

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

HOUSE BILL 1213

4
5 By: Representatives Gillespie, R. Smith, Dees, Agee, Berry, Biggs, Bledsoe, Bolin, Boyd, Cowling,
6 Dickinson, Eason, D. Evans, L. Evans, Gipson, Green, Haak, Hutchinson, Jacobs, Jones, Kenney, Key,
7 Lewellen, Oglesby, Ormond, Pace, Roebuck, Rosenbaum, J. Taylor, Thomas, White
8 By: Senators Capps, Baker, Higginbothom, Horn, J. Jeffress, Miller, Steele, Womack

For An Act To Be Entitled

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10
11 AN ACT TO PROVIDE A LIABILITY INSURANCE POOL FOR
12 NURSING HOME PATIENTS; TO PROVIDE COURT AND
13 ADMINISTRATIVE PROCEDURES FOR PERSONAL INJURY
14 CLAIMS AGAINST NURSING HOMES; AND FOR OTHER
15 PURPOSES.
16

Subtitle

17
18 AN ACT TO ADDRESS INSURANCE COVERAGE FOR
19 NURSING HOME PATIENTS AND PERSONAL
20 INJURY CLAIMS AGAINST NURSING HOMES.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

28 20-10-1901. Title.

29 This subchapter shall be referred to as the "Fair Care and Treatment
30 Act of 2003".

31
32 20-10-1902. Purpose and intent.

33 The purpose and intent of this act is to provide for the fair care and
34 treatment of persons receiving long-term care in skilled nursing facilities
35 duly licensed to operate in this state. This act authorizes the creation of
36 a liability insurance pool known as the Patient's Recovery Fund to provide a



1 secure and sustainable source of funds to satisfy personal injury claims by
2 or on behalf of patients of participating facilities. This act provides fair
3 administrative and court procedures for the resolution of disputes between
4 facilities and their patients and authorizes the resolution of such disputes
5 by private arbitration.

6
7 20-10-1903. Patient's Recovery Fund – Participation.

8 (a) The Patient's Recovery Fund is created for the payment of valid
9 claims, judgments and arbitral awards against participating facilities. Each
10 participating facility shall remit monthly assessments to the fund, or make
11 payments to the fund in lieu of assessments, based upon the number of
12 occupied beds as of the first business day of each month. Assessments may be
13 prepaid upon terms approved by the board. Assessments and other payments,
14 together with earned income, surplus and all other moneys accruing to the
15 fund, shall be held in trust by the board for the purposes set forth herein.

16 (b) The fund shall not be deposited or maintained in the state
17 treasury, but shall be a cash fund under the direction and control of the
18 board, as set forth herein. The fund shall not be subject to regulation by
19 the State Insurance Department.

20 (c) Only claims, judgments or arbitral awards arising from a wrongful
21 act or acts which occur during a period of participation in the fund shall be
22 covered by the fund. The fund shall offer tail coverage to participating
23 facilities upon terms approved by the board.

24 (d)(1) A skilled nursing facility which is certified to provide
25 services under Title XVIII or Title XIX of the Social Security Act shall
26 participate in and contribute to the fund as a condition of maintaining its
27 license to provide long-term care in this state. A skilled nursing facility
28 which is not certified to provide services under Title XVIII or Title XIX of
29 the Social Security Act, or which receives no reimbursement or other payment
30 under Title XVIII or Title XIX of the Social Security Act for services
31 provided to any of its patients, may elect to participate in the fund, but
32 shall not be required to participate in the fund as a condition of
33 maintaining its license to provide long-term care in this state.

34 (2) Subject to the rules and regulations of the fund and upon
35 terms approved by the board, a skilled nursing facility which is required to
36 participate in the fund as a condition of maintaining its license to provide

1 long-term care in this state may opt out of participation in the fund by
 2 giving notice to the administrator that such facility is owned and operated
 3 by a nonprofit, government or church affiliated organization as defined by
 4 the board. Wrongful acts occurring during such facility's prior period or
 5 periods of participation shall be covered.

