Rules and Regulations of the State of Georgia

Department 274 DEPARTMENT OF COMMUNITY HEALTH CERTIFICATE OF NEED APPEAL PANEL

Current through Rules and Regulations filed through November 6, 2026

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ADMINISTRATIVE HISTORY

The **Administrative History** following each Rule gives the date on which the Rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. Principal abbreviations used in the Administrative History are as follows.

f. - filed

eff. - effective

R. - Rule (Abbreviated only at the beginning of the control number)

Ch. - Chapter (Abbreviated only at the beginning of the control number)

ER. - Emergency Rule

Rev. - Revised

Note: Emergency Rules are listed in each Rule's Administrative History by Emergency Rule number, date filed and effective date. The Emergency Rule will be in effect for 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this Emergency Rule is adopted, as specified by the Agency.

Emergency Rule Chapter 274-1-0.1 has been adopted. Filed July 21, 1983; effective July 20, 1983, the date of adoption, to be in effect for 120 days or until the effective date of a permanent rule covering the same subject matter superseding this Emergency Rule is adopted, as specified by the Agency. This Emergency Rule was adopted to comply with Georgia Laws 1983, Act 552, mandating the Review Board to promulgate rules separate from the Health Planning Agency. (This Emergency Rule will not be published; copies may be obtained from the Agency.)

Chapter 274-1 entitled "Administration" has been adopted superseding Emergency Rule 274-1-0.1. Filed November 8, 1983; effective November 28, 1983.

Rules 274-1-.04 and .13 have been amended. Filed July 9, 1985; effective July 29, 1985.

Chapter 274-1 has been repealed and a new Chapter adopted. Filed December 19, 1994; effective January 8, 1995.

Rule 274-1 had been amended. Filed August 15, 2002; effective September 4, 2002.

Chapter 274-1 has been repealed and a new Chapter adopted. Filed December 16, 2004; effective January 5, 2005.

Rules 274-1-.08, .11, and .14 have been amended. Filed October 14, 2005; effective November 3, 2005.

Rules 274-1-.03, .10, .11, and .19 have been amended. Filed September 29, 2006; effective October 19, 2006.

Chapter 274-1 has been repealed and a new chapter adopted. Filed September 25, 2008; effective October 15, 2008.

Rule 274-1-.10 has been amended. Filed August 27, 2009; effective September 16, 2009.

Rule 274-1-.12 amended. F. Nov. 17, 2015; eff. Dec. 7, 2015.

Rule 274-1-.12 amended. F. Dec. 12, 2017; eff. Jan. 1, 2018.

Rules 274-1-.01, .02, .03, .04, .06, .10, .11, .12 amended. F. Aug. 12, 2022; eff. Sep. 1, 2022.

Cite as Ga. Comp. R. & Regs. R. dept. 274, ADMINISTRATIVE HISTORY

Chapter 274-1. ADMINISTRATION.

Rule 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 Appeal Panel shall be to serve as a panel of independent hearing officers to review the Department's initial decision 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.

(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.

(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 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 the Chairperson and Vice Chairperson of the Appeal Panel shall also be compensated for their services rendered to the Appeal Panel outside of attendance at an 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. Appeal Panel members shall receive compensation for the administration of the cases assigned to them, including pre-hearing, hearing, and post-hearing work, in an amount determined to be appropriate and reasonable by the Department of Administrative Services. Such compensation to the members of the Appeal Panel shall be made by the Department of Administrative Services.

(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 Appeal Panel.

(5) All documents filed with either the 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 filed via the Department's web portal and sent to each attorney of record (or directly to any party not represented by an attorney). The date of receipt by the Appeal Panel or assigned hearing officer shall be the official date and timestamp stated on the electronic mail receipt confirmation for the web portal submission.

Cite as Ga. Comp. R. & Regs. R. 274-1-.01
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Administration" adopted as ER. 274-1-0.1-.01. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule of same title adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule of same title adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.02. Definitions.

(1) "Appeal Panel" means the panel of attorneys appointed by the Governor to review the Department's initial decision to grant or deny a certificate of need application.

(2) "Appellant" means the person who files an appeal with the Appeal Panel.

(3) "Applicant" means the person who files an application for review of a project with the Department.

