Article 3.

Adult Care Home Residents' Bill of Rights.

§ 131D-19. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the residents in adult care homes and assisted living residences licensed pursuant to Part 1 of this Article. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights. It is the intent of the General Assembly that rules developed by the Social Services Commission to implement Article 1 and Article 3 of Chapter 131D of the General Statutes encourage every resident's quality of life, autonomy, privacy, independence, respect, and dignity and provide the following:

(1) Diverse and innovative housing models that provide choices of different lifestyles that are acceptable, cost-effective, and accessible to all consumers regardless of age, disability, or financial status;

(2) A residential environment free from abuse, neglect, and exploitation;

(3) Available, affordable personal service models and individualized plans of care that are mutually agreed upon by the resident, family, and providers and that include measurable goals and outcomes;

(4) Client assessment, evaluation, and independent case management that enhance quality of life by allowing individual risk-taking and responsibility by the resident for decisions affecting daily living to the greatest degree possible based on the individual's ability; and

(5) Oversight, monitoring, and supervision by State and county governments to ensure every resident's safety and dignity and to assure that every resident's needs, including nursing and medical care needs if and when needed, are being met. (1981, c. 923, s. 1; 1995, c. 535, s. 12; 2009-462, s. 4(g).)

§ 131D-20. Definitions.

As used in this Article, the following terms have the meanings specified:

(1) "Abuse" means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

(2) Repealed by Session Laws 1995, c. 535, s. 13, effective October 1, 1995.

(2a) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Health Service Regulation.

(2b) "Assisted living residence" means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102.

(3) "Exploitation" means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.

(4) "Facility" means an adult care home licensed under G.S. 131D-2.4.

(5) "Family care home" means an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.

(6) Repealed by Session Laws 2001-209, s. 1(c), effective June 15, 2001.

(7) Repealed by Session Laws 1995, c. 535, s. 13.

(8) "Neglect" means the failure to provide the services necessary to maintain the physical or mental health of a resident.

(9) "Resident" means an aged or disabled person who has been admitted to a facility. (1981, c. 923, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2C; 1983, c. 824, ss. 2, 3, 5, 7, 8; 1995, c. 535, s. 13; 1997-456, s. 21; 2001-209, s. 1(c); 2007-182, s. 1; 2009-462, s. 4(h).)

§ 131D-21. Declaration of residents' rights.

Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

(1) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.

(2) To receive care and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.

(3) To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.

(4) To be free of mental and physical abuse, neglect, and exploitation.

(5) Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.

(6) To have his or her personal and medical records kept confidential and not disclosed except as permitted or required by applicable State or federal law.

(7) To receive a reasonable response to his or her requests from the facility administrator and staff.

(8) To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own or their initiative at any reasonable hour.

(9) To have access at any reasonable hour to a telephone where he or she may speak privately.

(10) To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery, and postage.

(11) To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.

(12) To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.

(13) To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.

(14) To be notified when the facility is issued a provisional license or notice of revocation of license by the North Carolina Department of Health and Human Services and the basis on which the provisional license or notice of revocation of license was issued. The resident's responsible family member or guardian shall also be notified.

(15) To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.

(16) To receive upon admission to the facility a copy of this section.

(17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Medical Care Commission, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Medical Care Commission shall adopt rules pertaining to the transfer and discharge of residents that offer protections to residents for safe and orderly transfer and discharge. (1981, c. 923, s. 1; 1983, c. 824, s. 13; 1983 (Reg. Sess., 1984), c. 1076; 1997-443, s. 11A.118(a); 1999-334, s. 1.6; 2000-111, s. 3; 2011-272, s. 3; 2011-314, s. 5.)

§ 131D-21.1. Peer review.

It is not a violation of G.S. 131D-21(6) for medical records to be disclosed to a private peer review committee if:

(1) The peer review committee has been approved by the Department;

(2) The purposes of the peer review committee are to:

a. Survey facilities to verify a high level of quality care through evaluation and peer assistance;

b. Resolve written complaints in a responsible and professional manner; and
c. Develop a basic knowledge of care and standards useful in establishing a means of measuring quality of care; and

(3) The peer review committee keeps such records confidential. (1983, c. 816, s. 1.)

§ 131D-21.2. Quality assurance, medical, or peer review committees.

