

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 397  
Committee Substitute Favorable 4/20/11  
PROPOSED SENATE COMMITTEE SUBSTITUTE H397-PCS80269-TD-53

Short Title: DHHS Penalties and Remedies Revision.-AB

(Public)

Sponsors:

Referred to:

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.



\* H 3 9 7 - P C S 8 0 2 6 9 - T D - 5 3 \*

- 1 c. ~~Provide a copy of the written confirmation required under~~  
2 ~~sub-subdivision b. of this subdivision to the Department. Require a~~  
3 ~~plan of correction to be submitted to the Department, based on a~~  
4 ~~written report of the findings, that describes steps the facility will~~  
5 ~~take to achieve and maintain compliance.~~

6 The Department shall impose a civil penalty in an amount not less than five  
7 hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for  
8 each Type A-A1 Violation in facilities or programs that serve six or fewer  
9 persons. The Department shall impose a civil penalty in an amount not less  
10 than one thousand dollars (\$1,000) nor more than twenty thousand dollars  
11 (\$20,000) for each Type A-A1 Violation in facilities or programs that serve  
12 seven or more persons.

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

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

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

34 The violation or violations shall be corrected within the time specified for  
35 correction by the Department or its authorized representative. The  
36 Department may or may not assess a penalty taking into consideration the  
37 compliance history, preventative measures, and response to previous  
38 violations by the facility. Where a facility has failed to correct a Type A2  
39 Violation, the Department shall assess the facility a civil penalty in the  
40 amount of up to one thousand dollars (\$1,000) for each day that the  
41 deficiency continues beyond the time specified for correction by the  
42 Department or its authorized representative. The Department or its  
43 authorized representative shall determine whether the violation has been  
44 corrected.

- 45 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the  
46 violation was not previously identified by the Department or its authorized  
47 representative or (ii) the violation was discovered by the facility and was  
48 self-reported, but in either case the violation has been corrected. In  
49 determining whether a penalty should be assessed under this section, the  
50 Department shall consider the following factors:

- 51 a. Preventative measures in place prior to the violation.

- 1                    b. Whether the violation or violations were abated immediately.  
2                    c. Whether the facility implemented corrective measures to achieve and  
3                    maintain compliance.  
4                    d. Whether the facility's system to ensure compliance is maintained and  
5                    continues to be implemented.  
6                    e. Whether the regulatory area remains in compliance.  
7                    (2) "Type B Violation" means a violation by a facility of the regulations,  
8                    standards, and requirements set forth in Article 2 or 3 of this Chapter or  
9                    applicable State or federal laws and regulations governing the licensure or  
10                    certification of a facility which ~~present a direct relationship~~ is detrimental to  
11                    the health, safety, or welfare of any client or patient, but which does not  
12                    result in substantial risk that death or serious physical ~~harm~~ harm, abuse,  
13                    neglect, or exploitation will occur. ~~The Department shall require a plan of~~  
14                    ~~correction for each Type B Violation and may require the facility to establish~~  
15                    ~~a specific plan of correction within a specific time period to address the~~  
16                    ~~violation. The person making the findings shall do the following:~~  
17                    a. Orally and immediately inform the facility of the Type B Violation  
18                    and the specific findings.  
19                    b. Require a written plan of protection regarding how the facility will  
20                    immediately abate the Type B Violation in order to protect clients or  
21                    residents from further risk or additional harm.  
22                    c. Within 15 working days of the investigation, send a report of the  
23                    findings to the facility.  
24                    d. Require a plan of correction to be submitted to the Department, based  
25                    on the written report of the findings, that describes steps the facility  
26                    will take to achieve and maintain compliance.  
27                    (b) ~~Penalties for Failure to Correct Violations Within Time Specified. –~~  
28                    (1) ~~Where a facility has failed to correct a Type A Violation, the Department~~  
29                    ~~shall assess the facility a civil penalty in the amount of up to one thousand~~  
30                    ~~dollars (\$1,000) for each day that the deficiency continues beyond the time~~  
31                    ~~specified in the plan of correction approved by the Department or its~~  
32                    ~~authorized representative. The Department or its authorized representative~~  
33                    ~~shall ensure that the violation has been corrected.~~  
34                    (2) Where a facility has failed to correct a Type B Violation within the time  
35                    specified for correction by the Department or its authorized representative,  
36                    the Department shall assess the facility a civil penalty in the amount of up to  
37                    four hundred dollars (\$400.00) for each day that the ~~deficiency~~ violation  
38                    continues beyond the date specified for correction without just reason for the  
39                    failure. The Department or its authorized representative shall ensure that the  
40                    violation has been corrected.  
41                    (3) Repeat Violations. – The Department shall impose a civil penalty which is  
42                    treble the amount assessed under ~~subdivision (1) of this subsection (a) of this~~  
43                    ~~section~~ when a facility under the same management, ownership, or control  
44                    management or ownership has received a citation during the previous 12  
45                    months for which the appeal rights are exhausted and penalty payment is  
46                    expected or has occurred, and has received a citation and paid a penalty for  
47                    the current violation is for violating the same specific provision of a statute  
48                    or regulation for which it received a citation ~~violation~~ during the previous 12  
49                    months.

