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For discussion
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**LegCo Panel on Health Services**

**Way forward on the regulation of health care personnel not currently subject to statutory registration**

This paper provides for Members' information the Administration's position on the regulation of health care personnel whose practice is currently not subject to statutory regulation.

## Concept of regulating health care personnel

2. There is no universally agreed definition for "health care personnel". In the broadest sense, the scope of health care personnel ranges from a professional or an expert in a particular specialty, to a general-skilled person providing support to a health profession in the course of any health-related services. The continuous advancement and growing diversity of medicine and health treatment also add to the complication of the definition.

3. Health care personnel are engaged in varying degrees of interface with their clients during their practice, some in a more direct form than the others. Some health care personnel are subject to regulation, so that potential health hazards arising from possible unqualified or substandard services to the public can be safeguarded against, although the exact regulatory framework for a particular profession varies from place to place. Regulation of health care personnel can come in many different forms ranging from statutory regulation like the enactment of a stand-alone legislation, or a statutory register to society-based registration. In whatever forms, regulation frameworks tend to share the general features of establishing minimum standards as entry requirements and providing a quality check of the practitioners they seeks to regulate.

## Statutory regulation of health care professions in Hong Kong

4. In Hong Kong, statutory regulation of health care professions can be traced back as early as to 1957 with the enactment of the Medical Registration Ordinance (Cap. 161) to regulate the practice of medical practitioners. Since then, statutory regulatory systems for dentists, midwives, nurses, pharmacists, five supplementary medical professions (i.e. medical

laboratory technologists, occupational therapists, optometrists, radiographers and physiotherapists), chiropractors and Chinese medicine practitioners have been established.

5. The aforementioned statutory regulations, premised on professional self-regulation, are enforced by the regulatory bodies established under the respective legislation. These statutory bodies, composed of members from the professions and also lay members, regulate the professional practice and conduct of the health care professionals through a system of registration and disciplinary actions prescribed in the legislation. The various legislation confer upon the professions a very high degree of autonomy and status. The regulatory bodies are given the power to devise their own code of practice/ethics for their members to follow, and a disciplinary mechanism to handle and investigate complaints lodged by the public, and to exercise disciplinary actions to fellow members.

6. Since the regulation is statute-based, changes of the details of the regulatory framework would require legislative amendments. The Boards and Councils formed under these legislation are serviced by the Department of Health which provides secretarial and administrative support.

## **Principles and criteria for statutory regulation**

7. As mentioned, the objective for regulating health care professions is to protect the public from potential health hazards arising from services rendered by unqualified personnel. In considering whether certain health care professions should be subject to statutory regulation, the Administration adopts a risk-based approach to assess the risk associated with the practice, and whether such level of risk warrants control of the practice through the enactment of legislation. The following are some major considerations -

### *Patient interface*

8. The mode of service delivered by health care personnel varies. Some of these personnel have frequent contact with patients and provide direct clinical treatment while others are limited to providing support to their frontline colleagues. Practice of the former naturally carries a higher risk level, and therefore have a relatively stronger case for being subjected to statutory regulation.

### *Level of risk associated with malpractice*

9. The level of risk arising from malpractice also differs from one

health care profession to another. Health care personnel who perform invasive procedures are more prone to pose more imminent and recognizable threat to the well-being of service recipients, and their practice should therefore be accorded with higher priority for statutory regulation.

*Size of profession and employment distribution in public and private sectors*

10. While the primary consideration in deciding whether a particular group of health care personnel should be subject to statutory regulation is on the risk level of the practice, the size of individual health care professions, which has a bearing on its coverage and impact to the community, should also be taken into account. Health care professions of a smaller size will have a relatively smaller magnitude of health risk imposed onto the community. Distribution of these personnel in the public and private sectors is another consideration. As quality assurance measures such as the issue of practice guidelines, the provision of on-the-job training and continuing professional education are more readily available in the public sector, professions whose members are employed mainly in the public sector tend to pose less threat to public health than those professions predominated by private sector practitioners.

11. In short, when it comes to statutory regulation, the Administration generally accords higher priority to those health care personnel which are of a larger size, predominantly in the private sector, as well as with more patients' interface and higher level of harm arising from malpractice.

**Health care personnel not currently subject to statutory regulation**

12. There are various health care professions whose practice is currently not subject to a statutorily-based registration/enrolment and disciplinary system. To enable practical illustration of the size, employment distribution, and the scope of work of some of these health care professions, reference is made to the 15 health care professions which make up the Health Services Functional Constituency[1], and they are used to briefly set out the scene. While up-to-date official statistics concerning the size and distribution of these health care personnel is not readily available, the estimated size and employment structure of these professions, based on the data collected by the Department of Health in 2000, are tabulated at ***Annex A***.

13. It is noted from ***Annex A*** that the majority of practitioners in most of the 15 non-statutorily regulated health care professions were working in the public sector. We do not see evidence of drastic change of this distribution

[1] As provided for under Section 20I(1) of the Legislative Council Ordinance.

pattern in the past few years. As mentioned before, the systems in place in the public sector already provide these practitioners with some form of institutional control with regard to their practice. While dental technicians and dental surgery assistants were mainly found in the private sector, the fact that the duties of dental technicians do not involve direct interface with patients whereas the work of dental surgery assistants is under close personal supervision of dentists seems to conclude that their practice is of fairly low risk as far as public health is concerned.

14. Given the above observations, there does not seem to be an immediate need to subject these health care personnel under statutory regulation.

