

ORDINANCE 24- 16

AN ORDINANCE OF THE COUNTY OF PINELLAS, PROVIDING THAT THE PINELLAS COUNTY CODE BE AMENDED BY ADDING A SECTION TO BE NUMBERED CHAPTER 110, ARTICLE III; PROVIDING FOR THE ESTABLISHMENT OF A LOCAL PROVIDER PARTICIPATION FUND; PROVIDING FOR THE AUTHORIZATION OF NON-AD VALOREM SPECIAL ASSESSMENTS 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 PINELLAS COUNTY COMMUNITY; PROVIDING FOR THE PROCEDURE FOR ADOPTING THE ANNUAL NON-AD VALOREM SPECIAL ASSESSMENTS TO BE DEPOSITED INTO THE LOCAL PROVIDER PARTICIPATION FUND; PROVIDING FOR THE AUTHORIZED USES FOR LOCAL PROVIDER PARTICIPATION FUND PROCEEDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR RESOLUTION OF CONFLICT OF LAWS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the hospitals in Pinellas County's jurisdiction (the "Hospitals") annually provide millions of dollars of uncompensated care to uninsured persons; and

WHEREAS, the hospitals in Pinellas County's jurisdiction (the "Hospitals") annually provide millions of dollars of uncompensated care to those who qualify for Medicaid because Medicaid, on average, historically covers only 61% 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") operates several supplemental payment programs designed to provide reimbursement to cover the Medicaid reimbursement shortfall and to provide resources to support charity care; and

WHEREAS, non-public Hospitals have asked Pinellas County (the “County”) to impose assessments upon certain real property upon which Hospitals operate 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 funding raised by the County assessments will, through intergovernmental transfers (“IGTs”) provided consistent with federal guidelines, support additional funding for Medicaid supplemental payments to Hospitals; and

WHEREAS, the County acknowledges that the Hospital properties assessed can benefit directly and especially from the assessments as a result of the above-described additional funding; and

WHEREAS, the County has determined that a logical relationship exists between the services provided and the special and particular benefit to the real property upon which the Hospitals operate; 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 supplemental payments to the Hospitals for health care services directly and specifically benefits the properties upon which Hospitals operate and supports their continued ability to provide those services; and

WHEREAS, imposing assessments limited to properties upon which Hospitals operate 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 assessments support 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 assessments 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 properly apportioned assessments by which all Hospitals will be assessed a uniform amount that is compliant with 42 C.F.R. § 433.68(d); and

WHEREAS, the County adopts this Ordinance enabling the County to levy uniform non-ad valorem special assessments, which are fairly and reasonably apportioned among the properties upon which Hospitals operate within the County's jurisdictional limits, to establish and maintain a system of funding for IGTs to support the non-federal share of Medicaid supplemental payments, thus directly and specially benefitting properties upon which Hospitals operate.

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

SECTION 1. Chapter 110 of the Pinellas County Code, is hereby amended, by adding a new Article III, as follows:

Sec. 10-57. - Title.

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

Sec. 10-58. - Authority.

Pursuant to Article VIII, Section 1(g) of the Constitution of the State of Florida, Chapter 125 of the Florida Statutes, and Article II of the Pinellas County Home Rule Charter, the Board is hereby authorized to impose special assessments against private for-profit and not-for-profit hospitals located within the County to fund the non-federal share of supplemental payments associated with Local Services.

Sec. 10-59. - Purpose.

The non-ad valorem special assessments authorized by this article shall be imposed, levied, collected, and enforced against Assessed Properties located within the County. Proceeds from the Assessments shall be used to benefit Assessed Properties through supplemental payments for Local Services. When imposed, the Assessments shall constitute liens 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 Assessments shall be computed and assessed only in the manner provided in this Ordinance.

Sec. 10-60. - 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

assessments 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. 10-61. - 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 Assessments.

Assessments mean the non-ad valorem special assessments imposed by the County on Assessed Property to fund the non-federal share of supplemental payments that will benefit hospitals providing Local Services.

Assessment Resolutions mean the resolutions described in Section 10-64 hereof.

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

Charter means the home rule charter of Pinellas County, Florida.

Comptroller means the Pinellas 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 Pinellas 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 Pinellas County community and surrounding area.

Local Provider Participation Fund means a separate, custodial or other fund account into which funds collected from the Non-Ad Valorem assessments are deposited for the specific purpose of supporting the IGTs in execution of this program.

Non-Ad Valorem Assessment Rolls means the special assessment rolls prepared by the County.

Ordinance means the Pinellas County Local Provider Participation Fund Ordinance.

Tax Collector means the Pinellas County Tax Collector.

Sec. 10-61. - 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. 10-62. - Scope of Assessments.

Pursuant to § 125.01, Fla. Stat., the Board is hereby authorized to create non-ad valorem special assessments that shall be imposed, levied, collected, and enforced against Assessed Property to fund the non-federal share of supplemental payments benefitting Assessed Properties providing Local Services in the County. Funds generated as a result of the Assessments shall be held in a custodial or other fund account, as required and established by this ordinance for the purpose of supporting this program, 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 supplemental payments to be made directly or indirectly in support of hospitals serving low-income, Medicaid, and uninsured patients and (2) reimburse the County for administrative costs associated with the implementation of the Assessments authorized by this Ordinance, as further specified in the Assessment Resolutions.

