

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3499 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Marcus McEntire \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3499

By: McEntire

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to insurance; amending 36 O.S. 2021,  
9 Section 319, which relates to hearings pursuant to  
10 the Insurance Code; modifying citation; amending 36  
11 O.S. 2021, Section 907, which relates to the general  
12 powers of the Insurance Commissioner; modifying  
13 language to include pharmacy benefits manager;  
14 amending 36 O.S. 2021, Section 6103.2, which relates  
15 to the definition of insurer; modifying the  
16 definition of insurer to include doing of or  
17 proposing to do insurance business without a license;  
18 amending 36 O.S. 2021, Section 6960, which relates to  
19 definitions in the Patient's Right to Pharmacy Choice  
20 Act; defining terms; amending 36 O.S. 2021, Section  
21 6962, which relates to compliance and prohibitions;  
22 directing that pharmacy benefits managers conduct  
23 audit and report to Oklahoma Insurance Department;  
24 modifying prohibited practices by pharmacy benefits  
managers; amending 36 O.S. 2021, Section 6963, which  
relates to monitoring of activities carried out by,  
or on behalf of, health insurers; directing health  
insurers to conduct audit and submit report to  
Oklahoma Insurance Department; amending 36 O.S. 2021,  
Section 6966, which relates to complaints submitted  
to the Patient's Right to Pharmacy Choice Commission;  
modifying Commissioner's authority; modifying the  
Pharmacy Choice Commission's powers; modifying  
hearing procedures; amending 36 O.S. 2021, Section  
6967, which relates to confidentiality under the  
Patient's Right to Pharmacy Choice Act; modifying  
applicability of statute; and providing an effective  
date.

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

2 SECTION 1. AMENDATORY 36 O.S. 2021, Section 319, is  
3 amended to read as follows:

4 Section 319. A. In conducting any hearing pursuant to the  
5 Insurance Code, the Insurance Commissioner may appoint an  
6 independent hearing examiner who shall sit as a quasi-judicial  
7 officer. The ordinary fees and costs of such hearing examiner shall  
8 be assessed by the hearing examiner against the respondent, unless  
9 the respondent is the prevailing party. Within thirty (30) days  
10 after termination of the hearing or of any rehearing thereof or  
11 reargument thereon, unless such time is extended by stipulation, a  
12 final order shall be issued.

13 B. 1. The Patient's Right to Pharmacy Choice Commission  
14 established pursuant to Section ~~40~~ 6966 of this ~~act~~ title shall  
15 conduct any hearing pursuant to the Patient's Right to Pharmacy  
16 Choice Act or relating to the oversight of pharmacy benefits  
17 managers pursuant to the Pharmacy Audit Integrity Act and Sections  
18 357 through 360 of Title 59 of the Oklahoma Statutes. Within thirty  
19 (30) days after termination of a hearing or of any rehearing thereof  
20 or reargument thereon, unless such time is extended by stipulation,  
21 a final order shall be issued.

22 2. The Pharmacy Choice Commission members shall not be entitled  
23 to receive any compensation related to conducting a hearing pursuant  
24

1 to this section including per diem or mileage for any travel or  
2 expenses related to appointment on the Commission.

3 SECTION 2. AMENDATORY 36 O.S. 2021, Section 907, is  
4 amended to read as follows:

5 Section 907. In addition to any powers hereinbefore expressly  
6 enumerated in this law, the Insurance Commissioner shall have full  
7 power and authority to enforce by regulations, orders or otherwise  
8 all and singular, the provisions of this law, and the full intent  
9 thereof. In particular the Commissioner shall have the authority  
10 and power:

11 1. To examine all records of insurers, pharmacy benefits  
12 managers and advisory organizations and to require any insurer,  
13 agent, broker, pharmacy benefits manager, and advisory organization  
14 to furnish under oath such information as it may deem necessary for  
15 the administration of this law. The expense of such examination  
16 shall be paid by the insurer, pharmacy benefits manager, or advisory  
17 organization examined. In lieu of such examination, the  
18 Commissioner may, in the discretion of the Commissioner, accept a  
19 report of examination made by any other insurance supervisory  
20 authority;

21 2. To make and enforce such reasonable orders, rules and  
22 regulations as may be necessary in making this law effective, but  
23 such orders, rules and regulations shall not be contrary to or  
24 inconsistent with the provisions of this law; and

1           3. To issue an order, after a full hearing to all parties in  
2 interest requiring any insurer, group, association, pharmacy  
3 benefits manager, or organization of insurers and the members and  
4 subscribers thereof to cease and desist from any unfair or  
5 unreasonable practice.

