

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE.

The meeting was called to order by Chairperson Jim Morrison at 1:33 p.m. on February 24, 2003, in Room 143-N of the Capitol.

All members were present except Representative Landwehr and Reitz, both of whom were excused.

Committee staff present:

Bill Wolff, Kansas Legislative Research Department
Renaë Jefferies, Kansas Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees appearing before the committee: None

Others attending: See Attached Guest List

The minutes for the February 18 and February 19 meetings were approved by proper motion, second, and unanimous vote.

The Chair announced that some of the bills before the committee might be discussed after Turnaround.

A motion was made, seconded and passed to discuss **HB 2169** for possible action. A second motion was made, seconded and passed to recommend **HB 2169** favorable for passage.

A motion was made and seconded to recommend **HB 2161** favorable for passage. Discussion centered around how a dental hygienist can bill Medicaid indirectly for services outside the dental office. Ron Gaches, representing the Kansas Dental Hygienist Association, said the bill removes a barrier to dental service in Kansas, and that billing could be accomplished through the dentist's office or through the organization where the service was provided.

A motion was made, seconded, and passed to accept the balloon amendment to **HB 2161**. (Attachment 1)

Further discussion focused on parental consent before a dental hygienist provides service to a student. Representative DeCastro noted that because such service is invasive, such consent is needed. A motion was made and seconded to amend the bill to include the consent of a parent or legal guardian for underage persons. The amendment passed. A further amendment passed which changed the word *student* to *person* on page 3, line 3.

The Committee then recommended **HB 2161** favorable for passage as amended.

A motion to reopen discussion of **HB 2161** was seconded and passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at on February 24, 2003, in Room 143-N of the Capitol.

Representative DeCastro expressed concern about billing procedures, especially if done through a school district, which might divert such payments into the general fund. Discussion included concern that smaller school districts might be excluded from receiving services with such an amendment. Representative DeCastro withdrew her amendment.

A further motion was made, seconded and passed to recommend **HB 2161** as amended favorable for passage.

A motion was made and seconded to recommend **HB 2171** favorable for passage. The motion passed unanimously.

The Committee began consideration of **HB 2172**. After some discussion, a motion was made and seconded to recommend **HB 2172** favorable for passage. Further discussion elicited a substitute motion and second to hold **HB 2172** for further consideration during the 2004 legislative session. After discussion regarding the added fiscal burden created by the bill, the motion passed.

The Committee began discussion of the **HB 2254** balloon amendment. (Attachment 2) Bill Wolff noted that the bill creates conflicts between two sets of statutes:

- One set of statutes defines an adult, the other set does not;
- One set of statutes relies on the corrective action of Kansas Department of Health and Environment; the other relies on the investigation of Social and Rehabilitative Services and law enforcement;
- One set refers to a "resident," the other to an "adult."

A motion was made, seconded and passed to recommend **HB 2254** favorable for passage.

After discussion by the Committee, a motion was made and seconded to amend **HB 2254** by including the balloon. The Committee discussed on what basis an adult is considered incapacitated or exploited, who should provide protective services, and whether hospice and home and community-based services were included in the bill. Dr. Wolff commented that government-assistance providers included a variety of service providers, but that the focus of the bill was not who provided services, but rather who should report abuse.

The Committee agreed to continue discussion on **HB 2254** at the next meeting, which is scheduled for Tuesday, February 25, at 1:30 p.m. The meeting was adjourned at 2:57 p.m.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

DATE: February 24 2003

NAME	REPRESENTING
M. Missa Puggan	Federico Consulting
Phyllis Kelly	KACE
EARLY Robbins	KS Optometric Assn
Bill Grosz	Shawnee Mission Med Center
Bob Williams	KS Pharmacists Assn
Chip Wheeler	Assn of Osteopathic Med.
Kenne Van Hower	KAHP
Sky Westlund	KNA SW
Rodie Wellshear Johnson	Patrice Hurley & Co (KNA SW)

HOUSE HEALTH & HUMAN SERVICES COMMITTEE
PUBLIC HEARING 2.18.03

Session of 2003

HOUSE BILL No. 2161

By Committee on Health and Human Services

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AN ACT regarding dentists and dentistry; relating to dental hygienists; amending K.S.A. 65-1456 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-1456 is hereby amended to read as follows: 65-1456. (a) The board may suspend or revoke the license of any dentist who shall permit any dental hygienist operating under such dentist's supervision to perform any operation other than that permitted under the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory thereof, and may suspend or revoke the license of any hygienist found guilty of performing any operation other than those permitted under article 14 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory thereof. No license of any dentist or dental hygienist shall be suspended or revoked in any administrative proceedings without first complying with the notice and hearing requirements of the Kansas administrative procedure act.

(b) The practice of dental hygiene shall include those educational, preventive, and therapeutic procedures which result in the removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the gingival sulci. Included among those educational, preventive and therapeutic procedures are the instruction of the patient as to daily personal care, protecting the teeth from dental caries, the scaling and polishing of the crown surfaces and the planing of the root surfaces, in addition to the curettage of those soft tissues lining the free gingiva to the depth of the gingival sulcus and such additional educational, preventive and therapeutic procedures as the board may establish by rules and regulations.

(c) Subject to such prohibitions, limitations and conditions as the board may prescribe by rules and regulations, any licensed dental hygienist may practice dental hygiene and may also perform such dental service as may be performed by a dental assistant under the provisions of K.S.A. 65-1423 and amendments thereto.

