

PROPOSED

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE STATEWIDE MEDICAID MANAGED CARE HOSPITAL DIRECTED PAYMENT PROGRAM; CREATING ARTICLE V OF CHAPTER 16 OF THE BROWARD COUNTY CODE OF ORDINANCES (“CODE”); PROVIDING FOR THE IMPOSITION, LEVY, COLLECTION, AND ENFORCEMENT OF A NON-AD VALOREM SPECIAL ASSESSMENT TO FUND THE NON-FEDERAL SHARE OF MEDICAID AND MEDICAID MANAGED CARE PAYMENTS TO BENEFIT EXISTING AND NEWLY LICENSED HOSPITAL PROPERTIES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Mayor Michael Udine)

WHEREAS, annually, hospitals in Broward County (“Hospitals”) provide millions of dollars of uncompensated care to uninsured persons and those who qualify for Medicaid, but Medicaid on average covers only sixty percent (60%) of the costs of the health care services actually provided by the Hospitals to Medicaid-eligible persons, leaving such Hospitals with significant uncompensated costs (“Medicaid Shortfall”);

WHEREAS, the State of Florida (“State”) received federal authority to establish the Statewide Medicaid Managed Care hospital directed payment program (“DPP”) to address the Medicaid Shortfall and to improve the quality of care provided to individuals who receive Medicaid;

WHEREAS, the DPP allows local governments to establish a non-ad valorem special assessment that is charged to local hospital properties, and the revenue generated is placed into a Local Provider Participation Fund and matched with federal funds providing the local hospitals with supplemental Medicaid reimbursement;

1 WHEREAS, a number of Hospitals impacted by the Medicaid Shortfall have
2 requested that the Board of County Commissioners of Broward County, Florida (“Board”),
3 impose a uniform non-ad valorem special assessment upon certain real property owned
4 or leased by the Hospitals to help finance the non-federal share of the State’s Medicaid
5 program (“Assessment”);

6 WHEREAS, the funding raised by the Assessment will, through intergovernmental
7 transfers (“IGTs”) consistent with federal guidelines, support additional funding for
8 Medicaid payments to the Hospitals;

9 WHEREAS, the Board finds that the Hospital properties assessed will benefit
10 directly from the Assessment by unlocking additional federal funds to be provided to the
11 Hospitals operating on the properties;

12 WHEREAS, the Board has determined that a logical relationship exists between
13 the services provided by the Hospitals, which will be supported by the Assessment, and
14 the particular benefit to the real property of the Hospitals;

15 WHEREAS, the Board has an interest in promoting access to health care for
16 Broward County (“County”) low-income and uninsured residents;

17 WHEREAS, leveraging additional federal support through the IGTs to provide
18 Medicaid payments to the Hospitals for health care services directly benefits the
19 Hospitals’ properties and supports their continued ability to provide those services;

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

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1 WHEREAS, the Assessment enhances the financial stability and viability of the
2 Hospitals providing such services and, therefore, will support the continued improvement
3 of the properties on which the Hospitals are located;

4 WHEREAS, the Hospitals are important contributors to the County’s economy, and
5 the financial benefit to these Hospitals directly supports their mission, as well as their
6 ability to grow and maintain their facilities in concert with the population growth in the
7 County;

8 WHEREAS, the Board finds the Assessment will enhance the Hospitals’ ability to
9 improve the value of their properties and facilities; and

10 WHEREAS, the Board desires to enact this Ordinance enabling the County to levy
11 an Assessment, which is fairly and reasonably apportioned among the Hospitals’
12 properties within the County’s jurisdictional limits, and to establish and maintain a system
13 of funding for IGTs to support the non-federal share of Medicaid payments, thus directly
14 benefitting Hospital properties,

15 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
16 BROWARD COUNTY, FLORIDA:

17 Section 1. Article V of Chapter 16 of the Broward County Code of Ordinances
18 is hereby created to read as follows:

19 [Underlining omitted]

20 **ARTICLE V. LOCAL PROVIDER PARTICIPATION FUND**

21 **Sec. 16-123. Title.**

22 This Article V shall be known and may be cited as the “Broward County Local
23 Provider Participation Fund Ordinance.”

