

1 ENGROSSED SENATE AMENDMENT  
TO  
2 ENGROSSED HOUSE  
BILL NO. 2123

By: McEntire, Townley, Frix,  
Grego, Newton, Moore, Pae,  
Boles, Johns, Phillips,  
Lawson, Burns, Hilbert,  
Sterling, Roe and Caldwell  
(Chad) of the House

and

McCortney, Stephens, Hicks  
and Taylor of the Senate

An Act relating to insurance; defining term; amending  
36 O.S. 2011, Section 121, which relates to  
computation of time; including the Pharmacy Choice  
Commission; \*\*\*Pharmacy Choice Commission with  
certain duties and authorities; authorizing the  
Insurance Commissioner to employ certain persons;  
providing for certain expenses to be charged to  
certain entities; requiring filing and keeping of a  
certain affidavit; \*\*\* confidentiality and privileged  
information; including the Pharmacy Choice  
Commission; providing for codification; and declaring  
an emergency.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert

"An Act relating to insurance; clarifying reference;  
amending 36 O.S. 2011, Section 121, which relates to  
computation of time; clarifying reference; amending  
36 O.S. 2011, Section 307, as amended by Section 1,  
Chapter 362, O.S.L. 2017 (36 O.S. Supp. 2020, Section  
307), which relates to the duties of the Insurance  
Commissioner; creating exceptions; requiring  
Commissioner report certain information to Pharmacy  
Choice Commission; amending 36 O.S. 2011, Section  
312A, as amended by Section 2, Chapter 298, O.S.L.

2015 (36 O.S. Supp. 2020, Section 312A), which relates to enforcement and recording of penalties and fees; providing for enforcement of certain actions by the Pharmacy Choice Commission; modifying penalties Commissioner and Pharmacy Choice Commission may impose; amending 36 O.S. 2011, Section 313, which relates to orders and notices; specifying requirements for Pharmacy Choice Commission orders and notices; requiring the Pharmacy Choice Commission to comply with certain requirements; amending 36 O.S. 2011, Section 319, which relates to hearings; requiring Pharmacy Choice Commission to conduct certain hearings; requiring final order be issued in certain time period; specifying that Commission members not receive compensation; amending 36 O.S. 2011, Section 332, which relates to general duties and powers; vesting the Pharmacy Choice Commission with certain duties and powers created by Insurance Commissioner; providing for certain expenses to be charged to certain entities; amending 36 O.S. 2011, Section 907, which relates to the general powers of the Insurance Commissioner; adding PBMs to entities Insurance Commissioner may examine; amending Section 8, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6965), which relates to the power to investigate; authorizing Commissioner to examine PBMs in certain circumstances; modifying time for certain response; amending Section 9, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6966), which relates to complaints of certain violations; creating the Patient's Right to Pharmacy Choice Commission; adding complaints Commissioner may hear; adding to Commissioner's powers for violation of certain acts; authorizing Pharmacy Choice Commission to hold hearings in certain circumstances; authorizing Commission to impose certain disciplinary action to certain persons; modifying appointments of initial members; providing for election of chair and vice-chair; establishing terms for certain hearings; modifying persons who may request a full record of proceedings be made; allowing certain parties to intervene in certain hearings; adding Pharmacy Choice Commission as entity to hold certain hearings and require certain reporting; amending Section 10, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6967), which relates to confidentiality and privileged information; modifying information deemed

1 confidential in certain circumstances; adding  
2 Pharmacy Choice Commission as entity for certain  
3 disclosures and confidentiality; construing  
4 provision; providing for codification; and declaring  
5 an emergency.

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

7 SECTION 1. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 107.3 of Title 36, unless there  
9 is created a duplication in numbering, reads as follows:

10 When used with reference to the administration of the Oklahoma  
11 Insurance Code, "Pharmacy Choice Commission" means the Patient's  
12 Right to Pharmacy Choice Commission established by Section 10 of  
13 this act.

14 SECTION 2. AMENDATORY 36 O.S. 2011, Section 121, is  
15 amended to read as follows:

16 Section 121. In computing any period of time prescribed or  
17 allowed by this title, by the rules of the Insurance Commissioner,  
18 or by any applicable statute, the day of the act, event, or default  
19 from which the designated period of time begins to run shall not be  
20 included. The last day of the period so computed shall be included,  
21 unless it is a Saturday, a Sunday, a legal holiday as defined by the  
22 Oklahoma Statutes, or any day when the office of the Commissioner  
23 does not remain open for public business until 4:00 p.m., in which  
24 event the period runs until the end of the next day when the office  
of the Commissioner is open until 4:00 p.m. When the period of time

1 prescribed or allowed is less than seven (7) days, intermediate  
2 Saturdays, Sundays and legal holidays shall be excluded in the  
3 computation.

