

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 397
Committee Substitute Favorable 4/20/11

Short Title: DHHS Penalties and Remedies Revision.-AB

(Public)

Sponsors:

Referred to:

March 17, 2011

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



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

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

13 (1a) "Type A2 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 substantial risk that death or serious
17 physical harm, abuse, neglect, or exploitation will occur. The person making
18 the findings shall do the following:

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

29 The violation or violations shall be corrected within the time specified for
30 correction by the Department or its authorized representative. The
31 Department may or may not assess a penalty taking into consideration the
32 compliance history, preventative measures, and response to previous
33 violations by the facility. Where a facility has failed to correct a Type A2
34 Violation, the Department shall assess the facility a civil penalty in the
35 amount of up to one thousand dollars (\$1,000) for each day that the
36 deficiency continues beyond the time specified for correction by the
37 Department or its authorized representative. The Department or its
38 authorized representative shall determine whether the violation has been
39 corrected.

40 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the
41 violation was not previously identified by the Department or its authorized
42 representative or (ii) the violation was discovered by the facility as was
43 self-reported, but in either case the violation has been corrected. In
44 determining whether a penalty should be assessed under this section, the
45 Department shall consider the following factors:

- 46 a. Preventative measures in place prior to the violation.
- 47 b. Whether the violation or violations were abated immediately.
- 48 c. Whether the facility implemented corrective measures to achieve and
49 maintain compliance.
- 50 d. Whether the facility's system to ensure compliance is maintained and
51 continues to be implemented.

- 1 e. Whether the regulatory area remains in compliance.
- 2 (2) "Type B Violation" means a violation by a facility of the regulations,
3 standards, and requirements set forth in Article 2 or 3 of this Chapter or
4 applicable State or federal laws and regulations governing the licensure or
5 certification of a facility which ~~present a direct relationship~~ is detrimental
6 to the health, safety, or welfare of any client or patient, but which does not
7 result in substantial risk that death or serious physical ~~harm~~ harm, abuse,
8 neglect, or exploitation will occur. ~~The Department shall require a plan of~~
9 ~~correction for each Type B Violation and may require the facility to establish~~
10 ~~a specific plan of correction within a specific time period to address the~~
11 ~~violation.~~ The person making the findings shall do the following:
- 12 a. Orally and immediately inform the facility of the Type B Violation
13 and the specific findings.
- 14 b. Require a written plan of protection regarding how the facility will
15 immediately abate the Type B Violation in order to protect clients or
16 residents from further risk or additional harm.
- 17 c. Within 15 working days of the investigation, send a report of the
18 findings to the facility.
- 19 d. Require a plan of correction to be submitted to the Department, based
20 on the written report of the findings, that describes steps the facility
21 will take to achieve and maintain compliance.
- 22 (b) ~~Penalties for Failure to Correct Violations Within Time Specified. —~~
- 23 (1) ~~Where a facility has failed to correct a Type A Violation, the Department~~
24 ~~shall assess the facility a civil penalty in the amount of up to one thousand~~
25 ~~dollars (\$1,000) for each day that the deficiency continues beyond the time~~
26 ~~specified in the plan of correction approved by the Department or its~~
27 ~~authorized representative. The Department or its authorized representative~~
28 ~~shall ensure that the violation has been corrected.~~
- 29 (2) Where a facility has failed to correct a Type B Violation within the time
30 specified for correction by the Department or its authorized representative,
31 the Department shall assess the facility a civil penalty in the amount of up to
32 four hundred dollars (\$400.00) for each day that the ~~deficiency~~ violation
33 continues beyond the date specified for correction without just reason for the
34 failure. The Department or its authorized representative shall ensure that the
35 violation has been corrected.
- 36 (3) Repeat Violations. — The Department shall impose a civil penalty which is
37 treble the amount assessed under ~~subdivision (1) of this subsection (a) of this~~
38 ~~section~~ when a facility under the same management, ownership, or control
39 management or ownership has received a citation during the previous 12
40 months for which the appeal rights are exhausted and penalty payment is
41 expected or has occurred, and has received a citation and paid a penalty for
42 the current violation is for violating the same specific provision of a statute
43 or regulation for which it received a citation violation during the previous 12
44 months.
- 45 (c) Factors to Be Considered in Determining Amount of Initial Penalty. — In
46 determining the amount of the initial penalty to be imposed under this section, the Department
47 shall consider the following factors:
- 48 (1) There is substantial risk that serious physical harm, abuse, neglect, or
49 exploitation will occur, and this has not been corrected within the time
50 specified by the Department or its authorized representative; The gravity of
51 ~~the violation, including the fact that death or serious physical harm to a~~