6           SECTION 3.           AMENDATORY           36 O.S. 2021, Section 6103.2, is  
7 amended to read as follows:

8           Section 6103.2 A. Unless otherwise indicated, the term  
9 "insurer" as used in Sections 6103.1 through 6103.11 of this title  
10 includes all legal entities, associations, and individuals engaged  
11 as principals in the business of insurance and also includes  
12 interinsurance exchanges, mutual benefit societies and insurance  
13 exchanges and syndicates.

14           B. The venue of any act listed in this section shall be  
15 Oklahoma County.

16           C. Any one of the following acts in this state effected by mail  
17 or otherwise is defined to be doing an insurance business in this  
18 state:

19           1. The making of or proposing to make, as an insurer, an  
20 insurance contract;

21           2. The making of or proposing to make, as guarantor or surety,  
22 any contract of guaranty or suretyship as a vocation and not merely  
23 incidental to any other legitimate business or activity of the  
24 guarantor or surety;

1 3. The taking or receiving of any application for insurance;

2 4. Maintaining any agency or office where any acts in  
3 furtherance of an insurance business are transacted, including but  
4 not limited to:

5 a. the execution of contracts of insurance with citizens  
6 of this or any other state,

7 b. maintaining files or records of contracts of  
8 insurance,

9 c. the processing of claims, and

10 d. the receiving or collection of any premiums,  
11 commissions, membership fees, assessments, dues or  
12 other consideration for any insurance or any part  
13 thereof;

14 5. The issuance or delivery of contracts of insurance to  
15 residents of this state or to persons authorized to do business in  
16 this state;

17 6. Directly or indirectly acting as an agent for, or otherwise  
18 representing or aiding on behalf of another, any person or insurer  
19 in:

20 a. the solicitation, negotiation, procurement or  
21 effectuation of insurance or renewals thereof,

22 b. the dissemination of information as to coverage or  
23 rates, or forwarding of applications, or delivery of  
24 policies or contracts,

- 1 c. inspection of risks,
- 2 d. fixing of rates or investigation or adjustment of
- 3 claims or losses,
- 4 e. the transaction of matters subsequent to effectuation
- 5 of the contract and arising out of it, or
- 6 f. in any other manner representing or assisting a person
- 7 or insurer in the transaction of insurance with
- 8 respect to subjects of insurance resident, located or
- 9 to be performed in this state~~7~~.

10 Provided, the provisions of this paragraph shall not operate to  
11 prohibit full-time salaried employees of a corporate insured from  
12 acting in the capacity of an insurance manager or buyer in placing  
13 insurance in behalf of such employer;

14 7. Contracting to provide indemnification or expense  
15 reimbursement in this state to persons domiciled in this state or  
16 for risks located in this state, whether as an insurer, agent,  
17 administrator, trust, funding mechanism, or by any other method, for  
18 any type of medical expenses including, but not limited to,  
19 surgical, chiropractic, physical therapy, speech pathology,  
20 audiology, professional mental health, dental, hospital, or  
21 optometric expenses, whether this coverage is by direct payment,  
22 reimbursement, or otherwise. This provision shall not apply to:

- 23 a. any program otherwise authorized by law that is
- 24 established by any political subdivision of this state

1 or under the provisions of Sections 1001 through 1008  
2 of Title 74 of the Oklahoma Statutes, or

3 b. a multiple employer welfare arrangement as defined in  
4 Section 3 of the Employee Retirement Income Security  
5 Act of 1974, 29 U.S.C., Section 1002(40)(A), as  
6 amended, that holds a valid license issued by the  
7 Insurance Commissioner or is exempt from state  
8 regulation pursuant to subsection B of Section 634 of  
9 this title;

10 8. The doing of any kind of insurance business specifically  
11 recognized as constituting the doing of an insurance business within  
12 the meaning of the statutes relating to insurance;

13 9. The doing or proposing to do any insurance business in  
14 substance equivalent to any of the foregoing in a manner designed to  
15 evade the provisions of the statutes; ~~or~~

16 10. Any other transactions of business in this state by an  
17 insurer; or

18 11. The doing of or proposing to do insurance business without  
19 first being licensed by Oklahoma law.

