ARIZONA STATE LEGISLATURE
Forty-seventh Legislature – Second Regular Session

SENATE HEALTH AND HOUSE OF REPRESENTATIVES HEALTH COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY BOARD OF RESPIRATORY CARE EXAMINERS AND THE SUNRISE HEARING INVOLVING REGULATION OF NON-PHYSICIAN SURGICAL ASSISTANTS SCOPE OF PRACTICE FOR OPTOMETRIC PRESCRIBING PRIVILEGES CREATING NEW LICENSED PROFESSIONAL POSITION OF COMMUNITY DENTAL HEALTH COORDINATOR AND AUDITOR GENERAL REPORT OF NON-SUNSET AUDIT OF BEHAVIORAL HEALTH SERVICES AHCCCS HEALTHCARE GROUP PROGRAM

Minutes of Meeting
Monday, November 20, 2006
House Hearing Room 5 -- 10:00 a.m.

Chairman Rick Murphy called the meeting to order at 10:20 a.m. and attendance was noted by the secretary.

Members Present

Senator Carolyn Allen
Senator Robert Cannell
Senator Barbara Leff
Senator Jim Waring, Co-Chair
Representative David Bradley
Representative Doug Quelland
Representative Rick Murphy, Co-Chair

Members Absent

Senator Marsha Arzberger
Representative Laura Knaperek
Representative Linda Lopez

Speakers Present

Shan Hays, Performance Audit Manager, Auditor General's Office
Susan Gerard, Director, Department of Health Services (DHS)
Dot Reinhard, Audit Team Manager, Auditor General's Office
Anthony D. Rodgers, Director, Arizona Health Care Cost Containment System (AHCCCS)
John Mills, Majority Analyst, Health Committee
Jack Confer, Executive Director, Arizona Board of Osteopathic Examiners in Medicine
Mary Martin, Executive Director, Arizona Board of Respiratory Care Examiners
Eugene Smith, Arizona Alliance of Non Physician Surgical Assistants
Jason Bezozo, Arizona Hospital and Healthcare Association
Tim Miller, Executive Director, Arizona Medical Board, Arizona Regulatory Board of Physician Assistants

Don Isaacson, Arizona Optometric Association
Les Walls, M.D., O.P. President, Southern California College of Optometry
Lansing Brown, M.D.
Thomas Moore, M.D
Janna Day, Arizona Society of Ophthalmology
John Macdonald, Arizona Dental Association
Anita Elliott, President, Arizona Dental Association
Paul Gosar, D.D., Past President, Arizona Dental Association
Kelsey Lundy, Arizona State Dental Association
Persons recognized who did not speak (Page 7, 8, 17 and 19)

Auditor General Report on Behavioral Health Services

Shan Hays, Performance Audit Manager, Auditor General's Office, gave a presentation of the special audit of Behavioral Health Services for Adults with Serious Mental Illness in Maricopa County issued in September of this year. A hard copy of the presentation was also distributed (Attachment 1).

Regarding sums being moved from the Seriously Mentally Ill (SMI) fund, Senator Leff asked if the plaintiffs in Arnold vs. Sarn had agreed to that being done. Ms. Hays answered that she did not know the answer, but, according to the contract, the existing prohibition to moving funds is for Medicaid and KidsCare funds. Senator Leff stated that when the Legislators added money for the SMI population, it was supposed to be for that purpose with no idea of it being used in other places.

Ms. Hays explained there had been lawsuits involving other program areas, including Children's Behavioral Health Services, General Mental Health and Substance Abuse. For that reason, Value Options used the extra money to make up for losses incurred in the other programs. Senator Allen stated she was concerned about the way the money was being used and said perhaps this situation needs to be revisited.

Senator Leff asked if the audit showed that all the needs of the SMI population were met before SMI monies were moved on to other programs. Ms. Hayes said in 2005, the year the audit covered, ValueOptions did not use any SMI money for other programs because there was not any SMI money left over. That year Value Options, as part of a court-ordered agreement, added considerably to its case-management system. A new case-management plan was developed that included the hiring of about four hundred new case managers, which, in turn, caused them not to have excess monies available in the SMI program.

Senator Allen asked about employee turnover, as it has been a revolving door. Ms. Hays answered that one of the changes with the new clinical-team model is to require a clinical structure with case managers at the bottom level with each one being responsible for 30 consumers. Each group of three case managers reports to a clinical liaison, a more experienced person with a degree, who supervises those three and is responsible in some aspects for the 30. Ms. Hays believes there are efforts to make the system more workable even when there is turnover, but they did not look specifically at the turnover problem.

Susan Gerard, Director, Department of Health Services (DHS), stated she appreciated the audit, which as always was well-done, very professional and important in getting necessary feedback. She said she also appreciated the opportunity to answer the questions the members have about the audit. As to the issue of moving money from one line to another, she found that disturbing. She said it is a contract she inherited.

Ms. Gerard also remarked that the timing for the audit is excellent because DHS is in the process of doing a new Request for Proposals (RFP) for Maricopa County so a lot of things learned in the audit can be incorporated in the new RFP and in the contract.

