A BILL FOR AN ACT

CONCERNING THE CREATION OF AN ENTERPRISE THAT IS EXEMPT FROM
THE REQUIREMENTS OF SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION AND RELATED STATUTORY PROVISIONS TO
ADMINISTER A FEE-BASED HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY PROGRAM FOR HOSPITALS, AND, IN
CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill creates the Colorado healthcare affordability and
sustainability enterprise (enterprise) as a type 2 agency and government-owned business within the department of health care policy and financing (HCPF) for the purpose of participating in the implementation and administration of a state Colorado healthcare affordability and sustainability program (program) on and after July 1, 2016, and creates a board consisting of 13 members appointed by the governor with the advice and consent of the senate to govern the enterprise. The business purpose of the enterprise is, in exchange for the payment of a new healthcare affordability and sustainability fee (fee) by hospitals to the enterprise, to administer the program and thereby support hospitals that provide uncompensated medical services to uninsured patients and participate in publicly funded health insurance programs by:

- Participating in a federal program that provides additional matching money to states;
- Using fee revenue, which must be credited to a newly created healthcare affordability and sustainability fee fund and used solely for purposes of the program, and federal matching money to:
  - Reduce the amount of uncompensated care that hospitals provide by increasing the number of individuals covered by publicly funded health insurance; and
  - Increase publicly funded insurance reimbursement rates to hospitals; and
- Providing or contracting for or arranging advisory and consulting services to hospitals and coordinating services to hospitals to help them more effectively and efficiently participate in publicly funded insurance programs.

The bill does not take effect if the federal centers for medicare and medicaid services determine that it does not comply with federal law. The enterprise is designated as an enterprise for purposes of the taxpayer's bill of rights (TABOR) so long as it meets TABOR requirements. The primary powers and duties of the enterprise are to:

- Charge and collect the fee from hospitals;
- Leverage fee revenue collected to obtain federal matching money;
- Utilize and deploy both fee revenue and federal matching money in furtherance of the business purpose of the enterprise;
- Issue revenue bonds payable from its revenues;
- Enter into agreements with HCPF as necessary to collect and expend fee revenue;
- Engage the services of private persons or entities serving as contractors, consultants, and legal counsel for professional and technical assistance and advice and to supply other
services related to the conduct of the affairs of the enterprise, including the provision of additional business services to hospitals; and

Adopt and amend or repeal policies for the regulation of its affairs and the conduct of its business.

The existing hospital provider fee program is repealed and the existing hospital provider fee oversight and advisory board is abolished, effective July 1, 2016.

The bill specifies that so long as the enterprise qualifies as a TABOR-exempt enterprise, fee revenue does not count against either the TABOR state fiscal year spending limit or the referendum C cap, the higher statutory state fiscal year spending limit established after the voters of the state approved referendum C in 2005. The bill clarifies that the creation of the new enterprise to charge and collect the fee is the creation of a new government-owned business that provides business services to hospitals as an enterprise for purposes of TABOR and related statutes and does not constitute the qualification of an existing government-owned business as a new enterprise that would require or authorize downward adjustment of the TABOR state fiscal year spending limit or the referendum C cap.

In order to compensate for a proposed reduction in the amount of the fiscal year 2016-17 long bill appropriation of revenue from fees collected by HCPF from hospitals and federal matching money, the bill appropriates $146,693,573 in healthcare affordability and sustainability fees and federal funds to the enterprise for fiscal year 2016-17.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 25.5-4-402.4 as follows:

25.5-4-402.4. Hospitals - healthcare affordability and sustainability fee - legislative declaration - Colorado healthcare affordability and sustainability enterprise - federal waiver - fund created - rules. (1) Short title. The short title of this section is the "COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE ACT OF 2016".

(2) Legislative declaration. The general assembly hereby finds and declares that:
(a) The state and the providers of publicly funded medical services, and hospitals in particular, share a common commitment to comprehensive health care reform;

(b) Hospitals within the state incur significant costs by providing uncompensated emergency department care and other uncompensated medical services to low-income and uninsured populations;

(c) This section is enacted as part of a comprehensive health care reform and is intended to provide the following services and benefits to hospitals and individuals:

(I) Providing a payer source for some low-income and uninsured populations who may otherwise be cared for in emergency departments and other settings in which uncompensated care is provided;

(II) Reducing the underpayment to Colorado hospitals participating in publicly funded health insurance programs;

(III) Reducing the number of persons in Colorado who are without health care benefits;

(IV) Reducing the need of hospitals and other health care providers to shift the cost of providing uncompensated care to other payers;

(V) Expanding access to high-quality, affordable health care for low-income and uninsured populations; and

(VI) Providing the additional business services specified in subparagraph (IV) of paragraph (a) of subsection (4) of this section to hospitals that pay the healthcare affordability and sustainability fee charged and collected as authorized by
SUBSECTION (4) OF THIS SECTION BY THE COLORADO HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY ENTERPRISE CREATED IN
PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION.

(d) The COLORADO HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY ENTERPRISE PROVIDES BUSINESS SERVICES TO HOSPITALS
WHEN, IN EXCHANGE FOR PAYMENT OF HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEES BY HOSPITALS, IT:

   (I) OBTAINS FEDERAL MATCHING MONEY AND RETURNS BOTH THE
HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEES AND THE
FEDERAL MATCHING MONEY TO HOSPITALS TO INCREASE REIMBURSEMENT
RATES TO HOSPITALS FOR PROVIDING MEDICAL CARE UNDER THE STATE
MEDICAL ASSISTANCE PROGRAM AND THE COLORADO INDIGENT CARE
PROGRAM AND TO INCREASE THE NUMBER OF INDIVIDUALS COVERED BY
PUBLIC MEDICAL ASSISTANCE; AND

   (II) PROVIDES ADDITIONAL BUSINESS SERVICES TO HOSPITALS AS
SPECIFIED IN SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF SUBSECTION (4)
OF THIS SECTION;

(e) It is necessary, appropriate, and in the best interest of
the state to acknowledge that by providing the business
services specified in subparagraphs (I) and (II) of paragraph (d) of
this subsection (2) the COLORADO HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY ENTERPRISE ENGAGES IN AN ACTIVITY CONDUCTED IN THE
PURSUIT OF A BENEFIT, GAIN, OR LIVELIHOOD AND THEREFORE OPERATES
AS A BUSINESS;

(f) Consistent with the determination of the COLORADO
SUPREME COURT IN Nicholl v. E-470 Public Highway Authority, 896
P.2d 859 (COLO. 1995), that the power to impose taxes is
INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, IT IS THE CONCLUSION OF THE GENERAL ASSEMBLY THAT THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE CHARGED AND COLLECTED BY THE COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE IS A FEE, NOT A TAX, BECAUSE THE FEE IS IMPOSED FOR THE SPECIFIC PURPOSES OF ALLOWING THE ENTERPRISE TO DEFRAY THE COSTS OF PROVIDING THE BUSINESS SERVICES SPECIFIED IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (d) OF THIS SUBSECTION (2) TO HOSPITALS THAT PAY THE FEE AND IS COLLECTED AT RATES THAT ARE REASONABLY CALCULATED BASED ON THE BENEFITS RECEIVED BY THOSE HOSPITALS; AND

(g) SO LONG AS THE COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE QUALIFIES AS AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, THE REVENUES FROM THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE CHARGED AND COLLECTED BY THE ENTERPRISE ARE NOT STATE FISCAL YEAR SPENDING, AS DEFINED IN SECTION 24-77-102 (17), C.R.S., OR STATE REVENUES, AS DEFINED IN SECTION 24-77-103.6 (6) (c), C.R.S., AND DO NOT COUNT AGAINST EITHER THE STATE FISCAL YEAR SPENDING LIMIT IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS DEFINED IN SECTION 24-77-103.6 (6) (b) (I) (B), C.R.S.