4 SECTION 3. AMENDATORY 36 O.S. 2011, Section 307, as  
5 amended by Section 1, Chapter 362, O.S.L. 2017 (36 O.S. Supp. 2020,  
6 Section 307), is amended to read as follows:

7 Section 307. The Insurance Commissioner shall be charged with  
8 the duty of administration and enforcement of the provisions of the  
9 Oklahoma Insurance Code ~~and~~, of any requirements placed on an  
10 insurance company pursuant to the Oklahoma Statutes and determining  
11 the duties assigned to the Patient's Right to Pharmacy Choice  
12 Commission. The Commissioner shall have jurisdiction over  
13 complaints against all persons engaged in the business of insurance,  
14 and shall hear all matters either in person, by authorized  
15 disinterested employees, or by hearing examiners appointed by the  
16 Commissioner for that purpose and not specifically addressed  
17 otherwise in this act. It shall be the duty of the Commissioner to  
18 file and safely keep all books and papers required by law to be  
19 filed with the Insurance Department, and to keep and preserve in  
20 permanent form a full record of proceedings, including a concise  
21 statement of the conditions of such insurers and other entities  
22 reported and examined by the Department and its examiners. The  
23 Commissioner shall, annually, at the earliest practicable date after  
24 returns are received from the several authorized insurers and other

1 organizations, make a report to the Governor ~~of the State of~~  
2 ~~Oklahoma~~ of the affairs of the ~~Office~~ office of the Commissioner,  
3 which report shall contain a tabular statement and synopsis of the  
4 several statements, as accepted by the Commissioner, which shall  
5 include with respect to each insurance company the admitted assets,  
6 liabilities except capital, capital and surplus, Oklahoma premium  
7 income, amount of claims paid in Oklahoma, and such other matters as  
8 may be of benefit to the public. The Commissioner shall, on a  
9 quarterly basis, report to the Pharmacy Choice Commission an  
10 accounting of matters relating to pharmacy benefit managers  
11 including, but not limited to, the number and types of complaints:

12 1. Received;

13 2. Resolved by hearing;

14 3. Resolved by settlement;

15 4. Determined not to be violations; and

16 5. That are outstanding.

17 The Commissioner may educate consumers and make recommendations  
18 regarding the subject of insurance in this state, and shall set  
19 forth in a statement the various sums received and disbursed by the  
20 Department, from and to whom and for what purpose. Such report  
21 shall be published by and subject to the order of the Commissioner.  
22 The Commissioner shall, upon retiring from office, deliver to the  
23 qualified successor all furniture, records, papers and property of  
24 the office.

1       SECTION 4.       AMENDATORY       36 O.S. 2011, Section 312A, as  
2 amended by Section 2, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2020,  
3 Section 312A), is amended to read as follows:

4       Section 312A. Civil penalties and fees imposed by the Insurance  
5 Commissioner or the Patient's Right to Pharmacy Choice Commission  
6 pursuant to Oklahoma law may be enforced in the same manner in which  
7 civil judgments may be enforced. All final orders of the Insurance  
8 Commissioner or Pharmacy Choice Commission imposing administrative  
9 charges, fees, civil penalties, restitution or fines may be recorded  
10 in the office of the Clerk of the District Court of Oklahoma County  
11 and, upon such recording, all appropriate writs and process shall  
12 issue and shall be enforced by the judges of said court upon  
13 application.

14       SECTION 5.       AMENDATORY       36 O.S. 2011, Section 313, is  
15 amended to read as follows:

16       Section 313. A. Orders and notices of the Insurance  
17 Commissioner or Patient's Right to Pharmacy Choice Commission shall  
18 be in writing and shall be signed by either the Commissioner, an  
19 authorized employee of the Insurance Department, ~~or~~ an independent  
20 hearing examiner or the Pharmacy Choice Commission. A final order  
21 signed by an independent hearing examiner, or the Chair or Vice-  
22 Chair of the Pharmacy Choice Commission, after hearing, shall be  
23 final agency action, notwithstanding the provisions of Section 311  
24 of Title 75 of the Oklahoma Statutes.

1 B. In the exercise of the powers and the performance of the  
2 duties enumerated in this title, the Commissioner and the Pharmacy  
3 Choice Commission shall comply with the procedures of the  
4 Administrative Procedures Act. Any conflict between the provisions  
5 of Title 75 of the Oklahoma Statutes and of this title shall be  
6 resolved in favor of the provisions of this title.

7 SECTION 6. AMENDATORY 36 O.S. 2011, Section 319, is  
8 amended to read as follows:

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

18 B. 1. The Patient's Right to Pharmacy Choice Commission  
19 established pursuant to Section 10 of this act shall conduct any  
20 hearing pursuant to the Patient's Right to Pharmacy Choice Act or  
21 relating to the oversight of pharmacy benefits managers pursuant to  
22 the Pharmacy Audit Integrity Act and Sections 357 through 360 of  
23 Title 59 of the Oklahoma Statutes. Within thirty (30) days after  
24 termination of a hearing or of any rehearing thereof or reargument

1 thereon, unless such time is extended by stipulation, a final order  
2 shall be issued.

3 2. The Pharmacy Choice Commission members shall not be entitled  
4 to receive any compensation related to conducting a hearing pursuant  
5 to this section including per diem or mileage for any travel or  
6 expenses related to appointment on the Commission.

7 SECTION 7. AMENDATORY 36 O.S. 2011, Section 332, is  
8 amended to read as follows:

9 Section 332. A. The powers and duties of the Patient's Right  
10 to Pharmacy Choice Commission shall be created by the Insurance  
11 Commissioner and set forth in the applicable provisions of the  
12 Insurance Code.

13 B. The Commissioner may conduct such examinations and  
14 investigations of insurance matters, within the scope of the  
15 authority of the Commissioner, as the Commissioner may deem proper  
16 to secure information useful in the lawful administration of the  
17 applicable provisions of the Oklahoma Insurance Code.

