Date: 05/17/2022	**AGENDA ITEM**			**Item:** 08
[X] Ordinance	[] Resolution	[] Budget Resolution	[] Other	

County Goals							
[]	Thriving Communities	[]	Economic & Financial Vitality	[]	Excellence In Government	[X]	NA

Department: Legal Department
Division: Legal

Subject: Ordinance 2022-18 creating Article X, Sections 110-771 through 110-790 of Chapter 110 of the Code of Ordinances of the of Volusia, to be entitled "Local Provider Participation Fund."

Michael Dyer County Attorney Department Approval		**Legal** Laura Coleman Assistant County Attorney **Approved as to Form and Legality**	**County Manager's Office** Ryan Ossowski Chief Financial Officer
Division Approval			

Council Action:

Modification:

Account Number(s): NA
Total Item Budget: NA

Staff Contact(s):	**Phone:**	**Ext.**
Laura Mauldin Coleman	386 736 5950	12950
Mike Dyer	386 736 5950	13238

Summary/Highlights:
Medicaid is a joint federal-state health insurance program. Medicaid is jointly funded by states and the federal government through federal matching of state funds. State general revenue comprises a large share of the funds receiving a federal match. However, other forms of revenue collection can also draw down federal matching dollars. Local governments can collect funds and use intergovernmental transfers (IGTs) to send them to the state to trigger federal matching, as long as they comply with federal rules.

Hospitals that provide Medicaid services often fail to receive full compensation for those services. Unlocking federal funds through IGTs allows hospitals to cover this shortfall.

The State recently received approval from the federal government to implement the Medicaid Managed Care Hospital Direct Payment Program (DPP). To implement the Hospital DPP, counties adopt a non-ad valorem special assessment to collect funds from hospitals in the county. The counties transfer those funds to the state, where the money draws down additional federal funds. The sum is then dispersed to address the hospital Medicaid shortfall.

AdventHealth has requested the County impose a non-ad valorem special assessment upon certain real property interests held by the hospitals to help finance the non-federal share of the State's Medicaid Program. Halifax Health supports AdventHealth's request.

At this time, the special assessment would only be imposed on the following hospitals in Volusia County: AdventHealth Daytona Beach; (ii) AdventHealth DeLand; (iii) AdventHealth Fish Memorial; (iv) AdventHealth New Smyrna; (v) Halifax Health - Medical Center of Deltona; and (vi) Select Specialty Hospital - Daytona Beach. The special assessment will never be imposed on any individual residents.

At its April 5, 2022, meeting, Council instructed staff to prepare the requested ordinance, in collaboration with AdventHealth and their consultant, Adelanto HealthCare Ventures.

The ordinance is attached for Council's consideration. Additional information regarding the DPP and the Local Provider Participation Fund is also attached.

Recommended Motion: Adoption and execution.

ORDINANCE 2022-18

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA; ADDING ARTICLE X, SECTIONS 110-771 THROUGH 110-790; AUTHORIZING CREATION OF THE COUNTY OF VOLUSIA LOCAL PROVIDER PARTICIPATION FUND UNDER THE AUTHORITY OF ARTICLE VIII, SECTION 1(G) OF THE CONSTITUTION OF THE STATE OF FLORIDA AND THE VOLUSIA COUNTY HOME RULE CHARTER; SPECIFYING THE METHOD OF SETTING AND COMPUTING ANNUAL NON-AD VALOREM SPECIAL ASSESSMENTS TO SPECIFIED ASSESSED PROPERTIES OF HEALTHCARE PROVIDERS TO BE DEPOSITED INTO THE FUND; SPECIFYING AUTHORIZED USES FOR THE FUND PROCEEDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AUTHORIZING INCLUSION IN CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the hospitals in Volusia County's jurisdiction (the "Hospitals") annually provide millions of dollars of uncompensated care to uninsured persons and those 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 hospitals with significant uncompensated costs; and

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

WHEREAS, impacted Hospitals have asked Volusia 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 such 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, through intergovernmental transfers ("IGTs") provided consistent with federal guidelines, support additional funding for Medicaid payments to Hospitals; and

WHEREAS, the County acknowledges that the Hospital properties assessed will increase in value 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 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 uninsured residents; and

WHEREAS, leveraging additional federal support through the above-described IGTs to fund Medicaid payments to the Hospitals for health care services directly and specifically adds value to 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 these 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 such 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 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 uniform non-ad valorem special assessment, which is fairly and reasonably apportioned among the

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, thus directly and specially benefitting Hospital properties.

BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

(Words in ~~strike through~~ type are deletions; words in underscore type are additions.)

SECTION I: Article X of chapter 110 of the Code of Ordinances of the County of Volusia is hereby amended by the addition of the following sections:

Sec. 110-771. - Title.

This Article X shall be known and may be cited as the "Volusia County Local Provider Participation Fund Ordinance."

Sec. 110-772. - Authority.

Pursuant to Article VIII, Section 1(g) of the Constitution of the State of Florida, Chapter 125 of the Florida Statutes, and Article II of the Volusia County Home Rule Charter, the Council is hereby authorized to impose a special assessments, including the special assessment described herein against private for-profit and not-for-profit hospitals located within the County to fund the non-federal share of Medicaid payments associated with Local Services.

Sec. 110-773. - Purpose.

The non-ad valorem special assessment authorized by this article shall be imposed, levied, collected, and enforced against Assessed Properties located within the County.

Proceeds from the Assessment shall be used to benefit Assessed Properties through enhanced Medicaid payments 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 may cause foreclosure proceedings, which could result in loss of title, to commence. The Assessment shall be computed and assessed only in the manner provided in this Ordinance.

Sec. 110-774. - Alternative Method.

This Ordinance shall be deemed to provide an additional and alternative method, as specified in § 197.3631, Fla. Stat. ("Alternative Method"), 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. 110-775. - Definitions.

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

"Assessed Property" means the real property in the County to which an Institutional Health Care Provider holds a right of possession and right of use through an ownership or leasehold interest, thus making the property subject to the Assessment. As of the effective date of this Ordinance the following are the Assessed Properties: (i) AdventHealth Daytona

Beach; 301 Memorial Medical Pkwy, Daytona Beach, FL 32117; (ii) AdventHealth DeLand; 701 W Plymouth Ave, DeLand, FL 32720; (iii) AdventHealth Fish Memorial; 1055 Saxon Blvd 1st Floor, Orange City, FL 32763; (iv) AdventHealth New Smyrna; 401 Palmetto St, New Smyrna Beach, FL 32168; (v) Halifax Health - Medical Center of Deltona; 3300 Halifax Crossing Boulevard, Deltona, FL 32725; and (vi) Select Specialty Hospital - Daytona Beach; 301 Memorial Medical Pkwy, Daytona Beach, FL 32117.

