

## 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: 2019 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\(16\)fl.](#), which shall include consideration of adequate geographic location of equipment and services; **and develop a State Medical Facilities Plan;**

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

(25) "State Medical Facilities Plan" means 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)k. states:

(8a) "Rule" means 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 the statutory mandates, the RRC does not review the contents of the Plan, but instead reviews 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 through multiple newspapers across the State, which were published on February 7, 2018. The initial public hearing was held on March 7, 2018. Following that hearing, the Council adopted the proposed plan on May 30, 2018.

### **Public Hearings and Adoption of the Plan**

The agencies held six public hearings after the adoption. Notice of those hearings were published in multiple newspapers across the State on May 30, 2018. The six public hearings were held on the following dates at the listed locations:

1. July 11, 2018 in Greensboro.
2. July 13, 2018 in Wilmington.

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3. July 17, 2018 in Concord.
4. July 20, 2018 in Asheville.
5. July 24, 2018 in Greenville.
6. July 25, 2018 in Raleigh.

The Department submitted sign-up sheets for each hearing and Council minutes, showing that written and oral comments were received and reviewed. The Plan was adopted on October 3, 2018. The plan was approved by the Governor on December 21, 2018.

Staff believes that 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.