



Alerts

Wisconsin Supreme Court Clarifies What Types of Health Care Facilities Qualify for Property Tax Exemption

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Health Law Alert

On July 19, 2011, the Wisconsin Supreme Court released its highly anticipated decision in *Covenant Healthcare System, Inc. v. City of Wauwatosa*, clarifying the extent to which Wisconsin law provides for property tax exemptions for outpatient hospital departments. The Court held that an outpatient clinic located five miles from a main hospital campus was eligible for property tax exemption under Wis. Stat. § 70.11(4m)(a).

Background and Decisions of the Lower Courts

Covenant Healthcare System involved property tax exemption requests filed by Covenant Healthcare System, Inc. with the city of Wauwatosa, Wisconsin from 2003 to 2006. Covenant was the sole owner of St. Joseph Regional Medical Center, Inc., which, in turn, owned St. Joseph Outpatient Clinic, a freestanding outpatient medical facility comprising three floors of a five-story building located five miles from St. Joseph Hospital in Wauwatosa. St. Joseph Hospital was a full-service hospital with approximately 600 inpatient beds. The outpatient clinic included an urgent care center providing all levels of emergency room care. It also provided patients with cardio/pulmonary services, continence and pelvic floor services, laboratory services, outpatient surgery, pain management services, pediatric rehabilitation, physical therapy, radiology, sleep disorder services, women's health services, and wound care services. All hospital and outpatient records could be accessed at both the hospital and the off-campus outpatient clinic. Also, the facilities shared registration and billing systems, and operated under the same hospital license.

Covenant claimed a property tax exemption for the outpatient clinic as property used exclusively for the purpose of a hospital under Wis. Stat. § 70.11(4m)(a), but the city assessor denied the exemption all four years. Covenant paid the tax, but brought an action pursuant to Wis. Stat. § 74.35(3)(d) to recover the amount of the assessments. The city argued that the outpatient clinic was not entitled to the property tax exemption because it was the equivalent of a doctor's office and was used for commercial purposes, and because a benefit inured to St. Joseph's sole member, Covenant.

In March 2009, a circuit court in Milwaukee County held that the outpatient clinic was entitled to the exemption for nonprofit hospitals under Wis. Stat. § 70.11(4m). The court of appeals reversed in August 2010, holding that the outpatient center was taxable as the equivalent of a "doctor's office" under the statutes.

Decision of the Wisconsin Supreme Court

The Wisconsin Supreme Court held that the outpatient clinic was used for the primary purposes of a hospital and therefore qualified as tax-exempt property under Wis. Stat. § 70.11(4m)(a). Rejecting the city's arguments that the outpatient clinic was the equivalent of a doctor's office, the Court held that while modern technology allowed complex procedures to be performed in an outpatient setting, that did not automatically convert the outpatient clinic into a doctor's office.

The Court noted that the clinic provided amenities and services, such as accepting ambulances to provide emergency care, which were not typical of a doctor's office. The doctors at the clinic also had to share unassigned cubicles. The court



of appeals had considered the outpatient clinic the equivalent of a doctor's office in part because patients were seen there mostly by appointment during scheduled business hours. But the Supreme Court found that this is was also true of outpatient care provided at the main hospital complex, and that both parties agreed such care did not impact the tax-exempt status of the main hospital. The Court reaffirmed that the clinic's proximity to the main hospital was not a relevant factor in determining whether the clinic was a doctor's office.

The Court also rejected the argument that the outpatient clinic was used for "commercial purposes," a use which would have disqualified it from exemption pursuant to Wis. Stat. § 70.11(4m)(a). The Court defined "commercial purposes" as "having profit as the primary aim," and identified multiple other goals of the outpatient clinic, such as promoting a greater faith-based healthcare presence. The Court also observed that no private physicians or individual shareholders would receive any excess revenue that the outpatient clinic generated.

The Court recognized that § 70.11(4m)(a) exempts hospital property from taxation only if "no part of the net earnings . . . inures to the benefit of any shareholder, member, director or officer," but clarified that a not-for-profit entity does not qualify as a "member" under this provision.

This landmark case provides greater clarity as to what types of health care facilities qualify for property tax exemption in Wisconsin.

For more information, please contact your regular [Hinshaw attorney](#).

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