

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 602
HOUSE BILL 332

AN ACT TO CLARIFY THE DOMICILIARY AND NURSING HOME PENALTY
ASSESSMENT LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"§ 131D-34. Penalties; remedies.

(a) Violations Classified. – The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any ~~facility~~ facility's licensee 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~~ facility's licensee 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~~ facility's licensee 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~~ facility's licensee has failed to correct a Type A Violation, the Department shall assess the ~~facility~~ facility's licensee 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~~ facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the ~~facility~~ facility's licensee 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 on a facility's licensee which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the ~~same~~ management, ownership, or ~~control~~ control of that same licensee:
 - a. Has received a citation and paid a fine, or
 - b. Has received a citation for which the Department in ~~the~~ its 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~~ the facility's licensee received a citation during the previous six months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the six-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

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

- (1) The gravity of the violation, including the probability 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~~ facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

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

- (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, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care ~~facility~~ facility's licensee for Type B violations except those violations that have been previously cited against the long-term care ~~facility~~ facility's licensee during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

- (1) A licensed pharmacist;
- (2) A registered nurse experienced in long-term care;
- (3) A representative of a nursing home;
- (4) A representative of a domiciliary home; and
- (5) Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home ~~patient~~, resident chosen from a list prepared by the Office of State Long-Term

Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near' relative is a spouse, sibling, parent, child, grandparent, or grandchild.

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

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

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

"§ 131E-129. Penalties.

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any ~~facility~~facility's licensee 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~~facility's licensee 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~~facility's licensee 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~~facility's licensee has failed to correct a Type A Violation, the Department shall assess the ~~facility~~facility's licensee 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~~facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the ~~facility~~facility's licensee 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 on a facility's licensee which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the ~~same~~ management, ownership, or ~~control~~control of that same licensee:

- 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~~the facility's licensee has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

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

- (1) The gravity of the violation, including the probability 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~~facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any ~~facility~~facility's licensee 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~~: facility's licensee:

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

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

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives