

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 1474

Short Title: Adult Care/Nursing Homes.

(Public)

---

Sponsors: Senators Martin of Guilford; and Dannelly.

---

Referred to: Appropriations.

---

June 3, 1996

A BILL TO BE ENTITLED

1 AN ACT TO APPROPRIATE FUNDS TO ESTABLISH A REVOLVING FUND FOR  
2 THE PURCHASE OF FIRE PROTECTION EQUIPMENT FOR ADULT CARE  
3 HOMES, GROUP HOMES, AND NURSING HOMES, TO REQUIRE THE  
4 DEPARTMENT OF HUMAN RESOURCES TO ADOPT RULES REGARDING  
5 FIRE PROTECTION SYSTEMS IN CERTAIN HOMES, AND TO CHANGE  
6 EXISTING LAW REGARDING COMMUNITY ADVISORY COMMITTEES,  
7 STAFF/RESIDENT RATIO, PENALTIES, AND CONFIDENTIALITY OF  
8 INFORMATION.  
9

10 The General Assembly of North Carolina enacts:

11 **PART I.**

12 **REVOLVING LOAN FUND FOR FIRE PROTECTION.**

13 Section 1. (a) Chapter 122A of the General Statutes is amended by adding a  
14 new section to read:

15 "**§ 122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection**  
16 **Fund authorized; authority.**

17 (a) The North Carolina Housing Finance Agency shall establish a Adult Care  
18 Home, Group Home, and Nursing Home Fire Protection Fund (hereinafter 'Fire  
19 Protection Fund') to assist owners of adult care homes, group homes for developmentally  
20 disabled adults, and nursing homes with the purchase and installation of fire protection

1 systems in existing and new adult care homes, group homes for developmentally disabled  
2 adults, and nursing homes. The Fire Protection Fund shall be a revolving fund.

3 (b) The Agency, in consultation with the Department of Human Resources, shall  
4 adopt rules for the management and use of the Fire Protection Fund. These rules at a  
5 minimum shall provide for the following:

6 (1) Financial incentives for owners of facilities who utilize Fire Protection  
7 Fund monies to install sprinkler systems instead of smoke detection  
8 equipment.

9 (2) Maximum loan amounts of one dollar and seventy-five cents (\$1.75) per  
10 square foot for advanced smoke detectors and digital communication  
11 equipment, three dollars and seventy-five cents (\$3.75) per square foot  
12 for residential sprinkler systems, and six dollars (\$6.00) per square foot  
13 for institutional sprinkler systems.

14 (3) Interest rates from three percent (3%) to six percent (6%) for a period  
15 not to exceed 20 years for sprinkler systems and 10 years for smoke  
16 detection systems.

17 (4) Documentary verification that owners of facilities obtain fire protection  
18 systems at a reasonable cost.

19 (5) Acceleration of a loan when statutory fire protection requirements are  
20 not met by the facility for which the loan was made.

21 (6) Loan approval priority criteria that considers the frailty level of  
22 residents at a facility.

23 (7) Loan origination and servicing fees."

24 (b) Proceeds from the Fire Protection Fund created in this act may be used to  
25 provide staff support to the North Carolina Housing Finance Agency for loan processing  
26 and to the Department of Human Resources for review and approval of fire protection  
27 plans and inspection of fire protection systems.

28 (c) The North Carolina Housing Finance Agency shall, by October 1, 1996, adopt  
29 temporary rules to implement this section.

30 (d) Effective July 1, 1996, there is appropriated from the General Fund to the  
31 North Carolina Housing Finance Agency, the sum of ten million dollars (\$10,000,000) to  
32 establish the Fire Protection Fund.

33  
34 **PART II.**  
35 **FIRE PROTECTION.**

36 Sec. 2. (a) The Department of Human Resources shall adopt rules to ensure  
37 that:

38 (1) All licensed adult care homes with seven or more residents and nursing  
39 homes have:

40 a. sprinkler systems; or

41 b. complete smoke detection systems for all spaces not subject to  
42 false alarms and rate-of-rise heat detectors in other spaces and  
43 digital communication devices connected to transmit building

1 fire alarm signals to a 24-hour manned location in the most direct  
2 and reliable means acceptable to the local fire department.

