

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 332  
Committee Substitute Favorable 5/1/95

Short Title: Domiciliary/Nursing Home Pen. Law/AB.

(Public)

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Sponsors:

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Referred to:

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March 1, 1995

A BILL TO BE ENTITLED

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

1 not less than two hundred fifty dollars (\$250.00) nor more than five  
2 thousand dollars (\$5000) for each Type A Violation.

- 3 (2) 'Type B Violation' means a violation by a ~~facility~~facility's licensee of  
4 the regulations, standards and requirements set forth in G.S. 131D-21 or  
5 applicable State or federal laws and regulations governing the licensure  
6 or certification of a facility which present a direct relationship to the  
7 health, safety, or welfare of any resident, but which does not create  
8 substantial risk that death or serious physical harm will occur. The  
9 Department may impose a civil penalty in an amount up to two hundred  
10 fifty dollars (\$250.00) for each Type B Violation. A citation for a Type  
11 B Violation which relates to the physical plant, systems, or equipment  
12 of the facility and which causes no harm to a resident of the facility  
13 shall provide 10 days to correct the violation. If such a Type B  
14 Violation, that is not a repeat violation as specified in (b)(3) of this  
15 section, is corrected within the 10 days, no civil penalty shall be  
16 imposed.

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

- 18 (1) Where a ~~facility~~facility's licensee has failed to correct a Type A  
19 Violation, the Department shall assess the ~~facility~~facility's licensee a  
20 civil penalty in the amount of up to five hundred dollars (\$500.00) for  
21 each day that the deficiency continues. The Department or its  
22 authorized representative shall conduct an on-site inspection of the  
23 facility to insure that the violation has been corrected.

- 24 (2) Where a ~~facility~~facility's licensee has failed to correct a Type B  
25 Violation within the time specified for correction by the Department, the  
26 Department shall assess the ~~facility~~facility's licensee a civil penalty in  
27 the amount of up to two hundred dollars (\$200.00) for each day that the  
28 deficiency continues beyond the date specified for correction without  
29 just reason for such failure. The Department or its authorized  
30 representative shall conduct an on-site inspection of the facility to insure  
31 that the violation has been corrected.

- 32 (3) The Department shall impose a civil penalty on a facility's licensee  
33 which is treble the amount assessed under subdivision (1) or (2) of  
34 subsection (a) when a facility under the ~~same~~ management, ownership,  
35 or ~~control~~control of that same licensee:

36 a. Has received a citation and paid a fine, or

37 b. Has received a citation for which the Department in ~~the~~its  
38 discretion granted to it under subdivision (2) of subsection (a) did  
39 not impose a penalty,

40 for violating the same specific provision of a statute or regulation for  
41 which ~~it~~the facility's licensee received a citation during the previous six  
42 months or within the time period of the previous licensure inspection,  
43 whichever time period is longer. The counting of the six-month period

1 shall be tolled during any time when the facility is being operated by a  
2 court-appointed temporary manager pursuant to Article 4 of this  
3 Chapter.

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

7 (1) The gravity of the violation, including the probability that death or  
8 serious physical harm to a resident will result or has resulted; the  
9 severity of the actual or potential harm, and the extent to which the  
10 provisions of the applicable statutes or regulations were violated;

11 (2) The reasonable diligence exercised by the licensee and efforts to correct  
12 violations;

13 (3) The number and type of previous violations committed by the licensee;

14 (4) The amount of assessment necessary to insure immediate and continued  
15 compliance; and

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

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

20 (e) Any ~~facility~~-facility's licensee wishing to contest a penalty shall be entitled to  
21 an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B  
22 of the General Statutes. A petition for a contested case shall be filed within 30 days after  
23 the Department mails a notice of penalty to a licensee. One issue at the administrative  
24 hearing shall be the reasonableness of the amount of any civil penalty assessed by the  
25 Department. If a civil penalty is found to be unreasonable, the hearing officer may  
26 recommend that the penalty be modified accordingly.

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

30 (g) The Secretary may bring a civil action in the superior court of the county  
31 wherein the violation occurred to recover the amount of the administrative penalty  
32 whenever a ~~facility~~-facility's licensee:

33 (1) Which has not requested an administrative hearing fails to pay the  
34 penalty within 60 days after being notified of the penalty, or

35 (2) Which has requested an administrative hearing fails to pay the penalty  
36 within 60 days after receipt of a written copy of the decision as provided  
37 in G.S. 150B-36.

