

Governor Christie's Veto of Hospital Fee Bill Tees Up Additional Litigation

Authors:

Richard T. Frazier

George E. "Ned"
Rahn, Jr.

Brenna D. Kelly

SUMMARY

On January 19, 2016, New Jersey Governor Chris Christie vetoed bipartisan legislation that sought to establish hospital "community service contributions" ("CSCs") in hopes of avoiding litigation concerning the tax burden of nonprofit hospitals under the New Jersey Tax Court's holding in *AHS Hospital Corp. v. Town of Morristown* on June 25, 2015.¹ The parties to that case settled their disputes in November 2015. Under the settlement, the hospital agreed to pay \$10M immediately, as well as an estimated \$1.05M per year in future tax payments. The concern of the New Jersey Legislature seems to be that, given the holding of the *AHS Hospital* case, more communities may seek tax payments from nonprofit hospitals through litigation.

The New Jersey Senate introduced S3299 in December 2015 in response to the New Jersey Tax Court's June 25, 2015 ruling. The settlement in the *AHS Hospital* case left the June 2015 ruling unchallenged and, importantly, precedential for future cases. The proposed legislation created a CSC requirement for acute care hospitals, which would have been a \$2.50 per hospital bed per day charge, and a \$250 per day charge for satellite emergency care facilities. The amounts collected from the CSC would have been used to fund police and fire protection, first aid, emergency and ambulance services, or to reduce the property tax levy.

This legislation would have affirmed tax-exemption for property used exclusively for nonprofit hospital purposes, and would include in this exemption the leasing of space to profit-making medical providers. However, other leases or use of acute care hospital space by profit-making enterprises would have been taxed. In addition to these taxes, communities would have received the bulk of the CSCs. The nonprofit hospitals could have applied for a certificate exempting them from the CSC requirement if they were in financial distress or at risk of being in financial distress.

S3299 quickly passed the Senate and House on January 11, 2016, but was vetoed on January 19, 2016 by Governor Christie. The Governor gave no reason for his veto. Without legislation either overruling the *AHS Hospital* ruling or creating an alternate path, the tax liabilities of nonprofit hospitals, particularly those having profit-making components, is uncertain.

¹ For more information on this decision, please see our prior discussion from the July 2015 Alert (<http://tinyurl.com/HealthCare-July2015>), "Tax Court Finds that Non-Profit Hospital Does Not Qualify for Property Tax Exemption."

Saul Ewing will continue to monitor developments in this matter. For more information, please contact the authors or the attorney at the firm with whom you are regularly in contact.

This Alert was written by Richard T. Frazier, George E. "Ned" Rahn, Jr. and Brenna D. Kelly, members of the firm's Health Care Practice. Richard can be reached at 215.972.7828 or rfrazier@saule.com. Ned can be reached at 215.972.7165 or nrahn@saule.com. Brenna can be reached at 215.972.7874 or bkelly@saule.com. This publication has been prepared by the Health Care Practice for information purposes only.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."

© 2016 Saul Ewing LLP, a Delaware Limited Liability Partnership.
ALL RIGHTS RESERVED.