

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Secretary of Health and Human Services and the State Health Coordinating Council

RULE CITATION: 2023 State Medical Facilities Plan

RECOMMENDED ACTION:

X Approve. Note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

The Department of Health and Human Services is required to create an annual State Medical Facilities Plan. The Plan used to be a rule and, as such, was subject to the Administrative Procedure Act. Session Law 2003-229 amended the APA to state that the State Medical Facilities Plan is exempt from the APA. However, the Plan is still subject to RRC review to ensure that the process was conducted in accordance with the statute.

G.S. 131E-177 states, in relevant part:

The Department of Health and Human Services is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to exercise the following powers and duties:

....

(4) Develop policy, criteria, and standards for health service facilities planning; shall conduct statewide registration and inventories of and make determinations of need for health service facilities, health services as specified in G.S. 131E-176(16)f., and equipment as specified in G.S. 131E-176(16)f1., which shall include consideration of adequate geographic location of equipment and services; **and develop a State Medical Facilities Plan;**

Seth Ascher

Commission Counsel

G.S. 131E-176(25) states:

(25) State Medical Facilities Plan. – The plan prepared by the Department of Health and Human Services and the North Carolina State Health Coordinating Council, and approved by the Governor. In preparing the Plan, the Department and the State Health Coordinating Council shall maintain a mailing list of persons who have requested notice of public hearings regarding the Plan. Not less than 15 days prior to a scheduled public hearing, the Department shall notify persons on its mailing list of the date, time, and location of the hearing. The Department shall hold at least one public hearing prior to the adoption of the proposed Plan and at least six public hearings after the adoption of the proposed Plan by the State Health Coordinating Council. The Council shall accept oral and written comments from the public concerning the Plan.

G.S. 150B-2(8a) states, in relevant part:

(8a) Rule. – Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

....

k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

Given these statutory mandates, the RRC is not charged with reviewing the contents of the Plan, but instead with reviewing the process to ensure compliance with G.S. 131E-176(25). The Department of Health and Human Services and State Health Coordinating Council have submitted documentation to the RRC showing compliance with all parts of G.S. 131E-176(25).

Mailing List of Interested Persons

In its submission, the Department and Council provided the mailing and email list of persons who requested notice of public hearings regarding the Plan and were provided notice of the date, time, and location of each hearing.

Public Hearing and Adoption of the Proposed Plan

The agencies provided notice of the initial public hearing by publishing a notice of the hearing on the agency's website on December 28, 2021, and through emails to their interested persons list dated December 29, 2021, and February 7, 2022. The initial public hearing was held on March 2, 2022. Following that hearing, the Council adopted the proposed plan on June 1, 2022.

Public Hearings and Adoption of the Plan

The agencies held six public hearings after the adoption. The agencies provided notice of those hearings through an email to their interested persons list dated June 6, 2022, and published the dates on the Secretary of State's calendar. The six public hearings were held on the following dates

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via WebEx:

1. July 12, 2022.
2. July 14, 2022.
3. July 18, 2022.
4. July 20, 2022.
5. July 25, 2022.
6. July 27, 2022.

The Department submitted sign-up sheets for each hearing and Council minutes, showing that written and oral comments were received and reviewed. The Council submitted the recommended plan to the Governor on October 27, 2022. The plan was approved by the Governor on December 16, 2022.

Staff believes the Department and Council fulfilled the requirements of G.S. 131E-176 and recommends finding the agencies conformed to G.S. 131E-176(25) in preparing the State Medical Facilities Plan.

Seth Ascher

Commission Counsel