

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 397  
Committee Substitute Favorable 4/20/11  
Senate Finance Committee Substitute Adopted 6/13/11

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

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

- 48 a. Preventative measures in place prior to the violation.
- 49 b. Whether the violation or violations were abated immediately.
- 50 c. Whether the facility implemented corrective measures to achieve and  
51 maintain compliance.

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

1 ~~specified by the Department or its authorized representative; The gravity of~~  
2 ~~the violation, including the fact that death or serious physical harm to a~~  
3 ~~client or patient has resulted; the severity of the actual or potential harm, and~~  
4 ~~the extent to which the provisions of the applicable statutes or regulations~~  
5 ~~were violated;~~

6 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial  
7 risk for client death, did occur;~~The gravity of the violation, including the~~  
8 ~~probability that death or serious physical harm to a client or patient will~~  
9 ~~result; the severity of the potential harm, and the extent to which the~~  
10 ~~provisions of the applicable statutes or regulations were violated;~~

11 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk  
12 for client death, did occur;~~The gravity of the violation, including the~~  
13 ~~probability that death or serious physical harm to a client or patient may~~  
14 ~~result; the severity of the potential harm, and the extent to which the~~  
15 ~~provisions of the applicable statutes or regulations were violated;~~

16 (3a) A client died;

17 (3b) A client died and there is substantial risk to others for serious physical harm,  
18 abuse, neglect, or exploitation;

19 (3c) A client died and there is substantial risk for further client death;

20 (4) The reasonable diligence exercised by the licensee to comply with  
21 G.S. 131E-256 and other applicable State and federal laws and regulations;

22 (5) Efforts by the licensee to correct violations;

23 (6) The number and type of previous violations committed by the licensee  
24 within the past 36 months; and

25 ~~(7) The amount of assessment necessary to ensure immediate and continued~~  
26 ~~compliance; and~~

27 (8) The number of clients or patients put at risk by the violation.

28 (d) The facts found to support the factors in subsection (c) of this section shall be the  
29 basis in determining the amount of the penalty. The Department shall document the findings in  
30 written record and shall make the written record available to all affected parties including:

31 (1) The licensee involved;

32 (2) The clients or patients affected; and

33 (3) The family members or guardians of the clients or patients affected.

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

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

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

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

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

47 (g) Any penalty imposed by the Department of Health and Human Services under this  
48 section shall commence on the ~~day the violation began.~~ date of the letter of notification of the  
49 penalty amount.

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

- 1 (1) Which has not requested an administrative hearing fails to pay the penalty  
2 within 60 days after being notified of the penalty, or  
3 (2) Which has requested an administrative hearing fails to pay the penalty  
4 within 60 days after receipt of a written copy of the decision as provided in  
5 G.S. 150B-36.
- 6 (i) In lieu of assessing ~~an~~ all or some of the administrative penalty, the Secretary may  
7 order a facility to provide staff training ~~if~~ if the training is:
- 8 (1) Specific to the violation;  
9 (2) Approved by the Department of Health and Human Services; and  
10 (3) Taught by someone approved by the Department.  
11 (1) ~~The penalty would be for the facility's only violation within a 12-month~~  
12 ~~period preceding the current violation and while the facility is under the~~  
13 ~~same management; and~~  
14 (2) ~~The training is:~~
- 15 a. ~~Specific to the violation;~~  
16 b. ~~Approved by the Department of Health and Human Services; and~~  
17 c. ~~Taught by someone approved by the Department and other than the~~  
18 ~~provider.~~
- 19 (j) The clear proceeds of civil penalties provided for in this section shall be remitted to  
20 the State Treasurer for deposit in accordance with State law.
- 21 (k) In considering renewal of a license, the Department shall not renew a license if  
22 outstanding fines and penalties imposed by the Department against the facility or program have  
23 not been paid. Fines and penalties for which an appeal is pending are exempt from  
24 consideration for nonrenewal under this subsection."

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

26 **"§ 131D-34. Penalties; remedies.**

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

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

- 1 c. ~~Provide a copy of the written confirmation required under~~  
2 ~~sub-subdivision b. of this subdivision to the Department. Require a~~  
3 ~~plan of correction to be submitted to the Department, based on the~~  
4 ~~written report of the findings, that describes steps the facility will~~  
5 ~~take to achieve and maintain compliance.~~

6 The Department shall impose a civil penalty in an amount not less than five  
7 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for  
8 each Type A-A1 Violation in ~~homes-facilities~~ licensed for six or fewer beds.  
9 The Department shall impose a civil penalty in an amount not less than one  
10 thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000)  
11 for each Type A-A1 Violation in facilities licensed for seven or more beds.  
12 Where a facility has failed to correct a Type A1 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 violation continues beyond the time  
15 specified for correction by the Department or its authorized representative.  
16 The Department or its authorized representative shall determine whether the  
17 violation has been corrected.

