

ORDINANCE NO. 2021-__

AN ORDINANCE ENACTING A NEW LOCAL PROVIDER PARTICIPATION FUND TO BE CODIFIED AT ARTICLE XI, CHAPTER 25 OF THE ORANGE COUNTY CODE OF ORDINANCES; AUTHORIZING A NON-AD VALOREM SPECIAL ASSESSMENT TO BE IMPOSED, LEVIED, COLLECTED, AND ENFORCED AGAINST REAL PROPERTY OWNED OR LEASED BY PRIVATE FOR-PROFIT AND NOT-FOR-PROFIT HOSPITALS TO FUND THE NON-FEDERAL SHARE OF MEDICAID PAYMENTS BENEFITTING HOSPITALS PROVIDING HEALTHCARE SERVICES TO MEDICAID, INDIGENT, AND UNINSURED MEMBERS OF THE ORANGE COUNTY COMMUNITY; SPECIFYING THE METHOD OF SETTING AND COMPUTING THE ANNUAL NON-AD VALOREM SPECIAL ASSESSMENT TO BE DEPOSITED INTO THE FUND; SPECIFYING AUTHORIZED USES FOR THE FUND PROCEEDS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the private for-profit and not-for-profit hospitals in Orange County's jurisdiction (the "Hospitals") annually provide millions of dollars of uncompensated care to uninsured persons and those who qualify for Medicaid because on average, Medicaid covers only sixty percent of the costs of the health care services actually provided by Hospitals to Medicaid-eligible persons, leaving the 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 Orange 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 assessed Hospital properties 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 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 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 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

72 **WHEREAS**, the Orange County Board of County Commissioners desires to adopt this
Ordinance in order to enable the County to levy a uniform non-ad valorem special assessment,
74 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-
76 federal share of Medicaid payments, thus directly and specially benefitting Hospital properties.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
78 **ORANGE COUNTY, FLORIDA:**

Section 1. Enactment of New Local Provider Participation Fund Ordinance. A new
80 Local Provider Participation Fund Ordinance, to be codified at Article XI, Chapter 25, of the
Orange County Code of Ordinances, is hereby enacted to read as follows:

82 **ARTICLE XI. ORANGE COUNTY LOCAL PROVIDER**
 PARTICIPATION FUND

84 **Sec. 25-329. Title.**

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

88 **Sec. 25-330. Purpose.**

90 The non-ad valorem special assessment authorized by this
article shall be imposed, levied, collected, and enforced against
92 Assessed Properties located within the jurisdictional boundaries of
the County. Proceeds from the Assessment shall be used to benefit
94 Assessed Properties through enhanced Medicaid payments for Local
Services. When imposed, the Assessment shall constitute a lien
96 upon the Assessed Properties equal in rank and dignity with the liens
of all state, county, district, or municipal taxes and other non-ad
98 valorem assessments. Failure to pay may result in foreclosure
proceedings and loss of title. The Assessment shall be computed and
100 assessed only in the manner provided in this Ordinance.

Sec. 25-331. Alternative Method of Collection.

102 This Ordinance shall be deemed to provide an additional and
alternative method, as specified in § 197.3631, Florida Statutes, for
104 the assessment and collection of the non-ad valorem special
assessment described herein. The Ordinance shall be regarded as

106 supplemental and additional to powers conferred by other laws and
107 shall not be regarded as in derogation of any powers now existing,
108 or which may exist hereafter. This Ordinance, being necessary for
109 the health, safety, and welfare of the inhabitants of the County, shall
110 be liberally construed to effect the purposes hereof.

Sec. 25-332. Definitions.

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

Assessed Property means the real property in the County to
116 which an Institutional Health Care Provider holds a right of
117 possession and right of use through an ownership or leasehold
118 interest, thus making the property subject to the Assessment.

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

Assessment Resolution means the resolution described in
124 Section 25-335 hereof.

Board means the Board of County Commissioners of Orange
126 County, Florida.

Charter means the home rule charter of Orange County,
128 Florida.

Comptroller means the Orange County Comptroller, ex
130 officio Clerk to the Board, or other such person as may be duly
authorized to act on such person's behalf.

132 *County* means Orange County, Florida.

Fiscal Year means the period commencing on October 1 of
134 each year and continuing through the next succeeding September
135 30, or such other period as may be prescribed by law as the fiscal
136 year for the County.

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

140 *Local Services* means the provision of healthcare services to
Medicaid, indigent, and uninsured members of the Orange County
community.

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

144 *Ordinance* means the Orange County Local Provider
Participation Fund Ordinance.

146 *Tax Collector* means the Orange County Tax Collector.

Sec. 25-333. Scope of Assessment.

148 Pursuant to § 125.01, Florida Statutes, there is hereby
authorized a non-ad valorem special assessment that shall be
150 imposed, levied, collected, and enforced against Assessed Property
to fund the non-federal share of Medicaid payments benefitting
152 Assessed Properties providing Local Services in the County. Funds
generated as a result of the Assessment shall be held in a separate
154 fund called the local provider participation fund and shall be
available to be used only to (1) provide to the Florida Agency for
156 Health Care Administration the non-federal share for Medicaid
payments to be made directly or indirectly in support of hospitals
158 serving Medicaid and low income patients and (2) reimburse the
County for administrative costs associated with the implementation
160 of the Assessment authorized by this Ordinance, as further specified
in the Assessment Resolution.

