

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

HOUSE BILL 1414

5 By: Representatives Bright, Napper  
6  
7

## For An Act To Be Entitled

8  
9  
10 AN ACT TO PROVIDE A LIABILITY INSURANCE POOL FOR  
11 NURSING HOME PATIENTS; TO PROVIDE COURT AND  
12 ADMINISTRATIVE PROCEDURES FOR PERSONAL INJURY  
13 CLAIMS AGAINST NURSING HOMES; AND FOR OTHER  
14 PURPOSES.  
15

### Subtitle

16  
17 AN ACT TO ADDRESS INSURANCE COVERAGE FOR  
18 NURSING HOME PATIENTS AND PERSONAL  
19 INJURY CLAIMS AGAINST NURSING HOMES.  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Title 20, Subtitle 2, Chapter 10 of the Arkansas Code is  
25 amended by adding the following new subchapter 19 to read as follows:

26 20-10-1901. Title.

27 This subchapter shall be known and may be cited as the "Fair Care and  
28 Treatment Act of 2003".  
29

30 20-10-1902. Purpose and intent.

31 (a) The purpose and intent of this subchapter is to provide for the  
32 fair care and treatment of persons receiving long-term care in skilled  
33 nursing facilities licensed to operate in this state.

34 (b) This subchapter authorizes the creation of a liability insurance  
35 pool known as the Patient's Recovery Fund to provide a secure and sustainable  
36 source of funds to satisfy personal injury claims by or on behalf of patients



1 of participating facilities.

2  
3 20-10-1903. Definitions.

4 As used in this subchapter:

5 (1) "Action for injury" means any civil action, whether based in tort,  
6 contract, or otherwise, to recover damages on account of an injury to a  
7 patient of any skilled nursing facility;

8 (2) "Affiliate" means any person or entity controlling, controlled by,  
9 or under common control with a skilled nursing facility;

10 (3) "Board" means the Patient's Recovery Fund Board created under this  
11 subchapter.

12 (4)(A) "Claim" means a demand for recovery of damages from the  
13 Patient's Recovery Fund, whether based in tort, contract, or otherwise, on  
14 account of an injury to a patient of a participating facility.

15 (B) A claim may be brought by the patient, or by the guardian,  
16 representative, executor, administrator, or person acting on behalf of the  
17 patient, including a third party whose right to recover damages is derivative  
18 of the legal rights of the patient;

19 (5) "Claimant" means the person or persons alleging a claim or action  
20 for injury against a skilled nursing facility;

21 (6) "Injury" means the personal injury or death of a patient of a  
22 skilled nursing facility arising out of or sustained in the course of the  
23 services rendered to the patient by the facility, its owners, principals,  
24 officers, employees, agents, and affiliates, or any person or entity  
25 providing management services to the facility, or arising out of or sustained  
26 in the course of the relationship between the patient and the facility, its  
27 owners, principals, officers, employees, agents and affiliates, or any person  
28 or entity providing management services to the facility;

29 (7) "Occupied beds" means:

30 (A) Beds occupied by patients at midnight;

31 (B) Beds placed on hold during a period of time not to exceed  
32 five (5) consecutive calendar days during which a patient is in a hospital  
33 bed; and

34 (C) Beds placed on hold during a period of time not to exceed  
35 fourteen (14) consecutive calendar days during which a patient is on  
36 therapeutic home leave;

1           (8)(A) “Participating facility” means a skilled nursing facility which  
2 participates in and contributes to the Patient’s Recovery Fund, including the  
3 owners, principals, officers, employees, agents, and affiliates of the  
4 skilled nursing facility.

5           (B) “Participating facility” does not include any unaffiliated  
6 person or entity providing management services to a skilled nursing home  
7 facility contributing to or participating in the Patient’s Recovery Fund;

8           (9) “Patient” means a person receiving care or treatment from a  
9 skilled nursing facility;

10           (10) “Skilled nursing facility” means a “long-term care facility” as  
11 defined by § 20-10-213(4); and

12           (11) “Wrongful act” means any act or conduct, whether by commission or  
13 omission, which is a proximate cause of an injury.

14  
15           20-10-1904. Patient’s Recovery Fund – Participation.

16           (a)(1) The Patient’s Recovery Fund is created for the payment of valid  
17 claims or judgments against participating facilities.