1 (c) Factors to Be Considered in Determining Amount of Initial Penalty. – In  
2 determining the amount of the initial penalty to be imposed under this section, the Department  
3 shall consider the following factors:

4 (1) There is substantial risk that serious physical harm, abuse, neglect, or  
5 exploitation will occur, and this has not been corrected within the time  
6 specified by the Department or its authorized representative; ~~The gravity of~~  
7 the violation, including the fact that death or serious physical harm to a  
8 client or patient has resulted; the severity of the actual or potential harm, and  
9 the extent to which the provisions of the applicable statutes or regulations  
10 were violated;

11 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial  
12 risk for client death, did occur; ~~The gravity of the violation, including the~~  
13 probability that death or serious physical harm to a client or patient will  
14 result; the severity of the potential harm, and the extent to which the  
15 provisions of the applicable statutes or regulations were violated;

16 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk  
17 for client death, did occur; ~~The gravity of the violation, including the~~  
18 probability that death or serious physical harm to a client or patient may  
19 result; the severity of the potential harm, and the extent to which the  
20 provisions of the applicable statutes or regulations were violated;

21 (3a) A client died;

22 (3b) A client died and there is substantial risk to others for serious physical harm,  
23 abuse, neglect, or exploitation;

24 (3c) A client died and there is substantial risk for further client death;

25 (4) The reasonable diligence exercised by the licensee to comply with  
26 G.S. 131E-256 and other applicable State and federal laws and regulations;

27 (5) Efforts by the licensee to correct violations;

28 (6) The number and type of previous violations committed by the licensee  
29 within the past 36 months; and

30 (7) ~~The amount of assessment necessary to ensure immediate and continued~~  
31 ~~compliance; and~~

32 (8) The number of clients or patients put at risk by the violation.

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

36 (1) The licensee involved;

37 (2) The clients or patients affected; and

38 (3) The family members or guardians of the clients or patients affected.

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

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

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

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

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

1 (g) Any penalty imposed by the Department of Health and Human Services under this  
 2 section shall commence on the ~~day the violation began.~~ date of the letter of notification of the  
 3 penalty amount.

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

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

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

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

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

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

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

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

31 **"§ 131D-34. Penalties; remedies.**

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

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

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

- 1           a1.    Require a written plan of protection regarding how the facility will  
 2           immediately abate the Type A1 Violation in order to protect residents  
 3           from further risk or additional harm.
- 4           b.     ~~Within 10-15 working days of the investigation, confirm in writing to~~  
 5           ~~the administrator the information provided orally under~~  
 6           ~~sub-subdivision a. of this subdivision; and send a report of the~~  
 7           ~~findings to the facility.~~
- 8           c.     ~~Provide a copy of the written confirmation required under~~  
 9           ~~sub-subdivision b. of this subdivision to the Department. Require a~~  
 10          ~~plan of correction to be submitted to the Department, based on the~~  
 11          ~~written report of the findings, that describes steps the facility will~~  
 12          ~~take to achieve and maintain compliance.~~

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

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

- 31           a.     Orally and immediately inform the facility of the Type A2 Violation  
 32           and the specific findings.
- 33           b.     Require a written plan of protection regarding how the facility will  
 34           immediately abate the Type A2 Violation in order to protect clients  
 35           or residents from further risk or additional harm.
- 36           c.     Within 15 working days of the investigation, send a report of the  
 37           findings to the facility.
- 38           d.     Require a plan of correction to be submitted to the Department, based  
 39           on the written report of the findings, that describes steps the facility  
 40           will take to achieve and maintain compliance.

