I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: *Texas Human Resources Code, Chapter 48*

A. Conduct

1. **Neglect**: “Neglect” means the failure to provide for one’s self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services. Tex. Human Res. Code §48.002(a)(4).

2. **Abuse**

   (a) **Definition**

   (i) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person’s caretaker, family member, or other individual who has an ongoing relationship with the person; or

   (ii) sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person’s caretaker, family member, or other individual who has an ongoing relationship with the person.


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

   Texas Human Resources Code, Chapter 48, does not distinguish between a single negligent act or omission, or series of acts or omissions.
(c) Legal Requirement for the act(s) or omission(s):

“Abuse” as defined in Chapter 48 relates to actions by the “person’s caretaker, family member, or other individual who has an ongoing relationship with the person.” Tex. Human Res. Code §48.002(a)(2).

3. Exploitation: “Exploitation” means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly or disabled person that involves using, or attempting to use, the resources of the elderly or disabled person, including the person’s social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person. Tex. Human Res. Code §48.002(a)(3).

B. Vulnerable Adults

“Disabled person” means a person with a mental, physical, or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s care or protection and who is:

(A) 18 years of age or older; or

(B) under 18 years of age and who has had the disabilities of minority removed.


However, note that when considering whether to appoint a guardian over an incapacitated person, “[i]f the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person.” Tex. Prob. Code §602.

C. Persons/Entities Excluded From Statute

1. A person filing a report under this chapter or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

2. A person, including an authorized department volunteer, medical personnel, or law enforcement officer, who at the request of the department participates in an investigation required by this chapter or in an action that results from that investigation is immune from civil or criminal liability for any act or omission relating to that participation if the person acted in good faith and, if applicable, in the course and scope of the person’s assigned responsibilities or duties.
3. A person who reports the person’s own abuse, neglect, or exploitation of another person or who acts in bad faith or with malicious purpose in reporting alleged abuse, neglect, or exploitation is not immune from civil or criminal liability.

4. An employer whose employee acts under Subsection (a) or (b) is immune from civil or criminal liability on account of an employee’s report, testimony, or participation in any judicial proceedings arising from a petition, report, or investigation. This subsection does not apply to an employer who is the subject of an investigation.


D. Reporting Requirement for Litigation to State

1. Except as prescribed by Subsection (b), a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation, including a disabled person receiving services as described by Section 48.252, shall report the information required by Subsection (d) immediately to the department.

2. If a person has cause to believe that an elderly or disabled person, other than a disabled person receiving services as described by Section 48.252, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

3. The duty imposed by Subsections (a) and (b) applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person’s employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health professional.


E. Preclusion of Arbitration

In health care liability claims against health care providers as defined in Texas Civil Practice & Remedies Code, Chapter 74, the following applies:

§ 74.451. Arbitration Agreements

(a) No physician, professional association of physicians, or other health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a written notice in 10-point boldface type clearly and conspicuously stating:
UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

(b) A violation of this section by a physician or professional association of physicians constitutes a violation of Subtitle B, Title 3, Occupations Code, and shall be subject to the enforcement provisions and sanctions contained in that subtitle.

(c) A violation of this section by a health care provider other than a physician shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Section 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and shall be subject to an enforcement action by the consumer protection division under that act and subject to the penalties and remedies contained in Section 17.47, Business & Commerce Code, notwithstanding Section 74.004 or any other law.

(d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.


F. Relationship to Medical Malpractice actions

The Texas medical liability statute limits civil remedies in health care liability claims against health care providers as defined in Texas Civil Practice & Remedies Code, Chapter 74:

Conflict with Other Law and Rules of Civil Procedure:

(a) In the event of a conflict between this chapter and another law, including a rule of procedure or evidence or court rule, this chapter controls to the extent of the conflict.

(b) Notwithstanding Subsection (a), in the event of a conflict between this chapter and Section 101.023, 102.003, or 108.002, those sections of this code control to the extent of the conflict.

(c) The district courts and statutory county courts in a county may not adopt local rules in conflict with this chapter.
G. Criminal Provision

The Texas Penal Code provides as follows:

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury;

(3) bodily injury; or

(4) exploitation

(b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1)(1), (2), (3), or (4) is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

…

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), (3), or (4), the actor acting during the actor’s capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.
(e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), (3), or (4).

Tex. Pen. Code §22.04(a), (a-1), (b), (d)-(g).

H. Statute of Limitations:


A health care liability claim must be filed “within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed.” Tex. Civ. Prac. & Rem. Code §74.251(a).

I. Burden of Proof:


J. Can Regulations Establish Standard of Care:

Regulations can be used as evidence to help establish the standard of care, but all health care liability claims against health care providers are subject to Texas Civil Practice & Remedies Code, Chapter 74, and negligence must be established through expert opinion. Tex. Laurel Ridge Hosp., L.P. v. Almazon, 374 S.W.3d 601, 605 (Tex. App. – San Antonio 2012, no pet.).

II. DAMAGES

A. Damages Available

1. Actual economic damages
Medical bills and expenses are limited to the amount actually paid or incurred rather than the total amount billed. Tex. Civ. Prac. & Rem. Code §41.0105.

2. **Non-economic damages**

Non-economic damages in a health care liability claim subject to Tex. Civ. Prac. & Rem. Code, Chapter 74, are limited to $250,000, total as to any and all physician defendants. Tex. Civ. Prac. & Rem. Code §74.301(a). A claimant can recover an additional $250,000 for non-economic damages against a health care institution. Tex. Civ. Prac. & Rem. Code §74.301(b) and (c) respectively.

3. **Punitive Damages**

A plaintiff may recover exemplary damages if they can show by clear and convincing evidence that the incident was caused by fraud, malice, or gross negligence. Tex. Civ. Prac. & Rem. Code §41.003(a). The elements for exemplary damages must be shown by clear and convincing evidence, and a jury finding regarding exemplary damages must be unanimous. Tex. Civ. Prac. & Rem. Code §41.003(d). Exemplary damages are limited to the greater of: 1) two times the amount of economic damages plus an amount equal to any noneconomic damages found by the jury, not exceeding $750,000; or 2) $200,000. Note this limitation does not apply if certain criminal conduct can be proven.

4. **Court costs**

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

C. **Attorney’s Fees Available**: Not in a personal injury suit.

   1. If available, are the attorney’s fees limited?

III. **LEGISLATION AFFECTING STATUTE**

A. **Pending**: None

B. **Anticipated**: None