

1 **SENATE FLOOR VERSION**

2 February 13, 2017

3 SENATE BILL NO. 431

By: Brown

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6 An Act relating to insurance; amending 36 O.S. 2011,
7 Sections 305, 309.4, as last amended by Section 1,
8 Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section
9 309.4), 1622, 1624, 4101.1, as amended by Section 6,
10 Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section
11 4101.1), 6903.1, and 6937, which relate to
12 Commissioner appointing assistants, disclosure,
13 mortgages on real estate, acquiring or holding real
14 property, extension of policies to insure dependents,
15 exemption of certain health maintenance organizations
16 from certain provisions; and short title; modifying
17 earnings of certain employees; giving certain
18 documents confidential privilege; prohibiting more
19 than a certain percentage of a company's assets from
20 being invested in certain mortgage loans, money
21 mortgages, and real property; updating references;
22 eliminating exemption of certain domestic health
23 maintenance organizations from certain provisions of
24 act; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 305, is
amended to read as follows:

Section 305. A. The Insurance Commissioner may appoint such
deputies, assistants, examiners, actuaries, attorneys, clerks and
employees, at ~~salaries~~ compensation to be fixed by the Insurance
Commissioner, as may be necessary properly to discharge the duties

1 imposed upon the Insurance Commissioner under this Code. The
2 Insurance Commissioner shall appoint all examiners for his office.
3 The attorneys appointed by the Insurance Commissioner shall be the
4 legal advisors for the office of Insurance Commissioner and are
5 authorized to appear for and represent the Insurance Commissioner in
6 any and all litigation that may arise in the discharge of his duties
7 except as otherwise provided elsewhere in this Code. Provided, the
8 Insurance Commissioner, whenever he deems it necessary, may call
9 upon the Attorney General of the State of Oklahoma for legal
10 counsel, and such assistance as may be required to enforce
11 provisions of this Code.

12 B. No deputy, assistant or employee of the Commissioner shall
13 be financially interested, directly or indirectly, in any insurer,
14 agency or insurance transaction except as a policyholder or claimant
15 under a policy; except, that as to such matters wherein a conflict
16 of interests does not exist on the part of any such individual, the
17 Commissioner may employ from time to time insurance actuaries or
18 other technicians who are independently practicing their professions
19 even though similarly employed by insurers and others. This section
20 shall not be deemed to prohibit employment by the Commissioner of
21 retired or pensioned personnel of insurers or insurance
22 organizations.

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1 SECTION 2. AMENDATORY 36 O.S. 2011, Section 309.4, as
2 last amended by Section 1, Chapter 73, O.S.L. 2016 (36 O.S. Supp.
3 2016, Section 309.4), is amended to read as follows:

4 Section 309.4. A. All examination reports shall be comprised
5 of only facts appearing upon the books, records, or other documents
6 of the company, its agents or other persons examined, or as
7 ascertained from the testimony of its officers or agents or other
8 persons examined concerning its affairs, and such conclusions and
9 recommendations as the examiners find reasonably warranted from such
10 facts.

11 B. No later than thirty (30) days following completion of the
12 examination, the examiner in charge shall file with the Insurance
13 Department a verified written report of examination under oath.
14 Upon receipt of the verified report, the Department shall transmit
15 the report to the company examined, together with a notice which
16 shall afford such company examined a reasonable opportunity of not
17 more than twenty (20) days to make a written submission or written
18 rebuttal with respect to any matters contained in the examination
19 report.

20 C. Within twenty (20) days of the end of the period allowed for
21 the receipt of written submissions or written rebuttals, the
22 Insurance Commissioner shall fully consider and review the report,
23 together with any written submissions or written rebuttals and any
24 relevant portions of the examiners' work papers and enter an order:

1 1. Adopting the examination report as filed or with
2 modification or corrections. If the examination report reveals that
3 the company is operating in violation of any law, regulation or
4 prior order of the Commissioner, the Commissioner may order the
5 company to take any action the Commissioner considers necessary and
6 appropriate to cure such violation;

7 2. Rejecting the examination report with directions to the
8 examiners to reopen the examination for purposes of obtaining
9 additional data, documentation or information, and refiling pursuant
10 to subsection A of this section; or

11 3. Calling for an investigatory hearing with notice pursuant to
12 the Administrative Procedures Act to the company for purposes of
13 obtaining additional documentation, data, information and testimony.

14 D. 1. All orders entered pursuant to paragraph 1 of subsection
15 C of this section shall be accompanied by findings and conclusions
16 resulting from the Commissioner's consideration and review of the
17 examination report, relevant examiner work papers and any written
18 submissions or rebuttals. Any such order shall be considered a
19 final administrative decision and may be appealed pursuant to the
20 Administrative Procedures Act, and shall be served upon the company
21 by certified mail, together with a copy of the adopted examination
22 report. Within thirty (30) days of the issuance of the adopted
23 report, the company shall file affidavits executed by each of its
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1 directors stating under oath that they have received a copy of the
2 adopted report and related orders.

