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Subcommittee to Study Issues Relating to Mainland-HKSAR Families

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 28 April 2011**

**Use of public obstetric services by Mainland women
whose spouses are Hong Kong residents**

Purpose

This paper gives an account of the past discussions by the relevant committees of the Legislative Council ("LegCo") on the implementation of the new obstetric service arrangements.

Background

2. To address the increasing use of obstetric services in Hong Kong by women from the Mainland which exerted heavy pressure on the obstetric services in the public hospitals and deprived local expectant mothers from accessing such services, the Hospital Authority ("HA") introduced an obstetric package charge for non-eligible persons ("NEPs") at a rate of \$20,000 for a stay of three days and two nights in all public hospitals on 1 September 2005.

3. To better channel demand from Mainland women for obstetric services to the private sector and to enable it to better assess the demand for obstetric services and plan service expansion, HA has implemented since 1 February 2007 revised arrangements for obstetric services for NEPs. Under the revised arrangements, all non-local women who wish to seek obstetric services in public hospitals have to make prior booking and pay for a package charge of \$39,000, which covers one antenatal check in specialist out-patient clinic, the delivery and the first three days and two nights stay for the delivery. For cases of delivery by emergency admission without making the prior booking, the charge would be \$48,000.

Past discussions

4. The Panel on Health Services ("HS Panel") held four meetings between January 2007 and February 2008 to discuss the new obstetric service arrangements for NEPs, and received views from 10 deputations at its meeting on 30 April 2007. The Panel on Security also held one meeting on 8 May 2007 to discuss the complementary immigration measures to tie in with the arrangements. Major views/concerns expressed by members and the Administration's responses are set out in the ensuing paragraphs.

Obstetric service charge for NEPs whose spouses are Hong Kong residents

5. In the course of discussions by the HS Panel, some members expressed the view that HA should adopt a two-tier structure for the NEP obstetric package charge by applying its revised rate of \$39,000/\$48,000 to NEPs with no marital ties in Hong Kong while allowing NEPs whose spouses were Hong Kong residents to pay the old rate of \$20,000. They pointed out that many NEP pregnant women whose spouses were Hong Kong residents were forced to give birth in the Mainland due to a lack of financial means, which was detrimental to family unity and social integration. Under the existing immigration policy, babies fathered by Hong Kong residents but born in the Mainland had to apply under the One Way Permit ("OWP") Scheme to settle in Hong Kong, whereas Chinese citizens born in Hong Kong had right of abode in Hong Kong regardless of the status of their parents under Article 24(2)(1) of the Basic Law.

6. According to the Administration, it had no intention to introduce an extra tier in the NEP obstetric package charge for NEPs whose spouses were residents of Hong Kong. Under the population policy, eligibility for subsidised public benefits was restricted to holders of Hong Kong Identity Card or children under the age of 11 who were Hong Kong residents. Persons not holding a Hong Kong Identity Card, i.e. NEPs, including Two Way Permit ("TWP") holders who were spouses of Hong Kong residents, might access public medical services in Hong Kong by paying the specified charges applicable to them. Whilst recognising that marriages between residents of Hong Kong and the Mainland would become increasingly prevalent, the onus should be on those couples who engaged in cross-boundary marriages to make appropriate plans to meet their medical needs.

7. Members considered the Administration's explanation unacceptable for the following reasons. First, the rate of \$20,000 was set on a cost recovery basis. Second, NEPs whose spouses were Hong Kong residents were in effect members of Hong Kong families. Although these NEPs had yet to become residents of

Hong Kong under the OWP Scheme, many held TWPs and stayed in Hong Kong throughout the year except for days when they had to return to the Mainland to renew their visit endorsement.

8. The HS Panel passed a motion on 16 April 2007 urging the Administration to allow NEPs whose spouses were Hong Kong residents to pay the old rate of \$20,000, and requested the Administration to provide a response by June 2007. The Administration advised that it needed more time to monitor the effects of the new obstetric service arrangements prior to making any changes to the arrangements.

