

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**HOUSE BILL 782**

Short Title: Facility Quality & Safety Improvement-HHS.-AB (Public)

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Sponsors: Representative Wright.

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Referred to: Finance.

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March 17, 2005

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE STATUTORY CHANGES TO IMPROVE QUALITY AND  
3 SAFETY IN HOME CARE SERVICES, MENTAL HEALTH FACILITIES,  
4 ADULT CARE HOMES, AND CERTAIN HOSPITAL FACILITIES.

5 The General Assembly of North Carolina enacts:

6                   **SECTION 1.(a)** G.S. 131E-140 reads as rewritten:

7 "**§ 131E-140. Rules and enforcement.**

8       (a) The Commission is authorized to adopt, amend and repeal all rules necessary  
9 for the implementation of this Part. Provided, these rules shall not extend, modify, or  
10 limit the licensing of individual health professionals by their respective licensing  
11 boards; nor shall these rules in any way be construed to extend the appropriate scope of  
12 practice of any individual health care provider.

13       (a1) The Commission shall adopt rules that recognize the different types of home  
14 care services and shall adopt specific requirements for the provision of each type of  
15 home care ~~service~~service including defining the geographic service area in which a  
16 home care agency is licensed to operate.

17       (a2) The Commission shall adopt rules to establish staff qualifications including  
18 professional requirements for home care agency staff. The rules may require that one or  
19 more staff of an agency be either licensed or certified. The rules may establish  
20 minimum training and education qualifications for staff and may include the recognition  
21 of professional certification boards for those professions not licensed or certified under  
22 other provisions of the North Carolina General Statutes provided that the professional  
23 board evaluates applicants on a basis that protects the public health, safety, or welfare.

24       (a3) The Commission shall adopt rules for prohibiting licensed home care  
25 agencies.

26       (b) The Department shall enforce the rules adopted or amended by the  
27 Commission with respect to home care agencies."

28                   **SECTION 1.(b)** G.S. 131E-141 reads as rewritten:

29 "**§ 131E-141. Inspection.**

1 (a) The Department shall inspect home care agencies in accordance with rules  
2 adopted by the Commission to determine compliance with the provisions of this Part  
3 and the rules established by the Commission.

4 (b) Notwithstanding the provisions of G.S. 8-53, "Communications between  
5 physician and patient," or any other provision of law relating to the confidentiality of  
6 communications between physician and patient, the representatives of the Department  
7 who make these inspections may review any writing or other record in any recording  
8 medium which pertains to the admission, discharge, medication, treatment, medical  
9 condition, or history of persons who are or have been clients of the agency being  
10 inspected unless that client objects in writing to review of that client's records.  
11 Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or  
12 through an agency who may be interviewed by representatives of the Department may  
13 disclose to these representatives information related to any inquiry, notwithstanding the  
14 existence of the physician-patient privilege in G.S. 8-53, "Communication between  
15 physician and patient," or any other rule of law; provided the client has not made  
16 written objection to this disclosure. The agency, its employees, and any person  
17 interviewed during these inspections shall be immune from liability for damages  
18 resulting from the disclosure of any information to the Department. Any confidential or  
19 privileged information received from review of records or interviews, except as noted in  
20 G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed  
21 without written authorization of the client or legal representative, or unless disclosure is  
22 ordered by a court of competent jurisdiction. The Department shall institute appropriate  
23 policies and procedures to ensure that this information shall not be disclosed without  
24 authorization or court order. The Department shall not disclose the name of anyone who  
25 has furnished information concerning an agency without the consent of that person.  
26 Neither the names of persons furnishing information nor any confidential or privileged  
27 information obtained from records or interviews shall be considered "public records"  
28 within the meaning of G.S. 132-1, "Public records' defined." Prior to releasing any  
29 information or allowing any inspections referred to in this section, the client must be  
30 advised in writing by the licensed agency that the client has the right to object in writing  
31 to release of information or review of the client's records and that by an objection in  
32 writing the client may prohibit the inspection or release of the records.

33 (c) An agency must provide each client with a written notice of the Division of  
34 Facility Services hotline number in advance of furnishing care to the client or during the  
35 initial evaluation visit before the initiation of services."