18           (2)(A) Each participating facility shall remit monthly  
19 assessments to the fund, or make payments to the fund in lieu of assessments,  
20 based upon the number of occupied beds as of the first business day of each  
21 month.

22                   (B) Assessments may be prepaid upon terms approved by the  
23 board.

24                   (C) Assessments and other payments, together with earned  
25 income, surplus, and all other moneys accruing to the fund, shall be held in  
26 trust by the board for the purposes provided by this subchapter.

27           (b)(1) The fund shall not be deposited or maintained in the state  
28 treasury, but shall be a cash fund under the direction and control of the  
29 board, as provided by this subchapter.

30                   (2) The fund shall not be subject to regulation by the State  
31 Insurance Department.

32           (c)(1) Only claims, judgments, or arbitral awards arising from a  
33 wrongful act or acts that occur during a period of participation in the fund  
34 shall be covered by the fund.

35                   (2) The fund shall offer tail coverage to participating  
36 facilities upon terms approved by the board.

1           (d)(1)(A) A skilled nursing facility that is certified to provide  
 2 services under Title XVIII or Title XIX of the Social Security Act shall  
 3 participate in and contribute to the fund as a condition of maintaining its  
 4 license to provide long-term care in this state.

5           (B) A skilled nursing facility that is not certified to  
 6 provide services under Title XVIII or Title XIX of the Social Security Act,  
 7 or that receives no reimbursement or other payment under Title XVIII or Title  
 8 XIX of the Social Security Act for services provided to any of its patients,  
 9 may elect to participate in the fund, but shall not be required to  
 10 participate in the fund as a condition of maintaining its license to provide  
 11 long-term care in this state.

12           (2)(A) Subject to the rules and regulations of the fund and upon  
 13 terms approved by the board, a skilled nursing facility that is required to  
 14 participate in the fund as a condition of maintaining its license to provide  
 15 long-term care in this state may opt out of participation in the fund by  
 16 giving notice to the administrator of the Patient's Recovery Fund that the  
 17 facility is owned and operated by a nonprofit, government, or church  
 18 affiliated organization as defined by the board.

19           (B) Wrongful acts occurring during the facility's prior  
 20 period or periods of participation shall be covered.

21           (3)(A) A participating facility shall be dismissed as a  
 22 participant in the fund for nonpayment of assessments or payments in lieu of  
 23 assessments, as determined by the rules and regulations of the fund.

24           (B) The board shall provide by regulation for a grace  
 25 period for curing a default in the payment of assessments or other payments  
 26 prior to formal dismissal and may impose a late fee not to exceed five  
 27 dollars (\$5.00) per occupied bed per event of default.

28           (C) Upon dismissal of a facility from the fund, wrongful  
 29 acts occurring during the facility's prior period or periods of participation  
 30 shall be covered.

31           (4)(A) A participating facility shall be dismissed from the fund  
 32 and shall not have any of the privileges or benefits of the fund upon a  
 33 determination by the board or a court that the facility provides a  
 34 substandard quality of care.

35           (B) Substandard quality of care is:

36           (i) Any deficiency in 42 CFR 483.13, Resident

1 Behavior and Facility Practices, 42 CFR 483.15, Quality of Life, or 42 CFR  
2 483.25, Quality of Care, that:

3 (a) Constitutes immediate jeopardy to resident  
4 health or safety;

5 (b) A pattern of or widespread actual harm  
6 that is not immediate jeopardy; or

7 (c) A widespread potential for more than  
8 minimal harm that is not immediate jeopardy, with no actual harm; or

9 (ii) A violation of any criminal statute while providing  
10 care to a resident.

11  
12 20-10-1905. Election by participating facility – Initial assessments  
13 and payments.

14 (a) A participating facility may elect:

15 (1) To carry a higher deductible, or to retain a higher limit of  
16 its risks, by providing evidence satisfactory to the board that it is  
17 qualified to fund its risks of loss and that the facility or its affiliate  
18 maintains segregated accounts to fund the deductible and self insured  
19 retention losses;

20 (2) To purchase commercial insurance coverage by providing proof  
21 of the coverage to the board; or

22 (3) To accept the insurance coverage provided by the fund and to  
23 pay monthly assessments as provided in this subchapter.

