

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 397

Short Title: DHHS Penalties and Remedies Revision.-AB (Public)

Sponsors: Representative Lewis (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A, if favorable, Finance.

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT REVISING PENALTIES AND REMEDIES CONCERNING HEALTH
3 FACILITIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 122C-24.1 reads as rewritten:

6 **"§ 122C-24.1. Penalties; remedies.**

7 (a) ~~Violations Classified.~~ Violation Classification and Penalties. – The Department of
8 Health and Human Services shall impose an administrative penalty in accordance with
9 provisions of this Article on any facility licensed under this Article which is found to be in
10 violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations.
11 Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature
12 of the violation as follows:

13 (1) "Type ~~A~~A1 Violation" means a violation by a facility of the regulations,
14 standards, and requirements set forth in Article 2 or 3 of this Chapter or
15 applicable State or federal laws and regulations governing the licensure or
16 certification of a facility which results in death or serious physical harm,
17 abuse, neglect, or exploitation. ~~harm, or results in substantial risk that death~~
18 ~~or serious physical harm will occur. Type A Violations shall be abated or~~
19 ~~eliminated immediately. The Department shall require an immediate plan of~~
20 ~~correction for each Type A Violation.~~ The person making the findings shall
21 do the following:

- 22 a. Orally and immediately inform the ~~administrator of the~~ facility of the
23 Type A1 Violation and the specific findings and what must be done
24 to correct them, and set a date by which the violation must be
25 corrected; findings.
- 26 a1. Require a written plan of protection regarding how the facility will
27 immediately abate the Type A1 Violation in order to protect clients
28 from further risk or additional harm.
- 29 b. Within ~~10~~15 working days of the investigation, ~~confirm in writing to~~
30 ~~the administrator the information provided orally under~~
31 ~~sub-subdivision a. of this subdivision; and~~ send a report of the
32 findings to the facility.
- 33 c. ~~Provide a copy of the written confirmation required under~~
34 ~~sub-subdivision b. of this subdivision to the Department. Require a~~
35 plan of correction to be submitted to the Department, based on a



1 written report of the findings, that describes steps the facility will
2 take to achieve and maintain compliance.

3 The Department shall impose a civil penalty in an amount not less than five
4 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for
5 each Type A–A1 Violation in facilities or programs that serve six or fewer
6 persons. The Department shall impose a civil penalty in an amount not less
7 than one thousand dollars (\$1,000) nor more than twenty thousand dollars
8 (\$20,000) for each Type A–A1 Violation in facilities or programs that serve
9 seven or more persons.

10 Where a facility has failed to correct a Type A1 Violation, the Department
11 shall assess the facility a civil penalty in the amount of up to one thousand
12 dollars (\$1,000) for each day that the violation continues beyond the time
13 specified for correction. The Department or its authorized representative
14 shall determine whether the violation has been corrected.

15 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
16 standards, and requirements set forth in Article 2 or 3 of this Chapter or
17 applicable State or federal laws and regulations governing the licensure or
18 certification of a facility which results in substantial risk that death or serious
19 physical harm, abuse, neglect, or exploitation will occur. The person making
20 the findings shall do the following:

- 21 a. Orally and immediately inform the facility of the Type A2 Violation
22 and the specific findings.
- 23 b. Require a written plan of protection regarding how the facility will
24 immediately abate the Type A2 Violation in order to protect clients
25 or residents from further risk or additional harm.
- 26 c. Within 15 working days of the investigation, send a report of the
27 findings to the facility.
- 28 d. Require a plan of correction to be submitted to the Department, based
29 on the written report of the findings, that describes steps the facility
30 will take to achieve and maintain compliance.

31 The violation or violations shall be corrected within the time specified for
32 correction by the Department or its authorized representative. If corrected
33 within the said time frame, no penalty shall be assessed. Where a facility has
34 failed to correct a Type A2 Violation, the Department shall assess the
35 facility a civil penalty in the amount of up to one thousand dollars (\$1,000)
36 for each day that the deficiency continues beyond the time specified for
37 correction by the Department or its authorized representative. The
38 Department or its authorized representative shall determine whether the
39 violation has been corrected.

40 (1b) "Past Corrected Type A1 or Type A2 Violation" means the violation was not
41 previously identified by the Department or its authorized representative but
42 has been corrected. A penalty may not be assessed if:

- 43 a. The violation or violations were abated immediately; and
- 44 b. The facility implemented corrective measures to achieve and
45 maintain compliance.

