

Joint Legislative Oversight
& Sunset Committee

JLOSC Meeting: June 6, 2022

Starting at 1:30 p.m.



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Mark Brainard Jr. & Amanda McAtee
Division of Research, analysts for JLOSC

Twitter: @DEDivResearch

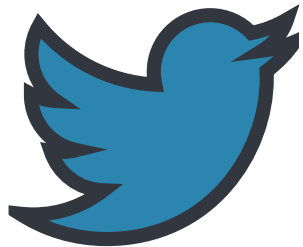
Email: Sunset@Delaware.gov

Web: legis.delaware.gov/Committee/Sunset

Phone: (302) 744-4114

Written public comments accepted via email.

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STATE OF DELAWARE
JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE

Joint Legislative Oversight and Sunset Committee
Virtual Meeting

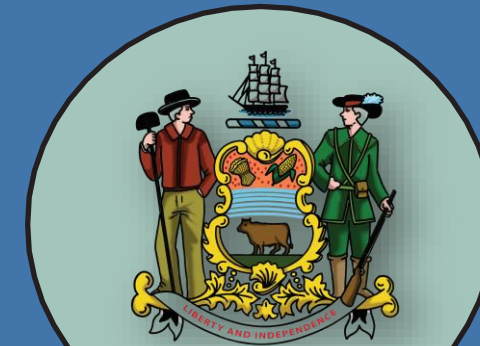
Public Viewing Access via General Assembly [Live Stream](#)

Monday, June 6, 2022

1:00 p.m.

Agenda

1. Welcome
2. Approve Minutes
3. Draft Legislation
4. Health Resources Board Update
5. Adjournment



Joint Legislative Oversight
& Sunset Committee

June 6, 2022

Draft Legislation and
HRB Review Update

151st General Assembly,
2nd Session

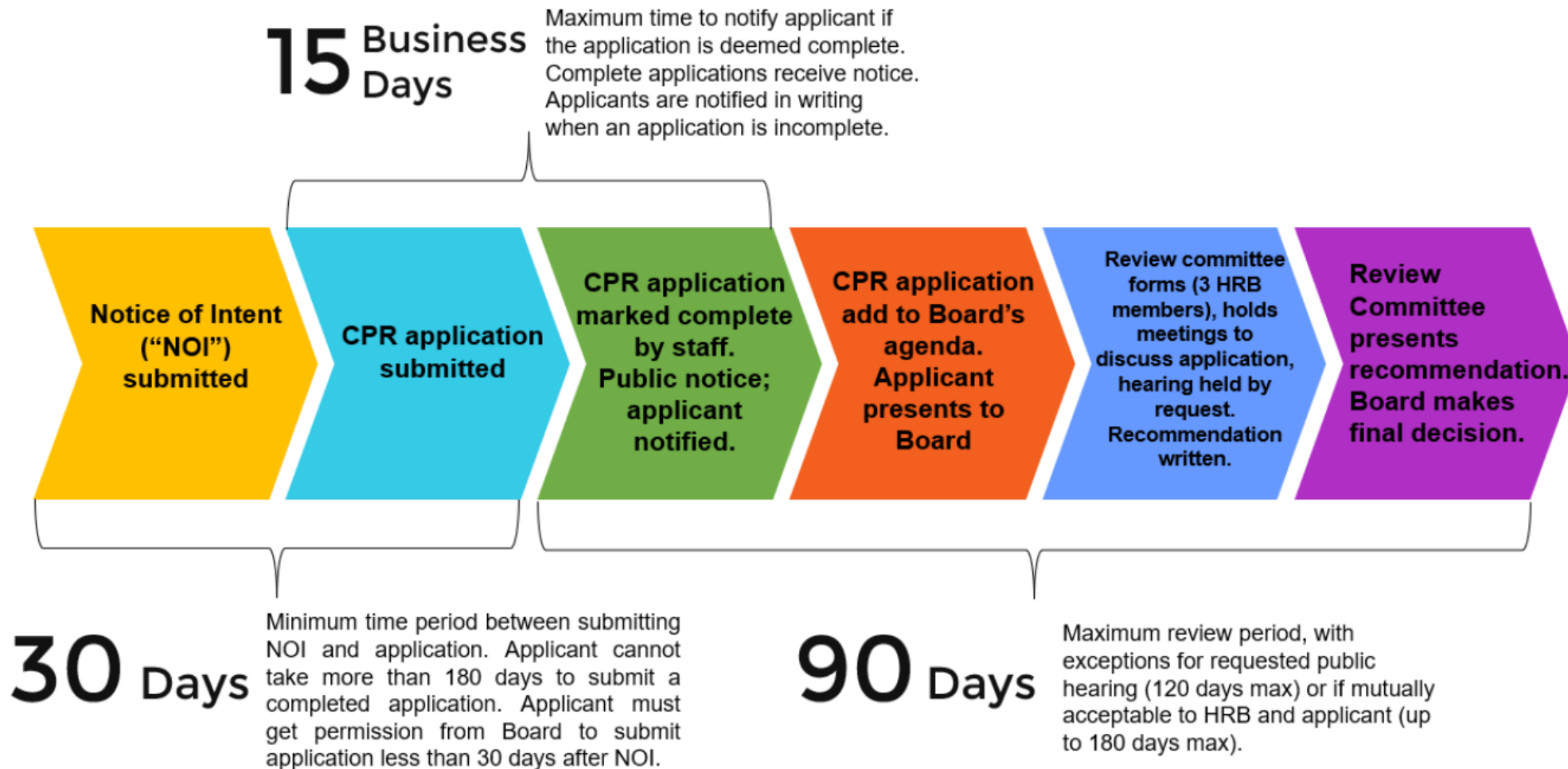
HRB Update: Members, Meetings, Legislation (June 2021 – present)

