

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

As Engrossed: H2/12/03

A Bill

HOUSE BILL 1424

5 By: Representative Bond
6
7

For An Act To Be Entitled

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

Subtitle

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

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

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

25 20-10-1901. Title.

26 This subchapter shall be known and may be referred to as the "Nursing
27 Home Liability Reform Act".
28

29 20-10-1902. Purpose and intent.

30 (a) The purpose and intent of this subchapter is to ensure that persons
31 receiving long-term care in skilled nursing facilities licensed to operate in
32 this state have a fair opportunity to have their complaints heard and, when
33 appropriate, receive compensation for their damages.

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. This subchapter provides fair administrative
2 and court procedures for the resolution of disputes between facilities and
3 their patients.

4
5 20-10-1903. Definitions.

6 As used in this subchapter:

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

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

12 (3) "Board" means the Patient's Recovery Fund Board created by this
13 subchapter;

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

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

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

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

31 (7) "Occupied beds" means:

32 (A) Beds occupied by patients at midnight;

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

36 (C) Those beds placed on hold during a period of time not to

1 exceed fourteen (14) consecutive calendar days during which a patient is on
2 therapeutic home leave;

3 (8)(A) "Participating facility" means a skilled nursing facility which
4 participates in and contributes to the Patient's Recovery Fund, including the
5 owners, principals, officers, employees, agents, medical director, and
6 affiliates of the skilled nursing facility.

7 (B) "Participating facility" does not include any unaffiliated
8 person or entity providing management services to the facility;

9 (9) "Patient" means a person receiving care or treatment from a
10 skilled nursing facility;

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

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

15
16 20-10-1904. Patient's Recovery Fund – Participation.

17 (a)(1) The Patient's Recovery Fund is created for the payment of valid
18 claims and judgments against participating facilities.

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

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

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

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

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

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

36 (2) The fund shall offer tail coverage to participating

1 facilities upon terms approved by the board.

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

6 (2)(A) A participating facility shall be dismissed as a
7 participant in the fund for nonpayment of assessments or payments in lieu of
8 assessments, as determined by the rules and regulations of the fund.

9 (B) The board shall provide by regulation for a grace
10 period for curing a default in the payment of assessments or other payments
11 prior to formal dismissal and may impose a late fee not to exceed twenty
12 dollars (\$20.00) per occupied bed per event of default.

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

16
17 20-10-1905. Election by participating facility – Initial assessments
18 and payments.

19 (a) A participating facility may elect:

20 (1) To carry a higher deductible, or to retain a higher limit of
21 its risks, by providing evidence satisfactory to the board that it is
22 qualified to fund its risks of loss and that the facility or its affiliate
23 maintains segregated accounts to fund the deductible and self insured
24 retention losses;

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

27 (3) To accept the insurance coverage provided by the Patient's
28 Recovery Fund and to pay monthly assessments as provided in this subchapter.

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

31 (1) Shall maintain coverage of not less than three hundred fifty
32 thousand dollars (\$350,000) per claim and an annual aggregate limit of
33 coverage of not less than seven hundred thousand dollars (\$700,000);

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

36 (3)(A) Shall participate in the fund upon equal terms with other

1 participating facilities.

2 (B) However, the fund shall not pay claims or judgments on
3 behalf of the facility, unless, and only to the extent that, the facility
4 acquires coverage from the fund.

5 (c)(1) Assessments and payments in lieu of assessments shall be
6 beginning January, 2004, based upon the number of occupied beds as of the
7 first business day of the month.

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

12
13 20-10-1906. Initial limits of coverage and deductible.

14 With respect to participating facilities which elect to accept the
15 insurance coverage provided by the Patient's Recovery Fund:

16 (1) The initial amount of the per claim limit of coverage shall
17 be three hundred fifty thousand dollars (\$350,000);

18 (2) The initial amount of the annual aggregate limit of coverage
19 per participating facility shall be seven hundred thousand dollars
20 (\$700,000); and

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

23
24 20-10-1907. Patient's Recovery Fund Board – Powers and duties.

