

ORDINANCE NO. 21- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 102. TAXATION. OF THE BREVARD COUNTY CODE OF ORDINANCES. AT ARTICLE IV. AD VALOREM PROPERTY TAXATION. IN ORDER TO CREATE A NEW DIVISION 4. BREVARD COUNTY LOCAL PROVIDER PARTICIPATION FUND NON-AD VALOREM ASSESSMENT. IN ORDER TO ESTABLISH A NON-AD VALOREM ASSESSMENT FOR THE MEDICAID MANAGED CARE HOSPITAL DIRECTED PAYMENT PROGRAM AND IN ORDER TO CREATE A BREVARD COUNTY LOCAL PROVIDER PARTICIPATION FUND UNDER THE AUTHORITY OF SECTION 1(G), ARTICLE VIII OF THE CONSTITUTION OF THE STATE OF FLORIDA AND THE BREVARD COUNTY HOME RULE CHARTER; FURTHER ESTABLISHING THE METHOD OF SETTING AND COMPUTING ANNUAL NON-AD VALOREM SPECIAL ASSESSMENTS TO BE DEPOSITED INTO THE FUND AND SPECIFYING AUTHORIZED USES FOR THE FUND PROCEEDS; PROVIDING FOR SEVERABILITY, CONFLICTS, AREA ENCOMPASSED, PROVIDING FOR AN EFFECTIVE DATE AND INCLUSION IN CODE.

WHEREAS, the private for-profit and not-for-profit hospitals in Brevard County (the "Hospitals") annually provide millions of dollars of uncompensated care to persons who qualify for Medicaid because Medicaid, on average, covers only 60% of the costs of the health care services actually provided by Hospitals to Medicaid eligible persons, leaving the Hospitals with significant uncompensated costs ("Medicaid shortfall"); and

WHEREAS, the State of Florida (the "State") is seeking federal authority to establish the Statewide Medicaid Managed Care hospital directed payment program (the "DPP") to offset hospitals' Medicaid shortfall and improve quality of care provided to Florida's Medicaid population; and

WHEREAS, the Hospitals have asked Brevard County (the "County") to impose an assessment upon certain real property owned by the Hospitals to help finance the non-federal share of the State's Medicaid program; and

WHEREAS, the only properties to be assessed are the real property sites of the Hospitals; and

WHEREAS, the County recognizes that one or more Hospitals within the County's boundaries may be located upon real property leased from governmental entities and that such Hospitals may be assessed because courts do not make distinctions on the application of special assessments based on "property interests" but rather on the distinction of the classifications of real property being assessed; and

WHEREAS, the funding raised by the County assessment will support, through intergovernmental transfers (“IGTs”) consistent with federal guidelines, additional funding for Medicaid payments to Hospitals to address the Medicaid shortfall; and

WHEREAS, the County acknowledges that the Hospital properties assessed will benefit directly and especially from the assessment as a result of the above-described additional funding provided to said Hospitals; and

WHEREAS, the County has determined that a logical relationship exists between the Medicaid services provided by the Hospitals, which will be supported by the assessment, and the special and particular benefit to the real property of the Hospitals; and

WHEREAS, the County has an interest in promoting access to health care for its low-income and under-insured residents; and

WHEREAS, leveraging additional federal support through the above-described IGTs to fund payments to the Hospitals for health care services provided to Medicaid-eligible persons directly and specifically benefits the Hospitals’ properties and supports their continued ability to provide those services; and

WHEREAS, imposing an assessment limited to Hospital properties to help fund the provision of Medicaid services and the achievement of certain quality standards by the Hospitals to residents of the County is a valid public purpose that benefits the health, safety, and welfare of the citizens of the County; and

WHEREAS, the assessment ensures the financial stability and viability of the Hospitals providing Medicaid services; and

WHEREAS, the Hospitals are important contributors to the overall County’s economy, and the financial benefit to these Hospitals directly and specifically supports their mission, as well as their ability to grow, expand, and maintain their facilities in concert with the population growth in the jurisdiction of the County; and

WHEREAS, the County finds the assessment will enhance the Hospitals’ ability to grow, expand, maintain, improve, and increase the value of their properties and facilities under all present circumstances and those of the foreseeable near future; and

WHEREAS, the County is proposing a properly apportioned assessment by which all Hospitals will be assessed a uniform amount that is compliant with 42 C.F.R. § 433.68(d); and

WHEREAS, the County adopts this Ordinance enabling the County to levy a non-ad valorem assessment, which is fairly and reasonably apportioned among the private

for-profit and not-for-profit Hospitals' properties within the County's jurisdictional limits, to establish and maintain a system of funding for IGTs to support the non-federal share of Medicaid payments that will directly and specially benefit Hospital properties.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. Chapter 102. Taxation., of the Brevard County Code of Ordinances, is hereby amended, at Article IV. Ad Valorem Property Taxation. in order to create a new Division 4. entitled Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment., and said new Division 4. shall read as follows:

Division 4. Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment.

