

Proposed

STATE OF KANSAS
KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES

NOTICE OF PUBLIC HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS

A public hearing will be conducted at 10:00 a.m. on October 24, 2014 in the Kansas Department for Aging and Disability Services' 331 W Conference Room, 503 S. Kansas Ave., New England Building, Topeka, to consider the adoption of proposed new rules and regulations of the Kansas Department for Aging and Disability Services (KDADS) on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Brenda Kroll, Health Occupations Credentialing, 612 S. Kansas, Topeka, Kansas 66603 or by email to brenda.kroll@kdads.ks.gov. All interested parties will be given a reasonable opportunity to present their views written or orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Brenda Kroll at (785) 296-0061 or TTY (785) 291-3167. Handicapped parking is located on the east side of the New England Building's entrance on Kansas Avenue.

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at the following website: www.kdads.ks.gov. Printed copies are available at the front desk of the KDADS office at the address listed above.

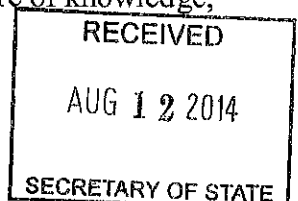
KDADS estimates that expenditures of \$11,000 from the State General Fund would be incurred for start-up costs to make necessary changes to the agency's registration software. The agency would then use registration fee revenue to finance ongoing administrative expenditures for production and processing of applications, processing approvals for continuing education requirements, and maintenance of the registry. The biennial registration fee is \$65.00 per person. The agency estimates 500 individuals will register in each two year registration period, resulting in a total amount of \$32,500 for a two year period.

In addition to KDADS, the Department of Administration, the Attorney General, the Kansas Legislature (through the Joint Committee on Rules and Regulations and the Legislative Research Department) and the Secretary of State shall bear the costs associated with the adoption of these regulations.

Operators will be required to submit an application fee of \$65.00 biennially. The regulations require registered operators receive 30 hours of continuing professional education for each 2 year registration period. The cost of obtaining these hours will be borne by the individual operator or the employing facility. Continuing education costs are estimated at \$15.00 per hour for a total of \$225.00 per operator per year. There is no economic impact to the general public.

A list of the proposed regulations and a brief summary follows.

26-39-500 Definitions. This regulation defines the terms referenced in this set of regulations including: accredited college or university, clock-hour, continuing education, core of knowledge,



disciplinary action, domains of practice, in-service education, long term care provider organization, registration, relevant experience, relevant field, sponsor, and sponsorship.

26-39-501. Registration. This regulation outlines the requirements an applicant must meet prior to registering as an operator as determined in the statute. Applicants must submit appropriate applications with fees, be at least 21 years of age, have a high school diploma or equivalent with one year of relevant experience, have an associate's degree in a related field, or a bachelor's degree, and successfully complete an operator course as specified in 26-39-503.

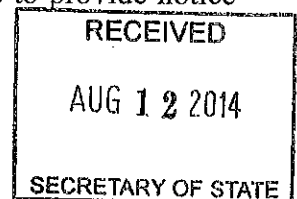
26-39-502. Application for Registration. This regulation outlines the requisite components of an application to become a registered operator. The applicant must provide a high school diploma or equivalent, academic transcripts, or evidence of relevant work experience. Applicants who have received their academic training outside the United States shall obtain an equivalency validation from an approved entity which specializes in educational credential evaluations. Applicants must provide all necessary records, affidavits, or other documents related to any adverse information received through criminal history records, or other disciplinary actions taken against them. Any applicant who has been subject to such action has the burden of proof that the applicant has been rehabilitated and warrants the public trust.

26-39-503. Operator Course. This regulation outlines the process and criteria for approving and disapproving operator courses for the purpose of registering operators. The requirements identify which entities may provide the course, basic requirements for course instructors, course content, course length, testing protocols, and sets the passing score of the test at 80%. An individual who fails the exam may take the exam one additional time. An individual who fails the exam a second time must retake the course prior to challenging the exam again.

26-39-504. Registration renewal and reinstatement; continuing education. This regulation outlines the processes for normal registration renewal, late renewal, and reinstatement of the credential when the credential has lapsed for failure to renew. Renewal requirements include timely submission of renewal application, and completion of 30 hours of continuing professional education with content specified by the department. The regulation provides an auditing process for verification of applicants' continuing education and describes the elements required for sponsors of continuing education to have their offerings approved for use toward the renewal of an operator's registration. Applicants may file a late renewal application within 30 days of the expiration of their registration. Operators who fail to renew within the final date of the late renewal window will have a registration which is lapsed for failure to renew. Applicants whose registration is lapsed no longer than 24 months may complete application and 30 hours of continuing education to have their registration reinstated. Applicants whose registration lapses longer than 24 months must retake the approved operator course and pass the examination to be reinstated.

