


Research Plan: Tennessee's Right to Shop Legislation

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Support:

Deputy Executive Director Approval: Initial:  Date: 5-14-19

Executive Director Approval: Initial:  Date: 5/14/19

Purpose

Study any cost savings realized by enrollees with health insurance plans in states that have adopted legislation or programs that require insurance carriers offering health plans in those states to offer incentive programs to enrollees for shopping for healthcare services at lower costs.

Background

Senate Bill 510 and its companion, House Bill 419—passed by the Senate and House, but not yet signed by the Governor—requires insurers to provide information that enables the insured to shop around for the best price on medical services, and authorizes insurers to offer incentive programs to reward the insured for choosing lower cost services. The type of program authorized by the bill, one where carriers offer health plans that include incentives to enrollees for shopping for healthcare services at lower costs, are commonly referred to as “Right to Shop” programs. Right to Shop programs are meant to address rising health care costs by encouraging the insured to switch to lower cost service providers. In these programs, the insurer provides relevant price information on medical services so the insured can shop around for the best price. If the insured chooses to receive services from a provider at a price that is less than the average price for a service, then that person usually will receive a check from the insurer that is a percentage of the saved cost, usually \$25-\$500.

Senate Bill 510 and House Bill 419 makes adoption of Right to Shop programs by insurers optional, stating, “Beginning on January 1, 2021, a carrier may provide incentives for enrollees in a health plan who elect to receive a comparable healthcare

service from a network provider that is covered by the health plan and that is paid less than the average allowed amount paid by that carrier to network providers for that comparable healthcare service before and after an enrollee's out-of-pocket limit has been met." While the incentive programs are optional, the legislation does require that beginning "upon approval of the next health insurance rate filing on or after January 1, 2021, a carrier offering a health plan in this state shall implement a shopping and decision support program that provides shopping capabilities and decision support services for enrollees in a health plan. Further, the legislation says "Incentives, effective January 1, 2021, may be calculated as a percentage of the difference between the amount actually paid by the carrier for a given comparable healthcare service and the average allowed amount for that service. Incentives may be provided as a cash payment to the enrollee, a credit toward the enrollee's annual in-network deductible and out-of-pocket limit, or a credit or reduction of a premium, a copayment, cost sharing, or a deductible." The total value of incentives offered to any one enrollee must not exceed \$599 in any year.

The legislation also directs the Commission to perform a study of any cost savings realized by enrollees with health plans, including private health plans and state funded health plans, in other states that have adopted legislation or programs. The study shall include, at a minimum, an examination of savings realized by such programs in Maine, New Hampshire, Florida, Arizona, and Kentucky. The legislation requires the Commission to report its findings by December 2020.

Step 1. Define the Problem

To determine what, if any, cost savings are realized by people with health insurance plans that offer incentive programs for shopping for healthcare services at lower costs?

Step 2. Assemble Some Evidence

- Review past and present legislation, statutes, and regulations affecting Tennessee's Right to Shop legislation and other related legislation.
 - Review committee hearings on legislation and summarize comments and concerns of committee members, bill sponsors, and others.
 - Interview bill sponsors, proponents, and other stakeholders.
 - Review fiscal notes. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to

determine estimated cost and the methods and rationale for the estimates.

- Review relevant federal statutes and regulations.
- Review similar policies and laws in other states.
- Review relevant literature and data sets from other states.
- Interview legislators, state officials, industry experts and other stakeholders. These include but are not limited to representatives of
 - the Tennessee Department of Commerce and Insurance,
 - the Tennessee State Insurance Committee,
 - the Tennessee Health Care Campaign,
 - the Tennessee Medical Association,
 - the Tennessee Hospital Association, and
 - health insurance providers.

Step 3. Construct Alternatives

Alternatives will be based on

- current law,
- other states' laws, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Cost, direct and indirect, to
 - consumers of health insurance,
 - state government,
 - insurance companies, and
 - healthcare providers.
- Receptiveness of
 - consumers of health insurance,
 - state government,

- insurance companies,
- healthcare providers.
- Ease of administration for
 - state government,
 - insurance companies, and
 - healthcare providers.

Step 5. Project Outcomes

- Estimate cost to
 - state government,
 - consumers of health insurance,
 - insurance companies, and
 - healthcare providers.
- Estimate the ease of administration.
- Estimate the acceptability to consumers, state government, insurance companies, and healthcare providers.