36 **SECTION 2.(a)** G.S. 122C-23(e) reads as rewritten:

37 "~~Unless a license is provisional or has been suspended or revoked, it shall be~~  
38 ~~valid for a period not to exceed two years from the date of issue.~~Initial licenses issued  
39 under the authority of this section shall be valid for not more than 15 months. Licenses  
40 shall be renewed annually thereafter and shall expire at the end of the calendar year. The  
41 expiration date of a license shall be specified on the license when issued. Renewal of a  
42 regular license is contingent upon receipt of information required by the Secretary for  
43 renewal and continued compliance with this Article and the rules of the Commission

1 and the Secretary. Licenses for facilities that have not served any clients during the  
2 previous 12 months are not eligible for renewal.

3 The Secretary may issue a provisional license for a period up to six months to a  
4 person obtaining the initial license for a facility. The licensee must demonstrate  
5 substantial compliance prior to being issued a full license.

6 A provisional license for a period not to exceed six months may be granted by the  
7 Secretary to a person who is temporarily unable to comply with a rule ~~or rules~~ when the  
8 noncompliance does not present an immediate threat to the health and safety of the  
9 individuals in the licensable facility. During this period the licensable facility shall  
10 correct the noncompliance based on a plan submitted to and approved by the Secretary.  
11 ~~The noncompliance may not present an immediate threat to the health and safety of the~~  
12 ~~individuals in the licensable facility.~~ A provisional license for an additional period of  
13 time to meet the noncompliance may not be issued."

14 **SECTION 2.(b)** G.S. 122C-24.1(a) reads as rewritten:

15 **"§ 122C-24.1. Penalties; remedies.**

16 (a) Violations Classified. – The Department of Health and Human Services shall  
17 impose an administrative penalty in accordance with provisions of this Article on any  
18 facility licensed under this Article which is found to be in violation of Article 2 or 3 of  
19 this Chapter or applicable State and federal laws and regulations. Citations issued for  
20 violations shall be classified according to the nature of the violation as follows:

21 (1) "Type A Violation" means a violation by a facility of the regulations,  
22 standards, and requirements set forth in Article 2 or 3 of this Chapter  
23 or applicable State or federal laws and regulations governing the  
24 licensure or certification of a facility which results in death or serious  
25 physical harm, or results in substantial risk that death or serious  
26 physical harm will occur. Type A Violations shall be abated or  
27 eliminated immediately. The Department shall require an immediate  
28 plan of correction for each Type A Violation. The person making the  
29 findings shall do the following:

- 30 a. Orally and immediately inform the administrator of the facility  
31 of the specific findings and what must be done to correct them,  
32 and set a date by which the violation must be corrected;
- 33 b. Within 10 working days of the investigation, confirm in writing  
34 to the administrator the information provided orally under  
35 sub-subdivision a. of this subdivision; and
- 36 c. Provide a copy of the written confirmation required under  
37 sub-subdivision b. of this subdivision to the Department.

38 The Department shall impose a civil penalty in an amount not less than  
39 ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor  
40 more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars  
41 (\$10,000) for each Type A Violation in facilities or programs that  
42 serve ~~nine-six~~ or fewer persons. The Department shall impose a civil  
43 penalty in an amount not less than ~~five hundred dollars (\$500.00)~~  
44 one thousand dollars (\$1,000) nor more than ~~ten thousand dollars~~

1           ~~(\$10,000)~~ twenty thousand dollars (\$20,000) for each Type A  
2 Violation in facilities or programs that serve ~~10-7~~ or more persons.

- 3           (2) "Type B Violation" means a violation by a facility of the regulations,  
4 standards, and requirements set forth in Article 2 or 3 of this Chapter  
5 or applicable State or federal laws and regulations governing the  
6 licensure or certification of a facility which present a direct  
7 relationship to the health, safety, or welfare of any client or patient, but  
8 which does not result in substantial risk that death or serious physical  
9 harm will occur. The Department shall require a plan of correction for  
10 each Type B Violation and may require the facility to establish a  
11 specific plan of correction within a specific time period to address the  
12 violation.