24 (b) A participating facility that elects to self insure or to purchase  
25 commercial insurance:

26 (1) Shall maintain coverage of not less than two hundred fifty  
27 thousand dollars (\$250,000) per claim and an annual aggregate limit of  
28 coverage of not less than five hundred thousand dollars (\$500,000);

29 (2) Shall pay an administrative fee to the fund in lieu of  
30 monthly assessments, as provided in § 20-10-1905(c); and

31 (3)(A) Shall participate in the fund upon equal terms with other  
32 participating facilities.

33 (B) However, the fund shall not pay claims, judgments, or  
34 arbitral awards on behalf of the facility, unless, and only to the extent  
35 that, the facility acquires coverage from the fund.

36 (c)(1) Assessments and payments in lieu of assessments shall be paid

1 beginning January, 2004, based upon the number of occupied beds as of the  
2 first business day of the month.

3 (2) The initial amount of the aggregate annual assessment,  
4 payable monthly, shall be one thousand dollars (\$1,000) per occupied bed and  
5 the initial amount of the annual administrative fee in lieu of assessments  
6 shall be two hundred dollars (\$200) per occupied bed.

7  
8 20-10-1906. Initial limits of coverage and deductible.

9 With respect to participating facilities that elect to accept the  
10 insurance coverage provided by the Patient’s Recovery Fund:

11 (1) The initial amount of the per claim limit of coverage shall  
12 be two hundred fifty thousand dollars (\$250,000);

13 (2) The initial amount of the annual aggregate limit of coverage  
14 per participating facility shall be five hundred thousand dollars (\$500,000);  
15 and

16 (3) The initial amount of the deductible shall be ten thousand  
17 dollars (\$10,000) per claim.

18  
19 20-10-1907. Patient’s Recovery Fund Board – Powers and duties.

20 (a)(1)(A) The Patient’s Recovery Fund Board shall have five (5)  
21 members and shall consist of a physician, a registered nurse, a certified  
22 public accountant, and an attorney, all licensed in this state, and a private  
23 citizen.

24 (B) The initial board shall be appointed on or before  
25 August 1, 2003, from a list of ten (10) names submitted by the Arkansas  
26 Health Care Association, or its successor, on or before July 1, 2003. The  
27 ten (10) nominees shall consist of two (2) physicians, two (2) registered  
28 nurses, two (2) certified public accountants, two (2) attorneys, and two (2)  
29 private citizens.

30 (2)(A) The Governor shall appoint the physician director, who  
31 shall be the chairperson of the board, and the nurse director.

32 (B) The Speaker House of Representatives shall appoint the  
33 certified public accountant director, who shall be the vice-chairperson of  
34 the board.

35 (C) The Attorney General shall appoint the attorney  
36 director, who shall be the secretary of the board.

1                   (D) The President Pro Tempore of the Senate shall appoint  
2 the private citizen director.

3                   (3)(A) The initial terms shall be staggered so that the  
4 chairperson and the private citizen director shall serve for three (3) years,  
5 the vice-chairperson and the nurse director shall service for two (2) years,  
6 and the secretary shall serve for one (1) year.

7                   (B) Subsequent terms shall be three (3) years.

8                   (C) Directors shall be eligible for reappointment.

9                   (b)(1) A director may be removed for cause by the Governor upon ten  
10 (10) days' written notice to the director.

11                   (2)(A) A director whose term expires, or who resigns, is  
12 removed, or becomes incapacitated, shall be replaced within forty-five (45)  
13 days after the vacancy or expiration of the term from a list of two (2)  
14 nominees of the same profession or standing, furnished by the Arkansas Health  
15 Care Association to the official responsible for the appointment of the  
16 position.

17                   (B) If a successor is not appointed within the forty-five  
18 (45) day period, the remaining directors shall select an interim director of  
19 the same profession or standing who shall serve for the new term or the  
20 unexpired portion of the term, as the case may be.

21                   (3) A directors whose term expires shall continue to serve until  
22 his or her successor is appointed.

23                   (c) The board shall supervise the management and activities of the  
24 Patient's Recovery Fund.

25                   (d) Members of the board shall not be entitled to compensation for  
26 their services but may receive expense reimbursement in accordance with § 25-  
27 16-902 and a stipend pursuant to § 25-16-905.