3 (2) Both new family care homes and homes for developmentally disabled  
4 adults whose plans have not been approved by the Department of  
5 Human Resources before September 1, 1996, have a supervised  
6 residential sprinkler system, automatic fire alarm system, and digital  
7 communication device connected to transmit building fire alarm signals  
8 to a 24-hour manned location in the most direct and reliable means  
9 acceptable to the local fire department.

10 (3) Both family care homes and homes for developmentally disabled adults  
11 that are currently licensed or have had plans approved by the  
12 Department of Human Resources prior to September 1, 1996 (existing  
13 facilities), have at least 120-volt smoke detectors for all spaces not  
14 subject to false alarms and rate-of-rise heat detectors in other areas of  
15 the building (such as kitchens and attics).

16 (4) Existing facilities that are already required to have a manual fire alarm  
17 system by building codes have a digital communication device  
18 connected to transmit building fire alarm signals to a 24-hour manned  
19 location in the most direct and reliable means acceptable to the local fire  
20 department.

21 (b) The Department of Human Resources shall adopt rules requiring that facilities  
22 required to install complete fire alarm systems or alternate sprinkler systems shall do so  
23 by July 1, 1998, unless the facility can demonstrate to the Department of Human  
24 Resources, that installation services have been sought in good faith but cannot be  
25 obtained due to shortages in installation personnel or fire protection equipment and that  
26 facilities required to install 120-volt smoke detection systems shall do so by July 1, 1997,  
27 unless the facility can demonstrate to the Department of Human Resources that  
28 installation services have been sought in good faith but cannot be obtained due to  
29 shortages in installation personnel or fire protection equipment.

30 (c) The Department of Human Resources shall adopt rules to ensure that nursing  
31 homes and adult care homes train staff in fire and disaster response, have fire alarms  
32 certified by qualified persons twice a year, have sprinkler systems certified by qualified  
33 persons once a year, and comply with the National Fire Prevention Association (NFPA)  
34 guide concerning alternative approaches to life safety.

35 (d) The Department of Human Resources shall adopt temporary rules to effect this  
36 Part by October 1, 1996.

### 37 38 **PART III.**

#### 39 **ADULT HOME AND NURSING HOME ADVISORY COMMITTEES.**

40 Sec. 3. G.S. 131D-31 reads as rewritten:

41 "**§ 131D-31. Adult care home community advisory committees.**

42 (a) Statement of Purpose. – It is the intention of the General Assembly that  
43 community advisory committees work to maintain the intent of the Adult Care Home

1 Residents' Bill of Rights within the licensed adult care homes in this State. It is the  
2 further intent of the General Assembly that the committees promote community  
3 involvement and cooperation with adult care homes to ensure quality care for the elderly  
4 and disabled adults.

5 (b) Establishment and Appointment of Committees. –

6 (1) A community advisory committee shall be established in each county  
7 that has at least one licensed adult care ~~home~~home. ~~The committee~~  
8 shall serve all the homes in the county, and shall work with each of  
9 these homes for the best interests of the residents. In a county that has  
10 one, two, or three adult care homes with 10 or more beds, the committee  
11 shall have a minimum of five members.

12 (2) In a county with four or more adult care homes with 10 or more beds,  
13 the committee shall have a minimum of one additional member for each  
14 adult care home with 10 or more beds in excess of three, up to a  
15 maximum of 20 members, three. In each county with four or more adult  
16 care homes with 10 or more beds, the committee shall establish a  
17 subcommittee of ~~no more than five members and~~ no fewer than three  
18 members from the committee for each adult care home in the county.  
19 Each member must serve on at least one subcommittee.

20 (3) In counties with no adult care homes with 10 or more beds, the  
21 committee shall have a minimum of five members. Regardless of how  
22 many members a particular community advisory committee is required  
23 to have, at least one member of each committee shall be a person  
24 involved in the area of mental retardation.

25 (4) The boards of county commissioners are encouraged to appoint the  
26 Adult Care Home Community Advisory Committees. Of the members,  
27 a minority (not less than one-third, but as close to one-third as possible)  
28 shall be chosen from among persons nominated by a majority of the  
29 chief administrators of adult care homes in the county. If the adult care  
30 home administrators fail to make a nomination within 45 days after  
31 written notification has been sent to them requesting a nomination, these  
32 appointments may be made without nominations. If the county  
33 commissioners fail to appoint members to a committee by July 1, 1983,  
34 the appointments shall be made by the Assistant Secretary for Aging,  
35 Department of Human Resources, no sooner than 45 days after  
36 nominations have been requested from the adult care home  
37 administrators, but no later than October 1, 1983. In making  
38 appointments, the Assistant Secretary for Aging shall follow the same  
39 appointment process as that specified for the County Commissioners.