13           **SECTION 2.(c)** G.S. 122C-24.1(b) reads as rewritten:

- 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 a civil penalty in the amount of up  
17 to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for  
18 each day that the deficiency continues beyond the time specified in the  
19 plan of correction approved by the Department or its authorized  
20 representative. The Department or its authorized representative shall  
21 ensure that the violation has been corrected.

22           (2) Where a facility has failed to correct a Type B Violation within the  
23 time specified for correction by the Department or its authorized  
24 representative, the Department shall assess the facility a civil penalty  
25 in the amount of up to ~~two hundred dollars (\$200.00)~~ four hundred  
26 dollars (\$400.00) for each day that the deficiency continues beyond the  
27 date specified for correction without just reason for the failure. The  
28 Department or its authorized representative shall ensure that the  
29 violation has been corrected.

30           (3) The Department shall impose a civil penalty which is treble the  
31 amount assessed under subdivision (1) of subsection (a) of this section  
32 when a facility under the same management, ownership, or control has  
33 received a citation and paid a penalty for violating the same specific  
34 provision of a statute or regulation for which it received a citation  
35 during the previous 12 months."

36           **SECTION 2.(d)** Effective July 1, 2007, G.S. 122C-25(a) reads as rewritten:

37           "**§ 122C-25. Inspections; confidentiality.**

38           (a) The Secretary shall make or cause to be made inspections that the Secretary  
39 considers necessary. Facilities licensed under this Article shall be subject to inspection  
40 at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e.  
41 shall be inspected on an annual basis.

42           ...."

43           **SECTION 2.(e)** G.S. 122C-25 is amended by adding the following new  
44 subsection to read:

1 "§ 122C-25. Inspections; confidentiality.

2 ...

3 (d) All residential facilities, as defined in G.S. 122C-3(14)e. shall ensure that the  
4 Division of Facility Services complaint hotline number is posted conspicuously in a  
5 public place in the facility."

6 **SECTION 3.(a)** G.S. 131D-2(b)(1) reads as rewritten:

7 "(b) Licensure; inspections. –

8 (1) The Department of Health and Human Services shall inspect and  
9 license, under rules adopted by the Medical Care Commission, all  
10 adult care homes for persons who are aged or mentally or physically  
11 disabled except those exempt in subsection (c) of this section. The  
12 Department shall issue a license for a facility not currently licensed as  
13 an adult care home for a period of six months. If the licensee  
14 demonstrates substantial compliance with Articles 1 and 3 of this  
15 Chapter and rules adopted pursuant thereto, the Department shall issue  
16 a license for the balance of the calendar year. Licenses issued-renewed  
17 under the authority of this section shall be valid for one year from the  
18 date of issuance-renewal unless revoked earlier by the Secretary for  
19 failure to comply with any part of this section or any rules adopted  
20 hereunder. Licenses shall be renewed annually upon filing and the  
21 Department's approval of the renewal application. The Department  
22 shall charge each adult care home with six or fewer beds a  
23 nonrefundable annual license fee in the amount of one hundred  
24 twenty-five dollars (\$125.00). The Department shall charge each adult  
25 care home with more than six beds a nonrefundable annual license fee  
26 in the amount of one hundred seventy-five dollars (\$175.00) plus a  
27 nonrefundable annual per-bed fee of six dollars and twenty-five cents  
28 (\$6.25). A license shall not be renewed if outstanding fees, fines, and  
29 penalties imposed by the State against the home have not been paid.  
30 Fines and penalties for which an appeal is pending are exempt from  
31 consideration. The renewal application shall contain all necessary and  
32 reasonable information that the Department may by rule require.  
33 Except as otherwise provided in this subdivision, the Department may  
34 amend a license by reducing it from a full license to a provisional  
35 license for a period of not more than 90 days whenever the Department  
36 finds that:

- 37 a. The licensee has substantially failed to comply with the  
38 provisions of Articles 1 and 3 of Chapter 131D of the General  
39 Statutes and the rules adopted pursuant to these Articles;  
40 b. There is a reasonable probability that the licensee can remedy  
41 the licensure deficiencies within a reasonable length of time;  
42 and

- 1 c. There is a reasonable probability that the licensee will be able  
2 thereafter to remain in compliance with the licensure rules for  
3 the foreseeable future.