(4) "Chairperson" means the Chairperson of the Appeal Panel appointed by the Governor or the Vice Chairperson acting as Chairperson at the direction of either the appointed Chairperson or the Governor.

(5) "Commissioner" means the commissioner of the Department of Community Health as provided for in O.C.G.A. § 31-2-6.

(6) "Department" means the Department of Community Health established under O.C.G.A. § 31-2-4.

(7) "Hearing Officer" means the attorney from the Appeal Panel to whom a case has been assigned by the Chairperson.

Cite as Ga. Comp. R. & Regs. R. 274-1-.02
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Definitions" adopted as ER. 274-1-0.1-.02. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule of same title adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule of same title adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.03. Request for Initial Administrative Appeal Hearing or Intervention.

(1) Any Applicant for a project, and any party that is permitted to oppose an application pursuant to paragraph (2) of subsection (d) of O.C.G.A. § 31-6-43 and has timely notified the Department, as required by the applicable certificate of need rules, prior to its decision that such party is opposed to the application before the Department, shall have the right to an initial administrative appeal hearing before an appeal panel hearing officer or to intervene in such hearing.

(2) Such request for hearing or intervention shall be filed with the Chairperson of the Appeal Panel within thirty (30) days of the date the Department decision is issued, pursuant to O.C.G.A. § 31-6-43, or within thirty (30) days after the date the application is deemed to have been approved, if no decision is issued. A request for intervention shall be filed with the Chairperson of the Appeal Panel within ten (10) days of any request for hearing. Without exception to the status of the party, the request shall state with specificity which Certificate of Need application(s) is being appealed. Unless agreed otherwise by all of the parties or determined otherwise by the hearing officer to whom the case is assigned, an appeal of one application which was joined with one or more other applications by the Department, or an application which was reviewed concurrently in a batching review cycle by the Department, shall serve as an appeal of all of the joined or batched applications.

(3) A request for an initial administrative appeal hearing before a hearing officer or to intervene in such a hearing shall be in writing and filed via the Department's web portal within the applicable thirty (30) day period. If the thirtieth (30th) day falls on a weekend or a federal or state holiday, the time for requesting an appeal or intervention shall be extended to the next business day. The date of receipt shall be the official date and timestamp stated on the electronic mail receipt confirmation for the web portal submission.

Cite as Ga. Comp. R. & Regs. R. 274-1-.03
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Scope of Appeal Hearing" adopted as ER. 274-1-0.1-.03. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Request for Initial Administrative Appeal Hearing or Intervention" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Amended: F. Sept. 29, 2006; eff. Oct. 19, 2006.
Repealed: New Rule of same title adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.04. Appeal Filing Fees; Provisions for Amount and Payment.

(1) In the event an appeal is filed, the appeal shall be accompanied by payment of a filing fee of $7,500.00. The fee shall be made using one of the methods of payment listed on the "Approved Methods of Payment for the Appeal Filing Fee" posted on the Department's website at https://dch.georgia.gov/divisionsoffices/office-health-planning/certificate-need-con-appeal-panel. If the filing fee is mailed, it shall be sent enclosed with a copy of the request for appeal or intervention as provided in Rule 274-1-.03. An appeal filed by or on behalf of a hospital in a rural county to challenge the Department's denial of that hospital's Certificate of Need application shall be exempt from such filing fee.

(2) A separate appeal filing fee, in the amount specified in paragraph (1), shall be paid by each separate party requesting an appeal or intervention in any such appeal. A party requesting intervention shall pay the appeal filing fee within fourteen (14) days of the date on which either the appeal is filed or its intervention is filed, whichever is later. If a Department decision to grant a Certificate of Need application is appealed to the Certificate of Need Appeal Panel, then the Applicant for the Certificate of Need may intervene in the appeal without having to pay an appeal filing fee.

(3) In the event a party requests an appeal or intervention in an appeal of more than one application reviewed by the Department, pursuant to joinder review or a batching cycle review, the party shall pay a separate filing fee for each separate application for which an appeal or intervention in such appeal is requested.