Step 6. Confront Trade-offs

- How will the differences between the current policy and the other alternatives affect the public?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem.

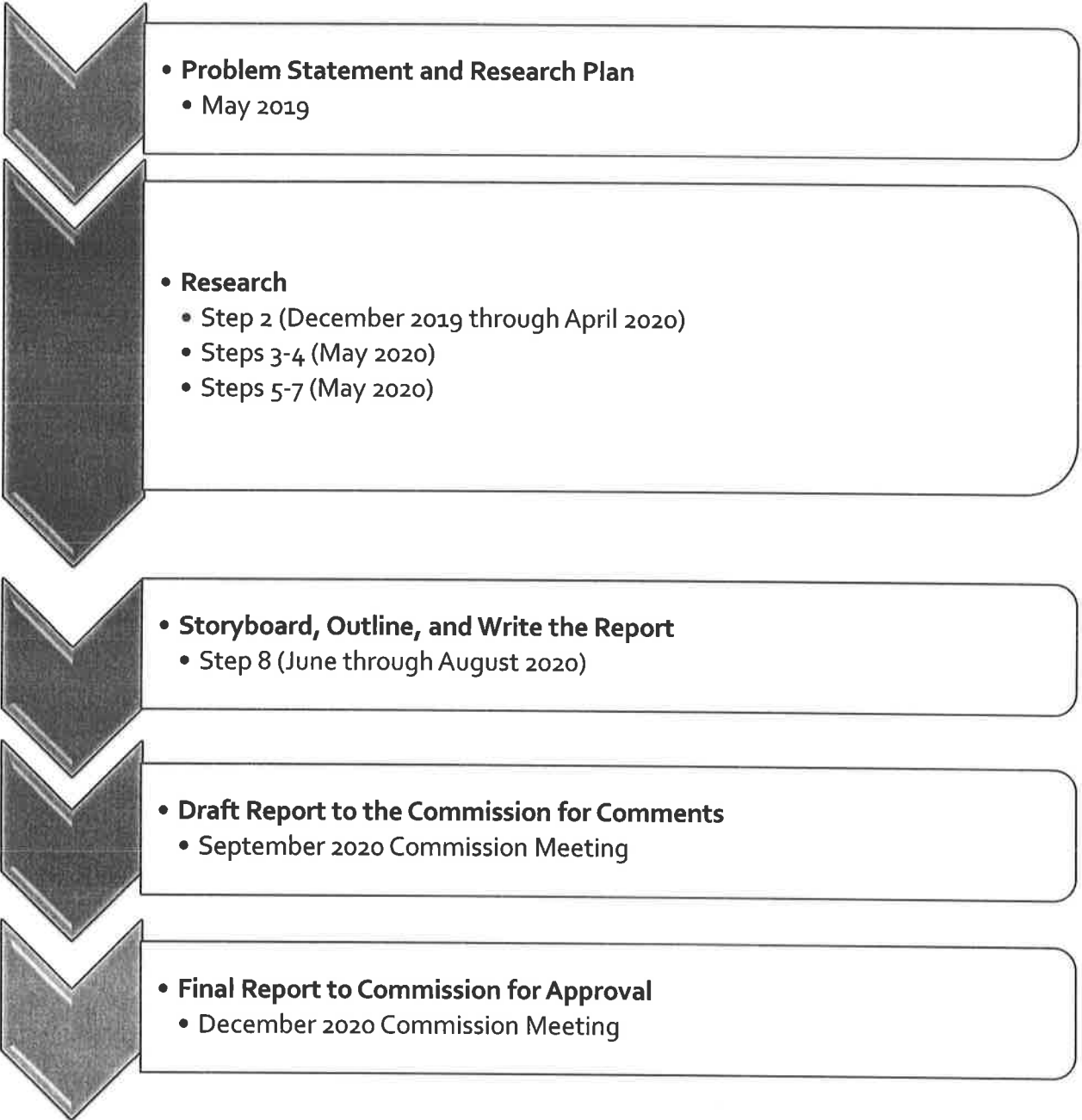
Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission.

Revisit Steps 5 through 8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives.

- Revise and edit the draft to reflect comments of the Commission.
- Submit final report to the Commission for approval.



