OPINION NO. 85-046

Syllabus:

In its development of amendments to the state health plan, the Statewide Health Coordinating Council (SHCC) must, pursuant to R.C. 3702.56(C), follow the procedures set forth in R.C. 119.03(A), (B), (C), and (H), with the exception of requirements imposed pursuant to R.C. 121.24 or 127.18, but need not comply with R.C. 119.03(D), (E), (F), (G), and (I). In particular, the SHCC must follow the public notice and hearing procedures of R.C. 119.03(A) and (C) and must file proposals with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review under R.C. 119.03(B) and (H), but proposed amendments to the state health plan are not subject to invalidation by the General Assembly pursuant to R.C. 119.03(I).

To: David L. Jackson, M.D., Ph.D., Director, Department of Health, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985

I have before me your request for an opinion concerning the procedure which the Statewide Health Coordinating Council (SHCC) must follow in adopting the state health plan.

R.C. 3702.56(A) provides for the creation of the SHCC, to be composed, as required by the Federal National Health Planning and Resources Development Act of 1974, 88 Stat. 2225, 42 U.S.C. §300k, as amended, (the Federal Act), of members appointed by the Governor. See 42 U.S.C. §300m-3(b); 42 C.F.R. §123.303; R.C. 3702.51(E). Pursuant to 42 U.S.C. §300m-3(a) and 42 C.F.R. §123.301, the SHCC shall advise the state health planning and development agency (state agency). The Department of Health has been designated as Ohio's state agency. See 42 U.S.C. §300m; R.C. 3702.51(F); R.C. 3702.53(A). R.C. 3702.53(B) and 42 U.S.C. §300m-2(a)(3) impose upon the state agency the duty of assisting the SHCC in the performance of its functions. R.C. 3702.56(C) invests the SHCC with the duties and powers provided in the Federal Act and in R.C. Chapter 3702. One of the major duties of the SHCC is the adoption and amendment of a state health plan. See 42 U.S.C. §300m-3(c); 42 C.F.R. §123.306; R.C. 3702.56.

Your question concerns the following language of R.C. 3702.56(C):

> In its development of amendments to the state health plan, the council is an agency within the meaning of section 119.01 of the Revised Code and shall follow the procedures of Chapter 119. of the Revised Code. All meetings of the council or its committees in the development of amendments to the state health plan shall continue to be open to the public in accordance with section 121.22 of the Revised Code and as mandated in applicable federal regulations. (Emphasis added.)

You have asked about the extent to which the SHCC, in adopting the state health plan, must comply with the provisions of R.C. Chapter 119 and, in particular, with the provisions relating to legislative review of proposed rules. See R.C. 119.03(H), (I). It is my understanding that, prior to the enactment of the language of R.C.

3702.56(C) quoted above, a state health plan was adopted by the SHCC and approved by the Governor in accordance with 42 U.S.C. §300m-3(c)(2)(C), though it was not adopted as a rule under R.C. Chapter 119. See Am. Sub. S.B. 386, 115th Gen. A. (1984) (eff. July 2, 1984). See also former R.C. 3702.59, enacted by Am. Sub. S.B. 349, 112th Gen. A. (1978) (eff. March 15, 1979), and repealed by Sub. H.B. 469, 114th Gen. A. (1982) (eff. Oct. 6, 1982). Since a state health plan is currently in existence, and since R.C. 3702.56(C) speaks of the development of amendments to the state health plan, I assume that your question relates to amendments to the existing state health plan.

R.C. 3702.56(C) states that, "[i]n its development of amendments to the state health plan, the [statewide health coordinating] council is an agency within the meaning of [R.C. 119.01] and shall follow the procedures of [R.C. Chapter 119]." It also states that, "[i]n accordance with [R.C. Chapter 119], the council shall, by rule, establish criteria and procedures in accordance with the federal act, which it shall follow in performing any review functions." It, thus, appears that, in order to carry out review functions, the SHCC shall establish rules pursuant to R.C. Chapter 119. See 42 U.S.C. §300m-3(c); [1984-1985 Monthly Record] Ohio Admin. Code Chapter 3703 at 928-34. It is, however, not clear from a reading of R.C. 3702.56(C) precisely which procedures of R.C. Chapter 119 are applicable to the SHCC in the development of amendments to the state health plan.

R.C. 119.01(A) includes as "[a]genc[ies]," for purposes of R.C. 119.01, various state bodies with the authority to promulgate rules, make adjudications, or issue licenses, and "the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to" R.C. 119.01-.13. R.C. 3702.56(C) makes the SHCC's function of developing amendments to the state health plan subject to the procedures of R.C. Chapter 119. R.C. Chapter 119 does not, however, include any provisions which relate specifically to the development of amendments to a plan. Rather, the procedures set forth in R.C. Chapter 119 are of two types, relating either to the adoption, amendment, and rescission of rules, see, e.g., R.C. 119.02-.03, or to the making of adjudication orders, see, e.g., R.C. 119.06-.09. See generally 1973 Op. Att'y Gen. No. 73-125.

Pursuant to R.C. 3702.56(C) and 42 U.S.C. §300m-3(c)(2)(A), a SHCC is required to prepare, review, and revise as necessary a state health plan, which shall be made up of health systems plans of the health systems agencies within the state. See also 42 C.F.R. §123.306. The plan is required to describe the institutional health services and other health services needed to provide for the well-being of persons receiving care within the state, and to describe the number and type of resources which are necessary to meet the goals of the plan. 42 U.S.C. §300m-3(c)(2)(A). 42 U.S.C. §300L-2(b)(2) provides that a health systems plan shall be a detailed statement of goals "describing a healthful environment...and health systems in the area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area" and meeting various other criteria. It appears, then, that a state health plan is just what its name suggests—a plan for satisfying the health-related needs of the state and its residents. The plan is to be implemented and applied in various manners. See, e.g., 42 U.S.C. §300m-3(c)(6); 42 U.S.C. §300n-1(c); 42 C.F.R. §123.306; [1984-1985 Monthly Record] Ohio Admin. Code Chapter 3703 at 928-34. It is, however, clear that its adoption or amendment does not constitute an "adjudication," as that term is used in R.C. Chapter 119. See R.C. 119.01(D) (defining "[a]djudication" to mean "the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person..."). It is, further, clear that the procedures of R.C. Chapter 119 which pertain to adjudication hearings are in no sense applicable to the adoption or amendment of the state health plan. See, e.g., R.C. 119.07-.09. It follows that, in order to attach any meaning to the language of R.C. 3702.56 which subjects the SHCC to the procedures of R.C. Chapter 119 in the development of amendments to the state health plan, see generally R.C. 1.47(B); State ex rel. Brownell v. Industrial Commission, 131 Ohio St. 124, 2 N.E.2d 260 (1936), the SHCC must be found to be subject to the rule-making procedures contained in R.C. Chapter 119 in developing amendments to the state health plan.

The rule-making procedures of R.C. Chapter 119 appear primarily in R.C. 119.03. That section states, in part:

> In the adoption, amendment, or rescission of any rule, an agency shall comply with the following procedure:
>
> (A) Reasonable public notice shall be given at least thirty days prior to the date set for a hearing, in the manner and form and for the length of time as the agency determines and shall include:
>
> (1) A statement of the agency's intention to consider adopting, amending, or rescinding a rule;
>
> (2) A synopsis of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which the proposed rule, amendment, or rescission relates;
>
> (3) A statement of the reason or purpose for adopting, amending, or rescinding the rule;
>
> (4) The date, time, and place of a hearing on the proposed action, which shall be not earlier than thirty nor later than fifty days after the proposed rule, amendment, or rescission is filed under division (B) of this section. In addition to public notice, the agency may give whatever other notice it considers necessary. Each agency shall adopt a rule setting forth in detail the method that the agency shall follow in giving public notice as to the adoption, amendment, or rescission of rules. The rule shall require the agency to provide the public notice required under division (A) of this section to any person who requests it and pays a reasonable fee, not to exceed the cost of copying and mailing. The methods used for notification may include, but are not limited to, mailing notices to all subscribers on a mailing list or mailing notices in addressed, stamped envelopes provided by the person requesting the notice.
>
> (B) One copy of the full text of the proposed rule, amendment, or rule to be rescinded, accompanied by one copy of the public notice required under division (A) of this section, shall be filed with the secretary of state. Two copies of the full text of the proposed rule, amendment, or rule to be rescinded, accompanied by two copies of the public notice required under division (A) of this section, shall be filed with the director of the legislative service commission. . . .The proposed rule, amendment, or rescission shall be available for at least thirty days prior to the date of the hearing at the office of the agency in printed or other legible form without charge to any person affected by the proposal. . . .The agency shall attach a copy of the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, to each copy of a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.
>
> (C) On the date and at the time and place designated in the notice, the agency shall conduct a public hearing at which any person affected by the proposed action of the agency may appear and be heard in person, by his attorney, or both, may present his position, arguments, or contentions, orally or in writing, offer and examine witnesses, and present evidence tending to show that the proposed rule, amendment, or rescission, if adopted or effectuated, will be unreasonable or unlawful.
>
> At the hearing, the testimony, rulings on the admissibility of evidence, and proffers of evidence shall be recorded by stenographic means. Such record shall be made at the expense of the agency.
>
> In any hearing under this section the agency may administer oaths or affirmations.
>
> The agency shall pass upon the admissibility of evidence, but the person affected may at the time make objection to the ruling of the agency, and if the agency refuses to admit evidence the person offering the evidence shall make a proffer of the evidence, and the proffer shall be made a part of the record of such hearing.
>
> (D) After complying with divisions (A), (B), (C), and (H) of this section, and when the time for legislative review and invalidation under division (I) of this section has expired, the agency may issue an

