

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 451\*

Short Title: Hosp. Penalty Expanded/AB.

(Public)

Sponsors: Representatives Linney; Capps, Clary, Cocklereece, Cummings, Davis, Lemmond, Pate, Reynolds, Sharpe, Sherrill, Snowden, Weatherly, and G. Wilson.

Referred to: Welfare Reform and Human Resources, if favorable, Judiciary I.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE ADMINISTRATIVE PENALTY PROCESS TO HOSPITALS, HOME CARE AGENCIES, AND HOSPICES.

The General Assembly of North Carolina enacts:

Section 1. Part A of Article 5 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

**"§ 131E-83. Penalties.**

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility's licensee which is found to be in violation of the requirements of this Article 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's licensee of the regulations, standards, and requirements set forth in this Article, 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 patient will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than

1           two hundred fifty dollars (\$250.00) nor more than five thousand dollars  
2           (\$5,000) for each Type A Violation.

3           (2) 'Type B Violation' means a violation by a facility's licensee of the  
4           regulations, standards, and requirements set forth in this Article, or  
5           applicable State or federal laws and regulations governing the licensure  
6           or certification of a facility which presents a direct relationship to the  
7           health, safety, or welfare of any patient, 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 five hundred  
10           dollars (\$500.00) for each Type B Violation. A citation for a Type B  
11           Violation which relates to the physical plant, systems or equipment of  
12           the facility, and which causes no harm to a patient of the facility shall  
13           provide 10 days to correct the violation. If such Type B Violation,  
14           which is not a repeat violation as specified in (b)(3) of this section, is  
15           corrected within the 10 days, no civil penalty shall be imposed.

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

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

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

30           (3) The Department shall impose a civil penalty which is treble the amount  
31           assessed under subdivision (1) or (2) of subsection (a) of this section  
32           when a facility under the same management, ownership, or control:

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

34           b. Has received a citation for which the Department, in its  
35           discretion, granted to it under subdivision (2) of subsection (a) of  
36           this section but did not impose a penalty,

37           for violating the same specific provision of a statute or regulation for  
38           which it has received a citation during the previous 12 months or within  
39           the time period of the previous licensure inspection, whichever time  
40           period is longer.

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

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

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

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

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

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

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

34               Sec. 2. Part C of Article 6 of Chapter 131E of the General Statutes is amended  
35 by adding the following new section to read:

36 **"§ 131-143. Penalties.**

37               (a) Violations classified. The Department shall impose an administrative penalty  
38 in accordance with provisions of this Part on any Home Care Agency's licensee as  
39 defined in this Part which is found to be in violation of the requirements of Part C of  
40 Article 6 of Chapter 131E of the General Statutes or applicable State and federal laws and  
41 regulations. Citations issued for violations shall be classified according to the nature of  
42 the violation as follows:

- 1           (1) 'Type A Violation' means a violation by an agency's licensee of the  
2 regulations, standards, and requirements set forth in Part C of Article 6  
3 of Chapter 131E of the General Statutes, or applicable State or federal  
4 laws and regulations governing the licensure or certification of an  
5 agency which creates substantial risk that death or serious physical harm  
6 to a client will occur or where such harm has occurred. Type A  
7 Violations shall be abated or eliminated immediately. The Department  
8 shall impose a civil penalty in an amount not less than two hundred fifty  
9 dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each  
10 Type A Violation.
- 11           (2) 'Type B Violation' means a violation by an agency's licensee of the  
12 regulations, standards, and requirements set forth in Part C of Article 6  
13 of Chapter 131E of the General Statutes, or applicable State or federal  
14 laws and regulations, governing the licensure or certification of an  
15 agency which presents a direct relationship to the health, safety, or  
16 welfare of any client, but which does not create substantial risk that  
17 death or serious physical harm will occur. The Department may impose  
18 a civil penalty in an amount up to five hundred dollars (\$500.00) for  
19 each Type B Violation. A citation for a Type B Violation which relates  
20 to the physical plant, systems, or equipment of the agency and which  
21 causes no harm to a client of the agency shall provide 10 days to correct  
22 the violation. If such a Type B Violation, which is not a repeat violation  
23 as specified in (b)(3) of this section, is corrected within the 10 days, no  
24 civil penalty shall be imposed.
- 25       (b) Penalties for failure to correct violations within time specified.
- 26           (1) Where an agency has failed to correct a Type A Violation, the  
27 Department shall assess the agency's licensee a civil penalty in the  
28 amount of up to five hundred dollars (\$500.00) for each day that the  
29 deficiency continues. The Department or its authorized representative  
30 shall conduct an on-site inspection of the agency to insure that the  
31 violation has been corrected.
- 32           (2) Where an agency has failed to correct a Type B Violation within the  
33 time specified for correction by the Department, the Department shall  
34 assess the agency a civil penalty in the amount of up to two hundred  
35 dollars (\$200.00) for each day that the deficiency continues beyond the  
36 date specified for correction without just reason for such failure. The  
37 Department or its authorized representative shall conduct an on-site  
38 inspection of the agency to insure that the violation has been corrected.
- 39           (3) The Department shall impose a civil penalty which is treble the amount  
40 assessed under subdivision (1) or (2) of subsection (a) of this section  
41 when an agency under the same management, ownership, or control:  
42       a. Has received a citation and paid a fine, or

