I. CIVIL STATUTE PROTECTING DEPENDENT ADULTS OR ELDERS FROM NEGLECT OR ABUSE: NMSA 1978, §§ 27-7-14 through 27-7-31.

A. Conduct

1. **Neglect**: The failure of the caretaker of an adult to provide for the basic needs of the adult, such as clothing, food, shelter, supervision and care for the physical and mental health of that adult; "neglect" includes self-neglect. NMSA 1978, § 27-7-16(N) (1989).

2. **Abuse**:¹

   (a) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish;

   (b) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult; or

   (c) sexual abuse, including criminal sexual contact, incest and criminal sexual penetration.

3. **Exploitation**:² An unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise. NMSA 1978, § 27-7-16(I) (1997).

B. Vulnerable Adults

1. **Incapacitated Adult**: Any adult with a mental, physical or developmental condition that substantially impairs the adult's ability to provide adequately for the adult's own care or protection. NMSA 1978, § 27-7-16(L) (1997).

C. Persons/Entities Excluded From Statute

1. **Immunity**: “Any person making a report pursuant to Section 27-7-30 NMSA 1978, testifying in any judicial proceeding arising from the report

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¹ NMSA 1978, § 27-7-16(B) (2007).

² Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.
or participating in a required evaluation pursuant to the Adult Protective Services Act or any law enforcement officer carrying out his responsibilities under that act or any person providing records or information as required under that act shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose.” NMSA 1978, § 27-7-31 (1997).

D. Reporting Requirement for Litigation to State

Attorneys for the New Mexico Aging and Long-Term Services Department or the district attorney's office shall file all proceedings on behalf of a suspected victim of elder abuse or neglect under the Adult Protective Services Act. NMSA 1978, § 27-7-28 (1989).

E. Preclusion of Arbitration

None.

F. Relationship to Medical Malpractice actions

None.

G. Criminal Provisions

1. Interference with Investigation: Willful interference with a state investigation of adult abuse, neglect or exploitation is a misdemeanor. NMSA 1978, § 27-7-19(E) (2007).

2. Voluntary Protective Services and Protective Placement: Interference with the provision of protective services or protective placement to an adult who consents to receive those services is a misdemeanor. NMSA 1978, § 27-7-23(B) (2007).

3. Involuntary Protective Services and Protective Placement: Interference with the provision of involuntary protective services or protective placement to an adult is a misdemeanor. NMSA 1978, § 27-7-24(D) (2007).

4. Confidentiality of Records: Intentional and unlawful release or other unlawful use of information or records closed to the public pursuant to the Adult Protective Services Act is a misdemeanor. NMSA 1978, § 27-7-29(D) (2007).

5. Duty to Report: Failure or refusal to report elder abuse, or the obstructing or impeding of any investigation into elder abuse, is a misdemeanor. NMSA 1978, § 27-7-30(C) (2007).

H. Statute of Limitations: Statute Is Silent. Two possibilities:
2. **Unspecified Actions:** Four years. NMSA 1978, § 37-1-4 (1953).

I. **Burden of Proof:** Statute Is Silent.

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

   *Unclear.* In New Mexico, to receive a negligence *per se* instruction, a party must meet a four-part test:

   1. There must be a statute which prescribes certain actions or defines a standard of conduct, either explicitly or implicitly,
   2. the defendant must violate the statute,
   3. the plaintiff must be in the class of persons sought to be protected by the statute, and
   4. the harm or injury to the plaintiff must generally be of the type the legislature through the statute sought to prevent.


II. **DAMAGES**

   A. **Damages Available**

      1. Actual Damages
      2. Special Damages
      3. Punitive Damages
      4. Injunctive Relief

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

      *Yes.* Although New Mexico’s Adult Protective Services Act does not speak to the issue, the statutory beneficiaries of a wrongful death action may recover for the pain and suffering experienced by the decedent between the time of injury and death. UJI 13-1830 NMRA (2008).

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

III. **LEGISLATION AFFECTING STATUTE**

   A. **Pending:** None.

   B. **Anticipated:** None