18 ~~B.~~ C. The Insurance Commissioner shall have the authority to  
19 employ actuaries, statisticians, accountants, attorneys, auditors,  
20 investigators or any other technicians as the Insurance Commissioner  
21 may deem necessary or beneficial to examine any filings for rate  
22 revisions made by insurers or advisory organizations and to examine  
23 such records of the insurers or advisory organizations as may be  
24 deemed appropriate in conjunction with the filing for a rate

1 revision in order to determine that the rates or other filings are  
2 consistent with the terms, conditions, requirements and purposes of  
3 the Insurance Code, and to verify, validate and investigate the  
4 information upon which the insurer or advisory organization relies  
5 to support such filing.

6 1. The Commissioner shall maintain a list of technicians  
7 qualified pursuant to rules adopted by the Commissioner who are  
8 proficient in the lines of insurance being reviewed. Upon request  
9 of the Commissioner, the Commissioner shall employ the next  
10 available technician in rotation on the list, proficient in the line  
11 or lines of insurance being reviewed. The Commissioner may deviate  
12 from the list when employing technicians for loss cost filings  
13 pursuant to Section 901.5 of this title.

14 2. All reasonable expenses incurred in such filing review shall  
15 be paid by the insurer or advisory organization making the filing.

16 ~~C.~~ D. The Commissioner shall employ examiners to ensure that  
17 the rates which have been approved by or filed with the Commissioner  
18 are the rates which are being used by the insurer or by the insurers  
19 whose advisory organization has had a rate approval or rate filing.

20 1. Any insurer or pharmacy benefit manager examined pursuant to  
21 the provisions of this section shall pay all reasonable charges  
22 incurred in such examination, including the actual expense of the  
23 Commissioner ~~or~~, the Pharmacy Choice Commission and the expenses and  
24 compensation of the authorized representative of the Commissioner

1 and the expense and compensation of assistants and examiners  
2 employed therein.

3 2. All expenses incurred in such examination shall be verified  
4 by affidavit and a copy shall be filed and kept in the office of the  
5 Insurance Commissioner.

6 SECTION 8. AMENDATORY 36 O.S. 2011, Section 907, is  
7 amended to read as follows:

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

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

23 2. To make and enforce such reasonable orders, rules, and  
24 regulations as may be necessary in making this law effective, but

1 such orders, rules and regulations shall not be contrary to or  
2 inconsistent with the provisions of this law; and

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

7 SECTION 9. AMENDATORY Section 8, Chapter 426, O.S.L.  
8 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as  
9 follows:

10 Section 6965. A. The Insurance Commissioner shall have power  
11 and authority to examine and investigate ~~into~~ the affairs of every  
12 pharmacy benefits manager (PBM) engaged in pharmacy benefits  
13 management in this state in order to determine whether such entity  
14 is in compliance with the Patient's Right to Pharmacy Choice Act.

15 B. All PBM files and records shall be subject to examination by  
16 the Insurance Commissioner or by duly appointed designees. The  
17 Insurance Commissioner, authorized employees and examiners shall  
18 have access to any of a PBM's files and records that may relate to a  
19 particular complaint under investigation or to an inquiry or  
20 examination by the Insurance Department.

21 C. Every officer, director, employee or agent of the PBM, upon  
22 receipt of any inquiry from the Commissioner shall, within ~~thirty~~  
23 ~~(30)~~ twenty (20) days from the date the inquiry is sent, furnish the  
24 Commissioner with an adequate response to the inquiry.

1 D. When making an examination under this section, the Insurance  
2 Commissioner may retain subject matter experts, attorneys,  
3 appraisers, independent actuaries, independent certified public  
4 accountants or an accounting firm or individual holding a permit to  
5 practice public accounting, certified financial examiners or other  
6 professionals and specialists as examiners, the cost of which shall  
7 be borne by the PBM ~~which~~ that is the subject of the examination.

8 SECTION 10. AMENDATORY Section 9, Chapter 426, O.S.L.  
9 2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as  
10 follows:

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

13 B. The Insurance Commissioner shall provide for the receiving  
14 and processing of individual complaints alleging violations of the  
15 provisions of the Patient's Right to Pharmacy Choice Act, the  
16 Pharmacy Audit Integrity Act and Sections 357 through 360 of Title  
17 59 of the Oklahoma Statutes.

18 ~~B. C.~~ The Commissioner shall ~~establish a Patient's Right to~~  
19 ~~Pharmacy Choice Advisory Committee to~~ have the power and authority  
20 to review complaints, hold hearings, subpoena witnesses and records,  
21 initiate prosecution, reprimand, require restitution, approve and  
22 sign settlement agreements, place on probation, suspend, revoke  
23 and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00)  
24 for each count for which any pharmacy benefits manager (PBM) has

1 violated a provision of ~~this act~~ the Patient's Right to Pharmacy  
2 Choice Act, the Pharmacy Integrity Audit Act and Sections 357  
3 through 360 of Title 59 of the Oklahoma Statutes. ~~The Advisory~~  
4 ~~Committee~~ Any violation that cannot be settled shall go to a hearing  
5 before the Pharmacy Choice Commission.

