The Tennessee Advisory Commission on Intergovernmental Relations

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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

September 28, 2022

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building at 1:34 p.m., Chairman Ken Yager presiding.

Present 22	Absent 2
Mayor Rogers Anderson	Representative Harold Love Jr.
Mayor Tom Bickers	Senator Bo Watson
Mayor Buddy Bradshaw	
Mayor Kevin D. Brooks	
Senator Heidi Campbell	
Councilman Chase Carlisle	
Mr. Calvin Clifton	
Representative John Crawford	
Mayor Terry Frank	
County Clerk Mary Gaither	
Representative Patsy Hazlewood	
Mayor Jill Holland	
County Executive Jeff Huffman	
Senator Jon Lundberg	
Comptroller Jason Mumpower[1]	
Representative Antonio Parkinson	
Mr. Jeff Peach	
Commissioner Deniece Thomas	
Mayor Larry Waters	
Representative Ryan Williams	
Senator Ken Yager	
Senator Jeff Yarbro	

[1] Dana Spoonmore represented Jason Mumpower.

1. Call to Order and Approval of the Minutes

Chairman Ken YAGER called the meeting to order at 1:34 p.m. Chairman YAGER then requested and received approval of the June 2022 meeting minutes.

2. Commission and Staff Update

Executive Director Cliff LIPPARD informed the members of the passing of the Commission's first and longtime executive director, Dr. Harry A. Green. Following a moment of silence honoring Dr. Green's life, accomplishments, and service to the State of Tennessee, Dr. LIPPARD provided a short update on the TACIR staff's work with other state agencies in support of the transition from the Basic Education Program to the Tennessee Investment in Student Achievement program. Dr. LIPPARD then provided a staff update, informing the members of the recent promotion of Michael Mount to the position of research director and of the addition of two new staff members, Senior Research Associate Kevin McCarthy and Research Associate Maame Danquah.

3. Post-Award and Implementation Process for State Grants —Draft Report for Review and Comment.

Research Associate Chris BELDEN presented the draft report on the post-award and implementation process for state grants for review and comment. The draft was prepared in response to a request from Chairman Ken YAGER, which directed staff to review the post-award and implementation phase for state-administered grants to local governments and identify any changes warranted to streamline these processes.

Mr. BELDEN said the draft report identifies several existing ways to improve the post-award phase of state-administered grant programs and includes the following draft recommendations: State agencies should regularly convene grant advisory boards, which are made up of local government officials and those who assist them with grant management, to solicit feedback for improving grant requirements and processes, and the state could consider establishing an interagency working group for sharing lessons learned from agencies' efforts to improve grant requirements and processes. State agencies should accept Title VI training provided by other agencies when verifying compliance with federal and state law—unless they can demonstrate other agencies' trainings are inadequate for their programs—to eliminate the need for grantees to take multiple trainings when they have grants with multiple agencies. The state should require agencies to use a single, statewide grant management system (GMS) to promote a more uniform, user-friendly experience across agencies for grantees, with exceptions provided for agencies that can demonstrate the system won't support functions necessary for their grant programs.

Senator Jeff YARBRO asked how many state agencies currently have their own systems, how long the duration of the contracts associated with those systems are, and whether the GMS procured by the Department of Finance and Administration has the capability to be customized for each state agencies' needs. Mr. BELDEN said that TACIR staff did not collect data on how many state agencies have their own GMS, but several do. Mr. BELDEN said the duration of those contracts would likely need to be taken into consideration when transitioning state agencies to a statewide GMS, and according to Department of Finance and Administration staff, the single GMS would have the customizable capabilities for most state agencies.

Senator YARBRO asked how willing state agencies would be to adopt a single GMS and whether there are chokepoints that exist for state agencies that aren't willing to participate. Senator Jon LUNDBERG said regardless of whether there's appetite for a single GMS among agencies, making a single GMS a requirement might well be warranted. Commissioner Deniece THOMAS noted that the Department of Labor and Workforce Development is the first agency to adopt the system, and it is helpful to solicit feedback from agencies throughout the implementation of the system.

In response to Representative Antonio PARKINSON's question about whether the report addresses disparities between grant funding received by large and small nonprofits, Mr. BELDEN said that the report looked at grants received by local governments but not nonprofits. Senator Heidi CAMPBELL asked whether the study included information about how federal funds are awarded to specific state agencies, and Mr. BELDEN responded that it does not.

