

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 643

By: Johnson (Constance)

4  
5  
6 AS INTRODUCED

7 An Act relating to health insurance rate review  
8 process; creating the Oklahoma Individual Market Rate  
9 Review Act; providing short title; defining terms;  
10 requiring insurers to submit changes in premium rates  
11 to the Insurance Commissioner; requiring the  
12 Commissioner to issue certain written findings;  
13 authorizing the Commissioner to determine if filing  
14 is complete; specifying that approved rates shall be  
15 guaranteed by the insurer for certain time; requiring  
16 the Commissioner to post the rate filing on the  
17 Insurance Department's website; requiring the  
18 Commissioner to promulgate rules to establish the  
19 information required to be included in the rate  
20 filing; specifying information to be included in the  
21 rate filing; requiring an insurer to send certain  
22 written notice to affected policyholders; specifying  
23 form and content of the notice; requiring certain e-  
24 mail alert system to be made available by the  
Commissioner; requiring public comment period on the  
rate change and rate filing; specifying time periods  
for the comment period; specifying standards for  
rates; directing the Commissioner to disapprove a  
rate change under certain conditions; requiring the  
Commissioner to take certain factors into  
consideration when making the determination on the  
rates; requiring an insurer to pool certain  
experience until certain provision is fully in  
effect; requiring the Commissioner to provide written  
notice upon approval of a rate change; specifying  
form and content of the notice; specifying effective  
date for such rate change; requiring the Commissioner  
to hold a public hearing under certain conditions;  
directing the Commissioner to promulgate rules  
governing the hearings; requiring such hearings to be  
conducted by a hearing examiner; requiring

1 Commissioner to provide notice of such hearing;  
2 specifying form and content of the notice; deeming  
3 certain documents and correspondence to be public  
4 records; authorizing the Commissioner to contract  
5 with certain actuaries or experts; requiring the  
6 position of Consumer Advocate within the Insurance  
7 Department; specifying duties of the Consumer  
8 Advocate; allowing certain persons to intervene in a  
9 proposed rate change; authorizing the awarding of  
10 certain fees and expenses to certain persons;  
11 specifying jurisdiction of certain review; providing  
12 codification; and providing an effective date.

9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 4420.1 of Title 36, unless there  
12 is created a duplication in numbering, reads as follows:

13 This act shall be known and may be cited as the "Oklahoma  
14 Individual Market Rate Review Act".

15 SECTION 2. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 4420.2 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18 As used in the Oklahoma Individual Market Rate Review Act:

- 19 1. "Commissioner" means the Insurance Commissioner;
- 20 2. "Department" means the Insurance Department; and
- 21 3. "Insurer" means any entity subject to the insurance laws and  
22 regulations of this state, or subject to the jurisdiction of the  
23 Insurance Commissioner, that contracts or offers to contract to  
24 provide, deliver, arrange for, pay for, or reimburse any of the

1 costs of health care services, including, without limitation, an  
2 insurance company offering accident and sickness insurance, a health  
3 maintenance organization, a nonprofit hospital service corporation,  
4 a nonprofit medical service corporation, a domestic insurance  
5 company that offers or provides health insurance coverage in the  
6 state and a foreign insurance company that offers or provides health  
7 insurance coverage in the state.

8 SECTION 3. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 4420.3 of Title 36, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. Any insurer desiring to change premium rates on any policy  
12 form, contract, or certificate must submit electronically a rate  
13 filing request for approval with the Insurance Commissioner. No  
14 premium rate or change to a premium rate shall be used unless  
15 approved by the Commissioner, and unless policyholders have received  
16 notice as required in Section 9 of this act.

17 B. Within thirty (30) days of the close of the sixty-day public  
18 comment period required under Section 6 of this act, the  
19 Commissioner shall issue a written decision with findings on the  
20 considerations listed in Section 7 of this act, and any other  
21 considerations taken into account, to approve, modify, or disapprove  
22 the proposed rates. If, however, a hearing on the proposed rate  
23 change is held under Section 10 of this act, the Commissioner may  
24 reasonably extend the time to issue a written decision with findings

1 to approve, modify, or disapprove the proposed rate change to  
2 accommodate a hearing schedule. Upon issuing the decision, the  
3 Commissioner shall post his or her decision on the Insurance  
4 Department's website and provide written notice to the insurer of  
5 the decision.