6 The Pharmacy Choice Commission shall hold hearings and may  
7 reprimand, require restitution, place on probation, suspend, revoke  
8 or levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for  
9 each count that a PBM has violated a provision of the Patient's  
10 Right to Pharmacy Choice Act, the Pharmacy Integrity Audit Act or  
11 Sections 357 through 360 of Title 59 of the Oklahoma Statutes. The  
12 Insurance Commissioner or the Pharmacy Choice Commission may impose  
13 as part of any disciplinary action restitution to the provider or  
14 patient and the payment of costs expended by the Pharmacy Choice  
15 Commission or Insurance Department for any legal fees and costs  
16 including, but not limited to, staff time, salary and travel  
17 expense, witness fees and attorney fees. ~~The Advisory Committee~~  
18 Insurance Commissioner or the Pharmacy Choice Commission may take  
19 ~~such actions singly~~ review violations singularly or in combination,  
20 as the nature of the violation requires.

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

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

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

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

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

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

1 successor has been duly appointed. ~~No~~ Except for the initial term  
2 to establish the Pharmacy Choice Commission, no person shall be  
3 appointed to serve more than two consecutive terms. The Commission  
4 shall annually elect a chair and vice-chair from among its members.  
5 There shall be no limit on the number of times a member may serve as  
6 chair or vice-chair. A quorum shall consist of no less than five  
7 (5) members and shall be required for the Commission to hold a  
8 hearing.

9 ~~E.~~ F. Hearings shall be held in the Insurance Commissioner's  
10 offices or at such other place as the Insurance Commissioner may  
11 deem convenient.

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

18 ~~G.~~ H. At the time and place fixed for a hearing, the PBM shall  
19 have an opportunity to be heard and to show cause why the ~~Insurance~~  
20 ~~Commissioner or his or her duly appointed hearing examiner~~ Pharmacy  
21 Choice Commission should not revoke or suspend the PBM's license and  
22 levy administrative fines for each violation. Upon good cause  
23 shown, the ~~Commissioner~~ Commission shall permit ~~any person~~ any  
24 complainant or a duly authorized representative of the complainant

1 to intervene, appear and be heard at the hearing by counsel or in  
2 person.

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

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

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

22 SECTION 11. AMENDATORY Section 10, Chapter 426, O.S.L.  
23 2019 (36 O.S. Supp. 2020, Section 6967), is amended to read as  
24 follows:

1       Section 6967. A. Documents, evidence, materials, records,  
2 reports, complaints or other information in the possession or  
3 control of the Insurance Department or the Right to Pharmacy Choice  
4 Commission, that are obtained by, created by or disclosed to the  
5 Insurance Commissioner, Pharmacy Choice Commission or any other  
6 person in the course of an evaluation, examination, investigation or  
7 review made pursuant to the provisions of the Patient's Right to  
8 Pharmacy Choice Act, the Pharmacy Integrity Audit Act or Sections  
9 357 through 360 of Title 59 of the Oklahoma Statutes shall be  
10 confidential by law and privileged, shall not be subject to open  
11 records request, shall not be subject to subpoena, and shall not be  
12 subject to discovery or admissible in evidence in any private civil  
13 action if obtained from the Insurance Commissioner, the Pharmacy  
14 Choice Commission or any employees or representatives of the  
15 Insurance Commissioner.

16       B. Nothing in this section shall prevent the disclosure of a  
17 final order issued against a pharmacy benefits manager by the  
18 Insurance Commissioner or ~~his or her duly appointed hearing examiner~~  
19 Pharmacy Choice Commission. Such orders shall be open records.

20       C. In the course of any hearing made pursuant to the provisions  
21 of the Patient's Right to Pharmacy Choice Act, the Pharmacy  
22 Integrity Audit Act or Sections 357 through 360 of Title 59 of the  
23 Oklahoma Statutes, nothing in this section shall be construed to  
24 prevent the Insurance Commissioner or any employees or

1 representatives of the Insurance Commissioner from presenting  
2 admissible documents, evidence, materials, records, reports or  
3 complaints to the adjudicating authority.

4 SECTION 12. It being immediately necessary for the preservation  
5 of the public peace, health or safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval."

8  
9 Passed the Senate the 22nd day of April, 2021.

10  
11 \_\_\_\_\_  
Presiding Officer of the Senate

12  
13 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
14 2021.

15  
16 \_\_\_\_\_  
Presiding Officer of the House  
17 of Representatives

1 ENGROSSED HOUSE  
2 BILL NO. 2123

By: McEntire, Townley, Frix,  
Grego, Newton, Moore, Pae,  
Boles, Johns, Phillips,  
Lawson, Burns, Hilbert,  
Sterling, Roe and Caldwell  
(Chad) of the House