Ms. Gerard stated that funds are moved from line to line when there are losses in the General Mental Health line in order to pay the bills. Years ago a prohibition was put on moving children's money to pay for SMI services. It was decided the children were not getting everything they needed and it was thought the children's program was being starved to make sure there was money at the end of the year to pay for SMI services, so a moratorium was put on for good reason. However, she thinks in the adult system it needs to be remembered that a lot of people who are seriously mentally ill also have substance-abuse problems, and substance abuse services are paid for under General Mental Health. So SMIs are still being helped even though it is not in the SMI line.

She would like for DHS to require any Regional Behavioral Health Authority (RBHA) to get permission from DHS before moving funds from one line to another. This could be done by showing that there is a need and that it is going to benefit the SMIs; or vice-versa, (if it is an SMI needing funds from General Mental Health, they would need to make their case). She believes all agree that no one should ever be able to move money in order to make money. This can be provided for through rule but she also does not have a problem with it being in statute. Flexibility is needed, however, to move money from one line to another in the adult system.

Regarding people in emergency rooms with psychiatric issues, Ms. Gerard reported this has come up in two other areas. A task force at DHS is looking at diversion issues and overcrowding in hospitals and the Governor has an executive-order task force looking specifically at availability of physicians, either on-call or emergency. The biggest problem for DHS is that there is no data; the information is all anecdotal. DHS needs to know who is showing up in emergency rooms. If those patients showing up are on Medicare and not dual-eligible, since the RHBA is a Medicaid system, it is not funded to take care of those patients. If the person is on CIGNA, the mental health system is not geared to take them either. She said DHS is looking at its crisis system which does not seem to be working as it should and does not have the capacity that is needed, e.g., there is no facility on the east side of Maricopa County and there is only a small one on the west side. Those things are going to be in the new proposal for the RFPs. DHS is working with the hospitals, the fire departments and the ambulance companies, trying to find out who the patients are, what the issues are and how the patients can better be served. She said psychiatric hospitals do not exist anymore and there are very few psychiatric hospital beds available. Even in general, there are not enough hospital beds.

She stated that some of the problems concern ambulance companies, dispatch, and alternative destinations, because fire departments are saying they have to take the person, even if the only

issue is psychiatric, to an emergency room. Actually, they could take the person to a crisis center, so DHS is looking at these issues and where it has the authority to make changes.

Senator Cannell said that since reimbursement is fairly reasonable with RBHA, but is not reasonable at all with private insurance companies, all the psychologists and psychiatrists in the rural communities work for the RBHA. Senator Cannell said he realizes the line cannot be crossed when dealing with Medicaid dollars: however, it is a problem from the emergency room standpoint in getting stuck with these patients. He said he is sure that some of the stories that are being told are about patients who could not be taken care of anyway, but there is no one else in those areas to take care of them.

Senator Allen commented that a lot of responsibility is put on the ambulance drivers to do diagnoses, which she thinks they are not prepared to do. Ms. Gerard said that is why there is an Emergency Medical Services (EMS) council that develops protocols in medical direction training. She said at least Phoenix Fire, which provides close to half of the care in Maricopa County, actually has its own special teams trained to identify and deal with psychiatric cases. Ms. Gerard said DHS is not going to change anything without the pre-hospital companies, fire departments, etc. being involved, they all need to be part of this solution because it has become an unbelievable burden to them as well. They are really concerned about how to make those determinations, what to rule out and how to do it.

Senator Leff asked if a person can refuse to go by ambulance to the emergency room and spoke about the case of a constituent who was told she did not have a choice, even though her injuries were minor. Ms. Gerard stated that it is a person's right to refuse to be transported in the ambulance, though something probably has to be signed by the person. Ms. Gerard said she would get the specific information for Senator Leff.

Auditor General Report on AHCCCS Healthcare Group Program

Dot Reinhard, Audit Team Manager, Auditor General's Office, gave a presentation of the special audit of the Healthcare Group Program (HCG), which is part of the Arizona Health Care Cost Containment System (AHCCCS) completed in February of this year. A hard copy of the presentation was also distributed (Attachment 2).

Senator Allen asked about the decline in membership after the cost of premiums went up, how much the premiums were raised and how many people left the program. Ms. Reinhardt said she does not have that information. The report indicated that according to HCG a legislative subsidy was required because the membership pool in the late 1990s consisted primarily of high-risk individuals and the premiums rose beyond what members could afford. Therefore, a number of members left the program and those remaining consisted mainly of high-risk individuals with the cost being covered by legislative subsidy.

Senator Leff asked about the rise in premiums and mentioned a constituent whose premium is now $800 a month, way beyond what she can afford, which defeats the purpose of having this program. Ms. Reinhard said the audit was conducted when the legislative subsidy was ending, and it did look like membership was increasing, but the agency could provide information on the additional number of members and how it has changed. The audit only concerned 2005. Senator

Leff asked if the cost of the outreach affected the cost of the premiums. Ms. Reinhard stated that the audit did not address that issue.

Anthony D. Rodgers, Director, Arizona Health Care Cost Containment System (AHCCCS), reported that in 1987, when the HCG started, it was marketed through the plans but by 1998 the plans began dropping out because they were primarily Medicare groups and began seeing HCG as a high-risk pool because of low membership. Two plans stayed – Mercy Care and University Physicians Health (UPH). He believes the Legislature, to avoid any more plans dropping out, agreed to subsidize HCG. The rates were competitive but there was limited marketing, and slowly but surely, HCG started losing numbers. In 2003 HCG was redesigned with the idea that if enough choices were created, even though the premiums would rise over time, a person could move to another choice, e.g., a different network or a higher deductible.

