

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

A Bill

SENATE BILL 301

4
5 By: Senator Madison

For An Act To Be Entitled

6
7
8
9 THE ARKANSAS NURSING HOME TORT REFORM ACT OF
10 2003.

Subtitle

11
12
13 THE ARKANSAS NURSING HOME TORT REFORM
14 ACT OF 2003.

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code Title 20, Chapter 10 is amended to add an
20 additional subchapter to read as follows:

21
22 20-10-1901. Title.

23 This subchapter shall be known and may be cited as the "Arkansas
24 Nursing Home Tort Reform Act of 2003".

25
26 20-10-1902. Purpose and intent.

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

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

35 (c) This subchapter provides fair procedures for the resolution of
36 disputes between facilities and their patients.



1
2 20-10-1903. Definitions.

3 As used in this subchapter:

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

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

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

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

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

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

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

28 (7) "Occupied beds" means:

29 (A) Beds occupied by patients at midnight;

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

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

36 (8)(A) "Participating facility" means a skilled nursing facility that

1 participates in and contributes to the Patient’s Recovery Fund, including the
2 owners, principals, officers, employees, agents, medical director and
3 affiliates of the skilled nursing facility.

4 (B) “Participating facility” does not include any unaffiliated person
5 or entity providing management services to the facility;

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

8 (10) “Skilled nursing facility” means a “long-term care facility” as
9 defined by § 20-10-214(4); and

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

12
13 20-10-1904. Exclusive remedy – Venue.

14 Notwithstanding any other provision of law:

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

20 (2) Any action for injury shall be commenced in the circuit court of
21 the county in which the injury occurred; and

22 (3) Any claim filed against a participating facility before the filing
23 of an action for injury in circuit court shall be dismissed by the
24 administrator of the Patient’s Recovery Fund without prejudice.

25
26 20-10-1905. Statute of limitations and pleadings.

27 (a) An action for injury shall be commenced within the time specified
28 in § 16-56-105, except actions for medical injury which must be commenced as
29 specified in § 16-114-203(a), (b), or (c), whichever is applicable.

30 (b) The Arkansas Rules of Civil Procedure shall govern the form and
31 substance of any pleadings.

32
33 20-10-1906 Evidence – Burden of proof.

34 (a) The results of any surveys or inspections by state or federal
35 regulators, or by accrediting organizations, which a plaintiff seeks to use
36 as evidence must be relevant to the injury or injuries at issue in order to

1 be admissible.

2 (b) Burden of proof issues are governed by the standards applicable to
 3 all other civil actions.

4
 5 20-10-1907. Punitive damages.

6 (a)(1) This section shall govern punitive damage awards against all
 7 participating facilities.

8 (2) Punitive damages may be awarded only if the plaintiff proves
 9 that the defendant is liable for compensatory damages and that one of the
 10 following aggravating factors was present and was related to the injury for
 11 which compensatory damages were awarded:

12 (A) Actual, and not constructive, fraud;

13 (B) Malice;

14 (C) Willful or wanton conduct; or

15 (D) Reckless disregard of consequences from which malice
 16 may be inferred.

17 (b) The plaintiff must prove the existence of an aggravating factor by
 18 clear and convincing evidence.

19 (c) Except as provided in subsection (d) of this section, a punitive
 20 damages award may not exceed the greater of one million dollars (\$1,000,000)
 21 or three (3) times the amount of compensatory damages.

22 (d) The limit on punitive damages in subsection (c) of this section
 23 notwithstanding, a punitive damages award may not exceed the greater of two
 24 million dollars (\$2,000,000) or four (4) times the amount of compensatory
 25 damages when the jury or fact finder determines, by clear and convincing
 26 evidence, that:

27 (1) The actions of the defendant were motivated by unreasonable
 28 financial gain; and

29 (2) The defendant intentionally pursued a course of conduct that
 30 resulted in injury or damage.

31
 32 20-10-1908. Civil Reparations Trust Fund.

33 If a punitive damages award is adjudged against a skilled nursing
 34 facility, fifty percent (50%) of the punitive damages awarded, after payment
 35 of all applicable costs and fees including reasonable attorneys' fees, shall
 36 be ordered by the administrator of the Patient's Recovery Fund,

1 administrative law judge, or circuit court to be paid to the claimant, with
 2 the remainder of the award to be ordered paid into the Civil Reparations
 3 Trust Fund to be administered by the Treasurer of State and to be allocated
 4 for payment of Medicaid expenditures, independent living opportunities for
 5 seniors, or in home health care as directed by the General Assembly.