- 1 client or patient has resulted; the severity of the actual or potential harm, and
2 the extent to which the provisions of the applicable statutes or regulations
3 were violated;
- 4 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial
5 risk for client death, did occur;~~The gravity of the violation, including the~~
6 ~~probability that death or serious physical harm to a client or patient will~~
7 ~~result; the severity of the potential harm, and the extent to which the~~
8 ~~provisions of the applicable statutes or regulations were violated;~~
- 9 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk
10 for client death, did occur;~~The gravity of the violation, including the~~
11 ~~probability that death or serious physical harm to a client or patient may~~
12 ~~result; the severity of the potential harm, and the extent to which the~~
13 ~~provisions of the applicable statutes or regulations were violated;~~
- 14 (3a) A client died;
- 15 (3b) A client died and there is substantial risk to others for serious physical harm,
16 abuse, neglect, or exploitation;
- 17 (3c) A client died and there is substantial risk for further client death;
- 18 (4) The reasonable diligence exercised by the licensee to comply with
19 G.S. 131E-256 and other applicable State and federal laws and regulations;
- 20 (5) Efforts by the licensee to correct violations;
- 21 (6) The number and type of previous violations committed by the licensee
22 within the past 36 months; and
- 23 ~~(7) The amount of assessment necessary to ensure immediate and continued~~
24 ~~compliance; and~~
- 25 (8) The number of clients or patients put at risk by the violation.
- 26 (d) The facts found to support the factors in subsection (c) of this section shall be the
27 basis in determining the amount of the penalty. The Department shall document the findings in
28 written record and shall make the written record available to all affected parties including:
- 29 (1) The licensee involved;
- 30 (2) The clients or patients affected; and
- 31 (3) The family members or guardians of the clients or patients affected.
- 32 (e) 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 (f) Any facility wishing to contest a penalty shall be entitled to an administrative
36 hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case
37 shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At
38 least the following specific issues shall be addressed at the administrative hearing:
- 39 (1) The reasonableness of the amount of any civil penalty assessed, and
- 40 (2) The degree to which each factor has been evaluated pursuant to subsection
41 (c) of this section to be considered in determining the amount of an initial
42 penalty.
- 43 If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to
44 be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.
- 45 (g) Any penalty imposed by the Department of Health and Human Services under this
46 section shall commence on the ~~day the violation began.~~ date of the letter of notification of the
47 penalty amount.
- 48 (h) The Secretary may bring a civil action in the superior court of the county wherein
49 the violation occurred to recover the amount of the administrative penalty whenever a facility:
- 50 (1) Which has not requested an administrative hearing fails to pay the penalty
51 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 in
 3 G.S. 150B-36.
- 4 (i) In lieu of assessing ~~an all~~ or some of the administrative penalty, the Secretary may
 5 order a facility to provide staff training ~~if; if the training is:~~
- 6 (1) Specific to the violation;
 7 (2) Approved by the Department of Health and Human Services; and
 8 (3) Taught by someone approved by the Department.
- 9 (1) ~~The penalty would be for the facility's only violation within a 12-month~~
 10 ~~period preceding the current violation and while the facility is under the~~
 11 ~~same management; and~~
- 12 (2) ~~The training is:~~
- 13 a. ~~Specific to the violation;~~
 14 b. ~~Approved by the Department of Health and Human Services; and~~
 15 e. ~~Taught by someone approved by the Department and other than the~~
 16 ~~provider.~~
- 17 (j) The clear proceeds of civil penalties provided for in this section shall be remitted to
 18 the State Treasurer for deposit in accordance with State law.
- 19 (k) In considering renewal of a license, the Department shall not renew a license if
 20 outstanding fines and penalties imposed by the Department against the facility or program have
 21 not been paid. Fines and penalties for which an appeal is pending are exempt from
 22 consideration for nonrenewal under this subsection."

