I. The Disabled Adults and Elder Persons Protections Act, O.C.G.A. § 30-5-1 et seq.

A. Conduct

1. **Neglect**: means the absence or omission of essential services to the degree that it harms or threatens with harm the physical or emotional health of a disabled adult or elder person. O.C.G.A. § 30-5-3(9).

2. **Abuse**: means the willful infliction of physical pain, physical injury, sexual abuse, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person. O.C.G.A. § 30-5-3(1).

3. **Exploitation**: means the illegal or improper use of a disabled adult or elder person or that person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own or another's profit or advantage. O.C.G.A. § 30-5-3(8).

B. Applicable to:

1. "Elder person" means a person 65 years of age or older who is not a resident of a long-term care facility. O.C.G.A. § 30-5-3(6).

2. "Disabled adult" means a person 18 years of age or older who is not a resident of a long-term care facility, but who is mentally or physically incapacitated or has Alzheimer's disease. O.C.G.A. § 30-5-3(5).

C. Criminal Provision

1. Any person who knowingly and willfully exploits a disabled adult, elder person, or resident, willfully inflicts physical pain, physical injury, sexual

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1 "Resident" is defined by O.C.G.A. § 16-5-100(8) as any person who is receiving treatment or care in any long-term care facility.
abuse, mental anguish, or unreasonable confinement upon a disabled adult, elder person, or resident, or willfully deprives of essential services a disabled adult, elder person, or resident shall be guilty of a felony. O.C.G.A. § 16-5-102.

2. **Persons/Entities Excluded From Statute:** An owner, officer, administrator, board member, employee, or agent of a long-term care facility shall not be held criminally liable for the actions of another person who is convicted pursuant to this article unless such owner, officer, administrator, board member, employee, or agent was a knowing and willful party to or conspirator to the abuse or neglect. O.C.G.A. § 16-5-103

3. O.C.G.A. § 16-3-25 also provides that a person who is an employee, agent, or volunteer at a long-term care facilities, assisted living communities, or personal care homes, or who is required to be licensed pursuant to Georgia law, relating to home health care and hospices, who commits the offense of simple battery against a person who is admitted to or receiving services from such facility, person, or entity shall be punished for a misdemeanor of a high and aggravated nature.

4. O.C.G.A. § 30-5-8 makes the failure to report abuse, neglect or exploitation by someone required to make such a report under O.C.G.A. § 30-5-4, including physicians and nurses, a misdemeanor.

5. **Interplay with State Civil Statute:** O.C.G.A. § 16-5-103 provides that the criminal statute is cumulative and supplemental to any other state law.

II. **Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq.**

A. **Regulations Establishing Standard of Care:** O.C.G.A. § 31-8-108(a)(2) provides that each resident shall receive care, treatment, and services which are adequate and appropriate. Care, treatment, and services shall be provided in compliance with applicable laws and regulations. In the context of a nursing home, over and above the contractual obligation the nursing home assumed to take care of its residents, the state has imposed a statutory obligation for it to exercise "reasonable care and skill." O.C.G.A. § 31-8-108. The general standard of care required of a nursing home is that degree of care, skill, and diligence usually exhibited by such homes generally in the community. *Associated Health Systems v. Jones*, 185 Ga. App. 798, 801 (366 SE2d 147) (1988).

B. **Required care, treatment, and services; rights in regard thereto; experimental research or treatment**

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2 O.C.G.A. § 30-5-8 previously provided that in addition to any other provision of law, it was unlawful for a person to act with the specific intent to abuse, neglect, or commit exploitation of any disabled adult or elder person. Any violation of this statute was a felony. The 2013 amendment to the statute omitted these provisions. Sections 16-5-102 through 16-5-104 were enacted in 2013.
1. Each resident shall receive care, treatment, and services which are adequate and appropriate. Care, treatment, and services shall be provided as follows:

(a) With reasonable care and skill;

(b) In compliance with applicable laws and regulations;

(c) Without discrimination in the quality of a service based on the source of payment for the service;

(d) With respect for the resident's personal dignity and privacy; and

(e) With the goal of the resident's return home or to another environment less restrictive than the facility.

2. In the provision of care, treatment, and services to the resident by the facility, each resident or guardian shall be entitled to the following:

(a) To choose the resident's physician. The physician so chosen shall inform the resident in advance whether or not the physician's fees can be paid from public or private benefits to which the resident is entitled and shall provide such documentation as may be required by law or regulation;

(b) To participate in the overall planning of the resident's care and treatment. The resident or guardian shall be informed of this right each time a substantial change in the treatment plan is made;

(c) To refuse medical treatment, dietary restrictions, and medications for the resident. The resident or guardian shall be informed of the probable consequences of such refusal, the refusal shall be noted in the resident's medical records, and the resident's attending physician shall be notified as soon as practical. If such refusal apparently would be seriously harmful to the health or safety of the resident, the facility shall either refer the resident to a hospital or notify a responsible family member or, if such a family member is not readily available, the county department of family and children services. If such refusal would be harmful to the health or safety of others, as documented in the resident's medical records by the resident's physician, this subsection shall not apply. Any facility or employee of such facility which complies with this paragraph shall not be liable for any damages resulting from such refusal;

(d) To receive from the facility upon the request of the resident, guardian, or representative the name, address, and telephone number of the resident's physician;
To have any significant change in the resident's health status reported to persons of his choice by the facility within a reasonable time; and

To obtain from the resident's physician or the physician attached to the facility a complete and current explanation concerning the resident's medical diagnosis, treatment, and prognosis in language the resident can understand. Each resident shall have access to all information in the medical records of the resident and shall be permitted to inspect and receive a copy of such records unless medically contraindicated. The facility may charge a reasonable fee for duplication, which fee shall not exceed actual cost.

3. Each resident shall be free from experimental research or treatment unless the informed, written consent of the resident or guardian is first obtained.

C. Any resident, guardian, or representative who believes his rights under the statute have been violated shall have the right to request a hearing from the department pursuant to the Georgia Administrative Procedure Act. O.C.G.A. § 31-8-125.

D. Any person or persons aggrieved because a long-term care facility has violated or failed to provide any right granted under this article shall have a cause of action against such facility for damages and such other relief as the court deems proper. O.C.G.A. § 31-8-126.

E. Relationship to Medical Malpractice actions: The right of a resident to bring an action pursuant to this Code section is in addition to any and all other rights, remedies, or causes of action the resident may have by statute or at common law. O.C.G.A. § 31-8-126(c).

F. Statute of Limitations: Two Years – § O.C.G.A. 9-3-33

G. Burden of Proof: Preponderance of the Evidence

III. DAMAGES

A. Damages Available: The statute does not provide specifically the types of damages available, but presumably common law damages including actual and compensatory damages are recoverable along with punitive damages pursuant to O.C.G.A. § 51-12-5 and attorney’s fees pursuant to O.C.G.A. § 13-6-11 where applicable.

IV. LEGISLATION AFFECTING STATUTE

A. Pending: The Disabled Adults and Elder Persons Protections Act, O.C.G.A. § 30-5-1 et seq. was amended in 2013.

B. Anticipated: None