Mr. Rodgers explained that, for example, in Maricopa County there are three different networks that have grown from 11,000 to 23,000 and continue to grow by 500 a month due to outreach and educational efforts. The PPOs were expanded in order to go statewide. When a person graduates to a higher age band, their premium also goes up. The persons heard from the most were those moving into a new age band. AHCCCS is looking at how to mitigate some of those dramatic increases like the example mentioned of the premium going from $500 to $800. Still available to the member is the possibility of moving from a lower deductible plan to a higher deductible plan. Sixty percent of members are in a zero-deductible plan. HCG is the only one who offers a zero-deductible plan for the small business market

In response to Senator Leff's questions, Mr. Rodgers said the approach taken was that if the only way to solve the problem is with a subsidy, the government is going to have to stay in the subsidizing business because that just means that the market is not going to work. The belief was that innovative products that have not been provided in this market could be an answer that would not require a subsidy. In fact, last year the Legislature did approve Benefit Light and HCG was able to use benefit options as a way to keep premiums affordable. The fact that HCG has grown and is still competitive in the market suggests that.

Mr. Rodgers said for those whose premiums have dramatically increased, it will be necessary to go back to the drawing board to determine the cause. Maybe the age and sex categories need to be changed; maybe premiums need to be raised incrementally each year instead. It is going to take the actuaries to figure this out. Mr. Rodgers said AHCCCS is looking at ways to solve the problem because the plan has to be kept affordable. The policy choice of a risk pool has been tried in other states with limited success because there are caps and cut-offs in lean years.

Senator Leff asked what is solved when an individual such as her constituent, who has high blood pressure and clearly cannot afford the premiums, is thrown off insurance. Mr. Rodgers said he would like to have the constituent's name so someone can talk with her because there are other options besides paying a premium of $800 a month.

Senator Allen asked how the outreach program is doing and commented that a considerable amount of money has gone into it. Mr. Rodgers reported that outreach has gone well, that it was front-loaded and networks were expanded causing a constant need for new material. Most of the expenditure has been in material cost for this outreach which has been part of the reason why

HCG has grown. Most people said they had never heard of HCG. Senator Allen asked how realistic is the initial goal of 100,000. Mr. Rodgers said they are going up about 500 enrollees a month. To get a net of 500, about 1,000 need to be enrolled. He said their systems are taxed because not only are they enrolling, but re-enrolling every year. It has been a slower and more difficult process than originally thought. There is a resistance in small business to get involved in group coverage. Though the growth suggests there is a market, HCG does not have the staff or system capabilities. The number one way of people hearing about them is word of mouth.

Mr. Bradley asked how much of an impediment it is to have a 180-day waiting period. Mr. Rodgers said it has a significant impact, and, when the waiting period is explained, businesses lose interest. Dealing with uninsured businesses is still the goal. Once enrollment reaches 32,000, some of the bumps they have seen will be mitigated. He is still a proponent of this approach because, though a subsidized budget can be done, he would really like to see if the market will work. Last year a lot of data was gathered to help set the premiums and make sure there is balance.

Mr. Quelland cautioned Mr. Rodgers about reinsurance from offshore companies.

Senator Cannell said he has heard no complaints about AHCCCS and encouraged Mr. Rodgers to keep going along the lines he spoke about.

Sunset Review of the Board of Osteopathic Examiners in Medicine and Surgery

John Mills, Majority Analyst, Health Committee stated that pursuant to A.R.S. 41-2953, the Joint Legislative Audit Committee assigned a sunset review to the Arizona Board of Osteopathic Examiners in Medicine and Surgery to the House Health Committee of Reference and the Senate Health Committee of Reference. Copies of the responses of the Osteopathic Board to questions were distributed (Attachment 3)

Mr. Mills stated that the Board has asked for several proposed legislative changes including giving the Director of the Osteopathic Board the same duties as A.R.S 32-1405, 20-27, which are the duties of the Arizona Medical Board's Executive Director. Mr. Mills read the relevant paragraphs and answered questions. Further, the Osteopathic Board requests the language of A.R.S. 32-1800 be updated and clarified and asked for a continuation of ten years.

Jack Confer, Executive Director, Arizona Board of Osteopathic Examiners in Medicine, stated that a little backlog of complaints was identified that has taken too long to investigate. Being familiar with the best practices of the Arizona Medical Board, he believes the Board can manage the backlog by finding a way to get rid of frivolous complaints that are not standard to care and create a reporting method back to the Board of what staff has done. He mentioned there is an appeal process. The object of the request is efficiency -- to become better at investigating complaints. Senator Waring asked if there is any difference in reporting to the public. Dr. Confer said this is a board management staff issue. If something is not confidential already, it will not be made confidential by this change.

