



2015-2016 General Assembly

# HOUSE BILL 667: Mental Health, Developmental Disability, Substance Abuse, and Adult Care Facility Penalties and Remedies/Electronic Supervision Devices.

**Committee:**  
**Introduced by:**  
**Analysis of:** S.L. 2016-50

**Date:** August 2, 2016  
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Staff Attorney

**OVERVIEW:** *S.L. 2016-50 amends 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 Department of Health and Human Services pilot program for 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.*

*This act became effective June 30, 2016.*

## **BILL ANALYSIS:**

### Amendment of penalties and remedies for Mental Health, Developmental Disability, Substance Abuse, and Adult Care Home Facilities

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. Prior to S.L. 2016-50, the list of types of violations included 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 were counted as a violation, but DHHS possessed discretion as to whether to impose a penalty.

*S.L. 2016-50 eliminates the "Past Corrected Violation" and instead exempts from the definition of violation a Type A1, Type A2, or Type B Violation where the following criteria are met:*

- *The violation was discovered by the facility.*
- *The Department determines that the violation was abated immediately.*
- *The violation was corrected prior to inspection by the Department.*
- *The Department determines that reasonable preventative measures were in place prior to the violation.*

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- *The Department determines that subsequent to the violation, the facility implemented corrective measures to achieve and maintain compliance.*

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, however prior to S.L. 2016-50, the term "substantial risk" was not defined in the statute. *S.L. 2016-50 defines "substantial risk" as the risk of an outcome that is substantially certain to materialize if immediate action is not taken.*

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. *S.L. 2016-50 expands this to also allow the Secretary of DHHS to 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.*

## Elimination of the penalty review committee for adult care homes

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, however, prior to S.L. 2016-50, for adult care homes there was a penalty review committee within DHHS which reviewed administrative penalties assessed pursuant to G.S. 131D-34.

*S.L. 2016-50 eliminates the penalty review committee for adult care homes and changes 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. These changes to Chapter 131D align the procedures for adult care homes more closely with those facilities licensed under Chapter 122C.*

## Repeal of sunset on DHHS Pilot Program Regarding Electronic Supervision Devices

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 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.

*S.L. 2016-50 removes 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:** S.L. 2016-50 became effective June 30, 2016.