

MEMORANDUM

JLOSC Adopted Recommendations HRB Review as of June 6, 2022



Joint Legislative Oversight
& Sunset Committee

Recommendation #1, Option 1 – continue HRB

After review and analysis, JLOSC staff recommends option 1, continue the Delaware Health Resources Board, subject to any further recommendations that JLOSC adopts.

Continue or Terminate (standard JLOSC recommendation)

Option 1: The Delaware Health Resources Board shall continue, subject to any further recommendations that JLOSC adopts.

- OR -

Option 2: The Delaware Health Resources Board is terminated, and the Committee will sponsor legislation to implement this recommendation.

4/27/2021 Update: Recommendation #1, Option 1 adopted by JLOSC.

Recommendation #2 – Restructure HRB to Advisory Capacity

Restructure the Health Resources Board as an advisory board assisting the applicable department charged with review of Certificate of Public Review applications.

Under this recommendation, JLOSC will sponsor legislation restructuring HRB to an advisory capacity. JLOSC staff recognizes this would be a large change and note that an advisory HRB may fit better in another department within DHSS such as the Office of Health Facilities Licensing and Certification. To draft the required legislation, JLOSC staff would work closely with HRB and DHSS staff to ensure proper composition and placement. Any draft legislation formed from the adoption of this recommendation would be presented to JLOSC for review, discussion, and approval.

4/27/2021 Update: Recommendation #2 adopted by JLOSC.

Recommendation #3 – Statute Revisions

JLOSC should consider sponsoring a bill to apply technical corrections to the governing statute of HRB, Chapter 93, Title 16, and using this review as a guide, applying revisions to sections covering topics such as:

- Board composition.
- Quorum requirements.
- Activities subject to review.¹
- Procedures for review.
- Review considerations.
- Charity Care.

JLOSC and HRB administrative staff will work together to develop statutory revisions. JLOSC staff will engage stakeholders as necessary.

4/27/2021 Update: Recommendation #3 adopted by JLOSC.

¹ Includes revision under 16 Del. C. § 9304 (1) adopted by JLOSC in recommendation 6 from previous 2012 review.

Revised Recommendation #4 – Utilization Survey, Utilization Survey Form Requirements.

JLOSC should consider sponsoring a bill to require HRB to collect utilization information from approved projects on an annual basis to build and maintain utilization statistics. HRB will work with the Office of Health Facilities Licensing and Certification (OHFLC) to collect annual utilization information. HRB will compile a summary and make it available to the public on their website.

Other states have similar requirements for the purpose of maintaining accurate utilization statistics to review CON applications. HRB currently requires former CPR applicants to submit annual charity care reports. Utilization information is just as important to the CPR process as charity care reporting. All applicants that receive approval through the CPR process with HRB must then go through licensing and certification with OHFLC to meet state and federal facility requirements such as Facility Guidelines Institute (“FGI”) standards. OHFLC currently requires utilization information from their licensees. To avoid process duplication, HRB could work with OHFLC to obtain this information.

4/27/2021 Update: Revised Recommendation #4 adopted by JLOSC.

Revised Recommendation #4, Option 1 – Conducting a State-wide Health Care Facility Utilization and Cost Study.

Using annual utilization information in Recommendation #4, HRB will conduct or contract a state-wide health care facility utilization study every 5 years. To avoid process duplication, HRB will work with appropriate stakeholders and OHFLC. The study will be published on the board’s website and a copy sent to the General Assembly and Division of Research Librarian. Such study will include an assessment of:

- Current cost, availability, and utilization of acute hospital care.
- Hospital emergency care.
- Specialty hospital care.
- Outpatient surgical care.
- Primary care and clinic care; geographic areas and subpopulations that may be underserved or have reduced access to specific types of health care services.
- Other factors that the agency deems pertinent to health care facility utilization.
- Unmet needs of persons at risk and vulnerable populations as determined by the executive director.
- Projection of future demand for health care services and the impact that technology may have on the demand, capacity or need for such services, and recommendations for the expansion, reduction or modification of health care facilities or services.

4/27/2021 Update: Revised Recommendation #4, Option 1 adopted by JLOSC.

Revised Recommendation #5 – Release from Review.

HRB is held over and shall report to the Committee in January 2022 and shall submit progress reporting to JLOSC staff regarding the progress and implementation of all adopted recommendations on the following schedule:²

- Progress Report #1 – September 1, 2021
- Progress Report #2 – December 1, 2021

4/27/2021 Update: Revised Recommendation #5 adopted by JLOSC.

² JLOSC staff will contact HRB administrative staff with a report template and guidelines no later than June 30, 2021.

Recommendation #6 – Guidance for HRB during holdover and pending legislation.

HRB is held over and shall report to the Committee in January 2023 and shall submit progress reporting to JLOSC staff regarding the progress and implementation of all adopted recommendations on the following schedule:³

- Progress Report #1 – August 1, 2022
- Progress Report #2 – October 1, 2022
- Progress Report #3 – December 1, 2022

To streamline operations during the period of holdover and pending legislation, HRB will implement the following policies effective June 6, 2022:

• **Discontinue use of review committees.**

- Staff will prepare overview of the application and provide HRB members with overview and application materials at least 1 week prior to scheduled presentation meeting.
- HRB will ask questions of applicant after presentation.
- If a public hearing is requested, take public comment at the presentation meeting.
- HRB will review and vote on application at the presentation meeting.
- HRB will direct any questions during discussion to the applicant during their meeting.
- Review process may be split into 2 meetings if application is extensive.
- Guidance for current applications under review:
 - Delaware Surgical Arts and Nemours NICU Expansion – HRB members will review full review committee reports prior to June 23, 2022 meeting. Review committees will present a high-level overview of findings on June 23, 2022, HRB will vote on applications.
 - Encompass Health Rehabilitation Hospital application will be reviewed by the full board at either the June 23 or July 28, 2022 meeting, a review committee will not be used.

• **Use quorum definitions as established by statute and bylaws.**

- Statute: A quorum shall consist of at least 50% of the membership.
- Bylaws: a meeting quorum is 8 members, and a voting quorum is a majority of members who are present at the meeting and able to vote.
 - “The disqualification of a member from voting or a member abstaining from voting shall not affect the quorum. All matters, except as provided for in Article VI of these bylaws, shall be decided by a majority of the members present and voting. Members who abstain from voting on a particular matter are considered “present and voting” for purposes of determining a majority.”

06/06/2022 Update: Recommendation #6 adopted by JLOSC

³ JLOSC staff will contact HRB administrative staff with a report template no later than June 30, 2022.