

ORDINANCE NO. 21-18

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, AMENDING CHAPTER 17, SPECIAL ASSESSMENTS, OF THE MARION COUNTY CODE OF ORDINANCES, BY ADDING A NEW ARTICLE VI, THE MARION COUNTY LOCAL PROVIDER PARTICIPATION FUND NON-AD VALOREM SPECIAL ASSESSMENT, UNDER THE AUTHORITY OF FLORIDA CONSTITUTION, ARTICLE VIII, SECTION 1(f), AND SECTION 125.01, FLORIDA STATUTES, IN ORDER TO HELP OFFSET DESIGNATED HOSPITALS' MEDICAID SHORTFALL; PROVIDING FINDINGS; PROVIDING FOR THE IMPOSITION OF ANNUAL NON-AD VALOREM SPECIAL ASSESSMENTS ON REAL PROPERTY INTERESTS OF DESIGNATED PRIVATE HOSPITALS TO BE DEPOSITED INTO THE FUND; SPECIFYING THE METHOD OF SETTING AND COMPUTING THE NON-AD VALOREM SPECIAL ASSESSMENTS; AND SPECIFYING AUTHORIZED USES FOR THE FUND PROCEEDS; PROVIDING FOR SEVERABILITY, CONFLICTS AND AREA ENCOMPASSED; AND PROVIDING AN EFFECTIVE DATE AND INCLUSION IN THE CODE OF ORDINANCES.

WHEREAS, the Marion County hospitals described herein (the "Hospitals") annually provide millions of dollars of uncompensated care to persons who qualify for Medicaid because Medicaid typically covers only 60% of the costs of the health care services actually provided by Hospitals to Medicaid-eligible persons, leaving hospitals with significant uncompensated costs ("Medicaid shortfall"); and

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

WHEREAS, **several Hospitals in the State of Florida, including hospitals in Marion County**, have expressly requested Marion County (the "County") to impose a non-ad valorem assessment upon the Hospitals' Marion County real property interests to help finance the non-federal share of the State's Medicaid program; and

WHEREAS, the only real property interests that will be subject to the non-ad valorem assessments authorized herein are those belonging to the Hospitals; and

WHEREAS, the County recognizes that one or more of the Hospitals within Marion 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 classification of the real property being assessed; and

WHEREAS, the revenues raised by the assessments authorized herein will, through intergovernmental transfers (“IGTs”) provided consistent with federal guidelines, support additional funding for Medicaid payments to the Hospitals to reduce the Medicaid shortfall; and

WHEREAS, the Board of County Commissioners conducted a duly-advertised public hearing to consider adoption of this ordinance on July 6, 2021; and

WHEREAS, in advance of the public hearing on this Ordinance, the Board received a certified property appraiser’s opinion indicating that the Hospital properties to be assessed will receive a special and unique benefit as a result of the amount of the assessments; and in consideration of this opinion, the Board finds 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 assessed real property interests of the Hospitals; and

WHEREAS, the County has an interest in promoting access to health care for its low-income and under-insured residents, which affords benefits not only to those individuals, but to the community as a whole; 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’ property interests and supports their continued ability to provide those services; and

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

WHEREAS, the assessments will strengthen the financial stability and viability of the Hospitals providing such Medicaid services; and

WHEREAS, the Hospitals are important contributors to the County’s overall 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 Board finds that the assessments will enhance the Hospitals’ ability to grow, expand, maintain, improve, and increase the value of their Marion County facilities under all present circumstances and those of the foreseeable future; and

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

WHEREAS, due to the unique nature of the assessments authorized herein; the Board is requiring each Hospital that is assessed under the terms of this ordinance and any implementing Board resolutions, to: (a) waive any legal challenges to the validity of this ordinance and implementing Board resolutions; (b) defend and hold harmless Marion County from any damages that may be sustained by any of the Hospitals due to this ordinance and implementing resolutions; and (c) defend and hold harmless **Marion County** from any penalties that may be imposed by the State of Florida or any agency of the Federal Government, including but not limited to the Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) as a result of any assessments that may be imposed hereunder, or any requests for federal matching funds with respect to revenues raised by such assessments; and

WHEREAS, on July 6, 2021, the Board of County Commissioners adopted this Ordinance No. **21-18**, enabling Marion County to levy a uniform non-ad valorem special assessment, which by definition is fairly and reasonably apportioned among the Hospitals’ property interests 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, thus directly and specially benefitting the Hospital properties.

