

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE DRH50131-LB-230A (03/08)

Short Title: DHHS Penalties and Remedies Revision.-AB

(Public)

Sponsors: Representative Lewis.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT REVISING PENALTIES AND REMEDIES CONCERNING HEALTH  
3 FACILITIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 122C-24.1 reads as rewritten:

6 "§ 122C-24.1. Penalties; remedies.

7 (a) ~~Violations Classified.~~ Violation Classification and Penalties. – The Department of  
8 Health and Human Services shall impose an administrative penalty in accordance with  
9 provisions of this Article on any facility licensed under this Article which is found to be in  
10 violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations.  
11 Citations issued for violations shall be classified and penalties assessed according to the nature  
12 of the violation as follows:

13 (1) "Type ~~A~~A1 Violation" means a violation by a facility of the regulations,  
14 standards, and requirements set forth in Article 2 or 3 of this Chapter or  
15 applicable State or federal laws and regulations governing the licensure or  
16 certification of a facility which results in death or serious physical harm,  
17 abuse, neglect, or exploitation. ~~harm, or results in substantial risk that death~~  
18 ~~or serious physical harm will occur. Type A Violations shall be abated or~~  
19 ~~eliminated immediately. The Department shall require an immediate plan of~~  
20 ~~correction for each Type A Violation.~~ The person making the findings shall  
21 do the following:

22 a. Orally and immediately inform the ~~administrator of the facility of the~~  
23 Type A1 Violation and the specific findings and what must be done  
24 to correct them, and set a date by which the violation must be  
25 corrected; findings.

26 a1. Require a written plan of protection regarding how the facility will  
27 immediately abate the Type A1 Violation in order to protect clients  
28 from further risk or additional harm.

29 b. Within ~~10~~15 working days of the investigation, ~~confirm in writing to~~  
30 ~~the administrator the information provided orally under~~  
31 ~~sub-subdivision a. of this subdivision; and send a report of the~~  
32 findings to the facility.

33 c. ~~Provide a copy of the written confirmation required under~~  
34 ~~sub-subdivision b. of this subdivision to the Department. Require a~~  
35 plan of correction to be submitted to the Department, based on a



1 written report of the findings, that describes steps the facility will  
2 take to achieve and maintain compliance.

3 The Department shall impose a civil penalty in an amount not less than five  
4 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for  
5 each Type A–A1 Violation in facilities or programs that serve six or fewer  
6 persons. The Department shall impose a civil penalty in an amount not less  
7 than one thousand dollars (\$1,000) nor more than twenty thousand dollars  
8 (\$20,000) for each Type A–A1 Violation in facilities or programs that serve  
9 seven or more persons.

10 Where a facility has failed to correct a Type A1 Violation, the Department  
11 shall assess the facility a civil penalty in the amount of up to one thousand  
12 dollars (\$1,000) for each day that the violation continues beyond the time  
13 specified for correction. The Department or its authorized representative  
14 shall determine whether the violation has been corrected.

15 (1a) "Type A2 Violation" means a violation by a facility of the regulations,  
16 standards, and requirements set forth in Article 2 or 3 of this Chapter or  
17 applicable State or federal laws and regulations governing the licensure or  
18 certification of a facility which results in substantial risk that death or serious  
19 physical harm, abuse, neglect, or exploitation will occur. The person making  
20 the findings shall do the following:

- 21 a. Orally and immediately inform the facility of the Type A2 Violation  
22 and the specific findings.  
23 b. Require a written plan of protection regarding how the facility will  
24 immediately abate the Type A2 Violation in order to protect clients  
25 or residents from further risk or additional harm.  
26 c. Within 15 working days of the investigation, send a report of the  
27 findings to the facility.  
28 d. Require a plan of correction to be submitted to the Department, based  
29 on the written report of the findings, that describes steps the facility  
30 will take to achieve and maintain compliance.

31 The violation or violations shall be corrected within the time specified for  
32 correction by the Department or its authorized representative. If corrected  
33 within the said time frame, no penalty shall be assessed. Where a facility has  
34 failed to correct a Type A2 Violation, the Department shall assess the  
35 facility a civil penalty in the amount of up to one thousand dollars (\$1,000)  
36 for each day that the deficiency continues beyond the time specified for  
37 correction by the Department or its authorized representative. The  
38 Department or its authorized representative shall determine whether the  
39 violation has been corrected.