**Conference Committee Report on
House Bill No. 419 / Senate Bill No. 510**

The House and Senate Conference Committee appointed pursuant to motions to resolve the differences between the two houses on House Bill No. 419 (Senate Bill No. 510) has met and recommends that all amendments be deleted:

The Committee further recommends that the following amendment be adopted:
by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, is amended by adding the following as a new part:

56-7-3501. This part shall be known and may be cited as the "Tennessee Right to Shop Act."

56-7-3502. As used in this part:

(1) "Allowed amount" means the contractually agreed upon payment amount between a carrier and a healthcare entity participating in the carrier's network, excluding any member deductible, co-pay, or other obligation;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Comparable healthcare service" includes, but is not limited to:

(A) Physical and occupational therapy services;

(B) Radiology and imaging services;

(C) Laboratory services; and

(D) Infusion therapy;

(4) "Department" means the department of commerce and insurance;

(5) "Health plan" means health insurance coverage as defined in § 56-7-109;

(6) "Healthcare entity" means:

(A) Any healthcare facility licensed under title 33 or 68; and

(B) Any healthcare provider licensed under title 63 or 68;

(7) "Insurance carrier" or "carrier" means a health insurance entity as defined in § 56-7-109; and

(8) "Shopping and decision support program" means the program established by a carrier pursuant to this part.

56-7-3503.

(a)

(1) Beginning upon approval of the next health insurance rate filing on or after January 1, 2021, a carrier offering a health plan in this state shall implement a shopping and decision support program that provides shopping capabilities and decision support services for enrollees in a health plan.

Beginning on January 1, 2021, a carrier may provide incentives for enrollees in a health plan who elect to receive a comparable healthcare service from a network provider that is covered by the health plan and that is paid less than the average allowed amount paid by that carrier to network providers for that comparable healthcare service before and after an enrollee's out-of-pocket limit has been met.

(2) Incentives, effective January 1, 2021, may be calculated as a percentage of the difference between the amount actually paid by the carrier for a given comparable healthcare service and the average allowed amount for that service. Incentives may be provided as a cash payment to the enrollee, a credit toward the enrollee's annual in-network deductible and out-of-pocket limit, or a credit or reduction of a premium, a copayment, cost sharing, or a deductible.

(3) The shopping and decision support program may provide each enrollee with at least fifty percent (50%) of the carrier's saved costs for each comparable healthcare service. However, the shopping and decision support

program may exclude incentive payments, credits, or reductions for services where the savings to the carrier is fifty dollars (\$50.00) or less.

(4) The average allowed amount must be based on the actual allowed amounts paid to network providers under the enrollee's health plan within a reasonable timeframe, not to exceed one (1) year.

(5) Annually, at enrollment or renewal, a carrier shall provide, at a minimum, notice to enrollees of the right to obtain information described in subdivision (a)(4) and the process for obtaining the information, and a description of how to earn any incentives. A carrier shall provide this notice on the carrier's website and in health plan materials provided to enrollees.

(b) An insurance carrier shall make the shopping and decision support program available as a component of all health plans offered by the carrier in this state.

(c) Prior to offering the shopping and decision support program to any enrollee, a carrier shall file a description of the shopping and decision support program established by the carrier pursuant to this section with the department. The insurance carrier has discretion as to the appropriate format for providing the information required and may customize the format in order to provide the most relevant information necessary to permit the department to determine compliance. The department may review the filing made by the carrier to determine if the carrier's shopping and decision support program complies with this section.

(d)

(1) Beginning January 1, 2022, a carrier shall annually file with the department for the most recent calendar year the total number of comparable healthcare service incentive payments made pursuant to this section, the use of comparable healthcare services by category of service for which comparable healthcare service incentive payments were made, the total incentive payments

made to enrollees, the average amount of incentive payments made by service for the transactions, and the total number and percentage of a carrier's enrollees that participated in the transactions.

(2) Beginning in 2022 and by April 1 of each year thereafter, the commissioner shall submit an aggregate report for all carriers filing the information required by this subsection (d) to the commerce and labor committee of the senate and the insurance committee of the house of representatives. The commissioner may set reasonable limits on the annual reporting requirements on carriers to focus on the more popular comparable healthcare services.

56-7-3504.

(a)

(1) Except as provided in subdivision (a)(2), beginning upon approval of the next health insurance rate filing on or after January 1, 2020, a carrier offering a health plan in this state shall comply with this section.