order adopting the proposed rule or the proposed amendment or rescission of the rule, consistent with the synopsis or general statement included in the public notice. At that time the agency shall designate the effective date of the rule, amendment, or rescission, which shall not be earlier than the tenth day after the rule, amendment, or rescission has been filed in its final form as provided in section 119.04 of the Revised Code.

(E) Prior to the effective date of a rule, amendment, or rescission, the agency shall make a reasonable effort to inform those affected by the rule, amendment, or rescission and to have available for distribution to those requesting it the full text of the rule as adopted or as amended.

(F) If the governor, upon the request of an agency, determines that an emergency requires the immediate adoption, amendment, or rescission of a rule, he shall issue a written order, a copy of which shall be filed with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review, that the procedure prescribed by this section with respect to the adoption, amendment, or rescission of a specified rule is suspended. The agency may then adopt immediately the emergency rule, amendment, or rescission. . . .

. . . .

(H) When any agency files a proposed rule, amendment, or rescission under division (B) of this section, it shall also file with the joint committee on agency rule review two copies of the full text of the proposed rule, amendment, or rule to be rescinded in the same form and two copies of the public notice required under division (A) of this section. . . .An agency shall attach one copy of the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, to each copy of a proposed rule, amendment, or rescission, and to each copy of a proposed rule, amendment, or rescission in revised form, that is filed under this division.

(I)(1) The joint committee on agency rule review may recommend the adoption of a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof if it finds any of the following:

(a) That the rule-making agency has exceeded the scope of its statutory authority in proposing the rule, amendment, or rescission;

(b) That the proposed rule, amendment, or rescission conflicts with another rule, amendment, or rescission adopted by the same or a different rule-making agency;

(c) That the proposed rule, amendment, or rescission conflicts with the legislative intent in enacting the statute under which the rule-making agency proposed the rule, amendment, or rescission;

(d) That the rule-making agency has failed to prepare a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission as required by section 121.24 or 127.18 of the Revised Code, or both.

The house of representatives and senate may adopt a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof. . . .

. . . .

(3) Invalidation of any version of a proposed rule, amendment, rescission, or part thereof by concurrent resolution shall prevent the rule-making agency from instituting or continuing proceedings to adopt any version of the same proposed rule, amendment, rescission, or part thereof for the duration of the general assembly that invalidated the proposed rule, amendment, rescission, or part thereof unless the same general assembly adopts a concurrent resolution permitting the rule-making agency to institute or continue such proceedings.

It is possible to make R.C. 119.03 applicable to the development of amendments to

the state health plan by the SHCC simply by substituting "development of amendments to the state health plan" for "adoption, amendment, or rescission of any rule" in the opening phrases of R.C. 119.03, and it is my judgment that such a substitution carries out the evident intent of the legislature in enacting R.C. 3702.56(C). See generally Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

It does not, however, follow from the foregoing analysis that the SHCC must abide by all rule-making procedures of R.C. Chapter 119 in developing amendments to the state health plan. It is implicit in the reference of R.C. 3702.56(C) to R.C. Chapter 119 that the SHCC shall follow only the procedures which are applicable to its undertakings, and that it shall not follow any procedures which may conflict with federal law. To determine which provisions are applicable to the SHCC it is, therefore, appropriate to consider the various provisions of R.C. 119.03.

