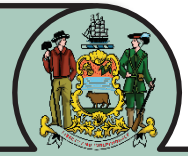


FINAL REPORT 2021

151st General Assembly, 1st Legislative Session



**Joint Legislative Oversight
& Sunset Committee**



***Respectfully submitted to the
Joint Legislative Oversight and Sunset Committee
June 2021***

JLOSC Final Report 2021

Summary of work completed, 151st General Assembly, Session 1

Holdover Reports and Recommendations

In 2020, the COVID-19 pandemic shortened the public meeting schedule and work of Joint Legislative Oversight and Sunset Committee (“JLOSC” or “Committee”) during the 2nd legislative session of the 150th General Assembly. As a result, the 2019 and 2020 reviews were left in various stages of review completion. In 2021, JLOSC held public presentations for the remaining two 2020 review entities and a holdover meeting for the Division for the Visually Impaired (“DVI”), a 2019 review entity. DVI was the only 2019 review entity to report back to the Committee in February 2020 and February 2021. The remaining 2019 entities were held over to 2021 due to needed legislation delayed by the COVID-19 pandemic. In 2021, the Committee held a total of 13 meetings and adopted a total of 39 recommendations for 2020 review entities.

Read more about Holdover Reports and Recommendations on page 6.

Legislation

In 2021, JLOSC embarked on an ambitious legislative effort. The COVID-19 pandemic stalled the legislative process in 2020 and the work carried over into 2021, resulting in the largest number of recommended bills in the Committee’s history. This session JLOSC reviewed and approved 9 draft bills, with 5 completing the legislative process. Because legislation stemming from reviews often requires collaboration between the entity under review and Committee staff, additional legislation is planned for 2022 with the intention of drafting at least 11 more bills in conjunction with the 2019 and 2020 reviews.

Read more about Legislation on page 8.

2022 Reviews

During the fall of 2021, JLOSC staff reviewed and revamped the process of completing reports and research for the Committee. JLOSC staff presented improvements to the Committee during its January 25, 2021 orientation meeting. Staff requested that the Committee expand review selections from 4 to 7 entities for 2022 since the streamlined processes would allow staff to undertake additional review work. Staff prepared a list of entities never reviewed by JLOSC and the Committee selected the following 7 entities for 2022 sunset and legislative oversight review:

- Advisory Council on Pedestrian Awareness and Walkability (DelDOT).
- Medical Marijuana Act Oversight Committee (DHSS).
- Governor’s Commission on Community and Volunteer Service (DHSS).
- Water Infrastructure Advisory Council (DNREC).
- Technology Investment Council (DTI).
- Family Law Commission (LEG).
- Council on Libraries (DOS).

JLOSC also selected the following 2 entities for a more focused and preliminary review to determine current operating status:

- Delaware Motion Picture and Television Development Commission (DOS).
- Interagency Council on Adult Literacy (DOE).

Read more about 2022 Reviews on page 10.

2021 Joint Legislative Oversight and
Sunset Members:

Senator Kyle Evans Gay, Chair

**Representative Sherry Dorsey Walker,
Vice Chair**

Representative Krista Griffith

Senator Stephanie L. Hansen

Representative Kendra Johnson

Senator Brian Pettyjohn

Senator Marie Pinkney

Senator Bryant L. Richardson

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The Division of Research is a nonpartisan and confidential reference bureau for the General Assembly and provides many services including staff support for JLOSC.

Special thanks: We appreciate the assistance provided by entities under review and their staff.

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A Note About This Report

The Committee approved this final report on June 22, 2021. The following pages summarize the work of the Committee during the first session of the 151st General Assembly, including all applicable recommendations and updated information from entities held over from 2019 and 2020. The Committee's website provides full reports and additional information.

Due to the COVID-19 pandemic and state of emergency, the General Assembly announced the postponement of its legislative session and closed Legislative Hall to the public amid the spread of COVID-19 in March 2020. Prior to the closure of Legislative Hall, JLOSC held meetings in February and March 2020 for entities held over from 2019 and public presentation hearings for 2 of the 4 entities under 2020 review. The JLOSC chairs issued a statement on May 22, 2020, explaining that the 2020 review process would continue in 2021 and that all entities under review were considered held over.

Due to the shortened JLOSC review cycle and modified legislative session, review work continued for 2020 review entities and the Committee did not select additional entities for review in 2021.

About the Committee

Delaware's Legislative Oversight and Sunset Law, enacted in 1979 in Chapter 102 of Title 29, provides for the periodic legislative review of state agencies, boards, councils, and commissions. The purpose of review is to determine if there is a public need for an entity and, if so, to determine if it is effectively performing to meet that need. Generally, the Committee will not review an entity more than once every six years.

The Joint Legislative Oversight and Sunset Committee is responsible for guiding the review process. The Committee is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore appoints five senators and the Speaker of the House appoints five representatives to serve on the Committee.

