

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 110*

Short Title: Penalties for Adult Care/Nursing Homes.

(Public)

Sponsors: Representatives Earle; Alexander, Bonner, Braswell, Clary, Cunningham, Easterling, Goodwin, H. Hunter, Kinney, Luebke, McAllister, McMahan, Moore, Mosley, Rogers, Russell, Saunders, Shubert, Sutton, Wainwright, Warner, G. Wilson, and Wright.

Referred to: Human Resources, if favorable, Judiciary II.

February 12, 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

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

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

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

- 29 (1) Where a facility has failed to correct a Type A Violation, the
30 Department shall assess the facility a civil penalty in the amount of up
31 to five hundred dollars (\$500.00) for each day that the deficiency
32 ~~continues.~~ continues beyond the time specified in the plan of correction
33 approved by the Department or its authorized representative. The
34 Department or its authorized representative shall ~~conduct an on-site~~
35 ~~inspection of the facility to insure~~ ensure that the violation has been
36 corrected.
- 37 (2) Where a facility has failed to correct a Type B Violation within the time
38 specified for correction by the ~~Department,~~ Department or its authorized
39 representative, the Department shall assess the facility a civil penalty in
40 the amount of up to two hundred dollars (\$200.00) for each day that the
41 deficiency continues beyond the date specified for correction without
42 just reason for such failure. The Department or its authorized

1 representative shall ~~conduct an on-site inspection of the facility to insure~~
2 ensure that the violation has been corrected.

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

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

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

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

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

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

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

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

26 (4) The amount of assessment necessary to insure immediate and continued
27 compliance; and

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

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

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

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

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

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

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

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

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. The Secretary shall ensure that departmental staff review
15 of local departments of social services' penalty recommendations along with prepared
16 staff recommendations for the penalty review committee are completed within 60 days of
17 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.~~ The Secretary shall ensure that the
22 Nursing Home/Adult Care Home Penalty Review Committee established by this
23 subsection is comprised of nine members. At least one member shall be appointed from
24 each of the following categories:

25 (1) A licensed pharmacist;

26 (2) A registered nurse experienced in long-term care;

27 (3) A representative of a nursing home;

28 (4) A representative of an adult care home; and

29 (5) Two public members. One shall be a 'near' relative of a nursing home
30 patient, chosen from a list prepared by the Office of State Long-Term
31 Care Ombudsman, Division of Aging, Department of Human
32 Resources. One shall be a 'near' relative of a rest home patient, chosen
33 from a list prepared by the Office of State Long-Term Care
34 Ombudsman, Division of Aging, Department of Human Resources. For
35 purposes of this subdivision, a 'near' relative is a spouse, sibling, parent,
36 child, grandparent, or grandchild.

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

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

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

2 **"§ 131E-129. Penalties.**

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

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

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

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

42 (1) Where a facility has failed to correct a Type A Violation, the
43 Department shall assess the facility a civil penalty in the amount of up

1 to five hundred dollars (\$500.00) for each day that the deficiency
2 ~~continues.~~ continues beyond the time specified in the plan of correction
3 approved by the Department or its authorized representative. The
4 Department or its authorized representative shall ~~conduct an on-site~~
5 ~~inspection of the facility to insure~~ ensure that the violation has been
6 corrected.

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

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

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

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

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

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

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

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

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

40 (4) The amount of assessment necessary to insure immediate and continued
41 compliance; and

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

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

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

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

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

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

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

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

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