3 2. Any hearing conducted pursuant to paragraph 3 of subsection
4 C of this section by the Commissioner or authorized representative
5 shall be conducted as a nonadversarial confidential investigatory
6 proceeding as necessary for the resolution of any inconsistencies,
7 discrepancies or disputed issues apparent upon the face of the filed
8 examination report or raised by or as a result of the Commissioner's
9 review of relevant work papers or by the written submission or
10 rebuttal of the company. Within thirty (30) days of the conclusion
11 of any such hearing, the Commissioner shall enter an order pursuant
12 to paragraph 1 of subsection C of this section.

13 3. The Commissioner shall not appoint an examiner as an
14 authorized representative to conduct the hearing. The Commissioner
15 or a representative of the Commissioner may issue subpoenas for the
16 attendance of any witnesses or the production of any documents
17 deemed relevant to the investigation whether under the control of
18 the Department, the company or other persons. The documents
19 produced shall be included in the record, and testimony taken by the
20 Commissioner or representative of the Commissioner shall be under
21 oath and preserved for the record.

22 4. Nothing contained in this section shall require the
23 Department to disclose any information or records which would
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1 indicate or show the existence or content of any investigation or
2 activity of a criminal justice agency.

3 5. The hearing shall proceed with the Commissioner or a
4 representative of the Commissioner posing questions to the persons
5 subpoenaed. Thereafter the company and the Department may present
6 testimony relevant to the investigation. The company and the
7 Department shall be permitted to make closing statements and may be
8 represented by counsel of their choice.

9 E. 1. Upon the adoption of the examination report under
10 paragraph 1 of subsection C of this section, the Commissioner shall
11 continue to hold the content of the examination report as private
12 and confidential information for a period of two (2) days except to
13 the extent provided in subsection B of this section and subsection F
14 of Section 309.3 of this title. Thereafter, the Commissioner may
15 open the report for public inspection so long as no court of
16 competent jurisdiction has stayed its publication.

17 2. Nothing contained in Sections 309.1 through 309.7 of this
18 title shall prevent or be construed as prohibiting the Commissioner
19 from disclosing the content of an examination report, preliminary
20 examination report or results, or any matter relating thereto, to
21 the insurance department of this or any other state or country, or
22 to law enforcement officials of this or any other state or agency of
23 the federal government at any time, so long as such agency or office
24 receiving the report or matters relating thereto agrees in writing

1 to hold it confidential and in a manner consistent with Sections
2 309.1 through 309.7 of this title.

3 3. In the event the Commissioner determines that regulatory
4 action is appropriate as a result of any examination, the
5 Commissioner may initiate any proceedings or actions as provided by
6 law.

7 4. No waiver of any applicable privilege or claim of
8 confidentiality in the documents, materials or information provided
9 to the Commissioner shall occur as a result of disclosure to the
10 Commissioner under this section or as a result of sharing as
11 authorized in subparagraph 2 of this paragraph.

12 F. All working papers, recorded information, documents, data
13 calls, Market Conduct Annual Statements and copies thereof produced
14 by, obtained by or disclosed to the Commissioner or any other person
15 in the course of an examination made under Sections 309.1 through
16 309.7 of this title, or in the course of analysis by the
17 Commissioner or any other person of the financial condition or
18 market conduct of a company, shall be given confidential treatment
19 and are not subject to subpoena and may not be made public by the
20 Commissioner or any other person, except to the extent provided in
21 subsection E of this section and subsection F of Section 309.3 of
22 this title. Access may also be granted to the National Association
23 of Insurance Commissioners. Such parties shall agree in writing
24 prior to receiving the information to provide to it the same

1 confidential treatment as required by this section, unless the prior
2 written consent of the company to which it pertains has been
3 obtained.

4 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1622, is
5 amended to read as follows:

6 Section 1622. A. An insurer may invest any of its funds in
7 bonds, notes or other evidences of indebtedness which are secured by
8 first mortgages or deeds of trust upon improved, unencumbered real
9 property located in the United States, or which are secured by first
10 mortgages or deeds of trust upon leasehold estates having an expired
11 term of not less than twenty-one (21) years, inclusive of the term
12 which may be provided by an enforceable option of renewal, in
13 improved, unencumbered real property located in the United States.