46 (2) "Type B Violation" means a violation by a facility of the regulations,
47 standards, and requirements set forth in Article 2 or 3 of this Chapter or
48 applicable State or federal laws and regulations governing the licensure or
49 certification of a facility which ~~present a direct relationship~~ is detrimental
50 to the health, safety, or welfare of any client or patient, but which does not
51 result in substantial risk that death or serious physical ~~harm~~ harm, abuse,

1 ~~neglect, or exploitation will occur. The Department shall require a plan of~~
2 ~~correction for each Type B Violation and may require the facility to establish~~
3 ~~a specific plan of correction within a specific time period to address the~~
4 ~~violation. The person making the findings shall do the following:~~

- 5 a. Orally and immediately inform the facility of the Type B Violation
6 and the specific findings.
7 b. Require a written plan of protection regarding how the facility will
8 immediately abate the Type B Violation in order to protect clients or
9 residents from further risk or additional harm.
10 c. Within 15 working days of the investigation, send a report of the
11 findings to the facility.
12 d. Require a plan of correction to be submitted to the Department, based
13 on the written report of the findings, that describes steps the facility
14 will take to achieve and maintain compliance.

15 (b) ~~Penalties for Failure to Correct Violations Within Time Specified. —~~

- 16 (1) ~~Where a facility has failed to correct a Type A Violation, the Department~~
17 ~~shall assess the facility a civil penalty in the amount of up to one thousand~~
18 ~~dollars (\$1,000) for each day that the deficiency continues beyond the time~~
19 ~~specified in the plan of correction approved by the Department or its~~
20 ~~authorized representative. The Department or its authorized representative~~
21 ~~shall ensure that the violation has been corrected.~~
22 (2) ~~Where a facility has failed to correct a Type B Violation within the time~~
23 ~~specified for correction by the Department or its authorized representative,~~
24 ~~the Department shall assess the facility a civil penalty in the amount of up to~~
25 ~~four hundred dollars (\$400.00) for each day that the deficiency violation~~
26 ~~continues beyond the date specified for correction without just reason for the~~
27 ~~failure. The Department or its authorized representative shall ensure that the~~
28 ~~violation has been corrected.~~
29 (3) Repeat Violations. — ~~The Department shall impose a civil penalty which is~~
30 ~~treble the amount assessed under subdivision (1) of this subsection (a) of this~~
31 ~~section when a facility under the same management, ownership, or control~~
32 ~~management or ownership has received a violation during the previous 12~~
33 ~~months for which the appeal rights are exhausted and penalty payment is~~
34 ~~expected or has occurred, and has received a citation and paid a penalty for~~
35 ~~the current violation is for violating the same specific provision of a statute~~
36 ~~or regulation for which it received a citation violation during the previous 12~~
37 ~~months.~~

38 (c) ~~Factors to Be Considered in Determining Amount of Initial Penalty. —~~ In
39 determining the amount of the initial penalty to be imposed under this section, the Department
40 shall consider the following factors:

- 41 (1) There is substantial risk that serious physical harm, abuse, neglect, or
42 exploitation will occur, and this has not been corrected within the time
43 specified by the Department or its authorized representative; The gravity of
44 the violation, including the fact that death or serious physical harm to a
45 client or patient has resulted; the severity of the actual or potential harm, and
46 the extent to which the provisions of the applicable statutes or regulations
47 were violated;
48 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial
49 risk for client death, did occur; The gravity of the violation, including the
50 probability that death or serious physical harm to a client or patient will