(3) (a) THE COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE, REFERRED TO IN THIS SECTION AS THE "ENTERPRISE", IS CREATED. THE ENTERPRISE IS AND OPERATES AS A GOVERNMENT-OWNED BUSINESS WITHIN THE STATE DEPARTMENT FOR THE PURPOSE OF CHARGING AND COLLECTING THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE, LEVERAGING HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE REVENUE TO OBTAIN FEDERAL
MATCHING MONEY, AND UTILIZING AND DEPLOYING THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE REVENUE AND FEDERAL
MATCHING MONEY TO PROVIDE THE BUSINESS SERVICES SPECIFIED IN
SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (d) OF SUBSECTION (2) OF
THIS SECTION TO HOSPITALS THAT PAY THE HEALTHCARE AFFORDABILITY
AND SUSTAINABILITY FEE.

(b) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES
OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT
RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS
THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL
COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT
CONSTITUTES AN ENTERPRISE PURSUANT TO THIS PARAGRAPH (b), THE
ENTERPRISE IS NOT SUBJECT TO ANY PROVISIONS OF SECTION 20 OF
ARTICLE X OF THE STATE CONSTITUTION.

(c) CREATION OF THE COLORADO HEALTHCARE AFFORDABILITY
AND SUSTAINABILITY ENTERPRISE AS A NEW ENTERPRISE TO CHARGE AND
COLLECT A NEW HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE
AS AUTHORIZED BY SUBSECTION (4) OF THIS SECTION AND PROVIDE
HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE-FUNDED BUSINESS
SERVICES TO HOSPITALS IS THE CREATION OF A NEW GOVERNMENT-OWNED
BUSINESS THAT PROVIDES BUSINESS SERVICES TO HOSPITALS AS A NEW
ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION, DOES NOT CONSTITUTE THE QUALIFICATION OF AN
EXISTING GOVERNMENT-OWNED BUSINESS AS AN ENTERPRISE FOR
PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR
SECTION 24-77-103.6 (6) (b) (II), C.R.S., AND, THEREFORE, DOES NOT
REQUIRE OR AUTHORIZE ADJUSTMENT OF THE STATE FISCAL YEAR
SPENDING LIMIT CALCULATED PURSUANT TO SECTION 20 OF ARTICLE X OF
THE STATE CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS
DEFINED IN SECTION 24-77-103.6 (6) (b) (I) (B), C.R.S.

(d) THE ENTERPRISE’S PRIMARY POWERS AND DUTIES ARE:

(I) TO CHARGE AND COLLECT THE HEALTHCARE AFFORDABILITY
AND SUSTAINABILITY FEE AS SPECIFIED IN SUBSECTION (4) OF THIS
SECTION;

(II) TO LEVERAGE HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEE REVENUE COLLECTED TO OBTAIN FEDERAL MATCHING
MONEY, WORKING WITH OR THROUGH THE STATE DEPARTMENT AND THE
STATE BOARD TO THE EXTENT REQUIRED BY FEDERAL LAW OR OTHERWISE
NECESSARY;

(III) TO EXPEND HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEE REVENUE, MATCHING FEDERAL MONEY, AND ANY
OTHER MONEY FROM THE HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEE CASH FUND AS SPECIFIED IN SUBSECTIONS (4) AND (5)
OF THIS SECTION;

(IV) TO ISSUE REVENUE BONDS PAYABLE FROM THE REVENUES OF
THE ENTERPRISE;

(V) TO ENTER INTO AGREEMENTS WITH THE STATE DEPARTMENT
TO THE EXTENT NECESSARY TO COLLECT AND EXPEND HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE REVENUE;

(VI) TO ENGAGE THE SERVICES OF PRIVATE PERSONS OR ENTITIES
SERVING AS CONTRACTORS, CONSULTANTS, AND LEGAL COUNSEL FOR
PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE AND TO SUPPLY
OTHER SERVICES RELATED TO THE CONDUCT OF THE AFFAIRS OF THE ENTERPRISE, INCLUDING THE PROVISION OF ADDITIONAL BUSINESS SERVICES TO HOSPITALS AS SPECIFIED IN SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION, WITHOUT REGARD TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.; AND

(VII) TO ADOPT AND AMEND OR REPEAL POLICIES FOR THE REGULATION OF ITS AFFAIRS AND THE CONDUCT OF ITS BUSINESS CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

(e) THE ENTERPRISE SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AS IF THE SAME WERE TRANSFERRED TO THE STATE DEPARTMENT BY A TYPE 2 TRANSFER, AS DEFINED IN SECTION 24-1-105, C.R.S.

(4) Healthcare affordability and sustainability fee. (a) FOR THE FISCAL YEAR COMMENCING JULY 1, 2016, AND FOR EACH FISCAL YEAR THEREAFTER, THE ENTERPRISE IS AUTHORIZED TO CHARGE AND COLLECT HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEES, AS DESCRIBED IN 42 CFR 433.68 (b), ON OUTPATIENT AND INPATIENT SERVICES PROVIDED BY ALL LICENSED OR CERTIFIED HOSPITALS, REFERRED TO IN THIS SECTION AS "HOSPITALS", FOR THE PURPOSE OF OBTAINING FEDERAL FINANCIAL PARTICIPATION UNDER THE STATE MEDICAL ASSISTANCE PROGRAM AS DESCRIBED IN THIS ARTICLE AND ARTICLES 5 AND 6 OF THIS TITLE, REFERRED TO IN THIS SECTION AS THE "STATE MEDICAL ASSISTANCE PROGRAM", AND THE COLORADO INDIGENT CARE PROGRAM DESCRIBED IN PART 1 OF ARTICLE 3 OF THIS TITLE, REFERRED TO IN THIS SECTION AS THE "COLORADO INDIGENT CARE PROGRAM". THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEES SHALL BE USED BY THE
ENTERPRISE TO:

(I) PROVIDE A BUSINESS SERVICE TO HOSPITALS BY INCREASING
REIMBURSEMENT TO HOSPITALS FOR PROVIDING MEDICAL CARE UNDER:
(A) THE STATE MEDICAL ASSISTANCE PROGRAM; AND
(B) THE COLORADO INDIGENT CARE PROGRAM;

(II) PROVIDE A BUSINESS SERVICE TO HOSPITALS BY INCREASING
THE NUMBER OF INDIVIDUALS COVERED BY PUBLIC MEDICAL ASSISTANCE
AND THEREBY REDUCING THE AMOUNT OF UNCOMPENSATED CARE THAT
THE HOSPITALS MUST PROVIDE;

(III) PAY THE ADMINISTRATIVE COSTS TO THE ENTERPRISE IN
IMPLEMENTING AND ADMINISTERING THIS SECTION; AND

(IV) PROVIDE OR CONTRACT FOR OR ARRANGE THE PROVISION OF
ADDITIONAL BUSINESS SERVICES TO HOSPITALS BY:
(A) CONSULTING WITH HOSPITALS TO HELP THEM IMPROVE BOTH
COST EFFICIENCY AND PATIENT SAFETY IN PROVIDING MEDICAL SERVICES
AND THE CLINICAL EFFECTIVENESS OF THOSE SERVICES;

(B) ADVISING HOSPITALS REGARDING POTENTIAL CHANGES TO
FEDERAL AND STATE LAWS AND REGULATIONS THAT GOVERN THE
PROVISION OF AND REIMBURSEMENT PAID FOR MEDICAL SERVICES UNDER
THE PROGRAMS ADMINISTERED PURSUANT TO THIS ARTICLE AND ARTICLES
5 AND 6 OF THIS TITLE;

(C) PROVIDING COORDINATED SERVICES TO HOSPITALS TO HELP
THEM ADAPT AND TRANSITION TO ANY NEW OR MODIFIED PERFORMANCE
TRACKING AND PAYMENT SYSTEMS FOR THE PROGRAMS ADMINISTERED
PURSUANT TO THIS ARTICLE AND ARTICLES 5 AND 6 OF THIS TITLE, WHICH
MAY INCLUDE DATA SHARING, TELEHEALTH COORDINATION AND SUPPORT,
ESTABLISHMENT OF PERFORMANCE METRICS, BENCHMARKING TO SUCH
METRICS, AND CLINICAL AND ADMINISTRATIVE PROCESS CONSULTING AND
OTHER APPROPRIATE SERVICES; AND

(D) PROVIDING ANY OTHER SERVICES TO HOSPITALS THAT AID
THEM IN EFFICIENTLY AND EFFECTIVELY PARTICIPATING IN THE PROGRAMS
ADMINISTERED PURSUANT TO THIS ARTICLE AND ARTICLES 5 AND 6 OF THIS
TITLE.

