

March 15, 2021

Joint Legislative Oversight and Sunset Committee
411 Legislative Avenue
Dover, DE 19901

Dear Chairwoman Gay, Co-Chair Walker and members of the Sunset Committee:

Delaware's Health Resources Board ensures that Delawareans have a say in significant health care investments that affect and impact quality, cost and their access to care. Beebe Healthcare believes that the Health Resources Board (sometimes referred to as the "HRB") and Delaware law and DHSS regulations governing the HRB are merely in need of some common sense changes in order to update Delaware's Certificate of Public Review ("CPR") process, and to allow the Delaware Health Resources Board to perform more effectively.

Delaware's HRB and CPR statute and regulations ensure that all Delawareans, including the most vulnerable, are provided necessary and appropriate health care. All of the state's general acute care hospitals and pediatric hospital are non-profits and serve as safety net hospitals that treat all patients, whether they have insurance or not. Critics of the HRB and CPR process suggest that eliminating the HRB and the CPR process will increase competition and reduce costs. Unfortunately, this suggestion and its "supporting analysis" are built on a false premise. Delaware hospitals provide a full range of services – many of those services lose money but are needed by the public. Delaware hospitals serve patients covered by Medicare and Medicaid, which reimburse hospitals less than the cost to provide these necessary healthcare services. Without the HRB and CPR process, any out-of-state, for-profit healthcare corporation could build a facility tailored to perform only profitable services for patients with commercial insurance— leaving Medicare, Medicaid and uninsured patients without equivalent access to care. This would then siphon off patients with better-reimbursing commercial insurance from our own non-profit hospitals, leaving them without the necessary revenue to underwrite, subsidize and pay for the full range of health care services-- both those that are profitable and those that are unprofitable-- which are all needed by Delawareans.

Therefore, we strongly believe that Delaware's Health Resources Board and CPR process must be maintained during sunset committee review. That said, we also believe that Delaware must make changes to enable the Health Resources Board to perform more effectively. These changes include:

1. Convene a working group that includes representatives with appropriate health planning background from industries subject to CPR review, other stakeholders, and the public, for the purpose of updating the review criteria and the application process.
2. Providing funding for independent staff or consultants with expertise in health policy and planning to review CPR applications and help guide HRB analysis and determinations.
3. Revise the composition of the HRB to improve quorum by accepting more at-large members to avoid recusals and allowing those that recuse themselves to still be counted toward quorum.
4. Allowing dialogue between applicants, impacted parties, and the HRB during the CPR process to facilitate real-time discussion and answers to questions to fully inform the HRB in their deliberations.

Thank you for your service, and please do not hesitate to contact me if Beebe Healthcare can be of service to you, your committee and all Delawareans.

Very truly yours,



David A. Tam, M.D. MBA CPHE FACHE
President and Chief Executive Officer



March 16, 2021

Wayne A. Smith
President & CEO

The Honorable Kyle Evans Gay
Chair, Joint Legislative Oversight and Sunset
Committee
411 Legislative Avenue
Dover, DE 19901

The Honorable Sherry Dorsey Walker
Vice-Chair, Joint Legislative Oversight
and Sunset Committee
411 Legislative Avenue
Dover, DE 19901

RE: Request to Convene a Working Group as HRB Recommendation

*Alfred I. duPont Hospital
for Children*

Mark Mumford,
Executive Vice President
Chief Executive,
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Terry Murphy,
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Wilmington Veterans

Affairs Medical Center
Vincent Kane
Director

Delaware Healthcare

Association
Wayne A. Smith
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Dear Senator Gay and Representative Dorsey Walker,

Thank you for the opportunity to comment ahead of the Joint Legislative Oversight and Sunset Committee's (JLOSC) meeting to make recommendations on the Health Resources Board scheduled for March 18th. The Delaware Healthcare Association is pleased to submit the [attached document](#) outlining our recommendations to improve the HRB. We also request that priority be given to what we believe is the most necessary and important recommendation: convening a working group that includes hospital representatives and other stakeholders for the purpose of updating the Certificate of Public Review criteria and application process.