(d) Except as otherwise provided in this section, the practice of dental hygiene shall be performed under the direct or general supervision of a licensed dentist at the office of such licensed dentist. The board shall

Attachment 1

HHS 2-24-03

1 designate by rules and regulations the procedures which may be per-
 2 formed by a dental hygienist under direct supervision and the procedures
 3 which may be performed under general supervision of a licensed dentist.
 4 As used in this section: (1) "Direct supervision" means that the dentist is
 5 in the dental office, personally diagnoses the condition to be treated,
 6 personally authorizes the procedure and before dismissal of the patient
 7 evaluates the performance; and (2) "general supervision" means a Kansas
 8 licensed dentist may delegate verbally or by written authorization the
 9 performance of a service, task or procedure to a licensed dental hygienist
 10 under the supervision and responsibility of the dentist, if the dental hy-
 11 gienist is licensed to perform the function, and the supervising dentist
 12 examines the patient at the time the dental hygiene procedure is per-
 13 formed, or during the 12 calendar months preceding the performance of
 14 the procedure, except that the licensed hygienist shall not be permitted
 15 to diagnose a dental disease or ailment, prescribe any treatment or a
 16 regimen thereof, prescribe, order or dispense medication or perform any
 17 procedure which is irreversible or which involves the intentional cutting
 18 of the soft or hard tissue by any means. A dentist is not required to be
 19 on the premises at the time a hygienist performs a function delegated
 20 under part (2) of this subsection.

21 (e) The practice of dental hygiene may be performed at an adult care
 22 home, hospital long-term care unit, state institution, local health depart-
 23 ment or indigent health care clinic on a resident of a facility, client or
 24 patient thereof so long as:

25 (1) A licensed dentist has delegated the performance of the service,
 26 task or procedure;

27 (2) the dental hygienist is under the supervision and responsibility of
 28 the dentist;

29 (3) either the supervising dentist is personally present or the services,
 30 tasks and procedures are limited to the cleaning of teeth, education and
 31 preventive care;

32 (4) the supervising dentist examines the patient at the time the dental
 33 hygiene procedure is performed or has examined the patient during the
 34 12 calendar months preceding performance of the procedure; and

35 ~~(5) nothing in this subsection (e) shall be construed to prevent a den-~~
 36 ~~tal hygienist from providing dental education hygiene instruction or visual~~
 37 ~~oral health care screenings in a school or community based setting.~~

38 ~~(f) The board may issue a permit to a licensed dental hygienist to~~
 39 ~~provide dental screening under such terms and conditions as the board~~
 40 ~~may reasonably establish in such permit. Such permit shall be subject to~~
 41 ~~renewal at the time the license for dental hygiene is renewed.~~

42 ~~(g) (f) The practice of dental hygiene may be performed at a public~~
 43 ~~school or accredited non public school, as defined in K.S.A. 72-89b02, and~~

/ delete lines 35-37 /

1 amendments thereto, head start program, state correctional institution,
2 local health department or indigent health care clinic, as defined in K.S.A.
3 65-1466, and amendments thereto, on a student who meets the require-
4 ments of medicaid, healthwave or the federal free and reduced lunch pro-
5 gram, an inmate, client or patient thereof so long as:

6 (1) The dental hygienist has received an "extended care permit" from
7 the Kansas dental board specifying that the dental hygienist has per-
8 formed 1,800 hours of dental hygiene care or has been an instructor at
9 an accredited dental hygiene program for four semesters during the three
10 years prior;

11 (2) the dental hygienist shows proof of professional liability
12 insurance;

13 (3) the dental hygienist is sponsored by a dentist licensed in the state
14 of Kansas, including a signed agreement stating that the dentist shall mon-
15 itor the dental hygienist's activities, except such dentist shall not monitor
16 more than five dental hygienists with an extended care permit;

17 (4) the tasks and procedures are limited to: (A) removal of extraneous
18 deposits, stains and debris from the teeth and the rendering of smooth
19 surfaces of the teeth to the depths of the gingival sulci; (B) the application
20 of fluoride; (C) dental hygiene instruction; (D) assessment of the patient's
21 apparent need for further evaluation by a dentist to diagnose the presence
22 of dental caries and other abnormalities; and (E) other duties as may be
23 delegated verbally or in writing by the sponsoring dentists consistent with
24 this act;

25 (5) the dental hygienist advises the patient and legal guardian that
26 the services are preventive in nature and do not constitute a comprehen-
27 sive dental diagnosis and care;

28 (6) the dental hygienist provides a copy of the findings and the report
29 of treatment to the sponsoring dentist and any other dental or medical
30 supervisor at a participating organization found in this subsection;

31 (7) any payment to the dental hygienist for dental hygiene services is
32 received from the sponsoring dentist or the participating organization
33 found in this subsection; and

34 (8) nothing in this subsection shall be construed to prevent a dental
35 hygienist from providing dental hygiene instruction or visual oral health
36 screenings in a school or community based setting.

37 (g) The practice of dental hygiene may be performed at an adult care
38 home, hospital long-term care unit, state institution or at the home of a
39 homebound person who qualifies for the federal home and community
40 based service (HCBS) waiver on a resident of a facility, client or patient
41 thereof so long as:

42 (1) The dental hygienist has received an "extended care permit II"
43 from the Kansas dental board specifying that the dental hygienist has: (A)

1 performed 1,800 hours of dental hygiene care or has been an instructor
2 at an accredited dental hygiene program for four semesters during the
3 three years prior; and (B) completed six hours of training on the care of
4 special needs patients or other training as may be accepted by the board;

5 (2) the dental hygienist shows proof of professional liability
6 insurance;

7 (3) the dental hygienist is sponsored by a dentist licensed in the state
8 of Kansas, including a signed agreement stating that the dentist shall mon-
9 itor the dental hygienist's activities, except such dentist shall not monitor
10 more than five dental hygienists with an extended care permit II;

11 (4) the tasks and procedures are limited to: (A) removal of extraneous
12 deposits, stains and debris from the teeth and the rendering of smooth
13 surfaces of the teeth to the depths of the gingival sulci; (B) the application
14 of fluoride; (C) dental hygiene instruction; (D) assessment of the patient's
15 apparent need for further evaluation by a dentist to diagnose the presence
16 of dental caries and other abnormalities; and (E) other duties as may be
17 delegated verbally or in writing by the sponsoring dentist consistent with
18 this act;

19 (5) the dental hygienist advises the patient and legal guardian that
20 the services are preventive in nature and do not constitute comprehensive
21 dental diagnosis and care;

22 (6) the dental hygienist provides a copy of the findings and the report
23 of treatment to the sponsoring dentist and any other dental or medical
24 supervisor at a participating organization found in this subsection;

25 (7) any payment to the dental hygienist for dental hygiene services is
26 received from the sponsoring dentist or the participating organization
27 found in this subsection;

28 (8) the dental hygienist completes a minimum of six hours of educa-
29 tion in the area of special needs care within the board's continuing dental
30 education requirements for relicensure; and

31 (9) nothing in this subsection shall be construed to prevent a dental
32 hygienist from providing dental hygiene instruction or visual oral health
33 screenings in a school or community based setting.