(b) THE ENTERPRISE SHALL RECOMMEND FOR APPROVAL AND
ESTABLISHMENT BY THE STATE BOARD THE AMOUNT OF THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE THAT IT INTENDS TO CHARGE
AND COLLECT. THE STATE BOARD MUST ESTABLISH THE FINAL AMOUNT OF
THE FEE BY RULES PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF
TITLE 24, C.R.S. THE STATE BOARD SHALL NOT ESTABLISH ANY AMOUNT
THAT EXCEEDS THE FEDERAL LIMIT FOR SUCH FEES. THE STATE BOARD
MAY DEVIATE FROM THE RECOMMENDATIONS OF THE ENTERPRISE, BUT
SHALL EXPRESS IN WRITING THE REASONS FOR ANY DEVIATIONS. IN
ESTABLISHING THE AMOUNT OF THE FEE AND IN PROMULGATING THE RULES
GOVERNING THE FEE, THE STATE BOARD SHALL:

(I) CONSIDER RECOMMENDATIONS OF THE ENTERPRISE;

(II) ESTABLISH THE AMOUNT OF THE HEALTHCARE AFFORDABILITY
AND SUSTAINABILITY FEE SO THAT THE AMOUNT COLLECTED FROM THE FEE
AND FEDERAL MATCHING FUNDS ASSOCIATED WITH THE FEE ARE
SUFFICIENT TO PAY FOR THE ITEMS DESCRIBED IN PARAGRAPH (a) OF THIS
SUBSECTION (4), BUT NOTHING IN THIS SUBPARAGRAPH (II) SHALL REQUIRE
THE STATE BOARD TO INCREASE THE FEE ABOVE THE AMOUNT
RECOMMENDED BY THE ENTERPRISE; AND

(III) FOR THE 2016-17 FISCAL YEAR, ESTABLISH THE AMOUNT OF
THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE SO THAT THE
AMOUNT COLLECTED FROM THE FEE IS APPROXIMATELY EQUAL TO THE
SUM OF THE AMOUNTS OF THE APPROPRIATIONS SPECIFIED FOR THE FEE IN
THE GENERAL APPROPRIATION ACT, HOUSE BILL 16-______, ENACTED IN
2016, AND ANY OTHER SUPPLEMENTAL APPROPRIATION ACT.

(c) (I) IN ACCORDANCE WITH THE REDISTRIBUTIVE METHOD SET
FORTH IN 42 CFR 433.68 (e) (1) AND (e) (2), THE ENTERPRISE, ACTING IN
CONCERT WITH OR THROUGH AN AGREEMENT WITH THE STATE
DEPARTMENT IF REQUIRED BY FEDERAL LAW, MAY SEEK A WAIVER FROM
THE BROAD-BASED HEALTHCARE AFFORDABILITY AND SUSTAINABILITY
FEES REQUIREMENT OR THE UNIFORM HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEES REQUIREMENT, OR BOTH. SUBJECT TO FEDERAL
APPROVAL AND TO MINIMIZE THE FINANCIAL IMPACT ON CERTAIN
HOSPITALS, THE ENTERPRISE MAY EXEMPT FROM PAYMENT OF THE
HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE CERTAIN TYPES OF
HOSPITALS, INCLUDING BUT NOT LIMITED TO:

(A) PSYCHIATRIC HOSPITALS, AS LICENSED BY THE DEPARTMENT
OF PUBLIC HEALTH AND ENVIRONMENT;

(B) HOSPITALS THAT ARE LICENSED AS GENERAL HOSPITALS AND
CERTIFIED AS LONG-TERM CARE HOSPITALS BY THE DEPARTMENT OF
PUBLIC HEALTH AND ENVIRONMENT;

(C) CRITICAL ACCESS HOSPITALS THAT ARE LICENSED AS GENERAL
HOSPITALS AND ARE CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT UNDER 42 CFR PART 485, SUBPART F;

(D) INPATIENT REHABILITATION FACILITIES; OR

(E) HOSPITALS SPECIFIED FOR EXEMPTION UNDER 42 CFR 433.68
(e).

(II) IN DETERMINING WHETHER A HOSPITAL MAY BE EXCLUDED,
THE ENTERPRISE SHALL USE ONE OR MORE OF THE FOLLOWING CRITERIA:

(A) A HOSPITAL THAT IS LOCATED IN A RURAL AREA;

(B) A HOSPITAL WITH WHICH THE STATE DEPARTMENT DOES NOT CONTRACT TO PROVIDE SERVICES UNDER THE STATE MEDICAL ASSISTANCE PROGRAM;

(C) A HOSPITAL WHOSE INCLUSION OR EXCLUSION WOULD NOT SIGNIFICANTLY AFFECT THE NET BENEFIT TO HOSPITALS PAYING THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE; OR

(D) A HOSPITAL THAT MUST BE INCLUDED TO RECEIVE FEDERAL APPROVAL.

(III) THE ENTERPRISE MAY REDUCE THE AMOUNT OF THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE FOR CERTAIN HOSPITALS TO OBTAIN FEDERAL APPROVAL AND TO MINIMIZE THE FINANCIAL IMPACT ON CERTAIN HOSPITALS. IN DETERMINING FOR WHICH HOSPITALS THE ENTERPRISE MAY REDUCE THE AMOUNT OF THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE, THE ENTERPRISE SHALL USE ONE OR MORE OF THE FOLLOWING CRITERIA:

(A) THE HOSPITAL IS A TYPE OF HOSPITAL DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c);

(B) THE HOSPITAL IS LOCATED IN A RURAL AREA;

(C) THE HOSPITAL SERVES A HIGHER PERCENTAGE THAN THE AVERAGE HOSPITAL OF PERSONS COVERED BY THE STATE MEDICAL ASSISTANCE PROGRAM, MEDICARE, OR COMMERCIAL INSURANCE OR PERSONS ENROLLED IN A MANAGED CARE ORGANIZATION;

(D) THE HOSPITAL DOES NOT CONTRACT WITH THE STATE DEPARTMENT TO PROVIDE SERVICES UNDER THE STATE MEDICAL ASSISTANCE PROGRAM;
(E) If the hospital paid a reduced healthcare affordability and sustainability fee, the reduced fee would not significantly affect the net benefit to hospitals paying the healthcare affordability and sustainability fee; or

(F) The hospital is required not to pay a reduced healthcare affordability and sustainability fee as a condition of federal approval.

(IV) The enterprise may change how it pays hospital reimbursement or quality incentive payments, or both, in whole or in part, under the authority of a federal waiver if the total reimbursement to hospitals is equal to or above the federal upper payment limit calculation under the waiver.

(d) The enterprise may alter the process prescribed in this subsection (4) to the extent necessary to meet the federal requirements and to obtain federal approval.