In general, the conduction of reviews spans a ten- to twelve-month time period commencing in July. The Committee's analysts compile a comprehensive review of each entity, based on the responses each entity provides on a questionnaire designed to meet statutory criteria, and then prepares a preliminary report for the use of committee members during public hearings held each year. The entity under review has the burden of showing that there is a genuine public need and that the entity is meeting that need. Public hearings serve as a critical component of the review process because they provide an opportunity for JLOSC to assess and question the entity under review regarding public need and performance.

At the conclusion of a review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an entity. Although the Committee has "sunset" a small number of entities since its first reviews in 1980, the more common approach has been for the Committee to work with an entity under review to formalize specific statutory and non-statutory recommendations with an end goal of improving the entity's overall performance and accountability.

Holdover Reports and Recommendations

Recap of 2019 Holdovers

All 2019 holdover documentation can be found on the JLOSC website under [2019 Reviews](#).

- **Delaware Advisory Council on Career and Technical Education (“DACCTE”)**: Released from review upon the submission of its annual report, slated for December 2021.
- **Council on Correction**: Restructure statute based on JLOSC recommendations and provide staffing support under Criminal Justice Council, 1st session 2021, Senate Bill 129. JLOSC to consider release in 2022.
- **Delaware Health Information Network (“DHIN”)**: Released upon enactment of legislation for technical corrections; 1st session 2021, Senate Bill 128.
- **Adult Protective Services (“APS”)**: Released upon enactment of legislation for technical corrections; planned for 2nd session 2022.
- **Division for the Visually Impaired (“DVI”)**: Presented holdover report on February 9, 2021, Committee voted to release upon enactment of legislation for technical corrections; planned for 2nd session 2022.

2020 Holdover Summary

All 2020 holdover documentation can be found on the JLOSC website under [2020 Reviews](#).

- **Conservation District Operations: DNREC Division of Watershed Stewardship**: Release Pending.
 - Presentation meeting held on March 9, 2020.
 - Recommendations meeting held on February 10, 2021.
 - 8 recommendations adopted.¹
 - Release from review pending submission of a status report due to the Committee in January 2022.
- **Delaware Health Resources Board (“HRB”)**: Holdover with reporting requirements.
 - Presentation meeting held on March 11, 2020.
 - Recommendation meetings held on March 18, 2021, March 25, 2021, and April 27, 2021.
 - 5 recommendations adopted.²
 - Recommendations cover restructure into advisory capacity, utilization surveys, completing a state-wide utilization and cost study, numerous statute revisions to include technical corrections, modifications to board composition, quorum requirements, activities subject to review, procedures for review, review considerations and charity care.
 - HRB is held over, required to submit progress updates on September 1, 2021 and December 1, 2021, and will report to the Committee in January 2022.

¹ See Appendix A for full list of adopted recommendations.

² See Appendix B for full list of adopted recommendations.

- **Delaware Interscholastic Athletic Association (“DIAA”):** Holdover with reporting requirements.
 - Presentation meeting held on February 10, 2021.
 - Recommendation meetings held on February 16, 2021, March 23, 2021, and May 4, 2021.
 - 15 recommendations adopted.⁴
 - Recommendations cover out-of-season coaching, website updates, establishing a strategic plan, board modifications to fee structure, board member composition and terms, restructure of board meetings and standing committee structure, development of a new DIAA staff position, and statutory updates to include technical corrections, revenue, and insurance.
 - DIAA is held over, required to submit progress updates on July 31, 2021, October 31, 2021, and January 31, 2021, and will report to the Committee in January 2022.

- **Delaware Nursing Home Resident Quality Assurance Commission (“DNHRQAC”):** Release Pending.
 - Presentation meeting held on February 16, 2021.
 - Recommendations meeting held on April 1, 2021.
 - 11 recommendations adopted.⁵
 - Recommendations cover statutory updates to include relocation of administrative and budgetary responsibilities to the Department of Safety and Homeland Security, exploring a name change to one more easily recognizable, developing criteria for facility visits, making recommendations to modify Eagle’s Law, conducting research to report and recommend policy changes relating to staffing ratios at assisted living facilities, adding information to annual reports, and a status report requirement due to the Committee in January 2022.
 - After JLOSC adopted recommendations at the April 1, 2021, meeting, DNHRQAC submitted a letter dated April 15, 2021 outlining numerous grievances regarding the review process. JLOSC staff prepared a memorandum to Committee members providing a detailed account of the review process and communications submitted to and from DNHRQAC since 2019.⁶
 - Release pending upon enactment of recommended legislation.

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⁴ See Appendix C for full list of adopted recommendations.

⁵ See Appendix D for full list of adopted recommendations.

⁶ See Appendix E for staff memorandum to JLOSC in response to DNHRQAC letter.

Legislation

The following is a status summary of legislation drafted and approved by JLOSC in 2021.

