

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 53*

Children & Human Resources Committee Substitute Adopted 4/23/97

House Committee Substitute Favorable 7/17/97

Corrected Copy 7/21/97

Short Title: Penalties for Adult Care/Nursing Homes.

(Public)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"§ 131D-34. Penalties; remedies.

(a) Violations Classified. – The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred.

1 results in death or serious physical harm, or results in substantial risk
2 that death or serious physical harm will occur. Type A Violations shall
3 be abated or eliminated immediately. The Department shall require an
4 immediate plan of correction for each Type A Violation. The person
5 making the findings shall do the following:

6 a. Orally and immediately inform the administrator of the facility of
7 the specific findings and what must be done to correct them, and
8 set a date by which the violation must be corrected;

9 b. Within 10 working days of the investigation, confirm in writing
10 to the administrator the information provided orally under sub-
11 subdivision a. of this subdivision; and

12 c. Provide a copy of the written confirmation required under sub-
13 subdivision b. of this subdivision to the Department.

14 The Department shall impose a civil penalty in an amount not less than
15 two hundred fifty dollars (\$250.00) nor more than five thousand dollars
16 (\$5000) for each Type A ~~Violation~~. Violation in homes licensed for nine
17 or fewer beds. The Department shall impose a civil penalty in an
18 amount not less than five hundred dollars (\$500.00) nor more than ten
19 thousand dollars (\$10,000) for each Type A Violation in facilities
20 licensed for 10 or more beds.

21 (2) 'Type B Violation' means a violation by a facility of the regulations,
22 standards and requirements set forth in G.S. 131D-21 or applicable State
23 or federal laws and regulations governing the licensure or certification
24 of a facility which present a direct relationship to the health, safety, or
25 welfare of any resident, but which does not ~~create~~ result in substantial
26 risk that death or serious physical harm will occur. The Department may
27 impose a civil penalty in an amount up to two hundred fifty dollars (\$250.00)
28 for each Type B Violation. A citation for a Type B Violation which relates to
29 the physical plant, systems, or equipment of the facility and which causes no
30 harm to a resident of the facility shall provide 10 days to correct the violation.
31 If such a Type B Violation, that is not a repeat violation as specified in (b)(3)
32 of this section, is corrected within the 10 days, no civil penalty shall be
33 imposed. The Department shall require a plan of correction for each
34 Type B Violation and may require the facility to establish a specific
35 plan of correction within a specific time period to address the violation.

36 (b) Penalties for failure to correct violations within time specified.

37 (1) Where a facility has failed to correct a Type A Violation, the
38 Department shall assess the facility a civil penalty in the amount of up
39 to five hundred dollars (\$500.00) for each day that the deficiency
40 ~~continues~~ continues beyond the time specified in the plan of correction
41 approved by the Department or its authorized representative. The
42 Department or its authorized representative shall ~~conduct an on-site~~