5 and

6 McCortney, Stephens, Hicks  
7 and Taylor of the Senate  
8  
9

10 An Act relating to insurance; defining term; amending  
11 36 O.S. 2011, Section 121, which relates to  
12 computation of time; including the Pharmacy Choice  
13 Commission; amending 36 O.S. 2011, Section 301, which  
14 relates to the Insurance Department; including the  
15 Pharmacy Choice Commission; providing for the powers  
16 and duties of the Commission; amending 36 O.S. 2011,  
17 Section 307, as amended by Section 1, Chapter 362,  
18 O.S.L. 2017 (36 O.S. Supp. 2020, Section 307), which  
19 relates to the duties of the Insurance Commissioner;  
20 creating exceptions; amending 36 O.S. 2011, Section  
21 312A, as amended by Section 2, Chapter 298, O.S.L.  
22 2015 (36 O.S. Supp. 2020, Section 312A), which  
23 relates to enforcement and recording of penalties and  
24 fees; providing for enforcement of certain actions by  
the Pharmacy Choice Commission; amending 36 O.S.  
2011, Section 313, which relates to orders and  
notices; requiring the Pharmacy Choice Commission to  
comply with certain requirements; amending 36 O.S.  
2011, Section 332, which relates to general duties  
and powers; vesting the Pharmacy Choice Commission  
with certain duties and authorities; authorizing the  
Insurance Commissioner to employ certain persons;  
providing for certain expenses to be charged to  
certain entities; requiring filing and keeping of a  
certain affidavit; amending 36 O.S. 2011, Section  
907, which relates to the general powers of the  
Insurance Commissioner; providing exception; amending  
Section 8, Chapter 426, O.S.L. 2019 (36 O.S. Supp.

2020, Section 6965), which relates to the power to investigate; vesting certain authority in the Pharmacy Choice Commission; modifying time for certain response; amending Section 9, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6966), which relates to complaints of certain violations; creating the Patient's Right to Pharmacy Choice Commission; providing for restitution; modifying terms; modifying appointments of initial members; providing for election of chair and vice-chair; allowing certain parties to intervene in certain hearings; transferring certain duties from the Insurance Commissioner to the Pharmacy Choice Commission; amending Section 10, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6967), which relates to confidentiality and privileged information; including the Pharmacy Choice Commission; providing for codification; and declaring an emergency.

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

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 107.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

When used with reference to the administration of the Oklahoma Insurance Code, "Pharmacy Choice Commission", "Pharmacy Commission" or "Commission" means the Patient's Right to Pharmacy Choice Commission established by Section 6966 of Title 36 of the Oklahoma Statutes.

SECTION 14. AMENDATORY 36 O.S. 2011, Section 121, is amended to read as follows:

Section 121. In computing any period of time prescribed or allowed by this title, by the rules of the Insurance Commissioner or

1 the Pharmacy Choice Commission, or by any applicable statute, the  
2 day of the act, event, or default from which the designated period  
3 of time begins to run shall not be included. The last day of the  
4 period so computed shall be included, unless it is a Saturday, a  
5 Sunday, a legal holiday as defined by the Oklahoma Statutes, or any  
6 day when the office of the Commissioner does not remain open for  
7 public business until 4:00 p.m., in which event the period runs  
8 until the end of the next day when the office of the Commissioner is  
9 open until 4:00 p.m. When the period of time prescribed or allowed  
10 is less than seven (7) days, intermediate Saturdays, Sundays and  
11 legal holidays shall be excluded in the computation.

12 SECTION 15. AMENDATORY 36 O.S. 2011, Section 301, is  
13 amended to read as follows:

14 Section 301. The Insurance Department of the State of Oklahoma  
15 is hereby created. The Department shall consist of the Insurance  
16 Commissioner and the Pharmacy Choice Commission. The Insurance  
17 Commissioner shall be the chief executive officer of the Insurance  
18 Department. The powers and duties of the Insurance Commissioner  
19 shall be those created by the Oklahoma Insurance Code and not  
20 reserved to the Commission, as well as such powers and duties as the  
21 Commission may request the Commissioner to perform. The powers and  
22 duties of the Pharmacy Choice Commission shall be those created by  
23 the applicable provisions of the Code. The Insurance Department  
24 shall be situated in one area in the State Capitol or some other

1 location conveniently accessible to the general public subject to  
2 the provisions of Sections 63 and 94 of Title 74 of the Oklahoma  
3 Statutes and Section 580:20-13-5 of the Oklahoma Administrative  
4 Code.

5 SECTION 16. AMENDATORY 36 O.S. 2011, Section 307, as  
6 amended by Section 1, Chapter 362, O.S.L. 2017 (36 O.S. Supp. 2020,  
7 Section 307), is amended to read as follows:

8 Section 307. The Insurance Commissioner shall be charged with  
9 the duty of administration and enforcement of the provisions of the  
10 Oklahoma Insurance Code and of any requirements placed on an  
11 insurance company pursuant to the Oklahoma Statutes, except those  
12 duties specifically assigned to the Pharmacy Choice Commission. The  
13 Insurance Commissioner shall provide such administrative and staff  
14 support as required by the Commission. The Commissioner shall have  
15 jurisdiction over complaints against all persons engaged in the  
16 business of insurance, other than complaints assigned to the  
17 Pharmacy Choice Commission, and shall hear all matters either in  
18 person, by authorized disinterested employees, or by hearing  
19 examiners appointed by the Commissioner for that purpose. It shall  
20 be the duty of the Commissioner to file and safely keep all books  
21 and papers required by law to be filed with the Insurance  
22 Department, and to keep and preserve in permanent form a full record  
23 of proceedings, including a concise statement of the conditions of  
24 such insurers and other entities reported and examined by the

1 Department and its examiners. The Commissioner shall, annually, at  
2 the earliest practicable date after returns are received from the  
3 several authorized insurers and other organizations, make a report  
4 to the Governor of the State of Oklahoma of the affairs of the  
5 ~~Office~~ office of the Commissioner, which report shall contain a  
6 tabular statement and synopsis of the several statements, as  
7 accepted by the Commissioner, which shall include with respect to  
8 each insurance company the admitted assets, liabilities except  
9 capital, capital and surplus, Oklahoma premium income, amount of  
10 claims paid in Oklahoma, and such other matters as may be of benefit  
11 to the public. The Commissioner may educate consumers and make  
12 recommendations regarding the subject of insurance in this state,  
13 and shall set forth in a statement the various sums received and  
14 disbursed by the Department, from and to whom and for what purpose.  
15 Such report shall be published by and subject to the order of the  
16 Commissioner. The Commissioner shall, upon retiring from office,  
17 deliver to the qualified successor all furniture, records, papers  
18 and property of the office.

