I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: Delaware Code Annotated (Del. C.) tit. 31 § 3901, et seq.

A. Conduct

1. Abuse

   (a) Definition

   (i) Physical abuse by unnecessarily inflicting pain or injury on an adult who is impaired, or

   (ii) Emotional abuse, including ridiculing, demeaning, making derogatory remarks, cursing, or threatening an impaired adult

2. Mistreatment

   (a) Definition

   (i) The failure to provide appropriate physical or emotional care to an adult who is impaired.

3. Neglect

   (a) Definition

   (i) Lack of attention by a caregiver to the physical needs of the impaired adult including but not limited to toileting, bathing, meals, and safety.

   (ii) Failure by a caregiver to carry out a treatment plan prescribed by a health care professional for the impaired adult.

   (iii) Intentional and permanent abandonment or desertion in any place of an adult who is impaired by a caregiver who does not make reasonable efforts to ensure that essential services will be provided for said adult who is impaired.

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1 Id. § 3902(1)
2 Id. § 3902(13)
3 Id. § 3902(14)
4. **Exploitation**
   
   (a) **Definition**
   
   (i) The illegal use or abuse of a person who is impaired or their resources by another person by profit or advantage.

5. **Spiritual Treatment and Medical Care Exception**
   
   An impaired adult shall not be considered abused, mistreated, neglected, or otherwise in need of protective services for the sole reason that the person relies on prayer or spiritual treatment in accordance with the practice and tenets of a recognized church. Furthermore, nothing in this statute shall require or authorize medical care over the implied or express objections of the impaired person.

6. **Single Act and/or Pattern**
   
   (a) A single act may qualify as abuse, mistreatment, neglect, or abandonment.

B. **Impaired Adult**
   
   Any person 18 years of age or older who, because of a physical or mental disability, is substantially impaired in the ability to provide adequately for the person’s own care or custody. Physical and mental disabilities include any such disability, including intellectual and developmental disabilities, brain damage, physical degeneration, senility, deterioration, habitual drunkenness, drug addiction, and mental or physical impairment.

C. **Persons/Entities Excluded From Statute**
   
   1. Anyone participating in good faith in the making of a report that an impaired adult is in need of protective services is immune from any liability, civil or criminal.

D. **Reporting Requirement for Litigation to the State**
   
   Any person who has reasonable cause to believe that an impaired adult is in need of protective services must report such information to the Department of Health and Social Services.

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4 Id. 31 § 3902(9)
5 Id. § 3911
6 See id. § 3902
7 Id. § 3902(2)
8 Id. § 3902(16)
9 Id. §§ 3910(a),(c)
10 Id. § 3910(a)
E. **Preclusion of Arbitration**

Delaware has instituted the Delaware Uniform Arbitration Act, which holds that any arbitration decision is “valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract”. **10 Del. C. § 5701**.

F. **Relationship to Medical Malpractice Actions**

The Delaware Patient Abuse Act, **11 Del. C. § 1131 et seq.** protects patients and residents of long term care facilities from various forms of abuse and neglect. It contains many of the same provisions as the impaired adult statute. See id. However, the Patient Abuse Act only covers the basic treatment of a patient by any healthcare provider. Delaware’s medical malpractice applies when the wrongdoer is a trained professional, and distinctly considers the training and expertise of the medical provider for establishing the proper standard of care. **Delaware Dept. of Health and Social Services v. Jain**, 29 A.3d 207, 212-213 (2011).

G. **Criminal Provision**

1. Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired shall be guilty of a class A misdemeanor.\(^\text{11}\) If such acts cause bodily harm, permanent disfigurement, or permanent disability, the person shall be guilty of a class D felony. If such acts result in the death of an impaired person, the person shall be guilty of a class A felony.\(^\text{12}\)

2. Any person who knowingly or recklessly exploits an adult who is impaired by using their resources shall be guilty of:\(^\text{13}\)

   (a) A class A misdemeanor for use of resources of less than $500

   (b) A class G felony where the resources are worth more than $500 but less than $5,000.

   (c) A class E felony where the resources are worth more than $5,000 but less than $10,000.

   (d) A class D felony where the resources are worth more than $10,000 but less than $50,000

   (e) For any exploitation of more than $50,000, the wrongdoer shall be guilty of a class C felony.

3. **Interplay with Civil Statute**

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\(^{11}\) 32 Del. C. § 3913(a)

\(^{12}\) Id. § 3913(c)

\(^{13}\) Id. § 3913(b)
The criminal statute’s inclusion with the other provisions of the impaired adult statute, along with the clear intent of the legislature to protect vulnerable adults in Delaware, provides for an unambiguous interpretation of the statute. *State v. Sailer*, 684 A.2d 1247, 1250 (Del. Super. 1995).

H. **Statute of Limitations:** Three years – 10 Del. C. § 8106


J. **Can Regulations Establish Standard of Care?**

   Yes. A negligence per se instruction may be received for the violation of a regulation, but only if the regulation is “promulgated pursuant to a legislative directive and enacted for a valid purpose”. *Toll Bros., Inc. v. Considine*, 706 A.2d 493, 497 (1998).

II. **DAMAGES**

   A. **Damages Available**

      (1) Actual Damages

      (2) Special Damages

      (3) Punitive Damages

      (4) Injunctive Relief

      (5) Costs of Suit

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

      Yes. A decedent’s survivors are entitled to compensation for pain and suffering that occurred from the time of the injury to the time of death. *Magee v. Rose*, 405 A.2d 143, 146 (1979). Delaware’s Survival Statute allows that all causes of action survive to the executor or the personal representative for the deceased party upon their death. 10 Del. C. § 3701. Damages for conscious pain and suffering are included as recoverable damages under the Survival Statute. 405 A.2d 143 at 146.

   C. **Attorney’s Fees Available:** No.

III. **LEGISLATION AFFECTING STATUTE**

   A. **Pending:** None

   B. **Anticipated:** None