

# 立法會 *Legislative Council*

LC Paper No. CB(2)2002/09-10(02)

Ref : CB2/BC/4/09

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

### **Background brief prepared by Legislative Council Secretariat**

#### **Purpose**

This paper gives an account of the discussions by the Panel on Welfare Services ("the Panel") on the proposal to introduce a licensing scheme for residential care homes for persons with disabilities ("RCHDs").

#### **Background**

##### Types of RCHDs

2. RCHDs in Hong Kong are run by both the private sector and non-governmental organisations ("NGOs"). There are three types of RCHDs, namely subvented RCHDs, self-financing RCHDs operated by NGOs and private homes.

3. According to the Administration, there are about 11 100 subsidised residential care places for persons with disabilities ("PWDs"). Various kinds of subsidised residential care services are provided to those who cannot live independently or cannot be adequately cared for by their families. These services include –

- (a) Hostel for Severely Mentally Handicapped Persons;
- (b) Hostel for Moderately Mentally Handicapped Persons;
- (c) Supported Hostel;
- (d) Care and Attention Homes for Severely Disabled Persons;
- (e) Hostel for Severely Physically Handicapped Persons;

- (f) Long Stay Care Home;
- (g) Halfway House;
- (h) Care and Attention Home for the Aged Blind;
- (i) Small Group Home for Mildly Mentally Handicapped Children/Integrated Small Group Home;
- (j) Residential Special Child Care Centre; and
- (k) Integrated Vocational Training Centre (Residential Service).

4. As at January 2010, there were about 2 900 reported places (with 70% enrolment rate) in 54 private RCHDs known to the Social Welfare Department ("SWD"). According to the profile of 1 806 residents as gathered from the operators of 48 private RCHDs in a survey conducted in May 2009, 94% of private RCHD residents were persons with mental illness and/or mental handicap (54% were ex-mentally ill persons, 29% were persons with mental handicap, and 11% were persons with mental illness and mental handicap).

#### Monitoring of RCHDs

5. As there is no licensing scheme for RCHDs, the operation of private RCHDs is not subject to a licensing scheme or monitoring mechanism. However, the Administration has put in place measures to provide advice and guidance for the operation of RCHDs, including private homes, with a view to improving their operation and quality of services.

#### *Code of Practice*

6. In 2002, SWD issued a Code of Practice for Residential Care Homes for Persons with Disabilities ("the Code of Practice") which serves as a guide to the operators on the minimum standard of service as well as the basis for SWD to provide advice and guidance to RCHDs.

#### *Regular visits*

7. District staff of SWD have been paying regular liaison visits to RCHDs to give advice on drug administration, use of physical constraints on residents, meals, hygiene and infection control, compliance with the Code of Practice, etc.

### *Other support for private homes*

8. Apart from regular liaison visits, SWD also provides other forms of support for private RCHDs. This includes financial support from the Lotteries Fund for the installation of cohorting facilities for combating infectious diseases, provision of influenza vaccination for the residents and staff, and provision of staff training places.

### Voluntary Registration Scheme ("VRS")

9. SWD has since 2006 implemented a VRS for private RCHDs as an interim measure to encourage operators of private RCHDs to enhance service quality. Under VRS, information on private RCHDs meeting the requirements in building safety, fire safety, general management and health care is uploaded to SWD homepage for public viewing. As at April 2010, there were 54 private RCHDs known to SWD, of which only six have joined VRS.

## **Discussions by the Panel on Welfare Services**

### Licensing scheme for RCHDs

10. The Panel had discussed time and again the progress of VRS and the introduction of the licensing scheme for RCHDs at its meetings held on 11 June 2007, 8 May 2008, 12 January 2009, and 12 April 2010. The Panel also received views from deputations at the meeting on 24 April 2010. Members considered that given the lukewarm response of private RCHDs to join VRS, it was most unlikely that they would improve their service quality on their own initiative. The introduction of a licensing scheme was the only option to ensure that all RCHDs would meet the basic service standards.

