

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 397
PROPOSED COMMITTEE SUBSTITUTE H397-PCS50298-RF-18

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.

33 c. Provide a copy of the written confirmation required under
34 sub-subdivision b. of this subdivision to the Department. Require a



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

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

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

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

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

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

43 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the
44 violation was not previously identified by the Department or its authorized
45 representative or (ii) the violation was discovered by the facility as was
46 self-reported, but in either case the violation has been corrected. In
47 determining whether a penalty should be assessed under this section, the
48 Department shall consider the following factors:

- 49 a. Preventative measures in place prior to the violation.
50 b. Whether the violation or violations were abated immediately.

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

- 1 (1) There is substantial risk that serious physical harm, abuse, neglect, or
2 exploitation will occur, and this has not been corrected within the time
3 specified by the Department or its authorized representative; ~~The gravity of~~
4 the violation, including the fact that death or serious physical harm to a
5 client or patient has resulted; the severity of the actual or potential harm, and
6 the extent to which the provisions of the applicable statutes or regulations
7 were violated;
- 8 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial
9 risk for client death, did occur;~~The gravity of the violation, including the~~
10 ~~probability that death or serious physical harm to a client or patient will~~
11 ~~result; the severity of the potential harm, and the extent to which the~~
12 ~~provisions of the applicable statutes or regulations were violated;~~
- 13 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk
14 for client death, did occur;~~The gravity of the violation, including the~~
15 ~~probability that death or serious physical harm to a client or patient may~~
16 ~~result; the severity of the potential harm, and the extent to which the~~
17 ~~provisions of the applicable statutes or regulations were violated;~~
- 18 (3a) A client died;
- 19 (3b) A client died and there is substantial risk to others for serious physical harm,
20 abuse, neglect, or exploitation;
- 21 (3c) A client died and there is substantial risk for further client death;
- 22 (4) The reasonable diligence exercised by the licensee to comply with
23 G.S. 131E-256 and other applicable State and federal laws and regulations;
- 24 (5) Efforts by the licensee to correct violations;
- 25 (6) The number and type of previous violations committed by the licensee
26 within the past 36 months; and
- 27 (7) ~~The amount of assessment necessary to ensure immediate and continued~~
28 ~~compliance; and~~
- 29 (8) The number of clients or patients put at risk by the violation.
- 30 (d) The facts found to support the factors in subsection (c) of this section shall be the
31 basis in determining the amount of the penalty. The Department shall document the findings in
32 written record and shall make the written record available to all affected parties including:
- 33 (1) The licensee involved;
- 34 (2) The clients or patients affected; and
- 35 (3) The family members or guardians of the clients or patients affected.
- 36 (e) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any
37 facility which refuses to allow an authorized representative of the Department to inspect the
38 premises and records of the facility.
- 39 (f) Any facility wishing to contest a penalty shall be entitled to an administrative
40 hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case
41 shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At
42 least the following specific issues shall be addressed at the administrative hearing:
- 43 (1) The reasonableness of the amount of any civil penalty assessed, and
- 44 (2) The degree to which each factor has been evaluated pursuant to subsection
45 (c) of this section to be considered in determining the amount of an initial
46 penalty.
- 47 If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to
48 be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.
- 49 (g) Any penalty imposed by the Department of Health and Human Services under this
50 section shall commence on the ~~day the violation began.~~ date of the letter of notification of the
51 penalty amount.

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

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

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

- 10 (1) Specific to the violation;
11 (2) Approved by the Department of Health and Human Services; and
12 (3) Taught by someone approved by the Department.
13 (4) ~~The penalty would be for the facility's only violation within a 12-month~~
14 ~~period preceding the current violation and while the facility is under the~~
15 ~~same management; and~~
16 (2) ~~The training is:~~
17 a. ~~Specific to the violation;~~
18 b. ~~Approved by the Department of Health and Human Services; and~~
19 e. ~~Taught by someone approved by the Department and other than the~~
20 ~~provider.~~