6 C. Failure to submit all of the information required or  
7 requested by the Commissioner under Section 5 of this act shall make  
8 the rate filing incomplete. Within ten (10) days of receiving a  
9 rate filing for a proposed rate change, the Commissioner shall  
10 determine whether the filing is complete. If the Commissioner  
11 determines that a filing is incomplete, the Commissioner shall  
12 notify the insurer in writing that the filing is deficient and give  
13 the insurer an opportunity to provide the missing information.

14 D. Approved rates shall be guaranteed by the insurer, as to the  
15 policyholders affected by the rates, for a period of not less than  
16 twelve (12) months, or as an alternative to the insurer giving the  
17 guarantee, the approved rates may be applicable to all policyholders  
18 at one time if the insurer chooses to apply for that relief with  
19 respect to those policies no more frequently than once in any  
20 twelve-month period.

21 SECTION 4. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 4420.4 of Title 36, unless there  
23 is created a duplication in numbering, reads as follows:

24

1       A. Upon receipt of a rate filing requesting a rate change, the  
2 Insurance Commissioner shall, within three (3) business days, post  
3 the rate filing including all information required under Section 5  
4 of this act on the Insurance Department's website, along with the  
5 insurer's rate filing summary required under Section 5 of this act.

6       B. The Commissioner shall prominently post links on the  
7 Department's website to a webpage on which rate filings and  
8 summaries can be found. Links to rate filings and summaries shall  
9 be clearly labeled by name of the insurer, type of policy, and the  
10 filing date of the proposed rate change. If the Commissioner uses a  
11 searchable database to publicly post rate filings, the Commissioner  
12 shall post search instructions and plain-language explanatory  
13 material sufficient to make it easy to find a rate filing in the  
14 database.

15       SECTION 5.       NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section 4420.5 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18       A. Every rate filing submitted under Section 3 of this act for  
19 a proposed rate change shall include sufficient information and data  
20 to allow the Insurance Commissioner to consider the factors set  
21 forth in Section 7 of this act, any factors established under  
22 federal regulations concerning "unreasonableness" of premiums, and  
23 any other factors required by the Commissioner.

24

1 B. The information in the rate filing shall be presented in a  
2 standard format to be determined by a rule promulgated by the  
3 Commissioner, with information clearly labeled under headings.

4 C. The Commissioner shall promulgate rules to establish the  
5 specific data and information required to be included in the rate  
6 filing to allow the Commissioner to consider the factors in Section  
7 7 of this act, any factors under federal or state law, and any other  
8 information that the Commissioner determines should be submitted.  
9 The Commissioner may adopt and require use of the disclosure form  
10 used for justification of premium increases under Section 2794 of  
11 Title 42 of the United States Code (Patient Protection and  
12 Affordable Care Act), except that the Commissioner shall require  
13 additional disclosures in a standard format to the extent that the  
14 federal disclosure form does not include the information required to  
15 consider the factors in Section 7 of this act, the information  
16 required under this section, and any additional information that the  
17 Commissioner determines should be submitted.

18 D. The rules establishing the specific data and information  
19 required in the filing shall ensure that each filing includes, but  
20 is not limited to:

21 1. A Rate Filing Summary which must explain the filing in a  
22 manner that allows consumers to understand the rate change. The  
23 summary shall be in accordance with a form established by the  
24

1 Commissioner. The information contained in this summary must match  
2 the information provided elsewhere in the filing;

3 2. a. An Actuarial Memorandum which shall describe the  
4 benefit plan for each product and a description of any  
5 changes to the benefit plan. The actuarial memorandum  
6 shall report:

7 (1) an insurer's overall medical trend factor  
8 assumed, and also broken down by rate of price  
9 inflation and rate of utilization changes,

10 (2) medical trend for the two most recent twelve-  
11 month experience periods, itemized by rate of  
12 price inflation and rate of utilization changes,

