

**Legislative Council Bills Committee on
Residential Care Homes (Persons with Disabilities) Bill**

Draft Residential Care Homes (Persons with Disabilities) Regulation

Clause 24 of the Residential Care Homes (Persons with Disabilities) Bill (“the Bill”) proposes to empower the Secretary for Labour and Welfare to make regulations. The Administration plans to table the Residential Care Homes (Persons with Disabilities) Regulation (“the Regulation”) to provide for the requirements on the operation, management and supervision of residential care homes for persons with disabilities (including staffing and spatial requirements, health and safety requirements, penalties and fees, etc.) for vetting by the Legislative Council after the passage of the Bill. To facilitate Members’ consideration of the related provisions in the Bill, the draft Regulation is attached at Annex for reference. The attached Regulation is a draft version which is subject to amendments having regard to the final version of the Bill.

The Labour and Welfare Bureau

March 2011

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DISABILITIES) REGULATION
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RESIDENTIAL CARE HOMES (PERSONS WITH DISABILITIES) REGULATION

(Made by the Secretary for Labour and Welfare under section 24 of the Residential Care Homes (Persons with Disabilities) Ordinance ([] of [2010]))

PART 1

PRELIMINARY

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Interpretation

In this Regulation –

“ancillary worker” (助理員) means any person, other than a care worker, health worker or nurse, employed by an operator whose duties include those of a cook, domestic servant, driver, gardener, watchman, welfare worker or clerk;

“care worker” (護理員) means any person, other than an ancillary worker, health worker or nurse, employed by an operator to render personal care to residents;

“health worker” (保健員) means any person whose name appears on the register maintained by the Director under section 5;

“home manager” (主管) means any person responsible for the management of a residential care home for PWDs;

“nurse” (護士) means any person whose name appears on –

- (a) the register of nurses maintained under section 5 of the Nurses Registration Ordinance (Cap. 164); or
- (b) the roll of enrolled nurses maintained under section 11 of that Ordinance;

“operator” (營辦人) means a person holding a licence in respect of a residential care home for PWDs or a certificate of exemption in respect of an existing home;

“particulars of identity” (身分詳情) means the particulars set out on an identity card issued under the Registration of Persons Ordinance (Cap. 177);

“scheduled infectious disease” (表列傳染病) has the meaning given by section 2 of the Prevention and Control of Disease Ordinance (Cap. 599).

PART 2

TYPES OF RESIDENTIAL CARE HOMES FOR PWDs

3. Types of residential care homes for PWDs

For the purposes of sections 7(4)(c) and 11(3)(c) of the Ordinance, a residential care home for PWDs may be classified as –

- (a) a “high care level home”, namely, an establishment providing residential care for PWDs who are generally weak in health and lack basic self-care skill to the extent that they require personal care, attention and assistance in the course of daily living activities but do not require a high degree of professional medical or nursing care;
- (b) a “medium care level home”, namely, an establishment providing residential care for PWDs who are capable of basic self-care but have a degree of difficulty in daily living activities; or
- (c) a “low care level home”, namely, an establishment providing residential care for PWDs who are capable of basic self-care and require only minimal assistance in daily living activities.

PART 3

REGISTRATION OF HEALTH WORKERS

4. Qualifications for registration as health workers

A person who meets either of the following requirements is qualified to be registered as a health worker for the purposes of employment at a residential care home for PWDs –

- (a) the person has completed a course of training approved by the Director in writing either generally or in any particular case;
- (b) by reason of the person's education, training, professional experience and skill in health work, the Director is satisfied that the person is a suitable person to be registered as a health worker under section 6.

5. Register of health workers

(1) The Director must establish and maintain a register and cause to be kept in the register particulars of the names and addresses of all persons registered as health workers under this Regulation and any other matters that the Director thinks fit.

(2) The register must be available for inspection by the public free of charge at any offices of the Government that the Director directs, during the hours when those offices are open to the public.

(3) The Director must enter in the register any amendment that the Director considers necessary for the purposes of preserving the accuracy of the register in respect of the address or any other particulars relating to a person whose name appears in it.

(4) Subject to subsection (5), the Director must remove from the register the name of a person –

- (a) who dies;

- (b) who requests in writing that the person's name be removed;
- (c) whose registration is cancelled under section 8; or
- (d) who is also registered as a health worker under the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) and whose name has been removed under section 5(4) of that Regulation.