(2) On and after December 1, 2020, a carrier offering a health plan in this state shall make available the interactive member portal described in subsection (b), and may make available the toll-free phone number described in subsection (b).

(b)

(1) A carrier shall make available an interactive member portal or a toll-free phone number that enables an enrollee to request and obtain from the carrier information on out-of-pocket costs to the enrollee for the comparable healthcare services or on the average payments made by the carrier to network entities or providers for comparable healthcare services, as well as quality data for those providers, to the extent available.

(2) The member portal or toll-free phone number must allow an enrollee seeking information about the cost of a particular healthcare service to estimate out-of-pocket costs applicable to that enrollee and compare the average allowed amount paid to a network provider for the procedure or service under the enrollee's health plan within a reasonable timeframe not to exceed one (1) year.

(3) The out-of-pocket estimate must provide a good faith estimate based on the information provided by the enrollee or the enrollee's provider of the amount the enrollee will be responsible to pay out-of-pocket for a proposed non-emergency procedure or service that is determined by the carrier to be a medically necessary covered benefit from a carrier's network provider, including any copayment, deductible, coinsurance, or other out-of-pocket amount for any covered benefit, based on the information available to the carrier at the time the request is made, and subject to further medical necessity review by the carrier. A carrier may contract with a third-party vendor to comply with this subsection (b).

(4) A carrier shall provide the information described in this subsection (b) by the carrier's member portal or toll-free phone number even if the enrollee requesting the information has exceeded the enrollee's deductible or out-of-pocket costs according to the enrollee's health plan. Existing transparency mechanisms or programs that estimate out-of-pocket costs for enrollees still within their deductible qualify under this section as long as those mechanisms or programs continue to disclose the estimated average allowed amount even after an enrollee has exceeded the enrollee's deductible as well as any estimated out-of-pocket cost.

(c) Nothing in this section prohibits a carrier from imposing cost-sharing requirements disclosed in the enrollee's policy, contract, or certificate of coverage for

unforeseen healthcare services that arise out of the non-emergency procedure or service or for a procedure or service provided to an enrollee that was not included in the original estimate.

(d) A carrier shall notify an enrollee that the provided costs are estimated costs, and that the actual amount the enrollee will be responsible to pay may vary due to unforeseen services that arise out of the proposed non-emergency procedure or service.

56-7-3505.

At the request of a patient, a healthcare provider licensed under title 63 or 68 shall provide a copy of an order for a comparable healthcare service within two (2) business days of the request.

56-7-3506.

The state insurance committee, created by § 8-27-201, shall publish a report no later than January 1, 2020, on examples of shared savings incentive programs that directly incentivize current enrollees and retirees to shop for lower cost care in other states and consider implementation of such a program in this state. The state insurance committee may implement such a program as part of the next open enrollment period if it is believed to be cost effective. The state insurance committee shall share the report in writing to the government operations committees in both the senate and house of representatives.

56-7-3507.

The commissioner is authorized to promulgate rules as necessary to implement this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

56-7-3508.

Except for § 56-7-3506, and notwithstanding § 56-7-1005, this part does not apply to:

(1) Any managed care organization contracting with the state to provide insurance through the TennCare program or the CoverKids program; or

(2) Any plan described in Section 1251 of the federal Patient Protection and Affordable Care Act (42 U.S.C. § 18011) and Section 2301 of the federal Health Care and Education Reconciliation Act.

56-7-3509.

Notwithstanding this part, the total value of incentives offered to any one (1) enrollee must not exceed five hundred ninety-nine dollars (\$599) in any year.

56-7-3510.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of any cost savings realized by enrollees with health plans, including private health plans and state funded health plans, in states that have adopted legislation or programs that require carriers offering health plans in those states to offer incentive programs to enrollees for shopping for healthcare services at lower costs, commonly referred to as “Right to Shop” legislation or programs. The study shall include, at a minimum, an examination of savings realized by such programs in Maine, New Hampshire, Florida, Arizona, and Kentucky.

(b) All appropriate state departments and agencies shall provide assistance to TACIR.

(c) TACIR shall report its findings to the general assembly no later than December 2020.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect

January 1, 2020, the public welfare requiring it, and shall apply to all health plans entered into or renewed on or after that date.

Senator Kerry Roberts

Representative Robin Smith

Senator Raumesh Akbari

Representative Martin Daniel

Senator Paul Bailey

Representative Cameron Sexton