(e) (I) The enterprise shall establish policies on the calculation, assessment, and timing of the healthcare affordability and sustainability fee. The enterprise shall assess the healthcare affordability and sustainability fee on a schedule to be set by the enterprise board as provided in paragraph (d) of subsection (7) of this section. The periodic healthcare affordability and sustainability fee payments from a hospital and the enterprise’s reimbursement to the hospital under subparagraphs (I) and (II) of paragraph (b) of subsection (5) of this section are due as nearly simultaneously as feasible; except that the enterprise’s reimbursement to the hospital shall be due no more than two days after the periodic healthcare
AFFORDABILITY AND SUSTAINABILITY FEE PAYMENT IS RECEIVED FROM THE HOSPITAL. THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE SHALL BE IMPOSED ON EACH HOSPITAL EVEN IF MORE THAN ONE HOSPITAL IS OWNED BY THE SAME ENTITY. THE FEE SHALL BE PRORATED AND ADJUSTED FOR THE EXPECTED VOLUME OF SERVICE FOR ANY YEAR IN WHICH A HOSPITAL OPENS OR CLOSES.

(II) (A) The enterprise is authorized to refund any unused portion of the healthcare affordability and sustainability fee. For any portion of the healthcare affordability and sustainability fee that has been collected by the enterprise but for which the enterprise has not received federal matching funds, the enterprise shall refund back to the hospital that paid the fee the amount of that portion of the fee within five business days after the fee is collected.

(B) No later than November 1, 2016, the state department shall refund any hospital provider fees collected as authorized by section 25.5-4-402.3, as said section existed before July 1, 2016, that are unexpended as of July 1, 2016, to the hospitals that paid the fees.

(III) The enterprise shall establish requirements for the reports that hospitals must submit to the enterprise to allow the enterprise to calculate the amount of the healthcare affordability and sustainability fee. Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., or paragraph (f) of subsection (7) of this section, information provided to the enterprise pursuant to this section is confidential and is not a public record. Nonetheless, the enterprise may prepare and

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RELEASE SUMMARIES OF THE REPORTS TO THE PUBLIC.

(f) A HOSPITAL SHALL NOT INCLUDE ANY AMOUNT OF THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE AS A SEPARATE LINE ITEM IN ITS BILLING STATEMENTS.

(g) THE STATE BOARD SHALL PROMULGATE ANY RULES PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., NECESSARY FOR THE ADMINISTRATION AND IMPLEMENTATION OF THIS SECTION. PRIOR TO SUBMITTING ANY PROPOSED RULES CONCERNING THE ADMINISTRATION OR IMPLEMENTATION OF THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE TO THE STATE BOARD, THE ENTERPRISE SHALL CONSULT WITH THE STATE BOARD ON THE PROPOSED RULES AS SPECIFIED IN PARAGRAPH (d) OF SUBSECTION (7) OF THIS SECTION.

(5) **Healthcare affordability and sustainability fee cash fund.**

(a) ALL HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEES COLLECTED PURSUANT TO THIS SECTION BY THE ENTERPRISE SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE CASH FUND, WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". MONEY IN THE FUND SHALL NOT BE TRANSFERRED TO ANY OTHER FUND AND SHALL NOT BE USED FOR ANY PURPOSE OTHER THAN THE PURPOSES SPECIFIED THIS SUBSECTION (5) AND SUBSECTION (4) OF THIS SECTION.

(b) ALL MONEYS IN THE FUND ARE SUBJECT TO FEDERAL MATCHING AS AUTHORIZED UNDER FEDERAL LAW AND ARE CONTINUOUSLY APPROPRIATED TO THE ENTERPRISE FOR THE FOLLOWING PURPOSES:

(I) TO MAXIMIZE THE INPATIENT AND OUTPATIENT HOSPITAL
REIMBURSEMENTS TO UP TO THE UPPER PAYMENT LIMITS AS DEFINED IN 42 CFR 447.272 AND 42 CFR 447.321;

(II) TO INCREASE HOSPITAL REIMBURSEMENTS UNDER THE COLORADO INDIGENT CARE PROGRAM TO UP TO ONE HUNDRED PERCENT OF THE HOSPITAL'S COSTS OF PROVIDING MEDICAL CARE UNDER THE PROGRAM;

(III) TO PAY THE QUALITY INCENTIVE PAYMENTS PROVIDED IN SECTION 25.5-4-402 (3);

(IV) SUBJECT TO AVAILABLE REVENUE FROM THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE AND FEDERAL MATCHING FUNDS, TO EXPAND ELIGIBILITY FOR PUBLIC MEDICAL ASSISTANCE BY:

(A) INCREASING THE ELIGIBILITY LEVEL FOR PARENTS AND CARETAKER RELATIVES OF CHILDREN WHO ARE ELIGIBLE FOR MEDICAL ASSISTANCE, PURSUANT TO SECTION 25.5-5-201 (1) (m), FROM SIXTY-ONE PERCENT TO ONE HUNDRED THIRTY-THREE PERCENT OF THE FEDERAL POVERTY LINE;

(B) INCREASING THE ELIGIBILITY LEVEL FOR CHILDREN AND PREGNANT WOMEN UNDER THE CHILDREN'S BASIC HEALTH PLAN TO UP TO TWO HUNDRED FIFTY PERCENT OF THE FEDERAL POVERTY LINE;

(C) PROVIDING ELIGIBILITY UNDER THE STATE MEDICAL ASSISTANCE PROGRAM FOR A CHILDLESS ADULT OR AN ADULT WITHOUT A DEPENDENT CHILD IN THE HOME, PURSUANT TO SECTION 25.5-5-201 (1) (p), WHO EARS UP TO ONE HUNDRED THIRTY-THREE PERCENT OF THE FEDERAL POVERTY LINE;

(D) PROVIDING A BUY-IN PROGRAM IN THE STATE MEDICAL ASSISTANCE PROGRAM FOR DISABLED ADULTS AND CHILDREN WHOSE FAMILIES HAVE INCOME OF UP TO FOUR HUNDRED FIFTY PERCENT OF THE
FEDERAL POVERTY LINE;

(V) TO PROVIDE CONTINUOUS ELIGIBILITY FOR TWELVE MONTHS FOR CHILDREN ENROLLED IN THE STATE MEDICAL ASSISTANCE PROGRAM;

(VI) TO PAY THE ENTERPRISE'S ACTUAL ADMINISTRATIVE COSTS OF IMPLEMENTING AND ADMINISTERING THIS SECTION, INCLUDING BUT NOT LIMITED TO THE FOLLOWING COSTS:

(A) ADMINISTRATIVE EXPENSES OF THE ENTERPRISE;

(B) THE ENTERPRISE'S ACTUAL COSTS RELATED TO IMPLEMENTING AND MAINTAINING THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE, INCLUDING PERSONAL SERVICES, OPERATING, AND CONSULTING EXPENSES;

(C) THE ENTERPRISE'S ACTUAL COSTS FOR THE CHANGES AND UPDATES TO THE MEDICAID MANAGEMENT INFORMATION SYSTEM FOR THE IMPLEMENTATION OF SUBPARAGRAPHS (I) TO (III) OF THIS PARAGRAPH (b);

(D) THE ENTERPRISE'S PERSONAL SERVICES AND OPERATING COSTS RELATED TO PERSONNEL, CONSULTING SERVICES, AND FOR REVIEW OF HOSPITAL COSTS NECESSARY TO IMPLEMENT AND ADMINISTER THE INCREASES IN INPATIENT AND OUTPATIENT HOSPITAL PAYMENTS MADE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), INCREASES IN THE COLORADO INDIGENT CARE PROGRAM PAYMENTS MADE PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), AND QUALITY INCENTIVE PAYMENTS MADE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (b);

