

HHS COMMITTEE #2  
February 26, 2009

**MEMORANDUM**

February 24, 2009

TO: Health and Human Services Committee

FROM: Linda McMillan, Senior Legislative Analyst *lmc*

SUBJECT: **Update: Certificate of Need Process**

At its December 11, 2008 session, the Health and Human Services (HHS) Committee received briefings from the county's five acute care hospitals on their services, patient data, patient needs, and future facility plans. The Committee discussed that the final determination on whether additional hospital beds are approved is made by the Maryland Health Care Commission through their Certificate of Need Process.

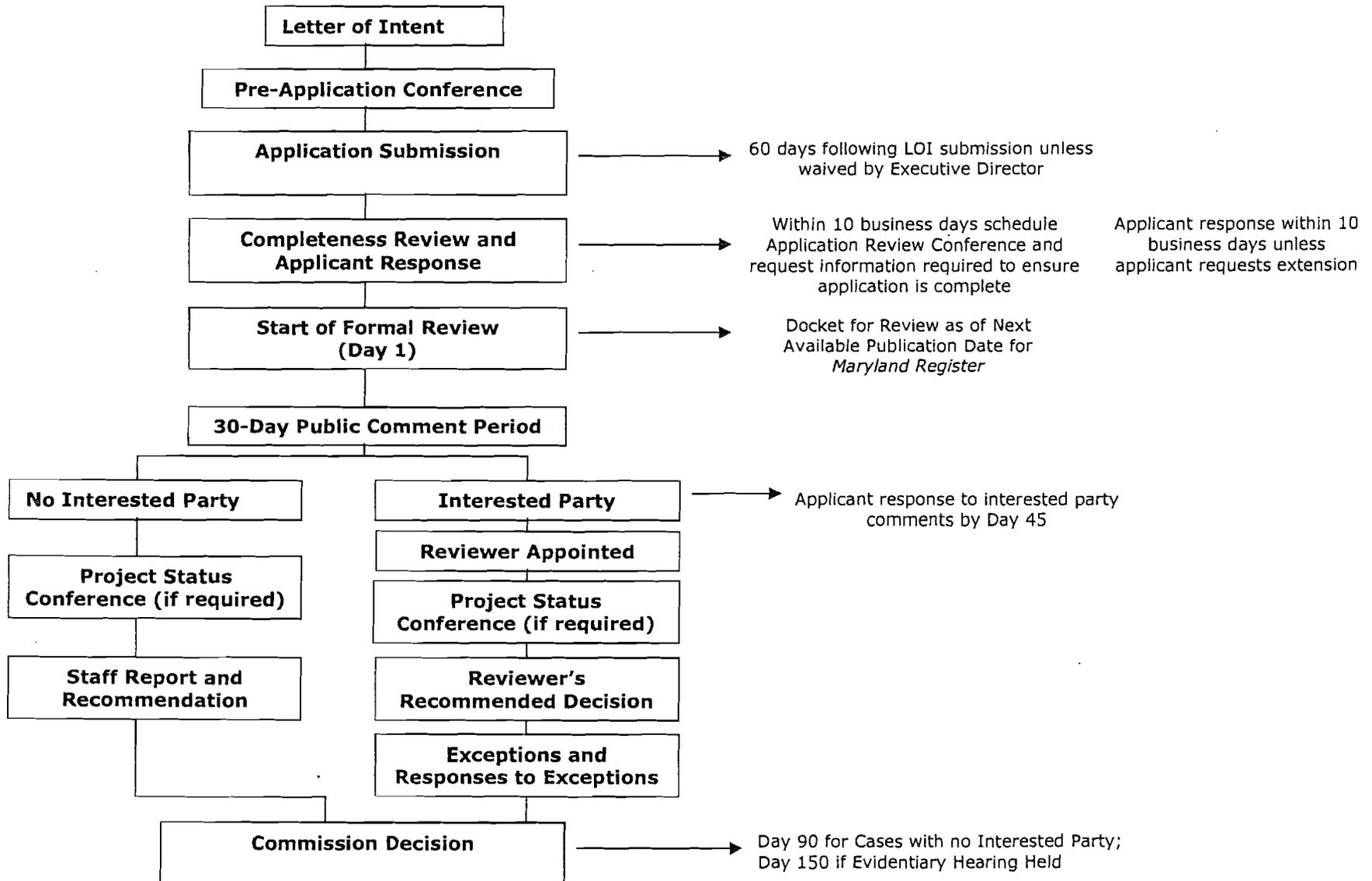
At this session, Pamela Barclay, Director of the Center for Hospital Services at the Maryland Health Care Commission, will be present to provide the Committee with an update on the Montgomery County requests currently before the Commission and the process and timeline that will be used by the Commission to make its decision.

