



North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Mental Health Licensure and Certification


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**ANNOUNCEMENT**

**To:** All Licensed N.C.G.S. §122C Providers  
**From:** Stephanie Alexander   
**Date:** 9/19/2011  
**Re:** G.S. 122C-24.1 Amendment

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North Carolina General Statute 122C-24.1 was amended and signed into law on June 23, 2011. The Mental Health Licensure and Certification Section of the Department of Health and Human Services, Division of Health Service Regulation will use the law that was in effect at the time state survey consultants exited your facility while on survey. For example, if state survey consultants exited your facility on June 22, 2011, they would use the old statute, that was in effect at that time. If state survey consultants exited your facility on or after June 24, 2011, they will use the new statute.

Below you will find an overview of the changes, followed by frequently asked questions. If you have additional questions, please contact Kim Ruppel at 919-855-3813 or [Kim.Ruppel@dhs.nc.gov](mailto:Kim.Ruppel@dhs.nc.gov).

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**Overview of Changes**

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The previous law provided for two classifications of violations: Type A and Type B.

**Type A Violations:** Type A violations were previously defined as non-compliance with a rule or regulation that resulted in serious *physical harm or death*, or substantial risk that serious *physical harm or death* will occur.

The new law expands the definition of a Type A violation and subdivides it to provide clarity. A Type A1 is a violation of a rule or regulation that *results in death or serious physical harm, abuse, neglect, or exploitation*. A Type A2 is a violation of a regulation which results in *substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur*.

In addition, the statute identifies a Past Corrected Type A1 or Type A2 violation. If a violation meets the criteria of a past corrected Type A1 or A2, a penalty may not be assessed. This gives the provider incentive and opportunity to identify and correct problems before the state does.

**Type B Violations:** A Type B violation previously was cited for non-compliance with a rule or regulation that presented a direct relationship to the health, safety or welfare of a client, but did not result in substantial risk of death or serious physical harm. A Type B violation now is a violation that is *detrimental* to the health, safety, or welfare of a client but does not result in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur.



**Civil Penalty:** Previously the state could assess a facility a flat fine of \$500 if the facility refused to allow an authorized representative of the Department of Health and Human Services access to the premises and records. This has been amended to \$50 per day.

**Training:** Training in lieu of all or some of the administrative penalty is no longer limited to those facilities that had no violations in the previous 12 months, and the trainer is no longer limited to those outside of the facility.

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### Frequently Asked Questions

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1. When do the changes take effect?
  - House Bill 397 was signed into law on 6/23/2011. All surveys with an exit date of 6/24/2011 or after are evaluated and processed with the changes.
2. When does a penalty get assessed?
  - A penalty will be assessed for a Type A1 violation. A penalty may or may not be assessed for a Type A2 violation, past corrected Type A1 violation or past corrected Type A2 violation.
3. What is the difference between a Type A1 violation and a Type A2 violation?
  - A Type A1 violation is a violation by a facility in which death or serious physical harm, serious abuse, serious neglect or serious exploitation has occurred.
  - A Type A2 violation is a violation by a facility in which there is substantial risk that death or serious physical harm, serious abuse, serious neglect or serious exploitation will occur.
4. How do you decide if a penalty is assessed?
  - Standardized forms are used to apply the criteria outlined in G.S. 122C-24.1 to decide if a penalty will be assessed.
5. Do you need a plan of correction for a Past Corrected Type A1/A2?
  - A plan of correction is optional, but not required for a past corrected violation.
6. Can I appeal a Type A2 or a Past Corrected Type A1/A2 with no penalty assessed?
  - Pursuant to G.S. 122C-24.1, "any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in Chapter 150B of the General Statutes." Therefore, if no penalty is assessed the facility does not have appeal rights.
7. What does "past corrected" Type A1 or Type A2 violation mean?
  - A past corrected violation means "...either (1) the violation was not previously identified by the Department or its authorized representative or (ii) the violation was discovered by the facility and was self-reported, but in either case the violation has been corrected..." In other words, the violation must have been corrected prior to the Department's inspection. The facility must have significant evidence and documentation the violation was corrected prior to the inspection.
8. I am being cited for a "past corrected" Type A1/ A2 which means I have already corrected the problem. Why am I getting cited if you are saying I already corrected the problem; shouldn't I just not be cited?
  - The rule violation found during the inspection meets the criteria for a Type A1 or Type A2 and, as per statute; the violation must be cited because it occurred. Since the facility put measures in place to ensure the violation was corrected prior to the Department's survey, the Department can recognize that the facility had implemented corrective measures and cite a past corrected type A1 or past corrected Type A2.
9. If I corrected the problem and therefore I am being cited a past corrected Type A1/A2 why am I getting a penalty?
  - Per the statute, a penalty may be assessed for past corrected violations taking into account the following factors: a) whether preventative measures in place prior to the violation, b) whether the violation or violations were abated immediately, c) whether the facility implemented corrective measures to achieve and maintain compliance, d) whether the facility's system to ensure compliance is maintained and continues to be implemented and e) whether the regulatory area remains in compliance.