Persons recognized in favor who did not speak:

David Steinway, Arizona Board of Osteopathic Medical Examiners
Andrew Becke, Arizona Board of Osteopathic Medical Examiners
Barbara Prah, Medical Consultant Arizona Board of Osteopathic Medical Examiners
Barbara Meyers, Deputy Director, Arizona Board of Osteopathic Medical Examiners
Amanda Weaver, Executive Director, Arizona Board of Osteopathic Medical Association

Senator Waring moved that the Senate and House Health Committee of Reference recommend that the Legislature give the Executive Director of the Arizona Board of Osteopathic Examiners in Medicine and Surgery the duties as outlined in Arizona Revised Statutes 32-1405, 20-27, direct staff to work with the Board to create draft legislation to update and clarify the Board's duties and powers and to continue the Arizona Board of Osteopathic Examiners in Medicine and Surgery for 10 years. The motion carried by a roll call vote of 7-0-0-3 (Attachment 4).

Sunset Review of the Arizona Board of Respiratory Care Examiners

John Mills, Majority Analyst, Health Committee, stated that pursuant to A.R.S. 41-2953, the Joint Legislative Audit Committee (JLAC) assigned a sunset review of the Arizona State Board of Respiratory Care Examiners Surgery to the House Health Committee of Reference and the Senate Health Committee of Reference. The Arizona State Board of Respiratory Care Examiners was created in 1990 with the primary responsibility of protecting the public from unauthorized and unqualified practice of respiratory care and unprofessional conduct by persons who practice respiratory care. Since the board's inception, over 4,000 practitioners were licensed. This number includes temporary licenses issued to qualified persons 24 hours after receipt of a complete license application. Currently the board takes an average of 80 days to review and complete final action on a complaint. Forty-five percent of the complaints result in disciplinary action, 9% result in a Letter of Concern being issued, and 56% dismissed without action. He requested a continuation for 10 years.

Mr. Mills distributed a copy of the response submitted by the Board to the items outlined in A.R.S. 41-2954 (Attachment 5).

Mary Martin, Executive Director, Arizona Board of Respiratory Care Examiners, introduced herself and stated that she would be happy to answer any questions.

Persons recognized in favor who did not speak:

Becky Brimhall, Vice-Chair, Arizona Board of Respiratory Care Examiners
Toni Rodriguez, Chairman, Arizona Board of Respiratory Care Examiners
Edward Hoskins, President, Arizona Society for Respiratory Care

Senator Waring moved that the Senate and House Health Committee of Reference recommend that the Legislature continue the Arizona Board of Respiratory Examiners for 10 years. The motion carried by a roll call vote of 7-0-0-3 (Attachment 6).

THE MEETING RECESSED AT 12:10 P.M. FOR LUNCH.

THE MEETING RECONVENED AT 1:20 P.M. ALL MEMBERS WERE PRESENT EXCEPT SENATOR ARZBERGER, MRS. KNAPEREK AND MS. LOPEZ.

Sunrise Application from the Arizona Alliance of Non-Physician Surgical Assistants regarding regulation of non-physician surgical assistants that are not regulated as Registered Nurses or Physician Assistants

John Mills, Majority Analyst, Health Committee, stated the proposal concerns safety, training and standards for surgical assistants, though probably the biggest issue involved is the question of reimbursement for non-physician surgical assistants through Medicare, Medicaid, AHCCCS and private insurance plans that are not certified. At this point the assistants are paid through the doctor or the hospital.

Eugene Smith, Arizona Alliance of Non Physician Surgical Assistants, stated he is a non-physician surgical assistant who practices in the greater Phoenix metropolitan area and one of the owners of Valleywide Surgical Assistants, which supplies surgical assistants in over 30 surgical facilities in the Valley. He is also past president of the National Surgical Assistants Association and an authorized spokesman for that organization. He stated that regulating the profession that is not regulated by the Nursing Board and Physician Assistant Board would have a positive impact on the surgical care of Arizona residents. It would establish standards for the training of surgical assistants, establish a lawful scope of practice, establish a disciplinary framework, provide enforcement capabilities and satisfy the demands of the insurance industry with AHCCCS being able and willing to reimburse them for their services. He reported that the insurance industry and AHCCCS have said for a long time that because the surgical assistants are not regulated, they pose a danger to the public, plus a liability to them, so they are not interested in recognizing them. This policy pits the surgical assistants against the surgeon or the patient, or to avoid that they need to do it for free. He said if he sends the doctor rather than going himself, for example, AHCCCS pays more money than necessary because they are paying for a physician rather than a non-physician.

He stated that in the states that regulate the profession, there has not been any negative impact to hospitals. He understands the Arizona Hospital Association is opposed to the proposal. Because he is on the board of directors for the National Surgical Assistants Association, he gets all the feedback about problems that are happening around the country and what the issues are. He is in contact with the members of the licensing boards or people that sit on those boards in various states that have regulation. He said he has not heard that one hospital has had to cancel surgery because there was not someone capable of assisting in a procedure once regulation was imposed in that state. It has had a positive impact on the patients because appropriately trained people are now assisting in surgery rather than people that are not trained to assist, and the insurance companies are starting to pick up the tab rather than the patient getting a bill from someone like him after they have paid to have insurance coverage to take care of it. It also takes a financial burden off the provider of the services.

He said they have tried the voluntary route for a number of years and have been trying to negotiate with AHCCCS since 1994. The only thing that will be considered is state regulation, or, as they call it, "licensure." He commented that hospitals are still accepting surgical assistants that are not trained in accredited programs and using non-accredited programs to train people in Arizona. Medical insurance providers are not willing to voluntarily change their policy. He said Senator Leff sponsored a meeting with HealthNet. They thought about it for a couple of months and decided not to voluntarily change their policy. He added that there is no disciplinary framework in place should somebody become a problem.

