

GENERAL ASSEMBLY OF NORTH CAROLINA

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

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.~~ results in death or serious physical harm, or results in substantial risk

1 that death or serious physical harm will occur. Type A Violations shall  
2 be abated or eliminated immediately. The Department shall require an  
3 immediate plan of correction for each Type A Violation. The person  
4 making the findings shall do the following:

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

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

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

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

- 36 (1) Where a facility has failed to correct a Type A Violation, the  
37 Department shall assess the facility a civil penalty in the amount of up  
38 to five hundred dollars (\$500.00) for each day that the deficiency  
39 ~~continues.~~ continues beyond the time specified in the plan of correction  
40 approved by the Department or its authorized representative. The  
41 Department or its authorized representative shall ~~conduct an on-site~~  
42 ~~inspection of the facility to insure~~ ensure that the violation has been  
43 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 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       (g1) In lieu of assessing an administrative penalty, the Secretary may order a  
2 facility to provide staff training if:

- 3           (1) The cost of training does not exceed one thousand dollars (\$1,000);  
4           (2) The penalty would be for the facility's only violation within a 12-month  
5 period preceding the current violation and while the facility is under the  
6 same management; and  
7           (3) The training is:  
8               a. Specific to the violation;  
9               b. Approved by the Department of Human Resources; and  
10              c. Taught by someone approved by the Department and other than  
11 the provider.

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

- 22           (1) The Secretary shall:  
23               a. Administer the work of the committee;  
24               b. Ensure provision of departmental staff review;  
25               c. Evaluate the local departments of social services and the Division  
26 of Facility Services' penalty recommendations;  
27               d. Ensure that recommendations by the Department are complete  
28 and submitted within 60 days of receipt of the initial  
29 recommendations from the local departments of social services  
30 or the Division of Facility Services; and  
31               e. Provide written copies of all procedures to:  
32                    1. The penalty review committee;  
33                    2. The local department of social services who is responsible  
34 for oversight of the facility involved;  
35                    3. The licensee involved;  
36                    4. The residents affected; and  
37                    5. The families or guardians of the residents affected.

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

- 42               (1)a. A licensed pharmacist;  
43               (2)b. A registered nurse experienced in long-term care;

- 1                   (3)c.           A representative of a nursing home;  
2                   (4)d.           A representative of an adult care home; and  
3                   (5)e.           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                                   under this subsection nor any member of their immediate families  
15                                   shall be employed by or own any interest in a nursing home or adult  
16                                   care home.

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

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

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

27                   "**§ 131E-129. Penalties.**

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

33                   (1)           'Type A Violation' means a violation by a facility of the regulations,  
34                                   standards, and requirements set forth in G.S. 131E-117, or applicable  
35                                   State or federal laws and regulations governing the licensure or  
36                                   certification of a facility which ~~creates substantial risk that death or serious~~  
37                                   ~~physical harm 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 plan of correction for each Type A Violation. The person  
42                                   making the findings shall do the following:

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

9           The Department shall impose a civil penalty in an amount not less than  
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           dollars (\$10,000) 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           result in substantial risk that death or serious physical harm will occur.  
19           ~~The Department may impose a civil penalty in an amount up to five hundred~~  
20           ~~dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation~~  
21           ~~which relates to the physical plant, systems, or equipment of the facility and~~  
22           ~~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)   Penalties 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) Factors to be considered in determining amount of initial penalty. In  
19 determining the amount of the initial penalty to be imposed under this section, the  
20 Department shall 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 (1a) 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 (1b) 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 (2) 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 (2a) 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 (c1) The facts found to support the factors in subsection (c) of this section shall be  
43 the basis in determining 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) The penalty review committee;

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

6 (3) The licensee involved;

7 (4) The residents affected; and

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           (1) The cost of training does not exceed one thousand dollars (\$1,000);  
2           (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           (3) The training is:  
6           a. Specific to the violation;  
7           b. Approved by the Department of Human Resources; and  
8           c. Taught by someone approved by the Department and other than  
9           the provider.
- 10       (h) The Department shall not assess an administrative penalty against a facility  
11       under this section if a civil monetary penalty has been assessed for the same violation  
12       under federal enforcement laws and regulations."
- 13           Section 3. This act becomes effective August 1, 1997, and applies to violations  
14       committed on or after that date.