

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.09

Scope of Initial Administrative Appeal Hearing

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

This rule is amended to reflect new provisions governing the statutory scope of an initial administrative appeal hearing before the CON Appeal Panel.

274-1-~~08~~ 09 Scope of Initial Administrative Appeal Hearing.

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

(a) whether ~~and the hearing officer shall order issuance of a Certificate of Need if~~ in the hearing officer's judgment, the application is consistent with the considerations as set forth in O.C.G.A. § 31-6-42 and the Department's Rules, as the hearing officer deems such considerations and Rules applicable to the review of the project;

(b) whether the Department committed prejudicial procedural error in its consideration of the ~~Certificate of Need~~ application; and

(c) whether the appeal lacks substantial justification; and

(d) whether such appeal was undertaken ~~solely~~ primarily for the purpose of delay or harassment.

(2) The following issues shall not be considered at an initial administrative appeal hearing and are immaterial to the hearing:

(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 hearing officer shall afford great deference to the Department's interpretation of the governing statutes and to the Department's application of its rules and regulations. The appeal hearing conducted by the Appeal Panel hearing officer shall be a de novo review of the decision of the Department.~~

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