1           b. Has received a citation for which the Department in its discretion  
2           granted to it under subdivision (2) of subsection (a) of this  
3           section but did not impose a penalty,

4           for violating the same specific provision of a statute or regulation for  
5           which it has received a citation during the previous 12 months or within  
6           the time period of the previous licensure inspection, whichever time  
7           period is longer.

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

11           (1) The gravity of the violation, including the probability that death or  
12           serious physical harm to a client will result or has resulted; the severity  
13           of the actual or potential harm, and the extent to which the provisions of  
14           the applicable statutes or regulations were violated;

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

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

18           (4) The amount of assessment necessary to insure immediate and continued  
19           compliance; and

20           (5) The number of clients put at risk by the violation.

21          (d) The Department shall impose a civil penalty on any agency's licensee which  
22          refuses to allow an authorized representative of the Department to inspect the premises  
23          and records of the agency.

24          (e) Any agency's licensee wishing to contest a penalty shall be entitled to an  
25          administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of  
26          the General Statutes. One issue at the administrative hearing shall be the reasonableness  
27          of the amount of any civil penalty assessed by the Department. If a civil penalty is found  
28          to be unreasonable, the hearing officer may recommend that the penalty be modified  
29          accordingly.

30          (f) 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 an agency:

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          (g) The penalty review committee established pursuant to G.S. 131D-34(h) shall  
39          review administrative penalties assessed pursuant to this section, provided, however, that  
40          the Penalty Review Committee shall not review penalty recommendations agreed to by  
41          the Department and the Home Care Agency for Type B Violations except those  
42          violations that have been previously cited against the Home Care Agency during the

1 previous 12 months, or within the time period of the previous licensure inspection,  
2 whichever time period is longer."

3 Sec. 3. Article 10 of Chapter 131E of the General Statutes is amended by  
4 adding the following new section to read.

5 **"§ 131E-208. Penalties.**

6 (a) Violations classified. The Department shall impose an administrative penalty  
7 in accordance with provisions of this Part on any Hospice licensee which is found to be in  
8 violation of the requirements of Article 10 of Chapter 131E of the General Statutes or  
9 applicable State and federal laws and regulations. Citations issued for violations shall be  
10 classified according to the nature of the violation as follows:

11 (1) 'Type A Violation' means a violation by a Hospice's licensee of the  
12 regulations, standards, and requirements set forth in Article 10 of  
13 Chapter 131E of the General Statutes or applicable State or federal laws  
14 and regulations governing the licensure or certification of a Hospice  
15 which creates substantial risk that death or serious physical harm to a  
16 client will occur or where such harm has occurred. Type A Violations  
17 shall be abated or eliminated immediately. The Department shall  
18 impose a civil penalty in an amount not less than two hundred fifty  
19 dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each  
20 Type A Violation.