4 The Department may extend a provisional license for not more than  
5 one additional 90-day period upon finding that the licensee has made  
6 substantial progress toward remedying the licensure deficiencies that  
7 caused the license to be reduced to provisional status.

8 The Department may revoke a license whenever:

- 9 a. The Department finds that:

- 10 1. The licensee has substantially failed to comply with the  
11 provisions of Articles 1 and 3 of Chapter 131D of the  
12 General Statutes and the rules adopted pursuant to these  
13 Articles; and  
14 2. It is not reasonably probable that the licensee can remedy  
15 the licensure deficiencies within a reasonable length of  
16 time; or

- 17 b. The Department finds that:

- 18 1. The licensee has substantially failed to comply with the  
19 provisions of Articles 1 and 3 of Chapter 131D of the  
20 General Statutes and the rules adopted pursuant to these  
21 Articles; and  
22 2. Although the licensee may be able to remedy the  
23 deficiencies within a reasonable time, it is not reasonably  
24 probable that the licensee will be able to remain in  
25 compliance with licensure rules for the foreseeable  
26 future; or

- 27 c. The Department finds that the licensee has failed to comply  
28 with the provisions of Articles 1 and 3 of Chapter 131D of the  
29 General Statutes and the rules adopted pursuant to these  
30 Articles, and the failure to comply endangered the health,  
31 safety, or welfare of the patients in the facility.

32 The Department may also issue a provisional license to a facility,  
33 pursuant to rules adopted by the Medical Care Commission, for  
34 substantial failure to comply with the provisions of this section or rules  
35 adopted pursuant to this section. Any facility wishing to contest the  
36 issuance of a provisional license shall be entitled to an administrative  
37 hearing as provided in the Administrative Procedure Act, Chapter  
38 150B of the General Statutes. A petition for a contested case shall be  
39 filed within 30 days after the Department mails written notice of the  
40 issuance of the provisional license.

41 **SECTION 3.(b)** G.S. 131D-2(b)(1a) reads as rewritten:

42 "(1a) In addition to the licensing and inspection requirements mandated by  
43 subdivision (1) of this ~~subsection~~, subsection:

1           a.     ~~the~~The Department shall ensure that adult care homes required  
2           to be licensed by this Article are monitored for licensure  
3           compliance on a regular basis. All facilities licensed under this  
4           Article and adult care units in nursing homes are subject to  
5           inspections at all times by the Secretary. The Division of  
6           Facility Services shall inspect all adult care homes and adult  
7           care units in nursing homes on an annual basis, effective July 1,  
8           2007, and thereafter.

9           b.     ~~In carrying out this requirement, the~~The Department shall work  
10          with county departments of social services to do the routine  
11          monitoring in accordance with policy and procedures  
12          established by the Division of Facility Services and to have the  
13          Division of Facility Services oversee this monitoring and  
14          perform any required follow-up inspection called for inspection.  
15          The county department of social services shall document in a  
16          written report all on-site visits including monitoring visits,  
17          revisits, and complaint investigations. The county department of  
18          social services shall submit to the Division of Facility Services  
19          written reports of each facility visit within 15 working days of  
20          the visit.

21          c.     The Division of Facility Services shall conduct and document  
22          annual and quarterly reviews of the county department of social  
23          services' performance. When monitoring is not done timely or  
24          there is failure to identify or document noncompliance, the  
25          Department may intervene in the particular service in question.  
26          Department intervention shall include one or more of the  
27          following activities:

28               1.     Sending staff of the Department to the county  
29               department of social services to provide technical  
30               assistance and to monitor the services being provided by  
31               the facility.

32               2.     Advising county personnel as to appropriate policies and  
33               procedures.

34               3.     Establishing a plan of action to correct county  
35               performance.

36               If within one year of completion of the intervention activities,  
37               the Secretary finds that the county department of social services  
38               is not providing the necessary monitoring services or fails to  
39               demonstrate reasonable efforts to do so, the Secretary may  
40               provide written notification of the failure to correct to the chair  
41               of the board of county commissioners and the chair of the  
42               county board of social services. The Secretary may determine  
43               that the Department shall assume the county's regulatory  
44               responsibility for the county's adult care homes.