Cite as Ga. Comp. R. & Regs. R. 274-1-.04
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Request for Appeal Hearing" adopted as ER. 274-1-0.1-.04. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Amended: F. July 9, 1985; eff. July 29, 1985.
Repealed: New Rule entitled "Assignment of Hearings; Review of Initial Administrative Appeal and Intervention Requests" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Appeal Filing Fees; Provisions for Amount and Payment" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.05. Assignment of Hearings; Review of Initial Administrative Appeal and Intervention Requests.

(1) In the event an appeal is requested, the Chairperson of the Appeal Panel shall appoint a hearing officer for each such hearing within thirty (30) days after the date the appeal is received. The Chairperson shall immediately deliver the appeal request and any other related documentation to the assigned hearing officer.

(2) The hearing officer shall review the request to determine whether it was timely filed and whether Appellant has standing. If the request is timely and the Appellant has standing,

an initial administrative appeal hearing shall be granted; provided, however; the hearing officer shall be entitled to consider all pre-hearing motions and arguments and may dispose of the case before conducting a hearing. The hearing officer shall have the authority to and shall make such rulings as may be required for the conduct of the hearing. If the request is not timely or the Appellant lacks standing, the hearing officer shall deny the request.

Cite as Ga. Comp. R. & Regs. R. 274-1-.05
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Review of Request by Chairman" adopted as ER. 274-1-0.1-.05. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Scheduling and Notice of Initial Administrative Appeal Hearing" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Assignment of Hearings; Review of Initial Administrative Appeal and Intervention Requests" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.06. Scheduling and Notice of Initial Administrative Appeal Hearing.

(1) Within fourteen (14) days after the appointment of the hearing officer, such hearing officer shall confer with the parties and set the date or dates for the hearing. The hearing officer shall provide the parties with written notice sent regular mail or electronic mail at least fourteen (14) days before the date of commencement of the hearing. Notification shall include, at a minimum, the information required in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-13.

(2) The hearing officer shall make all arrangements for scheduling the hearing, providing for the making of a record, the transcription thereof, and any other arrangements necessary to convene the hearing. However, the hearing officer shall be authorized to request the assistance of the General Counsel of the Department as necessary in the discharge of these duties.

Cite as Ga. Comp. R. & Regs. R. 274-1-.06
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Hearing Panel" adopted as ER. 274-1-0.1-.06. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Intervention" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Time of Initial Administrative Appeal Hearing" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Scheduling and Notice of Initial Administrative Appeal Hearing" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.07. Time of Initial Administrative Appeal Hearing.

(1) The hearing shall be scheduled not less than sixty (60) days nor more than one hundred and twenty (120) days after the filing of the request for a hearing, unless the Applicant consents, or in the case of competing Applicants, all applicants consent to an extension of this time period to a specified date. Unless the Applicant consents, or in the case of competing Applicants, all Applicants consent to an extension of said one hundred and twenty (120) day period, any hearing officer who regularly fails to commence a hearing within the required time period shall not be eligible for continued service as a hearing officer for the purposes of these Rules.

(2) The hearing officer shall be entitled to consider all pre-hearing motions and arguments and may dispose of the case before conducting a hearing. The hearing officer shall have the authority to and shall make such rulings as may be required for the conduct of the hearing.

Cite as Ga. Comp. R. & Regs. R. 274-1-.07
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Notice of Hearing" adopted as ER. 274-1-0.1-.07. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Hearing Panel" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Place of Initial Administrative Appeal Hearing" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Time of Initial Administrative Appeal Hearing" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.08. Place of Initial Administrative Appeal Hearing.

The initial administrative appeal hearing shall be held at the offices of the Department (2 Peachtree Street, NW, Atlanta, Georgia 30303) or, if those offices are unavailable at the scheduled time of the hearing, or are insufficient to accommodate the hearing for any reason, at such other place as the hearing officer designates with the approval of the General Counsel of the Department of Community Health.

Cite as Ga. Comp. R. & Regs. R. 274-1-.08
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Time of Hearing" adopted as ER. 274-1-0.1-.08. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Notice of Hearing" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Scope of Initial Administrative Appeal Hearing" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.

Amended: F. Oct. 14, 2005; eff. Nov. 3, 2005.
Repealed: New Rule entitled "Place of Initial Administrative Appeal Hearing" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.09. Scope of Initial Administrative Appeal Hearing.