34 (h) In addition to the duties specifically mentioned in subsection (b)
35 of K.S.A. 65-1456, and amendments thereto, any duly licensed dental
36 hygienist may:

37 (1) Give fluoride treatments as a prophylactic measure, as defined by
38 the United States public health service and as recommended for use in
39 dentistry;

40 (2) remove overhanging restoration margins and periodontal surgery
41 materials by hand scaling instruments; and

42 (3) administer local block and infiltration anaesthesia and nitrous ox-
43 ide. (A) The administration of local anaesthesia shall be performed under

1 the direct supervision of a licensed dentist. (B) Each dental hygienist who
2 administers local anaesthesia shall have completed courses of instruction
3 in local anaesthesia and nitrous oxide which have been approved by the
4 board.

5 ~~(h)~~ (i) (1) The courses of instruction required in subsection ~~(g)~~
6 ~~(h)~~(3)(B) of K.S.A. 65-1456, and amendments thereto, shall provide a
7 minimum of 12 hours of instruction at a teaching institution accredited
8 by the American dental association.

9 (2) The courses of instruction shall include courses which provide
10 both didactic and clinical instruction in: (A) Theory of pain control; (B)
11 anatomy; (C) medical history; (D) pharmacology; and (E) emergencies
12 and complications.

13 (3) Certification in cardiac pulmonary resuscitation shall be required
14 in all cases.

15 Sec. 2. K.S.A. 65-1456 is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its
17 publication in the statute book.

add new subsection (j)

The board is authorized to issue to a qualified dental hygienist an extended care permit or extended care permit II as provided in subsection (f) and (g) of this section.

add new subsection (k)

Nothing in this section shall be construed to prevent a dental hygienist from providing dental hygiene instruction or visual oral health care screenings in a school or community based setting.

HOUSE BILL No. 2254

By Representative Newton

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Proposed Amendments

Attachment 2
HHS 2-24-02

9 AN ACT concerning dependent persons; relating to the reporting of
10 abuse, neglect or exploitation of such persons; amending K.S.A. 39-
11 1401, 39-1403, 39-1404, 39-1405, 39-1406, 39-1407, 39-1408, 39-1409,
12 39-1430, 39-1432, 39-1433, 39-1436 and 39-1437 and K.S.A. 2002
13 Supp. 39-1402 and 39-1431 and repealing the existing sections.
14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) *Investigation of adult abuse.* The state depart-
17 ment of social and rehabilitation services and law enforcement officers
18 shall have the duty to receive and investigate reports of adult abuse ~~or~~
19 neglect, ~~for the purpose of determining whether the report is valid and~~
20 whether action is required to protect the adult from further abuse or
21 neglect. If the department and such officers determine that no action is
22 necessary to protect the adult but that a criminal prosecution should be
23 considered, the department and such law enforcement officers shall make
24 a report of the case to the appropriate law enforcement agency.

[]
[] , exploitation or fiduciary abuse

25 (b) *Joint investigations.* When a report of ~~adult financial, mental or~~
26 ~~physical abuse or~~ neglect indicates (1) that there is serious physical injury
27 to or serious deterioration or sexual abuse of the adult and (2) that action
28 may be required to protect the adult, the investigation may be conducted
29 as a joint effort between the department of social and rehabilitation serv-
30 ices and the appropriate law enforcement agency or agencies, with a free
31 exchange of information between such agencies. Upon completion of the
32 investigation by the law enforcement agency, a full report shall be pro-
33 vided to the department of social and rehabilitation services.

[] of, adult abuse, exploitation or fiduciary abuse
[] or exploitation

34 (c) *Coordination of investigations by county or district attorney.* If a
35 dispute develops between agencies investigating a reported case of adult
36 abuse ~~or neglect~~, the appropriate county or district attorney shall take
37 charge of, direct and coordinate the investigation.

[] , neglect, exploitation or fiduciary abuse
[] by a law enforcement agency

38 (d) *Investigations concerning certain facilities.* Any investigation in-
39 volving a facility subject to licensing or regulation by the secretary of
40 health and environment shall be reported promptly to the state secretary
41 of health and environment, upon conclusion of the investigation or sooner
42 if such report does not compromise the investigation.

43 (e) *Cooperation between agencies.* Law enforcement agencies and

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1 the department of social and rehabilitation services shall assist each other
2 in taking action which is necessary to protect the adult regardless of which
3 party conducted the initial investigation.

4 ~~[New Sec. 2. (a) If a resident does not consent to the receipt of rea-
5 sonable and necessary protective services or if such resident withdraws
6 the consent, such services shall not be provided or continued, except that
7 if the secretary of social and rehabilitation services has reason to believe
8 that such resident lacks capacity to consent, the secretary shall seek court
9 authorization to provide necessary services, as provided in subsection (b).~~

10 (b) If the secretary of social and rehabilitation services finds that a
11 resident is being or has been abused, neglected or exploited or is in the
12 condition which is the result of such abuse, neglect or exploitation and
13 lacks capacity to consent to reasonable and necessary protective services,
14 the secretary shall petition the district court for appointment of a guardian
15 or conservator, or both, for the resident pursuant to the provisions of the
16 act for obtaining a guardian or conservator, or both in order to obtain
17 such consent.

