I. Civil Statute Protecting Dependent Individuals from Neglect, Abuse, or Mistreatment: Abuse in Health Care Facilities: Rhode Island General Laws §23-17.8-1 et seq.¹

A. Conduct

1. **Neglect**: means the willful failure by a caregiver or other person with a duty of care to provide goods or services necessary to avoid physical harm, mental harm or mental illness to an elderly person, including, but not limited to, "abandonment" (withdrawal of necessary assistance) and denial of food or health related services. *RI Gen Laws §23-17.8-1(f)*

2. **Abuse**:²

   i. Any assault, including, but not limited to, hitting, kicking, pinching, slapping, or the pulling of hair; provided, however, unless it is required as an element of the offense charged, it shall not be necessary to prove that the patient or resident was injured by the assault;

   ii. Any assault as defined in chapter 37 of title 11 (sexual assault);

   iii. Any offense under chapter 10 of title 11 (abominable and detestable crimes against nature);

   iv. Any conduct which harms or is likely to physically harm the patient or resident except where the conduct is a part of the care and treatment, and in furtherance of the health and safety of the patient or resident; or

   v. Intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional or psychological harm to the patient or resident, including but not limited to, ridiculing or demeaning a patient or resident, making derogatory remarks to a

¹ This statute applies to any resident or patient of a facility as defined by the statute. R.I. Gen Laws § 42-66 et seq. is a separate provision applying to those 60 years and older, but is not specific to health care or long-term care facilities. Rather, this statute protects the elderly residing in the general community.

² R.I. Gen Laws § 23-17.8-1(a)
patient or resident or cursing directed towards a patient or resident, or threatening to inflict physical or emotional harm on a patient or resident.

3. **Mistreatment**: means the inappropriate use of medications, isolation, or use of physical or chemical restraints:
   
i. As punishment;
   
ii. For staff convenience;
   
iii. As a substitute for treatment or care;
   
iv. In conflict with a physician's order; or
   
v. In quantities which inhibit effective care or treatment, or which harms or is likely to harm the patient or resident

B. **Notice**

A notice of the reporting requirements and of the penalty imposed for failure to report shall be conspicuously posted on each floor of any facility required to be licensed. *R.I. Gen. Laws §23-17.8-7*

Any facility that fails to post, after written notice, the requirements of this chapter pursuant to § 23-17.8-7 shall be fined not more than five hundred ($ 500) dollars per day of the occurrence. *R.I. Gen. Laws §23-17.8-7.1*

C. **Persons Excluded From Statute / Immunity: R.I. Gen Laws §23-17.8-4a,b**

1. Any person who in good faith makes an oral or written report, excluding any perpetrator or conspirator of the patient abuse, mistreatment, or neglect, shall have immunity from any liability, civil or criminal, that might be incurred as a result of having made the report.

2. No facility shall discharge or in any manner discriminate or retaliate against any person who in good faith makes a report, testifies, or is about to testify in any proceeding about the abuse, mistreatment, or neglect of patients or residents in the facilities.

3. No facility shall discharge, threaten, or in any manner discriminate or retaliate against any employee regarding the employee's compensation, terms, conditions, location, duration, or privileges of employment because:

   i. The employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing,

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3 R.I. Gen Laws § 23-17.8-1(e)
or who, in good faith, makes a report, testifies, or is about to testify in any proceeding, about the abuse, mistreatment, or neglect of patients or residents in the facility, unless the employee knows or has reason to know that the report is false; or

ii. An employee is requested by a public body to testify or participate in an investigation, hearing, or inquiry held by that public body, or a court action.

D. Retaliation Remedies

1. A person who alleges retaliation or discrimination for making a report may bring a civil action for appropriate injunctive relief, damages, or both within three (3) years after the occurrence of the alleged violation of § 23-17.8-4. R.I. Gen. Laws § 23-17.8-5(a)

2. A facility which discharges, discriminates, or retaliates against a person who is about to make a report, makes a report, testifies, or is about to testify in any proceeding shall be liable to the person so discharged, discriminated, or retaliated against, for treble damages, costs, and attorneys' fees. Where a facility discharges, demotes, or retaliates by any other means against a person after he or she has made a report, testified, or was subpoenaed to testify as a result of a report required by this chapter, there shall be a rebuttable presumption that the facility discharged, demoted, or retaliated against that person as a result of his or her report or testimony. R.I. Gen. Laws § 23-17.8-5(b)

3. An employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf was about to report, reported, was about to testify, or testified, verbally or in writing, about a violation. R.I. Gen. Laws § 23-17.8-5(d)

4. A court may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, treble damages, or any combination of these remedies. A court shall also award the complainant the costs of litigation, including attorneys' fees. R.I. Gen. Laws § 23-17.8-5(e)
E. Reporting Requirements

1. Any physician, medical intern, registered nurse, licensed practical nurse, nurse's aide, orderly, certified nursing assistant, medical examiner, dentist, optometrist, optician, chiropractor, podiatrist, coroner, police officer, emergency medical technician, fire-fighter, speech pathologist, audiologist, social worker, pharmacist, physical or occupational therapist, or health officer, or any person, within the scope of their employment at a facility or in their professional capacity,

2. Who has knowledge of or reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, or neglected,

3. Shall make within twenty-four (24) hours or by the end of the next business day, a telephone report to the appropriate authority (the director of the department of health, the office of the state long-term care ombudsman, or the director of the department of behavioral healthcare).