- **12 total members.**
 - 2 resignations in August – September 2021.
 - 2 new appointments in May 2022.
 - Governor appointed a vice chair from membership.
 - 3 current vacancies:
 - 2 Public at Large Members.
 - 1 representative involved in purchasing health care coverage for employers with more than 200 employees.
- 8 virtual meetings held June 24, 2021 – May 26, 2022.
 - **5 meetings cancelled.** (4 lack of quorum and 1 no new business.)
- Quorum and review committee issues discussed in Staff Report still a problem. No changes to processes.
 - **Statute determines quorum is 50% of membership and bylaws state recusals do not affect quorum. Board has been counting recusals against quorum.**
 - **Difficulty in scheduling review committee meetings.**
 - Review committees are not in statute, regulations, or bylaws.
 - Bylaws permit use of subcommittees but does not require them to be used for application review.
- No discussions or planned changes to bylaws, regulations, or review processes. HRB is waiting for JLOSC legislation to change to advisory, which will impact operations.
 - JLOSC staff working on draft, which is complex and involves extensive drafting work and a fiscal note.
 - Despite our best efforts, draft is unlikely to be ready for JLOSC review this session.
 - We have observed continued issues with HRB regarding quorum and the inefficient review committee process and suggest JLOSC make an additional recommendation urging HRB to operate more efficiently until legislation can be reviewed and considered next session.

Review Process

- Review of process from page 17 of report, finding #4.
- 2021 Staff Report under 2020 review tab of JLOSC website.

HRB Certificate of Public Review Application Process



Application Timelines

- Complete applications received since June 2021.
- Since November 2021, it's taking about 2-3 months to schedule a review committee (virtual) meeting, which consists of 3 HRB members.