"Assessment" means a non-ad valorem special assessment imposed by the County on Assessed Property to fund the non-federal share of Medicaid and Medicaid managed care payments that will benefit hospitals providing Local Services.

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

"Assessment Resolution" means the resolution described in Section 110-779 hereof.

"Council" means the County Council of Volusia County, Florida.

"Charter" means the home rule charter of Volusia County, Florida.

"County" means the County of Volusia, a body corporate and politic and a subdivision of the State of 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 health care services to Medicaid, indigent, and uninsured members of the Volusia County community.

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

"Ordinance" means the Volusia County Local Provider Participation Fund Ordinance.

"Property Appraiser" means the Volusia County Property Appraiser.

"Tax Collector" means the Volusia County Tax Collector.

Sec. 110-776. - Interpretation.

Unless the context indicates otherwise, the terms "hereof," "hereby," "herein," "hereto," "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. 110-777. - Scope of Assessment.

Pursuant to § 125.01, Fla. Stat., the Council 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 an accounting 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 and low income patients 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, if any.

The Assessment must 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 110-773, 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 aforesaid Assessment shall be at the same time and in like manner as ad valorem taxes and subject to all ad valorem tax enforcement procedures afforded to the official annual real property tax notice.

Creation and implementation of the Assessment will not result in any additional pecuniary obligation on the County, Council, or County residents. The Assessment shall be imposed, levied, collected, and enforced against only Assessed Properties, and the Assessment Resolution, if any, 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. 110-778. - Computation of Assessment.

The annual Assessment shall be specified for each Assessed Property. The Council 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 hospital assessments levied by the state or local government, 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 hospital cost reports and/or the Florida Hospital Uniform Reporting System, as available from the Florida Agency for Health Care Administration. It shall be the responsibility and obligation of each Institutional Health Care Provider holding the right of possession and/or right of use to an Assessed Property to provide to the County with the aforementioned data and any other information relevant to computation of the Assessment by any deadline set by the Assessment Coordinator for any given year. If any such Institutional Health Care Provider fails to provide the aforementioned data or other information in a timely manner, the County may choose not to vote to adopt an annual Assessment Resolution.

Sec. 110-779. - Assessment Resolution.

Annually, the Council may adopt an Assessment Resolution authorizing collection of the Assessment. Without adoption of an applicable Assessment Resolution, no Assessment may be imposed, levied, collected, and enforced. The annual Assessment Resolution, if any, 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. 110-780. - Non-Ad Valorem Assessment Roll.

The Assessment Coordinator shall prepare, or direct the preparation of, the Non-Ad Valorem Assessment Roll, prior to Council's vote on an annual Assessment Resolution, if any. Such Non-Ad Valorem Assessment Roll shall contain the following:

a) The names and addresses of 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.

The Non-Ad Valorem Assessment Roll shall be retained by the Assessment Coordinator and shall be open to public inspection and posted to the County's publicly available website. 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.

Nothing in this Ordinance, including this section, shall be construed to require the Assessment Coordinator to prepare a Non-Ad Valorem Assessment Roll or the Council to vote to adopt any Assessment Resolution for or in any given Fiscal Year.

Sec. 110-781. - Notice by Publication.

Prior to any Council's vote, if any, to adopt an Assessment Resolution, the Assessment Coordinator shall publish once in a newspaper of general circulation within the County a notice stating that the Council, at a regular, adjourned, or special meeting on a certain day and hour, not earlier than 20 calendar days from such publication, will hear objections of all interested persons to approve the Assessment. 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.

Nothing in this Ordinance, including this section, shall be construed to require the Assessment Coordinator to prepare a Non-Ad Valorem Assessment Roll or the Council to vote to adopt any Assessment Resolution for or in any given Fiscal Year.

Sec. 110-782. - Notice by Mail.

In addition to the published notice required by Section 110-781, but only for the first fiscal year in which an Assessment is imposed by the Council against an Assessed Property, 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 used 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 tax certificate to be issued against the property or foreclosure proceedings, 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 Council 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, 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 Council pursuant to this Article.

Sec. 110-783. - Adoption of Assessment Resolution and Non-Ad Valorem Assessment Roll.

At the time named in the notice described in Section 110-781, the Council 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 Council 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 it deems just and right; and

c) Affirm the method of collection.

Sec. 11-784. - Revisions to the Assessment Roll.

The Council may revise the Non-Ad Valorem Assessment Roll one or more times during the Fiscal Year to modify the Assessment rate through the adoption of an additional Assessment Resolution, following the procedures described in Sections 110-779 through 110-783.

Sec. 110-785. - Effect of the Assessment Resolution.

The adoption of an 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 Council action on the Assessment Resolution. The Non-Ad Valorem Assessment Roll shall be delivered to the individual or official as the Council by resolution shall designate, which may be the Tax Collector.

Sec. 110-786. - Method of Collection.

The amount of the Assessment is to be collected pursuant to that method specified in the Assessment Resolution, which may be the Alternative Method.

Sec. 110-787. - Refunds.

If, at the end of the Fiscal Year, additional amounts remain in the local provider participation fund, the Council is hereby authorized to make 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. 110-788. - 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. 110-789. - Correction of Errors and Omissions.

No act of error or omission on the part of the Property Appraiser, Tax Collector, Assessment Coordinator, Council, or their deputies or employees shall operate to release or discharge any obligation for payment of the Assessment imposed by the Council under the provision of this Chapter.

Sec. 110-790. - Limitations on Surcharges.

Payments made by Assessed Properties under this article may not be passed along to patients of the Assessed Property as a surcharge or as any other form of additional patient charge.

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

SECTION III: SEVERABILITY. Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV: CONFLICTING ORDINANCES. All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION V: AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

SECTION VI: EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS 17th DAY OF MAY A.D., 2022.

	COUNTY COUNCIL
ATTEST:	VOLUSIA COUNTY, FLORIDA
_____	_____
George Recktenwald	Jeffrey S. Brower
County Manager	County Chair

Supporting Documentation Provided by Adelanto HealthCare Ventures L.L.C.

Medicaid Funding

Medicaid is a joint federal-state health insurance program that provides medical coverage to a low-income population consisting of children, pregnant women, people over 65, and individuals with disabilities. *See* 42 U.S.C. § 1396, *et seq.* Although the program is administered by the states, Medicaid is jointly funded by states and the federal government through federal matching of state funds. 42 U.S.C. § 1396b.