19 SECTION 17. AMENDATORY 36 O.S. 2011, Section 312A, as  
20 amended by Section 2, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2020,  
21 Section 312A), is amended to read as follows:

22 Section 312A. Civil penalties and fees imposed by the Insurance  
23 Commissioner or Pharmacy Choice Commission pursuant to Oklahoma law  
24 may be enforced in the same manner in which civil judgments may be

1 enforced. All final orders of the Insurance Commissioner or  
2 Pharmacy Choice Commission imposing administrative charges, fees,  
3 civil penalties, restitution or fines may be recorded in the office  
4 of the Clerk of the District Court of Oklahoma County and, upon such  
5 recording, all appropriate writs and process shall issue and shall  
6 be enforced by the judges of said court upon application.

7 SECTION 18. AMENDATORY 36 O.S. 2011, Section 313, is  
8 amended to read as follows:

9 Section 313. A. Orders and notices of the Insurance  
10 Commissioner or Pharmacy Choice Commission shall be in writing and  
11 shall be signed by either the Commissioner, an authorized employee  
12 of the Insurance Department, or an independent hearing examiner. A  
13 final order signed by an independent hearing examiner, after  
14 hearing, shall be final agency action, notwithstanding the  
15 provisions of Section 311 of Title 75 of the Oklahoma Statutes.

16 B. In the exercise of the powers and the performance of the  
17 duties enumerated in this title, the Commissioner and the Pharmacy  
18 Choice Commission shall comply with the procedures of the  
19 Administrative Procedures Act. Any conflict between the provisions  
20 of Title 75 of the Oklahoma Statutes and of this title shall be  
21 resolved in favor of the provisions of this title.

22 SECTION 19. AMENDATORY 36 O.S. 2011, Section 332, is  
23 amended to read as follows:

1       Section 332. A. The Pharmacy Choice Commission is hereby  
2 vested with the duty and authority of enforcing and administering  
3 all applicable provisions of the Oklahoma Insurance Code pertaining  
4 to the jurisdiction of the Commission, as well as the provisions of  
5 Sections 356 through 360 of Title 59 of the Oklahoma Statutes.

6       B. The Commission shall have powers and authority expressly  
7 conferred upon it and reasonably implied by the provisions of this  
8 Code and by the provisions of Sections 356 through 360 of Title 59  
9 of the Oklahoma Statutes. The Commission shall have the power to  
10 approve, disapprove, or approve with modifications any filings  
11 submitted to it.

12       C. The Commission may conduct such examinations and  
13 investigations of insurance matters, within the scope of its  
14 authority, as it may deem proper to secure information useful in the  
15 lawful administration of the applicable provisions of this Code and  
16 Sections 356 through 360 of Title 59 of the Oklahoma Statutes.

17       D. The Insurance Commissioner, on behalf of the Pharmacy Choice  
18 Commission, shall have the authority to employ actuaries,  
19 statisticians, accountants, attorneys, auditors, investigators or  
20 any other technicians, as the Commission may deem necessary or  
21 beneficial, to examine, audit, review, validate, investigate or  
22 secure information useful in the lawful administration of the  
23 applicable provisions of this Code and Sections 356 through 360 of  
24 Title 59 of the Oklahoma Statutes.

1       1. Any entity examined by the Commission pursuant to this  
2 section shall pay all reasonable charges incurred in such  
3 examination, including the actual expense of the Commission or the  
4 expenses and compensation of the authorized representative of the  
5 Commission.

6       2. All expenses incurred in such examination shall be verified  
7 by affidavit and a copy thereof shall be filed and kept at the  
8 office of the Insurance Commissioner.

9       E. The Commissioner may conduct such examinations and  
10 investigations of insurance matters, within the scope of the  
11 authority of the Commissioner, as the Commissioner may deem proper  
12 to secure information useful in the lawful administration of the  
13 applicable provisions of the Oklahoma Insurance Code.

14       ~~B.~~ F. The Insurance Commissioner shall have the authority to  
15 employ actuaries, statisticians, accountants, attorneys, auditors,  
16 investigators or any other technicians as the Insurance Commissioner  
17 may deem necessary or beneficial to examine any filings for rate  
18 revisions made by insurers or advisory organizations and to examine  
19 such records of the insurers or advisory organizations as may be  
20 deemed appropriate in conjunction with the filing for a rate  
21 revision in order to determine that the rates or other filings are  
22 consistent with the terms, conditions, requirements and purposes of  
23 the Insurance Code, and to verify, validate and investigate the  
24

1 information upon which the insurer or advisory organization relies  
2 to support such filing.

