I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: *Oklahoma Vulnerable Adults Act, 43A Oklahoma Statutes Annotated (O.S.A) § 10-101*

A. Conduct

1. **Abuse**

   (a) Defined as causing or permitting

   (i) The infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, mental anguish, or

   (ii) The deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

2. **Exploitation**

   The unjust or improper use of the resources of a vulnerable adult for profit or advantage through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

3. **Financial Neglect**

   The repeated failure of a caretaker or other person who has assumed the financial management role for a vulnerable adult to use the resources available to them to restore or maintain the health of a vulnerable adult and ensure their well being.

4. **Neglect**

   (a) Definition

   (i) The failure to provide protection for a vulnerable adult who is unable to protect their own interests,

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1 43A O.S.A. § 10-103(8)
2 *Id.* § 10-103(9)
3 *Id.* § 10-103(10)
4 *Id.* § 10-103(11)
(ii) The failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or

(iii) Negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

5. **Sexual abuse**

(a) **Definition**

(i) The oral, anal, or vaginal penetration of a vulnerable adult or through the union with the sexual organ of a person providing services to the vulnerable adult,

(ii) The touching, feeling, or observation of the body or private parts of the vulnerable adult by a person providing services for sexual gratification, or

(iii) Indecent exposure by a person providing services to a vulnerable adult.

6. **Indecent Exposure**

Forcing a vulnerable adult to observe the body or private parts of another, watch sexual acts, or touch or feel the body or private parts of another.

7. **Self Neglect**

The act or omission of a vulnerable adult to take the necessary steps to meet the essential requirements for physical or mental health and safety.

8. **Sexual Exploitation**

A caretakers causing, permitting, or encouragement of a vulnerable adult to engage in prostitution or the lewd, obscene, pornographic photographing, filming, or depiction of the vulnerable adult.

9. **Verbal Abuse**

The use of words, sounds, or other communication by a person providing services to the vulnerable adult that are likely to cause a reasonable person to experience humiliation, fear, intimidation, shame, or degradation.

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5 Id. § 10-103(12)
6 Id. § 10-103(13)
7 Id. § 10-103(14)
8 Id. § 10-103(15)
10. **Single Act and/or Pattern**

A single act or omission will qualify under the statute. See 43A O.S.A. § 10-103.

**B. Vulnerable Adult**

An individual who is an incapacitated person, or who, because of physical or mental disability, is substantially impaired in their ability to provide adequately for their own care, manage their property and finances, care for their mental and physical wellbeing, or to protect themselves from abuse without the help of others.

**C. Incapacitated Adult**

1. Any person over the age of eighteen who

   (i) Is impaired by a mental or physical illness or disability, dementia, mental retardation, developmental disability, or other cause, and

   (ii) Whose ability to evaluate and understand information and communicate is impaired to such an extent that the person lacks the capacity to care for their finances or their own well being without assistance from others.

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

Any person who in good faith makes or participates in a report of the abuse of a vulnerable adult shall have immunity from civil and criminal liability. This immunity is also applied to former employers of the negligent caretaker who have made past reports of the employee’s abuse in good faith.

**E. Reporting Requirement for Litigation to State**

Any person suspecting that a vulnerable adult has been subject to abuse, neglect, or exploitation shall make a report to either the Department of Human Services, the office of the district attorney of their county, or the local police or sheriff’s department. Persons who are required to make such a report are physicians, emergency response personnel, social workers and mental health professionals, law enforcement officials, staff of domestic abuse programs, and long term care facility staff. The report must contain the contact information of the vulnerable

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9 Id. § 10-103(5)
10 Id. § 10-103(4)
11 Id. § 10-104(E)(2)
12 Id. § 10-104(A)(1)
13 Id. § 10-104(B)
adult and their caretaker, the vulnerable adult’s current condition, and the details of the alleged abuse, neglect, or exploitation.  

**F. Preclusion of Arbitration**

An arbitration decision has the same force and effect as a judgment of a court as long as the elements of preclusion are met. *Carris v. John R. Thomas and Associates, P.C.*, 896 P.2d 522, 527 (1995). The elements are:

1. An identity of the subject matter, of the parties or their privies, of the capacity of the parties and of the cause of action;

2. The court which heard the original action must have been one of competent jurisdiction; and

3. The judgment rendered must have been a judgment on the merits of the case and not upon purely technical grounds.

**G. Relationship to Medical Malpractice Actions**

Acts of medical malpractice against a vulnerable adult can also provide a basis for an action under the Oklahoma Vulnerable Adults Act. *See 43A O.S.A. § 10-103.*

**H. Criminal Provisions**

1. Any person who knowingly or willfully fails to promptly report the abuse, neglect, or exploitation of a vulnerable adult shall be guilty of a misdemeanor punishable by imprisonment not exceeding one year, a fine not more than $1,000, or both.  

2. Any person who engages in abuse, sexual abuse, or exploitation of a vulnerable adult shall be guilty of a felony. They shall be fined not more than $10,000, be imprisoned for not more than two years, or both.  

3. A caretaker or other person responsible for a vulnerable adult who purposefully, knowingly, or recklessly neglects the vulnerable adult shall be guilty of a felony. They shall be fined no more than $10,000, be imprisoned for not more than two years, or both.  

4. Interplay with Civil Statute

The court will consider any provision of the Oklahoma Vulnerable Adult Act when the victim is elderly or incapacitated.  

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14 *Id.* § 10-104(C)
15 *Id.* § 10-104(E)
16 21 Okl.St.Ann. § 843.3(A)
17 *Id.* § 843.3(B)
18 *Id.* § 843.3(C)
I. Statute of Limitations: Two Years – 12 O.S.A. § 95(3)


K. Can Regulations Establish Standard of Care?
   Yes. Regulations can be used to establish the standard of care and support a negligence per se claim for their violation. Howard v. Zimmer, Inc., 299 P.3d 463, 473 (2013).

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. The personal representative of the decedent may maintain an action, and the pain and suffering endured by a decedent shall be distributed to their spouse, children, and kin.19

   C. Attorney’s Fees Available: No.

III. LEGISLATION AFFECTING STATUTE
   A. Pending: None
   B. Anticipated: None

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19 12 O.S.A. §§ 1053(A-B)