

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS15161-LNf-148 (3/10)

Short Title: Facility Quality and Safety Improvements.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

1
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, AND TO
5 APPROPRIATE FUNDS TO IMPLEMENT THE CHANGES.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 131E-140. Rules and enforcement.**

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

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

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

25 (a3) The Commission shall adopt rules for prohibiting licensed home care
26 agencies from hiring individuals listed on the Health Care Personnel Registry in
27 accordance with G.S. 131E-256(a)(1).

1 (b) The Department shall enforce the rules adopted or amended by the
2 Commission with respect to home care ~~agencies~~agencies and shall conduct an
3 inspection of each agency at least every three years."

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

5 **"§ 131E-141. Inspection.**

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

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

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

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

42 "(e) ~~Unless a license is provisional or has been suspended or revoked, it shall be~~
43 ~~valid for a period not to exceed two years from the date of issue.~~Initial licenses issued
44 under the authority of this section shall be valid for not more than 15 months. Licenses

1 shall be renewed annually thereafter and shall expire at the end of the calendar year. The
2 expiration date of a license shall be specified on the license when issued. Renewal of a
3 regular license is contingent upon receipt of information required by the Secretary for
4 renewal and continued compliance with this Article and the rules of the Commission
5 and the Secretary. Licenses for facilities that have not served any clients during the
6 previous 12 months are not eligible for renewal.

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

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

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

19 **"§ 122C-24.1. Penalties; remedies.**

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

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

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

42 The Department shall impose a civil penalty in an amount not less than
43 ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor
44 ~~more than five thousand dollars (\$5,000)~~ ten thousand dollars

1 ~~(\$10,000)~~ for each Type A Violation in facilities or programs that
2 serve ~~nine-six~~ or fewer persons. The Department shall impose a civil
3 penalty in an amount not less than ~~five hundred dollars (\$500.00)~~
4 one thousand dollars (\$1,000) nor more than ~~ten thousand dollars~~
5 ~~(\$10,000)~~ twenty thousand dollars (\$20,000) for each Type A
6 Violation in facilities or programs that serve ~~10-seven~~ or more persons.

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

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

18 "(b) Penalties for Failure to Correct Violations Within Time Specified. –

- 19 (1) Where a facility has failed to correct a Type A Violation, the
20 Department shall assess the facility a civil penalty in the amount of up
21 to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for
22 each day that the deficiency continues beyond the time specified in the
23 plan of correction approved by the Department or its authorized
24 representative. The Department or its authorized representative shall
25 ensure that the violation has been corrected.
- 26 (2) Where a facility has failed to correct a Type B Violation within the
27 time specified for correction by the Department or its authorized
28 representative, the Department shall assess the facility a civil penalty
29 in the amount of up to ~~two hundred dollars (\$200.00)~~ four hundred
30 dollars (\$400.00) for each day that the deficiency continues beyond the
31 date specified for correction without just reason for the failure. The
32 Department or its authorized representative shall ensure that the
33 violation has been corrected.
- 34 (3) The Department shall impose a civil penalty which is treble the
35 amount assessed under subdivision (1) of subsection (a) of this section
36 when a facility under the same management, ownership, or control has
37 received a citation and paid a penalty for violating the same specific
38 provision of a statute or regulation for which it received a citation
39 during the previous 12 months."

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

41 "**§ 122C-25. Inspections; confidentiality.**

- 42 (a) The Secretary shall make or cause to be made inspections that the Secretary
43 considers necessary. Facilities licensed under this Article shall be subject to inspection

1 at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e.
2 shall be inspected on an annual basis.

3 ..."

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

6 "**§ 122C-25. Inspections; confidentiality.**

7 ...

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

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

12 "(b) Licensure; inspections. –

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

42 a. The licensee has substantially failed to comply with the
43 provisions of Articles 1 and 3 of Chapter 131D of the General
44 Statutes and the rules adopted pursuant to these Articles;

- 1 b. There is a reasonable probability that the licensee can remedy
2 the licensure deficiencies within a reasonable length of time;
3 and
4 c. There is a reasonable probability that the licensee will be able
5 thereafter to remain in compliance with the licensure rules for
6 the foreseeable future.