Vice Chairman Kevin BROOKS asked for the report's recommendations to use stronger language. Mayor Jill HOLLAND agreed that the recommendations could be made stronger and said she would be interested in hearing from departments in the future about how they plan to address the recommendations made by the Commission. Executive Director Cliff LIPPARD said that at the will of the Commission, staff could add stronger language to the recommendations. Chairman YAGER said that the language of the recommendations could be amended by the Commission when the final report is presented for approval at the next meeting. He shared a letter from the city of Oak Ridge complimenting the report and its recommendations.

4. **Public Chapter 503, Acts of 2021 (Childhood Obesity)—Draft Report for Review and Comment**

Research Director David LEWIS presented the draft report on Public Chapter 503, Acts of 2021, for review and comment. He reviewed the negative outcomes associated with childhood obesity. He said the recognition of the upward trend in the rate of childhood obesity and its many root causes has led to a wide array of responses from federal, state, and local governments—and presented the steps Tennessee state government has taken to try and address the problem. But as the report documents, these efforts to both understand and confront the problem have not been enough to halt and reverse the overall increasing trend. He presented four draft recommendations.

Senator Jon LUNDBERG said the 58% of calories consumed in a day at schools in the report seemed high and asked about it. Mr. LEWIS said the report says up to 58%—setting a ceiling on the number of calories—and that many people would not consume nearly that high of a percentage in school in a day. Senator LUNDBERG asked whether staff was recommending that the state further regulate snacks in vending machines in schools. Mr. LEWIS said staff was not recommending that and such decisions should be left up to individual districts and communities.

Senator Heidi CAMPBELL said that access to healthy food was important to consider in addressing childhood obesity and asked whether that would be considered. Mr. LEWIS said that the Tennessee Livability Collaborative and Tennessee Department of Health are concerned about that issue and that he believed it would be considered.

Mayor Terry FRANK asked whether ways that other states have increased the participation rate in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) have been identified. Mr. LEWIS said it is difficult to determine exactly what causes the differing rates and explained how the COVID-19 pandemic made it even more difficult.

Senator Jeff YARBRO asked how the necessary data elements would be determined for addressing childhood obesity. Mr. LEWIS said that the departments participating in the Livability Collaborative—with input from the Office of Evidence and Impact—would need to agree on the data elements.

Representative Ryan WILLIAMS asked whether there is a way to more directly target the underlying causes of the increasing trend in childhood obesity rates. Mr. LEWIS said that the increase is occurring in almost all the world, and that it seems likely that greater access to food—not necessarily healthy food—is most likely a driving factor.

5. Electric Vehicles and Other Issues Affecting Road and Highway Funding—Draft Report For Review And Comment

Research Manager Bob MOREO presented the draft report for review and comment, which was prepared in response to concerns raised by Commission members about the growing market for electric vehicles (EVs) in Tennessee and what effect increased adoption of EVs might have on state and local road funding. Members also noted that increased adoption of EVs has brought with it demands from residents to improve the state's EV charging infrastructure. He said revenue from federal, state, and local sources contribute to fund road construction and maintenance at the state, county, and city levels noting that state fuel taxes provide most of the revenue used for roads.

Mr. MOREO said that because electric vehicle (EV) owners don't pay fuel taxes the state charges EV owners an extra $100 registration fee; however, unlike fuel taxes, revenue from registration fees aren't shared with local governments. He said that out-of-state drivers of gas-powered vehicles contribute fuel tax revenue when they buy gas in Tennessee, but the state's EV registration fee doesn't capture revenue from out-of-state owners of EVs traveling in Tennessee, and Tennessee does not apply the fee to plug-in hybrid vehicles (PHEVs).

Mr. MOREO said, assuming 10% of vehicles in Tennessee were electric in 2040, gas tax revenue could be reduced by an estimated $68 million. Some of that would be offset by the additional EV registration fee, but revenue from the fee would not be shared with local governments. He said increases in fuel efficiency of gas-powered vehicles and inflation for road construction costs will have far greater effects than EVs on the state's future road funding. Estimates in the draft report are that increased fuel economy could reduce gas tax revenue by $163 million in 2040 and construction cost inflation could reduce the purchasing power of the state's gas tax by $399 million in 2040.