25 (a)(1)(A) The Patient's Recovery Fund Board shall have five (5)
26 members and shall consist of a physician, a registered nurse, a certified
27 public accountant, and an attorney, all licensed in this state, and a private
28 citizen of this state.

29 (B) The initial board shall be appointed on or before
30 August 1, 2003. The Arkansas Trial Lawyers Association shall submit two (2)
31 nominees for the attorney position. The Arkansas Health Care Association
32 shall submit two (2) nominees for the physician position and two (2) for the
33 nurses position. The American Association of Retired Persons shall submit
34 two (2) nominees for the private citizen position.

35 (2)(A) The Governor shall appoint the certified public
36 accountant.

1 (B) The Speaker of the House of Representatives shall
2 appoint the physician member of the board and the private citizen.

3 (C) The Attorney General shall appoint the attorney member
4 of the board.

5 (D) The President Pro Tempore of the Senate shall appoint
6 the nurse member of the board.

7 (3)(A) The initial terms shall be staggered so that the
8 certified public accountant and the private citizen members shall serve for
9 three (3) years, the attorney member and the nurse member shall serve for two
10 (2) years, and the physician shall serve for one (1) year.

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

12 (C) Directors shall be eligible for reappointment for up
13 to three (3) terms.

14 (4) The certified public accountant member shall be the chair of
15 the board and the attorney member shall serve as the secretary.

16 (b)(1)(A) A board member whose term expires, or who resigns, or
17 becomes incapacitated, shall be replaced within forty-five (45) days after
18 the vacancy or expiration of the term from a list of two (2) nominees of the
19 same profession or standing, just as laid out in subsection (a) furnished to
20 the official responsible for the appointment of the position, except that the
21 Governor shall simply choose his or her appointee just as referenced in
22 subsection (a) of this section.

23 (B) If a successor is not appointed within the forty-five
24 (45) day period, the remaining board members shall select an interim board
25 member of the same profession or standing who shall serve for the new term or
26 the unexpired portion of the term, as the case may be.

27 (2) A director whose term expires shall continue to serve until
28 his or her successor is appointed.

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

31 (d) Each board member shall be compensated from the fund at the rate
32 of one hundred fifty dollars (\$150) per hour devoted to official board
33 activities, not to exceed one thousand five hundred dollars (\$1,500) each
34 month, plus out-of-pocket expenses incurred within the state, documented by
35 appropriate receipts.

36 (e) Board members shall be immune from suit while acting in their

1 official capacities, except for intentional wrongful acts or violation of
2 fiduciary duty.

3 (f)(1) The board shall have the power and discretion, after notice to
4 the affected participating facilities and a hearing, to determine the amount
5 of:

6 (A) The aggregate annual assessment per occupied bed and
7 the annual administrative fee in lieu of assessments;

8 (B) The per claim limit of coverage so long as it is not
9 lowered below two hundred and fifty thousand dollar (\$250,000);

10 (C) The annual aggregate limit of coverage per participating facility
11 so long as it is not lowered below five hundred thousand dollar (\$500,000);

12 (D) The amount of the per claim deductible.

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

16 (g)(1) The board shall determine terms, conditions and charges for
17 providing tail coverage to participating facilities and shall have the power
18 and discretion to offer supplemental coverage to participating facilities
19 upon terms approved by the board.

20 (2) However, supplemental coverage shall be not less than two
21 hundred thousand dollars (\$200,000) per claim.

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

23 (1) Enter into contracts;

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

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

28 (4)(A) Assess an annual surcharge upon the assessments of a
29 participating facility, after notice and a hearing, which demonstrates a
30 disproportionately high history of payable claims or judgments.

31 (B) The surcharge shall not exceed five hundred dollars
32 (\$500) per occupied bed.

33 (i)(1) The board shall promulgate rules and regulations to govern:

34 (A) The terms and conditions of participation in the fund;

35 (B) The administration of the fund, including the
36 collection, management and disposition of fund assets; and

1 (C) The procedures for resolution of claims before the
2 administrator of the Patient's Recovery Fund and the administrative law
3 judges.

