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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 13 July 2010

Use of subsidised obstetric services by Mainland women from the Mainland whose spouses are Hong Kong residents

Purpose

This paper gives an account of the past discussions by the Panel on Health Services ("the HS Panel"), the Panel on Security ("the Security Panel") and the Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("the Subcommittee") on the implementation of the new obstetric service arrangements and complementary immigration measures.

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 service for NEPs. Under the revised arrangements, all non-local women who wish to seek obstetric service 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 HS Panel held discussions with the Administration on 8 January 2007, 16 and 30 April 2007 and 18 February 2008 on the new obstetric service arrangements for NEPs, and received views from 10 deputations at the meeting on 30 April 2007. The Security Panel also discussed the implementation of the new obstetric service arrangements and complementary immigration measures at the meeting on 8 May 2007. 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 the discussions by the HS Panel, some members were of 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 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 according to Article 24(2)(1) of the Basic Law.

6. The Administration indicated that 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, such as if the patient had made use of the associated obstetric and gynaecology services in the public hospital, against the amount already paid for under the NEP obstetric package charge.

13. Having considered the actual situation after implementation of the new obstetric services 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 is 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 Security Panel 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 Security Panel 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. Members were also advised that upon the implementation of enhanced arrival checking, the number of extension of stay applications by pregnant visitors had dropped.

Effectiveness of the new obstetric service arrangements

16. At the meeting on 18 February 2008, the HS Panel was updated on the implementation of the new obstetric service arrangements and complementary immigration measures. Members were advised that the booking systems for obstetric

services in both public and private hospitals had been working smoothly since they were launched in February 2007, specifically –

- (a) apart from ensuring the provision of priority services to local women, the booking system helped to provide up-to-date information about the booking status of obstetric services in all public hospitals;
- (b) the increase in service package charge coupled with the implementation of the booking system and immigration measures had limited the number of births by non-local women in Hong Kong to a level that could be supported by the healthcare system;
- (c) the number of non-booked obstetric cases by non-local pregnant women in public hospitals had dropped significantly; and
- (d) the overall settlement rate for obstetric services by non-local pregnant women had improved.

17. As regards the refund arrangements which took effect from 29 October 2007, as at 31 December 2007, HA had received a total of 108 refund applications and approved 95 of them.

18. Some members remained of the view that Mainland spouses of Hong Kong residents should be excluded from the NEP obstetric package charge for the following reasons –

- (a) it was detrimental to family unity and social integration and contrary to the Government's call for closer integration with the Mainland and for each married couple in Hong Kong to have three children to improve the low fertility rate, as many Mainlanders whose spouses were Hong Kong residents were forced to return to the Mainland to give birth due to lack of means;
- (b) unlike children who could immediately settle in Hong Kong if they were born in Hong Kong regardless of whether one of their parents was Hong Kong resident, children born in the Mainland to Mainlanders whose spouses were Hong Kong residents had to wait for their turn for OWPs to settle in Hong Kong thereby making it more difficult for them to adapt to Hong Kong's education system;
- (c) the new obstetric service arrangements were discriminatory against Mainlanders whose spouses were Hong Kong residents in that Mainlanders had to wait up to five years under the OWP Scheme to settle in Hong Kong and become eligible for heavily subsidised rates for public medical services, whereas this was not the case for other non-local spouses of Hong Kong residents; and

- (d) Mainland women whose spouses were Hong Kong residents were not only members of Hong Kong families but also members of the community as they were able to stay in Hong Kong virtually year-round on the strength of the multiple visit endorsement under TWP while they were waiting for their turn for OWPs to settle in Hong Kong.

The Subcommittee's deliberations

Impact on capacity of public obstetric services

19. At its meetings on 29 June and 28 July 2009, the Subcommittee received views from eight deputations on and discussed with the Administration the obstetric service arrangements for Mainland women whose spouses were Hong Kong residents. 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.

20. The Administration reiterated that the objective of its policy on obstetric service was to ensure that Hong Kong residents were given proper and adequate obstetric service given that public resources were finite. 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 2009, the number of local pregnant women giving birth in public hospitals had increased by 10.8% as compared to the corresponding period in 2006; while the number of non-local pregnant women giving birth in public hospitals had decreased by 9.3% 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 91.6% when compared to the corresponding period in 2006.

21. 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, on balance, the Administration considered that the existing obstetric service charge arrangements for NEPs remained appropriate.

