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

Virginia does not provide a specific civil action to protect dependent adults from neglect or abuse. The State does provide protective services for dependent adults as part of the state’s social services. Virginia has mandatory reporting requirements when neglect or abuse is suspected. Also, the state has criminalized abuse and neglect of dependent adults. Va. Code Ann. § 63.2-100, et seq.

However, a civil cause of action would be based in common law negligence. If an action was brought against a health care provider it would fall under Virginia’s Medical Malpractice Act.


Actions for injuries inflicted by health care providers are usually brought as negligence actions. In large part, actions for negligent medical malpractice are governed by the common-law principles which are applicable in other types of negligence actions. Therefore, in such malpractice actions, as in other negligence actions, the plaintiff must establish:

1. Duty,
2. Breach of Duty,
3. Causation, and
4. Damages.

A. Conduct

1. Neglect:

An adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing
care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult. VA Code Ann. § 63.2-100

2. **Abuse**
   (a) **Definition**
   The willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult. VA Code Ann. § 63.2-100

   (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:** Adult exploitation” means the illegal use of an incapacitated adult or his resources for another's profit or advantage. VA Code Ann. § 63.2-100

B. **Vulnerable Adults**

1. **Types of Impairment**
   An “Incapacitated person” means any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being. VA Code Ann. § 63.2-1603

C. **Persons Entities Excluded**

1. Not Applicable to Adult Protection Statute

D. **Reporting Requirement for litigation to state**

1. Not Applicable to Adult Protection Statute

2. **Medical Malpractice**
   (a) In the case of a medical malpractice claim against the Commonwealth, a failure to give the notice required by Va. Code § 8.01-195.6 may bar the action.

E. **Preclusion of Arbitration**

1. Not Applicable to Adult Protection Statute

F. Relationship to Medical Malpractice actions
   1. Not Applicable to Adult Protection Statute

G. Criminal Provision
   1. § 18.2-369. Abuse and neglect of incapacitated adults; penalty
      (a) It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.
      (b) Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

H. Statute of Limitations
   1. Not Applicable to Adult Protection Statute
   2. Medical Malpractice
      (a) Personal injury actions based upon medical malpractice must normally be brought within two years after the cause of action accrues, as provided in Virginia Code § 8.01-243.9 Wrongful death actions are subject to the provisions of § 8.01-244.10
      (b) The limitations period is extended in actions for malpractice against health care providers in cases involving foreign objects left in the body, and in cases involving fraud, concealment, and intentional misrepresentation. In such instances, the limitations period is one year from the date that the object or injury is discovered or reasonably should have been discovered. Virginia Code § 8.01-243(c)

I. Burden of Proof
1. Not Applicable to Adult Protection Statute


J. Can Regulations establish standard of care

1. In medical malpractice action the standard of care may be established by expert testimony. Indeed, expert testimony is ordinarily necessary to establish the appropriate standard of care.

II. Damages

A. Damages Available

1. Adult Protection Statute
   (a) Injunctive Relief

2. Medical Malpractice Action
   (a) Actual Damages
   (b) Punitive Damages

The damages which may be recovered in medical malpractice actions generally are those which are available in any personal injury action, e.g., out-of-pocket expenses, pain and suffering, loss of income, etc. Damages for mental distress are also recoverable in medical malpractice actions, if the mental distress is accompanied by physical injury.

As amended in 1999, the Medical Malpractice Act provides in § 8.01-581.15 that in actions for injury to or death of a patient, the total amount recoverable against the health care provider for any such injury or death shall not exceed $1.5 million. In 2011, the General Assembly increased these limits: July 1, 2012, through June 30, 2013 $2.05 million; July 1, 2013, through June 30, 2014 $2.10 million; July 1, 2014, through June 30, 2015 $2.15 million.

VA Code Ann. § 8.01-581.15.

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

1. Not Applicable to Adult Protection Statute

C. Attorney’s Fees Available: Yes

1. If Available, are the attorney’s fees limited: No

III. Legislation Affecting Statute

A. Pending: Yes, effective July 1, 2013.
B. **Anticipated:** Unknown