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

11 The Department may revoke a license whenever:

- 12 a. The Department finds that:
13 1. The licensee has substantially failed to comply with the
14 provisions of Articles 1 and 3 of Chapter 131D of the
15 General Statutes and the rules adopted pursuant to these
16 Articles; and
17 2. It is not reasonably probable that the licensee can remedy
18 the licensure deficiencies within a reasonable length of
19 time; or
20 b. The Department finds that:
21 1. The licensee has substantially failed to comply with the
22 provisions of Articles 1 and 3 of Chapter 131D of the
23 General Statutes and the rules adopted pursuant to these
24 Articles; and
25 2. Although the licensee may be able to remedy the
26 deficiencies within a reasonable time, it is not reasonably
27 probable that the licensee will be able to remain in
28 compliance with licensure rules for the foreseeable
29 future; or
30 c. The Department finds that the licensee has failed to comply
31 with the provisions of Articles 1 and 3 of Chapter 131D of the
32 General Statutes and the rules adopted pursuant to these
33 Articles, and the failure to comply endangered the health,
34 safety, or welfare of the patients in the facility.

35 The Department may also issue a provisional license to a facility,
36 pursuant to rules adopted by the Medical Care Commission, for
37 substantial failure to comply with the provisions of this section or rules
38 adopted pursuant to this section. Any facility wishing to contest the
39 issuance of a provisional license shall be entitled to an administrative
40 hearing as provided in the Administrative Procedure Act, Chapter
41 150B of the General Statutes. A petition for a contested case shall be
42 filed within 30 days after the Department mails written notice of the
43 issuance of the provisional license."

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

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

3 ~~a. the~~ The Department shall ensure that adult care homes required
4 to be licensed by this Article are monitored for licensure
5 compliance on a regular basis. All facilities licensed under this
6 Article and adult care units in nursing homes are subject to
7 inspections at all times by the Secretary. The Division of
8 Facility Services shall inspect all adult care homes and adult
9 care units in nursing homes on an annual basis, effective July 1,
10 2007, and thereafter.

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

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

- 30 1. Sending staff of the Department to the county
31 department of social services to provide technical
32 assistance and to monitor the services being provided by
33 the facility.
- 34 2. Advising county personnel as to appropriate policies and
35 procedures.
- 36 3. Establishing a plan of action to correct county
37 performance.

38 If within one year of completion of the intervention activities,
39 the Secretary finds that the county department of social services
40 is not providing the necessary monitoring services or fails to
41 demonstrate reasonable efforts to do so, the Secretary may
42 provide written notification of the failure to correct to the chair
43 of the board of county commissioners and the chair of the
44 county board of social services. The Secretary may determine

1 that the Department shall assume the county's regulatory
2 responsibility for the county's adult care homes.

3 d. The county department of social services' adult home specialists
4 and their supervisors shall complete:

5 1. Eight hours of pre-basic training within 30 days of
6 employment;

7 2. Thirty-two hours of basic training within three months of
8 employment;

9 3. Twenty-four hours of post basic training within 90 days
10 of the basic training program;

11 4. A minimum of eight hours of complaint investigation
12 training within three months of employment; and

13 5. A minimum of 16 hours of statewide training annually
14 by the Division of Facility Services.

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

23 e. The Department shall monitor regularly the enforcement of
24 rules pertaining to air circulation, ventilation, and room
25 temperature in resident living quarters. These rules shall include
26 the requirement that air conditioning or at least one fan per
27 resident bedroom and living and dining areas be provided when
28 the temperature in the main center corridor exceeds 80 degrees
29 Fahrenheit.

30 f. The Department shall ~~also~~ keep an up-to-date directory of all
31 persons who are administrators as defined in subdivision (1a) of
32 subsection (a) of this section."

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

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

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

38 "**§ 131D-34. Penalties; remedies.**

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

1 (1) "Type A Violation" means a violation by a facility of the regulations,
2 standards, and requirements set forth in G.S. 131D-21 or applicable
3 State or federal laws and regulations governing the licensure or
4 certification of a facility which results in death or serious physical
5 harm, or results in substantial risk that death or serious physical harm
6 will occur. Type A Violations shall be abated or eliminated
7 immediately. The Department shall require an immediate plan of
8 correction for each Type A Violation. The person making the findings
9 shall do the following:

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

18 The Department shall impose a civil penalty in an amount not less than
19 ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor
20 more than ~~five thousand dollars (\$5000)~~ ten thousand dollars
21 (\$10,000) for each Type A Violation in homes licensed for ~~nine-six~~ or
22 fewer beds. The Department shall impose a civil penalty in an amount
23 not less than ~~five hundred dollars (\$500.00)~~ one thousand dollars
24 (\$1,000) nor more than ~~ten thousand dollars (\$10,000)~~ twenty thousand
25 dollars (\$20,000) for each Type A Violation in facilities licensed for
26 ~~10-seven~~ or more beds.