State general revenue comprises a large share of the funds receiving a federal match. Other forms of revenue collection, however, also qualify for matching. For example, local governments can collect funds and use intergovernmental transfers (IGTs) to send them to the state for federal matching. *See Social Security Act* § 1902(a)(2); 42 CFR § 433.51. IGTs have the advantage of increasing the magnitude of federal spending without a commensurate increase in state general revenue spending. So long as these IGTs comply with federal rules, they are eligible for federal match. *See* Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, PL 102–234, December 12, 1991, 105 Stat. 1793; *Social Security Act* § 1903(w).

Medicaid payments funded by matching serve a vital purpose. Hospitals that provide Medicaid services or other forms of indigent care often fail to receive full compensation for those services. Indeed, the Florida Hospital Association recently estimated that Medicaid reimbursement equates to approximately 66 percent of total procedure costs, leaving hospitals with 34 percent of costs unreimbursed. Unlocking federal funds through IGTs allows hospitals to cover this gap and to continue providing care to Floridians in need.

In November 2020, the Agency for Health Care Administration (AHCA) first applied for approval for a directed payment program (DPP) designed to address the Medicaid reimbursement shortfall. The directed payment program, approved by the federal government in 2021 and eligible for re-approval in 2022, allows the state to increase reimbursement for Florida's Medicaid-providing hospitals. The pool of money used for the initiative would come from a combination of funds from the state (the nonfederal share), with the addition of federal matching dollars.

As part of the Centers for Medicare & Medicaid Services' review of the Hospital DPP application, the agency requested information from AHCA regarding the source of the state share. AHCA stated in its February 9, 2021, response to CMS, "For participating private hospitals, provider tax revenues transferred by counties and generated *through non-ad valorem special*

assessments will be the source of the non-federal share. The county will certify that the special assessments will comply with health care related tax rules through the Letter of Agreement." (emphasis added). From the federal perspective, a non-ad valorem special assessment is a provider tax under 42 C.F.R. Part 433 Subpart B. CMS, therefore, is aware that local special assessments are used for this purpose.

Special Assessment Authority

Article VII, Section 9 of Florida's Constitution states that municipalities and counties may levy taxes only if authorized by general law. Notwithstanding this limitation, local governments retain statutory and inherent home-rule authority to charge special assessments without express legislative authorization. *See* Art. VIII, § 6, Fla. Const.; § 125.01(1)(r), Fla. Stat.; *see also City of Boca Raton v. State,* 595 So. 2d 25, 29 (Fla. 1992), *modified sub nom. Collier Cty. v. Fla.,* 733 So. 2d 1012 (Fla. 1999), *and holding modified by Sarasota Cty. v. Sarasota Church of Christ, Inc.,* 667 So. 2d 180 (Fla. 1995).

A special assessment is like a tax in many respects. Like a tax, it is an "enforced contribution" from a property owner. *Klemm v. Davenport,* 129 So. 904, 907 (Fla. 1930). Also like a tax, it is used to fund "usual and recognized [local] improvements and services." *Charlotte Cty. v. Fiske*, 350 So. 2d 578, 580 (Fla. 2d DCA 1977).

Despite these similarities, a special assessment has several distinct characteristics. Although a tax need not provide any specific benefit to property and "may be levied throughout the particular taxing unit for the general benefit of residents and property," *City of Boca Raton,* 595 So. 2d at 29, a special assessment: (1) must confer a specific benefit (2) upon the real property of payers. *Id.*; *City of N. Lauderdale v. SMM Properties, Inc.,* 825 So. 2d 343, 350 (Fla. 2002). Additionally, a lawful special assessment must be fairly and reasonably apportioned according to the benefits received. *Sarasota County*, 667 So. 2d at 183. This requirement is not onerous; the apportionment will be upheld as a legislative determination so long as it is not arbitrary. *Id.* at 184; *see also City of Winter Springs v. State*, 776 So. 2d 255, 257 (Fla. 2001).

Special Assessments for Medicaid Supplemental Payments

Volusia County may adopt a non-ad valorem special assessment to collect funds for IGT and federal matching. Nonpublic hospitals across Florida recognize the benefit of a special assessment, which would charge nonpublic hospitals only, over traditional forms of taxation as a means to generate a pool of funds capable of drawing down available federal dollars. Faced with the reality that hospitals fail to receive full reimbursement for safety net services, hospitals

appreciate the partnership of local governments to adopt creative strategies that unlock available federal funds to cover the need.

Whether local governments can use a special assessment for such collection and IGT under Florida law requires analysis of two questions:

1) Does the result of the collection qualify as an appropriate service or benefit to payers?
2) Does the benefit derived from the assessment improve the value of the affected land?

As explained below, the answer to these questions is yes.

Result of the Collection

Under Florida law, "the portion of the community which is required to bear [a special assessment must] receive[] some special or peculiar benefit . . . as a result of the improvement made with the proceeds of the special assessment." *Klemm*, 129 So. at 907. Any such benefit need not be unique to the bearer, but it must be "direct" and "special." *See Lake Cty. v. Water Oak Mgmt. Corp.*, 695 So. 2d 667, 670 (Fla. 1997). Benefits are not limited to capital projects or physical construction (*e.g.,* a new road, new streetlights); provision of vital services suffices. *Madison Cty. v. Foxx*, 636 So. 2d 39, 50 (1st DCA 1994). Neither case law nor statute provides any finite list of benefits that qualify.

An overview of existing case law shows that courts have approved a broad array of services and benefits funded through special assessments. They include:

- Fire protection, *see Fire Dist. No. 1 of Polk County v. Jenkins*, 221 So. 2d 740 (Fla.1969);
- Garbage collection, *see Fiske*, 350 So. 2d 578;
- Recycling services, *see Sockol v. Kimmins Recycling Corp.*, 729 So. 2d 998, 999 (Fla. 4th DCA 1999);
- Erosion control, *see City of Treasure Island v. Strong*, 215 So. 2d 473 (Fla. 1968);
- Sewer improvements, *see City of Hallandale v. Meekins*, 237 So. 2d 318 (Fla. 4th DCA 1970), *aff'd sub nom. Inv. Corp. of S. Fla. v. City of Hallandale,* 245 So. 2d 253 (Fla. 1971). 245 So. 2d 253 (Fla. 1971);
- Street improvements, *see Bodner v. City of Coral Gables*, 245 So. 2d 250 (Fla. 1971);
- Beautification projects, *see City of Winter Springs v. State*, 776 So.2d 255 (Fla. 2001),
- Security guard gate and security services, *see Rushfeldt v. Metropolitan Dade County*, 630 So.2d 643 (Fla. 3d DCA 1994); and

- Law enforcement protection and mosquito control, *see Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525, 527 (Fla. 1st DCA 2005).