The Committee last heard from the Maryland Health Care Commission in June 2007. An excerpt from that presentation which describes the basics of the Certificate of Need process is attached at © 1-9.

# Certificate of Need (CON)

- **Regulation of the supply and distribution of certain types of health care facilities and programs**
- **Operating in Maryland since 1973 – mandated by the federal government from the mid-1970s to mid-1980s**
- **CON programs currently operating, in some form, in 36 states and D.C.**
- **CON regulation is predicated on the following assumptions:**
  - Conventional market forces keeping demand and supply in balance are weak in health service delivery.
  - Quality of care and better outcomes for some services can benefit by controlling the number of service providers, so that programs can achieve high volume and high-level proficiency.
  - Unregulated market entry and competition may result in inequities in availability and access for some disadvantaged populations.

# Required Consideration in Certificate of Need Project Review



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## **Required Considerations in CON Review**

- **Consistency with applicable State Health Plan standards**
- **Need for the project**
- **Cost-effectiveness of the project**
- **Financial viability of the project**
- **Compliance of applicant with terms and conditions of previous CONs**
- **Impact of the project on costs, charges, and other providers**

# Participation in the Review Process

## ■ Interested Parties

- **Must be officially recognized by a Commissioner reviewer**
- **Automatic interested parties:**
  - ✓ Applicant
  - ✓ Commission staff
  - ✓ Local health department in jurisdiction or applicable planning region of project
- **Others who may qualify as interested parties:**
  - ✓ Third party payors demonstrating “substantial negative impact on overall cost to the health care system if the project is approved
  - ✓ Persons demonstrating “adverse affect” by approval of project in an issue area over which Commission has jurisdiction

# Participation in the Review Process

## ■ Interested Parties

- **Must seek IP status within 30 days of docketing of CON Application**
- **Request must include information that IP wishes Commission to consider in its review**
- **If opposing the application, comments must identify the State Health Plan standards or review criteria that have not been met and the reasons the project does not meet them with appropriate documentation or sworn affidavits supporting factual assertions**

# Participation in the Review Process

## ■ Interested Parties

- Receive all correspondence between MHCC and applicant
- Provided an opportunity to attend all meetings or conferences with applicant
- May file comments on changes made to an application
- May request the opportunity to make oral argument to a reviewer before a proposed decision is issued
- May file exceptions to a proposed decision
- May make oral argument to the Commission prior to action on an application
- May appeal a Commission decision for judicial review

# Participation in the Review Process

## ■ Participating Entities

- **Must be officially recognized by the Executive Director**
- **Limited to:**
  - ✓ A third-party payor
  - ✓ A jurisdiction in the health planning region where the project is located that is used for purposes of determining need under the SHP
  - ✓ A municipality where the proposed project will be located



# Participation in the Review Process

## ■ Participating Entities

- **Must seek PE status within 30 days of docketing of CON Application**
- **Request must include information that IP wishes Commission to consider in its review**
- **Comments must identify the State Health Plan standards or review criteria that have not been met**

# Participation in the Review Process

## ■ Participating Entities

- Receive all correspondence between MHCC and applicant
- Provided an opportunity to attend all meetings or conferences with applicant
- May file comments on proposed changes made in an application
- May request an opportunity to address the Commission prior to action on an application
- May address the Commission at discretion of Commission Chairman