

HEALTH CARE LAW UPDATE

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Hospital Law Issues

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Off-Campus NJ Hospital Facilities Denied Property Tax Exemption

A New Jersey appeals court ruled that a physical therapy service, pediatric practice and a wellness center operated by a tax-exempt hospital at an off-campus facility do not qualify for state property tax exemption.

This decision is noteworthy because the Appellate Court applied a new “three-component” test developed by the Tax Court to distinguish between off-campus facilities that are used for “hospital purposes” and those at which only “health-related” activities are located.

Set forth below is a brief summary of the decision followed by practical recommendations for hospitals wishing to obtain property tax exemptions for their off-campus service locations.

The Decision

At issue in this case were certain portions of a hospital-owned building, located 9½ miles from the hospital, which housed a Wellness Center, Physical Therapy Service and Pediatric Practice. The Wellness Center operated as a fitness center, with membership open to the general public for a fee.

The Wellness Center employed a medical director 3½ hours per week, who performed his duties via telephone and was not involved in providing medical care at the Center. No physician had any offices or hours at the Center, nor was there a system in place for off-campus medical supervision.

The Physical Therapy Service was located adjacent to the Wellness Center and utilized the equipment in the Center.

Physical therapy services were available to any member of the general public possessing an appropriate prescription from a physician. The staff of the Physical Therapy Service consisted of physical therapists and therapy aides. There were no physicians on site and the therapy provided was not reviewed or supervised by the hospital’s medical staff.

The Pediatric Practice consisted of office space similar to a private pediatric practice, with the physicians being employed by the hospital. Occasionally patients were referred to the hospital by the physicians and vice versa.

The court noted that the traditional prevailing test for determining property tax exemption for hospital-owned facilities was whether the property was “reasonably necessary” for hospital purposes. Applying that test to the facts before it, the court found that the result was inconclusive.

Previous cases which had developed the “reasonably necessary” test were based on a traditional hospital model where the core function of a hospital was to provide 24-hour continuous acute care. Recognizing that hospitals no longer confine themselves to this function, but instead have embraced a “continuum of care” philosophy which aims to enhance the overall health and well-being of patients through wellness and life-style programs, the court articulated a new set of factors for determining whether a hospital-owned facility is entitled to a state property tax exemption.

The court held that in those situations where the “reasonably necessary” test failed to yield a conclusive result, New Jersey courts should consider the following factors:

1. The nature and extent of the integration between the hospital and the off-campus facility. The greater the integration, the more likely it is that the facility serves a “hospital purpose”. Contrary to prior rulings, the court held that distance alone may indicate a lack of integration.
2. The extent to which the facility’s activities are controlled or supervised by the hospital’s medical staff; and
3. Whether the facility provides services primarily for hospital patients or is open primarily to the general public. In evaluating this factor, courts should also consider (a) the extent to which the facility competes with privately owned businesses, and (b) the percentage of use of the facility by hospital patients.

Applying these three factors, the court concluded that the Wellness Center, Physical Therapy Service and Pediatric Practice did not qualify for property tax exemption. The Wellness Center did not qualify because there was no integration of its services with the Hospital’s services; there was no supervision or interaction with its members by the Hospital’s medical staff; and it was used in large part by members of the general public who paid a membership fee.

The Physical Therapy Service did not qualify because it, too, was not integrated with the Hospital’s services and received no meaningful supervision by the Hospital’s medical staff. Further, its patients were not primarily hospital patients referred for continuation of treatment.

The Pediatric Practice similarly did not qualify because it served a patient population consisting mainly of members of the general public and not the Hospital’s patients, and it directly competed with private physician practices in the area.

Practical Recommendations

Hospitals seeking property tax exemption for their off-campus facilities should consider incorporating the following recommendations:

1. **Administrative Integration.** Off-campus facilities should function like a hospital department as opposed to a commercial venture such as a gym or physician office. The hospital’s HR department and medical leadership should participate in hiring employees and contractors at the off-campus location, and may consider requiring patients to visit the hospital’s admissions office or triage center before going to the off-campus location. Meeting Medicare’s provider-based criteria may be helpful in demonstrating such integration.
2. **Medical Supervision.** Physicians on the hospital’s medical staff should review and monitor the treatment and/or fitness plans, medical restrictions, and progress of patients at the off-campus facility initially and on an on-going basis. The hospital may also consider establishing a committee or other review process to oversee clinical policies and quality assurance.
3. **Emergency Procedures.** The hospital should develop clinical protocols and train staff to deal with medical problems and emergencies (e.g. install a defibrillator and train staff on its usage.)
4. **Charity Care.** Free or discounted services should be provided to individuals at the off-site facility who cannot pay for services, consistent with the hospital’s charity care policies.
5. **Distance.** Off-campus facilities should be located as close as possible to the hospital and serve the same patient base as the hospital.

We send these Updates to our clients and friends to provide information on recent developments in the law. The Updates, however, should not be relied on for legal advice in any particular matter. If you would like additional information, please contact: Gary W. Herschman at 973-643-5783 or Anjana D. Patel at 973-643-5097.

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