Although the list of projects and services is diverse, the common thread tying this assortment together is the direct and special nature of the benefit to payers. The entities affected by the assessment must obtain some positive impact as a result of their payment. Courts afford great deference to local governments on the question whether projects qualify as providing a proper benefit. Indeed, courts agree that a "legislative determination as to the existence of special benefits . . . should be upheld unless the determination is arbitrary." *See Sarasota Cty.*, 667 So. 2d at 184.

Here, the *service* provided by the county is the collection of funds and the transfer to the state for federal matching. This service is one local governments—and local governments alone—are uniquely positioned to provide for nonpublic hospitals. Because of the nature of federal requirements related to match eligibility, private collection arrangements do not suffice. *See Social Security Act* §1903(w); 42 CFR Part 433 Subpart B. Only funds collected by state entities through permissible mechanisms and transferred through IGTs satisfy the necessary criteria.

Performing mandatory collections, authorized by law or ordinance, is a "usual and recognized" function of local government. *Fiske*, 350 So. 2d at 580. From the genesis of the nation, the government has levied and collected taxes and other payments from citizens and businesses. Florida law, combined with the inherent home-rule authority of local governments, bestows the power of special assessment collection on counties and cities. §§ 125.01(1)(r), 170.03, Fla. Stat.; *City of Boca Raton,* 595 So. 2d at 29. Just as local governments are the "usual and recognized" purveyors of road construction projects and fire service underlying special assessments (traditional aims of special assessments), so too do they represent the customary assessors and collectors of taxes and other mandatory fees.

Submission of funds via IGT is similarly a "usual and recognized" function of local government. Since 2018, the City of Orlando has used IGTs to fund the non-federal share of a directed payment for charity care. Walton County has done so for charity care since 2020. Such transfers are a *service* in that they unlock the available federal matching dollars.

The *benefit* derived from the proposed special assessment is both "direct" and "special." *See Lake Cty.*, 695 So. 2d at 670. Federal funds flow back and directly benefit the payers of the assessment because they offset the cost of providing certain services or training and the cost of uncompensated care. The new reimbursement fulfills a critical funding need and frees up revenue

streams that can be repurposed for, among other things, physical plant improvements and upgraded patient services. The need for the federal subsidy—the *benefit* conferred from the special assessment—is rooted in the harsh realities of providing care to those most in need. For these reasons, any county levying an assessment can readily demonstrate the basis for its determination that the special assessment results in a benefit to payers of the assessment.

Effect on Land Value

In addition to providing a qualifying benefit, special assessments typically increase the value of assessed real property in some respect. *See Fisher v. Board of County Commissioners*, 84 So.2d 572 (Fla. 1956) ("To constitute a special benefit, the improvement must add something to the usual market value of the assessed property."). However, the test is not rigid, and the Florida Supreme Court has endorsed a benefits analysis that is broad in scope. *See Meyer v. City of Oakland Park*, 219 So. 2d 417, 420 (Fla. 1969) ("The term 'benefit,' as regards validity of improvement assessments, does not mean simply an advance or increase in market value, but embraces actual increase in money value and also potential or actual or added use and enjoyment of the property.").

Beginning in the early 1970s, some courts operated from the premise that the increase-in-value analysis should be focused on physical land changes and divorced from the property's then-current use. In one notable example, the Fourth District Court of Appeal held that "a special use to which property is put cannot be considered" in the value-enhancement calculus; the Fourth District Court of Appeal suggested that the analysis must be blind to the property's usage because the use of the land is voluntary and subject to change. *City of Hallandale*, 237 So. 2d at 322.

That narrow and rigid perspective quickly encountered opposition. In the 1977 case of *Charlotte County v. Fiske*, the Second District Court of Appeal approved a waste-management special assessment distinguishing between residential and commercial property (excluding commercial property from the assessment entirely) because the two types of property required different types of garbage-disposal services. 350 So. 2d at 580. The Florida Supreme Court endorsed this view in the 1995 *Sarasota County* case. Relying on *Fiske*, the Court upheld an assessment for contaminated stormwater treatment services that applied to developed real property but not to undeveloped real property. *Id.* at 185–86. The Court credited the county's findings that properties with impervious surfaces contributed the polluted stormwater to be treated by the system, while undeveloped properties absorbed runoff and therefore received no benefit. *Id.*

District courts of appeal followed the trend. In 2005, the First District Court of Appeal in *Quietwater Entertainment* upheld an Escambia County special assessment for law enforcement

protection and mosquito control for select lands based on the county's legislative findings that the assessed property had "unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property on the island and is subject to mosquito infestation." 890 So. 2d at 527. The continued persuasiveness of this thinking motivated the Florida Supreme Court's 2015 decision in *Morris v. City of Cape Coral*, 163 So. 3d 1174 (Fla. 2015). There, the Florida Supreme Court, in considering a challenge based on apportionment, approved a special assessment for fire-protection services that distinguished between developed and undeveloped property because the developed property derived a greater benefit from the assessment. *Id.* at 1178–79. In reaching its conclusion, the Court relied on reasoning articulated in *Sarasota County v. Sarasota Church of Christ, Inc.* to find that developed property could properly be assessed for fire services at a higher rate than undeveloped property because the cost to replace the respective structures differed and the service therefore provided a greater benefit to the developed property class. 163 So. 3d at 1179.

Applying the logic of these cases, Volusia County may create an assessment that attaches to only a narrow and specific class of properties that obtain a unique benefit of the service. That class includes properties on which nonpublic hospitals operate.

Courts will not uphold a special assessment ordinance if the initiative provides only a "personal benefit to individuals," but not to property. *See City of N. Lauderdale*, 825 So. 2d at 348, 350 (invalidating an assessment for emergency medical services); *see also Crowder v. Phillips*, 1 So. 2d 629, 631 (Fla. 1941) (en banc) (finding an assessment for construction of a hospital invalid because "there is no logical relationship between the construction and maintenance of a hospital, important as it is, and the improvement of real estate situated in the district"). Likewise, courts will not uphold an assessment if the benefit conferred upon the payers is not "different in type or degree from the benefits conferred to the community as a whole." *Hanna v. City of Palm Bay*, 579 So. 2d 320, 323 (5th DCA 1991).

