

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 H2/7/03

# 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

## 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.

## 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



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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 surcharge 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. The immunity  
33 granted by this section shall not be a defense of the skilled nursing  
34 facility and shall not alter existing law with respect to liability based  
35 upon respondeat superior.

36

1 20-10-1920. Statute of limitations.

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

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

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

10  
11 20-10-1921. Pleadings.

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

18  
19 20-10-1922. Evidence - Burden of proof.

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

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

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

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

36 (3) That as a proximate result thereof, the patient suffered

1 injury which otherwise would not have occurred.

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

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

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

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

11  
12 20-10-1923. Punitive damages.

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

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

21 (c) An award of punitive damages against a skilled nursing facility  
22 shall not exceed the lesser of three (3) times the award of compensatory  
23 damages or one million dollars (\$1,000,000); provided, that if an award of  
24 compensatory damages is twenty-five thousand dollars (\$25,000) or less, an  
25 award of punitive damages shall not exceed seventy-five thousand dollars  
26 (\$75,000).

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

29  
30 20-10-1924. Limitation on supersedeas.

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

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

