

## NOTICE OF PROPOSED RULEMAKING

TO: (a) Legislative Counsel – State of Georgia  
(b) All Parties on the Certificate of Need Appeal Panel’s Rulemaking Mailing List

FROM: Certificate of Need Appeal Panel  
2 Peachtree Street, NW  
5<sup>th</sup> Floor  
Atlanta, Georgia 30303

### **Notice of Proposed Rulemaking to Amend Certificate of Need Appeal Panel Rule 274-1-.04, Appeal Filing Fees; Provisions for Amount and Payment**

All interested parties are hereby notified pursuant to Ga. Laws 1964, pp. 338, 342, as amended (Official Code of Georgia Annotated (“O.C.G.A.”) § 50-13-4) that the Certificate of Need Appeal Panel intends to consider amendments to Rule 274-1-.04.

#### **BY THE CON APPEAL PANEL:**

On June 23, 2022, the Certificate of Need Appeal Panel (“CON Appeal Panel”) voted to issue this Notice of Proposed Rulemaking (“NOPR”) to consider amendments to CON Appeal Panel Rule 274-1-.04. The proposed amendments to CON Appeal Panel Rule 274-1-.04 contained in this NOPR shall be considered for adoption at a meeting of the CON Appeal Panel **on July 28, 2022, at 10 a.m.**, which will be held either virtually or at the CON Appeal Panel’s offices located on the 5<sup>th</sup> floor of 2 Peachtree Street, NW, Atlanta, Georgia 30303.

If adopted, the amendments to this rule, shall become effective as provided for by law twenty (20) days after their adoption by the CON Appeal Panel subsequent filing with the Secretary of State.

## **I. NOTICE OF PROPOSED RULEMAKING**

### **A. Introduction and Jurisdiction**

The CON Appeal Panel is governed by the Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.* The CON Appeal Panel is authorized to promulgate rules for its operation and rules of procedure. O.C.G.A. § 31-6-44(c).

## B. Synopsis and Explanation of Proposed Amendment to Rule

The proposed amendments to Rule 274-1-.04 increase the dollar amount of the filing fee from \$1,500.00 to \$7,500.00, apply the fee to all appeals to the CON Appeal Panel except as noted in this rule, provide that fees must be paid using one of the acceptable payment methodologies posted on the Department of Community Health's website, provide an exemption from the filing fee for a rural hospital that is appealing a Department decision to deny its Certificate of Need application, allow fourteen days from the filing of an appeal or the intervention, whichever is later, to pay the filing fee, and clarify that an applicant does not need to pay a filing fee to intervene in the appeal of a Department decision granting its application.

## II. PROPOSED AMENDMENTS TO RULE

Pursuant to the requirements of the Georgia Administrative Procedures Act at O.C.G.A. § 50-13-4(a)(1), the CON Appeal Panel intends to consider the proposed amendments to Ga. Comp. R. & Regs. 274-1-.04. The full text of the proposed amended Rule 274-1-.04 of the Rules of the CON Appeal Panel is set forth below.

