

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature –Second Regular Session

COMMITTEE ON HEALTH AND HUMAN SERVICES

Minutes of Meeting
Wednesday, February 15, 2012
House Hearing Room 4 -- 8:15 a.m.

Chairman Ash called the meeting to order at 8:34 a.m. and roll call was taken by the secretary.

Members Present

Mrs. Brophy McGee
Mrs. Gonzales
Mr. Heinz

Ms. Hobbs
Mrs. Judd
Mr. Pierce

Mrs. Yee
Mrs. Carter, Vice-Chairman
Mr. Ash, Chairman

Members Absent

None

Committee Action

HB2029 - DPA (5-4-0-0)
HB2054 - DPA S/E (7-0-0-2)
HB2526 - DPA (9-0-0-0)
HB2568 - DPA S/E (5-3-0-1)
HB2692 - DPA (8-0-1-0)

HB2713 - DPA S/E (9-0-0-0)
HB2754 - DPA S/E (8-0-0-1)
HB2794 - DPA (7-0-0-2)
HB2800 - DP (6-3-0-0)
HB2838 - DISCUSSED & HELD

CONSIDERATION OF BILLS

HB2838 - abortion; procedures; requirements; informed consent - DISCUSSED & HELD

Vice-Chairman Carter moved that HB2838 do pass.

Ingrid Garvey, Majority Research Analyst, explained that HB2838 adds provisions to the abortion statutes relating to rules, parental consent, informed consent and gestational age (Attachment 1).

Mrs. Yee, sponsor, stated that two key elements of this bill are the ban on abortions after 20 weeks of pregnancy, except in the case of a medical emergency, and the requirement to dispense the abortion pill in compliance with the protocol prescribed by the Food and Drug Administration (FDA) and agreed to by the drug manufacturer. She opined that it is necessary to protect the lives of preborn children and women who are forever scarred by abortion. In

response to a question, she acknowledged that the bill makes it a Class 5 felony if a physician aborts a baby after 20 weeks.

Mrs. Yee moved that the Yee six-line amendment to HB2838 dated 2/14/12 (Attachment 2) be adopted.

Mrs. Yee said this amendment clarifies that the provision relating to signage applies to an abortion clinic instead of any facility or office that provides abortions, which could potentially include hospitals (Attachment 2).

Question was called on the motion that the Yee six-line amendment to HB2838 dated 2/14/12 (Attachment 2) be adopted. The motion carried.

Ms. Hobbs moved that the Hobbs two-page amendment to HB2838 dated 02/14/2012 (Attachment 3) be adopted.

Ms. Hobbs explained that the amendment states that the Department of Health Services (DHS) shall require each private agency listed on its website that claims to assist a woman through pregnancy to inform patients of all pregnancy-related options, including the right to a legal abortion, or post at least one clearly legible sign in a conspicuous waiting room stating that the agency does not provide any information about abortion services (Attachment 3). Also, a woman who is not provided with this information can file civil action to obtain appropriate relief.

Question was called on the motion that the Hobbs two-page amendment to HB2838 dated 02/14/2012 (Attachment 3) be adopted. The motion failed.

Ms. Hobbs moved that the Hobbs nine-line amendment to HB2838 dated 02/14/2012 (Attachment 4) be adopted.

Ms. Hobbs explained that the amendment adds to informed consent for a patient seeking an abortion for lethal or non-lethal fetal conditions by requiring that information is also provided about the health risk to the mother of carrying the pregnancy to term (Attachment 4).

Question was called on the motion that the Hobbs nine-line amendment to HB2838 dated 02/14/2012 (Attachment 4) be adopted. The motion failed.

Mr. Heinz moved that the Heinz three-line amendment to HB2838 dated 2/14/12 (Attachment 5) be adopted.

Mr. Heinz related that the amendment specifies that only those members of the Legislature who vote in the affirmative on HB2838 endorse the findings and purposes section (Attachment 5), which is an egregious departure from evidence-based medicine, so it is not appropriate to make everyone support those findings.

Question was called on the motion that the Heinz three-line amendment to HB2838 dated 2/14/12 (Attachment 5) be adopted. The motion failed.

Mr. Heinz moved that the Heinz six-line amendment to HB2838 dated 2/14/12 (Attachment 6) be adopted.

Mr. Heinz stated that the amendment removes the following provisions from HB2838 (Attachment 6):

- Requirement for an ultrasound 24 hours prior to an abortion.
- Classifying violation of the section as an act of unprofessional conduct subject to license suspension or revocation.
- Allowing certain individuals to file a civil action to obtain relief for violation of the section.
- Requiring that a civil action must be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was the result of negligence, etc.
- Listing the various types of relief.
- Six-year statute of limitations for filing a civil action after the violation occurred.

Mrs. Yee spoke about the importance of informed consent and the 24-hour time period so a woman has the opportunity to view the ultrasound and reconsider the abortion.

Ms. Hobbs stated that the 24-hour waiting period is harmful for women who have to travel outside their community to obtain an abortion; low-income women do not have the financial ability to stay overnight or make two trips.

Question was called on the motion that the Heinz six-line amendment to HB2838 dated 2/14/12 (Attachment 6) be adopted. The motion failed.

Mr. Heinz moved that the Heinz four-line amendment to HB2838 dated 2/14/12 (Attachment 7) be adopted.

Mr. Heinz related that the amendment removes the following provisions from HB2838 (Attachment 7):

- Except in a medical emergency a person shall not perform, induce or attempt to perform or induce an abortion unless a physician has first made a determination of the probable gestational age of the unborn child.
- Class 5 misdemeanor language.
- Six-year statute of limitations.
- Civil action requirements in superior court.

Mrs. Yee said studies indicate that the risk of maternal health increases when the woman moves into additional gestational stages, which is why she supports the 20-week ban on abortions.

Question was called on the motion that the Heinz four-line amendment to HB2838 dated 2/14/12 (Attachment 7) be adopted. The motion failed.

