

**BRYON H. SHORT**  
STATE REPRESENTATIVE  
Seventh District



HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
LEGISLATIVE HALL  
DOVER, DELAWARE 19901

COMMITTEES  
Economic Development, Banking,  
Insurance & Commerce, Chair  
Energy  
Housing & Community Affairs  
Revenue & Finance  
Veterans Affairs

**Economic Development Committee**  
Meeting Minutes  
May 12, 2010

Chairman Short called the meeting to order at 2:33 p.m. Members present included Representatives Ramone, Keeley, Brady, Lavelle, Bennett, Viola, and Hocker. Representative D. Short was also present. For a list of guests present, please see attached.

After calling the meeting to order, Chairman Short explained that **HB 390, AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE REGULATORY FLEXIBILITY ACT AND THE ADMINISTRATIVE PROCEDURES ACT**, would be deferred until the next committee meeting.

Next, Chairman Short decided to address **HB 248, AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE CHARITABLE/FRATERNAL SOLICITATION ACT OF 1996**, and recognized Rep. Keeley, the bill's sponsor. Rep. Keeley explained that she would like for this bill to be tabled in order to allow for a compromise to be found. She hopes to find a solution over the next six weeks. Rep. Lavelle motioned to table the bill. Rep. Bennett seconded the motion. The bill was respectfully tabled.

Chairman Short choose to address **HB 377, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO LICENSURE FOR PLUMBING CONTRACTORS AND HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION CONTRACTORS**, and explained that this bill deals with reciprocity in regards to licensing procedures for plumbing and heating, ventilation, air conditioning and air refrigeration ("HVACR") fields. Currently, if a contractor is licensed in Maryland and they come to Delaware for a project, Delaware only demands proof of their license in Maryland. However, if a Delaware contractor goes to Maryland for a project, they need to sit for a test. This bill states that if another state accepts the Delaware license, then Delaware will accept their license. If another state requires Delaware contracts to take a test, then that state's contractors will take a test to work in Delaware.

Rep. Lavelle asked if there is a measurement to ensure that standards used by other states are similar to Delaware. Chairman Short stated that there may be issues but in general, the licenses will be similar. Rep. Lavelle asked if Delaware does a good job in

administering licensing procedures. Ralph Degliobizzi, of ABC Plumbing and Heating Company, stated up to two years ago, Delaware had no licensing and licensing was introduced to protect Delaware. If a contractor goes to Maryland, they need to take a test in order to work in the state; this is not the same for Maryland contractors coming to Delaware. Chairman Short explained that a week ago, a meeting was held with Professional Regulators regarding this issue, specifically between Maryland and Delaware.

Rep. Bennett motioned to release the bill from committee; Rep. Ramone seconded the motion. The bill was released from committee on a 6-1-0 vote.

Next, Chairman Short addressed **HB 367, AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO UNFAIR ACTS IN THE BUSINESS OF INSURANCE**, and recognized Rep. D. Short, the bill's sponsor. Rep. D. Short explained that there are people in attendance with various groups, including the Hospital Association and Medical Society, with whom he has discussed this bill. This bill addresses an issue surrounding adversarial third party denials of medical tests. Currently, insurance companies decide if a test is appropriate or medically necessary. Rep. D. Short stated that this bill will give the patient more clout because if they are denied coverage for a test, pay out-of-pocket for the test regardless, and the test is then deemed to have been necessary, the insurance company would be responsible for reimbursing the patient. There are issues as to how this process would work and who would have the authority to enforce this bill. This bill increases insurer responsibility.

Chairman Short recognized Mitch Crane, of the Delaware Department of Insurance (DOI). Mr. Crane explained that while this bill focuses on an important concept, a lot is left to interpretation. The first issue is the insurance companies and individuals enter into contracts, in which certain protocol must be followed concerning appeals. The bill should clearly state that these protocols should be followed first. Additionally, existing procedures outlined in the Delaware Code should be followed as well. Section 2307 of Title 18 is referenced in the synopsis but not the bill. Furthermore, stronger sections could be included within the bill. If the intent of this bill is to penalize, the term "medically necessary" needs to be defined, since it is not defined in the Delaware Code. Another issue concerns the reimbursing of patients. If an insurance company pays for a test, they will be a different rate than an individual. Therefore, does the insurance company pay the rate they would have had to pay or the rate that the individual paid? Also, the bill only mentions individuals who pay for the test, not doctors that proceed with the test and incur the cost themselves. Mr. Crane stated that this bill is important but should not be rushed. He recommends that the bill be tabled until next session, giving all parties involved time to investigate the issues.