(5) The Director must not remove from the register the name of a person under subsection (4)(c) –

- (a) until the period specified in section 10(1) has expired and no appeal has been made; or
- (b) if an appeal has been made, until after the final determination of the appeal or, in case the appeal is withdrawn, until after the withdrawal.

6. Application for and registration as health workers

(1) An application by a person for registration as a health worker must be made in the form and manner and be accompanied by the particulars that the Director determines.

(2) Subject to subsection (3) and on payment of the fee prescribed in section 36, the Director may register a person as a health worker, and may impose any conditions in relation to the registration that the Director thinks fit.

(3) The Director must not register an applicant as a health worker unless the Director is satisfied that the applicant is a person who is qualified, competent, and fit and proper to be registered as a health worker.

7. Director to give notice of decision on applicant

(1) If the Director registers or refuses to register a person as a health worker under section 6, the Director must immediately give a notice in writing of the decision to the person.

(2) If the Director refuses to register a person as a health worker, the notice referred to in subsection (1) must include –

- (a) an adequate statement of the reasons for the refusal; and
- (b) an endorsement setting out the relevant provisions of section 10.

8. Cancellation of registration

The Director may cancel the registration of a person registered as a health worker under section 6(2) if –

- (a) the Director is of the opinion that the registration was obtained by fraudulent means; or
- (b) the Director ceases to be satisfied of any matter in respect of which the Director is required to be satisfied under section 6(3).

9. Notice of cancellation of registration

(1) If the Director cancels any registration under section 8, the Director must immediately give a notice in writing of the decision to –

- (a) the person whose registration is cancelled; and
- (b) the operator of the residential care home for PWDs where the person is employed.

(2) A notice mentioned in subsection (1) must include –

- (a) an adequate statement of the reasons for cancelling the registration; and
- (b) an endorsement setting out the relevant provisions of section 10.

10. Appeals to Secretary for Labour and Welfare

- (1) A person –
- (a) whom the Director refuses to register under section 6; or
 - (b) whose registration is cancelled under section 8,

may, by notice in writing that states the grounds of appeal and is delivered to the Director within 21 days of being notified by the Director of the decision, appeal to the Secretary for Labour and Welfare against the decision of the Director.

(2) A decision that is appealed against under subsection (1) is not to have effect pending the determination of the appeal by the Secretary for Labour and Welfare.

(3) The Secretary for Labour and Welfare when considering any appeal against a decision of the Director –

- (a) must give the person who appealed against the decision an opportunity of being heard; and
- (b) may confirm or reverse the decision.

(4) On the confirmation or reversal of a decision under subsection (3)(b), the Director must immediately give a notice in writing relating to it to –

- (a) the person who appealed against the decision; and
- (b) the operator of the residential care home for PWDs where the person is employed.

PART 4

DUTIES OF OPERATORS

11. Employment of staff by operators

(1) An operator of a residential care home for PWDs must, according to the particular type of the residential care home, employ persons in the manner indicated in the Schedule to occupy the following posts in the residential care home –

- (a) home manager;

(b) ancillary worker;

(c) care worker;

(d) health worker;

(e) nurse.

(2) An operator of a residential care home for PWDs must not employ any person as –

(a) a home manager for any purpose other than employment as a home manager;

(b) an ancillary worker for any purpose other than employment as an ancillary worker;

(c) a care worker for any purpose other than employment as a care worker;

(d) a health worker –

(i) unless the name of the person appears on the register maintained by the Director under section 5; and

(ii) for any purpose other than employment as a health worker; or

(e) a nurse –

(i) unless the person is a registered nurse or an enrolled nurse within the meaning of the Nurses Registration Ordinance (Cap. 164); and

(ii) for any purpose other than employment as a nurse.

(3) An operator of a residential care home for PWDs must inform the Director in writing within 14 days of any change in the employment of a home manager of the residential care home under subsection (1)(a).

(4) An operator who contravenes subsection (1), (2) or (3) commits an offence and is liable to a fine at level 4.

12. Maintenance of records by operators

(1) An operator of a residential care home for PWDs must maintain a record of the name, address and particulars of identity of every person employed in the residential care home.

(2) An operator who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

13. Operators to provide plans etc.

(1) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, require the operator to provide to the Director a plan or diagram, with dimensions of the premises of the residential care home, before the expiry of the time, being not less than 14 days, indicated in the notice.