Mr. MOREO said some states share revenue from their EV fees with local governments, some charge higher fees to register heavier passenger vehicles, and others index their fuel tax rates to inflation and increased fuel economy. Some states are also testing methods to tax all vehicles, whether electric or gas-powered, on a vehicle-miles-traveled (VMT) basis.

Mr. MOREO presented the recommendations from the report. Because the practical effect of the state's EV registration fee is to serve as a substitute for the gas tax by collecting revenue for road funding from vehicle owners who don't purchase gasoline—and therefore don't contribute to road funding through the gas tax—the state should consider sharing EV registration fees with local governments in the same proportion as the gas tax and the state could consider applying a reduced EV registration fee to plug-in-hybrid vehicles and share this revenue with local governments in the same proportion as the gas tax. Given the effect of inflation on the purchasing power of gas tax revenue—and to assist lawmakers in evaluating whether to adjust the state's fuel tax rates—the Department of Revenue or another entity such as the State Funding Board should inform the General Assembly of the effect of inflation on the purchasing power of the state's fuel taxes at least once every two years. As the state confronts the tradeoffs associated with any potential alternatives to its current fuel-tax-based road funding framework, it should balance the ability to raise adequate revenue with equity for all drivers—regardless of whether their vehicles are powered by gas, electricity, or some other method; ensure that revenue from any adopted alternatives is shared with local governments in an equivalent manner to the current sharing of fuel taxes; and ensure any alternatives intended to offset lost revenues are designed to do so without discouraging customers from purchasing electric vehicles.

Representative Ryan WILLIAMS asked how much the average driver in Tennessee contributes in gas taxes, to determine how much is offset by the EV fee. Mr. MOREO said the calculation depends on the fuel economy figure chosen—for the report staff used 30 miles per gallon as an example, resulting in an estimated $136 in gas tax. He said the report doesn't make any recommendations about calculating the EV fee, but only provides an example for reference. In response to Representative WILLIAMS' question as to whether Tennessee is unique in not charging an extra fee for hybrid vehicles, Mr. MOREO said 30 states have EV fees and 14 of those include PHEVs, which often require a lesser fee; a few states even require owners of non-plug-in hybrids to pay a fee.

Mayor Tom BICKERS said the report's projected rate of EV adoption is low and asked whether a faster rate of adoption would affect local governments' road funding sooner and more significantly. Mr. MOREO said the projections in the report are based on a combination of sources that consider those factors but agreed that they could potentially be too low if the industry moves faster than anticipated. He said staff will present a range of projections in the final version of the report.

In response to Mayor BICKER's comments that EVs have the same effect on roads as gas-powered vehicles and question about whether the legislature should consider ways for EV owners to pay an equitable amount towards road maintenance, Mr. MOREO said the General Assembly could always change the EV registration fee. Mayor BICKERS asked whether the state is discussing how it will dispose of used EV batteries at the end of their life. Mr. MOREO said he wasn't aware of specific discussions in Tennessee, but that battery recycling is an issue the industry is working to address.

Mayor BICKERS asked whether the report considered the effects of federal legislation passed in 2022 that provided funding for states to develop new EV charging stations. Mr. MOREO said the report does consider those effects and that report describes the federal program and its implementation in Tennessee. Mayor BICKERS asked whether EV drivers pay any tax or fee when they use a charging station in Tennessee. Mr. MOREO said they don't but information about three states where that type of tax has recently been introduced will be added to the final report. Representative WILLIAMS asked whether states planning to tax EV charging will use some of the revenue to improve the supply of electricity. Mr. MOREO didn't know if the revenue will be used to improve the supply of electricity but said some will direct revenue to road funds.

Mayor Terry FRANK asked whether the state has any taxes on utilities or electricity. Mr. MOREO said he didn't know but will research the issue. [Staff found that the state already generates some revenue from the sale and distribution of electric power, although not specifically to fund roads. Electric utilities pay a 3% gross receipts tax and are subject to franchise and excise tax laws. Energy "sold directly to the consumer for residential use" is exempt but sales of electricity to commercial customers are generally subject to Tennessee's 7% state sales tax. Cities and counties cannot apply local-option sales taxes to electricity. If the electricity is used for manufacturing/processing and the electricity is separately metered from normal office use, the Department of Revenue can issue a tax exemption if the customer applies for one.] Representative WILLIAMS asked what effect EV charging stations will have on power consumption. Mayor Larry WATERS said electricity providers in his area are concerned the power grid won't be able to handle the added demand from EV charging and said charging station owners are concerned about the cost of electricity. He said these constraints may limit the adoption rate of EVs. Mr. MOREO said that TVA has a separate electricity rate structure for charging stations that is intended to make operating costs more affordable.

