SESSION 1997

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SENATE BILL 53* Children & Human Resources Committee Substitute Adopted 4/23/97 Committee Substitute Favorable 7/17/97

Short Title: Penalties for Adult Care/Nursing Homes.

(Public)

Sponsors:

Referred to:

February 6, 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

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1 <u>that death or serious physical harm will occur.</u> Type A Violation	lis shah
2 be abated or eliminated immediately. <u>The Department shall req</u>	
3 immediate plan of correction for each Type A Violation. The	
4 <u>making the findings shall do the following:</u>	<u>person</u>
	vility of
5a.Orally and immediately inform the administrator of the fac6the specific findings and what must be done to correct the	•
7 set a date by which the violation must be corrected;	<u>, anu</u>
	writing
8 <u>b.</u> <u>Within 10 working days of the investigation, confirm in</u> 9 to the administrator the information provided orally und	
10 subdivision a. of this subdivision; and	<u>ci suo-</u>
	er sub
11c.Provide a copy of the written confirmation required und12subdivision b. of this subdivision to the Department.	<u>ci suo-</u>
13 The Department shall impose a civil penalty in an amount not le	es than
14 two hundred fifty dollars (\$250.00) nor more than five thousand	
15 (\$5000) for each Type A Violation. - <u>Violation in homes licensed f</u>	
16 <u>or fewer beds.</u> The Department shall impose a civil penalty	
17 amount not less than five hundred dollars (\$500.00) nor more th	
18 <u>thousand dollars (\$10,000) for each Type A Violation in fa</u>	
19 licensed for 10 or more beds.	
20 (2) 'Type B Violation' means a violation by a facility of the regu	lations
21 standards and requirements set forth in G.S. 131D-21 or applicab	
22 or federal laws and regulations governing the licensure or certif	
23 of a facility which present a direct relationship to the health, sa	
24 welfare of any resident, but which does not create result in sub	•
25 risk that death or serious physical harm will occur. The Departme	
26 impose a civil penalty in an amount up to two hundred fifty dollars (\$	•
27 for each Type B Violation. A citation for a Type B Violation which re	
28 the physical plant, systems, or equipment of the facility and which ca	
29 harm to a resident of the facility shall provide 10 days to correct the vi	
30 If such a Type B Violation, that is not a repeat violation as specified i	
31 of this section, is corrected within the 10 days, no civil penalty s	shall be
32 imposed.—The Department shall require a plan of correction for	or each
33 <u>Type B Violation and may require the facility to establish a s</u>	
34 plan of correction within a specific time period to address the viol	lation.
35 (b) Penalties for failure to correct violations within time specified.	
36 (1) Where a facility has failed to correct a Type A Violation	
37 Department shall assess the facility a civil penalty in the amount	1
38 to five hundred dollars (\$500.00) for each day that the def	iciency
39 continues beyond the time specified in the plan of con	
40 <u>approved by the Department or its authorized representativ</u>	
41 Department or its authorized representative shall conduct an	
42 inspection of the facility to insure ensure that the violation ha	is been
43 corrected.	

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 enduet 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 peniod shall	1	(2)	Where a facility has failed to correct a Type B Violation within the time
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39 <u>laws and regulations;</u>	24 25 26 27 28 29 30 31 32 33 34 35 36 37 38	Department sha (1)_ (1a) (1b)	Il consider the following factors: The gravity of the violation, including the probability fact that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The reasonable diligence exercised by the licensee to comply with G.S.
40 (2a) and efforts Efforts by the licensee to correct violations;	24 25 26 27 28 29 30 31 32 33 34 35 36 37	Department sha (1)_ (1a) (1b)	Il consider the following factors: The gravity of the violation, including the probability fact that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The reasonable diligence exercised by the licensee to comply with G.S.
41 (3) The number and type of previous violations committed by the licensee;	24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39	Department sha (1)_ (1a) (1b) (2)	Il consider the following factors: The gravity of the violation, including the probability fact that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations; and efforts Efforts by the licensee to correct violations;
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42 licensee within the past 36 months;	24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41	Department sha (1)_ (1a) (1b) (2) (2a)	Il consider the following factors: The gravity of the violation, including the probability fact that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated; The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations; and efforts Efforts by the licensee to correct violations; The number and type of previous violations committed by the licensee ;

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 the
5	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	1 (a1) In liqu of assassing on adm	inistrative penalty the Secretary may order a		
2	(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:			
2	· · · · · · · · · · · · · · · · · · ·	es not exceed one thousand dollars (\$1,000);		
4		for the facility's only violation within a 12-month		
5		arrent violation and while the facility is under the		
6				
7		<u>L</u>		
8		iolation		
8 9	—			
		e Department of Human Resources; and		
10		cone approved by the Department and other than		
11		ich a nonalter norsiarre committee within the		
12		ish a penalty review committee within the		
13		strative penalties assessed pursuant to this section		
14		<u>IE-129 as follows:</u> The Secretary shall ensure that		
15 16		nts of social services' penalty recommendations along the penalty review committee are completed within 60		
10		al recommendations. The Penalty Review Committee		
18		agreed to by the Department and the long-term care		
19		violations that have been previously cited against the		
20	5 51 1	12 months or within the time period of the previous		
21				
22	1 / 1	<i>8 6 6 6 6 6 6 6 6 6 6</i>		
23		work of the committee:		
23 24	<u>a.</u> <u>Administer the v</u>	work of the committee; n of departmental staff review;		
24	a.Administer the v4b.Ensure provision	n of departmental staff review;		
24 25	Administer the va.Administer the vAb.Ensure provision5c.Evaluate the loc	n of departmental staff review; al departments of social services and the Division		
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1		<u>(3)c.</u>	A representative of a nursing home;
2		<u>(4)d.</u>	A representative of an adult care home; and
3		<u>(5)e.</u>	Two public members. One shall be a 'near' relative of a
4			nursing home patient, chosen from a list prepared by the
5			Office of State Long-Term Care Ombudsman, Division
6			of Aging, Department of Human Resources. One shall
7			be a 'near' relative of a rest home patient, chosen from a
8			list prepared by the Office of State Long-Term Care
9			Ombudsman, Division of Aging, Department of Human
10			Resources. For purposes of this subdivision, a 'near'
11			relative is a spouse, sibling, parent, child, grandparent,
12			or grandchild.
13		(3)	Neither the pharmacist, nurse, nor public members appointed
14		. ,	his subsection nor any member of their immediate families
15			employed by or own any interest in a nursing home or adult
16		care hor	
17	<u>(4)</u>		serving on the committee, each member shall complete a
18	\		rogram provided by the Department of Human Resources that
19			andards of care and applicable State and federal laws and
20			s governing facilities licensed under Chapter 131D and
21		-	<u>31E of the General Statutes.</u>
22	<u>(5)</u>	-	nber of the Committee shall serve a term of two years. The
23			ns of the members shall commence on August 3, 1989. The
24			shall fill all vacancies. Unexcused absences from three
25		-	ve meetings constitute resignation from the Committee."
26	Sectio		31E-129 reads as rewritten:
27	"§ 131E-129. P		
28	(a) Violat	tions classi	fied. The Department shall impose an administrative penalty
29			ons of this Part on any facility which is found to be in violation
30			G.S. 131E-117 or applicable State and federal laws and
31			ed for violations shall be classified according to the nature of
32	the violation as f		
33	(1)	'Type A V	Violation' means a violation by a facility of the regulations,
34		• •	and requirements set forth in G.S. 131E-117, or applicable
35		-	federal laws and regulations governing the licensure or
36			on of a facility which creates substantial risk that death or serious
37			arm to a resident will occur or where such harm has occurred.
38		results in	death or serious physical harm, or results in substantial risk
39		that death	or serious physical harm will occur. Type A Violations shall
40		be abated	or eliminated immediately. The Department shall require an
41		immediate	e plan of correction for each Type A Violation. The person
42			e findings shall do the following:

1			Quality and immediately inform the administrator of the facility of
1			a. Orally and immediately inform the administrator of the facility of
2			the specific findings and what must be done to correct them and
3			set a date by which the violation must be corrected;
4			b. Within 10 working days of the investigation, confirm in writing
5			to the administrator the information provided orally under sub-
6			subdivision a. of this subdivision; and
7			c. <u>Provide a copy of the written confirmation required under sub-</u>
8			subdivision b. of this subdivision to the Department.
9			The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250,00) nor more than five thousand dollars
10			two hundred fifty dollars (\$250.00) nor more than five thousand dollars
11			(\$5,000) five hundred dollars (\$500.00) nor more than ten thousand
12		(2)	<u>dollars (\$10,000)</u> for each Type A Violation.
13		(2)	'Type B Violation' means a violation by a facility of the regulations,
14			standards and requirements set forth in G.S. 131E-117 or applicable
15			State or federal laws and regulations governing the licensure or
16			certification of a facility which presents a direct relationship to the
17			health, safety, or welfare of any resident, but which does not create
18 19			result in substantial risk that death or serious physical harm will occur.
19 20			The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation
20 21			which relates to the physical plant, systems, or equipment of the facility and
21			which causes no harm to a resident of the facility shall provide 10 days to
23			correct the violation. If such a Type B Violation, which is not a repeat
24			violation as specified in (b)(3) of this section, is corrected within the 10 days,
25			no civil penalty shall be imposed. The Department shall require a plan of
26			correction for each Type B Violation and may require the facility to
27			establish a specific plan of correction within a specific time period to
28			address the violation.
29	(b)	Penal	ties for failure to correct violations within time specified.
30		(1)	Where a facility has failed to correct a Type A Violation, the
31		~ /	Department shall assess the facility a civil penalty in the amount of up
32			to five hundred dollars (\$500.00) for each day that the deficiency
33			continues. continues beyond the time specified in the plan of correction
34			approved by the Department or its authorized representative. The
35			Department or its authorized representative shall conduct an on-site
36			inspection of the facility to insure ensure that the violation has been
37			corrected.
38		(2)	Where a facility has failed to correct a Type B Violation within the time
39			specified for correction by the Department, Department or its authorized
40			representative, the Department shall assess the facility a civil penalty in
41			the amount of up to two hundred dollars (\$200.00) for each day that the
42			deficiency continues beyond the date specified for correction time
43			specified in the plan of correction approved by the Department or its

1		authorized representative without just reason for such failure. The
2		Department or its authorized representative shall conduct an on-site
3		inspection of the facility to insure ensure that the violation has been
4		corrected.
5	(3)	The Department shall impose a civil penalty which is treble the amount
6		assessed under subdivision (1) or (2) of subsection (a) when a facility
7		under the same management, ownership, or control:
8		a. Has control has received a citation and paid a fine, or
9		b. Has received a citation for which the Department in its discretion
10		granted to it under subdivision (2) of subsection (a) but did not
11		impose a penalty, penalty
12		for violating the same specific provision of a statute or regulation for
13		which it has received a citation during the previous 12 months or within
14		the time period of the previous licensure inspection, whichever time period is
15		longer. months. The counting of the 12-month period shall be tolled
16		during any time when the facility is being operated by a court-appointed
17		temporary manager pursuant to Article 13 of this Chapter.
18	(c) Factor	rs to be considered in determining amount of initial penalty. In
19	determining the	e amount of the initial penalty to be imposed under this section, the
20	Department shall	Il consider the following factors:
21	(1)	The gravity of the violation, including the probability-fact that death or
22		serious physical harm to a resident will result or has resulted; the severity
23		of the actual or potential harm, and the extent to which the provisions of
24		the applicable statutes or regulations were violated;
25	<u>(1a)</u>	The gravity of the violation, including the probability that death or
26		serious physical harm to a resident will 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	<u>(1b)</u>	The gravity of the violation, including the probability that death or
30		serious physical harm to a resident may 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	<u>(2)</u>	The reasonable diligence exercised by the licensee to comply with G.S.
34		131E-256 and G.S. 131E-265 and other applicable State and federal
35		laws and regulations;
36	<u>(2a)</u>	and efforts-Efforts by the licensee to correct violations;
37	(3)	The number and type of previous violations committed by the licensee;
38		licensee within the past 36 months;
39	(4)	The amount of assessment necessary to insure immediate and continued
40		compliance; and
41	(5)	The number of patients put at risk by the violation.
42		acts found to support the factors in subsection (c) of this section shall be
43	the basis in det	ermining the amount of the penalty. The Secretary shall document the