(a) A member of a duly appointed quality assurance, medical, or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131D-21.1.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, " 'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against an adult care home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings. (2004-149, s. 2.3; 2006-264, s. 65.)

§ 131D-22. Transfer of management responsibilities.

Any representative authorized in writing by a resident to manage his financial affairs, any resident's legal guardian as appointed by a court, or any resident's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by this Article, perform any other act, and receive or furnish any information required by this Article. (1981, c. 923, s. 1; 1983, c. 824, s. 14.)

§ 131D-23. No waiver of rights.

No facility may require a resident to waive the rights specified in G.S. 131D-21. (1981, c. 923, s. 1.)

§ 131D-24. Notice to resident.

(a) A copy of the declaration of the residents' rights shall be posted conspicuously in a public place in all facilities. A copy of the declaration of residents' rights shall be furnished to the resident upon admittance to the facility, to all residents currently residing in the facility, to a representative payee of the resident, or to any person designated in G.S. 131D-22, and if requested to the resident's responsible family member or guardian. Receipts for the declaration of rights

signed by these persons shall be retained in the facility's files. The declaration of rights shall be included as part of the facility's admission policies and procedures.

(b) The address and telephone number of the section in the Department of Health and Human Services responsible for the enforcement of the provisions of this Article shall be posted and distributed with copies of G.S. 131D-21. The address and telephone number of the county social services department, and the appropriate person or office of the Department of Health and Human Services shall also be posted and distributed. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a).)

§ 131D-25. Implementation.

Responsibility for implementing the provisions of this Article shall rest with the administrator of the facility. Each facility shall provide appropriate training to staff to implement the declaration of residents' rights included in G.S. 131D-21. (1981, c. 923, s. 1.)

§ 131D-26. Enforcement and investigation.

(a) The Department of Health and Human Services shall be responsible for the enforcement of the provisions of this Article. Specifically, the department of social services in the county in which the facility is located and the Department of Health and Human Services, shall be responsible for enforcing the provisions of the declaration of the residents' rights. The director of the county department of social services shall monitor the implementation of the declaration of the residents' rights and shall also investigate any complaints or grievances pertaining to violations of the declaration of rights.

(a1) When the department of social services in the county in which a facility is located receives a complaint alleging a violation of the provisions of this Article pertaining to patient care or patient safety, the department of social services shall initiate an investigation as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
(2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
(3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
(4) Within two weeks in all other situations.

The investigation shall be completed within 60 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

(b) If upon investigation, it is found that any of the provisions of the declaration of rights has been violated, the director of the county department of social services or a designee must orally inform the administrator immediately of the specific violations, what must be done to correct them, and set a date by which the violations must be corrected. This same information must be confirmed in writing to the administrator by the county director or a designee within 10 working days following the investigation. A copy of the letter shall be sent to the Department of Health and Human Services.

(c) Upon receiving requests for assistance in resolving complaints from the county department of social services, the Department of Health and Human Services shall ensure compliance with the provisions of this Article.

(d) The county director of social services shall annually make a report to the Department of Health and Human Services about the number of substantiated violations of G.S. 131D-21, the

nature of the violations, and the number of violations referred to the Department of Health and Human Services for resolution. (1981, c. 923, s. 1; 1983, c. 824, ss. 15, 16; 1997-443, s. 11A.118(a); 1999-334, s. 1.8; 2007-444, s. 5(b).)

§ 131D-27. Confidentiality.

The Department of Health and Human Services is authorized to inspect residents' records maintained at the facility when necessary to investigate any alleged violation of the declaration of the residents' rights. The Department of Health and Human Services shall maintain the confidentiality of all persons who register complaints with the Department of Health and Human Services and of all records inspected by the Department of Health and Human Services. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a).)

§ 131D-28. Civil action.

Every resident shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Article. The Department of Health and Human Services, a general guardian, or any person appointed ad litem pursuant to law, may institute an action pursuant to this section on behalf of the resident or residents. Any agency or person above named may enforce the rights of the resident specified in G.S. 131D-21 which the resident himself is unable to enforce. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a).)

§ 131D-29. Revocation of license.

The Department of Health and Human Services shall have the authority to revoke a license issued under G.S. 131D-2.4 in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Health and Human Services requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Health and Human Services may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a); 2009-462, s. 4(i).)

§ 131D-30. Repealed by Session Laws 1987, c. 600, s. 1.

§ 131D-31. Adult care home community advisory committees.