Representative Patsy HAZLEWOOD asked Mr. MOREO to discuss any states that are testing VMT taxes and what those states have learned. Mr. MOREO said the draft report includes a map of states studying VMT issues or testing VMT pilot projects to explore different methods of mileage reporting and implementation. Representative HAZLEWOOD asked whether a national organization is looking at the results of these individual state projects and whether any nongovernmental organization is evaluating these pilots. Mr. MOREO said the draft report cites a US Government Accountability Office (GAO) report that said a national approach will eventually be necessary to coordinate VMT taxes across state lines and that he didn't know of any nongovernmental organization looking at the results of the pilots. Executive Director Cliff LIPPARD asked whether the National Conference of State Legislatures (NCSL) had looked at these pilot programs. Mr. MOREO said staff used NCSL to get information about the programs, but that there hasn't yet been a comparative review. Dr. LIPPARD said staff would reach out to NCSL.

Representative John CRAWFORD asked what the costs of converting public vehicle fleets, including school buses and fire trucks, to electric are, and wanted to know how fast EV charging stations can charge vehicles and how many might be needed. Mr. MOREO said he would follow up with Representative CRAWFORD after the meeting. [Following the meeting, staff emailed information about fleet conversion and charging stations to Chairman Crawford. This included that Level 2 stations using 240V current are the most common type of charging right now. They're good for overnight charging, taking up to eight hours to fully charge EV batteries. Each one needs its own dedicated circuit, but they aren't expensive. DC "Fast Charging" uses commercial, three-phase power, but gets charging times of less than an hour in most cases. Fleets may not need that capacity if vehicles are driven around during the day and charged overnight. But for larger fleets, it could make sense to install fast chargers at some facilities and have staff responsible for rotating multiple vehicles through the chargers overnight; you could get eight vehicles recharged with one station.]

6. Public Chapter 497, Acts of 2021 (Water Recreation Resources)—Draft Report for Review and Comment

Research Manager Jennifer BARRIE presented the draft report on water recreation resource management for review and comment. The report was prepared in response to Public Chapter 497, Acts of 2021, which includes ten points the Commission was to study and report on to assist state agencies in identifying the best ways to manage the state's resources and handle challenges, given the evolving recreational use of the state's waterways. The final report will be presented for the Commission's approval at the December meeting and must be sent to the General Assembly by December 31, 2022.

Ms. BARRIE said that Tennessee, like other states, is experiencing an increase in outdoor recreation as more people are enjoying the state's natural resources and participating in a variety of activities like fishing, hunting, and paddling in non-motorized vessels, resulting in both benefits and challenges for the state. To help meet the challenges, the draft report recommends that state agencies with jurisdiction over the state's waterways should continue to take a collaborative approach to strategic planning with multiple agencies, consider a statewide task force to look at water recreation issues and work through conflicts, and develop existing and new partnerships to improve access to waterways. It also recommends that the Tennessee Fish and Wildlife Commission, which regulates commercial non-motorized vessel outfitters, should consider including a member of the commercial non-motorized vessel outfitter community. Finally, the draft report recommends that state agencies gather more robust data on the recreational use of water resources across the state and use the data for strategic planning.

Representative Ryan WILLIAMS said that communication between entities on the waterways is needed and commercial paddlecraft outfitters need a voice on the Fish and Wildlife Commission. Senator Jeff YARBRO said he is interested in how other states have incorporated the role of their tourism development offices with outdoor and water recreation. Ms. BARRIE responded that staff didn't look specifically at tourism offices in other states but did speak with staff in the Tennessee Office of Rural Tourism, and the office is interested in being involved with a statewide outdoor recreation committee. In response to Mayor Jill HOLLAND's question about where the Tennessee Office of Rural Tourism is housed, Ms. BARRIE said the office is part of the Tennessee Department of Tourist Development. Mayor Kevin BROOKS requested that the final report include an estimate of how much commercial use is happening at private accesses as opposed to public launch sites. Ms. BARRIE said that staff will include that information in the final report.

Chairman Yager adjourned the meeting at 3:52 p.m.

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TENNESSEE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS**

September 29, 2022

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building 8:36 a.m., Chairman Ken Yager, presiding.

