MEMORANDUM

TO: Joint Budget Committee

FROM: Eric Kurtz, JBC Staff (303-866-4952)

SUBJECT: Restricting Hospital Provider Fee Revenue

DATE: March 24, 2016

This memo addresses three issues that have come up recently related to the JBC's decision to draft a bill restricting the Hospital Provider Fee revenue by $50.0 million.

1. Senator Steadman and Representative Rankin asked about the potential for backfilling the lost revenue to the hospitals with a provider rate increase as described in one of the alternatives presented in the JBC Staff Figure Setting Recommendations dated March 15, 2016.

   Upon reflection and after running some models, the JBC staff does not believe the alternative to backfill the lost revenue to the hospitals with a provider rate increase is viable in the current TABOR refund environment for achieving the JBC's targeted level of General Fund relief. The concept behind the alternative is to make a larger reduction in the Hospital Provider Fee revenue than the targeted General Fund savings, then use a portion of the General Fund savings from reducing the TABOR refund to increase provider rates to hold the hospitals harmless, and have the net General Fund savings still match the original targeted level. In the current TABOR environment a larger reduction to the Hospital Provider Fee revenue would not generate additional General Fund savings, because the sum of the JBC's actions eliminated the projected TABOR refund obligation for FY 2016-17. Any increase in provider rates to backfill lost revenue to the hospitals would reduce the General Fund savings from restricting the Hospital Provider Fee revenue.

   Although the JBC voted to restrict the Hospital Provider Fee revenue by $50.0 million, the General Fund savings is only equal to the reduction in the TABOR refund obligation. As of yesterday's JBC decisions, the remaining TABOR refund obligation after all other actions was $26.6 million, so the General Fund savings achieved by restricting the Hospital Provider Fee was $26.6 million.

2. The Colorado Hospital Association (CHA) is advocating for the JBC to do the restriction to the Hospital Provider Fee revenue in the Long Bill, rather than in a separate bill. The Governor requested a separate bill. The JBC received an opinion from Legislative Legal Services (LLS) that a separate bill is necessary to restrict the revenue without changing Medicaid eligibility or benefits. However, the CHA believes a bill is not necessary.

   The legal complication with trying to make the reduction in the Long Bill is that there is a statutory prioritization of expenditures from the Hospital Provider Fee in the event that there are insufficient revenues to "fully fund" payments to hospitals that "maximize" reimbursements "to up to the upper payment limits" *[Section 25.5-4-402.3 (5) (b) in*

combination with Section 25.5-4-402.3 (4) (b) (I), C.R.S.]. This statutory prioritization says that the first thing that must be reduced when there is insufficient revenue from the Hospital Provider Fee is Medicaid eligibility or benefits.

Last year when the JBC staff proposed a restriction on Hospital Provider Fee revenues similar to what the Governor proposed this year, the CHA raised the statutory prioritization of funding as a potential barrier to implementation. Also, in previous years the CHA has threatened law-suits against the Department of Health Care Policy and Financing based on perceptions that the Department was not complying with the statutory prioritization of funding.

This year, however, CHA notes that the Hospital Provider Fee Oversight and Advisory Board (OAB) has already approved a hospital provider fee model that would restrict revenue by $73.1 million. Knowing the lead time required to get a model negotiated through the OAB and submitted to the Centers for Medicare and Medicaid Services (CMS) for approval, the Department submitted a plan to the OAB based on the Governor's request, in order to get the wheels moving, with the understanding that modifications might be necessary based on legislative action. The OAB has already approved that plan.

Representatives from the Department indicated verbally that if the JBC reduced Hospital Provider Fee revenue in the Long Bill by the $50.0 million approved yesterday, or by the $73.1 million approved by the OAB, the Department would take the reduction from the booster payments and would not reduce Medicaid eligibility or benefits. Citing the approval by the OAB, the Department representatives said that the Department would view either of those scenarios as meeting the statutory requirement to "maximize" payments "to up to the upper payment limits" and would not consider a separate bill as necessary. The JBC staff requested written confirmation of this position, but did not receive a response in time for inclusion in this memo.

CHA argues that the Governor's proposed restriction of $73.1 million results in Hospital Provider Fee revenues that fall within a range of the upper payment limit (UPL) that is consistent with the statutory directive to "maximize" payments. According to CHA, previous Hospital Provider Fee models have resulted in revenue between 94 and 98 percent of the UPL. This doesn't match the data below that was provided by the Department of Health Care Policy and Financing, but it is worth noting for future reference that CHA appears comfortable with the idea of Hospital Provider Fee revenues being limited to as low as 94 percent of the UPL.

Federal Fiscal Year	HPF % of UPL
15-16	96.3%
14-15	96.2%
13-14	96.6%
12-13	99.7%
11-12	99.9%
10-11	96.7%

3. The JBC may want to consider changing the amount of the restriction on the Hospital Provider Fee revenue.

   As noted earlier, the maximum General Fund savings from restricting the Hospital Provider Fee revenue is limited by the size of the TABOR refund obligation. After all the JBC's other actions yesterday, the remaining TABOR refund obligation that was eliminated by restricting the Hospital Provider Fee revenue was $26.6 million. Of the $26.6 million, only $7.0 million was attributable to the projected TABOR surplus in FY 2016-17 and the remaining $19.6 million was related to a miscount of revenue to the Adult Dental Fund that should have been refunded in FY 2014-15. The upshot is that the JBC could reduce the restriction on the Hospital Provider Fee revenue by only $7.0 million and get the same $26.6 million General Fund savings as the $50.0 million restriction achieved.

   However, there are risks associated with balancing so tightly to the projected TABOR refund. A small change in the revenue forecast could result in a mid-year projected need for a TABOR refund. If a new forecast showed a TABOR surplus, then the General Assembly would need to refund that surplus plus the $19.6 million carried forward from FY 2014-15.

   The JBC could also consider increasing the restriction on the Hospital Provider Fee to match the $73.1 million restriction approved by the OAB in order to take the revenue farther below the TABOR limit and provide a cushion against the potential that a change in the forecast will result in the need for a TABOR refund. This could also provide room for the General Assembly to pass bills with small revenue impacts without generating an increase in the TABOR refund obligation.

   The Colorado Hospital Association has expressed a preference for sticking to the $73.1 million revenue limit approved by the OAB. The CHA is concerned about the time required to negotiate a new distribution formula and the potential for delays in CMS approval.

   If the JBC decided to do a $73.1 million restriction on the Hospital Provider Fee, instead of the $50.0 million previously approved, the JBC could revisit the decision to accelerate payments from the Unclaimed Property Tax Fund to the Adult Dental Fund. That decision reduced the projected TABOR refund in FY 2016-17 by $34.8 million, but might not be necessary with a $73.1 million restriction on the Hospital Provider Fee, depending on how close to the TABOR limit the JBC wants to balance.