Rep. Viola asked for clarification for the payment issue, stating an example of blood work in which an individual would pay \$400 but the insurance company would pay \$78 because of a previous agreement. Mr. Crane stated that the example was what he was referring to. Rep. Viola then stated that due to his own personal experience, he understands that decisions by doctors are not always clear cut and doctors do not always

agree. Mr. Crane stated that there are internal and external review procedures that can help to determine the action needed.

Rep. D. Short stated when the doctor makes a judgment concerning a test for a patient, that decision can be overrode by another doctor who has not physically seen the patient. This forces the patient to proceed without insurance. This bill gives some clout to patients and brings the issue to light for discussion. Rep. D. Short expressed his wishes to get to the heart of the issue. Mr. Crane stated that the decision by an external doctor is necessary and that the review process needs to be independent of both the insurance company's doctor and the treating physician. Rep. D. Short asked Mr. Crane which doctor does not see the patient, to which Mr. Crane responded, after some questioning, that the insurance doctor does not see the patient.

Commissioner Karen Weldin Stewart, of DOI, stated that a patient can use one doctor for twenty years but that doctor might still not make the best decision; it is not uncommon for second or third opinions to over-turn the first doctor's decision. Rep. D. Short stated that a patient has a choice to leave their doctor but has no choice in the doctor hired by the insurance company.

Rep. Viola stated that he can understand both sides of the issue, the patient and the insurance company. There are people that can take advantage of this situation; for example, if a group of doctors also own a testing facility, they could encourage patients to get multiple tests. Rep. Hocker stated that putting the bill off until next session is not something that needs to occur; a minor amendment could correct the issues being discussed. Rep. D. Short stated that he would welcome any amendments and but has yet to receive any proposals. Rep. Brady, in agreement with Rep. Hocker, stated that in the past, the committee has moved legislation along with the acknowledgement that it needs work.

Rep. Lavelle asked if this bill would apply to Delaware state employee insurance policies. Mr. Crane stated that according to Title 18, there is no jurisdiction over self-insurance; it is controlled by federal law. Russell T. Larson, Delaware Controller General, explained any changes to insurance would not include the state. However, the state employee benefits usually choose to adopt any changes. Currently, the state has a process in place to deal with denials.

Rep. Lavelle stated that he currently attended a joint insurance meeting. He did not recall any of these issues being brought to the committee's attention. Nor does he see any DOI advertisements which explain that DOI cannot help Delawareans who are self-insured. Rep. Lavelle agrees that the bill could be cleaned up. Mr. Crane stated that DOI advertisements do not tell consumers to call their office if there is a problem with providers. Additionally, no mention is made to full versus self-insurance because the consumer would not understand the difference. Mr. Crane explained that consumer service records and responds to any complaints received. Since the hearing, the office received 25 to 30 calls, mostly relating to stress testing. Rep. Lavelle asked who determines if a test is medically necessary and how the DOI becomes aware that patients

have been denied necessary medical tests. Mr. Crane stated that medical experts determine the necessity of a test; if it is determined that a test is not necessary, the insurance company is prohibited by law to bill the patient for the test. Commissioner Stewart stated that complaints can come from a variety of sources, including the patient and insurance company.

Rep. D. Short asked why a fiscal note would be included if the costs would be borne by the third party if the review of the necessity of a test was completed correctly. Mr. Larson stated that if claims are made, the state is ultimately responsible. An amendment should be included to clarify the state's involvement.

Christine Schiltz, of America's Health Insurance Plans, agrees with DOI that there are issues that need to be dealt with in regards to this bill, including the external review process and penalties and policies already in place. She offered her services to work on an amendment to the bill.

Chairman Short thanked Rep. D. Short for his bill. In the past, specifically referring to Rep. Viola's bill, the committee has proceeded with a bill with the understanding that the bill will receive additional input. Chairman Short stated that he supports this bill and believes that many in attendance think that this bill does address a current issue in insurance.

Rep. Brady moved to release the bill from committee; Rep. Lavelle seconded the motion. The bill was released from committee on a 1-5-0 vote.

Chairman Short adjourned the meeting at 3:22 p.m.

Respectfully submitted by,

Jordan L. Fischer