18 (c) In any proceeding in district court pursuant to provisions of this
19 act, the district court shall appoint an attorney to represent the resident
20 ~~if the resident is without other legal representation.]~~

2. 21 ~~Sec. [3.]~~ K.S.A. 39-1401 is hereby amended to read as follows: 39-
22 1401. As used in this act:

23 (a) "Resident" means:

24 (1) Any resident, as defined by K.S.A. 39-923 and amendments
25 thereto; or

26 (2) any individual kept, cared for, treated, boarded or otherwise ac-
27 commodated in a medical care facility; or

28 (3) any individual, kept, cared for, treated, boarded or otherwise ac-
29 commodated in a state psychiatric hospital or state institution for the
30 mentally retarded.

31 (b) "Adult care home" has the meaning ascribed thereto in K.S.A.
32 39-923 and amendments thereto.

33 (c) "In need of protective services" means that a resident is unable
34 to perform or obtain services which are necessary to maintain physical or
35 mental health, or both.

36 (d) "Services which are necessary to maintain physical and mental
37 health" include, but are not limited to, the provision of medical care for
38 physical and mental health needs, the relocation of a resident to a facility
39 or institution able to offer such care, assistance in personal hygiene, food,
40 clothing, adequately heated and ventilated shelter, protection from health
41 and safety hazards, protection from maltreatment the result of which
42 includes, but is not limited to, malnutrition, deprivation of necessities or
43 physical punishment and transportation necessary to secure any of the

1 above stated needs, except that this term shall not include taking such
2 person into custody without consent, except as provided in this act.

3 (e) "Protective services" means services provided by the state or other
4 governmental agency or any private organizations or individuals which are
5 necessary to prevent abuse, neglect or exploitation. Such protective serv-
6 ices shall include, but not be limited to, evaluation of the need for serv-
7 ices, assistance in obtaining appropriate social services and assistance in
8 securing medical and legal services.

9 (f) "Abuse" means any act or failure to act performed intentionally
10 or recklessly that causes or is likely to cause harm to a resident, including:

11 (1) Infliction of physical or mental injury;

12 (2) any sexual act with a resident when the resident does not consent
13 or when the other person knows or should know that the resident is
14 incapable of resisting or declining consent to the sexual act due to mental
15 deficiency or disease or due to fear of retribution or hardship;

16 (3) unreasonable use of a physical restraint, isolation or medication
17 that harms or is likely to harm a resident;

18 (4) unreasonable use of a physical or chemical restraint, medication
19 or isolation as punishment, for convenience, in conflict with a physician's
20 orders or as a substitute for treatment, except where such conduct or
21 physical restraint is in furtherance of the health and safety of the resident
22 or another resident;

23 (5) a threat or menacing conduct directed toward a resident that re-
24 sults or might reasonably be expected to result in fear or emotional or
25 mental distress to a resident;

26 (6) fiduciary abuse; or

27 (7) omission or deprivation by a caretaker or another person of goods
28 or services which are necessary to avoid physical or mental harm or illness.

29 (g) "Neglect" means the failure or omission by one's self, caretaker
30 or another person *with a duty* to provide goods or services which are
31 reasonably necessary to ensure safety and well-being and to avoid physical
32 or mental harm or illness.

33 (h) "Caretaker" means a person or institution who has assumed the
34 responsibility, *whether legally or not*, for the care of the resident volun-
35 tarily, by contract or by order of a court of competent jurisdiction.

36 (i) "Exploitation" means misappropriation of resident property or in-
37 tentiously taking unfair advantage of an adult's physical or financial re-
38 sources for another individual's personal or financial advantage by the use
39 of undue influence, coercion, harassment, duress, deception, false rep-
40 resentation or false pretense by a caretaker or another person.

41 (j) "Medical care facility" means a facility licensed under K.S.A. 65-
42 425 *et seq.* and amendments thereto but shall not include, for purposes
43 of this act, a state psychiatric hospital ~~or state institution for the mentally~~

or state institution for the mentally

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1 ~~retarded, including Larned state hospital, Osawatome state hospital, and~~
2 ~~Rainbow mental health facility, Kansas neurological institute and Parsons~~
3 ~~state hospital and training center.~~

4 (k) "Fiduciary abuse" means a situation in which any person who is
5 the caretaker of, or who stands in a position of trust to, a resident, takes,
6 secretes, or appropriates the resident's money or property, to any use or
7 purpose not in the due and lawful execution of such person's trust.

8 (l) "State psychiatric hospital" means Larned state hospital, Osawa-
9 tomie state hospital and Rainbow mental health facility.

10 (m) ~~"State institution for the mentally retarded" means Kansas neu-~~
11 ~~rological institute and Parsons state hospital and training center.~~

(n) 12 ~~(n)~~ "Report" means a description or accounting of an incident or
13 incidents of abuse, neglect or exploitation under this act and for the pur-
14 poses of this act shall not include any written assessment or findings.

(o) 15 ~~(o)~~ "Law enforcement" means the public office which is vested
16 by law with the duty to maintain public order, make arrests for crimes
17 and investigate criminal acts, whether that duty extends to all crimes or
18 is limited to specific crimes.

(p) 19 ~~(p)~~ "Legal representative" means an agent designated in a durable
20 power of attorney, power of attorney or durable power of attorney for
21 health care decisions or a court appointed guardian, conservator or
22 trustee.

(q) 23 ~~(q)~~ "Financial institution" means any bank, trust company, escrow
24 company, finance company, saving institution or credit union, chartered
25 and supervised under state or federal law.

(r) 26 ~~(r)~~ "Governmental assistance provider" means an agency, or em-
27 ployee of such agency, which is funded solely or in part to provide assis-
28 tance within the Kansas senior care act, K.S.A. 75-5926 et seq., and
29 amendments thereto, including medicaid and medicare.

30 No person shall be considered to be abused, neglected or exploited or
31 in need of protective services for the sole reason that such person relies
32 upon spiritual means through prayer alone for treatment in accordance
33 with the tenets and practices of a recognized church or religious denom-
34 ination in lieu of medical treatment.