Present 20	**Absent 4**
Mayor Rogers Anderson	County Executive Jeff Huffman
Mayor Tom Bickers	Representative Harold Love Jr.
Mayor Buddy Bradshaw	Commissioner Deniece Thomas
Mayor Kevin D. Brooks	Senator Bo Watson
Senator Heidi Campbell	
Councilman Chase Carlisle	
Mr. Calvin Clifton	
Representative John Crawford	
Mayor Terry Frank	
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Mayor Jill Holland	
Senator Jon Lundberg	
Comptroller Jason Mumpower[1]	
Representative Antonio Parkinson	
Mr. Jeff Peach	
Mayor Larry Waters	
Representative Ryan Williams	
Senator Ken Yager	
Senator Jeff Yarbro	

[1]Dana Spoonmore represented Jason Mumpower.

7. Reference Based Pricing—Panel

Research Associate Michael STRICKLAND said that Senate Bill 2330 by Senator Hensley and House Bill 2468 by Representative Sparks directed the Commission to study the overall effect on health insurance prices when reference-based pricing is used. Reference-based pricing is a method for reducing the costs of healthcare that places a limit on the prices paid for healthcare services, with that limit indexed to a reference point. Most often, the reference point is some ratio of Medicare rates. Dr. STRICKLAND introduced panelists with knowledge of reference-based pricing. Panelists included

- Representative Mike Sparks;
- Laurie Lee, executive director, Benefits Administration, Tennessee Department of Finance and Administration;
- Randy Stamps, former executive director, Tennessee State Employees Association (TSEA); and
- Ralph Weber, president and chief executive officer, MediBid.

In addition, Dr. STRICKLAND introduced former Representative Martin DANIEL, owner and general manager of Elevation Outdoor Advertising, who had asked to make a statement regarding the Tennessee Attorney General's state employee healthcare plan claims audit.

Representative SPARKS said he is concerned about the rising costs of healthcare, so he called Ralph WEBER, whom he knew from Rutherford County, and asked what could be done about these rising costs. Representative SPARKS said Mr. WEBER suggested reference-based pricing. They requested records from the Tennessee state employee healthcare plan, and those records showed a lot of outliers with regard to what the state had paid in healthcare claims. He said that Montana's state employee healthcare plan saved $14 million dollars with reference-based pricing, and he believed that Tennessee, which is bigger than Montana, might save up to $100 million dollars by using reference-based pricing.

Executive Director LEE provided background on Tennessee's Benefits Administration, noting that it provides insurance through three separate self-funded risk pools for state and higher education employees as well as local government and local education employees, collectively referred to as the State Group Insurance Plan (SGIP). On the topic of reference-based pricing, she said there were many variations on the concept and emphasized the possibility of balance billing for patients when they are billed above the reference price. This means the patient would have to pay the difference between the reference price the insurer pays and the amount they are billed.

Executive Director LEE said that Benefits Administration is aware of rising healthcare costs, and they conduct ongoing research into best practices to deal with costs. She also noted that Benefits Administration is concerned with the total cost of care, which includes consideration of outcomes. According to their actuarial consultant, in 2021 the Benefits Administration's total payment rate was 157% of Medicare. She contrasted that with Montana, where, when reference-based pricing was instituted, the state was paying 191-322% of Medicare for hospital inpatient services and 239-611% for outpatient. The reference price was set to 220-225% of Medicare for inpatient and 230-250% of Medicare for outpatient. While this has resulted in savings for Montana, she observed that Tennessee's payment average is already lower at 157% of Medicare rates.

The SGIP currently uses two third-party administrators, Cigna and BlueCross BlueShield, whose services were obtained through competitive bidding. Each offers lower-cost network options. She suggested that some states that have instituted reference-based pricing do not have the same kind of competition among administrators to deliver efficiency.

She said that the SGIP prioritizes low-cost but high-quality services. She said they were also cognizant of price variation and outlier costs, and that reference-based pricing may be able to deal with these issues, but there could sometimes be a reason for price variation, like the complexity of a patient's case. Executive Director LEE said that Benefits Administration is not engaged in price negotiation with the providers; the third-party administrators, Cigna and BlueCross BlueShield negotiate prices with the providers. Their third-party administrators and the healthcare providers may be able to deal with that issue of price variation in negotiations.