Mr. Smith read part of a letter written by Marc J. Rosen, MD, the immediate past president of the Maricopa County Medical Society, President of the Arizona Orthopedic Society and an orthopedic surgeon. His practice uses licensed and non-licensed non-physicians:

> "As you may or may not know, it is becoming increasingly difficult to find qualified surgical assistants particularly in urgent or emergency settings. This statute establishes an approved scope of practice, sets forth training and educational guidelines, and by way of regulation would qualify those meeting the criteria set forth for AHCCCS reimbursement. They will now be a regulated entity as AHCCCS requires. As emergent care is concentrated in fewer hands and, reimbursement for physicians who assist decline driving them from the marketplace, there is a need for these paramedical personnel. The life of the "on-call" surgeon is difficult enough without adding the additional burden and loss of valuable time trying to find a qualified assistant for a surgical case that frequently entails inconvenient hours and low reimbursement. Furthermore, the lives of our patients are placed at risk both from the standpoint of delayed treatment as well as dissuading physicians from taking emergency calls due to this chronic lack of support."

Jason Bezozo, Arizona Hospital and Healthcare Association, stated that in the past the Association has opposed this proposal to regulate surgical assistants. He believes in hospital by-laws there is a governing process in place for surgical assistants to be credentialed. It requires a level of education and credentialing by a nationally recognized accrediting organization; it also requires several years of experience. It is the surgeon who determines who will serve on the surgical team; it is not up to the hospital. As long as the surgical assistants meet the credentialing requirements and experience etc., it is up to the surgeon to assemble that surgical team.

He said the Association believes there is no serious threat to patients today. He is unaware of complaints against surgical assistants with the Medical Board or with the Arizona Department of Health Services, which regulates hospitals throughout the state. He stated he recognizes and sympathizes with the reimbursement issues the surgical assistants are going through, and if it is the wish of this Committee of Reference to pursue legislation in the reimbursement area or regulation of surgical assistants, he would like to be a part of that discussion, though at this point he is opposed to this proposal.

Senator Allen asked what harm this would do to the hospitals. Mr. Bezozo said it is not that there is a harm, but there is no threat to the patients' safety or patients' care at this time. Senator Leff responded that there has to be some way to address the fact that insurance companies require somebody to be certified to be reimbursed; they are not asking for licensure. Regulation

is also something that AHCCCS requires and there is no way of getting around it. She believes the patients are safe and the doctor is responsible, but given the fact that surgical assistants cannot be independently reimbursed, it appears the system is not working.

Mr. Bezozo said they would have to see all of those things in the bill and maybe Association members would change their position. He said he would be happy to go back to its members at that time.

Senator Cannell commented that if a hospital can promulgate any rules it wants for surgical assistants, it would seem to him that since it is such an important position, the hospital associations would have at least recommended standards that a hospital must follow. He asked if there is a written standard by either the American or Arizona Hospital Associations that gives hospitals guidelines to follow in these situations. Mr. Bezozo said he believes minimum standards are set by the Joint Commission on Accreditation of Hospital Organizations (JCAHO) and possibly others.

Tim Miller, Executive Director, Arizona Medical Board, Arizona Regulatory Board of Physician Assistants, reported that on December 6 and 7, the Arizona Medical Board will be meeting to take up this issue and vote whether to oppose, support or remain neutral. He has not received any official word but should have an answer in early December. The Arizona Regulatory Board does not meet again until February so he will not be able to get an official word from them until late into the session on whether that board wants to support, oppose or remain neutral. He said there is a concern that the initial analysis of the proposed fees does not seem sufficient to cover the costs of certification, recertification, regulation and discipline. Senator Allen asked what the fee should be. Mr. Miller said that right now it is not known how much work this will involve; further investigation is needed.

Mr. Miller also explained a third option to certification that would answer the safety question but not the reimbursement issue.

Chairman Murphy recalled Mr. Smith to ask if from his perspective there is an overriding reason for certification from the safety standpoint, or if it is really about the reimbursement issue.

Mr. Smith stated that there is a changing dynamic in the profession and the skills the surgical assistants are needing more and more are not always taught in nursing, physician assistant school or even very much in medical schools. The way the industry is going is towards accredited programs and he would like to see hospitals going in the same direction.

Mr. Murphy asked if they were able to find a way to address the reimbursement issue through the legislative or another avenue, and the problem was solved but without regulation, would he want to try again for regulation. Mr. Smith answered that no one is interested in a fight since it would be very difficult to get regulation. He does feel strongly about people going to an accredited program in order to assist in the operating room. He commented that JCAHO does not have any standards yet as to what is acceptable training for a surgical assistant. His organization is just beginning to work with JCAHO regarding standards.

Senator Leff said she tried for a year to do something along those lines and could not, since, unless surgical assistants are regulated by the state, insurers, who consider this a safety issue, will not reimburse them independently.

Mr. Murphy asked Mr. Smith if he was aware of an increase in safety problems with surgical assistants or if the safety issue is more of a philosophical, rather than a real, issue. He asked if any surgical assistants have been sued. Mr. Smith said he is not aware of any surgical assistant being sued except for being named with another two hundred or so defendants. He does not know of the existence of any serious problems.