4 (2) The board shall ensure that claimants and participating
5 facilities have the ability to conduct discovery, pursuant to the Arkansas
6 Rules of Civil Procedure after any appeal from the administrator's initial
7 decision or after the administrator determines the claim should be
8 adjudicated.

9
10 20-10-1907. Administrator – Powers and duties.

11 (a) The board shall employ an administrator of the Patient's Recovery
12 Fund who is a graduate of an accredited four-year college or university with
13 at least ten (10) years experience in the field of risk management or
14 business administration. All qualifications, terms and conditions of
15 employment, including compensation, which shall be paid from the fund, shall
16 be at the sole discretion of the board. The board shall employ the
17 administrator in sufficient time for the administrator to assume the duties
18 of office on or before January 1, 2004.

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

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

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

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

33
34 20-10-1909. Patient's Recovery Fund Advisory Board.

35 (a)(1) The Patient's Recovery Fund Advisory Board shall have five (5)
36 members and shall consist of the State Insurance Commissioner, the Attorney

1 General, the Director of the Department of Human Services, one (1) director
2 appointed by the presiding officer of the Arkansas Senate, and one (1)
3 director appointed by the presiding officer of the Arkansas House of
4 Representatives.

5 (2) The directors appointed by the President Pro Tempore of the
6 Senate and the Speaker of the House of Representatives shall serve for terms
7 of two (2) years and shall be eligible for reappointment for up to three (3)
8 terms.

9 (b)(1) The advisory board shall advise the board and the administrator
10 of the Patient's Recovery Fund on the proper execution of the fund and the
11 business plan approved by the board.

12 (2)(A) The advisory board shall meet not less often than
13 semiannually to review and examine financial statements and progress reports,
14 prepared by the administrator and previously reviewed by the board, and to
15 advise the administrator and the board of the sufficiency of the reports.

16 (B) The financial statements shall include a balance sheet
17 and income statement, prepared according to generally accepted accounting
18 principles.

19 (C) The financial statements and progress reports shall be
20 subject to public inspection.

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

24
25 20-10-1910. Accumulation of fund assets – Disposition.

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

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

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

33 (1) The payment and satisfaction of claims or judgments pursuant
34 to this subchapter;

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

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

3
4 20-10-1911. Appointment of administrative law judges.

5 (a)(1) The Administrative Office of the Courts shall appoint not less
6 than one (1) administrative law judge, who shall serve for a term of three
7 (3) years, on a full-time or part-time basis, and shall be eligible for
8 reappointment.

9 (2) Administrative law judges shall be licensed attorneys and
10 shall have at least six (6) years of experience as a practicing attorney.

11 (b) The compensation and expenses of administrative law judges shall
12 be paid by the Patient's Recovery Fund.

13 (c) Only the Administrative Office of the Courts shall have the power
14 to appoint, reappoint, or fire the administrative law judge.

15
16 20-10-1912. Exclusive remedy – Venue.

17 Notwithstanding any other provision of law:

18 (1) This subchapter provides the exclusive remedy for any action
19 for injury brought against any skilled nursing facility whatsoever, including
20 its medical director, its owners, principals, officers, employees, agents and
21 affiliates, or any person or entity providing management services to the
22 facility.

23 (2) Any action for injury shall be commenced in the circuit
24 court of the county in which the injury occurred, and not otherwise.

25 (3) Any claim filed against a participating facility prior to
26 the filing of an action for injury in circuit court shall be dismissed by the
27 administrator of the Patient's Recovery Fund without prejudice.

28
29 20-10-1913. Participating facilities – Employment of counsel.

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

35 (b)(1) Fees and expenses incurred by counsel employed by the fund
36 shall be paid by the fund.

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

4
5 20-10-1914. Claims Procedure and judgments.