- 1 ~~inspection of the facility to insure~~ ensure that the violation has been
2 corrected.
- 3 (2) Where a facility has failed to correct a Type B Violation within the time
4 specified for correction by the ~~Department,~~ Department or its authorized
5 representative, the Department shall assess the facility a civil penalty in
6 the amount of up to two hundred dollars (\$200.00) for each day that the
7 deficiency continues beyond the date specified for correction without
8 just reason for such failure. The Department or its authorized
9 representative shall ~~conduct an on-site inspection of the facility to insure~~
10 ensure that the violation has been corrected.
- 11 (3) The Department shall impose a civil penalty which is treble the amount
12 assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility
13 under the same management, ownership, or ~~control:~~
14 a. ~~Has control has~~ received a citation and paid a ~~fine,~~ or
15 b. ~~Has received a citation for which the Department in the~~
16 ~~discretion granted to it under subdivision (2) of subsection (a) did~~
17 ~~not impose a penalty,~~ penalty
18 for violating the same specific provision of a statute or regulation for
19 which it received a citation during the previous ~~six months or within the~~
20 ~~time period of the previous licensure inspection, whichever time period is~~
21 ~~longer.~~ 12 months. The counting of the ~~six month~~ 12-month period shall
22 be tolled during any time when the facility is being operated by a court-
23 appointed temporary manager pursuant to Article 4 of this Chapter.
- 24 (c) Factors to be considered in determining amount of initial penalty. In
25 determining the amount of the initial penalty to be imposed under this section, the
26 Department shall consider the following factors:
- 27 (1) The gravity of the violation, including the ~~probability fact~~ that death or
28 serious physical harm to a resident ~~will result or~~ has resulted; the
29 severity of the actual or potential harm, and the extent to which the
30 provisions of the applicable statutes or regulations were violated;
- 31 (1a) The gravity of the violation, including the probability that death or
32 serious physical harm to a resident will result; the severity of the
33 potential harm, and the extent to which the provisions of the applicable
34 statutes or regulations were violated;
- 35 (1b) The gravity of the violation, including the probability that death or
36 serious physical harm to a resident may result; the severity of the
37 potential harm, and the extent to which the provisions of the applicable
38 statutes or regulations were violated;
- 39 (2) The reasonable diligence exercised by the licensee to comply with G.S.
40 131E-256 and G.S. 131E-265 and other applicable State and federal
41 laws and regulations;
- 42 (2a) ~~and efforts~~ Efforts by the licensee to correct violations;

1 (3) The number and type of previous violations committed by the licensee;
2 licensee within the past 36 months;

3 (4) The amount of assessment necessary to insure immediate and continued
4 compliance; and

5 (5) The number of patients put at risk by the violation.

6 (c1) The facts found to support the factors in subsection (c) of this section shall be the
7 basis in determining the amount of the penalty. The Secretary shall document the
8 findings in written record and shall make the written record available to all affected
9 parties including:

10 (1) The penalty review committee;

11 (2) The local department of social services who is responsible for oversight
12 of the facility involved;

13 (3) The licensee involved;

14 (4) The residents affected; and

15 (5) The family members or guardians of the residents affected.

16 (c2) Local county departments of social services and Division of Facilities Services
17 personnel shall submit proposed penalty recommendations to the Department within 45
18 days of the citation of a violation.

19 (d) The Department shall impose a civil penalty on any facility which refuses to
20 allow an authorized representative of the Department to inspect the premises and records
21 of the facility.

22 (e) Any facility wishing to contest a penalty shall be entitled to an administrative
23 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General
24 Statutes. A petition for a contested case shall be filed within 30 days after the Department
25 mails a notice of penalty to a licensee. ~~One issue at the administrative hearing shall be the~~
26 ~~reasonableness of the amount of any civil penalty assessed by the Department.~~ At least the
27 following specific issues shall be addressed at the administrative hearing:

28 (1) The reasonableness of the amount of any civil penalty assessed, and

29 (2) The degree to which each factor has been evaluated pursuant to
30 subsection (c) of this section to be considered in determining the amount
31 of an initial penalty.

32 If a civil penalty is found to be ~~unreasonable, unreasonable~~ or if the evaluation of each
33 ~~factor is found to be incomplete,~~ the hearing officer may recommend that the penalty be
34 ~~modified-adjusted~~ accordingly.

35 (f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty
36 imposed by the Department of Human Resources under this section shall commence on
37 the day the violation began.

38 (g) The Secretary may bring a civil action in the superior court of the county
39 wherein the violation occurred to recover the amount of the administrative penalty
40 whenever a facility:

41 (1) Which has not requested an administrative hearing fails to pay the
42 penalty within 60 days after being notified of the penalty, or

1 (2) Which has requested an administrative hearing fails to pay the penalty
2 within 60 days after receipt of a written copy of the decision as provided
3 in G.S. 150B-36.

4 (g1) In lieu of assessing an administrative penalty, the Secretary may order a
5 facility to provide staff training if:

6 (1) The cost of training does not exceed one thousand dollars (\$1,000);

7 (2) The penalty would be for the facility's only violation within a 12-month
8 period preceding the current violation and while the facility is under the
9 same management; and

10 (3) The training is:

11 a. Specific to the violation;

12 b. Approved by the Department of Human Resources; and

13 c. Taught by someone approved by the Department and other than
14 the provider.