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

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

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

1 (2) Where a facility has failed to correct a Type B Violation within the
2 time specified for correction by the Department or its authorized
3 representative, the Department shall assess the facility a civil penalty
4 in the amount of up to ~~two hundred dollars (\$200.00)~~four hundred
5 dollars (\$400.00) for each day that the deficiency continues beyond the
6 date specified for correction without just reason for such failure. The
7 Department or its authorized representative shall ensure that the
8 violation has been corrected.

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

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

21 (1) The gravity of the violation, including the fact that death or serious
22 physical harm to a resident has resulted; the severity of the actual or
23 potential harm, and the extent to which the provisions of the applicable
24 statutes or regulations were violated;

25 (1a) The gravity of the violation, including the probability that death or
26 serious physical harm to a resident will 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 (1b) The gravity of the violation, including the probability that death or
30 serious physical harm to a resident may result; the severity of the
31 potential harm, and the extent to which the provisions of the applicable
32 statutes or regulations were violated;

33 (2) The reasonable diligence exercised by the licensee to comply with
34 G.S. 131E-256 and G.S. 131E-265 and other applicable State and
35 federal laws and regulations;

36 (2a) Efforts by the licensee to correct violations;

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

39 (4) The amount of assessment necessary to insure immediate and
40 continued compliance; and

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

42 (c1) The facts found to support the factors in subsection (c) of this section shall be
43 the basis in determining the amount of the penalty. The Secretary shall document the

1 findings in written record and shall make the written record available to all affected
2 parties including:

- 3 (1) ~~The penalty review committee;~~
- 4 (2) The local department of social services who is responsible for
5 oversight of the facility involved;
- 6 (3) The licensee involved;
- 7 (4) The residents affected; and
- 8 (5) The family members or guardians of the residents affected.

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

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

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

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

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

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

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

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

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

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

- 43 (1) The cost of training does not exceed one thousand dollars (\$1,000);

- 1 (2) The penalty would be for the facility's only violation within a
2 12-month period preceding the current violation and while the facility
3 is under the same management; and
- 4 (3) The training is:
- 5 a. Specific to the violation;
- 6 b. Approved by the Department of Health and Human Services;
7 and
- 8 c. Taught by someone approved by the Department and other than
9 the provider.
- 10 ~~(h) The Secretary shall establish a penalty review committee within the~~
11 ~~Department, which shall review administrative penalties assessed pursuant to this~~
12 ~~section and pursuant to G.S. 131E-129 as follows:~~
- 13 ~~(1) The Secretary shall:~~
- 14 ~~a. Administer the work of the committee;~~
- 15 ~~b. Ensure provision of departmental staff review;~~
- 16 ~~c. Evaluate the local departments of social services and the~~
17 ~~Division of Facility Services' penalty recommendations;~~
- 18 ~~d. Ensure that recommendations by the Department are complete~~
19 ~~and submitted within 60 days of receipt of the initial~~
20 ~~recommendations from the local departments of social services~~
21 ~~or the Division of Facility Services; and~~
- 22 ~~e. Provide written copies of all procedures to:~~
- 23 ~~1. The penalty review committee;~~
- 24 ~~2. The local department of social services who is~~
25 ~~responsible for oversight of the facility involved;~~
- 26 ~~3. The licensee involved;~~
- 27 ~~4. The residents affected; and~~
- 28 ~~5. The families or guardians of the residents affected.~~
- 29 ~~(2) The Secretary shall ensure that the Nursing Home/Adult Care Home~~
30 ~~Penalty Review Committee established by this subsection is comprised~~
31 ~~of nine members. At least one member shall be appointed from each of~~
32 ~~the following categories:~~
- 33 ~~a. A licensed pharmacist;~~
- 34 ~~b. A registered nurse experienced in long-term care;~~
- 35 ~~c. A representative of a nursing home;~~
- 36 ~~d. A representative of an adult care home; and~~
- 37 ~~e. Two public members. One shall be a "near" relative of a nursing~~
38 ~~home patient, chosen from a list prepared by the Office of State~~
39 ~~Long Term Care Ombudsman, Division of Aging, Department~~
40 ~~of Health and Human Services. One shall be a "near" relative of~~
41 ~~a rest home patient, chosen from a list prepared by the Office of~~
42 ~~State Long Term Care Ombudsman, Division of Aging,~~
43 ~~Department of Health and Human Services. For purposes of this~~