40 (c) Joint Nursing and Adult Care Home Community Advisory Committees. –  
41 Appointment to the Nursing Home Community Advisory Committees shall preclude  
42 appointment to the Adult Care Home Community Advisory Committees except where  
43 written approval to combine these committees is obtained from the Assistant Secretary

1 for Aging, Department of Human Resources. Where this approval is obtained, the Joint  
2 Nursing and Adult Care Home Community Advisory Committee shall have the  
3 membership required of Nursing Home Community Advisory Committees and a  
4 minimum of one additional member for each adult care home with 10 or more beds  
5 licensed in the county. In counties with no adult care homes with 10 or more beds, there  
6 shall be a minimum of one additional member for every four other types of adult care  
7 homes in the county. ~~In no case shall the number of members on the Joint Nursing and Adult~~  
8 ~~Care Home Community Advisory Committee exceed 25.~~—Each member shall exercise the  
9 statutory rights and responsibilities of both Nursing Home Committees and Adult Care  
10 Home Committees. In making appointments to this joint committee, the county  
11 commissioners shall solicit nominations from both nursing and adult care home  
12 administrators for the appointment of approximately (but no more than) one-third of the  
13 members.

14 (d) Terms of Office. — Each committee member shall serve an initial term of one  
15 year. Any person reappointed to a second or subsequent term in the same county shall  
16 serve a two- or three-year term at the county commissioners' discretion to ensure  
17 staggered terms of office.

18 (e) Vacancies. — Any vacancy shall be filled by appointment of a person for a one-  
19 year term. If this vacancy is in a position filled by an appointee nominated by the chief  
20 administrators of adult care homes within the county, then the county commissioners  
21 shall fill the vacancy from persons nominated by a majority of the chief administrators. If  
22 the adult care home administrators fail to make a nomination by registered mail within 45  
23 days after written notification has been sent to them requesting a nomination, this  
24 appointment may be made without nominations. If the county commissioners fail to fill a  
25 vacancy, the vacancy may be filled by the Assistant Secretary for Aging, Department of  
26 Human Resources no sooner than 45 days after the commissioners have been notified of  
27 the appointment or vacancy.

28 (f) Officers. — The committee shall elect from its members a chair, to serve a one-  
29 year term.

30 (g) Minimum Qualifications for Appointment. — Each member must be a resident  
31 of the county which the committee serves. No person or immediate family member of a  
32 person with a financial interest in a home served by the committee, or employee or  
33 governing board member of a home served by the committee, or immediate family  
34 member of a resident in a home served by the committee may be a member of that  
35 committee. Any county commissioner who is appointed to the committee shall be  
36 deemed to be serving on the committee in an ex officio capacity. Members of the  
37 committee shall serve without compensation, but may be reimbursed for actual expenses  
38 incurred by them in the performance of their duties. The names of the committee  
39 members and the date of expiration of their terms shall be filed with the Division of  
40 Aging, Department of Human Resources.

41 (h) Training. — The Division of Aging, Department of Human Resources, shall  
42 develop training materials, which shall be distributed to each committee member. Each  
43 committee member must receive training as specified by the Division of Aging prior to

1 exercising any power under G.S. 131D-32. The Division of Aging, Department of Human  
2 Resources, shall provide the committees with information, guidelines, training, and  
3 consultation to direct them in the performance of their duties.

4 (i) Any written communication made by a member of adult care home advisory  
5 committee within the course and scope of the member's duties, as specified in G.S. 131D-  
6 32, shall be privileged to the extent provided in this subsection. This privilege shall be a  
7 defense in a cause of action for libel if the member was acting in good faith and the  
8 statements and communications do not amount to intentional wrongdoing.

9 To the extent that any adult care home advisory committee or any member is covered  
10 by liability insurance, that committee or member shall be deemed to have waived the  
11 qualified immunity herein to the extent of indemnification by insurance."