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

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

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

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

- 51 a. Preventive systems in place prior to the violation.

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

- 1 when the facility is being operated by a court-appointed temporary manager  
2 pursuant to Article 4 of this Chapter.
- 3 (c) ~~Factors to be considered in determining amount of initial penalty.~~ Factors to Be  
4 Considered in Determining Amount of Initial Penalty. – In determining the amount of the  
5 initial penalty to be imposed under this section, the Department shall consider the following  
6 factors:
- 7 (1) ~~The gravity of the violation, including the fact that death or serious physical~~  
8 ~~harm to a resident has resulted; the severity of the actual or potential harm,~~  
9 ~~and the extent to which the provisions of the applicable statutes or~~  
10 ~~regulations were violated;~~ There is substantial risk that serious physical harm,  
11 abuse, neglect, or exploitation will occur;
- 12 (1a) ~~The gravity of the violation, including the probability that death or serious~~  
13 ~~physical harm to a resident will result; the severity of the potential harm, and~~  
14 ~~the extent to which the provisions of the applicable statutes or regulations~~  
15 ~~were violated;~~ Serious physical harm, abuse, neglect, or exploitation,  
16 without substantial risk for resident death, did occur;
- 17 (1b) ~~The gravity of the violation, including the probability that death or serious~~  
18 ~~physical harm to a resident may result; the severity of the potential harm,~~  
19 ~~and the extent to which the provisions of the applicable statutes or~~  
20 ~~regulations were violated;~~ Serious physical harm, abuse, neglect, or  
21 exploitation, with substantial risk for resident death, did occur;
- 22 (1c) A resident died;
- 23 (1d) A resident died and there is substantial risk to others for serious physical  
24 harm, abuse, neglect, or exploitation;
- 25 (1e) A resident died and there is substantial risk for further resident death;
- 26 (2) The reasonable diligence exercised by the licensee to comply with  
27 G.S. 131E-256 and ~~G.S. 131E-265~~ G.S. 131D-40 and other applicable State  
28 and federal laws and regulations;
- 29 (2a) Efforts by the licensee to correct violations;
- 30 (3) The number and type of previous violations committed by the licensee  
31 within the past 36 months; and
- 32 (4) ~~The amount of assessment necessary to insure immediate and continued~~  
33 ~~compliance; and~~
- 34 ~~(5) (4) The number of patients-residents put at risk by the violation.~~
- 35 (c1) The facts found to support the factors in subsection (c) of this section shall be the  
36 basis in determining the amount of the penalty. The ~~Secretary-Department~~ shall document the  
37 findings in written record and shall make the written record available to all affected parties  
38 including:
- 39 (1) The penalty review committee;
- 40 (2) The local department of social services who is responsible for oversight of  
41 the facility involved;
- 42 (3) The licensee involved;
- 43 (4) The residents affected; and
- 44 (5) ~~The family members or guardians of the residents affected.~~ The family  
45 member who serves as a responsible party or those who have legal authority  
46 on behalf of the affected resident.
- 47 (c2) Local county departments of social services and Division of Health Service  
48 Regulation personnel shall submit proposed penalty recommendations to the Department within  
49 45 days of the citation of a violation.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 **"§ 131E-129. Penalties; Penalties; remedies.**

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

1 Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature  
2 of the violation as follows:

- 3 (1) "~~Type A-A1 Violation~~" means a violation by a ~~facility's licensee-facility~~ of  
4 the ~~regulations, standards, regulations~~ and requirements set forth in  
5 G.S. 131E-117, or applicable State or federal laws and regulations governing  
6 the licensure or certification of a facility which results in death or serious  
7 physical ~~harm, or results in substantial risk that death or serious physical~~  
8 ~~harm will occur. Type A Violations shall be abated or eliminated~~  
9 ~~immediately. The Department shall require an immediate plan of correction~~  
10 ~~for each Type A Violation-harm. The person making the findings shall do~~  
11 ~~the following:~~
- 12 a. Orally and immediately inform the ~~administrator of the facility of the~~  
13 Type A1 Violation and the specific findings and what must be done  
14 to correct them and set a date by which the violation must be  
15 corrected; findings.
  - 16 b. ~~Within 10 working days of the investigation, confirm in writing to~~  
17 ~~the administrator the information provided orally under~~  
18 ~~sub-subdivision a. of this subdivision; and~~
  - 19 e. ~~Provide a copy of the written confirmation required under~~  
20 ~~sub-subdivision b. of this subdivision to the Department.~~
  - 21 d. Require a written, credible allegation regarding how the facility will  
22 immediately remove the Type A1 Violation in order to protect  
23 residents from further risk or additional harm.
  - 24 e. Within 15 working days of the investigation, send a report of the  
25 findings to the facility.
  - 26 f. 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 by the date specified by  
29 the Department.