6 (3) A participating facility shall be dismissed as a participant
 7 in the fund for nonpayment of assessments or payments in lieu of assessments,
 8 as determined by the rules and regulations of the fund. The board shall
 9 provide by regulation for a grace period for curing a default in the payment
 10 of assessments or other payments prior to formal dismissal and may impose a
 11 late fee not to exceed five dollars (\$5.00) per occupied bed per event of
 12 default. Upon dismissal of a facility from the fund, wrongful acts occurring
 13 during such facility's prior period or periods of participation shall be
 14 covered.

15
 16 20-10-1904. Election by participating facility – Initial assessments
 17 and payments.

18 (a) A participating facility may elect:

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

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

26 (3) To accept the insurance coverage provided by the fund and to
 27 pay monthly assessments as provided herein.

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

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

33 (2) Shall pay an administrative fee to the fund in lieu of
 34 monthly assessments, as provided in § 20-10-1904(c); and

35 (3) Shall participate in the fund upon equal terms with other
 36 participating facilities; provided, that the fund shall not pay claims,

1 judgments or arbitral awards on behalf of such facility, unless, and only to
2 the extent that, such facility acquires coverage from the fund.

3 (c) Assessments and payments in lieu of assessments shall be paid from
4 and after January, 2004, based upon the number of occupied beds as of the
5 first business day of such month. The initial amount of the aggregate annual
6 assessment, payable monthly, shall be one thousand dollars (\$1,000) per
7 occupied bed and the initial amount of the annual administrative fee in lieu
8 of assessments shall be two hundred dollars (\$200) per occupied bed.

9
10 20-10-1905. Initial limits of coverage and deductible.

11 With respect to participating facilities which elect to accept the
12 insurance coverage provided by the fund, the initial amount of the per claim
13 limit of coverage shall be two hundred fifty thousand dollars (\$250,000), the
14 initial amount of the annual aggregate limit of coverage per participating
15 facility shall be five hundred thousand dollars (\$500,000), and the initial
16 amount of the deductible shall be ten thousand dollars (\$10,000) per claim.

17
18 20-10-1906. Patient's Recovery Fund Board – Powers and duties.

19 (a) The Patient's Recovery Fund Board shall have five (5) members and
20 shall consist of a physician, a registered nurse, a certified public
21 accountant, and an attorney, all duly licensed in this state, and a private
22 citizen. The initial board shall be appointed on or before August 1, 2003,
23 from a list of ten (10) names submitted by the Arkansas Health Care
24 Association, or its successor, on or before July 1, 2003. The ten (10)
25 nominees shall consist of two (2) physicians, two (2) registered nurses, two
26 (2) certified public accountants, two (2) attorneys, and two (2) private
27 citizens. The Governor shall appoint the physician director, who shall be
28 the chairman of the board, and the nurse director. The presiding officer of
29 the Arkansas House of Representatives shall appoint the certified public
30 accountant director, who shall be the vice-chairman of the board. The
31 Attorney General shall appoint the attorney director, who shall be the
32 secretary of the board. The presiding officer of the Arkansas Senate shall
33 appoint the private citizen director. The initial terms shall be staggered
34 so that the chairman and the private citizen director shall serve for three
35 (3) years, the vice-chairman and the nurse director shall serve for two (2)
36 years, and the secretary shall serve for one (1) year. Subsequent terms

1 shall be three (3) years. Directors shall be eligible for reappointment.

2 (b) A director may be removed for cause by the Governor upon ten (10)
3 days' written notice to the director. A director whose term expires, or who
4 resigns, is removed, or becomes incapacitated, shall be replaced within
5 forty-five (45) days after the vacancy or expiration of the term from a list
6 of two (2) nominees of the same profession or standing, furnished by the
7 Arkansas Health Care Association to the official responsible for the
8 appointment of such position. If a successor is not appointed within the
9 forty-five day period, the remaining directors shall select an interim
10 director of the same profession or standing who shall serve for the new term
11 or the unexpired portion of the term, as the case may be. Directors whose
12 terms expire shall continue to serve until their successors are appointed.