(2) An operator to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the plan or diagram required by the Director.

(3) An operator who contravenes subsection (2) commits an offence and is liable to a fine at level 4.

14. Operators to provide details of fees

(1) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, require the operator to provide to the Director details of any fees or charges payable by the residents of the residential care home, before the expiry of the time, being not less than 14 days, indicated in the notice.

(2) An operator to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the details of the fees and charges required by the Director.

(3) An operator must inform the Director in writing within 14 days of any change in the fees and charges payable by the residents.

(4) An operator who contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 4.

PART 5

DUTIES OF HOME MANAGERS

15. Submission of staff list by home managers

(1) A home manager must, in relation to a residential care home for PWDs and if required by the Director in writing, submit to the Director a list of staff employed by the operator of the residential care home under section 11, within 14 days of being required to do so.

(2) A home manager must, in relation to a residential care home for PWDs, at least once every 3 months inform the Director in writing of any change in the list of staff employed by the operator of the residential care home under section 11.

(3) A home manager who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 3.

16. Maintenance of records by home managers

(1) A home manager of a residential care home for PWDs must maintain a record of –

- (a) the name, address and particulars of identity of every resident;
- (b) the name, address and particulars of identity of at least one relative or one contact person of every resident;
- (c) where or how the relative or contact person may be contacted in an emergency;
- (d) the date of admission and discharge of every resident;
- (e) any accident or illness suffered by a resident and of any remedial action taken in relation to that accident or illness;
- (f) any death of a resident;
- (g) any action taken, including the use of force or mechanical restraint, to prevent or restrain a resident from self injury

or injuring others, or damaging property, or creating a disturbance;

- (h) possessions or property stored or held on behalf of every resident; and
- (i) any complaint made by a resident or any other person relating to the management or operation of the residential care home for PWDs and of any remedial action taken in relation to that complaint.

(2) A home manager who contravenes subsection (1) commits an offence and is liable to a fine at level 3.

17. Information to be provided by home managers

(1) The Director may, by a notice in writing given to a home manager of a residential care home for PWDs, require the home manager to provide any information concerning the residential care home that the Director may require, before the expiry of the time, being not less than 14 days, indicated in the notice.

(2) A home manager to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the information required by the Director.

(3) A home manager who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

18. Home managers to report scheduled infectious disease

(1) If a home manager of a residential care home for PWDs suspects or knows of a case of a scheduled infectious disease amongst the residents or staff of the residential care home or suspects or knows that a resident or staff member has been in contact with a case of a scheduled infectious disease, the home manager must immediately so report to the Director.

(2) A home manager who contravenes subsection (1) commits an offence and is liable to a fine at level 3.

PART 6

LOCATION AND DESIGN OF RESIDENTIAL CARE HOMES FOR PWDs

19. Location

A residential care home for PWDs must not be situated in any part of –

- (a) an industrial building; or
- (b) any premises the floor of which is immediately over the ceiling or immediately below the floor slab of any –
 - (i) godown;
 - (ii) cinema;
 - (iii) theatre; or
 - (iv) premises in which any trade that, in the opinion of the Director, may pose a risk to the life or safety of the residents is carried on.

20. Height

(1) Subject to subsection (2), a residential care home for PWDs, including any part of it, must not be situated at a height more than 24 m above the street level, measuring vertically from the street level to the floor of the premises in which the residential care home is or is to be situated.

(2) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, authorize that any part of the residential care home may be situated at a height more than 24 m above the street level as may be indicated in the notice.

21. Design

A residential care home for PWDs must, to the satisfaction of the Director, be designed to suit the particular needs of the residents as follows –

- (a) every passage and doorway must be wide enough to accommodate residents using walking aids or wheelchairs;
- (b) non-slip tiles must be fitted in every place where the safety of residents is in jeopardy by reason of a risk of slippage;
- (c) the ceiling of every room must, unless otherwise permitted by the Director, be situated at a height not less than 2.5 m measuring vertically from the floor or not less than 2.3 m measuring vertically from the floor to the underside of any beam;
- (d) any other requirements that may be set out in the Code of Practice issued by the Director under section 23 of the Ordinance.

22. Area of floor space per resident

(1) The minimum area of floor space required for each resident in a residential care home for PWDs is 6.5 m².