41           The violation or violations shall be corrected within the time specified for  
 42           correction by the Department or its authorized representative. The  
 43           Department may or may not assess a penalty taking into consideration the  
 44           compliance history, preventative measures, and response to previous  
 45           violations by the facility. Where a facility has failed to correct a Type A2  
 46           Violation, the Department shall assess the facility a civil penalty in the  
 47           amount of up to one thousand dollars (\$1,000) for each day that the  
 48           deficiency continues beyond the time specified for correction by the  
 49           Department or its authorized representative. The Department or its  
 50           authorized representative shall determine whether the violation has been  
 51           corrected.

(1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the violation was not previously identified by the Department or its authorized representative or (ii) the violation was discovered by the facility and was self-reported, but in either case the violation has been corrected. In determining whether a penalty should be assessed under this section, the Department shall consider the following factors:

- a. Preventive systems in place prior to the violation.
- b. Whether the violation or violations were abated immediately.
- c. Whether the facility implemented corrective measures to achieve maintain compliance.
- d. Whether the facility's system to ensure compliance is maintained and continues to be implemented.
- e. Whether the regulatory area remains in compliance.

(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 is detrimental present a direct relationship to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm-harm, abuse, neglect, or exploitation will occur. 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 reasonable time period to address the violation. The required plan cannot exceed requirements imposed by existing rule or law. The person making the findings shall do the following:

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

(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 one thousand dollars (\$1,000) for each day that the deficiency 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 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 or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars (\$400.00) for each day that the deficiency-violation continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) of this section when a facility under the same management, ownership, or control

1 ~~has received a citation~~ management or ownership has received a citation  
 2 during the previous 12 months for which the appeal rights are exhausted and  
 3 penalty payment is expected or has occurred, and the current violation is ~~and~~  
 4 paid a penalty for violating the same specific provision of a statute or  
 5 regulation for which it received a ~~citation~~ violation during the previous 12  
 6 months. The counting of the 12-month period shall be tolled during any time  
 7 when the facility is being operated by a court-appointed temporary manager  
 8 pursuant to Article 4 of this Chapter.

9 (c) ~~Factors to be considered in determining amount of initial penalty.~~ Factors to Be  
 10 Considered in Determining Amount of Initial Penalty. – In determining the amount of the  
 11 initial penalty to be imposed under this section, the Department shall consider the following  
 12 factors:

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

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

- 45 (1) The penalty review committee;  
 46 (2) The local department of social services who is responsible for oversight of  
 47 the facility involved;  
 48 (3) The licensee involved;  
 49 (4) The residents affected; and



1           (5) ~~The family members or guardians of the residents affected. The family~~  
2           ~~member who serves as a responsible party or those who have legal authority~~  
3           ~~on behalf of the affected resident.~~

4           (c2) Local county departments of social services and Division of Health Service  
5 Regulation personnel shall submit proposed penalty recommendations to the Department within  
6 45 days of the citation of a violation.

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

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

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

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

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

25          (f) ~~Notwithstanding the notice requirements of G.S. 131D-26(b), any~~ Any penalty  
26 imposed by the Department of Health and Human Services under this section shall commence  
27 ~~on the day the violation began.~~ date the violation was identified.

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

- 30           (1) Which has not requested an administrative hearing fails to pay the penalty  
31           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 in  
34           G.S. 150B-36.

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

- 37           (1) Specific to the violation;  
38           (2) Approved by the Department of Health and Human Services; and  
39           (3) Taught by someone approved by the Department.  
40           ~~(1) The cost of training does not exceed one thousand dollars (\$1,000);~~  
41           ~~(2) The penalty would be for the facility's only violation within a 12-month~~  
42           ~~period preceding the current violation and while the facility is under the~~  
43           ~~same management; and~~  
44           ~~(3) The training is:~~  
45           a. ~~Specific to the violation;~~  
46           b. ~~Approved by the Department of Health and Human Services; and~~  
47           c. ~~Taught by someone approved by the Department and other than the~~  
48           ~~provider.~~

49          (h) The Secretary shall establish a penalty review committee within the Department,  
50 which shall meet as often as needed, but no less frequently than once each quarter of the year,

1 to review administrative penalties assessed pursuant to this section and pursuant to  
2 G.S. 131E-129 as follows:

- 3 (1) The Secretary shall administer the work of the Committee and provide  
4 public notice of its meetings via Web site, and provide direct notice to the  
5 following parties involved in the penalties the Committee will be reviewing:  
6 a. The licensed provider, who upon receipt of the notice, shall post the  
7 notice of the scheduled Penalty Review Committee meeting in a  
8 conspicuous place available to residents, family members, and the  
9 public;  
10 b. The local department of social services that is responsible for  
11 oversight of the facility involved;  
12 c. The residents affected; and  
13 d. Those individuals lawfully designated by the affected resident to  
14 make health care decisions for the resident.
- 15 (2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty  
16 Review Committee established by this subsection is comprised of nine  
17 members. At least one member shall be appointed from each of the  
18 following categories:  
19 a. A licensed pharmacist;  
20 b. A registered nurse experienced in long term care;  
21 c. A representative of a nursing home;  
22 d. A representative of an adult care home; and  
23 e. Two public members. One shall be a "near" relative of a nursing  
24 home patient, chosen from a list prepared by the Office of State Long  
25 Term Care Ombudsman, Division of Aging, Department of Health  
26 and Human Services. One shall be a "near" relative of a rest home  
27 patient, chosen from a list prepared by the Office of State Long Term  
28 Care Ombudsman, Division of Aging, Department of Health and  
29 Human Services. For purposes of this subdivision, a "near" relative is  
30 a spouse, sibling, parent, child, grandparent, or grandchild.
- 31 (3) Neither the pharmacist, nurse, nor public members appointed under this  
32 subsection nor any member of their immediate families shall be employed  
33 by or own any interest in a nursing home or adult care home.
- 34 (4) Repealed by Session Laws 2005-276, s. 10.40A(1), effective July 1, 2005.
- 35 (4a) Repealed by Session Laws 2007-544, s. 1, effective October 1, 2007.
- 36 (4b) Prior to serving on the Committee, each member shall complete a training  
37 program provided by the Department of Health and Human Services that  
38 covers standards of care and applicable State and federal laws and  
39 regulations governing facilities licensed under Chapter 131D and Chapter  
40 131E of the General Statutes.
- 41 (5) Each member of the Committee shall serve a term of two years. The initial  
42 terms of the members shall commence on August 3, 1989. The Secretary  
43 shall fill all vacancies. Unexcused absences from three consecutive meetings  
44 constitute resignation from the Committee.
- 45 (6) The Committee shall be cochaired by:  
46 a. One member of the Department outside of the Division of Health  
47 Service Regulation; and  
48 b. One member who is not affiliated with the Department.
- 49 (i) The clear proceeds of civil penalties provided for in this section shall be remitted to  
50 the ~~Civil Penalty and Forfeiture Fund~~ State Treasurer for deposit in accordance with  
51 ~~G.S. 115C-457.2~~ State law."

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

2   "**§ 131E-129. Penalties.**~~Penalties; remedies.~~

3       (a) ~~Violations classified.~~ Violation Classification and Penalties. – The Department of  
4 Health and Human Services shall impose an administrative penalty in accordance with  
5 provisions of this ~~Part~~ Article on any ~~facility's licensee~~ facility which is found to be in violation  
6 of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations.  
7 Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature  
8 of the violation as follows:

9           (1) "Type A-~~A1~~ Violation" means a violation by a ~~facility's licensee~~ facility of  
10 the ~~regulations, standards, regulations~~ and requirements set forth in  
11 G.S. 131E-117, or applicable State or federal laws and regulations governing  
12 the licensure or certification of a facility which results in death or serious  
13 physical ~~harm, or results in substantial risk that death or serious physical~~  
14 ~~harm will occur.~~ Type A Violations shall be abated or eliminated  
15 immediately. The Department shall require an immediate plan of correction  
16 for each Type A Violation. ~~harm.~~ The person making the findings shall do  
17 the following:

- 18           a. Orally and immediately inform the ~~administrator of the~~ facility of the  
19 Type A1 Violation and the specific findings and what must be done  
20 to correct them and set a date by which the violation must be  
21 corrected; findings.  
22           b. ~~Within 10 working days of the investigation, confirm in writing to~~  
23 ~~the administrator the information provided orally under~~  
24 ~~sub-subdivision a. of this subdivision; and~~  
25           c. ~~Provide a copy of the written confirmation required under~~  
26 ~~sub-subdivision b. of this subdivision to the Department.~~  
27           d. Require a written, credible allegation regarding how the facility will  
28 immediately remove the Type A1 Violation in order to protect  
29 residents from further risk or additional harm.  
30           e. Within 15 working days of the investigation, send a report of the  
31 findings to the facility.  
32           f. Require a plan of correction to be submitted to the Department, based  
33 on the written report of the findings, that describes steps the facility  
34 will take to achieve and maintain compliance by the date specified by  
35 the Department.