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1 **Sec. 16-124. Authority.**

2 Pursuant to the Florida Constitution, Chapter 125 of the Florida Statutes, and the
3 Home Rule Charter of Broward County, Florida, the Board is authorized to impose a
4 special assessment against private for-profit and not-for-profit hospitals located within the
5 County to fund the non-federal share of Medicaid payments associated with Local
6 Services as provided in the Medicaid Hospital Directed Payment Program.

7 **Sec. 16-125. Purpose.**

8 The non-ad valorem special assessment authorized by this article shall be
9 imposed, levied, collected, and enforced against Assessed Properties located within the
10 County. Proceeds from the Assessment shall be used to benefit Assessed Properties
11 through enhanced Medicaid payments for Local Services. When imposed, the
12 Assessment shall constitute a lien upon the Assessed Properties equal in rank and dignity
13 with the liens of all state, county, district, or municipal taxes and other non-ad valorem
14 assessments. Failure to pay may cause foreclosure proceedings, which could result in
15 loss of title. The Assessment shall be computed and assessed only in the manner
16 provided in this Ordinance.

17 **Sec. 16-126. Definitions.**

18 For the purpose of this article, the following definitions shall apply:

19 *Assessed Property:* The real property in the County to which an Institutional Health
20 Care Provider holds a right of possession and right of use through an ownership or
21 leasehold interest, thus making the property subject to the Assessment.

22 *Assessment:* A non-ad valorem special assessment imposed by Broward County
23 on Assessed Property to fund the non-federal share of Medicaid and Medicaid managed
24 care payments that will benefit hospitals providing Local Services.

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1 *Assessment Resolution:* The resolution described in Section 16-129(c) hereof.

2 *Board:* The Board of County Commissioners of Broward County, Florida.

3 *County:* The unincorporated and incorporated areas of Broward County, Florida.

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

7 *Institutional Health Care Provider:* A private for-profit or not-for-profit hospital that
8 provides inpatient hospital services.

9 *Local Services:* The provision of health care services to Medicaid, indigent, and
10 uninsured members of the Broward County community.

11 *Medicaid Hospital Directed Payment Program:* The program authorized by the
12 Centers for Medicare & Medicaid Services (CMS) allowing the State of Florida to direct
13 specific payments made by managed care plans to all hospital providers for Medicaid
14 services.

15 *Non-Ad Valorem Assessment Roll:* The special assessment roll prepared by
16 Broward County.

17 *Ordinance:* The Broward County Local Provider Participation Fund Ordinance.

18 **Sec. 16-127. Scope of Assessment.**

19 Institutional Health Care Providers within the County incur hundreds of millions of
20 dollars in unreimbursed Medicaid costs each year. Contingent upon the non-federal
21 share being provided through intergovernmental transfers, the State of Florida received
22 federal authority to establish the Medicaid Hospital Directed Payment Program to help
23 offset this shortfall. Pursuant to Section 125.01, Florida Statutes, the Board hereby
24 creates a non-ad valorem special assessment that shall be imposed, levied, collected,

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1 and enforced against Assessed Property to fund the non-federal share of Medicaid
2 payments benefitting Assessed Properties providing Local Services in the County. Funds
3 generated as a result of the Assessment shall be held in a separate account called the
4 Local Provider Participation Fund and shall be used only to (1) provide to the Florida
5 Agency for Health Care Administration the non-federal share of Medicaid payments to be
6 made directly or indirectly in support of hospitals serving Medicaid and low-income
7 patients; and (2) reimburse Broward County for administrative costs associated with the
8 implementation of the Assessment authorized by this Ordinance, as further specified in
9 the Assessment Resolution.