(2) In determining the area of floor space for the purposes of this section, the area of any open space, podium, garden or any other area in the residential care home which the Director is satisfied is unsuitable for the purposes of a residential care home for PWDs must be disregarded.

23. Accessibility

A residential care home for PWDs must, to the satisfaction of the Director, be accessible by emergency services.

24. Heating, lighting and ventilation

A residential care home for PWDs must, to the satisfaction of the Director, be adequately heated, lighted and ventilated.

25. Toilet facilities

(1) A residential care home for PWDs must be provided with toilet facilities and sanitary arrangements of a type approved by the Director.

- (2) A room used for toilet facilities must –
- (a) to the satisfaction of the Director, be provided with fittings appropriate to the use of the toilet facilities by the residents;
 - (b) at all times be kept in a clean and sanitary condition; and
 - (c) not be used for any other purpose.

26. Water supply and ablutions

A residential care home for PWDs must, to the satisfaction of the Director, be provided with –

- (a) an adequate and wholesome supply of water;
- (b) adequate washing and laundering facilities; and
- (c) adequate bathing facilities.

27. Repair

A residential care home for PWDs must, to the satisfaction of the Director, be kept in a state of good repair.

PART 7

PRECAUTIONS AGAINST FIRE AND OTHER RISKS

28. Precautions for health and safety

In a residential care home for PWDs, the design, the construction (including the fire resistance of the elements of construction) and the properties of the materials must be such that the health and safety of the residents, and in particular their safe escape in the event of fire, are, to the satisfaction of the Director, reasonably assured.

29. Fire prevention equipment

A residential care home for PWDs must, to the satisfaction of the Director of Fire Services, be provided with adequate apparatus and equipment to safeguard the residential care home against fire.

30. Fire exits

The fire exits and exit routes of a residential care home for PWDs must, to the satisfaction of the Director, be –

- (a) kept free from obstruction; and
- (b) adequately illuminated.

31. Inspection of premises by members of Fire Services Department

(1) Any member of the Fire Services Department may, without warrant and on production if so required, of proof of the person's membership and particulars of identity, at all reasonable times enter and inspect –

- (a) a residential care home for PWDs;
- (b) a building where a residential care home for PWDs is situated, if it appears to the member that a risk of fire to the residential care home may arise in the building; or
- (c) a building, place or premises adjacent or near to a residential care home for PWDs, if it appears to the member that a risk of fire to the residential care home may arise in the building, place or premises.

(2) A person must not obstruct a member of the Fire Services Department in the exercise of the powers of the member under subsection (1).

(3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

32. Report from Fire Services Department

Any member of the Fire Services Department may, in relation to any residential care home for PWDs, report to the Director any matter arising from an inspection under section 31 or relating to the protection of life or property under the Fire Services Ordinance (Cap. 95) and may make recommendations to the Director as to anything necessary to preclude danger from fire.

33. Storage of medicine

All medicine and drugs in a residential care home for PWDs must, to the satisfaction of the Director, be kept in a secure place.

34. Examination of residents

(1) An operator of a residential care home for PWDs must ensure that every resident of the residential care home who has attained the age of 60 years is medically examined at least once in every 12 months.

(2) The examination must be conducted by a registered medical practitioner, who must report in writing to the operator on the health of every resident referred to in subsection (1).

(3) A copy of the report must be kept by the operator and made available at all reasonable times for inspection by the Director or any inspector.

35. Discharge of resident by operator

An operator of a residential care home for PWDs may, by a notice in writing given to any resident of the residential care home and to a relative or contact person of the resident, discharge the resident and require the resident to quit the residential care home, before the expiry of the time, being not less than 30 days, indicated in the notice.

PART 8**FEES****36. Fee for registration as health workers**

A fee of \$164 is payable for registration as a health worker under section 6(2).

SCHEDULE

[s. 11]

EMPLOYMENT OF STAFF

Item	Type of staff	Type of residential care home for PWDs		
		High care level home	Medium care level home	Low care level home
1.	Home manager	1 home manager	1 home manager	1 home manager
2.	Ancillary worker	1 ancillary worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.
3.	Care worker	(a) 1 care worker for every 20 residents or part of 20 residents, between 7 a.m. and 3 p.m.; (b) 1 care worker for every 40 residents or part of 40 residents, between 3 p.m. and 10 p.m.; (c) 1 care worker for every 60 residents or part of 60 residents, between 10 p.m. and 7 a.m.		

