

An Act

ENROLLED 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; 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 confidential in certain circumstances; adding Pharmacy Choice Commission as entity for certain disclosures and confidentiality; construing provision; providing for codification; and declaring an emergency.

SUBJECT: Insurance

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" means the Patient's Right to Pharmacy Choice Commission established by Section 10 of this act.

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

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

Section 307. The Insurance Commissioner shall be charged with the duty of administration and enforcement of the provisions of the Oklahoma Insurance Code ~~and~~, of any requirements placed on an insurance company pursuant to the Oklahoma Statutes and determining the duties assigned to the Patient's Right to Pharmacy Choice Commission. The Commissioner shall have jurisdiction over complaints against all persons engaged in the business of insurance, and shall hear all matters either in person, by authorized disinterested employees, or by hearing examiners appointed by the Commissioner for that purpose and not specifically addressed otherwise in this act. It shall be the duty of the Commissioner to file and safely keep all books and papers required by law to be filed with the Insurance Department, and to keep and preserve in permanent form a full record of proceedings, including a concise statement of the conditions of such insurers and other entities

reported and examined by the Department and its examiners. The Commissioner shall, annually, at the earliest practicable date after returns are received from the several authorized insurers and other organizations, make a report to the Governor ~~of the State of Oklahoma~~ of the affairs of the ~~Office~~ office of the Commissioner, which report shall contain a tabular statement and synopsis of the several statements, as accepted by the Commissioner, which shall include with respect to each insurance company the admitted assets, liabilities except capital, capital and surplus, Oklahoma premium income, amount of claims paid in Oklahoma, and such other matters as may be of benefit to the public. The Commissioner shall, on a quarterly basis, report to the Pharmacy Choice Commission an accounting of matters relating to pharmacy benefits managers including, but not limited to, the number and types of complaints:

1. Received;
2. Resolved by hearing;
3. Resolved by settlement;
4. Determined not to be violations; and
5. That are outstanding.

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

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

Section 312A. Civil penalties and fees imposed by the Insurance Commissioner or the Patient's Right to Pharmacy Choice Commission pursuant to Oklahoma law may be enforced in the same manner in which civil judgments may be enforced. All final orders of the Insurance Commissioner or Pharmacy Choice Commission imposing administrative charges, fees, civil penalties, restitution or fines may be recorded in the office of the Clerk of the District Court of Oklahoma County

and, upon such recording, all appropriate writs and process shall issue and shall be enforced by the judges of said court upon application.

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

Section 313. A. Orders and notices of the Insurance Commissioner or Patient's Right to Pharmacy Choice Commission shall be in writing and shall be signed by either the Commissioner, an authorized employee of the Insurance Department, ~~or~~ an independent hearing examiner or the Pharmacy Choice Commission. A final order signed by an independent hearing examiner, or the chair or vice-chair of the Pharmacy Choice Commission, after hearing, shall be final agency action, notwithstanding the provisions of Section 311 of Title 75 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Any insurer or pharmacy benefits manager examined pursuant to the provisions of this section shall pay all reasonable charges incurred in such examination, including the actual expense of the Commissioner ~~or~~, the Pharmacy Choice Commission and the expenses and compensation of the authorized representative of the Commissioner and the expense and compensation of assistants and examiners employed therein.

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

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

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

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

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

3. To issue an order, after a full hearing to all parties in interest requiring any insurer, group, association, or organization of insurers and the members and subscribers thereof to cease and 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 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. The Insurance Commissioner, 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.

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

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

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

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

B. The Insurance Commissioner shall provide for the receiving and processing of individual complaints alleging violations of the provisions of the Patient's Right to Pharmacy Choice Act, the

Pharmacy Audit Integrity Act and Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

~~B. C.~~ The Commissioner shall ~~establish a Patient's Right to Pharmacy Choice Advisory Committee to~~ have the power and authority to review complaints, hold hearings, subpoena witnesses and records, initiate prosecution, reprimand, require restitution, approve and sign settlement agreements, place on probation, suspend, revoke and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for each count for which any pharmacy benefits manager (PBM) has violated a provision of this act the Patient's Right to Pharmacy Choice Act, the Pharmacy Integrity Audit Act and Sections 357 through 360 of Title 59 of the Oklahoma Statutes. The Advisory Committee Any violation that cannot be settled shall go to a hearing before the Pharmacy Choice Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. 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 5th day of May, 2021.

Presiding Officer of the House
of Representatives

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

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____