R.C. 119.03(A) and (C), quoted above, set forth procedures for public notice and hearing. Such procedures are both readily applicable to the development of a state health plan and consistent with federal law. See 42 U.S.C. §300m-3(c)(2)(B) and 42 C.F.R. §123.306(b)(1) (providing that, in preparing and revising the state health plan, the SHCC shall conduct a public hearing and provide interested persons with an opportunity to submit their views orally and in writing). I conclude, therefore, that R.C. 3702.56(C) requires that the SHCC comply with these provisions.

R.C. 119.03(B), quoted in part above, provides for the filing of copies of a proposed rule, amendment, or rule to be rescinded, together with copies of the public notice required under R.C. 119.03(A), with the Secretary of State and the Director of the Legislative Service Commission. It provides further that the proposed rule, amendment, or rescission shall be made available at the agency to any person affected by the proposal. Federal law expressly requires that, prior to a hearing on a proposed state health plan, the SHCC shall provide a copy of the plan to the Governor for his review and comment. See 42 C.F.R. §123.306(b)(1)(ii). It does not contain any provision requiring that, in the development of amendments to the state health plan, proposals be filed with other state officers or agencies. The act of filing proposals as required by R.C. 119.03(B) is, however, one which may readily be performed by the SHCC. Performance of such act would serve the purposes of federal law that the proposal be widely available for review and comment by interested persons. See 42 U.S.C. §300m-3(c)(2)(B). The same purposes would be served by making the proposal available at the agency. I conclude, therefore, that R.C. 3702.56(C) requires that the SHCC comply with these portions of R.C. 119.03(B).

R.C. 119.03(B) also provides for the filing of a copy of the rule summary and fiscal analysis prepared under R.C. 121.24 or 127.18, or both. I find, however, that neither R.C. 121.24 nor 127.18 is applicable to the SHCC and, thus, that the SHCC need not comply with this portion of R.C. 119.03(B). R.C. 121.24(B) provides that, "[i]f an agency intends to adopt a rule, and reasonably believes that the proposed rule, if adopted, will be likely to affect individuals, small businesses, or small organizations,. . .(1) The agency shall prepare a complete and accurate rule summary and fiscal analysis of. . .the proposed rule." R.C. 121.24 also provides a procedure for receiving comments and revising the proposed rule. R.C. 127.18 provides that each rule-making agency shall prepare a rule summary and fiscal analysis of each proposed rule that it files under R.C. 119.03(H). The summary is to include the Ohio Administrative Code rule number of the proposed rule, the legal basis for the rule, an estimate of the amount by which the rule would increase or decrease revenues, and a summary of the cost of compliance.

The provisions of R.C. 121.24 and 127.18 are not, by their terms, applicable to the development of a state health plan. Further, the requirements of those sections are not simply procedural. Rather, those sections impose substantive requirements—the preparation of certain documents and undertaking of specified analyses—upon the bodies to which they apply. I find, therefore, that the provision of R.C. 3702.56(C) which makes the SHCC subject to the procedures of R.C. Chapter 119 does not operate to require the SHCC to prepare a rule summary and

fiscal analysis under R.C. 121.24 or 127.18. Since the SHCC is not obligated to prepare such items it is, clearly, not required to file them under R.C. 119.03(B).

R.C. 119.03(D), quoted above, defines the time at which an agency may issue an order adopting a proposed rule, amendment, or rescission and the method by which it shall establish the effective date of such rule, amendment, or rescission. As discussed more fully below, it appears that this provision is not applicable to the SHCC, both because it relates to the adoption, rather than the development, of proposals, and because it conflicts with federal law.

The language of R.C. 3702.56(C) to which your question relates makes the procedures of R.C. Chapter 119 applicable to the SHCC "[i]n its development of amendments to the state health plan." I believe that it is significant that the General Assembly used the word "development" rather than the word "adoption" which is commonly used in the Revised Code. See, e.g., R.C. 119.03. The word "development" suggests a process of bringing something into being, see The Random House Dictionary of the English Language 394 (unabridged ed. 1973) (defining "development" as "the act or process of developing" and "develop" as "to bring into being. . .; generate"), in contrast with the concept of a definite act which constitutes an adoption, see The Random House Dictionary of the English Language 20 (unabridged ed. 1973) (defining "adopt" as "to vote to accept"). It appears, therefore, that the General Assembly intended that the SHCC should follow R.C. Chapter 119 rule-making procedures as it undertakes the process of considering and preparing amendments to the state health plan, but that it did not intend to require that the amendments be formally adopted under R.C. Chapter 119 procedures. See generally Wachendorf v. Shaver (the legislature must be presumed to know the meaning of words and to have used the words of a statute advisedly); Metropolitan Securities Co. v. Warren State Bank, 117 Ohio St. 69, 158 N.E. 81 (1927) (where the legislature has used different language it is presumed that different results were intended). In particular, I believe that the language of R.C. 3702.56(C) neither authorizes nor requires the SHCC to adopt amendments to the state health plan pursuant to R.C. 119.03(D).