6 (a)(1)(A) A claimant shall begin the claims process by commencing a
7 civil lawsuit against a participating facility in the county where the
8 majority of the conduct giving rise to the claim occurred.

9 (B) A claimant shall serve the participating facility with
10 summons and complaint and the participating facility shall file an answer or
11 other appropriate pleading pursuant to the Arkansas Rules of Civil Procedure.

12 (C) If a timely response is filed, an automatic agreed
13 stay shall be put into effect on the lawsuit, and the claimant shall begin
14 the administrative process within thirty (30) days of the filing of the
15 participating facility's response.

16 (2) A participating facility shall be able to put the Patient's
17 Recovery Fund on notice of the filing of the civil lawsuit and the fund shall
18 retain counsel on behalf of the participating facility at the expense of the
19 fund.

20 (3) A claim against a participating facility which accrues
21 during a period of participation of the facility shall be submitted to the
22 administrator of the Patient's Recovery Fund by the claimant on forms created
23 by the administrator and made readily available to claimant.

24 (4) Claims shall be for compensatory damages and punitive
25 damages.

26 (5)(A) The administrator shall provide actual notice of the
27 claim by mailing a copy of the claim by certified mail to the participating
28 facility.

29 (B) Within thirty (30) days from the date of receipt of
30 the notice, the participating facility shall mail copies of its response to
31 the claim by certified mail to the claimant and the administrator.

32 (C) Failure of a participating facility to respond within
33 the thirty-day deadline shall subject the participating facility to default
34 with the administrator having the power to approve or settle the claim
35 without any further notice to the participating facility.

36 (b)(1) After the participating facility has responded to the claim,

1 the administrator has the sole authority to approve or to settle any claim
2 against a participating facility to the extent of the applicable limit of
3 coverage provided by the fund, including the deductible.

4 (2) The administrator shall take no longer than one hundred
5 twenty (120) days from the date the participating facility's response is due
6 to make a ruling on a claim.

7 (3) The administrator may make such investigation of the claim
8 as the administrator considers necessary, and upon application of any party,
9 or at the administrator's own discretion, shall conduct a preliminary
10 conference.

11 (4) The administrator may provide for submission of copies of
12 pleadings from the circuit court action, submission of medical records, and
13 the submission of affidavits or other exhibits in support of a claim or
14 defense.

15
16 20-10-1915. Adjudication of claims.

17 (a)(1) If the administrator of the Patient's Recovery Fund determines
18 that a claim should be adjudicated, or if the claimant or participating
19 facility is dissatisfied with the administrator's disposition of the claim
20 and notifies the administrator of intent to appeal within twenty (20) days of
21 the administrator's decision, the claim shall be referred randomly to an
22 administrative law judge, who shall conduct proceedings to determine the
23 validity of the claim within one hundred twenty (120) days of the
24 administrative law judge's receipt of the claim.

25 (2) The Patient's Recovery Fund shall be made a party to any of
26 the proceedings.

27 (3) The administrative law judge shall conduct an evidentiary
28 hearing on the claim and shall issue a written order within thirty (30) days
29 after the hearing. The administrative law judge has the authority:

30 (A) To hear and determine all claims;

31 (B) To enter orders for the proper conduct of proceedings;

32 (C) To issue subpoenas, administer oaths and take
33 testimony, by deposition or otherwise;

34 (D) To make and enter findings of fact and rulings of law;
35 and

36 (E) To make or modify awards in such amounts as may be

1 supported by the law and the evidence.

2 (4) An order of an administrative law judge granting, modifying
3 or denying a claim shall be supported by findings of fact and conclusions of
4 law and shall be filed with the administrator. The findings of fact and
5 conclusions of law of the administrative law judge shall not be admissible in
6 any circuit court action.

7 (5) The administrator shall deliver the order to the parties.

8 (b)(1) Within thirty (30) days of receipt of the order of the
9 administrative law judge, any party may proceed with the previously filed
10 lawsuit by notifying all parties via certified mail of their intent to pursue
11 the previously filed lawsuit in circuit court.