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

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

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

28 "**§ 131D-34. Penalties; remedies.**

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

- 35 (1) "Type ~~A~~A1 Violation" means a violation by a facility of the regulations,
36 standards, and requirements set forth in G.S. 131D-21 or applicable State or
37 federal laws and regulations governing the licensure or certification of a
38 facility which results in death or serious physical harm, abuse, neglect, or
39 exploitation. ~~or results in substantial risk that death or serious physical harm~~
40 ~~will occur. Type A Violations shall be abated or eliminated immediately.~~
41 ~~The Department shall require an immediate plan of correction for each Type~~
42 ~~A Violation.~~ The person making the findings shall do the following:
43 a. Orally and immediately inform the ~~administrator of the~~ facility of the
44 Type A1 Violation and the specific findings ~~findings and what must~~
45 ~~be done to correct them, and set a date by which the violation must~~
46 ~~be corrected;~~
47 a1. Require a written plan of protection regarding how the facility will
48 immediately abate the Type A1 Violation in order to protect residents
49 from further risk or additional harm.
50 b. Within ~~10~~15 working days of the investigation, ~~confirm in writing to~~
51 ~~the administrator the information provided orally under~~

1 ~~sub-subdivision a. of this subdivision; and send a report of the~~
2 ~~findings to the facility.~~

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

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

20 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
21 standards, and requirements set forth in G.S. 131D-21 or applicable State or
22 federal laws and regulations governing the licensure or certification of a
23 facility which results in substantial risk that death or serious physical harm,
24 abuse, neglect, or exploitation will occur. The person making the findings
25 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 written plan of protection regarding how the facility will
29 immediately abate the Type A2 Violation in order to protect clients
30 or residents from further risk or additional harm.
31 c. Within 15 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.

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

47 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i)
48 the violation was not previously identified by the Department or its
49 authorized representative or (ii) the violation was discovered by the facility
50 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~~ has received a citation ~~management or ownership has received a citation~~ during the previous 12 months for which the appeal rights are exhausted and ~~penalty payment is expected or has occurred, and the current violation is and~~ paid a penalty for violating the same specific provision of a statute or

1 regulation for which it received a ~~citation-violation~~ during the previous 12
2 months. The counting of the 12-month period shall be tolled during any time
3 when the facility is being operated by a court-appointed temporary manager
4 pursuant to Article 4 of this Chapter.

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

- 9 (1) ~~The gravity of the violation, including the fact that death or serious physical~~
10 ~~harm to a resident has resulted; the severity of the actual or potential harm,~~
11 ~~and the extent to which the provisions of the applicable statutes or~~
12 ~~regulations were violated;~~ There is substantial risk that serious physical harm,
13 abuse, neglect, or exploitation will occur;
14 (1a) ~~The gravity of the violation, including the probability that death or serious~~
15 ~~physical harm to a resident will result; the severity of the potential harm, and~~
16 ~~the extent to which the provisions of the applicable statutes or regulations~~
17 ~~were violated;~~ Serious physical harm, abuse, neglect, or exploitation,
18 without substantial risk for resident death, did occur;
19 (1b) ~~The gravity of the violation, including the probability that death or serious~~
20 ~~physical harm to a resident may result; the severity of the potential harm,~~
21 ~~and the extent to which the provisions of the applicable statutes or~~
22 ~~regulations were violated;~~ Serious physical harm, abuse, neglect, or
23 exploitation, with substantial risk for resident death, did occur;
24 (1c) A resident died;
25 (1d) A resident died and there is substantial risk to others for serious physical
26 harm, abuse, neglect, or exploitation;
27 (1e) A resident died and there is substantial risk for further resident death;
28 (2) The reasonable diligence exercised by the licensee to comply with
29 G.S. 131E-256 and ~~G.S. 131E-265~~ G.S. 131D-21 and other applicable State
30 and federal laws and regulations;
31 (2a) Efforts by the licensee to correct violations;
32 (3) The number and type of previous violations committed by the licensee
33 within the past 36 months; and
34 (4) ~~The amount of assessment necessary to insure immediate and continued~~
35 ~~compliance; and~~
36 ~~(5)~~ (4) The number of patients-residents put at risk by the violation.

