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

A. Conduct

1. Neglect

Neglect refers to:

a. A pattern of either conduct or inaction by a person or entity with a duty of care that fails to avoid or prevent mental or physical harm or pain to a vulnerable adult, or fails to provide the goods and services that maintain the mental or physical health of a vulnerable adult; or

b. An act or omission by a person or entity with a duty of care that demonstrates such a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the vulnerable adult’s welfare, health, or safety.


2. Abuse

a. Definition

Abuse refers to the willful action or inaction that inflict injury, unreasonable confinement, punishment, or intimidation on a vulnerable adult. If a vulnerable adult is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes exploitation and physical, mental, and sexual abuse. Wash. Rev. Code Ann. § 74.34.020(2) (West 2013).

b. Single Act and/or Pattern

The legislature has not specified what frequency of conduct qualifies as abuse. However, based on the definitions above, either a single act or pattern may qualify as abuse.
c. **Legal Requirement for the act(s) or omission(s):**

To establish a breach of the standard of care, a plaintiff must prove that a health care provider:

(i) failed to exercise the degree of skill, care, and learning expected of a reasonably prudent health care provider at that time in that profession acting in the same or similar circumstances; and

(ii) that such failure proximately caused the complained-of injury.


3. **Exploitation**

Exploitation is defined as the act of forcing, compelling, or exerting undue influence over a vulnerable adult thereby causing the vulnerable adult to act in a way that is inconsistent with a relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another. Wash. Rev. Code Ann. § 74.34.020(2)(d) (West 2013).

**B. Vulnerable Adults**

1. **Types of Impairment**

The statutory definition of “vulnerable adult” includes a person:

a. Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

b. Found incapacitated under chapter 11.88 RCW; or

c. Who has a developmental disability as defined under RCW 71A.10.020; or

d. Admitted to any facility; or

e. Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

f. Receiving services from an individual provider; or

g. Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.


**C. Persons/Entities Excluded from Statute**
A person participating in good faith in making a report under this statute or testifying about alleged abuse, neglect, financial exploitation, abandonment, or self-neglect of a vulnerable adult in a judicial or administrative proceeding is immune from liability resulting from the report or testimony. A person making a permissive report under this statute does not have a duty to report and no civil liability shall attach for any failure to make a permissive report under this statute.

a. Of note, conduct conforming with the reporting and testifying provisions of this statute shall not be deemed a violation of any confidential communication privilege. Nothing in this statute shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW. Wash. Rev. Code Ann. § 74.34.050 (West 2013).

D. Reporting Requirement for Litigation to State

1. Types of Reporters

a. A “mandated reporter” is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW. Wash. Rev. Code Ann. § 74.34.020(11) (West 2013).

b. A “permissive reporter” means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults. Wash. Rev. Code Ann. § 74.34.020(13) (West 2013).

2. Report Requirements

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:
(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:
(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

(10) In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the department or law enforcement, upon request, must have access to all relevant records related to the vulnerable adult that are in the possession of mandated reporters and their employees, unless otherwise prohibited by law. Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200, 70.230.080, and 74.42.640 shall not be subject to the requirements of this subsection. Providing access to records relevant to an investigation by the department or law enforcement under this provision may not be deemed a violation of any confidential communication privilege. Access to any records that would violate attorney-client privilege shall not be provided without a court order unless otherwise required by court rule or case law.

Wash. Rev. Code Ann. § 74.34.035 (West 2013).

E. Preclusion of Arbitration


F. Relationship to Medical Malpractice Action

**G. Criminal Provision**

1. See RCWA 9A.42 for Criminal Mistreatment Statute of Dependent Persons.

   Under the applicable Washington Criminal Code, a “dependent person” is a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life. A resident of a nursing home, as defined in RCW 18.51.010, a resident of an adult family home, as defined in RCW 70.128.010, and a frail elder or vulnerable adult, as defined in RCW 74.34.020(13), is presumed to be a dependent person for purposes of this chapter. Wash. Rev. Code Ann. § 74.34.145 (West 2013).

2. **Interplay with State Civil Statute**

   When the initial report or investigation by the department of social and health services indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will then coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this statute. Wash. Rev. Code Ann. § 74.34.063(2) (West 2013).

**H. Statute of Limitations**


**I. Burden of Proof**

The Vulnerable Adult Statute (“VAS”) establishes a separate cause of action with its own standards of proof that differ from those of common law negligence. *Warner v. Regent Assisted Living*, 132 Wash. App. 126, 134 (2006). For instance, the VAS does not require the plaintiff to proffer expert testimony to prove neglect, abuse, or pain and suffering. *Id.* The burden of proof rests on the plaintiff to prove that the defendant engaged in a pattern of conduct or inaction prohibited under the VAS. *Conrad v. Alderwood Manor*, 1119 Wash. App. 275, 281 (2003). In causes of action under the VAS, a plaintiff need not establish causation by direct and positive influence. *Id.* Rather, a plaintiff only needs to show by a chain of circumstances from which the ultimate fact required is naturally and reasonably inferable. *Id.*
J. Can Regulations Establish Standard of Care?

Unclear.

II. DAMAGES

A. Damages Available

1. Actual Damages
2. Pain and Suffering
3. Costs of Suit
   a. “Costs” includes, but is not limited to, reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be needed for the litigation for a claim brought under this provision.
4. Attorney’s Fees
5. Punitive Damages

No. Washington courts have a long-standing rule prohibiting punitive damages without express legislative authorization, which is not found in the VAS. Dailey v. N. Coast Life Ins. Co., 129 Wash. 2d 572, 575 (1996).

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

Yes. The personal representative shall only be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased on behalf of the beneficiaries listed in RCW 4.20.020, and such damages are still recoverable regardless of whether or not the death was caused by the injury that is the basis for the cause of action. Wash. Rev. Code Ann. §4.20.046(1) (West 2013).

C. Attorney’s Fees Available:

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

   Yes. Attorney’s fees must be reasonable. Wash. Rev. Code Ann. 74.34.200(3) (West 2013).

III. LEGISLATION AFFECTING STATUTE

A. Pending: None.

B. Anticipated: None.