Analysis – S-582 (Sacco)

S-582 (Sacco) would reaffirm the property tax exemption for non-profit hospitals and establish new requirements for non-profit hospitals to make payments to their host communities. S-1878 is currently awaiting consideration by the Senate Community and Urban Affairs Committee. It is similar, but not identical, to A-1503 (Burzichelli/Pintor Marin) which was reintroduced in February 2016 after a similar bill was pocket-vetoed by then-Governor Christie, and reintroduced again in January 2018. The main difference between the two bills is that S-582 would apply not only to acute care hospitals, but to the nursing homes owned by such hospitals.

Background
The bill was introduced in the wake of the June 2015 ruling by Tax Court Judge Vito Bianco that held that Morristown Medical Center is not entitled to tax exemption on nearly all of its property in Morristown, primarily due to the commingling of non-profit and for-profit activities and what the judge deemed to be excess benefit to the for-profit entities as a result. In the ruling, Judge Vito Bianco, characterizing the concept of modern non-profit hospitals as “legal fictions,” stated that if all hospitals in their current form are structured like Morristown Medical then none are justified in receiving property tax exemption, and it’s up to the legislature to enact statutory changes that would change this framework.

Atlantic Health Systems (AHS), the parent of Morristown Medical Center, declined to appeal the decision and negotiated a settlement with the Town of Morristown, in which the hospital agreed to pay $15.5 million in back taxes and penalties, plus annual property taxes on 24 percent of the hospital’s property from 2016 to 2025.

While the settlement resolved the dispute between AHS and Morristown, it essentially left unanswered all of the other questions raised by Judge Bianco’s decision. In the wake of the settlement announcement in the Morristown case, municipal officials in Newark, New Brunswick and elsewhere, in New Jersey and in other states, have moved swiftly to explore the possibility of challenging the tax exemptions or otherwise seeking payments from the hospitals within their borders. Currently, there are at least 40 hospitals in New Jersey whose tax exemptions have been formally challenged by their host municipalities.

Key Provisions
S-582 is designed to reaffirm the property tax exemption for modern hospitals while simultaneously creating a mandatory payment framework for hospitals to make payments to the host municipalities – essentially a statutory Payment in Lieu of Taxes (PILOT).

• The bill requires any owner of tax-exempt property used as an “acute care hospital”¹ to pay a “community service contribution” in the amount of $2.50/day for each licensed bed² (approx. $900/year per bed), or $250/day for each licensed satellite emergency care facility of such hospital, with these amounts increasing by 2% each year. The payments would be due to the municipality on a quarterly basis, with automatic interest penalties imposed on late payments.

• For hospitals that already have payment in lieu of taxes or other voluntary payment agreements in place with their host municipalities, those payments may be used to offset the community service contribution. Despite the synopsis which says that it applies to “certain nonprofit hospitals with on-site for-profit medical providers,” the bill appears to be drafted in such a way that all hospitals, except those receiving a hardship exemption, would be required to make some sort of payment to their host municipality.

• Financially distressed hospitals or satellite facilities, or those at risk of financial distress, may apply to the New Jersey Health Care Facilities Financing Authority for an exemption for the fee for the upcoming year. Factors

---

¹ “Acute care hospital” means a hospital which maintains and operates organized facilities and services as approved and licensed by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey, and includes all land and buildings that are used in the delivery of health care services by such hospital and its medical providers or that are used for the management, maintenance, administration, and security of such hospital and its medical providers, and any licensed satellite emergency care facility of such hospital.

² “Licensed bed” means one of the total number of acute care beds and nursing home beds, if any, for which an acute care hospital is approved for patient care by the Commissioner of Health.
that may determine financial distress may include whether the acute care hospital or satellite emergency care facility had a negative operating margin in the prior tax year; whether the owner is “not in full compliance with the financial terms of any bond covenants related to the acute care hospital or satellite emergency care facility”; the overall health of the hospital system if the hospital/satellite facility is part of a hospital system responsible for its debts; or whether the hospital/satellite facility is a safety net hospital or facility. Although the bill does not include an appeals process if the Authority denies the request, it’s possible that an appeal procedure would be developed by the New Jersey Department of Health as part of the regulatory process if the bill is signed.

- The bill clarifies that non-profit hospitals may lease or permit the use of their facilities by for-profit medical providers for medical purposes without having such use jeopardize their exemption for that portion of their property. This specifically addresses one of the primary portions of Judge Bianco’s ruling against Atlantic Health Systems. As indicated above, although the synopsis suggests that it only applies to those non-profit hospitals with on-site for-profit medical providers (which would apply to most, if not all, modern hospitals), the language would appear to apply even if a hospital did not have such for-profit arrangements in place.

- S-582 would establish a 9-member Nonprofit Hospital Community Service Contribution Study Commission to study the implementation of the law, its financial impact on hospitals and host municipalities, and the equity of the community service contributions. The commission is directed to issue a report to the Legislature within one year after the law takes effect.

Questions

- **Definition of “acute care hospital”** – The bill provides separate definitions for an “acute care hospital” (definition on p. 1) and “hospital purposes” (e.g., nursing homes, residential care facilities, assisted living, etc.), when laying out the ownership or use requirements that might subject an entity to the bill’s requirements. The bill refers at various points to property owned by an acute care hospital, or “used as an acute care hospital” but owned by an organization organized for “hospital purposes.” Several legal experts have indicated that the definition of acute care hospital has been carefully drafted so that non-hospital organizations from being inadvertently or inappropriately subject to the bill’s requirements; however, non-hospital organizations involved in providing health or residential services should examine the definition carefully to determine whether they might be covered. Additionally, this bill specifically adds hospital-owned nursing homes to the scope of activities that would be subject to the community service contributions, which raises the question of how broadly it would be applied.

- **Standing of third parties to bring property tax challenges** – A separate but related issue in the context of recent property tax cases concerns the standing of individual residents and other third parties to challenge the determination of government officials regarding tax exemption. Amending the law to limit such standing (for all non-profit property tax cases, not just hospitals) would help to protect organizations from being arbitrarily forced to re-prove their exemptions repeatedly and from needlessly siphoning scarce resources away from charitable purposes. Such a provision is not part of the current bill. (updated 2/16/2018)

---

3 In the bill, “Hospital purposes” includes acute care hospitals, health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L.1979, c.496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.