The Assessments must be broad based, and the amount of the Assessments must be uniformly imposed on each Assessed Property. The Assessments may not hold harmless any Institutional Health Care Provider, as required under 42 U.S.C. § 1396b(w). As set forth in Section 10-59, the Assessments 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 Assessments 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 Assessments will not result in any additional pecuniary obligation on the County, Board, or County residents. The Assessments shall be imposed, levied, collected, and enforced against only Assessed Properties, and the Assessment Resolutions 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, unless amended by Resolution by the Board in accordance with State and Federal law. Any reasonable expenses the County incurs to collect delinquent assessments in support of this program, 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 or other legal matters as a result of this program, are not subject to the limitation on administrative costs.

The Board may establish a designee to carry out the administration and execution of the Assessments. The designee may establish administrative rules and procedures to effectively carry out the program consistent with the Ordinance and Assessment Resolutions.

Sec. 10-63. – Computation of Assessments.

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

The amount of the Assessments 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. 10-64. – Assessment Resolutions.

The Assessment Resolutions shall describe (a) the supplemental payments proposed for funding from proceeds of the Assessments; (b) the benefits to the Assessment Properties associated with the Assessments; (c) the methodology for computing the assessed amounts; and (d) the method of collection, including how and when the Assessments are to be paid.

Sec. 10-65. – Non-Ad Valorem Assessment Roll.

The Non-Ad Valorem Assessment Rolls shall contain the following:

- a) The names and addresses of the Assessed Properties; and
- b) The Assessment rates and amount of the Assessments to be imposed against each Assessed Property based on the Assessment Resolutions.

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

Sec. 10-66. - Notice by Publication.

Notice shall be published once in a newspaper of general circulation within the County 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 Assessments. Such notice shall include:

- a) The Assessment rates;
- b) The procedure for objecting to the Assessment rates;
- c) The method by which the Assessments will be collected; and
- d) A statement that Non-Ad Valorem Special Assessment Rolls are available for public inspection.

Sec. 10-67. - Notice by Mail.

In addition to the published notice required by Section 10-66, the Board or a designee of the Board shall provide notice of the proposed Assessments by first class mail to the Assessed Properties. Such notice shall include:

- a) The purpose of the Assessments;
- b) The Assessment rates to be levied against each Assessed Property;
- c) The unit of measurement used to determine the Assessments;
- d) The total revenue to be collected by the County from the Assessments;
- e) A statement that failure to pay the Assessments 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 Rolls. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. Proof of service of said notice may be made by affidavit. Failure of the Assessed Property to receive such notice, because of mistake or inadvertence, shall not affect the validity of the Assessment Rolls or release or discharge any obligation for payment of the Assessments imposed by the Board pursuant to this Article.

Sec. 10-68. - Adoption of Assessment Resolution and Non-Ad Valorem Assessment Rolls.

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

Sec. 10-69. - Revisions to the Assessment Roll.

The Board may revise the Non-Ad Valorem Assessment Rolls one or more times during the Fiscal Year to modify the Assessment rates through the adoption of additional Assessment Resolutions, following the procedures set forth herein and as provided for in applicable Florida Statutes, as may be amended from time to time.

Sec. 10-70. - Effect of the Assessment Resolutions.

The adoption of Assessment Resolutions shall be the final adjudication of the issues presented (including, but not limited to, the method of apportionment and Assessment, the Assessment rates, the initial rates of Assessment, the Non-Ad Valorem Assessment Rolls, 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. The Non-Ad Valorem Assessment Rolls shall be delivered to the Tax Collector or such other official as the Board by resolution shall designate.

Sec. 10-71. - Method of Collection.

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

Sec. 10-72. - 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. Absent Board action, funds will remain in the account and rollover for the next fiscal year.

Sec. 10-73. - Responsibility for Enforcement.

The County and its agent, if any, shall maintain the duty to enforce the prompt collection of the Assessments 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. 10-74. - Indemnification.

The Institutional Health Care Providers that are the subject of 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, prior to the adoption of any Assessment Resolution, Institutional Health Care Providers liable for at least fifty-one percent (51%) of the total Assessments' amount for the forthcoming Fiscal Year shall together indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all (*i.e.*, 100%) liability, losses, disallowances, or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of any claims, demands, suits, causes of actions or administrative proceedings of any kind or nature arising out of or relating to the Assessments; provided, however, the entirety of any such liability, losses, disallowances or damages shall be prorated amongst all the Institutional Health Care Providers which provided the indemnification according to their respective share of the total amount of the Assessments applicable to such Institutional Health Care Providers. To the extent that an Institutional Health Care Provider is a public instrumentality entitled to the protections afforded by Section 768.28, Florida Statutes, the release and indemnification shall not be construed as a waiver of sovereign immunity beyond the waiver provided in such release and indemnification. The release and indemnification shall be in the form as prescribed by the County.

Sec. 10-75. - 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 Assessments imposed by the Board under the provision of this Chapter.

Sec. 10-76. - 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. Severability. If any Section, Subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to rend the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 3. Areas Embraced. This Ordinance shall be effective in the incorporated as well as unincorporated areas of the County.

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 Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas 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 intentions.

SECTION 6. Filing of Ordinance; Effective Date. Pursuant to Section 125.66, Fla. Stat., a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the ordinance with the Department of State.

APPROVED AS TO FORM
By: Cody J. Ward
Office of the County Attorney