38 (h) The Secretary shall establish a penalty review committee within the  
39 Department, which shall review administrative penalties assessed pursuant to this section  
40 and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review  
41 of local departments of social services' penalty recommendations along with prepared  
42 staff recommendations for the penalty review committee are completed within 60 days of  
43 receipt by the Department of the local recommendations. The Penalty Review

1 Committee shall not review penalty recommendations agreed to by the Department and  
2 the long-term care ~~facility~~facility's licensee for Type B violations except those violations  
3 that have been previously cited against the long-term care ~~facility~~facility's licensee during  
4 the previous 12 months or within the time period of the previous licensure inspection,  
5 whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest  
6 Home Penalty Review Committee established by this subsection is comprised of nine  
7 members. At least one member shall be appointed from each of the following categories:

- 8 (1) A licensed pharmacist;
- 9 (2) A registered nurse experienced in long-term care;
- 10 (3) A representative of a nursing home;
- 11 (4) A representative of a domiciliary home; and
- 12 (5) Two public members. One shall be a 'near' relative of a nursing home  
13 patient, chosen from a list prepared by the Office of State Long-Term  
14 Care Ombudsman, Division of Aging, Department of Human  
15 Resources. One shall be a 'near' relative of a rest home ~~patient~~resident  
16 chosen from a list prepared by the Office of State Long-Term Care  
17 Ombudsman, Division of Aging, Department of Human Resources. For  
18 purposes of this subdivision, a 'near' relative is a spouse, sibling, parent,  
19 child, grandparent, or grandchild.

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

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

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

28 "**§ 131E-129. Penalties.**

29 (a) Violations classified. The Department shall impose an administrative penalty  
30 in accordance with provisions of this Part on any ~~facility~~facility's licensee which is found  
31 to be in violation of the requirements of G.S. 131E-117 or applicable State and federal  
32 laws and regulations. Citations issued for violations shall be classified according to the  
33 nature of the violation as follows:

- 34 (1) Type A Violation means a violation by a ~~facility~~facility's licensee of the  
35 regulations, standards, and requirements set forth in G.S. 131E-117, or  
36 applicable State or federal laws and regulations governing the licensure  
37 or certification of a facility which creates substantial risk that death or  
38 serious physical harm to a resident will occur or where such harm has  
39 occurred. Type A Violations shall be abated or eliminated immediately.  
40 The Department shall impose a civil penalty in an amount not less than  
41 two hundred fifty dollars (\$250.00) nor more than five thousand dollars  
42 (\$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~~ facility's licensee has failed to correct a Type A  
16 Violation, the Department shall assess the ~~facility~~ facility's licensee a  
17 civil penalty in the amount of up to five hundred dollars (\$500.00) for  
18 each day that the deficiency continues. The Department or its  
19 authorized representative shall conduct an on-site inspection of the  
20 facility to insure that the violation has been corrected.
- 21           (2) Where a ~~facility~~ facility's licensee has failed to correct a Type B  
22 Violation within the time specified for correction by the Department, the  
23 Department shall assess the ~~facility~~ facility's licensee a civil penalty in  
24 the amount of up to two hundred dollars (\$200.00) for each day that the  
25 deficiency continues beyond the date specified for correction without  
26 just reason for such failure. The Department or its authorized  
27 representative shall conduct an on-site inspection of the facility to insure  
28 that the violation has been corrected.
- 29           (3) The Department shall impose a civil penalty on a facility's licensee  
30 which is treble the amount assessed under subdivision (1) or (2) of  
31 subsection (a) when a facility under the ~~same~~ management, ownership,  
32 or ~~control~~ control of that same licensee:
- 33           a. Has received a citation and paid a fine, or  
34           b. Has received a citation for which the Department in its discretion  
35 granted to it under subdivision (2) of subsection (a) but did not  
36 impose a penalty,
- 37 for violating the same specific provision of a statute or regulation for  
38 which ~~it~~ the facility's licensee has received a citation during the previous  
39 12 months or within the time period of the previous licensure  
40 inspection, whichever time period is longer. The counting of the 12-  
41 month period shall be tolled during any time when the facility is being  
42 operated by a court-appointed temporary manager pursuant to Article 13  
43 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-~~facility's licensee:

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-~~facility's licensee for Type B violations  
35 except those violations that have been previously cited against the long-term care ~~facility-~~  
36 facility's licensee during the previous 12 months, or within the time period of the  
37 previous licensure inspection, whichever time period is longer."

38 Sec. 3. This act is effective upon ratification.