40 (1b) "Past Corrected Type A1 or Type A2 Violation" means the violation was not  
41 previously identified by the Department or its authorized representative but  
42 has been corrected. A penalty may not be assessed if:

- 43 a. The violation or violations were abated immediately; and  
44 b. The facility implemented corrective measures to achieve and  
45 maintain compliance.

46 (2) "Type B Violation" means a violation by a facility of the regulations,  
47 standards, and requirements set forth in Article 2 or 3 of this Chapter or  
48 applicable State or federal laws and regulations governing the licensure or  
49 certification of a facility which ~~present a direct relationship~~ is detrimental  
50 to the health, safety, or welfare of any client or patient, but which does not  
51 result in substantial risk that death or serious physical ~~harm~~ harm, abuse,

neglect, or exploitation will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation. The person making the findings shall do the following:

- a. Orally and immediately inform the facility of the Type B Violation and the specific findings.
- b. Require a written plan of protection regarding how the facility will immediately abate the Type B Violation in order to protect clients or residents from further risk or additional harm.
- c. Within 15 working days of the investigation, send a report of the findings to the facility.
- d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

(b) ~~Penalties for Failure to Correct Violations Within Time Specified.~~

- (1) ~~Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.~~
- (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars (\$400.00) for each day that the ~~deficiency violation~~ continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.
- (3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under ~~subdivision (1) of this subsection (a) of this section~~ when a facility under the same ~~management, ownership, or control~~ management or ownership has received a violation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and has received a citation and paid a penalty for the current violation is for ~~violating~~ the same specific provision of a statute or regulation for which it received a ~~citation violation~~ during the previous 12 months.

(c) Factors to Be Considered in Determining Amount of Initial Penalty. – In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur, and this has not been corrected within the time specified by the Department or its authorized representative; The gravity of the violation, including the fact that death or serious physical harm to a client or patient has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for client death, did occur; The gravity of the violation, including the probability that death or serious physical harm to a client or patient will

- 1 result; the severity of the potential harm, and the extent to which the  
2 provisions of the applicable statutes or regulations were violated;
- 3 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk  
4 for client death, did occur;~~The gravity of the violation, including the~~  
5 ~~probability that death or serious physical harm to a client or patient may~~  
6 ~~result; the severity of the potential harm, and the extent to which the~~  
7 ~~provisions of the applicable statutes or regulations were violated;~~
- 8 (3a) A client died;
- 9 (3b) A client died and there is substantial risk to others for serious physical harm,  
10 abuse, neglect, or exploitation;
- 11 (3c) A client died and there is substantial risk for further client death;
- 12 (4) The reasonable diligence exercised by the licensee to comply with  
13 G.S. 131E-256 and other applicable State and federal laws and regulations;
- 14 (5) Efforts by the licensee to correct violations;
- 15 (6) The number and type of previous violations committed by the licensee  
16 within the past 36 months; and
- 17 ~~(7) The amount of assessment necessary to ensure immediate and continued~~  
18 ~~compliance; and~~
- 19 (8) The number of clients or patients put at risk by the violation.
- 20 (d) The facts found to support the factors in subsection (c) of this section shall be the  
21 basis in determining the amount of the penalty. The Department shall document the findings in  
22 written record and shall make the written record available to all affected parties including:
- 23 (1) The licensee involved;
- 24 (2) The clients or patients affected; and
- 25 (3) The family members or guardians of the clients or patients affected.
- 26 (e) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any  
27 facility which refuses to allow an authorized representative of the Department to inspect the  
28 premises and records of the facility.
- 29 (f) Any facility wishing to contest a penalty shall be entitled to an administrative  
30 hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case  
31 shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At  
32 least the following specific issues shall be addressed at the administrative hearing:
- 33 (1) The reasonableness of the amount of any civil penalty assessed, and
- 34 (2) The degree to which each factor has been evaluated pursuant to subsection  
35 (c) of this section to be considered in determining the amount of an initial  
36 penalty.
- 37 If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to  
38 be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.
- 39 (g) Any penalty imposed by the Department of Health and Human Services under this  
40 section shall commence on the day the violation began.
- 41 (h) The Secretary may bring a civil action in the superior court of the county wherein  
42 the violation occurred to recover the amount of the administrative penalty whenever a facility:
- 43 (1) Which has not requested an administrative hearing fails to pay the penalty  
44 within 60 days after being notified of the penalty, or
- 45 (2) Which has requested an administrative hearing fails to pay the penalty  
46 within 60 days after receipt of a written copy of the decision as provided in  
47 G.S. 150B-36.
- 48 (i) In lieu of assessing ~~an~~ all or some of the administrative penalty, the Secretary may  
49 order a facility to provide staff training ~~if~~ if the training is:
- 50 (1) Specific to the violation;
- 51 (2) Approved by the Department of Health and Human Services; and

1           (3) Taught by someone approved by the Department.

