

WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

Challenge to Charity Care Heads to the New Jersey Supreme Court

11/12/24

In a surprise twist, following rejection at the Appellate Division earlier this Summer, a group of fourteen New Jersey hospitals will now have their challenge to the legality of New Jersey charity care requirements heard by the New Jersey Supreme Court.

The challenge spans many years, with a group of eight New Jersey hospitals originally filing appeals related to charity care with the New Jersey Department of Health in 2014. The hospitals brought a claim on constitutional grounds, but the Department of Health found it lacked jurisdiction and the matter was appealed to the Appellate Division. In 2016, the Appellate court declined to rule on the matter, and remanded the matter to the lower court for further proceedings. The hospitals brought the claim to an appellate court, but, in 2016, the court declined to rule on the matter, and remanded the matter to the lower court.

The controversy revolves around the hospitals' claim that New Jersey charity care and Medicaid requirements, which they allege require them to provide both free and below-cost items and services, amount to unconstitutional takings under both the U.S. Constitution and the New Jersey Constitution. The State's charity care requirements originate from N.J.S.A. 26:2H-18.64, which states "[n]o hospital shall deny any admission or appropriate service to a patient on the basis of that patient's ability to pay or source of payment."

The suit was then brought to the trial court (with additional hospitals joining), but it was dismissed. The trial court in *Englewood Hospital & Medical Center v. State of New Jersey* found both that no taking has occurred, and also that other claims were not ripe as the hospitals had failed to exhaust all administrative remedies available to them. The hospitals appealed, but in a June 2024 decision, an appellate court similarly found no takings had occurred.

On November 4, 2024, the New Jersey Supreme Court, however, agreed to hear the case. As phrased by the Supreme Court Clerk's office, the question before the court is "Does New Jersey's charity care program — which requires a hospital to provide services to all patients regardless of their ability to pay, prohibits the hospital from billing those patients, and does not provide at-cost reimbursement to the hospital — amount to an unconstitutional taking of the hospital's property?"

The ramifications of this case could be far reaching, greatly changing not only New Jersey hospital finances and operations, but also potentially leading to a cascade of similar challenges in other states with analogous charity care requirements. The case will be heard in the 2025 session of the New Jersey Supreme Court. Wilentz, Goldman & Spitzer, P.A. will continue to monitor the matter and provide updates as they occur.

Attorneys

- Jason J. Krisza
- John D. Barry

Practice

- Health Law