13 (c) The board shall supervise the management and activities of the
14 fund. Each director shall be compensated from the fund at the rate of one
15 hundred fifty dollars (\$150) per hour devoted to official board activities,
16 not to exceed one thousand five hundred dollars (\$1,500) each month, plus
17 out-of-pocket expenses incurred within the state, documented by appropriate
18 receipts. Directors shall be immune from suit while acting in their official
19 capacities, except for intentional wrongful acts or violation of fiduciary
20 duty.

21 (d) The board shall have the power and discretion, after notice to the
22 affected participating facilities and a hearing, and based upon accepted risk
23 management practices, to determine the amount of the aggregate annual
24 assessment per occupied bed, the amount of the annual administrative fee in
25 lieu of monthly assessments, the amount of the per claim limit of coverage,
26 the amount of the annual aggregate limit of coverage per participating
27 facility, and the amount of the per claim deductible. Notice of a change in
28 the foregoing amounts, or any of them, shall be given to the affected
29 participating facilities not less than sixty (60) days prior to the effective
30 date of the change.

31 (e) The board shall determine terms, conditions and charges for
32 providing tail coverage to participating facilities and shall have the power
33 and discretion to offer supplemental coverage to participating facilities
34 upon terms approved by the board; provided, that supplemental coverage shall
35 be not less than one hundred thousand dollars (\$100,000) per claim.

36 (f) The board shall have the power to enter into contracts, and to sue

1 and be sued, in its own name, to borrow public or private funds in such
 2 amounts and upon such terms as may be negotiated with a creditor or
 3 creditors, subject to otherwise applicable laws, and to assess an annual
 4 surcharge upon the assessments of a participating facility, after notice and
 5 a hearing, which demonstrates a disproportionately high history of payable
 6 claims, judgments or arbitral awards, such surcharge not to exceed two
 7 hundred dollars (\$200) per occupied bed.

8 (g) The board shall promulgate rules and regulations to govern the
 9 terms and conditions of participation in the fund, the administration of the
 10 fund, including the collection, management and disposition of fund assets,
 11 and the procedures for resolution of claims before the administrator and the
 12 administrative law judges.

13
 14 20-10-1907. Administrator – Powers and duties.

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

23 (b) The administrator shall conduct and supervise the business affairs
 24 of the fund, pursuant to a written business plan approved by the board, which
 25 may include a plan for voluntary mediation of claims. The administrator
 26 shall employ appropriate professional personnel to assist with the business
 27 affairs of the fund, which shall include a nationally recognized risk
 28 management consultant. With board approval, the administrator may purchase
 29 or lease appropriate office space, equipment and other necessary assets for
 30 the use of the fund, and may expend fund moneys for all other necessary and
 31 appropriate purposes, subject to the rules and regulations of the fund.

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

36

20-10-1908. Patient’s Recovery Fund Advisory Board.

(a) The Patient’s Recovery Fund Advisory Board shall have five (5) members and shall consist of the State Insurance Commissioner, the Attorney General, the Director of the Department of Human Services, one (1) director appointed by the presiding officer of the Arkansas Senate, and one (1) director appointed by the presiding officer of the Arkansas House of Representatives. The directors appointed by the presiding officers of the Arkansas Senate and the Arkansas House of Representatives shall serve for terms of two (2) years and shall be eligible for reappointment.

(b) The advisory board shall advise the board and the administrator on the proper execution of the fund and the business plan approved by the board. The advisory board shall meet not less often than semiannually to review and examine financial statements and progress reports, prepared by the administrator and previously reviewed by the board, and to advise the administrator and the board of the sufficiency of the reports. The financial statements shall include a balance sheet and income statement, prepared according to generally accepted accounting principles. The financial statements and progress reports shall be subject to public inspection, but all other business activities and records of the board and the administrator shall be confidential and shall be exempt from the Freedom of Information Act. The board shall issue an annual financial report prepared and certified by a certified public accountant on the first business day of July of each year, which shall be subject to public inspection.

