Federal Statutes Applicable to Elder Abuse/Neglect and Health Care Fraud Prosecutions

18 USC 1347 - Health Care Fraud Statute
Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice –

1) To defraud any health care benefit program; or
2) To obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program,

in connection with the delivery of or payment for health care benefits, items or services, shall be fined or imprisoned not more than 10 years, or both. *If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined or imprisoned for any term of years or for life, or both.*

18 USC 1035 – False Statements Related to Health Care Matters

18 USC 1001 – Making and Conspiring to Make False Statements to Federal Officials

18 USC 1518 – Obstruction of a Federal Audit

18 USC 1518 – Obstruction of Criminal Investigations of Health Care Offenses

18 USC 1343 – Fraud by Wire, Radio or Television

18 USC 4 – Misprision of Felony
Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not, as soon as possible, make known the same to some judge or other person in civil or military authority under the United States, shall be fined or imprisoned not more than three years, or both.

18 USC 287 – False, Fictitious or Fraudulent Claims (Criminal)

18 USC 669 – Theft or Embezzlement in Connection with Health Care

31 USC 3729 – Civil False Claims Act

Can also be used in cases involving failure to provide a minimum level of care, and failure to meet minimum staffing levels required to provide a minimum level of care

State Statutes Applicable to Disabled and/or Elder Abuse, Neglect and Exploitation

OCGA 16-5-1 Murder	OCGA 16-7-21 Criminal Trespass
OCGA 16-5-2 Voluntary Manslaughter	OCGA 16-7-23 Criminal Damage to Property
OCGA 16-5-3 Involuntary Manslaughter	OCGA 16-8-1…16-8-12 Theft Offenses
OCGA 16-5-21 Aggravated Assault	OCGA 16-8-12(3)(a) Theft by Fiduciary (Felony – any dollar amount)
OCGA 16-5-24 Aggravated Battery	OCGA 16-8040 Robbery
OCGA 16-5-40 Kidnapping	OCGA 16-9-20 Deposit Account Fraud
OCGA 16-5-41 False Imprisonment	OCGA 16-9-31 Financial Transaction Card Fraud
OCGA 16-5-100 Cruelty to Person >65 y.o.	OCGA 16-9-32 Forgery of Financial Trans Card
OCGA 16-6-1 Rape	OCGA 16-9-33 Financial Transaction Card Fraud
OCGA 16-6-2 Aggravated Sodomy	OCGA 16-9-37 Unauthorized Use of Financial Trans Card
OCGA 16-6-5.1 Sexual Assault **(in facility)**	OCGA 16-9-52 Improper Solicitation of Money
OCGA 16-6-22.2 Aggravated Sexual Battery	OCGA 16-9-102 Mortgage Fraud
OCGA 16-5-20(e) Simple Assault (H&A)	OCGA 16-8-105 Mortgage Fraud Penalties
OCGA 16-5-23c Simple Battery (H&A)	OCGA 16-9-120 Home Repair Fraud Act
OCGA 16-5-23.1(j) Battery (H&A)	OCGA 16-9-121 Identity Fraud
OCGA 16-5-23.1(k) Battery **(Felony if committed by employee of facility)**	OCGA 10-1-393 Unfair/Deceptive Practices
OCGA 19-13-1 Family Violence Act	OCGA 10-1-393.6 Unlawful Telemarketing
OCGA 30-5-1 Protection of Disabled Adults & Elder Persons Act	OCGA 10-1-850 Unfair or Deceptive Practices in Consumer Transactions
OCGA 30-5-8 Penalties for abuse, neglect & exploitation (not residents of long term care fac)	OCGA 10-5B-6 Abusive Telemarketing (if targeting seniors, can double penalties)
OCGA 31-8-80 Long Term Care Facility Reporting Act	OCGA 17-3-2.2 Statute of Limitations is 15 years when >65 y.o.
OCGA 31-5-8 Penalties for 31-8-80: Misdemeanor	OCGA 30-5-3 Abuse/Exploitation of a disabled or elder adult
OCGA 31-8-81 Abuse of a LTC facility resident	OCGA 16-5-21(d) Aggravated Assault

OCGA 30-5-3 Neglect	OCGA 31-8-81 Exploitation

Reporting Requirements

OCGA 31-7-9 Health Care Personnel are required to notify law enforcement of any non-accidental injuries

OCGA 30-5-4(a)(1)(A) Law Enforcement Personnel having reasonable cause to believe that a disabled adult or elder person (who is not a resident of a long term care facility) has had a physical injury or injuries inflicted other than by accidental means, or has been neglected or exploited shall report or cause a report to be made to Adult Protective Services (APS).

OCGA 30-5-4(b)(1) APS, in receipt of a report of abuse with reasonable cause to believe such report is true, shall immediately notify the appropriate law enforcement agency or prosecuting attorney.

OCGA 31-8-82(a)(2)(3) Any Police Officer who has knowledge that any resident or former resident has been abused or exploited while residing in a LTC facility shall immediately make a report to the Office of Regulatory Services (ORS).

OCGA 31-8-83(a) ORS may delegate the conduct of investigation to local police authorities or other appropriate agencies. If such delegation occurs, the agency to which authority has been delegated **must report the results** of its investigation to ORS immediately upon completion.

OCGA 31-8-57 Any person who has reasonable cause to believe that a *resident of a LTC facility* is being, or has been, abused, neglected, exploited, or abandoned or is in a condition which is the result of abuse, neglect, exploitation, or abandonment, may report such information or cause a report to be made in any reasonable manner to the State ombudsman or community ombudsman, if any.