(a) Statement of Purpose. – It is the intention of the General Assembly that community advisory committee members function as representatives of the Office of the State Long-Term Care Ombudsman and through their designation work to maintain the intent of the Adult Care Home Residents' Bill of Rights within the licensed adult care homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with adult care homes to ensure quality care for the elderly and adults with disabilities.

(b) Establishment and Appointment of Committees. –

(1) A community advisory committee shall be established in each county that has at least one licensed adult care home, shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county that has one, two, or three adult care homes with 10 or more beds, the committee shall have five members.

(2) In a county with four or more adult care homes with 10 or more beds, the committee shall have one additional member for each adult care home with 10 or more beds in excess of three, and may have up to five additional members at the discretion of the county commissioners, not to exceed a maximum of 25 members. In each county with four or more adult care homes with 10 or more beds, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each adult care home in the county. Each member must serve on at least one subcommittee.

(3) In counties with no adult care homes with 10 or more beds, the committee shall have five members. Regardless of how many members a particular community advisory committee is required to have, at least one member of each committee shall be a person involved in the area of intellectual or other developmental disabilities.

(4) The boards of county commissioners are encouraged to appoint the adult care home community advisory committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) shall be chosen from among persons nominated by a majority of the chief administrators of adult care homes in the county. If the adult care home administrators fail to make a nomination within 45 days after written notification has been sent to them requesting a nomination, these appointments may be made without nominations. If the county commissioners fail to appoint members to a committee, the appointments shall be made by the Office of the State Long-Term Care Ombudsman no sooner than 45 days after nominations have been requested from the adult care home administrators. In making appointments, the Office of the State Long-Term Care Ombudsman shall follow the same appointment process as that specified for the county commissioners.

(5) Notwithstanding any other provision of this Article, appointment to an adult care home community advisory committee is contingent upon designation of the appointee by the Office of the State Long-Term Care Ombudsman in accordance with G.S. 143B-181.18. A designated appointee is directly accountable to the State Long-Term Care Ombudsman Program in order to perform the duties as a representative of the Office of the State Long-Term Care Ombudsman. Removal of the appointee's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the appointment to the adult care home community advisory committee.

(6) Any individual who serves as a community advisory committee member must go through the Office of the State Long-Term Care Ombudsman's certification and designation process and meet the certification and designation requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures.

(c) Joint Nursing and Adult Care Home Community Advisory Committees. – Appointment to the nursing home community advisory committees shall preclude appointment to the adult care home community advisory committees except where written approval to combine these committees is obtained from the Office of the State Long-Term Care Ombudsman. Where this approval is obtained, the joint nursing and adult care home community advisory committee shall have the membership required of nursing home community advisory committees and one additional member for each adult care home with 10 or more beds licensed in the county. In counties with no adult care homes with 10 or more beds, there shall be one additional member for every four other types of adult care homes in the county. In no case shall the number of members on the joint nursing and adult care home community advisory committee exceed 25. Each member shall exercise the statutory rights and responsibilities of both nursing home community advisory committees and adult care home community advisory committees. In making appointments to this joint committee, the county commissioners shall solicit nominations from both nursing and adult care home administrators for the appointment of approximately (but no more than) one-third of the members.

(d) Terms of Office. – Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a two-or three-year term at the county commissioners' discretion to ensure staggered terms of office.

(e) Vacancies. – Any vacancy shall be filled by appointment of a person for a one-year term. If this vacancy is in a position filled by an appointee nominated by the chief administrators of adult care homes within the county, then the county commissioners shall fill the vacancy from persons nominated by a majority of the chief administrators. If the adult care home administrators fail to make a nomination by registered mail within 45 days after written notification has been sent to them requesting a nomination, this appointment may be made without nominations. If the county commissioners fail to fill a vacancy, the vacancy shall be filled by the Office of the State Long-Term Care Ombudsman no sooner than 45 days after the commissioners have been notified of the appointment or vacancy.

(f) Officers. – The committee shall elect from its members a chair, to serve a one-year term.

(g) Minimum Qualifications for Appointment. – Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by the committee, or employee or governing board member of a home served by the committee, or immediate family member of a resident in a home served by the committee may be a member of that committee. Any county commissioner who is appointed to the committee serves on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Office of the State Long-Term Care Ombudsman.

