

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.14

Scope of Board Meeting

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

Section 274-1-.14 is repealed due to the abolishment of the Health Planning Review Board by SB 433.

~~274-1-.14 Scope of Board Meeting. Repealed.~~

~~(1) The issues for decision by the Board shall be limited to:~~

~~(a) generally, whether the Board should affirm, reverse, or modify the hearing officer's decision or to remand the case to the hearing officer for further consideration;~~

~~(b) whether, in the Board's judgment, the hearing officer's decision correctly ruled that the application was or was not consistent with the considerations set forth in O.C.G.A. § 31-6-42 and the Department's Rules, as the hearing officer deemed such considerations and Rules applicable to the review of the project. In all circumstances, the Board's decision shall be based upon considerations as set forth in O.C.G.A. § 31-6-42 and the Department's Rules;~~

~~(c) whether, in the Board's judgment, the hearing officer's decision correctly ruled that the Department did or did not commit prejudicial procedural error in its consideration of the Certificate of Need application;~~

~~(d) whether, in the Board's judgment, the hearing officer's findings of fact were supported by substantial evidence, which shall mean that the record contains such relevant evidence as a reasonable mind might accept as adequate to support such findings, inferences, conclusions, or decisions, which such evidentiary standard shall be in excess of the "any evidence" standard contained in other statutory provisions;~~

~~(e) whether, if based upon the findings of the hearing officer, the appeal filed by any party of a decision of the Department lacks substantial justification and was undertaken solely for the purpose of delay or harassment.~~

~~(2) The following issues shall not be considered by the Board at their meeting and are immaterial to the meeting:~~

~~(a) the correctness, adequacy, or appropriateness of the considerations, rules, or standards by which the proposed project was reviewed by the Department; and~~

~~(b) the determination of whether a proposed project is subject to review under O.C.G.A. § 31-6-1 et seq. and the Department's Rules.~~

~~(3) In considering the issues presented by an appellant, the Board shall afford great deference to the Department's interpretation of the governing statutes and to the Department's application of its rules and regulations.~~

~~Authority O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.~~