11. The Panel was briefed on the salient features of the Residential Care Homes (Persons with Disabilities) Bill at the meeting on 12 April 2010. The Administration advised that it would model on the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("the RCHE Ordinance") and propose to adopt similar provisions relating to the offences and penalties for operating a RCHD without a valid licence or a Certificate of Exemption ("COE"), the making of false statements in applications, the obstruction of inspectors in performing their duties, and failure to comply with the requirements of a direction given by Director of Social Welfare ("DSW"), etc. Non-compliance would be liable on conviction to a fine at level six (at present \$100,000) and to imprisonment for two years and to a fine of \$10,000 for each day during which the offence continued. SWD staff would make regular inspections to each home annually. It would also conduct surprise inspections to ensure compliance of the licensing requirements. Penalties would be imposed for non-compliance with the licensing requirements.

### Impact of the licensing scheme on the RCHD operators and residents

12. While the Panel was generally supportive of the Bill and urged its early implementation, some members noted with concern that some private RCHDs would close down upon the implementation of the statutory licensing scheme for being unable to meet the licensing requirements, and thereby resulting in displacement of residents. These members urged the Administration to make necessary decanting arrangements for the affected residents.

13. The Administration advised that it would formulate suitable complementary measures to encourage private RCHDs to upgrade their service standards. To this end, a pilot Bought Place Scheme would be introduced prior to the implementation of the statutory licensing system to encourage the private RCHD operators to enhance their service quality, and a financial assistance scheme would be implemented upon enactment of the Bill to provide subsidies to private RCHDs to carry out improvement works for compliance with the licensing requirements in building and fire safety. Besides, there would be a grace period of 18 months for RCHDs to apply for a licence or a COE upon commencement of the proposed legislation and for SWD to process all such applications.

14. As regards the decanting arrangements for residents of private RCHDs, the Administration stressed that it attached great importance to the well-being of RCHD residents. In addition to introducing various complementary measures for upgrading service standards of RCHDs, the Administration would assist affected residents of private RCHDs to move to other RCHDs as far as practicable if individual private RCHDs ceased to operate. The Administration pointed out that some private RCHDs had indicated their intention to join VRS and SWD would process these applications once received.

### One licence for one residential care home

15. On the implementation details of one licence for one residential care home, members were advised that having regard to the policy of continuum of care, improved health services, and the increasing lifespan of the population of PWDs, some RCHDs would also be caught by the RCHE Ordinance. The Administration proposed, therefore, that one residential care home was to be covered only by a licence issued under either the RCHE Ordinance or the RCHD Ordinance (when enacted). If a residential care home fitted into the definitions of the home to be regulated as set out in both the existing RCHE Ordinance and the RCHD Ordinance (when enacted), the home operator would only need to indicate his intention to hold or apply for one licence under either of those Ordinances; and once a licence had been issued and remained in force, there was no need for the operator to apply for another licence under the other ordinance, unless the operator intended to switch over to provide the other type of service.

Although PWDs and the elderly had many similar residential care needs, they also had distinct care needs. To cater for the needs of these two types of service users and to provide better services, a residential care home should largely provide dedicated services to either PWDs or the elderly. It was under such principle that the Administration intended to discourage the operator of a residential care home from diversifying its services by serving both PWDs and the elderly at the same time, e.g. serving a significant proportion of PWDs in a RCHE, or vice versa.

#### Draft Code of Practice

16. Members were advised that under the Bill, DSW would be empowered to issue a statutory Code of Practice specifying detailed requirements and standards for the operation of RCHDs and compliance by the licensees. A Licensing Office would be set up to ensure compliance of the licensing requirements as specified in the RCHD Ordinance (when enacted), its Regulation and the Code of Practice. Members were further advised that the Code of Practice would serve as a blueprint for the future licensing scheme.

17. Some members were concerned that the proposed licensing standards for space and staffing were lower than those set out in the existing non-statutory Code of Practice for RCHDs issued in 2002. The Administration explained that as part of the statutory licensing system, the Code of Practice would set out the minimum licensing standards for compliance by RCHDs. For this purpose, a Working Group comprising representatives from PWDs, parent groups, subvented RCHDs, private RCHDs, the academia and the Hong Kong Council of Social Service had been set up to review the existing Code of Practice. In the process, it had convened meetings and organised consultation sessions to gauge the views of the rehabilitation sector and stakeholders. The Administration stressed that the standards proposed in the draft Code of Practice were set to balance the practical situations of RCHDs and the needs of PWDs.

#### **Relevant papers**

18. Members are invited to access the LegCo website <http://www.legco.gov.hk> for details of the relevant papers and minutes of the meetings.