13 (3) medical trend for the two most recent twelve-  
14 month experience periods, disaggregated by  
15 category of type of medical reimbursement,  
16 including hospital inpatient, hospital  
17 outpatient, physician services, prescription  
18 drugs and other ancillary services, including  
19 laboratory, and radiology; medical trend for each  
20 category should also be itemized by rate of price  
21 inflation and rate of utilization changes,

22 (4) medical trend for the two most recent twelve-  
23 month experience periods, broken down by major  
24 geographic region of the state. For purposes of

1                   this section "major geographic region" shall  
2                   correspond to any areas defined under any  
3                   geographic rating factors used, or shall be  
4                   defined by the Commissioner, and

5                   (5) an insurer requesting a rate change shall also  
6                   provide information on aggregate cost increases  
7                   for specific hospitals and for specific medical  
8                   groups within a plan network,

9                   b. The actuarial memorandum shall explain how the  
10                  proposed rate change was calculated, including a  
11                  description of all assumptions, factors, calculations,  
12                  and any other information pertinent to the proposed  
13                  rate. The insurer must clearly identify and quantify  
14                  medical trend factors and all other factors used in  
15                  developing the rates,

16                  c. The insurer must provide detailed support for each  
17                  assumption used to determine the proposed rate change.  
18                  These assumptions must each be separately discussed,  
19                  adequately supported, and also be appropriate for the  
20                  specific line of business, product design, benefit  
21                  configuration, and time period. Any and all factors  
22                  affecting the projection of future claims must be  
23                  presented and adequately supported. The trend  
24

1 assumptions shall be, if practical, separately  
2 quantified into two categories, medical and insurance:

3 Medical = provider price increases + utilization  
4 changes

5 Insurance = underwriting wear-off (duration),  
6 deductible leveraging, other factors and assumptions,

7 d. The actuarial memorandum shall include rate tables,  
8 presented as determined by the Commissioner,

9 e. The actuarial memorandum shall, for each plan subject  
10 to a proposed increase, show the average increase, as  
11 well as the maximum increase to be charged for any  
12 policyholder and the minimum increase to be charged  
13 for any policyholder, and

14 f. The actuarial memorandum shall include the signature  
15 of and date that a qualified actuary reviewed the rate  
16 filing;

17 3. A description of cost containment and quality improvement  
18 efforts in which the insurer must explain any changes the insurer  
19 has made in its health care cost containment efforts and quality  
20 improvement efforts since the insurer's last rate filing for the  
21 same category of health benefit plan, including a description of any  
22 factors that relate to the Commissioner's consideration of  
23 affordability under Section 7 of this act;

24

1 4. A disclosure of certain expenses in which the insurer shall  
2 include information sufficient to show expenses relating to:

3 a. salaries, wages, bonuses or other compensation  
4 benefits,

5 b. broker commissions,

6 c. rent or occupancy expenses,

7 d. marketing and advertising,

8 e. federal and state lobbying expenses,

9 f. all political contributions,

10 g. all dues paid to trade groups that engage in lobbying  
11 or make political contributions,

12 h. general office expenses, including but not limited to  
13 sundries, supplies, telephone, printing and postage,

14 i. third party administration expenses or fees or other  
15 group service expense or fees,

16 j. legal fees and expenses and other professional or  
17 consulting fees,

18 k. other taxes, licenses and fees,

19 l. travel expenses, and

20 m. charitable contributions.

21 When possible, the insurer should show how the expenses in this  
22 section were applied on a per member per month basis to the rates  
23 subject to the proposed rate change; and  
24

1           5. A certification of compliance in which the rate application  
2 shall be signed by the officers of the insurer who exercise the  
3 functions of a chief executive and chief financial officer. Each  
4 officer shall certify that the representations, data, and  
5 information provided to the department to support the application  
6 are true and that the filing complies with state statutes, rules,  
7 product standards and filing requirements.

