

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2123

By: McEntire

COMMITTEE SUBSTITUTE

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; amending 36 O.S. 2011, Section 301, which relates to the Insurance Department; including the Pharmacy Choice Commission; providing for the powers and duties of the Commission; 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; 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; 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 1. 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 2. 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 the Pharmacy Choice Commission, or by any applicable statute, the day of the act, event, or default from which the designated period

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

10 SECTION 3. AMENDATORY 36 O.S. 2011, Section 301, is  
11 amended to read as follows:

12 Section 301. The Insurance Department of the State of Oklahoma  
13 is hereby created. The Department shall consist of the Insurance  
14 Commissioner and the Pharmacy Choice Commission. The Insurance  
15 Commissioner shall be the chief executive officer of the Insurance  
16 Department. The powers and duties of the Insurance Commissioner  
17 shall be those created by the Oklahoma Insurance Code and not  
18 reserved to the Commission, as well as such powers and duties as the  
19 Commission may request the Commissioner to perform. The powers and  
20 duties of the Pharmacy Choice Commission shall be those created by  
21 the applicable provisions of the Code. The Insurance Department  
22 shall be situated in one area in the State Capitol or some other  
23 location conveniently accessible to the general public subject to  
24 the provisions of Sections 63 and 94 of Title 74 of the Oklahoma

1 Statutes and Section 580:20-13-5 of the Oklahoma Administrative  
2 Code.

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

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

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

17 SECTION 5. AMENDATORY 36 O.S. 2011, Section 312A, as  
18 amended by Section 2, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2020,  
19 Section 312A), is amended to read as follows:

20 Section 312A. Civil penalties and fees imposed by the Insurance  
21 Commissioner or Pharmacy Choice Commission pursuant to Oklahoma law  
22 may be enforced in the same manner in which civil judgments may be  
23 enforced. All final orders of the Insurance Commissioner or  
24 Pharmacy Choice Commission imposing administrative charges, fees,

1 civil penalties, restitution or fines may be recorded in the office  
2 of the Clerk of the District Court of Oklahoma County and, upon such  
3 recording, all appropriate writs and process shall issue and shall  
4 be enforced by the judges of said court upon application.

5 SECTION 6. AMENDATORY 36 O.S. 2011, Section 313, is  
6 amended to read as follows:

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

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

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

22 Section 332. A. The Pharmacy Choice Commission is hereby  
23 vested with the duty and authority of enforcing and administering  
24 all applicable provisions of the Oklahoma Insurance Code pertaining

1 to the jurisdiction of the Commission, as well as the provisions of  
2 Sections 356 through 360 of Title 59 of the Oklahoma Statutes.

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

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

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

22 1. Any entity examined by the Commission pursuant to this  
23 section shall pay all reasonable charges incurred in such  
24 examination, including the actual expense of the Commission or the

1 expenses and compensation of the authorized representative of the  
2 Commission.

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

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

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

23 1. The Commissioner shall maintain a list of technicians  
24 qualified pursuant to rules adopted by the Commissioner who are

1 proficient in the lines of insurance being reviewed. Upon request  
2 of the Commissioner, the Commissioner shall employ the next  
3 available technician in rotation on the list, proficient in the line  
4 or lines of insurance being reviewed. The Commissioner may deviate  
5 from the list when employing technicians for loss cost filings  
6 pursuant to Section 901.5 of this title.

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

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

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

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

22 SECTION 8. AMENDATORY 36 O.S. 2011, Section 907, is  
23 amended to read as follows:  
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1       Section 907. In addition to any powers hereinbefore expressly  
2 enumerated in this law, the Commissioner shall have full power and  
3 authority to enforce by regulations, orders, or otherwise all and  
4 singular, the provisions of this law, and the full intent thereof,  
5 except for those provisions reserved to the Pharmacy Choice  
6 Commission by the Oklahoma Insurance Code and Sections 356 through  
7 360 of Title 59 of the Oklahoma Statutes. In particular ~~it~~ the  
8 Commissioner shall have the authority and power:

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

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

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

SECTION 9. AMENDATORY Section 8, Chapter 426, O.S.L.

2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as follows:

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

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

C. Every officer, director, employee or agent of the PBM, upon receipt of any inquiry from the ~~Commissioner~~ Pharmacy Choice Commission shall, within ~~thirty (30)~~ fifteen (15) days from the date the inquiry is sent, furnish the ~~Commissioner~~ Commission with an adequate response to the inquiry.

D. When making an examination under this section, the ~~Insurance Commissioner~~ Pharmacy Choice Commission may retain subject matter experts, attorneys, appraisers, independent actuaries, independent

1 certified public accountants or an accounting firm or individual  
2 holding a permit to practice public accounting, certified financial  
3 examiners or other professionals and specialists as examiners, the  
4 cost of which shall be borne by the PBM ~~which~~ that is the subject of  
5 the examination.