But where the county can prove some "logical relationship" between the value of the payers' property and the project's purpose, the assessment will survive. *See Lake Cty,* 695 So. 2d at 670 (noting that a logical relationship must exist between the services provided and the benefit to real property). This view has led courts to uphold assessments for services such as garbage collection, fire rescue, and mosquito control—services that add value to land by virtue of enhancing its value and utility to occupants. These services are proper bases for assessments because they enhance property value by providing derivative benefits, such as lower insurance premiums and increased rent ceilings for occupying tenants. *See Lake Cty.*, 695 So. 2d at 669; *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740 (Fla. 1969). Courts agree, therefore, that the "logical

connection" hurdle is overcome whenever the local government establishes the increased-value connection in the record.[1]

Even if the determination of enhanced value is subjective in some respects, courts respect that such matters are "questions of fact for a legislative body rather than the judiciary," and that local government's findings "should be upheld unless the determination is arbitrary." *Morris*, 163 So. 3d at 1177 (citing *Sarasota Church of Christ*, 667 So. 2d at 183). As a general matter, courts are deferential because they recognize that "[n]o system of appraising benefits or assessing costs has yet been devised that is not open to some criticism." *S. Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380, 383 (Fla. 1973) (quoting *City of Fort Myers v. State*, 117 So. 97, 104 (Fla. 1928)). So long as the government has some evidence to support enhanced value, suits premised on the notion that value is not enhanced fail. *See Harris v. Wilson,* 656 So. 2d 512, 515 (Fla. 1st DCA 1995), *approved,* 693 So. 2d 945 (Fla. 1997) ("As the County has made its legislative findings as to the existence of special benefits from disposal services, the courts should not substitute their judgment for those determinations."); *City of Hallandale,* 237 So. 2d at 320–21 ("[I]f reasonable men may differ as to whether land assessed was benefited by the local improvement, the determination of the city officials as to such benefits must be sustained."). Only where the city fails to produce *any* competent, substantial evidence that the property value of a parcel actually increased have courts invalidated the assessment. *See*, *e.g.*, *City of N. Lauderdale*, 825 So. 2d at 350 (invalidating a special assessment for provision of emergency medical services because the city offered "no testimony or expert opinion indicating how the portion of the assessment providing for emergency medical services specially benefits real property"); *Indian Creek Country Club, Inc. v. Indian Creek Vill.*, 211 So. 3d 230, 236 (3d DCA 2017) (rejecting a special assessment for security services because there was "no evidence in the record to show that any of the real property owners (residential or commercial) would get lower insurance premiums as a result of the Village providing general law enforcement to its residents' real property; there appears to be no evidence in the record of an increase in law enforcement capabilities and patrols as a result of the special assessment; [and] there is no data to show that property values would increase as a benefit of the general law enforcement provided to the Village and Club").

[1] Courts, however, will not find an adequate logical connection established where the local government presents only abstract testimony that the proposed benefit "generally renders real property more valuable and more marketable," without providing evidence of any specific increase in actual value of affected lots. *See Donnelly v. Marion Cty*., 851 So. 2d 256, 265 (5th DCA 2003). In *Donnelly*, the court invalidated an assessment, noting that even the "defendants' own expert testified he was unable to say with any exactitude what the increase in the value of any particular lot in the [area subject to assessment] was as a result of provision of the services at issue, even though he was confident that the lots 'are more valuable and more marketable.'" *Id.* at 266; *id.* at 265 n.10 ("Even the defendants' expert could not find any relationship between lower insurance rates [a purported benefit] and the services being provided.").

In contrast, where the local government's findings are supported by competent, substantial evidence, they are "entitled to a presumption of correctness." *Desiderio Corp. v. City of Boynton Beach*, 39 So. 3d 487, 493–94 (Fla. 4th DCA 2010) (citing *City of Winter Springs*, 776 So. 2d at 261–62); *Ass'n of Cmty. Organizations for Reform Now/ACORN v. City of Fla. City*, 444 So. 2d 37, 38 (Fla. 3d DCA 1983) (stating that a challenger cannot succeed unless he bears his burden of overcoming the presumption). Courts will accept legislative determinations supported by testimony of experts. Thus, in *City of Winter Springs v. State*, the Fourth District Court of Appeal upheld an assessment for district beautification projects based on findings from a consultant and appraiser hired by the city that a "positive and certain influence on the market value for properties [exists] in areas where such improvements are made." 776 So. 2d at 258.

Comparable testimony supporting the value-enhancing benefit of a hospital special assessment, applicable only to properties where a nonpublic hospital operates, is readily available. Properties eligible for the increased federal match are more valuable than their non-qualifying counterparts in neighboring districts without such assessments. When hospital systems seek to expand into Florida or a given region of the state or consider whether to stay, they will target lands in counties that levy the assessment and offer the federal match. This is so because the assessment results in a benefit: potential increased income from federal matching dollars. Such new payments offset the costs each hospital faces and therefore diminish the magnitude at which hospitals provide certain services at a loss.

Desire for lands offering this benefit will drive up the value, just as provision of certain services, such as fire protection or waste management, do. This assertion is supported by an appraisal from Lucas Woodruff of OHC Advisors in a valuation focused specifically on the hospital directed payment program.

Indirect benefits necessarily become available to payers and their properties as a county implements IGTs that result in payout of federal funds. Payers may apply funds received through matching to increase the value of the affected real property in myriad ways: capital improvements, facility expansion, and covering the costs of maintenance and upkeep. Legislative findings and expert reports to this effect will render the assessment defensible against challenge.

In sum, where the record contains sufficient evidence of benefit to property, courts caution only that special assessments cannot be unreasonable, arbitrary, used to generate profit for the local government,[2] or borne unequally by payers unless their benefits are proportionally unequal, as well. *See Fiske,* 350 So. 2d at 581. These pitfalls render an assessment invalid.

[2] The *Fiske* court did not elaborate on what constitutes a "profit" for the local government. The confines of this boundary remain untested.

However, the proposed special assessment for nonpublic hospitals does not present these dangers. The assessment results in a benefit: potential for federal matching dollars.

Comparable Special Assessments in Other Florida Jurisdictions

Recognizing that a hospital special assessment comports with existing legal parameters, two jurisdictions in Florida have historically collected assessments to support Medicaid-related IGTs. The City of Orlando collects an assessment based on the gross outpatient revenues of hospitals within the city limits that provide uncompensated charity care. These funds go to the state and then increase the draw-down from the Low-Income Pool. Collection began in 2018 and remains intact. Walton County, too, adopted a special assessment in 2020 designed to collect funds for IGT and federal matching. The City of Pensacola previously used a special assessment for the same purposes.