15. In addition, the fact that only a small number of reported incidents of injury resulting from treatments offered by non-statutorily regulated health care personnel may serve as an indicator of the relatively low level of public health risk associated with their practice. From 2000 to 2003, the Department of Health (DH) received 53 complaints associated with the performance of non-statutorily regulated health care personnel working in DH and only two partially substantiated cases were classified as 'injury related to treatment procedures'. During the same period, only one complaint relating to the alleged malpractice of non-statutorily regulated health care personnel was received by the Consumer Council and no such complaint was reported by the private hospitals.

16. Also, while practice of these health care personnel is not specifically regulated, there are legislation in place to guard the public against general medical malpractice covering prescription and use of drugs, the making of health claims and the use of medical apparatus. Moreover, under common law, all health care practitioners have a duty of care towards their patients, and they are required to exercise the care and skill reasonably expected of them as competent practitioners practising in their field. Any patients feeling aggrieved by such practice, like consumers of any other services, can seek legal remedy / redress through civil litigation.

17. Insights on the issue may also be borrowed from international practices in regulating these health care professions. A table setting out the regulation situation of five selected health care professions in other jurisdictions is prepared at ***Annex B***. It is noted that the situation actually varies from one profession to another, and differs between different countries.

**Society-based registration**

18. Statute-based registration aside, regulation of health care

personnel can also be achieved through administrative means. One form of it is through society-based registration.

19. Society-based registration is a voluntary scheme that thrives on the need and consensus of the profession to promote standard. Under society-based registration, professional associations administer an enrolment system and promulgate a list of qualified members to enable the public to make informed decisions when seeking certain health care services. In order to provide quality services to the public, the associations concerned are also encouraged to adopt respective professional code of practice, encourage members to gain accreditation by pursuing continuing professional development, develop society-based quality assurance scheme and devise a disciplinary mechanism to ensure that only qualified personnel could stay on their lists.

20. In pursuance of this direction, DH, upon collaboration from these associations is sought, can assist by enhancing public access to information regarding the availability of these health practices and the nature of their duties and services rendered, so that members of the public can make an informed choice. At the same time, DH will continue to issue health advice to the public if any treatment is considered to be immediately risky, based on surveillance intelligence in the public sector and any possible legal recourse.

**Way forward**

21. Given that excessive regulation could discourage competition and cause resources implications to the society at large, statutory regulation of health care professions should only be called for when there is evidence showing that the practice of a health care profession has demonstrated an unacceptable level of risk to the public. In this light, there is no apparent or imminent need to introduce specific legislation to regulate the health care personnel who are currently not so subjected to. In the meantime, the Administration suggests that health care personnel should consider pursuing society-based registration and is prepared to assist in promulgating such registration systems as appropriate.

22. Members are invited to note the contents of this paper.

Health, Welfare and Food Bureau
14 May 2004

**Annex A**

## Estimated Size[1] and Distribution of the 15 Health Care Professions Current Not Subject to Statutory Regulation

| | Public Sector[2] | Private Sector | Total |
|---|---|---|---|
| **Audiologists** | 25 | 6 | 31 |
| **Audiology Technicians** | 19 | 4 | 23 |
| **Chiropodists/Podiatrists** | 21 | 1 | 22 |
| **Clinical Psychologists** | 151 | 23 | 174 |
| **Dental Surgery Assistants** | 388 | 778 | 1166 |
| **Dental Technicians/Technologists** | 101 | 274 | 375 |
| **Dental Therapists** | 296 | 0 | 296 |
| **Dietitians** | 100 | 20 | 120 |
| **Dispensers** | 943 | N/A[3] | 943 |
| **Educational Psychologists** | 38 | 6 | 44 |
| **Mould Laboratory Technicians** | 28 | 1 | 29 |
| **Orthoptists** | 16 | 1 | 17 |
| **Prosthetists / Orthotists** | 96 | 7 | 103 |
| **Scientific Officers (Medical)** | 26 | 0 | 26 |
| **Speech Therapists** | 117 | 30 | 147 |

[1] Figures refer to the number of health care personnel practising in Hong Kong as at 1.7.2000, collected by the Department of Health in the Health Manpower Survey 2000.

[2] Public sector includes Government, Hospital Authority, academic institutions, and subvented organizations.

[3] There is no distinct profession titled as "dispensers" in the private sector. In the private sector, the duties of "dispensers" are very often subsumed under those of other health-related professionals, e.g. a clinical nurse. Nevertheless, dispensers in the Department of Health also work in the Pharmaceutical Manufactory where their main duties are the manufacturing of pharmaceutical products.

**Annex B**

## Regulation of Health Care Personnel in Some Jurisdictions

| | Dietitians | Podiatrists/ Chiropodists | Clinical Psychologists | Prosthetists and Orthotists | Speech Therapists |
|---|---|---|---|---|---|
| **The United Kingdom** | Yes[1] | Yes[1] | No | Yes[1] | Yes[1] |
| **The United States** | Yes, in 41 States[2] | Yes | Yes[2] | N/A[3] | Yes, in 45 States |
| **Australia** | No | Yes | Yes | No | Yes, in Queensland |
| **Canada** | Yes | Yes, in 7 Provinces | Yes | N/A | Yes, in 6 Provinces |
| **Singapore** | No | No | No | No | N/A |
| **Korea** | Yes | No | Yes | Yes | N/A |
| **Japan** | Yes | No | No | No | N/A |

Note:

None of the five professions is subject to statutory regulation in the Mainland.

Remarks:

1 It is amongst the 12 professions requiring registration with the Health Professions Council

2 Practice requirements (in form of licensure, certification or registration) vary by State

3 N/A: Information not available