28                   (e) Directors shall be immune from suit while acting in their official  
29 capacities, except for intentional wrongful acts or violation of fiduciary  
30 duty.

31                   (f)(1) The board shall have the power and discretion, after notice to  
32 the affected participating facilities and a hearing, and based upon accepted  
33 risk management practices, to determine the amount of:

34                   (A) The aggregate annual assessment per occupied bed;

35                   (B) The annual administrative fee in lieu of monthly  
36 assessments;

1                   (C) The per claim limit of coverage;

2                   (D) The annual aggregate limit of coverage per  
 3 participating facility; and

4                   (E) The per claim deductible.

5                   (2) Notice of a change in the foregoing amounts, or any of them,  
 6 shall be given to the affected participating facilities not less than sixty  
 7 (60) days prior to the effective date of the change.

8                   (g) The board shall determine terms, conditions, and charges for  
 9 providing tail coverage to participating facilities and shall have the power  
 10 and discretion to offer supplemental coverage to participating facilities  
 11 upon terms approved by the board. However, supplemental coverage shall be  
 12 not less than one hundred thousand dollars (\$100,000) per claim.

13                   (h) The board shall have the power to:

14                   (1) Enter into contracts;

15                   (2) Sue and be sued, in its own name;

16                   (3) Borrow public or private funds in such amounts and upon such  
 17 terms as may be negotiated with a creditor or creditors, subject to otherwise  
 18 applicable laws; and

19                   (4)(A) Assess an annual surcharge upon the assessments of a  
 20 participating facility, after notice and a hearing, which demonstrates a  
 21 disproportionately high history of payable claims, judgments or arbitral  
 22 awards.

23                   (B) The surcharge shall not exceed two hundred dollars  
 24 (\$200) per occupied bed.

25                   (i) The board shall promulgate rules and regulations to govern:

26                   (1) The terms and conditions of participation in the Patient's  
 27 Recovery Fund;

28                   (2) The administration of the fund, including the collection,  
 29 management and disposition of fund assets; and

30                   (3) The procedures for resolution of claims before the  
 31 administrator of the Patient's Recovery Fund and the administrative law  
 32 judges.

33

34                   20-10-1908. Administrator – Powers and duties.

35                   (a) The board shall employ an administrator of the Patient's Recovery  
 36 Fund who is a graduate of an accredited four-year college or university with



1 at least ten (10) years experience in the field of risk management or  
 2 business administration. All qualifications, terms and conditions of  
 3 employment, including compensation, which shall be paid from the Patient's  
 4 Recovery Fund, shall be at the sole discretion of the board. The board shall  
 5 employ the administrator in sufficient time for the administrator to assume  
 6 the duties of office on or before January 1, 2004.

7 (b)(1) The administrator shall conduct and supervise the business  
 8 affairs of the fund, pursuant to a written business plan approved by the  
 9 board, which may include a plan for voluntary mediation of claims.

10 (2) The administrator shall employ appropriate professional  
 11 personnel to assist with the business affairs of the fund, which shall  
 12 include a nationally recognized risk management consultant.

13 (3) With board approval, the administrator may purchase or lease  
 14 appropriate office space, equipment and other necessary assets for the use of  
 15 the fund, and may expend fund moneys for all other necessary and appropriate  
 16 purposes, subject to the rules and regulations of the fund.

17 (c) The administrator shall exercise best efforts to locate and  
 18 approve a list of commercial insurance carriers to offer supplemental  
 19 insurance coverage in aggregate amounts of up to two million five hundred  
 20 thousand dollars (\$2,500,000) at negotiable rates.

21  
 22 20-10-1909. Patient's Recovery Fund Advisory Board.

23 (a)(1) The Patient's Recovery Fund Advisory Board shall have five (5)  
 24 members and shall consist of the State Insurance Commissioner, the Attorney  
 25 General, the Director of the Department of Human Services, one (1) director  
 26 appointed by the President Pro Tempore of the Senate, and one (1) director  
 27 appointed by the President Pro Tempore of the House of Representatives.

28 (2) The directors appointed by the presiding officers of the  
 29 Arkansas Senate and the Arkansas House of Representatives shall serve for  
 30 terms of two (2) years and shall be eligible for reappointment.