3. 35 Sec. ~~4~~ K.S.A. 2002 Supp. 39-1402 is hereby amended to read as
36 follows: 39-1402. (a) Any person who is licensed to practice any branch
37 of the healing arts, a licensed psychologist, a licensed master level psy-
38 chologist, a licensed clinical psychotherapist, a chief administrative officer
39 of a medical care facility, an adult care home administrator or operator,
40 a licensed social worker, a licensed professional nurse, a licensed practical
41 nurse, a licensed marriage and family therapist, a licensed clinical mar-
42 riage and family therapist, licensed professional counselor, licensed clin-
43 ical professional counselor, registered alcohol and drug abuse counselor,

retarded

, Kansas neurological institute and Parsons
state hospital and training center

"State institution for the mentally retarded"
means Kansas neurological institute and Parsons
state hospital and training center.

1 a teacher, ~~a bank trust officer, a guardian or a conservator, officers~~ ~~or~~
 2 ~~employees~~ of financial institutions, a legal representative or a govern-
 3 mental assistance provider who has reasonable cause to believe that a
 4 resident is being or has been abused, neglected or exploited, or is in a
 5 condition which is the result of such abuse, neglect or exploitation or is
 6 in need of protective services, shall report immediately such information
 7 or cause a report of such information to be made in any reasonable man-
 8 ner to the department of health and environment with respect to residents
 9 defined under subsections (a)(1) and (a)(2) of K.S.A. 39-1401 and amend-
 10 ments thereto and to the department of social and rehabilitation services
 11 and appropriate law enforcement agencies with respect to all other resi-
 12 dents. Reports made to one department which are required by this sub-
 13 section to be made to the other department shall be referred by the
 14 department to which the report is made to the appropriate department
 15 for that report, and any such report shall constitute compliance with this
 16 subsection. Reports shall be made during the normal working week days
 17 and hours of operation of such departments. Reports shall be made to
 18 law enforcement agencies during the time the departments are not open
 19 for business. Law enforcement agencies shall submit the report and ap-
 20 propriate information to the appropriate department on the first working
 21 day that such department is open for business. A report made pursuant
 22 to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed
 23 a report under this section.

a bank trust officer and any other

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2

24 (b) The report made pursuant to subsection (a) shall contain the
 25 name and address of the person making the report and of the caretaker
 26 caring for the resident, the name and address of the involved resident,
 27 information regarding the nature and extent of the abuse, neglect or ex-
 28 ploitation, the name of the next of kin of the resident, if known, and any
 29 other information which the person making the report believes might be
 30 helpful in an investigation of the case and the protection of the resident.

31 (c) Any other person, not listed in subsection (a), having reasonable
 32 cause to suspect or believe that a resident is being or has been abused,
 33 neglected or exploited, or is in a condition which is the result of such
 34 abuse, neglect or exploitation or is in need of protective services may
 35 report such information to the department of health and environment
 36 with respect to residents defined under subsections (a)(1) and (a)(2) of
 37 K.S.A. 39-1401 and amendments thereto and to the department of social
 38 and rehabilitation services with respect to all other residents. Reports
 39 made to one department which are to be made to the other department
 40 under this section shall be referred by the department to which the report
 41 is made to the appropriate department for that report.

42 (d) Notice of the requirements of this act and the department to
 43 which a report is to be made under this act shall be posted in a conspic-

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1 uous *public* place in every adult care home and medical care facility in
2 this state.

3 (e) Any person required to report information or cause a report of
4 information to be made under subsection (a) who knowingly fails to make
5 such report or cause such report to be made shall be guilty of a class B
6 misdemeanor.

4.

7 ~~Sec. [5]~~ K.S.A. 39-1403 is hereby amended to read as follows: 39-
8 1403. (a) Anyone participating in the making of any report pursuant to
9 this act, or in any follow-up activity to or investigation of such report or
10 any other report of abuse, neglect or exploitation of an adult or who
11 testifies in any administrative or judicial proceeding arising from such
12 report shall not be subject to any civil ~~or criminal~~ liability on account of
13 such report, investigation or testimony, unless such person acted in bad
14 faith or with malicious purpose.

15 (b) No employer shall terminate the employment of, prevent or im-
16 pair the practice or occupation of or impose any other sanction on any
17 employee solely for the reason that such employee made or caused to be
18 made a report under this act.

5.

19 ~~Sec. [6]~~ K.S.A. 39-1404 is hereby amended to read as follows: 39-
20 1404. (a) The department of health and environment or the department
21 of social and rehabilitation services upon receiving a report that a resident
22 is being, or has been, abused, neglected or exploited, or is in a condition
23 which is the result of such abuse, neglect or exploitation or is in need of
24 protective services shall:

25 (1) When a criminal act has occurred or has appeared to have oc-
26 curred, immediately notify, *in writing*, the appropriate law enforcement
27 agency;

28 (2) make a personal visit with the involved resident:

29 (A) Within 24 hours when the information from the reporter indi-
30 cates imminent danger to the health or welfare of the involved resident;

31 (B) within three working days for all reports of suspected abuse, when
32 the information from the reporter indicates no imminent danger; or

33 (C) within five working days for all reports of neglect or exploitation
34 when the information from the reporter indicates no imminent danger.

35 (3) Complete, within 30 working days of receiving a report, a thor-
36 ough investigation and evaluation to determine the situation relative to
37 the condition of the involved resident and what action and services, if
38 any, are required. The investigation shall include, but not be limited to,
39 consultation with those individuals having knowledge of the facts of the
40 particular case; and

41 (4) prepare, upon a completion of the evaluation of each case, a writ-
42 ten assessment which shall include an analysis of whether there is or has
43 been abuse, neglect or exploitation; recommended action; a determina-

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tion of whether protective services are needed; and any follow up.

(b) The department which investigates the report shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken if required upon completion of the investigation or sooner if such measures do not jeopardize the investigation.

(c) The department of health and environment ~~may~~^{shall} inform the chief administrative officer of a facility as defined by K.S.A. 39-923 and amendments thereto within 30 days of confirmed findings of resident abuse, neglect or exploitation.