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

24 **"§ 131D-34. Penalties; remedies.**

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

- 31 (1) "Type ~~A~~ A1 Violation" means a violation by a facility of the regulations,
 32 standards, and requirements set forth in G.S. 131D-21 or applicable State or
 33 federal laws and regulations governing the licensure or certification of a
 34 facility which results in death or serious physical harm, abuse, neglect, or
 35 exploitation. ~~or results in substantial risk that death or serious physical harm~~
 36 ~~will occur. Type A Violations shall be abated or eliminated immediately.~~
 37 ~~The Department shall require an immediate plan of correction for each Type~~
 38 ~~A Violation.~~ The person making the findings shall do the following:
- 39 a. Orally and immediately inform the ~~administrator of the facility of the~~
 40 Type A1 Violation and the specific findings ~~findings and what must~~
 41 ~~be done to correct them, and set a date by which the violation must~~
 42 ~~be corrected;~~
- 43 a1. Require a written plan of protection regarding how the facility will
 44 immediately abate the Type A1 Violation in order to protect residents
 45 from further risk or additional harm.
- 46 b. Within ~~10~~ 15 working days of the investigation, ~~confirm in writing to~~
 47 ~~the administrator the information provided orally under~~
 48 ~~sub-subdivision a. of this subdivision; and send a report of the~~
 49 findings to the facility.
- 50 c. ~~Provide a copy of the written confirmation required under~~
 51 ~~sub-subdivision b. of this subdivision to the Department.~~ Require a

1 plan of correction to be submitted to the Department, based on the
2 written report of the findings, that describes steps the facility will
3 take to achieve and maintain compliance.

4 The Department shall impose a civil penalty in an amount not less than five
5 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for
6 each Type A-A1 Violation in ~~homes~~ facilities licensed for six or fewer beds.
7 The Department shall impose a civil penalty in an amount not less than one
8 thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000)
9 for each Type A-A1 Violation in facilities licensed for seven or more beds.
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 by the Department or its authorized representative.
14 The Department or its authorized representative shall determine whether the
15 violation has been corrected.

16 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
17 standards, and requirements set forth in G.S. 131D-21 or applicable State or
18 federal laws and regulations governing the licensure or certification of a
19 facility which results in substantial risk that death or serious physical harm,
20 abuse, neglect, or exploitation will occur. The person making the findings
21 shall do the following:

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

32 The violation or violations shall be corrected within the time specified for
33 correction by the Department or its authorized representative. The
34 Department may or may not assess a penalty taking into consideration the
35 compliance history, preventative measures, and response to previous
36 violations by the facility. Where a facility has failed to correct a Type A2
37 Violation, the Department shall assess the facility a civil penalty in the
38 amount of up to one thousand dollars (\$1,000) for each day that the
39 deficiency continues beyond the time specified for correction by the
40 Department or its authorized representative. The Department or its
41 authorized representative shall determine whether the violation has been
42 corrected.

43 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i)
44 the violation was not previously identified by the Department or its
45 authorized representative or (ii) the violation was discovered by the facility
46 and was self-reported, but in either case the violation has been corrected. In
47 determining whether a penalty should be assessed under this section, the
48 Department shall consider the following factors:

- 49 a. Preventive systems in place prior to the violation.
50 b. Whether the violation or violations were abated immediately.

