



LEGISLATIVE VIEWPOINT

New Jersey State League
of Municipalities

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Re: A-1135/S-357 & S-624

Dear Members of the Senate Budget and Appropriations Committee,

The League appreciates the efforts made in the past by the sponsors to allow us to express concerns with A-1135/S-357 & S-624. While discussions had been productive and we have offered viable alternatives our fundamental concerns with these bills remain. Therefore, we must respectfully oppose A-1135/S-357 & S-624.

These bills seek to address the issue of property tax exemptions for not-for-profit hospitals with on-site for-profit medical providers, by broadening property tax exemption for hospitals and creating a so-called, 'Community Service Contribution Fee.' The underlying issues that A-1135/S-357 & S-624 seek to resolve stems from the AHS Hospital Corp. v Town of Morristown, tax court ruling which brought to light how the business model for modern hospitals does not comport with the original public policy reasons for exempting non-profit hospitals from property tax. Since the issuance of Morristown decision, municipalities across the state have examined the business operations of the not-for-profit hospital within their communities – leading to numerous court challenges, questioning the tax-exempt status of these entities.

These court cases have dragged on for years – proving costly for municipalities and hospitals alike. For this reason, the League is supportive of a legislative solution to this problem, however, these bills are not a proper solution. Our concerns are not new and have been noted in the public record in previous iterations of this bill, from past legislative sessions. Below, are some of the broader concerns we have expressed.

First, as a threshold issue, we believe this bill would violate the State Constitution's Uniformity Clause and Exemption Clause. Second, this bill's piecemeal approach to adjusting for tax irregularities focused solely on non-profit health care facilities is not prudent considering similar issues present themselves with other tax-exempt entities. Given this, a comprehensive overhaul or at the very least an examination of the State's current tax-exempt structure is a much preferred approach. The League sees this as an opportunity to amend and re-codify the property tax exemption law (N.J.S.A. 54:4-3.6) to better reflect how hospitals and other entities operate in our modern time.

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Constitutional Concerns

The New Jersey Constitution requires uniform taxation, and uniform exemptions. The State Constitution which has been examined by years of case law prohibits exemptions based on the status of the property owner. A-1135/S-357 & S-624 would create a special exemption class consisting of entities owned by non-profit organizations, providing for profit medical services in a hospital setting. Entities owned and organized as not-for-profits but providing the same for profit medical services would not be entitled to tax exemption. This disparity clearly runs afoul of the State's Constitution.

Committee amendments include a provision that would exempt certain hospitals completely from the community service contribution and property taxes, should they meet a two-part qualifying test. The first part of the test, requires a not-for-profit hospital would need to certify to the Department of Health that the hospital did not balance bill or collect payment from an individual for inpatient services rendered at the hospital by its employed physicians during the calendar year, and that the hospitals forbearance of payment was lawful and consistent with an advisory opinion issued to the hospital by the federal government. The second part of the qualifying test requires a hospital average over three years at least 12 percent of the hospitals total expenses be for providing community benefits, as required under IRS Form 990.

It is unclear how many not-for-profit hospitals would currently or could possibly qualify for a total exemption under this new provision. However, this seemingly individualized treatment underscores the League's previous concerns that provisions of this bill and versions of the bill in previous legislative sessions, are violative of our State's constitutional requirement for uniform application of property taxes.

Inadequate Method and Metric for Calculating Community Service Contribution Fee

Putting aside for the moment our constitutional concerns, we have identified several other areas of concern with A-1135/S-357 & S-624.

Using licensed beds as a metric to calculate the Community Service Contribution ("CSC") fee of a hospital is not an appropriate method. First, these bills would not include in the CSC fee all licensed beds. The bill provides for a host of exceptions which would exclude, skilled nursing, psychiatric, sub-acute, and new born beds. It would also exclude from this calculation, "beds not commissioned for use," a term that is not defined and would seemingly rely on self-reporting by the hospitals and would be nearly impossible to audit.

Second, the business and operational structures of hospitals have changed dramatically since the time when they were first granted exemption from property taxes under N.J.S.A. 54:4-3.6, and they will continue to change. One of those operational changes includes the reduction in

the number of licensed beds hospitals maintain. And according to various industry reports, the number of licensed beds will continue to decrease given the changes in our nation's health care laws.

While committee amendments to A-1135, which we assume S-457 and S-624 will be amended to mirror, lock in place the number of beds as they were on January 1, 2020 to calculate future years' community service fees, alleviating our concerns of an ever-decreasing multiplier, this does not remove other concerns with using licensed beds as a metric.

A-1135/S-357 & S-624 also provide for a \$250 per day fee to be paid to the host municipality by "Satellite Emergency Care Facilities" (ECF). This fee does not contemplate the differences in the size or type of ECFs. Further, the language of the bill would seemingly allow for certain ECFs that are currently taxed according to their assessed value to potentially pay the much lesser CSC fee. In essence, this would amount to a new or expanded tax exemption to profitable businesses. In other words removing currently taxable properties from the municipal property tax rolls and leaving the difference to be made up by the remaining property tax payers.

Further, the definition of "medical provider" in these bills is much too broad and would arguably include properties far outside what is currently tax exempt under Title 54 and the accompanying case law. Under A-1135/S-357 & S-624 definition, "medical provider" could mean executive offices, billing facilities, and other properties not located on the same campus of what a hospital is traditionally thought to be.

Effect on Current Agreements

Committee amendments to A-1135 maintain agreements between municipalities and hospitals currently in place for as long as they are active and would also require payment of the amount greater between the agreement and the CSC fee. Additionally, committee amendments would also see that in no event would a municipality be required to refund any amount to a hospital. We are pleased with these amendments and support their inclusion in any legislation addressing this issue.

Additionally, Committee amendments included a provision allowing a host municipality and a not-for-profit hospital to reach an agreement outside of and in addition to the CSC fee. There is however no incentive for a hospital to reach any such agreement with a host municipality. Some current agreements require payments to host municipality that would be more than what the hospital would pay under the CSC. As these agreements expire municipalities would be losing out on revenue that had once been negotiated an agreed to all while providing the same services.

In conclusion, it is not difficult to examine the impact this unconstitutional property tax exemption would have on municipalities and property tax payers. By way of example; Capital Health Medical Center in Pennington/Hopewell has 221 licensed beds. Using the CSC calculation and without reducing for the exempted licensed beds, Capital Health's yearly CSC would be \$201,663. Jersey City Medical Center in Jersey City having 328 licensed beds, would be assessed a CSC fee of \$299,300. And, Virtua Memorial Hospital, in Mount Holly at 383 beds would be assessed a CSC of \$349,488. If these hospitals' sprawling facilities were properly taxed under the Morristown decision these properties would have an assessed value in the tens if not hundreds of millions.

Effectively, A-1135/S-357 & S-624 and the CSC fee provide a tax exemption for a particular industry, which when contemplated serves as a subsidy, paid for by all other property tax payers of host communities. This comes at a time when local governments are already faced with lost revenues due to the COVID-19 public health emergency, and must continue to fund essential services such as first responders, public health and the day-to-day administration of government.

For these and many other reasons, the League must respectfully oppose A-1135/S-357 & S-624. We appreciate your time and attention to these concerns.

Very truly yours,



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