I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse: Wis. Stat. § 46.90, et.seq.

A. Conduct

(1) **Neglect:** The failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. Neglect does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law.¹

(2) **Abuse:**

(a) **Definition:**

(i) Physical abuse (the intentional or reckless infliction of bodily harm);

(ii) Emotional abuse (language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed);

(iii) Sexual abuse;

(iv) Treatment without consent (the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance);

(v) Unreasonable confinement or restraint (the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining devices, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices in entities regulated by the department if the methods or devices are employed in conformance with state and federal standards governing confinement and restraint); or

(vi) Deprivation of a basic need for food, shelter, clothing, or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement, or court order.  

(b) Single Act and/or Pattern:

Unknown, but the language suggests that a single act is sufficient.

(c) Legal Requirement for the act(s) or omission(s):

Any person, other than a person in charge of or employed in a facility or program under s. 940.295(2) who does any of the following may be penalized:

(i) Intentionally subjects an individual at risk to abuse;

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(ii) Recklessly subjects an individual at risk to abuse; or

(iii) Negligently subjects an individual at risk to abuse.

(3) **Financial Exploitation:**

Any person who does any of the following may be penalized:

(i) Obtaining an individual’s money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent;

(ii) Theft;

(iii) The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities;

(iv) Unauthorized use of an individual’s personal identifying information or documents;

(v) Unauthorized use of an entity’s identifying information or documents;

(vi) Forgery; or

(vii) Financial transaction card crimes.

B. **Adult At Risk**

(1) **Elder Adult at Risk:** Any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

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3 Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.
C. **Persons/Entities Excluded From Statute**

(1) Nothing in this section may be construed to mean that an individual at risk (including an elder adult at risk) is abused solely because he or she consistently relies upon treatment by spiritual means through prayer for healing, in lieu of medical care, in accordance with his or her religious tradition.  

(2) A health care provider acting in the scope of his or her practice or employment who commits an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith error in judgment or discretion is not considered to be abuse of an elder adult.

D. **Reporting Requirement for Litigation to State**

Except as provided in § 46.90(4)(ae), a person specified in § 46.90(4)(ab) who has seen an elder adult at risk in the course of the person's professional duties shall file a report with the county department, the elder-adult-at-risk agency, a state or local law enforcement agency, the department, or the board on aging and long-term care if the elder adult at risk has requested the person to make the report, or if the person has reasonable cause to believe that any of the following situations exist:

(1) The elder adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report the risk; or

(2) An elder adult at risk other than the subject of the report is at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by a suspected perpetrator.

E. **Preclusion of Arbitration:** Unknown.

F. **Relationship to Medical Malpractice Actions**

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A health care provider acting in the scope of his or her practice or employment who commits an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith error in judgment or discretion.  

G. Criminal Provision

(1) Any person who intentionally subjects an individual at risk to abuse under circumstances that:

(a) Cause death is guilty of a Class C felony.
(b) Cause great bodily harm is guilty of a Class F felony.
(c) Are likely to cause great bodily harm is guilty of a Class G felony.
(d) Cause bodily harm is guilty of a Class H felony.
(e) Are likely to cause bodily harm is guilty of a Class I felony.
(f) Are not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

(2) Any person who recklessly subjects an individual at risk to abuse under circumstances that:

(a) Cause death is guilty of a Class C felony.
(b) Cause great bodily harm is guilty of a Class F felony.
(c) Are likely to cause great bodily harm is guilty of a Class I felony.
(d) Cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

(e) Are not causing and not likely to cause bodily harm is guilty of a
Class B misdemeanor.

(3) Any person who negligently subjects an individual at risk to abuse under
circumstances that:

(a) Cause death is guilty of a Class D felony.

(b) Cause great bodily harm is guilty of a Class F felony.

(c) Are likely to cause great bodily harm is guilty of a Class I felony.

(d) Cause or are likely to cause bodily harm is guilty of a Class A
misdemeanor.

(e) Are not causing and not likely to cause bodily harm is guilty of a
Class B misdemeanor.

(4) Possible Penalties:  

(a) For a Class C felony, a fine not to exceed $100,000 or
imprisonment not to exceed 40 years, or both.

(b) For a Class D felony, a fine not to exceed $100,000 or
imprisonment not to exceed 25 years, or both.

(c) For a Class F felony, a fine not to exceed $25,000 or imprisonment
not to exceed 12 years and 6 months, or both.

(d) For a Class G felony, a fine not to exceed $25,000 or imprisonment
not to exceed 10 years, or both.

(e) For a Class H felony, a fine not to exceed $10,000 or imprisonment
not to exceed 6 years, or both.

(f) For a Class I felony, a fine not to exceed $10,000 or imprisonment
not to exceed 3 years and 6 months, or both.

