MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Eric Kurtz, JBC Staff (303-866-4952)
DATE	March 19, 2020
SUBJECT	HAS Fee – offset General Fund

JBC ACTION TO DATE

The JBC has not yet acted on a staff recommendation for legislation to use $40 million from the Healthcare Affordability and Sustainability (HAS) Fee to offset General Fund in Medical Services Premiums. This is a one-time change for FY 2020-21. The recommendation was contained in the Staff Budget Balancing Options for the Department of Health Care Policy and Financing on page 36. This change requires a bill.

REVISED RECOMMENDATION

Based on new information from the Department of Health Care Policy and Financing and the Colorado Hospital Association (CHA), the revised JBC staff recommendation is to use $161.0 million from the HAS Fee to offset General Fund. This requires a bill and as part of the bill the JBC staff recommends a provision requiring that hospitals would be responsible for returning any federal funds drawn from HAS Fee revenues that exceed the federal net patient revenue limit and any associated penalties. The staff recommendation includes the following components:

HAS Fee - offset General Fund	
	State FY 2020-21
FFY 19-20 Plan Year	
Original staff recommendation at 5.75% NPR	$40.0
Additional HAS Fee up to 6% NPR	$74.0
FFY 20-21 Plan Year	
Additional HAS Fee up to 6% NPR	$47.0
TOTAL state FY 2020-21	**$161.0**

The amount the state can collect from hospitals through the HAS Fee is constrained by federal regulation to 6.0 percent of net patient revenues (NPR). Historically, the Department has developed plans for collecting the HAS Fee based on 5.75 percent of NPR in order to be conservative. If the Department collects too much HAS Fee, the federal government will seek repayment of the federal funds that were matched by any HAS Fee in excess of 6.0 percent of NPR. The Department would be willing to change this practice of collecting 5.75 percent of NPR to instead collect 6.0 percent of NPR, but recommends legislation to ensure that the hospitals would be responsible for returning any federal funds drawn from HAS Fee revenues that exceed the NPR limit and any associated penalties.[1] This eliminates ambiguity where an over collection of HAS Fee might be interpreted as creating a General Fund obligation for the repayment to the federal government.

[1] In addition, the Department wants CHA to assign people to a task force and commit that "hospitals will work diligently to reduce overall utilization in a shared quest to redefine the delivery of health care – referred to as 'the new normal' – to the betterment of the state budget as well as Colorado employers and families." This is not part of the JBC staff recommendation as it is a nebulous demand and not something that would be part of legislation or the Long Bill, but it is something JBC members could encourage, if so desired.

If the Department collected the HAS Fee to 6.0 percent of NPR in federal FY 2019-20, the Department projects it could collect an additional $74.0 million in state FY 2020-21 that could be used to offset the need for General Fund for Medical Services Premiums. The Department's forecast takes into account an estimated 11.0 percent decrease in NPR from what was forecasted in February 2020 and an increase in HAS Fee obligations for expansion populations based on the May 2020 enrollment and expenditure forecast. The CHA is largely in agreement with the Department's calculations, although CHA had not seen the final numbers from the Department at the time this document was prepared.

In addition to collecting more HAS Fee in federal FY 2019-20, the Department could collect more HAS Fee in federal FY 2020-21. It is a different federal fiscal year with a new 6.0% NPR limit, but it would impact the same state FY 2020-21. The Department of Health Care Policy and Financing would prefer not to obligate HAS Fee from federal FY 2020-21 in state FY 2020-21. Part of the Department's reluctance is due to uncertainty about what is happening with net patient revenues and HAS fee obligations for expansion populations. Also, the Department prefers to reserve HAS Fee from federal FY 2020-21 for potential budget balancing in state FY 2021-22. There might be other reasons for the Department's preference that have not been articulated to the JBC staff, such as plans related to reinsurance or the public option.

The staff recommendation to collect $47.0 million from the HAS Fee for General Fund relief in federal FY 2020-21 is based on an iteration of options proposed by CHA. However, the $47.0 million offered by CHA in federal FY 2020-21 was in the context of smaller amounts from the HAS Fee in federal FY 2019-20 than what the JBC staff is recommending. The JBC staff does not know how CHA feels about the recommendation to take $47.0 million from the HAS Fee in federal FY 2020-21, but CHA believes at least $47.0 million is available. Significantly more than $47.0 million is potentially available in federal FY 2020-21, if the JBC needs to take more, but due to the Department's concerns about obligating funds from federal FY 2020-21, the JBC staff decided to limit the recommendation (for now) to $47.0 million. Both the CHA and the Department acknowledge that their current projections show at least $47.0 million will be available in federal FY 2020-21.

Because the Department would prefer not to obligate HAS Fee from federal FY 2020-21 in state FY 2020-21, the Department suggests that further General Fund relief from the hospitals be in the form of provider rate reductions. However, due to the favorable federal match for services to expansion populations, a provider rate reduction is a less efficient way to get General Fund relief from the hospitals than increasing collections from the HAS Fee. For every dollar in additional HAS Fee collected the hospitals lose one dollar and the General Fund gains one dollar in relief. In contrast, the Department suggested cutting provider rates for hospitals by $206.0 million total funds to generate only $73.0 million in General Fund savings. For this reason, the JBC staff does not recommend the Department's alternative approach.

ALTERNATIVE 1

If the JBC is concerned about minimizing the impact of an increase in HAS Fee collections on rural and critical access hospitals, the JBC could reduce the amount of HAS Fee from federal FY 2019-20 that is used for General Fund relief and reserve some of the room under the NPR limit for increased supplemental payments that are targeted to these institutions. The Department proposed reserving

$5.0 million for this purpose. The CHA proposed reserving $40.0 million, but CHA's purpose was described to the JBC staff as preventing claw backs below the FY 2019-20 distributions to hospitals, and not specifically to help rural and critical access hospitals, although the traditional distribution of the supplemental payments would favor rural and critical access hospitals.

ALTERNATIVE 2

The JBC could consider, in conjunction with the staff recommendation or with Alternative 1, exempting the hospitals from the across-the-board provider rate reduction. The logic would be that the hospitals are contributing to addressing the budget shortfall in a different way that generates more General Fund relief than a 1.0 percent provider rate reduction.

A 1.0 percent provider rate reduction saves approximately $2.7 million General Fund from payments to hospitals, but it reduces total funds payments to hospitals by $9.6 million.

OTHER RELEVANT BACKGROUND

The JBC previously approved a bill to use $42.0 million from the HAS Fee to offset the need for General Fund, including $21.0 million in FY 2019-20 and $21.0 million in FY 2020-21. This amount is equal to the unexpected windfall the hospitals otherwise would have received because of the change in the federal match rate as part of the federal Families First Coronavirus Relief Act. The $42.0 million has already been approved by the JBC and accounted for in the General Fund overview. The $42.0 million is not really a cut to the hospitals, but many documents from the CHA include this amount as part of the hospital contribution to General Fund relief.