26-39-505. Fees. This regulation sets the fee for registration at \$65.00 for a two year period, and prorated for periods less than two years. Late renewal fee of \$35.00 will be applied to applications completed within 30 days from the expiration of the registration. An additional fee of \$65.00 will be assessed an operator renewing after having a lapsed or revoked registration.

26-39-506. Change of Name or address. This regulation requires operators to provide notice of name or address change to the department within 30 days of the change.



26-39-500. Definitions. Each of the following terms, as used in K.A.R. 26-39-500 through 26-39-506, shall have the meaning specified in this regulation:

(a) "Accredited college or university" means a college or university that is accredited by an accrediting body recognized by the council on postsecondary accreditation or by the secretary of the U.S. department of education.

(b) "Clock-hour" means at least 50 minutes of direct instruction, excluding registration, breaks, and meals.

(c) "Continuing education" means a formally organized learning experience that has education as its explicit, principal intent and is oriented toward the enhancement of adult care home administration values, skills, knowledge, and ethics.

(d) "Core of knowledge" means the educational training content for the field of adult care home administration specified in K.A.R. 28-38-29.

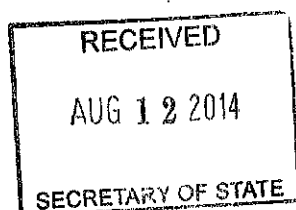
(e) "Disciplinary action" means a final action by the secretary or by a board or agency in this state or another jurisdiction on a professional or occupational health care credential.

(f) "Domains of practice" means the knowledge, skills, and abilities specified in K.A.R. 28-38-29.

(g) "In-service education" means learning activities that are provided to an individual in the work setting and are designed to assist the individual in fulfilling job responsibilities.

(h) "Long-term care provider organization" means any professional association concerned with the care and treatment of chronically ill or infirm elderly patients or any association concerned with the regulation of adult care homes.

(i) "Registration" means the credential issued by the secretary to each applicant who meets the requirements for an operator specified in K.A.R. 26-39-501.



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(j) "Relevant experience" shall include work experience in business, hospitality, gerontology, or health and human services, or other fields as approved by the secretary.

(k) "Relevant field" shall include degrees in business, hospitality, gerontology, or health and human services, or other degrees as approved by the secretary.

(l) "Sponsor" means any entity approved by the secretary to provide continuing education programs or courses on a long-term basis.

(m) "Sponsorship" means an approved, long-term provision of programs or courses for the purpose of fulfilling the continuing education requirements for registration renewal or reinstatement. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-_____, _____; effective P-_____.)

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26-39-501. Registration. Each applicant for initial registration as an operator shall meet the following requirements:

- (a) Submit an application and meet the requirements specified in K.A.R. 26-39-502;
- (b) pay the applicable fee specified in K.A.R. 26-39-505;
- (c) be at least 21 years of age;
- (d)(1) Have a high school diploma or equivalent, with one year of relevant experience;
- (2) have an associate's degree in a relevant field; or
- (3) have a bachelor's degree; and
- (e) have successfully completed an operator course as specified in K.A.R. 26-39-503.

(Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T- _____,
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26-39-502. Application for registration. (a) Each applicant for registration shall submit a completed application, pay the applicable fee, and provide evidence satisfactory to the department of having met the requirements in K.A.R. 26-39-501.

(b) Each applicant shall provide the department with one of the following:

(1) Academic transcripts or proof of receipt of an associate's degree, if qualifying with an associate's degree in a relevant field;

(2) academic transcripts or proof of receipt of a bachelor's degree or graduate degree, if qualifying with a bachelor's degree; or

(3) both a high school diploma or the equivalent and evidence of one year of relevant experience, if qualifying with a high school diploma and one year of relevant experience.

(c) Each applicant shall arrange for transcripts to be provided directly to the department by the school or the accredited college or university.

(d) Each applicant who has received an associate's degree, bachelor's degree, or graduate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner acceptable to the department. Each applicant shall pay all transcription fees directly to the transcriber.

(e) Each applicant who has received an associate's degree, bachelor's degree, or graduate degree outside the United States or its territories shall obtain an equivalency validation from a department-approved entity that specializes in educational credential evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency.