Applicant	Application Received	Application Complete	HRB Meeting Presentation	Review Committee Meeting Date(s)	Scheduled HRB Meeting Review, Outcome
Select Specialty Hospital	8/23/2021	9/10/2021	9/23/2021	10/20/2021	11/18/2021, approved
Outpatient Procedure Center	9/2/2021	unknown	11/18/2021	2/2/2022	2/24/2022, approved
Delaware Surgical Arts	10/26/2021	2/25/2022	3/24/2022	5/18/2022	scheduled for 06/23/2022, pending final review
Post Acute Medical (PAM)	11/15/2021	12/7/2021	12/16/2021 (cancelled), 1/27/2022	3/9/2022 (cancelled), 04/11/2022, 05/16/2022	5/26/2022, approved
Nemours NICU Expansion	12/28/2021	2/25/2022	3/24/2022	5/13/2022	scheduled for 06/23/2022, pending final review

Total Business Days in Review Process

Applicant	Number of Business Days from Application Receipt Date to HRB Meeting Presentation	Number of Business Days from Application Receipt Date to Review Committee Meeting(s)	Number of Business Days from Application Receipt Date to HRB Meeting & Final Review
Select Specialty Hospital	22	41	61
Outpatient Procedure Center	78	102	118
Delaware Surgical Arts	101	139	163 <small>*pending June 23 meeting</small>
Post Acute Medical (PAM)	21 (cancelled) / 48	77 (cancelled) / 100 / 124	132
Nemours NICU Expansion	60	95	122 <small>*pending June 23 meeting</small>

- **Maximum review time is 90 days.**
 - Exception made if a public hearing is requested, then review time is extended to 120 days.
 - If mutually acceptable to HRB and applicant, up to 180 days max.
 - Application for PAM had a public hearing request that was later cancelled and not held.
 - 2 review committee meetings were held to review answers to questions submitted to applicant.
 - Review committee will not speak to applicant during its meetings.

Review Committee Members

- During this time HRB had 10 appointed members.
 - 8 out of 10 members served on committees.
 - 2 members served on 3 out of the 5 committees.
 - 2 members served on 2 out of the 5 committees.
 - 1 review committee meeting only had 2 members present.

