

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: Department of Health and Human Services, Division of Health Service Regulation

RULE CITATION: 2026 State Medical Facilities Plan

RECOMMENDATION DATE: January 13, 2026

RECOMMENDED ACTION:

No action

X Approve, but 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 and the North Carolina State Health Coordinating Council are 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 (APA). Session Law 2003-229 amended the APA to exempt the State Medical Facilities Plan from the APA's rulemaking requirements. However, the Plan is still subject to RRC review to ensure that the process was conducted in accordance with G.S. 131E-176(25).

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:

Christopher S. Miller
Rules Review Commission Counsel

...

(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[.]

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 has submitted documentation to the RRC showing compliance with all parts of G.S. 131E-176(25).

Mailing List and Notification of Interested Persons

In its submission, the Department and Council provided an email list of 336 persons who requested notice of public hearings regarding the Plan. As noted below, this list was provided notice of the date, time, and location of each hearing as required.

Initial Public Hearing

The agencies provided notice of the initial public hearing by email to their interested persons list dated February 12, 2025. All public hearing information was also posted on the agency's website.

The initial public hearing on the development of the proposed Plan was held on March 5, 2025, in-person at the Greg Poole, Jr. All Faiths Chapel (1030 Richardson Drive, Raleigh, NC). Comments related to the development of the proposed Plan were accepted by the Council until March 19, 2025.

The proposed Plan was adopted by the State Health Coordinating Council at its meeting on June 4, 2025.

Six Public Hearings Following Adoption of the Proposed Plan

The agencies then held six public hearings on the proposed Plan. The agencies provided notice of those hearings through an email to their interested persons list dated June 13, 2025. The six public hearings were held on the following dates virtually via Microsoft Teams:

- 1. July 7, 2025*
- 2. July 9, 2025*
- 3. July 15, 2025*
- 4. July 17, 2025*
- 5. July 21, 2025*
- 6. July 23, 2025*

Comments regarding the proposed Plan and related petitions were accepted by the Council until August 6, 2025.

Oral and Written Comments from the Public

The agencies submitted sign-up sheets from all seven meetings noted above, including indication as to which members of the public wished to provide oral comments.

All oral and written comments, including letters of support, were aggregated on the agency's website at <https://info.ncdhhs.gov/dhsr/mfp/petitions.html>.

Council and Committee Meeting Minutes confirm that petitions and comments were reviewed and considered.

Governor's Approval

The recommended 2026 State Medical Facilities Plan was adopted, by a vote of approval, at the Council's October 1, 2025 meeting.

The Council then submitted the recommended Plan to the Governor on October 29, 2025. The Plan

was approved by the Governor on November 25, 2025.

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 2026 State Medical Facilities Plan.