162 The Assessment shall be broad based, and the amount of the
Assessment shall be uniformly imposed on each Assessed Property.
164 The Assessment may not hold harmless any Institutional Health
Care Provider, as required under 42 U.S.C. § 1396b(w). As set forth
166 in Section 25-330, the Assessment shall constitute a lien upon the
Assessed Properties equal in rank and dignity with the liens of all
168 state, county, district, or municipal taxes and other non-ad valorem
assessments.

170 Creation and implementation of the Assessment will not
result in any additional pecuniary obligation on the County, Board,
172 or County residents. The Assessment shall be imposed, levied,
collected, and enforced against only Assessed Properties, and the
174 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 annually. 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. 25-334. 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 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. 25-335. Assessment Resolution.

The Assessment Resolution shall describe (a) the Medicaid payments proposed for funding from proceeds of the Assessment; (b) the benefits to the Assessed 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. 25-336. Non-Ad Valorem Assessment Roll.

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

a) The names of the property owners 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.

Sec. 25-337. Notice by Publication.

Upon completion of the Non-Ad Valorem Assessment Roll, the Comptroller shall publish once in a newspaper of general circulation within the County a notice stating that the Board shall, not earlier than 20 calendar days from such publication, convene and hear from all interested parties. 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 Comptroller.

Sec. 25-338. Notice by Mail.

In addition to the published notice required by Section 25-337, but only for the first fiscal year in which an Assessment is imposed by the Board against Assessed Properties, the Comptroller 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

g) The date, time, and place of the hearing.

Notice shall be mailed at least 20 calendar days prior to the hearing to the owner of 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 Comptroller may provide proof of such notice by affidavit. Failure of the owner 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. 25-339. Adoption of Assessment Resolution and Non-Ad Valorem Assessment Roll.

At the date and time named in the notice, the Board shall convene and hear from all interested parties. 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.

Prior to the adoption of the Assessment Resolution and Non-Ad Valorem Assessment Roll, the County shall have a fully executed agreement with the State governing the intergovernmental transfer of the Assessment funds.

Sec. 25-340. Revisions to the Assessment Roll.

The Board 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 25-333 through 25-339.

Sec. 25-341. 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 Board action on the Assessment Resolution.

Sec. 25-342. Method of Collection.

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

Sec. 25-343. 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. 25-344. 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. 25-345. Hold Harmless and Indemnification.

The Hospitals that are subject to this Ordinance have requested adoption of this Ordinance and have given assurances to the County that the objectives and procedures addressed in this Ordinance are proper and lawful. Accordingly, the Hospitals that are the subject of this Ordinance shall execute a Hold Harmless and Indemnification in substantially the form attached hereto as Exhibit

“A” and incorporated by this reference, and may not be modified except in the sole discretion of the County, prior to the adoption of any Assessment Resolution whereby the Hospitals indemnify and hold harmless the County and its officers, employees and agents from any and all claims including the costs and fees associated with the defense of such claims, that may arise in the event that the objectives and procedures of this Ordinance are challenged by any person, entity, or governmental agency.

Sec. 25-346. Correction of Errors and Omissions.

No act of error or omission on the part of the County, Board, Comptroller, or their employees shall operate to release or discharge any obligation for payment of the Assessment imposed pursuant to this Ordinance.

Section 2. Effective Date. This Ordinance shall take effect pursuant to general law.

ADOPTED THIS ____ DAY OF _____, 2021.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

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Hold Harmless and Indemnification

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This Hold Harmless and Indemnification is made and entered as of the date referenced below by _____, with a business address of _____, (“Hospital”).

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WHEREAS, Hospital requested that Orange County (“County”) adopt the Orange County Local Provider Participation Fund Ordinance (“Ordinance”); and

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WHEREAS, Hospital has provided the County assurances that the objectives and procedures addressed in the Ordinance are proper and lawful; and

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WHEREAS, Hospital waives any right to challenge the procedures and objectives set out in the Ordinance or any assessment levied pursuant to the Ordinance; and

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WHEREAS, pursuant to the Ordinance, and in consideration of the County adopting the Ordinance, Hospital is required to execute this Hold Harmless and Indemnification prior to the County adopting any Assessment Resolution.

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NOW THEREFORE, in consideration of the covenants contained herein, Hospital hereby agrees as follows:

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The foregoing recitals are true and are incorporated herein by reference.

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Hospital hereby agrees to indemnify and hold harmless the County, the Orange County Comptroller, and their respective officers, employees and agents, from any and all claims arising from the adoption and implementation of the Orange County Local Provider Participation Fund Ordinance including any challenge to the procedure or authority of the County or its agents to levy or collect an assessment or any challenge to an assessment levied or collected by the County or its agents against any property owner pursuant to Ordinance, including any and all claims, and the costs and fees associated with the defense of such claims, that may arise due to the objection or

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360 challenge to the Ordinance or challenge to the County's procedure or authority to impose any
assessment levied or collected thereunder as may be challenged by any person, entity, or
362 government agency. The indemnification and hold harmless obligations set forth herein shall be
binding on Hospital's successors and assigns.

364 **IN WITNESS WHEREOF**, I have hereunto set my hand and seal on this ____ day of
_____, 20__.

366 **HOSPITAL:**

WITNESSES:

368 _____ Title: _____

Printed Name: _____

370 _____

Printed Name: _____

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374 STATE OF FLORIDA
COUNTY OF ORANGE

376 The foregoing instrument was acknowledged before me by means of ____ physical presence
or ____ online notarization, this ____ day of _____, 20__, by _____
378 _____, as _____ of _____, who is personally
known to me or who has produced _____ as identification.

(NOTARY SEAL)

Notary Public

Name

Typed, Printed or Stamped

My Commission Expires: _____

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