- 1 c. Whether the facility implemented corrective measures to achieve
2 maintain compliance.
- 3 d. Whether the facility's system to ensure compliance is maintained and
4 continues to be implemented.
- 5 e. Whether the regulatory area remains in compliance.
- 6 (2) "Type B Violation" means a violation by a facility of the regulations,
7 standards and requirements set forth in G.S. 131D-21 or applicable State or
8 federal laws and regulations governing the licensure or certification of a
9 facility which ~~is detrimental present a direct relationship~~ to the health,
10 safety, or welfare of any resident, but which does not result in substantial
11 risk that death or serious physical ~~harm~~ harm, abuse, neglect, or exploitation
12 will occur. ~~The Department shall require a plan of correction for each Type~~
13 ~~B Violation and may require the facility to establish a specific plan of~~
14 ~~correction within a reasonable time period to address the violation. The~~
15 ~~required plan cannot exceed requirements imposed by existing rule or~~
16 ~~law. The person making the findings shall do the following:~~
- 17 a. Orally and immediately inform the facility of the Type B Violation
18 and the specific findings.
- 19 b. Require a written plan of protection regarding how the facility will
20 immediately abate the Type B Violation in order to protect residents
21 from further risk or additional harm.
- 22 c. Within 15 working days of the investigation, send a report of the
23 findings to the facility.
- 24 d. Require a plan of correction to be submitted to the Department, based
25 on the written report of the findings, that describes steps the facility
26 will take to achieve and maintain compliance.
- 27 (b) ~~Penalties for failure to correct violations within time specified.~~
- 28 (1) ~~Where a facility has failed to correct a Type A Violation, the Department~~
29 ~~shall assess the facility a civil penalty in the amount of up to one thousand~~
30 ~~dollars (\$1,000) for each day that the deficiency continues beyond the time~~
31 ~~specified in the plan of correction approved by the Department or its~~
32 ~~authorized representative. The Department or its authorized representative~~
33 ~~shall ensure that the violation has been corrected.~~
- 34 (2) Where a facility has failed to correct a Type B Violation within the time
35 specified for correction by the Department or its authorized representative,
36 the Department shall assess the facility a civil penalty in the amount of up to
37 four hundred dollars (\$400.00) for each day that the ~~deficiency~~ violation
38 continues beyond the date specified for correction without just reason for
39 such failure. The Department or its authorized representative shall ensure
40 that the violation has been corrected.
- 41 (3) Repeat Violations. – The Department shall impose a civil penalty which is
42 treble the amount assessed under subdivision (1) of subsection (a) of this
43 section when a facility under the same management, ownership, or control
44 has received a citation management or ownership has received a citation
45 during the previous 12 months for which the appeal rights are exhausted and
46 penalty payment is expected or has occurred, and the current violation is and
47 paid a penalty for violating the same specific provision of a statute or
48 regulation for which it received a citation violation during the previous 12
49 months. The counting of the 12-month period shall be tolled during any time
50 when the facility is being operated by a court-appointed temporary manager
51 pursuant to Article 4 of this Chapter.

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

5 (1) ~~The gravity of the violation, including the fact that death or serious physical~~
6 ~~harm to a resident has resulted; the severity of the actual or potential harm,~~
7 ~~and the extent to which the provisions of the applicable statutes or~~
8 ~~regulations were violated;~~ There is substantial risk that serious physical harm,
9 abuse, neglect, or exploitation will occur;

10 (1a) ~~The gravity of the violation, including the probability that death or serious~~
11 ~~physical harm to a resident will result; the severity of the potential harm, and~~
12 ~~the extent to which the provisions of the applicable statutes or regulations~~
13 ~~were violated;~~ Serious physical harm, abuse, neglect, or exploitation,
14 without substantial risk for resident death, did occur;