31 (b)(1) The advisory board shall advise the board and the administrator  
 32 of the Patient's Recovery Fund on the proper execution of the Patient's  
 33 Recovery Fund and the business plan approved by the board.

34 (2)(A) The advisory board shall meet at least semiannually to  
 35 review and examine financial statements and progress reports, prepared by the  
 36 administrator and previously reviewed by the board, and to advise the

1 administrator and the board of the sufficiency of the reports.

2 (B) The financial statements shall include a balance sheet  
3 and income statement, prepared according to generally accepted accounting  
4 principles.

5 (C) The financial statements and progress reports shall be  
6 subject to public inspection, but all other business activities and records  
7 of the board and the administrator shall be confidential and shall be exempt  
8 from the Freedom of Information Act.

9 (3) The board shall issue an annual financial report prepared  
10 and certified by a certified public accountant on the first business day of  
11 July of each year, which shall be subject to inspection.

12  
13 20-10-1910. Accumulation of fund assets – Disposition.

14 (a)(1) All moneys held by the Patient’s Recovery Fund shall be  
15 deposited in banks located within the state or shall be invested in  
16 obligations which are permitted investments for the board of trustees of any  
17 public employee retirement system of any political subdivision of the state.

18 (2) An accurate inventory of all personal property of the fund  
19 shall be maintained at all times.

20 (b) The fund shall be used and expended only for:

21 (1) The payment and satisfaction of claims, or judgments  
22 pursuant to this subchapter;

23 (2) The payment of reasonable fees and expenses incurred by  
24 counsel employed by the fund; and

25 (3) The payment of the costs of operation of the fund, including  
26 but not limited to compensation, fees and ordinary business expenses.

27  
28 20-10-1911. Appointment of administrative law judges.

29 (a)(1) The Administrative Office of the Courts shall appoint not less  
30 than one (1) administrative law judge, who shall serve for a term of three  
31 (3) years, on a full-time or part-time basis.

32 (2) An administrative law judge shall be eligible for  
33 reappointment.

34 (3) Administrative law judges shall be licensed attorneys and  
35 shall be otherwise qualified as determined by the board.

36 (b) The compensation and expenses of administrative law judges shall

1 be paid by the Patient's Recovery Fund.

2  
3 20-10-1912. Participating facilities – Employment of counsel.

4 (a) Upon request by a participating facility, other than a  
5 participating facility that maintained commercial insurance coverage for the  
6 relevant period, the Patient's Recovery Fund shall employ counsel to defend  
7 any action for injury against the facility to recover damages on account of  
8 an injury to a patient.

9 (b)(1) Fees and expenses incurred by counsel employed by the fund  
10 shall be paid by the fund;

11 (2) However, the administrator of the Patient's Recovery Fund  
12 has the authority to determine the reasonableness of the fees and expenses,  
13 subject to the rules and regulations of the fund.

14  
15 20-10-1913. Stay – Exhaustion of administrative remedies.

16 (a)(1) The plaintiff or a participating facility that maintained  
17 coverage from the Patient's Recovery Fund for the relevant period may, within  
18 the time for answering a complaint, move the court to stay the proceedings  
19 and direct the parties to exhaust administrative remedies.

20 (2) Upon the filing of the motion, the circuit court shall stay  
21 all further proceedings in the action and direct that the parties shall  
22 exhaust administrative remedies.

23 (b) Failure of either party to move for a stay and exhaustion shall be  
24 deemed a waiver of administrative remedies described in this subchapter.

25 (c) Upon notice that the claim has been approved or settled by the  
26 administrator of the Patient's Recovery Fund or adjudicated to a final  
27 administrative order and that all rights to seek further administrative  
28 relief, or to appeal from a final administrative order have expired, the  
29 circuit court shall enter an order providing that all requests for relief  
30 with respect to the action for injury have been satisfied and that the action  
31 is dismissed with prejudice.

32  
33 20-10-1914. Claims – Authority of administrator.

34 (a)(1)(A) Upon entry of a stay in circuit court and direction to  
35 exhaust administrative remedies, the claimant shall file a claim against a  
36 participating facility that maintained coverage from the Patient's Recovery

1 Fund for the relevant period with the administrator of the Patient's Recovery  
 2 Fund on a form created by the administrator or by filing his or her original  
 3 complaint with the administrator.