- 1           d.     The county department of social services' adult home specialists  
2                 and their supervisors shall complete:  
3                 1.     Eight hours of pre-basic training within 30 days of  
4                 employment;  
5                 2.     32 hours of basic training within three months of  
6                 employment;  
7                 3.     24 hours of post-basic training within 90 days of the  
8                 basic training program;  
9                 4.     A minimum of eight hours of complaint investigation  
10                training within three months of employment; and  
11                5.     A minimum of 16 hours of statewide training annually  
12                by the Division of Facility Services.

13                Adult home specialists and their supervisors employed prior to  
14                and on the effective date of this sub-subparagraph must  
15                complete the required training components within six months of  
16                the effective date. If the required training is not completed  
17                within six months of the established time frames, the Secretary  
18                may provide written notification of the county's failure to train  
19                staff to the chair of the county board of commissioners and the  
20                chair of the county board of social services.

- 21           e.     The Department shall monitor regularly the enforcement of  
22                 rules pertaining to air circulation, ventilation, and room  
23                 temperature in resident living quarters. These rules shall include  
24                 the requirement that air conditioning or at least one fan per  
25                 resident bedroom and living and dining areas be provided when  
26                 the temperature in the main center corridor exceeds 80 degrees  
27                 Fahrenheit.  
28           f.     The Department shall ~~also~~ keep an up-to-date directory of all  
29                 persons who are administrators as defined in subdivision (1a) of  
30                 subsection (a) of this section."

31           **SECTION 3.(c)** G.S. 131D-2 is amended by adding the following new  
32           subsection to read:

33           "(j) Adult care homes shall post the Division of Facility Services' complaint  
34           hotline number conspicuously in a public place in the facility."

35           **SECTION 3.(d)** G.S. 131D-34 reads as rewritten:

36           "**§ 131D-34. Penalties; remedies.**

37           (a) Violations Classified. – The Department of Health and Human Services shall  
38           impose an administrative penalty in accordance with provisions of this Article on any  
39           facility which is found to be in violation of requirements of G.S. 131D-21 or applicable  
40           State and federal laws and regulations. Citations issued for violations shall be classified  
41           according to the nature of the violation as follows:

- 42           (1) "Type A Violation" means a violation by a facility of the regulations,  
43           standards, and requirements set forth in G.S. 131D-21 or applicable  
44           State or federal laws and regulations governing the licensure or

1 certification of a facility which results in death or serious physical  
 2 harm, or results in substantial risk that death or serious physical harm  
 3 will occur. Type A Violations shall be abated or eliminated  
 4 immediately. The Department shall require an immediate plan of  
 5 correction for each Type A Violation. The person making the findings  
 6 shall do the following:

- 7 a. Orally and immediately inform the administrator of the facility
- 8 of the specific findings and what must be done to correct them,
- 9 and set a date by which the violation must be corrected;
- 10 b. Within 10 working days of the investigation, confirm in writing
- 11 to the administrator the information provided orally under
- 12 sub-subdivision a. of this subdivision; and
- 13 c. Provide a copy of the written confirmation required under
- 14 sub-subdivision b. of this subdivision to the Department.

15 The Department shall impose a civil penalty in an amount not less than  
 16 ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor  
 17 more than ~~five thousand dollars (\$5000)~~ ten thousand dollars  
 18 (\$10,000) for each Type A Violation in homes licensed for ~~nine-six~~ or  
 19 fewer beds. The Department shall impose a civil penalty in an amount  
 20 not less than ~~five hundred dollars (\$500.00)~~ one thousand dollars  
 21 (\$1,000) nor more than ~~ten thousand dollars (\$10,000)~~ twenty thousand  
 22 dollars (\$20,000) for each Type A Violation in facilities licensed for  
 23 ~~10-7~~ or more beds.

24 (2) "Type B Violation" means a violation by a facility of the regulations,  
 25 standards and requirements set forth in G.S. 131D-21 or applicable  
 26 State or federal laws and regulations governing the licensure or  
 27 certification of a facility which present a direct relationship to the  
 28 health, safety, or welfare of any resident, but which does not result in  
 29 substantial risk that death or serious physical harm will occur. The  
 30 Department shall require a plan of correction for each Type B  
 31 Violation and may require the facility to establish a specific plan of  
 32 correction within a specific time period to address the violation.