15 (h) The Secretary shall establish a penalty review committee within the
16 Department, which shall review administrative penalties assessed pursuant to this section
17 and pursuant to ~~G.S. 131E-129.~~ G.S. 131E-129 as follows: ~~The Secretary shall ensure that~~
18 ~~departmental staff review of local departments of social services' penalty recommendations along~~
19 ~~with prepared staff recommendations for the penalty review committee are completed within 60~~
20 ~~days of receipt by the Department of the local recommendations. The Penalty Review Committee~~
21 ~~shall not review penalty recommendations agreed to by the Department and the long term care~~
22 ~~facility for Type B violations except those violations that have been previously cited against the~~
23 ~~long term care facility during the previous 12 months or within the time period of the previous~~
24 ~~licensure inspection, whichever time period is longer.~~

25 (1) The Secretary shall:

26 a. Administer the work of the committee;

27 b. Ensure provision of departmental staff review;

28 c. Evaluate the local departments of social services and the Division
29 of Facility Services' penalty recommendations;

30 d. Ensure that recommendations by the Department are complete
31 and submitted within 60 days of receipt of the initial
32 recommendations from the local departments of social services
33 or the Division of Facility Services; and

34 e. Provide written copies of all procedures to:

35 1. The penalty review committee;

36 2. The local department of social services who is responsible
37 for oversight of the facility involved;

38 3. The licensee involved;

39 4. The residents affected; and

40 5. The families or guardians of the residents affected.

41 (2) The Secretary shall ensure that the Nursing Home/Adult Care Home
42 Penalty Review Committee established by this subsection is comprised

1 of nine members. At least one member shall be appointed from each of
2 the following categories:

- 3 (1)a. A licensed pharmacist;
4 (2)b. A registered nurse experienced in long-term care;
5 (3)c. A representative of a nursing home;
6 (4)d. A representative of an adult care home; and
7 (5)e. Two public members. One shall be a 'near' relative of a
8 nursing home patient, chosen from a list prepared by the
9 Office of State Long-Term Care Ombudsman, Division
10 of Aging, Department of Human Resources. One shall
11 be a 'near' relative of a rest home patient, chosen from a
12 list prepared by the Office of State Long-Term Care
13 Ombudsman, Division of Aging, Department of Human
14 Resources. For purposes of this subdivision, a 'near'
15 relative is a spouse, sibling, parent, child, grandparent,
16 or grandchild.

17 (3) Neither the pharmacist, nurse, nor public members appointed
18 under this subsection nor any member of their immediate families
19 shall be employed by or own any interest in a nursing home or adult
20 care home.

21 (4) Prior to serving on the committee, each member shall complete a
22 training program provided by the Department of Human Resources that
23 covers standards of care and applicable State and federal laws and
24 regulations governing facilities licensed under Chapter 131D and
25 Chapter 131E of the General Statutes.

26 (5) Each member of the Committee shall serve a term of two years. The
27 initial terms of the members shall commence on August 3, 1989. The
28 Secretary shall fill all vacancies. Unexcused absences from three
29 consecutive meetings constitute resignation from the Committee."

30 Section 2. G.S. 131E-129 reads as rewritten:

31 "**§ 131E-129. Penalties.**

32 (a) Violations classified. The Department shall impose an administrative penalty
33 in accordance with provisions of this Part on any facility which is found to be in violation
34 of the requirements of G.S. 131E-117 or applicable State and federal laws and
35 regulations. Citations issued for violations shall be classified according to the nature of
36 the violation as follows:

- 37 (1) 'Type A Violation' means a violation by a facility of the regulations,
38 standards, and requirements set forth in G.S. 131E-117, or applicable
39 State or federal laws and regulations governing the licensure or
40 certification of a facility which ~~creates substantial risk that death or serious~~
41 ~~physical harm to a resident will occur or where such harm has occurred.~~
42 results in death or serious physical harm, or results in substantial risk
43 that death or serious physical harm will occur. Type A Violations shall

1 be abated or eliminated immediately. The Department shall require an
2 immediate plan of correction for each Type A Violation. The person
3 making the findings shall do the following:

- 4 a. Orally and immediately inform the administrator of the facility of
5 the specific findings and what must be done to correct them and
6 set a date by which the violation must be corrected;
7 b. Within 10 working days of the investigation, confirm in writing
8 to the administrator the information provided orally under sub-
9 subdivision a. of this subdivision; and
10 c. Provide a copy of the written confirmation required under sub-
11 subdivision b. of this subdivision to the Department.

