

ORDINANCE NO. 2021- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA CREATING CHAPTER 215 OF THE CODE OF INDIAN RIVER COUNTY, FLORIDA ENTITLED “INDIAN RIVER COUNTY LOCAL PROVIDER PARTICIPATION FUND ORDINANCE” ESTABLISHING A LOCAL PROVIDER PARTICIPATION FUND UNDER THE AUTHORITY OF ARTICLE VIII, SECTION 1(F) OF THE CONSTITUTION OF THE STATE OF FLORIDA AND 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 PROCEEDS; AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICT AND AN EFFECTIVE DATE

WHEREAS, the hospitals in Indian River 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, two of the three impacted Hospitals have asked Indian River 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, while the third Hospital is unopposed to the assessment; and

WHEREAS, the only properties to be assessed are the real property sites of such 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 some, but not necessarily all, Hospitals; and

WHEREAS, the County acknowledges that the Hospital properties assessed will benefit directly and specially from the assessment as a result of the availability of above-described additional funding provided to said 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 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 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 property and 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 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, on September 14, 2021, the Indian River County Board of County Commissioners adopted 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.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

Section 1. Enactment Authority.

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

Section 2. Legislative Findings.

The Board finds that the "Whereas" clauses above are true and correct, and hereby incorporates such clauses as the legislative findings of the Board.

Section 3. Creation of New Chapter.

Chapter 215 of the Code of Indian River County, Florida is hereby created to read as follows:

CHAPTER 215. INDIAN RIVER COUNTY LOCAL PROVIDER PARTICIPATION FUND ORDINANCE

Sec. 215.01. - Title.

This Chapter 215 shall be known and may be cited as the "Indian River County Local Provider Participation Fund Ordinance."

Sec. 215.02. - 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. 215.03 - Purpose.

The non-ad valorem special assessment authorized by this Chapter 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 availability of enhanced Medicaid payments for Local Services. The Assessment shall be computed and assessed only in the manner provided in this Ordinance.

Sec. 215.04. - 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. 215.05. - 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.

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 that will benefit hospitals providing Local Services.

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

Assessment Resolution means the resolution described in Section 215.09 of the Code.

Board means the Board of County Commissioners of Indian River County, Florida.

County means Indian River 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 health care services to Medicaid, indigent, and uninsured members of the Indian River County community.

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

Ordinance means the Indian River County Local Provider Participation Fund Ordinance.

Sec. 215.06. - 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. 215.07. - Assessment.

- 1) 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 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.
- 2) 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).
- 3) 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. 215.08.- Computation of Assessment.

- 1) 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.
- 2) 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.

Sec. 215.09. - 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. 215.10. - Non-Ad Valorem Assessment Roll.

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

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

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

Sec. 215.11. - Notice by Publication.

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 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.

Sec. 215.12. - Notice by Mail.

- 1) In addition to the published notice required by Section 215.11, 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 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
 - f) The date, time, and place of the hearing.
- 2) 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 Chapter.

Sec. 215.13. - 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 may be made at the public hearing or 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. 215.14. – Revisions to the Assessment Roll.

The Board may revise the Non-Ad Valorem Assessment Roll during the Fiscal Year to modify the Assessment rate through the adoption of an additional Assessment Resolution, following the procedures described in Sections 215.07 through 215.14.

Sec. 215.15. - 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 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 Assessment Resolution.

Sec. 215.16. - Method of Collection.

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

Sec. 215.17. - 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. 215.18. - 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.

Sec. 215.19. - Correction of Errors and Omissions.

No act of error or omission on the part of the 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.

Sec. 215.20. - 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 4. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. Severability. If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 6. Codification. It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

Section 7. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the ___ day of September, 2021, for a public hearing to be held on the 14th day of September, 2021, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman, Joseph E. Flescher	_____
Vice-Chairman, Peter D. O'Bryan	_____
Commissioner Susan Adams	_____
Commissioner Joseph H. Earman	_____
Commissioner Laura Moss	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ___ day of _____, 2021.

**BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: _____
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the _____
day of _____, 2021.

DRAFT