

SYNOPSIS

Administrative Rules for Certificate of Need Appeal Panel

Rule 274-1-.12

Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Department Commissioner

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

The former 274-1-.12 is repealed.

The new 274-1-.12 is adopted to reflect new provisions governing the finality of the hearing officer's decision and the requirements for optional review of the hearing officer's decision by the Department of Community Health Commissioner.

274-1-~~11.12~~ Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Board Commissioner.

(1) The decision of the Appeal Panel hearing officer ~~shall~~ will become the final decision of the Department upon the sixty-first (61st) day following the ~~receipt of the hearing officer's date of the~~ decision ~~by the Board~~ unless an objection thereto is filed with the Commissioner 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~~ may appeal to the Commissioner and shall file its specific objections ~~thereto~~ with the Board Commissioner or his or her designee within thirty (30) days of the date 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 Commissioner 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 a~~ An original copy must be received by the ~~Board Commissioner~~ at the ~~Office of General Counsel, Division of Health Planning,~~ Department of Community Health, 2 Peachtree Street, N.W., 5th Floor, Atlanta, Georgia 30303, within the applicable thirty (30) day time period. If the thirtieth (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 p.m. 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~~ The Commissioner, or his or her designee, shall determine whether a party complied with the provisions of this Rule. In the event ~~that the Chairperson or the Vice Chairperson~~ Commissioner, or his or her designee, 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~~ Department with in respect to such determinations. A

decision adverse to a party shall specify in detail the extent to which a party failed to comply.

~~274-1-.12 Scheduling and Notice of Review Board Meetings.~~

~~(1) 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 the Board to review. The Chairperson or Vice Chairperson shall set the date for the Board meeting and provide the parties with written notice mailed at least 14 days prior to such meeting. The notice shall include the date and time upon which the Board intends to commence its meeting, the location of the meeting, and shall specify the cases which the Board intends to consider on that date.~~

~~(2) No party to an initial administrative appeal hearing nor any person on behalf of such party shall contact, outside of a duly constituted Board meeting, any member of the Board to discuss any aspect of a project or an appeal.~~

~~(3) The Chairperson or the Vice Chairperson shall make all arrangements for scheduling the meeting, providing for the making of a record, the transcription thereof, and any other arrangements necessary to convene the meeting. Further, the Chairperson or Vice Chairperson shall be responsible for securing the attendance of Board members for the Board's regularly scheduled meetings. However, the Chairperson or the Vice Chairperson shall be authorized to request the assistance of the Department as necessary in the discharge of these duties.~~

~~(4) All meetings of the Board shall be open to the public. As provided by law, due notice including the time, place, and nature of business to be conducted shall be provided. The Chairperson or Vice Chairperson shall be authorized to request the assistance of the Department as necessary in the discharge of these duties.~~

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

Authority: O.C.G.A. § 31-6-44