8           SECTION 6.           NEW LAW           A new section of law to be codified  
9 in the Oklahoma Statutes as Section 4420.6 of Title 36, unless there  
10 is created a duplication in numbering, reads as follows:

11           A. An insurer shall send written notice of a proposed rate  
12 change to each policyholder affected by the change on or before the  
13 date the rate filing or application is submitted to the Insurance  
14 Commissioner. The notice shall:

15           1. State in size 16-point font in bold the actual dollar amount  
16 of the proposed rate change and the specific percentage by which the  
17 current premium would be increased for the policyholder;

18           2. Describe in plain, understandable terms any changes in the  
19 plan design or any changes in benefits, and highlight this  
20 information by printing in 16-point font in bold;

21           3. Prominently include mailing and website addresses and  
22 telephone numbers for the insurer through which a person may request  
23 additional information;

24

1 4. Provide information about public programs, including but not  
2 limited to Medicaid, High Risk Pools, and CHIP; and

3 5. State that the proposed rate change is subject to approval  
4 by the Commissioner, and inform policyholders of the sixty-day  
5 public comment period available under this section and provide the  
6 website address of the Insurance Department where the rate filing  
7 can be found.

8 B. The Commissioner shall make available an e-mail alert system  
9 in which members of the public may sign up on the Department's  
10 website to receive notice of a proposed rate change for a selected  
11 insurer. The Commissioner shall send such e-mail alerts within  
12 three (3) business days after receiving a rate filing proposing a  
13 rate change.

14 C. Beginning on the date that the Commissioner posts on the  
15 Department website a proposed rate change pursuant to Section 4 of  
16 this act, the Commissioner shall open a sixty-day public comment  
17 period on the rate change and rate filing. The Commissioner shall  
18 allow members of the public to comment by mail and e-mail, and the  
19 Commissioner may create a website where members of the public can  
20 publicly post comments. The Commissioner, in his or her discretion,  
21 may convene meetings around the state for consumers to comment and  
22 ask questions. The Commissioner shall prominently post on the  
23 Department's website information describing the public comment  
24

1 period that applies to proposed rate changes and informing members  
2 of the public how to submit a comment.

3 D. If a rate filing is found to be incomplete under Section 5  
4 of this act, the Commissioner shall start a new sixty-day public  
5 comment period after the Commissioner determines that the filing is  
6 complete and posts the insurer's complete filing on the Department  
7 website.

8 E. Within thirty (30) days of the close of the sixty-day public  
9 comment period required under this section, the Commissioner shall  
10 issue a written decision with findings on the considerations listed  
11 in Section 7 of this act, and any other considerations taken into  
12 account, to approve, modify, or disapprove the proposed rates. If,  
13 however, a hearing on the proposed rate change is held under Section  
14 10 of this act, the Commissioner may reasonably extend the time to  
15 issue a written decision with findings to approve, modify, or  
16 disapprove the proposed rate change to accommodate a hearing  
17 schedule. Upon issuing the decision, the Commissioner shall post his  
18 or her decision on the Department's website and provide written  
19 notice to the insurer of the decision.

20 SECTION 7. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 4420.7 of Title 36, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. When making any determination pursuant to the Oklahoma  
24 Individual Market Rate Review Act, the Insurance Commissioner shall

1 act to guard the solvency of health insurers, protect the interests  
2 of consumers of health insurance and shall encourage and direct  
3 insurers towards policies that advance the welfare of the public  
4 through overall efficiency, improved health care quality, and  
5 appropriate affordability of coverage and access.

6 B. Rates shall be:

7 1. Actuarially sound;

8 2. Reasonable, and not excessive, inadequate, or unfairly  
9 discriminatory; and

10 3. Based on reasonable administrative expenses. Rates may not be  
11 deceptive or constitute an unfair trade practice. An insurer shall  
12 have the burden to show by clear and convincing evidence that its  
13 rates comply with the terms of this subsection.

14 C. The Commissioner shall disapprove a proposed rate change if  
15 the proposed rates are:

16 1. Not actuarially sound;

17 2. Unreasonable;

18 3. Excessive;

19 4. Inadequate;

20 5. Unfairly discriminatory;

21 6. Based on unreasonable administrative expenses;

22 7. Not in the public interest; or

23 8. If the rate filing is incomplete.