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6. Sec. 174 K.S.A. 39-1405 is hereby amended to read as follows: 39-

1405. (a) The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding that a resident may be in need of protective services. If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents, or if the resident lacks capacity to consent, the secretary shall obtain consent from such resident's legal representative. If a resident or such resident's legal representative, or both, fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

may

(b) If the caretaker or legal representative, or both, of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services ~~may~~^{shall} seek to obtain an injunction enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker or legal representative, or both, refuses to allow the provision of such services. If the judge, by clear and convincing evidence, finds that the resident is in need of protective services and has been prevented by the caretaker or legal representative, or both, from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The court may appoint a new legal representative if the court deems that it is in the best interest of the resident.

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7 ~~Sec. 8.~~ K.S.A. 39-1406 is hereby amended to read as follows: 39-
 2 1406. Any person, department or agency authorized to carry out the du-
 3 ties enumerated in this act, *including investigating law enforcement agen-*
 4 *cies* and the long-term care ombudsman shall have access to all relevant
 5 records. The authority of the secretary of social and rehabilitation services
 6 and the secretary of health and environment under this act shall include,
 7 but not be limited to, the right to initiate or otherwise take those actions
 8 necessary to assure the health, safety and welfare of any resident, subject
 9 to any specific requirement for individual consent of the resident.

8. 10 ~~Sec. 9.~~ K.S.A. 39-1407 is hereby amended to read as follows: 39-
 11 1407. If a resident does not consent to the receipt of reasonable and
 12 necessary protective services, or if such person withdraws the consent,
 13 such services shall not be provided or continued, except that if the sec-
 14 retary of social and rehabilitation services has reason to believe that such
 15 resident lacks capacity to consent, the secretary ~~may~~ ~~shall~~ seek court au-
 16 thorization to provide necessary services, as provided in K.S.A. 39-1408,
 17 *and amendments thereto.*

9. 18 ~~Sec. 10.~~ K.S.A. 39-1408 is hereby amended to read as follows: 39-
 19 1408. (a) If the secretary of social and rehabilitation services finds that a
 20 resident is being or has been abused, neglected or exploited or is in a
 21 condition which is the result of such abuse, neglect or exploitation and
 22 lacks capacity to consent to reasonable and necessary protective services,
 23 the secretary ~~may~~ ~~shall~~ petition the district court for appointment of a
 24 guardian or conservator, or both, for the resident pursuant to the provi-
 25 sions of the act for obtaining a guardian or conservator, or both, in order
 26 to obtain such consent.

27 (b) In any proceeding in district court pursuant to provisions of this
 28 act, the district court shall appoint an attorney to represent the resident
 29 if the resident is without other legal representation.

10. 30 ~~Sec. 11.~~ K.S.A. 39-1409 is hereby amended to read as follows: 39-
 31 1409. In performing the duties set forth in this act, the secretary of social
 32 and rehabilitation services ~~or~~, the secretary of health and environment *or*
 33 *an appropriate law enforcement agency* may request the assistance of the
 34 staffs and resources of all appropriate state departments, agencies and
 35 commissions and local health departments and may utilize any other pub-
 36 lic or private agency, group or individual who is appropriate and who may
 37 be available to assist such department *or agency* in the investigation and
 38 determination of whether a resident is being, or has been, abused, ne-
 39 glected or exploited or is in a condition which is a result of such abuse,
 40 neglect or exploitation, except that any internal investigation conducted
 41 by any caretaker under investigation shall be limited to the least serious
 42 category of report as specified by the secretary of health and environment
 43 or the secretary of social and rehabilitation services, as applicable.

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1 Sec. ~~19~~ K.S.A. 39-1430 is hereby amended to read as follows: 39-
2 1430. As used in this act:

3 (a) "Adult" means an individual 18 years of age or older alleged to
4 be unable to protect their own interest ~~and for~~ who is harmed or threat-
5 ened with harm, *whether financial, mental or physical in nature*, through
6 action or inaction by either another individual or through their own action
7 or inaction when (1) such person is residing in such person's own home,
8 the home of a family member or the home of a friend, (2) such person
9 resides in an adult family home as defined in K.S.A. 39-1501 and amend-
10 ments thereto, or (3) such person is receiving services through a provider
11 of community services and affiliates thereof operated or funded by the
12 department of social and rehabilitation services or the department on
13 aging or a residential facility licensed pursuant to K.S.A. 75-3307b and
14 amendments thereto. Such term shall not include persons to whom K.S.A.
15 39-1401 *et seq.* and amendments thereto apply.

16 (b) "Abuse" means any act or failure to act performed intentionally
17 or recklessly that causes or is likely to cause harm to an adult, including:

- 18 (1) Infliction of physical or mental injury;
- 19 (2) any sexual act with an adult when the adult does not consent or
20 when the other person knows or should know that the adult is incapable
21 of resisting or declining consent to the sexual act due to mental deficiency
22 or disease or due to fear of retribution or hardship;
- 23 (3) unreasonable use of a physical restraint, isolation or medication
24 that harms or is likely to harm an adult;
- 25 (4) unreasonable use of a physical or chemical restraint, medication
26 or isolation as punishment, for convenience, in conflict with a physician's
27 orders or as a substitute for treatment, except where such conduct or
28 physical restraint is in furtherance of the health and safety of the adult;
- 29 (5) a threat or menacing conduct directed toward an adult that results
30 or might reasonably be expected to result in fear or emotional or mental
31 distress to an adult;
- 32 (6) fiduciary abuse; or
- 33 (7) omission or deprivation by a caretaker or another person of goods
34 or services which are necessary to avoid physical or mental harm or illness.

35 (c) "Neglect" means the failure or omission by one's self, caretaker
36 or another person *with a duty to supply or* provide goods or services
37 which are reasonably necessary to ensure safety and well-being and to
38 avoid physical or mental harm or illness.

39 (d) "Exploitation" means misappropriation of an adult's property or
40 intentionally taking unfair advantage of an adult's physical or financial
41 resources for another individual's personal or financial advantage by the
42 use of undue influence, coercion, harassment, duress, deception, false
43 representation or false pretense by a caretaker or another person.

and

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1 (e) "Fiduciary abuse" means a situation in which any person who is
2 the caretaker of, or who stands in a position of trust to, an adult, takes,
3 secretes, or appropriates their money or property, to any use or purpose
4 not in the due and lawful execution of such person's trust *or benefit*.

