

SYNOPSIS
Rule 274-1-.08

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed amendment is to modify an existing regulation regarding the scope of initial administrative appeals to the Health Planning Review Board.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

The existing regulation, 274-1-.08, is modified. A new 274-1-.08(3) is added to reflect the law of the State of Georgia regarding deference to the Department of Community Health's Certificate of Need decisions as reflected in the decision of the Georgia Court of Appeals, Ga. Dept. of Cmty. Health v. Satilla Health Servs., Inc., 266 Ga. App. 880; 598 S.E.2d 514 (2004).

PROPOSED RULES
OF
STATE HEALTH PLANNING REVIEW BOARD

CHAPTER 274-1
ADMINISTRATION

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

(1) The issues for 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 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 whether such appeal was undertaken solely 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.

SYNOPSIS
Rule 274-1-.11

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed amendment is to modify an existing regulation regarding the submission of objections to the Health Planning Review Board.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

The existing regulation, 274-1-.11, is modified to reflect that specific objections may be submitting by hand, by regular mail, and by certified and/or registered mail. The modified rule reflects the time of receipt for each method of submittal.

**PROPOSED RULES
OF
STATE HEALTH PLANNING REVIEW BOARD**

**CHAPTER 274-1
ADMINISTRATION**

274-1-11 Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Board.

(1) The decision of the hearing officer shall become the final decision of the Department upon the sixty-first day following the receipt of the hearing officer's decision by the Board unless an objection thereto is filed within the time limit established in subsection 2 of this Rule and within 60 days of the receipt of the hearing officer's decision by the Board:

(a) at least a quorum of the Board meets to review such decision and, by a majority vote of those members present at the meeting, the Board decides to affirm, reverse, or modify the hearing officer's decision or to remand the case to the hearing officer for further consideration; or

(b) at the request of any party which participated in the initial administrative appeal hearing before the hearing officer, or upon its own initiative, the Chairperson or the Vice Chairperson extends the time period for review of such decision. However, the Board may not extend the time period for review of the hearing officer's decision for longer than 45 days.

(2) Any party, including the Department, which disputes any finding of fact or conclusion of law rendered by the hearing officer in such hearing officer's decision and which wishes to appeal that decision to the Board shall file such party's specific objections thereto with the Board within 30 days of such party's receipt of the hearing officer's decision. Any party that submits such party's specific objections to the Board shall be entitled to present oral argument to the Board so long as that party notifies the Board of such intent in its submission of specific objections.

(3) Any objections filed with the Board shall specify in detail the errors allegedly committed by the hearing officer in the hearing officer's decision. Failure to specify such alleged errors in detail shall constitute a waiver of all available objections. Further, the party submitting such objections must specify the date upon which it received the hearing officer's decision.

(4) All objections shall be in writing and an original copy must be received by the Board at the Office of General Counsel, Department of Community Health, 2 Peachtree Street, N.W., 40th Floor, Atlanta, Georgia 30303, within the applicable 30-day period. If the 30th day falls on a weekend or a federal or state holiday, the time for submitting such objections shall be extended to the next business day.

(a) The date of receipt shall be the official postmark date if mailed by registered or certified mail;

(b) The date of receipt shall be the date the Department actually receives the request as documented by Department date stamp if mailed by regular first class mail or if hand delivered, except that any such request received after 5:00 pm shall be deemed in receipt the following business day; and

(c) The only acceptable methods of delivery of any such objections shall be certified mail, registered mail, regular first class mail, and hand delivery.

Further, additional copies of such objections shall be mailed to all members of the Board at their respective addresses and to the Department, each attorney of record, or directly to any party not represented by an attorney.

(5) On behalf of the Board, the Chairperson or the Vice Chairperson shall determine whether a party complied with the provisions of this Rule. In the event that the Chairperson or the Vice Chairperson determines that the party failed to comply with the provisions of this Rule, such person shall have the authority to render written decisions on behalf of the Board in respect to such determinations. A decision adverse to a party shall specify in detail the extent to which a party failed to comply.

SYNOPSIS
Rule 274-1-.14

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed amendment is to modify an existing regulation regarding the scope of Review Board meetings.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

The existing regulation, 274-1-.14, is modified. A new 274-1-.14(3) is added to reflect the law of the State of Georgia regarding deference to the Department of Community Health's Certificate of Need decisions as reflected in the decision of the Georgia Court of Appeals, Ga. Dept. of Cmty. Health v. Satilla Health Servs., Inc., 266 Ga. App. 880; 598 S.E.2d 514 (2004).

PROPOSED RULES
OF
STATE HEALTH PLANNING REVIEW BOARD

CHAPTER 274-1
ADMINISTRATION

274-1-.14 Scope of Board Meeting.

(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.