Mr. Heinz moved that the Heinz five-line amendment to HB2838 dated 02/14/2012 (Attachment 8) be adopted.

Mr. Heinz conveyed that the amendment removes the Class 5 felony penalty for persons who violate the informed consent provisions, which is punishable by 9 to 24 months incarceration (Attachment 8). He opined that this penalty is too severe, especially given the uncertain ability to determine the gestational age, which is being left up to a judge and is not appropriate.

Ms. Garvey advised that the language still remains specifying that physicians who knowingly violate the section will be subject to unprofessional conduct and license suspension or revocation.

Mr. Heinz remarked that it is already not acceptable, unprofessional and not in keeping with the standards of medical practice to fail to obtain informed consent for anything, including any termination procedure.

Question was called on the motion that the Heinz five-line amendment to HB2838 dated 02/14/2012 (Attachment 8) be adopted. The motion carried.

Mr. Heinz moved that the Heinz two-page amendment to HB2838 dated 02/14/2012 (Attachment 9) be adopted.

Mr. Heinz stated that the amendment removes all civil and unprofessional conduct penalties in A.R.S. title 36, chapter 20, regarding abortion (Attachment 9). The penalties are too severe for health care providers who are acting in good faith and practicing in the state.

Mrs. Yee commented that the amendment eliminates the ability to enforce the law with respect to abortion providers who, in the past, helped minors circumvent parental consent laws. Parents should have recourse in that situation.

Question was called on the motion that the Heinz two-page amendment to HB2838 dated 02/14/2012 (Attachment 9) be adopted. The motion failed by a roll call vote of 4-5-0-0 (Attachment 10).

Robin Snyder, representing self, spoke in favor of HB2838. She related that when she became pregnant seven years ago, an ultrasound showed some issues so the doctor recommended a specialist who determined that the baby had a lethal chromosomal disorder and recommended an abortion. She and her husband conducted research and obtained further information, and after 39 weeks, their son was born. Holding their dead baby was peaceful, cathartic and shared with family and friends. She stressed that it is important to deliver information on all options. Their decision was right for them, and their son was given the chance of survival that every child deserves regardless of deformities or imperfections.

Dr. Eric Reuss, obstetrician/gynecologist, representing self, opposed HB2838. He said he performs abortions, although not many, for patients who express the desire to proceed in this procedure that is currently protected by the Supreme Court. Referring to the findings in the bill, he submitted that it references articles that have been published, some as old as 1987 that are not

applicable because medicine is evidence-based, and choosing certain articles that are one-sided does not provide a balanced view. He responded to questions about the findings section, determining gestational age, lethal fetal conditions, the impact on physicians of the provisions allowing the filing of a civil lawsuit, FDA protocol for the abortion pill and information provided to patients with an abnormal screening test.

Kat Sabine, Chairperson, NARAL Pro-Choice Arizona, said a woman in Tucson had a stillborn child in 2009, and less than a year later, she became pregnant and found that the medication she was taking would impede the pregnancy. It would have been dangerous to stop the medication, so she chose to continue taking it and decided to terminate the pregnancy. The woman believes the doctors helped her make the best decision, without judgment. She urged the Members to vote no on HB2838.

Carrie Hulburd, representing self, opposed HB2838. She read a letter from a friend about her best friend who was pregnant and made the difficult, loving and educated choice to terminate the pregnancy so the baby would not suffer any longer due to a serious heart defect. Ms. Hulburd said this bill will have a devastating effect on women's health in Arizona and make an already tragic situation worse. Government should not be interfering in personal, private medical decisions, especially when it involves the heart-wrenching reality of a pregnancy with a fetal anomaly.

Vice-Chairman Carter assumed the Chair.

Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona, opposed HB2838. Referring to the language allowing for a civil action against anyone who causes, aids or assists a minor in obtaining an abortion, she stated that ideally a teenager can talk to a parent about a problem, but that does not always happen in reality. If a teenager talks to a trusted school counselor instead about a pregnancy and the counselor discusses all options, including abortion, the counselor could face civil liability when he was trying to help the student. Also, regarding the 20-week issue, however one feels about abortion, each woman's pregnancy is unique and represents its own set of circumstances which, unfortunately, can include things going terribly wrong, in which case the woman needs the freedom and time to make the best decision for her family.

Anna Flynn, representing self, opposed HB2838. She stated that informed consent simply means providing information about all options and letting people make an informed decision. This legislation limits people's knowledge because it limits access to evidence-based research, creates protocols for medical professionals and creates facts that are not real facts. Time, energy and money should be focused on ensuring that young women and men are informed and educated to make decisions that work for them.

Dr. Robert Hardy, retired, representing self, opposed to HB2838, stated that he supports Planned Parenthood. He read a letter signed by 19 physicians expressing concern about the negative effect this legislation will have on the medical profession (Attachment 11).

Liza Love, representing self and on behalf of a person not able to attend, opposed HB2838. She stated that people will be impacted by this legislation. She asked the Members to take into

consideration the reality of what the bill does and recognize that if someone makes a responsible decision, it was done because it is the right thing to do, and it is legal.

Theresa Ulmer, Consultant, Planned Parenthood Arizona, spoke in opposition to HB2838. She testified that this is a personal and different decision for every woman confronted with an unwanted or complicated pregnancy or an unhealthy fetus, and the potential of what life will be like if they have to deal with the consequences of this legislation and are not able to do what is best for their family. This bill is ingenious when the majority of the Members probably support tort reform. The best medical professionals need to be attracted to the state, but this bill puts Arizona on a path where the best quality care cannot be provided.

She said last year, the Committee passed extensive regulations on the medical profession relating to abortion care, which went into effect five months ago, along with additional legislation from the past that was tied up in litigation. The industry is still looking at the impact of that and it is too soon to look at another step. This bill will further limit a woman's ability to obtain abortion medication under the evidence-based protocol that the profession sees as best for patient care. She asked the Members to oppose HB2838 if for no other reason than because tort reform is important to Arizona. She responded to questions about Planned Parenthood.