20 D. The definition of a bail bond shall be the same as the  
21 definition of a bond in Section 1301 of Title 59 of the Oklahoma  
22 Statutes. The business of bail bonds shall be all aspects of acting  
23 as a bail bondsman including, but not limited to, depositing or  
24 pledging cash or real property as security for an appearance bond in



1 a criminal judicial proceeding, or executing or countersigning bail  
2 bonds for an insurer or professional bondsman in connection with an  
3 appearance bond in criminal judicial proceedings, and charging and  
4 receiving money for these services. The business of bail bonds  
5 shall also include solicitation for a bail bond, as defined in  
6 Section 1301 of Title 59 of the Oklahoma Statutes.

7 E. The provisions of this section do not apply to:

8 1. The lawful transaction of surplus lines insurance;

9 2. Life, accident and health insurance or annuities provided to  
10 educational or scientific institutions organized and operated  
11 without profit to any private shareholder or individual for the  
12 benefit of such institutions or individuals engaged in the service  
13 of such institutions;

14 3. The lawful transaction of reinsurance by insurers;

15 4. Transactions in this state involving a policy lawfully  
16 solicited, written and delivered outside of this state covering only  
17 subjects of insurance not resident, located or expressly to be  
18 performed in this state at the time of issuance, and which  
19 transactions are subsequent to the issuance of such policy; or

20 5. Any individual who is not required to have a bail bondsman  
21 license, as provided in Section 1303 of Title 59 of the Oklahoma  
22 Statutes.

23 SECTION 4. AMENDATORY 36 O.S. 2021, Section 6960, is  
24 amended to read as follows:

1 Section 6960. For purposes of the Patient's Right to Pharmacy  
2 Choice Act:

3 1. "Health insurer" means any corporation, association, benefit  
4 society, exchange, partnership or individual licensed by the  
5 Oklahoma Insurance Code;

6 2. "Mail-order pharmacy" means a pharmacy licensed by this  
7 state that primarily dispenses and delivers covered drugs via common  
8 carrier;

9 3. "Pharmacy benefits manager" or "PBM" means a person that  
10 performs pharmacy benefits management and any other person acting  
11 for such person under a contractual or employment relationship in  
12 the performance of pharmacy benefits management for a managed-care  
13 company, nonprofit hospital, medical service organization, insurance  
14 company, third-party payor or a health program administered by a  
15 department of this state;

16 4. "Pharmacy and therapeutics committee" or "P&T committee"  
17 means a committee at a hospital or a health insurance plan that  
18 decides which drugs will appear on that entity's drug formulary;

19 5. "Provider" means a provider as defined in Section 357 of  
20 Title 59 of the Oklahoma Statutes;

21 6. "Retail pharmacy" or "pharmacy" means a pharmacy, as defined  
22 in Section 353.1 of Title 59 of the Oklahoma Statutes;

23  
24

1        7. "Retail pharmacy network" means retail pharmacy providers  
2 contracted with a PBM in which the pharmacy primarily fills and  
3 sells prescriptions via a retail, storefront location;

4        ~~6.~~ 8. "Rural service area" means a five-digit ZIP code in which  
5 the population density is less than one thousand (1,000) individuals  
6 per square mile;

7        ~~7.~~ 9. "Spread pricing" means a prescription drug pricing model  
8 utilized by a pharmacy benefits manager in which the PBM charges a  
9 health benefit plan a contracted price for prescription drugs that  
10 differs from the amount the PBM directly or indirectly pays the  
11 pharmacy or pharmacist for providing pharmacy services; and

12        10. "Suburban service area" means a five-digit ZIP code in  
13 which the population density is between one thousand (1,000) and  
14 three thousand (3,000) individuals per square mile; and

15        ~~8.~~ 11. "Urban service area" means a five-digit ZIP code in  
16 which the population density is greater than three thousand (3,000)  
17 individuals per square mile.

18        SECTION 5.        AMENDATORY        36 O.S. 2021, Section 6962, is  
19 amended to read as follows:

20        Section 6962. A. The Oklahoma Insurance Department shall  
21 review ~~and approve~~ retail pharmacy network access for all pharmacy  
22 benefits managers (PBMs) to ensure compliance with Section 4 of this  
23 act.

1        1. Every PBM that does business in this state shall conduct a  
2 semiannual network adequacy audit to ensure compliance with Section  
3 6961 of this act.

