

PROTECT YOUR TAX-EXEMPT STATUS

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Many not-for-profit long-term care homes risk losing their Ohio real property tax-exempt status because of the way in which their admission documentation is drafted. Homes need to be very careful about how they word their admission agreements.

Most not-for-profit adult care facilities, residential care facilities, and nursing facilities receive tax exemption under Ohio law as “homes for the aged.” In order to benefit from the home for the aged tax exemption, the home must meet the following requirements:

- (1) The home must be owned and operated by a charitable, not-for-profit organization that does not distribute any earnings to its members or trustees, and which is exempt from Federal income taxation under section 501 of the Internal Revenue Code;
- (2) The home must be open to the public without regard to race, color, or national origin;
- (3) The home cannot pay for land, equipment, goods and services, or interest on debts incurred at an unreasonably high rate; and
- (4) *The home must provide services to its residents for the life of each resident without regard to his or her ability to continue to pay for the full cost of services.*

The first three requirements above rarely cause a home any problem with regard to obtaining or maintaining the home for the aged tax exemption. The fourth requirement, however, has been the subject of numerous challenges to a home’s tax exempt status, and has cost some not-for-profit homes a great deal of money that could have been put to the organization’s charitable purpose(s).

The fourth requirement, *i.e.*, that a home will provide services to its residents for the life of each resident without regard to his or her ability to pay for the full cost of services, appears to be very straightforward; however, it is not. Over the years, homes have attempted to meet this requirement in various ways, such as passing Board of Trustees resolutions and adopting organizational policies prohibiting the discharge of residents solely for reason of nonpayment. However, upon challenge, the Ohio State Supreme Court has held that the definitive determinant of whether a home satisfies the fourth requirement is how the issue is addressed in the home’s admission agreement with its residents. That is, a home must state clearly in its admission agreement that it will not discharge a resident solely for reason of nonpayment. If that language is not included in the admission agreement, or if the language is ambiguous, then it does not matter whether the home has a policy of not discharging residents for nonpayment, or even that the home has never discharged a resident solely for nonpayment. The admission agreement will trump all other policies and practices of the not-for-profit home.



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Thus, homes should take great care in how they draft their admission material. Homes need to ensure that the discharge language contained in the agreement is not contradicted in other provisions of the agreement or admission documents. For example, in recent years some homes have inserted a 'standard' provision into their admission agreements which states that they will not discharge a resident for nonpayment without carefully examining or modifying the rest of the agreement to ensure compliance. In some cases, the 'standard' language is contradicted or made ambiguous by other sections of the admission agreement that provide for the discharge of the resident in the event of non-payment. The result is that the admission agreement as a whole could be construed to violate the requirement. Therefore, it is essential that the agreement be examined in its entirety to ensure that it does not provide for the discharge of residents solely for reason of nonpayment.

In addition, certified nursing homes will most likely wish to draft their admission agreements in such a manner as to allow a resident to take full advantage of Medicaid reimbursement when they are eligible. A poorly designed admission agreement can lock a home into paying for the resident's care, or a large portion thereof, in perpetuity from its charitable resources, even though the resident is otherwise Medicaid-eligible.

The admission agreement must also be crafted to ensure that a home's charitable

resources are actually used to provide for persons in need, and not for residents who could otherwise pay for care, but refuse. For example, some homes have faced the situation where a resident's family, in a misguided attempt at estate planning, has improperly transferred a resident's resources, thus making the resident ineligible for Medicaid. After the resident's application for Medicaid is denied due to the improper transfer of resources, the family then refuses to pay the home's fees. But for the wrongful actions of the resident's family, that particular resident has the means to pay for his/her care. In this instance, while a home is free to absorb the cost of the resident's care if it so chooses, this is generally not the result contemplated by most homes' charitable care policies. The law allows a home to discharge a resident who has the resources to pay for care, but who nevertheless refuses to pay for their care. However, the admission agreement must be carefully crafted to permit the home to take this action while still preserving the tax exemption requirements.

Ohio school boards have been very active in challenging the tax-exempt status of not-for-profit homes in a search for additional local tax revenue to fund school programs. Homes that wish to obtain or maintain their tax-exempt status as homes for the aged should review their current admission material and make sure that it will adequately protect them from any possible challenges to their tax exempt status.

Mr. Martin is a principal and Mr. Haran is an associate with the law firm of Rolf & Goffman Co., L.P.A. The firm represents not-for-profit long-term care providers across Ohio in a wide range of matters. The firm has experience in reviewing and drafting admission material so that it complies with tax exemption laws, and also in disputing and appealing denials of tax exemption before the Ohio Board of Tax Appeals. If you would like assistance in either of these areas, please feel free to contact Mr. Martin at (216) 514-1100.