



HOUSE BILL 667: Facility Penalty & Remedy/Electron. Supervise.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2016-2017 General Assembly

Committee:	Senate Health Care	Date:	June 13, 2016
Introduced by:	Reps. Hager, Dobson	Prepared by:	Augustus D. Willis Committee Counsel
Analysis of:	PCS to Second Edition H667-CSSH-74		

SUMMARY: *The Proposed Committee Substitute (PCS) to H667 would amend penalties and remedies for facilities that provide services to the mentally ill, developmentally disabled, and substance abusers and for adult care home facilities; defines the term "substantial risk"; allows flexibility in assessing an administrative penalty when the facility has provided training and has corrected the violation and remains in compliance; eliminates the penalty review committee for adult care homes; and repeals the June 30, 2016 sunset on the DHHS pilot program regarding electronic supervision devices.*

CURRENT LAW: Within Chapter 122C, Article 2 deals with the licensure of facilities for the mentally ill, the developmentally disabled, and substance abusers, and Article 3 addresses the rights of patients in such facilities.

Subsection (a) of G.S. 122C-24.1 classifies types of violations of those statutes or other applicable State and federal laws, and sets forth procedures to be followed and penalties to be assessed in the event of such a violation. Currently, the list of types of violations includes a "past corrected Type A1 or A2 violation," for violations that existed at one time, but have been corrected and were either (i) not previously identified by the Department of Health and Human Services (DHHS), or (ii) was discovered by the facility and was self-reported. Such cases are counted as a violation, but DHHS has discretion as to whether to impose a penalty.

Subsection (c) of G.S. 122C-24.1 sets forth factors for the Department of Health and Human Services to consider in determining the amount of the penalty to be assessed for a violation, including instances of where "substantial risk" exists that serious physical harm, abuse, neglect, exploitation, or client death will occur. The term "substantial risk" is not currently defined in the statute.

Subsection (i) of G.S. 122C-24.1 allows the Secretary of DHHS to order a facility to provide staff training in lieu of assessing some or all of an administrative penalty imposed for a violation.

Chapter 131D deals with inspection and licensing of adult care homes. G.S. 131D-34 largely mirrors the penalty structures and procedures of the laws on mental health facilities, including the provisions detailed above. Additionally, for adult care homes, there is currently a penalty review committee within DHHS which reviews administrative penalties assessed pursuant to G.S. 131D-34.

S.L. 2015-264 (Technical Corrections), Section 91.4(a) continued and expanded the pilot program established by the Division of Health Service Regulation, DHHS, to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. To facilitate the pilot program, 10A NCAC 27G.1704, which establishes the minimum staffing requirements for residential treatment facilities for children and adolescents, is waived. However, the

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Division of Health Service Regulation is allowed to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon the follow-up surveys that are related to electronic supervision. **S.L. 2015-264, Section 91.4(b)** provides that the authorization for this pilot program is set to expire on June 30, 2016.

BILL ANALYSIS: Sections 1 & 2: The PCS would make the following changes to G.S. 122C-24.1 and G.S. 131D-34:

- Remove "past corrected Type A1 or Type A2 violation" from the list of type of violations and specify that a Type A1, Type A2, or Type B Violation is not considered a violation as long as all of the following criteria are met:
 - The violation was discovered by the facility.
 - DHHS determines that the violation was abated immediately.
 - The violation was corrected prior to inspection by DHHS.
 - DHHS determines that reasonable preventative measures were in place prior to the violation.
 - DHHS determines that subsequent to the violation, the facility implemented corrective measures to achieve and maintain compliance.
- Defines the term "substantial risk" as "the risk of an outcome that is substantially certain to materialize if immediate action is not taken."
- In lieu of assessing all or some of an administrative penalty, the Secretary of DHHS may order a facility to provide staff training, or consider the approval of training already completed, and the Secretary may also take into consideration whether the facility has corrected the violation and continues to remain in compliance with the regulation.

The PCS would also make the following two changes to Chapter 131D which will align the procedures for adult care homes more closely with those facilities licensed under Chapter 122C:

- Eliminate the penalty review committee for adult care homes.
- Change the date on which a penalty commences from the date on which a violation is identified to the date of the letter of notification of the penalty amount.

Section 3: The PCS would remove the June 30, 2016 sunset date on the pilot program authorized by Sections 91.4(a) and (b) of S.L. 2015-264.

EFFECTIVE DATE: This act is effective when it becomes law.