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HEALTH Nursing Homes: Provide Conditions Under Which Certain Monetary Penalties May Be Imposed Against Nursing Facilities, Nursing Homes, or Intermediate Care Homes; Provide for the Suspension of Civil Monetary Penalties Against Such Facilities Under Certain Conditions; Provide That Under Certain Conditions Civil Monetary Penalties Imposed Shall Relate Back to the Date on Which Such Penalties Were Suspended; Provide That Nothing in the Act Should Be Construed to Require the State Survey Agency to Act in Violation of Applicable Federal Law, Regulations, and Guidelines

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HEALTH

Nursing Homes: Provide Conditions Under Which Certain Monetary Penalties May Be Imposed Against Nursing Facilities, Nursing Homes, or Intermediate Care Homes; Provide for the Suspension of Civil Monetary Penalties Against Such Facilities Under Certain Conditions; Provide That Under Certain Conditions Civil Monetary Penalties Imposed Shall Relate Back to the Date on Which Such Penalties Were Suspended; Provide That Nothing in the Act Should Be Construed to Require the State Survey Agency to Act in Violation of Applicable Federal Law, Regulations, and Guidelines

CODE SECTION:	O.C.G.A. § 31-2-6 (amended)
BILL NUMBER:	HB 264
ACT NUMBER:	380
GEORGIA LAWS:	2001 Ga. Laws 1230
SUMMARY:	The Act prohibits the Department of Human Resources (DHR) from fining or restricting the licensing of any nursing facility, nursing home, or intermediate care unit, for any act or omission for which that facility has already received an intermediate sanction or notice of intent to sanction. The Act further provides that if a monetary penalty is assessed, the DHR must resurvey the facility within forty-eight hours or the accrual of all monetary penalties will be suspended until the resurvey is completed. If, however, upon resurvey, the facility is still found to be non-compliant, the monetary penalties will relate back to the original date.
EFFECTIVE DATE:	July 1, 2001

History

The nursing home industry, spearheaded by the Georgia Nursing Home Association, asked Representative Nikki Randall to sponsor HB 264 after discovering that many nursing homes “were paying hefty

civil fines after violations in the facilities had been corrected.”¹ The Department of Human Resources (DHR) surveys nursing facilities and reports deficiencies.² Where a fine is imposed per day, that fine continues until such time as DHR determines, through a revisit to the facility, that the facility is back in compliance.³ However, in many cases, the DHR had not resurveyed facilities for months, with penalties accruing even though all problems had been corrected.⁴ The industry hoped that the bill would encourage the DHR to “pre-empt . . . substandard rules and better prioritize their own staff time regarding the issue.”⁵

HB 264

Introduction

Representative Nikki Randall of the 127th District introduced HB 264 on the House floor on January 26, 2001.⁶ The House assigned the bill to its Human Relations and Aging Committee, which favorably reported the bill, as substituted, on February 8, 2001.⁷ The House adopted the Committee substitute and passed the bill unanimously on February 13, 2001.⁸ On February 14, 2001, the Senate assigned HB 264 to its Veterans and Community Affairs Committee, which offered its own substitute and favorably reported the bill on March 1, 2001.⁹ The Senate adopted the Committee substitute and unanimously passed the bill on

1. Electronic Mail Interview with Gayle Sexton, Director, Georgia Nursing Home Association (Mar. 26, 2001) [hereinafter Sexton Interview].

2. See Audio Recording of House Proceedings, Feb. 13, 2001 (remarks by Rep. Nikki Randall), at <http://www.state.ga.us/services/leg/audio/2001archive.html>.

3. See *id.* If the facility is certified as Medicaid only, the Department of Community Health (DCH) is responsible for enforcing the correction plan. If the facility is also certified for Medicare, the Health Care Financing Administration (HCFA) is responsible for enforcement. The Office of Regulatory Services is responsible for enforcement in private-pay homes. See Electronic Mail Interview with Becky Kurtz, State Long-Term Care Ombudsman (May 14, 2001) [hereinafter Kurtz Interview I]; see also Electronic Mail Correspondence with Gayle Sexton, Director, Georgia Nursing Home Association, Oct. 16, 2001 (on file with the *Georgia State University Law Review*).