Colby Bower, Director of Government Relations, Arizona Department of Health Services (DHS), neutral on HB2838, stated that a fiscal note indicates staff time costs associated with requirements for the DHS website, but DHS has information technology staff that can develop the websites. He will find out if the state will be liable if the information on the website is not up-to-date or contains faulty information.

Deborah Sheasby, Legal Counsel, Center for Arizona Policy, spoke in support of HB2838. She submitted for the record a copy of an informational presentation to the Senate Health Committee from Clarke D. Forsythe, Esquire, Senior Counsel, Americans United for Life, regarding legal issues relating to the prohibition on abortions at 20 weeks (Attachment 12). She made the following points:

- The state has a strong interest in protecting maternal health, which has been repeatedly upheld by the Supreme Court and compels this ban on abortion at 20 weeks, except in the case of a medical emergency.
- A study in the *Journal of Obstetrics and Gynecology* indicates that the later in gestational age, the more likely the woman is to have serious complications resulting in death.
- There is medical evidence that a baby can feel pain at 20 weeks and the state has a strong interest in protecting the integrity of the medical profession. She cited examples in which the gestational age was manipulated by doctors in order to perform an abortion resulting in the death of patients.
- HB2838 requires that physicians follow the standard of care in the profession for dating the pregnancy and rely on that.
- FDA protocol for the abortion pill is important for protecting women's health and safety.

Ms. Sheasby responded to questions about how the 20-week ban will protect the integrity of the medical profession, how the bill will prevent a doctor from manipulating data to change the gestational age, estimating the gestational age and professional misconduct.

Mr. Heinz said the civil penalties in the bill are based on an arbitrary date that cannot be medically proven; it could be plus or minus five days, and it would be up to a judge, or possibly a jury, to decide if it is plus or minus.

Chairman Ash resumed the Chair.

Beth Hallgren, Campaign Administrator, 40 Days For Life, representing self, spoke in favor of HB2838. She stated that this bill is meant to ensure that women understand the ramifications and are given all of the information in order to make an informed consent. She stands on the sidewalk in front of abortion facilities where she sees women being strongly coerced to do something they do not want to do. The mother of one young lady, who was a minor, was physically encouraging her to go into the abortion facility despite a sign informing women that they cannot legally be coerced into having an abortion, which is an added assistance to inform women.

Vice-Chairman Carter announced the names of those who signed up in support of HB2838 but did not speak:

Ron Johnson, Executive Director, Arizona Catholic Conference

Debi Vandenboom, representing self

Terrance Traylor, representing self

Vice-Chairman Carter announced the names of those who signed up in opposition to HB2838 but did not speak:

Laura Carruthers, representing self

Maddy Urken, representing self

Michelle Steinberg, Director of Public Affairs, Planned Parenthood Arizona

Maureen Quirk, representing self

Carol Consalvo, representing self

Judith Salzman, representing self

Dianne Post, Lawyer, representing self

Rivko Knox, representing self

Mary Ellen Kazda, representing self

Ellen Meltzer, representing self

Kelly Damron, representing self

Seth Apfel, representing self

Brenda Young, representing self

Chris Fike, representing self

Serah Blain, Secular Coalition for Arizona

Janice Miano, representing self

Marissa Morabito, representing self

Stephanie Vargas, representing self

Vice-Chairman Carter announced the names of those who signed up as neutral on HB2838 but did not speak:

David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association

Chairman Ash stated that he will exercise the prerogative of the Chair and hold the bill.

Mr. Pierce related the personal experience of his brother and wife who were told three years ago that their unborn child would have medical problems that would be incompatible with life. They were given the option to abort but elected not to do so. When the baby was born, he spent a few weeks in the Neonatal Intensive Care Unit, but went home before doctors expected. He has had a number of surgeries, and though later than normal, he is now able to stand up and walk while holding onto furniture. Mr. Pierce submitted that this bill will help ensure that decisions are completely informed.

Mrs. Yee stated that two doctors wanted to be present, but were unable to attend. She read a letter from Dr. Paul Liu in support of the bill, stating that medical literature shows that by the 20th week the unborn child develops pain sensors all over the body, so he does not believe their young lives should be terminated (Attachment 13). Additionally, he agrees with medical evidence that maternal health is also endangered when an abortion is attempted later in pregnancy, especially after 20 weeks.

Ms. Hobbs read an email from Dr. Pam Lotke stating that there is no precedent or medical reason to place larger burdens on physicians providing abortion services than any other procedures, the vast majority of which pose much greater risks to patients (Attachment 14). In the second trimester, physicians quote a two-week possible discrepancy in gestational age in either direction. Wait times are an undue burden on women, and when providing informed consent she discusses the possible risks and consequences of abortion, as well as the risks for continuing the pregnancy.

Vice-Chairman Carter withdrew the motion that HB2838 do pass.

HB2800 - public funding; family planning; prohibition - DO PASS

Vice-Chairman Carter moved that HB2800 do pass.

Cassandra Wallace, Majority Staff Intern, explained that HB2800 outlines the priority for receipt of state funds for family planning services and specifies that the state or any political subdivision may not contract with any person or facility that performs nonfederally-qualified abortions (Attachment 15).

Representative Justin Olson, sponsor, said the intent of this bill is to ensure that public funds are not used to subsidize abortions.

Theresa Ulmer, Consultant, Planned Parenthood Arizona, opposed HB2800. She related that all abortion funds are segregated. Planned Parenthood offers a variety of services that are directly funded by federal funds, such as family planning, cervical cancer screening, etc., and most of the

patients served are low-income. Defunding Planned Parenthood will impact thousands of patients. This bill was challenged in Kansas, Indiana and North Carolina and the Center for Medicare and Medicaid Services will not allow it. Women are actually intelligent individuals who can make decisions and deserve the same access to health care as men. She encouraged the Members to vote no and keep the playing field level for all individuals in Arizona.

Anna Flynn, representing self, opposed HB2800. She related that organizations like Planned Parenthood provide affordable, accessible health care. It has not been possible to overturn *Roe v. Wade* so this legislation is being used to circumvent people's constitutional rights, which is not good use of the Legislature's time. She would like to see the bill defeated.