To date, no payer has challenged these assessments in court. Standing principles limit the class of entities who may bring such challenges to the pool of payers of the assessment, and paying hospitals desire to continue contributing to the fund to obtain federal matching dollars.[3] *See Hays v. City of Tampa*, 154 So. 687 (Fla. 1934) (concluding that a complaint against a special assessment is subject to dismissal if a plaintiff does not allege facts showing it has an interest that will be adversely affected by the challenged assessment). As a result, these programs have continuously generated valuable federal matching funds for affected hospitals.

Since April 2021, sixteen other jurisdictions around Florida have adopted ordinances designed to generate funds for IGTs that will obtain federal matching to cover the Medicaid shortfall. They range from Escambia County to the City of Jacksonville and from Bay County to Miami-Dade. The availability of these local programs will attract hospitals seeking to expand into the state to the participating areas. Because Florida law allows for use of special assessments to generate funds for such IGTs, counties across the state can partner with local hospitals—

[3] Even if a challenge were asserted, Florida courts have held that refunds may not be appropriate if "equitable considerations" would preclude them. *See Gulesian v. Dade Cty. Sch. Bd.*, 281 So. 2d 325, 326 (Fla. 1973). Such considerations include whether the assessment was levied in good faith and whether refunding "would impose an intolerable burden" on the government entity. In *Dryden v. Madison County*, 696 So. 2d 728 (Fla. 1997), the Florida Supreme Court specifically held that "[w]here an invalid tax scheme applies across the board and confers a commensurate benefit . . . 'equitable considerations' may preclude a refund." *Dryden*, 696 So. 2d at 730 (citing *Gulesian*, 281 So. 2d at 325). In *Dryden*, the plaintiffs were not entitled to refunds because the special assessments, though invalid, "were non-discriminatory (i.e., they applied across the board to all property owners in the county), and they conferred a commensurate benefit (i.e., they provided for garbage collection and disposal, landfill closure, ambulance service, and fire protection). Further, the county acted in good faith in imposing these assessments." Id. at 730. The case against any kind of a refund should the proposed assessment here be invalidated is even stronger in light of the receipt and distribution of matching federal funds. Unwinding the funding process would likely prove insurmountable and lead a court, in light of the actual benefit received, to refuse to order a refund.

stalwarts of the community, providers of indigent care, and large-scale employers—to provide much needed benefit and financial relief. Volusia County should follow the example of the state's entrepreneurial localities and pass the assessment ordinance.

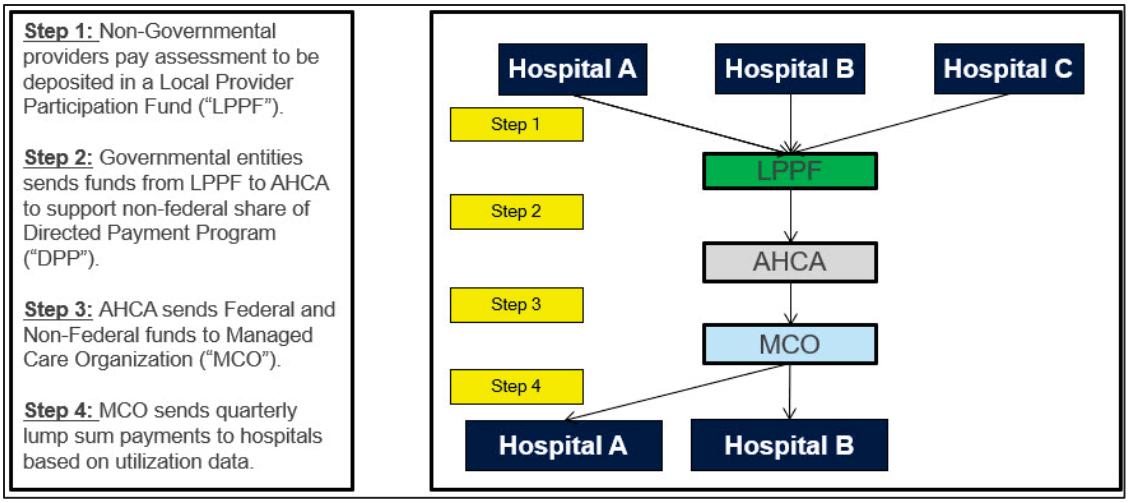
My name is **Lucas Woodruff**, MAI. I'm an appraiser and Partner, EVP – Acute Care at the valuation firm OHC Advisors. OHC Advisors specializes in the valuation of healthcare properties and I lead the acute care side of the business. Over the course of my career, I have appraised well over 200 hospitals in addition to medical office buildings, behavioral health facilities, psychiatric hospitals and surgery centers. I received my designation as a member of the Appraisal Institute (MAI) in 2016 which is a designation long recognized by courts of law, government agencies, financial institutions and investors as a mark of excellence in the field of real estate valuation and analysis.

This letter concerns the impact of a new Medicaid finance program operating in Florida. Medicaid was enacted by the federal government in 1965, as part of the Social Security Amendments. Medicaid provides healthcare coverage for the nation's most economically disadvantaged populations, as well as the nations disabled. The program is jointly administered and funded by the federal government and states.

Florida recently received approval from the federal government to implement the Medicaid Managed Care Hospital Direct Payment Program (Hospital DPP). This program allows the state to direct certain funds for a specific purpose. For the Hospital DPP, the purpose is addressing the Medicaid shortfall (i.e., the difference between the amount hospitals spend to provide Medicaid services and the amount they receive in reimbursement).

To implement the Hospital DPP, counties adopt a non-ad valorem special assessment to collect funds from hospitals. The counties transfer those funds to the state, where the money constitutes the non-federal share of Medicaid financing and, as a result, draws down additional federal funds. The sum is then dispersed to address the hospital Medicaid shortfall. The Hospital DPP results in increased net patient service revenue.

The exact amount of additional matching funds from the federal government via the Hospital Directed Payment Program (Hospital DPP) will vary but the projections provided to me via an impact analysis performed by Adelanto Healthcare Ventures, based on data from Florida Agency for Health Care Administration (AHCA), indicate it is roughly 160% of the initial assessment amount. The combined amount would then be dispersed throughout hospitals in the region after expenses of administrative fees and MCD DSH Loss (a reduction due to Medicaid Disproportionate Share Hospital Loss where there is a limit on the amount of Medicaid reimbursement for these facilities). The impact analysis and other supporting documents are available on request. The chart below provided by Adelanto Healthcare Ventures shows the general flow of funds from the hospitals, to the Local Provider Participation Fund (LPPF) to the State of Florida Agency for Health Care Administration (AHCA) who then gets the matching federal funds and sends them to the Managed Care Organization who disperses the funds to the hospitals.