(E) THE ENTERPRISE'S ACTUAL COSTS FOR THE CHANGES AND UPDATES TO THE COLORADO BENEFITS MANAGEMENT SYSTEM AND MEDICAID MANAGEMENT INFORMATION SYSTEM TO IMPLEMENT AND MAINTAIN THE EXPANDED ELIGIBILITY PROVIDED FOR IN SUBPARAGRAPHS
(IV) AND (V) OF THIS PARAGRAPH (b);

(F) THE ENTERPRISE’S PERSONAL SERVICES AND OPERATING COSTS RELATED TO PERSONNEL NECESSARY TO IMPLEMENT AND ADMINISTER THE EXPANDED ELIGIBILITY FOR PUBLIC MEDICAL ASSISTANCE PROVIDED FOR IN SUBPARAGRAPHS (IV) AND (V) OF THIS PARAGRAPH (b), INCLUDING BUT NOT LIMITED TO ADMINISTRATIVE COSTS ASSOCIATED WITH THE DETERMINATION OF ELIGIBILITY FOR PUBLIC MEDICAL ASSISTANCE BY COUNTY DEPARTMENTS;

(G) THE ENTERPRISE’S PERSONAL SERVICES, OPERATING, AND SYSTEMS COSTS RELATED TO EXPANDING THE OPPORTUNITY FOR INDIVIDUALS TO APPLY FOR PUBLIC MEDICAL ASSISTANCE DIRECTLY AT HOSPITALS OR THROUGH ANOTHER ENTITY OUTSIDE THE COUNTY DEPARTMENTS, IN CONNECTION WITH SECTION 25.5-4-205, THAT WOULD INCREASE ACCESS TO PUBLIC MEDICAL ASSISTANCE AND REDUCE THE NUMBER OF UNINSURED SERVED BY HOSPITALS; AND

(VII) TO PROVIDE ADDITIONAL BUSINESS SERVICES TO HOSPITALS AS SPECIFIED IN SUBPARAGRAPH (V) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION.

(6) Appropriations. (a) (I) THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE IS TO SUPPLEMENT, NOT SUPPLANT, GENERAL FUND APPROPRIATIONS TO SUPPORT HOSPITAL REIMBURSEMENTS AS OF JULY 1, 2016. GENERAL FUND APPROPRIATIONS FOR HOSPITAL REIMBURSEMENTS SHALL BE MAINTAINED AT THE LEVEL OF APPROPRIATIONS IN THE MEDICAL SERVICES PREMIUM LINE ITEM MADE FOR THE FISCAL YEAR COMMENCING JULY 1, 2015; EXCEPT THAT GENERAL FUND APPROPRIATIONS FOR HOSPITAL REIMBURSEMENTS MAY BE REDUCED IF AN INDEX OF APPROPRIATIONS TO OTHER PROVIDERS SHOWS THAT
GENERAL FUND APPROPRIATIONS ARE REDUCED FOR OTHER PROVIDERS. IF
THE INDEX SHOWS THAT GENERAL FUND APPROPRIATIONS ARE REDUCED
FOR OTHER PROVIDERS, THE GENERAL FUND APPROPRIATIONS FOR
HOSPITAL REIMBURSEMENTS SHALL NOT BE REDUCED BY A GREATER
PERCENTAGE THAN THE REDUCTIONS OF APPROPRIATIONS FOR THE OTHER
PROVIDERS AS SHOWN BY THE INDEX.

(II) IF GENERAL FUND APPROPRIATIONS FOR HOSPITAL
REIMBURSEMENTS ARE REDUCED BELOW THE LEVEL OF APPROPRIATIONS
IN THE MEDICAL SERVICES PREMIUM LINE ITEM MADE FOR THE FISCAL
YEAR COMMENCING JULY 1, 2015, THE GENERAL FUND APPROPRIATIONS
WILL BE INCREASED BACK TO THE LEVEL OF APPROPRIATIONS IN THE
MEDICAL SERVICES PREMIUM LINE ITEM MADE FOR THE FISCAL YEAR
COMMENCING JULY 1, 2015, AT THE SAME PERCENTAGE AS THE
APPROPRIATIONS FOR OTHER PROVIDERS AS SHOWN BY THE INDEX. THE
GENERAL ASSEMBLY IS NOT OBLIGATED TO INCREASE THE GENERAL FUND
APPROPRIATIONS BACK TO THE LEVEL OF APPROPRIATIONS IN THE MEDICAL
SERVICES PREMIUM LINE ITEM IN A SINGLE FISCAL YEAR AND SUCH
INCREASES MAY OCCUR OVER NONCONSECUTIVE FISCAL YEARS.

(III) FOR PURPOSES OF THIS PARAGRAPH (a), THE "INDEX OF
APPROPRIATIONS TO OTHER PROVIDERS" OR "INDEX" MEANS THE AVERAGE
PERCENT CHANGE IN REIMBURSEMENT RATES THROUGH APPROPRIATIONS
OR LEGISLATION ENACTED BY THE GENERAL ASSEMBLY TO HOME HEALTH
PROVIDERS, PHYSICIAN SERVICES, AND OUTPATIENT PHARMACIES,
EXCLUDING DISPENSING FEES. THE STATE BOARD, AFTER CONSULTATION
WITH THE ENTERPRISE BOARD, IS AUTHORIZED TO CLARIFY THIS
DEFINITION AS NECESSARY BY RULE.

(b) IF THE REVENUE FROM THE HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEE IS INSUFFICIENT TO FULLY FUND ALL OF THE PURPOSES DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION:

(I) THE GENERAL ASSEMBLY IS NOT OBLIGATED TO APPROPRIATE GENERAL FUND REVENUES TO FUND SUCH PURPOSES;

(II) THE HOSPITAL PROVIDER REIMBURSEMENT AND QUALITY INCENTIVE PAYMENT INCREASES DESCRIBED IN SUBPARAGRAPHS (I) TO (III) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION AND THE COSTS DESCRIBED IN SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION SHALL BE FULLY FUNDED USING REVENUE FROM THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE AND FEDERAL MATCHING FUNDS BEFORE ANY ELIGIBILITY EXPANSION IS FUNDED; AND

(III) (A) IF THE STATE BOARD PROMULGATES RULES THAT EXPAND ELIGIBILITY FOR MEDICAL ASSISTANCE TO BE PAID FOR PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION, AND THE STATE DEPARTMENT THEREAFTER NOTIFIES THE ENTERPRISE BOARD THAT THE REVENUE AVAILABLE FROM THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE AND THE FEDERAL MATCHING FUNDS WILL NOT BE SUFFICIENT TO PAY FOR ALL OR PART OF THE EXPANDED ELIGIBILITY, THE ENTERPRISE BOARD SHALL RECOMMEND TO THE STATE BOARD REDUCTIONS IN MEDICAL BENEFITS OR ELIGIBILITY SO THAT THE REVENUE WILL BE SUFFICIENT TO PAY FOR ALL OF THE REDUCED BENEFITS OR ELIGIBILITY. AFTER RECEIVING THE RECOMMENDATIONS OF THE ENTERPRISE BOARD, THE STATE BOARD SHALL ADOPT RULES PROVIDING FOR REDUCED BENEFITS OR REDUCED ELIGIBILITY FOR WHICH THE REVENUE WILL BE SUFFICIENT AND SHALL FORWARD ANY
ADOPTED RULES TO THE JOINT BUDGET COMMITTEE. NOTWITHSTANDING
THE PROVISIONS OF SECTION 24-4-103 (8) AND (12), C.R.S., FOLLOWING
THE ADOPTION OF RULES PURSUANT TO THIS SUB-SUBPARAGRAPH (A), THE
STATE BOARD SHALL NOT SUBMIT THE RULES TO THE ATTORNEY GENERAL
AND SHALL NOT FILE THE RULES WITH THE SECRETARY OF STATE UNTIL
THE JOINT BUDGET COMMITTEE APPROVES THE RULES PURSUANT TO
SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (III).