She said reference-based pricing does not necessarily weigh the quality of providers or direct patients to better quality providers. It could encourage the use of a low-cost provider at the expense of quality, possibly resulting in poorer outcomes and more complications. It could also lead to network erosion in which some providers choose to leave the network. That would be of concern in geographic areas where there are already few providers available.

Executive Director LEE said that, based on a review of the literature seen by Benefits Administration, a bidding model for care might result in someone needing to travel across the country for standard care. She also suggested that the Affordable Care Act may impose some limitations on reference-based pricing based on access and quality standards, and she said there were several relevant lawsuits currently ongoing. But the effect of reference-based pricing, she said, depended on the model adopted. She noted that the approach used in Montana had not succeeded in North Carolina, and that healthcare markets vary widely.

She concluded by saying that as the SGIP was now averaging about 150% of Medicare, a reference price of 250% like in Montana would be a setback. She added that reference-based pricing risked network erosion, and Benefits Administration remains focused on balancing the total cost of care with health outcomes and protecting member access to quality providers.

Mr. STAMPS thanked the Governor and state legislature for their efforts in maintaining the state employee health system, noting that the state pays 80% of the insurance premium costs for active state employees. He observed that reference-based pricing is not the only means to contain healthcare costs. For employees hired since July 1, 2015, state insurance coverage has been eliminated when they retire before age 65, and he pointed to this as one example of how the state has saved money. They also increased the out-of-pocket spending limits to then lower premium costs.

He said that these measures demonstrate the consultation that has taken place with state employees and TSEA. He noted that TSEA does not currently hold a position on reference-based pricing, though it may adopt one after the final report in January. He said that in his experience the Benefits Administration had always provided TSEA with balanced and fair information, and that he expected TSEA would strongly consider any input from Benefits Administration.

Mr. STAMPS emphasized that reference-based pricing could limit opportunities for healthcare in some areas. He questioned whether reference-based pricing, should it be adopted, would include a cap on out-of-pocket spending, and suggested that when there are cost savings to be achieved by reference-based pricing, they should be shared with state employees. Reiterating that TSEA has no position on reference-based pricing, he said he did not foresee TSEA supporting an approach like that adopted in California, Montana, North Carolina, or Oregon.

Mr. WEBER said that Representative SPARKS had called him several years ago to discuss methods for saving taxpayer money. He said that he has served as an employee benefits consultant and works with over 150 employers, many of whom use reference-based pricing. He said that 100 million Americans currently have medical debt, and this medical debt is a factor in two-thirds of bankruptcies in the country.

He said that the data he had previously received from Executive Director LEE for 2018 indicated state spending at 150% of Medicare rates exactly, with in-network providers paid at 151% of Medicare, but out-of-network providers at 145%. He said there were different data points reported on total healthcare spending, but taking the lowest figure of $1.6 billion per year, the six percent difference between in- and out-of-network providers would suggest $96 million in savings. He said he had a memo from BlueCross BlueShield saying that they do not provide discounts to state employees through their providers.

Mr. WEBER cited price discrepancies in the data they had obtained earlier from Benefits Administration. One provider charged $19,800 for a computerized tomography (CT) scan when the average was $635. He acknowledged that there would be price variation, but he said that the CT scan price differential he mentioned amounted to a 3,100% difference. He recounted similar data for colonoscopies ($2,212 average, with an outlier of $17,341, at a difference of 1,600%). He said that Medicare rates the quality of providers on a five-star system, and that he had found most of the providers in the data charging less than $5,000 were rated four or five stars, while those charging $10,000 or more were rated two or three stars. He said that a negative correlation between cost and quality could be explained in part by the fact that a more experienced doctor might perform a procedure in less time, possibly also with faster recovery, resulting in lower cost.

He noted that TennCare pays perhaps 86% of Medicare and that it still retains many providers. He said that patients are the best people to control the cost of healthcare, which can be done by giving them incentives and transparency to choose quality providers. In reference to Executive Director LEE's example of traveling out of state for a colonoscopy, he said that there were many capable providers in Tennessee, and that going out of state might increase costs.

Mr. WEBER said that the No Surprises Act's controls on balance billing would make reference-based pricing more consumer-friendly, though quality measures would need to be shown in advance. He said reference-based pricing would also let patients make their own choice of providers. The state employee health plan's network is not efficient in his view, and he said providers should not be counted as low quality simply because they were not part of the network.