The Health Resources Board (HRB) which administers Delaware's Certificate of Need System, makes determinations on whether or not health care facilities, projects and services meet approval criteria. Delaware's certificate of need system, known as Certificate of Public Review (CPR), provides important value for our community and should remain. This system ensures that the public has a say in health care investments in our state — helping our health care system grow in ways that improve — and don't harm — quality, cost and access to care. It also shields the most vulnerable Delawareans from being left without care.

The Health Resources Board that administers this system faces several challenges that need to be addressed, including: consistent lack of quorum, canceled meetings that delay projects, non-transparent (and often inconsistent) criteria, analysis and decisions and lack of adequate staff support.

The [attached](#) recommendations reflects a consensus document developed by representatives of the Delaware Healthcare Association's member hospitals. One of the most critical recommendations included in this list is recommendation #4: **Convene a working group that includes representatives with appropriate health planning background from industries subject to CPR review and other stakeholders for the purpose of updating the review criteria and application process.**

We strongly encourage the JLOSC to recommend the convening of such a working group, which can dive deeper into the current process and its governing documents (the Delaware Code and the Health Resources Management Plan) to make much-needed improvements.

At a minimum, this working group should be tasked with the following:

- a) ensuring information requested in Certificate of Public Review applications is relevant for assessing the service being proposed;
- b) foster better and more consistent alignment with the criteria that the Health Care Commission has established by ensuring that the information being requested in the application aligns with the criteria for evaluation and supports the HRB's deliberations on these criteria;
- c) restrict any new criteria from evaluations unless the new criteria is communicated to the applicant prior to the application being submitted;
- d) create a schedule for regular review, and training for HRB members on the review criteria and to allow for consistent assessment of applications; and,
- e) consider eliminating the Health Resources Management Plan and, instead, detail criteria for CPR review in the Statute to simplify the process.
- f) (Listed as #5 in the *attached* document) With the input of providers, update the list of health care expenditures, including medical equipment and activities that require a CPR.

For example, this working group could consider several additional recommendations for changes to the Health Resources Management Plan and/or Delaware Code that the Delaware Healthcare Association believes would improve the Certificate of Public Review process, including (note: these additional recommendations were included in DHA's response to the JLOSC survey in October 2020):

- i. Expenditure threshold - Ensure the expenditure threshold that triggers HRB review of \$5.8 million is annually adjusted for inflation.
- ii. Expenditures that should not be subject to review - Strengthen the exemption under Title III, Chapter 93, Section 9304, (a) item (2) of the code to clarify that Capital Expenditures that are necessary for maintaining the physical structure, or not related to direct patient care are NOT subject to review. Hospitals should not have to g
- iii. Nonprofit Acquisition - Remove the word "nonprofit" from Title III, Chapter 93, Section 9304, (a) item (1) of the Delaware Code and the Health Resources Management Plan as it should not just be non-profit acquisitions that are subject to review.
- iv. Bed Capacity - Eliminate the "by more than 10 percent" and "whichever is less" language from the Health Resources Management Plan and Title III, Chapter 93, Section 9304 (a) (3) of the Delaware Code. This language refers to the change in bed capacity activity that triggers CPR review. This should be left simply as 10

beds. Currently, if a facility has only 50 beds and adds 5, they would be subject to review. This does not make sense that an activity of \$5.7 million or under is NOT subject to review while adding 5 beds would be.

- v. Medical Equipment - Remove the requirement that an acquisition of major medical equipment be considered an activity subject to review from the Health Resources Management Plan & the Delaware Code (item (4) under Section 9304 as well as the definition, item (6) under section 9302 of Title III, Chapter 93). As written, the current language practically requires CPR review for all equipment, which is very time consuming. HRB does not have expertise to deem if such equipment is needed or not, and therefore it should not be subject to review. If removing all equipment is not possible, at a minimum, remove MRI, CT and lithotripsy from the list of equipment subject to review under the Health Resources Management Plan.