3 1. The Commissioner shall maintain a list of technicians  
4 qualified pursuant to rules adopted by the Commissioner who are  
5 proficient in the lines of insurance being reviewed. Upon request  
6 of the Commissioner, the Commissioner shall employ the next  
7 available technician in rotation on the list, proficient in the line  
8 or lines of insurance being reviewed. The Commissioner may deviate  
9 from the list when employing technicians for loss cost filings  
10 pursuant to Section 901.5 of this title.

11 2. All reasonable expenses incurred in such filing review shall  
12 be paid by the insurer or advisory organization making the filing.

13 ~~C.~~ G. The Commissioner shall employ examiners to ensure that  
14 the rates which have been approved by or filed with the Commissioner  
15 are the rates which are being used by the insurer or by the insurers  
16 whose advisory organization has had a rate approval or rate filing.

17 1. Any insurer examined pursuant to the provisions of this  
18 section shall pay all reasonable charges incurred in such  
19 examination, including the actual expense of the Commissioner or the  
20 expenses and compensation of the authorized representative of the  
21 Commissioner and the expense and compensation of assistants and  
22 examiners employed therein.

1        2. All expenses incurred in such examination shall be verified  
2 by affidavit and a copy shall be filed and kept in the office of the  
3 Insurance Commissioner.

4        SECTION 20.        AMENDATORY        36 O.S. 2011, Section 907, is  
5 amended to read as follows:

6        Section 907. In addition to any powers hereinbefore expressly  
7 enumerated in this law, the Commissioner shall have full power and  
8 authority to enforce by regulations, orders, or otherwise all and  
9 singular, the provisions of this law, and the full intent thereof,  
10 except for those provisions reserved to the Pharmacy Choice  
11 Commission by the Oklahoma Insurance Code and Sections 356 through  
12 360 of Title 59 of the Oklahoma Statutes. In particular ~~it~~ the  
13 Commissioner shall have the authority and power:

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

22        2. To make and enforce such reasonable orders, rules, and  
23 regulations as may be necessary in making this law effective, but  
24

1 such orders, rules and regulations shall not be contrary to or  
2 inconsistent with the provisions of this law; and

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

7 SECTION 21. AMENDATORY Section 8, Chapter 426, O.S.L.  
8 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as  
9 follows:

10 Section 6965. A. The ~~Insurance Commissioner~~ Pharmacy Choice  
11 Commission shall have power and authority to examine and investigate  
12 ~~into~~ the affairs of every pharmacy benefits manager (PBM) engaged in  
13 pharmacy benefits management in this state in order to determine  
14 whether such entity is in compliance with the Patient's Right to  
15 Pharmacy Choice Act.

16 B. All PBM files and records shall be subject to examination by  
17 the ~~Insurance Commissioner or by duly appointed designees~~ Pharmacy  
18 Choice Commission. The ~~Insurance Commissioner~~ Commission,  
19 authorized employees and examiners shall have access to any of a  
20 PBM's files and records that may relate to a particular complaint  
21 under investigation or to an inquiry or examination by the ~~Insurance~~  
22 ~~Department~~ Commission.

23 C. Every officer, director, employee or agent of the PBM, upon  
24 receipt of any inquiry from the ~~Commissioner~~ Pharmacy Choice

1 Commission shall, within ~~thirty (30)~~ fifteen (15) days from the date  
2 the inquiry is sent, furnish the ~~Commissioner~~ Commission with an  
3 adequate response to the inquiry.

4 D. When making an examination under this section, the ~~Insurance~~  
5 ~~Commissioner~~ Pharmacy Choice Commission may retain subject matter  
6 experts, attorneys, appraisers, independent actuaries, independent  
7 certified public accountants or an accounting firm or individual  
8 holding a permit to practice public accounting, certified financial  
9 examiners or other professionals and specialists as examiners, the  
10 cost of which shall be borne by the PBM ~~which~~ that is the subject of  
11 the examination.

12 SECTION 22. AMENDATORY Section 9, Chapter 426, O.S.L.  
13 2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as  
14 follows:

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

17 B. The Insurance Commissioner, on behalf of the Pharmacy Choice  
18 Commission, shall provide for the receiving and processing of  
19 individual complaints alleging violations of the provisions of the  
20 Patient's Right to Pharmacy Choice Act and Sections 356 through 360  
21 of Title 59 of the Oklahoma Statutes.

22 ~~B. C.~~ The ~~Commissioner~~ Pharmacy Choice Commission shall  
23 ~~establish a Patient's Right to Pharmacy Choice Advisory Committee to~~  
24 review complaints, hold hearings, subpoena witnesses and records,

1 initiate prosecution, reprimand, require restitution, place on  
2 probation, suspend, revoke and/or levy fines not to exceed Ten  
3 Thousand Dollars (\$10,000.00) for each count for which any pharmacy  
4 benefits manager (PBM) has violated a provision of ~~this act~~ the  
5 Patient's Right to Pharmacy Choice Act or Sections 356 through 360  
6 of Title 59 of the Oklahoma Statutes. The ~~Advisory Committee~~  
7 Commission may impose as part of any disciplinary action restitution  
8 to the provider or patient and the payment of costs expended by the  
9 Commission or Insurance Department for any legal fees and costs  
10 including, but not limited to, staff time, salary and travel  
11 expense, witness fees and attorney fees. The ~~Advisory Committee~~  
12 Commission may take such actions singly or in combination, as the  
13 nature of the violation requires.