(h) Training, Certification, and Designation. – The Office of the State Long-Term Care Ombudsman shall develop training requirements for certification and designation in accordance with 45 C.F.R. § 1324.13(c)(2). Each committee member must receive certification training as specified by the State Long-Term Care Ombudsman Program Policies and Procedures and be designated as representatives of the State Long-Term Care Ombudsman Program prior to exercising any power under G.S. 131D-32. The State Long-Term Care Ombudsman Program shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(i) Privilege. – Any written communication made by a member of an adult care home advisory committee within the course and scope of the member's duties, as specified in G.S. 131D-32, is privileged to the extent provided in this subsection. All communication is the property of the Office of the State Long-Term Care Ombudsman and is subject to the Office's disclosure policies. This privilege is a defense in a cause of action for libel if the member was acting in good faith and the statements and communications do not amount to intentional wrongdoing.

To the extent that any adult care home advisory committee or any member is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity provided in this subsection to the extent of indemnification by insurance. (1981, c. 923, s. 1; 1983, c. 88, s. 1; 1987, c. 682, s. 2; 1995, c. 535, s. 14; 1997-176, s. 2; 1997-443, s. 11A.118(a); 2017-103, s. 1(a); 2019-76, s. 17.)

§ 131D-32. Functions of adult care home community advisory committees.

(a) The committee shall serve as the nucleus for increased community involvement with adult care homes and their residents.

(b) The committee shall promote community education and awareness of the needs of aging and disabled persons who reside in adult care homes, and shall work towards keeping the public informed about aspects of long-term care and the operation of adult care homes in North Carolina.

(c) The committee shall develop and recruit volunteer resources to enhance the quality of life for adult care home residents.

(d) The committee shall establish linkages with the adult care home administrators and the county department of social services for the purpose of maintaining the intent of the Adult Care Home Residents' Bill of Rights.

(e) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. The committee shall notify the enforcement agency of all verified violations of the Adult Care Home Residents' Bill of Rights.

(f) The committee or subcommittee may communicate through the committee chair with the Department of Health and Human Services, the county department of social services, or any other agency in relation to the interest of any resident.

(g) Each committee shall quarterly visit the adult care homes with 10 or more beds it serves. For each official quarterly visit, a majority of the committee members shall be present. A minimum of three members of the committee shall make at least one visit annually to each other type of adult care home licensed in the county. In addition, each committee may visit the adult care homes it serves whenever it deems it necessary to carry out its duties. In counties with subcommittees, the subcommittee assigned to a home shall perform the duties of the committee under this subsection, and a majority of the subcommittee members must be present for any visit. When visits are made to group homes for developmentally disabled adults, rules concerning confidentiality as adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall apply.

(h) The individual members of the committee shall have the right between 10:00 a.m. and 8:00 p.m. to enter the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to members of the subcommittee which serves that home. A majority of the committee or subcommittee members shall be present to enter the facility at other hours. Before entering any adult care home, the committee or members of the committee shall identify themselves to the person present at the facility who is in charge of the facility at that time.

(i) The committee shall prepare reports as required by the Department of Health and Human Services containing an appraisal of the problems of adult care homes facilities as well as issues affecting long-term care in general. Copies of the report shall be sent to the board of county commissioners, county department of social services and the Division of Aging.

(j) Nothing contained in this section shall be construed to require the expenditure of any county funds to carry out the provisions in this section. (1981, c. 923, s. 1; 1983, c. 88, s. 2; 1991, c. 636, s. 19(b); 1995, c. 254, s. 6; c. 535, s. 15; 1997-443, s. 11A.118(a).)

§ 131D-33: Repealed by Session Laws 1983, c. 824, s. 19.

§ 131D-34. Penalties; remedies.

(a) Violation Classification and Penalties. – The Department of Health and Human Services 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 for violations shall be classified and penalties assessed according to the nature of the violation as follows:

(1) "Type A1 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 results in death or serious physical harm, abuse, neglect, or exploitation. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A1 Violation and the specific findings.

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

b. Within 15 working days of the investigation, send a report of the findings to the facility.

c. 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.

The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A1 Violation in facilities licensed for six or fewer beds. The Department shall impose a civil penalty in an amount not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each Type A1 Violation in facilities licensed for seven or more beds. Where a facility has failed to correct a Type A1 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 violation continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1a) "Type A2 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 results in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.
b. Require a written plan of protection regarding how the facility will immediately abate the Type A2 Violation in order to protect clients or 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.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 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 for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1b) Repealed by Session Laws 2016-50, s. 2, effective June 30, 2016.

