



## Property Tax Exemption for Nonprofit Hospitals and Freestanding Outpatient Facilities - Wisconsin Supreme Court Provides Roadmap



On July 19, 2011, the Wisconsin Supreme Court released a decision in the case of *Covenant Healthcare Systems, Inc. v. City of Wausau* that provides a roadmap for how nonprofit hospitals can have a freestanding outpatient medical facility qualify for property tax exemption under Wisconsin Statute section 70.11(4m)(a). Until this decision, hospitals were operating in a grey area regarding this issue because of two inconsistent opinions from the Wisconsin appellate courts. Now, the Wisconsin Supreme Court has provided some guidance on how to qualify for property tax exemption.

If a nonprofit hospital has a freestanding outpatient facility, there are two main issues the hospital must address to assure the facility will be exempt from property taxes. First, the outpatient facility must be used exclusively for the purpose of the hospital. To satisfy this requirement, the facility must be fully integrated with the hospital and effectively serve as a department of the hospital.

In practice, a hospital can meet this requirement by operating the outpatient facility as an extension of the primary hospital. For example, if the hospital is overburdened in a certain practice area, it should divert patients from the hospital to the outpatient facility for such practice. If the hospital would like to expand or purchase a new piece of medical equipment that it cannot house, it should expand or place the new equipment in the outpatient facility. In addition, the hospital and the facility should have shared access to the same records, use the same billing system, and operate under the same hospital license. It is important to note that the hospital and outpatient facility should document how the two locations are integrated and how the facility is alleviating a burden on the hospital.

The second main issue pertains to the definition of the term "doctor's office." Wis. Stat. section 70.11(4m)(a) allows for property tax exemption for a nonprofit hospital, but it does not extend the exemption to a doctor's office. Therefore, to avoid paying property taxes, a nonprofit hospital's outpatient facility cannot be classified as a doctor's office.

The determination of whether an outpatient facility is classified as a doctor's office is done on a case-by-case basis, but there are several factors the taxing authorities and the courts will examine to make that determination. In the *Covenant* case, the Wisconsin Supreme Court held that the outpatient facility was not a doctor's office for the following reasons:

- The physicians at the facility are not paid variable compensation related to their services or extra compensation for overseeing non-physician staff at the facility.

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- The hospital and the facility use the same billing system.
- The physicians at the facility do not have their own offices (but they can use unassigned offices or cubicles).
- The physicians do not own or lease the building or the equipment.

It should be noted that the facility in the *Covenant* case has certain attributes that make it a fairly substantial outpatient facility. For example, the facility has an urgent care center that is open 24 hours a day, 7 days a week; it can provide all levels of emergency room care; and the facility has a gift shop and a cafeteria. Furthermore, it was constructed in conformity with the standards for providing hospital ambulatory services and was accredited by the Joint Commission on the Accreditation of Hospitals.

In most cases, an outpatient facility of a nonprofit hospital will not share all of the characteristics of the facility in the *Covenant* case. Therefore, the *Covenant* case provides only one reference point on the spectrum of when an outpatient facility will qualify for property tax exemption. An outpatient facility that does not provide the same level of services that are offered at the *Covenant* facility will need to be analyzed on a case-by-case basis to determine whether there is support for qualifying for property tax exemption. The *Covenant* case provides guidance, but it does not provide a black and white answer for every nonprofit hospital that wants its outpatient facility to qualify for property tax exemption.

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