24

1 D. In making the determination, the Commissioner shall consider  
2 and issue findings on the following factors:

3 1. Reasonableness and soundness of actuarial assumptions,  
4 calculations, projections, and factors used by the insurer to arrive  
5 at the proposed rate change;

6 2. The insurer's historical trends for medical claims. The  
7 Commissioner may consider, for comparison, medical trends reported  
8 by other insurers in the state, or of medical trends for the state,  
9 a region, or the country as a whole. The Commissioner shall also  
10 consider inflation indices, such as the Consumer Price Index and the  
11 medical care component of the Consumer Price Index;

12 3. Reasonableness of historical and projected administrative  
13 expenses;

14 4. Compliance with medical loss ratio standards in effect under  
15 federal or state law. The Commissioner may review and consider the  
16 insurer's medical loss ratio disclosures submitted pursuant to the  
17 federal Patient Protection and Affordable Care Act;

18 5. Whether the rate change applies to an open or closed block  
19 of business. If it applies to a closed block of business, whether  
20 the applicant has pooled the experience of the closed block of  
21 business with all appropriate blocks of business that are not closed  
22 pursuant to Section 8 of this act;

23

24

1       6. Whether the insurer has complied with all federal and state  
2 requirements for pooling risk and requirements for participation in  
3 risk adjustment programs in effect under federal and state law;

4       7. The financial condition of the insurance company for at  
5 least the past five (5) years, including but not limited to  
6 profitability, surplus, reserves, investment income, reinsurance,  
7 dividends, and transfers of funds to affiliates and/or parent  
8 companies;

9       8. Whether the proposed rate change and any contribution to  
10 surplus or profit margin included in the proposed rate change is  
11 reasonable in light of the entire company's surplus level and  
12 additional factors in the previous subsection;

13       9. The financial performance for at least the past five years,  
14 or total years in existence if less, of the block of business  
15 subject to the proposed rate change including but not limited to  
16 past and projected profits, surplus, reserves, investment income,  
17 and reinsurance applicable to the block;

18       10. The financial performance for at least the past five years  
19 of insurer's statewide individual market business, and the insurer's  
20 overall statewide business;

21       11. Any anticipated change in the number of enrollees if the  
22 proposed premium rate is approved;

23       12. Changes to covered benefits or health benefit plan design;

24

1 13. Whether the proposed change in the premium rate is  
2 necessary to maintain the insurer's solvency or to maintain rate  
3 stability and prevent excessive rate increases in the future;

4 14. The insurer's statement of purpose or mission in its  
5 corporate charter or mission statement;

6 15. The hardship on members affected by the proposed rate  
7 change;

8 16. Public comments received under Section 6 of this act  
9 pertaining to the standards set forth in this section; and

10 17. Affordability of the insurance product or products subject  
11 to the proposed rate change. To assess affordability, the  
12 Commissioner shall consider:

13 a. price comparison to other market rates for similar  
14 products including consideration of rate  
15 differentials, if any, between not-for-profit and for-  
16 profit insurers or between similar products offered  
17 inside of a health insurance exchange,

18 b. efforts of the insurer to maintain close control over  
19 its administrative costs, and changes in the insurer's  
20 health care cost containment and quality improvement  
21 efforts since the insurer's last rate filing for the  
22 same product,

23 c. implementation of strategies by the insurer to enhance  
24 the affordability of its products, including whether

1 the insurer offers products that address the  
2 underlying cost of health care by creating appropriate  
3 incentives for consumers, employers, providers and the  
4 insurer itself that promote a focus on primary care,  
5 prevention and wellness, active management procedures  
6 for the chronically ill population; use of appropriate  
7 cost-efficient settings and use of evidence-based,  
8 quality care,

9 d. whether the insurer employs provider payment  
10 strategies to enhance cost effective utilization of  
11 appropriate services,

12 e. five-year rate change history for the population  
13 affected by the proposed rate change, and

14 f. constraints on affordability efforts including:

15 (1) state and federal requirements,

16 (2) costs of medical services over which plans have  
17 limited control,

18 (3) health plan solvency requirements, and

19 (4) the prevailing financing system in the United  
20 States and the resulting decrease in consumer  
21 price sensitivity.

22 E. Nothing in this section shall preclude the Commissioner from  
23 considering any factor that, in the Commissioner's discretion, is  
24 relevant to his or her determination. The Commissioner shall have

1 authority to promulgate rules to facilitate consideration of the  
2 factors in this section. Nothing in this section shall preclude the  
3 Commissioner from requesting from an insurer information or data to  
4 support these factors or factors not on this list.