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

- 41 (1) The penalty review committee;
42 (2) The local department of social services who is responsible for oversight of
43 the facility involved;
44 (3) The licensee involved;
45 (4) The residents affected; and
46 (5) ~~The family members or guardians of the residents affected.~~ The family
47 member who serves as a responsible party or those who have legal authority
48 on behalf of the affected resident.

49 (c2) Local county departments of social services and Division of Health Service
50 Regulation personnel shall submit proposed penalty recommendations to the Department within
51 45 days of the citation of a violation.

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

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

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

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

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

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

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

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

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

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

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

- 47 (1) The Secretary shall administer the work of the Committee and provide
48 public notice of its meetings via Web site, and provide direct notice to the
49 following parties involved in the penalties the Committee will be reviewing:
 - 50 a. The licensed provider, who upon receipt of the notice, shall post the
51 notice of the scheduled Penalty Review Committee meeting in a

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

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

46 "**§ 131E-129. Penalties; Penalties; remedies.**

47 (a) ~~Violations classified.~~ Violation Classification and Penalties. – The Department of
 48 Health and Human Services shall impose an administrative penalty in accordance with
 49 provisions of this ~~Part~~ Article on any ~~facility's licensee~~ facility which is found to be in violation
 50 of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations.

1 Citations ~~issued~~ for violations shall be classified and penalties assessed according to the nature
2 of the violation as follows:

- 3 (1) "~~Type A-A1 Violation~~" means a violation by a ~~facility's licensee-facility~~ of
4 the ~~regulations, standards, regulations~~ and requirements set forth in
5 G.S. 131E-117, or applicable State or federal laws and regulations governing
6 the licensure or certification of a facility which results in death or serious
7 physical ~~harm, or results in substantial risk that death or serious physical~~
8 ~~harm will occur. Type A Violations shall be abated or eliminated~~
9 ~~immediately. The Department shall require an immediate plan of correction~~
10 ~~for each Type A Violation-harm. The person making the findings shall do~~
11 ~~the following:~~
- 12 a. ~~Orally and immediately inform the administrator of the facility of the~~
13 ~~Type A1 Violation and the specific findings and what must be done~~
14 ~~to correct them and set a date by which the violation must be~~
15 ~~corrected; findings.~~
 - 16 b. ~~Within 10 working days of the investigation, confirm in writing to~~
17 ~~the administrator the information provided orally under~~
18 ~~sub-subdivision a. of this subdivision; and~~
 - 19 e. ~~Provide a copy of the written confirmation required under~~
20 ~~sub-subdivision b. of this subdivision to the Department.~~
 - 21 d. Require a written, credible allegation regarding how the facility will
22 immediately remove the Type A1 Violation in order to protect
23 residents from further risk or additional harm.
 - 24 e. Within 15 working days of the investigation, send a report of the
25 findings to the facility.
 - 26 f. Require a plan of correction to be submitted to the Department, based
27 on the written report of the findings, that describes steps the facility
28 will take to achieve and maintain compliance by the date specified by
29 the Department.

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

- 39 (1a) "Type A2 Violation" means a violation by a facility of the regulations,
40 standards, and requirements set forth in G.S. 131E-117 or applicable State or
41 federal laws and regulations governing the licensure or certification of a
42 facility which results in substantial risk that death or serious physical harm
43 will occur. The person making the findings shall do the following:
- 44 a. Orally and immediately inform the facility of the Type A2 Violation
45 and the specific findings.
 - 46 b. Require a credible allegation regarding how the facility will
47 immediately remove the Type A2 Violation in order to protect
48 residents from 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 The violation or violations shall be corrected within the time specified for
6 correction by the Department or its authorized representative. The
7 Department may or may not assess a penalty taking into consideration the
8 compliance history, preventative measures, and response to previous
9 violations by the facility. Where a facility has failed to correct a Type A2
10 Violation, the Department shall assess the facility a civil penalty in the
11 amount of up to one thousand dollars (\$1,000) for each day that the
12 deficiency continues beyond the time specified for correction by the
13 Department or its authorized representative. The Department or its
14 authorized representative shall determine whether the violation has been
15 corrected.