Beth Hallgren, Campaign Administrator, 40 Days For Life, representing self, spoke in favor of HB2800. She stated that this bill does not prevent anyone from donating to Planned Parenthood. She prefers her tax money to go toward the poor, needy, and sick and not to fund abortions.

Charles Donovan, President, Charlotte Lozier Institute, Washington, D.C. spoke in favor of HB2800 (Attachment 16). He stated that this bill does not reduce federally- or state-appropriated family planning funds nor does it change eligibility for any woman in the state to qualify for Medicaid or Title X assistance. It places priority behind those funds so it goes to agencies listed in the legislation that can deal with all of a woman's needs in the most coordinated setting possible. HB2800 will harmonize Arizona's policy priorities with the requirements of legislation known as the Hyde Amendment, which has, since 1976, limited the circumstances under which taxpayer dollars can be used to pay for abortions.

Chairman Ash announced the names of those who signed up in support of HB2800 but did not speak:

Ron Johnson, Executive Director, Arizona Catholic Conference
Deborah Sheasby, Legal Counsel, Center for Arizona Policy

Chairman Ash announced the names of those who signed up in opposition to HB2800 but did not speak:

Maddy Urken, representing self
Maureen Quirk, representing self
Rivko Knox, representing self
Anjali Abraham, Public Policy Director, American Civil Liberties Union of Arizona
Michelle Steinberg, Director of Public Affairs, Planned Parenthood Arizona
Ellen Meltzer, representing self
Laura Carruthers, representing self
Kelly Damron, representing self
Seth Apfel, representing self
Brenda Young, representing self
Carol Consalvo, representing self
Chris Fike, representing self
Serah Blain, Secular Coalition for Arizona
Janice Miano, representing self
Marissa Morabito, representing self
Francine Dobkin, representing self

Bill Gates, representing self

Chairman Ash announced the names of those who signed up as neutral on HB2800 but did not speak:

Colby Bower, Director of Government Relations, Arizona Department of Health Services

Mr. Heinz expressed concern that the bill will impact the ability of providers to be reimbursed for services rendered by Planned Parenthood other than abortions, such as female primary care, which will be a detriment to public health and women and impact the state's Medicaid program.

Question was called on the motion that HB2800 do pass. The motion carried by a roll call vote of 6-3-0-0 (Attachment 17).

HB2754 - Arizona medical board; disciplinary action - DO PASS AMENDED S/E
S/E: same subject

Mrs. Yee moved that HB2754 do pass.

Mrs. Yee moved that the Yee seven-page strike-everything amendment to HB2754 dated 2/13/12 (Attachment 18) be adopted.

Joe DeMenna, Majority Assistant Research Analyst, explained that the strike-everything amendment to HB2754 (Attachment 18) allows the Arizona Medical Board to consider bias or improper motive on the part of the complainant as a mitigating factor when determining disciplinary action (Attachment 19).

Mrs. Yee, sponsor, said the strike-everything amendment to HB2754 is about managing frivolous claims on medical professionals by medical professionals who take advantage of an opportunity to drag their primary competitor's name into the mud to pursue a competitive advantage. She worked with stakeholders on the language, which is about maintaining fairness in the medical community and keeping doctors accountable for their actions.

Dr. Anthony Yeung, endoscopic spine surgeon, representing self, spoke in favor of HB2754. He said he sees the strike-everything amendment as an important partial and first step in tort reform that is not addressed very often, which is expert witness testimony by people who are really paid experts. He hopes for even stronger language to eliminate any further ambiguity that also offers immunity protection for good faith reporting. He advised that he was on the receiving end of a bad faith complaint by a competitive spine surgeon in 2005 who sent a grossly negligent and false complaint to the Arizona Medical Board and Arizona statute provided him absolute immunity protection from civil action (Attachment 20). This surgeon charged \$3,000 per hour to testify against him in a malpractice lawsuit and received \$100,000 for his testimony in court. The Board had already dismissed the case and a letter of complaint by the plaintiff's lawyer requesting a review of the malpractice case. After Dr. Yeung prevailed in court, the neurosurgeon made false accusations to the Board that the Board declined to investigate.

When asked for his opinion, Mr. Heinz stated that this is an important professional self-regulation issue. “Kneecapping” the competition by formal action is not appropriate, it is unprofessional and it is not becoming of any regulated profession.

David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association, spoke in favor of the strike-everything amendment to HB2754. He stated that the language was worked out with the Arizona Medical Board, Assistant Attorney Generals and Stuart Goodman. The concerns raised by Dr. Yeung are legitimate and this has happened in more than one instance.

Vice-Chairman Carter announced the names of those who signed up in support of HB2754 but did not speak:

Michelle Pabis, Assistant Government Relations Director, Scottsdale Healthcare
Stuart Goodman, Lobbyist, Arizona Medical Board

Vice-Chairman Carter announced the names of those who signed up as neutral on HB2754 but did not speak:

J. Michael Low, Attorney, MICA

Question was called on the motion that the Yee seven-page strike-everything amendment to HB2754 dated 2/13/12 (Attachment 18) be adopted. The motion carried.

Vice-Chairman Carter moved that HB2754 as amended do pass. The motion carried by a roll call vote of 8-0-0-1 (Attachment 21).

HB2029 - child care; day camps; exemption - DO PASS AMENDED

Vice-Chairman Carter moved that HB2029 do pass.

Vice-Chairman Carter moved that the Ash 11-line amendment to HB2029 dated 2/7/12 (Attachment 22) be adopted.

Bethan Jones, Majority Intern, explained that HB2029 exempts day camps that are nationally accredited from state licensure (Attachment 23). The amendment contains the following provisions (Attachment 22):

- Strikes the terms *educational and other enrichment* from the language relating to what day camp programs can provide.
- Specifies that to be exempt a day camp must be accredited by a nationally-recognized accrediting organization for day camps that is approved by the Department of Health Services (DHS).
- Stipulates that a day camp program must operate for less than 10 weeks each year to qualify for exemption.
- Requires, for the purposes of the staff-to-child ratio, each staff member to be at least 18 years of age and for all employees to have fingerprint cards.