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

SECTION 1. Chapter 17 of the Marion County Code, Special Assessments, is hereby amended, by adding a new Article VI, as follows:

Sec. 17-264. – Title.

This Article VI shall be known, and may be cited as the “Marion County Local Provider Participation Fund Ordinance.”

Sec. 17-265. – Authority.

Pursuant to Article VIII, Section 1(f) of the Constitution of the State of Florida and Chapter 125 of the Florida Statutes, the Board is authorized to impose a special assessment against private for-profit and not-for-profit hospitals located within Marion County (the “Hospitals”) to fund the non-federal share of Medicaid payments associated with Local Services.

Sec. 17-266. – Purpose.

The non-ad valorem special assessments authorized by this article shall be imposed, levied, collected, and enforced against the Assessed Properties located within Marion County. Proceeds from the Assessments shall be used to benefit the Assessed Properties through enhanced Medicaid Payment 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, and failure to pay may cause foreclosure proceedings to be instituted that could result in loss of title. The assessment shall be computed and assessed only in the manner provided for in this Ordinance.

Sec. 17-267. – Alternative Method.

This Ordinance **and its implementing resolutions** shall **together** be deemed to provide an additional and alternative method, as specified in § 197.3631, Fla. Stat., for the assessment and collection of the non-ad valorem special assessment described herein. 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 in the future. 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. 17-268. – Definitions.

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

Annual Final Assessment Resolution means the resolution described in Sections 17-277 and 17-278 hereof, which shall be the final proceeding for the imposition of an Assessment, establishing the rate for the non-ad valorem assessment for a specific 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 it subject to the Assessment.

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 Coordinator means the person appointed to administer the Assessment imposed pursuant to this Article, or such person's designee.

Assessment Resolution means the resolution described in Section 17-272 hereof.

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

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

County means Marion 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 Marion County community.

Non-ad valorem Assessment Roll means the special assessment roll prepared by the County.

Ordinance means the Marion County Local Provider Participation Fund Ordinance.

Tax Collector means the Marion County Tax Collector.

Sec. 17-269. – Interpretation.

Unless the context indicates otherwise, the terms “hereof,” “hereby,” “herein,” “hereunder,” and similar terms refer to this Article. The term “hereafter” means after, and the term “heretofore” means before the effective date of the Ordinance.

Sec. 17-270. – Assessment.

Pursuant to §125.01, Fla. Stat., the Board is hereby authorized to create 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 account 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 (AHCA) 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 17-266, 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. In addition to other remedies available at law or equity, the enforcement of the aforementioned Assessment **may** be at the same time and in like manner as ad valorem taxes and **may be** subject to all ad valorem tax enforcement procedures afforded to use of the official annual real property tax notice.

Creation and implementation of the Assessment will not result in any additional pecuniary obligation on the County, Board, or County residents as 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 **\$150,000.00**. 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. 17-271. – Computation of Assessment.

The annual Assessment shall be specified for each Assessed Property. 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**, equals an amount of revenue that 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. 17-272. – Assessment Resolution.

The Assessment Resolution shall describe (a) the Medicaid payments proposed for funding from proceeds of the Assessment; (b) the benefits to the Assessment 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 is to be paid.

Sec. 17-273. – Non-Ad Valorem Assessment Roll.

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

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

The Non-Ad Valorem Assessment Roll shall be retained by the Assessment Coordinator and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Assessment for each Assessed Property can be determined by use of a computer terminal available to the public.

Sec. 17-274. – Notice by Publication.

Upon completion of the Non-Ad Valorem Assessment Roll, the Assessment Coordinator shall publish once in a newspaper of general circulation within the County a notice stating

that at a meeting of the Board on a certain day and hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular, adjourned, or special meeting, the Board will hear objections of all interested persons to approve the aforementioned Non-Ad Valorem Assessment Roll. 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 Assessment Coordinator.