Eligibility for heavily-subsidised social services

9. Some members of the HS Panel pointed out that the existing population policy on excluding NEPs whose spouses were Hong Kong residents from getting subsidised social services should be reviewed. They suggested and members agreed that the HS Panel should line up a joint meeting with other relevant Panels to discuss with the Chief Secretary for Administration ("CS") the eligibility for public benefits by NEPs whose spouses were Hong Kong residents.

10. CS's Office advised that as CS had already briefed and exchanged views with members of the House Committee at the special meeting held on 12 October 2007 on the priority areas being pursued by the Steering Committee on Population Policy, there was nothing new that CS could apprise Panel members at that stage on the population policy concerning eligibility for public benefits by NEPs whose spouses were Hong Kong residents. The Steering Committee, chaired by CS, comprised the Financial Secretary, Secretary for Education, Secretary for Security, Secretary for Food and Health, Secretary for Home Affairs, Secretary for Labour and Welfare, Secretary for Financial Services and the Treasury, and directorates of the Departments concerned as core members.

Refund of the NEP Obstetric Package Charge

11. A suggestion was made for fees paid at the time of booking to be refunded to the person making the booking, if the delivery did not take place eventually for reasons such as a miscarriage or unexpected matters preventing the NEPs concerned from coming to Hong Kong to give birth.

12. HA advised that the rationale of making the fees paid for the NEP obstetric package charge non-refundable was to make it a serious commitment for the person making the booking, which by itself, had incurred certain necessary costs (e.g. reservation of beds and delivery suites etc), not to mention the opportunity costs involved in case the limited resources were not fully utilised. This

no-refund policy also helped to deter double booking which was not uncommon before the introduction of the revised NEP obstetric package charge. Nevertheless, if a booked case in a public hospital could not take place in unfortunate circumstances such as a miscarriage, HA would offset the medical fees so incurred against the amount already paid for under the NEP obstetric package charge, if the patient had made use of the associated obstetric and gynaecology services in the public hospital.

13. Having considered the actual situation after implementation of the new obstetric service booking arrangements, HA implemented the following refund policy starting from 29 October 2007 after publication in the Gazette -

- (a) refund would be provided under two categories of special circumstances. The first category was the occurrence of miscarriage, termination of pregnancy or still birth. The second category was a change of status of the pregnant women from NEP to Eligible Person ("EP") during the period between payment of fees for booking and delivery;
- (b) for NEPs who had paid \$39,000 for the obstetric package charges in public hospitals, partial refund of \$20,000 would be made for justified cases fulfilling the criteria in the first category, after deducting those charges for the HA hospital services they had received for the concerned pregnancy. Under the second category, pregnant women with a change of status from NEP to EP during the period between payment of the package fee and delivery would be fully refunded for the obstetric package charges, after deducting those charges for the HA hospital services they had received for the concerned pregnancy; and
- (c) those NEPs who had paid on or after 1 February 2007 and fulfilled the relevant criteria could apply for a refund.

Implementation of complementary measures

14. In its paper for the Panel on Security in February 2007, the Administration advised that to complement the new obstetric services, the Immigration Department ("ImmD") had stepped up arrival checking of all visitors who were at an advanced stage of pregnancy, i.e. women who had been pregnant for seven months (28 weeks) or above. Those visitors whose purpose of visit was believed to be to give birth in Hong Kong were required to produce proof of booking arrangements with a local hospital. Any visitor who could not meet the immigration requirements concerned could be denied entry.

15. At the meeting of the Panel on Security on 8 May 2007, members were advised that frontline staff of ImmD had by and large experienced not much difficulties in stepping up arrival checking of pregnant visitors, most of whom were well aware of the new obstetric service arrangements. Upon the implementation of enhanced arrival checking, the number of extension of stay applications by pregnant visitors had dropped.

