



中華人民共和國香港特別行政區政府總部勞工及福利局
Labour and Welfare Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
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Mr YICK Wing-kin,
Assistant Legal Adviser,
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr YICK,

**Residential Care Homes (Persons with Disabilities) Regulation
(L.N. 111 of 2011)**

Thank you for your letter of 19 July 2011 regarding the Residential Care Homes (Persons with Disabilities) Regulation (“the RCHD Regulation”). Our response to the issues raised in the letter is as follows.

Section 5(4)(d) – Register of health workers

2. Upon commencement of the RCHD Regulation, health workers of residential care homes for the elderly (“RCHEs”) and residential care homes for persons with disabilities (“RCHDs”) will be required to register under the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A) (“RCHE Regulation”) and the RCHD Regulation respectively. For those who would like to be qualified as both types of health workers, they have to register under both registers.

3. It is stipulated in both the RCHE Regulation and the RCHD Regulation that the registration of a health worker may be cancelled if the Director of Social Welfare (“DSW”) is of the opinion that the registration was obtained by fraudulent means, or if DSW ceases to be satisfied that the person is qualified, competent and fit and proper to be registered as a health worker. For a health worker who has registered in both registers, if DSW, on the basis of the abovementioned reasons, cancels the health worker’s registration in accordance with the RCHE Regulation, then that health worker’s other registration under the RCHD Regulation will also be cancelled pursuant to section 5(4)(d) of the RCHD Regulation.

4. Section 5(4)(d) of the RCHD Regulation is formulated in view of the similarity of the qualifications and the duties between the health workers serving RCHEs and those serving RCHDs. If DSW decides to cancel a health worker’s registration under the RCHE Regulation, we consider it necessary to cancel the health worker’s registration under the RCHD Regulation in order to protect the wellbeing of RCHD residents. Such arrangement fulfils the legislative intent of the Residential Care Homes (Persons with Disabilities) Ordinance (“RCHD Ordinance”) and the RCHD Regulation which aim to improve the service quality of RCHDs and protect RCHD residents.

5. Moreover, considering that under normal circumstances, it is unlikely that a health worker will initiate cancellation of registration in only one of the registers. We have, therefore, originally proposed to apply section 5(4)(b) of the RCHE Regulation (i.e. request for removing one’s name from the register) to section 5(4)(d) of the RCHD Regulation. In light of the comment from the Legal Adviser of the Legislative Council, we will make an amendment to allow a person who initiates a cancellation of registration under the RCHE Regulation to retain the registration as a RCHD health worker.

Section 15 – Operators to ensure advertisement contains certain information

6. The purpose of section 15 of the RCHD Regulation is to enable the public to learn from an RCHD advertisement whether that residential care home has obtained a RCHD licence or certificate of exemption. We do not intend to include any additional provision to regulate the accuracy of other information in the advertisement. In fact, misrepresentations are regulated under the Misrepresentation Ordinance (Cap. 284). Section 3 of that Ordinance stipulates that where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then the person making the misrepresentation could be liable to damages.

Section 23 – Area of floor space per resident

Calculation of floor area

7. The concept of “net usable indoor area” is applied in determining whether a residential care home complies with the minimum requirement on the area of floor space per resident. On such basis, all indoor spaces available for the use of residents, carrying out activities and for the exclusive use of the residential care home for provision of services to residents (including toilet, cooking facilities, office space, communal space, etc.) can be counted. The RCHD Regulation also stipulates that, in determining the area of floor space, any open space, podium, garden or any other area in the residential care home which DSW is satisfied is unsuitable for the purposes of an RCHD (e.g. staff quarter, roof, bay window, etc.) is to be disregarded.

8. Given that the calculation method involves considerable technical and particular data that may be subject to changes along with the advancement in building technologies, the detailed method for calculating floor area will be set out in the Code of Practice for Residential Care Homes for Persons with Disabilities (“CoP”) to facilitate any updating of the calculation method in future. As part of the licensing system, DSW may refuse to issue a licence to any RCHD which fails to comply with the requirements under the CoP pursuant to section 7(3)(c) of the RCHD Ordinance.

“Any open space”

9. Section 23(2) of the RCHD Regulation was modelled on section 22 of the RCHE Regulation. The term “any open space” (任何空地) in section 23(2) of the RCHD Regulation means outdoor open space. In the English text of the RCHD Regulation, the word “open” itself in “any open space” implies outdoor. As a matter of fact, the term “open space” in some existing ordinances is not given any definition. An example is the Public Health and Municipal Services Ordinance (Cap. 132) in which canopy means “...[a] structure which is erected on any building or in or over any open space adjacent to or on a building and is supported by posts or other means”. The term “open space” is not defined in that Ordinance.

Section 24 – Accessibility

10. The accessibility under section 24 of the RCHD Regulation refers to the accessibility by emergency services (including fire or ambulance service teams). In certain situations (e.g. a fire), lifts are not essential for the provision of emergency services. The Licensing Office of the Social Welfare Department will, in consultation with the Fire Services Department and the Buildings Department and with regard to various factors such as the locations of the residential care homes, assess whether individual residential care homes have complied with the requirements under section 24 of the RCHD Regulation. The Licensing Office will also issue guidelines to operators of residential care homes which provide advice on the selection of suitable premises.

Yours sincerely,

(Miss Neve Leung)
for Secretary for Labour and Welfare

cc.

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