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

34 (1) Where a facility has failed to correct a Type A Violation, the  
 35 Department shall assess the facility a civil penalty in the amount of up  
 36 to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for  
 37 each day that the deficiency continues beyond the time specified in the  
 38 plan of correction approved by the Department or its authorized  
 39 representative. The Department or its authorized representative shall  
 40 ensure that the violation has been corrected.

41 (2) Where a facility has failed to correct a Type B Violation within the  
 42 time specified for correction by the Department or its authorized  
 43 representative, the Department shall assess the facility a civil penalty  
 44 in the amount of up to ~~two hundred dollars (\$200.00)~~ four hundred

1           dollars (\$400.00) for each day that the deficiency continues beyond the  
2           date specified for correction without just reason for such failure. The  
3           Department or its authorized representative shall ensure that the  
4           violation has been corrected.

- 5           (3)   The Department shall impose a civil penalty which is treble the  
6           amount assessed under subdivision (1) of subsection (a) when a  
7           facility under the same management, ownership, or control has  
8           received a citation and paid a penalty for violating the same specific  
9           provision of a statute or regulation for which it received a citation  
10          during the previous 12 months. The counting of the 12-month period  
11          shall be tolled during any time when the facility is being operated by a  
12          court-appointed temporary manager pursuant to Article 4 of this  
13          Chapter.

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

- 17           (1)   The gravity of the violation, including the fact that death or serious  
18           physical harm to a resident has resulted; the severity of the actual or  
19           potential harm, and the extent to which the provisions of the applicable  
20           statutes or regulations were violated;
- 21           (1a)  The gravity of the violation, including the probability that death or  
22           serious physical harm to a resident will result; the severity of the  
23           potential harm, and the extent to which the provisions of the applicable  
24           statutes or regulations were violated;
- 25           (1b)  The gravity of the violation, including the probability that death or  
26           serious physical harm to a resident may result; the severity of the  
27           potential harm, and the extent to which the provisions of the applicable  
28           statutes or regulations were violated;
- 29           (2)   The reasonable diligence exercised by the licensee to comply with  
30           G.S. 131E-256 and G.S. 131E-265 and other applicable State and  
31           federal laws and regulations;
- 32           (2a)  Efforts by the licensee to correct violations;
- 33           (3)   The number and type of previous violations committed by the licensee  
34           within the past 36 months;
- 35           (4)   The amount of assessment necessary to insure immediate and  
36           continued compliance; and
- 37           (5)   The number of patients put at risk by the violation.

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

- 42           (1)   ~~The penalty review committee;~~
- 43           (2)   The local department of social services who is responsible for  
44           oversight of the facility involved;

- 1 (3) The licensee involved;
- 2 (4) The residents affected; and
- 3 (5) The family members or guardians of the residents affected.

4 (c2) Local county departments of social services and Division of Facilities  
5 Services personnel shall submit proposed penalty recommendations to the Department  
6 within 45 days of the citation of a violation.

7 (d) The Department shall impose a civil penalty on any facility which refuses to  
8 allow an authorized representative of the Department to inspect the premises and  
9 records of the facility.

10 (d1) The Department shall impose a civil penalty on any applicant for licensure  
11 who provides false information or omits material information on an application. The  
12 amount of the penalty shall be as is prescribed for a Type A violation.

13 (e) Any facility wishing to contest a penalty shall be entitled to an administrative  
14 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General  
15 Statutes. A petition for a contested case shall be filed within 30 days after the  
16 Department mails a notice of penalty to a licensee. At least the following specific issues  
17 shall be addressed at the administrative hearing:

- 18 (1) The reasonableness of the amount of any civil penalty assessed, and
- 19 (2) The degree to which each factor has been evaluated pursuant to  
20 subsection (c) of this section to be considered in determining the  
21 amount of an initial penalty.

22 If a civil penalty is found to be unreasonable or if the evaluation of each factor is  
23 found to be incomplete, the hearing officer may recommend that the penalty be adjusted  
24 accordingly.

