

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#2119
4/21/2021 11:48 AM

(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

[insurance - Pharmacy Choice Commission -
enforcement and recording of penalties and fees -
certain duties and authorities - complaints of
certain violations - Patient's Right to Pharmacy
Choice Commission - codification -

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" means the Patient's

1 Right to Pharmacy Choice Commission established by Section 10 of
2 this act.

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

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

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

21 Section 307. The Insurance Commissioner shall be charged with
22 the duty of administration and enforcement of the provisions of the
23 Oklahoma Insurance Code ~~and~~, of any requirements placed on an
24 insurance company pursuant to the Oklahoma Statutes and determining

1 the duties assigned to the Patient's Right to Pharmacy Choice
2 Commission. The Commissioner shall have jurisdiction over
3 complaints against all persons engaged in the business of insurance,
4 and shall hear all matters either in person, by authorized
5 disinterested employees, or by hearing examiners appointed by the
6 Commissioner for that purpose and not specifically addressed
7 otherwise in this act. It shall be the duty of the Commissioner to
8 file and safely keep all books and papers required by law to be
9 filed with the Insurance Department, and to keep and preserve in
10 permanent form a full record of proceedings, including a concise
11 statement of the conditions of such insurers and other entities
12 reported and examined by the Department and its examiners. The
13 Commissioner shall, annually, at the earliest practicable date after
14 returns are received from the several authorized insurers and other
15 organizations, make a report to the Governor ~~of the State of~~
16 ~~Oklahoma~~ of the affairs of the ~~Office~~ office of the Commissioner,
17 which report shall contain a tabular statement and synopsis of the
18 several statements, as accepted by the Commissioner, which shall
19 include with respect to each insurance company the admitted assets,
20 liabilities except capital, capital and surplus, Oklahoma premium
21 income, amount of claims paid in Oklahoma, and such other matters as
22 may be of benefit to the public. The Commissioner shall, on a
23 quarterly basis, report to the Pharmacy Choice Commission an
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1 accounting of matters relating to pharmacy benefit managers
2 including, but not limited to, the number and types of complaints:

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

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

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

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

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

5 SECTION 5. 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 Patient's Right to Pharmacy Choice Commission shall
9 be in writing and shall be signed by either the Commissioner, an
10 authorized employee of the Insurance Department, ~~or~~ an independent
11 hearing examiner or the Pharmacy Choice Commission. A final order
12 signed by an independent hearing examiner, or the Chair or Vice-
13 Chair of the Pharmacy Choice Commission, after hearing, shall be
14 final agency action, notwithstanding the provisions of Section 311
15 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 6. AMENDATORY 36 O.S. 2011, Section 319, is
23 amended to read as follows:

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

10 B. 1. The Patient's Right to Pharmacy Choice Commission
11 established pursuant to Section 10 of this act shall conduct any
12 hearing pursuant to the Patient's Right to Pharmacy Choice Act or
13 relating to the oversight of pharmacy benefits managers pursuant to
14 the Pharmacy Audit Integrity Act and Sections 357 through 360 of
15 Title 59 of the Oklahoma Statutes. Within thirty (30) days after
16 termination of a hearing or of any rehearing thereof or reargument
17 thereon, unless such time is extended by stipulation, a final order
18 shall be issued.

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

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

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

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

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

22 1. The Commissioner shall maintain a list of technicians
23 qualified pursuant to rules adopted by the Commissioner who are
24 proficient in the lines of insurance being reviewed. Upon request

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

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

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

12 1. Any insurer or pharmacy benefit manager examined pursuant to
13 the provisions of this section shall pay all reasonable charges
14 incurred in such examination, including the actual expense of the
15 Commissioner ~~or~~, the Pharmacy Choice Commission and the expenses and
16 compensation of the authorized representative of the Commissioner
17 and the expense and compensation of assistants and examiners
18 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 Insurance Commissioner shall have full
3 power and authority to enforce by regulations, orders₇ or otherwise
4 all and singular, the provisions of this law, and the full intent
5 thereof. In particular ~~it~~ the Commissioner shall have the authority
6 and power:

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

16 2. To make and enforce such reasonable orders, rules₇ and
17 regulations as may be necessary in making this law effective, but
18 such orders, rules and regulations shall not be contrary to or
19 inconsistent with the provisions of this law; and

20 3. To issue an order, after a full hearing to all parties in
21 interest requiring any insurer, group, association₇ or organization
22 of insurers and the members and subscribers thereof to cease and
23 desist from any unfair or unreasonable practice.

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1 SECTION 9. AMENDATORY Section 8, Chapter 426, O.S.L.
2 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as
3 follows:

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

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

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

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

3 SECTION 10. AMENDATORY Section 9, Chapter 426, O.S.L.
4 2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as
5 follows:

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

8 B. The Insurance Commissioner shall provide for the receiving
9 and processing of individual complaints alleging violations of the
10 provisions of the Patient's Right to Pharmacy Choice Act, the
11 Pharmacy Audit Integrity Act and Sections 357 through 360 of Title
12 59 of the Oklahoma Statutes.

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

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

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

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

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

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

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

8 ~~D. Committee~~ E. Pharmacy Choice Commission members ~~shall be~~
9 first appointed for terms of five (5) years shall serve the initial

10 term staggered as follows: the two members appointed by the Office

11 of the Governor shall serve for one (1) year, the two members

12 appointed by the Insurance Commissioner shall serve for two (2)

13 years, the two members appointed by the Oklahoma Pharmacists

14 Association shall serve for two (2) years and the one member

15 appointed by the Attorney General shall serve for three (3) years.

16 Subsequent terms shall be for five (5) years. The terms of the

17 members ~~of the Advisory Committee~~ shall expire on the thirtieth day

18 of June of the year designated for the expiration of the term for

19 which appointed, but the member shall serve until a qualified

20 successor has been duly appointed. ~~No~~ Except for the initial term

21 to establish the Pharmacy Choice Commission, no person shall be

22 appointed to serve more than two consecutive terms. The Commission

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

24 There shall be no limit on the number of times a member may serve as

1 chair or vice-chair. A quorum shall consist of no less than five
2 (5) members and shall be required for the Commission to hold a
3 hearing.

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

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

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

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

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

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

17 SECTION 11. AMENDATORY Section 10, Chapter 426, O.S.L.
18 2019 (36 O.S. Supp. 2020, Section 6967), is amended to read as
19 follows:

20 Section 6967. A. Documents, evidence, materials, records,
21 reports, complaints or other information in the possession or
22 control of the Insurance Department or the Right to Pharmacy Choice
23 Commission, that are obtained by, created by or disclosed to the
24 Insurance Commissioner, Pharmacy Choice Commission or any other

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

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

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

23 SECTION 12. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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4 58-1-2119 CB 4/21/2021 11:48:30 AM

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