12 The Department shall impose a civil penalty in an amount not less than
13 ~~two hundred fifty dollars (\$250.00) nor more than five thousand dollars~~
14 ~~(\$5,000) five hundred dollars (\$500.00) nor more than ten thousand~~
15 ~~dollars (\$10,000) for each Type A Violation.~~

- 16 (2) 'Type B Violation' means a violation by a facility of the regulations,
17 standards and requirements set forth in G.S. 131E-117 or applicable
18 State or federal laws and regulations governing the licensure or
19 certification of a facility which presents a direct relationship to the
20 health, safety, or welfare of any resident, but which does not ~~create~~
21 result in substantial risk that death or serious physical harm will occur.
22 ~~The Department may impose a civil penalty in an amount up to five hundred~~
23 ~~dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation~~
24 ~~which relates to the physical plant, systems, or equipment of the facility and~~
25 ~~which causes no harm to a resident of the facility shall provide 10 days to~~
26 ~~correct the violation. If such a Type B Violation, which is not a repeat~~
27 ~~violation as specified in (b)(3) of this section, is corrected within the 10 days,~~
28 ~~no civil penalty shall be imposed. The Department shall require a plan of~~
29 correction for each Type B Violation and may require the facility to
30 establish a specific plan of correction within a specific time period to
31 address the violation.

- 32 (b) Penalties for failure to correct violations within time specified.

- 33 (1) Where a facility has failed to correct a Type A Violation, the
34 Department shall assess the facility a civil penalty in the amount of up
35 to five hundred dollars (\$500.00) for each day that the deficiency
36 ~~continues.~~ continues beyond the time specified in the plan of correction
37 approved by the Department or its authorized representative. The
38 Department or its authorized representative shall ~~conduct an on-site~~
39 inspection of the facility to ~~insure~~ ensure that the violation has been
40 corrected.
41 (2) Where a facility has failed to correct a Type B Violation within the time
42 specified for correction by the ~~Department,~~ Department or its authorized
43 representative, the Department shall assess the facility a civil penalty in

1 the amount of up to two hundred dollars (\$200.00) for each day that the
2 deficiency continues beyond the ~~date specified for correction time~~
3 specified in the plan of correction approved by the Department or its
4 authorized representative without just reason for such failure. The
5 Department or its authorized representative shall ~~conduct an on-site~~
6 ~~inspection of the facility to insure~~ ensure that the violation has been
7 corrected.

8 (3) The Department shall impose a civil penalty which is treble the amount
9 assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility
10 under the same management, ownership, or ~~control~~:

11 a. ~~Has control~~ has received a citation and paid a fine, or

12 b. ~~Has received a citation for which the Department in its discretion~~
13 ~~granted to it under subdivision (2) of subsection (a) but did not~~
14 ~~impose a penalty, penalty~~

15 for violating the same specific provision of a statute or regulation for
16 which it has received a citation during the previous 12 ~~months or within~~
17 ~~the time period of the previous licensure inspection, whichever time period is~~
18 ~~longer.~~ months. The counting of the 12-month period shall be tolled
19 during any time when the facility is being operated by a court-appointed
20 temporary manager pursuant to Article 13 of this Chapter.