Legislation passed by the 151st General Assembly and awaiting action by the Governor

- Senate Bill 86: DE Advisory Council on Career and Technical Education – Annual Reporting Requirements.
- Senate Bill 87 with Senate Amendment 1: DE Health Information Network – Gift of Life.
- Senate Bill 88: DE Health Information Network – Use of Clinical Healthcare Data.
- Senate Bill 128: DE Health Information Network – Technical Corrections.
 - Release from the House Sunset Committee on June 15, 2021.
- Senate Bill 129: Council on Corrections – Provide Staffing Support under Criminal Justice Council.
 - Released from the House Sunset Committee on June 15, 2021.

Legislation Introduced

- Senate Bill 118: DE Health Information Network – Long-term Care Facilities.
 - Requires a fiscal note, process will not complete by June 30, 2021.
- Senate Bill 119: DE Health Information Network – Dental Insurers.
 - Requires fiscal note research, process will not complete by June 30, 2021.
- Senate Bill 121: DE Health Information Network – Dept. of Corrections.
 - Requires a fiscal note, process will not complete by June 30, 2021.
- Senate Bill 130: DE Interscholastic Athletic Association – Out of Season Coaching.
 - After SB 130 was released, misinformation was published regarding the bill's policy and legislative process. A detailed history of SB 130 is provided for clarification:
 - March 23, 2021: JLOSC DIAA recommendations meeting; DIAA explained historical issues with out of season coaching efforts and expressed interest in legislation to enable a public school coach to coach their returning students out of season on a team with a private organization for pay.
 - March 30, 2021: JLOSC staff attended a meeting of DIAA's Rules and Regulations Committee, where proposed regulations were reviewed and approved for full Board consideration. Among the sections removed by the Committee was 6.9.3. Removing the language would allow out of season coaching returning student athletes for pay.
 - April 8, 2021: JLOSC staff attended a meeting of the DIAA Board, where section 6.9.3 was added back into the proposed regulations, due to the statutory limitations that PIC noted in its opinions and the inequity it would create between public and private school coaches.
 - April 29, 2021: JLOSC's legislative attorney drafted a bill which was sent to DIAA for review.
 - May 4, 2021: Draft bill presented to JLOSC at its third DIAA recommendations meeting; additional revisions requested.
 - May 6, 2021: JLOSC reviewed revised bill, which included revisions DIAA requested, and voted to release legislation. Bill released and numbered Senate Bill No. 130.
 - May 10, 2021: Introduced and assigned to Senate Legislative Oversight & Sunset Committee.
 - May 13, 2021: JLOSC staff emailed a copy of the legislation to the Public Integrity Commission's ("PIC") legal counsel, Deborah Moreau.

- May 13, 2021: Senate Legislative Oversight and Sunset Committee Meeting noticed; agenda posted included SB 130. This date appears on the General Assembly website and cannot be modified.
- May 14, 2021: Senate Legislative Oversight and Sunset Committee meeting agenda amended to include an unrelated bill; SB 130 remained on the agenda.
- May 18, 2021: Senate Legislative Oversight and Sunset Committee meeting held at 10:00am.
- May 19, 2021: Reported out of Senate Legislative Oversight & Sunset Committee with 3 on its merits.
- May 21, 2021: PIC emailed statement regarding SB 130 to the entire General Assembly, incorrectly stating the May 18 Senate committee meeting notice and agenda were not posted on the General Assembly's website until one hour prior to the meeting.
- June 9, 2021: Opinion piece written by PIC Chair Andrew T. Manus is published by the News Journal, again incorrectly stating the May 18 Senate committee meeting notice and agenda were not posted on the General Assembly's website until one hour prior to the meeting.
- Based on advice provided by DIAA's state-appointed Deputy Attorney General and PIC's legal counsel at DIAA's June 10, 2021, meeting, the DIAA Board adopted a position that SB 130 was not necessary in developing out of season coaching requirements. Additionally, PIC and the DIAA Board will work collaboratively to address the issue of out of season coaching returning student athletes. It is unclear if the regulations will address the pay restriction, which was the intent behind SB 130. DIAA will present a resolution to JLOSC in January 2022.

The following is a summary of legislation planned for JLOSC review in 2022.

Legislation Planned for 2022

- **JLOSC Statute Updates:**
 - Technical corrections, clean up focused review section, update timelines, etc.
- **Division for the Visually Impaired:**
 - Technical corrections.
 - Substantive changes (education, vocational rehab, etc.).
- **Adult Protective Services:**
 - Technical corrections.
 - Substantive changes (defining self-neglect, duty to report, advisory council modifications).
- **Delaware Interscholastic Athletic Association:**
 - Technical corrections.
 - Substantive changes (board comp, term limits, executive sessions, revenue & insurance, etc.).
- **Delaware Nursing Home Resident Quality Assurance Commission:**
 - Technical corrections.
 - Substantive changes (annual reporting requirements, administrative placement, etc.).
- **Delaware Health Resources Board:**
 - Technical corrections.
 - Substantive changes (advisory board, utilization reporting, board comp, etc.).
- **Ongoing Clean-Up Project with the Governor's Office:**
 - Items as identified.

