

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 110*
Committee Substitute Favorable 4/21/97

Short Title: Penalties for Adult Care/Nursing Homes.

(Public)

Sponsors:

Referred to:

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE
3 HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION
4 OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

5 The General Assembly of North Carolina enacts:

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

7 **"§ 131D-34. Penalties; remedies.**

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

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

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

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

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

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

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

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

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

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

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

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

8 (1) The penalty review committee;

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

11 (3) The licensee involved;

12 (4) The residents affected; and

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

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

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

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

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

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

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

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

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

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

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

1 (g1) The Secretary may use monies collected as an administrative penalty to
2 reimburse a facility for providing staff training if:

3 (1) The cost of training, not to exceed one thousand dollars (\$1,000), is
4 equal to or less than the amount of the assessed penalty;

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

8 (3) The training is specific to the violation, approved by the Department of
9 Human Resources, and taught by someone approved by the Department
10 other than the provider.

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

21 (1) The Secretary shall:

22 a. Administer the work of the committee;

23 b. Ensure provision of departmental staff review;

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

26 d. Ensure that recommendations by the Department are complete
27 and submitted within 60 days of receipt of the initial
28 recommendations from the local departments of social services
29 or the Division of Facility Services; and

30 e. Provide written copies of all procedures to:

31 1. The penalty review committee;

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

34 3. The licensee involved;

35 4. The residents affected; and

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

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

41 ~~(1)~~a. A licensed pharmacist;

42 ~~(2)~~b. A registered nurse experienced in long-term care;

43 ~~(3)~~c. A representative of a nursing home;

44 ~~(4)~~d. A representative of an adult care home; and

1 (5)e. Two public members. One shall be a 'near' relative of a nursing home
2 patient, chosen from a list prepared by the Office of State Long-Term
3 Care Ombudsman, Division of Aging, Department of Human
4 Resources. One shall be a 'near' relative of a rest home patient, chosen
5 from a list prepared by the Office of State Long-Term Care
6 Ombudsman, Division of Aging, Department of Human Resources.
7 For purposes of this subdivision, a 'near' relative is a spouse, sibling,
8 parent, child, grandparent, or grandchild.

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

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

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

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

22 **"§ 131E-129. Penalties.**

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

28 (1) 'Type A Violation' means a violation by a facility of the regulations,
29 standards, and requirements set forth in G.S. 131E-117, or applicable
30 State or federal laws and regulations governing the licensure or
31 certification of a facility which ~~creates substantial risk that death or serious~~
32 ~~physical harm to a resident will occur or where such harm has occurred.~~
33 results in death or serious physical harm, or results in substantial risk
34 that death or serious physical harm will occur. Type A Violations shall
35 be abated or eliminated immediately. The Department shall require an
36 immediate plan of correction for each Type A Violation. The person
37 making the findings shall do the following:

- 38 a. Orally and immediately inform the administrator of the facility of
39 the specific findings and what must be done to correct them and
40 set a date by which the violation must be corrected;
41 b. Within 10 working days of the investigation, confirm in writing
42 to the administrator the information provided orally under sub-
43 subdivision a. of this subdivision; and

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

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

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

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

24 (1) Where a facility has failed to correct a Type A Violation, the
25 Department shall assess the facility a civil penalty in the amount of up
26 to five hundred dollars (\$500.00) for each day that the deficiency
27 ~~continues.~~ continues beyond the time specified in the plan of correction
28 approved by the Department or its authorized representative. The
29 Department or its authorized representative shall ~~conduct an on-site~~
30 ~~inspection of the facility to insure~~ ensure that the violation has been
31 corrected.

32 (2) Where a facility has failed to correct a Type B Violation within the time
33 specified for correction by the ~~Department,~~ Department or its authorized
34 representative, the Department shall assess the facility a civil penalty in
35 the amount of up to two hundred dollars (\$200.00) for each day that the
36 deficiency continues beyond the ~~date specified for correction~~ time
37 specified in the plan of correction approved by the Department or its
38 authorized representative without just reason for such failure. The
39 Department or its authorized representative shall ~~conduct an on-site~~
40 ~~inspection of the facility to insure~~ ensure that the violation has been
41 corrected.

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

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

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

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

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

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

21 (1a) The gravity of the violation, including the probability that death or
22 serious physical harm to a resident will result; the severity of the
23 potential harm, and the extent to which the provisions of the applicable
24 statutes or regulations were violated;

25 (1b) The gravity of the violation, including the probability that death or
26 serious physical harm to a resident may result; the severity of the
27 potential harm, and the extent to which the provisions of the applicable
28 statutes or regulations were violated;

29 (2) The reasonable diligence exercised by the licensee to comply with G.S.
30 131E-256 and G.S. 131E-265 and other applicable State and federal
31 laws and regulations;

32 (2a) and efforts Efforts by the licensee to correct violations;

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

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

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

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

42 (1) The penalty review committee;

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

3 (3) The licensee involved;

4 (4) The residents affected; and

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

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

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

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

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

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

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

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

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

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

32 (g) The penalty review committee established pursuant to G.S. 131D-34(h) shall
33 review administrative penalties assessed pursuant to this section, ~~provided, however, that~~
34 ~~the Penalty Review Committee shall not review penalty recommendations agreed to by the~~
35 ~~Department and the long-term care facility for Type B violations except those violations that~~
36 ~~have been previously cited against the long-term care facility during the previous 12 months, or~~
37 ~~within the time period of the previous licensure inspection, whichever time period is longer.~~
38 section.

39 (g1) The Secretary may use monies collected as an administrative penalty to
40 reimburse a facility for providing staff training if:

41 (1) The cost of training, not to exceed one thousand dollars (\$1,000), is
42 equal to or less than the amount of the assessed penalty;

- 1 (2) The assessed penalty is for the facility's only violation within a 12-
2 month period preceding the current violation and while the facility is
3 under the same management; and
- 4 (3) The training is specific to the violation, approved by the Department of
5 Human Resources, and taught by someone approved by the Department
6 other than the provider.
- 7 (h) The Department shall not assess an administrative penalty against a facility
8 under this section if a civil monetary penalty has been assessed for the same violation
9 under federal enforcement laws and regulations."
- 10 Section 3. This act becomes effective August 1, 1997, and applies to violations
11 committed on or after that date.