

**LEGISLATIVE COUNCIL
PANEL ON WELFARE SERVICES**

**Progress on the Preparation of the
Residential Care Homes (Persons with Disabilities) Bill**

Purpose

This paper updates Members on the progress of the preparation of the Residential Care Homes (Persons with Disabilities) Bill (the Bill), and seeks Members' support for the Administration to introduce the Bill into the Legislative Council (LegCo) within the current LegCo session.

Background

2. In accordance with the strategic directions set out in the 2007 Rehabilitation Programme Plan and in response to Members' views, the Administration has undertaken to regulate residential care homes for persons with disabilities (RCHDs) through a statutory licensing scheme so as to ensure their service quality and help the market develop residential care homes of different types and operational modes. Since the last reports to the LegCo Panel on Welfare Services (the Panel) in January and March 2009, the Administration has pressed ahead with the drafting of the Bill, and has reviewed the related policy issues having regard to Members' comments and stakeholders' views. It remains our plan to introduce the Bill into LegCo in the current session with a view to implementing a statutory licensing scheme for RCHDs.

3. In preparing for the licensing scheme, the Social Welfare Department (SWD) has since 2006 implemented a Voluntary Registration Scheme (VRS) for private RCHDs as an interim measure to encourage operators of private RCHDs to enhance their service quality. Under the VRS, information on private RCHDs meeting the requirements in building safety, fire safety, general management and health care will be uploaded to the SWD homepage for public viewing. As at February 2010, there are 54 private RCHDs known to SWD, providing a total of 2 900 residential places (with a 71% enrolment rate). Of these private RCHDs, six have joined the VRS, providing a total of 536 places (with an 84% enrolment rate). Apart from conducting regular quarterly visits to RCHDs registered under the VRS, SWD also conducts quarterly visits to non-VRS private RCHDs and all self-financed RCHDs run by NGOs, with a view to giving them guidance and advice as appropriate.

The Bill: Key Legislative Proposals

4. The Bill aims to provide for the control of RCHDs through a licensing system administered by the Director of Social Welfare (DSW). The legislative proposals comprise:

- (a) the Bill that provides a statutory framework to regulate RCHDs (including application and exception, mechanism for application, issue, renewal, cancellation, suspension and refusal of application of licences, appeal mechanism, supervision and offences, etc.);
- (b) a Regulation setting out the requirements on the operation, management and supervision of RCHDs (including the staffing and space requirements, health and safety requirements, penalties and fees, etc.);
- (c) a power to be given to DSW in the Bill to issue a Code of Practice specifying detailed procedures, guidelines and standards for the operation, keeping, management and control of RCHDs for compliance by the licensees, such as the requirements for building and fire safety, barrier-free access, general management and health care etc.; and
- (d) consequential amendments to other pieces of legislation.

5. The Administration is modelling the Bill on the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (the RCHE Ordinance) as far as practicable to ensure consistency while giving due consideration to the circumstances specific to RCHDs. The key legislative proposals in the Bill are highlighted in paragraphs 6 to 17 below.

Definition of RCHDs

6. Modelling on the RCHE Ordinance, we propose to define RCHDs as any premises at which more than five persons with disabilities (PWDs) who have attained the age of 6 years are habitually received for the purpose of residential accommodation with the provision of care.

Definition of PWDs

7. In defining PWDs, we have taken into account the definition of “disability” in the Disability Discrimination Ordinance (Cap. 487).

One licence for one residential care home

8. Many residential care homes for the elderly (RCHEs) with residents suffering from frailty and psycho-geriatric illness will be caught by the future licensing scheme for RCHDs. The existing Care and Attention Home for the Aged Blind will fit into both categories of RCHDs and RCHEs. Given the prevailing policy of continuum of care, the improved health services, and the increasing lifespan of the population of PWDs, some RCHDs will also be caught by the RCHE Ordinance. We propose, therefore, that one residential care home is to be covered only by a licence issued under either the RCHE Ordinance or the RCHD Ordinance (when enacted). In other words, if a residential care home fits 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 will only need to hold or apply for one licence under either of those Ordinances; and once a licence has been issued and remains in force, there is no need for the operator to apply for another licence under the other ordinance, unless the operator intends to switch to provide the other type of service.

9. Although PWDs and the elderly have many similar residential care needs, they also have some distinct residential care needs. To cater for the needs of these two types of service users and to provide better services, a residential care home should provide dedicated services to either the PWDs or the elderly. It is under such principle that we intend to discourage the operator of a residential care home from diversifying its services by serving both PWDs and the elderly at the same time. Indeed, allowing a residential care home to have two types of licences in parallel implies that the home is permitted under the law to admit both PWDs and the elderly, and is therefore not in line with the above principle. Also, from operational perspective, it may create an untenable situation whereby these homes will be subject to two licensing schemes both administered by SWD, resulting in the overlapping of licensing and monitoring efforts.

Application

10. In line with the RCHE Ordinance, we consider that the RCHD Ordinance (when enacted) should not apply to premises used solely for the purpose of the medical treatment of persons (such as hospitals, nursing homes), or for educational or other specific purposes (such as special schools). The considerations are that while the above institutions may be providing residential care services to PWDs, they are set up for specific purposes, such as providing medical care or meeting educational needs, and are already regulated by existing legislation¹ with commensurable residential care service standards.

