

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-first Legislature – First Regular Session

COMMITTEE ON HEALTH

Minutes of Meeting
Wednesday, February 27, 2013
House Hearing Room 4 -- 10:00 a.m.

Chairman Carter called the meeting to order at 10:03 a.m. and roll call was taken by the secretary.

Members Present

Mrs. Brophy McGee
Mrs. Gonzales
Mr. Lovas

Mr. Meyer
Ms. Steele
Ms. Townsend

Mr. Boyer, Vice-Chairman
Mrs. Carter, Chairman

Members Absent

None

Committee Action

SB1021 – DP (8-0-0-0)
SB1037 – DP (8-0-0-0)
SB1044 – DP (8-0-0-0)

SB1102 – DP (8-0-0-0)
SB1105 – DP (8-0-0-0)
SB1235 – DP (8-0-0-0)

Chairman Carter welcomed Shawn Nelson, a constituent, who is shadowing her for the day.

PRESENTATIONS

Non-Medical Home Care Services

Mrs. Brophy McGee stated she was privileged to be the legislative liaison with the Task Force Against Senior Abuse (TASA) during her first term. She attended meetings with a comprehensive group of individuals under the leadership of Thomas Chenal to address ongoing issues with the aging population in Arizona.

Thomas Chenal, Member, Task Force Against Senior Abuse (TASA), stated that barbers are licensed, but caregivers do not have to be licensed. There is no oversight over non-medical in-home caregivers, and with the aging population, this is becoming more and more problematic. He reviewed the mission statement of TASA (Attachment 1, Page 1).

Don Irish, Member, Task Force Against Senior Abuse (TASA), discussed the fact that there is no regulatory oversight or licensure for businesses that provide non-medical in-home care services to consumers, which translates to no consumer protection (Attachment 1, Pages 2 and 3).

Bob Roth, Member, Task Force Against Senior Care (TASA), related he has been in the home care business for over 20 years. He addressed the differences in home care and other disciplines (home health care agencies and hospice) that serve vulnerable adults and discussed the following (Attachment 1, Pages 3 through 7):

- Non-medical home care services and delivery under an employer model.
- Independent contractors who contract with a provider where there is no plan of care, no oversight, no backup when a caregiver cannot make their shift and inconsistent background checks.
- Private caregivers who work for themselves, can be found on Craigslist and have few, if any, background checks.
- Services provided by home care versus home health care.

Mr. Irish returned to the podium and related statistics regarding an increase in the aging population, noting that there will have to be a corresponding growth of non-medical home care providers and caregivers to meet their needs. He discussed the demographics of individuals who utilize non-medical home care services (Attachment 1, Pages 8 and 9). He stated that with no regulatory oversight for the non-medical home care services industry, a person just released from prison can start a company in Arizona and serve the most vulnerable population. He provided examples of harm to consumers that licensure could have prevented (Attachment 1, Page 10). He added if the industry was regulated, companies would need client contact, there would be oversight, monitoring, supervision and vetting.

Mrs. Gonzales thanked Mrs. Brophy McGee for sponsoring this legislation; her mother is 86 and in need of this type of care. She questioned why the industry is not regulated. Mrs. Brophy McGee responded that two attempts were made to regulate non-medical home care. One was a bill, but this type of regulation needs to go through a sunrise process. The second attempt was through the sunrise process that failed to produce a recommendation. She commented that as more of the population is aging, policies are needed to regulate this type of activity where people with no background information are going into people's homes and intimately handling residents and their belongings.

Mrs. Gonzales and Ms. Steele offered to assist Mrs. Brophy McGee in this effort. Mrs. Brophy McGee indicated that the first step is raising awareness and having people understand the problem because so much of what happens is not reported. This issue is escalating as the elderly population increases.

Chairman Carter thanked the presenters for taking the time to bring this issue forward. She remarked that people sometimes do not realize that eventually there will be situations with elderly people in which decisions have to be made in a very short time. By working through the interim, a proposal can be developed for next session. She asked interested parties to contact Mrs. Brophy McGee.

CONSIDERATION OF BILLS

SB1102 – hearing aid dispensers; audiologists – DO PASS

Vice-Chairman Boyer moved that SB1102 do pass.