20-10-1909. Accumulation of fund assets – Disposition.

(a) All moneys held by the fund shall be deposited in banks located within the state or shall be invested in obligations which are permitted investments for the board of trustees of any public employee retirement system of any political subdivision of the state. An accurate inventory of all personal property of the fund shall be maintained at all times.

(b) The fund shall be used and expended for the payment and satisfaction of claims, judgments, or arbitral awards pursuant to this subchapter, for the payment of reasonable fees and expenses incurred by counsel employed by the fund, for the payment of the costs of operation of the fund, including but not limited to compensation, fees and ordinary business expenses, and for no other purposes.

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20-10-1910. Appointment of administrative law judges.

The Administrative Office of the Courts shall appoint not less than one (1) administrative law judge, who shall serve for a term of three (3) years, on a full-time or part-time basis, and shall be eligible for reappointment. Administrative law judges shall be licensed attorneys and shall be otherwise qualified as determined by the board. The compensation and expenses of administrative law judges shall be paid by the fund.

20-10-1911. Definitions.

As used in this subchapter:

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

(b) "Affiliate" of a skilled nursing facility means any person or entity controlling, controlled by, or under common control with such facility.

(c) "Board" means the Patient's Recovery Fund Board created by this subchapter.

(d) "Claim" means a demand for recovery of damages from the Patient's Recovery Fund, whether based in tort, contract or otherwise, on account of an injury to a patient of a participating facility. A claim may be brought by the patient, or by the guardian, representative, executor, administrator, or person acting on behalf of such patient, including a third party whose right to recover damages is derivative of the legal rights of the patient.

(e) "Claimant" means the person or persons alleging a claim or action for injury against a skilled nursing facility.

(f) "Injury" means the personal injury or death of a patient of a skilled nursing facility arising out of or sustained in the course of the services rendered to the patient by the facility, its owners, principals, officers, employees, agents and affiliates, or any person or entity providing management services to such facility, or arising out of or sustained in the course of the relationship between the patient and the facility, its owners, principals, officers, employees, agents and affiliates, or any person or entity providing management services to such facility.

(g) "Occupied beds" means:

1 such facility or any demand for arbitration against such facility to recover
 2 damages on account of an injury to a patient. Fees and expenses incurred by
 3 counsel employed by the fund shall be paid by the fund; provided, that the
 4 administrator has the authority to determine the reasonableness of such fees
 5 and expenses, subject to the rules and regulations of the fund.

6
 7 20-10-1914. Stay – Exhaustion of administrative remedies.

8 (a) After the pleadings have been joined, when it appears from a
 9 verified pleading or otherwise that the skilled nursing facility is a
 10 participating facility which maintained coverage from the fund for the
 11 relevant period, the circuit court, upon the motion of the parties or its own
 12 motion, shall stay all further proceedings in the action and direct that the
 13 claimant shall exhaust administrative remedies.

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

20
 21 20-10-1915. Claims – Authority of administrator.

22 (a) A claim against a participating facility which maintained coverage
 23 from the fund for the relevant period shall be filed with the administrator
 24 by the claimant on a form created by the administrator. The claimant shall
 25 serve copies of the claim upon the parties. Claims shall be for compensatory
 26 damages only and shall not include punitive damages, costs or attorney’s
 27 fees. Within twenty (20) days from the filing of the claim, the
 28 participating facility shall file its response to the claim on a form created
 29 by the administrator. When service of the claim is effected by mail or by
 30 electronic means, three (3) days shall be added to the time for filing a
 31 response. The administrator may provide for the submission of copies of
 32 pleadings from the action for injury and the submission of affidavits or
 33 other exhibits in support of a claim or defense.