2022 Reviews

JLOSC staff prepared a list of potential reviews for JLOSC consideration that highlighted boards and commissions never reviewed by JLOSC. At its March 25, 2021 meeting, JLOSC selected the following 7 entities for legislative oversight and sunset review:

- **Advisory Council on Pedestrian Awareness and Walkability (DelDOT).**
- **Medical Marijuana Act Oversight Committee (DHSS).**
- **Governor’s Commission on Community and Volunteer Service (DHSS).**
- **Water Infrastructure Advisory Council (DNREC).**
- **Technology Investment Council (DTI).**
- **Family Law Commission (LEG).**
- **Council on Libraries (DOS).**

In addition, JLOSC selected the following 2 entities for a more focused and preliminary review on determining current operating status:

- **Delaware Motion Picture and Television Development Commission (DOS).**
- **Interagency Council on Adult Literacy (DOE).**

Overview of 2022 Review Process

JLOSC staff noticed all 2022 entities for legislative oversight and sunset review (“full review”) on June 11, 2021. Entities will submit a completed Self-Report by August 18, 2021. This will be the first presentation to JLOSC regarding the entity’s purpose, mission, and performance. JLOSC staff will review for completeness and compliance with instructions. JLOSC staff will not edit received Self-Reports and entities under review are responsible for report contents. Committee staff will send completed Self-Reports to JLOSC members and post copies on the Committee’s website for the public.

The Self-Report is new to the 2022 review cycle and contains JLOSC performance review questionnaire contents carried over from the prior reviews. Completed Self-Reports should look like the Draft Reports for prior reviews found on the Committee’s website. The implementation of the Self-Report is a process enhancement developed and implemented by JLOSC staff to streamline the review process.

JLOSC staff will complete a performance evaluation of each entity under full review and prepare a Staff Findings and Recommendations Report (“Staff Report”). This report will include key findings, conclusions, and recommendations for JLOSC consideration. Recommendations are not finalized until reviewed, discussed, and adopted by JLOSC with an affirmative vote of 7 members.

Each entity under full review will receive a draft copy of the Staff Report and will submit a written response. The Committee will receive the Staff Report with each entity’s response included. After the Committee receives a draft copy, it will be published online for the public. In February 2022, JLOSC staff will schedule an in person public hearing for each entity under review to present to the Committee. The public is encouraged to contact JLOSC staff at sunset@delaware.gov with comments concerning any entity under review.

Appendices

Page	Appendix
12	A: Conservation District Operations Program - DNREC Division of Watershed Stewardship Adopted Recommendations
14	B: DE Health Resources Board Adopted Recommendations
16	C: DE Interscholastic Athletic Association Adopted Recommendations
20	D: DE Nursing Home Resident Quality Assurance Commission Adopted Recommendations
23	E: Staff Memorandum to JLOSC in Response to DNHRQAC Letter

RECOMMENDATIONS

February 10, 2021 DNREC Conservation District Operations



Joint Legislative Oversight
& Sunset Committee

The following are recommendations for the DNREC Conservation District Operations approved by the Joint Legislative Oversight & Sunset Committee (“JLOSC” or “Committee”). JLOSC staff drafted these recommendations after completion of research, analysis, and following observations made during the presentation meeting. These recommendations are not final until adopted by JLOSC. JLOSC will review and discuss recommendations at a public meeting, where the Committee is free to modify, reject, or create brand new recommendations.

The Committee is statutorily authorized to recommend 1 or more of the following:

- Continuation of the entity as is.
- Termination of the entity.
- Termination of any program within the entity.
- Consolidation, merger, or transfer of the entity or the entity’s functions to another entity.
- Termination of the entity unless certain conditions are met or modifications are made, by legislation or otherwise within a specified time period.
- Budget appropriation limits for the entity.
- Legislation which the Committee considers necessary to carry out its decision to continue or terminate the entity.

Under §10213(a), Title 29, the Committee must first determine whether there is a genuine public need for an agency under review. To meet this requirement, the Committee may select to continue or terminate the entity under review.

Adopted Recommendation 1 with Option 1: Continue

Under §10213(a), Title 29, the Committee must determine whether there is a genuine public need for an agency under review. To meet this requirement, the Committee may select one of the following options.

Option 1: The Conservation District Operations program of DNREC’s Division of Watershed Stewardship shall continue, subject to any further recommendations that JLOSC adopts.

- OR -

~~Option 2: The Conservation District Operations program of DNREC’s Division of Watershed Stewardship is terminated and the Committee will sponsor legislation to implement this recommendation.~~

Adopted Recommendation 2: Drainage Program Realignment

DNREC and the Division of Watershed Stewardship shall continue the effort to realign the Drainage Program to function as two units within the Conservation Programs Section: The Tax Ditch Program and the Public Ditch Program.