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

5           (2) ~~The training is:~~

6           a. ~~Specific to the violation;~~

7           b. ~~Approved by the Department of Health and Human Services; and~~

8           e. ~~Taught by someone approved by the Department and other than the~~  
9 ~~provider.~~

10           (j) The clear proceeds of civil penalties provided for in this section shall be remitted to  
11 the State Treasurer for deposit in accordance with State law.

12           (k) In considering renewal of a license, the Department shall not renew a license if  
13 outstanding fines and penalties imposed by the Department against the facility or program have  
14 not been paid. Fines and penalties for which an appeal is pending are exempt from  
15 consideration for nonrenewal under this subsection."

16           **SECTION 2.** G.S. 131D-34 reads as rewritten:

17 **"§ 131D-34. Penalties; remedies.**

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

24           (1) "Type ~~A-A1~~ Violation" means a violation by a facility of the regulations,  
25 standards, and requirements set forth in G.S. 131D-21 or applicable State or  
26 federal laws and regulations governing the licensure or certification of a  
27 facility which results in death or serious physical harm, abuse, neglect, or  
28 exploitation, or results in substantial risk that death or serious physical harm  
29 will occur. Type A Violations shall be abated or eliminated immediately.  
30 ~~The Department shall require an immediate plan of correction for each Type~~  
31 ~~A Violation.~~ The person making the findings shall do the following:

32           a. Orally and immediately inform the ~~administrator of the facility of the~~  
33 Type A1 Violation and the specific findings ~~findings, and what must~~  
34 ~~be done to correct them, and set a date by which the violation must~~  
35 ~~be corrected;~~

36           a1. Require a written plan of protection regarding how the facility will  
37 immediately abate the Type A1 Violation in order to protect residents  
38 from further risk or additional harm.

39           b. Within ~~10-15~~ working days of the investigation, ~~confirm in writing to~~  
40 ~~the administrator the information provided orally under~~  
41 ~~sub-subdivision a. of this subdivision; and send a report of the~~  
42 findings to the facility.

43           c. ~~Provide a copy of the written confirmation required under~~  
44 ~~sub-subdivision b. of this subdivision to the Department. Require a~~  
45 plan of correction to be submitted to the Department, based on the  
46 written report of the findings, that describes steps the facility will  
47 take to achieve and maintain compliance.

48           The Department shall impose a civil penalty in an amount not less than five  
49 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for  
50 each Type ~~A-A1~~ Violation in ~~homes~~ facilities licensed for six or fewer beds.  
51           The Department shall impose a civil penalty in an amount not less than one

1 thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000)  
2 for each Type ~~A~~A1 Violation in facilities licensed for seven or more beds.  
3 Where a facility has failed to correct a Type A1 Violation, the Department  
4 shall assess the facility a civil penalty in the amount of up to one thousand  
5 dollars (\$1,000) for each day that the violation continues beyond the time  
6 specified for correction by the Department or its authorized representative.  
7 The Department or its authorized representative shall determine whether the  
8 violation has been corrected.

9 (1a) "Type A2 Violation" means a violation by a facility of the regulations,  
10 standards, and requirements set forth in G.S. 131D-21 or applicable State or  
11 federal laws and regulations governing the licensure or certification of a  
12 facility which results in substantial risk that death or serious physical harm,  
13 abuse, neglect, or exploitation will occur. The person making the findings  
14 shall do the following:

- 15 a. Orally and immediately inform the facility of the Type A2 Violation  
16 and the specific findings.
- 17 b. Require a written plan of protection regarding how the facility will  
18 immediately abate the Type A2 Violation in order to protect clients  
19 or residents from further risk or additional harm.
- 20 c. Within 15 working days of the investigation, send a report of the  
21 findings to the facility.
- 22 d. Require a plan of correction to be submitted to the Department, based  
23 on the written report of the findings, that describes steps the facility  
24 will take to achieve and maintain compliance.