Medicaid is funded by state and federal governments jointly with each covering a portion of the expense. The percentage of funding from the government is based on the income figures of the state in relation to the national averages. However, the rates paid are still below the actual costs of delivering the services resulting in a shortfall. Shortfall is calculated by taking hospital Medicaid costs and deducting Medicaid payments received from the state/federal government. According to the American Hospital Association (AHA) Medicare-Medicaid 2020 Underpayment Fact Sheet, the underpayment for Medicaid in 2019 was $19 billion and indicated hospitals received only 90 cents per every dollar spent caring for Medicaid patients in 2019. In Florida, according to the Florida Hospital Association Facts and Stats page, Medicaid represents 7.9% of total funding for all Florida hospitals. They also report that the cost of uncompensated care from all sources is approximately $2.8 billion. Florida has also seen a recent spike in Medicaid enrollment since the pandemic of approximately 20 percent indicating the shortfall issue will likely become a bigger one going forward. In addition, the most recent Florida budget from January of 2021 included a cut to Medicaid but did include authorization for a state directed provider payment program (DPP).

Based on my [training and experience] as an appraiser of medical facilities and specifically hospitals, it is my opinion that hospital properties that are eligible for increased federal funds from the Hospital DPP are more valuable than similar properties that do not receive these funds, all other factors equal. This is easily seen in the business enterprise/going concern value but the impact on the real estate can also be approximately quantified.

Analysis

I was provided with sample numbers for a partial portion of an example Florida Medicaid Managed Care Region. The numbers represent actual health system data from AHCA data. The data is shown below:

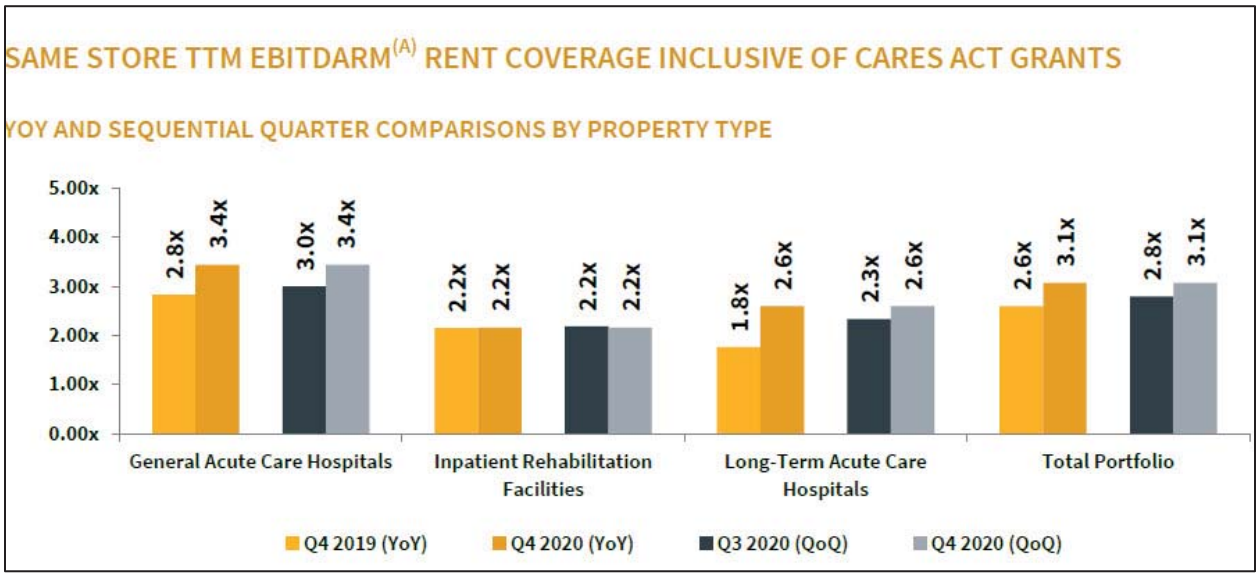
Impact Analysis - Florida Medicaid Managed Care Region							
Example System	Gross Reimbursement	IGT Need (Assessment)	% Change	Net Reimbursement (before expenses)	Net Reimbursement (after fees and MCD DSH Loss)	Fee %	Net Gain over IGT Need (Assessment)
A	$7,052,258	$2,682,679	162.9%	$4,369,579	$4,274,770	-2.2%	59.3%
B	$6,090,752	$2,316,922	162.9%	$3,773,830	$3,395,076	-10.0%	46.5%
C	$28,253,220	$10,747,525	162.9%	$17,505,695	$16,948,922	-3.2%	57.7%
D	$412,058	$156,747	162.9%	$255,311	$39,863	-84.4%	-74.6%
E	$108,097	$41,120	162.9%	$66,977	$65,231	-2.6%	58.6%
F	$2,858,776	$1,087,478	162.9%	$1,771,297	$1,738,673	-1.8%	59.9%
G	$70,965,369	$26,995,226	162.9%	$43,970,142	$37,422,357	-14.9%	38.6%
H	$673,017	$256,016	162.9%	$417,001	$406,132	-2.6%	58.6%
Total or Average (percentages)	**$116,413,547**	**$44,283,713**		**$72,129,832**	**$64,291,024**	**-15.2%**	**38.1%**
					Average w/o outlier	**-5.3%**	**54.2%**

As shown, the IGT Need (Inter-governmental transfer) represents the amount of assessment on each hospital paid into the LPPF (Local Provider Participation Fund). This money is then sent to the Florida Agency for Healthcare Administration (AHCA) who then request the federal matching as shown on the earlier chart. In this analysis, the resulting funds after the federal match represent 162.9% increase over the initial assessment (Gross Reimbursement). These funds are then distributed out to the entire region. After the deduction of fees and MDC DSH Loss, there is still a net gain that averages 38.1% for the participating health systems (54.2% if we exclude the outlier). The disbursement of funds is based on Medicaid utilization data.

The additional funding would flow right through the income statement to both the net patient service revenue (NPSR) top-line number and, after operating expenses are deducted, eventually to the earnings before interest, taxes, depreciation, amortization and rent (EBITDAR) which are the primary numbers I use and have seen used in valuations of the going concern of hospitals, also known as business enterprise value. The going concern value (business enterprise value) is then broken down into real estate, FF&E (furniture, fixtures and equipment) with any residual as intangible value.

