I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: Abuse, Neglect, or Exploitation of a Vulnerable Adult, Utah Code Ann. §§ 62A-3-301, et seq.¹

A. Conduct

1. Neglect²

(a) Failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or failure of a caretaker to provide protection from health and safety hazards or maltreatment;

(b) Failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(c) A pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(d) Knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;

(e) Self-neglect by the vulnerable adult; or

(f) Abandonment by a caretaker.

¹ Many other states have enacted specific “Elder Abuse Acts” that codify claims that may be raised thereunder for protection against the neglect and abuse of the elderly, and that set forth a variety of equitable and legal remedies for the same. At the present time, Utah has no such legislation.

In addition to the abuse statute, there are three other statutes governing elder abuse: (1) Utah’s statute providing for criminal penalties, which parallels the civil statute. (U.C.A. § 76-5-111, et seq.); (2) the Utah Health Care Malpractice Act (U.C.A. § 78B-3-401, et seq.); and (3) the Governmental Immunity Act of Utah (U.C.A. § 63G-7-101 et seq.). Depending upon the identity of the defendant in a particular case, a claim for elder abuse may be subject to one or more of these statutes and their procedural requirements and limitation periods.

² U.C.A. § 62A-3-301(20)(a).
2. **Abuse:** The term “abuse” includes many acts that cause harm to a vulnerable adult.

(a) **Civil definition**

(i) Knowingly or intentionally: attempting to cause harm, causing harm, or placing another in fear of harm;

(ii) Unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;

(iii) Emotional or psychological abuse;

(iv) A sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

(v) Deprivation of life sustaining treatment, or medical or mental health treatment (except as provided in the Advance Health Care Directive Act or when informed consent has been obtained)

(b) **Criminal definition**

(i) Attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;

(ii) Causing physical injury by knowing or intentional acts or omissions;

(iii) Unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or

(iv) Deprivation of life sustaining treatment, or medical or mental health treatment (except as provided in the Advance Health Care Directive Act or when informed consent has been obtained)

3. **Single Act or Pattern**

(a) A single negligent act or omission, or a series of acts or omissions will qualify. (See, e.g., U.C.A. § 62A-3-301(20)(a)(iii).)

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3 U.C.A. § 62A-3-301(2)
4 U.C.A. § 76-5-111(1)(b)
4. **Legal Requirement for the act(s) or omission(s):** Performed by a person or entity acting as a caretaker

   (a) “Caretaker” means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities. (U.C.A. § 62A-3-301(7).)

5. **Exploitation**\(^5\): An offense described in U.C.A. § 76-5-111(4) (Abuse, Neglect, or Exploitation of a Vulnerable Adult) or U.C.A. § 76-5b-202 (Sexual Exploitation of a Vulnerable Adult)

### B. Vulnerable Adults

1. A senior adult, 65 years or older; or

2. An adult 18 years or older who has a mental or physical impairment that substantially affects the adult’s ability to:

   (a) provide personal protection,

   (b) provide necessities such as food, shelter, clothing, or health care;

   (c) obtain services necessary for health, safety, or welfare;

   (d) carry out the activities of daily living;

   (e) manage the adult’s resources; or

   (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

### C. Persons/Entities Excluded from Statute

1. State, per Governmental Immunity Act (U.C.A. § 63G-7-101 *et seq.*).

2. Claims against governmental entities and their employees are also governed by the Utah Governmental Immunity Act.

3. Physicians employed by a hospital and responding to in-hospital emergency situations are entitled to immunity under the Good Samaritan Statute if they have no preexisting duty to do so. *(Hirpa v. IHC Hospitals, Inc.* (Utah 1997) 948 P.2d 785, 788.) Thus, health care professionals have

\(^5\) Exploitation will not be addressed in this compendium – instead, only the abuse and neglect portions of the statutes.
immunity from liability for care provided gratuitously at the scene of an emergency, unless they have a legal duty to respond.

D. Reporting Requirement for Litigation to State

1. Malpractice Act: plaintiff must file a Notice of Intent to Commence Action and a Request for Pre-litigation Panel Review Hearing prior to filing a malpractice action. The plaintiff must give at least 90 days prior notice of intent to commence action. (U.C.A. § 78B-3-412)

2. Governmental Immunity Act: plaintiff must file a Notice of Claim before filing suit. (U.C.A. § 63G-7-4021)

E. Preclusion of Arbitration

1. In 1999, the Utah Healthcare Malpractice Act was amended to include a section on arbitration, U.C.A. § 78B-3-421, which was an attempt by the Utah Legislature to approve arbitration based on the decision, Sosa v. Paulos (Utah 1996) 924 P.2d 357, which was favorable of arbitration. For a binding arbitration agreement between a patient and a healthcare provider to be validly executed, the act requires that the patient be given in writing certain information, such as “the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury.”

