

39-1405. Same; protective services; injunction. (a) The secretary for aging and disability services shall forward to the Kansas department for children and families any finding with respect to residents defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. The secretary of health and environment shall forward to the Kansas department for children and families any finding with respect to residents defined under (a)(2) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. If the secretary for children and families determines that a resident is in need of protective services, the secretary for children and families shall provide the necessary protective services, if a resident consents, or if the resident lacks capacity to consent, the secretary may 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 for children and families has reason to believe that such a resident lacks capacity to consent, the secretary for children and families 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.

(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 for children and families may 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.

History: L. 1980, ch. 124, § 5; L. 1990, ch. 153, § 5; L. 2003, ch. 91, § 6; L. 2003, ch. 149, § 28; L. 2014, ch. 115, § 160; July 1.