

2021 Kansas Statutes

39-1401. Abuse, neglect or exploitation of residents; definitions. As used in this act:

(a) "Resident" means:

- (1) Any resident, as defined by K.S.A. 39-923, and amendments thereto; or
- (2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility; or
- (3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

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

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

(d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

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

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

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

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

(h) "Caretaker" means a person or institution who has assumed the responsibility, whether legally or not, for the care of the resident voluntarily, by contract or by order of a court of

competent jurisdiction.

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

(j) "Medical care facility" means a facility licensed under K.S.A. 65-425 et seq., and amendments thereto, but shall not include, for purposes of this act, a state psychiatric hospital or state institution for people with intellectual disability, including Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

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

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital and Rainbow mental health facility.

(m) "State institution for people with intellectual disability" means Kansas neurological institute and Parsons state hospital and training center.

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

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

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

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

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

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

History: L. 1980, ch. 124, § 1; L. 1983, ch. 149, § 1; L. 1989, ch. 128, § 1; L. 1990, ch. 153, § 1; L. 1998, ch. 200, § 4; L. 2003, ch. 91, § 2; L. 2012, ch. 91, § 30; July 1.