4 (B) The claimant shall serve copies of the claim upon the  
 5 parties.

6 (2) Claims shall be for compensatory damages only and shall not  
 7 include punitive damages, costs or attorney's fees.

8 (3)(A) Within twenty (20) days after the filing of the claim,  
 9 the participating facility shall file its response to the claim on a form  
 10 created by the administrator or by answering the complaint.

11 (B) When service of the claim is effected by mail or by  
 12 electronic means, three (3) days shall be added to the time for filing a  
 13 response.

14 (4) The administrator may provide for the submission of copies  
 15 of other pleadings from the action for injury and the submission of  
 16 affidavits or other exhibits in support of a claim or defense.

17 (b)(1)(A) The administrative process shall conclude not later than  
 18 eight (8) months after the filing of the claim with the administrator.

19 (B) However the parties may agree in a writing filed with  
 20 the administrator for an extension of time not to exceed four (4) additional  
 21 months.

22 (2) Upon the expiration of the term as provided in this section  
 23 or as agreed by the parties without a settlement or final order, the circuit  
 24 court may extend the administrative process for a reasonable time or may  
 25 direct that further proceedings be had in the circuit court.

26 (c)(1) The administrator has the sole authority to approve, modify, or  
 27 settle any claim or demand for arbitration against a participating facility  
 28 to the extent of the applicable limit of coverage provided by the fund,  
 29 including the deductible.

30 (2) The administrator does not have authority to approve,  
 31 modify, or settle any claim against a participating facility, or to consent  
 32 to any award in an amount greater than the applicable limit of coverage  
 33 provided by the fund, including the deductible.

34  
 35 20-10-1915. Disposition of claims – Adjudication.

36 (a)(1) The administrator of the Patient's Recovery Fund may

1 investigate the claim as the administrator considers necessary, and upon  
2 application of any party, or on the administrator's own motion, shall conduct  
3 a preliminary conference.

4 (2) The administrator may enter a written order disposing of the  
5 claim without adjudication.

6 (b)(1)(A) If the administrator determines that a claim should be  
7 adjudicated, or if the claimant or participating facility is dissatisfied  
8 with the administrator's disposition of the claim without adjudication, the  
9 claim shall be referred to an administrative law judge, who shall  
10 expeditiously conduct proceedings to determine the validity of the claim.

11 (B) The fund shall be made a party to the proceeding.

12 (2) A request for adjudication by the claimant or participating  
13 facility shall be filed within twenty (20) days after the filing of the  
14 administrator's order disposing of the claim without adjudication.

15 (c)(1) The administrative law judge shall conduct an evidentiary  
16 hearing on the claim and shall issue a written order within thirty (30) days  
17 after the hearing.

18 (2) The administrative law judge may:

19 (A) Hear and determine all claims;

20 (B) Enter orders for the proper conduct of proceedings;

21 (C) Issue subpoenas, administer oaths and take testimony,  
22 by deposition or otherwise;

23 (D) Make and enter findings of fact and rulings of law;  
24 and

25 (E) Make or modify awards in such amounts as may be  
26 supported by the law and the evidence.

27 (d)(1) An order of an administrative law judge granting, modifying, or  
28 denying a claim shall be supported by findings of fact and conclusions of law  
29 and shall be filed with the administrator.

30 (2) Any claim for relief or request for a ruling by the parties  
31 that is not disposed of by an express finding of fact or conclusion of law in  
32 the order shall be deemed denied.

33 (e)(1) In no event shall the disposition of any claim by the  
34 administrator or the administrative law judge shall become final in more than  
35 one hundred eighty (180) days from the date of entry of the circuit court  
36 stay.

1           (2) Any claim not disposed of within the one hundred eighty-day  
 2 period shall be returned to the circuit court and the stay of proceedings  
 3 shall be lifted.

4  
 5           20-10-1916. Appeal – Demand for trial by jury.

6           (a)(1) Any party may appeal the order of the administrative law judge  
 7 to the circuit court where the action for injury is stayed by filing with the  
 8 administrator of the Patient’s Recovery Fund, within twenty (20) days from  
 9 the filing of the order, a notice of appeal.

10           (2) A party shall have twenty (20) days from the filing of a  
 11 notice of appeal in which to file a notice of cross appeal.