Sec. 102-242. - Definitions.

When used in this Ordinance, the following terms shall have the meanings below, unless the context clearly requires otherwise:

Annual Final Assessment Resolution means the resolution imposing an Assessment and which shall memorialize the final rate applicable for the Fiscal Year.

Assessed Property means an Institutional Health Care Provider holding a right of possession and right of use to real property in the County through an ownership or leasehold interest, thus making the Property subject to the Assessment. **Each separate ownership interest shall be a separate assessment district.**

Assessment means a non-ad valorem special assessment imposed by the County on Institutional Health Care Providers located in the County limits to fund the non-federal share of Medicaid and Medicaid managed care payments directed to hospitals providing Local Services in the County.

Assessment Resolution means the resolution described in Section 102-247 hereof.

Board means the Board of County Commissioners of Brevard County, Florida.

Charter shall mean the home rule charter of Brevard County, Florida.

Comptroller means the Brevard County Comptroller, ex officio Clerk to the Board, or other such person duly authorized to act on such person's behalf.

County means Brevard County, Florida.

Fiscal Year means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the County.

Institutional Health Care Provider means a private for-profit or not-for-profit hospital that provides inpatient hospital services.

Local Services means the provision of inpatient and outpatient hospital services to Medicaid, indigent, and uninsured members of the Brevard County community.

Medicaid Managed Care Hospital Directed Payment Program is a federally approved program that permits the State of Florida to access federal funds through Intergovernmental Transfers (IGTs) in order to direct the federal funds for managed care plan expenditures to hospitals for plan-covered services and offset the hospitals' Medicaid Shortfall.

Non-Ad Valorem Assessment Roll means the special assessment roll prepared by the County.

Ordinance means the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance.

Sec. 102-243. -Purpose.

The non-ad valorem special assessment authorized by this division shall be imposed, levied, collected, and enforced against Assessed Properties located within the County. Proceeds from the Assessment shall be used to benefit the Assessed Properties for Local Services. When imposed, the Assessment shall constitute a lien upon the Assessed Properties equal in rank and dignity with the liens of all state, county, district, or municipal taxes and other non-ad valorem assessments. Failure to pay an Assessment may cause a lien to be filed against the Assessed Property or the commencement of foreclosure proceedings. The Assessment shall be computed and assessed only in the manner provided in this Ordinance.

Sec.102-244. – Method of collection.

This Ordinance shall be deemed to provide a method, as specified in § 197.3631, Florida Statutes, for the assessment and collection of the non-ad valorem special assessment described herein. **Prior to the imposition of an assessment the County shall have a fully executed Agreement with the State of Florida.** The Ordinance shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing, or which may exist hereafter. This Ordinance, being necessary for the health, safety, and welfare of the inhabitants of the County, shall be liberally construed to effect the purposes hereof.

Sec. 102-245. - Scope of Assessment.

Pursuant to § 125.01, Fla. Stat., there is hereby created a non-ad valorem special assessment that shall be imposed, levied, collected, and enforced against Assessed Property to fund the non-federal share of Medicaid payments benefitting Assessed Properties providing Local Services in the County. Funds generated as a result of the Assessment shall be held in a separate fund called the local provider participation fund and shall be available to be used only to: (1) provide to the Florida Agency for Health Care Administration the non-federal share for Medicaid payments to be made directly or indirectly in support of hospitals serving Medicaid beneficiaries and (2) reimburse the County for administrative costs associated with the implementation of the Assessment authorized by this Ordinance, as further specified in the Assessment Resolution.

The Assessment will be broad based, and the amount of the Assessment must be uniformly imposed on each Assessed Property. The Assessment may not hold harmless any Institutional Health Care Provider, as required under 42 U.S.C. § 1396b(w). As set forth in Section 102-243, the Assessment shall constitute a lien upon the Assessed Properties equal in rank and dignity with the liens of all state, county, district, or municipal taxes and other non-ad valorem assessments.