Ingrid Garvey, Senior Majority Research Analyst, explained that SB1102 increases the licensure period for hearing aid dispensers, audiologists and speech language pathologists from one year to two years and adjusts the continuing education requirements accordingly (Attachment 2).

Senator Kimberly Yee, sponsor, stated this bill does three things: allows the Department of Health Services (ADHS) to consolidate funds to decrease the regulatory burden, increases the licensure period for hearing aid dispensers, audiologists and speech language pathologists from one year to two years and clarifies and modernizes the statute by updating specific terms.

Colby Bower, Chief Legislative Liaison, Arizona Department of Health Services (ADHS), spoke in support of SB1102. In response to a question, he explained that Section 5 strikes a provision requiring ADHS to test for the code of ethics in the chapter; however, stakeholders agreed to remove the provision because there is no code of ethics in the chapter. He is committed to working with the Commission to address that concern and with stakeholders through the rulemaking process to ensure the rules are modernized to represent the current marketplace and best practices.

Sherri Collins, Executive Director, Arizona Commission for the Deaf and Hard of Hearing, stated a neutral position on SB1102 because of the language in Section 5. She said she met with Mr. Bower yesterday and hopes the bill can be modified. She related that the Commission receives complaints about hearing aid dispensers taking advantage of seniors who buy various expensive hearing aids. She wants to ensure that before hearing aid dispensers are licensed, they are tested on knowledge of professional conduct. Another concern is that hearing aid dispensers or audiologists are going to people's homes to test clients' hearing, which should be done in a sound booth. She wants to ensure consumer protection is in place, especially for seniors. Many technical changes need to be made to the bill and she will work with ADHS to develop language to protect consumers.

Vice-Chairman Boyer announced the names of those who signed up in support of SB1102 but did not speak:

Steve Barclay, Lobbyist, Hearing Healthcare Providers of Arizona

Question was called on the motion that SB1102 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 3).

SB1021 – board of massage therapy; continuation – DO PASS

Vice-Chairman Boyer moved that SB1021 do pass.

Maritza Heras, Majority Intern, explained that the Committee of Reference (COR) conducted a sunset review hearing of the Arizona State Board of Massage Therapy and recommended that the

Board be continued for ten years. SB1021 continues the Board for 10 years until July 1, 2023 (Attachment 4).

Senator Nancy Barto, sponsor, commented that this bill continues the Board for 10 years as per the recommendation of the COR.

Kathleen Phillips, Deputy Director, Arizona State Board of Massage Therapy, spoke in favor of SB1021. She said when the Board began licensing in 2004, it expected to license between 3,000 and 5,000 massage therapists; today the Board licenses 10,219 massage therapists. The Board receives approximately 134 applications each month or 1,600 applications annually. Licensees are required to renew their license on their birthday every two years. The Board employs a staff of five to process initial and renewal applications, conduct investigations and prepare for and hold board meetings where disciplinary actions are taken. The Board works diligently to ensure complaints are processed within 180 days.

Gregory Harris, Arizona State Board of Massage Therapy; American Massage Therapy Association, expressed full support for continuation of the Board.

Tee Wills, Chairman, Government Relations Committee, Arizona Chapter, American Massage Therapy Association, related that the Arizona Chapter wholeheartedly supports continuation of the Board, which is doing a wonderful job for more than 10,000 massage therapists in Arizona. It provides health and safety protection to the consumer and lends credibility to the profession.

Names of persons who signed up in support of SB1021 but did not speak:
Michael Carr, representing self

Question was called on the motion that SB1021 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 5).

SB1037 – acupuncture board of examiners – DO PASS

Vice-Chairman Boyer moved that SB1037 do pass.

Maritza Heras, Majority Intern, explained that SB1037 updates statutes related to the Arizona Acupuncture Board of Examiners and appropriates \$3,600 from the Board's funds for Board member compensation in FY 2013-2014, removes language related to preceptorship, makes various changes related to licensure, and makes technical and conforming changes (Attachment 6).

Senator Nancy Barto, sponsor, noted that this is a reform bill for the Arizona Acupuncture Board of Examiners.