12           (3) A notice of appeal or cross appeal shall designate any  
 13 necessary transcript of the proceedings, with the cost to be paid by the  
 14 parties ordering transcripts.

15           (4) A notice of appeal or cross appeal shall be served upon all  
 16 parties to the claim by certified mail.

17           (5) The administrator shall send to the circuit court all  
 18 pertinent documents and papers, together with the designated transcript and  
 19 the orders of the administrative law judge, which shall become the record on  
 20 appeal.

21           (b) The circuit court shall review the findings and orders of the  
 22 administrative law judge de novo on the record, in which case the decision of  
 23 the circuit court shall be final.

24           (c)(1) Alternatively, notwithstanding subsections (a) and (b) of this  
 25 section, any party to an appeal may demand a trial de novo to the circuit  
 26 court or a trial by jury of any issue triable by right to a jury by noting  
 27 its demand in the notice of appeal or notice of cross appeal filed with the  
 28 administrator, or by filing with the circuit court, within twenty (20) days  
 29 from the filing of the administrative record transmitted by the  
 30 administrator, a notice of demand therefor.

31           (2) If trial de novo or trial by jury is demanded in a notice of  
 32 appeal or a notice of cross appeal, the administrator shall forgo preparation  
 33 and transmission of the record and shall transmit only the notice to the  
 34 circuit court which shall serve to preserve the matter for trial.

35           (d)(1) The failure of a party to file a demand for a trial de novo to  
 36 the circuit court or for a jury trial within the time provided in this

1 subchapter constitutes a waiver by the party of the right to a trial de novo  
 2 or a jury trial.

3 (2) A demand for trial by jury may not be withdrawn without the  
 4 consent of the parties.

5 (e) If trial de novo or trial by jury is demanded, no party shall be  
 6 limited to or by evidence presented, issues raised, arguments made, or in any  
 7 other way limited by that which occurred at the administrative level.

8  
 9 20-10-1917. Payment of claims.

10 (a) With respect to a participating facility which maintained coverage  
 11 from the Patient's Recovery Fund for the relevant period, a claim that has  
 12 been approved or settled by the administrator, or a claim that has been  
 13 adjudicated to a final administrative order or a final judgment of a circuit  
 14 court shall be paid as follows:

15 (1) The participating facility shall pay the deductible and the  
 16 self-insured portion of the award, if any, that were in effect when the claim  
 17 or action for injury accrued;

18 (2) If commercial insurance coverage is inapplicable, the fund  
 19 shall pay the balance of the award to the claimant, subject to the per claim  
 20 limit of coverage and the annual aggregate limit of coverage per  
 21 participating facility in effect when the claim or action for injury accrued,  
 22 excluding fees and expenses; and

23 (3) The fund shall not pay punitive damages or costs and  
 24 attorney's fees incurred by the claimant.

25 (b)(1)(A) Claims or judgments that become final and unappealable  
 26 during the first six (6) months of the calendar year shall be paid by the  
 27 fund on the following August 15.

28 (B) Claims or judgments that become final and unappealable  
 29 during the last six (6) months of the calendar year shall be paid by the fund  
 30 on the following February 15.

31 (2)(A) If the balance in the fund is insufficient to pay in full  
 32 all claims, or judgments that have become final and unappealable during a  
 33 six-month period, the award paid to each claimant shall be prorated.

34 (B) Any amount left unpaid as a result of the proration  
 35 shall be paid before the payment of claims, judgments, or arbitral awards  
 36 which become final and unappealable during any subsequent six-month period.

1           (c)(1) Prejudgment interest shall not be payable on any claim or  
2 judgment.

3           (2)(A) Simple interest at the rate of six percent (6%) per annum  
4 shall be paid on the unpaid balance of a claim, judgment, or arbitral award  
5 beginning August 15 or February 15, as the case may be.

6           (B) However, in any action for injury that is tried before  
7 a jury, postjudgment interest shall be payable as provided by law.

8  
9           SECTION 2. Arkansas Code § 25-16-905, which lists state boards and  
10 commissions that are authorized to receive a stipend of one hundred ten  
11 dollars (\$110), is amended to add an additional subdivision to read as  
12 follows:

13           (7) Patient's Recovery Fund Board.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36