

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.20

Judicial 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

Section 274-1-.20 is a new section replacing the old section (20) entitled "Final Decision" reflecting SB 433 provisions governing judicial review of final decisions of the CON Appeal Panel.

274-1-.20 Final Decision; Judicial Review.

~~Unless the hearing officer's decision becomes the Department's decision by operation of law as provided in Rule 274-1-.11, the final decision of the Board shall become the Department's decision by operation of law. Such final decision shall be the final agency decision for purposes of O.C.G.A. § 50-13, the "Georgia Administrative Procedure Act." Judicial Review may be sought in accordance with the "Georgia Administrative Procedure Act" and O.C.G.A. § 31-6-44(m).~~

~~(1) Any party to the initial administrative appeal hearing conducted by the appointed Appeal Panel hearing officer, excluding the Department, may seek judicial review of the final decision in accordance with the method set forth in O.C.G.A. § 51-13 et. seq., the "Georgia Administrative Procedure Act", except as otherwise modified by these Rules.~~

~~(2) In conducting such review, the Court may reverse or modify the final decision only if substantial rights of the appellant have been prejudiced because the procedures followed by the Department, the hearing officer, or the Commissioner or the administrative findings, inferences, and conclusions contained in the final decision are:~~

~~(a) In violation of constitutional or statutory provisions;~~

~~(b) In excess of the statutory authority of the department;~~

~~(c) Made upon unlawful procedures;~~

~~(d) Affected by other error of law;~~

~~(e) 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; or~~

~~(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.~~

(3) In the event a party seeks judicial review, the Department shall, within thirty (30) days of the filing of the notice of appeal with the Superior Court, transmit certified copies of all documents and papers in its file together with a transcript of the testimony taken and its findings of fact and decision to the Clerk of the Superior Court to which the case has been appealed.

(4) The case so appealed may then be brought by either party upon ten (10) days' written notice to the other before the Superior Court for a hearing upon such record, subject to an assignment of the case for hearing by the Court; provided, however, if the Court does not hear the case within one hundred and twenty (120) days of the date of docketing in the Superior Court, the decision of the Department shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the one hundred and twenty (120) days has been continued to a date certain by order of the Court.

(5) In the event a hearing is held later than ninety (90) days after the date of docketing in the Superior Court because same has been continued to a date certain by order of the Court, the decision of the Department shall be considered affirmed by operation of law if no order of the Court disposing of the issues on appeal has been entered within thirty (30) days after the date of the continued hearing.

(6) If a case is heard within one hundred and twenty (120) days from the date of docketing in the Superior Court, the decision of the Department shall be considered affirmed by operation of law if no order of the Court dispositive of the issues on appeal has been entered within thirty (30) days of the date of the hearing.

(7) A party responding to an appeal to the Superior Court shall be entitled to reasonable attorneys' fees and costs if such party is the prevailing party of such appeal as decided by final order; provided, however, 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 not have been raised in the administrative proceeding.

Authority O.C.G.A. § 31-6-44.1.