34 (b) The administrator has the sole authority to approve, modify or
 35 settle any claim or demand for arbitration against a participating facility
 36 to the extent of the applicable limit of coverage provided by the fund,

1 including the deductible. The administrator is without authority to approve,
 2 modify or settle any such claim or demand, or to consent to any award in an
 3 amount greater than the applicable limit of coverage provided by the fund,
 4 including the deductible.

5
 6 20-10-1916. Disposition of claims – Adjudication.

7 (a) The administrator may make such investigation of the claim as the
 8 administrator considers necessary, and upon application of any party, or on
 9 the administrator’s own motion, shall conduct a preliminary conference. The
 10 administrator may enter a written order disposing of the claim without
 11 adjudication.

12 (b) If the administrator determines that a claim should be
 13 adjudicated, or if the claimant or participating facility is dissatisfied
 14 with the administrator’s disposition of the claim without adjudication, the
 15 claim shall be referred to an administrative law judge, who shall
 16 expeditiously conduct proceedings to determine the validity of the claim.
 17 The fund shall be made a party to such proceeding. A request for
 18 adjudication by the claimant or participating facility shall be filed within
 19 twenty (20) days from the filing of the administrator’s order disposing of
 20 the claim without adjudication.

21 (c) The administrative law judge shall conduct an evidentiary hearing
 22 on the claim and shall issue a written order within thirty (30) days after
 23 such hearing. The administrative law judge has the authority:

- 24 (1) To hear and determine all claims;
- 25 (2) To enter orders for the proper conduct of proceedings;
- 26 (3) To issue subpoenas, administer oaths and take testimony, by
 27 deposition or otherwise;
- 28 (4) To make and enter findings of fact and rulings of law; and
- 29 (5) To make or modify awards in such amounts as may be supported
 30 by the law and the evidence.

31 (d) An order of an administrative law judge granting, modifying or
 32 denying a claim shall be supported by findings of fact and conclusions of law
 33 and shall be filed with the administrator. Any claim for relief or request
 34 for a ruling by the parties which is not disposed of by an express finding of
 35 fact or conclusion of law in the order shall be deemed denied.

1 20-10-1917. Appeal – Demand for trial by jury.

2 (a) Any party may appeal the order of the administrative law judge to
3 the circuit court where the action for injury is stayed by filing with the
4 administrator, within twenty (20) days from the filing of the order, a notice
5 of appeal. A party shall have twenty (20) days from the filing of a notice
6 of appeal in which to file a notice of cross appeal. A notice of appeal or
7 cross appeal shall designate any necessary transcript of the proceedings,
8 with the cost to be paid by the parties ordering transcripts. A notice of
9 appeal or cross appeal shall be served upon all parties to the claim by
10 certified mail. The administrator shall send to the circuit court all
11 pertinent documents and papers, together with the designated transcript and
12 the orders of the administrative law judge, which shall become the record on
13 appeal.

14 (b) The circuit court shall review the findings and orders of the
15 administrative law judge de novo on the record, in which case the decision of
16 the circuit court shall be final; provided, that any party to the appeal may
17 demand a trial de novo to the circuit court or a trial by jury of any issue
18 triable of right by a jury by filing with the circuit court, within twenty
19 (20) days from the filing of the administrative record transmitted by the
20 administrator, a notice of demand therefor. A demand for trial by jury may
21 be indorsed upon a pleading of the party in the circuit court either prior to
22 or subsequent to the filing of the administrative record.

23 (c) The failure of a party to file a demand for a trial de novo to the
24 circuit court or for a jury trial within the time provided in this subchapter
25 constitutes a waiver by the party of such right. A demand for trial by jury
26 may not be withdrawn without the consent of the parties.

27
28 20-10-1918. Payment of claims.