15 (1b) ~~The gravity of the violation, including the probability that death or serious~~
16 ~~physical harm to a resident may result; the severity of the potential harm,~~
17 ~~and the extent to which the provisions of the applicable statutes or~~
18 ~~regulations were violated;~~ Serious physical harm, abuse, neglect, or
19 exploitation, with substantial risk for resident death, did occur;

20 (1c) A resident died;

21 (1d) A resident died and there is substantial risk to others for serious physical
22 harm, abuse, neglect, or exploitation;

23 (1e) A resident died and there is substantial risk for further resident death;

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

27 (2a) ~~Efforts by the licensee to correct violations;~~

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

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

32 (5) ~~(4) The number of patients-residents put at risk by the violation.~~

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

37 (1) ~~The penalty review committee;~~

38 (2) ~~The local department of social services who is responsible for oversight of~~
39 ~~the facility involved;~~

40 (3) ~~The licensee involved;~~

41 (4) ~~The residents affected; and~~

42 (5) ~~The family members or guardians of the residents affected. The family~~
43 ~~member who serves as a responsible party or those who have legal authority~~
44 on behalf of the affected resident.

45 (c2) Local county departments of social services and Division of Health Service
46 Regulation personnel shall submit proposed penalty recommendations to the Department within
47 45 days of the citation of a violation.

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

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

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

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

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

16 (f) ~~Notwithstanding the notice requirements of G.S. 131D-26(b), any~~ Any penalty
17 imposed by the Department of Health and Human Services under this section shall commence
18 ~~on the day the violation began.~~ date the violation was identified.

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

- 21 (1) Which has not requested an administrative hearing fails to pay the penalty
22 within 60 days after being notified of the penalty, or
- 23 (2) Which has requested an administrative hearing fails to pay the penalty
24 within 60 days after receipt of a written copy of the decision as provided in
25 G.S. 150B-36.

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

- 28 (1) Specific to the violation;
- 29 (2) Approved by the Department of Health and Human Services; and
- 30 (3) Taught by someone approved by the Department.
- 31 (1) ~~The cost of training does not exceed one thousand dollars (\$1,000);~~
- 32 (2) ~~The penalty would be for the facility's only violation within a 12-month~~
33 ~~period preceding the current violation and while the facility is under the~~
34 ~~same management; and~~
- 35 (3) ~~The training is:~~
 - 36 a. ~~Specific to the violation;~~
 - 37 b. ~~Approved by the Department of Health and Human Services; and~~
 - 38 e. ~~Taught by someone approved by the Department and other than the~~
39 ~~provider.~~

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

- 44 (1) The Secretary shall administer the work of the Committee and provide
45 public notice of its meetings via Web site, and provide direct notice to the
46 following parties involved in the penalties the Committee will be reviewing:
 - 47 a. The licensed provider, who upon receipt of the notice, shall post the
48 notice of the scheduled Penalty Review Committee meeting in a
49 conspicuous place available to residents, family members, and the
50 public;