6
 7 20-10-1909. Limitation on supersedeas.

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

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

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

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

21
 22 20-10-1910. Mediation, arbitration, and alternative dispute
 23 resolution.

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

27
 28 20-10-1911. Patient's Recovery Fund – Participation.

29 (a)(1) The Patient's Recovery Fund is created for the payment of valid
 30 claims, judgments, and arbitral awards against participating facilities.

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

35 (B) Assessments may be prepaid upon terms approved by the
 36 board.

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

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

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

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

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

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

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

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

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

28 (e)(1) A participating facility shall be dismissed from the fund and
 29 shall not have any of the privileges or benefits of the fund upon a
 30 determination by the board or a court that the facility provides a
 31 substandard quality of care.

32 (2) Substandard quality of care is:

33 (A) Any deficiency in 42 CFR 483.13, Resident Behavior and
 34 Facility Practices, 42 CFR 483.15 Quality of Life, or 42 CFR 483.25 Quality
 35 of Care, that constitutes immediate jeopardy to resident health or safety;

36 (B) A pattern of or widespread actual harm that is not

1 immediate jeopardy;

2 (C) A widespread potential for more than minimal harm that
 3 is not immediate jeopardy, with no actual harm; or

4 (D) A violation of any criminal law while providing care
 5 to a resident.

6
 7 20-10-1912. Election by participating facility – Initial assessments
 8 and payments.

9 (a) A participating facility may elect:

10 (1) To carry a higher deductible, or to retain a higher limit of
 11 its risk, by providing evidence satisfactory to the board that it is
 12 qualified to fund its risks of loss and that the facility or its affiliate
 13 maintains segregated accounts to fund the deductible and self insured
 14 retention losses;

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

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

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

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

24 (2) Shall pay an administrative fee to the fund in lieu of
 25 monthly assessments, as provided in § 20-10-1912(c)(2); and

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

28 (B) However, the fund shall not pay claims or judgments on
 29 behalf of the facility, unless, and only to the extent that, the facility
 30 acquires coverage from the funds;

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

34 (2)(A) The initial amount of the aggregate annual assessment,
 35 payable monthly, shall be one thousand dollars (\$1,000) per occupied bed.

36 (B) The initial amount of the annual administrative fee in

1 lieu of assessments shall be two hundred dollars (\$200) per occupied bed.

2
3 20-10-1913. Initial limits of coverage and deductible.

4 With respect to participating facilities which elect to accept the
5 insurance coverage provided by the Patient’s Recovery Fund:

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

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

11 (3) The initial amount of the deductible shall be ten thousand dollars
12 (\$10,000) per claim.

13
14 20-10-1914. Patient’s Recovery Fund Board – Powers and duties.

15 (a)(1)(A) There is created the Patient’s Recovery Fund Board to
16 consist of the following five (5) members:

17 (i) A physician licensed in this state;

18 (ii) A registered nurse licensed in this state;

19 (iii) A certified public accountant licensed in this
20 state;

21 (iv) An attorney licensed in this state; and

22 (v) A private citizen who is a resident of this
23 state.

24 (B) The initial board shall be appointed on or before August 1,
25 2003.

26 (C) The Arkansas Trial Lawyers Association shall submit
27 two (2) nominees for the attorney position from which the Attorney General
28 shall appoint the attorney member of the board.

29 (D) The Arkansas Health Care Association shall submit two
30 (2) nominees for the physician position from which the Speaker of the House
31 of Representatives shall appoint the physician member of the board.

32 (E) The Arkansas Health Care Association shall submit two
33 (2) nominees for the registered nurse position from which the President Pro
34 Tempore of the Senate shall appoint the registered nurse member of the board.

35 (F) The American Association of Retired Persons shall
36 submit two (2) nominees for the private citizen position from which the

1 Speaker of the House of Representatives shall appoint the private citizen
2 member of the board.

3
4 (G) The Governor shall appoint the certified public
5 accountant member of the board.

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

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

11 (C) Directors shall be eligible for reappointment for one (1)
12 additional three (3) year term.

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

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

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

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

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

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

35 (e) Board members shall be immune from suit while acting in their
36 official capacities, except for intentional wrongful acts or violation of

1 fiduciary duty.

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

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

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

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

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

13 (2) Notice of a change in the amounts prescribed in subsection
 14 (f), or any of them, shall be given to the affected participating facilities
 15 not less than sixty (60) days before 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 amounts and upon terms as
 26 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, judgments, or arbitral
 31 awards, not to exceed two hundred dollars (\$200) per occupied bed.