- Specifies that a day camp cannot allow three- or four-year-olds to engage in activities that are not deemed age appropriate by a nationally-recognized accrediting organization.

Representative John Kavanagh, sponsor, stated that he worked with DHS on this bill. Day camps are accredited by a national accreditation association and must comply with their standards so there is no reason to place them under DHS licensing, which is a very expensive process that will put them out of business. These are short, eight-week summer programs provided during the day. The amendment was drafted after multiple meetings with stakeholders, mostly day care center people, who are not 100 percent on board, but he understands their business situation.

Vice-Chairman Carter assumed the Chair.

In response to questions, Representative Kavanagh indicated that fingerprinting will take place. There is only one accrediting body, but should there be more, they would have to be authorized by the Director of DHS. The amendment contains concessions made to the child care industry. The only area of disagreement now is the inclusion of three- and four-year-olds for which the staff ratios are different, and some restrictions will probably be placed on activities so there is no danger. Many sports camps, ballet camps, and Boys and Girls Clubs, etc., currently exist without regulations. He added that this bill applies to any camp that is inspected and accredited by a national agency.

Don DeWitt, Secretary of the Board, First Christian Church and Guiding Light School, opposed HB2029. He stated that people in the child care and preschool profession worked for many years with the Division of Licensing Services at DHS to provide safe, clean and quality child care. DHS charges child care centers thousands of dollars for license fees. He questioned why this bill proposes to create an opportunity for a favored unlicensed organization to add three- and four-year-olds to its day-long operation when qualified child care and preschool centers are operating with low enrollment and greatly reduced income due to the economy and major cutbacks by the state. He submitted that all programs should meet the same standards statewide. This type of legislation opens the door for others to take advantage of broader guidelines and less oversight and exposes three- and four-year-olds to too much risk.

Mary Rossi, District Manager, Knowledge Universe, opposed HB2029. She expressed concern that it will open up a new unlicensed type of care for three- and four-year-old children, resulting in unsafe conditions and unfortunate situations. The children who attend day camps will be from current state-licensed centers where they are in regulated care. She said child care providers also seek accreditation, but it is for quality, while licensing is about health and safety. Accreditation also does not address staff qualifications other than being fingerprinted. Additionally, with an accrediting body in another state, how will complaints, concerns and emergency situations be investigated and ensure that safe environments are provided for children.

Mary Sue Watson, Owner, Children's Campus and Premier Childcare, opposed HB2029. She stated that a few years ago, agreement was reached with the Legislature that the rules will follow the child, so she is wondering now why that is not happening, perhaps because licensing with DHS is too expensive. Last year, all three Children's Campus and Premier Childcare facilities were due for relicensing, which would have been \$1,350 before legislation with new regulations

increased the fees; last year she had to pay \$23,000 while enrollment is decreasing. She said she does not want to pay the licensing either, but that is the rule, and many providers are holding on “by the skin of their teeth”. This is not a level playing field and there is a reason the state regulates infants through age 12.

Robert Orsi, Sunrise Preschools, opposed HB2029. He stated that he is a credentialed school psychologist, and the developmental needs for three- and four-year-olds are not appropriate for a camp setting or the introduction of field trips. Boys and Girls Clubs are only for children of school age who can sign themselves in and out, but there are even issues there. He said he pays \$100,000 in fees every licensing cycle, which used to be \$8,000 to \$9,000. If the only concern of the day camp is that it is only open part of the year, a proportionate share should be paid instead of providing an exemption from the fees, which are expensive for everyone. He added that it appears this bill is crafted for one provider, who may run an excellent program, but it will allow anyone to open a day camp and have the same exemptions from the cost and rules associated with providing a safe environment.

Karyn Miller, Owner/Director, Cactus Day Camp, representing self, spoke in favor of HB2029. She explained that she is a school principal, and during the summer she owns and directs an independent, private day camp for eight weeks in increments of two-week sessions. She has been licensed by DHS for five years, but the regulations she has been following do not apply to camps. She employs 14 college students and has 59 campers during the biggest session. This bill specifically states that the program cannot run longer than 10 weeks. The fees are disproportionate; she only receives revenue for eight weeks, but she has a significant number of children in the summer, so the fees are at the highest level of the fee structure. If she takes one more child in the biggest session, the fee of \$4,000 will increase to \$7,800. With accreditation from the American Camping Association, the fee is based on the operating budget and it is \$500. The state defines day care, as well as overnight camps for which the fee is \$100 for the initial license and \$25 thereafter with no requirements for ages. She noted that the American Camping Association has over 300 rules and regulations for health and safety, including staffing. The mission of the day camp is different than that of day care centers.

In response to questions, she indicated that she was advised by DHS that there is no flexibility in the law to allow for a prorated fee, and described burdensome DHS restrictions.

Bruce Liggett, Executive Director, Arizona Child Care Association, in opposition to HB2029, made the following points:

- If there is a problem with applicability of the regulations, change the regulations and not grant a certain segment of child care a blanket exemption.
- Accreditation is different than licensing; it is not a replacement for minimum state health and safety standards.
- The bill contains provisions for fingerprinting and age of the staff with no monitoring.
- He will not support a bill that deregulates the health and safety standards for three- and four-year-old children.

In response to questions, Mr. Liggett noted that he would support a prorated fee for day camps, noting that the entire fee structure needs to be reviewed.

Chairman Ash resumed the Chair.

James Emch, Valley Child Care & Learning Centers, opposed HB2029. He stated that three of his family's child care facilities are nationally accredited, so he understands the difference between licensed and accredited. Accredited is a one-time inspection, typically a snapshot of what happens in the facility and the rest is done on paper. He pointed out that the accrediting body requires him to send the state licensing report in with accreditation documentation. He said he believes there are some flaws in this bill.

