

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 600
HOUSE BILL 1057

AN ACT TO REVISE ADMINISTRATIVE PENALTIES FOR VIOLATIONS BY
NURSING HOMES AND DOMICILIARY CARE HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-126 and G.S. 131D-30 are repealed.

Sec. 2. Part B of Chapter 131E of the General Statutes is amended by adding a new section at the end to read:

"§ 131E-129. **Penalties.**—(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each Type A Violation.
 - (2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.
- (b) Penalties for failure to correct violations within time specified.

- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure 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, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.
- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:
 - a. has received a citation and paid a fine, or
 - b. has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.

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

- (1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
- (3) The number and type of previous violations committed by the licensee;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

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

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be

unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

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

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

Sec. 3. Article 3 of Chapter 131D of the General Statutes is amended by adding a new section at the end to read:

"§ 131D-130. Penalties; remedies.—(a) Violations classified. The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5000) for each Type A Violation.
- (2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to two hundred fifty dollars (\$250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

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

- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency

continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure 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, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.
- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:
 - a. has received a citation and paid a fine, or
 - b. has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,for violating the same specific provision of a statute or regulation for which it received a citation during the previous six months or within the time period of the previous licensure inspection, whichever time period is longer.

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

- (1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
- (3) The number and type of previous violations committed by the licensee;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

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

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

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

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

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

(h) The Secretary shall establish a penalty review committee within the Department."

Sec. 4. This act shall become effective October 1, 1987.

In the General Assembly read three times and ratified this the 10th day of July, 1987.