1	findings in written record and shall make the written record available to all affected
2	parties including:
3	(1) <u>The penalty review committee;</u>
4	(2) The local department of social services who is responsible for oversight
5	of the facility involved;
6	(3) <u>The licensee involved;</u>
7	(4) <u>The residents affected; and</u>
8	(5) The family members or guardians of the residents affected.
9	(c2) Local county departments of social services and Division of Facilities Services
10	personnel shall submit proposed penalty recommendations to the Department within 45
11	days of the citation of a violation.
12	(d) The Department shall impose a civil penalty on any facility which refuses to
13	allow an authorized representative of the Department to inspect the premises and records
14	of the facility.
15	(e) Any facility wishing to contest a penalty shall be entitled to an administrative
16	hearing as provided in the Administrative Procedure Act, Chapter 150B of the General
17	Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of
18	any civil penalty assessed by the Department. At least the following specific issues shall be
19	addressed at the administrative hearing:
20	(1) The reasonableness of the amount of any civil penalty assessed, and
21	(2) The degree to which each factor has been evaluated pursuant to
22	subsection (c) of this section to be considered in determining the amount
23	of an initial penalty.
24	If a civil penalty is found to be unreasonable, unreasonable or if the evaluation of each
25	factor is found to be incomplete, the hearing officer may recommend that the penalty be
26	modified adjusted accordingly.
27	(f) The Secretary may bring a civil action in the superior court of the county
28	wherein the violation occurred to recover the amount of the administrative penalty
29	whenever a facility:
30	(1) Which has not requested an administrative hearing fails to pay the
31	penalty within 60 days after being notified of the penalty; or
32	(2) Which has requested an administrative hearing fails to pay the penalty
33	within 60 days after receipt of a written copy of the decision as provided
34	in G.S. 150B-36.
35	(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall
36	review administrative penalties assessed pursuant to this section, provided, however, that
37	the Penalty Review Committee shall not review penalty recommendations agreed to by the
38	Department and the long-term care facility for Type B violations except those violations that
39	have been previously cited against the long term care facility during the previous 12 months, or
40	within the time period of the previous licensure inspection, whichever time period is longer.
41	section.
42	(g1) In lieu of assessing an administrative penalty, the Secretary may order a
43	facility to provide staff training if:

1	<u>(1)</u>	The cost of training does not exceed one thousand dollars (\$1,000);
2	$\overline{(2)}$	The penalty would be for the facility's only violation within a 12-month
3		period preceding the current violation and while the facility is under the
4		same management; and
5	<u>(3)</u>	The training is:
6		<u>a.</u> <u>Specific to the violation;</u>
7		b. <u>Approved by the Department of Human Resources; and</u>
8		c. <u>Taught by someone approved by the Department and other than</u>
9		the provider.
10	(h) The I	Department shall not assess an administrative penalty against a facility
11	under this section	on if a civil monetary penalty has been assessed for the same violation
12	under federal en	forcement laws and regulations."
13	Sectio	on 3. This act becomes effective August 1, 1997, and applies to violations
14		

14 committed on or after that date.