22. The Subcommittee passed a motion moved by Hon LEUNG Yiu-chung at the meeting on 28 July 2009, as follows –

"That this Subcommittee requests the Government to assess the impact on

- (a) the capacity of public medical services in Hong Kong; and
- (b) the population policy

if Mainland spouses of Hong Kong residents are given equal treatment with local women in using obstetric services, including the waiting time required and the level of service charges, and submit an assessment report to facilitate follow-up deliberation by the Subcommittee."

23. 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. In its reply, EOC advises, among others, that on the available information, it takes the view that the distinction between NEPs whose spouses are Hong Kong residents and NEPs whose spouses are not Hong Kong residents does not engage anti-discrimination ordinances.

24. 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 service for NEPs in HA was suspended from September to December in 2008 and then from October to December in 2009 to ensure local women would receive adequate obstetric service. Members were advised that if those NEPs with Hong Kong resident husbands were to be charged the EPs rate for obstetric service, the Administration expected that there would be substantial increase in the number of such NEPs seeking to deliver in the public hospitals, causing enormous pressure on the service capacity.

25. 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 service.

Deliberations of the Family Council and the Steering Committee on Population Policy

26. Apart from requesting the Administration to follow up on the motion passed at the meeting on 28 July 2009, members also requested the Administration to convey members' views to the Steering Committee on Population Policy and the Family Council for consideration and follow-up discussion on the policy of obstetric service 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.

27. At the 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 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.

28. 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 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.

29. While noting that the Family Council had deliberated on the matter, some members took the view that the eligibility for using subsidised obstetric service 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

30. 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 marital ties in Hong Kong. Moreover, the Administration should review the refund arrangements of unused obstetric services and provide a pro-rata refund according to the notification period.

31. 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 services arrangement, which included the cost of operating the booking arrangement and additional manpower cost for providing service. The Administration would consider members' views on the refund arrangements after the conclusion of the ongoing judicial review applications¹.

32. Members may wish to note that the Court of Appeal rejected the challenges in the applications for judicial review and handed down the judgment on 10 May 2010.

Related information

33. At the Council meeting on 10 January 2007, Dr Hon Joseph LEE moved a motion urging the Government to expeditiously formulate feasible and effective policies and measures to re-allocate public resources to resolve the problem brought about by non-local pregnant women giving birth in Hong Kong. Dr Hon Kwok Ka-ki and Hon Andrew CHENG moved amendments to the motion. The motion as amended by the two Members was carried.

Relevant papers

34. Members are invited to access the Legislative Council's website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings. A list of relevant papers is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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¹ According to the Administration, the obstetric service package charge for NEPs in public hospitals is being challenged in two ongoing 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 charge 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 have lodged an appeal and the hearing before the Court of Appeal will take place in March 2010. The second application which involved a similar challenge to the exclusion of the applicant from subsidised obstetric services was heard before the Court of First Instance in September 2009.

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion</u>
Legislative Council	10 January 2007	Proceedings of the motion debate on non-local pregnant women giving birth in Hong Kong held on 10 January 2007
Panel on Health Services	8 January 2007	Administration's paper LC Paper No. CB(2)761/06-07(03) Minutes of meeting LC Paper No. CB(2)1043/06-07
	16 April 2007	Administration's paper LC Paper No. CB(2)1552/06-07(01) Minutes of meeting LC Paper No. CB(2)2080/06-07
	30 April 2007	Minutes of meeting LC Paper No. CB(2)2410/06-07
	18 February 2008	Administration's paper LC Paper No. CB(2)1050/07-08(03) Minutes of meeting LC Paper No. CB(2)1264/07-08
Panel on Security	8 May 2007	Administration's paper LC Paper Nos. CB(2)1130/06-07(01) and CB(2)1736/06-07(04) Minutes of meeting LC Paper No. CB(2)2285/06-07

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion</u>
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	29 June 2009	Administration's paper LC Paper No. CB(2)1979/08-09(01) Minutes of meeting LC Paper No. CB(2)2354/08-09
	28 July 2009	Administration's paper LC Paper Nos. CB(2)2258/08-09(01) to (03) Letter dated 9 July 2009 from the Home Affairs Bureau LC Paper No. CB(2)2258/08-09(04) Minutes of meeting LC Paper No. CB(2)2535/08-09
	19 January 2010	Administration's paper LC Paper No. CB(2)743/09-10(01) Minutes of meeting LC Paper No. CB(2)1023/09-10

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Legislative Council Secretariat
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