4        2. The results of each audit shall be submitted to the Oklahoma  
5 Insurance Department on a semiannual basis.

6        3. Every PBM that does business in this state shall report to  
7 the Oklahoma Insurance Department any significant change, including  
8 but not limited to mergers, acquisitions, and ceasing to do business  
9 in Oklahoma within thirty (30) days of the change.

10        B. A PBM, or an agent of a PBM, shall not:

11        1. Cause or knowingly permit the use of advertisement,  
12 promotion, solicitation, representation, proposal or offer that is  
13 untrue, deceptive or misleading;

14        2. Charge a pharmacist or pharmacy a fee related to the  
15 adjudication of or submission of a claim, ~~including without~~  
16 ~~limitation a fee for:~~

17            a. ~~the submission of a claim,~~

18            b.

19        3. Charge a pharmacist or pharmacy a fee related to the  
20 credentialing of a pharmacy or pharmacist;

21        4. Charge a pharmacist or pharmacy a fee related to the  
22 application, enrollment or participation in a retail pharmacy  
23 network, ~~or~~;

24            e.

1        5. Charge a pharmacist or pharmacy a fee related to the  
2 development or management of claims processing services or claims  
3 payment services related to participation in a retail pharmacy  
4 network;

5        ~~3.~~ 6. Reimburse a pharmacy or pharmacist in the state an amount  
6 less than the amount that the PBM reimburses a pharmacy owned by or  
7 under common ownership with a PBM for providing the same covered  
8 services. The reimbursement amount paid to the pharmacy shall be  
9 equal to the reimbursement amount calculated on a per-unit basis  
10 using the same generic product identifier or generic code number  
11 paid to the PBM-owned or PBM-affiliated pharmacy;

12        ~~4.~~ 7. Deny a pharmacy the opportunity to participate in any  
13 pharmacy network at preferred participation status if the pharmacy  
14 is willing to accept the terms and conditions that the PBM has  
15 established for other pharmacies as a condition of preferred network  
16 participation status;

17        ~~5.~~ 8. Deny, limit or terminate a pharmacy's contract based on  
18 employment status of any employee who has an active license to  
19 dispense, despite probation status, with the State Board of  
20 Pharmacy;

21        ~~6.~~ 9. Retroactively deny or reduce reimbursement for a covered  
22 service claim after returning a paid claim response as part of the  
23 adjudication of the claim, unless:

24            a. the original claim was submitted fraudulently, or

1           b. to correct errors identified in an audit, so long as  
2           the audit was conducted in compliance with ~~Sections~~  
3           ~~356.2 and 356.3 of Title 59 of the Oklahoma Statutes;~~  
4           or

5       ~~7.~~ 10. Fail to make any payment due to a pharmacy or pharmacist  
6 for covered services properly rendered in the event a PBM terminates  
7 a pharmacy or pharmacist from a pharmacy benefits manager network.

8       C. The requirements and prohibitions under this section shall  
9 apply to contracts between pharmacy benefits managers and  
10 pharmacists or pharmacies for participation in retail pharmacy  
11 networks.

12       1. A PBM contract shall:

13           a. not restrict, directly or indirectly, any pharmacy  
14           that dispenses a prescription drug from informing, or  
15           penalize such pharmacy for informing, an individual of  
16           any differential between the individual's out-of-  
17           pocket cost or coverage with respect to acquisition of  
18           the drug and the amount an individual would pay to  
19           purchase the drug directly, ~~and~~

20           b. ensure that any entity that provides pharmacy benefits  
21           management services under a contract with any such  
22           health plan or health insurance coverage does not,  
23           with respect to such plan or coverage, restrict,  
24           directly or indirectly, a pharmacy that dispenses a

1 prescription drug from informing, or penalize such  
2 pharmacy for informing, a covered individual of any  
3 differential between the individual's out-of-pocket  
4 cost under the plan or coverage with respect to  
5 acquisition of the drug and the amount an individual  
6 would pay for acquisition of the drug without using  
7 any health plan or health insurance coverage,

8 c. not restrict, directly or indirectly, any pharmacy  
9 that dispenses a prescription drug from offering or  
10 providing home delivery/mail order services to a  
11 covered individual with respect to acquisition of the  
12 drug, or penalize such pharmacy for offering or  
13 providing home delivery/mail order services to a  
14 covered individual with respect to acquisition of the  
15 drug, and

16 d. ensure that any entity that provides pharmacy benefits  
17 management services under a contract with any such  
18 health plan or health insurance coverage does not,  
19 with respect to such plan or coverage, restrict,  
20 directly or indirectly, a pharmacy that dispenses a  
21 prescription drug from offering or providing home  
22 delivery/mail order services to a covered individual  
23 with respect to acquisition of the drug, or penalize  
24 such pharmacy for offering or providing home

1           delivery/mail order services to a covered individual  
2           with respect to acquisition of the drug.