5 SECTION 8. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 4420.8 of Title 36, unless there  
7 is created a duplication in numbering, reads as follows:

8 Until such time as subsection C of Section 1312 of the Patient  
9 Protection and Affordable Care Act is fully in effect in the state,  
10 an insurer must pool the experience of a closed block of business  
11 with all appropriate blocks of business that are not closed for the  
12 purpose of determining the premium rate of any policy within the  
13 closed block, with no rate penalty or surcharge beyond that which  
14 reflects the experience of the combined pool. A closed block of  
15 business is a policy or group of policies that are no longer being  
16 marketed or sold by the insurer, or that has less than five hundred  
17 (500) in-force contracts in this state, or for which enrollment has  
18 dropped by more than twelve percent (12%) since the last rate  
19 filing.

20 SECTION 9. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 4420.9 of Title 36, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. If the Insurance Commissioner approves a rate change, the  
24 Commissioner shall provide written notice to the insurer that rates

1 have been approved. Upon receipt of a notice of approval, the  
2 insurer shall send written notice by first class mail to all  
3 policyholders affected by the rate change. The notice shall inform  
4 policyholders in size 16-point font in bold the actual dollar amount  
5 of the approved premium rate increase for the policyholder, the  
6 specific percentage by which the current premium will be increased  
7 for the policyholder, the effective date of the new rate, a  
8 description in plain, understandable terms of any changes in plan  
9 design or any changes in benefits including a reduction in benefits  
10 or changes to waivers, exclusions or conditions, and highlight this  
11 information by printing in 16-point font in bold. The notice shall  
12 also provide information about public programs, including but not  
13 limited to Medicaid, High Risk Pools, and CHIP.

14 B. No approved rate shall be effective less than sixty (60)  
15 days from a policyholder's receipt of the notice required under this  
16 section.

17 SECTION 10. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 4420.10 of Title 36, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. At any time during the sixty-day public comment period  
21 required under Section 6 of this act, the Insurance Commissioner  
22 shall issue an order scheduling a public hearing on the proposed  
23 rate change if:  
24

1           1. A consumer or his or her representative or a consumer  
2 advocacy group requests a hearing within forty-five (45) days of the  
3 opening of the public comment period. Any person requesting a  
4 hearing under this paragraph shall submit the request in writing.  
5 Upon receiving a request, the Commissioner shall decide within  
6 fifteen (15) days whether to grant the hearing, and if the  
7 Commissioner decides not to grant the hearing, the Commissioner  
8 shall issue written findings in support of that decision;

9           2. The Commissioner on his or her own motion determines to hold  
10 a hearing;

11           3. The proposed rate change is "unreasonable" under the federal  
12 Patient Protection and Affordable Care Act;

13           4. The Attorney General requests a hearing;

14           5. The Consumer Advocate responsible for reviewing rate filings  
15 under Section 11 of this act requests a hearing; or

16           6. If the rate request exceeds ten percent (10%), or the  
17 proposed rate change would result in an annual increase exceeding  
18 ten percent (10%).

19           B. The Commissioner shall promulgate rules governing hearings.  
20 Those rules shall, at a minimum, include timelines for scheduling  
21 and commencing hearings, and procedures to prevent delays in  
22 commencing or continuing hearings without good cause.

23           C. Hearings shall be conducted by a hearing examiner. The  
24 hearing examiner shall render a decision within thirty (30) days of

1 the closing of the record in the proceeding. The Commissioner shall  
2 adopt, amend or reject a decision by the hearing examiner within ten  
3 (10) days of the hearing examiner's decision. Hearings shall be  
4 conducted pursuant to Administrative Procedures Act; however,  
5 notwithstanding any provision of the Administrative Procedures Act,  
6 the hearing examiner shall take judicial notice of the public  
7 comments received during the hearing or the public comment period.  
8 This provision shall not be read to preclude any other judicial  
9 notice.

10 D. For purposes of judicial review, a decision to hold a  
11 hearing is not a final order or decision; however, a decision not to  
12 hold a hearing is final.