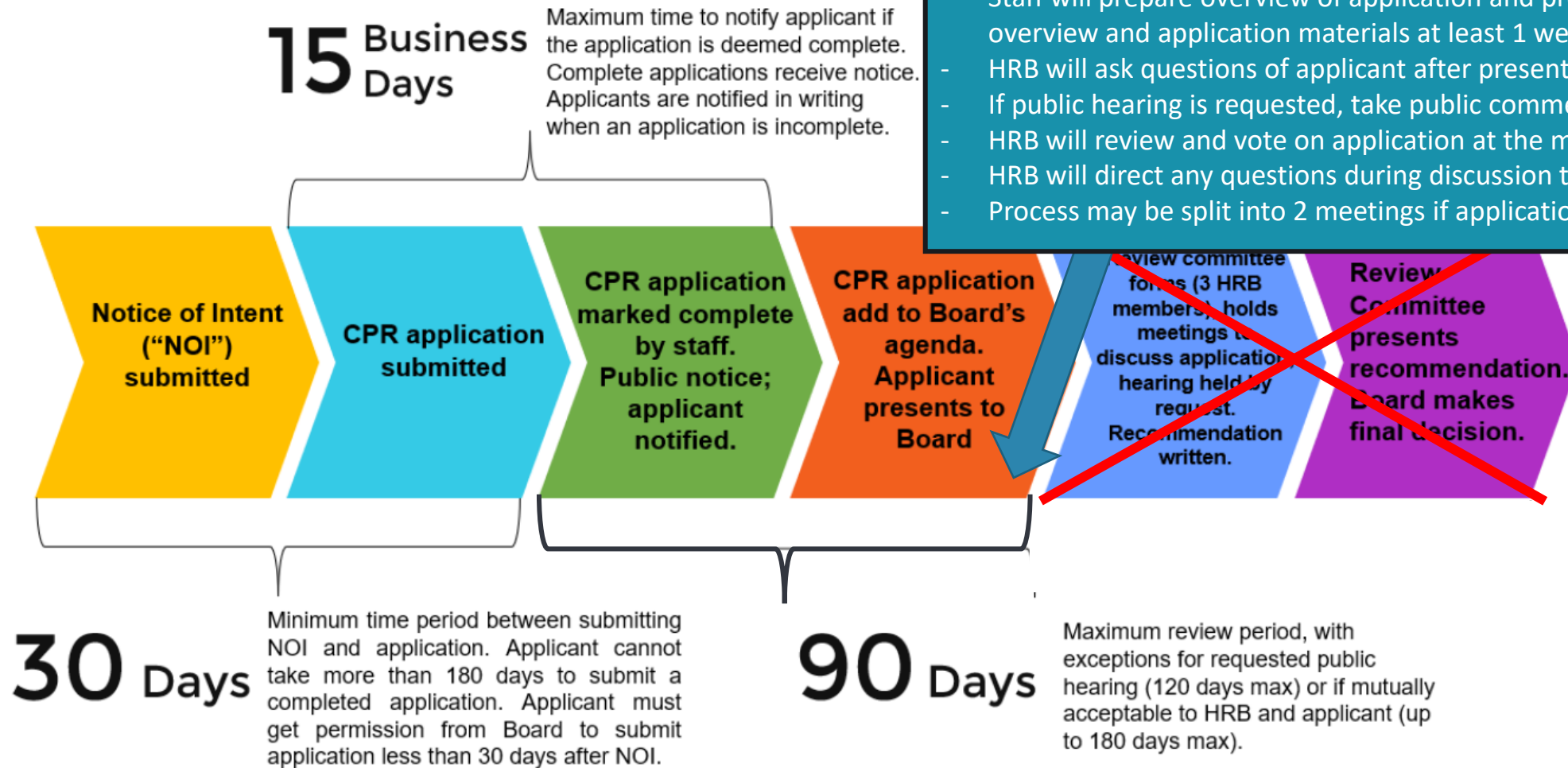


Applicant	Committee Members
Select Specialty Hospital	Cheryl Heiks, John Walsh, Brett Fallon
Outpatient Procedure Center	Cheryl Heiks, Leighann Hinkle, Pamela Price
Delaware Surgical Arts	Michael Hackendorn and Brett Fallon
Post Acute Medical (PAM)	John Walsh, Leighann Hinkle, Brett Fallon
Nemours NICU Expansion	Cheryl Heiks, Dr. Elizabeth Brown, Peggy Strine

Revised Review Process

➤ Remove review committee process.

HRB Certificate of Public Review Application Process



- Staff will prepare overview of application and provide HRB members with overview and application materials at least 1 week prior to board meeting.
- HRB will ask questions of applicant after presentation.
- If public hearing is requested, take public comment at meeting.
- HRB will review and vote on application at the meeting.
- HRB will direct any questions during discussion to applicant during meeting.
- Process may be split into 2 meetings if application is extensive.

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➤ Red column shows provides an idea of how quickly applications could have been decided if the review committee processes were not used.

Recommendation #6

- **Direct HRB to discontinue use of review committees.**
 - Since November 2021 it's taking about 2-3 months to schedule a review committee (virtual) meeting, which consists of 3 HRB members.
 - 1 review committee only had 2 HRB members.
 - 4 out of 5 applications reviewed since June 2021 have taken between 118 and 163 days to review.
 - Maximum review period is 90 days unless public hearing is requested (120 days).
 - Only 1 application requested a public hearing, request later cancelled (132 days).
- **Provide clarity for quorum, direct HRB to use quorum as established by statute and bylaws.**
 - Currently the statute reads "A quorum shall consist of at least 50% of the membership. This can be interpreted to mean 50% of the current filled positions or 50% of the composition of the Board.
 - Bylaws define a meeting quorum as 8 members and a voting quorum as 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."**
- **Continue holdover, submit holdover reports in September and December 2022.**
 - JLOSC staff will provide report template.