> **Senator Waring moved that the Senate and House Health Committee of Reference recommend that the Legislature require certification by the Arizona Medical Board of non-physician surgical assistants that are not licensed or certified by another Arizona regulatory board as set forth in this sunrise application. The motion carried by a roll-call vote of 7-0-0-3 (Attachment 7).**

Sunrise Application from the Arizona Optometric Association regarding increasing scope of practice pertaining to prescribing privileges

John Mills, Majority Analyst Health Committee, stated that the Arizona Optometric Association submitted a sunrise application to change the scope of practice for the use of pharmaceuticals in the practice of optometry. Currently optometrists have prescribing privileges limited by name to specific drugs and would like to change the scope of this to specific classes of drugs. There are three issues on this sunrise application. First of all, optometrists would like to have prescribing privileges for the entire class of antibiotic drugs, and, secondly, the same with the entire class of antihistamines. Third, regarding what is referred to as NSAIDs – non-steroidal anti-inflammatory drugs, currently optometrists are allowed to prescribe these medications including ibuprofen in prescription dosages, but have to use non-prescription tablets to fill those dosages. Optometrists can tell the patient to go to any store and pick up ibuprofen and violate label recommendations to get to the proper prescription strength. There already is that ability in law, but optometrists would like a change to be able to actually prescribe the prescription-strength tablets and have patients take those instead.

Chairman Murphy noted that last week he spoke with Mr. Isaacson who told him the antibiotic portion of the request will be dropped and the request would be limited to the other two. He said Mr. Isaacson can clarify if he has misstated it in any way.

Don Isaacson, Arizona Optometric Association, stated that this proposal was filed several months ago, and at that time antibiotics, NSAIDS and antihistamines were considered. He said there has been a lot of discussion since that time and they narrowed the scope. He commented he would like to go back and give a context for the optometry profession and how it evolved and why they are here today. Though the optometry profession existed for a long time, it was during the early 1970s and beyond that training involved medical care in addition to refraction. Historically, a lot of that grew out of the Vietnam War as did the physician assistant. There are now eighteen schools in the United States and two in Canada that teach eye care much like a dental school teaches four years of dental care or a podiatric school teaches four years of

podiatry or foot care. Optometry today is refraction and medical care of the eye within limits. He said it is not as broad as the ophthalmology profession, and the optometrist community has nothing but total respect for the M.D. and D.O.

He stated that the profession had three separate iterations of legislation to expand the practice. The initial was topical pharmaceuticals to diagnose, which was sometime around 1990. In 1993, optometrists received the right to treat with topical pharmaceuticals. In 1998 and again in 1999, the Legislature addressed oral pharmaceuticals and gave optometrists the right to prescribe, dispense and administer in four areas. After a considerable length of discussion involving a gentleman from the University of Arizona College of Pharmacy and an analysis of what pharmaceutical optometrists use and need, four classes of pharmaceuticals were permitted. The profession knew that at some point it would have to come back to the Legislature because drugs are constantly being replaced by better ones. A meeting was held early on with Dr. Hal Wand, Executive Director, Board of Pharmacy, at the end of October. He, in turn, consulted Dr. Herrier of the University of Arizona College of Pharmacy who looked at the issue and wrote back to say okay with antihistamines. He said there is nothing in the pipeline of new drugs to cause any of those drugs pharmacists can already prescribe to be replaced, so there is no need to address antibiotics at this time. In respect to NSAIDs, the prescription strength with a seven-day limit is okay. Based on that, discussions were held with the Medical Association and the Ophthalmologic Association, and, as of Friday, an agreement was reached at least with the Arizona Medical Association on an approach that would have nothing to do with antibiotics, would replace the three-named antihistamines with a general reference to prescription strength antihistamines, and with NSAIDs would keep the language the same and add "prescription-strength NSAIDs for up to seven days."

Mr. Isaacson reported there are eight prescribing privileges in Arizona not counting veterinary. Currently, optometry is the most restricted. All fifty states have dealt with these issues. Fifty states today allow optometrists to prescribe, dispense and administer topical pharmaceuticals. Forty-five states allow optometrists to administer oral pharmaceuticals. He said regarding issues such as at what point it is appropriate to use topical or other pharmaceuticals with children, he would look at the prescribing privileges of the other professions that are not very specific. He said that optometrists, like dentists and medical doctors, go to school for four years, year around, and half of those four years are clinical, where there is not only refraction, but heavy practical training on ocular disease management and intervention. He said to that end, Dr. Les Walls, president of the Southern California College of Optometry, who is an M.D. and an optometrist, is present.

Senator Cannell stated he thinks the committee should give strong consideration to limiting topical antibiotic drops, especially in infants, because of a very big risk. He has some major concerns about it.

Mr. Isaacson said this has been a privilege since 1993 and he has represented the Optometric Association, about ten years, and there has never been a concern or complaint of which he is aware. There is always a legitimate concern about what is appropriate for a particular patient. This is where the professional judgment that is taught during the four years of training comes in,

and other professions that do not have these limitations also need to use the same professional judgment.