Impact on capacity of public obstetric services

16. The Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("the Subcommittee") held four meetings between June 2009 and July 2010 to discuss the obstetric service arrangements for Mainland women whose spouses were Hong Kong residents and receive views of deputations. Members generally held the view that the obstetric service arrangements were contrary to the population policy of encouraging births, and it was detrimental to family unity and social integration.

17. The Administration stressed that the objective of its policy on obstetric services was to ensure proper and adequate obstetric services to Hong Kong residents given the finite public resources. In 2007, there were 27 574 live births born in Hong Kong to Mainland women, of whom 18 816 were born to Mainland women whose spouses were not Hong Kong residents. The corresponding figures in 2008 were 33 565 and 25 269. In the light of the upward trend for use of public obstetric services by Hong Kong pregnant women, there was a need to limit the number of NEPs coming to Hong Kong to give births at a level that could be supported by the public healthcare system, and thereby all NEPs should continue to be subject to the same NEP rates for relevant services in the public healthcare system. Consequent upon the implementation of the new obstetric service arrangements in February 2007, it was recorded that in the first five months of 2010, the number of local pregnant women giving birth in public hospitals had increased by 13% as compared to the corresponding period in 2006;

while the number of non-local pregnant women giving birth in public hospitals had decreased by 16.5% as compared to the corresponding period in 2006. The number of deliveries by non-local pregnant women in public hospitals through Accident and Emergency Departments had decreased significantly by 93.1%.

18. The Administration further advised that after the Subcommittee meeting on 29 June 2009, the Food and Health Bureau ("FHB") made an assessment on the subject in the light of the deliberations of the Subcommittee. Taking into account FHB's policy objectives of the obstetric service charge arrangements, the read-across implications on other heavily subsidised public services, and the need to ensure rational use of the finite public resources, the Administration considered on balance that the existing obstetric service charge arrangements for NEPs remained appropriate.

19. Some members remained of the view that NEPs whose spouses were Hong Kong residents should not be treated on equal footing with those NEPs with no marital ties in Hong Kong. At its meeting on 28 July 2009, the Subcommittee passed a motion requesting the Government to assess the impact on the capacity of public medical services in Hong Kong and the population policy if Mainland spouses of Hong Kong residents were given equal treatment with local women in using obstetric services.

20. The Subcommittee also agreed to invite views from the Equal Opportunities Commission ("EOC") on whether applying the same obstetric service package charges for NEPs whose spouses were Hong Kong residents and those with no marital ties in Hong Kong constituted an unfair treatment to the former. EOC advised, among others, that based on the available information, the distinction between NEPs whose spouses were Hong Kong residents and NEPs whose spouses were not Hong Kong residents did not involve the anti-discrimination ordinances.

21. The Administration subsequently advised the Subcommittee on 19 January 2010 that the service capacity in the public hospitals was under considerable pressure. The annual delivery capacity in HA had been fully utilised in the past two years. The service capacity had been stretched to its limit during peak season and the booking for obstetric services for NEPs in HA hospitals was suspended from September to December in 2008 and then from October to December in 2009 to ensure that local women would receive adequate obstetric services. Members were advised that if those NEPs with Hong Kong resident husbands were to be charged the EPs rate for obstetric services, the Administration expected a substantial increase in the number of such NEPs seeking to deliver in the public hospitals, causing enormous pressure on the service capacity.

22. Some members remained of the view that children born to Mainland mothers and fathered by Hong Kong residents were in effect members of Hong Kong families. These Mainland women should therefore be entitled to use subsidised obstetric services.

23. Apart from requesting the Administration to follow up on the motion passed at the Subcommittee's meeting on 28 July 2009, members also requested the Administration to convey their views to the Steering Committee on Population Policy and the Family Council for consideration and follow-up discussion on the policy of obstetric services and the impacts of the policy on family reunion. As the use of subsidised public benefits was related to the population policy, members took a strong view that CS should attend future meeting(s) of the Subcommittee when the subject was discussed again. The Administration advised that the Steering Committee on Population Policy had been kept informed of the deliberations of the Subcommittee on the matter.

