

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 53*

Short Title: Penalties for Adult Care/Nursing Homes.

(Public)

Sponsors: Senators Dannelly, Carpenter, Martin of Pitt, Cochrane; Albertson, Ballance, Hoyle, Lucas, Martin of Guilford, Perdue, and Winner.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

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

"§ 131D-34. Penalties; remedies.

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

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

The Department shall require a plan of correction for each Type A

1 Violation. The Department may direct the facility to establish a specific
2 plan of correction within a specific time period to address any Type A
3 Violation. The Department shall impose a civil penalty in an amount
4 not less than two hundred fifty dollars (\$250.00) nor more than five
5 thousand dollars (\$5000) for each Type A Violation. Violation in homes
6 licensed for nine or fewer beds. The Department shall impose a civil
7 penalty in an amount not less than five hundred dollars (\$500.00) nor
8 more than ten thousand dollars(\$10,000) for each Type A Violation in
9 facilities licensed for 10 or more beds.

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

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

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

35 (2) Where a facility has failed to correct a Type B Violation within the time
36 specified for correction by the ~~Department, Department or its authorized~~
37 representative, the Department shall assess the facility a civil penalty in
38 the amount of up to two hundred dollars (\$200.00) for each day that the
39 deficiency continues beyond the date specified for correction without
40 just reason for such failure. The Department or its authorized
41 representative shall ~~conduct an on-site inspection of the facility to insure~~
42 ensure that the violation has been 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 the~~
6 ~~discretion granted to it under subdivision (2) of subsection (a) did~~
7 ~~not impose a penalty, fine~~

8 for violating the same specific provision of a statute or regulation for
9 which it received a citation during the previous ~~six months or within the~~
10 ~~time period of the previous licensure inspection, whichever time period is~~
11 ~~longer, 12 months.~~ The counting of the ~~six month~~ 12-month period shall
12 be tolled during any time when the facility is being operated by a court-
13 appointed temporary manager pursuant to Article 4 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 that death or
18 serious physical harm to a resident will result or has resulted; the
19 severity of the actual or potential harm, and the extent to which the
20 provisions of the applicable statutes or regulations were violated;

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

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

24 (4) The amount of assessment necessary to insure immediate and continued
25 compliance; and

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

27 (c1) Local county departments of social services and Division of Facilities Services
28 personnel shall submit proposed penalty recommendations to the Department within 45
29 days of the citation of a violation.

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

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

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

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

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

9 (h) The Secretary shall establish a penalty review committee within the
10 Department, which shall review administrative penalties assessed pursuant to this section
11 and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review
12 of local departments of social services' penalty recommendations along with prepared
13 staff recommendations for the penalty review committee are completed within 60 days of
14 receipt by the Department of the local recommendations. ~~The Penalty Review Committee
15 shall not review penalty recommendations agreed to by the Department and the long-term care
16 facility for Type B violations except those violations that have been previously cited against the
17 long-term care facility during the previous 12 months or within the time period of the previous
18 licensure inspection, whichever time period is longer.~~ The Secretary shall ensure that the
19 Nursing Home/Adult Care Home Penalty Review Committee established by this
20 subsection is comprised of nine members. At least one member shall be appointed from
21 each of the following categories:

- 22 (1) A licensed pharmacist;
- 23 (2) A registered nurse experienced in long-term care;
- 24 (3) A representative of a nursing home;
- 25 (4) A representative of an adult care home; and
- 26 (5) Two public members. One shall be a 'near' relative of a nursing home
27 patient, chosen from a list prepared by the Office of State Long-Term
28 Care Ombudsman, Division of Aging, Department of Human
29 Resources. One shall be a 'near' relative of a rest home patient, chosen
30 from a list prepared by the Office of State Long-Term Care
31 Ombudsman, Division of Aging, Department of Human Resources. For
32 purposes of this subdivision, a 'near' relative is a spouse, sibling, parent,
33 child, grandparent, or grandchild.

