

## **SYNOPSIS**

### ***Administrative Rules for Certificate of Need Appeal Panel***

#### ***Rule 274-1-.13***

#### ***Commissioner (Or His or Her Designee) Review***

### **STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE**

The purpose of the proposed amendments in totality is to modify existing regulations in light of changes in the Certificate of Need statute, O.C.G.A. § 31-6 et seq., due to the passage of Senate Bill (SB) 433 in the 2008 Georgia General Assembly. SB 433 necessitates revision to the existing administrative rules for administrative appeals of certificate of need decisions. SB 433 abolished the previous Health Planning Review Board and created the Certificate of Need (CON) Appeal Panel. O.C.G.A. 31-6-44 and 31-6-44.1. The revisions are outlined in detail below.

### **DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES**

The new 274-1-.13 is adopted to reflect new provisions governing the Department of Community Health Commissioner review of the CON Appeal Panel hearing officer decision.

### **274-1-.13 Place of Board Meeting.**

~~All Board meetings shall be held at the offices of the Department (2 Peachtree Street, N.W., Atlanta, Georgia 30303) or, if those offices are insufficient to accommodate the meeting for any reason, at such other place as the Chairperson or Vice Chairperson designates, with the approval of the General Counsel of the Department of Community Health.~~

### **274-1-.13 Commissioner (Or His or Her Designee) Review.**

(1) In the event an appeal of the hearing officer's decision is filed, the Commissioner or his or her designee, may adopt the hearing officer's order as the final order of the Department. The Commissioner may reject or modify the conclusions of law over which the Department has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction.

(2) By rejecting or modifying such conclusion of law or interpretation of administrative rule, the Department must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule; and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as reasonable or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

(3) The Commissioner may not reject or modify the findings of fact unless the Commissioner first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon any competent substantial evidence; or that the proceedings on which the findings were based did not comply with the essential requirements of law.

(4) If, before the date set for the Commissioner's decision, application is made to the Commissioner for leave to present additional evidence, and it is shown to the satisfaction of the Commissioner that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the hearing officer,

the Commissioner may order that the additional evidence be taken before the same hearing officer who rendered the initial decision upon conditions determined by the Commissioner.

(5) The hearing officer may modify the initial decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decision with the Commissioner. Unless leave is given by the Commissioner in accordance with the provisions of this Rule, the hearing officer may not consider new evidence under any circumstances.

(6) If, based upon the findings of fact by the hearing officer, the Commissioner determines that the appeal of a decision of the Department filed by any party lacks substantial justification and was undertaken primarily for the purpose of delay or harassment, the Commissioner may enter an award in his or her written order against such party and in favor of the successful party or parties, including the Department, of all or any part of their respective reasonable and necessary attorneys' fees and expenses of litigation, as the Commissioner deems just.

(7) Such award may be enforced by any court undertaking judicial review of the final decision. In the absence of any petition for judicial review, then such award shall be enforced, upon due application, by any court having personal jurisdiction over the party against whom such award is made.

(8) Unless the hearing officer's decision becomes the Department's final decision by operation of law as provided in paragraph 1 of Rule 274-1-.12, the decision of the Commissioner shall become the Department's final decision. Such final decision shall be the final Department decision for purposes of O.C.G.A. § 50-13 et. seq., the "Georgia Administrative Procedure Act". The appeals process provided by these Rules shall be the administrative remedy only for decisions made by the Department pursuant to O.C.G.A. § 31-6-43, which involve the approval or denial of applications for certificates of need.

(9) A party responding to an appeal to the Commissioner may be entitled to reasonable attorneys' fees and costs of such appeal if it is determined that the appeal

lacked substantial justification and was undertaken primarily for the purpose of delay or harassment; provided, however, that the Department shall not be required to pay attorneys' fees or costs. This Rule shall not apply to the portion of attorneys' fees accrued on behalf of a party responding to or bringing a challenge to the Department's authority to enact a rule or regulation or the Department's jurisdiction or another challenge that could have been decided in the administrative proceeding, nor shall it apply to costs accrued when the only argument raised by the appealing party is one described in this Rule.

Authority O.C.G.A. § 31-6-44.