This conclusion is consistent with the fact that federal law sets forth provisions governing the adoption of a state health plan or a revised state health plan. As noted above, federal law requires that a copy of a proposed state health plan be provided to the Governor for review and comment. See 42 C.F.R. §123.306(b)(1)(ii). It states, further, the state health plan or any revised state health plan becomes effective after approval by the SHCC and the Governor. See 42 U.S.C. §300m-3(c)(2)(C). R.C. 119.03(D) would permit an agency to adopt a proposal, effective as of a date which it establishes, without review or approval by the Governor. The provisions of R.C. 119.03(D) thus conflict with federal law and, since the function of the SHCC is to implement the Federal Act, it must be concluded that R.C. 119.03(D) is not applicable to the SHCC.

R.C. 119.03(E), quoted above, provides that, prior to the effective date of a rule, amendment, or rescission, the agency shall make a reasonable effort to inform those affected by it and to make copies available. Since the state health plan is not adopted by the SHCC under R.C. 119.03 and the effective date of the plan depends upon approval by the Governor, rather than upon action by the SHCC, the provisions of R.C. 119.03(E) are not directly applicable to the SHCC. Further, R.C. 119.03(E) relates to the adoption of a proposal, rather than to its development. I conclude, therefore, that R.C. 3702.56(C) does not require that the SHCC comply with R.C. 119.03(E).

R.C. 119.03(F), quoted in part above, provides for the adoption, amendment, or rescission of a rule in an emergency. Since R.C. 3702.56(C) requires that the SHCC comply with R.C. Chapter 119 only in developing amendments to the state health plan, I find that the provisions of R.C. 119.03(F) are not applicable to the SHCC.

R.C. 119.03(G) relates to rules adopted by an authority within the Department of Taxation or the Bureau of Employment Services and is clearly not applicable to the SHCC.

R.C. 119.03(H), quoted in part above, provides that proposed rules be filed with the Joint Committee on Agency Rule Review (JCARR), and R.C. 119.03(I), quoted in part above, permits the General Assembly to invalidate such proposed rules. You suggest that adoption of the procedure set forth in these provisions would run counter to the Federal Act, which provides that the state health plan becomes effective after approval by the SHCC and the Governor. See 42 U.S.C. §300m-3(c)(2)(C).

As noted above, federal law requires that, prior to a hearing on a proposed state health plan, the SHCC provide a copy to the Governor for review and comment. See 42 C.F.R. §123.306(b)(1)(ii). Federal law does not, however, make specific provision for submission of a proposed state health plan to the state legislature. As discussed in connection with R.C. 119.03(B), the act of filing proposals with various governmental bodies is one which may readily be performed by the SHCC and which, in fact, serves the purposes of federal law that the proposals be widely available for review and comment by interested persons. It is clear that the state legislature may be interested in the development of the state health plan, and that the filing of a copy of a proposal with JCARR may increase the accessibility of such proposal to interested persons. It appears, therefore, that there is no objection under the Federal Act to having the SHCC, in developing amendments to the state health plan, file its proposals with JCARR, and I find that the provisions of R.C. 119.03(H) which provide for such filing are applicable to the SHCC. As discussed above in connection with R.C. 119.03(B), since the SHCC is not required to prepare a rule summary and fiscal analysis under R.C. 121.24 or 127.18, it is not obligated to file such items under R.C. 119.03(H).

It is, however, my judgment that a different result must be reached with respect to R.C. 119.03(I), which permits JCARR to recommend the adoption of a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof, and which permits the House of Representatives and Senate to adopt such a resolution. As discussed above, the use of the word "development" in R.C. 3702.56(C) indicates that the SHCC is not subject to the provisions of R.C. 119.03 which relate specifically to the act of adopting a state health plan, as opposed to the preparation of such a plan. Applying the legislative invalidation procedures of R.C. 119.03(I) to a proposed amendment to the state health plan would not simply constitute input into the "development" of the amendment but would, rather, permit the General Assembly to prevent the SHCC from adopting that amendment. I do not believe that such a result was contemplated by R.C. 3702.56(C).