Les Walls, M.D., O.P. President, Southern California College of Optometry, spoke in support of the proposal and has indicated that he participated in the education of optometrists in community education and at the curricular level. He was involved in curriculum development and implementation both in optometry and medicine over the past thirty years and is familiar with educational programs and the conservative approach. He stated that the education and training of an optometrist is so much different now than it was thirty years ago. These things are covered in the curriculum. Optometrists are taught, for example, that a child with a simple red eye who is also lethargic or has a fever or symptoms that would cause concern, should be referred to a medical doctor.

He assured the Committee that their optometrists are adequately educated and trained and are a very conservative lot. He commented that is why there was testimony that there have not been any complaints from the state board about children or anyone else. He observed that the changes in the proposal are very safe and are not anything new.

Senator Leff asked what situation would require prescription-drug strength. Dr. Walls said the over-the-counter doses are very conservative and probably the equivalent of one-and-a-half aspirin or maybe two, so there is not the desired effect. The prescription dose is typically 400 mg and when treating inflammation, 400-600 mg is used. When the patient goes to the pharmacy they can buy fewer pills and there may be the possibility of reimbursement because it is a prescription with pre-paid health plans and insurance policies, etc.

Senator Leff commented that these types of drugs are really rough on the stomach and asked what training the optometrist has to deal with this. She asked about the inability to prescribe whatever drug would be needed to take care of gastric issues.

Dr. Walls said his personal opinion is that the prescription drugs are a little safer and a little more predictable than the over-the-counter drugs. The drugs are never prescribed without asking about the patient's medical history, eg., gastric upset; this is a normal part of the exam. Otherwise, optometrists work with the patient's family doctor. Senator Leff said she has a problem with adding prescription authority to the optometrist who does not have the same medical training as an M.D. or D.O. Dr. Walls responded optometrists are already prescribing it, but it is being prescribed over the counter. Optometrists have pharmaceutical training in depth and that is why there have been no serious problems.

Senator Cannell said he is concerned about the fact that infants with conjunctivitis might have gonorrhea, and he is wondering whether optometrists are really ready to handle or recognize that disease – also meningitis. His concern is that an optometrist is acting as a medical doctor when that infant needs a pediatrician who can recognize these diseases. Even family physicians are quick to refer these cases to pediatricians. He further commented that doctors taking care of children are not just medical students; they go through a residency that covers all these cases. He said he is disturbed that optometrists even want to prescribe antibiotic eye drops for children.

Dr. Walls said he completely agrees with Senator Cannell and that the optometrists work very well with the family doctors, pediatricians and ophthalmologists to quickly refer those who need to be referred. When optometrists see something beyond the scope of practice they are taught that the patient must be referred.

Senator Leff asked about the optometrist's training in pharmaceuticals versus medical school, which also has residency. Dr. Walls said that it is very parallel to that in dentistry and pretty much the same in all the disciplines.

Lansing Brown, M.D. stated that he is an ophthalmologist and also served on the Board of Optometry at the time some of these questions were raised. He then read from A.R.S. 32-1728, which says "The board shall adopt a course of study for certification to use oral pharmaceuticals after consultation with colleges of optometry accredited by a national accrediting body on optometric education and with the College of Pharmacy at the University of Arizona."

Dr. Brown stated he was on the Board when it consulted with the Board of Pharmacy, and Dr. Herrier was assigned to study this. Dr. Herrier issued a statement that any optometrist trying to get certified in terms of oral pharmaceuticals needed to have 35 hours of pharmaceutical training. The Board decided that 12 hours was enough. An optometric license used to be very hard to get. Optometry now has a national board exam and that exam is in no way adequate in comparison to what is really needed for medical training and taking care of medical eye problems.

Chairman Murphy said that at this point the optometric board is asking to take the specific names off antihistamines, and make it a general category and lightly loosen up the NSAIDs and allow optometrists to prescribe prescription-strength NSAIDs instead of filling the prescriptions with over-the-counter pills. He asked why that would be a problem. Dr. Brown said he did not use NSAIDs very often as a practicing ophthalmologist, and he is very concerned that someone is being given NSAIDs for some kind of eye pain without a diagnosis. He is not sure why this has to be extended to a higher level. He disagrees that a prescription drug is better than just adding extra pills from over the counter. He said the problem is with misdiagnosis. He is concerned as to why optometrists are requesting this. Answering Senator Allen, he said it seems like optometrists are trying to increase the scope of practice and this has been going on for a period of time.

Thomas Moore, M.D., stated he is in sole practice as a pediatrician, has been in family practice many years and is board certified in ophthalmology. He has not had reason to write prescriptions for any of the antihistamines or antibiotics previously requested, or NSAIDs, since this legislation was enacted in 1999. Seven ophthalmologists and lobbyists met some weeks ago to discuss this legislation and the emphasis was on the lack of need, especially the antibiotics. In addition, it was mentioned that since the optometrists can advise patients to use over-the-counter NSAIDs in prescription doses, there is no need to write prescriptions. He is opposed because the safety of Arizona citizens would be placed at risk.

Janna Day, Arizona Society of Ophthalmology, stated there have been some internal issues about the official position. There are a significant number of concerns, and obviously there have been some misunderstandings as to what the Association was trying to work out with Mr. Isaacson. At this point she thinks the leadership of the Association is inclined to be on record as supporting

the deal they made with Mr. Isaacson, leaving out the antibiotics and moving forward the other two issues -- antihistamines and NSAIDs, while expressing concern about the prescription-strength portion of NSAIDs.