29 (a) With respect to a participating facility which maintained coverage
30 from the fund for the relevant period, a claim that has been approved or
31 settled by the administrator, or a claim that has been adjudicated to a final
32 administrative order or a final judgment of a circuit court, or a final
33 arbitral award, shall be paid as follows:

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

1 (2) Provided that commercial insurance coverage is inapplicable,
 2 the fund shall pay the balance of the award to the claimant, subject to the
 3 per claim limit of coverage and the annual aggregate limit of coverage per
 4 participating facility in effect when the claim, action for injury or demand
 5 for arbitration accrued, exclusive of fees and expenses. The fund shall not
 6 pay punitive damages or costs and attorney's fees incurred by the claimant.

7 (b)(1) Claims, judgments or arbitral awards which become final and
 8 unappealable during the first six (6) months of the calendar year shall be
 9 paid by the fund on the following August 15. Claims, judgments or arbitral
 10 awards which become final and unappealable during the last six (6) months of
 11 the calendar year shall be paid by the fund on the following February 15.

12 (2) If the balance in the fund is insufficient to pay in full
 13 all claims, judgments and arbitral awards which have become final and
 14 unappealable during a six-month period, the award paid to each claimant shall
 15 be prorated. Any amount left unpaid as a result of the proration shall be
 16 paid before the payment of claims, judgments or arbitral awards which become
 17 final and unappealable during any subsequent six-month period.

18 (c) Prejudgment interest shall not be payable on any claim, judgment
 19 or arbitral award. Simple interest at the rate of six percent (6%) per annum
 20 shall be paid on the unpaid balance of a claim, judgment or arbitral award
 21 from and after August 15 or February 15, as the case may be; provided, that
 22 in any action for injury that is tried before a jury, postjudgment interest
 23 shall be payable as provided by law.

24
 25 20-10-1919. Liability of medical director – Immunity from suit.

26 With respect to any action for injury, the medical director of a
 27 skilled nursing facility is individually liable only for a wrongful act or
 28 acts performed solely as a treating physician of a patient. The medical
 29 director is individually immune from suit for all other acts or omissions
 30 performed within the scope of employment as a medical director.

31
 32 20-10-1920. Statute of limitations.

33 (a) All actions for injury shall be commenced within two (2) years
 34 after the action for injury shall have accrued.

35 (b) An action for injury accrues on the date of the wrongful act
 36 complained of, and no other time.

1 (c) No action for injury shall encompass alleged wrongful acts
 2 occurring more than two (2) years prior to the commencement of the action for
 3 injury based upon an allegation of a continuing course of conduct or
 4 otherwise.

5
 6 20-10-1921. Pleadings.

7 In any action for injury, the complaint shall state the alleged
 8 wrongful act or acts complained of with specificity, shall state how each
 9 individual wrongful act contributed to the injury, and shall specifically
 10 describe the injury. If a demand for punitive damages is made, the complaint
 11 shall allege only that the wrongful act or acts complained of were
 12 intentional and that punitive damages should be awarded.

13
 14 20-10-1922. Evidence - Burden of proof.

15 (a) Reports of investigations or surveys conducted by any governmental
 16 or regulatory agency, quality assurance surveys, satisfaction surveys,
 17 evidence of the care and treatment of other patients of the skilled nursing
 18 facility, quality indicator reports, quality assurance committee records or
 19 reports, peer review committee records or reports, or any other evidence of
 20 the general pattern and practice of the operation of a skilled nursing
 21 facility shall not be admissible. Specific entries in such investigations,
 22 surveys, records or reports which identify an act or omission by a named
 23 person which allegedly was a direct cause of the injury at issue may be
 24 admissible.

25 (b) The claimant shall have the burden of proving:

26 (1) The degree of skill and learning ordinarily possessed and
 27 practiced by a skilled nursing facility in good standing in the same or a
 28 similar locality;

29 (2) That the skilled nursing facility failed to act in
 30 accordance with that standard; and

31 (3) That as a proximate result thereof, the patient suffered
 32 injury which otherwise would not have occurred.