10 The Assessment must be broad based, and the amount of the Assessment must
11 be uniformly imposed on each Assessed Property. The Assessment may not hold
12 harmless any Institutional Health Care Provider, as required under 42 U.S.C.
13 § 1396b(w). As set forth in Section 16-125, the Assessment shall constitute a lien upon
14 the Assessed Properties equal in rank and dignity with the liens of all state, county,
15 district, or municipal taxes and other non-ad valorem assessments. In addition to other
16 remedies available at law or in equity, the enforcement of the aforesaid Assessment shall
17 be at the same time and in like manner as ad valorem taxes and subject to all ad valorem
18 tax enforcement procedures set forth in the official annual real property tax notice.

19 Creation and implementation of the Assessment will not result in any additional
20 pecuniary obligation on Broward County, the Board, or County residents. The
21 Assessment shall be imposed, levied, collected, and enforced against only Assessed
22 Properties, and the Assessment Resolution shall provide that Broward County's
23 administrative costs shall be reimbursed from the Assessments collected.

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1 **Sec. 16-128. Computation of Assessment.**

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

6 The amount of the Assessment required of each Assessed Property may not
7 exceed an amount that, when added to the amount of other hospital assessments levied
8 by the state or local government, exceeds the maximum percent of the aggregate net
9 patient revenue of all Assessed Properties in the County permitted by
10 42 C.F.R. § 433.68(f)(3)(i)(A). Assessments for each Assessed Property will be derived
11 from data contained in hospital cost reports and/or the Florida Hospital Uniform Reporting
12 System, as available from the Florida Agency for Health Care Administration.

13 **Sec. 16-129. Annual Proceedings for Imposing Assessment.**

14 The Board, subject to the provisions of this section and without an election, may
15 impose an Assessment for the purposes provided for in this article. The proceedings for
16 imposing the Assessment shall be as follows:

17 (a) *Petition.* In each Fiscal Year, the Board may impose an Assessment only
18 after receipt of a petition requesting the imposition of the Assessment signed by at least
19 seventy-five percent (75%) of the Institutional Health Care Providers. The petition shall
20 set forth: (1) the boundaries or other description sufficient to identify each Assessed
21 Property; (2) a legal opinion, that is acceptable to the Office of County Attorney, from a
22 duly licensed Florida attorney stating that the imposition of the Assessment is lawful; and
23 (3) an executed release, in a form acceptable to the Office of County Attorney, wherein
24 each of the Institutional Health Care Providers state, among other things, they forever

1 release Broward County and its officers, employees, and agents from any and all liability
2 relating to the imposition of the Assessment. There shall also be filed with the petition a
3 duly certified copy of the proceedings of the board of directors or stockholders of each of
4 the Institutional Health Care Providers and such other documents, if any, as may be
5 required by the Office of County Attorney to show that those signing the petition are duly
6 authorized to sign the petition and to subject the Assessed Property to the levy and
7 imposition of the Assessment as provided in this article.

8 (b) *Non-Ad Valorem Assessment Roll.* Upon receipt of the petition described
9 in Section 16-129(a) and the review and approval as to legal sufficiency of the petition by
10 the Office of County Attorney, which shall examine the petition for compliance with the
11 requirements set forth in Section 16-129(a), the County Administrator or designee shall
12 cause to be prepared and presented to the Board a Non-Ad Valorem Assessment Roll,
13 which shall contain:

- 14 (1) The names and addresses of the Assessed Properties; and
15 (2) The proposed Assessment rate and amount of the Assessment to be
16 imposed against each Assessed Property.

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

22 (c) *Assessment Resolution.* In addition to the Non-Ad Valorem Assessment
23 Roll described in Section 16-129(b), the County Administrator or designee shall cause to
24 be prepared and presented to the Board an Assessment Resolution that shall describe

1 (a) the Medicaid payments proposed for funding from proceeds of the Assessment; (b)
2 the benefits to the Assessment Properties associated with the Assessment; (c) the
3 methodology for computing the assessed amounts; and (d) the method of collection,
4 including how and when the Assessment is to be paid.