Sec. 17-275. Notice by Mail.

In addition to the published notice required by Section 17-274, but only for the first year in which an Assessment is imposed by the Board against Assessed Properties, the Assessment Coordinator 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 **may** cause a tax certificate to be issued against the property or foreclosure proceedings to be instituted, either of which may result in a loss of title to the property;
- f) A statement that all affected and / or interested parties have a right to appear at the hearing and to file written objections with the Board within 20 days of the notice; and
- g) 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 Assessment Coordinator may provide proof of such notice by affidavit. Failure of the Assessed Property to receive such notice, due to 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. 17-276. – Adoption of Assessment Resolution and Non-Ad Valorem Assessment Roll.

At the time named in the notice, the Board shall receive and consider any written objections of interested persons. All objections to the Assessment Resolution and Non-Ad Valorem Assessment Roll shall be made in writing and filed with the Assessment Coordinator at or before the time or adjourned time of such hearing. At the date and time

named in the notice, 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;
- b) Approve the Non-Ad Valorem Assessment Roll, with such amendments as the Board deems just and right; and
- c) Affirm the method of collection.

Sec. 17-277. – Annual Final Assessment Resolution.

The Board may revise the Non-Ad Valorem Assessment Roll during the Fiscal Year to **change** the Assessment rate **if calculations suggest such change or correction is necessary**. However, the Board must adopt an Annual Final Assessment Resolution during the Fiscal Year to memorialize the final rate applicable for the Fiscal Year.

Sec. 17-278. – 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. The Non-Ad Valorem Assessment Roll shall be delivered to the Tax Collector or such other official as the Board by resolution shall designate.

Sec. 17-279. – Method of Collection.

The amount of the assessment **may** be collected pursuant to the Alternative Method, as specified in the Assessment Resolution.

Sec. 17-280. – 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 refund to Assessed Properties in proportion to the amounts paid in during the Fiscal Year for all or a portion of the unutilized local provider participation fund.

Sec. 17-281. – Responsibility for Enforcement.

The County and its agent, if any, shall maintain the duty to enforce the prompt collection of the Assessment by the means provided herein. The duties related to collection of assessments may be enforced at the suit of any holder of obligations in a court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

Sec. 17-282. Correction of Errors and Omissions.

No act of error or omission on the part of the Comptroller, Property Appraiser, Tax Collector, Assessment Coordinator, Board, or their deputies or employees shall operate

to release or discharge any obligation for payment of the Assessment imposed by the Board under the provisions of this Chapter.

SECTION 2. APPLICABILITY.

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

SECTION 3. SEVERABILITY.

If any portion of this Ordinance is for any reason held invalid or declared to be unconstitutional, inoperative, or void by any court of competent jurisdiction, such holdings shall not affect the validity of the remainder of this ordinance.

SECTION 4. RESOLUTION OF CONFLICT OF LAWS.

In all instances where Florida law, as evidenced by the Florida Statutes, Florida Administrative Code, applicable case law or otherwise, mandates standards or requirements that are stricter than the provisions of this Ordinance, or where a matter is addressed by Florida law that is not addressed by this Ordinance, then said law shall govern. In situations where this Ordinance addresses a matter in a manner that is stricter than that of Florida law, the provisions of this Ordinance shall control.

SECTION 5. INCLUSION IN THE MARION COUNTY CODE.

The provisions of this Ordinance shall be included and incorporated in the Marion County Code, as an addition or amendment thereto, and shall be appropriately re-numbered to conform to the uniform numbering system of the Marion County Code, once established.

SECTION 6. FILING OF ORDINANCE.

In accordance with the provisions of § 125.66, Fla. Stat., a certified copy of this Ordinance shall be filed with the Florida Department of State.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall become effective upon filing with the Department of State.

DULY ADOPTED this 6th day of July, 2021.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

JEFF GOLD, Chairman

ATTEST:

GREGORY C. HARRELL,
CLERK