25 The violation or violations shall be corrected within the time specified for  
26 correction by the Department or its authorized representative. If corrected  
27 within the said time frame, no penalty shall be assessed. Where a facility has  
28 failed to correct a Type A2 Violation, the Department shall assess the  
29 facility a civil penalty in the amount of up to one thousand dollars (\$1,000)  
30 for each day that the deficiency continues beyond the time specified for  
31 correction by the Department or its authorized representative. The  
32 Department or its authorized representative shall determine whether the  
33 violation has been corrected.

34 (1b) "Past Corrected Type A1 or Type A2 Violation" means the violation was not  
35 previously identified by the Department or its authorized representative but  
36 has been corrected. A penalty may not be assessed if:

- 37 a. The violation or violations were abated immediately; and
- 38 b. The facility implemented corrective measures to achieve and  
39 maintain compliance.

40 (2) "Type B Violation" means a violation by a facility of the regulations,  
41 standards and requirements set forth in G.S. 131D-21 or applicable State or  
42 federal laws and regulations governing the licensure or certification of a  
43 facility which ~~is detrimental present a direct relationship~~ to the health,  
44 safety, or welfare of any resident, but which does not result in substantial  
45 risk that death or serious physical ~~harm~~ harm, abuse, neglect, or exploitation  
46 will occur. ~~The Department shall require a plan of correction for each Type~~  
47 ~~B~~ Violation and may require the facility to establish a specific plan of  
48 correction within a reasonable time period to address the violation. The  
49 required plan cannot exceed requirements imposed by existing rule or  
50 law. The person making the findings shall do the following:

- 1                   a.       Orally and immediately inform the facility of the Type B Violation  
2                               and the specific findings.
- 3                   b.       Require a written plan of protection regarding how the facility will  
4                               immediately abate the Type B Violation in order to protect residents  
5                               from further risk or additional harm.
- 6                   c.       Within 15 working days of the investigation, send a report of the  
7                               findings to the facility.
- 8                   d.       Require a plan of correction to be submitted to the Department, based  
9                               on the written report of the findings, that describes steps the facility  
10                              will take to achieve and maintain compliance.
- 11       (b)       ~~Penalties for failure to correct violations within time specified.~~
- 12               (1)       ~~Where a facility has failed to correct a Type A Violation, the Department~~  
13                              ~~shall assess the facility a civil penalty in the amount of up to one thousand~~  
14                              ~~dollars (\$1,000) for each day that the deficiency continues beyond the time~~  
15                              ~~specified in the plan of correction approved by the Department or its~~  
16                              ~~authorized representative. The Department or its authorized representative~~  
17                              ~~shall ensure that the violation has been corrected.~~
- 18               (2)       Where a facility has failed to correct a Type B Violation within the time  
19                              specified for correction by the Department or its authorized representative,  
20                              the Department shall assess the facility a civil penalty in the amount of up to  
21                              four hundred dollars (\$400.00) for each day that the ~~deficiency-violation~~  
22                              continues beyond the date specified for correction without just reason for  
23                              such failure. The Department or its authorized representative shall ensure  
24                              that the violation has been corrected.
- 25               (3)       Repeat Violations. – The Department shall impose a civil penalty which is  
26                              treble the amount assessed under ~~subdivision (1) of subsection (a) of this~~  
27                              ~~section~~ when a facility under the same ~~management, ownership, or control~~  
28                              ~~has received a citation-management or ownership has received a violation~~  
29                              during the previous 12 months for which the appeal rights are exhausted and  
30                              penalty payment is expected or has occurred, and the current violation is and  
31                              ~~paid a penalty for violating the same specific provision of a statute or~~  
32                              ~~regulation for which it received a citation-violation during the previous 12~~  
33                              months. The counting of the 12-month period shall be tolled during any time  
34                              when the facility is being operated by a court-appointed temporary manager  
35                              pursuant to Article 4 of this Chapter.
- 36       (c)       ~~Factors to be considered in determining amount of initial penalty.~~ Factors to Be  
37       Considered in Determining Amount of Initial Penalty.
- 38       In determining the amount of the initial penalty to be imposed under this section, the  
39       Department shall consider the following factors:
- 40               (1)       ~~The gravity of the violation, including the fact that death or serious physical~~  
41                              ~~harm to a resident has resulted; the severity of the actual or potential harm,~~  
42                              ~~and the extent to which the provisions of the applicable statutes or~~  
43                              ~~regulations were violated; There is substantial risk that serious physical harm,~~  
44                              ~~abuse, neglect, or exploitation will occur;~~
- 45               (1a)       ~~The gravity of the violation, including the probability that death or serious~~  
46                              ~~physical harm to a resident will result; the severity of the potential harm, and~~  
47                              ~~the extent to which the provisions of the applicable statutes or regulations~~  
48                              ~~were violated; Serious harm, abuse, neglect, or exploitation, without~~  
49                              ~~substantial risk for resident death, did occur;~~
- 50               (1b)       ~~The gravity of the violation, including the probability that death or serious~~  
51                              ~~physical harm to a resident may result; the severity of the potential harm,~~