21 (2) 'Type B Violation' means a violation by a Hospice's licensee of the  
22 regulation, standards, and requirements set forth in Article 10 of  
23 Chapter 131E of the General Statutes or applicable State or federal laws  
24 and regulations, governing the licensure or certification of a Hospice  
25 which presents a direct relationship to the health, safety, or welfare of  
26 any client, but which does not create substantial risk that death or  
27 serious physical harm will occur. The Department may impose a civil  
28 penalty in an amount up to five hundred dollars (\$500.00) for each Type  
29 B Violation. A citation for a Type B Violation which relates to the  
30 physical plant, systems, or equipment of the agency and which causes  
31 no harm to a Hospice client of the agency shall provide 10 days to  
32 correct the violation. If such a Type B Violation, which is not a repeat  
33 violation as specified in (b)(3) of this section, is corrected within the 10  
34 days, no civil penalty shall be imposed.

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

36 (1) Where a Hospice has failed to correct a Type A Violation, the  
37 Department shall assess the Hospice's licensee a civil penalty in the  
38 amount of up to five hundred dollars (\$500.00) for each day that the  
39 deficiency continues. The Department or its authorized representative  
40 shall conduct an on-site inspection of the Hospice to insure that the  
41 violation has been corrected.

42 (2) Where a Hospice has failed to correct a Type B Violation within the  
43 time specified for correction by the Department, the Department shall

1 assess the agency's licensee a civil penalty in the amount of up to two  
2 hundred dollars (\$200.00) for each day that the deficiency continues  
3 beyond the date specified for correction without just reason for such  
4 failure. The Department of its authorized representative shall conduct  
5 an on-site inspection of the Hospice to insure that the violation has been  
6 corrected.

7 (3) The Department shall impose a civil penalty which is treble the amount  
8 assessed under subdivision (1) or (2) of subsection (a) of this section  
9 when a Hospice under the same management, ownership, or control:

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

11 b. Has received a citation for which the Department in its discretion  
12 granted to it under subdivision (2) of subsection (a) of this  
13 section but did not impose a penalty,

14 for violating the same specific provision of a statute or regulation for  
15 which it has received a citation during the previous 12 months or within  
16 the time period of the previous licensure inspection, whichever time  
17 period is longer.

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 probability that death or  
22 serious physical harm to a client will result or has resulted; the severity  
23 of the actual or potential harm, and the extent to which the provisions of  
24 the applicable statutes or regulations were violated;

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

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

28 (4) The amount of assessment necessary to insure immediate and continued  
29 compliance; and

30 (5) The number of clients put at risk by the violation.

31 (d) The Department shall impose a civil penalty on any Hospice's licensee which  
32 refuses to allow an authorized representative of the Department to inspect the premises  
33 and records of the Hospice.

34 (e) Any Hospice's licensee wishing to contest a penalty shall be entitled to an  
35 administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of  
36 the General Statutes. One issue at the administrative hearing shall be the reasonableness  
37 of the amount of any civil penalty assessed by the Department. If a civil penalty is found  
38 to be unreasonable, the hearing officer may recommend that the penalty be modified  
39 accordingly.

40 (f) The Secretary may bring a civil action in the superior court of the county  
41 wherein the violation occurred to recover the amount of the administrative penalty  
42 whenever a Hospice:

- 1           (1) Which has not requested an administrative hearing fails to pay the  
2           penalty within 60 days after being notified of the penalty; or  
3           (2) Which has requested an administrative hearing fails to pay the penalty  
4           within 60 days after receipt of a written copy of the decision as provided  
5           in G.S. 150B-36.  
6       (g) The Penalty Review Committee established pursuant to G.S. 131D-34(h) shall  
7       review administrative penalties assessed pursuant to this section, provided, however, that  
8       the Penalty Review Committee shall not review penalty recommendations agreed to by  
9       the Department and the Hospice for Type B Violations except those violations that have  
10       been previously cited against the Hospice during the previous 12 months, or within the  
11       time period of the previous licensure inspection, whichever time period is longer."  
12           Sec. 4. This act becomes effective October 1, 1995, and applies to penalties  
13       for violations occurring on or after that date.