5 (d) *Public Notice.* Upon the presentation to the Board of the Non-Ad Valorem
6 Assessment Roll and Assessment Resolution, the County Administrator or designee shall
7 publish once in a newspaper of general circulation within the County a notice stating that
8 the Board, at a regular or special meeting on a certain day and hour, not earlier than
9 twenty (20) calendar days after such publication, will consider adoption of the Assessment
10 Resolution and hear objections of all interested persons to approve the proposed
11 Assessment. Such notice shall include:

- 12 (1) The Assessment rate;
- 13 (2) The procedure for objecting to the Assessment rate;
- 14 (3) The method by which the Assessment will be collected; and
- 15 (4) A statement that the Non-Ad Valorem Special Assessment Roll is available
16 for inspection.

17 (e) *Notice by Mail.* In addition to the published notice required by Section 16-
18 129(d), the County Administrator or designee shall provide notice of the proposed
19 Assessment by first-class mail to the Assessed Properties. Such notice shall include:

- 20 (1) The purpose of the Assessment;
- 21 (2) The Assessment rate to be levied against each Assessed Property;
- 22 (3) The unit of measurement used to determine the Assessment;
- 23 (4) The total revenue to be collected by Broward County from the Assessment;

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1 (5) A statement that failure to pay the Assessment will cause a tax certificate
2 to be issued against the property or foreclosure proceedings, either of which
3 may result in a loss of title to the property;

4 (6) A statement that all affected and/or interested parties have a right to appear
5 at the hearing and to file written objections with the Board within twenty (20)
6 days after the date of the notice; and

7 (7) The date, time, and place of the hearing.

8 The notice required under this section shall be mailed at least twenty (20) calendar days
9 prior to the regular or special meeting required in Section 16-129(d). This notice shall be
10 deemed mailed upon delivery to the United States Postal Service. Failure of the
11 Assessed Property to receive such notice, because of a mistake or inadvertence, shall
12 not affect the validity of the Assessment Roll or release or discharge any obligation for
13 payment of the Assessment imposed by the Board pursuant to this article.

14 (f) *Adoption of Assessment Resolution and Non-Ad Valorem Assessment Roll.*

15 At the time named in the notice required under Section 16-129(d), the Board shall receive
16 and consider any objections of interested persons and may then or thereafter adopt,
17 annul, or modify the Assessment Resolution and Non-Ad Valorem Assessment Roll.

18 **Sec. 16-130. Revisions to the Assessment Roll.**

19 The Board may revise the Non-Ad Valorem Assessment Roll one or more times
20 during the Fiscal Year to modify the Assessment rate through the adoption of additional
21 Assessment Resolutions, following the procedures described in Section 16-129.

22 **Sec. 16-131. Effect of the Assessment Resolution.**

23 The adoption of an Assessment Resolution shall be the final adjudication of the
24 issues presented (including, but not limited to, the method of apportionment and

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1 Assessment, the Assessment rate, the initial rate of Assessment, the Non-Ad Valorem
2 Assessment Roll, and the levy and lien of the Assessments), unless proper steps shall
3 be initiated in a court of competent jurisdiction to secure relief within twenty (20) days
4 after the date of Board action on the Assessment Resolution.

5 **Sec. 16-132. Method of Collection.**

6 The Assessment is to be collected pursuant to an alternative method pursuant to
7 Section 197.3631, Florida Statutes. The County Administrator or designee shall provide
8 the Assessment bills by first-class mail to each Institutional Health Care Provider. The
9 bill or accompanying explanatory material shall include:

- 10 (a) A brief explanation of the Assessment;
- 11 (b) A description of the unit of measurement used to determine the amount of
12 the service;
- 13 (c) The number of units contained within the Assessment;
- 14 (d) The total amount of Assessment imposed against the Assessed Property
15 for the appropriate period;
- 16 (e) The location at which payment will be accepted;
- 17 (f) The date on which the Assessment is due;
- 18 (g) A statement regarding the potential consequences for failure to timely pay
19 the Assessment; and
- 20 (h) A copy of the indemnification required by Section 16-129(a), which shall be
21 executed by the owners of Assessed Properties and returned with the submission of the
22 Assessment.

