

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 17 June 2005**

**Legal Service Division Report on
Certification for Employee Benefits
(Chinese Medicine) (Miscellaneous Amendments) Bill 2005**

I. SUMMARY

- 1. Object of the Bill** To recognize the certification given by and medical examination and treatment conducted by registered Chinese medical practitioners (“CMP”) for the purposes of entitlement to certain employees’ benefits under 3 labour ordinances.
- 2. Comments** At present, claims for certain employees’ benefits under the 3 labour ordinances have to be supported by medical evidence given by medical practitioners registered under the Medical Registration Ordinance (Cap. 161). The Chinese Medicine Ordinance (Cap. 549) (“CMO”) was passed in 1999 to provide a regulatory framework for the practice of Chinese medicine. Since then, the Chinese Medicine Council was established to regulate the practice of Chinese medicine by means of, amongst other things, a Code of Practice issued in 2002. The Administration has found it appropriate that the medical functions of registered CMP that are in line with their professional training should also be recognized for the purposes of the 3 labour ordinances.
- 3. Public Consultation** Various bodies including the Labour Advisory Board (“LAB”) were consulted in 2001 and the principle of recognizing Chinese medicine under the 3 labour ordinances was supported. LAB was consulted again in early 2005 on the technical aspects of the proposal. The Medical Council of Hong Kong and the Hong Kong Medical Association expressed views on the proposal and these views, including concerns on the competence and training of registered CMP, have been considered by the Administration in preparing the Bill.
- 4. Consultation with LegCo Panel** On 16 May 2002, the Panel on Manpower was consulted on the Administration's proposal to recognize Chinese medicine for entitlement of employee benefits. Members expressed support in principle whilst some members were concerned about the possible abuse in obtaining certified sickness days as the consultation fee for treatment by CMP might be less than the fee charged by medical practitioners.
- 5. Conclusion** The Bill will give effect to some important policy changes and have implications on the operation of the main labour legislation, it is recommended that a Bills Committee be formed to examine it.

II. REPORT

Object of the Bill

To provide for recognition of certification in various forms given by, and medical examination and treatment conducted or given by, registered Chinese medical practitioners (“CMP) for the purposes of entitlement to certain employees’ benefits under the Employment Ordinance (Cap. 57) (“EO”), the Employees’ Compensation Ordinance (Cap. 282) (“ECO”) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (“PCO”) (“the 3 labour ordinances”) and other related matters.

LegCo Brief Reference

2. LD HQ/711/253/1 Pt. 9 issued by the Economic Development and Labour Bureau in June 2005.

Date of First Reading

3. 15 June 2005.

Comments

4. The 3 labour ordinances provide that claims for certain employees’ benefits conferred thereunder have to be supported by medical evidence given by medical practitioners (“MP”) registered under the Medical Registration Ordinance (Cap. 161).

5. The Chinese Medicine Ordinance (Cap. 549) (“CMO”) was passed in 1999 to provide a regulatory framework for the practice of Chinese medicine and the use, trading and manufacture of Chinese medicines. Since then, a registration system has been put in place and the Chinese Medicine Council (“CMC”) was established under CMO to devise and implement control measures to regulate the practice of Chinese medicine by means of, amongst other things, a Code of Practice issued in 2002.

6. The Administration now considers that the 3 labour ordinances should also recognize the medical treatment, examination and certification given by registered CMP and hence the 3 labour ordinances be amended accordingly (para. 2 of LegCo Brief). However, recognition will only be given to medical functions which are in line with the professional training of registered CMP.

7. Parts 2, 3 and 4 of the Bill seek to amend the 3 labour ordinances in relation to certification of benefits under:-

(a) *Employment Ordinance (Part 2 of the Bill):-*

- (i) an employee being permanently unfit for his current work and that he may terminate his contract of employment without notice or payment in lieu of notice;
- (ii) the taking of maternity leave and the unfitness of a pregnant employee for certain heavy, hazardous or harmful work;
- (iii) an employee being permanently unfit for his current work for the purposes of a claim for long service payment;
- (iv) a period of unfitness for work for the purposes of a claim for sickness allowance;
- (v) a scheme of medical treatment operated by an employer;
- (vi) an employee being incapable of work in consequence of sickness or injury for the purposes of the concept of “continuous contract”; and
- (vii) the fitness of a child to be employed.

(b) *Employees’ Compensation Ordinance (Part 3 of the Bill):-*

- (i) a period of absence from duty being necessary for the purposes of a claim for compensation in the case of temporary incapacity resulting from an accident;
- (ii) a period during which the employee receives medical treatment for the purposes of a claim for medical expenses;
- (iii) the employer requiring the employee to submit to medical examination or treatment;
- (iv) an application for review of periodical payment; and
- (v) the medical treatment to which an employee must submit before he is entitled to the cost of supplying and fitting a prosthesis or surgical appliance.

(c) *Pneumoconiosis (Compensation) Ordinance (Part 4 of the Bill):-*

- (i) the entitlement of a person suffering from pneumoconiosis to the payment of medical expenses for medical treatment received;
- (ii) whether the medical treatment received by a person suffering from pneumoconiosis is reasonably necessary in connection with his pneumoconiosis; and
- (iii) the imminence of the death of a person suffering from pneumoconiosis for the purposes of a request for further medical examination.

8. Under the Bill, fees of a registered Chinese medicine practitioner will be included in “medical expenses” under ECO and PCO. Recovery of medical expenses that are cost of medicines will be subject to certain conditions. The cost will be payable only if the medicines are prescribed medicines for the direct treatment of the work injury (under EO) or prescribed medicines for such medical treatment as is reasonably necessary in connection with pneumoconiosis (under PCO). The cost of Chinese herbal medicines is not payable if the medicines are sold otherwise than by the holder of a retailer licence or a registered Chinese medicine practitioner for administering to his patient.

9. The Bill also provides that an employee may be denied certain benefits if he fails without reasonable excuse to submit to free medical treatment provided by the employer.

Public Consultation

10. The Chinese Medicine Practitioners Board (established under CMC), Hong Kong Dental Council, the Pneumoconiosis Compensation Fund Board and its Pneumoconiosis Medical Board, Hospital Authority, Department of Health and Privacy Commissioner for Personal Data were consulted and they agreed to the proposal (para. 28 of LegCo Brief).

11. The Labour Advisory Board (“LAB”) was consulted in 2001 and it supported the principle of recognizing Chinese medicine under the 3 labour ordinances. LAB was consulted again in early 2005 on the technical aspects of the proposal and it will be further consulted on the commencement date of the legislative amendments after enactment (para. 29 of LegCo Brief).

12. According to the Administration, the Medical Council of Hong Kong and the Hong Kong Medical Association expressed views on the proposal and these views, including concerns on the competence and training of registered CMP, have been considered by the Administration in preparing the Bill (para. 30 of LegCo Brief).

Consultation with LegCo Panel

13. At its meeting on 16 May 2002, the Panel on Manpower was consulted on the Administration's proposal to recognize Chinese medicine for entitlement of employee benefits under EO, ECO, PCO and the Pneumoconiosis Ex Gratia Scheme. Members expressed support in principle for the Administration's proposal whilst some members were concerned about the possible abuse in obtaining certified sickness days as the consultation fee for treatment by CMP might be less than the fee charged by medical practitioners.

Conclusion

14. The Bill will give effect to some important policy changes and have implications on the operation of the main labour legislation, it is recommended that a Bills Committee be formed to examine it.

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