Further, permitting the legislature to invalidate a proposed amendment to the state health plan would appear to conflict with federal law. As you have noted, the Federal Act provides that the state health plan, or a revised state health plan, becomes effective after approval by the SHCC and the Governor. See 42 U.S.C. §300m-3(c)(2)(C). The Federal Act permits the Governor to disapprove a state health plan which has been approved by the SHCC "only if the Governor determines that the plan does not effectively meet the statewide health needs of the State as determined by the State Agency." 42 U.S.C. §300m-3(c)(2)(C). Giving another body veto power over the adoption of a plan or a revision of the plan would, indeed, run counter to this federal scheme. See generally Village of Struthers v. Sokol, 108 Ohio St. 263, 140 N.E. 519 (1923) (in determining whether laws passed by two governmental bodies are in conflict, the test is whether one permits that which the other prohibits). Since R.C. 3702.56(C) indicates that the SHCC is to perform the duties provided in the Federal Act, it must be concluded that the SHCC need not comply with R.C. Chapter 119 procedures which could prevent such performance. It follows that the SHCC is not, in the development of amendments to the state health plan, subject to the provisions of R.C. 119.03(I) which permit JCARR to recommend the adoption of a concurrent resolution invalidating a proposed rule, amendment, or rescission and which permit the General Assembly to adopt such a resolution.

You have raised the question whether, if it is concluded that proposed amendments to the state health plan must be filed under R.C. 119.03(B) and (H) in the same manner in which rules are filed, it follows that the proposed amendments must comply with the format and style requirements which are applicable to rules.

See, e.g., R.C. 103.05; 1 Ohio Admin. Code Chapter 103-5. I do not believe that this is the case.

R.C. 103.05, which authorizes the Director of the Legislative Service Commission to codify the rules of the administrative agencies of the state and to establish a standard format for such rules, applies, inter alia, to rules filed under R.C. 119.04. R.C. 119.04 governs the formal adoption of rules, rather than their development and is, for this reason, not applicable to the SHCC in the development of amendments to the state health plan. The provisions of R.C. 103.05 and rules adopted thereunder are, similarly, inapplicable to the SHCC in the development of amendments to the state health plan.

I note that the fact that this opinion concludes that proposed amendments to the state health plan must be filed under R.C. 119.03(B) and (H) in the same manner in which rules are filed does not mean that such amendments to the state health plan must be considered to be "rules," as that term is used in R.C. Chapter 119. The state health plan is, under federal law, a statement of goals and intentions, rather than a standard to be enforced. See 42 U.S.C. §300m-3(c)(2)(A); R.C. 119.01(C) (defining "[r]ule" as "any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency. . ."). But see 42 U.S.C. §300m-3(c)(6) (providing that conformity with the state health plan is a factor to be considered in the granting of federal funds); [1984-1985 Monthly Record] Ohio Admin. Code Chapter 3703 at 928-34. If the General Assembly had intended that the state health plan and amendments thereto should be, in all respects, treated as rules, the General Assembly could easily have so expressly provided. See generally R.C. 3702.56(C) ("[i]n accordance with [R.C. Chapter 119], the [SHCC] shall, by rule, establish criteria and procedures in accordance with the federal act, which it shall follow in performing any review functions"). As is concluded above in connection with the discussion of R.C. 119.03(D), the language of R.C. 3702.56(C) which makes the SHCC subject to R.C. Chapter 119 procedures in the development of amendments to the state health plan does not indicate that such amendments should be adopted as rules under R.C. Chapter 119.

In conclusion, it is my opinion, and you are hereby advised, that, in its development of amendments to the state health plan, the Statewide Health Coordinating Council (SHCC) must, pursuant to R.C. 3702.56(C), follow the procedures set forth in R.C. 119.03(A), (B), (C), and (H), with the exception of requirements imposed pursuant to R.C. 121.24 or 127.18, but need not comply with R.C. 119.03(D), (E), (F), (G), and (I). In particular, the SHCC must follow the public notice and hearing procedures of R.C. 119.03(A) and (C) and must file proposals with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review under R.C. 119.03(B) and (H), but proposed amendments to the state health plan are not subject to invalidation by the General Assembly pursuant to R.C. 119.03(I).