§ 131E-129. 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 the requirements of G.S. 131E-117 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 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 results in death or serious physical harm. 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.

b., c. Repealed by Session Laws 2011-249, s. 3, effective June 23, 2011.

d. Require a written, credible allegation regarding how the facility will immediately remove the Type A1 Violation in order to protect residents from further risk or additional harm.

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

f. 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 by the date specified by the Department.

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. 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 date 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. 131E-117 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 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 credible allegation regarding how the facility will immediately remove the Type A2 Violation in order to protect residents from further risk or additional harm.

c. Within 10 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 by the date specified by the Department.

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

a. Preventive systems in place prior to the violation.
b. Whether the violation or violations were abated immediately.
c. Whether the facility implemented corrective measures to achieve and 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'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 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 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 regarding how the facility will immediately remove the Type B Violation in order to protect residents from further risk or additional harm.
c. Within 10 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 by the date specified by the Department.

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.

(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 law.

(b) Repealed by Session Laws 2011-249, s. 3, 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.
(2) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for resident death, did occur.
(3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for resident death, did occur.
(4) A resident died.
(5) A resident died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation.
(6) A resident died and there is substantial risk for further resident death.
(7) Reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 did occur.
(8) Efforts by the licensee to correct violations.
(9) The number and type of previous violations committed by the licensee within the past 36 months.
(10) The number of residents put at risk by the violations.

(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 Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;
(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.

(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. 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 hearing officer may recommend that the penalty be adjusted accordingly.

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

(f) 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.

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

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

(1) Specific to the violation;

(2) Approved by the Department of Health and Human Services; and

(3) Taught by an individual approved by the Department.

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

(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. 2; 1989, c. 556, s. 2; 1993, c. 390, s. 2; 1995, c. 396, s. 1; 1995 (Reg. Sess., 1996), c. 602, s. 2; 1997-431, s. 2; 1997-443, s. 11A.122; 1998-215, s. 78(b); 2007-182, s. 1.1; 2011-249, s. 3; 2012-194, s. 29; 2025-25, s. 24(k).)