33 (c) In any action for injury which is tried before a jury:

34 (1) The applicable standard of care and a violation thereof
 35 shall be established by expert testimony as determined by the trial court to
 36 be admissible under the Arkansas Rules of Evidence;

1 (2) Expert opinion testimony by owners, principals, officers,
 2 employees or agents of the skilled nursing facility during the relevant
 3 period shall not be admissible without the consent of the facility; and

4 (3) The findings of fact and conclusions of law of the
 5 administrative law judge shall not be admissible.

6
 7 20-10-1923. Punitive damages.

8 (a) In any action for injury, if compensatory damages are awarded and
 9 the claimant has made a demand for punitive damages, the fact finder shall
 10 determine whether punitive damages should be awarded. The amount of any
 11 award of punitive damages shall be determined by the trial court.

12 (b) Punitive damages may be awarded against a skilled nursing facility
 13 when the facility intentionally pursued a course of conduct for the purpose
 14 of causing injury, and not otherwise. Liability for punitive damages must be
 15 proved by clear and convincing evidence.

16 (c) An award of punitive damages against a skilled nursing facility
 17 shall not exceed the lesser of three (3) times the award of compensatory
 18 damages or one million dollars (\$1,000,000); provided, that if an award of
 19 compensatory damages is twenty-five thousand dollars (\$25,000) or less, an
 20 award of punitive damages shall not exceed seventy-five thousand dollars
 21 (\$75,000).

22 (d) In any appeal of an award of punitive damages, the appellate court
 23 shall review the evidence upon which the award is based de novo.

24
 25 20-10-1924. Limitation on supersedeas.

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

29 (a) One million dollars (\$1,000,000) in the case of a skilled nursing
 30 facility which, together with its affiliates, had one hundred fifty (150) or
 31 fewer occupied beds on the date of the judgment;

32 (b) Two million dollars (\$2,000,000) in the case of a skilled nursing
 33 facility which, together with its affiliates, had more than one hundred fifty
 34 (150) but four hundred (400) or fewer occupied beds on the date of the
 35 judgment; or

36 (c) Five million dollars (\$5,000,000) in the case of a skilled nursing

1 facility which, together with its affiliates, had more than four hundred
2 (400) occupied beds on the date of the judgment.

3
4 20-10-1925. Arbitration.

5 (a) Notwithstanding any other provision of law, a written agreement to
6 submit to arbitration any controversy thereafter arising between a skilled
7 nursing facility and a patient of such facility, or the guardian,
8 representative, executor, administrator, or person acting on behalf of such
9 patient, including a third party whose right to recover damages is derivative
10 of the legal rights of the patient, is valid, enforceable, and irrevocable,
11 save upon grounds as exist at law or in equity for the revocation of any
12 contract.

13 (b)(1) A participating facility which maintained coverage from the
14 fund for the relevant period shall give notice to the administrator of any
15 demand for arbitration to recover damages on account of an injury to a
16 patient.

17 (2) Any final award against such facility resulting from
18 arbitration shall be paid from the fund in the same manner, and subject to
19 the same limitations, as a claim or judgment against a participating
20 facility.

21 (c) The running of the statute of limitations shall be suspended for a
22 period not to exceed one (1) year upon the service of a demand for
23 arbitration upon a skilled nursing facility.

24
25 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that adequate commercial insurance
27 coverage at affordable rates is not available for nursing homes in this
28 state; that lawsuits and claims which may become lawsuits threaten the
29 financial stability of nursing homes; that patients of nursing homes do not
30 have recourse to adequate sources of funds to redress legitimate claims for
31 personal injury; and that existing procedures are inadequate to protect the
32 interests of nursing homes and of those persons, primarily the elderly, who
33 are in need of long-term care. Therefore, an emergency is declared to exist
34 and this act being immediately necessary for the preservation of the public
35 peace, health, and safety shall become effective on:

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

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

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

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