Mr. Kavanagh stated that DHS does not oppose the bill; it is only opposed by operators of full-time day care centers who may lose some clients. If this bill passes, this day camp will be in the center; on one side are day care centers that are regulated, perhaps too much by DHS, while on the other side are Boys and Girls Clubs, all day dance camps, etc., with no regulations. This is about providing safe and fun things for children to do in the summer.

Colby Bower, Director of Government Relations, Arizona Department of Health Services (DHS), neutral on HB2029, responded to questions about rewriting rules to comply with legislation. He stated that DHS likes the fact that the day camp encourages physical activity and is limited to ten weeks. He clarified that a basketball camp, for example, would qualify for the single subject exemption, but a camp that engages in different recreational activities constitutes a multiple subject facility, which is the reason the day camp needs to be licensed under the current rule structure.

Mr. Kavanagh stated that he is willing to work on the bill and a fee change.

Chairman Ash announced the names of those who signed up in opposition to HB2029 but did not speak:

Kevin DeMenna, The Arizona Child Care Association

Ryan DeMenna, Associate, The Arizona Child Care Association

Question was called on the motion that the Ash 11-line amendment to HB2029 dated 2/7/12 (Attachment 22) be adopted. The motion carried.

Mrs. Yee expressed concern about the exemption of young children from health and safety oversight, which she hopes Mr. Kavanagh will address in the stakeholder meeting.

Ms. Garvey, in response to questions, clarified portions of the bill and the amendment.

A brief discussion followed among the Members.

Vice-Chairman Carter moved that HB2029 as amended do pass. The motion carried by a roll call vote of 5-4-0-0 (Attachment 24).

HB2713 - Arizona long-term care trust - DO PASS AMENDED S/E
S/E: long-term care insurance premiums; deduction

Vice-Chairman Carter moved that HB2713 do pass.

Vice-Chairman Carter moved that the Ash nine-page strike-everything amendment to HB2713 dated 02/10/2012 (Attachment 25) be adopted.

Ingrid Garvey, Majority Research Analyst, explained that the strike-everything amendment to HB2713 (Attachment 25) allows for a subtraction of long-term care insurance premiums and amounts deposited into a long-term care savings account from Arizona gross income (Attachment 26).

Representative Steve Farley, co-sponsor, stated that this strike-everything amendment is one of the first efforts of the new Arizona Senior Caucus. More people are living longer but, unfortunately, it is estimated that one-third of people over 80 suffer from dementia, which often requires long-term care. Wealthy families can afford to pay for long-term care; families in poverty can use the state program for indigent seniors, the Arizona Long Term Care System (ALTCS), but middle-class families have no good options except to impoverish themselves in order to qualify for ALTCS, which increases costs to the state. This legislation encourages Arizona taxpayers of all ages to begin saving to pay for long-term care when it is needed and allows people to create a long-term care savings account in which the money deposited will be subtracted from gross income and accrue interest without paying Arizona taxes. Hopefully, the bill can be used to gain support nationally and ultimately encourage Congress to tackle this critical issue.

Chairman Ash announced the names of those who signed up in support of the strike-everything amendment to HB2713 but did not speak:

Don Isaacson, LeadingAge Arizona

Michael Haener, Arizona Health Care Association

Question was called on the motion that the Ash nine-page strike-everything amendment to HB2713 dated 02/10/2012 (Attachment 25) be adopted. The motion carried.

Vice-Chairman Carter moved that HB2713 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 27).

HB2526 - skilled nursing home provider assessments - DO PASS AMENDED

Vice-Chairman Carter moved that HB2526 do pass.

Vice-Chairman Carter moved that the Ash 27-line amendment to HB2526 dated 2/14/12 (Attachment 28) be adopted.

Bethan Jones, Majority Intern, explained that HB2526 adds a new article regarding nursing facility provider assessments and the necessary corresponding language (Attachment 29). The amendment contains the following provisions (Attachment 28):

- Adds the definition of *continuing care retirement community* and removes the definition of *life care center*.
- Removes life care centers that are licensed by the Department of Insurance from the list of nursing facility providers that are exempt from the quality assessment and exempts continuing care communities from the assessments.
- Specifies that the Department of Revenue (DOR) will serve as the collection agent for AHCCCS and that monies received by DOR will then be transferred to the Fund.
- Makes technical and conforming changes.

Chairman Ash, sponsor, said this legislation is the result of meetings with skilled nursing home providers who are facing serious financial consequences because of budget cuts from the state. The bill provides a means of providing funds to the providers without any cost to the state; otherwise, some may not be able to continue in business.

Kathleen Collins Pagels, Executive Director, Arizona Health Care Association, in favor of HB2526, related that under this bill, each skilled nursing facility will pay an assessment to the state based on the number of Medicaid days care is provided, which will be used to draw down federal monies at a rate of almost three-to-one. The monies will then be returned to the facilities to provide a supplemental payment for skilled nursing care. It is cost neutral to the state. The Arizona Health Care Cost Containment System (AHCCCS) takes an administrative fee of one percent to administer the program, and per the amendment, collection will be handled by the DOR. The total assessment paid by the providers is estimated to be \$17 million with \$53 million returned to the facilities. Forty other states have provider assessments and three are in the process. The Centers for Medicare and Medicaid Services (CMS) has routinely approved these assessments because Medicaid is underfunded. This legislation is designed to be a bridge during very difficult economic times and will sunset in 2015.

Vice-Chairman Carter announced the names of those who signed up as neutral on HB2526 but did not speak:

Sean Laux, Legislative Liaison, Department of Revenue

Jennifer Carusetta, Chief Legislative Liaison, Arizona Health Care Cost Containment System (AHCCCS), neutral on HB2526, said she had some concerns about the administrative requirements so the amendment is being evaluated to determine if those are addressed. She noted that CMS looks at a number of items when approving provider assessments, one of which is where the distribution of funding from the assessment goes. Typically, CMS is not as favorable to a system in which the money that is matched goes back to the provider group that pays the assessment and nowhere else; CMS generally likes to see the assessment also benefit the entire program such as going to provider rates, specific enrollment groups, etc., in addition to direct reimbursement to the provider group.