12 Sec. 4. G.S. 131E-128 reads as rewritten:

13 **"§ 131E-128. Nursing home advisory committees.**

14 (a) It is the purpose of the General Assembly that community advisory committees  
15 work to maintain the intent of this Part within the nursing homes in this State, including  
16 nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is  
17 the further purpose of the General Assembly that the committees promote community  
18 involvement and cooperation with nursing homes and an integration of these homes into  
19 a system of care for the elderly.

20 (b) (1) A community advisory committee shall be established in each  
21 county which has a nursing home, including a nursing home operated  
22 by a hospital licensed under Article 5 of ~~G.S. Chapter 131E~~, G.S.  
23 Chapter 131E. This committee shall serve all the homes in the  
24 county, and shall work with each home in the best interest of the  
25 persons residing in each home. In a county which has one, two, or  
26 three nursing homes, the committee shall have a minimum of five  
27 members. In a county with four or more nursing homes, the  
28 committee shall have a minimum of one additional member for each  
29 nursing home in excess of three.

30 (2) In each county with four or more nursing homes, the committee shall  
31 establish a subcommittee of ~~no more than five members and~~ no fewer than  
32 three members from the committee for each nursing home in the county.  
33 Each member must serve on at least one subcommittee.

34 (3) Each committee shall be appointed by the board of county  
35 commissioners. Of the members, a minority (not less than one-third, but  
36 as close to one-third as possible) must be chosen from among persons  
37 nominated by a majority of the chief administrators of nursing homes in  
38 the county and of the governing bodies of the hospitals licensed under  
39 Article 5 of G.S. Chapter 131E, which operate nursing homes. If the  
40 nursing home administrators and the governing bodies of the hospitals  
41 licensed under Article 5 of G.S. Chapter 131E, which operate nursing  
42 homes fail to make a nomination within 45 days after written  
43 notification has been sent to them by the board of county commissioners

1            requesting a nomination, these appointments may be made by the board  
2            of county commissioners without nominations.

3            (c) Each committee member shall serve an initial term of one year. Any person  
4            reappointed to a second or subsequent term in the same county shall serve a three-year  
5            term. Persons who were originally nominees of nursing home chief administrators and  
6            the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E,  
7            which operate nursing homes, or who were appointed by the board of county  
8            commissioners when the nursing home administrators and the governing bodies of the  
9            hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes  
10           failed to make nominations, may not be reappointed without the consent of a majority of  
11           the nursing home chief administrators and the governing bodies of the hospitals licensed  
12           under Article 5 of G.S. Chapter 131E, which operate nursing homes within the county. If  
13           the nursing home chief administrators and the governing bodies of the hospitals licensed  
14           under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to approve or  
15           reject the reappointment within 45 days of being requested by the board of county  
16           commissioners, the commissioners may reappoint the member if they so choose.

17           (d) Any vacancy shall be filled by appointment of a person for a one-year term.  
18           Any person replacing a member nominated by the chief administrators and the governing  
19           bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
20           nursing homes or a person appointed when the chief administrators and the governing  
21           bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate  
22           nursing homes failed to make a nomination shall be selected from among persons  
23           nominated by the administrators and the governing bodies of the hospitals licensed under  
24           Article 5 of G.S. Chapter 131E, which operate nursing homes, as provided in subsection  
25           (b). If the county commissioners fail to appoint members to a committee, or fail to fill a  
26           vacancy, the appointment may be made or vacancy filled by the Secretary or the  
27           Secretary's designee no sooner than 45 days after the commissioners have been notified  
28           of the appointment or vacancy if nomination or approval of the nursing home  
29           administrators and the governing bodies of the hospitals licensed under Article 5 of G.S.  
30           Chapter 131E, which operate nursing homes is not required. If nominations or approval  
31           of the nursing home administrators and the governing bodies of the hospitals licensed  
32           under Article 5 of G.S. Chapter 131E, which operate nursing homes is required, the  
33           appointment may be made or vacancy filled by the Secretary or the Secretary's designee  
34           no sooner than 45 days after the commissioners have received the nomination or  
35           approval, or no sooner than 45 days after the 45-day period for action by the nursing  
36           home administrators and the governing bodies of the hospitals licensed under Article 5 of  
37           G.S. Chapter 131E, which operate nursing homes.

38           (e) The committee shall elect from its members a chair, to serve a one-year term.

