

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-55
SENATE BILL 1179

AN ACT PERTAINING TO REPORTING REQUIREMENTS FOR THE HEALTH CARE PERSONNEL REGISTRY; IMPOSING PENALTIES FOR VIOLATIONS OF LICENSING AND OTHER REQUIREMENTS FOR CERTAIN MENTAL HEALTH FACILITIES; AND AUTHORIZING THE ADOPTION OF CERTAIN TEMPORARY AND PERMANENT RULES TO IMPLEMENT REQUIREMENTS FOR CERTAIN MENTAL HEALTH FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-256(g) reads as rewritten:

"(g) ~~Upon investigation and documentation, health~~ Health care facilities shall ensure that the Department is notified of all ~~substantiated~~ allegations against health care ~~personnel~~ personnel, including injuries of unknown source, which appear to a reasonable person to be related to any act listed in subdivision (a)(1) of this section, and shall promptly report to the Department any resulting disciplinary action, demotion, or termination of employment of health care personnel. ~~section.~~ Facilities must have evidence that all alleged acts are investigated and must make every effort to protect residents from harm while the investigation is in progress. The results of all investigations must be reported to the Department within five working days of the initial notification to the Department."

Section 2. Article 15 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"§ 131E-256.1. Adverse action on a license; appeal procedures.

(a) The Department may suspend, cancel, or amend a license when a facility subject to this Article has substantially failed to comply with this Article or rules adopted under this Article.

(b) Administrative action taken by the Department under this section shall be in accordance with Chapter 150B of the General Statutes."

Section 3. G.S. 122C-23 is amended by adding the following new subsection to read:

"(g) The Secretary may suspend the admission of any new clients to a facility licensed under this Article where the conditions of the facility are detrimental to the health or safety of the clients. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In suspending admissions under this subsection, the Secretary shall consider the following factors:

- (1) The degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and
- (2) The character and degree of impact of the conditions at the facility on the health or safety of its clients.

A facility may contest a suspension of admissions under this subsection in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within 20 days after the Department mails notice of suspension of admissions to the licensee."

Section 4. Article 2 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"§ 122C-24.1. Penalties; remedies.

(a) Violations Classified. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter 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 of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:
 - a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
 - b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and
 - c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each Type A Violation in facilities or programs that serve nine or fewer persons. The Department shall impose a civil penalty in an amount not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A Violation in facilities or programs that serve 10 or more persons.

- (2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct

relationship to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

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

- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.
- (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.
- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) of this section when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months.

(c) Factors to Be Considered in Determining Amount of Initial Penalty. – In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) The gravity of the violation, including the fact that death or serious physical harm to a client or patient has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The gravity of the violation, including the probability that death or serious physical harm to a client or patient will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (3) The gravity of the violation, including the probability that death or serious physical harm to a client or patient may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

- (4) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and other applicable State and federal laws and regulations;
- (5) Efforts by the licensee to correct violations;
- (6) The number and type of previous violations committed by the licensee within the past 36 months;
- (7) The amount of assessment necessary to ensure immediate and continued compliance; and
- (8) The number of clients or patients put at risk by the violation.

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

- (1) The licensee involved;
- (2) The clients or patients affected; and
- (3) The family members or guardians of the clients or patients affected.

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

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

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

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

(g) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the violation began.

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

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

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

- (1) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and
- (2) The training is:
 - a. Specific to the violation;
 - b. Approved by the Department of Health and Human Services; and
 - c. Taught by someone approved by the Department and other than the provider.

(j) The clear proceeds of civil penalties provided for in this section shall be remitted to the State Treasurer for deposit in accordance with State law.

(k) In considering renewal of a license, the Department shall not renew a license if outstanding fines and penalties imposed by the Department against the facility or program have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration for nonrenewal under this subsection."

Section 5. G.S. 122C-26 reads as rewritten:

"§ 122C-26. Powers of the Commission.

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article; ~~and~~
- (4) Adopt rules for the waiver of rules adopted under this ~~Article~~. Article; ~~and~~
- (5) Adopt rules applicable to facilities licensed under this Article:
 - a. Establishing personnel requirements of staff employed in facilities;
 - b. Establishing qualifications of facility administrators or directors;
 - c. Establishing requirements for death reporting including confidentiality provisions related to death reporting; and
 - d. Establishing requirements for patient advocates."

Section 6. Notwithstanding G.S. 150B-21.1(a), the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt temporary rules to implement G.S. 122C-26(5).

Section 7. Sections 1 through 4 of this act become effective October 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2000.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 1:34 p.m. this 30th day of June, 2000