hospital can receive a property tax exemption. Placing obstacles in the way of patients who need charity care is not consistent with the fulfillment of a charitable purpose. Hospitals should be strongly encouraged by the court to eliminate any obstacle that prevents or hinders in applying for charity care.

Factor 6: The Property’s Primary Purpose is Used Exclusively for Charitable Purposes and Not for a Secondary or Incidental Usage.

The sixth factor of the Methodist test tracks closely with the language of Article IX, Section 6 of the Illinois Constitution and with the Illinois Property Tax Code, both of which provide that the property must be used “exclusively” for charitable purposes in order to receive a tax exemption. In Methodist, the court noted that the term “exclusively used” means that the property’s primary use is for charitable purposes and not a secondary or incidental purpose. However, this standard on its face may be problematic to the modern day not-for-profit hospital

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247 Brief of Defendant-Appellant, supra note 118, at 20.
248 Id. at 20-22.
249 Id. at 22.
250 Brief of Defendant-Appellant, supra note 118, at 7, 23.
251 Methodist Old People’s Home, 233 N.E.2d at 542.
because not-for-profit entities commonly subcontract with for-profit entities.\textsuperscript{252} Therefore, the court should ensure that anytime it considers this factor, it takes into account that outsourcing has become the norm in the hospital industry and that not-for-profit hospitals needed to adapt to the ever-changing hospital business.

In the Provena case, the Attorney General argues that this element is not met by Provena because of the hospital’s limited charity care program, its reliance on third parties to provide healthcare, its inability to count Medicare and Medicaid losses due to the Riverside decision, and its inability to count any amounts directed towards other community benefits all demonstrate that the hospital’s efforts are insufficient.\textsuperscript{253} She argues that dedicating 0.7 percent of hospital revenue for charity care is a marginal effort, and not primary.\textsuperscript{254} In addition, she argues that in Sisters of the Third Order of St. Francis v. Board of Review of Peoria County\textsuperscript{255} that approximately eleven percent of the hospital’s patients were charitable and that was sufficient to justify an exemption. However, this hundred-year old case was decided in an era where the not-for-profit hospital was a dramatically different institution than it is today, well before the creation of programs such as Medicare and Medicaid. It is reasonable to infer that Sister’s Hospital would have had a much less than eleven percent of its patients on a charitable status if Medicare and Medicaid existed. Therefore, Sisters should have very little persuasive value today because a proper comparison cannot be made between the modern not-for-profit hospital and the alms house hospital of the past.

\textsuperscript{252} Brief for Illinois Hospital Association at 24, as Amici Curiae Supporting Plaintiff, Provena Covenant Medical Center v. Illinois Department of Revenue, No. 2006 MR 00597 (7th Cir, Sept. 2007).
\textsuperscript{253} Id. at 24-30.
\textsuperscript{254} Id. at 24.
\textsuperscript{255} Sisters of the Third Order v. Peoria County Bd. of Review, 83 N.E. 272 (Ill. 1907).
Her brief also highlights the appellate court’s decision in the *Riverside* case, where the court held that dedicating three percent of revenue towards charity care was insufficient.\textsuperscript{256} The Attorney General argued, using *Riverside’s* holding, that Provena’s dedication of 0.7 percent of revenue for charity care was insufficient because it was noticeably below the three percent deemed unacceptable by the *Riverside* court.\textsuperscript{257} Provena appears to have an insufficient program and cannot justify its tax exemption if the court accepts the narrow view that having a sufficient charity care program alone determines the fate of a hospital’s tax exemption.

Under her argument, the Attorney General continues to focus mainly on the breadth of Provena’s charity care program and ignores any other efforts that a hospital makes towards its charitable purpose.\textsuperscript{258} The Illinois Supreme Court should not adopt a narrow focus that only determines the extent of a hospital’s charity care program because it is not the only factor that proves whether or not a hospital is organized for a charitable purpose. For any future test used by the court, a hospital’s charity care program may provide evidence of its commitment to a charitable purpose; however, it should not be the only factor considered. The court should adopt a broader view of charitable purpose modeled off of the federal community benefits test that examines the hospital’s aggregate effort to be charitable for its community. That analysis should include an examination of the hospital’s commitment to Medicare and Medicaid, and what other programs or support is given to the community as a whole.

The Attorney General further argues that Provena’s reliance on third parties also demonstrates that the hospital was not exclusively operating for charitable purposes.\textsuperscript{259} Her brief provides facts that show Provena employed only 5 of its 9 physicians, paid a third-party vendor

\textsuperscript{257} Brief of Defendant-Appellant, *supra* note 118, at 24.
\textsuperscript{258} See generally *Id*.
\textsuperscript{259} Brief of Defendant-Appellant, *supra* note 118, at 25.
to provide its emergency services, allowed subcontracts to for-profit providers for billing services, and that none of the vendors agreed to follow the hospital’s charitable goals.260 However, to accept this argument, the court will essentially remove the tax exempt status from many hospitals because Provena’s practices are illustrative of the way a modern day hospital operates. The fact that a hospital has contracts with for-profit vendors should not lead to the automatic conclusion that the hospital in no longer fulfilling its charitable mission.