4.	Health worker	1 health worker for every 30 residents or part of 30 residents, or 1 nurse for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.	1 health worker for every 60 residents or part of 60 residents, or 1 nurse	No health worker or nurse required
5.	Nurse			

Notes:

1. In these Notes, “designated person” (指定人士) means a home manager, an ancillary worker, a care worker, a health worker or a nurse.
2. As an additional requirement for a high care level home, at least 2 designated persons must be on duty between 6 p.m. and 7 a.m.
3. As an additional requirement for a medium care level home with a capacity of –
 - (a) more than 60 residents, at least 1 designated person must be on duty and 1 other designated person must be on site (whether or not on duty) between 6 p.m. and 7 a.m.;
 - (b) not more than 60 residents, at least 1 designated person must be on site (whether or not on duty) and 1 other designated person must be on call (whether or not on site) between 6 p.m. and 7 a.m.
4. As an additional requirement for a low care level home, at least 1 designated person must be on site (whether or not on duty) and 1 other designated person must be on call (whether or not on site) between 6 p.m. and 7 a.m.

Secretary for Labour and Welfare

[2010]

Explanatory Note

This Regulation provides for the operation, management and staffing of residential care homes for persons with disabilities (“PWDs”) and miscellaneous matters. The Regulation contains 8 Parts and 1 Schedule.

Part 1

2. Part 1 (sections 1 and 2) provides for preliminary matters and contains a definition section that includes, among other things, definitions of various types of staff that an operator of a residential care home for PWDs is required to employ in the residential care home.

Part 2

3. Part 2 (section 3) sets out different types of residential care homes for PWDs. Depending on the level of care required, the classifications are “high care level home”, “medium care level home” and “low care level home”.

Part 3

4. Part 3 (sections 4 to 10) deals with the registration of health workers, being one type of staff that an operator of a residential care home for PWDs is required to employ in the residential care home.
5. Section 4 sets out the qualifications for registration as a health worker.
6. Section 5 provides that the Director of Social Welfare (“the Director”) must establish and maintain a register of all health workers.
7. Sections 6 to 9 deal with the application for, and cancellation of, the registration of a health worker.
8. Section 10 provides for appeals against the decisions of the Director to the Secretary for Labour and Welfare.

Part 4

9. Part 4 (sections 11 to 14) deals with the duties of an operator of a residential care home for PWDs.
10. Section 11 requires an operator to employ, in the manner indicated in the Schedule, various types of staff in a residential care home for PWDs, namely, home manager, ancillary worker, care worker, health worker and nurse.
11. Sections 12 to 14 require an operator to –
 - (a) maintain a record of every member of the staff employed in the residential care home for PWDs (section 12);
 - (b) provide a plan or diagram of the residential care home to the Director (section 13); and
 - (c) provide details of fees or charges payable by the residents of the residential care home to the Director (section 14).

Part 5

12. Part 5 (sections 15 to 18) sets out the duties of a home manager of a residential care home for PWDs.

13. Section 15 requires a home manager of a residential care home for PWDs to submit a list of staff employed by the operator of the residential care home to the Director.

14. Sections 16 to 18 require a home manager to –

- (a) maintain a record relating to the particulars of the residents of a residential care home for PWDs, and of at least one relative or one contact person of every resident (section 16);
- (b) provide information concerning the residential care home for PWDs to the Director (section 17); and
- (c) report any scheduled infectious disease under the Prevention and Control of Disease Ordinance (Cap. 599) to the Director (section 18).

Part 6

15. Part 6 (sections 19 to 27) sets out the requirements as to location, design and other matters relating to the safety of a residential care home for PWDs.

Part 7

16. Part 7 (sections 28 to 35) deals with precautions against fire and other risks.

17. Sections 28 to 33 provide for precautions for health and safety matters.

18. Section 34 deals with the medical examination of residents of a residential care home for PWDs.

19. Section 35 provides for the discharge of residents of a residential care home for PWDs.

Part 8

20. Part 8 (section 36) provides for the fee payable for registration as a health worker.

Schedule

21. The Schedule prescribes the requirement for the type and number of staff by reference to the different types of residential care homes for PWDs.