(B) THE JOINT BUDGET COMMITTEE SHALL PROMPTLY CONSIDER
ANY RULES ADOPTED BY THE STATE BOARD PURSUANT TO
SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III). THE JOINT BUDGET
COMMITTEE SHALL PROMPTLY NOTIFY THE STATE DEPARTMENT, THE
STATE BOARD, AND THE ENTERPRISE BOARD OF ANY ACTION ON THE
RULES. IF THE JOINT BUDGET COMMITTEE DOES NOT APPROVE THE RULES,
THE JOINT BUDGET COMMITTEE SHALL RECOMMEND A REDUCTION IN
BENEFITS OR ELIGIBILITY SO THAT THE REVENUE FROM THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE AND THE MATCHING FEDERAL
FUNDS WILL BE SUFFICIENT TO PAY FOR THE REDUCED BENEFITS OR
ELIGIBILITY. AFTER APPROVING THE RULES PURSUANT TO THIS
SUB-SUBPARAGRAPH (B), THE JOINT BUDGET COMMITTEE SHALL REQUEST
THAT THE COMMITTEE ON LEGAL SERVICES, CREATED PURSUANT TO
SECTION 2-3-501, C.R.S., EXTEND THE RULES AS PROVIDED FOR IN
SECTION 24-4-103 (8), C.R.S., UNLESS THE COMMITTEE ON LEGAL
SERVICES FINDS AFTER REVIEW THAT THE RULES DO NOT CONFORM WITH
SECTION 24-4-103 (8) (a), C.R.S.

(C) AFTER THE STATE BOARD HAS RECEIVED NOTIFICATION OF THE
APPROVAL OF RULES ADOPTED PURSUANT TO SUB-SUBPARAGRAPH (A) OF
THIS SUBPARAGRAPH (III), THE STATE BOARD SHALL SUBMIT THE RULES TO
THE ATTORNEY GENERAL PURSUANT TO SECTION 24-4-103 (8)(b), C.R.S.,
AND SHALL FILE THE RULES AND THE OPINION OF THE ATTORNEY GENERAL
WITH THE SECRETARY OF STATE PURSUANT TO SECTION 24-4-103 (12),
C.R.S., AND WITH THE OFFICE OF LEGISLATIVE LEGAL SERVICES.
PURSUANT TO SECTION 24-4-103 (5), C.R.S., THE RULES SHALL BE
EFFECTIVE TWENTY DAYS AFTER PUBLICATION OF THE RULES AND SHALL
ONLY BE EFFECTIVE UNTIL THE FOLLOWING MAY 15 UNLESS THE RULES
ARE EXTENDED PURSUANT TO A BILL ENACTED PURSUANT TO SECTION
24-4-103 (8), C.R.S.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
IF, AFTER RECEIPT OF AUTHORIZATION TO RECEIVE FEDERAL MATCHING
FUNDS FOR MONEYS IN THE FUND, THE AUTHORIZATION IS WITHDRAWN OR
CHANGED SO THAT FEDERAL MATCHING FUNDS ARE NO LONGER
AVAILABLE, THE ENTERPRISE SHALL CEASE COLLECTING THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE AND SHALL REPAY TO THE
HOSPITALS ANY MONEYS RECEIVED BY THE FUND THAT ARE NOT SUBJECT
TO FEDERAL MATCHING FUNDS.

(7) Colorado healthcare affordability and sustainability
enterprise board. (a)(I) EXCEPT AS OTHERWISE PROVIDED IN
SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), THE ENTERPRISE BOARD
CONSISTS OF THIRTEEN MEMBERS APPOINTED BY THE GOVERNOR, WITH
THE ADVICE AND CONSENT OF THE SENATE, AS FOLLOWS:

(A) FIVE MEMBERS WHO ARE EMPLOYED BY HOSPITALS IN
COLORADO, INCLUDING AT LEAST ONE PERSON WHO IS EMPLOYED BY A
HOSPITAL IN A RURAL AREA, ONE PERSON WHO IS EMPLOYED BY A
SAFETY-NET HOSPITAL FOR WHICH THE PERCENT OF MEDICAID-ELIGIBLE
INPATIENT DAYS RELATIVE TO ITS TOTAL INPATIENT DAYS SHALL BE EQUAL
TO OR GREATER THAN ONE STANDARD DEVIATION ABOVE THE MEAN, AND
ONE PERSON WHO IS EMPLOYED BY A HOSPITAL IN AN URBAN AREA;

(B) ONE MEMBER WHO IS A REPRESENTATIVE OF A STATEWIDE
ORGANIZATION OF HOSPITALS;

(C) ONE MEMBER WHO REPRESENTS A STATEWIDE ORGANIZATION
OF HEALTH INSURANCE CARRIERS OR A HEALTH INSURANCE CARRIER
LICENSED PURSUANT TO TITLE 10, C.R.S., AND WHO IS NOT A
REPRESENTATIVE OF A HOSPITAL;

(D) ONE MEMBER OF THE HEALTH CARE INDUSTRY WHO DOES NOT
REPRESENT A HOSPITAL OR A HEALTH INSURANCE CARRIER;

(E) ONE MEMBER WHO IS A CONSUMER OF HEALTH CARE AND WHO
IS NOT A REPRESENTATIVE OR AN EMPLOYEE OF A HOSPITAL, HEALTH
INSURANCE CARRIER, OR OTHER HEALTH CARE INDUSTRY ENTITY;

(F) ONE MEMBER WHO IS A REPRESENTATIVE OF PERSONS WITH
DISABILITIES, WHO IS LIVING WITH A DISABILITY, AND WHO IS NOT A
REPRESENTATIVE OR AN EMPLOYEE OF A HOSPITAL, HEALTH INSURANCE
CARRIER, OR OTHER HEALTH CARE INDUSTRY ENTITY;

(G) ONE MEMBER WHO IS A REPRESENTATIVE OF A BUSINESS THAT
PURCHASES OR OTHERWISE PROVIDES HEALTH INSURANCE FOR ITS
EMPLOYEES; AND

(H) TWO EMPLOYEES OF THE STATE DEPARTMENT.

(II) THE INITIAL MEMBERS OF THE ENTERPRISE BOARD ARE THE
MEMBERS OF THE HOSPITAL PROVIDER FEE OVERSIGHT AND ADVISORY
BOARD THAT WAS CREATED AND EXISTED PURSUANT TO THIS SUBSECTION
(7) PRIOR TO JULY 1, 2016, AND SUCH MEMBERS SHALL SERVE ON AND
AFTER JULY 1, 2016, FOR THE REMAINDER OF THE TERMS FOR WHICH THEY
WERE APPOINTED AS MEMBERS OF THE ADVISORY BOARD. THE POWERS,
DUTIES, AND FUNCTIONS OF THE HOSPITAL PROVIDER FEE OVERSIGHT AND
ADVISORY BOARD ARE TRANSFERRED BY A \textbf{TYPE 3} TRANSFER, AS DEFINED
IN SECTION 24-1-105, C.R.S., TO THE ENTERPRISE, AND THE HOSPITAL
PROVIDER FEE OVERSIGHT AND ADVISORY BOARD IS ABOLISHED.

(III) The governor shall consult with representatives of
a statewide organization of hospitals in making the
appointments pursuant to sub-subparagraphs (A) and (B) of
subparagraph (I) of this paragraph (a). No more than six members
of the enterprise board may be members of the same political
party.

(IV) Members of the enterprise board serve at the
pleasure of the governor. All terms are for four years. A
member who is appointed to fill a vacancy shall serve the
remainder of the unexpired term of the former member.