- 1 result; the severity of the potential harm, and the extent to which the
2 provisions of the applicable statutes or regulations were violated;
- 3 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk
4 for client death, did occur;~~The gravity of the violation, including the~~
5 ~~probability that death or serious physical harm to a client or patient may~~
6 ~~result; the severity of the potential harm, and the extent to which the~~
7 ~~provisions of the applicable statutes or regulations were violated;~~
- 8 (3a) A client died;
- 9 (3b) A client died and there is substantial risk to others for serious physical harm,
10 abuse, neglect, or exploitation;
- 11 (3c) A client died and there is substantial risk for further client death;
- 12 (4) The reasonable diligence exercised by the licensee to comply with
13 G.S. 131E-256 and other applicable State and federal laws and regulations;
- 14 (5) Efforts by the licensee to correct violations;
- 15 (6) The number and type of previous violations committed by the licensee
16 within the past 36 months; and
- 17 ~~(7) The amount of assessment necessary to ensure immediate and continued~~
18 ~~compliance; and~~
- 19 (8) The number of clients or patients put at risk by the violation.
- 20 (d) The facts found to support the factors in subsection (c) of this section shall be the
21 basis in determining the amount of the penalty. The Department shall document the findings in
22 written record and shall make the written record available to all affected parties including:
- 23 (1) The licensee involved;
- 24 (2) The clients or patients affected; and
- 25 (3) The family members or guardians of the clients or patients affected.
- 26 (e) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any
27 facility which refuses to allow an authorized representative of the Department to inspect the
28 premises and records of the facility.
- 29 (f) Any facility wishing to contest a penalty shall be entitled to an administrative
30 hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case
31 shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At
32 least the following specific issues shall be addressed at the administrative hearing:
- 33 (1) The reasonableness of the amount of any civil penalty assessed, and
- 34 (2) The degree to which each factor has been evaluated pursuant to subsection
35 (c) of this section to be considered in determining the amount of an initial
36 penalty.
- 37 If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to
38 be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.
- 39 (g) Any penalty imposed by the Department of Health and Human Services under this
40 section shall commence on the day the violation began.
- 41 (h) The Secretary may bring a civil action in the superior court of the county wherein
42 the violation occurred to recover the amount of the administrative penalty whenever a facility:
- 43 (1) Which has not requested an administrative hearing fails to pay the penalty
44 within 60 days after being notified of the penalty, or
- 45 (2) Which has requested an administrative hearing fails to pay the penalty
46 within 60 days after receipt of a written copy of the decision as provided in
47 G.S. 150B-36.
- 48 (i) In lieu of assessing ~~an all~~ an all or some of the administrative penalty, the Secretary may
49 order a facility to provide staff training ~~if~~ if the training is:
- 50 (1) Specific to the violation;
- 51 (2) Approved by the Department of Health and Human Services; and

1 (3) Taught by someone approved by the Department.

2 (1) ~~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 (2) ~~The training is:~~

6 a. ~~Specific to the violation;~~

7 b. ~~Approved by the Department of Health and Human Services; and~~

8 e. ~~Taught by someone approved by the Department and other than the~~
9 ~~provider.~~

10 (j) The clear proceeds of civil penalties provided for in this section shall be remitted to
11 the State Treasurer for deposit in accordance with State law.

12 (k) In considering renewal of a license, the Department shall not renew a license if
13 outstanding fines and penalties imposed by the Department against the facility or program have
14 not been paid. Fines and penalties for which an appeal is pending are exempt from
15 consideration for nonrenewal under this subsection."

16 **SECTION 2.** G.S. 131D-34 reads as rewritten:

17 **"§ 131D-34. Penalties; remedies.**

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

24 (1) ~~"Type A-A1 Violation"~~ means a violation by a facility of the regulations,
25 standards, and requirements set forth in G.S. 131D-21 or applicable State or
26 federal laws and regulations governing the licensure or certification of a
27 facility which results in death or serious physical harm, abuse, neglect, or
28 exploitation, or results in substantial risk that death or serious physical harm
29 will occur. ~~Type A Violations shall be abated or eliminated immediately.~~
30 ~~The Department shall require an immediate plan of correction for each Type~~
31 ~~A Violation.~~ The person making the findings shall do the following:

32 a. Orally and immediately inform the ~~administrator of the facility of the~~
33 Type A1 Violation and the specific findings ~~findings, and what must~~
34 ~~be done to correct them, and set a date by which the violation must~~
35 ~~be corrected;~~

36 a1. Require a written plan of protection regarding how the facility will
37 immediately abate the Type A1 Violation in order to protect residents
38 from further risk or additional harm.

39 b. ~~Within 10-15 working days of the investigation, confirm in writing to~~
40 ~~the administrator the information provided orally under~~
41 ~~sub-subdivision a. of this subdivision; and send a report of the~~
42 ~~findings to the facility.~~

43 c. ~~Provide a copy of the written confirmation required under~~
44 ~~sub-subdivision b. of this subdivision to the Department. Require a~~
45 plan of correction to be submitted to the Department, based on the
46 written report of the findings, that describes steps the facility will
47 take to achieve and maintain compliance.

48 The Department shall impose a civil penalty in an amount not less than five
49 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for
50 each Type ~~A-A1~~ Violation in homes-facilities licensed for six or fewer beds.