(f) If adverse information concerning the applicant is received through criminal history records, abuse, neglect and exploitation information, or disciplinary action information or from any other source, the applicant shall provide, upon request, all necessary records, affidavits, or

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other documentation required by the secretary concerning the disciplinary action, the abuse, neglect or exploitation findings, or the criminal conviction, including any evidence that all disciplinary action or sentencing requirements have been completed. All costs for the acquisition of these documents shall be the applicant's responsibility.

(g) If an applicant has been subject to disciplinary action or has been convicted of a felony or misdemeanor, the applicant shall have the burden of proving that the applicant has been rehabilitated and warrants the public trust. (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4 and 9; effective, T- _____, _____; effective P- _____.)

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26-39-503. Operator course. (a) Each applicant shall have successfully completed an operator course on principles of assisted living that is approved by the secretary.

(b) Each operator course shall be conducted by one of the following training providers:

- (1) A long-term care provider organization;
- (2) a community college;
- (3) an area vocational-technical school;
- (4) a postsecondary school under the jurisdiction of the state board of regents; or
- (5) an equivalent training provider approved by the secretary.

(c) Each training provider shall ensure that each individual responsible for administering the operator course has at least two years of professional experience in long-term care or as an instructor of long-term care and meets one of the following requirements:

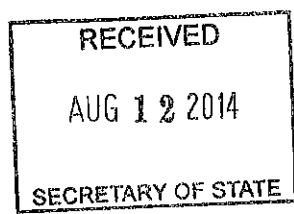
- (1) Has a bachelor's degree; or
- (2) is a registered professional nurse.

(d) Each training provider seeking approval to conduct an operator course shall submit the following at least three weeks before the first anticipated start date of the operator course:

(1) A course outline that includes all content areas in the department's document titled "operator course guideline," dated July 31, 2014 and hereby adopted by reference. The operator course shall consist of at least 45 clock-hours of instruction, excluding breaks, lunch, and test time, and a test;

(2) the policy and procedure to be followed to maintain test security, which shall include at least the following:

- (A) Securing the tests in a manner that ensures confidentiality;
- (B) not providing the test content to any individual before test time; and



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(C) notifying the department of any breach in the security of the test;

(3) a list of the printed materials provided to each participant, which shall include at least the following:

(A) The Kansas adult care home statutes and regulations for assisted living facilities and residential health care facilities, home pluses, and adult day cares;

(B) a functional capacity screening manual and form;

(C) the “dietary guidelines for Americans” and “tuberculosis (TB) guidelines for adult care homes,” as adopted by reference in K.A.R. 26-39-105; and

(D) an example of a negotiated service agreement; and

(4) after initial approval, submit each proposed change in the operator course to the secretary for approval before the change is implemented.

(e) If the operator course does not meet or continue to meet the requirements for approval or if there is a material misrepresentation of any fact with the information submitted by the training provider to the department, approval may be withheld, made conditional, limited, or withdrawn by the secretary.

(f) Each approved training provider shall meet the following requirements:

(1) Notify the department, electronically or in writing, at least three weeks before each operator course, including course dates, time, and location;

(2) administer and score the test provided by the department after each individual’s completion of the operator course. The individual may have access to the applicable statutes and regulations during the test. A score of 80 percent or higher shall constitute a passing score. Any individual who fails the test may retake the test one time. An alternative test version shall be

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used. Each individual who fails the test a second time shall be required to retake the operator course;

(3) within three weeks after the end of the operator course, provide a certificate of completion to each individual who completed the operator course and passed the test. Each certificate shall contain the following:

(A) A statement that the named individual completed the operator course; and

(B) the course approval number assigned by the department;

(4) maintain a record of the certificates issued to the individuals who have successfully completed the operator course; and

(5) within three weeks after the end of the operator course, submit to the department a copy of each certificate of completion issued and a list of the individuals who successfully completed the operator course. The list shall contain the following:

(A) The course approval number;

(B) the name, address, and date of birth of each individual; and

(C) any other information as required by the secretary. (Authorized by and implementing

L. 2014, ch. 94, sec. 4; effective, T- _____, _____; effective P- _____.)

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26-39-504. Registration renewal and reinstatement; continuing education. (a) Each

registration shall expire biennially on April 30. Each initial registration shall be issued for at least 12 months but not more than 24 months.

(b)(1) On or before April 30 of the calendar year in which the registration expires, each operator shall submit electronically or have postmarked a completed renewal application and the renewal fee specified in K.A.R. 26-39-505.

(2) The registration may be renewed within the 30-day period following the expiration date only if the completed application and the renewal fee and renewal late fee specified in K.A.R. 26-39-505 are received electronically or postmarked on or before May 30 of the calendar year in which the registration expires.

