

# 立法會 *Legislative Council*

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## **Panel on Health Services**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 11 June 2007**

#### **Regulation of "Health Maintenance Organisations"**

#### **Purpose**

This paper gives an account of the past discussions by the Panel on Health Services (the Panel) on the regulation of "Health Maintenance Organisations" (HMOs).

#### **Background**

##### *"HMOs" landscape in Hong Kong*

2. The term "HMOs" in Hong Kong generally refers to groups related to the provision of primary healthcare services. They may mean group medical practices and scheme administrators. Group medical practices may carry one or more of the following characteristics: incorporated entities; may not be owned by doctors; doctors being employed to deliver services; existence of a distinct management layer; participating in contract medicine, operating for profit, etc. Scheme administrators are specialised parties linking up employers and insurers as purchasers on the one hand, and group practices and solo-practitioners as service providers on the other.

##### *Concern about operation of HMOs in Hong Kong*

3. While HMOs' services have brought benefits to purchasers and users in terms of choice, affordability, accessibility and comprehensiveness, there have been concerns that HMOs' cost containment drive and commercial interests may compromise patients' welfare and healthcare personnel's professional autonomy.

##### *Regulatory regime over the quality of medical services provided by HMOs*

4. At present, there is no regulatory system specific to HMOs in Hong Kong. According to the Administration, this situation is not unique to Hong Kong. For instance, among countries including the United States, the United Kingdom, Singapore, Canada

(Ontario), and Australia (New South Wales), only HMOs in the United States where they have the strongest hold are subject to regulation.

### **Past discussions**

5. The Panel discussed the regulation of HMOs with the Administration on 13 February 2006, 30 March 2006, 10 July 2006, and 12 March 2007. At two of these meetings, the Panel also listened to the views of deputations on the matter.

6. Deputations on the doctors' side urged for the regulation of HMOs through legislation, such as requiring a HMO to have a legal representative who was a doctor and who would be held accountable for the activities of the HMO irrespective of whether he/she was actively practising in the HMO and requiring a HMO to be owned by doctors whose percentage of shares in the HMO should be more than 90% of the entire number of shares issued. On the other hand, deputations on the HMOs' side did not see the need for introducing legislation to regulate HMOs mainly for the reason that HMOs in Hong Kong were essentially doctor "panel" groups providing limited outpatient primary and secondary care. Regulation of these groups was presently through the individual registration of the doctors concerned with the Medical Council of Hong Kong, the Companies Ordinance (Cap. 32) as well as other relevant ordinances according to the services provided by the HMOs, such as radiation and pharmacy.

7. Major views/concerns expressed by members and the Administration's responses are summarised in the ensuing paragraphs.

### *Current regulatory regime over quality of medical services provided by HMOs*

8. The Administration considered that the current regulatory regime over the quality of medical services provided by HMOs could sufficiently protect patients' interests as doctors were under professional obligation to ensure that their medical services were up to the professional standards stipulated by the Medical Council of Hong Kong. The Medical Council had issued a Professional Code and Conduct for the Guidance of Registered Medical Practitioners to ensure doctors' compliance with appropriate procedures and standards of medical treatment in the provision of medical services for the interests of patients. In addition to general responsibilities to patients, the Professional Code and Conduct stipulated that, among other things, "Doctors should exercise careful scrutiny and judgment of medical contracts and schemes to ensure that they are ethical and in the best interests of patients. Doctors should disassociate themselves from organisations that provide substandard medical services, infringe patients' rights or otherwise contravene the Professional Code and Conduct". Derelict of professional responsibilities might be taken as professional misconduct, which was subject to disciplinary actions by the Medical Council.

9. The Administration further advised that it was its goal to enhance the role of the private sector in the provision of primary health care service. In the enhancement process,

there might be a need to strengthen the overall regulation of private medical practice. Such regulatory regime would most likely encompass all forms of private medical business operation, including solo-practice clinics and various forms of HMO-like entities and groups.