51 The Department shall impose a civil penalty in an amount not less than one

1 thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000)
2 for each Type ~~A~~A1 Violation in facilities licensed for seven or more beds.
3 Where a facility has failed to correct a Type A1 Violation, the Department
4 shall assess the facility a civil penalty in the amount of up to one thousand
5 dollars (\$1,000) for each day that the violation continues beyond the time
6 specified for correction by the Department or its authorized representative.
7 The Department or its authorized representative shall determine whether the
8 violation has been corrected.

9 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
10 standards, and requirements set forth in G.S. 131D-21 or applicable State or
11 federal laws and regulations governing the licensure or certification of a
12 facility which results in substantial risk that death or serious physical harm,
13 abuse, neglect, or exploitation will occur. The person making the findings
14 shall do the following:

- 15 a. Orally and immediately inform the facility of the Type A2 Violation
16 and the specific findings.
- 17 b. Require a written plan of protection regarding how the facility will
18 immediately abate the Type A2 Violation in order to protect clients
19 or residents from further risk or additional harm.
- 20 c. Within 15 working days of the investigation, send a report of the
21 findings to the facility.
- 22 d. Require a plan of correction to be submitted to the Department, based
23 on the written report of the findings, that describes steps the facility
24 will take to achieve and maintain compliance.

25 The violation or violations shall be corrected within the time specified for
26 correction by the Department or its authorized representative. If corrected
27 within the said time frame, no penalty shall be assessed. Where a facility has
28 failed to correct a Type A2 Violation, the Department shall assess the
29 facility a civil penalty in the amount of up to one thousand dollars (\$1,000)
30 for each day that the deficiency continues beyond the time specified for
31 correction by the Department or its authorized representative. The
32 Department or its authorized representative shall determine whether the
33 violation has been corrected.

34 (1b) "Past Corrected Type A1 or Type A2 Violation" means the violation was not
35 previously identified by the Department or its authorized representative but
36 has been corrected. A penalty may not be assessed if:

- 37 a. The violation or violations were abated immediately; and
- 38 b. The facility implemented corrective measures to achieve and
39 maintain compliance.

40 (2) "Type B Violation" means a violation by a facility of the regulations,
41 standards and requirements set forth in G.S. 131D-21 or applicable State or
42 federal laws and regulations governing the licensure or certification of a
43 facility which is detrimental ~~present a direct relationship~~ to the health,
44 safety, or welfare of any resident, but which does not result in substantial
45 risk that death or serious physical ~~harm~~ harm, abuse, neglect, or exploitation
46 will occur. ~~The Department shall require a plan of correction for each Type~~
47 ~~B~~ Violation and may require the facility to establish a specific plan of
48 correction within a reasonable time period to address the violation. The
49 required plan cannot exceed requirements imposed by existing rule or
50 law. The person making the findings shall do the following:

- 1 a. Orally and immediately inform the facility of the Type B Violation
2 and the specific findings.
- 3 b. Require a written plan of protection regarding how the facility will
4 immediately abate the Type B Violation in order to protect residents
5 from further risk or additional harm.
- 6 c. Within 15 working days of the investigation, send a report of the
7 findings to the facility.
- 8 d. Require a plan of correction to be submitted to the Department, based
9 on the written report of the findings, that describes steps the facility
10 will take to achieve and maintain compliance.
- 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 Department~~
13 ~~shall assess the facility a civil penalty in the amount of up to one thousand~~
14 ~~dollars (\$1,000) for each day that the deficiency continues beyond the time~~
15 ~~specified in the plan of correction approved by the Department or its~~
16 ~~authorized representative. The Department or its authorized representative~~
17 ~~shall ensure that the violation has been corrected.~~
- 18 (2) Where a facility has failed to correct a Type B Violation within the time
19 specified for correction by the Department or its authorized representative,
20 the Department shall assess the facility a civil penalty in the amount of up to
21 four hundred dollars (\$400.00) for each day that the ~~deficiency-violation~~
22 continues beyond the date specified for correction without just reason for
23 such failure. The Department or its authorized representative shall ensure
24 that the violation has been corrected.
- 25 (3) Repeat Violations. – The Department shall impose a civil penalty which is
26 treble the amount assessed under ~~subdivision (1) of subsection (a) of this~~
27 ~~section~~ when a facility under the same ~~management, ownership, or control~~
28 ~~has received a citation-management or ownership has received a violation~~
29 during the previous 12 months for which the appeal rights are exhausted and
30 penalty payment is expected or has occurred, and the current violation is and
31 ~~paid a penalty for violating the same specific provision of a statute or~~
32 ~~regulation for which it received a citation-violation during the previous 12~~
33 months. The counting of the 12-month period shall be tolled during any time
34 when the facility is being operated by a court-appointed temporary manager
35 pursuant to Article 4 of this Chapter.
- 36 (c) ~~Factors to be considered in determining amount of initial penalty.~~ Factors to Be
37 Considered in Determining Amount of Initial Penalty.
- 38 In determining the amount of the initial penalty to be imposed under this section, the
39 Department shall consider the following factors:
- 40 (1) ~~The gravity of the violation, including the fact that death or serious physical~~
41 ~~harm to a resident has resulted; the severity of the actual or potential harm,~~
42 ~~and the extent to which the provisions of the applicable statutes or~~
43 ~~regulations were violated; There is substantial risk that serious physical harm,~~
44 ~~abuse, neglect, or exploitation will occur;~~
- 45 (1a) ~~The gravity of the violation, including the probability that death or serious~~
46 ~~physical harm to a resident will result; the severity of the potential harm, and~~
47 ~~the extent to which the provisions of the applicable statutes or regulations~~
48 ~~were violated; Serious harm, abuse, neglect, or exploitation, without~~
49 ~~substantial risk for resident death, did occur;~~
- 50 (1b) ~~The gravity of the violation, including the probability that death or serious~~
51 ~~physical harm to a resident may result; the severity of the potential harm,~~

1 ~~and the extent to which the provisions of the applicable statutes or~~
2 ~~regulations were violated; Serious physical harm, abuse, neglect, or~~
3 ~~exploitation, with substantial risk for resident death, did occur;~~

4 (1c) A resident died;

5 (1d) A resident died and there is substantial risk to others for serious physical
6 ~~harm, abuse, neglect, or exploitation;~~

7 (1e) A resident died and there is substantial risk for further resident death;

8 (2) The reasonable diligence exercised by the licensee to comply with
9 G.S. 131E-256 and ~~G.S. 131E-265~~ G.S. 131D-21 and other applicable State
10 and federal laws and regulations;

11 (2a) Efforts by the licensee to correct violations;

12 (3) The number and type of previous violations committed by the licensee
13 within the past 36 months; and

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

16 (5) The number of ~~patients~~ residents put at risk by the violation.

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

21 (1) The penalty review committee;

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

24 (3) The licensee involved;

25 (4) The residents affected; and

26 (5) ~~The family members or guardians of the residents affected. Those individuals~~
27 ~~lawfully designated by the affected resident to make health care decisions~~
28 ~~for the resident.~~

29 (c2) Local county departments of social services and Division of Health Service
30 Regulation personnel shall submit proposed penalty recommendations to the Department within
31 45 days of the citation of a violation.

32 (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any
33 facility which refuses to allow an authorized representative of the Department to inspect the
34 premises and records of the facility.

35 (d1) The Department shall impose a civil penalty on any applicant for licensure who
36 provides false information or omits information on the portion of the licensure application
37 requesting information on owners, administrators, principals, or affiliates of the facility. The
38 amount of the penalty shall be as is prescribed for a ~~Type A-A1~~ Violation.

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

44 (1) The reasonableness of the amount of any civil penalty assessed, and

45 (2) The degree to which each factor has been evaluated pursuant to subsection
46 (c) of this section to be considered in determining the amount of an initial
47 penalty.

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

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

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

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

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

11 (g1) In lieu of assessing ~~an all~~ or some of the administrative penalty, the Secretary may
12 order a facility to provide staff training ~~if~~if the training is:

13 (1) Specific to the violation;

14 (2) Approved by the Department of Health and Human Services; and

15 (3) Taught by someone approved by the Department.