While we encourage the JLOSC to consider including all of the Delaware Healthcare Association's recommendations listed in the [attached](#) document, we strongly request that convening a working group to update the CPR criteria and process be made a top priority. Thank you for your consideration of this request.

Sincerely,



Wayne A. Smith
President & CEO

CC: Members and staff of the Joint Legislative Oversight & Sunset Committee

DHA represents hospitals and health care delivery systems in Delaware and advocates for policies that create an environment enabling every Delawarean to be as healthy as they can be.



Delaware Hospitals' **Recommendations to Improve the Health Resources Board**



According to Title 16, Chapter 93 of the Delaware Code, the purpose of Delaware's Health Resources Board (HRB) Certificate of Public Review (CPR) process is to "assure that there is continuing public scrutiny of certain health-care developments which could negatively affect the quality of health care or threaten the ability of health-care facilities to provide services to the medically indigent. This public scrutiny is to be focused on balancing concerns for cost, access and quality." The Delaware HRB was established to "foster the cost-effective and efficient use of health-care resources and the availability of and access to high quality and appropriate health-care services."

The HRB is scheduled to come under Sunset Committee review in February 2020. The Delaware Healthcare Association **recommends several procedural changes to improve the process and function of the Health Resources Board and improve consistency in the review of CPR applications. DHA recommends the following changes:**

1. **Provide funding for independent staff or consultants with expertise in health policy and planning** to review CPR applications, support the HRB with analysis and interpretation, and to help guide HRB business, debate and determinations.
2. **Allow dialogue between applicants, impacted parties, and the HRB during the CPR review process** to facilitate real-time discussion and answers to questions to aid the HRB in their deliberations.
3. **Allow technological capabilities** for HRB members to participate remotely to improve meeting attendance, deliberation and function.
4. **Convene a working group** that includes representatives with appropriate health planning background from industries subject to CPR review and other stakeholders for the purpose of updating the review criteria and application process. Specifically, the working group should:
 - a) ensure information requested in CPR application is relevant for assessing the service being proposed;
 - b) foster better and more consistent alignment with the criteria that the Health Care Commission has established by ensuring that the information being requested in the application aligns with the criteria for evaluation and supports the HRB's deliberations on these criteria;
 - c) restrict any new criteria from evaluations unless the new criteria is communicated to the applicant prior to the application being submitted;



Delaware Hospitals' **Recommendations to Improve the Health Resources Board**

- d) create a schedule for regular review, and training for HRB members on the review criteria and to allow for consistent assessment of applications; and,
 - e) consider eliminating the Health Resources Management Plan and, instead, detail criteria for CPR review in the Statute to simplify process.
5. With the input of providers, **update the list of health care expenditures**, including medical equipment and activities that require a CPR.
 6. Ensure that CPR criteria requires facilities to care for the underserved in Delaware by requiring all facilities subject to a CPR review to **take all public insurance** (e.g. Medicare, Medicaid and TRICARE), with a clear enforcement mechanism for violations.
 7. **Revise the composition of the HRB to improve quorum** by the following means: accept more at-large members to prevent the consistent issue of multiple recusals; allow those that recuse themselves to still be counted toward quorum; and quorum should be based on the number of sitting members, not the number of seats, or at least five members.
 8. **HRB should explore models from other states to develop a model for evaluating capacity and demand for any facility or service** included in HRB's authority. Such models exist for inpatient beds of all types (acute care, Obstetric Care, Skilled Nursing Facilities, etc.), but there is no model for free standing Emergency Departments (EDs) or cardiac catheterization labs, for example.
 9. **Optimize administrative support processes** to assure transparent and effective communications regarding the HRB activities, applications, meetings and agendas. For example, allow reports to be "considered read" into the public record without having to verbally read through the entire report during HRB meetings.

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