1 ~~and the extent to which the provisions of the applicable statutes or~~  
2 ~~regulations were violated; Serious physical harm, abuse, neglect, or~~  
3 ~~exploitation, with substantial risk for resident death, did occur;~~

4 (1c) A resident died;

5 (1d) A resident died and there is substantial risk to others for serious physical  
6 ~~harm, abuse, neglect, or exploitation;~~

7 (1e) A resident died and there is substantial risk for further resident death;

8 (2) The reasonable diligence exercised by the licensee to comply with  
9 G.S. 131E-256 and ~~G.S. 131E-265~~ G.S. 131D-21 and other applicable State  
10 and federal laws and regulations;

11 (2a) Efforts by the licensee to correct violations;

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

14 (4) ~~The amount of assessment necessary to insure immediate and continued~~  
15 ~~compliance; and~~

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

17 (c1) The facts found to support the factors in subsection (c) of this section shall be the  
18 basis in determining the amount of the penalty. The ~~Secretary~~ Department shall document the  
19 findings in written record and shall make the written record available to all affected parties  
20 including:

21 (1) The penalty review committee;

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

24 (3) The licensee involved;

25 (4) The residents affected; and

26 (5) ~~The family members or guardians of the residents affected. Those individuals~~  
27 ~~lawfully designated by the affected resident to make health care decisions~~  
28 ~~for the resident.~~

29 (c2) Local county departments of social services and Division of Health Service  
30 Regulation personnel shall submit proposed penalty recommendations to the Department within  
31 45 days of the citation of a violation.

32 (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any  
33 facility which refuses to allow an authorized representative of the Department to inspect the  
34 premises and records of the facility.

35 (d1) The Department shall impose a civil penalty on any applicant for licensure who  
36 provides false information or omits information on the portion of the licensure application  
37 requesting information on owners, administrators, principals, or affiliates of the facility. The  
38 amount of the penalty shall be as is prescribed for a ~~Type A-A1~~ Violation.

39 (e) Any facility wishing to contest a penalty shall be entitled to an administrative  
40 hearing as provided in ~~the Administrative Procedure Act, Chapter 150B of the General Statutes.~~  
41 A petition for a contested case shall be filed within 30 days after the Department mails a notice  
42 of penalty to a licensee. At least the following specific issues shall be addressed at the  
43 administrative hearing:

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

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

48 If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to  
49 be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.



1 (f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed  
2 by the Department of Health and Human Services under this section shall commence on the  
3 day the violation ~~began~~is imposed.

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

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

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

11 (g1) In lieu of assessing ~~an all~~or some of the administrative penalty, the Secretary may  
12 order a facility to provide staff training ~~if~~if the training is:

13 (1) Specific to the violation;

14 (2) Approved by the Department of Health and Human Services; and

15 (3) Taught by someone approved by the Department.

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

17 ~~(2) The penalty would be for the facility's only violation within a 12 month~~  
18 ~~period preceding the current violation and while the facility is under the~~  
19 ~~same management; and~~

20 ~~(3) The training is:~~

21 a. ~~Specific to the violation;~~

22 b. ~~Approved by the Department of Health and Human Services; and~~

23 c. ~~Taught by someone approved by the Department and other than the~~  
24 ~~provider.~~

25 (h) The Secretary shall establish a penalty review committee within the Department,  
26 which shall meet as often as needed, but no less frequently than once each quarter of the year,  
27 to review administrative penalties assessed pursuant to this section and pursuant to  
28 G.S. 131E-129 as follows:

29 (1) The Secretary shall administer the work of the Committee and provide  
30 public notice of its meetings via Web site, and provide direct notice to the  
31 following parties involved in the penalties the Committee will be reviewing:

32 a. The licensed provider, who upon receipt of the notice, shall post the  
33 notice of the scheduled Penalty Review Committee meeting in a  
34 conspicuous place available to residents, family members, and the  
35 public;

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

38 c. The residents affected; and

39 d. Those individuals lawfully designated by the affected resident to  
40 make health care decisions for the resident.