16 ~~(1) The cost of training does not exceed one thousand dollars (\$1,000);~~

17 ~~(2) The penalty would be for the facility's only violation within a 12 month~~
18 ~~period preceding the current violation and while the facility is under the~~
19 ~~same management; and~~

20 ~~(3) The training is:~~

21 a. ~~Specific to the violation;~~

22 b. ~~Approved by the Department of Health and Human Services; and~~

23 c. ~~Taught by someone approved by the Department and other than the~~
24 ~~provider.~~

25 (h) The Secretary shall establish a penalty review committee within the Department,
26 which shall meet as often as needed, but no less frequently than once each quarter of the year,
27 to review administrative penalties assessed pursuant to this section and pursuant to
28 G.S. 131E-129 as follows:

29 (1) The Secretary shall administer the work of the Committee and provide
30 public notice of its meetings via Web site, and provide direct notice to the
31 following parties involved in the penalties the Committee will be reviewing:

32 a. The licensed provider, who upon receipt of the notice, shall post the
33 notice of the scheduled Penalty Review Committee meeting in a
34 conspicuous place available to residents, family members, and the
35 public;

36 b. The local department of social services that is responsible for
37 oversight of the facility involved;

38 c. The residents affected; and

39 d. Those individuals lawfully designated by the affected resident to
40 make health care decisions for the resident.

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

45 a. A licensed pharmacist;

46 b. A registered nurse experienced in long term care;

47 c. A representative of a nursing home;

48 d. A representative of an adult care home; and

49 e. Two public members. One shall be a "near" relative of a nursing
50 home patient, chosen from a list prepared by the Office of State Long
51 Term Care Ombudsman, Division of Aging, Department of Health

and Human Services. 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 Health and Human Services. 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) Repealed by Session Laws 2005-276, s. 10.40A(1), effective July 1, 2005.

(4a) Repealed by Session Laws 2007-544, s. 1, effective October 1, 2007.

(4b) Prior to serving on the Committee, each member shall complete a training program provided by the Department of Health and Human Services 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.

(6) The Committee shall be cochaired by:

a. One member of the Department outside of the Division of Health Service Regulation; and

b. One member who is not affiliated with the Department.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the ~~Civil Penalty and Forfeiture Fund~~ State Treasurer for deposit in accordance with ~~G.S. 115C-457.2, State law.~~"

SECTION 3. G.S. 131E-129 reads as rewritten:

"§ 131E-129. Penalties. Penalties; remedies.

(a) ~~Violations classified.~~ Violation Classification and Penalties. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this ~~Part~~ Article on any ~~facility's licensee 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 and penalties assessed according to the nature of the violation as follows:

(1) "Type ~~A~~ A1 Violation" means a violation by a ~~facility's licensee facility~~ of the ~~regulations, standards, regulations~~ 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 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.~~ harm. The person making the findings shall do the following:

a. Orally and immediately inform the ~~administrator of the facility~~ of the Type A1 Violation and the specific findings and what must be done to correct them and set a date by which the violation must be corrected; findings.

b. ~~Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and~~

- 1 e. ~~Provide a copy of the written confirmation required under~~
2 ~~sub-subdivision b. of this subdivision to the Department.~~
3 d. Require a written, credible allegation regarding how the facility will
4 immediately remove the Type A1 Violation in order to protect
5 residents from further risk or additional harm.
6 e. Within 10 working days of the investigation, send a report of the
7 findings to the facility.
8 f. Require a plan of correction to be submitted to the Department, based
9 on the written report of the findings, that describes steps the facility
10 will take to achieve and maintain compliance by the date specified by
11 the Department.

12 The Department shall impose a civil penalty in an amount not less than ~~five~~
13 ~~hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) nor more than ~~ten~~
14 ~~thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) for each Type
15 ~~A-A1~~ Violation. Where a facility has failed to correct a Type A1 Violation,
16 the Department shall assess the facility a civil penalty in the amount of up to
17 one thousand dollars (\$1,000) for each day that the violation continues
18 beyond the date specified for correction by the Department or its authorized
19 representative. The Department or its authorized representative shall
20 determine whether the violation has been corrected.

21 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
22 standards, and requirements set forth in G.S. 131E-117 or applicable State or
23 federal laws and regulations governing the licensure or certification of a
24 facility which results in substantial risk that death or serious physical harm
25 will occur. The person making the findings shall do the following:

- 26 a. Orally and immediately inform the facility of the Type A2 Violation
27 and the specific findings.
28 b. Require a credible allegation regarding how the facility will
29 immediately remove the Type A2 Violation in order to protect
30 residents from further risk or additional harm.
31 c. Within 10 working days of the investigation, send a report of the
32 findings to the facility.
33 d. Require a plan of correction to be submitted to the Department, based
34 on the written report of the findings, that describes steps the facility
35 will take to achieve and maintain compliance by the date specified by
36 the Department.