(g) For a Class A misdemeanor, a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

(h) For a Class B misdemeanor, a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both.

(i) For a Class C misdemeanor, a fine not to exceed $500 or imprisonment not to exceed 30 days, or both.

(5) Habitual Criminality:12

If the actor is a repeater and the present conviction is for any crime for which imprisonment may be imposed, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) A maximum term of imprisonment of one year or less may be increased to not more than two years.

(b) A maximum term of imprisonment of more than one year but not more than ten years may be increased by not more than two years if the prior convictions were for misdemeanors and by not more than four years if the prior conviction was for a felony.

(c) A maximum term of imprisonment of more than ten years may be increased by not more than two years if the prior convictions were for misdemeanors and by not more than six years if the prior conviction was for a felony.

H. Statute of Limitations

The later of three years from the date of injury, or one year from the date the injury was discovered but limited to five years from the date of the act or omission.13

I. Burden of Proof

Beyond a reasonable doubt.\(^\text{14}\)

**J. Can Regulations Establish Standard of Care:** Unknown.

**K. Elder-Adult-At-Risk Agency Response**

(1) Upon responding to a report, the elder-adult-at-risk agency or the investigative agency shall determine whether the elder adult at risk or any other individual involved in the alleged abuse, financial exploitation, neglect, or self-neglect is in need of services. From the appropriation under s. 20.435(7)(dh), the department shall allocate to selected counties not less than $25,000 in each fiscal year, and within the limits of these funds and of available state and federal funds and of county funds appropriated to match the state and federal funds, the elder-adult-at-risk agency shall provide the necessary direct services to the elder adult at risk or other individual or arrange for the provision of the direct services with other agencies or individuals. Those direct services provided shall be rendered under the least restrictive conditions necessary to achieve their objective.\(^\text{15}\)

(2) If, after responding to a report, the elder-adult-at-risk agency has reason to believe that the elder adult at risk has been the subject of abuse, financial exploitation, neglect, or self-neglect, the elder-adult-at-risk agency may do any of the following:

(a) Request immediate assistance in initiating a protective services action under ch. 55 or contact an investigative agency, as appropriate;

(b) Take appropriate emergency action, including emergency protective placement, if the elder-adult-at-risk agency determines that the emergency action is in the best interests of the elder adult at risk and the emergency action is the least restrictive appropriate intervention;

\(^\text{14}\) Wis. Stat. § 939.70 (2011); Wis. Stat. § 940; State v. Poellinger, 153 Wis.2d 493, 501 (Wis. 1990).

\(^\text{15}\) Wis. Stat. § 46.90(5m)(a) (2011).
(c) Refer the case to law enforcement officials, for further investigation or to the district attorney, if the elder-adult-at-risk agency has reason to believe that a crime has been committed;

(d) Refer the case to the licensing, permitting, registration, or certification authorities of the department or to other regulatory bodies if the residence, facility, or program for the elder adult at risk is or should be licensed, permitted, registered, or certified or is otherwise regulated;

(e) Refer the case to the department of safety and professional services if the financial exploitation, neglect, self-neglect, or abuse involves an individual who is required to hold a credential; or

(f) Bring a petition for a guardianship and protective services or protective placement under ch. 55 or a review of an existing guardianship if necessary to prevent financial exploitation, neglect, self-neglect, or abuse and if the elder adult at risk would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter, or services.\textsuperscript{16}

(3) An elder adult at risk may refuse to accept services unless a guardian authorizes the services. The elder-adult-at-risk agency or other provider agency shall notify the elder adult at risk of this right to refuse before providing services.\textsuperscript{17}

II. DAMAGES

A. Damages Available

(1) Actual damages;

(2) Pain, suffering and noneconomic damages (limited to $750,000);

(3) Loss of consortium, society and companionship or loss of love and affection;

\textsuperscript{16} Wis. Stat. § 46.90(5m)(br) (2011).

\textsuperscript{17} Wis. Stat. § 46.90(5m)(c) (2011).
(4) Loss of earnings or earning capacity;

(5) Each element of medical expenses; or

(6) Costs of suit.

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

Yes. If the decedent dies before judgment, he/she is still entitled to damages for pain and suffering. “Noneconomic damages for the victim’s pre-death pain and suffering survive the victim’s death under the survival statute and are referred to as survival actions. The survival action…is not a new cause of action. It is rather the cause of action held by the decedent immediately before or at death, now transferred to his personal representative.”

C. **Attorney’s Fees Available**

Yes. For civil actions, attorney fees are subject to the limitations found in Wis. Stat. 814.04 and 814.045.

III. **LEGISLATION AFFECTING STATUTE**

A. **Pending:** None known.

B. **Anticipated:** None known.