2. Arbitration agreements between a physician and a decedent are not enforceable in wrongful death actions brought by a non-signatory family member of the decedent. (Bybee v. Abdulla (Utah 2008) 189 P.3d 40.)

F. Relationship to Medical Malpractice Actions

1. “Malpractice action against a health care provider” means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider. (U.C.A., § 78B-3-403(17)).

2. The Utah Health Care Malpractice Act (U.C.A. § 78B-3-401 et seq.) does not prohibit other civil remedies. Generally, however, if the claim is against a convalescent facility or some other type of health care facility where health care services are provided, the claim is subject to the Malpractice Act and must comply with the requirements therein, including the requirement of filing a Notice of Intent to Commence Action (§ 78B-3-412), requesting and satisfying the requirements for prelitigation review, and being subject to a two-year limitations period (U.C.A., § 78B-3-404).
3. The Malpractice Act also applies to malpractice actions against health care providers that are brought under the Utah Governmental Immunity Act.

G. Criminal Provision

1. Utah’s definition of criminal offenses incorporates several criteria for classifying the severity of the crime of abuse, neglect, or exploitation of a vulnerable adult.

   (a) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:

      (i) if done intentionally or knowingly, second degree felony;
      (ii) if done recklessly, third degree felony; and
      (iii) if done with criminal negligence, class A misdemeanor.

   (b) Under circumstances other than those likely to produce death or serious physical injury:

      (i) intentionally or knowingly, class A misdemeanor;
      (ii) recklessly, class B misdemeanor; and
      (iii) criminal negligence, class C misdemeanor.

2. Moreover, a person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor. (U.C.A. § 62A-3-305(4)(a))

H. Statute of Limitations: Depends on the claims made.

1. One year—Claim against a State facility. (Utah Governmental Immunity Act, U.C.A. § 63G-7-101 et seq.)

2. Two years—Claim against convalescent facility or other type of health care where health care services are provided. (Utah Health Care Malpractice Act, U.C.A. § 78B-3-401 et seq.; see also U.C.A. § 78B-2-114.)

3. Four years—Negligence claim against a family member or individual. (U.C.A. § 78B-2-307(3).)

4. Four years—Catchall provision (U.C.A. § 78B-2-307(3).)

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6 U.C.A., § 76-5-111(2), (3)
I. Burden of Proof

1. Preponderance of evidence (U.C.A. § 62A-3-311.5(5)): At the hearing, “the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.”


1. The Utah Supreme Court has held that the violation of a statute does not necessarily constitute negligence per se and may be considered only as evidence of negligence. (Intermountain Farmers Association v. Fitzgerald (1978) 574 P.2d 1162, 1164.) Violation of a safety standard set by statute may be regarded as prima facie evidence of negligence, but is subject to justification or excuse if the evidence is such that it reasonably could be found. (Id. at pp. 1164–65; see also Child v. Gonda (1998) 972 P.2d 425, 432.)

2. Likewise, criminal culpability constitutes only evidence of negligence in a civil action, rather than negligence per se. (Dixon v. Stewart (1982) 658 P.2d 591, 600.)

II. DAMAGES

A. Damages Available

1. Actual damages
2. Special damages
3. Punitive damages
4. Injunctive relief
5. Cost of suit

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

1. In a case arising out of a wrongful death, a cause of action for the personal injuries inflicted upon the decedent prior to her or her death survives the decedent and may be brought pursuant to U.C.A. § 62A-3-314. This enables the heirs of the decedent to recover both special and general damages for the personal injuries, if any, inflicted upon the decedent prior to death.

C. Attorney’s Fees Available: Yes (§ 62A-3-314(3), (4))

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7 In a medical malpractice action, non-economic damages are capped. (U.C.A. § 78B-3-410.)
1. If the plaintiff prevails in an action, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff;

2. If the defendant prevails in an action, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

III. LEGISLATION AFFECTING STATUTE

A. Pending: None

B. Anticipated: None