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

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

41 Section 2. G.S. 131E-129 reads as rewritten:
42 "**§ 131E-129. Penalties.**

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

6 (1) 'Type A Violation' means a violation by a facility of the regulations,
7 standards, and requirements set forth in G.S. 131E-117, or applicable
8 State or federal laws and regulations governing the licensure or
9 certification of a facility which creates substantial risk that death or
10 serious physical harm to a resident will occur or where such harm has
11 occurred. Type A Violations shall be abated or eliminated immediately.
12 The Department shall require a plan of correction for each Type A
13 Violation. The Department may direct the facility to establish a specific
14 plan of correction within a specific time period to address any Type A
15 Violation. The Department shall impose a civil penalty in an amount
16 not less than two hundred fifty dollars (\$250.00) nor more than five thousand
17 dollars (\$5,000) five hundred dollars (\$500.00) nor more than ten
18 thousand dollars (\$10,000) for each Type A Violation. The Department
19 shall require a plan of correction for each Type A Violation. The
20 Department may direct the facility to establish a specific plan of
21 correction within a specific time period to address any Type A
22 Violation.

23 (2) 'Type B Violation' means a violation by a facility of the regulations,
24 standards and requirements set forth in G.S. 131E-117 or applicable
25 State or federal laws and regulations governing the licensure or
26 certification of a facility which presents a direct relationship to the
27 health, safety, or welfare of any resident, but which does not create
28 substantial risk that death or serious physical harm will occur. ~~The~~
29 ~~Department may impose a civil penalty in an amount up to five hundred~~
30 ~~dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation~~
31 ~~which relates to the physical plant, systems, or equipment of the facility and~~
32 ~~which causes no harm to a resident of the facility shall provide 10 days to~~
33 ~~correct the violation. If such a Type B Violation, which is not a repeat~~
34 ~~violation as specified in (b)(3) of this section, is corrected within the 10 days,~~
35 ~~no civil penalty shall be imposed. The Department shall require a plan of~~
36 ~~correction for each Type B Violation. The Department may direct the~~
37 ~~facility to establish a specific plan of correction within a specific time~~
38 ~~frame to address any Type B Violation.~~

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

40 (1) Where a facility has failed to correct a Type A Violation, the
41 Department shall assess the facility a civil penalty in the amount of up
42 to five hundred dollars (\$500.00) for each day that the deficiency
43 ~~continues.~~ continues beyond the time specified in the plan of correction

1 approved by the Department or its authorized representative. 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 (2) Where a facility has failed to correct a Type B Violation within the time
6 specified for correction by the ~~Department,~~ Department or its authorized
7 representative, the Department shall assess the facility a civil penalty in
8 the amount of up to two hundred dollars (\$200.00) for each day that the
9 deficiency continues beyond the ~~date specified for correction~~ time
10 specified in the plan of correction approved by the Department or its
11 authorized representative without just reason for such failure. The
12 Department or its authorized representative shall ~~conduct an on-site~~
13 ~~inspection of the facility to insure~~ ensure that the violation has been
14 corrected.

- 15 (3) The Department shall impose a civil penalty which is treble the amount
16 assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility
17 under the same management, ownership, or ~~control~~:
18 a. ~~Has control~~ has received a citation and paid a ~~fine,~~ or
19 b. ~~Has received a citation for which the Department in its discretion~~
20 ~~granted to it under subdivision (2) of subsection (a) but did not~~
21 ~~impose a penalty,~~ fine

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

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

- 31 (1) The gravity of the violation, including the probability that death or
32 serious physical harm to a resident will result or has resulted; the
33 severity of the actual or potential harm, and the extent to which the
34 provisions of the applicable statutes or regulations were violated;
35 (2) The reasonable diligence exercised by the licensee and efforts to correct
36 violations;
37 (3) The number and type of previous violations committed by the licensee;
38 (4) The amount of assessment necessary to insure immediate and continued
39 compliance; and
40 (5) The number of patients put at risk by the violation.

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

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

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

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

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

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

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

25 Section 3. This act becomes effective August 1, 1997, and applies to violations
26 committed on or after that date.