37 The violation or violations shall be corrected within the time specified for
38 correction by the Department or its authorized representative. If corrected by
39 the date specified by the Department, no penalty shall be assessed. Where a
40 facility has failed to correct a Type A2 Violation, the Department shall
41 assess the facility a civil penalty in the amount of up to one thousand dollars
42 (\$1,000) for each day that the violation continues beyond the date specified
43 for correction by the Department or its authorized representative. The
44 Department or its authorized representative shall determine if the violation
45 has been corrected.

46 (1b) "Past Corrected Type A1 or Type A2 Violation" means the violation was not
47 previously identified by the Department or its authorized representative but
48 has been corrected. A penalty may not be assessed if:

- 49 a. The violation or violations were abated immediately; and
50 b. The facility implemented corrective measures to achieve and
51 maintain compliance.

1 (2) "Type B Violation" means a violation by a facility's licensee of the
2 regulations, standards and requirements set forth in G.S. 131E-117 or
3 applicable State or federal laws and regulations governing the licensure or
4 certification of a facility which ~~presents a direct relationship~~ is detrimental to
5 the health, safety, or welfare of any resident, but which does not result in
6 substantial risk that death or serious physical harm will occur. ~~The~~
7 ~~Department shall require a plan of correction for each Type B Violation and~~
8 ~~may require the facility to establish a specific plan of correction within a~~
9 ~~specific time period to address the violation.~~ The person making the findings
10 shall do the following:

- 11 a. Orally and immediately inform the facility of the Type B Violation
12 and the specific findings.
13 b. Require a written plan regarding how the facility will immediately
14 remove the Type B Violation in order to protect residents from
15 further risk or additional harm.
16 c. Within 10 working days of the investigation, send a report of the
17 findings to the facility.
18 d. Require a plan of correction to be submitted to the Department, based
19 on the written report of the findings, that describes steps the facility
20 will take to achieve and maintain compliance by the date specified by
21 the Department.

22 Where a facility has failed to correct a Type B Violation within the time
23 specified for correction by the Department or its authorized representative,
24 the Department shall assess the facility a civil penalty in the amount of up to
25 four hundred dollars (\$400.00) for each day that the violation continues
26 beyond the date specified for correction without just reason for such failure.
27 The Department or its authorized representative shall ensure that the
28 violation has been corrected.

29 (3) Repeat Violations. – The Department shall impose a civil penalty which is
30 treble the amount assessed under subsection (a) of this section when a
31 facility under the same management or ownership has received a violation
32 during the previous 12 months for which the appeal rights are exhausted and
33 penalty payment is expected or has occurred, and the current violation is for
34 the same specific provision of a statute or regulation for which it received a
35 violation during the previous 12 months. The counting of the 12-month
36 period shall be tolled during any time when the facility is being operated by
37 a court-appointed temporary manager pursuant to law.

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

39 (1) ~~Where a facility's licensee has failed to correct a Type A Violation, the~~
40 ~~Department shall assess the facility's licensee a civil penalty in the amount of~~
41 ~~up to five hundred dollars (\$500.00) for each day that the deficiency~~
42 ~~continues beyond the time specified in the plan of correction approved by~~
43 ~~the Department or its authorized representative. The Department or its~~
44 ~~authorized representative shall ensure that the violation has been corrected.~~

45 (2) ~~Where a facility's licensee has failed to correct a Type B Violation within the~~
46 ~~time specified for correction by the Department or its authorized~~
47 ~~representative, the Department shall assess the facility's licensee a civil~~
48 ~~penalty in the amount of up to two hundred dollars (\$200.00) for each day~~
49 ~~that the deficiency continues beyond the time specified in the plan of~~
50 ~~correction approved by the Department or its authorized representative~~

1 without just reason for such failure. The Department or its authorized
2 representative shall ensure that the violation has been corrected.