(3) If the completed renewal application and the applicable fee or fees are not received electronically or postmarked within the 30-day period following the expiration date, the registration shall be deemed to have lapsed for failure to renew and shall be reissued only after the registration has been reinstated.

(c) Each individual whose registration has lapsed for not more than 24 months shall submit a completed application, on department-approved forms, showing completion of 30 clock-hours of continuing education. The application shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-39-505.

(d) Each individual whose registration has lapsed for more than 24 months shall submit a completed application on department-approved forms showing successful completion of the operator course within the most recent 24-month period. The application shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-39-505.

(e) Continuing education requirements shall be prorated on a monthly basis for each operator whose initial or reinstatement registration period is less than 24 months.

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(f)(1) Each application for renewal shall include an attestation verifying that the operator has completed at least 30 clock-hours of continuing education during the period covered by the most recent registration. Continuing education in excess of the required 30 clock-hours shall not be carried over to the next renewal period.

An operator's renewal application may be randomly selected for audit to confirm completion of continuing education requirements. Each operator whose renewal application is selected for audit shall provide all documentation requested by the secretary.

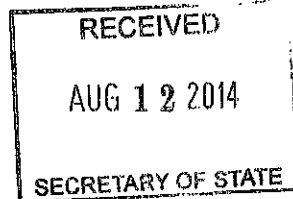
The 30 clock-hours of continuing education shall be earned through participation in or attendance at continuing education offerings pertaining to the core of knowledge or the domains of practice and shall be accumulated within subject areas as follows:

(A) At least 15 clock-hours in administration, which may include the following subjects:

- (i) General administration;
- (ii) applicable standards of environmental health and safety;
- (iii) local health and safety regulations;
- (iv) departmental organization and management; and
- (v) community interrelationships;

(B) at least 10 clock-hours in resident care, which may include the following subjects:

- (i) Psychology of resident care;
- (ii) principles of medical care;
- (iii) personal and social care; and
- (iv) therapeutic and supportive care; and



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(C) a maximum of five clock-hours in electives, which shall be in the domains of practice or the core of knowledge or in health-related fields.

(2) Five hours of continuing education credit in electives shall be approved for attendance, if verified by the sponsor, at state or national annual conventions that pertain to long-term care, in addition to continuing education credit approved for individual sessions at the state or national annual conventions.

(g) In-service education shall not be deemed a continuing education activity for the purpose of registration renewal or reinstatement.

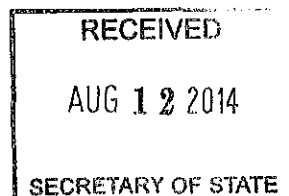
(h) Fifteen clock-hours of continuing education credit shall be approved for each college credit hour that pertains to the domains of practice or the core of knowledge and is earned within the renewal period.

(i) Each operator or nonapproved provider of continuing education who seeks approval of a continuing education offering shall submit a request for prior approval to the department at least three weeks before the offering is to be presented. The request shall provide information about the proposed offering, including objectives, content, and agenda, on a form provided by the department.

(j) Each operator who attends a continuing education offering and who also serves as a presenter shall receive two clock-hours for each clock-hour of presentation time. Presenters shall not receive additional credit for repetition of these presentations.

(k) Each sponsor shall meet the following requirements:

(1) Offer at least six continuing education activities, including workshops, seminars, academic courses, self-study courses, teleconferences, and educational sessions, over a two-year period;



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(2) designate one person as the coordinator, who shall be responsible for administering all requirements and outcomes of the sponsorship program. The department shall be notified in advance of any staff change involving the coordinator, including proof of that person's credentials to be the coordinator. Each coordinator shall meet one of the following requirements:

(A) Be currently licensed as an administrator, as defined in K.A.R. 26-39-100, or be currently registered as an operator, as defined in K.S.A. 39-923 and amendments thereto;

(B) have relevant experience or have a degree in a relevant field;

(C) serve as staff member of a professional organization related to the field of adult care home administration; or

(D) have a background or academic preparation in adult education or training;

(3) submit a completed application, in a department-approved format. The application and all required documentation shall be received by the department at least 30 days before the initial continuing education offering;

(4) ensure that all continuing education offerings pertain to the domains of practice or the core of knowledge; and

(5) submit an annual report on department-approved forms no later than January 31 of each year for the preceding calendar year. This report shall describe the approved continuing education activities provided and the quality improvement methods used, including how evaluation data is incorporated in planning future continuing education activities.