Pete Gonzalez, Executive Director, Arizona Acupuncture Board of Examiners, in support of SB1037, stated that when the Board was created in 1998, nine members were appointed by the Governor, but for some reason, the Legislature decided to compensate only three of the Board members. He is attempting to secure finances to compensate the remaining six members. The amount of compensation is consistent with other boards, which depends on the scope, size and oversight responsibility of the board.

Vice-Chairman Boyer announced the names of those who signed up in support of SB1037 but did not speak:

Jonathan Lindsey, Arizona Society for Oriental Medicine and Acupuncture

Question was called on the motion that SB1037 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

SB1105 – occupational therapy board – DO PASS

Vice-Chairman Boyer moved that SB1105 do pass.

Ryan Sullivan, Majority Assistant Research Analyst, explained that SB1105 modifies statutes relating to the Arizona Board of Occupational Therapy Examiners and revises the Board's administrative powers and duties (Attachment 8).

Senator Nancy Barto, sponsor, stated that SB1105 contains reforms in regard to the Board. Many boards are changing and updating statutes in order to work more efficiently, which is also true in this case.

Randy Frost, Executive Director, Arizona Board of Occupational Therapy, spoke in support of SB1105. He related that the Board is composed of five members who oversee occupational therapists and occupational therapy assistants. This bill clears up areas in the statutes. One important provision relates to supervision to protect patients. SB1105 explains *unprofessional conduct* and adds provisions in regard to billing and confidentiality.

Mr. Meyer asked why the use of narcotic drugs prescribed by a physician will not be considered unprofessional conduct. Mr. Frost responded that it is not necessarily unprofessional conduct if the therapist has a prescription and is being seen by a doctor. Mr. Meyer asked how the Board will differentiate between a person with a prescription who is abusing the drug and may be placing a patient at risk and those who are not. Mr. Frost answered that he does not know how the Board will make that determination. Mr. Meyer stated he hopes the issue will be addressed before the bill goes to the Floor.

Senator Barto attested that the intent of the bill is that it will not automatically be considered unprofessional conduct, but if an investigation determines there was unprofessional conduct due to use of a narcotic, the Board can take action. She added she is willing to draft language to address that.

Mrs. Brophy McGee said she understands this is something all boards deal with and asked about their provisions. Chairman Carter referred to language in the bill on page 10, lines 16 through 32, which contains provisions regarding disciplinary proceedings and states the licensee may actively participate in a substance abuse recovery program. She indicated she will work with Senator Barto to include language from other boards, to which Senator Barto agreed.

Mrs. Gonzales expressed concern about removal of the quorum requirements, which means only one member of the Board can show up and make decisions. Mr. Frost indicated that language was duplicative because the bill states that the Board will follow open meeting requirements; the

intent is not to eliminate the quorum process. Chairman Carter indicated that House staff will review the existing language to ensure the issue is addressed, and if not, it will be addressed in a Floor amendment.

Mr. Meyer remarked that the bill provides immunity to Board members from civil liability for any action within the scope of their duties if they are taken without malice and in the reasonable belief that they are warranted by law and questioned if that is typical for other boards. Mr. Frost replied that it mirrors other boards.

Question was called on the motion that SB1105 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 9).

SB1044 – massage therapy board – DO PASS

Vice-Chairman Boyer moved that SB1044 do pass.

Maritza Heras, Majority Intern, explained that SB1044 modifies statutes relating to the Arizona State Board of Massage Therapy and revises the Board's administrative powers and duties, redefines *Board recognized school*, allows Board members to receive compensation in the amount of \$100 for each day of actual service and clarifies that the massage course of study consists of a minimum of 500 hours of classroom and clinical hours (Attachment 10). It also makes technical and conforming changes.

Senator Nancy Barto, sponsor, stated this is a reform bill for the Arizona State Board of Massage Therapy. When a sunset hearing occurs, there is often a reform bill associated to make clarifying and practical changes for the benefit of the Board and the public.

Kathleen Phillips, Deputy Director, Arizona State Board of Massage Therapy, in support of SB1044, offered to answer questions.

Chairman Carter announced the names of those who signed up in support of SB1044 but did not speak:

Tee Wills, Chairman, Government Relations Committee, Arizona Chapter, American Massage Therapy Association

Gregory Harris, Lobbyist, American Massage Therapy Association; Arizona State Board of Massage Therapy

Question was called on the motion that SB1044 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 11).