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

45           (1a) "Type A2 Violation" means a violation by a facility of the regulations,  
46 standards, and requirements set forth in G.S. 131E-117 or applicable State or  
47 federal laws and regulations governing the licensure or certification of a  
48 facility which results in substantial risk that death or serious physical harm  
49 will occur. The person making the findings shall do the following:  
50           a. Orally and immediately inform the facility of the Type A2 Violation  
51 and the specific findings.

- 1           b. Require a credible allegation regarding how the facility will  
2           immediately remove the Type A2 Violation in order to protect  
3           residents from further risk or additional harm.  
4           c. Within 10 working days of the investigation, send a report of the  
5           findings to the facility.  
6           d. Require a plan of correction to be submitted to the Department, based  
7           on the written report of the findings, that describes steps the facility  
8           will take to achieve and maintain compliance by the date specified by  
9           the Department.

10           The violation or violations shall be corrected within the time specified for  
11           correction by the Department or its authorized representative. The  
12           Department may or may not assess a penalty taking into consideration the  
13           compliance history, preventative measures, and response to previous  
14           violations by the facility. Where a facility has failed to correct a Type A2  
15           Violation, the Department shall assess the facility a civil penalty in the  
16           amount of up to one thousand dollars (\$1,000) for each day that the  
17           deficiency continues beyond the time specified for correction by the  
18           Department or its authorized representative. The Department or its  
19           authorized representative shall determine whether the violation has been  
20           corrected.

21           (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the  
22           violation was not previously identified by the Department or its authorized  
23           representative or (ii) the violation was discovered by the facility and was  
24           self-reported, but in either case the violation has been corrected. In  
25           determining whether a penalty should be assessed under this section, the  
26           Department shall consider the following factors:

- 27           a. Preventive systems in place prior to the violation.  
28           b. Whether the violation or violations were abated immediately. and  
29           c. Whether the facility implemented corrective measures to achieve and  
30           maintain compliance.  
31           d. Whether the facility's system to ensure compliance is maintained and  
32           continues to be implemented.

33           e. Whether the regulatory area remains in compliance.  
34           (2) "Type B Violation" means a violation by a facility's licensee of the  
35           regulations, standards and requirements set forth in G.S. 131E-117 or  
36           applicable State or federal laws and regulations governing the licensure or  
37           certification of a facility which ~~presents a direct relationship~~ is detrimental to  
38           the health, safety, or welfare of any resident, but which does not result in  
39           substantial risk that death or serious physical harm will occur. ~~The~~  
40           ~~Department shall require a plan of correction for each Type B Violation and~~  
41           ~~may require the facility to establish a specific plan of correction within a~~  
42           ~~specific time period to address the violation.~~The person making the findings  
43           shall do the following:

- 44           a. Orally and immediately inform the facility of the Type B Violation  
45           and the specific findings.  
46           b. Require a written plan regarding how the facility will immediately  
47           remove the Type B Violation in order to protect residents from  
48           further risk or additional harm.  
49           c. Within 10 working days of the investigation, send a report of the  
50           findings to the facility.

1           d.     Require a plan of correction to be submitted to the Department, based  
2               on the written report of the findings, that describes steps the facility  
3               will take to achieve and maintain compliance by the date specified by  
4               the Department.

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

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

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

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

28           ~~(2)   Where a facility's licensee has failed to correct a Type B Violation within the~~  
29           ~~time specified for correction by the Department or its authorized~~  
30           ~~representative, the Department shall assess the facility's licensee a civil~~  
31           ~~penalty in the amount of up to two hundred dollars (\$200.00) for each day~~  
32           ~~that the deficiency continues beyond the time specified in the plan of~~  
33           ~~correction approved by the Department or its authorized representative~~  
34           ~~without just reason for such failure. The Department or its authorized~~  
35           ~~representative shall ensure that the violation has been corrected.~~