14 B. Real property shall not be deemed to be encumbered within
15 the meaning of this section by reason of the existence of
16 instruments reserving mineral, oil or timber rights, rights-of-way,
17 sewer rights, rights in walls, nor by reason of any liens for taxes
18 or assessments not delinquent, nor by reason of building
19 restrictions or other restrictive covenants, nor when such real
20 property is subject to lease under which rents or profits are
21 reserved to the owner, if in any event the security for such loan
22 is a first lien upon such real property and if there is no
23 condition or right of reentry or forfeiture under which, in the
24 case of real property other than leaseholds, such lien can be cut

1 off, subordinated, or otherwise disturbed or under which, in the
2 case of leaseholds, the insurer is unable to continue the lease in
3 force for the duration of the loan.

4 C. No such mortgage loan or loans made or acquired by an
5 insurer on any one property shall, at the time of investment by the
6 insurer, exceed eighty percent (80%) of the value, or if the loan
7 is for purchase money, the lesser of eighty percent (80%) of the
8 value or purchase price of the real property or leasehold securing
9 the same, except that such loan or loans may equal the amount of
10 any guaranty by the United States of America or by any agency or
11 instrumentality of the United States of America or by any private
12 insurance company licensed as an authorized insurer by the
13 Insurance Department of the State of Oklahoma to write mortgage
14 insurance. Additionally, no single mortgage loan to any individual
15 shall exceed four percent (4%) of the company's admitted assets,
16 with no more than twenty-five percent (25%) of the company's
17 admitted assets invested in total aggregate amount in mortgage
18 loans. The calculation of admitted assets is based on the
19 insurer's annual statement as of December 31 last preceding the
20 date of investment, or as shown by a current financial statement on
21 file with the Commissioner.

22 Mortgage loans made or acquired by an insurer prior to December
23 31, 1992, shall be in compliance with the limitation provided in
24 this subsection for total aggregate investment of admitted assets

1 in mortgage loans by December 31, 1997. Mortgage loans made or
2 acquired by an insurer on or after December 31, 1992, but prior to
3 September 1, 1993, shall be in compliance with the limitations for
4 investment of admitted assets in single mortgage loans to
5 individuals and total aggregate investments of admitted assets in
6 mortgage loans provided in this subsection by December 31, 1997.
7 Insurers shall maintain accurate and adequate records reflecting
8 the provisions of this section and submit such records with
9 quarterly and annual statements.

10 D. No such mortgage loan or loans shall be made or acquired by
11 an insurer except after an appraisal made by a qualified appraiser
12 for the purpose of such investment. No change or modification
13 shall be made to such appraisal by any mortgage underwriter unless
14 such person is licensed or certified as an appraiser pursuant to
15 the Oklahoma Certified Real Estate Appraisers Act or unless such
16 person has been provided by the person who made the appraisal
17 written consent to make the modification. Such modification shall
18 be disclosed to the seller and buyer and/or the seller's agent.

19 E. No such mortgage loan or loans made or acquired by an
20 insurer after July 1, 2006, shall be made or acquired by an insurer
21 unless the mortgages or mortgage loans are upon improved,
22 unencumbered real property permitted as an investment pursuant to
23 Section 1624 of this title.
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1 F. No mortgage loan upon a leasehold shall be made or acquired
2 pursuant to this section unless the terms thereof shall provide for
3 amortization payments to be made by the borrower on the principal
4 thereof at least once in each year in amounts sufficient completely
5 to amortize the loan within a period of four-fifths (4/5) of the
6 term of the leasehold, inclusive of the term which may be provided
7 by an enforceable option of renewal, which is unexpired at the time
8 the loan is made, but in no event exceeding thirty-five (35) years.

9 G. Subject to specific limitations otherwise applicable, no
10 more than an aggregate of thirty-five percent (35%) of the
11 company's admitted assets may be invested in mortgage loans
12 pursuant to this section, purchase money mortgages pursuant to
13 Section 1623 of this title, and real property pursuant to Section
14 1624 of this title.

15 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1624, is
16 amended to read as follows:

17 Section 1624. No insurance company, foreign, alien or domestic,
18 doing business in Oklahoma, may acquire or hold real property
19 therein, except as follows:

20 1. Such as shall be requisite for the convenient accommodation
21 of the transaction of its own business; the amount invested in such
22 real property shall not exceed ten percent (10%) of the investing
23 company's admitted assets but the Insurance Commissioner may grant
24 permission to the company to invest in real property for such

1 purpose in such increased amount as he may deem proper on the
2 showing made, if upon a hearing held before him he shall find that
3 the amount represented by such percentage of its admitted assets is
4 insufficient to provide convenient accommodation for the company's
5 business; ~~real.~~ Real estate maintained for the convenient
6 accommodation of the transaction of its own business, permitted to
7 be carried as an admitted asset of the company pursuant to this
8 section shall be carried at an amount equal to its cost at the time
9 of acquisition together with the actual cost of improvements made
10 thereon, less encumbrances and less depreciation; provided, however,
11 any real estate carried at fair market value as an admitted asset of
12 the company on the effective date of this act shall be excluded from
13 this provision;