12 (2) The previously lodged stay shall no longer have any force or
13 effect and the lawsuit shall proceed pursuant to the Arkansas Rules of Civil
14 Procedure.

15 (3) Upon notice that the claim has been approved or settled by
16 the administrator or adjudicated to a final administrative order and that all
17 rights to seek further administrative relief or to appeal to the circuit
18 court have expired, the circuit court shall enter an order providing that all
19 requests for relief with respect to the action for injury have been satisfied
20 and that the action is dismissed with prejudice.

21
22 20-10-1916. Payment of claims.

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

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

31 (2) If commercial insurance coverage is inapplicable, the fund
32 shall pay the balance of the award to the claimant, subject to the per claim
33 limit of coverage and the annual aggregate limit of coverage per
34 participating facility in effect when the claim or action for injury,
35 exclusive of fees and expenses.

36 (b)(1)(A) Claims or judgments that become final and unappealable

1 during the first six (6) months of the calendar year shall be paid by the
2 fund no later than August 15.

3 (B) Claims, judgments or arbitral awards that become final
4 and unappealable during the last six (6) months of the calendar year shall be
5 paid by the fund no later than February 15.

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

9 (B) Any amount left unpaid as a result of the proration
10 shall be paid before the payment of claims or judgments which become final
11 and unappealable during any subsequent six-month period.

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

14 (2) Simple interest at the rate of six percent (6%) per annum
15 shall be paid on the unpaid balance of a claim or judgment from and after
16 August 15 or February 15, as the case may be; provided, that in any action
17 for injury that is tried before a jury, postjudgment interest shall be
18 payable as provided by law.

19
20 20-10-1917. Statute of limitations and pleadings.

21 (a) Current law concerning applicable statute of limitations shall
22 apply.

23 (b) The Arkansas Rules of Civil Procedure shall govern the form and
24 substance of any complaints or pleadings.

25
26 20-10-1918. Evidence - Burden of proof.

27 Evidentiary issues shall be governed by the Arkansas Rules of Evidence
28 and burden of proof issues are governed by case law and Arkansas Model Jury
29 Instructions.

30
31 20-10-1919. Punitive damages.

32 (a) This section shall govern punitive damage awards against all
33 participating facilities. No award of punitive damages against a skilled
34 nursing facility shall exceed the greater of four (4) times the award of
35 compensatory damages or the following:

36 (1) Twenty million dollars (\$20,000,000) for a defendant with a

1 net worth of more than one billion dollars (\$1,000,000,000);

2 (2) Fifteen million dollars (\$15,000,000) for a defendant with a
3 net worth of more than seven hundred fifty million dollars (\$750,000,000) but
4 not more than one billion dollars (\$1,000,000,000);

5 (3) Ten million dollars (\$10,000,000) for a defendant with a net
6 worth of more than five hundred million dollars (\$500,000,000) but not more
7 than seven hundred fifty million dollars (\$750,000,000);

8 (4) Seven million five hundred thousand dollars (\$7,500,000) for
9 a defendant with a net worth of more than one hundred million dollars
10 (\$100,000,000) but not more than five hundred million dollars (\$500,000,000);

11 (5) Five million dollars (\$5,000,000) for a defendant with a net
12 worth of more than fifty million dollars (\$50,000,000) but not more than one
13 hundred million dollars (\$100,000,000); or

14 (6) Four percent (4%) of the defendant's net worth for a
15 defendant with a net worth of fifty million dollars (\$50,000,000) or less.

16 (b) For the purposes of determining the defendant's net worth in
17 subsection (a) of this section, the amount of the net worth shall be
18 determined in accordance with generally accepted accounting principles.

19 (c) The limitation on the amount of punitive damages imposed by this
20 section shall not be disclosed to the trier of fact, but shall be applied by
21 the court to any punitive damages verdict.