14 ~~C. D.~~ The ~~Advisory Committee~~ Pharmacy Choice Commission shall  
15 consist of seven (7) persons appointed as follows:

16 1. Two persons who shall be ~~nominated~~ appointed by the Oklahoma  
17 Pharmacists Association;

18 2. Two consumer members not employed by or professionally  
19 related to the insurance, pharmacy or PBM ~~nominated~~ industry  
20 appointed by the Office of the Governor;

21 3. Two persons representing the PBM or insurance industry  
22 ~~nominated~~ appointed by the Insurance Commissioner; and

23 4. One person representing the Office of the Attorney General  
24 ~~nominated~~ appointed by the Attorney General.

1       ~~D. Committee~~ E. Pharmacy Choice Commission members ~~shall be~~  
2 first appointed for terms of five (5) years shall serve the initial  
3 term staggered as follows: the two members appointed by the Office  
4 of the Governor shall serve for one (1) year, the two members  
5 appointed by the Insurance Commissioner shall serve for two (2)  
6 years, the two members appointed by the Oklahoma Pharmacists  
7 Association shall serve for two (2) years, and the one member  
8 appointed by the Attorney General shall serve for three (3) years.  
9 Subsequent terms shall be for five (5) years. The terms of the  
10 members ~~of the Advisory Committee~~ shall expire on the thirtieth day  
11 of June of the year designated for the expiration of the term for  
12 which appointed, but the member shall serve until a qualified  
13 successor has been duly appointed. No person shall be appointed to  
14 serve more than two consecutive terms. The Commission shall  
15 annually elect a chair and vice-chair from among its members. There  
16 shall be no limit on the number of times a member may serve as chair  
17 or vice-chair.

18       ~~E. F.~~ F. Hearings shall be held in the Insurance Commissioner's  
19 offices or at such other place as the ~~Insurance Commissioner~~  
20 Commission may deem convenient.

21       ~~F. G.~~ G. The Insurance Commissioner, on behalf of the Pharmacy  
22 Choice Commission, shall issue and serve upon the PBM a statement of  
23 the charges and a notice of hearing in accordance with the  
24

1 Administrative Procedures Act, Sections 250 through 323 of Title 75  
2 of the Oklahoma Statutes.

3 ~~G.~~ H. At the time and place fixed for a hearing, the PBM shall  
4 have an opportunity to be heard and to show cause why the ~~Insurance~~  
5 ~~Commissioner~~ Pharmacy Choice Commission or ~~his or her~~ its duly  
6 appointed hearing examiner should not revoke or suspend the PBM's  
7 license and levy administrative fines for each violation. Upon good  
8 cause shown, the ~~Commissioner~~ Commission shall permit ~~any person a~~  
9 duly authorized representative of the PBM to intervene, appear and  
10 be heard at the hearing by counsel or in person.

11 ~~H.~~ I. All hearings will be public and held in accordance with,  
12 and governed by, Sections 250 through 323 of Title 75 of the  
13 Oklahoma Statutes.

14 ~~I.~~ J. The Insurance Commissioner, on behalf of the Pharmacy  
15 Choice Commission, upon written request reasonably made by the  
16 licensed PBM affected by the hearing and at such PBM's expense shall  
17 cause a full stenographic record of the proceedings to be made by a  
18 competent court reporter.

19 ~~J.~~ K. If the ~~Insurance Commissioner~~ Pharmacy Choice Commission  
20 determines, based on an investigation of complaints, that a PBM has  
21 engaged in violations of ~~this act~~ the Patient's Right to Pharmacy  
22 Choice Act or Sections 356 through 360 of Title 59 of the Oklahoma  
23 Statutes with such frequency as to indicate a general business  
24 practice and that such PBM should be subjected to closer supervision

1 with respect to such practices, the ~~Insurance Commissioner~~  
2 Commission may require the PBM to file a report at such periodic  
3 intervals as the ~~Insurance Commissioner~~ Commission deems necessary.

4 SECTION 23. AMENDATORY Section 10, Chapter 426, O.S.L.  
5 2019 (36 O.S. Supp. 2020, Section 6967), is amended to read as  
6 follows:

7 Section 6967. A. Documents, materials, reports, complaints or  
8 other information in the possession or control of the Insurance  
9 Department, on behalf of the Pharmacy Choice Commission, that are  
10 obtained by or disclosed to the Insurance Commissioner, Pharmacy  
11 Choice Commission, or any other person in the course of an  
12 evaluation, examination, investigation or review made pursuant to  
13 the provisions of the Patient's Right to Pharmacy Choice Act or  
14 Sections 356 through 360 of Title 59 of the Oklahoma Statutes shall  
15 be confidential by law and privileged, shall not be subject to open  
16 records request, shall not be subject to subpoena, and shall not be  
17 subject to discovery or admissible in evidence in any private civil  
18 action if obtained from the Insurance Commissioner, the Pharmacy  
19 Choice Commission, or any employees or representatives of the  
20 Insurance ~~Commissioner~~ Department.

21 B. Nothing in this section shall prevent the disclosure of a  
22 final order issued against a pharmacy benefits manager by the  
23 ~~Insurance Commissioner~~ Pharmacy Choice Commission or ~~his or her~~ its  
24 duly appointed hearing examiner. Such orders shall be open records.

SECTION 24. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 8th day of March, 2021.

Presiding Officer of the House  
of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2021.

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Presiding Officer of the Senate