

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 332

Short Title: Nursing Home Pen. Law/AB.

(Public)

Sponsors: Representatives Linney; and Earle.

Referred to: Welfare Reform and Human Resources.

March 1, 1995

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE NURSING HOME PENALTY ASSESSMENT LAW.

The General Assembly of North Carolina enacts:

Section 1. 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.

- 1 (2) Type B Violation means a violation by a ~~facility~~ facility's licensee of the
2 regulations, standards and requirements set forth in G.S. 131E-117 or
3 applicable State or federal laws and regulations governing the licensure
4 or certification of a facility which presents a direct relationship to the
5 health, safety, or welfare of any resident, but which does not create
6 substantial risk that death or serious physical harm will occur. The
7 Department may impose a civil penalty in an amount up to five hundred
8 dollars (\$500.00) for each Type B Violation. A citation for a Type B
9 Violation which relates to the physical plant, systems, or equipment of
10 the facility and which causes no harm to a resident of the facility shall
11 provide 10 days to correct the violation. If such a Type B Violation,
12 which is not a repeat violation as specified in (b)(3) of this section, is
13 corrected within the 10 days, no civil penalty shall be imposed.
- 14 (b) Penalties for failure to correct violations within time specified.
- 15 (1) Where a facility has failed to correct a Type A Violation, the
16 Department shall assess the ~~facility~~ facility's licensee a civil penalty in
17 the amount of up to five hundred dollars (\$500.00) for each day that the
18 deficiency continues. The Department or its authorized representative
19 shall conduct an on-site inspection of the facility to insure that the
20 violation has been corrected.
- 21 (2) Where a facility has failed to correct a Type B Violation within the time
22 specified for correction by the Department, the Department shall assess
23 the ~~facility~~ facility's licensee a civil penalty in the amount of up to two
24 hundred dollars (\$200.00) for each day that the deficiency continues
25 beyond the date specified for correction without just reason for such
26 failure. The Department or its authorized representative shall conduct
27 an on-site inspection of the facility to insure that the violation has been
28 corrected.
- 29 (3) The Department shall impose a civil penalty which is treble the amount
30 assessed under subdivision (1) or (2) of subsection (a) when a facility
31 under the same management, ownership, or control:
- 32 a. Has received a citation and paid a fine, or
33 b. Has received a citation for which the Department in its discretion
34 granted to it under subdivision (2) of subsection (a) but did not
35 impose a penalty,
36 for violating the same specific provision of a statute or regulation for
37 which it has received a citation during the previous 12 months or within
38 the time period of the previous licensure inspection, whichever time
39 period is longer. The counting of the 12-month period shall be tolled
40 during any time when the facility is being operated by a court-appointed
41 temporary manager pursuant to Article 13 of this Chapter.

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

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

14 (d) The Department shall impose a civil penalty on any ~~facility~~facility's licensee
15 which refuses to allow an authorized representative of the Department to inspect the
16 premises and records of the facility.

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

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

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

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

38 Sec. 2. This act is effective upon ratification.