I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: *Florida Statutes 415.101, et seq.*

A. Conduct

1. Neglect:

   (a) Definition

   The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult.\(^1\)

   (b) Third Party Conduct

   The failure of a caregiver to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.

   (c) Single Act and/or Pattern

   A single negligent act or omission or series of acts or omissions, which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death will qualify as neglect.\(^2\)

---

\(^1\) The authors gratefully acknowledge the assistance of Summer Associate, Mohammad Khaleelullah.

\(^2\) *Fla. Stat.* §415.102(16).

\(^3\) *Id.*
2. **Abuse:** Any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health constitutes abuse. Abuse includes acts and omissions.⁴

3. **Exploitation:**⁵

   (a) A person who stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

   (b) A person who knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.⁶

4. **Intimidation:**⁷ The communication by word or act to a vulnerable adult that the vulnerable adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.⁸

**B. Vulnerable Adults**

1. **Types of Impairment**

   Any person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.⁹

**C. Persons/Entities Excluded From Statute**

---

⁴ *Fla. Stat.* §415.102(1); no legal duty or relationship appears to be required under the statute’s express terms.

⁵ Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.

⁶ *Fla. Stat.* §415.102(8).

⁷ Intimidation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.

⁸ *Fla. Stat.* §415.102(14).

⁹ *Fla. Stat* §415.102(27).
Any person who participates in making a report under mandatory reporting requirements or participates in a judicial proceeding resulting there from is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. However, no immunity is granted to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult.\(^{10}\)

D. Reporting Requirement for Litigation to State – The statute does not provide specific notice and process requirements to the state for litigation.

1. Other Applicable Statutes

   (a) Civil actions for damages against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under state laws relating to the operation of the licensed facility shall be brought pursuant to civil enforcement under Nursing Homes and Related Health Care Facilities Fla. Stat. §400.023(1).

E. Preclusion of Arbitration

A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine the issue and, according to its determination, shall grant or deny the application. Fla. Stat. §682.03.

F. Relationship to Medical Malpractice actions

The Florida Adult Protective Services Act (APSA), Fla. Stat. § 415.1111, is in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult. However, the APSA was not intended to provide an alternate cause of action for medical negligence. Bohannon v. Shands Teaching Hosp. & Clinics, Inc., 983 So. 2d 717, 721 (Fla. Dist. Ct. App. 2008).

G. Criminal Provision

1. Abuse

\(^{10}\) Fla. Stat. §415.1036.
(a) Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

(d) A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree.\(^{11}\)

2. Aggravated abuse

(a) Committing aggravated battery on an elderly person or disabled adult;

(b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or

(c) Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person disabled adult.

(d) A person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the first degree.\(^{12}\)

3. Neglect

(a) A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the second degree.

(b) A person who willfully or by culpable negligence neglects an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree.\(^{13}\)

\(^{11}\) Fla. Stat. §825.102(1).
\(^{12}\) Fla. Stat. §825.102(2).
\(^{13}\) Fla. Stat. §825.102(3).
H. Statute of Limitations

An action founded on alleged abuse, as defined in *Fla. Stat.* § 415.102, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later. *Fla. Stat.* § 95.11(7).

I. Burden of Proof

In Florida, in civil action, a party must present a preponderance of the evidence to discharge his or her burden of production in a civil action. *In re Estate of Ziy*, 223 So. 2d 42, 43 (Fla. 1969).

J. Can Regulations Establish A Standard Of Care:


II. Damages

A. Damages available

   (1) Actual Damages
   
   (2) Punitive Damages

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

**Yes.** All causes of action survive and may be commenced, prosecuted, and defended in the name of the person prescribed by law. *Fla. Stat.* §46.021.

C. Attorney’s Fees Available: Yes.

A prevailing party may be entitled to recover reasonable attorney’s fees.

III. Legislation Affecting Statute

---

15 *Id.*
A. **Pending:** None

B. **Anticipated:** None