24. At the Subcommittee's meeting on 19 January 2010, the Administration advised that the Family Council noted the views of the Subcommittee on the obstetric service arrangements of HA for non-Hong Kong resident women expressed at its meeting in September 2009. The Family Council had deliberated on the existing obstetric service charge arrangements for non-local resident women from the family angle. Taking into account the need to balance consideration of a multitude of factors, it concluded that the obstetric service charge arrangements were effective and no review was considered necessary at this stage.

25. Members were also advised that the Steering Committee on Population Policy had thoroughly considered the views of the Subcommittee, the Family Council and FHB on the issue regarding obstetric service arrangements for NEPs in public hospitals, in particular arrangements for Mainland women whose spouses were Hong Kong residents. From the population policy angle, the Steering Committee considered that even if Mainland women whose spouses were Hong Kong residents were entitled to the subsidised rates as local women in using obstetric service arrangements in public hospitals, its impact on the Hong Kong population would be limited. Having regard to the policy objectives of the obstetric service arrangements and the read-cross implications on other heavily subsidised healthcare services if there was a change to the definition of EP for public healthcare services, the Steering Committee considered that the existing obstetric service charge arrangements for NEPs should be maintained.

26. While noting that the Family Council had deliberated on the matter, some members took the view that the eligibility for using subsidised obstetric services in public hospitals should be further considered on a household basis by the

Family Council. The Administration advised that the Family Council had deliberated the matter from the family angle and concluded that no review was considered necessary at this stage. Nonetheless, the Administration would convey members' views to the Family Council for consideration.

Refund arrangement for unused obstetric services

27. Some members considered that a two-tier structure should be adopted for the NEP obstetric package charges for Mainland spouses of Hong Kong residents and those NEPs with no martial ties in Hong Kong. The Administration should review the refund arrangements for unused obstetric services and provide a pro-rata refund according to the notification period.

28. As regards the refund arrangements for unused obstetric services, the Administration pointed out that HA implemented a refund policy starting from October 2007 under which if a booked case in a public hospital could not take place in unfortunate circumstances such as miscarriage, a partial refund of not more than \$20,000 would be made. According to the Administration, the amount was set at no more than \$20,000 to serve as a disincentive for NEPs to use public obstetric services, as well as to cover the additional costs incurred by HA in the implementation of the new obstetric service arrangement, which included the cost of operating the booking arrangement and additional manpower cost for providing service.

29. The Subcommittee was subsequently advised that HA had decided to revise the amount of refund for cases involving miscarriage, termination of pregnancy and still birth from \$20,000 to \$39,000 in mid-July 2010, and the refund would be subject to deduction of those charges for the hospital services which the patient had received for the same pregnancy. HA would also consider refund applications for the obstetric services utilised from 1 February 2007 onwards.

30. A suggestion was made to extend the refund arrangement for booked cases to cases involving premature deliveries in the Mainland given that the Mainland mothers had not used the obstetric services in HA hospitals at all. Consideration should be given to making partial refund of the package charge for these cases. Members were advised that HA had fully deliberated the refund arrangement for obstetric service package charge and decided to revise the amount of refund for cases involving miscarriage, termination of pregnancy or still birth having regard to the fact that the loss of baby in these cases was a very unfortunate event for the family concerned. However, the nature of premature delivery was different from such cases.

Fee waiver

31. Concern was raised as to whether the Administration should review the waiver mechanism for medical fees and charges within HA in the light of the court judgment on the judicial review of the obstetric service package charge for NEPs.