36           ~~(3)   The Department shall impose a civil penalty on a facility's licensee which is~~  
37           ~~treble the amount assessed under subdivision (1) of subsection (a) when a~~  
38           ~~facility under the management, ownership, or control of that same licensee~~  
39           ~~has received a citation and paid a penalty for violating the same specific~~  
40           ~~provision of a statute or regulation for which the facility's licensee has~~  
41           ~~received a citation during the previous 12 months. The counting of the~~  
42           ~~12-month period shall be tolled during any time when the facility is being~~  
43           ~~operated by a court appointed temporary manager pursuant to Article 13 of~~  
44           ~~this Chapter.~~

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

48           ~~(1)   The gravity of the violation, including the fact that death or serious physical~~  
49           ~~harm to a resident has resulted; the severity of the actual or potential harm,~~  
50           ~~and the extent to which the provisions of the applicable statutes or~~  
51           ~~regulations were violated;~~

- 1           (1a) ~~The gravity of the violation, including the probability that death or serious~~  
2           ~~physical harm to a resident will result; the severity of the potential harm, and~~  
3           ~~the extent to which the provisions of the applicable statutes or regulations~~  
4           ~~were violated;~~
- 5           (1b) ~~The gravity of the violation, including the probability that death or serious~~  
6           ~~physical harm to a resident may result; the severity of the potential harm,~~  
7           ~~and the extent to which the provisions of the applicable statutes or~~  
8           ~~regulations were violated;~~
- 9           (2) ~~The reasonable diligence exercised by the licensee to comply with~~  
10          ~~G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal~~  
11          ~~laws and regulations;~~
- 12          (2a) ~~Efforts by the licensee to correct violations;~~
- 13          (3) ~~The number and type of previous violations committed by the licensee~~  
14          ~~within the past 36 months;~~
- 15          (4) ~~The amount of assessment necessary to insure immediate and continued~~  
16          ~~compliance; and~~
- 17          (5) ~~The number of patients put at risk by the violation.~~
- 18          (1) There is substantial risk that serious physical harm, abuse, neglect, or  
19          exploitation will occur.
- 20          (2) Serious physical harm, abuse, neglect, or exploitation, without substantial  
21          risk for resident death, did occur.
- 22          (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk  
23          for resident death, did occur.
- 24          (4) A resident died.
- 25          (5) A resident died and there is substantial risk to others for serious physical  
26          harm, abuse, neglect, or exploitation.
- 27          (6) A resident died and there is substantial risk for further resident death.
- 28          (7) Reasonable diligence exercised by the licensee to comply with  
29          G.S. 131E-256 and G.S. 131E-265 did occur.
- 30          (8) Efforts by the licensee to correct violations.
- 31          (9) The number and type of previous violations committed by the licensee  
32          within the past 36 months.
- 33          (10) The number of residents put at risk by the violations.
- 34          (c1) The facts found to support the factors in subsection (c) of this section shall be the  
35          basis in determining the amount of the penalty. The Secretary shall document the findings in  
36          written record and shall make the written record available to all affected parties including:
- 37                  (1) The penalty review committee;
- 38                  (2) The local department of social services who is responsible for oversight of  
39                  the facility involved;
- 40                  (3) The licensee involved;
- 41                  (4) The residents affected; and
- 42                  (5) The family members or guardians of the residents affected. The family  
43                  member who serves as a responsible party or those who have legal authority  
44                  on behalf of the affected resident.
- 45          (c2) Local county departments of social services and Division of Health Service  
46          Regulation personnel shall submit proposed penalty recommendations to the Department within  
47          45 days of the citation of a violation.
- 48          (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any  
49          ~~facility's licensee-facility~~ which refuses to allow an authorized representative of the Department  
50          to inspect the premises and records of the facility.

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

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

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

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

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

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

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

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

- 27 ~~(1) The cost of training does not exceed one thousand dollars (\$1,000);~~
- 28 ~~(2) The penalty would be for the facility's only violation within a 12-month~~  
29 ~~period preceding the current violation and while the facility is under the~~  
30 ~~same management; and~~
- 31 ~~(3) The training is:~~
  - 32 ~~a. (1) Specific to the violation;~~
  - 33 ~~b. (2) Approved by the Department of Health and Human Services; and~~
  - 34 ~~e. (3) Taught by someone an individual approved by the ~~Department and other~~~~  
35 ~~than the provider.~~ Department.

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

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

41 **SECTION 4.** This act is effective when it becomes law.