

## Burgos, Alexander N

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**Subject:** FW: RRC Submission- 2024 State Medical Facilities Plan  
**Attachments:** 2024 SMFP Memo\_Governor Cooper.pdf; 2024 SMFP Approval\_Governor Cooper.pdf

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**From:** Emanuel, Andrea N <andrea.emanuel@dhhs.nc.gov>  
**Sent:** Thursday, January 18, 2024 2:13 PM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Cc:** Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>; Payne, Mark <mark.payne@dhhs.nc.gov>; Milliken, Emery <emery.milliken@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: RRC Submission- 2024 State Medical Facilities Plan

Good afternoon –

Thank you for your questions based on your review of the 2024 State Medical Facilities Plan.

The following laws are applicable to your questions regarding the Plan's approval versus its adoption.

Pursuant to G.S. § 150B-2(2) “adopt” means “[t]o take final action to create, amend or repeal a rule.” G.S. §150B-2 (8a)k. defines a rule as “[a]ny 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. (Emphasis Added.)

Additionally, G.S. §131E-176(25), in Article 9 of Chapter 131E (the Certificate of Need Law) defines the State Medical Facilities Plan as “[t]he 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.” The word “adopt” is not defined in Article 9 of Chapter 131E. However, the Oxford Learner's Dictionary defines the word “adopt” as follows: “[to]... formally accept a suggestion or policy by voting.” [Oxford Learners Dictionary](#)

The State Medical Facilities Plan is not a rule within the mea§150B-2 (8a)k. Therefore, the State Medical Facilities Plan does not require adoption in accordance with G.S. § 150B-2(2). Although G.S. 131E-176(25) references the adoption of the proposed and final Plans, neither the term “adopt” nor “adoption” is defined anywhere in Article 9 of Chapter 131E. Conversely, the State Medical Facilities Plan is annually prepared by the State Health Coordinating Council, with support from the agency, in accordance with G.S. 131E-176(25) and then *approved* by the Governor.

Accordingly, our responses to your questions are shared below in bold text.

*On pgs. 74-76 of the Notebook, it appears that a proposed plan was approved on May 31, 2023. When was the proposed plan adopted by the State Health Coordinating Council? **The State Health Coordinating Council, by its vote of approval, adopted the Proposed 2024 State Medical Facilities Plan (the “Plan”) on May 31, 2023.***

*On pgs. 77-79 of the Notebook, it appears that the final plan was approved on October 4, 2023. When was the final plan adopted by the State Health Coordinating Council? **The State Health Coordinating Council, by its vote of approval, adopted the 2024 State Medical Facilities Plan on October 4, 2023.***

*The November 29, 2023, memo submitted to Commission Counsel indicates the governor had not yet approved the plan at that time. The plan was publicly posted and appears to have the governor’s approval. When did the governor approve the plan? Please submit the Governor’s approval to us, including the date. **The Governor approved the 2024 State Medical Facilities Plan on December 22, 2023. (See attached memorandum and approval documents)***

Please let me know if we can provide additional clarity.

Kind regards,

**Andrea Emanuel, PhD**

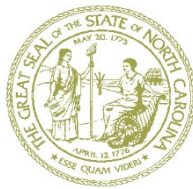
Assistant Section Chief

Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section

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**STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR**

**ROY COOPER  
GOVERNOR**

I hereby approve the *2024 State Medical Facilities Plan* (the "Plan") as recommended to me by the North Carolina State Health Coordinating Council ("SHCC"), effective January 1, 2024. In addition, I am directing the SHCC to develop, for inclusion in the *2025 State Medical Facilities Plan*, a general policy to address how certificate of need ("CON") applicants will provide culturally competent healthcare that integrates principles to increase health equity and reduce health disparities in underserved communities.

A handwritten signature in black ink that reads "Roy Cooper".

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Roy Cooper, Governor

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December 22, 2023

Date



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

ROY COOPER  
GOVERNOR

MEMORANDUM

TO: Sandra B. Greene, Chair  
NC State Health Coordinating Council

FROM: Governor Roy Cooper

SUBJECT: 2024 State Medical Facilities Plan

DATE: December 21, 2023

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I am approving the **2024 State Medical Facilities Plan** as recommended to me by the NC State Health Coordinating Council. I thank the Council for their work in drafting this year's Plan and ensuring that the public had opportunities to offer input before it was submitted to me. I also thank you for your leadership in this important effort.

As you know, I believe that healthy people and healthy communities are the foundation for a thriving, prosperous state and a core part of the work of state government is improving health. To achieve progress for all North Carolinians, we must reduce health disparities and improve access to health care – two related objectives which intersect well with the work and guiding principles of the NC State Health Coordinating Council.

Applicants for new institutional health services subject to a Certificate of Need (CON) can and should play an important role in improving the health of NC residents and communities. Their CON applications should also specify how they will meet the needs of underserved communities.

As such, I am directing the Council to develop, for inclusion in the **2025 State Medical Facilities Plan**, with public input and comment, a new general policy to address how CON applicants will provide culturally competent healthcare that also integrates principles which increase equitable access to healthcare services and reduce health disparities in underserved communities.

cc: Secretary Kody Kinsley  
Mark T. Benton  
S. Mark Payne

## Burgos, Alexander N

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**From:** Wiggs, Travis C  
**Sent:** Wednesday, January 10, 2024 12:48 PM  
**To:** Emanuel, Andrea N  
**Cc:** Mitchell, Micheala L; Payne, Mark; Milliken, Emery; Burgos, Alexander N  
**Subject:** RRC Submission- 2024 State Medical Facilities Plan

Good afternoon,

Rules Review Commission Counsel has reviewed the State Medical Facilities Plan and it's supporting documents to determine if it was adopted in accordance with G.S. 131E-176(25). The Rules Review Commission has not yet reviewed this plan or decided whether the plan will be approved.

After reviewing the statute, counsel is seeking clarification on the following items:

On pgs. 74-76 of the Notebook, it appears that a proposed plan was approved on May 31, 2023. When was the proposed plan adopted by the State Health Coordinating Council?

On pgs. 77-79 of the Notebook, it appears that the final plan was approved on October 4, 2023. When was the final plan adopted by the State Health Coordinating Council?

The November 29, 2023, memo submitted to Commission Counsel indicates the governor had not yet approved the plan at that time. The plan was publicly posted and appears to have the governor's approval. When did the governor approve the plan? Please submit the Governor's approval to us, including the date.

Please submit any record of approval by the SHCC to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov) to be filed and processed.

Please reply to this email with responses to the questions above within 10 business days.

Thank you.

Travis C. Wiggs  
Rules Review Commission Counsel  
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