(V) The governor shall designate a chair from among the
members of the enterprise board appointed pursuant to
sub-subparagraphs (A) to (G) of subparagraph (I) of this
paragraph (a). The enterprise board shall elect a vice-chair
from among its members.

(b) Members of the enterprise board serve without
compensation but shall be reimbursed from moneys in the fund
for actual and necessary expenses incurred in the performance
of their duties pursuant to this section.

(c) The enterprise board may contract for a group
facilitator to assist the members of the enterprise board in
performing their required duties.

(d) The enterprise board has, at a minimum, the following
DUTIES:

(I) To determine the timing and method by which the enterprise assesses the healthcare affordability and sustainability fee and the amount of the fee;

(II) If requested by the Health and Human Services Committees of the Senate or House of Representatives, or any successor committees, to consult with the committees on any legislation that may impact the healthcare affordability and sustainability fee or hospital reimbursements established pursuant to this section;

(III) To determine changes in the healthcare affordability and sustainability fee that increase the number of hospitals benefiting from the uses of the healthcare affordability and sustainability fee described in subparagraphs (I) to (V) of paragraph (b) of subsection (5) of this section or that minimize the number of hospitals that suffer losses as a result of paying the healthcare affordability and sustainability fee;

(IV) To recommend to the state department reforms or changes to the inpatient hospital and outpatient hospital reimbursements and quality incentive payments made under the state medical assistance program to increase provider accountability, performance, and reporting;

(V) To recommend to the state department the schedule and approach to the implementation of subparagraphs (IV) and (V) of paragraph (b) of subsection (5) of this section;

(VI) If moneys in the fund are insufficient to fully fund all of the purposes specified in paragraph (b) of subsection (5) of
THIS SECTION, TO RECOMMEND TO THE STATE BOARD CHANGES TO THE
EXPANDED ELIGIBILITY PROVISIONS DESCRIBED IN SUBPARAGRAPH (IV) OF
PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION;

(VII) TO PREPARE THE REPORTS SPECIFIED IN PARAGRAPH (e) OF
THIS SUBSECTION (7);

(VIII) TO MONITOR THE IMPACT OF THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE ON THE BROADER HEALTH CARE
MARKETPLACE;

(IX) TO ESTABLISH REQUIREMENTS FOR THE REPORTS THAT
HOSPITALS MUST SUBMIT TO THE ENTERPRISE TO ALLOW THE ENTERPRISE
TO CALCULATE THE AMOUNT OF THE HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEE; AND

(X) TO PERFORM ANY OTHER DUTIES REQUIRED TO FULFILL THE
ENTERPRISE BOARD'S CHARGE OR THOSE ASSIGNED TO IT BY THE STATE
BOARD OR THE EXECUTIVE DIRECTOR.

(e) ON OR BEFORE JANUARY 15, 2017, AND ON OR BEFORE
JANUARY 15 EACH YEAR THEREAFTER, THE ENTERPRISE BOARD SHALL
SUBMIT A WRITTEN REPORT TO THE HEALTH AND HUMAN SERVICES
COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR
ANY SUCCESSOR COMMITTEES, THE JOINT BUDGET COMMITTEE OF THE
GENERAL ASSEMBLY, THE GOVERNOR, AND THE STATE BOARD. THE
REPORT SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

(I) THE RECOMMENDATIONS MADE TO THE STATE BOARD
PURSUANT TO THIS SECTION;

(II) A DESCRIPTION OF THE FORMULA FOR HOW THE HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY FEE IS CALCULATED AND THE
PROCESS BY WHICH THE HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY FEE IS ASSESSED AND COLLECTED;

(III) AN ITEMIZATION OF THE TOTAL AMOUNT OF THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE PAID BY EACH HOSPITAL AND ANY PROJECTED REVENUE THAT EACH HOSPITAL IS EXPECTED TO RECEIVE DUE TO:

(A) THE INCREASED REIMBURSEMENTS MADE PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION AND THE QUALITY INCENTIVE PAYMENTS MADE PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION; AND

(B) THE INCREASED ELIGIBILITY DESCRIBED IN SUBPARAGRAPHS (IV) AND (V) OF PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION;

(IV) AN ITEMIZATION OF THE COSTS INCURRED BY THE ENTERPRISE IN IMPLEMENTING AND ADMINISTERING THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE; AND

(V) ESTIMATES OF THE DIFFERENCES BETWEEN THE COST OF CARE PROVIDED AND THE PAYMENT RECEIVED BY HOSPITALS ON A PER-PATIENT BASIS, AGGREGATED FOR ALL HOSPITALS, FOR PATIENTS COVERED BY EACH OF THE FOLLOWING:

(A) MEDICAID;

(B) MEDICARE; AND

(C) ALL OTHER PAYERS.

(f) (I) THE ENTERPRISE IS SUBJECT TO THE OPEN MEETINGS PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S., AND THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

(II) FOR PURPOSES OF THE "COLORADO OPEN RECORDS ACT", -28-
PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., AND EXCEPT AS MAY
OTHERWISE BE PROVIDED BY FEDERAL LAW OR REGULATION OR STATE
LAW, THE RECORDS OF THE ENTERPRISE ARE PUBLIC RECORDS, AS DEFINED
IN SECTION 24-72-202 (6), C.R.S., REGARDLESS OF WHETHER THE
ENTERPRISE RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL
REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), C.R.S.,
FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED.

(III) THE ENTERPRISE IS A PUBLIC ENTITY FOR PURPOSES OF PART
2 OF ARTICLE 57 OF TITLE 11, C.R.S.

SECTION 2. In Colorado Revised Statutes, 24-1-119.5, add (9)
as follows:

24-1-119.5. Department of health care policy and financing -
creation. (9) THE COLORADO HEALTHCARE AFFORDABILITY AND
SUSTAINABILITY ENTERPRISE CREATED IN SECTION 25.5-4-402.4 (3),
C.R.S., SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND
FUNCTIONS AS IF THE SAME WERE TRANSFERRED BY A TYPE 2 TRANSFER,
AS DEFINED IN SECTION 24-1-105, TO THE DEPARTMENT OF HEALTH CARE
POLICY AND FINANCING.

SECTION 3. In Colorado Revised Statutes, amend 2-3-119 as
follows:

2-3-119. Audit of healthcare affordability and sustainability
fee - cost shift. Starting with the second full state fiscal year following
the receipt of the notice from the executive director of the department of
health care policy and financing pursuant to section 25.5-4-402.3 (7),
C.R.S., and thereafter At the discretion of the legislative audit committee,
the state auditor shall conduct or cause to be conducted a performance
and fiscal audit of the hospital provider HEALTHCARE AFFORDABILITY AND
SECTION 4. In Colorado Revised Statutes, 2-3-1203, repeal (3) (f) (V) as follows:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates on which the statutory authorization for the designated advisory committee is scheduled for repeal:

(f) July 1, 2019:

(V) The hospital provider fee oversight and advisory board, created in section 25.5-4-402.3, C.R.S.;

SECTION 5. In Colorado Revised Statutes, 24-4-103, amend (8) (c) (I) as follows:

24-4-103. Rule-making - procedure - definitions - repeal.

(8) (c) (I) Notwithstanding any other provision of law to the contrary and the provisions of section 24-4-107, all rules adopted or amended on or after January 1, 1993, and before November 1, 1993, shall expire at 11:59 p.m. on May 15 of the year following their adoption unless the general assembly by bill acts to postpone the expiration of a specific rule, and commencing with rules adopted or amended on or after November 1, 1993, all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 shall expire at 11:59 p.m. on the May 15 that follows such one-year period unless the general assembly by bill acts to postpone the expiration of a specific rule; except that a rule adopted pursuant to section 25.5-4-402.3 (5) (b) (III) section 25.5-4-402.4 (6) (b) (III), C.R.S., shall expire at 11:59 p.m. on the May 15 following the adoption of the rule unless the general assembly acts by bill to postpone the expiration of a specific rule.
The general assembly, in its discretion, may postpone such expiration, in which case, the provisions of section 24-4-108 or 24-34-104 shall apply, and the rules shall expire or be subject to review as provided in said sections. The postponement of the expiration of a rule shall not constitute legislative approval of the rule nor be admissible in any court as evidence of legislative intent. The postponement of the expiration date of a specific rule shall not prohibit any action by the general assembly pursuant to the provisions of paragraph (d) of this subsection (8) with respect to such rule.