Vice-Chairman Carter announced the names of those who signed up in support of HB2526 but did not speak:

Vanessa Torres, Medical Records Coordinator, LeadingAge Arizona
Lara Bowles, Care Meridian Healthcare
Gary Olson, Red Rock Care and Rehab
Jeffery Mathews, representing self
Meagan Pagels, representing self
Jim Guschl, representing self
Ken Kidder, Skilled Nursing Home Administrator
David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association
Patrick Hobbs, Healthcare Administrator, Bandera Healthcare
Brian Newberry, Executive Director, North Mountain Medical & Rehabilitation Center
Tom Hines, representing self
Genny Rose, Executive Director, LeadingAge Arizona
Richard Anderson, Health Facility Administrator, Ponderosa Pines Care and Rehab
Blake Gillman, Springdale West
Kari Curry, Enrichment Director, LeadingAge Arizona
Paula Mitchell, Copper Mountain Inn
Heather Krzmarzick, Administrator, Good Samaritan Society, Prescott Village
Don Isaacson, LeadingAge Arizona
Kathleen Langford, representing self
Linda Doescher, Office Manager, Arizona Health Care Association
Patricia Torrington, representing self
Deb Gullett, Arizona Association of Health Plans
Michael Dalton, President, Bandera Healthcare
Doug Haney, Administrator, Bella Vita Health and Rehab Center
Norman Moore, Attorney, LeadingAge Arizona
Nigel Santiago, Highland Manor Health and Rehabilitation
Mark Winn, representing self
Paul Loomans, Vice President, Marketing, LeadingAge Arizona
Holly Gibson, Administrator, RidgeCrest HealthCare
Tim Claybaugh, Executive Director, Life Care Center at South Mountain
Cindy Leach, Vice President, Operations, Villa Maria Care Center
Richard Aznar-Beane, Administrator, North Mountain Medical & Rehabilitation
Tom Ballard, Business Development Manager, Choice Rehab Care
Daniel Waddell, East Mesa Healthcare
Richard Park, La Rosa Health Care Center at Santa Catalina Villa
Eric Faas, Executive Director, Desert Terrace; Banderra Healthcare
Eli Robbins, Administrator, North Mountain Medical and Rehabilitation Center
Stuart Goodman, Lobbyist, Dignity Health (formerly Catholic Healthcare West)
Adrienne Gaona, representing self
Jason Gerodias, representing self
Michael Morris, Administrator, Grace Healthcare
Linatte Stephens, representing self
Katie Molaro, representing self
F. Michael Roberts, representing self
Laura Miller, representing self

Brittany Carter, Director of Education, Arizona Health Care Association
Tieg Bargar, representing self
Kenneth Green, representing self
Michael Johnson, representing self
Michael Thomas, representing self
Mark Muir, representing self
Deedee Ramon, Sr., representing self
Barbara Bailes, representing self
Valerie Lanham, representing self
Christopher Frere, representing self
Linda Steadman, representing self
Janet Lumpkin, representing self
Rebecca Myers, representing self
Faye Lincoln, Sr., Vice President, Avalon Health Care
Mary Hanna, Department Director, Maravilla Care Center
Tom Taugape, Chief Operations Officer, Maravilla Care Center
Forrest Peterson, Administrator, Osborn Health and Rehab
Patricia Ketchum, Registered Diet Technician, Maravilla Care Center
Kathleen Connolly, representing self
Dean Kidder, Chief Executive Officer, Creative Care
Allen Marsh, Administrator in Training, Osborn Health & Rehabilitation
Susan Leino, nurse, Highland Manor
Misti Valentino, representing self
Michael Haener, Arizona Health Care Association
Linda Daquilante, representing self
Barbara Fanning, Legislative Liaison, Arizona Hospital and Healthcare Association

Question was called on the motion that the Ash 27-line amendment to HB2526 dated 2/14/12 (Attachment 28) be adopted. The motion carried.

Vice-Chairman Carter moved that HB2526 as amended do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 30).

HB2692 - medical marijuana; dispensaries; certificates - DO PASS AMENDED

Vice-Chairman Carter moved that HB2692 do pass.

Vice-Chairman Carter moved that the Ash 11-line amendment to HB2692 dated 2/13/12 (Attachment 31) be adopted.

Joe DeMenna, Majority Assistant Research Analyst, explained that HB2692 adds additional qualifying criteria for applicants for medical marijuana dispensary registration certificates (Attachment 32). The amendment removes the requirement that principal officers and board members must be residents of Arizona for three years and adds a severability clause (Attachment 31).

Representative John Fillmore, sponsor, stated this bill is about establishing criteria to control dispensaries under the Medical Marijuana Act. There were some concerns that are addressed with the amendment, which he supports. In response to a question, he related that the qualifying conditions were derived from looking at what was established in other states, both good and bad. He is working with the Department of Health Services (DHS) to develop a very similar process to that used by the Department of Liquor.

Theresa Ulmer, Consultant, RSS Consulting LLC, spoke in favor of HB2692. She indicated that the elements DHS adopted in rule were removed by the court, so there is basically a lottery system for selecting who obtains dispensary licenses. The intent of the bill is to have a process in place so the best potential operators receive a license. In response to a question, she acknowledged that once the provisions are in place and the threshold is met, a lottery will be used if more people want to obtain dispensary licenses.

Chairman Ash announced the names of those who signed up as neutral on HB2692 but did not speak:

Colby Bower, Director of Government Relations, Arizona Department of Health Services

Vice-Chairman Carter announced the names of those who signed up in opposition to HB2692 but did not speak:

Seth Apfel, representing self

Vice-Chairman Carter announced the names of those who signed up in support of HB2692 but did not speak:

Gibson McKay, Sherpa Public Affairs, RSS

Question was called on the motion that the Ash 11-line amendment to HB2692 dated 2/13/12 (Attachment 31) be adopted. The motion carried.