(1) The issue for the decision by the hearing officer shall be:

(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 as 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 application; and

(c) whether the appeal lacks substantial justification; and

(d) whether such appeal was undertaken primarily 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) The appeal hearing conducted by the Appeal Panel hearing officer shall be a de novo review of the decision of the Department.

Cite as Ga. Comp. R. & Regs. R. 274-1-.09
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Place of Hearing" adopted as ER. 274-1-0.1-.09. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Time of Hearing" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Conduct of Initial Administrative Appeal Hearing" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Scope of Initial Administrative Appeal Hearing" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.10. Conduct of Initial Administrative Appeal Hearing.

(1) The initial administrative hearing shall be conducted as a full evidentiary hearing in accordance with Chapter 13 of Title 50, the Georgia Administrative Procedure Act, relating to contested cases, except as otherwise specified in O.C.G.A. § 31-6-44 or these Rules. In addition to being filed via the Department's web portal where required by Rule 274-1-.01(5), all documents submitted to the hearing officer, another party or an attorney of record pursuant to this rule may be submitted via either regular mail or electronic mail, unless otherwise directed by the hearing officer.

(2) Subject to the prior approval of the hearing officer, all files, working papers, studies, notes and other writings or information used by the Department in making its decision shall be public records and available to the parties, and the hearing officer may permit each party to exercise such reasonable rights of pre-hearing discovery of such information used by the parties as will expedite the hearing. Answers to such a request for discovery shall be served within ten (10) business days of the date the request was received. A request for discovery of information not included in items (a) through (f) below shall be made to the hearing officer. Any party may, upon written request to another party, discover the following items as a matter of right:

(a) a list of considerations and standards that are deemed applicable and as to which evidence will be presented;

(b) the names and addresses of all witnesses who will be present for the hearing;

(c) the names and addresses of all witnesses who may be present for the hearing;

(d) the resume of any expert witness who will or may be present for the hearing;

(e) a list of each documentary or demonstrative item to be used at the hearing and known at the time the request for discovery is answered; and

(f) any updates of studies or data previously submitted to the Department.

(3) At least ten (10) business days prior to commencement of the initial administrative hearing, each party shall submit to the hearing officer and to each attorney of record or party not represented by an attorney a brief summary of the facts and legal contentions on which the party's case is based. The summary shall not exceed eight (8) double-spaced pages in length.

(4) At the discretion of the Hearing Officer, each party to an initial administrative hearing may be required to submit, along with and at the time of the summary of facts and legal contentions referenced in subsection (3) above, the written direct testimony of the primary health planning expert witness it intends to present at the hearing along with any exhibits which correspond to the direct expert witness testimony. This written material shall be submitted to the hearing officer and to each attorney of record or party not represented by an attorney. This written material shall be used by the Department as an

official copy for the administrative hearing record. The written direct testimony of any expert witness and the corresponding exhibits submitted pursuant to this rule shall be tendered in lieu of direct live testimony of a party's expert witness at the initial administrative hearing. The expert witness of any party shall be subject to live cross examination and redirect examination at the initial administrative hearing. The expert witness shall be tendered as an expert by the party who submitted written direct testimony of the expert witness prior to any cross-examination. An expert witness may also be subject to voir dire with regard to their qualification as an expert by any party at the discretion of the hearing officer. The written direct testimony and corresponding exhibits are not subject to the eight (8) double-spaced page limit referenced in subsection (3) above.

(5) Any party to an initial administrative hearing who intends to submit updates of studies previously submitted to the Department prior to its decision shall submit such updates, along with any supporting documentation, in written form at the same time as the summary of facts and legal contentions referenced in subsection (3) above. The updated studies, if any, shall be submitted to the hearing officer and to each attorney of record or party not represented by an attorney. The updates and supporting documentation are not subject to the eight (8) double-spaced page limit referenced in subsection (3) above.

(6) In the event the Hearing Officer requires written direct testimony of a primary health planning expert to be filed pursuant to subsection (4) above, at least five (5) business days prior to commencement of the initial administrative hearing, each party shall submit to the hearing officer and to each attorney of record or party not represented by an attorney objections to the admissibility of proposed expert testimony, documents, exhibits, and updated studies referenced in subsections (3), (4), and (5) above.