16 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the
17 violation was not previously identified by the Department or its authorized
18 representative or (ii) the violation was discovered by the facility and was
19 self-reported, but in either case the violation has been corrected. In
20 determining whether a penalty should be assessed under this section, the
21 Department shall consider the following factors:

22 a. Preventive systems in place prior to the violation.

23 b. Whether the violation or violations were abated immediately. and

24 c. Whether the facility implemented corrective measures to achieve and
25 maintain compliance.

26 d. Whether the facility's system to ensure compliance is maintained and
27 continues to be implemented.

28 e. Whether the regulatory area remains in compliance.

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

39 a. Orally and immediately inform the facility of the Type B Violation
40 and the specific findings.

41 b. Require a written plan regarding how the facility will immediately
42 remove the Type B Violation in order to protect residents from
43 further risk or additional harm.

44 c. Within 10 working days of the investigation, send a report of the
45 findings to the facility.

46 d. Require a plan of correction to be submitted to the Department, based
47 on the written report of the findings, that describes steps the facility
48 will take to achieve and maintain compliance by the date specified by
49 the Department.

50 Where a facility has failed to correct a Type B Violation within the time
51 specified for correction by the Department or its authorized representative,

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

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

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

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

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

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

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

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

46 (1a) ~~The gravity of the violation, including the probability that death or serious~~
47 ~~physical harm to a resident will result; the severity of the potential harm, and~~
48 ~~the extent to which the provisions of the applicable statutes or regulations~~
49 ~~were violated;~~

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;
- 3 (2) ~~The reasonable diligence exercised by the licensee to comply with~~
4 ~~G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal~~
5 ~~laws and regulations;~~
- 6 (2a) ~~Efforts by the licensee to correct violations;~~
- 7 (3) ~~The number and type of previous violations committed by the licensee~~
8 ~~within the past 36 months;~~
- 9 (4) ~~The amount of assessment necessary to insure immediate and continued~~
10 ~~compliance; and~~
- 11 (5) ~~The number of patients put at risk by the violation.~~
- 12 (1) There is substantial risk that serious physical harm, abuse, neglect, or
13 exploitation will occur.
- 14 (2) Serious physical harm, abuse, neglect, or exploitation, without substantial
15 risk for resident death, did occur.
- 16 (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk
17 for resident death, did occur.
- 18 (4) A resident died.
- 19 (5) A resident died and there is substantial risk to others for serious physical
20 harm, abuse, neglect, or exploitation.
- 21 (6) A resident died and there is substantial risk for further resident death.
- 22 (7) Reasonable diligence exercised by the licensee to comply with
23 G.S. 131E-256 and G.S. 131E-265 did occur.
- 24 (8) Efforts by the licensee to correct violations.
- 25 (9) The number and type of previous violations committed by the licensee
26 within the past 36 months.
- 27 (10) The number of residents put at risk by the violations.
- 28 (c1) The facts found to support the factors in subsection (c) of this section shall be the
29 basis in determining the amount of the penalty. The Secretary shall document the findings in
30 written record and shall make the written record available to all affected parties including:
- 31 (1) The penalty review committee;
- 32 (2) The local department of social services who is responsible for oversight of
33 the facility involved;
- 34 (3) The licensee involved;
- 35 (4) The residents affected; and
- 36 (5) ~~The family members or guardians of the residents affected.~~The family
37 member who serves as a responsible party or those who have legal authority
38 on behalf of the affected resident.
- 39 (c2) Local county departments of social services and Division of Health Service
40 Regulation personnel shall submit proposed penalty recommendations to the Department within
41 45 days of the citation of a violation.
- 42 (d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any
43 ~~facility's licensee-facility~~ which refuses to allow an authorized representative of the Department
44 to inspect the premises and records of the facility.
- 45 (e) Any ~~facility's licensee-facility~~ wishing to contest a penalty shall be entitled to an
46 administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the
47 General Statutes. A petition for a contested case shall be filed within 30 days after the
48 Department mails a notice of penalty to a licensee. At least the following specific issues shall
49 be addressed at the administrative hearing:
- 50 (1) The reasonableness of the amount of any civil penalty assessed, and

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

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

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

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

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

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

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

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

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

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

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