

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2123, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator McCortney

McCortney-CB-FS-Req#2103
4/19/2021 4:45 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE

FOR 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

FLOOR SUBSTITUTE

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

1 certain time period; specifying that Commission
2 members not receive compensation; amending 36 O.S.
3 2011, Section 332, which relates to general duties
4 and powers; vesting the Pharmacy Choice Commission
5 with certain duties and powers created by Insurance
6 Commissioner; providing for certain expenses to be
7 charged to certain entities; amending 36 O.S. 2011,
8 Section 907, which relates to the general powers of
9 the Insurance Commissioner; adding PBMs to entities
10 Insurance Commissioner may examine; amending Section
11 8, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020,
12 Section 6965), which relates to the power to
13 investigate; authorizing Commissioner to examine PBMs
14 in certain circumstances; modifying time for certain
15 response; amending Section 9, Chapter 426, O.S.L.
16 2019 (36 O.S. Supp. 2020, Section 6966), which
17 relates to complaints of certain violations; creating
18 the Patient's Right to Pharmacy Choice Commission;
19 adding complaints Commissioner may hear; adding to
20 Commissioner's powers for violation of certain acts;
21 authorizing Pharmacy Choice Commission to hold
22 hearings in certain circumstances; authorizing
23 Commission to impose certain disciplinary action to
24 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.

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

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

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

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

10 Section 121. In computing any period of time prescribed or
11 allowed by this title, by the rules of the Insurance Commissioner,
12 or by any applicable statute, the day of the act, event, or default
13 from which the designated period of time begins to run shall not be
14 included. The last day of the period so computed shall be included,
15 unless it is a Saturday, a Sunday, a legal holiday as defined by the
16 Oklahoma Statutes, or any day when the office of the Commissioner
17 does not remain open for public business until 4:00 p.m., in which
18 event the period runs until the end of the next day when the office
19 of the Commissioner is open until 4:00 p.m. When the period of time
20 prescribed or allowed is less than seven (7) days, intermediate
21 Saturdays, Sundays and legal holidays shall be excluded in the
22 computation.

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

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

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

9 1. Received;

10 2. Resolved by hearing;

11 3. Resolved by settlement;

12 4. Determined not to be violations; and

13 5. That are outstanding.

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

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

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

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

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

22 B. In the exercise of the powers and the performance of the
23 duties enumerated in this title, the Commissioner and the Pharmacy
24 Choice Commission shall comply with the procedures of the

1 Administrative Procedures Act. Any conflict between the provisions
2 of Title 75 of the Oklahoma Statutes and of this title shall be
3 resolved in favor of the provisions of this title.

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

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

15 B. 1. The Right to Pharmacy Choice Commission established
16 pursuant to Section 11 of this act shall conduct any hearing
17 pursuant to the Patient's Right to Pharmacy Choice Act or relating
18 to the oversight of pharmacy benefits managers pursuant to Sections
19 356 through 360 of Title 59 of the Oklahoma Statutes. Within thirty
20 (30) days after termination of a hearing or of any rehearing thereof
21 or reargument thereon, unless such time is extended by stipulation,
22 a final order shall be issued.

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

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

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

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

9 B. 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.~~ C. 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.~~ D. 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 or pharmacy benefit manager examined pursuant to
18 the provisions of this section shall pay all reasonable charges
19 incurred in such examination, including the actual expense of the
20 Commissioner ~~or~~, the Pharmacy Choice Commission and the expenses and
21 compensation of the authorized representative of the Commissioner
22 and the expense and compensation of assistants and examiners
23 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 8. 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 Insurance Commissioner shall have full
8 power and authority to enforce by regulations, orders, or otherwise
9 all and singular, the provisions of this law, and the full intent
10 thereof. In particular ~~it~~ the Commissioner shall have the authority
11 and power:

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

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

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

5 SECTION 9. AMENDATORY Section 8, Chapter 426, O.S.L.
6 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as
7 follows:

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

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

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

23 D. When making an examination under this section, the Insurance
24 Commissioner may retain subject matter experts, attorneys,

1 appraisers, independent actuaries, independent certified public
2 accountants or an accounting firm or individual holding a permit to
3 practice public accounting, certified financial examiners or other
4 professionals and specialists as examiners, the cost of which shall
5 be borne by the PBM ~~which~~ that is the subject of 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 shall provide for the receiving
12 and processing of individual complaints alleging violations of the
13 provisions of the Patient's Right to Pharmacy Choice Act, the
14 Pharmacy Audit Integrity Act and Sections 357 through 360 of Title
15 59 of the Oklahoma Statutes.

16 ~~B. C.~~ The Commissioner shall ~~establish a Patient's Right to~~
17 ~~Pharmacy Choice Advisory Committee to~~ have the power and authority
18 to review complaints, hold hearings, subpoena witnesses and records,
19 initiate prosecution, reprimand, require restitution, approve and
20 sign settlement agreements, place on probation, suspend, revoke
21 and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00)
22 for each count for which any pharmacy benefits manager (PBM) has
23 violated a provision of this act the Patient's Right to Pharmacy
24 Choice Act, the Pharmacy Integrity Audit Act and Sections 357

1 through 360 of Title 59 of the Oklahoma Statutes. ~~The Advisory~~
2 ~~Committee~~ Any violation that cannot be settled shall go to a hearing
3 before the Pharmacy Choice Commission.

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

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

22 1. Two persons who are members in good standing of the Oklahoma
23 Pharmacists Association, who shall be ~~nominated~~ appointed by the
24 Oklahoma ~~Pharmacists Association~~ Board of Pharmacy; a list of

1 eligible appointees shall be sent annually to the Oklahoma Board of
2 Pharmacy by the Oklahoma Pharmacists Association;

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

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

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

10 ~~D. Committee~~ E. Pharmacy Choice Commission members ~~shall be~~
11 first appointed ~~for terms of five (5) years~~ shall serve the initial
12 term staggered as follows: the two members appointed by the Office
13 of the Governor shall serve for one (1) year, the two members
14 appointed by the Insurance Commissioner shall serve for two (2)
15 years, the two members appointed by the Oklahoma Pharmacists
16 Association shall serve for two (2) years and the one member
17 appointed by the Attorney General shall serve for three (3) years.
18 Subsequent terms shall be for five (5) years. The terms of the
19 members ~~of the Advisory Committee~~ shall expire on the thirtieth day
20 of June of the year designated for the expiration of the term for
21 which appointed, but the member shall serve until a qualified
22 successor has been duly appointed. ~~No~~ Except for the initial term
23 to establish the Pharmacy Choice Commission, no person shall be
24 appointed to serve more than two consecutive terms. The Commission

1 shall annually elect a chair and vice-chair from among its members.

2 There shall be no limit on the number of times a member may serve as
3 chair or vice-chair. A quorum shall consist of no less than five
4 (5) members and shall be required for the Commission to hold a
5 hearing.

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

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

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

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

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

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

20 SECTION 11. AMENDATORY Section 10, Chapter 426, O.S.L.
21 2019 (36 O.S. Supp. 2020, Section 6967), is amended to read as
22 follows:

23 Section 6967. A. Documents, evidence, materials, records,
24 reports, complaints or other information in the possession or

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

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

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

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

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