41 (2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty  
42 Review Committee established by this subsection is comprised of nine  
43 members. At least one member shall be appointed from each of the  
44 following categories:

45 a. A licensed pharmacist;

46 b. A registered nurse experienced in long term care;

47 c. A representative of a nursing home;

48 d. A representative of an adult care home; and

49 e. Two public members. One shall be a "near" relative of a nursing  
50 home patient, chosen from a list prepared by the Office of State Long  
51 Term Care Ombudsman, Division of Aging, Department of Health

and Human Services. One shall be a "near" relative of a rest home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. For purposes of this subdivision, a "near" relative is a spouse, sibling, parent, child, grandparent, or grandchild.

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

(4) Repealed by Session Laws 2005-276, s. 10.40A(1), effective July 1, 2005.

(4a) Repealed by Session Laws 2007-544, s. 1, effective October 1, 2007.

(4b) Prior to serving on the Committee, each member shall complete a training program provided by the Department of Health and Human Services that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.

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

(6) The Committee shall be cochaired by:

a. One member of the Department outside of the Division of Health Service Regulation; and

b. One member who is not affiliated with the Department.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the ~~Civil Penalty and Forfeiture Fund~~ State Treasurer for deposit in accordance with ~~G.S. 115C-457.2, State law.~~"

**SECTION 3.** G.S. 131E-129 reads as rewritten:

**"§ 131E-129. Penalties. Penalties; remedies.**

(a) ~~Violations classified. Violation Classification and Penalties.~~ – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this ~~Part Article~~ on any ~~facility's licensee facility~~ which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature of the violation as follows:

(1) "Type ~~A-A1~~ Violation" means a violation by a ~~facility's licensee facility~~ of the ~~regulations, standards, regulations~~ and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, ~~or results in substantial risk that death or serious physical harm will occur.~~ Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. ~~harm.~~ The person making the findings shall do the following:

a. Orally and immediately inform the ~~administrator of the facility~~ of the Type A1 Violation and the specific findings and what must be done to correct them and set a date by which the violation must be corrected; findings.

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

- 1 e. ~~Provide a copy of the written confirmation required under~~  
2 ~~sub-subdivision b. of this subdivision to the Department.~~  
3 d. Require a written, credible allegation regarding how the facility will  
4 immediately remove the Type A1 Violation in order to protect  
5 residents from further risk or additional harm.  
6 e. Within 10 working days of the investigation, send a report of the  
7 findings to the facility.  
8 f. Require a plan of correction to be submitted to the Department, based  
9 on the written report of the findings, that describes steps the facility  
10 will take to achieve and maintain compliance by the date specified by  
11 the Department.

12 The Department shall impose a civil penalty in an amount not less than ~~five~~  
13 ~~hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) nor more than ~~ten~~  
14 ~~thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) for each Type  
15 ~~A-A1~~ Violation. Where a facility has failed to correct a Type A1 Violation,  
16 the Department shall assess the facility a civil penalty in the amount of up to  
17 one thousand dollars (\$1,000) for each day that the violation continues  
18 beyond the date specified for correction by the Department or its authorized  
19 representative. The Department or its authorized representative shall  
20 determine whether the violation has been corrected.

21 (1a) "Type A2 Violation" means a violation by a facility of the regulations,  
22 standards, and requirements set forth in G.S. 131E-117 or applicable State or  
23 federal laws and regulations governing the licensure or certification of a  
24 facility which results in substantial risk that death or serious physical harm  
25 will occur. The person making the findings shall do the following:

- 26 a. Orally and immediately inform the facility of the Type A2 Violation  
27 and the specific findings.  
28 b. Require a credible allegation regarding how the facility will  
29 immediately remove the Type A2 Violation in order to protect  
30 residents from further risk or additional harm.  
31 c. Within 10 working days of the investigation, send a report of the  
32 findings to the facility.  
33 d. Require a plan of correction to be submitted to the Department, based  
34 on the written report of the findings, that describes steps the facility  
35 will take to achieve and maintain compliance by the date specified by  
36 the Department.