Adopted Recommendation 3: Tax Ditch Working Group

The existing internal working group shall engage the necessary external stakeholders to identify and find potential solutions to address the following issues affecting the tax ditch infrastructure:

- a. Insufficient funding for maintenance.
- b. Operational issues between tax ditch organizations, counties, and DNREC Drainage Program.
- c. Changes in the environment, land use, and development.
- d. Staffing and tax ditch officer retention and turnover.

Adopted Recommendation 4: Existing Tax Ditch Organizations

The Drainage Program shall review the existing 234 tax ditch organizations and identify any that may be combined due to physical proximity or other factors.

Adopted Recommendation 5 with Option: Dissolving a Tax Ditch Organization

The Drainage Program shall engage the Tax Ditch Working Group in drafting an updated process to dissolve a tax ditch organization due to nonfeasance and other failures of statutory obligations.

Option: The Drainage Program reports to the JLOSC on the organizational and financial need required for the Tax Ditch Program to successfully take over and manage a failing tax ditch organization.

Adopted Recommendation 6: Kent and Sussex Conservation District Projects

The Drainage Program shall establish a mechanism for developing scalable and manageable projects to expand the roles of the Kent and Sussex Conservation Districts.

Adopted Recommendation 7 with Option: Reporting Updates

The Drainage Program shall submit a status report, no later than January 31, 2022 to the JLOSC. Report shall include:

- a. General findings of the Tax Ditch Working Group.
- b. Analysis of the proposal to combine any existing tax ditch organizations.
- c. Status of process to dissolve tax ditch organizations.
- d. Update on expanded partnerships between Kent and Sussex Conservation districts.
- e. Latest RC&D Project Prioritization list.

Option: Analysis related to the Option in Recommendation 5.

Adopted Recommendation 8 with Option 2: Release from Review

Option 1: The Conservation District Operations program of DNREC's Division of Watershed Stewardship is released from review upon receipt of the required reporting due to the Committee.

- OR -

~~Option 2: The Conservation District Operations program of DNREC's Division of Watershed Stewardship is held over and shall report to the Committee in January 2022.~~

RECOMMENDATIONS

April 27, 2021 JLOSC Adopted Recommendations HRB



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.

RECOMMENDATIONS

May 4, 2021 Delaware Interscholastic Athletic Association



Joint Legislative Oversight
& Sunset Committee

The following are Delaware Interscholastic Athletic Association (“DIAA”) initial draft recommendations for the Joint Legislative Oversight & Sunset Committee (“JLOSC” or “Committee”). JLOSC staff drafted these recommendations after completion of research, analysis, and following observations made during the presentation meeting. These recommendations are not final until adopted by JLOSC. JLOSC will review and discuss recommendations at a public meeting, where the Committee is free to modify, reject, or create brand new recommendations.

The Committee is statutorily authorized to recommend 1 or more of the following:

- Continuation of the entity as is.
- Termination of the entity.
- Termination of any program within the entity.
- Consolidation, merger, or transfer of the entity or the entity’s functions to another entity.
- Termination of the entity unless certain conditions are met or modifications are made, by legislation or otherwise within a specified time period.
- Budget appropriation limits for the entity.
- Legislation which the Committee considers necessary to carry out its decision to continue or terminate the entity.

Under §10213(a), Title 29, the Committee must first determine whether there is a genuine public need for an agency under review. To meet this requirement, the Committee may select to continue or terminate the entity under review.

Adopted Recommendation 1: Continue or Terminate

Option 1: The Delaware Interscholastic Athletic Association shall continue, subject to any further recommendations that JLOSC adopts.

~~—OR—~~

~~Option 2: The Delaware Interscholastic Athletic Association is terminated, and the Committee will sponsor legislation to implement this recommendation.~~

Adopted Recommendation 2: General Statutory Updates & Technical Corrections

JLOSC will sponsor a bill to make technical corrections to DIAA’s entire governing statute, Chapter 3, Title 14.¹

¹ The Committee’s legislative attorney will draft any legislation resulting from approved recommendations, unless otherwise noted.

Adopted Recommendation 3: Out-of-Season Coaching

JLOSC will sponsor legislation amending Chapter 3, Title 14 clarifying that interscholastic coaches who privately coach out-of-season are not in violation of the State Employees', Officers', and Officials' Code of Conduct so long as the criteria DIAA promulgates through regulations are met.

Option 1: The DIAA Board shall consider changes to section 6.8.3 ("Nonschool Recreation and Club Programs and Competitions") of the current proposed Regulation 1009 DIAA High School Interscholastic Athletics within three months following the effective date of this legislation.