Vice-Chairman Carter moved that HB2692 as amended do pass. The motion carried by a roll call vote of 8-0-1-0 (Attachment 33).

THE MEETING RECESSED AT 2:00 P.M. UNTIL ADJOURNMENT OF THE FLOOR, CAUCUS AND APPROPRIATIONS COMMITTEE.

THE MEETING RECONVENED AT 3:30 P.M. ALL MEMBERS WERE PRESENT.

Vice-Chairman Carter assumed the Chair.

HB2794 - CPS; review teams - DO PASS AMENDED

Mrs. Yee moved that HB2794 do pass.

Mrs. Yee moved that the Hobbs five-line amendment to HB2794 dated 02/10/2012 (Attachment 34) be adopted.

Joe DeMenna, Majority Assistant Research Analyst, explained that HB2794 removes the review team process from Child Protective Services (CPS) statutes (Attachment 35). The amendment makes a technical change (Attachment 34).

Ms. Hobbs, sponsor, related that this legislation is from the Arizona Child Safety Task Force that met during the Interim. After the case team makes a decision to remove a child, the removal review team reviews that decision, which is duplicative, cumbersome and takes time away from CPS workers on caseloads. In over 4,000 removal reviews in the last three years, removal review teams made the decision once to change the removal so it does not add any protection against unnecessary removals. In response to a question, she indicated that the Department of Economic Security generally signs in as neutral, but is satisfied with the bill.

Mrs. Yee announced the names of those who signed up in support of HB2794 but did not speak:
Beth Rosenberg, Lobbyist, Children's Action Alliance
Emily Jenkins, President/Chief Executive Officer, Arizona Council of Human Service Providers

Question was called on the motion that the Hobbs five-line amendment to HB2794 dated 02/10/2012 (Attachment 34) be adopted. The motion carried.

Mrs. Yee moved that HB2794 as amended do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 36).

HB2568 - surrogacy; health insurance - DO PASS AMENDED S/E
S/E: health care services; contract; prohibition

Mrs. Yee moved that HB2568 do pass.

Mrs. Yee moved that the Ash 24-line strike-everything amendment to HB2568 dated 02/13/2012 (Attachment 37) be adopted.

Bethan Jones, Majority Intern, explained that the strike-everything amendment to HB2568 (Attachment 37) prohibits an eligible person from accepting compensation for entering into or fulfilling a service contract if the person knows that fulfilling the services required in the contract will require them to receive health care services that they would not have otherwise received (Attachment 38).

Representative Justin Olson, sponsor, stated that it came to his attention that people are entering into contracts knowing that fulfilling the contract will require the use of health care services funded by the Arizona Health Care Cost Containment System (AHCCCS). The strike-everything amendment states that compensation cannot be received if expenses will be incurred that will be billed to AHCCCS, or another payor will have to pay for the medical coverage prior to entering into the contract and compensation can be received; if not, AHCCCS can recover the cost of the medical services from the compensation that is received, but not more than the actual services or compensation received. He responded to questions about enforcement, disclosure, need for the legislation, related litigation, the magnitude of the problem and surrogacy contracts.

Vice-Chairman Carter said she received an email from Jennifer Carusetta from AHCCCS who is testifying in another Committee. She said she asked AHCCCS staff to evaluate the amendment. The legislation says AHCCCS “may” rather than “shall” recover the cost so AHCCCS is neutral.

Representative Olson responded to further questions about simultaneous military benefits for AHCCCS recipients, compensation, potential denial of care by AHCCCS due to a violation and possibly penalizing the health care provider for an illegal contract.

Jennifer Carusetta, Chief Legislative Liaison, Arizona Health Care Cost Containment System (AHCCCS), neutral on the strike-everything amendment to HB2568, related that as long as someone meets the eligibility requirements, prenatal care, delivery and postpartum care is provided. She said she asked AHCCCS staff to review the amendment, which says AHCCCS “may” obtain reimbursement from the individual. Some comfort level is needed that AHCCCS will not get in trouble if those people cannot be identified. Eligibility cannot be conditioned upon whether or not a pregnancy is based on a surrogacy, and AHCCCS does not have the ability to contact everyone who becomes pregnant to see how it occurred, and even then, it would be based on self-reporting. If there is a need for clarity, she would be glad to work with Representative Olson, but she needs to obtain more information from AHCCCS staff as to how recovery will occur and whether more resources will be necessary to carry out that process.

Question was called on the motion that the Ash 24-line strike-everything amendment to HB2568 dated 02/13/2012 (Attachment 37) be adopted. The motion carried.

Mrs. Yee moved that HB2568 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 39).

HB2054 - technical correction; medical marijuana - DO PASS AMENDED S/E
S/E: certification in medical specialty; disclosure

Mrs. Yee moved that HB2054 do pass.

Mrs. Yee moved that the Ash 17-page strike-everything amendment to HB2054 dated 2/13/12 (Attachment 40) be adopted.

Ingrid Garvey, Majority Research Analyst, explained that the strike-everything amendment to HB2054 updates the definition of *unprofessional conduct* to include falsely representing a physician’s board certification in a specialty or specific procedure (Attachment 41).

Chairman Ash, sponsor, stated that this was brought to him by a plastic surgeon who had to fix some of the mistakes made by doctors who attended weekend seminars on liposuction and other procedures. The people thought the instructor was board certified in plastic surgery, but he was an emergency medical technician. The bill states that someone who claims to be board certified must indicate the specialty.

Vice-Chairman Carter announced the names of those who signed up in support of the strike-everything amendment to HB2054 but did not speak:

David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association

Question was called on the motion that the Ash 17-page strike-everything amendment to HB2054 dated 2/13/12 (Attachment 40) be adopted. The motion carried.

Mrs. Yee moved that HB2054 as amended do pass. The motion carried by a roll call vote of 7-0-0-2 (Attachment 42).

Without objection, the meeting adjourned at 4:20 p.m.

Linda Taylor, Committee Secretary
March 12, 2012

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)