I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: There is no “elder abuse” statute in Alabama which provides a civil remedy for elder abuse. Plaintiffs must bring a medical malpractice action under the Alabama Medical Liability Act (Ala.Code § 6-5-540 et seq.)

A. Conduct: There is no private cause of action for elder abuse. However, the following conduct could be used as evidence in a medical malpractice action.

1. Abuse: The infliction of physical pain, injury, or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health. *Code of Alabama §38-9-2(1)*

   (a) Intentionally: A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his or her purpose is to cause that result or to engage in that conduct. *Code of Alabama §38-9-2(9)*

2. Neglect: The failure of a caregiver to provide food, shelter, clothing, medical services, or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself when the failure is the result of the person's mental or physical inability. *Code of Alabama §38-9-2(10)*

3. Emotional Abuse: The willful or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any protected person. *Code of Alabama §38-9-2(6)*

4. Exploitation: The expenditure, diminution, or use of the property, assets, or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative. *Code of Alabama §38-9-2(8)*

B. Individuals Subject To The Statute: Again, there is no elder abuse civil statute, any individual can bring a claim under the Medical Liability Act, however, if a

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1 This Compendium will not address the issue of exploitation, but instead will only focus on “neglect” and “abuse” cases.
resident falls under the “protected person” provision, then the provisions of Code of Alabama §38-9-2, et seq. will apply.

1. **Protected Person:** Any person over 18 years of age subject to protection under this chapter or any person, including, but not limited to, persons who are senile, mentally ill, developmentally disabled, or mentally retarded, or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others. *Code of Alabama §38-9-2(17)*

**C. Persons/Entities That Are Included In the Statute**

1. **Types of Individuals Whose Care Is Subject to the Statute**

   (a) “Caregiver²” An individual who has the responsibility for the care of a protected person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, by contract or as a result of the ties of friendship.

      (1) Employee of a Nursing Home: Includes a person permitted to perform work in a nursing home by the nursing home administrator or by a person or an entity with an ownership interest in the facility, or by both. A person shall be considered an employee whether or not he or she receives compensation for the work performed. *Code of Alabama §38-9-2(7)*

**D. Reporting Requirement for Litigation to State**

None.

**E. Arbitration As It Relates To Elder Abuse Litigation**

The Alabama Supreme Court found that as it related to the nursing facility and resident: (1) a valid arbitration agreement existed between nursing home resident and nursing home, and (2) the arbitration agreement between nursing home and nursing home resident was not unconscionable. *Carraway v. Beverly Enterprises Alabama, Inc.*, 978 So.2d 27 (Ala. 2007)

**F. Relationship to Medical Malpractice actions**

As there is no “elder abuse” act in Alabama, claims alleging abuse and neglect against a nursing facility or hospital are subject to the Medical Liability Act. *Ex parte Northport Health Service, Inc.*, 682 So.2d 52 (Ala. 1996).

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² As defined in *Code of Alabama §38-9-2*
G. Caps

1. Caps on noneconomic damages under the Medical Liability Act were found to be unconstitutional (although not repealed – statute originally limited damages to $400,000). See Moore v. Mobile Infirmary Ass'n, 592 So.2d 156 (Ala. 1991); See also Mobile Infirmary Medical Center v. Hodgen, 884 So.2d 801 (Ala. 2003).

2. Caps on Punitive Damages: In all civil actions, no award of punitive damages shall exceed three times the compensatory damages of the party claiming punitive damages or five hundred thousand dollars ($500,000), whichever is greater. Actions based on wrongful death, intentional infliction of injury, and class actions are excluded. Alabama Code § 6-11-21(a)

   (a) As to a defendant who is a small business, no award of punitive damages shall exceed fifty thousand dollars ($50,000) or 10 percent of the business' net worth, whichever is greater. Alabama Code § 6-11-21(b)

H. Criminal Provision

1. Any person who intentionally abuses or neglects a person in violation of Alabama Code Title 38 Chapter 9 shall be guilty of a Class B felony if the intentional abuse or neglect causes serious physical injury. Alabama Code § 38-9-7(b)

2. Any person who recklessly abuses or neglects a person in violation of Alabama Code Title 38 Chapter 9 shall be guilty of a Class C felony if the reckless abuse or neglect causes serious physical injury. Alabama Code § 38-9-7(c)

3. Any person who intentionally abuses or neglects a person in violation of Alabama Code Title 38 Chapter 9 shall be guilty of a Class C felony if the intentional abuse or neglect causes physical injury. Alabama Code § 38-9-7(c)

4. Any person who recklessly abuses or neglects a person in violation of Alabama Code Title 38 Chapter 9 shall be guilty of a Class A misdemeanor if the reckless abuse or neglect causes physical injury. Alabama Code § 38-9-7(d)

5. Any person who emotionally abuses a person in violation of Alabama Code Title 38 Chapter 9 shall be guilty of a Class A misdemeanor. Alabama Code § 38-9-7(e)

I. Statute of Limitations: Two Years. Alabama Code § 6-5-482
J. Burden of Proof:

1. Claims brought under the Medical Liability Act: substantial evidence See Alabama Code 1975 § 6-5-549

2. Punitive Damages: Clear and convincing evidence. See Alabama Code § 6-11-20

K. Do Pain and Suffering Survive Death


II. DAMAGES

A. Damages Available

1. Actual Damages
2. Special Damages
3. Punitive Damages (wrongful death actions or intentional infliction of injuries only)
4. Costs of Suit

B. Attorney’s Fees Available: No. (As no private right of action)

1. If available, are the attorney’s fees limited? N/A

III. LEGISLATION AFFECTING STATUTE

A. Anticipated: None