4. See Sexton Interview, *supra* note 1.

5. *Id.*

6. See State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

7. See *id.*

8. See Georgia House of Representatives Voting Record, HB 264 (Feb. 13, 2001); State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

9. See State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

March 13, 2001.¹⁰ The House agreed to the Senate substitute on March 19, 2001.¹¹ The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 264 into law on April 28, 2001.¹²

Consideration by the House

After introduction, the House assigned the bill to its Human Relations and Aging Committee.¹³ The Committee favorably reported the bill, as substituted, on February 8, 2001.¹⁴ The Committee substitute removed language in proposed Code section 31-2-6, which limited the additional sanctions that could be levied against noncompliant facilities.¹⁵ Thus, the Committee substitute permitted the DHR to continue its practice of recommending or imposing additional penalties for any new problems discovered while a facility was implementing a correction plan.¹⁶ The House adopted the Committee substitute and unanimously passed HB 264, as substituted, on February 13, 2001.¹⁷

Consideration by the Senate

The bill was referred to the Senate Veterans and Community Affairs Committee on February 14, 2001.¹⁸ The Committee favorably reported HB 264, as substituted, on March 1, 2001.¹⁹ The Committee substitute added language to proposed Code section 31-2-6, to provide that the Act should not be construed to require the state survey agency to violate federal law, regulations or guidelines.²⁰ The Senate adopted the Committee substitute and unanimously passed the bill on March 13,

10. See Georgia Senate Voting Record, HB 264 (Mar. 13, 2001); State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

11. See State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

12. See 2001 Ga. Laws 1230, § 2, at 1231.

13. See State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

14. See *id.*

15. Compare HB 264, as introduced, 2001 Ga. Gen. Assem., with HB 264 (HCS), 2001 Ga. Gen. Assem.

16. See Kurtz Interview I, *supra* note 3.

17. See Georgia House of Representatives Voting Record, HB 264 (Feb. 13, 2001); State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

18. See State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

19. See *id.*

20. Compare HB 264 (HCS), 2001 Ga. Gen. Assem., with HB 264 (SCS), 2001 Ga. Gen. Assem. This language was added because nursing homes receiving Medicare/Medicaid money are already subject to federal penalties, which will supersede the state penalties under this bill. See Electronic Mail Interview with Becky Kurtz, State Long-Term Care Ombudsman (Mar. 26, 2001) [hereinafter Kurtz Interview II].

2001.²¹ The House agreed to the Senate substitute on March 19, 2001.²² Governor Roy Barnes signed the bill into law on April 28, 2001.²³

The Act

The Act amends Code section 31-2-6 by adding language providing that once a monetary penalty is assessed, if the DHR does not resurvey the facility within forty-eight hours, the accrual of all monetary penalties will be suspended until the resurvey is completed.²⁴ The Act also provides that if upon resurvey the facility is still found to be non-compliant, the monetary penalties will relate back to the original date.²⁵ The Act further provides that nothing contained within the new subsection is to be construed as requiring the state survey agency to violate applicable federal law, regulations or guidelines.²⁶

Opposition to HB 263

The Department of Human Resources expressed some concern about the section in the original bill which would have prevented the DHR from imposing additional penalties during any period when a facility was supposed to be correcting another deficiency.²⁷ That language was subsequently withdrawn by the House Committee on Human Relations and Aging.²⁸

Furthermore, the Act will have little applicability to nursing homes that participate in Medicaid and Medicare.²⁹ Because these facilities are subject to regulatory and enforcement penalties under the federal system, they can “never be fined for violating state regulations.”³⁰

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21. See Georgia Senate Voting Record, HB 264 (Mar. 13, 2001); State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

22. See State of Georgia Final Composite Status Sheet, HB 264, Mar. 21, 2001.

23. See 2001 Ga. Laws 1230, § 2, at 1231.

24. Compare 1991 Ga. Laws 341, § 1, at 342-43 (formerly found at O.C.G.A. § 31-2-6 (Supp. 2000)), with O.C.G.A. § 31-2-6 (2001).

25. Compare 1991 Ga. Laws 341, § 1, 342-43 (formerly found at O.C.G.A. § 31-2-6 (Supp. 2000)), with O.C.G.A. § 31-2-6 (2001).

26. See O.C.G.A. § 31-2-6 (2001).

27. See Kurtz Interview II, *supra* note 20.

28. See HB 264 (HCS), 2001 Ga. Gen. Assem.

29. See Kurtz Interview II, *supra* note 20.

30. *Id.*