He said that from the data he had seen there were many providers charging from 200% to 3,000% more than the average, and it is these that reference-based pricing is meant to deal with. He suggested that even though the state's average reimbursement rate might be 150% of Medicare, there could still be expensive outliers. He concluded his remarks by saying that he was sure a reference-based pricing plan could be written to cap out-of-pocket maximums and help prevent medical debt.

Executive Director LEE said that when a patient receives an explanation of benefits (EOB) you can see the price the patient was charged for the service, and the network discount on the EOB is the amount the insurance company negotiated off the price. She noted that they sent information about the prices charged to the state legislators. She said they could not send them the network discount data because this is proprietary information of the insurance companies. Mr. STAMPS said it was the TSEA's position that if you are going to limit the availability of healthcare and the providers that are available to state employees, they should see some direct benefit by limiting out-of-pocket cost.

Representative SPARKS mentioned a state employee who was in his office one day and said that he had received a $2,400 health bill. The employee said that he found out he didn't owe the money after he did some digging. Representative SPARKS said that this example emphasizes the need for more dialogue on healthcare since we all know we have a problem.

Representative PARKINSON asked whether there was a law or policy that could force the healthcare providers to show the range of costs next to the amount that they are charging state employees. Executive Director LEE responded that the insurance companies that the state contracts with, Blue Cross Blue Shield and Cigna, have online transparency tools that allow state employees to go online to see what they would pay for a healthcare service, but she is not certain that they show the range of costs. Representative PARKINSON suggested that requiring providers to show the range of costs next to the amount charged to employees might create the kind of competition to get costs down.

In response to Senator CAMPBELL's question about North Carolina's experience with reference-based pricing, Executive Director LEE replied that North Carolina had trouble getting enough healthcare providers to agree to the reference price. She said this is an example of the network erosion she was talking about where the choices available to plan members would diminish.

Mayor HOLLAND asked who determines which providers are in network and out of network. Executive Director LEE responded that the state has a contract with Blue Cross Blue and Cigna.

They ask them in the contracts to establish networks and the insurance companies negotiate with the providers to determine who is in and out of network.

In response to Councilman CARLISLE's question about how Benefits Administration measures outcomes, Executive Director LEE said that for substance use disorders, for example, outcomes would be measured by the early readmission rate; outcomes for medical and surgical procedures could be measured by the readmissions because of complications. She mentioned they also look at mortality and morbidity rates. Executive Director LEE noted that some providers that do the most patient volumes have the best outcomes because the process is well refined; open-heart surgery is a great example.

Representative WILLIAMS asked whether healthcare outcomes affect the prices the state pays for healthcare. Executive Director LEE responded that the state of Tennessee doesn't get involved in rate setting; the companies the state contracts with set the rates through negotiations with the providers. She said that one of the insurance companies they contract with looks at overall performance and outcomes in joint replacements and this factors into the rate negotiations for this service. Next Representative WILLIAMS asked whether the state had the ability to penalize a provider for a bad outcome. Executive Director LEE answered that there might be a way to penalize providers contractually for bad health outcome. For example, if a patient is readmitted after 30 days it may say in the contract that the insurer does not have to pay for the readmission.

In response to Representative HAZLEWOOD's question about what difficulties the state is having with providers in its network and what affect reference-based pricing would have on that, Executive Director LEE replied that they have concerns about erosion of networks and have providers who go in and out of network often. She said that the insurance companies that negotiate on the state's behalf take provider shortage in an area into consideration when negotiating the state's contracts, and the state might pay more in a rural area because of provider shortage in that area.

Mayor FRANK asked whether there were other ideas or things other than reference-based pricing that could be done to lower the high-priced healthcare bills the state has pay. Mr. WEBER answered that reference-based pricing encourages competition and drives down prices since the insurer will pay the reference price to any provider. He argued that narrow networks discourage competition and drive up healthcare prices since it gives in network providers a monopoly; patients use in-network providers more since it costs them less out-of-pocket. Narrow networks penalize out of network providers since patients must pay more out-of-pocket to use them even when the prices charged by the providers are lower than in network providers.

Former Representative Martin DANIEL said that the healthcare market is far from being a purely competitive market and cannot function efficiently to provide services at the lowest possible price. He noted that there is no procedure in place whereby enrollees of Tennessee's state healthcare plan are encouraged to seek out the lowest healthcare provider. There is evidence that costs incurred by the Tennessee plan are excessive. As recently as 2018 widely varying amounts were paid by the state healthcare plan for similar uncomplicated procedures.