3           2. A pharmacy benefits manager's contract with a participating  
4 pharmacist or pharmacy shall not prohibit, restrict or limit  
5 disclosure of information to the Insurance Commissioner, law  
6 enforcement or state and federal governmental officials  
7 investigating or examining a complaint or conducting a review of a  
8 pharmacy benefits manager's compliance with the requirements under  
9 the Patient's Right to Pharmacy Choice Act.

10           3. A pharmacy benefits manager shall establish and maintain an  
11 electronic claim inquiry processing system using the National  
12 Council for Prescription Drug Programs' current standards to  
13 communicate information to pharmacies submitting claim inquiries.

14           4. A pharmacy benefits manager shall provide proposed terms and  
15 conditions to applicant pharmacy within thirty (30) days of receipt  
16 of application and shall add applicant pharmacy to the PBM's  
17 pharmacy network within fourteen (14) days of receipt of signed  
18 contract from applicant pharmacy. If applicant pharmacy is added to  
19 the PBM's pharmacy network, the PBM shall, in accordance with the  
20 terms and conditions of the signed contract, retroactively reimburse  
21 pharmacy for any and all claims made by pharmacy to the PBM between  
22 the date of pharmacy's application for inclusion in the PBM's  
23 network of pharmacies and the date of pharmacy's addition to the PBM  
24 network.



1        5. Once a contract has been entered into, the PBM shall have  
2 fourteen (14) days to file a copy of said contract with the Oklahoma  
3 Insurance Department.

4        SECTION 6.        AMENDATORY        36 O.S. 2021, Section 6963, is  
5 amended to read as follows:

6        Section 6963. A. A health insurer shall be responsible for  
7 monitoring all activities carried out by, or on behalf of, the  
8 health insurer under the Patient's Right to Pharmacy Choice Act, and  
9 for ensuring that all requirements of this act are met.

10        1. Every health insurer that does business in this state shall  
11 conduct a semiannual network adequacy audit to ensure compliance  
12 with Section 6961 of this act.

13        2. The results of each audit shall be submitted to the Oklahoma  
14 Insurance Department on a semiannual basis.

15        B. Whenever a health insurer contracts with another person to  
16 perform activities required under this act, the health insurer shall  
17 be responsible for monitoring the activities of that person with  
18 whom the health insurer contracts and for ensuring that the  
19 requirements of this act are met.

20        C. An individual may be notified at the point of sale when the  
21 cash price for the purchase of a prescription drug is less than the  
22 individual's copayment or coinsurance price for the purchase of the  
23 same prescription drug.

1 D. A health insurer or pharmacy benefits manager (PBM) shall  
2 not restrict an individual's choice of in-network provider for  
3 prescription drugs.

4 E. An individual's choice of in-network provider ~~may~~ shall  
5 include ~~a retail pharmacy or a~~ any mail-order pharmacy and any  
6 pharmacy as defined in Section 353.1 of Title 59 of the Oklahoma  
7 Statutes. A health insurer or PBM shall not restrict such choice.  
8 Such health insurer or PBM shall not require or incentivize using  
9 any discounts in cost-sharing or a reduction in copay or the number  
10 of copays to individuals to receive prescription drugs from an  
11 individual's choice of in-network pharmacy.

12 F. A health insurer, pharmacy or PBM shall adhere to all  
13 Oklahoma laws, statutes and rules when mailing, shipping and/or  
14 causing to be mailed or shipped prescription drugs into the State of  
15 Oklahoma.

16 SECTION 7. AMENDATORY 36 O.S. 2021, Section 6966, is  
17 amended to read as follows:

18 Section 6966. A. There is hereby created the Patient's Right  
19 to Pharmacy Choice Commission.

20 B. The Insurance Commissioner shall provide for the receiving  
21 and processing of individual complaints alleging violations of the  
22 provisions of the Patient's Right to Pharmacy Choice Act, the  
23 Pharmacy Audit Integrity Act and Sections 357 through 360 of Title  
24 59 of the Oklahoma Statutes.