6 SECTION 10. AMENDATORY Section 9, Chapter 426, O.S.L.  
7 2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as  
8 follows:

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

11 B. The Insurance Commissioner, on behalf of the Pharmacy Choice  
12 Commission, shall provide for the receiving and processing of  
13 individual complaints alleging violations of the provisions of the  
14 Patient's Right to Pharmacy Choice Act and Sections 356 through 360  
15 of Title 59 of the Oklahoma Statutes.

16 ~~B. C. The Commissioner~~ Pharmacy Choice Commission shall  
17 ~~establish a Patient's Right to Pharmacy Choice Advisory Committee to~~  
18 review complaints, hold hearings, subpoena witnesses and records,  
19 initiate prosecution, reprimand, require restitution, place on  
20 probation, suspend, revoke and/or levy fines not to exceed Ten  
21 Thousand Dollars (\$10,000.00) for each count for which any pharmacy  
22 benefits manager (PBM) has violated a provision of ~~this act~~ the  
23 Patient's Right to Pharmacy Choice Act or Sections 356 through 360  
24 of Title 59 of the Oklahoma Statutes. The ~~Advisory Committee~~

1 Commission may impose as part of any disciplinary action restitution  
2 to the provider or patient and the payment of costs expended by the  
3 Commission or Insurance Department for any legal fees and costs  
4 including, but not limited to, staff time, salary and travel  
5 expense, witness fees and attorney fees. The ~~Advisory Committee~~  
6 Commission may take such actions singly or in combination, as the  
7 nature of the violation requires.

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

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

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

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

17 4. One person representing the Office of the Attorney General  
18 ~~nominated~~ appointed by the Attorney General.

19 ~~D. Committee~~ E. Pharmacy Choice Commission members ~~shall be~~  
20 first appointed ~~for terms of five (5) years~~ shall serve the initial  
21 term staggered as follows: the two members appointed by the Office  
22 of the Governor shall serve for one (1) year, the two members  
23 appointed by the Insurance Commissioner shall serve for two (2)  
24 years, the two members appointed by the Oklahoma Pharmacists

1 Association shall serve for two (2) years, and the one member  
2 appointed by the Attorney General shall serve for three (3) years.  
3 Subsequent terms shall be for five (5) years. The terms of the  
4 ~~members of the Advisory Committee~~ shall expire on the thirtieth day  
5 of June of the year designated for the expiration of the term for  
6 which appointed, but the member shall serve until a qualified  
7 successor has been duly appointed. No person shall be appointed to  
8 serve more than two consecutive terms. The Commission shall  
9 annually elect a chair and vice-chair from among its members. There  
10 shall be no limit on the number of times a member may serve as chair  
11 or vice-chair.

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

15 ~~F.~~ G. The Insurance Commissioner, on behalf of the Pharmacy  
16 Choice Commission, shall issue and serve upon the PBM a statement of  
17 the charges and a notice of hearing in accordance with the  
18 Administrative Procedures Act, Sections 250 through 323 of Title 75  
19 of the Oklahoma Statutes.

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

1 cause shown, the ~~Commissioner~~ Commission shall permit ~~any person a~~  
2 duly authorized representative of the PBM to intervene, appear and  
3 be heard at the hearing by counsel or in person.

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

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

12 ~~J.~~ K. If the ~~Insurance Commissioner~~ Pharmacy Choice Commission  
13 determines, based on an investigation of complaints, that a PBM has  
14 engaged in violations of ~~this act~~ the Patient's Right to Pharmacy  
15 Choice Act or Sections 356 through 360 of Title 59 of the Oklahoma  
16 Statutes with such frequency as to indicate a general business  
17 practice and that such PBM should be subjected to closer supervision  
18 with respect to such practices, the ~~Insurance Commissioner~~  
19 Commission may require the PBM to file a report at such periodic  
20 intervals as the ~~Insurance Commissioner~~ Commission deems necessary.

21 SECTION 11. AMENDATORY Section 10, Chapter 426, O.S.L.  
22 2019 (36 O.S. Supp. 2020, Section 6967), is amended to read as  
23 follows:  
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1       Section 6967. A. Documents, materials, reports, complaints or  
2 other information in the possession or control of the Insurance  
3 Department, on behalf of the Pharmacy Choice Commission, that are  
4 obtained by or disclosed to the Insurance Commissioner, Pharmacy  
5 Choice Commission, or any other person in the course of an  
6 evaluation, examination, investigation or review made pursuant to  
7 the provisions of the Patient's Right to Pharmacy Choice Act or  
8 Sections 356 through 360 of Title 59 of the Oklahoma Statutes shall  
9 be confidential by law and privileged, shall not be subject to open  
10 records request, shall not be subject to subpoena, and shall not be  
11 subject to discovery or admissible in evidence in any private civil  
12 action if obtained from the Insurance Commissioner, the Pharmacy  
13 Choice Commission, or any employees or representatives of the  
14 Insurance ~~Commissioner~~ Department.

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

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

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