10. Hon LI Fung-ying, Hon Andrew CHENG, Dr Hon KWOK Ka-ki, Dr Hon Joseph LEE, Hon CHAN Yuen-han and Hon Albert HO urged the Administration not to drag its feet on regulating HMOs as human lives were at stake. Dr KWOK advised that the Medical Council was willing to regulate HMOs if given the legal backing to do so. Hon Mrs Selina CHOW and Hon Vincent FANG did not oppose the regulation of HMOs, but considered that details for regulating HMOs should be carefully hammered out to ensure that the provisions were enforceable, easily understood by the trade, and provide a level playing field for HMOs and solo-practice clinics.

11. On review, the Administration agreed to explore ways to strengthen the current regulatory regime over quality of medical services provided by HMOs. A Working Group was set up by the Department of Health (DH) in May 2006 to study the issue and collect views from stakeholders.

#### *Appointment of medical directors*

12. The Administration sought members' view on 10 July 2006 on requiring group practices that employed frontline doctors to appoint medically-qualified personnel as medical director who should be held accountable for all the medical decisions made in the operation of the group.

13. Hon Andrew CHENG, Dr Hon Joseph LEE, Dr YEUNG Sum and Dr KWOK Ka-ki considered that the medical director concept fell far short of safeguarding patients' interests, as the proposal only focused on regulating the professional conduct of doctors, which at present was adequately regulated by the Medical Council, whereas the crux of the problem lay in the lack of regulation over the operation of the HMOs.

14. The Administration explained that the medical director concept was an effective first step to better safeguard patients' interests, as the medical directors, being doctors themselves, would also be subject to regulation by the Medical Council. The Administration had not ruled out the option of enacting legislation to regulate HMOs. However, given the myriad relationship among different parties involved in the delivery of healthcare services provided by HMOs, more time was needed to find out which party in the chain should be held accountable and which aspect of the whole operation should be regulated before determining how they should be regulated.

15. Hon LI Fung-ying asked how patients' interests could be safeguarded if the role of medical director was taken up by an owner of a HMO.

16. The Administration advised that the fact that an owner or one of the owners of a HMO assumed the role of medical director should not erode the additional safeguard

intended for the patients, as the medical director would be held accountable for all the medical decisions made in the HMO. Irrespective of whether the owner of a HMO assumed the role of medical director, he/she would still be liable to civil claims for negligence/malpractice in the provision of medical services.

17. At the suggestion of Hon LI Kwok-ying, the Administration agreed to give consideration to making the appointment of medical directors independent from HMOs.

18. In response to Dr Hon KWOK Ka-ki's enquiry on the action to be taken by the Administration to ensure that all HMOs would appoint a medical director in their medical practices, the Administration said that insurance companies would be advised not to work with those HMOs which did not have a medical director. Where necessary, consideration could be given to enacting legislation making the appointment of medical director mandatory.

19. Members were briefed by the Administration on 12 March 2007 on the progress made by the Working Group in taking forward the medical director concept, which included spelling out the duties of the medical director and working with the Medical Council on how medical directors could be incorporated into the Council's Professional Code and Conduct. To complement the Code of the Medical Council, DH was prepared to draw up guidelines to cover those extra requirements for medical directors which would not fall under the purview of the Medical Council. DH would also maintain a list of group practices that had appointed medical directors. If a medical director infringed the relevant codes of the Medical Council, he/she might no longer be eligible to perform the duties of a medical director and the respective group would be de-listed unless it appointed another eligible doctor as medical director. If the management of the group repeatedly and unduly interfered with the professional decisions of the medical director, the group would not be allowed to be listed again.

20. Members did not oppose the medical director concept per se, but considered that its implementation alone would be far from adequate in safeguarding patients' interests. Dr KWOK Ka-ki urged the Administration to expeditiously come up with comprehensive strategies on regulating HMOs. Members agreed to hold another meeting to listen to the views of deputations on the medical director concept.

### **Relevant papers**

21. Members are invited to access LegCo's website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings of the Panel held on 13 February 2006, 30 March 2006, 10 July 2006 and 12 March 2007.