The Assessment shall be imposed, levied, collected, and enforced against only Assessed Properties, and the Assessment Resolution shall provide that the County's administrative costs shall be reimbursed from the collected amounts. The County's administrative costs shall not exceed \$150,000. Any reasonable expenses the County incurs to collect delinquent assessments, including any attorney's fees incurred as a result of contracting with an attorney to represent the county in seeking and enforcing the collection of delinquent assessments, are not subject to the limitation on administrative costs.

Sec. 102-246. - Computation of Assessment.

The annual Assessment shall be specified for each Assessed Property. The Board shall set the Assessment in amounts that, in the aggregate, will generate sufficient revenue to fund the non-federal share of Medicaid payments associated with Local Services to be funded by the Assessment.

The amount of the Assessment required of each Assessed Property may not exceed an amount that, when added to the amount of other required assessments, exceeds the maximum percent of the aggregate net patient revenue of all Assessed Hospitals in the County permitted by 42 C.F.R. § 433.68(f)(3)(i)(A). Assessments for each Assessed Property will be derived from data contained in the Florida Hospital Uniform Reporting System, as available from the Florida Agency for Health Care Administration.

Sec. 102-247. - Assessment Resolution.

The Assessment Resolution shall describe (a) the Medicaid payments proposed for funding from proceeds of the Assessment, (b) the benefits to the Assessed Properties associated with the Assessment, (c) the methodology for computing the assessed amounts, and (d) the method of collection, including how and when the Assessment must be paid.

Sec. 102-248. - Non-Ad Valorem Assessment Roll.

The County shall prepare, or direct the preparation of, the Non-Ad Valorem Assessment Roll, which shall contain the following:

- (a) The names of the property owners for the Assessed Properties; and
- (b) The Assessment rate and amount of the Assessment to be imposed against each Assessed Property based on the Assessment Resolution.

Sec. 102-249. - Notice by Publication.

Upon completion of the Non-Ad Valorem Assessment Roll, the County shall publish once in a newspaper of general circulation within the County a notice stating that the Board, at a regular, adjourned, or special meeting on a certain day and hour, not earlier than 20 calendar days from such publication. Such notice shall include:

- (a) The Assessment rate;
- (b) The procedure for objecting to the Assessment rate;
- (c) The method by which the Assessment will be collected; and
- (d) A statement that the Non-Ad Valorem Special Assessment Roll is available for inspection at the Office of the County.

Sec. 102-250. - Notice by Mail.

In addition to the published notice required by Section 102-249, for the first fiscal year and for any assessment that will exceed a prior year's Assessment rate imposed by the Board against Assessed Properties, the County shall provide notice of the proposed Assessment by first class mail to the Assessed Properties. Such notice shall include:

- (a) The purpose of the Assessment;
- (b) The Assessment rate to be levied against each Assessed Property;
- (c) The unit of measurement applied to determine the Assessment;

- (d) The total revenue to be collected by the County from the Assessment;
- (e) A statement that failure to pay the Assessment will cause a lien to be filed against the property or foreclosure proceedings, either of which may result in a loss of title to the property; and
- (f) The date, time, and place of the hearing.

Notice shall be mailed at least 20 calendar days prior to the hearing to each Assessed Property at such address as is shown on the Assessment Roll. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. The County may provide proof of such notice by affidavit. Failure of the Assessed Property to receive such notice, because of mistake or inadvertence, shall not affect the validity of the Assessment Roll or release or discharge any obligation for payment of the Assessment imposed by the Board pursuant to this Article.

Sec. 102-251. - Adoption of Assessment Resolution and Non-Ad Valorem Assessment Roll.

At the date and time named in the notice, if there is no objection from any property owner subject to the Assessment, the Board may adopt the Assessment Resolution and Non-Ad Valorem Assessment Roll which shall:

- (a) Set the rate of the Assessment to be imposed on the specific parcels of land constituting the districts;
- (b) Approve the Non-Ad Valorem Assessment Roll, with such amendments as it deems just and right; and
- (c) Affirm the method of collection.

Sec. 102-252. - Annual Final Assessment Resolution.

The Board may revise the Non-Ad Valorem Assessment Roll during the Fiscal Year to modify the Assessment rate. In the event of a revision, the Board must adopt an Annual Final Assessment Resolution during the Fiscal Year to memorialize the final rate applicable for the Fiscal Year.