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

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

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

36 (C) The procedures for resolution of claims before the

1 administrator of the Patient’s Recovery Fund and the administrative law
 2 judges.

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

7
 8 20-10-1915. Administrator – Powers and duties.

9 (a)(1) The board shall employ an administrator of the Patient’s
 10 Recovery Fund who is a graduate of an accredited four-year college or
 11 university with at least ten (10) years experience in the field of risk
 12 management or business administration.

13 (2) All qualifications, terms, and conditions of employment,
 14 including compensation, which shall be paid from the fund, shall be at the
 15 sole discretion of the board.

16 (3) The board shall employ the administrator in sufficient time
 17 for the administrator to assume the duties of office on or before January 1,
 18 2004.

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

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

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

30
 31 20-10-1916. Patient’s Recovery Fund Advisory Board.

32 (a)(1) There is created the Patient’s Recovery Fund Advisory Board to
 33 consist of:

- 34 (A) The State Insurance Commissioner;
- 35 (B) The Attorney General;
- 36 (C) The Director of the Department of Human Services;

1 (D) One (1) director appointed by the President Pro
 2 Tempore of the Arkansas Senate; and

3 (E) One (1) director appointed by the Speaker of the
 4 Arkansas House of 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 one (1)
 8 additional three (3) year term.

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

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

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

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

25
 26 20-10-1917. Accumulation of fund assets – Disposition.

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

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

33 (c) The fund may be used for the following purposes:

34 (1) The payment and satisfaction of claims or judgments under
 35 this subchapter;

36 (2) The payment of reasonable fees and expenses incurred by

1 counsel employed by the fund; and

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

4
 5 20-10-1918. Appointment of administrative law judges.

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

10 (2) Administrative law judges shall be licensed attorneys in the
 11 State of Arkansas and shall have at least six (6) years experience as a
 12 practicing attorney.

13 (b) The compensation and expenses of administrative law judges shall
 14 be paid by the Patient’s Recovery Fund.

15 (c) Only the Administrative Office of the Courts shall have the power
 16 to appoint, reappoint, or terminate the employment of the administrative law
 17 judge.

18
 19 20-10-1919. Participating faculties – Employment of counsel.

20 (a) Upon request by a participating facility, other than a
 21 participating facility that maintained commercial insurance coverage for the
 22 relevant period, the Patient’s Recovery Fund shall employ counsel to defend
 23 any action for injury against the facility to recover damages on account of
 24 an injury to a patient.

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

27 (2) However, the administrator of the Patient’s Recovery Fund
 28 has the authority to determine the reasonableness of the fees and expenses,
 29 subject to the rules and regulations of the fund.

30
 31 20-10-1920. Claims Procedure and judgments.

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

35 (B) A claimant shall serve the participating facility with
 36 summons and complaint and the participating facility shall file an answer or

1 other appropriate pleading under the Arkansas Rules of Civil Procedure.

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

6 (2) A participating facility shall be able to put the Patient's
7 Recovery Fund on notice of the filing of the civil lawsuit and the fund shall
8 retain counsel on behalf of the participating facility at the expense of the
9 fund.

10 (3)(A) A claim against a participating facility which accrues
11 during the participation of the facility shall be submitted to the
12 administrator of the Patient's Recovery Fund by the claimant on forms created
13 by the administrator and made readily available to the claimant.

14 (B) Claims shall be for compensatory damages and punitive
15 damages.

16 (C) The administrator shall provide actual notice of the
17 claim by mailing a copy of the claim by certified mail to the participating
18 facility.

19 (D) Within thirty (30) days after the date of receipt of
20 the notice, the participating facility shall mail copies of its response to
21 the claim by certified mail to the claimant and the administrator.

22 (E) Failure of the participating facility to respond
23 within the thirty-day deadline shall subject the participating facility to
24 default with the administrator having the power to approve or settle the
25 claim without any further notice to the participating facility.

26 (b)(1) After the participating facility has responded to the claim,
27 the administrator has the sole authority to approve or to settle any claim
28 against a participating facility to the extent of the applicable limit of
29 coverage provided by the fund, including the deductible.

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

33 (3) The administrator may make an investigation of the claim as
34 the administrator considers necessary, and upon application of any party, or
35 at the administrator's own discretion, shall conduct a preliminary
36 conference.

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

5
 6 20-10-1921. Adjudication of claims.