1 C. The Commissioner shall have the power and authority to  
2 review complaints, subpoena witnesses and records, initiate  
3 prosecution, ~~reprimand, require restitution,~~ administer oaths and  
4 examine under oath any person as to any matter pertinent to the  
5 examination, approve and sign settlement agreements, and issue  
6 orders to place on probation, suspend, revoke, or refuse to renew a  
7 license issued pursuant to the Oklahoma Pharmacy Act, reprimand,  
8 require restitution and/or levy fines not to exceed Ten Thousand  
9 Dollars (\$10,000.00) for each count for which any pharmacy benefits  
10 manager (PBM) has violated a provision of the Patient's Right to  
11 Pharmacy Choice Act, the Pharmacy Audit Integrity ~~Audit~~ Act and  
12 Sections 357 through 360 of Title 59 of the Oklahoma Statutes. Upon  
13 the failure or refusal of any person to obey a subpoena, the  
14 Commissioner may petition a court of competent jurisdiction and,  
15 upon proper showing, the court may enter any order compelling the  
16 witness to appear and testify or produce documentary evidence.  
17 Failure to obey the court order shall be punishable as contempt of  
18 court. Any order issued by the Commissioner pursuant to provisions  
19 of this section shall become a final order unless, no later than  
20 thirty (30) days after the order is served, the person or persons  
21 named therein request a hearing. Any ~~violation that cannot be~~  
22 ~~settled~~ hearing pertaining to an order against a PBM issued by the  
23 Insurance Commissioner, or a cease and desist order against a PBM  
24

1 shall ~~go to a hearing before~~ be heard by the Pharmacy Choice  
2 Commission.

3 The Pharmacy Choice Commission shall have the power to issue  
4 subpoenas, to administer oaths, and to examine under oath any person  
5 as to any matter pertinent to the examination, hold hearings ~~and~~  
6 ~~may,~~ reprimand, require restitution, place on probation, suspend, or  
7 revoke a license issued pursuant to the Oklahoma Pharmacy Act,  
8 and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00)  
9 for each count that a PBM has violated a provision of the Patient's  
10 Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity  
11 Act or Sections 357 through 360 of Title 59 of the Oklahoma  
12 Statutes. The Insurance Commissioner or the Pharmacy Choice  
13 Commission may impose as part of any disciplinary action restitution  
14 to the provider or patient and the payment of costs expended by the  
15 Pharmacy Choice Commission or Insurance Department for any legal  
16 fees and costs including, but not limited to, staff time, salary and  
17 travel expense, witness fees and attorney fees. The Insurance  
18 Commissioner or the Pharmacy Choice Commission may review violations  
19 singularly or in combination, as the nature of the violation  
20 requires. Penalties, fees, and costs may be enforced in the same  
21 manner in which civil judgments may be enforced.

22 D. The Pharmacy Choice Commission shall consist of seven (7)  
23 persons who shall serve as hearing examiners and shall be appointed  
24 as follows:

1           1. Two persons who are members in good standing of the Oklahoma  
2 Pharmacists Association, who shall be appointed by the Oklahoma  
3 Board of Pharmacy; a list of eligible appointees shall be sent  
4 annually to the Oklahoma Board of Pharmacy by the Oklahoma  
5 Pharmacists Association;

6           2. Two consumer members not employed by or professionally  
7 related to the insurance, pharmacy or PBM industry appointed by the  
8 Office of the Governor;

9           3. Two persons representing the PBM or insurance industry  
10 appointed by the Insurance Commissioner; and

11           4. One person representing the Office of the Attorney General  
12 appointed by the Attorney General.

13           E. Pharmacy Choice Commission members first appointed shall  
14 serve the initial term staggered as follows: the two members  
15 appointed by the Office of the Governor shall serve for one (1)  
16 year, the two members appointed by the Insurance Commissioner shall  
17 serve for two (2) years, the two members appointed by the Oklahoma  
18 Pharmacists Association shall serve for two (2) years and the one  
19 member appointed by the Attorney General shall serve for three (3)  
20 years. Subsequent terms shall be for five (5) years. The terms of  
21 the members shall expire on the thirtieth day of June of the year  
22 designated for the expiration of the term for which appointed, but  
23 the member shall serve until a qualified successor has been duly  
24 appointed. Except for the initial term to establish the Pharmacy

1 Choice Commission, no person shall be appointed to serve more than  
2 two consecutive terms. The Commission shall annually elect a chair  
3 and vice-chair from among its members. There shall be no limit on  
4 the number of times a member may serve as chair or vice-chair. A  
5 quorum shall consist of no less than five members and shall be  
6 required for the Commission to hold a hearing.