### **RULES OF THE CERTIFICATE OF NEED APPEAL PANEL**

#### **Title 274: Certificate of Need Appeal Panel**

#### **Chapter 274-1 Administration**

#### **Rule 274-1-.04 Appeal Filing Fees; Provisions for Amount and Payment**

- (1) In the event an appeal is filed ~~by a competing applicant, or any competing health care facility, or any county or municipal government,~~ the appeal shall be accompanied by payment of a filing fee of ~~\$1,500.00~~ \$7,500.00. The fee shall be made ~~by using one of the methods of payment listed on the "Approved Methods of Payment for the Appeal Filing Fee" posted on the Department's website at <https://dch.georgia.gov/divisionsoffices/office-health-planning/certificate-need-con-appeal-panel>.~~ ~~certified bank check, cashier's check, or money order made payable to the "Certificate of Need Appeal Panel, Chairperson".~~ If the filing fee is mailed, it shall be sent enclosed with a copy of the request for appeal or intervention as provided in Rule 274-1-.03. An appeal filed by or on behalf of a hospital in a rural county to challenge the Department's denial of that hospital's Certificate of Need application shall be exempt from such filing fee.
- (2) A separate appeal filing fee, in the amount specified in paragraph (1), shall be paid by each separate party listed above requesting an appeal or intervention in any such appeal. A party requesting intervention shall pay the appeal filing fee within fourteen (14) days of the date on which either the appeal is filed or its intervention is filed, whichever is later. If a Department decision to grant a Certificate of Need application is appealed to the Certificate of Need Appeal Panel, then the Applicant for the Certificate of Need may intervene in the appeal without having to pay an appeal filing fee.
- (3) In the event a party ~~listed in subsection (1) above~~ requests an appeal or intervention in an appeal of more than one application reviewed by the Department, pursuant to joinder review or a batching cycle review, the party shall pay a separate filing fee for each separate application for which an appeal or intervention in such appeal is requested.

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

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The CON Appeal Panel shall consider adopting the proposed amendments to this rule at an open meeting held at 10:00 a.m. on July 28, 2022, either virtually or in the hearing room located on the 5<sup>th</sup> floor at 2 Peachtree Street, NW, Atlanta, Georgia 30303.

All interested parties who desire to do so may submit comments, data, views, arguments, or any other relevant matters in writing to the CON Appeal Panel concerning the proposed amendments to this rule. Such written material must be delivered to the CON Appeal Panel no later than **July 8, 2022**. The CON Appeal Panel requests that, where possible, comments include specific proposed edits to the rule.

Any written materials are to be filed with:

Wright McLeod  
Chairperson  
Certificate of Need Appeal Panel  
2 Peachtree Street, NW  
5<sup>th</sup> Floor  
Atlanta, Georgia 30303  
wmcleod@mcleod.com

All persons interested in presenting views or arguments orally should present a written request for an oral hearing by **July 8, 2022**. If no request for oral hearing is made, the CON Appeal Panel shall consider only those written comments filed in accordance with the provisions of this notice. If oral hearing is requested, then the CON Appeal Panel shall hold oral hearings either virtually or in the hearing room located on the 5<sup>th</sup> floor of 2 Peachtree Street, NW, Atlanta, Georgia 30303 at 10:00 a.m. on **July 21, 2022**.

The general authority for adoption of this rule is found in O.C.G.A. § 31-6-44. Upon request by any interested parties either prior to the adoption of the amendments to the rule or within thirty (30) days thereafter, pursuant to O.C.G.A. § 50-13-4(a)(2), the CON Appeal Panel shall issue a concise statement of the principal reasons for and against adoption of the amendments to this rule and incorporating the reasons for overruling the consideration, if any, urged against its adoption.

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**WHEREFORE IT IS ORDERED**, that the CON Appeal Panel hereby issues this Notice of Proposed Rulemaking for consideration of amending Ga. Comp. R. & Regs. 274-1-.04.

**ORDERED FURTHER**, that this Notice of Proposed Rulemaking shall be published in conformity with the requirements of the Administrative Procedure Act as provided in O.C.G.A. § 50-13-4.

**ORDERED FURTHER**, that all interested parties shall file comments and proposed edits no later than 4:00 p.m. on July 8, 2022.

**ORDERED FURTHER**, that all persons interested in presenting views or arguments orally should present a written request for an oral hearing by July 8, 2022. If requested, the CON Appeal Panel will hold a hearing to receive oral comments at 10:00 a.m. on July 21, 2022.

**ORDERED FURTHER**, that any motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the CON Appeal Panel.

**ORDERED FURTHER**, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this CON Appeal Panel may deem just and proper.

The above by action of the CON Appeal Panel on the 23<sup>rd</sup> day of June, 2022.

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\_\_\_\_\_  
Wright McLeod  
Chairperson  
Certificate of Need Appeal Panel

6/27/2022  
\_\_\_\_\_  
Date