I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: 
Arkansas Annotated Code (A.A.C.) § 9-20-101, et seq. - Adult Maltreatment Custody Act and A.A.C. §20-10-209

A. Conduct

1. **Neglect** – as defined in A.A.C. § 9-20-103(17)

   (a) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

   (b) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

   (i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

   (ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

   (iii) Negligently failing to carry out a prescribed treatment plan; or

   (iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in rules promulgated by the Office of Long-Term Care;

2. **Abuse** – as defined in A.A.C. § 9-20-103(1)(A) means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver and includes the following conduct:

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1“Long-term care facility” means:

   (A) A nursing home;

   (B) A residential care facility;
(a) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;

(b) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(c) Any intentional threat that a reasonable person would find credible and non-frivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(d) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

3. **Exploitation**

4. **Sexual Abuse**

**B. Individuals Subject To the Statute**

1. **Endangered Adult** (as defined in A.A.C. § 9-20-103(6))

(a) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with mental retardation; or

(F) Any facility that provides long-term medical or personal care;

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2 Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes. The definition of exploitation is set forth in A.C.A. §9-20-103(7)(A)-(D).

3 Sexual Abuse will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes. The definition of sexual abuse is set forth in A.C.A. § 9-20-103(23).
(b) A long-term care facility resident or an Arkansas State Hospital resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

2. Impaired Adult (as defined in A.A.C. § 9-20-103(10))

(a) “Impaired adult” means a person eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(i) For purposes of this subchapter, a long-term care facility resident is presumed to be an impaired person;

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

1. Types of Individuals Whose Care Is Subject To the Statute

(a) “Caregiver” means any of the following that has the responsibility for the protection, care, or custody of an endangered person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court:

(i) A related person or an unrelated person;

(ii) An owner, an agent, or a high managerial agent of a public or private organization; or

(iii) A public or private organization

2. Persons Excluded From Liability

(a) Sole member of a governing body. See Bedell v. Williams, 2012 Ark. 75, 386 S.W.3d 493 (Ark. 2012) (finding that a governing body was required for nursing homes in order to participate in Medicare and Medicaid, but did not create an independent duty on behalf of its members).

D. Reporting Requirement for Litigation to State

4 As defined in A.C.A. § 9-20-103(3))
None.

E. Arbitration As It Relates To Elder Abuse Litigation

In *Courtyard Gardens Health and Rehabilitation, LLC v. Quarles*, 2013 Ark. 228, the Court found that (1) evidence did not demonstrate, as a matter of law, that resident's son, who signed arbitration agreement, had actual authority to bind nursing home resident to the arbitration agreement; (2) as a matter of apparent first impression, resident's adult son did not have authority to bind nursing home resident to the arbitration agreement by virtue of statute providing that any adult child, for his or her mother or father of unsound mind, may consent to any surgical or medical treatment or procedure not prohibited by law that is suggested by a licensed physician.

F. Resident Rights Violations (Not a Separate Cause of Action)

1. Statute – A.A.C. §20-10-209
   (a) Any resident who is injured by a deprivation or infringement of his or her rights under A.A.C. §20-10-1209 (Resident’s Rights Statute) may bring a cause of action under §16-114-201 et seq., against any licensee responsible for the deprivation or infringement.
   
   (b) A deprivation or infringement of rights under this subchapter may be used as evidence of negligence.

2. Case law

G. Persons Who Can Bring an Action for Elder Abuse

1. Resident;

2. Resident’s Guardian

3. Personal Representative of the estate of a deceased resident.

H. Evidence Not Admissible At Trial in an Elder Abuse Case

Nurses employed by a defendant hospital or nursing home cannot be called as expert witnesses and testify against their defendant employer. *See A.A.C. §16–114–207(3); and Bedell v. Williams*, 386 S.W.3d 493, 504-505 (Ark. 2012).

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5 See A.C.A. §20-10-209(A)(2)
I. Relationship to Medical Malpractice actions

An action for medical injury is the sole remedy against a medical provider. *See A.A.C. §16-114-213*

An action for medical injury includes all actions against a medical care provider (including nursing homes) whether based in tort, contract, or otherwise, to recover damages on account of medical injury. *See A.A.C. §16-114-201*

J. Criminal Provision

Pursuant to *A.A.C. § 5-28-103(a)*, it is unlawful for any person or caregiver to abuse, neglect, or exploit any endangered person or impaired person.

1. If the abuse causes serious physical injury or a substantial risk of death, any person or caregiver who purposely abuses an endangered person or an impaired person is guilty of a Class B felony. *A.A.C. § 5-28-103(b)(1)*

2. If the abuse causes physical injury, any person or caregiver who purposely abuses an adult endangered person or an adult impaired person is guilty of a Class D felony. *A.A.C. § 5-28-103(b)(2)*

3. Any person or caregiver who neglects an adult endangered person or an adult impaired person, causing serious physical injury or substantial risk of death, is guilty of a Class D felony. *A.A.C. § 5-28-103(c)(1)*

4. Any person or caregiver who neglects an adult endangered person or an adult impaired person, causing physical injury, is guilty of a Class B misdemeanor. *A.A.C. § 5-28-103(c)(2)*

5. Any person or caregiver who abuses an adult endangered person or an adult impaired person is guilty of a Class B misdemeanor. *A.A.C. § 5-28-103(d)*

K. Statute of Limitations: Two Years – *A.A.C. § 16-114-203*


M. Can Regulations Establish Standard of Care:

1. Company Rules and Regulations: Such rules or regulations must establish a standard of care (i.e. an industry standard) in order to be considered evidence of negligence. *Arkansas Louisiana Gas Co. v. Stracener*, 239 Ark. 1001, 395 S.W.2d 745 (1965)

2. State and Federal Regulations: The violation of state and federal statutes or regulations may be considered to be evidence of negligence. *Jackson v. Cadillac Cowboy, Inc.*, 337 Ark. 24, 986 S.W.2d 410 (1999). However, a plaintiff must still prove that the violation proximately caused injury. *See

N. Admissibility of Adult Maltreatment Reports

1. A written report from a person or official required by this subchapter to report shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment. See A.A.C. §9-20-107(a)

2. The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment. See A.A.C. §9-20-107(b)

II. DAMAGES

A. Damages Available

1. Actual Damages

2. Special Damages

3. Punitive Damages – A.A.C. §16-114-209


5. Costs of Suit

B. Does Pain and Suffering of Decedent/Resident Survive Death:

Yes.

C. Attorney’s Fees Available: No.

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

III. LEGISLATION AFFECTING STATUTE

A. Anticipated: None

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6 When there is a finding that an employee of the long-term care facility failed to do something which a reasonably careful person would do or did something which a reasonable person would not do under circumstances similar to those shown by the evidence in the case, which caused an injury due to an infringement or a deprivation of the resident’s rights. See A.C.A. §20-10-1209(A)(4).