39           (f) Each member must be a resident of the county which the committee serves. No  
40           person or immediate family member of a person with a financial interest in a home  
41           served by a committee, or employee or governing board member or immediate family  
42           member of an employee or governing board member of a home served by a committee, or  
43           immediate family member of a patient in a home served by a committee may be a

1 member of a committee. Membership on a committee shall not be considered an office as  
2 defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the  
3 committee shall be deemed to be serving on the committee in an ex officio capacity.  
4 Members of the committee shall serve without compensation, but may be reimbursed for  
5 the amount of actual expenses incurred by them in the performance of their duties. The  
6 names of the committee members and the date of expiration of their terms shall be filed  
7 with the Division of Aging, which shall supply a copy to the Division of Facility  
8 Services.

9 (g) The Division of Aging, Department of Human Resources, shall develop  
10 training materials which shall be distributed to each committee member and nursing  
11 home. Each committee member must receive training as specified by the Division of  
12 Aging prior to exercising any power under subsection (h) of this section. The Division of  
13 Aging, Department of Human Resources, shall provide the committees with information,  
14 guidelines, training, and consultation to direct them in the performance of their duties.

15 (h) (1) Each committee shall apprise itself of the general conditions  
16 under which the persons are residing in the homes, and shall work for  
17 the best interests of the persons in the homes. This may include  
18 assisting persons who have grievances with the home and facilitating  
19 the resolution of grievances at the local level.

20 (2) Each committee shall quarterly visit the nursing home it serves. For  
21 each official quarterly visit, a majority of the committee members shall  
22 be present. In addition, each committee may visit the nursing home it  
23 serves whenever it deems it necessary to carry out its duties. In counties  
24 with four or more nursing homes, the subcommittee assigned to a home  
25 shall perform the duties of the committee under this subdivision, and a  
26 majority of the subcommittee members must be present for any visit.

27 (3) Each member of a committee shall have the right between 10:00 A.M.  
28 and 8:00 P.M. to enter into the facility the committee serves in order to  
29 carry out the members' responsibilities. In a county where  
30 subcommittees have been established, this right of access shall be  
31 limited to homes served by those subcommittees to which the member  
32 has been appointed.

33 (4) The committee or subcommittee may communicate through its chair  
34 with the Department or any other agency in relation to the interest of  
35 any patient. The identity of any complainant or resident involved in a  
36 complaint shall not be disclosed except as permitted under the Older  
37 Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.

38 (5) Each home shall cooperate with the committee as it carries out its  
39 duties.

40 (6) Before entering into any nursing home, the committee, subcommittee,  
41 or member shall identify itself to the person present at the facility who is  
42 in charge of the facility at that time.



1 (i) Any written communication made by a member of a nursing home advisory  
2 committee within the course and scope of the member's duties, as specified in G.S. 131E-  
3 128, shall be privileged to the extent provided in this subsection. This privilege shall be a  
4 defense in a cause of action for libel if the member was acting in good faith and the  
5 statements or communications do not amount to intentional wrongdoing.

6 To the extent that any nursing home advisory committee or any member thereof is  
7 covered by liability insurance, that committee or member shall be deemed to have waived  
8 the qualified immunity herein to the extent of indemnification by insurance."

9  
10 **PART IV.**

11 **STAFF/RESIDENT RATIO.**

12 Sec. 5. (a) Chapter 131D of the General Statutes is amended by adding a new  
13 section to read:

14 **"§ 131D-5.1. Adult care home staffing requirements.**

15 Adult care homes shall be required to have one aide on duty for every 30 residents  
16 during the third (night) shift."

17 (b) This Part becomes effective October 1, 1996.

18  
19 **PART V.**

20 **INCREASED PENALTIES.**

21 Sec. 6. G.S. 131D-34 reads as rewritten:

22 **"§ 131D-34. Penalties; remedies.**

23 (a) Violations Classified. – The Department of Human Resources shall impose an  
24 administrative penalty in accordance with provisions of this Article on any facility which  
25 is found to be in violation of requirements of G.S. 131D-21 or applicable State and  
26 federal laws and regulations. Citations issued for violations shall be classified according  
27 to the nature of 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. 131D-21 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  
32 serious physical harm to a resident will occur or where such harm has  
33 occurred. Type A Violations shall be abated or eliminated immediately.  
34 The Department shall impose a civil penalty in an amount not less than  
35 ~~two hundred fifty dollars (\$250.00) nor more than five thousand dollars~~  
36 ~~(\$5000) five hundred dollars (\$500.00) nor more than ten thousand~~  
37 dollars (\$10,000) for each Type A Violation.