(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 to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. 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.

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 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.

(2a) A Type A1, Type A2, or Type B Violation as defined above shall not include 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 if all of the following criteria are met:

a. The violation was discovered by the facility.
b. The Department determines that the violation was abated immediately.
c. The violation was corrected prior to inspection by the Department.
d. The Department determines that reasonable preventative measures were in place prior to the violation.
e. The Department determines that subsequent to the violation, the facility implemented corrective measures to achieve and maintain compliance.

(2b) As used in this section, "substantial risk" shall mean the risk of an outcome that is substantially certain to materialize if immediate action is not taken.

(3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under subsection (a) of this section when a facility under the same 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 for the same specific provision of a statute or regulation for which it received a violation during the previous 12 months. 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 4 of this Chapter.

(b) Repealed by Session Laws 2011-249, s. 2, effective June 23, 2011.

(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) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur;

(1a) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for resident death, did occur;

(1b) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for resident death, did occur;

(1c) A resident died;

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

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

(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131D-40 and other applicable State and federal laws and regulations;

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

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

(4) Repealed by Session Laws 2011-249, s. 2, effective June 23, 2011;

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

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

(1) Repealed by Session Laws 2016-50, s. 2, effective June 30, 2016.

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

(3) The licensee involved;

(4) The residents affected; and

(5) The family member who serves as a responsible party or those who have legal authority on behalf of the affected resident.

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

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

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

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in 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. At least the following specific issues shall be addressed at the administrative hearing:

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

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

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the administrative law judge may order that the penalty be adjusted accordingly.

(f) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the date of the letter of notification of the penalty amount.

(g) The Secretary may bring a civil action in the superior court of the county where the violation occurred to recover the amount of the administrative penalty if either of the following applies to a facility:

(1) The facility has not requested an administrative hearing and fails to pay the penalty within 60 days after being notified of the penalty.

(2) The facility has requested an administrative hearing and fails to pay the penalty within 60 days after the Office of Administrative Hearings forwards a written copy of the decision as provided in G.S. 150B-34.

(g1) In lieu of assessing all or some of the administrative penalty, the Secretary may order a facility to provide staff training, or consider the approval of training completed by the facility after the violation, if all of the following criteria are met:

(1) The training is determined by the Department to be specific to the violation.
(2) The training is approved by the Department.
(3) The training is taught by someone approved by the Department.
(4) The facility has corrected the violation and continues to remain in compliance with the regulation.

(h) Repealed by Session Laws 2016-50, s. 2, effective June 30, 2016.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987, c. 600, s. 3; 1989, c. 556, s. 1; 1991, c. 66, s. 1; c. 572, s. 3; 1993, c. 390, s. 4; 1993 (Reg. Sess., 1994), c. 698, s. 1; 1995, c. 535, s. 16; 1995 (Reg. Sess., 1996), c. 602, s. 1; 1997-431, s. 1; 1997-443, s. 11A.118(a); 1998-215, s. 78(a); 2005-276, s. 10.40A(l); 2007-182, ss. 1, 1.1; 2007-544, s. 1; 2011-249, s. 2; 2011-398, s. 45; 2016-50, s. 2; 2025-25, s. 24(j).)

§ 131D-34.1. Report of death of resident.

(a) An adult care home shall notify the Department of Health and Human Services immediately upon the death of any resident that occurs in the adult care home or that occurs within 24 hours of the resident's transfer to a hospital if the death occurred within seven days of the adult care home's use of physical restraint or physical hold of the resident, and shall notify the Department of Health and Human Services within three days of the death of any resident of the adult care home resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from an adult care home in accordance with subsection (a) of this section, the Department of Health and Human Services shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402, that a person with a disability has died. The Department shall provide the agency access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the information in accordance with its powers and duties under applicable State and federal law and regulations.

(c) If the death of a resident of the adult care home occurs within seven days of the adult care home's use of physical restraint or physical hold, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the agency. In carrying out the requirements of this section, the Department and the agency shall adhere to State and federal requirements of confidentiality, privilege, and other

prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section. (2000-129, s. 6(a); 2007-323, ss. 19.1(i), 19.1(j).)