22 (d) The limitation on the amount of punitive damages imposed by this
23 section shall not apply to actions brought for damages or an injury resulting
24 from an act or failure to act by a participating facility if the claimant or
25 plaintiff in a civil lawsuit proves that the participating facility or
26 defendant intentionally pursued a course of conduct for the purpose of
27 causing injury or damage.

28 (e)(1) Any award of punitive damages, if decided by a jury, shall be
29 by separate verdict form and shall be made by a unanimous vote of the jury;

30 (2) Any award of punitive damages made by the administrator or
31 administrative law judge shall be stated separate and apart from any award
32 for compensatory damages.

33
34 20-10-1920. Civil Reparations Trust Fund.

35 If a punitive award is received against a skilled nursing facility,
36 fifty percent (50%) of the punitive or exemplary damages awarded, after

1 payments of all applicable costs and fees, shall be ordered by the
 2 administrator of the Patient's Recovery Fund, administrative law judge or
 3 circuit court to be paid to the claimant, with the remainder of the award to
 4 be ordered paid into the Civil Reparations Trust Fund to be administered by
 5 the State Treasurer and to be allocated for payment of Medicaid expenditures,
 6 independent living opportunities for seniors, or in home health care as
 7 directed by the General Assembly.

8
 9 20-10-1921. Limitation on supersedeas.

10 In any appeal of a judgment of a circuit court against a skilled
 11 nursing facility, the amount of a supersedeas bond or other security approved
 12 by the court shall not exceed:

13 (1) Two million dollars (\$2,000,000) in the case of a skilled
 14 nursing facility which, together with its affiliates, had one hundred fifty
 15 (150) or fewer occupied beds on the date of the judgment;

16 (2) Three million dollars (\$3,000,000) in the case of a skilled
 17 nursing facility which, together with its affiliates, had more than one
 18 hundred fifty (150) but four hundred (400) or fewer occupied beds on the date
 19 of the judgment; or

20 (3) Five million dollars (\$5,000,000) in the case of a skilled
 21 nursing facility which, together with its affiliates, had more than four
 22 hundred (400) occupied beds on the date of the judgment.

23
 24 20-10-1922. Mediation, arbitration and alternative dispute resolution.

25 Notwithstanding any other provision of law, the parties to any claim
 26 may at anytime agree to enter into mediation, binding arbitration or other
 27 alternative dispute resolution.

28 20-10-1923. No provision of this subchapter shall apply to or alter
 29 existing law with respect to any claim, charge, action, or suit brought or
 30 prosecuted by the Attorney General.

31
 32 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11 is amended
 33 to add an additional section to read as follows:

34 19-5-1123. Civil Reparations Trust Fund

35 (a) There is created on the books of the Treasurer of State, Auditor
 36 of State, and Chief Fiscal Officer of the State a trust fund to be known as

1 the "Civil Reparations Trust Fund".

2 (b) The fund shall consist of those moneys collected and used for the
3 purposes provided under § 20-10-1922.

4 (c)(1) The moneys credited to the fund shall be held as trust funds in
5 interest-bearing accounts only.

6 (2) All interest earned shall be credited to the fund and shall
7 be used only for the purposes of the fund.

8
9 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
10 General Assembly of the State of Arkansas that adequate commercial insurance
11 coverage at affordable rates is not available for nursing homes in this
12 state; that lawsuits and claims which may become lawsuits threaten the
13 financial stability of nursing homes; that patients of nursing homes do not
14 have recourse to adequate sources of funds to redress legitimate claims for
15 personal injury; and that existing procedures are inadequate to protect the
16 interests of nursing homes and of those persons, primarily the elderly, who
17 are in need of long-term care. Therefore, an emergency is declared to exist
18 and this act being immediately necessary for the preservation of the public
19 peace, health, and safety shall become effective on:

20 (1) The date of its approval by the Governor;

21 (2) If the bill is neither approved nor vetoed by the Governor,
22 the expiration of the period of time during which the Governor may veto the
23 bill; or

24 (3) If the bill is vetoed by the Governor and the veto is
25 overridden, the date the last house overrides the veto.

26
27 */s/ Bond*
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