7 F. Hearings shall be held in the Insurance Commissioner's  
8 offices or at such other place as the Insurance Commissioner may 16-  
9 deem convenient.

10 G. ~~The~~ Upon request for a hearing in accordance with subsection  
11 C of this section, the Insurance Commissioner shall issue ~~and serve~~  
12 ~~upon the PBM a statement of the charges and~~ a notice of hearing in  
13 accordance with the Administrative Procedures Act, Sections 250  
14 through 323 of Title 75 of the Oklahoma Statutes. A hearing shall  
15 be set within thirty (30) days and notice of that hearing date shall  
16 be provided to the complainant within a reasonable time period.

17 H. At the time and place fixed for a hearing, the PBM shall  
18 have an opportunity to be heard and to show cause why the Pharmacy  
19 Choice Commission should not place on probation, revoke or suspend  
20 the PBM's license, reprimand, require restitution, and/or levy  
21 administrative fines for each violation. Upon good cause shown, the  
22 Commission shall permit any complainant or a duly authorized  
23 representative of the complainant to intervene, appear and be heard  
24 at the hearing by counsel or in person.

1 I. All hearings will be public and held in accordance with, and  
2 governed by, Sections 250 through 323 of Title 75 of the Oklahoma  
3 Statutes.

4 J. The Insurance Commissioner, upon written request reasonably  
5 made by the complainant or the licensed PBM affected by the hearing  
6 and at such expense of the requesting party, shall cause a full  
7 stenographic record of the proceedings to be made by a competent  
8 court reporter.

9 K. If the Insurance Commissioner or Pharmacy Choice Commission  
10 determines that a PBM has engaged in violations of the Patient's  
11 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or  
12 Sections 357 through 360 of Title 59 of the Oklahoma Statutes with  
13 such frequency as to indicate a general business practice and that  
14 such PBM should be subjected to closer supervision with respect to  
15 such practices, the Insurance Commissioner or the Pharmacy Choice  
16 Commission may require the PBM to file a report at such periodic  
17 intervals as the Insurance Commissioner or the Pharmacy Choice  
18 Commission deems necessary.

19 SECTION 8. AMENDATORY 36 O.S. 2021, Section 6967, is  
20 amended to read as follows:

21 Section 6967. A. Documents, evidence, materials, records,  
22 reports, complaints or other information in the possession or  
23 control of the Insurance Department ~~or the Right to Pharmacy Choice~~  
24 ~~Commission~~ that are obtained by, created by or disclosed to the

1 Insurance Commissioner, ~~Pharmacy Choice Commission~~ Oklahoma  
2 Insurance Department, or any other person in the course of an  
3 evaluation, examination, investigation or review made pursuant to  
4 the provisions of the Patient's Right to Pharmacy Choice Act, the  
5 Pharmacy ~~Integrity~~ Audit Integrity Act or Sections 357 through 360  
6 of Title 59 of the Oklahoma Statutes shall be confidential by law  
7 and privileged, shall not be subject to open records request, shall  
8 not be subject to subpoena and shall not be subject to discovery or  
9 admissible in evidence in any private civil action if obtained from  
10 the Insurance Commissioner, ~~the Pharmacy Choice Commission~~ or any  
11 employees or representatives of the Insurance Commissioner.

12 B. Nothing in this section shall prevent the disclosure of a  
13 final order issued against a pharmacy benefits manager by the  
14 Insurance Commissioner or Pharmacy Choice Commission. Such orders  
15 shall be open records.

16 C. In the course of any hearing made pursuant to the provisions  
17 of the Patient's Right to Pharmacy Choice Act, the Pharmacy  
18 ~~Integrity~~ Audit Integrity Act or Sections 357 through 360 of Title  
19 59 of the Oklahoma Statutes, nothing in this section shall be  
20 construed to prevent the Insurance Commissioner or any employees or  
21 representatives of the Insurance Commissioner from presenting  
22 admissible documents, evidence, materials, records, reports or  
23 complaints to the adjudicating authority.

24



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

SECTION 9. This act shall become effective November 1, 2022.

58-2-10373 MJ 02/10/22