Sec. 102-253. - Effect of Annual Final Assessment Resolution.

The adoption of the Annual Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the method of apportionment and Assessment, the Assessment rate, the initial rate of Assessment, the Non-Ad Valorem

Assessment Roll, and the levy and lien of the Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Board action on the Annual Final Assessment Resolution.

Sec. 102-254. - Method of Collection.

The amount of the assessment is to be collected pursuant to the Section 197.3631, Florida Statutes, as amended, and as specified in the Assessment Resolution.

Sec. 102-255. - Refunds.

If, at the end of the Fiscal Year, additional amounts remain in the local provider participation fund, the Board is hereby authorized to make a refund to Assessed Properties in proportion to amounts paid in during the Fiscal Year for all or a portion of the unutilized local provider participation fund.

Sec. 102-256. - Responsibility for Enforcement.

The County shall enforce the prompt collection of the Assessment by the means provided herein. The duties related to collection of assessments may be enforced by any holder of obligations in a court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

Sec. 102-257.- Hold Harmless and Indemnification.

The Hospitals that are subject to this Ordinance have requested adoption of this Ordinance and have given assurances to the County that the objectives and procedures addressed in this Ordinance are proper and lawful. Accordingly, the Hospitals that are the subject of this Ordinance shall execute a Hold Harmless and Indemnification Form, a copy of which is attached hereto and incorporated by this reference and may be modified in the sole discretion of the County, prior to the adoption of any Assessment Resolution or Annual Final Assessment Resolution whereby the Hospitals indemnify and hold harmless the County and its officers, employees and agents from any and all claims including the costs and fees associated with the defense of such claims, that may arise in the event that the objectives and procedures of this Ordinance are challenged by any person, entity, or governmental agency.

Sec. 102-258. - Correction of Errors and Omissions.

No error or omission on the part of the Board or its employees shall operate to release or discharge any obligation for payment of the Assessment imposed by the Board under the provision of this Chapter.

SECTION 2. AREA ENCOMPASSED.

It is hereby intended that this Ordinance shall constitute a uniform law applicable in all unincorporated areas of Brevard County, Florida, and to all incorporated areas of Brevard County where there is no existing conflict of law or municipal ordinance.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause or provision and shall not be affected by such holding.

SECTION 4. CONFLICT.

All resolutions, ordinances, and agreements or parts thereof that may be determined to be in conflict with this ordinance are repealed.

SECTION 5. EFFECTIVE DATE.

A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing pursuant to law.

SECTION 6. INCLUSION IN THE BREVARD COUNTY CODE.

It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in Regular Session, this _____ day of _____, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk
(SEAL)

Rita Pritchett, Chair

As approved by the Board on _____

Reviewed for legal form and content:

County Attorney
Exhibit A

HOLD HARMLESS AND INDEMNIFICATION

WHEREAS, _____, with a business address of _____ (hereinafter "Hospital") requested that Brevard County (hereinafter "County") adopt the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance; and

WHEREAS, Hospital has given the County assurances that the objectives and procedures addressed in the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance are proper and lawful; and

WHEREAS, Hospital waives any right to challenge the procedures and objectives set out in the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance or any assessment levied pursuant to the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance; and

WHEREAS, pursuant to the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance, Hospital is required to execute this Hold Harmless and Indemnification prior to the adoption of any Assessment Resolution or Annual Final Assessment Resolution by the County.

NOW THEREFORE, in consideration of the covenants contained herein, Hospital hereby agrees as follows:

The foregoing recitals are true and are incorporated herein by reference.

Hospital hereby indemnifies and holds harmless the County, its officers, employees and agents from any and all claims arising from the adoption and implementation of the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance including any challenge to the procedure or authority of the County to levy or collect an assessment or any challenge to an assessment levied or collected by the County against any property owner pursuant to the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance, including any and all claims, the costs and fees associated with the defense of such claims, that may arise due to the objection or challenge to the Brevard County Local Provider Participation Fund Non-Ad Valorem Assessment Ordinance or challenge to the County's procedure or authority to impose any assessment levied or collected thereunder as may be challenged by any person, entity, or government agency.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 20__.

HOSPITAL:

WITNESSES:

Printed Name:

Signature

Title:_____

Printed Name:

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

(NOTARY SEAL)

Notary Public

Name Typed, Printed or Stamped
My Commission Expires: _____