

1 10A NCAC 13D .2111 is proposed for amendment as follows:

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3 **10A NCAC 13D .2111 ADMINISTRATIVE PENALTY DETERMINATION PROCESS**

4 (a) The surveyor ~~or complaints investigator~~ shall identify and notify the facility of areas of noncompliance resulting
5 from a survey ~~or investigation~~ which may be violations of patients' rights contained in G.S. 131E-117 or rules
6 contained in this Subchapter. The facility may submit additional written information which was not available at the
7 time of the visit for evaluation by the surveyor. ~~surveyor, investigator, or branch head.~~ The surveyor ~~surveyor,~~
8 ~~investigator or branch head~~ shall notify the facility if a decision is made, based on information received, not to
9 recommend a penalty. If the decision is to recommend a penalty, the surveyor ~~or investigator~~ shall complete and
10 submit a negative action an administrative penalty proposal, which includes the classification of the violation and
11 penalty assessed in compliance with G.S. 131E-129, and recommend a penalty, by Type (A or B), to the branch
12 head to the Nursing Home Licensure & Certification Section designee. ~~who shall~~ The designee shall make a
13 ~~decision on~~ determine the type and amount of the penalty to be submitted for consideration. The ~~negative action~~
14 penalty proposal shall then be submitted to the Section administrative penalty monitor for processing.

15 (b) The ~~Department~~ Nursing Home Licensure & Certification Section shall notify the licensee by certified mail
16 within 10 working days from the time the penalty proposal is received by the Section administrative penalty monitor
17 that an administrative penalty is being considered.

18 (c) The licensee shall have 10 working days from receipt ~~of the notification of the penalty proposal notification~~ to
19 provide the ~~Department~~ Section with any additional written information relating to the proposed administrative
20 penalty. ~~Upon request by the licensee, the Department shall grant the licensee an extension of up to 30 days to~~
21 ~~submit additional written information relating to the proposed administrative penalty.~~

22 (d) If the penalty recommendation is classified as a Type B violation and is not a repeat violation as defined by G.S.
23 131E-129, the licensee shall be notified of the type and amount of penalty and may accept the recommendation
24 instead of review by the Penalty Review Committee. If the penalty recommendation is accepted, the licensee must
25 notify the administrative penalty monitor by certified mail within five working days following receipt of the
26 recommendation. The licensee must include payment of the penalty with the notification. If payment is not received,
27 the recommendation shall be forwarded to the Penalty Review Committee.

28 (e) The Penalty Review Committee must review a recommended penalty proposal ~~when: it is a Type A violation; is~~
29 ~~a Type B violation that has been previously cited during the previous 12 months or within the time period of the~~
30 ~~previous licensure inspection, whichever time period is longer; or is a~~ when it is a: Type A1 violation; Type A2
31 violation that has not been corrected; Type B violation that has been cited during the previous 12 months or within
32 the time period of the previous licensure inspection, whichever time period is longer; or a Type B violation as
33 provided in Paragraph (d) of this Rule which is not accepted by the licensee.

34 (f) ~~A subcommittee of the Penalty Review Committee consisting of four committee members assigned by the~~
35 ~~Penalty Review Committee chair shall meet to initially review non-repeat Type B violations. The Penalty Review~~
36 ~~Committee chair shall appoint the subcommittee chair and shall be an ex officio member of the Penalty Review~~
37 ~~Committee subcommittee. The surveyor or investigator recommending the penalty or a branch representative shall~~

1 attend the meeting when work schedules permit. Providers, complainants, affected parties and any member of the
2 public may also attend the meeting. The administrative penalty monitor shall be responsible for informing parties of
3 these public meetings.

4 (g) Time shall be allowed during the Penalty Review Committee subcommittee meetings for individual
5 presentations regarding proposed penalties. The total time allowed for presentations regarding each facility, the
6 order in which presenters shall speak and length of presentations shall be determined by the Penalty Review
7 Committee subcommittee chair.

8 (h) The administrative penalty monitor shall have five working days from the meeting date to notify the facility and
9 involved parties of penalty recommendations made by the Penalty Review Committee subcommittee. These
10 recommendations including the vote of the Penalty Review Committee subcommittee shall be submitted for review
11 by the full Penalty Review Committee at a meeting scheduled for the following month.

12 (i) The full Penalty Review Committee shall consider Type A violations, repeat Type B violations and non repeat
13 Type B violations referred by the Penalty Review Committee subcommittee. Providers, complainants, affected
14 parties and any member of the public may attend full Penalty Review Committee meetings. Upon written request of
15 any affected party for reasons of illness or schedule conflict, the Department may grant a delay until the following
16 month for Penalty Review Committee review. The Penalty Review Committee chair may ask questions of any of
17 these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual
18 presentations which provide pertinent additional information. The order in which presenters speak and the length of
19 each presentation shall be at the discretion of the Penalty Review Committee chair.

20 (j) The Penalty Review Committee and Penalty Review Committee subcommittee shall have for review the entire
21 record relating to the penalty recommendation. The Penalty Review Committee and Penalty Review Committee
22 subcommittee shall make recommendations after review of negative action proposals, any supporting evidence, and
23 any additional information submitted by the licensee as described in Paragraph (c) of this Rule that may have a
24 bearing on the proposal such as documentation not available during the investigation or survey, action taken to
25 correct the violation and plans to prevent the violation from recurring.

1 ~~(k) There shall be no taking of sworn testimony nor cross examination of anyone during the course of the Penalty~~
2 ~~Review Committee subcommittee or full Penalty Review Committee meetings.~~

3 ~~(f)~~ (f) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the
4 Penalty Review Committee shall recommend an administrative penalty type and amount for each violation pursuant
5 to G.S. 131E- 129. Recommendations for nursing home penalties shall be submitted to the Chief of the ~~Medical~~
6 ~~Facilities Licensure~~ Nursing Home Licensure & Certification Section who shall have five working days from the
7 date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation
8 and notify the licensee of his or her final decision by certified mail.

9 ~~(g)~~ (g) The licensee shall have 60 days from receipt of the notification of the Section Chief's final decision to pay
10 the penalty as provided by G.S. 131E-129 or must file a petition for contested case with the Office of Administrative
11 Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131E-2.

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14 *History Note: Authority G.S. 131D-34; 131E-104; 143B-165;*
15 *Eff. August 3, 1992;*
16 *Amended Eff. March 1, 1995; July 1, 2014;*
17 *Transferred and recodified from 10 NCAC 03H .0221 Eff. January 10, 1996.*