5 (f) "In need of protective services" means that an adult is unable to
6 provide for or obtain services which are necessary to maintain physical or
7 mental health or both.

8 (g) "Services which are necessary to maintain physical or mental
9 health or both" include, but are not limited to, the provision of medical
10 care for physical and mental health needs, the relocation of an adult to a
11 facility or institution able to offer such care, assistance in personal hy-
12 giene, food, clothing, adequately heated and ventilated shelter, protection
13 from health and safety hazards, protection from maltreatment the result
14 of which includes, but is not limited to, malnutrition, deprivation of ne-
15 cessities or physical punishment and transportation necessary to secure
16 any of the above stated needs, except that this term shall not include
17 taking such person into custody without consent except as provided in
18 this act.

19 (h) "Protective services" means services provided by the state or
20 other governmental agency or by private organizations or individuals
21 which are necessary to prevent abuse, neglect or exploitation. Such pro-
22 tective services shall include, but shall not be limited to, evaluation of the
23 need for services, assistance in obtaining appropriate social services, and
24 assistance in securing medical and legal services.

25 (i) "Caretaker" means a person who has assumed the responsibility,
26 *whether legally or not*, for an adult's care or financial management or
27 both.

28 (j) "Secretary" means the secretary of social and rehabilitation
29 services.

30 (k) "Report" means a description or accounting of an incident or in-
31 cidents of abuse, neglect or exploitation under this act and for the pur-
32 poses of this act shall not include any written assessment or findings.

33 (l) "Law enforcement" means the public office which is vested by law
34 with the duty to maintain public order, make arrests for crimes, investi-
35 gate criminal acts and file criminal charges, whether that duty extends to
36 all crimes or is limited to specific crimes.

37 (m) "Involved adult" means the adult who is the subject of a report
38 of abuse, neglect or exploitation under this act.

39 (n) "*Legal representative, financial institution and governmental*
40 *assistance provider*" shall have the meanings ascribed thereto in K.S.A.
41 39-1401, and amendments thereto.

42 No person shall be considered to be abused, neglected or exploited or
43 in need of protective services for the sole reason that such person relies

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1 upon spiritual means through prayer alone for treatment in accordance
2 with the tenets and practices of a recognized church or religious denom-
3 ination in lieu of medical treatment.

12. 4 Sec. ~~13~~ K.S.A. 2002 Supp. 39-1431 is hereby amended to read as

5 follows: 39-1431. (a) Any person who is licensed to practice any branch
6 of the healing arts, a licensed psychologist, a licensed master level psy-
7 chologist, a licensed clinical psychotherapist, the chief administrative of-
8 ficer of a medical care facility, a teacher, a licensed social worker, a li-
9 censed professional nurse, a licensed practical nurse, a licensed dentist,
10 a licensed marriage and family therapist, a licensed clinical marriage and
11 family therapist, licensed professional counselor, licensed clinical profes-
12 sional counselor, registered alcohol and drug abuse counselor, a law en-
13 forcement officer, a case manager, ~~a guardian or conservator, a bank trust~~
14 ~~officer, a rehabilitation counselor, a holder of a power of attorney, officers~~
15 ~~or employees~~ of financial institutions, a legal representative, a govern-
16 mental assistance provider, an owner or operator of a residential care
17 facility, an independent living counselor and the chief administrative of-
18 ficer of a licensed home health agency, the chief administrative officer of
19 an adult family home and the chief administrative officer of a provider of
20 community services and affiliates thereof operated or funded by the de-
21 partment of social and rehabilitation services or licensed under K.S.A. 75-
22 3307b and amendments thereto who has reasonable cause to believe that
23 an adult is being or has been abused, neglected or exploited or is in need
24 of protective services shall report, immediately from receipt of the infor-
25 mation, such information or cause a report of such information to be made
26 in any reasonable manner. An employee of a domestic violence center
27 shall not be required to report information or cause a report of infor-
28 mation to be made under this subsection. Other state agencies receiving
29 reports that are to be referred to the department of social and rehabili-
30 tation services *and the appropriate law enforcement agency*, shall submit
31 the report to the department *and agency* within six hours, during normal
32 work days, of receiving the information. Reports shall be made to the
33 department of social and rehabilitation services during the normal work-
34 ing week days and hours of operation. Reports shall be made to law en-
35 forcement agencies during the time social and rehabilitatton services are
36 not in operation. Law enforcement shall submit the report and appro-
37 priate information to the department of social and rehabilitation services
38 on the first working day that social and rehabilitation services is in op-
39 eration *after receipt of such information.*

a bank trust officer or any other

40 (b) The report made pursuant to subsection (a) shall contain the
41 name and address of the person making the report and of the caretaker
42 caring for the involved adult, the name and address of the involved adult,
43 information regarding the nature and extent of the abuse, neglect or ex-

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1 ploitation, the name of the next of kin of the involved adult, if known,
2 and any other information which the person making the report believes
3 might be helpful in the investigation of the case and the protection of the
4 involved adult.

5 (c) Any other person, *not listed in subsection (a)*, having reasonable
6 cause to suspect or believe that an adult is being or has been abused,
7 neglected or exploited or is in need of protective services may report such
8 information to the department of social and rehabilitation services. Re-
9 ports shall be made to law enforcement agencies during the time social
10 and rehabilitation services are not in operation.

11 (d) A person making a report under subsection (a) shall not be re-
12 quired to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and
13 amendments thereto.

14 (e) Any person required to report information or cause a report of
15 information to be made under subsection (a) who knowingly fails to make
16 such report or cause such report not to be made shall be guilty of a class
17 B misdemeanor.

18 (f) Notice of the requirements of this act and the department to
19 which a report is to be made under this act shall be posted in a conspic-
20 uous *public* place in every adult family home as defined in K.S.A. 39-
21 1501 and amendments thereto and every provider of community services
22 and affiliates thereof operated or funded by the department of social and
23 rehabilitation services or other facility licensed under K.S.A. 75-3307b
24 and amendments thereto, *and other institutions included in subsection*
25 *(a)*.