- 1 b. The local department of social services that is responsible for
2 oversight of the facility involved;
3 c. The residents affected; and
4 d. Those individuals lawfully designated by the affected resident to
5 make health care decisions for the resident.
- 6 (2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty
7 Review Committee established by this subsection is comprised of nine
8 members. At least one member shall be appointed from each of the
9 following categories:
10 a. A licensed pharmacist;
11 b. A registered nurse experienced in long term care;
12 c. A representative of a nursing home;
13 d. A representative of an adult care home; and
14 e. Two public members. One shall be a "near" relative of a nursing
15 home patient, chosen from a list prepared by the Office of State Long
16 Term Care Ombudsman, Division of Aging, Department of Health
17 and Human Services. One shall be a "near" relative of a rest home
18 patient, chosen from a list prepared by the Office of State Long Term
19 Care Ombudsman, Division of Aging, Department of Health and
20 Human Services. For purposes of this subdivision, a "near" relative is
21 a spouse, sibling, parent, child, grandparent, or grandchild.
- 22 (3) Neither the pharmacist, nurse, nor public members appointed under this
23 subsection nor any member of their immediate families shall be employed
24 by or own any interest in a nursing home or adult care home.
- 25 (4) Repealed by Session Laws 2005-276, s. 10.40A(1), effective July 1, 2005.
- 26 (4a) Repealed by Session Laws 2007-544, s. 1, effective October 1, 2007.
- 27 (4b) Prior to serving on the Committee, each member shall complete a training
28 program provided by the Department of Health and Human Services that
29 covers standards of care and applicable State and federal laws and
30 regulations governing facilities licensed under Chapter 131D and Chapter
31 131E of the General Statutes.
- 32 (5) Each member of the Committee shall serve a term of two years. The initial
33 terms of the members shall commence on August 3, 1989. The Secretary
34 shall fill all vacancies. Unexcused absences from three consecutive meetings
35 constitute resignation from the Committee.
- 36 (6) The Committee shall be cochaired by:
37 a. One member of the Department outside of the Division of Health
38 Service Regulation; and
39 b. One member who is not affiliated with the Department.
- 40 (i) The clear proceeds of civil penalties provided for in this section shall be remitted to
41 the ~~Civil Penalty and Forfeiture Fund~~ State Treasurer for deposit in accordance with
42 ~~G.S. 115C-457.2, State law.~~"

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

44 "**§ 131E-129. Penalties. Penalties; remedies.**

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

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

- 10 a. Orally and immediately inform the ~~administrator of the~~ facility of the
11 Type A1 Violation and the specific findings and what must be done
12 to correct them and set a date by which the violation must be
13 corrected; findings.
14 b. ~~Within 10 working days of the investigation, confirm in writing to~~
15 ~~the administrator the information provided orally under~~
16 ~~sub-subdivision a. of this subdivision; and~~
17 c. ~~Provide a copy of the written confirmation required under~~
18 ~~sub-subdivision b. of this subdivision to the Department.~~
19 d. Require a written, credible allegation regarding how the facility will
20 immediately remove the Type A1 Violation in order to protect
21 residents from further risk or additional harm.
22 e. Within 15 working days of the investigation, send a report of the
23 findings to the facility.
24 f. Require a plan of correction to be submitted to the Department, based
25 on the written report of the findings, that describes steps the facility
26 will take to achieve and maintain compliance by the date specified by
27 the Department.

28 The Department shall impose a civil penalty in an amount not less than ~~five~~
29 ~~hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) nor more than ~~ten~~
30 ~~thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) for each Type
31 ~~A~~A1 Violation. Where a facility has failed to correct a Type A1 Violation,
32 the Department shall assess the facility a civil penalty in the amount of up to
33 one thousand dollars (\$1,000) for each day that the violation continues
34 beyond the date specified for correction by the Department or its authorized
35 representative. The Department or its authorized representative shall
36 determine whether the violation has been corrected.

37 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
38 standards, and requirements set forth in G.S. 131E-117 or applicable State or
39 federal laws and regulations governing the licensure or certification of a
40 facility which results in substantial risk that death or serious physical harm
41 will occur. The person making the findings shall do the following:

- 42 a. Orally and immediately inform the facility of the Type A2 Violation
43 and the specific findings.
44 b. Require a credible allegation regarding how the facility will
45 immediately remove the Type A2 Violation in order to protect
46 residents from further risk or additional harm.
47 c. Within 10 working days of the investigation, send a report of the
48 findings to the facility.
49 d. Require a plan of correction to be submitted to the Department, based
50 on the written report of the findings, that describes steps the facility

1 will take to achieve and maintain compliance by the date specified by
2 the Department.