7 (a)(1) If the administrator of the Patient’s Recovery Fund determines
 8 that a claim should be adjudicated, or if the claimant or participating
 9 facility is dissatisfied with the administrator’s disposition of the claim
 10 and notifies the administrator of intent to appeal within twenty (20) days of
 11 the administrator’s decision, the claim shall be referred randomly to an
 12 administrative law judge, who shall conduct proceedings to determine the
 13 validity of the claim within one hundred twenty (120) days of the
 14 administrative law judge’s receipt of the claim.

15 (2) The Patient’s Recovery Fund shall be made a party to the
 16 proceeding.

17 (3) The administrative law judge shall conduct an evidentiary
 18 hearing on the claim and shall issue a written order within thirty (30) days
 19 after the hearing.

20 (4) The administrative law judge has the authority:

21 (A) To hear and determine all claims;

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

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

25 (D) To make and enter findings of fact and rulings of law;
 26 and

27 (E) To make or modify awards in the amounts as may be
 28 supported by the law and the evidence.

29 (5)(A) An order of an administrative law judge granting,
 30 modifying, or denying a claim shall be supported by findings of fact and
 31 conclusions of law and shall be filed with the administrator.

32 (B) The findings of fact and conclusions of law shall not
 33 be admissible in any circuit court action where either party chooses trial de
 34 novo.

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

36 (b)(1) Within thirty (30) days of receipt of the order of the

1 administrative law judge, any party may proceed with the previously filed
2 lawsuit by notifying all parties by certified mail of their intent to pursue
3 the previously filed lawsuit in circuit court.

4 (2) The previously lodged stay shall no longer have any force or
5 effect, and the lawsuit shall proceed under the Arkansas Rules of Civil
6 Procedure.

7 (3) Upon notice that the claim has been approved or settled by
8 the administrator or adjudicated to a final administrative order, and that
9 all rights to seek further administrative relief or to appeal to the circuit
10 court have expired, the circuit court shall enter an order providing that all
11 requests for relief with respect to the action for injury have been satisfied
12 and that the action is dismissed with prejudiced.

13
14 20-10-1922. Payment of claims.

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

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

23 (2) If commercial insurance coverage is inapplicable, the fund
24 shall pay the balance of the award to the claimant, subject to the per claim
25 limit of coverage and the annual aggregate limit of coverage per
26 participating facility in effect when the claim or action for injury,
27 exclusive of fees and expenses, accrued.

28 (b)(1)(A) Claims, judgments and arbitral awards that become final and
29 unappealable during the first six (6) months of the calendar year shall be
30 paid by the fund on the following August 15.

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

34 (2)(A) If the balance in the fund is insufficient to pay in full
35 all claims, judgments, and arbitral awards that have become final and
36 unappealable during a six-month period, the award paid to each claimant shall

1 be prorated.

2 (B) Any amount left unpaid as a result of the proration
 3 shall be paid before the payment of claims, judgments and arbitral awards
 4 that become final and unappealable during any subsequent six-month period.

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

7 (2)(A) Simple interest at the rate of six percent (6%) per annum
 8 shall be paid on the unpaid balance of a claim or judgment from and after
 9 August 15 or February 15, as the case may be.

10 (B) However, in any action for injury that is tried before
 11 a jury, post judgment interest shall be payable as provided by law.

12
 13 20-10-1923. No provision of this subchapter shall apply to, or alter
 14 existing law, with respect to any claim, charge, action, or suit brought or
 15 prosecuted by the Attorney General.

16
 17 SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 11 is amended
 18 to add an additional section to read as follows:

19 19-5-1123. Civil Reparations Trust Fund.

20 (a) There is created on the books of the Treasurer of State, Auditor
 21 of State, and Chief Fiscal Officer of the State a trust fund to be known as
 22 the "Civil Reparations Trust Fund".

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

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

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

29
 30 SECTION 3 EMERGENCY CLAUSE. It is found and determined by the General
 31 Assembly of the State of Arkansas that adequate commercial insurance coverage
 32 at affordable rates is not available for nursing homes in this state; that
 33 lawsuits and claims that may become lawsuits threaten the financial stability
 34 of nursing homes; that patients of nursing homes do not have recourse to
 35 adequate sources of funds to redress legitimate claims for personal injury;
 36 and that existing procedures are inadequate to protect the interests of

1 nursing homes and of those persons, primarily the elderly, who are in need of
2 long-term care. Therefore, an emergency is declared to exist and this act
3 being immediately necessary for the preservation of the public peace, health,
4 and safety shall become effective on:

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

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

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36