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

- 39 (1a) "Type A2 Violation" means a violation by a facility of the regulations,  
40 standards, and requirements set forth in G.S. 131E-117 or applicable State or  
41 federal laws and regulations governing the licensure or certification of a  
42 facility which results in substantial risk that death or serious physical harm  
43 will occur. The person making the findings shall do the following:
- 44 a. Orally and immediately inform the facility of the Type A2 Violation  
45 and the specific findings.
  - 46 b. Require a credible allegation regarding how the facility will  
47 immediately remove the Type A2 Violation in order to protect  
48 residents from further risk or additional harm.
  - 49 c. Within 10 working days of the investigation, send a report of the  
50 findings to the facility.

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

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

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

22           a.     Preventive systems in place prior to the violation.

23           b.     Whether the violation or violations were abated immediately. and

24           c.     Whether the facility implemented corrective measures to achieve and  
25               maintain compliance.

26           d.     Whether the facility's system to ensure compliance is maintained and  
27               continues to be implemented.

28           e.     Whether the regulatory area remains in compliance.

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

39           a.     Orally and immediately inform the facility of the Type B Violation  
40               and the specific findings.

41           b.     Require a written plan regarding how the facility will immediately  
42               remove the Type B Violation in order to protect residents from  
43               further risk or additional harm.

44           c.     Within 10 working days of the investigation, send a report of the  
45               findings to the facility.

46           d.     Require a plan of correction to be submitted to the Department, based  
47               on the written report of the findings, that describes steps the facility  
48               will take to achieve and maintain compliance by the date specified by  
49               the Department.

50           Where a facility has failed to correct a Type B Violation within the time  
51           specified for correction by the Department or its authorized representative,

1 the Department shall assess the facility a civil penalty in the amount of up to  
2 four hundred dollars (\$400.00) for each day that the violation continues  
3 beyond the date specified for correction without just reason for such failure.  
4 The Department or its authorized representative shall ensure that the  
5 violation has been corrected.

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

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

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

22 (2) ~~Where a facility's licensee has failed to correct a Type B Violation within the~~  
23 ~~time specified for correction by the Department or its authorized~~  
24 ~~representative, the Department shall assess the facility's licensee a civil~~  
25 ~~penalty in the amount of up to two hundred dollars (\$200.00) for each day~~  
26 ~~that the deficiency continues beyond the time specified in the plan of~~  
27 ~~correction approved by the Department or its authorized representative~~  
28 ~~without just reason for such failure. The Department or its authorized~~  
29 ~~representative shall ensure that the violation has been corrected.~~

30 (3) ~~The Department shall impose a civil penalty on a facility's licensee which is~~  
31 ~~treble the amount assessed under subdivision (1) of subsection (a) when a~~  
32 ~~facility under the management, ownership, or control of that same licensee~~  
33 ~~has received a citation and paid a penalty for violating the same specific~~  
34 ~~provision of a statute or regulation for which the facility's licensee has~~  
35 ~~received a citation during the previous 12 months. The counting of the~~  
36 ~~12-month period shall be tolled during any time when the facility is being~~  
37 ~~operated by a court appointed temporary manager pursuant to Article 13 of~~  
38 ~~this Chapter.~~

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

42 (1) ~~The gravity of the violation, including the fact that death or serious physical~~  
43 ~~harm to a resident has resulted; the severity of the actual or potential harm,~~  
44 ~~and the extent to which the provisions of the applicable statutes or~~  
45 ~~regulations were violated;~~

46 (1a) ~~The gravity of the violation, including the probability that death or serious~~  
47 ~~physical harm to a resident will result; the severity of the potential harm, and~~  
48 ~~the extent to which the provisions of the applicable statutes or regulations~~  
49 ~~were violated;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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