

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BAY COUNTY, FLORIDA, AMENDING CHAPTER 11, HEALTH AND HUMAN SERVICES, OF THE BAY COUNTY CODE OF ORDINANCES, BY ADDING A NEW ARTICLE, THE BAY COUNTY LOCAL PROVIDER PARTICIPATION FUND NON-AD VALOREM SPECIAL ASSESSMENT, UNDER THE AUTHORITY OF ARTICLE VIII, SECTION 1(F) OF THE CONSTITUTION OF THE STATE OF FLORIDA 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; 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 hospitals in Bay County's jurisdiction (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 hospitals with significant uncompensated costs ("Medicaid shortfall"); 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 help offset Hospitals' Medicaid shortfall and improve quality of care provided to the Florida Medicaid population; and

WHEREAS, the impacted Hospitals have expressly asked Bay County (the "County") to impose a non-ad valorem assessment upon certain real property interests held by the Hospitals 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 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 Board of County Commissioners conducted a duly-advertised public hearing to consider adoption of this ordinance on August 17, 2021; and

WHEREAS, at that public hearing, the Board received testimony that demonstrated that the Hospital properties' to be assessed will receive a special and unique benefit at least commensurate with the amount of the assessments; and 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 funding raised by the County assessment will, through intergovernmental transfers ("IGTs") provided consistent with federal guidelines, support 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, 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 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 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 the assessment will enhance the Hospitals' ability to grow, expand, maintain, improve, and increase the value of their Bay 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 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 Bay 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 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 August 17, the Board of County Commissioners adopted this Ordinance enabling the 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 Hospital properties.

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

SECTION 1. Chapter 11 of the Bay County Code, is hereby amended, by adding a new Article IV as follows:

Sec. 11-58. - Title.

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

Sec. 11-59. - 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 hereby authorized to impose a special assessment 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. 11-60. - Purpose.

The non-ad valorem special assessment authorized by this Chapter shall be imposed, levied, collected, and enforced against the Assessed Properties located within the County. Proceeds from the Assessment shall be used to benefit the 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, 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 in this Ordinance.

Sec. 11-61. - Alternative Method

This Ordinance shall 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. 11-62. - 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 Section 11-70, or, if necessary, Section 11-71 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 Resolution means the resolution described in Section 11-66 hereof.

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

Comptroller means the Bay 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 Bay 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 to members of the Bay County community, including the Medicaid-eligible patients, the indigent, and the uninsured.

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

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

Ordinance means this Bay County Local Provider Participation Fund Ordinance.

Tax Collector means the Bay County Tax Collector.

Sec. 11-63. - Interpretation.

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

Sec. 11-64. - 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 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 specific metric for the rate will be provided in each resolution. Possible metrics include net patient revenue, gross revenue, and other proxies for utilization. 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 11-60, 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 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 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. 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. 11-65.- 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, 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 hospital cost reports and/or the Florida Hospital Uniform Reporting System, as available from the Florida Agency for Health Care Administration.

Sec. 11-66. - 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. 11-67. - 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 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 County 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. 11-68. - 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 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.

Sec. 11-69. - Notice by Mail.

In addition to the published notice required by Section 11-68, but only for the first fiscal year in which an Assessment is 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 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 County 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 Chapter.

Sec. 11-70. - 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 County 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 it deems just and right; and
- c) Affirm the method of collection.

Sec. 11-71. - Annual Final Assessment Resolution.

The Board may revise the Non-Ad Valorem Assessment Roll during the Fiscal Year to modify the Assessment rate. If so, the Board must adopt an Annual Final Assessment Resolution during the

Fiscal Year to memorialize the final rate applicable for the Fiscal Year. Such adoption requires notice.

Sec. 11-72. - Effect of Annual Final Assessment Resolution.

The adoption of the Assessment Resolution, or, where applicable, 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. 11-73. - Method of Collection.

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

Sec. 11-74. - 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 amounts paid in during the Fiscal Year for all or a portion of the unutilized local provider participation fund.

Sec. 11-75. - 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. 11-76. - Correction of Errors and Omissions.

No act of error or omission on the part of the Comptroller, Property Appraiser, Tax Collector, 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 provision of this Chapter.

Sec. 11-77. - 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 2. APPLICABILITY.

It is hereby intended that this Ordinance shall constitute a uniform law applicable in all unincorporated areas of Bay County, Florida, and to all incorporated areas of Bay 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 Administrative Code, Florida Statutes, 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 BAY COUNTY CODE.

The provisions of this Ordinance shall be included and incorporated in the Bay County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Bay 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 August 17, 2021.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
BAY COUNTY, FLORIDA**

Bill Kinsaul, Clerk

Robert Carroll, Chairman

APPROVED AS TO FORM:

Bay County Attorney's Office