(l) If a sponsor fails to meet the requirements in this regulation after receiving the secretary's approval or if there is a material misrepresentation of any fact with the information submitted to the secretary by a sponsor, approval may be withdrawn or conditions relating to the

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26-39-505. Fees. (a) The registration application fee shall be \$65.00. The registration application fee for an initial registration of less than 24 months shall be prorated for any full or partial month.

(b) The registration renewal fee shall be \$65.00.

(c) The registration renewal late fee shall be \$35.00.

(d) The application fee for reinstatement of a lapsed or revoked registration shall be \$65.00, in addition to the registration renewal fee specified in subsection (b). (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4, 7, 8, and 9; effective, T-_____, _____; effective P-_____.)

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26-39-506. Change of name or address. Each operator shall notify the department of any change in the operator's name or address within 30 days of the change.

(a) Notice of each address change shall include the operator's name, registration number, previous mailing address, and new mailing address.

(b) Notice of each name change shall meet the following requirements:

(1) Include the operator's previous name, new name, and registration number; and

(2) be accompanied by one of the following:

(A) A certified copy of the operator's marriage certificate or license;

(B) a certified copy of the operator's court decree evidencing the name change; or

(C) a photocopy of the operator's driver's license or Kansas identification card specifying the new name. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-

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Date: 08/11/2014

**Kansas Department for Aging and Disability Services
Economic Impact Statement**

Pursuant to the requirements of K.S.A. 77-416, the Kansas Department for Aging and Disability Services submits the following Economic Impact Statement:

I. Summary of Proposed Regulation(s), Including Purpose:

K.A.R. 26-39-500, 26-39-501, 26-39-502, 26-39-503, 26-39-504, 26-39-505 and 26-39-506 establish minimum qualifications for obtaining Registration as an Operator as well as establishing renewal requirements and a fee structure to comply with House Bill 2418 which passed in the 2014 legislative session requiring Operator Registration. Operators have the authority and responsibility to oversee assisted living facilities or residential health care facilities with fewer than 61 residents, home plus facilities and adult day care facilities.

II. Reason or Reasons the Proposed Regulation is Required, Including Whether or Not the Regulation is Mandated by Federal Law:

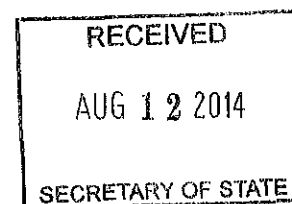
The 2014 passage of House Bill 2418 which amended K.S.A. 2013 Supp. 39-923 and 39-925 and repealed existing sections requires regulations be promulgated. The proposed regulations are not mandated in federal law.

III. Anticipated Economic Impact Upon the Following:

a. Kansas Department for Aging and Disability Services:

KDADS estimates that expenditures of \$11,000 from the State General Fund would be incurred for start-up costs to make the necessary changes to the agency's registration software. The agency would then use registration fee revenue to finance ongoing administrative expenditures for production and processing of applications, processing approvals for continuing education requirements, consultation with operators and new applicants, and maintenance of the registry. The biennial fee revenues and registration not to exceed \$65.00 per person. The agency estimates 500 individuals will register in each two year registration period, resulting in a total amount of \$32,500 for a two year period.

b. Other Governmental Agencies:



In addition to KDADS, the Department of Administration, the Attorney General, the Kansas Legislature (through the Joint Committee on Rules and Regulations and the Legislative Research Department) and the Secretary of State shall bear the costs associated with the adoption of these regulations.

c. Private Business or Individuals:

Assisted Living facilities and residential health care facilities with less than 61 residents, home plus and adult day care facilities will be required to have a registered operator. In addition, operators will be required to complete continuing education to maintain their registration. Operators will be required to submit an application fee not to exceed \$70.00 biennially.

The regulations require registered operators receive 30 hours of continuing professional education for each 2 year registration period. The cost of obtaining these hours will be borne by the individual operator or the employing facility. Continuing education costs are estimated at \$15.00 per hour, for a total of \$225.00 per operator, per year.

d. Consumers:

None

IV. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection:

Consideration was given to statutory regulation other than registration or licensure through the creation or extension of statutory causes of civil action or the creation or extension of injunctive remedies. Stakeholders, including providers and representatives from provider associations, participated in discussion of these regulations. It was determined that the credentialing level of registration would best provide the means for an individual to be required to meet predetermined qualifications in order to be listed on an official roster and be permitted to use the designated title of operator. The number of continuing education hours required was set based on requirements for comparable health professions, and in consultation with consumer and provider stakeholders, and current adult care home operators who will be affected by these regulations.

