

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2123

By: McEntire, Townley, Frix,
Grego, Newton and Moore of
the House

7 and

8 **McCortney, Stephens, Hicks**
9 **and Taylor** of the Senate

10
11
12 COMMITTEE SUBSTITUTE

13 An Act relating to insurance; defining term; amending
14 36 O.S. 2011, Section 121, which relates to
15 computation of time; including the Pharmacy Choice
16 Commission; amending 36 O.S. 2011, Section 301, which
17 relates to the Insurance Department; including the
18 Pharmacy Choice Commission; providing for the powers
19 and duties of the Commission; amending 36 O.S. 2011,
20 Section 307, as amended by Section 1, Chapter 362,
21 O.S.L. 2017 (36 O.S. Supp. 2020, Section 307), which
22 relates to the duties of the Insurance Commissioner;
23 creating exceptions; amending 36 O.S. 2011, Section
24 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;

1 providing for certain expenses to be charged to
2 certain entities; requiring filing and keeping of a
3 certain affidavit; amending 36 O.S. 2011, Section
4 907, which relates to the general powers of the
5 Insurance Commissioner; providing exception; amending
6 Section 8, Chapter 426, O.S.L. 2019 (36 O.S. Supp.
7 2020, Section 6965), which relates to the power to
8 investigate; vesting certain authority in the
9 Pharmacy Choice Commission; modifying time for
10 certain response; amending Section 9, Chapter 426,
11 O.S.L. 2019 (36 O.S. Supp. 2020, Section 6966), which
12 relates to complaints of certain violations; creating
13 the Patient's Right to Pharmacy Choice Commission;
14 providing for restitution; modifying terms; modifying
15 appointments of initial members; providing for
16 election of chair and vice-chair; allowing certain
17 parties to intervene in certain hearings;
18 transferring certain duties from the Insurance
19 Commissioner to the Pharmacy Choice Commission;
20 amending Section 10, Chapter 426, O.S.L. 2019 (36
21 O.S. Supp. 2020, Section 6967), which relates to
22 confidentiality and privileged information; including
23 the Pharmacy Choice Commission; providing for
24 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.

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

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

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

18 Section 301. The Insurance Department of the State of Oklahoma
19 is hereby created. The Department shall consist of the Insurance
20 Commissioner and the Pharmacy Choice Commission. The Insurance
21 Commissioner shall be the chief executive officer of the Insurance
22 Department. The powers and duties of the Insurance Commissioner
23 shall be those created by the Oklahoma Insurance Code and not
24 reserved to the Commission, as well as such powers and duties as the

1 Commission may request the Commissioner to perform. The powers and
2 duties of the Pharmacy Choice Commission shall be those created by
3 the applicable provisions of the Code. The Insurance Department
4 shall be situated in one area in the State Capitol or some other
5 location conveniently accessible to the general public subject to
6 the provisions of Sections 63 and 94 of Title 74 of the Oklahoma
7 Statutes and Section 580:20-13-5 of the Oklahoma Administrative
8 Code.

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

12 Section 307. The Insurance Commissioner shall be charged with
13 the duty of administration and enforcement of the provisions of the
14 Oklahoma Insurance Code and of any requirements placed on an
15 insurance company pursuant to the Oklahoma Statutes, except those
16 duties specifically assigned to the Pharmacy Choice Commission. The
17 Insurance Commissioner shall provide such administrative and staff
18 support as required by the Commission. The Commissioner shall have
19 jurisdiction over complaints against all persons engaged in the
20 business of insurance, other than complaints assigned to the
21 Pharmacy Choice Commission, and shall hear all matters either in
22 person, by authorized disinterested employees, or by hearing
23 examiners appointed by the Commissioner for that purpose. It shall
24 be the duty of the Commissioner to file and safely keep all books

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

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

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

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

15 Section 313. A. Orders and notices of the Insurance
16 Commissioner or Pharmacy Choice Commission shall be in writing and
17 shall be signed by either the Commissioner, an authorized employee
18 of the Insurance Department, or an independent hearing examiner. A
19 final order signed by an independent hearing examiner, after
20 hearing, shall be final agency action, notwithstanding the
21 provisions of Section 311 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 7. AMENDATORY 36 O.S. 2011, Section 332, is
5 amended to read as follows:

6 Section 332. A. The Pharmacy Choice Commission is hereby
7 vested with the duty and authority of enforcing and administering
8 all applicable provisions of the Oklahoma Insurance Code pertaining
9 to the jurisdiction of the Commission, as well as the provisions of
10 Sections 356 through 360 of Title 59 of the Oklahoma Statutes.

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

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

22 D. The Insurance Commissioner, on behalf of the Pharmacy Choice
23 Commission, shall have the authority to employ actuaries,
24 statisticians, accountants, attorneys, auditors, investigators or

1 any other technicians, as the Commission may deem necessary or
2 beneficial, to examine, audit, review, validate, investigate or
3 secure information useful in the lawful administration of the
4 applicable provisions of this Code and Sections 356 through 360 of
5 Title 59 of the Oklahoma Statutes.

6 1. Any entity examined by the Commission pursuant to this
7 section shall pay all reasonable charges incurred in such
8 examination, including the actual expense of the Commission or the
9 expenses and compensation of the authorized representative of the
10 Commission.

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

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

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

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

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

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

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

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

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

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

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

8 Section 907. In addition to any powers hereinbefore expressly
9 enumerated in this law, the Commissioner shall have full power and
10 authority to enforce by regulations, orders, or otherwise all and
11 singular, the provisions of this law, and the full intent thereof,
12 except for those provisions reserved to the Pharmacy Choice
13 Commission by the Oklahoma Insurance Code and Sections 356 through
14 360 of Title 59 of the Oklahoma Statutes. In particular ~~it~~ the
15 Commissioner shall have the authority and power:

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

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

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

9 SECTION 9. AMENDATORY Section 8, Chapter 426, O.S.L.
10 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as
11 follows:

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

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

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

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

14 SECTION 10. AMENDATORY Section 9, Chapter 426, O.S.L.
15 2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as
16 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~J.~~ K. If the ~~Insurance Commissioner~~ Pharmacy Choice Commission
23 determines, based on an investigation of complaints, that a PBM has
24 engaged in violations of ~~this act~~ the Patient's Right to Pharmacy

1 Choice Act or Sections 356 through 360 of Title 59 of the Oklahoma
2 Statutes with such frequency as to indicate a general business
3 practice and that such PBM should be subjected to closer supervision
4 with respect to such practices, the ~~Insurance Commissioner~~
5 Commission may require the PBM to file a report at such periodic
6 intervals as the ~~Insurance Commissioner~~ Commission deems necessary.

7 SECTION 11. AMENDATORY Section 10, Chapter 426, O.S.L.
8 2019 (36 O.S. Supp. 2020, Section 6967), is amended to read as
9 follows:

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

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

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

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10 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/24/2021 -
11 DO PASS, As Amended and Coauthored.
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