

Where health law intersects with nonprofit/tax-exempt law

By Susan Alexander Ott

Imagine the many matters for which a nonprofit/tax-exempt healthcare organization might seek legal assistance: to reinstate lost, federal tax-exempt status; for advice in how a charitable endowment established a century ago may legally be used; to comply with federal grant rules; to merge one nonprofit with another; to establish a social venture enterprise while avoiding the unrelated business income tax; or to negotiate a charitable remainder trust where the organization will receive significant charitable dollars. The list could go on and on, but this article will concentrate on the most common ways in which knowledge of nonprofit, tax-exempt law will benefit attorneys assisting nonprofit healthcare clients.

Healthcare, whether organized for-profit or not-for-profit must be run as a business to survive. Within the overall nonprofit sector, healthcare – including large hospital systems and small providers of services – is the largest subcomponent. Here in western Pennsylvania, only four of the many acute-care hospitals are for-profit as opposed to nonprofit. The importance of nonprofit healthcare to the region is large.

Nonprofit healthcare is highly regulated. It is governed by federal, state and local laws and regulations, as well as industry standards across a wide spectrum of categories that include insurance, professional and institutional licensing and accreditation, research, ethics, business, tax and governance. Nonprofit healthcare



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entities are primarily responsible to the populations that they serve, not to owners and stockholders, as is the case in a for-profit healthcare organization.

An understanding of the law of nonprofit, tax-exempt organizations is specialized knowledge that intersects any of the categories mentioned above but is especially helpful in governance, business, tax and in the protection of tax-exempt status.

Governance of nonprofits is largely defined by state law, which provides rules on, among other issues, how a nonprofit board can be organized and managed, the fiduciary duties of directors, the proper management of charitable donations and on the liability protections provided by prudent decision making. State law intersects with federal law when the nonprofit is a federally tax-exempt organization, especially in the areas of charitable

purpose, avoidance of conflict of interest, private benefit, tax planning and reporting (the Form 990, etc.) and compliance. Boards and managers of nonprofit/exempt organizations are well advised to have periodic legal education updates on such matters and to keep their forms, policies, required registrations and practices in good order.

Nonprofit/exempt organization attorneys can assist healthcare organizations in business matters, especially those involving corporate change or growth. For example, mergers, dissolutions and other fundamental changes require specific consideration, interaction with the state attorney general and, potentially, advocacy in the local orphans' court.

Pennsylvania healthcare nonprofits can secure sales tax exemption and justify exemption from state property taxes with the help of an attorney knowledgeable in such matters. On the federal side, nonprofit/exempt lawyers often assist in structuring ventures (which may be profit-making) under the umbrella of the exempt organization while assisting with avoidance or minimization of unrelated business income taxation. Such trained lawyers also can review Forms 990 and assist the PA healthcare nonprofit to maximize compliance and strengthen marketability using this vehicle.

A healthcare organization that is nonprofit and federally tax-exempt receives beneficial tax treatment for maintaining a charitable purpose and for relieving the government of some of its burden. Some of these advantages

are, typically, organizational exemption from paying federal income tax, the ability to access capital through tax-exempt bonds and the ability to receive tax-deductible charitable contributions and grants. The value of this last advantage cannot be overstated. Generally, it will cost a nonprofit/exempt healthcare organization less to raise a charitable dollar than it will to raise an operational dollar. Although some have predicted that charitable giving will decrease because of the recently passed federal Tax Cuts and Jobs Act, savvy, tax-wise donors are seeking ways to make gifts to their favorite charitable entity. Such giving mechanisms are sometimes complex, and donors and donees alike benefit when advisors are involved.

In summary, a knowledge of nonprofit/tax-exempt law can help an attorney versed in such matters to protect a healthcare entity from expensive legal trouble and may even enable the entity to acquire and manage donated funds in a legally sound manner. ■

With a background in nonprofit and hospital administration, Susan Alexander Ott is a tax attorney who specializes in tax-exempt, health, estates and trusts and transactional law. Practicing with Owen & Conley, LLC., she holds M.P.H. and B.S. degrees from the University of Pittsburgh and a J.D. from Duquesne University School of Law.

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