13. 26 Sec. ~~[14]~~ K.S.A. 39-1432 is hereby amended to read as follows: 39-
27 1432. (a) Anyone participating in the making of any report pursuant to
28 this act, or in any follow-up activity to or investigation of such report or
29 who testifies in any administrative or judicial proceeding arising from such
30 report shall not be subject to any civil or ~~criminal~~ liability on account of
31 such report, investigation or testimony, unless such person acted in bad
32 faith or with malicious purpose.

33 (b) No employer shall terminate the employment of, prevent or im-
34 pair the practice or occupation of or impose any other sanction on any
35 employee solely for the reason that such employee made or caused to be
36 made a report, or cooperated with an investigation, under this act. A
37 court, in addition to other damages and remedies, may assess reasonable
38 attorney fees against an employer who has been found to have violated
39 the provisions of this subsection.

14. 40 Sec. ~~[15]~~ K.S.A. 39-1433 is hereby amended to read as follows: 39-
41 1433. (a) The department of social and rehabilitation services upon re-
42 ceiving a report that an adult is being, or has been abused, neglected, or
43 exploited or is in need of protective services, shall:

1 (1) When a criminal act has occurred or has appeared to have oc-
2 curred, immediately notify, *in writing*, the appropriate law enforcement
3 agency;

4 (2) make a personal visit with the involved adult:

5 (A) Within 24 hours when the information from the reporter indi-
6 cates imminent danger to the health or welfare of the involved adult;

7 (B) within three working days for all reports of suspected abuse, when
8 the information from the reporter indicates no imminent danger;

9 (C) within five working days for all reports of neglect or exploitation
10 when the information from the reporter indicates no imminent danger.

11 (3) Complete, within 30 working days of receiving a report, a thor-
12 ough investigation and evaluation to determine the situation relative to
13 the condition of the involved adult and what action and services, if any,
14 are required. The evaluation shall include, but not be limited to, consul-
15 tation with those individuals having knowledge of the facts of the partic-
16 ular case. If the alleged perpetrator is licensed, registered or otherwise
17 regulated by a state agency, such state agency also shall be notified ~~im-~~
18 ~~mediately~~ *upon completion of the investigation or sooner if such notifi-*
19 *cation does not compromise the investigation.*

20 (4) Prepare, upon completion of the investigation of each case, a writ-
21 ten assessment which shall include an analysis of whether there is or has
22 been abuse, neglect or exploitation, recommended action, a determina-
23 tion of whether protective services are needed, and any follow-up.

24 (b) The secretary of social and rehabilitation services shall forward
25 any finding of abuse, neglect or exploitation alleged to have been com-
26 mitted by a provider of services licensed, registered or otherwise author-
27 ized to provide services in this state to the appropriate state authority
28 which regulates such provider. The appropriate state regulatory authority
29 may consider the finding in any disciplinary action taken with respect to
30 the provider of services under the jurisdiction of such authority.

31 (c) The department of social and rehabilitation services shall inform
32 the complainant, upon request of the complainant, that an investigation
33 has been made and if the allegations of abuse, neglect or exploitation have
34 been substantiated, that corrective measures will be taken, *upon comple-*
35 *tion of the investigation or sooner, if such measures do not jeopardize the*
36 *investigation.*

37 (d) The department of social and rehabilitation services may inform
38 the chief administrative officer of community facilities licensed pursuant
39 to K.S.A. 75-3307b and amendments thereto of confirmed findings of
40 resident abuse, neglect or exploitation.

41 ~~Sec. 16~~ K.S.A. 39-1436 is hereby amended to read as follows: 39-
42 1436. (a) Any person or agency which maintains records relating to the
43 involved adult which are relevant to any investigation conducted by the

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department of social and rehabilitation services or a law enforcement agency under this act shall provide, upon the written consent of the involved adult or the involved adult's guardian, the department of social and rehabilitation services or a law enforcement agency with the necessary records to assist in investigations. Any such information shall be subject to the confidentiality requirements of K.S.A. 39-1434 and amendments thereto.

(b) The department of social and rehabilitation services or a law enforcement agency shall have access to all relevant records in accordance with the provisions of subsection (a).

16. 11 Sec. 17. K.S.A. 39-1437 is hereby amended to read as follows: 39-

12 1437. (a) If the secretary determines that an involved adult is in need of
13 protective services, the secretary shall provide the necessary protective
14 services if the adult consents, or if the adult lacks capacity to consent, the
15 secretary shall obtain consent from such adult's legal representative. If
16 the involved adult fails to consent and the secretary has reason to believe
17 that the involved adult lacks capacity to consent, the secretary shall de-
18 termine whether a petition for appointment of a guardian or conservator,
19 or both, should be filed. If such determination is made, the secretary may
20 shall petition the district court for appointment of a guardian or conser-
21 vator, or both, for an involved adult pursuant to the provisions of the act
22 for obtaining a guardian or conservator, or both.

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(b) If the caretaker or legal representative of an involved adult who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to the adult, the secretary may seek an injunction enjoining the caretaker or legal representative from interfering with the provision of protective services to the adult. The petition in such action shall allege specific facts sufficient to show that the adult is in need of protective services and consents to their provision and that the caretaker or legal representative refuses to allow the provision of such services. If the judge finds, by clear and convincing evidence, that the adult is in need of protective services and has been prevented by the caretaker or legal representative from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative from interfering with the provision of protective services to the adult. The court may appoint a new legal representative, if the court deems that it is in the best interest of the adult.

17. 38 Sec. 18. K.S.A. 39-1401, 39-1403, 39-1404, 39-1405, 39-1406, 39-1407, 39-1408, 39-1409, 39-1430, 39-1432, 39-1433, 39-1436 and 39-1437 and K.S.A. 2002 Supp. 39-1402 and 39-1431 are hereby repealed.

18. 39 Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.