Mandated Reporters

Many people are required by Georgia law to report when they suspect abuse, neglect or exploitation. Mandated reporters must make a report when they have a reasonable cause to believe that a disabled or elder adult has had an injury or injuries inflicted upon them, other than by accidental means, or has been neglected or exploited. Mandated reporters who do not fulfill their obligation to report may be charged with a misdemeanor. Georgia law lists mandated reporters in Code Section 30-5-8 for alleged victims who live in the community, and in Code Section 31-8-80 for alleged victims in a long term care facility. All other parties are encouraged to make reports if they believe that abuse, neglect, or exploitation has occurred.

The following are mandated reporters:

- **Law Enforcement Officers**
- **Health Care Personnel (includes Chiropractors, Dentists, Osteopaths, Podiatrists)**
- **Physicians, Interns and Residents**
- **Hospital and Medical Personnel**
- **Licensed Professional Counselors**
- **Social Workers**
- **Psychologists**

- **Pharmacists**
- **Rehab Therapists**
- **Nursing Personnel**
- **Adult Day Care Personnel**
- **Coroners & Medical Examiners**
- **Any employee of a financial institution**
- **Adult Protective Services (APS)**
- **Employees of public or private agencies engaged in professional health-related services to elder persons or disabled adults**
- **Administrators, Managers or other employees of a personal care home or nursing home**
- **Financial Institutions**

Report To:

APS – Adult Protective Services (404) 657-5250 or 1-888-774-0152 To report **abuse/neglect in a private home**	Name/Address/Age of Victim Name/Address of Caretaker Nature and extent of injury or condition resulting from abuse, neglect or exploitation; and, other pertinent information
ORS – Office of Regulatory Services (404) 657-5726, (404) 657-5728 or 1-800-878-6442 To report **abuse/neglect in a facility** www.ors.dhr.state.ga.us	Name/Address of reporter Name/Address of victim and facility Nature and extent of injury Can make reports on-line

Indicators of Elder Abuse/Neglect

Physical Abuse

- Injuries in various stages of healing, bruises, black eyes, lacerations, welts, cuts, untreated injuries, fractures, burns, hair pulled out, bite marks, open wounds, ligature marks, dehydration, malnutrition, deprivation of essential services such as medical care, food or water , refusal to talk (may indicate fear of retribution)

Neglect

- Dehydration, malnutrition, untreated health conditions, failure to receive medical treatment or essential services, lack of food or water, lack of basic hygiene, inappropriate clothing, inadequate heating/cooling, bed sores, unsafe environment, bed bound person left alone without care, locks/chains on interior doors, rodent or insect infestation, fecal/urine stained or saturated clothing and/or bedding, inadequate or unsafe living conditions, hoarding, refusal to talk (may indicate fear of retribution)

Sexual Abuse

- Bruising of breasts and/or genital areas, torn/bloody underclothes, difficulty walking/sitting, sexually transmitted diseases, unexplained change in behavior, unexplained bleeding in genital and/or peri-anal area, any nonconsensual sexual contact, forced viewing of sexually explicit materials, sexual harassment, refusal to talk (may indicate fear of retribution)

Psychological/Emotional Abuse

- Isolation, depression, agitation, withdrawal, unusual behavior, fear of caregiver(s), uncooperative caregiver(s), crying, refusal to talk (may indicate fear of retribution)

Financial Abuse

- Sudden change in banking habits, lack of amenities victim could afford, new names on signature cards, unauthorized withdrawals, abrupt changes in last will/testament, disappearance of funds and/or possessions, unpaid bills when funds are available, forged signatures, caregiver(s) has control of money but fails to provide for person's needs, signature on documents when person is unable to understand the transaction, 'voluntarily' giving inappropriate financial reimbursement to others for needed care and companionship

Resources:

Ombudsman 1-404-463-8383 1-888-454-5826 http://www.georgiaombudsman.org/	The Ombudsman is an advocate for residents of long term care facilities. The Ombudsman's Office can offer valuable assistance when investigating allegations of abuse/neglect.
Division of Aging 1-800-552-4464 (1-800-55-AGING)	The Division of Aging has a data base of services/providers throughout the state.
Ga. Certified Nurse Aide Registry 1-800-414-4358 www.ghp.georgia.gov	The Georgia Health Partnership website contains an on-line directory to confirm the certification of active aides.
Ga. Professional Licensing Board https://secure.sos.state.ga.us/myverification/	On-line directory to verify license status for many professionals such as nurses, dieticians, nursing home administrators, occupational/physical therapists, podiatrists, psychologists, counselors, etc.
GA Composite State Board of Medical Examiners http://www.medicalboard.state.ga.us/bdsearch/index.html	On-line directory to verify license status of physicians, physician assistants, respiratory therapists, etc.
Vital Records 404-679-4702	Birth/Death certificates

http://health.state.ga.us/programs/vitalrecords/	
Division of Mental Health Developmental Disabilities and Addictive Diseases (MHDDAD), 404-657-2258 http://mhddad.dhr.georgia.gov	Residents may be affiliated with MHDDAD
Department of Health and Human Services Office of Inspector General Hotline 1-800-447-8477 (1-800-HHS-TIPS)	Type of Complaint Name/Address of victim and facility Nature of program fraud or abuse, or patient abuse/neglect
State Medicaid Fraud Control Unit 770-414-3640	Fraud and patient abuse in licensed facilities
Georgia Crisis & Access Line 1-800-715-4225 www.behaviouralhealthlink.com	Mental Health issues
The Georgia Advocacy Office 404-885-1234 www.thegao.org	Protecting individuals with disabilities or mental illness

Investigative Tips:

Interviewing: Ensure separation of family members/caretakers from victim/witness.

Avoid assumptions about age/mental capacity.

Talk to individual at chronological age (avoid patronization, etc.)

Patience – may take longer than usual – don't rush

Photos: Injuries (include scale)

Individual in surroundings (if possible and safe) for context

Surroundings (tell the story)