

Statement of Bryan Howard, President, Planned Parenthood Arizona

Regarding the Strike All Amendment to SB1069

(NOTE: Text highlighted in yellow is supplemental and will not be read aloud by Mr. Howard in the event he presents this information orally.)

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Mr. Chairman, members of the Committee, thank you for allowing me this opportunity to bring forward relevant information about SB1069, legislation which is un-needed, violates federal law, violates the U.S. Constitution and is guaranteed to force Arizona taxpayers to continue cutting checks to Planned Parenthood to cover costs arising from our moral obligation to challenge barriers to Arizona women receiving the health care they need.

There are two provisions in SB1069 I will address.

I will begin with that portion of the proposed strike all amendment relating to Arizona's Medicaid program. This section begins at line 27 on page 17 of the strike all amendment.

This section of SB1069 restricts the ability of women covered by AHCCCS to decide where to get preventive health care.

This proposal is both un-needed and illegal.

This proposal is un-needed because AHCCCS is clear that abortion care is not covered except in a small number of specific and dire circumstances. **This prohibition can be found on page 10-3 in Chapter 10 of the AHCCCS Fee For Service Provider Manual, updated as recently as February of this year.**

Quoting from the manual:

"AHCCCS does not cover abortion counseling and pregnancy terminations unless:

- "The pregnant member suffers from a physical disorder, physical injury or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, that would as certified by a physician, place the member in danger of death unless the pregnancy is terminated, or***
- "The pregnancy is the result of rape or incest, or***
- "The pregnancy is medically necessary according to the medical judgment of a licensed physician who attests that continuation of the pregnancy could reasonably be expected to pose a serious physical or mental health problem for the pregnant member."***

Planned Parenthood Arizona understands that, by contracting with an AHCCCS health plan, we agree to abide by these rules.

Now the supporters of HB2800 last year and SB1069 this year maintain that Planned Parenthood is diverting AHCCCS reimbursements to subsidize abortion health care. This is incorrect, a fact confirmed by U.S. District Court Judge Neil Wake. In enjoining last year's HB2800, Judge Wake concluded:

"Defendants contend that taxpayer money that goes to PPAZ for other services is used to subsidize abortions because the money covers overhead and other shared expenses that allow PPAZ to perform abortions. But the Medicaid reimbursements PPAZ receives cover only about half the cost of providing Medicaid services. As a result, after the Medicaid services that PPAZ provides are paid for, there is no excess funding that could be used to subsidize abortions."

It is equally clear that restricting the choice of provider as SB1069 requires also violates federal Medicaid rules.

Section 1396a(a)(23) of the rules governing the national Medicaid program, *"gives recipients the right to choose among a range of qualified providers without government interference."* In other words, low-income Arizona women covered by AHCCCS are guaranteed the right to decide where to get Medicaid covered health care. Period.

House Bill 2800 last year tried to ban women from Planned Parenthood because we provide abortion health care, not reasons related to professional and technical qualifications. SB1069 tries to do the same thing by forcing women to choose between going to Planned Parenthood for preventive services covered by AHCCCS, or going elsewhere in order to protect their future ability to seek abortion care at Planned Parenthood with their own funds. Under SB1069, they cannot do both. This restriction is not about professional expertise and, as such, violates federal Medicaid law.

Again, Planned Parenthood challenged last year's HB2800. In his ruling in favor of Planned Parenthood's position, Judge Wake identified that federal Medicaid authorities have been clear about the this protection for patients again and again. He noted that in recent months, the federal Centers for Medicare and Medicaid that oversees these rules issued an informational bulletin to all states that said that states *"are not permitted to exclude providers from the program solely on the basis of the range of medical services they provide."*

Supporters of these restrictions contend that higher courts will overturn Judge Wake's decision in HB2800. However, the U.S. Supreme Court has already been asked and answered this question. Just two weeks ago, on May 28th, the U.S. Supreme Court allowed a lower court ruling to stand overturning an Indiana law involving the same restrictions. Moreover, in addition to Arizona and Indiana, rulings on similar laws in Kansas, North Carolina and Tennessee have reached the same conclusion.

At this point the question must be asked: how much taxpayer money should be wasted attempting to side-step the rules the state agrees to abide by when it accepts these federal funds?

Finally with respect to the Medicaid-aspect of SB1069, you should know that that these restrictions on low-income women extend far beyond those who come to Planned Parenthood. Among the documents we are providing today are screen shots of the names of Arizona health care facilities that have registered with the Arizona Department of Health Services abortion reporting service. Most of these facilities likely provide care to low income women through AHCCCS and, from their listing on the ADHS reporting website, appear to also provide their patients abortion health care from time to time. They too will eventually be put in the position of having to choose between providing abortion health care and serving low income women.

I will now turn to the portion of SB1069 that would eliminate the requirement that the Arizona Department of Health Services have a valid reason in order to conduct an unannounced search of an abortion-providing health care center. This begins on line 16 of page 1 of the strike all amendment.