~~Option 2: In the event the current proposed Regulation 1009 DIAA High School Interscholastic Athletics is not promulgated, JLOSC will sponsor legislation within six months clarifying that DIAA member school coaches cannot be prohibited from coaching out of season, under to the following conditions:~~

- ~~a. A coach will neither require nor coerce a DIAA student athlete to participate in any out-of-season activities.~~
- ~~b. A DIAA student athlete will not be rewarded or penalized in any way due to their participation or nonparticipation in out-of-season activities.~~
- ~~c. A coach's DIAA student athletes will not constitute more than 50% of said coach's out-of-season team or program.~~
- ~~d. A coach's private lesson, individualized session, and organized league opportunities must be available to all student athletes.~~
- ~~e. DIAA member school names, uniforms, and funds will not be used by coaches and student athletes participating in out-of-season programming.~~
- ~~f. Violations and subsequent fees and disciplinary action will be investigated and regulated by DIAA.~~

Adopted Recommendation 4: Strategic Plan

DIAA shall engage the necessary units within the Delaware Department of Education to establish a strategic planning process with a focus on:

- a. Student athlete development.
- b. Equity among student athlete opportunities.
- c. Communication and marketing.
- d. Community engagement.
- e. Board, committee member, and staff training program with a goal of improving time management and streamlining operations.
- f. Other areas deemed appropriate.

Adopted Recommendation 5: Expired Terms

DIAA shall request quarterly updates from the Governor's office as it addresses the current number of expired terms.

Adopted Recommendation 6: Term Limits

JLOSC will sponsor legislation amending Chapter 3, Title 14 establishing term limits for DIAA Board members of no more than three, consecutive or non-consecutive, 3-year terms for a total of 9 years.

Adopted Recommendation 7: Board Composition

Amend Chapter 3, Title 14, to address removal of a board member at any time for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance and change DIAA's Board composition as follows:

- a. Add a third school district superintendent/assistant superintendent, creating an equitable representation among counties.
- b. Add a third nonpublic school representative, who shall be a Head of School.
- c. Of the 6 public members, 1 shall be a current or recent parent of a student athlete from a member school.
- d. The Department of Education representative shall be a voting member.

Adopted Recommendation 8: Board Meetings

DIAA shall restructure Board meetings as follows:

- a. When possible, limit the number of executive sessions to 1 per meeting or schedule a separate executive session meeting.²
- b. Establish a standing public comment period that occurs at the beginning of the meeting prior to a vote on any action item and scheduled executive session.
- c. Explore the creation of an Executive Committee, made up of current Board members with appropriate representation, to conduct initial waiver hearings.

Analyst's Note: Holding individual executive sessions for each applicable agenda item is not a requirement of 29 Del. C. § 10004 (FOIA). Because FOIA does not require individual executive sessions, the Board could save time by addressing all executive session matters in one session.

Adopted Recommendation 9: Standing Committees

DIAA shall make the following changes to the standing committee structure:

- a. Update the committee membership information to include more specific standards relating to size, applicable stakeholder representation, subject matter expertise, and public accessibility.
- b. Create a more transparent selection process for committee membership including public notification and access to current vacancy information and application documentation.
- c. Ensure all membership information and committee decisions are easily accessible on the DIAA website.
- d. Adopt a specific disciplinary process should a violation of regulations occur.

² A separate executive session meeting has been utilized by several public bodies, including the [Board of Medical Licensure and Discipline](#).

Adopted Recommendation 10: DIAA Staff

DIAA shall develop a new staff position to submit to the Department of Education and Joint Finance Committee that will allow the Association to:

- a. Ensure compliance among member schools.
- b. Increase communication with student athletes and their guardians.
- c. Create equitable waiver and transfer policies through education and increased communication.
- d. Conduct investigations in a timelier manner.

Adopted Recommendation 11: Update and Enforce Fee Structure

The DIAA Board shall assess the current fee structure, make necessary changes, and adopt a mechanism for enforcement in the event of violations.

Adopted Recommendation 12: Enabling Language Regarding Revenue and Insurance

Amend Chapter 3, Title 14 to allow DIAA the ability to pursue the following:

- a. Sponsorship opportunities and other non-tournament related revenue streams.
- b. Purchase of general liability insurance as it relates to the rental of non-State venues for DIAA sponsored events.

~~Option: Purchase of student accident insurance as it relates to the protection of student athletes during DIAA sponsored events.~~

Adopted Recommendation 13: Website Updates

DIAA shall restructure and update its website as follows:

- a. Summaries of all promulgated regulations and other DIAA policies.
- b. Standing committee information, including but not limited to, committee authority, current membership, current vacancies, meeting notices, and adopted decisions and recommendations to the Board.
- c. Sport-specific pages featuring FAQs, policy documents, and tournament manuals.
- d. Easily accessible information on the waiver and transfer processes.

Adopted Recommendation 14: Follow Up Reporting

DIAA shall submit three status reports to the JLOSC on the implementation process of the adopted recommendations on or before the following dates:

- a. July 31, 2021
- b. October 31, 2021
- c. January 31, 2022

Adopted Recommendation 15: Release from Review or Hold Over

~~Option 1: DIAA is released from review upon enactment of JLOSC-sponsored legislation and submission of the status reports.~~

~~—OR—~~

Option 2: DIAA is held over and shall report to the Committee in January 2022.

