

ORDINANCE NO. 2021-____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, TO BE CODIFIED IN CHAPTER 114 AS ARTICLE VI OF THE COLLIER COUNTY CODE OF LAWS AND ORDINANCES AUTHORIZING THE CREATION OF THE COLLIER COUNTY LOCAL PROVIDER PARTICIPATION FUND ("FUND") UNDER THE AUTHORITY OF SECTION 1(F), ARTICLE VIII OF THE CONSTITUTION OF THE STATE OF FLORIDA SPECIFYING THE METHOD OF SETTING AND COMPUTING ANNUAL NON-AD VALOREM SPECIAL ASSESSMENTS TO BE DEPOSITED INTO THE FUND AND SPECIFYING AUTHORIZED USES FOR THE FUND; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE OF JULY 1, 2021 UNLESS THE ENABLING LEGISLATION IS NOT APPROVED BY THE GOVERNOR OF THE STATE OF FLORIDA.

RECITALS:

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

WHEREAS, impacted Hospitals have asked Collier 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 in these localities 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 to address the Medicaid shortfall; and

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

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

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

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

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

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

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

WHEREAS, the County finds the assessment will enhance the Hospitals' ability to grow, expand, maintain, improve and increase the value of their properties and facilities under all present circumstances and those of the foreseeable 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 adoption of this Ordinance will enable 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 that will directly and specially benefit Hospital properties.

WHEREAS, for the first year of the assessment the County finds that the alternative method, as specified in § 197.3631, Fla. Stat., for the assessment and collection of the non-ad valorem special assessment is appropriate but in future tax years may elect to use the uniform method if approved by the Board.

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

SECTION 1. Chapter 126 of the Collier County Code of Laws and Ordinances, is hereby amended, by adding a new Article VI as follows:

Sec. 126-211. - Title

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

Sec. 126-212. - Authority.

Pursuant to Article VIII, Section 1(f) of the Constitution of the State of Florida and Florida Statutes 125, 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. 126-213. - 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. 126-214. - 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 hereafter. This Ordinance, being necessary for the health, safety, and welfare of the inhabitants of the County, shall be liberally construed to effect the purposes hereof.

Sec. 126-215. - Definitions.

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

Annual Final Assessment Resolution means the resolution described in Sections 126-224 and 126-225 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 of real property in the County through an ownership or leasehold interest, thus making the property subject to the Assessment.

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

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

Assessment Resolution means the resolution described in Section 126-219 hereof.

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

County means Collier County, Florida.

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

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

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

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

Ordinance means the Collier County Local Provider Participation Fund Ordinance as it may be codified in Chapter 114 as Article VI in the Collier County Code of Laws and Ordinances.

Tax Collector means the Collier County Tax Collector.

Sec. 126-216. - 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. 126-217. - 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 Assessment may not hold harmless any Institutional Health Care Provider, as required under 42 U.S.C. § 1396b (w). As set forth in Section 126-213, 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, Board, or County residents. 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. 126-218.- 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 the Florida Hospital Uniform Reporting System, as available from the Florida Agency for Health Care Administration.

Sec. 126-219. - 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 must be paid.

Sec. 126-220. - Non-Ad Valorem Assessment Roll.

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

- a) The names of the Assessed Properties; 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. 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. 126-221. - Notice by Publication.

Upon completion of the Non-Ad Valorem Assessment Roll, the Assessment Coordinator shall publish once in a newspaper of general circulation within the County a notice stating that the Board, 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 aforementioned Non-Ad Valorem Assessment Roll. Such notice shall include:

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

Sec. 126-222. - Notice by Mail.

In addition to the published notice required by Section 126-221, but only for the first fiscal year in which an Assessment is imposed by the Board against Assessed Properties, the Assessment Coordinator shall provide notice of the proposed Assessment by first class mail to the Assessed Properties. Such notice shall include:

- a) The purpose of the Assessment;
- b) The Assessment rate to be levied against each Assessed Property;
- c) The unit of measurement applied to determine the Assessment;
- d) The total revenue to be collected by the County from the Assessment;
- e) A statement that failure to pay the Assessment 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 Board within 20 days of the notice; and
- g) The date, time, and place of the hearing.

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

Sec. 126-223. - Adoption of Assessment Resolution and Non-Ad Valorem Assessment Roll.

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

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

Sec. 126-224. - Annual Final Assessment Resolution.

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

Sec. 126-225. - Effect of Annual Final Assessment Resolution.

The adoption of the Annual Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the method of apportionment and Assessment, the Assessment rate, the initial rate of Assessment, the Non-Ad Valorem Assessment Roll, and the levy and lien of the Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Board action on the Annual Final Assessment Resolution. The Non-Ad Valorem Assessment Roll shall be delivered to the Tax Collector or such other official as the Board by resolution shall designate.

Sec. 126-226. - Method of Collection.

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

Sec. 126-227. - 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. 126-228. - 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. 126-229. - Correction of Errors and Omissions.

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

SECTION 2. APPLICABILITY.

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

SECTION 3. SEVERABILITY.

In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

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 COLLIER COUNTY CODE.

The provisions of this Ordinance shall be included and incorporated in the Collier County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Collier County Code, once established. The word "ordinance" may be changed to "section," "article," or other appropriate word or phrase necessary to accomplish such intentions.

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 July 1, 2021 unless the enabling legislation is not approved by the Governor of the State of Florida.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this ____ day of _____, 2021.

ATTEST:
CRYSTAL K KINZEL, CLERK

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: _____
 , DEPUTY CLERK

By: _____
 PENNY TAYLOR, CHAIRPERSON

Approved as to form
and legality:

Jennifer A. Belpedio
Assistant County Attorney

*JAB
5-26-21*