For example, in 2018 the prices billed to the state of Tennessee for arthroscopic procedures ranged from $881 to $49,343. He said the state could see substantial cost savings by implementing reference-based pricing that limits healthcare payments by establishing benchmarks. These benchmarks could be the average of cost per procedure or a reasonable percentage above the Medicare rate. In 2018, if payments for endoscopy had been limited to the median billed amounts, the state would have realized savings of $540,000.

8. Tangible Personal Property Tax—Draft for Review and Comment

Research Director Michael MOUNT presented the draft report on tangible personal property for review and comment. He said that it was prepared in response to Senator Lundberg's request at the January 2022 Commission meeting that the Commission study the personal property tax in Tennessee. Mr. MOUNT said that the Commission has identified several alternatives to make compliance easier for taxpayers, tax preparers, and local governments without reducing local revenue.

Mr. MOUNT said that Tennessee currently gives about 13% of businesses an option to streamline the process of complying with the personal property tax by certifying that they have $1,000 or less in personal property. He said that to give more businesses a means to reduce the time and cost of filing personal property taxes without decreasing local tax revenue, the draft report recommends that the General Assembly consider adding one or more tiers at greater dollar amounts.

Senator Jon LUNDBERG asked whether a de minimus tax at a $10,000 threshold could be constitutional. Mr. MOUNT said that our sense is that, if an assessment is being made then it would be constitutional. He noted that others disagree, and it's a gray area. County Clerk Mary GAITHER said that businesses with less than $3,000 in annual sales do not need a business license, businesses that have between $3,000 and $10,000 in annual sales are required to get a minimal activity business license, and businesses with greater than $10,000 in annual sales are required to get a standard business license. She suggested that once businesses have more than $10,000 in annual sales and change to a standard business license that they could start paying personal property taxes at that point.

Moving on to the next recommendation, Mr. MOUNT said that about two-thirds of Tennessee's counties continue to rely on paper filings, while only a third offer e-filing. He said that to encourage increased compliance with the tax, streamline the reporting process for businesses, reduce labor and costs for assessors, encourage consistency in filing requirements across jurisdictions, and modernize the filing process, the draft report recommends that county assessors consider adopting e-filing and that they continue to be encouraged to do so. Senator Jeff YARBRO asked whether there are ways for counties to be part of the same system. Mr. MOUNT said that the Comptroller's Office has a system that's available to county assessors that choose to use it, but many have not.

Mr. MOUNT went on to say that some new businesses may incorrectly assume that the Department of Revenue administers all state and local taxes in Tennessee, and the information on state websites regarding personal property taxes could be easy to overlook. He said that to better inform taxpayers of their tax obligations and enhance compliance, the draft report recommends that new businesses receive an email upon registration of their business licenses that outlines all the taxes they might owe, including local taxes. Representative John CRAWFORD asked whether local governments would be responsible for that email. Mr. MOUNT said that it would not be a burden on local governments unless they wanted to provide some input.

Regarding the final recommendation in the draft report, Mr. MOUNT said that in 1997, the Standard Industrial Classification (SIC) system was replaced with the North American Industrial Classification System (NAICS); however, Tennessee's business tax continues to use SIC while personal property tax account data use NAICS. He said that to ensure that business tax records across different governmental databases are consistent and updated, the draft report recommends that the General Assembly amend state law to update the industry classifications used for the business tax from SIC to NAICS. Senator LUNDBERG asked about the difference between the SIC and NAICS and how that would affect the taxes paid. Mr. MOUNT said that the business tax rate is based on business classification, and that determines the amount of tax paid. He said that the SIC and NAICS do not match, making comparisons difficult, and SIC has not been updated since 1997.

Senator LUNDBERG asked, what is the cost to tax collectors to administer the tax? Mr. MOUNT pointed to a summary of a TACIR survey in the report, which says that the cost to administer the tax is less than 1%. Senator LUNDBERG said that the personal property tax is a double or triple tax. He said that, for some equipment, businesses end up paying more in personal property tax than in sales tax. He requested that the report include additional information regarding the cost to businesses to file and pay the tax [Note: added to pages 15 and 16 of report].

Following a decision to poll the members on the next meeting date, Chairman Yager adjourned the meeting at 10:13 a.m.