SB1235 – psychiatric security review board; continuation – DO PASS

Vice-Chairman Boyer moved that SB1235 do pass.

Ingrid Garvey, Senior Majority Research Analyst, explained that the Committee of Reference conducted a sunset review of the Psychiatric Security Review Board and recommended that the Board be continued for seven years. SB1235 continues the Board for seven years until July 1, 2020 (Attachment 12).

Chairman Carter announced the names of those who signed up in support of SB1235 but did not speak:

Joseph Abate, Arizona Psychiatric Society

Question was called on the motion that SB1235 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 13).

PRESENTATIONS (CONTINUED)

Mrs. Brophy McGee stated the Committee will now hear what presenters have to say about multiple sclerosis (MS).

Terry Ashoff Johnson, Chairman, Board of Directors, Arizona Chapter, National Multiple Sclerosis Society, said the vision of the Society is to create a world free of multiple sclerosis (MS); the mission is to mobilize people and resources to drive research for a cure and address the challenges of individuals living with MS. A handout was provided about the National Multiple Sclerosis Society regarding a Proposal to Create a Multiple Sclerosis Task Force (Attachment 14).

Bonnie Dankowski, representing self, testified that her husband was diagnosed with MS. He was laid off by his employer, they lost their house and vehicle and moved into a small apartment. She found a job and her husband was told at the Veterans' Hospital that he would die in five years and would not get cancer, but they were wrong on both counts. Information on MS was scarce at that time; because of the MS Society and the National Institute of Health and other researchers, there is much more information today. MS is defined as an unpredictable, often disabling disease, of the central nervous system that interrupts the flow of information through the brain and body. It is a life-altering disease and the most common disabling disease of young adults. She said she eventually gave up her job and became a full-time caregiver to her husband. A Veterans' Administration counselor introduced her to respite care, which opened the door to many other home-and-community-based services. Since then, she has devoted her time to improving policies to make the lives of caregiving families better, particularly those with MS.

Ms. Johnson informed the Members that her stepson was diagnosed with MS 10 years ago. He is doing well, but says it is like running a marathon every day. The reason for proposing a Task Force is that she and Mrs. Dankowski do not want people to go through what Mrs. Dankowski and her husband went through in accessing services. The handout shows the location of people in Arizona with MS (Attachment 14, Page 4). For someone located in a Metro area, services are available, but in Tucson or Prescott, services are not available, so people have to drive lengthy distances to specialists, etc. Also, therapies exist today that did not exist when Mrs. Dankowski's husband was diagnosed. Drugs are now available to slow the progression of the disease, but there is no way to stop the disease or reverse damage caused by the disease.

Ms. Johnson advised that the purpose of the Task Force is to identify and address unmet needs of people affected by MS in Arizona and not penalize people because of where they live, provide persons with greater access to various treatments and other possible therapeutic options and effectively utilize the resources of state agencies and other chronic disease groups (Attachment 14, Pages 6 and 7). She added that she will be contacting Members individually to

propose the idea of the Task Force in 2014, which will be limited to one year. Recommendations will be made to the Governor and Legislature and there will be no cost.

In response to a question, Ms. Johnson advised that MS typically develops between 20 and 50 years of age, but she heard of a six-month-old diagnosed with MS. If someone has remitting relapsing MS, they go in and out of episodes, which cause various symptoms that go away after the episode. Some people wake up blind, which goes away, but later the blindness returns.

Mr. Lovas asked if genetic factors or environmental factors cause MS. Ms. Johnson responded that it is not known what causes MS. There is a lot of supposition because people who have had Epstein-Barr and mononucleosis develop MS, but there is also possibly a genetic factor.

Mrs. Dankowski commented that after the Gulf War, many soldiers developed MS and many Kuwaitis have it, so there are also environmental triggers. Mrs. Johnson stated that MS develops in women two times more than men. For some reason, when women are pregnant, MS goes away, but after pregnancy, a very strong attack can occur.

Chairman Carter thanked the presenters for bringing information to the Committee. She said she looks forward to working with them and Mrs. Brophy McGee to move this idea forward for the next session.

Without objection, the meeting adjourned at 11:35 a.m.

Linda Taylor, Committee Secretary
March 5, 2013

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