In support of this position, the Illinois Hospital Association points out in its amicus curiae brief that not-for-profit entities can make profits and retain a charitable tax exemption.261 The association relies upon the case Quad Cities Open, Inc. v. City of Silvis.262 In this case, the organizers of a Professional Golfers Association (PGA) Tour event sued the City of Silvis, Illinois because the city passed an ordinance taxing the event’s ticket sales and asserted that the PGA Tour was not tax exempt status because it generated large profits.263 The golf tournament was a large enterprise, it charged people entry fees, professional golfers were paid large sums to participate in the event, the tournament had contracts with many for-profit vendors such as radio and television networks, the tournament made a profit and had a sizeable bank account, and large sums of money were paid to make improvements to the golf course.264 The Illinois Supreme Court rejected the tax exemption challenge and held that the tournament was a charitable organization.265 The court in Quad Cities Open acknowledged that not-for-profit entities can generate profits as long as the organization’s main objective is to fulfill a charitable purpose.266 Thus, any court confronted with a tax exemption challenge or request should carefully examine

260 Id. at 25-26.
261 Brief for Illinois Hospital Association at 15, as Amici Curiae Supporting Plaintiff, Provena Covenant Medical Center v. Illinois Department of Revenue, No. 2006 MR 00597 (7th Cir, Sept. 2007).
262 Quad Cities Open, Inc. v. City of Silvis, 804 N.E.2d 499 (Ill. 2004).
263 Id. at 504.
264 Id. at 505.
265 Id. at 516-17.
266 Id. at 509-10, 516-17.
the hospital’s charitable purpose and whether any contractual relationships are inconsistent with that purpose or if the contracts are incidental to overall operation of the not-for-profit hospital.

On a final argument, the Attorney General reasserts the position of the two appellate courts that held losses from Medicaid and Medicare cannot count towards proving charitable purpose, nor could funding directed towards other community benefits be counted as well.267 As a result, she concludes in her brief that Provena could not count any losses from these programs to demonstrate the hospital was operating with a charitable purpose.268 It would be unfortunate for a court to continue adopting this position because focusing only on charity care does not capture the full story regarding a hospital’s true charitable purpose.

If Provena was allowed to account for its community benefits programs, it would bring its overall effort dedicated to the community (including charity care) to at least $2.2 million.269 This amount would clearly exceed the $1.1 million that the hospital received from its property tax exemption.270 To see the total picture, the court should also realize that Provena’s shortfall from Medicare in 2002 amounted to $7.4 million and its shortfall from Medicaid in 2002 was $3.1 million.271 It is clear to see that Provena does much more for the community than its charity care program. Overall, Provena spent $2.2 million on charity programs and lost $10.4 million from government sponsored programs. It would be hard to argue that absorbing nearly $13 million in costs is not fulfilling a charitable mission for the community and this provides a clear example why the court needs to recognize a not-for-profit hospital’s overall effort when determining whether or not to grant a charitable tax exemption.

269 Id. at 28.
270 Id. at 4.
B. The Solution: The State Test Should Be Modeled Off of the Federal Community Benefits Test and Consider What a Not-for-profit Hospital Does in the Aggregate with Charity Care Being One of Multiple Factors for the Court’s Consideration.

Reviewing the six-factor Methodist test, it is obvious that the forty year old analysis has not evolved along with the ever-changing not-for-profit hospital. The courts in Illinois incorrectly adopted a focus on an entity’s charity care program and failed to comprehend the provider’s overall charitable purpose. The standard should be revised to determine whether or not a not-for-profit hospital is fulfilling a charitable mission. A charity care program designed to help the largest number of people, subject to the financial ability of the not-for-profit hospital, should be one element of a court’s comprehensive analysis. A comprehensive analysis must include a full examination to determine all of the benefits a not-for-profit hospital provides to its community.

The Illinois court should adopt a standard modeled off the federal Community Benefits Test that correctly gauges a provider’s total benefit to the community.272 The federal test appropriately examines the impact of Medicare and Medicaid on providers and recognizes efforts beyond charity care programs, such as immunization programs and financial support given to local health clinics. There is no dispute that a not-for-profit hospital should be legally organized to include a community board that does not receive financial gain from the hospital. Furthermore, the hospital must have an open door policy for patients and physicians. The goal of making a profit should be a permissible activity as long as profits are directed to efforts consistent with the provider’s charitable purpose. The court should explore whether or not property held by a not-for-profit hospital is used exclusively for charitable purposes because it was the intent of state to provide tax relief only to truly charitable organizations.

Adopting a broader test makes more sense in today’s rapidly changing world where the hospital of today will not be the hospital of tomorrow. The court needs to adopt a test that will recognize that hospitals need to constantly evolve to remain competitive with their for-profit rivals but also challenge the hospital to maximize its ability to provide charitable services.

IV. Conclusion

Requiring not-for-profit, tax-exempt hospitals to maintain a substantial charity care program has been an issue at the forefront of discussion in the United States and in several states including Illinois. Numerous politicians have attacked not-for-profit hospitals claiming that charity care programs are inadequate and leave behind many poor patients who are unable to pay for medical care. US Senator Charles Grassley has been a tireless advocate of not-for-profit hospital reform on the national level and Attorney General Lisa Madigan has championed the cause in Illinois.

As the question of charity care is being raised all across the country, Illinois has the case Provena Covenant Medical Center v. Illinois Department of Revenue working its way through the legal system. This case will provide an opportunity for the Illinois courts to update their method for determining whether a not-for-profit hospital has met its burden of establishing it serves a charitable purpose. Overall, Illinois needs to adopt a consistent and predictable method used to determine that not-for-profit hospitals meet the standards necessary to retain their tax exempt status. With the Provena case, Illinois has an opportunity to become a model for how to count charity care in the system of tax exemptions. It is time for the Illinois courts to abandon the strict test used in Methodist Old People’s Home v. Korzen and adopt a broader test that will continue to reflect the continuing changes that not-for-profit hospitals must make to remain viable in today’s hospital industry.