37 The violation or violations shall be corrected within the time specified for  
38 correction by the Department or its authorized representative. If corrected by  
39 the date specified by the Department, no penalty shall be assessed. Where a  
40 facility has failed to correct a Type A2 Violation, the Department shall  
41 assess the facility a civil penalty in the amount of up to one thousand dollars  
42 (\$1,000) for each day that the violation continues beyond the date specified  
43 for correction by the Department or its authorized representative. The  
44 Department or its authorized representative shall determine if the violation  
45 has been corrected.

46 (1b) "Past Corrected Type A1 or Type A2 Violation" means the violation was not  
47 previously identified by the Department or its authorized representative but  
48 has been corrected. A penalty may not be assessed if:

- 49 a. The violation or violations were abated immediately; and  
50 b. The facility implemented corrective measures to achieve and  
51 maintain compliance.

1 (2) "Type B Violation" means a violation by a facility's licensee of the  
2 regulations, standards and requirements set forth in G.S. 131E-117 or  
3 applicable State or federal laws and regulations governing the licensure or  
4 certification of a facility which ~~presents a direct relationship~~ is detrimental to  
5 the health, safety, or welfare of any resident, but which does not result in  
6 substantial risk that death or serious physical harm will occur. ~~The~~  
7 ~~Department shall require a plan of correction for each Type B Violation and~~  
8 ~~may require the facility to establish a specific plan of correction within a~~  
9 ~~specific time period to address the violation.~~ The person making the findings  
10 shall do the following:

- 11 a. Orally and immediately inform the facility of the Type B Violation  
12 and the specific findings.  
13 b. Require a written plan regarding how the facility will immediately  
14 remove the Type B Violation in order to protect residents from  
15 further risk or additional harm.  
16 c. Within 10 working days of the investigation, send a report of the  
17 findings to the facility.  
18 d. Require a plan of correction to be submitted to the Department, based  
19 on the written report of the findings, that describes steps the facility  
20 will take to achieve and maintain compliance by the date specified by  
21 the Department.

22 Where a facility has failed to correct a Type B Violation within the time  
23 specified for correction by the Department or its authorized representative,  
24 the Department shall assess the facility a civil penalty in the amount of up to  
25 four hundred dollars (\$400.00) for each day that the violation continues  
26 beyond the date specified for correction without just reason for such failure.  
27 The Department or its authorized representative shall ensure that the  
28 violation has been corrected.

29 (3) Repeat Violations. – The Department shall impose a civil penalty which is  
30 treble the amount assessed under subsection (a) of this section when a  
31 facility under the same management or ownership has received a violation  
32 during the previous 12 months for which the appeal rights are exhausted and  
33 penalty payment is expected or has occurred, and the current violation is for  
34 the same specific provision of a statute or regulation for which it received a  
35 violation during the previous 12 months. The counting of the 12-month  
36 period shall be tolled during any time when the facility is being operated by  
37 a court-appointed temporary manager pursuant to law.

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

39 (1) ~~Where a facility's licensee has failed to correct a Type A Violation, the~~  
40 ~~Department shall assess the facility's licensee a civil penalty in the amount of~~  
41 ~~up to five hundred dollars (\$500.00) for each day that the deficiency~~  
42 ~~continues beyond the time specified in the plan of correction approved by~~  
43 ~~the Department or its authorized representative. The Department or its~~  
44 ~~authorized representative shall ensure that the violation has been corrected.~~

45 (2) ~~Where a facility's licensee has failed to correct a Type B Violation within the~~  
46 ~~time specified for correction by the Department or its authorized~~  
47 ~~representative, the Department shall assess the facility's licensee a civil~~  
48 ~~penalty in the amount of up to two hundred dollars (\$200.00) for each day~~  
49 ~~that the deficiency continues beyond the time specified in the plan of~~  
50 ~~correction approved by the Department or its authorized representative~~

1 without just reason for such failure. The Department or its authorized  
2 representative shall ensure that the violation has been corrected.