32. According to the Administration, the obstetric service package charges for NEPs in public hospitals had been challenged in two applications for judicial review. In the first application, the applicants challenged, among others, the Government's policy to exclude non-Hong Kong resident spouses of Hong Kong residents from the definition of EPs and decision of HA to revise the obstetric service package charges for NEPs since 1 February 2007. The application was dismissed by the Court of First Instance in the judgment handed down in December 2008. The applicants lodged an appeal and the hearing before the Court of Appeal took place in March 2010. On 10 May 2010, the Court of Appeal rejected the challenges in the application for judicial review. The second application involved a similar challenge to the exclusion of the applicant from subsidised obstetric services. The Court dismissed the application before the hearing.

33. The Administration explained that under the existing waiver mechanism within HA, patients who had financial difficulty in paying for the medical fees and charges in HA might apply for waiver of the relevant fees and charges. To ensure rational use of limited public resources, normally there was no fee waiver for NEP patients for HA services, including obstetric services. Waiver of medical fees and charges for NEP patients would be granted under exceptional circumstances. In the above court case, the court did not rule on the waiver mechanism, but it requested HA to reconsider the application for fee waiver and fee reduction from the applicant of the case. The above policy would continue to apply to all HA services including obstetric services.

Recent developments

34. In the 2010-2011 Policy Address, the Chief Executive tasked the Steering Committee on Population Policy to focus its study on two topics, which included studying in detail the ramifications of children born in Hong Kong to Mainland women returning to Hong Kong to study and live.

35. The topic was discussed at the special meeting of the House Committee on 10 December 2010. According to the statistics provided by the Administration, the total number of babies born in Hong Kong in 2009 was 82 095. Among them,

the number of babies born to Mainland mothers was 37 253; 6 213 of them were Type I babies (i.e. the fathers are Hong Kong permanent residents); 29 766 were Type II babies (i.e. both parents are non-Hong Kong permanent residents); and the remaining 1 274 were those whose Mainland mothers chose not to provide the fathers' residential status birth registration. According to the Hong Kong Population Projections 2010-2039, the total number of babies born in Hong Kong to Mainland women is projected to rise to about 40 000 to 50 000 per year (among them, about 34 000 to 43 000 will be Type II babies).

36. Members were advised that since the topic covered a wide range of complex issues, the Administration envisaged that certain areas would require more time for in-depth study and long term planning. The Steering Committee on Population Policy aimed at working out initial proposals in about a year's time.

37. Members may wish to note that according to the statistics collated by the Census and Statistic Department and ImmD, the provisional number of registered live births in Hong Kong in 2010 was 88 200. Among them, 47 552 (or 53.9%) were given by local women or non-local resident women other than Mainland women, and 68% of these births were born in public hospitals. Among the remaining 40 648 births in 2010 who were given by Mainland women, 32 653 (or 80.3%) were fathered by non-residents and 26% were born in public hospitals.

38. On 8 April 2011, HA announced that the booking for obstetric services for NEPs in HA hospitals was suspended from 8 April 2011 until end of December 2011.

Relevant papers

39. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on
use of public obstetric services by Mainland women
whose spouses are Hong Kong residents**

Committee	Date of meeting	Paper
Panel on Health Services	8 January 2007 (Item V)	Agenda Minutes
Legislative Council	10 January 2007	Official Record of Proceedings Pages 163 - 243 (Motion)
Panel on Health Services	16 April 2007 (Item I)	Agenda Minutes
Panel on Health Services	30 April 2007 (Item I)	Agenda Minutes
Panel on Security	8 May 2007 (Item IV)	Agenda Minutes
Panel on Health Services	18 February 2008 (Item IV)	Agenda Minutes
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	29 June 2009 (Item I)	Agenda Minutes
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	28 July 2009 (Item I)	Agenda Minutes
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	19 January 2010 (Item I)	Agenda Minutes
Committee	Date of meeting	Paper
Subcommittee to Study Issues Relating	13 July 2010 (Item I)	Agenda Minutes

to Mainland-HKSAR Families		
House Committee (Special meeting)	10 December 2010 (Item I)	Agenda Minutes

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