¹ For example, hospitals, nursing homes and maternity homes registered under the Hospital Authority Ordinance (Cap. 113) and the Hospital, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165), as well as special schools with residential facilities registered under the Education Ordinance (Cap. 279).

Application for licence or certificate of exemption (COE)

11. Modelling on the RCHE Ordinance, we propose to adopt similar procedures and timeframes for the application of a RCHD licence or a COE², including the grounds for refusal to issue or renew a licence.

Appeal mechanism

12. There will be an appeal mechanism for any persons aggrieved by DSW's decisions in refusing to issue or renew a licence or a COE. By reference to the Child Care Services Ordinance (Cap. 243) and the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566), we propose that all appeals under the RCHD Ordinance (when enacted) be handled by the Administrative Appeals Board under the Administrative Appeals Board Ordinance (Cap. 442).

Supervision of RCHDs

13. Modelling on the RCHE Ordinance, we propose to adopt similar provisions regarding the appointment of inspectors, including their powers and duties. In line with the RCHE Ordinance, DSW may give directions to ensure that:

- (a) RCHDs are operated and managed satisfactorily;
- (b) the welfare of residents in RCHDs is promoted in a proper manner;
- (c) adequate apparatus and equipment required as safeguards against fire or other hazard likely to endanger the lives or health of residents are provided in the RCHDs; and
- (d) the RCHD Ordinance (when enacted) is complied with.

Offences

14. Modelling on the RCHE Ordinance, we propose to adopt similar provisions relating to the offences and penalties for operating a RCHD without a valid licence or 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 DSW as mentioned in the above paragraph, etc.

² Existing RCHDs in operation before the RCHD Ordinance (when enacted) comes into effect may apply for a COE so as to allow reasonable time for these homes to take suitable follow up action to comply with the licensing requirements.

Regulations and Code of Practice

15. With due reference to the RCHE Ordinance, the Bill will include provisions regarding the making of Regulations (by the Secretary for Labour and Welfare), as well as the making of a Code of Practice (by DSW).

Code of Practice

16. As part of the statutory licensing mechanism, a Code of Practice will set out the minimum licensing standards for compliance by RCHDs. For this purpose, SWD has consulted the sector and stakeholders, and set up a Working Group to review the existing non-statutory Code issued in 2002, taking into account the practical situations of RCHDs and the changing needs of PWDs. The Working Group comprised representatives from PWDs, parent groups, subvented RCHDs, private RCHDs, the academia and the Hong Kong Council of Social Service (HKCSS). It was generally agreed that the previous Code should be simplified by adopting, as far as possible, the standards set out in the Code of Practice for RCHEs while, in parallel, standards that are specific to the situations of RCHDs should be devised. The Working Group also agreed that some form of mutual exclusion be provided between the existing RCHE Ordinance and the RCHD Ordinance (when enacted), for example, the home operator will only need to hold or apply for one licence under either of the Ordinances. Following consultation with the Rehabilitation Advisory Committee (RAC), the Panel was consulted on the draft Code of Practice for RCHDs on 12 January 2009 (LC Paper No. CB(2)560/08-09(04)).

Consequential amendments

17. In the course of drafting the Bill, we have identified a number of existing ordinances, including the RCHE Ordinance, which will require amendments consequential to the implementation of the proposed statutory licensing scheme for RCHDs and other related matters. We will propose consequential amendments to those ordinances in consultation with the policy Bureaux concerned.

Complementary Measures

18. In tandem with the legislative proposal, the Administration will formulate suitable complementary measures to encourage private RCHDs to upgrade their service standards; to increase the supply of subsidised residential care places, thereby shortening the waiting time for subsidised residential service; and to help the market develop more service options for PWDs. To this end, as the Chief Executive has announced in the 2009-10 Policy Address, the Administration will introduce a pilot Bought Place Scheme for private RCHDs (BPS) prior to the implementation of the statutory licensing system. To take forward this initiative, SWD has worked out

the framework for the pilot BPS. Following consultations with private RCHDs, parent groups, HKCSS, RAC and stakeholders, the Panel was consulted on the framework of the pilot BPS on 8 February 2010 (LC Paper No. CB(2)845/09-10(03)) and a special meeting of the Panel was also held on 13 March 2010 to collect the views from deputations.

Implementation

19. To allow time for individual RCHDs to apply for a new licence or a COE upon commencement of the proposed legislation and for SWD to process all such applications, there will be a grace period after which any RCHDs operating without a licence or a COE shall be guilty of an offence upon conviction. The Code of Practice, once promulgated, will serve as a code on the minimum service standards to be complied with by all RCHDs. While subvented RCHDs will have to comply with the Code, they will also have to comply with the terms and conditions of the Funding and Service Agreement as mutually agreed with SWD.

Advice Sought

20. Members are invited to note the progress of the Administration's preparatory work for the Bill and to support the Administration's proposal to introduce the Bill into the LegCo within the 2009-10 legislative session.

**Labour and Welfare Bureau
Social Welfare Department
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