21 (c) Factors to be considered in determining amount of initial penalty. In
22 determining the amount of the initial penalty to be imposed under this section, the
23 Department shall consider the following factors:

24 (1) The gravity of the violation, including the ~~probability fact~~ that death or
25 serious physical harm to a resident ~~will result or has resulted~~; the severity
26 of the actual or potential harm, and the extent to which the provisions of
27 the applicable statutes or regulations were violated;

28 (1a) The gravity of the violation, including the probability that death or
29 serious physical harm to a resident will result; the severity of the
30 potential harm, and the extent to which the provisions of the applicable
31 statutes or regulations were violated;

32 (1b) The gravity of the violation, including the probability that death or
33 serious physical harm to a resident may result; the severity of the
34 potential harm, and the extent to which the provisions of the applicable
35 statutes or regulations were violated;

36 (2) The reasonable diligence exercised by the licensee to comply with G.S.
37 131E-256 and G.S. 131E-265 and other applicable State and federal
38 laws and regulations;

39 (2a) ~~and efforts~~ Efforts by the licensee to correct violations;

40 (3) The number and type of previous violations committed by the ~~licensee;~~
41 licensee within the past 36 months;

42 (4) The amount of assessment necessary to insure immediate and continued
43 compliance; and

1 (5) The number of patients put at risk by the violation.
2 (c1) The facts found to support the factors in subsection (c) of this section shall be
3 the basis in determining the amount of the penalty. The Secretary shall document the
4 findings in written record and shall make the written record available to all affected
5 parties including:

- 6 (1) The penalty review committee;
7 (2) The local department of social services who is responsible for oversight
8 of the facility involved;
9 (3) The licensee involved;
10 (4) The residents affected; and
11 (5) The family members or guardians of the residents affected.

12 (c2) Local county departments of social services and Division of Facilities Services
13 personnel shall submit proposed penalty recommendations to the Department within 45
14 days of the citation of a violation.

15 (d) The Department shall impose a civil penalty on any facility which refuses to
16 allow an authorized representative of the Department to inspect the premises and records
17 of the facility.

18 (e) Any facility wishing to contest a penalty shall be entitled to an administrative
19 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General
20 Statutes. ~~One issue at the administrative hearing shall be the reasonableness of the amount of~~
21 ~~any civil penalty assessed by the Department.~~ At least the following specific issues shall be
22 addressed at the administrative hearing:

- 23 (1) The reasonableness of the amount of any civil penalty assessed, and
24 (2) The degree to which each factor has been evaluated pursuant to
25 subsection (c) of this section to be considered in determining the amount
26 of an initial penalty.

27 If a civil penalty is found to be ~~unreasonable, unreasonable or if the evaluation of each~~
28 ~~factor is found to be incomplete,~~ the hearing officer may recommend that the penalty be
29 ~~modified-adjusted~~ accordingly.

30 (f) The Secretary may bring a civil action in the superior court of the county
31 wherein the violation occurred to recover the amount of the administrative penalty
32 whenever a facility:

- 33 (1) Which has not requested an administrative hearing fails to pay the
34 penalty within 60 days after being notified of the penalty; or
35 (2) Which has requested an administrative hearing fails to pay the penalty
36 within 60 days after receipt of a written copy of the decision as provided
37 in G.S. 150B-36.

38 (g) The penalty review committee established pursuant to G.S. 131D-34(h) shall
39 review administrative penalties assessed pursuant to this section, ~~provided, however, that~~
40 ~~the Penalty Review Committee shall not review penalty recommendations agreed to by the~~
41 ~~Department and the long-term care facility for Type B violations except those violations that~~
42 ~~have been previously cited against the long-term care facility during the previous 12 months, or~~

1 ~~within the time period of the previous licensure inspection, whichever time period is longer.~~
2 section.

3 (g1) In lieu of assessing an administrative penalty, the Secretary may order a
4 facility to provide staff training if:

5 (1) The cost of training does not exceed one thousand dollars (\$1,000);

6 (2) The penalty would be for the facility's only violation within a 12-month
7 period preceding the current violation and while the facility is under the
8 same management; and

9 (3) The training is:

10 a. Specific to the violation;

11 b. Approved by the Department of Human Resources; and

12 c. Taught by someone approved by the Department and other than
13 the provider.

14 (h) The Department shall not assess an administrative penalty against a facility
15 under this section if a civil monetary penalty has been assessed for the same violation
16 under federal enforcement laws and regulations."

17 Section 3. This act becomes effective August 1, 1997, and applies to violations
18 committed on or after that date.