3 The violation or violations shall be corrected within the time specified for
4 correction by the Department or its authorized representative. The
5 Department may or may not assess a penalty taking into consideration the
6 compliance history, preventative measures, and response to previous
7 violations by the facility. Where a facility has failed to correct a Type A2
8 Violation, the Department shall assess the facility a civil penalty in the
9 amount of up to one thousand dollars (\$1,000) for each day that the
10 deficiency continues beyond the time specified for correction by the
11 Department or its authorized representative. The Department or its
12 authorized representative shall determine whether the violation has been
13 corrected.

14 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the
15 violation was not previously identified by the Department or its authorized
16 representative or (ii) the violation was discovered by the facility and was
17 self-reported, but in either case the violation has been corrected. In
18 determining whether a penalty should be assessed under this section, the
19 Department shall consider the following factors:

- 20 a. Preventive systems in place prior to the violation.
21 b. Whether the violation or violations were abated immediately. and
22 c. Whether the facility implemented corrective measures to achieve and
23 maintain compliance.
24 d. Whether the facility's system to ensure compliance is maintained and
25 continues to be implemented.
26 e. Whether the regulatory area remains in compliance.

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

- 37 a. Orally and immediately inform the facility of the Type B Violation
38 and the specific findings.
39 b. Require a written plan regarding how the facility will immediately
40 remove the Type B Violation in order to protect residents from
41 further risk or additional harm.
42 c. Within 10 working days of the investigation, send a report of the
43 findings to the facility.
44 d. Require a plan of correction to be submitted to the Department, based
45 on the written report of the findings, that describes steps the facility
46 will take to achieve and maintain compliance by the date specified by
47 the Department.

48 Where a facility has failed to correct a Type B Violation within the time
49 specified for correction by the Department or its authorized representative,
50 the Department shall assess the facility a civil penalty in the amount of up to
51 four hundred dollars (\$400.00) for each day that the violation continues

- 1 beyond the date specified for correction without just reason for such failure.
2 The Department or its authorized representative shall ensure that the
3 violation has been corrected.
- 4 (3) Repeat Violations. – The Department shall impose a civil penalty which is
5 treble the amount assessed under subsection (a) of this section when a
6 facility under the same management or ownership has received a citation
7 during the previous 12 months for which the appeal rights are exhausted and
8 penalty payment is expected or has occurred, and the current violation is for
9 the same specific provision of a statute or regulation for which it received a
10 violation during the previous 12 months. The counting of the 12-month
11 period shall be tolled during any time when the facility is being operated by
12 a court-appointed temporary manager pursuant to law.
- 13 (b) ~~Penalties for failure to correct violations within time specified.~~
- 14 (1) ~~Where a facility's licensee has failed to correct a Type A Violation, the~~
15 ~~Department shall assess the facility's licensee a civil penalty in the amount of~~
16 ~~up to five hundred dollars (\$500.00) for each day that the deficiency~~
17 ~~continues beyond the time specified in the plan of correction approved by~~
18 ~~the Department or its authorized representative. The Department or its~~
19 ~~authorized representative shall ensure that the violation has been corrected.~~
- 20 (2) ~~Where a facility's licensee has failed to correct a Type B Violation within the~~
21 ~~time specified for correction by the Department or its authorized~~
22 ~~representative, the Department shall assess the facility's licensee a civil~~
23 ~~penalty in the amount of up to two hundred dollars (\$200.00) for each day~~
24 ~~that the deficiency continues beyond the time specified in the plan of~~
25 ~~correction approved by the Department or its authorized representative~~
26 ~~without just reason for such failure. The Department or its authorized~~
27 ~~representative shall ensure that the violation has been corrected.~~
- 28 (3) ~~The Department shall impose a civil penalty on a facility's licensee which is~~
29 ~~treble the amount assessed under subdivision (1) of subsection (a) when a~~
30 ~~facility under the management, ownership, or control of that same licensee~~
31 ~~has received a citation and paid a penalty for violating the same specific~~
32 ~~provision of a statute or regulation for which the facility's licensee has~~
33 ~~received a citation during the previous 12 months. The counting of the~~
34 ~~12-month period shall be tolled during any time when the facility is being~~
35 ~~operated by a court-appointed temporary manager pursuant to Article 13 of~~
36 ~~this Chapter.~~
- 37 (c) Factors to be considered in determining amount of initial penalty. In determining the
38 amount of the initial penalty to be imposed under this section, the Department shall consider
39 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;~~
- 44 (1a) ~~The gravity of the violation, including the probability that death or serious~~
45 ~~physical harm to a resident will result; the severity of the potential harm, and~~
46 ~~the extent to which the provisions of the applicable statutes or regulations~~
47 ~~were violated;~~
- 48 (1b) ~~The gravity of the violation, including the probability that death or serious~~
49 ~~physical harm to a resident may result; the severity of the potential harm,~~
50 ~~and the extent to which the provisions of the applicable statutes or~~
51 ~~regulations were violated;~~

