

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: H2/4/03
A Bill

HOUSE BILL 1213

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, *Borhauer*
8 By: Senators Capps, Baker, Higginbothom, Horn, J. Jeffress, Miller, Steele, Womack, *Wilkins*
9

10
11 **For An Act To Be Entitled**

12 AN ACT TO PROVIDE A LIABILITY INSURANCE POOL FOR
13 NURSING HOME PATIENTS; TO PROVIDE COURT AND
14 ADMINISTRATIVE PROCEDURES FOR PERSONAL INJURY
15 CLAIMS AGAINST NURSING HOMES; AND FOR OTHER
16 PURPOSES.
17

18 **Subtitle**

19 AN ACT TO ADDRESS INSURANCE COVERAGE FOR
20 NURSING HOME PATIENTS AND PERSONAL
21 INJURY CLAIMS AGAINST NURSING HOMES.
22
23

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.

5
6 20-10-1903. Patient's Recovery Fund – Participation.

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

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

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

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

33 (2) Subject to the rules and regulations of the fund and upon
34 terms approved by the board, a skilled nursing facility which is required to
35 participate in the fund as a condition of maintaining its license to provide
36 long-term care in this state may opt out of participation in the fund by

1 giving notice to the administrator that such facility is owned and operated
2 by a nonprofit, government or church affiliated organization as defined by
3 the board. Wrongful acts occurring during such facility's prior period or
4 periods of participation shall be covered.

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

14
15 20-10-1904. Election by participating facility – Initial assessments
16 and payments.

17 (a) A participating facility may elect:

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

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

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

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

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

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

34 (3) Shall participate in the fund upon equal terms with other
35 participating facilities; provided, that the fund shall not pay *claims* or
36 judgments on behalf of such facility, unless, and only to the extent that,

1 such facility acquires coverage from the fund.

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

8
9 20-10-1905. Initial limits of coverage and deductible.

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

16
17 20-10-1906. Patient's Recovery Fund Board – Powers and duties.

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

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

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

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

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

35 (f) The board shall have the power to enter into contracts, and to sue
36 and be sued, in its own name, to borrow public or private funds in such

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

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

12
13 20-10-1907. Administrator – Powers and duties.

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

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

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

35
36 20-10-1908. Patient's Recovery Fund Advisory Board.

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

9 (b) The advisory board shall advise the board and the administrator on
10 the proper execution of the fund and the business plan approved by the board.
11 The advisory board shall meet not less often than semiannually to review and
12 examine financial statements and progress reports, prepared by the
13 administrator and previously reviewed by the board, and to advise the
14 administrator and the board of the sufficiency of the reports. The financial
15 statements shall include a balance sheet and income statement, prepared
16 according to generally accepted accounting principles. The board shall issue
17 an annual financial report prepared and certified by a certified public
18 accountant on the first business day of July of each year, which shall be
19 subject to public inspection.

20
21 20-10-1909. Accumulation of fund assets – Disposition.

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

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

33
34 20-10-1910. Appointment of administrative law judges.

35 The Administrative Office of the Courts shall appoint not less than one
36 (1) administrative law judge, who shall serve for a term of three (3) years,

1 on a full-time or part-time basis, and shall be eligible for reappointment.
2 Administrative law judges shall be licensed attorneys and shall be otherwise
3 qualified as determined by the board. The compensation and expenses of
4 administrative law judges shall be paid by the fund.

5
6 20-10-1911. Definitions.

7 As used in this subchapter:

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

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

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

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

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

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

32 (g) "Occupied beds" means:

33 (1) Beds occupied by patients at midnight;

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

1 (3) Those beds placed on hold during a period of time not to
2 exceed fourteen (14) consecutive calendar days during which a patient is on
3 therapeutic home leave.

4 (h) "Participating facility" means a skilled nursing facility which
5 participates in and contributes to the Patient's Recovery Fund, including the
6 owners, principals, officers, employees, agents, and affiliates of such
7 skilled nursing facility. "Participating facility" does not include any
8 unaffiliated person or entity providing management services to such facility.

