I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse:

North Carolina does not provide a specific civil action to protect Dependent Adults from Neglect or Abuse. The state does provide protection services for dependent adults as part of the state’s social services. North Carolina has mandatory reporting requirements when neglect or abuse is suspected. Also, the state has criminalized abuse and neglect of dependent adults. N.C. Gen. Stat. § 108A-99, et seq.

A civil cause of action for neglect or abuse of a dependent adult would be based in common law negligence. If an action was brought against a health care provider it would fall under North Carolina’s Medical Malpractice Act.

N.C.G.S. 90-21.11

(2) Medical malpractice action.--Either of the following:

a. A civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.

b. A civil action against a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes for damages for personal injury or death, when the civil action (i) alleges a breach of administrative or corporate duties to the patient, including, but not limited to, allegations of negligent credentialing or negligent monitoring and supervision and (ii) arises from the same facts or circumstances as a claim under subdivision a. of this subdivision.

A. Conduct

1. Neglect:

The word “neglect” refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person's mental or physical health or is not receiving services from the person's caretaker. N.C. Gen. Stat. § 108A-101 (m).
2. **Abuse**

   (a) **Definition**

   The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health. N.C. Gen. Stat. § 108A-101 (a).

   The word “caretaker” shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract. N.C. Gen. Stat. § 108A-101 (b).

   (b) **Single Act and/or Pattern**

   (i) Not applicable to Adult Protection Statute

   (c) **Legal Requirement for the act(s) or Omission(s):**

   (ii) Not Applicable to Adult Protection Statute

3. **Exploitation:** means the illegal or improper use of a disabled adult or his resources for another's profit or advantage. N.C. Gen. Stat. § 108A-101 (j).

B. **Vulnerable Adults**

1. **Types of Impairment**

   A "disabled adult" is any person 18 years of age or over, or any lawfully emancipated minor who is present in the state, and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy, or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances. N.C. Gen. Stat. § 108A-101 (d).

   A “disabled adult” shall be “in need of protective services” if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services. N.C. Gen. Stat. § 108A-101 (e).

C. **Persons Entities Excluded**

1. A person is not receiving services from his caretaker if, among other things and not by way of limitation, the person is a resident of one of the State-owned psychiatric hospitals listed in G.S. 122C-181(a)(1), the State-
owned Developmental Centers listed in G.S. 122C-181(a)(2), or the State-owned Neuro-Medical Treatment Centers listed in G.S. 122C-181(a)(3), the person is, in the opinion of the professional staff of that State-owned facility, mentally incompetent to give consent to medical treatment, the person has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and the person needs medical treatment. N.C. Gen. Stat. § 108A-101 (m).

D. Reporting Requirement for litigation to state

1. Not Applicable to Adult Protection Statute

E. Preclusion of Arbitration

1. Not Applicable to Adult Protection Statute
2. Medical Malpractice
   (a) North Carolina has a system of court-ordered mediated settlement conferences under rules drawn up by the North Carolina Supreme Court. N.C. Gen. Stat. § 7A-38.1.
   (b) Those rules allow the parties to select their own mediator, to agree on another form of settlement procedure (like arbitration or summary trial), or to dispense with mediation altogether for good cause shown. N.C. Rules, Super. Ct. Mediated Settlement Conf. Rule 1.

F. Relationship to Medical Malpractice actions

1. To prevail on a medical malpractice claim under North Carolina law, a plaintiff must establish:
   (a) the applicable standard of care;
   (b) the defendant's breach of that standard; and
   (c) that the breach caused the plaintiff's injury.


G. Criminal Provision

1. § 14-112.2 (b), (d)

   It is unlawful for a person: (i) who stands in a position of trust and confidence with an elder adult or disabled adult, or (ii) who has a business relationship with an elder adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the
use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder adult or disabled adult.

If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class F felony; (2) valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class G felony; (3) valued at less than twenty thousand dollars ($20,000), then the offense is a Class H felony.

2. § 14-112.2(c), (e)

It is unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the elder adult or disabled adult. This subsection shall not apply to a person acting within the scope of their lawful authority as the agent for the elder adult or disabled adult.

(1) if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at one hundred thousand dollars ($100,000) or more, then the offense is a Class G felony; (2) valued at twenty thousand dollars ($20,000) or more but less than one hundred thousand dollars ($100,000), then the offense is a Class H felony; (3) valued at less than twenty thousand dollars ($20,000), then the offense is a Class I felony.

H. Statute of Limitations

1. Adult Protection Statute

(a) None

2. Personal Injury / Medical Malpractice

(a) Three years for Personal Injury - N.C. Gen. Stat. § 1-52(16)

(b) Two years for Wrongful Death-N.C. Gen. Stat § 1-53

The 4 year statute of repose is available when the injury is not apparent until 2 or more years after the last act of the defendant. Suit must be brought within 1 year of the discovery date, but cannot be brought more than 4 years from the last act of the defendant. Unless foreign object with no therapeutic or diagnostic purpose is left in the body, then 10 year

**I. Burden of Proof**
1. Not Applicable to Adult Protection Statute
2. Medical Malpractice

**J. Can Regulations establish standard of care**
1. Medical Malpractice

**II. Damages**

A. Damages Available
1. Injunctive Relief
2. Medical Malpractice
   (a) Actual Damages
   (b) Punitive Damages - limited to three times compensatory damages or $250,000, whichever is greater. N.C. Gen. Stat. § 1D-25


B. Does Pain and Suffering of Decedent/Resident Survive Death
1. Not Applicable to Adult Protection Statute
2. Medical Malpractice
   (a) Yes.

C. Attorney’s Fees Available: Yes, but not generally
1. If available, are the attorney’s fees limited
   (a) No

**III. Legislation Affecting Statute**

A. Pending: None
B. **Anticipated**: Unknown