- 1 (2) ~~The reasonable diligence exercised by the licensee to comply with~~
2 ~~G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal~~
3 ~~laws and regulations;~~
4 (2a) ~~Efforts by the licensee to correct violations;~~
5 (3) ~~The number and type of previous violations committed by the licensee~~
6 ~~within the past 36 months;~~
7 (4) ~~The amount of assessment necessary to insure immediate and continued~~
8 ~~compliance; and~~
9 ~~(5) The number of patients put at risk by the violation.~~
10 (1) There is substantial risk that serious physical harm, abuse, neglect, or
11 exploitation will occur.
12 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial
13 risk for resident death, did occur.
14 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk
15 for resident death, did occur.
16 (4) A resident died.
17 (5) A resident died and there is substantial risk to others for serious physical
18 harm, abuse, neglect, or exploitation.
19 (6) A resident died and there is substantial risk for further resident death.
20 (7) Reasonable diligence exercised by the licensee to comply with
21 G.S. 131E-256 and G.S. 131E-265 did occur.
22 (8) Efforts by the licensee to correct violations.
23 (9) The number and type of previous violations committed by the licensee
24 within the past 36 months.
25 (10) The number of residents put at risk by the violations.
26 (c1) The facts found to support the factors in subsection (c) of this section shall be the
27 basis in determining the amount of the penalty. The Secretary shall document the findings in
28 written record and shall make the written record available to all affected parties including:
29 (1) The penalty review committee;
30 (2) The local department of social services who is responsible for oversight of
31 the facility involved;
32 (3) The licensee involved;
33 (4) The residents affected; and
34 (5) ~~The family members or guardians of the residents affected.~~The family
35 member who serves as a responsible party or those who have legal authority
36 on behalf of the affected resident.
37 (c2) Local county departments of social services and Division of Health Service
38 Regulation personnel shall submit proposed penalty recommendations to the Department within
39 45 days of the citation of a violation.
40 (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any
41 ~~facility's licensee-facility~~ which refuses to allow an authorized representative of the Department
42 to inspect the premises and records of the facility.
43 (e) Any ~~facility's licensee-facility~~ wishing to contest a penalty shall be entitled to an
44 administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the
45 General Statutes. A petition for a contested case shall be filed within 30 days after the
46 Department mails a notice of penalty to a licensee. At least the following specific issues shall
47 be addressed at the administrative hearing:
48 (1) The reasonableness of the amount of any civil penalty assessed, and
49 (2) The degree to which each factor has been evaluated pursuant to subsection
50 (c) of this section to be considered in determining the amount of an initial
51 penalty.

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

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

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

9 (1) Which has not requested an administrative hearing fails to pay the penalty
10 within 60 days after being notified of the penalty; or

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

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

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

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

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

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

23 ~~a. (1) Specific to the violation;~~

24 ~~b. (2) Approved by the Department of Health and Human Services; and~~

25 ~~e. (3) Taught by someone an individual approved by the ~~Department and other~~~~
26 ~~than the provider.~~ Department.

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

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

32 **SECTION 4.** This act is effective when it becomes law.