

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-431
SENATE BILL 53

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 that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:
 - a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
 - b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under subdivision a. of this subdivision; and
 - c. Provide a copy of the written confirmation required under subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5000) for each Type A ~~Violation.~~ Violation in homes licensed for nine or fewer beds. The Department shall impose a civil

penalty in an amount not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A Violation in facilities licensed for 10 or more beds.

- (2) 'Type B 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 present a direct relationship to the health, safety, or welfare of any resident, but which does not create result in substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to two hundred fifty dollars (\$250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

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

- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on site inspection of the facility to insure~~ ensure that the violation has been corrected.
- (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ~~conduct an on site inspection of the facility to insure~~ ensure that the violation has been corrected.
- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~
- a. ~~Has control~~ has received a citation and paid a fine, ~~or~~
 - b. ~~Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,~~ penalty

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

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

- (1) The gravity of the violation, including the ~~probability~~ fact that death or serious physical harm to a resident ~~will result or~~ has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
 - (1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
 - (1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;
 - (2a) ~~and efforts~~ Efforts by the licensee to correct violations;
- (3) The number and type of previous violations committed by the ~~licensee;~~ licensee within the past 36 months;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

- (1) The penalty review committee;
- (2) The local department of social services who is responsible for oversight of the facility involved;
- (3) The licensee involved;
- (4) The residents affected; and
- (5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

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

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. ~~One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department.~~ At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be ~~unreasonable~~, unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be ~~modified-adjusted~~ accordingly.

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

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

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

(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

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

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to ~~G.S. 131E-129.~~ G.S. 131E-129 as follows: ~~The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review~~

committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.

(1) The Secretary shall:

- a. Administer the work of the committee;
- b. Ensure provision of departmental staff review;
- c. Evaluate the local departments of social services and the Division of Facility Services' penalty recommendations;
- d. Ensure that recommendations by the Department are complete and submitted within 60 days of receipt of the initial recommendations from the local departments of social services or the Division of Facility Services; and
- e. Provide written copies of all procedures to:
 1. The penalty review committee;
 2. The local department of social services who is responsible for oversight of the facility involved;
 3. The licensee involved;
 4. The residents affected; and
 5. The families or guardians of the residents affected.

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

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

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

- (4) Prior to serving on the committee, each member shall complete a training program provided by the Department of Human Resources that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.
- (5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

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

"§ 131E-129. Penalties.

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 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. 131E-117, 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 that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:
 - a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them and set a date by which the violation must be corrected;
 - b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under subdivision a. of this subdivision; and
 - c. Provide a copy of the written confirmation required under subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5,000)~~ five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A Violation.

- (2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not ~~create~~ result in substantial risk that death or serious physical harm will occur.

~~The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.~~

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

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

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

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

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

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

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

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

- (1) The gravity of the violation, including the ~~probability~~ fact that death or serious physical harm to a resident ~~will result or~~ has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;
- (2a) ~~and efforts~~ Efforts by the licensee to correct violations;
- (3) The number and type of previous violations committed by the ~~licensee;~~ licensee within the past 36 months;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

- (1) The penalty review committee;
- (2) The local department of social services who is responsible for oversight of the facility involved;
- (3) The licensee involved;
- (4) The residents affected; and
- (5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

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

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. ~~One issue at the administrative hearing shall be the reasonableness of the~~

~~amount of any civil penalty assessed by the Department. At least the following specific issues shall be addressed at the administrative hearing:~~

- ~~(1) The reasonableness of the amount of any civil penalty assessed, and~~
- ~~(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.~~

~~If a civil penalty is found to be unreasonable, unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be modified-adjusted accordingly.~~

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

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

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

(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

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

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

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

In the General Assembly read three times and ratified this the 11th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:27 p.m. this 22nd day of August, 1997