1 subdivision, a "near" relative is a spouse, sibling, parent, child,
2 grandparent, or grandchild.

3 (3) ~~Neither the pharmacist, nurse, nor public members appointed under
4 this subsection nor any member of their immediate families shall be
5 employed by or own any interest in a nursing home or adult care
6 home.~~

7 (4) ~~Prior to serving on the committee, each member shall complete a
8 training program provided by the Department of Health and Human
9 Services that covers standards of care and applicable State and federal
10 laws and regulations governing facilities licensed under Chapter 131D
11 and Chapter 131E of the General Statutes.~~

12 (5) ~~Each member of the Committee shall serve a term of two years. The
13 initial terms of the members shall commence on August 3, 1989. The
14 Secretary shall fill all vacancies. Unexcused absences from three
15 consecutive meetings constitute resignation from the Committee.~~

16 (i) The clear proceeds of civil penalties provided for in this section shall be
17 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

18 **SECTION 4.(a)** There is appropriated from the General Fund to the
19 Department of Health and Human Services the sum of eight hundred thousand dollars
20 (\$800,000) for the 2005-2006 fiscal year. These funds shall be used for a provider
21 tracking base system to include all facilities that are regulated by the Department.
22 These funds shall be held in reserve subject to Office of State Budget and Management
23 approval and the Office of Information Technology Services approval in accordance
24 with the applicable provisions of S.L. 2004-129.

25 **SECTION 4.(b)** There is appropriated from the General Fund to the
26 Department of Health and Human Services, Division of Facility Services, the sum of
27 seven hundred twenty-eight thousand five hundred twenty-one dollars (\$728,521) for
28 the 2005-2006 fiscal year and the sum of one million five hundred seventy-two
29 thousand seven hundred twenty-four dollars (\$1,572,724) for the 2006-2007 fiscal year.
30 These funds shall be used to enable the Division of Facility Services to meet expanding
31 demands of inspecting 24-hour residential facilities for the mentally ill, developmentally
32 disabled, and substance abuse populations.

33 **SECTION 4.(c)** There is appropriated from the General Fund to the
34 Department of Health and Human Services, Division of Facility Services, the sum of
35 eight hundred twenty thousand two hundred fifty-one dollars (\$820,251) for the
36 2005-2006 fiscal year and the sum of two million one hundred five thousand nine
37 hundred fifty-five dollars (\$2,105,955) for the 2006-2007 fiscal year. These funds shall
38 be used to increase the capacity to license and inspect family care and adult care homes.

39 **SECTION 4.(d)** There is appropriated from the General Fund to the
40 Department of Health and Human Services, Division of Facility Services, the sum of
41 two hundred seventeen thousand three hundred eighty-two dollars (\$217,382) for the
42 2005-2006 fiscal year and the sum of two hundred seventy-three thousand eight hundred
43 forty-three dollars (\$273,843) for the 2006-2007 fiscal year. These funds shall be used

1 to support additional FTE to facilitate more timely responses to complaints from
2 providers, citizens, and consumers, and to increase timelines of reporting.

3 **SECTION 4.(e)** There is appropriated from the General Fund to the
4 Department of Health and Human Services, Division of Facility Services, the sum of
5 two hundred seventy-one thousand five hundred six dollars (\$271,506) for the
6 2005-2006 fiscal year and the sum of three hundred forty-nine thousand five hundred
7 ninety-one dollars (\$349,591) for the 2006-2007 fiscal year. These funds shall be used
8 to support additional FTE for the inspection of every non-Medicare certified home care
9 agency to be inspected at least every 36 months.

10 **SECTION 5.** Section 4 of this act becomes effective July 1, 2005. The
11 remainder of this act is effective when it becomes law.