RECOMMENDATIONS

April 1, 2021 DNHRQAC



Joint Legislative Oversight
& Sunset Committee

The following are Delaware Nursing Home Residents Quality Assurance Commission (“DNHRQAC”) initial draft recommendations for the Joint Legislative Oversight & Sunset Committee (“JLOSC” or “Committee”). JLOSC staff drafted these recommendations after completion of research, analysis, and following observations made during the presentation meeting. These recommendations are not final until adopted by JLOSC. JLOSC will review and discuss recommendations at a public meeting, where the Committee is free to modify, reject, or create brand new recommendations.

The Committee is statutorily authorized to recommend 1 or more of the following:

- Continuation of the entity as is.
- Termination of the entity.
- Termination of any program within the entity.
- Consolidation, merger, or transfer of the entity or the entity’s functions to another entity.
- Termination of the entity unless certain conditions are met or modifications are made, by legislation or otherwise within a specified time period.
- Budget appropriation limits for the entity.
- Legislation which the Committee considers necessary to carry out its decision to continue or terminate the entity.

Under §10213(a), Title 29, the Committee must first determine whether there is a genuine public need for an agency under review. To meet this requirement, the Committee may select to continue or terminate the entity under review.

Adopted Recommendation 1: Continue

Option 1: The Delaware Nursing Home Residents Quality Assurance Commission shall continue, subject to any further recommendations that JLOSC adopts.

~~—OR—~~

~~Option 2: The Delaware Nursing Home Residents Quality Assurance Commission is terminated, and the Committee will sponsor legislation to implement this recommendation.~~

Adopted Recommendation 2: General Statutory Updates & Technical Corrections

JLOSC will sponsor a bill to make any technical corrections to DNHRQAC’s entire governing statute, Chapter 79, Title 29.¹

¹ The Committee’s legislative attorney will draft any legislation resulting from approved recommendations, unless otherwise noted.

Recommendation 3: Administrative and Budgetary Responsibility

Option 1: JLOSC shall sponsor legislation specifying that administrative and budgetary responsibilities related to DNHRQAC are the responsibility of the Department of Safety and Homeland Security.²

~~-OR-~~

~~Option 2: JLOSC shall sponsor legislation specifying that administrative and budgetary responsibilities related to DNHRQAC are the responsibility of the Department of Health and Social Services.~~

Adopted Recommendation 4: Name Change

DNHRQAC shall explore changing its name to one more easily recognizable to long-term care residents, the public, and other stakeholders. (example: DCARES: Delaware Commission for Aging Residents' Safety)

Adopted Recommendation 5: Criteria for Facility Visits

DNHRQAC shall develop a criteria and rubric for visits to long-term care facilities. This rubric shall be published to its website and included in the annual report.

Adopted Recommendation 6: Eagle's Law Update

DNHRQAC shall engage the necessary stakeholders to report and recommend to the Department of Health and Social Services and the General Assembly needed changes to Eagle's Law, Chapter 11, Title 16 of Delaware Code, no later than January 31, 2022.

Adopted Recommendation 7: Staffing Ratios at Assisted Living Facilities

DNHRQAC shall conduct the required research to report and recommend to the Department of Health and Social Services and the General Assembly the necessary policy to adopt staffing ratios at assisted living facilities no later than January 31, 2022.

Recommendation 8: Elder Caucus

~~DNHRQAC shall provide information to the General Assembly relating to the creation of an Elder or Aging Caucus with a focus on the structure other legislatures and governing bodies have utilized.~~

² The Delaware [Department of Safety and Homeland Security](#) is home to two advocacy councils that work to improve the quality of life for Delawareans with disabilities.

Adopted Recommendation 9: Annual Report Updates

DNHRQAC shall add the following information to its annual report:

- a. Rubric, criteria, findings, and recommendations from facility visits.
- b. Any recommendations, including all correspondence, made to the Department of Health and Social Services, the Governor, the General Assembly, and other stakeholder organizations.
- c. Summary of legislative lobbying efforts, including the Commission's position on legislation and regulations effecting long-term care residents.
- d. Policy, advocacy, and legislative goals for the upcoming year.
- e. Breakdown of Executive Director duties including the percentage of time devoted to each duty.

Adopted Recommendation 10: Follow Up Reporting

DNHRQAC shall submit a status report, no later than January 31, 2022, updating the JLOSC on the implementation process of the adopted recommendations as well as a succession plan for the role of Executive Director, including a job description.

Adopted Recommendation 11: Release from Review

Option 1: DNHRQAC is released from review upon enactment of JLOSC-sponsored legislation and submission of the status report.