14 2. Such as shall have been mortgaged to it in good faith by way
15 of security for loans previously contracted for moneys due;

16 3. Such as shall have been conveyed to it in satisfaction of
17 debts previously contracted in course of its dealings;

18 4. Such as shall have been purchased at sales on judgments,
19 decrees, or mortgages obtained or made for such debts;

20 5. Such real property as shall have been acquired in whole or
21 in part, in exchange for real property of approximately the same
22 value theretofore legally acquired and held by it;

23 6. Real property and improvements thereon located in
24 incorporated cities and towns and as additions thereto or real

1 property and improvements wherever located acquired for sale or
2 lease ~~to any other corporation~~, if such ~~latter corporation~~ lessee or
3 purchaser could have legally acquired the same in the first
4 instance, and may make improvements thereon for commercial and
5 industrial purposes as an investment for the production of income.
6 The phrase "commercial and industrial purposes" shall not include
7 real property primarily intended for use or valued as agricultural,
8 horticultural, farm, and ranch, unless adjacent to other real
9 property the ownership of which is permitted under this section and
10 was acquired prior to July 1, 2006. The total amount invested in
11 such real property and improvements thereon shall not exceed the
12 company's capital and/or surplus, or ten percent (10%) of its
13 admitted assets whichever is the lesser; provided, however, the
14 amount invested in any one investment shall not exceed four percent
15 (4%) of the company's admitted assets. The admitted assets shall be
16 determined by the company's last annual report made as of December
17 31, immediately preceding and which has been filed with the
18 Insurance Commissioner as required by law, or as shown by a current
19 financial statement on file with the Commissioner; and

20 7. Real property acquired and held under Section 1612.1 of this
21 title.

22 8. Subject to specific limitations otherwise applicable, no more
23 than an aggregate of thirty-five percent (35%) of the company's
24 admitted assets may be invested in real property pursuant to this

1 section, purchase money mortgages pursuant to Section 1623 of this
2 title, and mortgage loans pursuant to Section 1622 of this title.

3 SECTION 5. AMENDATORY 36 O.S. 2011, Section 4101.1, as
4 amended by Section 6, Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016,
5 Section 4101.1), is amended to read as follows:

6 Section 4101.1. A. Insurance under any group life insurance
7 policy issued pursuant to ~~subsections A, C, and D~~ paragraphs 1, 3,
8 4, 5 and 6~~7~~ of Section 4101 of this title, may be extended to insure
9 the dependents, or any class or classes thereof, of each insured
10 employee or member who so elects in amounts in accordance with a
11 plan which precludes individual selection. The term "dependent" ~~is~~
12 means the spouse of the insured employee or member ~~and~~ or an insured
13 employee's or member's child under twenty-six (26) years of age or
14 his or her child twenty-six (26) years or older who is attending an
15 educational institution and relying upon the insured employee or
16 member for financial support.

17 B. Premiums for the insurance on such dependents shall be paid
18 by the policyholder either wholly from policyholder's funds, or from
19 funds contributed wholly by the employees or members, or partly from
20 funds contributed by the policyholder and partly by the employees or
21 members.

22 C. A dependent pursuant to this section shall have the same
23 conversion right as to the insurance on his or her life as is vested
24 in the employee or union member.

1 D. Notwithstanding the provisions of paragraph 7 of Section
2 4103 of this title, only one certificate need be issued for each
3 family unit if a statement concerning any dependent's coverage is
4 included in such certificate.

5 SECTION 6. AMENDATORY 36 O.S. 2011, Section 6903.1, is
6 amended to read as follows:

7 Section 6903.1. Domestic health maintenance organizations that
8 contract with the Oklahoma Health Care Authority to provide basic
9 health services to Medicaid recipients and that do not provide basic
10 health care services to any other group of persons shall be exempt
11 from the provisions of Sections 6911, ~~6913~~, 6914, 6915, and 6932 ~~and~~
12 ~~6937 of Title 36 of the Oklahoma Statutes~~ this title.

13 SECTION 7. AMENDATORY 36 O.S. 2011, Section 6937, is
14 amended to read as follows:

15 Section 6937. ~~A.~~ This act shall be known and may be cited as
16 the "Risk-based Capital (RBC) for Health Maintenance Organizations
17 Act of 2003".

18 ~~B. Domestic health maintenance organizations that contract with~~
19 ~~the Oklahoma Health Care Authority to provide basic health services~~
20 ~~to Medicaid recipients and that do not provide basic health care~~
21 ~~services to any other group of persons shall be exempt from the~~
22 ~~provisions of the Risk-based Capital (RBC) for Health Maintenance~~
23 ~~Organizations Act of 2003.~~

24 SECTION 8. This act shall become effective November 1, 2017.

1 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
February 13, 2017 - DO PASS
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