

## **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

RULE CITATION: State Medical Facilities Plan

RECOMMENDED ACTION:

- ☒ 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 was once a rule and, as such, was subject to the Administrative Procedure Act. Session Law 2003-229 amended the APA, exempting the State Medical Facilities Plan from the APA. However, the Plan is still subject to RRC review to ensure that the process was conducted in accordance with G.S. 131E-176.

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.

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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. excludes the State Medical Facilities Plan from the definition of "rule" 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."

Pursuant to statute, 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 Hearings and Adoption of the Proposed Plan**

On February 9 and 10, 2016, the agencies provided notice of a public hearing prior to the adoption of the Plan. This notice was published in newspapers throughout the State and via email. The public hearing was held on March 2, 2016, 2016. Two additional special public hearings were noticed by email and newspaper publication and were held on March 22 and April 8, 2016. Following these hearings, the Council adopted the proposed plan on May 25, 2016, as documented in the minutes of that meeting.

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

The agencies held six public hearings after the adoption of the proposed plan. On June 14 and 15, 2016, the agencies provided notice of a public hearing after to the adoption of the Plan. This notice was published in newspapers throughout the State. The six public hearings were held:

1. July 12, 2016, in Greensboro.
2. July 15, 2016, in Asheville.
3. July 19, 2016, in Greenville.
4. July 22, 2016 in Wilmington.
5. July 25, 2016, in Concord.
6. July 28, 2016, in Raleigh.

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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 5, 2016. The plan was approved by the Governor on December 14, 2016.

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