The relation of the operation revenue increase from DPP to the value of the real estate is a little more convoluted as the value of the real estate does not fluctuate as much from year to year with the large swings that sometimes occur in hospital revenue and EBITDAR numbers. That said, a continued and consistent increase in NPSR and EBITDAR would show up in the value of the real estate via the perspective of an investor in healthcare real estate. There are many public and private REITs (Real Estate Investment Trusts) that invest in healthcare real estate including hospitals, surgery centers, medical office buildings, seniors housing and other types of medical properties. These investors typically purchase the hospital real estate in a sale-leaseback transaction. This allows the health system to monetize the real estate and deploy that capital into hopefully more profitable service areas. The REIT will want to maximize their return on the investment by setting the highest lease rate possible and paying the lowest price while the health system will want the exact opposite. Many of the REITs will have minimum rent coverage ratios for any investments they consider. The rent coverage ratio is determined by the EBITDAR or EBITDARM (M representing management fees) divided by the real estate lease/rent. The higher the result, the more safety the investment has that the tenant, in this case the hospital, will meet the rent commitment for the real estate.

One of the largest REITs that own acute care hospital real estate is Medical Properties Trust (MPT). They currently own the real estate for 62 general acute care hospitals The chart below is from their 1st quarter 2021 supplemental financial statements and shows the rent coverage ratio also called lease coverage ratio. The most recent rent coverage ratio is 3.4 for general acute care hospitals.



For this example, we will use a 2.5 minimum rent coverage ratio. The chart below includes real estate only sales of general community hospitals. The buyer is typically a REIT and there is either an existing lease in place or it is a sale-lease back transaction where we can determinate a capitalization rate (net operating income divided by the sale price). The rates range from 8.69% to 11.66% with a mean of 9.61%. The average real estate lease rate was $31.05 per square foot.

Real Estate Only Hospital Sale Comparables

Name	Location	Price	Date	GBA	Price Per GBA	Lease Rate per SF	Year Built	Capitalization Rate
WellStar North Fulton Regional Hospital	Roswell, GA	$82,039,856	2/19/2020	306,753	$267.45		1985	
Foundations El Paso Hospital	El Paso, TX	$32,000,000	10/31/2019	77,000	$415.58	$42.63	2003	11.66%
Southern Indiana Rehabilitation Hospital	New Albany, IN	$23,400,000	6/28/2018	64,380	$363.47	$32.71	1994	8.69%
City Hospital of White Rock	Dallas, TX	$23,284,000	3/8/2018	236,314	$98.53	$9.63	1976,88,94	9.34%
Great Bend Regional Hospital	Great Bend, KY	$24,500,000	3/31/2017	58,000	$422.41	$39.22	2009	8.75%
					Average	**$31.05**		**9.61%**

We spoke with the head of acquisitions/EVP/Chief Investment Officer for a private healthcare REIT who has been directly involved in the purchase and sales of many hospitals throughout the nation. He stated the primary impact of the increased reimbursement would be through the higher rent coverage ratio. He stated that the typical go, no-go rent coverage ratio for his firm and others was approximately 2.0. This is assuming a market rate for the hospital real estate lease which are typically long-term (10 + years) and absolute net with the hospital operator paying all operating expenses related to the real estate. He stated that if the rent coverage ratio increased from say a 1.75 to a 2.25, it would attract far more interested

buyers which would impact the value of the real estate. Additionally, moving above a 2.0 (and the higher the better) would allow for easier financing as the banks also have minimum lease coverage requirements and will offer better financing terms as the risk of default is lowered. Better financing terms can and do impact real estate values. As a result of these impacts, he estimated the capitalization rate could potentially be 25 basis points lower resulting in a higher real estate value. He also reiterated the difficulty of isolating the increase in operating income (EBITDAR) of the hospital entity to an increase in the value of the real estate as these transactions are property specific with many other variables to consider.

We will use an example with a theoretical lease rate as we do not know the exact details (size, lease rate, etc.) for any of the hospitals in the sample region from the Impact Analysis shown earlier, based on AHCA data. As shown on the chart below, the example hospital is 200,000 square feet with the average rental rate shown from our comparables above of $30.00 per square foot. We multiplied those for our effective gross income (EGI). Since almost all hospitals owned by REITs or other institutional real estate investors are long term and absolute net (tenant paying operating expenses), we did not deduct for vacancy and only deducted a nominal 2.5% of EGI for landlord expenses of a management fee and reserves to get our Net Operating Income (NOI).

Example Hospital of Potential Real Estate Value Increase	
Hospital Size (SF)	200,000
Annual Rental Rate per SF	$30.00
Effective Gross Income (EGI)	$6,000,000
NOI (using 2.5% operating expenses)	**$5,850,000**
EBITDAR using 1.75 LCR	$10,237,500
Increased EBITDAR due to DPP (using 2.25 LCR)	$13,162,500
Value using cap rate of 9.75% (NOI/.0975)	$60,000,000
Value using lower cap rate of 9.50% due to decreased landlord risk from DPP and increased investor interest (NOI/.095)	$61,578,947
Real Estate Value increase	**$1,578,947**

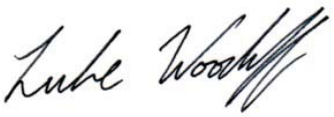
Once we have our NOI, we compare to the two different EBITDARs, one if the hospital does not participate in the Hospital Direct Payment Program and one example where the Lease Coverage Ratio is higher due to participation in the DPP resulting in a higher EBITDAR. We then use the different capitalization rates based on our comparables and discussions with the head of acquisitions for a healthcare private REIT. We again note that the higher LCR would result in a larger pool of interested buyers, it would also facilitate easier financing with better terms as well as more comfort/cushion for the buyer as well. Given these factors, a decrease in the capitalization rate of approximately 25 basis points would be warranted and that amount was also estimated by the chief investment officer at the healthcare REIT. Using the different cap rates resulted in a value increase of $1,578,947 for the facility participating in the Hospital Direct Payment Program.

Therefore, there is a direct, positive influence on the market value of the real estate for participating hospital properties due to the additional income generated from participation in this program.

Additionally, the hospitals may also apply the additional revenue generated from participation in the program to further enhance their property value in the future through capital outlay projects including renovations and expansions. The additional funding via the DPP could allow these projects to occur more quickly and easily, adding to the real estate value or helping maintain that value via on-going repairs and maintenance.

Health Systems considering adding a new hospital would be more likely to choose a county that participates in this program given the impact to NPSR and EBITDAR of the operation and would likely pay more for land in an area/county that participated in the Direct Payment Program versus one that did not.

Sincerely,



Lucas (Luke) Woodruff, MAI
Partner, EVP-Acute Care
OHC Advisors, Inc.