38 (2) 'Type B Violation' means a violation by a facility of the regulations,  
39 standards and requirements set forth in G.S. 131D-21 or applicable State  
40 or federal laws and regulations governing the licensure or certification  
41 of a facility which present a direct relationship to the health, safety, or  
42 welfare of any resident, but which does not create substantial risk that  
43 death or serious physical harm will occur. ~~The Department may impose a~~

1 civil penalty in an amount up to two hundred fifty dollars (\$250.00) for each  
2 Type B Violation. A citation for a Type B Violation which relates to the  
3 physical plant, systems, or equipment of the facility and which causes no harm  
4 to a resident of the facility shall provide 10 days to correct the violation. If  
5 such a Type B Violation, that is not a repeat violation as specified in (b)(3) of  
6 this section, is corrected within the 10 days, no civil penalty shall be imposed.  
7 The Department shall require a plan of correction for each Type B  
8 Violation. The Department may direct the facility to establish a specific  
9 plan of correction within a specific time period to address any Type B  
10 Violation.

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

12 (1) Where a facility has failed to correct a Type A Violation, the  
13 Department shall assess the facility a civil penalty in the amount of up  
14 to five hundred dollars (\$500.00) for each day that the deficiency  
15 ~~continues.~~ continues beyond the time specified in the plan of correction  
16 approved by the Department or its authorized representative. The  
17 Department or its authorized representative shall conduct an on-site  
18 inspection of the facility to insure ensure that the violation has been  
19 corrected.

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

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

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

34 b. ~~Has received a citation for which the Department in the~~  
35 ~~discretion granted to it under subdivision (2) of subsection (a) did~~  
36 ~~not impose a penalty, fine~~

37 for violating the same specific provision of a statute or regulation for  
38 which it received a citation during the previous ~~six months or within the~~  
39 ~~time period of the previous licensure inspection, whichever time period is~~  
40 ~~longer.~~ 12 months. The counting of the ~~six-month~~ 12-month period shall  
41 be tolled during any time when the facility is being operated by a court-  
42 appointed temporary manager pursuant to Article 4 of this Chapter.

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

- 4 (1) The gravity of the violation, including the probability that death or  
5 serious physical harm to a resident will result or has resulted; the  
6 severity of the actual or potential harm, and the extent to which the  
7 provisions of the applicable statutes or regulations were violated;  
8 (2) The reasonable diligence exercised by the licensee and efforts to correct  
9 violations;  
10 (3) The number and type of previous violations committed by the licensee;  
11 (4) The amount of assessment necessary to insure immediate and continued  
12 compliance; and  
13 (5) The number of patients put at risk by the violation.

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

17 (e) Any facility wishing to contest a penalty shall be entitled to an administrative  
18 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General  
19 Statutes. A petition for a contested case shall be filed within 30 days after the Department  
20 mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the  
21 reasonableness of the amount of any civil penalty assessed by the Department. If a civil  
22 penalty is found to be unreasonable, the hearing officer may recommend that the penalty  
23 be modified accordingly.

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

27 (g) 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 (h) The Secretary shall establish a penalty review committee within the  
36 Department, which shall review administrative penalties assessed pursuant to this section  
37 and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review  
38 of local departments of social services' penalty recommendations along with prepared  
39 staff recommendations for the penalty review committee are completed within 60 days of  
40 receipt by the Department of the local recommendations. ~~The Penalty Review Committee  
41 shall not review penalty recommendations agreed to by the Department and the long-term care  
42 facility for Type B violations except those violations that have been previously cited against the  
43 long-term care facility during the previous 12 months or within the time period of the previous~~

1 ~~licensure inspection, whichever time period is longer.~~ The Secretary shall ensure that the  
2 Nursing Home/Adult Care Home Penalty Review Committee established by this  
3 subsection is comprised of nine members. At least one member shall be appointed from  
4 each of the following categories:

- 5 (1) A licensed pharmacist;
- 6 (2) A registered nurse experienced in long-term care;
- 7 (3) A representative of a nursing home;
- 8 (4) A representative of an adult care home; and
- 9 (5) Two public members. One shall be a 'near' relative of a nursing home  
10 patient, chosen from a list prepared by the Office of State Long-Term  
11 Care Ombudsman, Division of Aging, Department of Human  
12 Resources. One shall be a 'near' relative of a rest home patient, chosen  
13 from a list prepared by the Office of State Long-Term Care  
14 Ombudsman, Division of Aging, Department of Human Resources. For  
15 purposes of this subdivision, a 'near' relative is a spouse, sibling, parent,  
16 child, grandparent, or grandchild.