13 E. The Commissioner shall provide notice of the hearing not  
14 less than fourteen (14) days prior to the hearing. The notice shall  
15 be prominently published on the Insurance Department's website and  
16 in a newspaper or newspapers having aggregate general circulation  
17 throughout the state at least fourteen (14) days prior to the  
18 hearing. The notice shall contain a description of the rates  
19 proposed to be charged and a copy of the notice shall be sent to the  
20 insurer. In addition, the insurer shall provide by first class  
21 mail, at least fourteen (14) days prior to the public hearing,  
22 notice of the public hearing to all affected policyholders. The  
23 notice shall:

24

1 1. Describe the proposed rate change. The public notice shall  
2 also provide information on opportunities for the public to provide  
3 comment on the proposal to the Commissioner; and

4 2. Be published in all languages spoken by five percent (5%) or  
5 more of the policyholders, or 1,000 people in the service area,  
6 whichever is less.

7 F. All documents, public comments, and correspondence with the  
8 Department submitted as part of the hearing are public records. The  
9 Commissioner shall provide prompt and reasonable access to the  
10 records concerning the proposed rate request to the public at no  
11 charge. The records shall be considered public records and be  
12 posted on the Department's website.

13 G. The Commissioner may contract with actuaries and/or subject  
14 matter experts to assist him or her in conducting the review or  
15 hearing required pursuant to the Oklahoma Individual Market Rate  
16 Review Act. The actuary or other expert shall serve under the  
17 direction of the Commissioner. The Commissioner is exempt from the  
18 provisions of the Oklahoma Central Purchasing Act for purposes of  
19 entering into contracts pursuant to this subsection.

20 SECTION 11. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 4420.11 of Title 36, unless  
22 there is created a duplication in numbering, reads as follows:

23 There is created within the Insurance Department a position to  
24 be known as the "Consumer Advocate" who shall represent and advocate

1 on behalf of the interests of health insurance policyholders and  
2 members. The goal of the Consumer Advocate shall be to obtain the  
3 lowest possible rates for health insurance consistent with  
4 protection of insurer solvency.

5 Any rate increase request greater than ten percent (10%), or  
6 resulting in an annual increase greater than ten percent (10%),  
7 shall be reviewed by the Consumer Advocate. The Consumer Advocate  
8 may employ legal assistants, experts and actuaries necessary to  
9 carry out its function of advocating on behalf of policyholders and  
10 members. The Insurance Commissioner shall ensure that such  
11 personnel and assistance are provided at a level sufficient to  
12 ensure that policyholder and member interests are effectively  
13 represented in all proceedings provided for in the Oklahoma  
14 Individual Market Rate Review Act.

15 SECTION 12. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 4420.12 of Title 36, unless  
17 there is created a duplication in numbering, reads as follows:

18 A. The Insurance Commissioner, on timely application, shall  
19 allow any person with an interest in the outcome of a proposed rate  
20 change to intervene as a party to that proceeding. Policyholders,  
21 insured members, consumer advocates, and community representatives  
22 shall all be considered persons with an interest. Any person whose  
23 interest is determined to be affected may present evidence, examine  
24 and cross-examine witnesses, and offer oral and written arguments,

1 and in connection therewith may conduct discovery proceedings in the  
2 same manner as is allowed in the court of this state. The specific  
3 intervention provisions of the Oklahoma Individual Market Rate  
4 Review Act shall control in the event of a conflict with the  
5 requirements of general state administrative law.

6 B. This section does not limit the power of the Commissioner to  
7 consolidate parties with similar interests for the purpose of  
8 intervention.

9 C. The Commissioner or a court shall award reasonable advocacy  
10 and witness fees and expenses to any person who demonstrates that  
11 (1) the person represents the interests of consumers, and (2) that  
12 he or she has made a substantial contribution to the adoption of any  
13 order, regulation or decision by the Commissioner or a court.

14 D. A final action by the Commissioner shall be subject to  
15 judicial review by the court in the county where services are  
16 rendered at the initiation of the insurer or any person that was a  
17 party to a proceeding under the Oklahoma Individual Market Rate  
18 Review Act.

19 SECTION 13. This act shall become effective November 1, 2011.

20

21 53-1-1149 ARE 1/20/2011 9:23:10 AM

22

23

24