(7) Appellants or Applicants shall proceed first with their cases before the hearing officer in the order determined by the hearing officer; and the Department, if a party, shall proceed last. Any interveners shall proceed in an order determined by the hearing officer.

(8) The burden of proof shall be on the Appellant.

(9) All evidence shall be presented at the initial administrative appeal hearing conducted by the appointed hearing officer.

(10) In addition to evidence submitted to the Department, a party may present any additional relevant evidence to the appeal panel hearing officer reviewing the decision of the Department if the evidence was not reasonably available to the party presenting the evidence at the time of the Department's review. The burden of proof as to whether the evidence was reasonably available shall be on the party attempting to introduce the new evidence.

(11) A party or intervener may present any relevant evidence on all issues raised by the hearing officer or any party to the hearing or revealed during discovery and shall not be limited to evidence or information presented to the Department prior to its decision, except that an applicant may not present a new need study or analysis responsive to the

general need consideration or service-specific need formula that is substantially different from any such study or analysis submitted to the Department prior to its decision and that could have reasonably been available for submission. The hearing officer shall consider the latest data available, including updates of studies previously submitted, in deciding whether an application is consistent with the applicable consideration or rules. The hearing officer shall consider the applicable considerations and rules in effect on the date the appeal is filed, even if the provisions of those considerations or rules were changed after the Department's decision.

(12) Initial administrative appeal hearings shall be conducted in such a manner as to conclude in a reasonable period of time. Any continuance or delays should be as brief as possible and shall only be granted for good cause shown. The hearing officer shall be vested with the authority to set reasonable time limits in advance of or during the hearing for the presentation of each party's case, subject to extension for good cause shown.

(13) The hearing officer shall make such rulings as may be required for the conduct of the hearing and shall have the authority to do the following in addition to any other rights granted by O.C.G.A. §50-13., the Georgia Administrative Procedure Act, which are not otherwise inconsistent with these Rules: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing motions and briefs; dispose of motions to dismiss for lack of jurisdiction over the subject matter or parties or for any other grounds; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing officer. The hearing officer may order such conferences with counsel for the parties, or the parties themselves if they are not represented by counsel, either prior to or during the hearing, as may facilitate determination of questions of evidence and other questions of law and expedite the hearing.

Cite as Ga. Comp. R. & Regs. R. 274-1-.10
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Conduct of Hearing" adopted as ER. 274-1-0.1-.10. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Place of Hearing" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Decision of Hearing Officer" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Amended: F. Sept. 29, 2006; eff. Oct. 19, 2006.
Repealed: New Rule entitled "Conduct of Initial Administrative Appeal Hearing" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Aug. 27, 2009; eff. Sept. 16, 2009.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.11. Decision of Hearing Officer.

(1) Within thirty (30) days after the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law as to each consideration as set forth in O.C.G.A. § 31-6-42. and the Department's Rules, including a detailed statement of the reasons for the decision of the hearing officer. The hearing officer may, by order, extend the period in which the decision must be made upon a determination that the complexity of the issues and/or the length of a record requires such extension of the period, but in no event may such extension exceed an additional fifteen (15) days.

(2) If any party has alleged that an appeal lacks substantial justification or was undertaken primarily for the purpose of delay or harassment, the decision of the hearing officer shall make findings of fact addressing the merits of the allegation pursuant to O.C.G.A. § 31-6-44.(i).

(3) The conclusion of the hearing is deemed to be the last date for submission of written evidence, proposed findings and conclusions, written arguments, or other materials, as fixed by the hearing officer.

(4) In the event of a consolidated hearing on applications which were joined for comparative review pursuant to O.C.G.A. § 31-6-43.(f), the hearing officer shall have the same powers specified for the Department in O.C.G.A. § 31-6-43.(f) to order the issuance of no Certificate of Need or one or more Certificates of Need.

(5) Notice of the decision is deemed to be issued on the day that it is signed by the hearing officer and sent with a Certificate of Service to all parties via the method chosen by the hearing officer.

(6) Immediately upon rendering a decision, the hearing officer shall file such decision, via regular or electronic mail, with the Chairperson of the Appeal Panel who shall serve such decision upon all parties by regular or electronic mail, and shall transmit the administrative record to the Commissioner. The Chairperson shall have been deemed in receipt of the hearing officer's decision on the date that the decision is received.