SECTION 6. In Colorado Revised Statutes, 25.5-3-108, amend (17) as follows:

25.5-3-108. Responsibility of the department of health care policy and financing - provider reimbursement. (17) Subject to adequate funding BEING made available under section 25.5-4-402.3 section 25.5-4-402.4, the state department COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE CREATED IN SECTION 25.5-4-402.4 (3) shall increase hospital reimbursements up to one hundred percent of hospital costs for providing medical care under the program.

SECTION 7. In Colorado Revised Statutes, 25.5-4-402, amend (3) (a) as follows:

25.5-4-402. Providers - hospital reimbursement - rules. (3) (a) In addition to the reimbursement rate process described in subsection (1) of this section and subject to adequate funding BEING made available pursuant to section 25.5-4-402.3 section 25.5-4-402.4, the state department COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE CREATED IN SECTION 25.5-4-402.4 (3) shall
pay an additional amount based upon performance to those hospitals that provide services that improve health care outcomes for their patients. This amount shall be determined by the state department based upon nationally recognized performance measures established in rules adopted by the state board. The state quality standards shall be consistent with federal quality standards published by an organization with expertise in health care quality, including but not limited to, the centers for medicare and medicaid services, the agency for healthcare research and quality, or the national quality forum.

SECTION 8. In Colorado Revised Statutes, 25.5-5-201, amend (1) (o) (II) and (1) (r) (II) as follows:

25.5-5-201. Optional provisions - optional groups - repeal.

(1) The federal government allows the state to select optional groups to receive medical assistance. Pursuant to federal law, any person who is eligible for medical assistance under the optional groups specified in this section shall receive both the mandatory services specified in sections 25.5-5-102 and 25.5-5-103 and the optional services specified in sections 25.5-5-202 and 25.5-5-203. Subject to the availability of federal financial aid funds, the following are the individuals or groups that Colorado has selected as optional groups to receive medical assistance pursuant to this article and articles 4 and 6 of this title:

(o) (II) Notwithstanding the provisions of subparagraph (I) of this paragraph (o), if the moneys in the hospital provider HEALTHCARE AFFORDABILITY AND SUSTAINABILITY fee cash fund established pursuant to section 25.5-4-402.3 (4) SECTION 25.5-4-402.4, together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b) SECTION 25.5-4-402.4,
25.5-4-402.4 (5) (b), after receiving recommendations from the hospital provider fee oversight and advisory board COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE established pursuant to section 25.5-4-402.3 (6) SECTION 25.5-4-402.4 (3), for individuals with disabilities who are participating in the medicaid buy-in program established in part 14 of article 6 of this title, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) SECTION 25.5-4-402.4 (6) (b) (III) may reduce the medical benefits offered or the percentage of the federal poverty line to below four hundred fifty percent or may eliminate this eligibility group.

(r) (II) Notwithstanding the provisions of subparagraph (I) of this paragraph (r), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4) SECTION 25.5-4-402.4, together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b) SECTION 25.5-4-402.4 (5) (b), after receiving recommendations from the hospital provider fee oversight and advisory board COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE established pursuant to section 25.5-4-402.3 (6) SECTION 25.5-4-402.4 (3), for persons eligible for a medicaid buy-in program established pursuant to section 25.5-5-206, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) SECTION 25.5-4-402.4 (6) (b) (III) may reduce the medical benefits offered, or the percentage of the federal poverty line, or may eliminate this eligibility group.

SECTION 9. In Colorado Revised Statutes, 25.5-5-204.5, amend (2) as follows:

-33- HB16-1420
25.5-5-204.5. Continuous eligibility - children - repeal.

(2) Notwithstanding the provisions of subsection (1) of this section, if the moneys in the hospital provider HEALTHCARE AFFORDABILITY AND SUSTAINABILITY fee cash fund established pursuant to section 25.5-4-402.3, together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b) SECTION 25.5-4-402.4 (5) (b), after receiving recommendations from the hospital provider fee oversight and advisory board COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE established pursuant to section 25.5-4-402.3 (6) SECTION 25.5-4-402.4 (3), the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) SECTION 25.5-4-402.4 (6) (b) (III) may eliminate the continuous enrollment requirement pursuant to this section.

SECTION 10. In Colorado Revised Statutes, 25.5-8-103, amend (4) (a) (II) and (4) (b) (II) as follows:

25.5-8-103. Definitions - repeal. As used in this article, unless the context otherwise requires:

(4) "Eligible person" means:

(a) (II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), if the moneys in the hospital provider HEALTHCARE AFFORDABILITY AND SUSTAINABILITY fee cash fund established pursuant to section 25.5-4-402.3 (4) SECTION 25.5-4-402.4 (5), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b) SECTION 25.5-4-402.4 (5) (b), after receiving recommendations from the hospital provider fee oversight and advisory board COLORADO HEALTHCARE
AFFORDABILITY AND SUSTAINABILITY ENTERPRISE established pursuant to section 25.5-4-402.3 (6), for persons less than nineteen years of age, the state board may by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) reduce the percentage of the federal poverty line to below two hundred fifty percent, but the percentage shall not be reduced to below two hundred five percent.

(b) (II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), if the moneys in the hospital provider fee cash fund established pursuant to section 25.5-4-402.3 (4), together with the corresponding federal matching funds, are insufficient to fully fund all of the purposes described in section 25.5-4-402.3 (4) (b) after receiving recommendations from the hospital provider fee oversight and advisory board, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (6) for pregnant women, the state board by rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the percentage of the federal poverty line to below two hundred fifty percent, but the percentage shall not be reduced to below two hundred five percent.

SECTION 11. In Colorado Revised Statutes, repeal 25.5-4-402.3.

SECTION 12. Appropriation. (1) For the 2016-17 state fiscal year, $73,149,728 is appropriated to the department of health care policy and financing for use by the Colorado healthcare affordability and
sustainability enterprise to supplement reimbursement to hospitals in
accordance with the purposes specified in section 25.5-4-402.4 (5) (b),
C.R.S. This appropriation is from the healthcare affordability and
sustainability fee cash fund created in section 25.5-4-402.4 (5), C.R.S.
The Colorado healthcare affordability and sustainability enterprise may
use this appropriation to implement this act.

(2) For the 2016-17 state fiscal year, the general assembly
anticipates that the department of health care policy and financing will
receive $73,543,845 in federal funds for the Colorado healthcare
affordability and sustainability enterprise for use by the enterprise to
supplement reimbursement to hospitals in accordance with the purposes
specified in section 25.5-4-402.4 (5) (b), C.R.S. The appropriation in
subsection (1) of this section is based on the assumption that the
department will receive this amount of federal funds, which is included
for informational purposes only.

SECTION 13. Effective date. (1) Except as otherwise provided
in this section, this act takes effect July 1, 2016.

(2) (a) This act does not take effect if the centers for medicare and
medicaid services determine that the amendments set forth in this act do
not comply with federal law.

(b) If the centers for medicare and medicaid services make the
determination described in paragraph (a) of this subsection (2), the
executive director of the department of health care policy and financing
shall, no later than June 1, 2016, notify the revisor of statutes in writing
of that determination.

SECTION 14. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, and safety.