~~—OR—~~

~~Option 2: DNHRQAC is held over and shall report to the Committee in January 2022.~~

MEMORANDUM

TO: The Joint Legislative Oversight and Sunset Committee
FROM: Mark Brainard Jr. & Amanda McAtee, JLOSC Analysts
DATE: April 16, 2021
RE: Response to DNHRQAC Letter Sent April 15, 2021

The Joint Legislative Oversight and Sunset Committee (“JLOSC” or “Committee”) directs staff to prepare a draft report and conduct a performance evaluation of the entity under review. JLOSC staff completed both items during the review of DNHRQAC. As referenced in the Commission’s [April 15, 2021 letter](#), the COVID-19 pandemic did extend the review process by postponing meetings to 2021. This occurred with the other 2020 reviews as well. DNHRQAC’s public presentation to JLOSC, originally scheduled for [March 17, 2020](#), was postponed and held on February 16, 2021. This schedule was not “rushed” and, unlike 2 other entities under review, allowed DNHRQAC an additional 11 months to prepare its JLOSC presentation. Additionally, all entities under 2020 review, including DNHRQAC, were required to submit holdover reporting directly to JLOSC staff as outlined in the May 22, 2020 [letter](#) from JLOSC’s Chair and Vice Chair. This presented each entity an opportunity to submit updated information to JLOSC and its staff. DNHRQAC submitted July, September, and December holdover [updates](#) to JLOSC staff and a summary was presented to JLOSC at the February 16, 2021 meeting.

During the review process, JLOSC staff held a [workshop](#) for all 2020 review entities, which DNHRQAC attended. Additionally, JLOSC holds an annual [orientation](#) meeting in January where overview information, like information presented in the workshop, is provided to the Committee and public. The workshop and annual orientations provide an overview of the review process and explain the recommendations phase. The recommendations drafted by JLOSC staff represent the improvement areas identified during the research and analysis of the entity’s performance review. JLOSC staff recommendations are not final until adopted by JLOSC, which is free to modify or reject any staff recommendation presented.

Since the review process highlights areas of performance improvement, the ability to achieve entity agreement on all recommendations is not always possible. When an entity under review disagrees with recommendations, it does not mean that the recommendations or review process is flawed. This is a common experience throughout similar review processes across the country and shared through organizations that JLOSC staff are professional members of, such as the National Legislative Program Evaluation Society (“NLPES”), which is a professional staff association connected with the National Conference of State Legislatures (“NCSL”). As professionals in the field of program evaluation and policy analysis, DNHRQAC presented no evidence presented that would change the intent of the recommendations.

Additionally, the allegations made in the April 15, 2021 letter regarding JLOSC staff conduct are without merit. Specifically, [emails to DNHRQAC](#) dated May 22, 2020, July 1, 2020, and July 10, 2020 outline the holdover process and the mechanism facilitating the submission of all necessary updates. To reiterate, not only was DNHRQAC offered multiple opportunities to provide necessary updates, including any COVID-related information, Commission staff submitted those updates as well as additional supplemental information on the following [11 dates](#):

- July 27, 2020
- September 28, 2020
- October 22, 2020
- November 19, 2020
- December 11, 2020
- February 15, 2021
- February 16, 2021
- February 17, 2021
- February 22, 2021
- March 17, 2021
- March 26, 2021

Similarly, [emails to DNHRQAC](#) dated September 5, 2019, January 22, 2020, January 25, 2021, and February 12, 2021 outline in great detail the presentation process as well as the information to be included in the presentation.

Lastly, the commentary by JLOSC staff at [minute 28](#) of the April 1, 2021 meeting specifically mention our outreach to DSHS and DHSS regarding Recommendation 3. The [response letter](#) from DNHRQAC dated March 26, 2021 contradicts the April 15, 2021 letter in that it stated agreement with the Option 1 of Recommendation 3.

Despite the suggestion that there has not been any mention of the proposal to move non-judicial agencies, the Government Efficiency and Accountability Review Board (“GEAR”) report mentioned in DNHRQAC’s recent correspondence has not “quickly dismissed” this notion. In fact, as recently as January 14, 2020, the [GEAR Criminal Justice Team Progress Report](#) states:

There are numerous advocacy and monitoring agencies within the Judicial Branch and the Department of Safety and Homeland Security which are not necessarily cohesive with their core missions (e.g., Non-Judicial agencies within the Courts, and disability organizations within DSHS)... Initiative: Finding appropriate homes for Non-Judicial agencies, where they can strongly advocate for their clients and their own operations. The Judicial Branch has no ability to provide proper oversight of these agencies with the current level of staffing, or without creating additional conflicts.

On April 1, 2021, JLOSC staff recommendations for DNHRQAC were reviewed and adopted by JLOSC. As members of JLOSC, you are free to rescind or modify any recommendation by an affirmative vote of 7 members. JLOSC staff is on record that the recommendations presented and adopted by JLOSC are in the best interest of the public to modify entity performance to fully accomplish and satisfy its statutory mission.