(7) The hearing officer may remand a matter to the Department if the hearing officer determines that it would be beneficial for the Department to consider new data, studies, or analyses that were not available before the decision or changes to the provisions of the applicable considerations or rules made after the Department's decision. The hearing officer shall establish the time deadlines for completion of the remand and shall retain jurisdiction of the matter throughout the completion of the remand.

(8) Notice of the decision 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.

Cite as Ga. Comp. R. & Regs. R. 274-1-.11
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Decision of Hearing Panel" adopted as ER. 274-1-0.1-.11. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Conduct of Hearing" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.

Repealed: New Rule entitled "Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Board" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Amended: F. Oct. 14, 2005; eff. Nov. 3, 2005.
Amended: F. Sept. 29, 2006; eff. Oct. 19, 2006.
Repealed: New Rule entitled "Decision of Hearing Officer" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.12. Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Department Commissioner.

(1) The decision of the Appeal Panel hearing officer will become the final decision of the Department upon the sixty-first (61[st]) day following the date of the decision unless an objection thereto is filed with the Commissioner within the time limit established in subsection (2) of this rule.

(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 may appeal to the Commissioner and shall file its specific objections with the Commissioner or his or her designee via the Department's web portal within thirty (30) days of the date of the hearing officer's decision.

(3) Any objections filed in accordance with this rule 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. A copy must be filed with the Department's Office of Health Planning via the Department's web portal and served on each attorney of record, or directly to any party not represented by an attorney at the time the objections are filed with the Commissioner or his or her designee. The objections must be received by the Office of Health Planning, within the applicable thirty (30) day time period. If the thirtieth (30[th]) 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. The date of receipt shall be the official date and timestamp stated on the electronic mail receipt confirmation for the web portal submission. Objections filed over the Department's web portal shall be deemed submitted on the date they are filed, up to 11:59 p.m.

(5) The Commissioner, or his or her designee, shall determine whether a party complied with the provisions of this rule. In the event the 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 Department with respect to such determinations. A decision adverse to a party shall specify in detail the extent to which a party failed to comply.

Cite as Ga. Comp. R. & Regs. R. 274-1-.12
Authority: O.C.G.A. §§31-6, 31-6-44.
History. Original Rule entitled "Record of Proceedings" adopted as ER. 274-1-0.1-.12. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Decision of Hearing Panel" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Scheduling and Notice of Review Board Meetings" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Finality of Hearing Officer's Decision; Optional Review of Hearing Officer's Decision by Department Commissioner" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.
Amended: F. Nov. 17, 2015; eff. Dec. 7, 2015.
Amended: F. Dec. 12, 2017; eff. Jan. 1, 2018.
Amended: F. Aug. 12, 2022; eff. Sep. 1, 2022.

Rule 274-1-.13. Commissioner (Or His or Her Designee) Review.

(1) In the event an appeal of the hearing officer's decision is filed, the Commissioner or his or her designee, may adopt the hearing officer's order as the final order of the Department. The Commissioner may reject or modify the conclusions of law over which the Department has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction.

(2) By rejecting or modifying such conclusion of law or interpretation of administrative rule, the Department must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule; and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as reasonable or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

(3) The Commissioner may not reject or modify the findings of fact unless the Commissioner first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon any competent substantial evidence; or that the proceedings on which the findings were based did not comply with the essential requirements of law.

(4) If, before the date set for the Commissioner's decision, application is made to the Commissioner for leave to present additional evidence, and it is shown to the satisfaction of the Commissioner that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the hearing officer, the Commissioner may order that the additional evidence be taken before the same hearing officer who rendered the initial decision upon conditions determined by the Commissioner.

(5) The hearing officer may modify the initial decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decision with the Commissioner. Unless leave is given by the Commissioner in accordance with the

provisions of this Rule, the hearing officer may not consider new evidence under any circumstances.

(6) If, based upon the findings of fact by the hearing officer, the Commissioner determines that the appeal of a decision of the Department filed by any party lacks substantial justification and was undertaken primarily for the purpose of delay or harassment, the Commissioner may enter an award in his or her 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 attorneys' fees and expenses of litigation, as the Commissioner deems just.

(7) 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 award is made.