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

28 (g) The Secretary may bring a civil action in the superior court of the county  
29 wherein the violation occurred to recover the amount of the administrative penalty  
30 whenever a facility:

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

36 (g1) In lieu of assessing an administrative penalty, the Secretary may order a  
37 facility to provide staff training if:

- 38 (1) The cost of training does not exceed one thousand dollars (\$1,000);
- 39 (2) The penalty would be for the facility's only violation within a  
40 12-month period preceding the current violation and while the facility  
41 is under the same management; and
- 42 (3) The training is:
  - 43 a. Specific to the violation;

- 1                   b.     Approved by the Department of Health and Human Services;  
2                   and  
3                   c.     Taught by someone approved by the Department and other than  
4                   the provider.
- 5       (h)   ~~The Secretary shall establish a penalty review committee within the~~  
6   ~~Department, which shall review administrative penalties assessed pursuant to this~~  
7   ~~section and pursuant to G.S. 131E-129 as follows:~~
- 8           (1)   ~~The Secretary shall:~~
- 9                   a.     ~~Administer the work of the committee;~~  
10                  b.     ~~Ensure provision of departmental staff review;~~  
11                  c.     ~~Evaluate the local departments of social services and the~~  
12                  ~~Division of Facility Services' penalty recommendations;~~  
13                  d.     ~~Ensure that recommendations by the Department are complete~~  
14                  ~~and submitted within 60 days of receipt of the initial~~  
15                  ~~recommendations from the local departments of social services~~  
16                  ~~or the Division of Facility Services; and~~  
17                  e.     ~~Provide written copies of all procedures to:~~
- 18                       1.     ~~The penalty review committee;~~  
19                       2.     ~~The local department of social services who is~~  
20                       ~~responsible for oversight of the facility involved;~~  
21                       3.     ~~The licensee involved;~~  
22                       4.     ~~The residents affected; and~~  
23                       5.     ~~The families or guardians of the residents affected.~~
- 24       (2)   ~~The Secretary shall ensure that the Nursing Home/Adult Care Home~~  
25   ~~Penalty Review Committee established by this subsection is comprised~~  
26   ~~of nine members. At least one member shall be appointed from each of~~  
27   ~~the following categories:~~
- 28                   a.     ~~A licensed pharmacist;~~  
29                   b.     ~~A registered nurse experienced in long term care;~~  
30                   c.     ~~A representative of a nursing home;~~  
31                   d.     ~~A representative of an adult care home; and~~  
32                   e.     ~~Two public members. One shall be a "near" relative of a nursing~~  
33                   ~~home patient, chosen from a list prepared by the Office of State~~  
34                   ~~Long Term Care Ombudsman, Division of Aging, Department~~  
35                   ~~of Health and Human Services. One shall be a "near" relative of~~  
36                   ~~a rest home patient, chosen from a list prepared by the Office of~~  
37                   ~~State Long Term Care Ombudsman, Division of Aging,~~  
38                   ~~Department of Health and Human Services. For purposes of this~~  
39                   ~~subdivision, a "near" relative is a spouse, sibling, parent, child,~~  
40                   ~~grandparent, or grandchild.~~
- 41       (3)   ~~Neither the pharmacist, nurse, nor public members appointed under~~  
42   ~~this subsection nor any member of their immediate families shall be~~  
43   ~~employed by or own any interest in a nursing home or adult care~~  
44   ~~home.~~

- 1           (4) ~~Prior to serving on the committee, each member shall complete a~~  
2           ~~training program provided by the Department of Health and Human~~  
3           ~~Services that covers standards of care and applicable State and federal~~  
4           ~~laws and regulations governing facilities licensed under Chapter 131D~~  
5           ~~and Chapter 131E of the General Statutes.~~  
6           (5) ~~Each member of the Committee shall serve a term of two years. The~~  
7           ~~initial terms of the members shall commence on August 3, 1989. The~~  
8           ~~Secretary shall fill all vacancies. Unexcused absences from three~~  
9           ~~consecutive meetings constitute resignation from the Committee.~~  
10          (i) The clear proceeds of civil penalties provided for in this section shall be  
11          remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."  
12          **SECTION 4.** This act is effective when it becomes law.