- 3 (3) ~~The Department shall impose a civil penalty on a facility's licensee which is
4 treble the amount assessed under subdivision (1) of subsection (a) when a
5 facility under the management, ownership, or control of that same licensee
6 has received a citation and paid a penalty for violating the same specific
7 provision of a statute or regulation for which the facility's licensee has
8 received a citation during the previous 12 months. The counting of the
9 12-month period shall be tolled during any time when the facility is being
10 operated by a court-appointed temporary manager pursuant to Article 13 of
11 this Chapter.~~

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

- 15 (1) ~~The gravity of the violation, including the fact that death or serious physical
16 harm to a resident has resulted; the severity of the actual or potential harm,
17 and the extent to which the provisions of the applicable statutes or
18 regulations were violated;~~
- 19 (1a) ~~The gravity of the violation, including the probability that death or serious
20 physical harm to a resident will result; the severity of the potential harm, and
21 the extent to which the provisions of the applicable statutes or regulations
22 were violated;~~
- 23 (1b) ~~The gravity of the violation, including the probability that death or serious
24 physical harm to a resident may result; the severity of the potential harm,
25 and the extent to which the provisions of the applicable statutes or
26 regulations were violated;~~
- 27 (2) ~~The reasonable diligence exercised by the licensee to comply with
28 G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal
29 laws and regulations;~~
- 30 (2a) ~~Efforts by the licensee to correct violations;~~
- 31 (3) ~~The number and type of previous violations committed by the licensee
32 within the past 36 months;~~
- 33 (4) ~~The amount of assessment necessary to insure immediate and continued
34 compliance; and~~
- 35 (5) ~~The number of patients put at risk by the violation.~~
- 36 (1) There is substantial risk that serious physical harm, abuse, neglect, or
37 exploitation will occur.
- 38 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial
39 risk for resident death, did occur.
- 40 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk
41 for resident death, did occur.
- 42 (4) A resident died.
- 43 (5) A resident died and there is substantial risk to others for serious physical
44 harm, abuse, neglect, or exploitation.
- 45 (6) A resident died and there is substantial risk for further resident death.
- 46 (7) Reasonable diligence exercised by the licensee to comply with
47 G.S. 131E-256 and G.S. 131E-265 did occur.
- 48 (8) Efforts by the licensee to correct violations.
- 49 (9) The number and type of previous violations committed by the licensee
50 within the past 36 months.
- 51 (10) The number of residents put at risk by the violations.

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

- 4 (1) The penalty review committee;
- 5 (2) The local department of social services who is responsible for oversight of
6 the facility involved;
- 7 (3) The licensee involved;
- 8 (4) The residents affected; and
- 9 (5) ~~The family members or guardians of the residents affected.~~ The family
10 member who serves as a responsible party or those who have legal authority
11 on behalf of the affected resident.

12 (c2) Local county departments of social services and Division of Health Service
13 Regulation personnel shall submit proposed penalty recommendations to the Department within
14 45 days of the citation of a violation.

15 (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any
16 ~~facility's licensee-facility~~ which refuses to allow an authorized representative of the Department
17 to inspect the premises and records of the facility.

18 (e) Any ~~facility's licensee-facility~~ wishing to contest a penalty shall be entitled to an
19 administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the
20 General Statutes. A petition for a contested case shall be filed within 30 days after the
21 Department mails a notice of penalty to a licensee. At least the following specific issues shall
22 be addressed at the administrative hearing:

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

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

29 (e1) Notwithstanding the notice requirements of G.S. 131E-24, any penalty imposed by
30 the Department of Health and Human Services under this section shall commence on the day
31 the violation is imposed.

32 (f) The Secretary may bring a civil action in the superior court of the county wherein
33 the violation occurred to recover the amount of the administrative penalty whenever a ~~facility's~~
34 ~~licensee: facility:~~

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

40 (g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review
41 administrative penalties assessed pursuant to this section.

42 (g1) In lieu of assessing ~~an all or some of the~~ administrative penalty, the Secretary may
43 order a facility to provide staff training ~~if:if the training is:~~

- 44 ~~(1) The cost of training does not exceed one thousand dollars (\$1,000);~~
- 45 ~~(2) The penalty would be for the facility's only violation within a 12-month~~
46 ~~period preceding the current violation and while the facility is under the~~
47 ~~same management; and~~
- 48 ~~(3) The training is:~~
 - 49 ~~a. (1) Specific to the violation;~~
 - 50 ~~b. (2) Approved by the Department of Health and Human Services; and~~

- 1 e. ~~(3)~~ Taught by ~~someone~~ an individual approved by the ~~Department and other~~
2 ~~than the provider.~~ Department.
- 3 (h) The Department shall not assess an administrative penalty against a facility under
4 this section if a civil monetary penalty has been assessed for the same violation under federal
5 enforcement laws and regulations.
- 6 (i) The clear proceeds of civil penalties provided for in this section shall be remitted to
7 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
- 8 **SECTION 4.** This act is effective when it becomes law.