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

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

24 Sec. 7. G.S. 131E-129 reads as rewritten:

25 "**§ 131E-129. Penalties.**

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

- 31 (1) 'Type A Violation' means a violation by a facility of the regulations,  
32 standards, and requirements set forth in G.S. 131E-117, or applicable  
33 State or federal laws and regulations governing the licensure or  
34 certification of a facility which creates substantial risk that death or  
35 serious physical harm to a resident will occur or where such harm has  
36 occurred. Type A Violations shall be abated or eliminated immediately.  
37 The Department shall impose a civil penalty in an amount not less than  
38 ~~two hundred fifty dollars (\$250.00) nor more than five thousand dollars~~  
39 ~~(\$5,000) five hundred dollars (\$500.00) nor more than ten thousand~~  
40 dollars (\$10,000) for each Type A Violation.

- 41 (2) 'Type B Violation' means a violation by a facility of the regulations,  
42 standards and requirements set forth in G.S. 131E-117 or applicable  
43 State or federal laws and regulations governing the licensure or

1 certification of a facility which presents a direct relationship to the  
2 health, safety, or welfare of any resident, but which does not create  
3 substantial risk that death or serious physical harm will occur. The  
4 Department may impose a civil penalty in an amount up to five hundred  
5 dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation  
6 which relates to the physical plant, systems, or equipment of the facility and  
7 which causes no harm to a resident of the facility shall provide 10 days to  
8 correct the violation. If such a Type B Violation, which is not a repeat  
9 violation as specified in (b)(3) of this section, is corrected within the 10 days,  
10 no civil penalty shall be imposed. The Department shall require a plan of  
11 correction for each Type B Violation. The Department may direct the  
12 facility to establish a specific plan of correction within a specific time  
13 frame to address any Type B Violation.

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

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

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

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

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

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

40 for violating the same specific provision of a statute or regulation for  
41 which it has received a citation during the previous 12 months ~~or within~~  
42 ~~the time period of the previous licensure inspection, whichever time period is~~  
43 ~~longer.~~ months. The counting of the 12-month period shall be tolled

1 during any time when the facility is being operated by a court-appointed  
2 temporary manager pursuant to Article 13 of this Chapter.

3 (c) Factors to be considered in determining amount of initial penalty. – In  
4 determining the amount of the initial penalty to be imposed under this section, the  
5 Department shall consider the following factors:

6 (1) The gravity of the violation, including the probability that death or  
7 serious physical harm to a resident will result or has resulted; the  
8 severity of the actual or potential harm, and the extent to which the  
9 provisions of the applicable statutes or regulations were violated;

10 (2) The reasonable diligence exercised by the licensee and efforts to correct  
11 violations;

12 (3) The number and type of previous violations committed by the licensee;

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

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

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

19 (e) Any facility wishing to contest a penalty shall be entitled to an administrative  
20 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General  
21 Statutes. One issue at the administrative hearing shall be the reasonableness of the  
22 amount of any civil penalty assessed by the Department. If a civil penalty is found to be  
23 unreasonable, the hearing officer may recommend that the penalty be modified  
24 accordingly.

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

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

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

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

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



1       "(c) The Secretary shall adopt rules regarding inspections, that, at a minimum,  
2 provide for:

- 3           (1) A general administrative schedule for inspections; and  
4           (2) An unscheduled inspection without notice, if there is a complaint  
5               alleging the violation of any licensing rule adopted under this Article.

6 Survey, inspection, and investigation schedules developed by the Department are not  
7 'public records' as defined in G.S. 132-1."

8

9

**PART VII.**

10

**EFFECTIVE DATE.**

11

12           Sec. 15. Unless otherwise provided in this act, this act is effective upon  
ratification.