1 **Sec. 16-133. Refunds.**

2 If, at the end of the Fiscal Year, additional amounts remain in the Local Provider
3 Participation Fund, the Board is hereby authorized to refund the owners of Assessed
4 Properties in proportion to amounts paid pursuant hereto during the Fiscal Year for all or
5 a portion of the unutilized monies in the Local Provider Participation Fund.

6 **Sec. 16-134. Responsibility for Enforcement.**

7 Broward County and its agents, if any, shall maintain the duty to enforce the prompt
8 collection of the Assessment by the means provided herein. The collection of the
9 Assessment may be enforced in a court of competent jurisdiction by mandamus or other
10 appropriate proceedings or actions.

11 **Sec. 16-135. Correction of Errors and Omissions.**

12 No act of error or omission on the part of the Board, County Administrator, or any
13 agent thereof shall operate to release or discharge any obligation for payment of the
14 Assessment imposed by the Board under the provisions of this article.

15 **Sec. 16-136. Limitations on Surcharges.**

16 Assessments imposed and paid under this article may not be passed along to
17 patients of the Institutional Health Care Providers as a surcharge or as any other form of
18 additional patient charge.

19 **Sec. 16-137. Indemnification and Hold Harmless.**

20 The Institutional Health Care Providers that are the subject of this article have
21 requested enactment of this article and have given assurances to Broward County that
22 the objectives and procedures addressed in this article are proper and lawful.
23 Accordingly, the Institutional Health Care Providers that are the subject of this article shall
24 provide to Broward County an indemnification and hold harmless document that holds

1 Broward County and its officers, employees, and agents harmless from any claim arising
2 from the adoption and implementation of this article, and shall indemnify Broward County
3 and its officers, employees, and agents from any and all claims, suits, damages,
4 disallowances, or other proceedings, including, but not limited to, original proceedings,
5 appeals, or any proceeding before any administrative body or tribunal, and from any and
6 all costs and attorneys or expert fees associated with the defense of such claims, that
7 may arise in the event that the objectives and procedures of this article are challenged by
8 any person, entity, or government agency. This indemnification and hold harmless shall
9 be approved by the Office of the County Attorney as to legal sufficiency and shall be
10 submitted with the Assessment pursuant to Section 16-132(h).

11 Section 2. Severability.

12 If any portion of this Ordinance is determined by any court to be invalid, the invalid
13 portion will be stricken, and such striking will not affect the validity of the remainder of this
14 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
15 legally applied to any individual, group, entity, property, or circumstance, such
16 determination will not affect the applicability of this Ordinance to any other individual,
17 group, entity, property, or circumstance.

18 Section 3. Inclusion in the Broward County Code of Ordinances.

19 It is the intention of the Board of County Commissioners that the provisions of this
20 Ordinance become part of the Broward County Code of Ordinances as of the effective
21 date. The sections of this Ordinance may be renumbered or relettered and the word
22 “ordinance” may be changed to “section,” “article,” or such other appropriate word or
23 phrase to the extent necessary in order to accomplish such intention.

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Section 4. Effective Date.

This Ordinance is effective as of the date provided by law.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ Christina A. Blythe 04/13/2022
Christina A. Blythe (date)
Assistant County Attorney

By /s/ Annika E. Ashton 04/13/2022
Annika E. Ashton (date)
Deputy County Attorney

CAB/sr
Hospital Special Assessment Ordinance.doc
04/13/2022

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