Once again, this proposal is un-needed and, in this case, it violates the United States constitution. It too will result in litigation that will be paid for by Arizona taxpayers.

This change is un-needed because, under Arizona law today, the ADHS Director already has the ability to conduct unannounced inspections of abortion providing health centers. He or she simply must be able to show cause in order to obtain an administrative search warrant.

The need for this change is also undermined by the fact that abortion is arguably the most regulated and scrutinized health care in Arizona.

Rather than take my word for it, I would direct your attention to the findings of ADHS, in a report issued just last week, to the United States House of Representatives.

We have provided you copies of this 71 page report that describes Arizona's system for regulating, inspecting and licensing abortion-providing health care facilities.

Here are a few key points covered:

1. Arizona has maintained a licensing program for abortion clinics under ARS 36-449 since November 1, 2010. (ADHS May 2013 report, page 1)
2. Abortion clinics shall meet the same licensure requirements as prescribed for Outpatient Treatment Centers and shall also comply with (ADHS) Department requirements of abortion clinics and department rules that govern abortion clinics. (pages 1 & 23)
3. On receipt of a properly completed application for initial licensure, the ADHS director shall conduct an inspection of the health care institution based on on-site observations, interviews and record reviews. Based on the results of the inspection, the director shall either deny the license or issue a regular or provisional license. An initial license is valid for only one year. (pages 3 & 17)
4. The department shall conduct a compliance inspection of a health care institution to determine compliance at least once during each license period. (page 17)
5. Among the requirements in Arizona's existing abortion clinic regulations are specifications for:
 - a. Physical facilities (page 23)
 - b. Clinic supplies and equipment including for use in an emergency. (page 24)
 - c. Clinic personnel (page 24)
 - d. Medical screening and evaluation (page 25)
 - e. The abortion procedure itself (page 25)
 - f. Recovery room standards (page 25)
 - g. Follow-up visits (page 26)
 - h. Parental consent (page 30)
 - i. Informed Consent (page 32)
 - j. Right of refusal (page 36)
 - k. Ultrasound (page 37)
 - l. Abortion reporting (page 41)
 - m. Complications reporting (page 42)
 - n. And enforcement. (page 27)

6. Failures to comply with the licensing rules are documented in a statement of deficiencies that requires a plan of correction be submitted within 14 calendar days. (page 3)
7. ADHS has performed 28 inspections since these rules took effect in 2010 and (page 3)
8. no abortion clinic has had its license suspended or revoked. (page 2)
9. And, finally, each abortion-providing health care center “shall ensure that the department’s Director is allowed access for a complaint inspection upon presentation of an administrative search warrant.” (page 48)

Altogether, over 71 pages, this report says that:

- (a) Abortion providing health centers are subject to detailed regulations which are enforced through in-person inspections.
- (b) Inspections are being carried out before licensing and for the renewal of a license.
- (c) The director currently has the authority and ability to conduct unannounced inspections if evidence of health and safety concerns arise.

With respect to Planned Parenthood Arizona specifically, all 13 of our health centers:

- are licensed by ADHS
- each health center has been licensed since the day it opened
- these facilities have undergone 36 in-person inspections since 2010 and all our licenses are in good standing
- four of our facilities have undergone an additional level of scrutiny as abortion providing health centers and these licenses also are in good standing.

Proponents of this section of SB1069 assert that the need for it has been reinforced by a case in Pennsylvania. However, they are failing to also mention reports that Pennsylvania’s abortion regulations had ceased to function properly and clinic inspections did not happen for 15 years. This is not the case in Arizona where license renewals are required annually and must involve an inspection.

Finally, warrantless inspections are unconstitutional.

The question of the constitutionality of warrantless searches was raised regarding the abortion clinic licensing statute passed by this legislature in 1999. Of three sections found to violate constitutional protections, one was exactly the warrantless searches now being proposed in SB1069, on the grounds that warrantless searches violate the U.S. Constitution’s Fourth

Amendment for *“abortion clinics, where the expectation of privacy is heightened, given the fact that the clinic provides a service grounded in a constitutional liberty, and that all provision of medical series in private physicians’ offices carries with it a high expectation of privacy for both physician and patient.”*

Supporters have suggested that a 1999 law found unconstitutional in 2004 might be found constitutional today. Once again, they are being less than honest. The reality is that the clinic licensing regulation requiring an administrative warrant is less than three years old.

As I have shared in previous testimony, Planned Parenthood Arizona supports regulation that legitimately protects Arizonans’ health and wellbeing. That is why I participated in drafting the original abortion clinic licensing statute.

However, Planned Parenthood opposes regulations that promise no health and safety benefit and, rather, could easily be employed to erect barriers and harass women seeking safe, legal health care.

Both of these proposals are un-needed and violate our federal laws and constitution. And they 100% guarantee that Arizona taxpayers will be cutting another check to Planned Parenthood. So far the state has agreed to pay Planned Parenthood \$215,000 arising from our challenge to HB2800. By adopting SB1069, taxpayers will almost certainly write another check to Planned Parenthood.

I welcome any questions you may have.

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