Persons recognized in support who did speak:

Jane Lynch, Arizona Optometric Association
Dr. Lori Grover, Arizona Optometric Association
Dr. Tom Czyz, Arizona Optometric Association

Senator Waring moved that the Senate and House Health Committee of Reference recommend that the Legislature amend the statutes relating to optometry to allow optometrists to prescribe all types of antihistamines subject to the existing rules and to prescribe prescription-strength non-steroidal anti-inflammatory drugs for use for a period not to exceed seven days. The motion failed by a roll-call vote of 2-4-0-4. (Attachment 8).

Senator Waring moved that the Senate and House Health Committee of Reference recommend that the Legislature amend the statutes relating to optometry to allow optometrists to prescribe all types of antihistamines subject to the existing rules. The motion carried by a roll-call vote of 6-0-0-4. (Attachment 9).

Sunrise Application from the Arizona Dental Association creating a new auxiliary position of Community Dental Health Coordinator within the dental team

John Mills, Majority Analyst, Health Committee, stated that the Arizona Dental Association submitted a sunrise application to create a new Certified Professional Dental Health Coordinator (CDHC) who would be allowed to screen and manage care prescribed by a dentist (Attachment 10).

John Macdonald, Arizona Dental Association, stated his support of the sunrise application and introduced Dr. Anita Elliott, President of the Arizona Dental Association, who, he said, would be able to speak more about it. He said there are several other members of the Association present, all of whom are dentists and can answer any questions that might come up.

Anita Elliott, President, Arizona Dental Association, stated that the Association's proposal is a step in expanding outside the traditional in-office model and getting out into the communities. The new person would be in a team led by a dentist, which would expand its reach deep into underserved communities and influence the local health communities to adopt and promote oral health. This was developed by the American Dental Association. Arizona was selected as a pilot state to develop the civic curriculum and the precise method with which this care will be delivered. The main goal is to educate and promote good oral health. The CDHC will be able to deliver minimal care. It really is a prevention program to improve the efficiency of care. There

are already people in the communities who have access and knowledge about the children and adults in the community, who could go through this training process for a year or a year-and-a-half to be able to do the oral health education and the diagnostic information to help the dentists.

Senator Leff asked why not use the dental hygienist and the dental assistant who are already available and improve on that. Dr. Elliot said the first emphasis is to use the dental assistant, but there is additional training. She said this program is still being developed and the specifics will come forward in the bill. It was just approved by the American Dental Association last month.

Paul Gosar, D.D., Past President, Arizona Dental Association, stated the Association has been following this program for two years with the help of school nurses and setting up "smile days." Basically, children who are not being seen by a dentist were gathered up and information taken, and when "smile day" came, the dentists got a lot of treatment done. It is just another method of triaging to make the work of the dentists more efficient. Senator Cannell said he is concerned that there is no definite program of instruction. Senator Leff asked why not increase the dental assistants instead of bringing in a brand new entity. Dr. Gosar said there are a lot of children not going to college because of debt and time away from family, so this is an opportunity for them also. Basically, this is an access to care program; they want to increase the efficiency of dentistry with the limited amount of dentists that exist.

Dr. Elliott said it is necessary to move forward with the sunrise application even though it is not all worked out. She gave the assurance that the Dental Association will work to make a bill that is very specific and tight in the curriculum.

Kelsey Lundy, Arizona State Dental Association, stated while the Association commends the Arizona Dental Association for trying to increase access to the underserved, the CDHS is not necessarily the answer. Many of the concerns which have been brought up, e.g., education requirements, are very vague. Dental assistants do not have any education requirements and are not certified in this state, so the Association is very uncomfortable with the increased scope of practice, and even the Dental Association believes there may be other ways of addressing access to underserved areas. She said another issue is that oral health care in Arizona has not been looked at for a number of years. There should be a stakeholder meeting involving everyone concerned. There may already be programs available that fill this need. All the issues should be looked at before creating a new position and/or expanding the scope of practice for providers that have no formal training in oral health care. She asked that a task force be created to look at these questions.

Mr. MacDonald commented that, as Dr. Elliott mentioned, this was approved just one month ago and there has not been time to have any stakeholder meetings, although this will be done. Now the process needs to be started.

Persons recognized in support who did not speak:

Brian Powley, Representative, Arizona Dental Association
Janet Regner, Arizona Dental Association
Tom Greco, Arizona Dental Association

Person recognized as opposed who did not speak:

Angela Roberts, President, Arizona State Dental Hygienists

Senator Waring moved that the Senate and House Health Committee of Reference recommend that the Legislature amend the statutes related to dentistry to create a new certified professional, the Community Dental Health Coordinator, who would undertake community-based oral health promotion, collect data, provide care coordination and provide specified dental care under the general supervision of a dentist as specified in the sunrise application The motion carried by a roll-call vote of 5-1-0-4 (Attachment 11).

Without objection, the meeting adjourned at 3:53 p.m.

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Pat Hudock, Committee Secretary
December 4, 2006

(Original minutes, attachments and tape on file in the Office of the Chief Clerk)