

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.17

Decision of Board

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Section 274-1-.17 is repealed due to the abolishment of the Health Planning Review Board by SB 433.

274-1-.17 Decision of Board. Repealed.

~~((1) Within 30 days after meeting to review a hearing officer's decision, either the Chairperson or the Vice Chairperson of the Board shall, on behalf of the Board members present at such meeting, issue a written order that memorializes the decision of the Board reached by such majority vote. The order shall make written findings of fact and conclusions of law as to each applicable consideration or rule of the Department, including a detailed statement of reasons for the decision of the Board. However, the Board shall be entitled to adopt any and all findings of fact or conclusions of law contained in the decision rendered by the hearing officer. Further, if the Board affirms the decision of the hearing officer, the Board shall be entitled to adopt the decision of the hearing officer as its own.~~

~~(2) In the event the Board reverses or modifies the hearing officer's decision, the Board shall issue a written order, which explains why such changes were made. However, the Board shall not reverse findings of fact made by the hearing officer unless the Board specifically finds that the hearing officer's findings of fact are not supported by substantial evidence, which shall mean that the record does not contain 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.~~

~~(3) In the event the Board remands the case, the Chairperson or Vice Chairperson shall enter a written order directing the case back to the hearing officer who rendered the initial decision. The order shall contain such directions and conditions as may facilitate the resolution of the matters at issue. However, the hearing officer also shall be entitled to remand the matter to the Department if the hearing officer deems such a remand appropriate.~~

~~(4) If, based upon the findings of the hearing officer, the Board determines that 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, the Board may enter~~

~~an award in its 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 attorney's fees and expenses of litigation, as the Board deems just. 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 an award is made.~~

~~(5) Any Board member who so desires may draft a dissenting opinion that will accompany the Board's final decision on the appeal, so long as that Board member was present at the meeting during which the vote was taken on that particular appeal.~~

~~(6) Subject to the foregoing provisions of this Rule, in the event of a consolidated hearing on applications which were joined pursuant to subsection (d) of O.C.G.A. § 31-6-43, the Board shall have the same powers specified for the Department in subsection (d) of O.C.G.A. § 31-6-43 to issue no Certificate of Need or one or more Certificates of Need.~~

~~(7) Notice of the decision is deemed to be issued on the day that it is signed by the Chairperson or Vice Chairperson on behalf of the Board. Notice of the decision shall be sent simultaneously to the Appellant, the Department, the Applicant, and other parties, if any.~~

~~(8) The Board's order shall include, in addition to findings of fact and conclusions of law, instructions to the Department as to granting or denying a Certificate of Need.~~

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