(8) Unless the hearing officer's decision becomes the Department's final decision by operation of law as provided in paragraph (1) of Rule 274-1-.12, the decision of the Commissioner shall become the Department's final decision. Such final decision shall be the final Department decision for purposes of O.C.G.A. §50-13*et seq.*, the Georgia Administrative Procedure Act. The appeals process provided by these Rules shall be the administrative remedy only for decisions made by the Department pursuant to O.C.G.A. § 31-6-43, which involve the approval or denial of applications for certificates of need.

(9) A party responding to an appeal to the Commissioner may be entitled to reasonable attorneys' fees and costs of such appeal if it is determined that the appeal lacked substantial justification and was undertaken primarily for the purpose of delay or harassment; provided, however, that 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 decided in the administrative proceeding, nor shall it apply to costs accrued when the only argument raised by the appealing party is one described in this Rule.

Cite as Ga. Comp. R. & Regs. R. 274-1-.13
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Judicial Review" adopted as ER. 274-1-0.1-.13. F. July 21, 1983; eff. July 20, 1983, the date of adoption.
Amended: Permanent Rule entitled "Record of Proceedings" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Amended: F. July 9, 1985; eff. July 29, 1985.
Repealed: New Rule entitled "Place of Board Meeting" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Commissioner (Or His or Her Designee) Review" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.14. Repealed.

Cite as Ga. Comp. R. & Regs. R. 274-1-.14
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Judicial Review" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983.
Repealed: New Rule entitled "Scope of Board Meeting" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Amended: F. Oct. 14, 2005; eff. Nov. 3, 2005.
Repealed: F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.15. Repealed.

Cite as Ga. Comp. R. & Regs. R. 274-1-.15
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Presentation of Additional Evidence" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.16. Repealed.

Cite as Ga. Comp. R. & Regs. R. 274-1-.16
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Conduct of Board Meeting" adopted. F. Dec. 19, 1994; eff. Jan. 5, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.17. Repealed.

Cite as Ga. Comp. R. & Regs. R. 274-1-.17
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Decision of Board" adopted. F. Dec. 19, 1994; eff. Jan. 5, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.18. Prohibition Against Ex- Parte Contact.

After the issuance of a decision by the Department pursuant to O.C.G.A. § 31-6-43, no party to an appeal hearing, nor any person on behalf of such party, shall make any ex parte contact with the hearing officer appointed to conduct the appeal hearing or the Commissioner, or his or her designee, in regard to a project under appeal. This prohibition shall not be considered to prohibit Department staff from rendering technical and administrative assistance to the Appeal Panel or the Commissioner, if requested to do so.

Cite as Ga. Comp. R. & Regs. R. 274-1-.18
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Prohibition Against Ex Parte Contact" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule of same title adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.19. Record of Proceedings.

The record of proceedings shall be maintained at the Office of General Counsel, Department of Community Health, 2 Peachtree Street, N.W., 5th Floor, Atlanta, Georgia 30303, and copies of such records as well as copies of all documents received in evidence shall be available to the public for inspection and copying. All parties to an initial administrative hearing shall share equally in the costs of preparing the record for both the initial administrative hearing and any subsequent Commissioner review involving the case, including the cost of any transcript. An initial party to a contested case before the Appeal Panel who withdraws as a party, prior to the administrative hearing before the hearing officer but after the Master File(s) of the project(s) at issue have been prepared by the Department, shall share in the pro-rata costs of such preparation.

Cite as Ga. Comp. R. & Regs. R. 274-1-.19
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44.
History. Original Rule entitled "Record of Proceedings" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.
Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Amended: F. Sept. 29, 2006; eff. Oct. 19, 2006.
Repealed: New Rule of same title adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.

Rule 274-1-.20. Judicial Review.

(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 O.C.G.A. § 31-6-44.1.

(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 heat 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.

Cite as Ga. Comp. R. & Regs. R. 274-1-.20
Authority: O.C.G.A. Secs. 31-5A, 31-6, 31-6-44, 31-6-44.1.
History. Original Rule entitled "Final Decision; Judicial Review" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995.
Amended: F. Aug. 15, 2002; eff. Sept. 4, 2002.

Repealed: New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005.
Repealed: New Rule entitled "Judicial Review" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.