- 3 (3) ~~The Department shall impose a civil penalty on a facility's licensee which is  
4 treble the amount assessed under subdivision (1) of subsection (a) when a  
5 facility under the management, ownership, or control of that same licensee  
6 has received a citation and paid a penalty for violating the same specific  
7 provision of a statute or regulation for which the facility's licensee has  
8 received a citation during the previous 12 months. The counting of the  
9 12-month period shall be tolled during any time when the facility is being  
10 operated by a court-appointed temporary manager pursuant to Article 13 of  
11 this Chapter.~~

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

- 15 (1) ~~The gravity of the violation, including the fact that death or serious physical  
16 harm to a resident has resulted; the severity of the actual or potential harm,  
17 and the extent to which the provisions of the applicable statutes or  
18 regulations were violated;~~
- 19 (1a) ~~The gravity of the violation, including the probability that death or serious  
20 physical harm to a resident will result; the severity of the potential harm, and  
21 the extent to which the provisions of the applicable statutes or regulations  
22 were violated;~~
- 23 (1b) ~~The gravity of the violation, including the probability that death or serious  
24 physical harm to a resident may result; the severity of the potential harm,  
25 and the extent to which the provisions of the applicable statutes or  
26 regulations were violated;~~
- 27 (2) ~~The reasonable diligence exercised by the licensee to comply with  
28 G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal  
29 laws and regulations;~~
- 30 (2a) ~~Efforts by the licensee to correct violations;~~
- 31 (3) ~~The number and type of previous violations committed by the licensee  
32 within the past 36 months;~~
- 33 (4) ~~The amount of assessment necessary to insure immediate and continued  
34 compliance; and~~
- 35 (5) ~~The number of patients put at risk by the violation.~~
- 36 (1) There is substantial risk that serious physical harm, abuse, neglect, or  
37 exploitation will occur.
- 38 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial  
39 risk for resident death, did occur.
- 40 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk  
41 for resident death, did occur.
- 42 (4) A resident died.
- 43 (5) A resident died and there is substantial risk to others for serious physical  
44 harm, abuse, neglect, or exploitation.
- 45 (6) A resident died and there is substantial risk for further resident death.
- 46 (7) Reasonable diligence exercised by the licensee to comply with  
47 G.S. 131E-256 and G.S. 131E-265 did occur.
- 48 (8) Efforts by the licensee to correct violations.
- 49 (9) The number and type of previous violations committed by the licensee  
50 within the past 36 months.
- 51 (10) The number of residents put at risk by the violations.

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

- 4 (1) The penalty review committee;
- 5 (2) The local department of social services who is responsible for oversight of  
6 the facility involved;
- 7 (3) The licensee involved;
- 8 (4) The residents affected; and
- 9 (5) ~~The family members or guardians of the residents affected.~~ The family  
10 member who serves as a responsible party or those who have legal authority  
11 on behalf of the affected resident.

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

15 (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any  
16 ~~facility's licensee-facility~~ which refuses to allow an authorized representative of the Department  
17 to inspect the premises and records of the facility.

18 (e) Any ~~facility's licensee-facility~~ wishing to contest a penalty shall be entitled to an  
19 administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the  
20 General Statutes. A petition for a contested case shall be filed within 30 days after the  
21 Department mails a notice of penalty to a licensee. At least the following specific issues shall  
22 be 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 subsection  
25 (c) of this section to be considered in determining the amount of an initial  
26 penalty.

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

29 (e1) Notwithstanding the notice requirements of G.S. 131E-24, any penalty imposed by  
30 the Department of Health and Human Services under this section shall commence on the day  
31 the violation is imposed.

32 (f) The Secretary may bring a civil action in the superior court of the county wherein  
33 the violation occurred to recover the amount of the administrative penalty whenever a ~~facility's~~  
34 ~~licensee: facility:~~

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

40 (g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review  
41 administrative penalties assessed pursuant to this section.

42 (g1) In lieu of assessing ~~an all or some of the~~ administrative penalty, the Secretary may  
43 order a facility to provide staff training ~~if:if the training is:~~

- 44 ~~(1) The cost of training does not exceed one thousand dollars (\$1,000);~~
- 45 ~~(2) The penalty would be for the facility's only violation within a 12-month~~  
46 ~~period preceding the current violation and while the facility is under the~~  
47 ~~same management; and~~
- 48 ~~(3) The training is:~~
  - 49 ~~a. (1) Specific to the violation;~~
  - 50 ~~b. (2) Approved by the Department of Health and Human Services; and~~

- 1           e. ~~(3)~~ Taught by ~~someone~~ an individual approved by the ~~Department and other~~  
2           ~~than the provider.~~ Department.
- 3           (h) The Department shall not assess an administrative penalty against a facility under  
4 this section if a civil monetary penalty has been assessed for the same violation under federal  
5 enforcement laws and regulations.
- 6           (i) The clear proceeds of civil penalties provided for in this section shall be remitted to  
7 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
- 8           **SECTION 4.** This act is effective when it becomes law.