4. In addition to those persons required to report pursuant to this section, any other person may make a report if that person has reasonable cause to believe that a patient or resident of a facility has been abused, mistreated, or neglected.

5. The report shall contain:

   i. The name, address, telephone number, occupation, and employer's address and the phone number of the person reporting;

   ii. The name and address of the patient or resident who is believed to be the victim of the abuse, mistreatment, or neglect;

   iii. The details, observations, and beliefs concerning the incident(s);

   iv. Any statements regarding the incident made by the patient or resident and to whom they were made;

   v. The date, time, and place of the incident;

   vi. The name of any individual(s) believed to have knowledge of the incident;

   vii. The name of any individual(s) believed to have been responsible for the incident.

6. Any person required to make a report shall be deemed to have complied with these requirements if a report is made to a high managerial agent of the facility in which the alleged incident occurred. Once notified, the high

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4 R.I. Gen Laws § 23-17.8-2(a-d)
managerial agent shall be required to meet all reporting requirements of this section within the time frames specified by this chapter.

7. Telephone reports made (see three (3) above) shall be followed-up within three (3) business days with a written report.


1. Any person required to make a report that fails to do so, shall be guilty of a misdemeanor and be punished by a fine of not more than five hundred dollars ($ 500).

2. Any person who alters or changes without authorization or destroys or renders unavailable a report made by another shall be deemed guilty of a misdemeanor and be fined not more than five hundred dollars ($ 500).

3. Any person who attempts to induce another to fail to report an incident of abuse, mistreatment, or neglect shall be deemed guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars ($ 1,000), or imprisoned not more than one year, or both.

4. Any person being a high managerial agent who fails to report an incident of abuse, mistreatment, or neglect after another has reported an incident of abuse, neglect or mistreatment to an appropriate agent shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000), or imprisoned for more than one year, or both.

G. Penalties for Committing Abuse, Mistreatment, or Neglect

1. Any person who knowingly commits any act of abuse, mistreatment, or neglect (types i – iv.) against a patient or resident of a facility shall be fined not more than three thousand dollars ($ 3,000) or imprisoned not more than three (3) years, or both.

2. Any person who commits any act of abuse (type v) against a patient or resident of a facility shall be fined not more than five hundred dollars ($ 500) or imprisoned not more than one year, or both.

3. If at the time of the alleged patient abuse, neglect, or mistreatment, the person committing the act was employed by a facility which either condoned or attempted to conceal the act or acts, that facility upon conviction shall be fined not more than five thousand dollars ($ 5,000).

4. Any member of the board of directors or a high managerial agent of a facility who condones or conceals any acts of abuse, neglect or

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5 R.I. Gen. Laws §23-17.8-10(a-d)
mistreatment of patients or residents of the facility shall be fined not more than three thousand dollars ($ 3,000) or imprisoned not more than three (3) years, or both.

5. Any person who is convicted of a violation, except the posting requirement, shall forfeit any professional license or certification.\textsuperscript{6}

\textbf{H. Statute of Limitations:}

For injury, medical malpractice, and wrongful death, the statute of limitations is three (3) years from the time of incident, or, if the incident was not immediately discoverable, three (3) years from the time the incident was reasonably discoverable in the exercise of reasonable diligence. \textit{R.I. Gen. Laws \$9-1-14, \$9-1-14.1, \$10-7-2}

\textbf{I. Burden of Proof:} Preponderance of the Evidence - \textit{R.I. Gen. Laws \$ 9, 10} (various parts)

\textbf{J. Can Regulations Establish Standard of Care:} Not on its own.

There is no question that the violation of a statute or an ordinance is not negligence \textit{per se} but is to be used by the trier of the facts merely as an aid in determining that issue on consideration of all the evidence. \textit{Kurczy v. St. Joseph Veterans Ass’n}, 820 A.2d 929, 2003 R.I. LEXIS 96 (R.I. 2003)

\textbf{II. DAMAGES}

\textbf{A. Damages Available}

1. Compensatory/Pecuniary

2. Special Damages (when death results)

3. Punitive Damages (for intentional and atrocious behavior, not wrongful death)

4. Costs of Suit

\textbf{B. Does Pain and Suffering of Decedent/Resident Survive Death:}

\textbf{Yes.} When the death of a person is caused by the wrongful act, neglect, or default of another, and if death had not ensued, would have entitled the party injured to maintain an action and recover damages, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages. Damages include hospital, medical, and other expenses incurred, loss of wages until time of death and recovery for pain and suffering. \textit{R.I. Gen.}

\textsuperscript{6} R.I. Gen. Laws \$23-17.8-10.1

C. Attorney’s Fees Available: Possibly, but limited to specific exceptions.

It is well settled in Rhode Island that a request for legal fees is governed by the "American Rule." As a result, litigants are generally required to pay their own attorney's fees, absent statutory authority or contractual liability. This rule, however, is subject to several exceptions. Pursuant to the "common fund exception," a court may award attorney's fees to a party whose litigation efforts directly benefited others. A court may also assess attorney's fees as a sanction for willful disobedience of a court order. Lastly, a court may award attorney's fees when a party has acted in bad faith or for oppressive reasons. Flanders v. Moreau, 2011 R.I. Super. LEXIS 100 (R.I. Super. Ct. 2011)

III. LEGISLATION AFFECTING STATUTE

A. Pending: None

B. Anticipated: None