

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.01 Administration

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 the abolition of the Health Planning Review Board and the creation of the CON Appeal Panel.

274-1-.01 Administration.

(1) These Rules shall apply to and govern appeals under O.C.G.A. § [31-6-44](#). Effective July 1, 2008, there is created the Certificate of Need Appeal Panel, which shall be an agency separate and apart from the department and shall consist of a panel of independent hearing officers. The purpose of the Board Appeal Panel shall be to serve as a panel of independent hearing officers to review the Department's initial decisions to grant or deny a certificate of need application. The Health Planning Review Board which existed on June 30, 2008, shall cease to exist after that date and the Certificate of Need Appeal Panel shall be constituted effective July 1, 2008. The terms of all members of the Health Planning Review Board serving as such on June 30, 2008, shall automatically terminate on such date. ~~made by hearing officers as provided in these Rules. At least a quorum of the Board shall meet at least once every month to review hearing officer decisions unless there are not any decisions for it to review. For purposes of these Rules, a quorum shall consist of five members of the Board, including either the Chairperson or the Vice Chairperson. The Board shall formulate and approve a list of at least five and not more than ten attorneys who shall serve as hearing officers for appeals that are assigned to them by the Chairperson of the Board. Each such attorney approved to be included on the list of hearing officers shall be an active member of the State Bar of Georgia in good standing, and each such attorney must have maintained such active status for the five years immediately preceding such person's respective approval.~~

(2) On and after July 1, 2008, the Appeal Panel shall be composed of members appointed by the Governor for a term of up to four (4) years each. The Governor shall appoint to the Appeal Panel attorneys who practice law in this state and who are familiar with the health care industry but who do not have a financial interest in or represent or have any compensation arrangement with any health care facility. Each member of the Appeal Panel shall be an active member of the State Bar of Georgia in good standing, and each attorney shall have maintained such active status for the five (5) years immediately preceding such person's appointment. The Governor shall name from

among such members a Chairperson and a Vice Chairperson of the Appeal Panel. The Vice Chairperson shall have the same authority as the Chairperson; provided, however, the Vice Chairperson shall not exercise such authority unless expressly delegated by the Chairperson or in the event the Chairperson becomes incapacitated, as determined by the Governor. Vacancies on the Appeal Panel caused by resignation, death, or any other cause shall be filled for the unexpired term in the same manner as the original appointment. No person required to register with the Secretary of State as a lobbyist or registered agent shall be eligible for appointment by the Governor to the Appeal Panel.

~~(2)~~(3) Members of the Appeal Panel shall serve as hearing officers for appeals that are assigned to them on a random basis by the Chairperson of the Appeal Panel. The members of the ~~Board Appeal Panel~~ shall receive no salary but shall be reimbursed for their expenses in attending meetings and for transportation costs as authorized by O.C.G.A. § [45-7-21](#), which provides for compensation and allowances of certain state officials; provided, however, that ~~and~~ the Chairperson and Vice Chairperson of the Appeal Panel shall also be compensated for their services rendered to the ~~Board Appeal Panel~~ outside of attendance at an ~~Board Appeal Panel~~ meeting, such as for time spent assigning hearing officers, the amount of which compensation shall be determined according to regulations of the Department of Administrative Services. ~~Hearing officers to whom a case has been assigned~~ Appeal Panel members shall receive compensation for the administration of the cases assigned to them, including prehearing, hearing, and posthearing work, in an amount determined to be appropriate and reasonable by the ~~Board.~~ The Department of Administrative Services. ~~shall make~~ Such compensation to the members of the Board Appeal Panel shall be made by the Department of Administrative Services. and to hearing officers.

~~(3)~~ 4) To the extent not inconsistent with these Rules, the Rules of the Department of Community Health relating to certificate of need and health planning (including review considerations and standards), as amended from time to time, shall apply to and govern the decisions of the ~~hearing officers and the Board~~ Appeal Panel.

~~(4)~~ 5) A copy of any document filed with either the ~~Board~~ Appeal Panel or a hearing officer to whom a case has been assigned by any person (including any

correspondence, motion, request for discovery, brief or other document) shall be sent to the Office of General Counsel, Department of Community Health and to each attorney of record (or directly to any party not represented by an attorney). All such submissions shall be on letter-sized paper.

Authority O.C.G.A. § 31-6-44.