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

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

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

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

17 Notwithstanding any other provision of law:

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

23 (b) Any action for injury, as defined herein, shall be commenced in
24 the circuit court of the county in which the injury occurred, and not
25 otherwise. Any claim filed against a participating facility prior to the
26 filing of an action for injury shall be dismissed by the administrator
27 without prejudice.

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

30 Upon request by a participating facility, other than a participating
31 facility which maintained commercial insurance coverage for the relevant
32 period, the fund shall employ counsel to defend any action for injury against
33 such facility. Fees and expenses incurred by counsel employed by the fund
34 shall be paid by the fund; provided, that the administrator has the authority
35 to determine the reasonableness of such fees and expenses, subject to the
36 rules and regulations of the fund.

1
2 20-10-1914. Stay – Exhaustion of administrative remedies.

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

9 (b) The administrative process shall conclude not later than eight (8)
10 months after the filing of the claim with the administrator; provided, that
11 the parties may agree in a writing filed with the administrator for an
12 extension of time not to exceed four (4) additional months. Upon the
13 expiration of the term as provided herein or as agreed by the parties without
14 a settlement or final order, the circuit court may extend the administrative
15 process for a reasonable time or may direct that further proceedings be had
16 in the circuit court.

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

23
24 20-10-1915. Claims – Authority of administrator.

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

1 (b) The administrator has the sole authority to approve, modify or
2 settle any claim against a participating facility to the extent of the
3 applicable limit of coverage provided by the fund, including the deductible.
4 The administrator is without authority to approve, modify or settle any such
5 claim, or to consent to any award in an amount greater than the applicable
6 limit of coverage provided by the fund, including the deductible.

7
8 20-10-1916. Disposition of claims – Adjudication.

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

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

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

26 (1) To hear and determine all claims;

27 (2) To enter orders for the proper conduct of proceedings;

28 (3) To issue subpoenas, administer oaths and take testimony, by
29 deposition or otherwise;

30 (4) To make and enter findings of fact and rulings of law; and

31 (5) To make or modify awards in such amounts as may be supported
32 by the law and the evidence.

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

1 fact or conclusion of law in the order shall be deemed denied.

2
3 20-10-1917. Appeal – Demand for trial by jury.

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

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

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

29
30 20-10-1918. Payment of claims.

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

36 (1) The participating facility shall pay the deductible and the

1 self-insured portion of the award, if any, that were in effect when the claim
2 or action for injury accrued.

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

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

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

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

26
27 20-10-1919. Liability of medical director – Immunity from suit.

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

33
34 20-10-1920. Statute of limitations.

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

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

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

7
8 20-10-1921. Pleadings.

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

15
16 20-10-1922. Evidence - Burden of proof.

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

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

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

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

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

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

36 (1) The applicable standard of care and a violation thereof

1 shall be established by expert testimony as determined by the trial court to
2 be admissible under the Arkansas Rules of Evidence;

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

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

8
9 20-10-1923. Punitive damages.

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

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

18 (c) An award of punitive damages against a skilled nursing facility
19 shall not exceed the lesser of three (3) times the award of compensatory
20 damages or one million dollars (\$1,000,000); provided, that if an award of
21 compensatory damages is twenty-five thousand dollars (\$25,000) or less, an
22 award of punitive damages shall not exceed seventy-five thousand dollars
23 (\$75,000).

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

26
27 20-10-1924. Limitation on supersedeas.

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

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

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

1 judgment; or

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

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6 *SECTION 2. No provision of this act:*

7 *(a) Shall apply to, or alter existing law with respect to, any claim,*
8 *charge, action, or suit brought or prosecuted by the Attorney General; or*

9 *(b) Shall be construed to diminish or enlarge the powers or duties of*
10 *a coroner or medical examiner.*

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

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

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

26 *(3) If the bill is vetoed by the Governor and the veto is*
27 *overridden, the date the last house overrides the veto.*

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29 */s/ Gillespie, et al*
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