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**Subcommittee on Residential and Community Care Services for Persons
with Disabilities and the Elderly under the Panel on Welfare Services**

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 10 December 2010**

Regulation of residential care homes for the elderly

Purpose

This paper provides background information on the regulatory framework for residential care homes for the elderly ("RCHEs") and gives a brief account of past discussions of the Panel on Welfare Services ("the Panel") and its Subcommittee on Elderly Services relating to the subject.

Background

2. RCHEs in Hong Kong are run by both the private sector and non-governmental organisations ("NGOs"). At present, the Government is providing about 26 000 subsidised places in RCHEs, serving about 44% of all elders staying in RCHEs throughout the territory. There are three different types of subsidised places, namely, places provided in subvented RCHEs run by NGOs, places in contract RCHEs, and places in private RCHEs participating in the Enhanced Bought Place Scheme ("EBPS").

3. RCHEs, with the exception of nursing homes which are regulated under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165), must be licensed or granted certificate of exemption to legitimise their operation under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("the Ordinance"). The Ordinance came into effect on 1 April 1995 and was fully implemented on 1 June 1996.

4. The Ordinance sets out the minimum statutory standards for the service quality of all RCHEs, including space and staffing standards, building and fire safety, location and design, heating, lighting and ventilation, maintenance of residents' records, etc. The Ordinance also empowers the Director of Social Welfare ("DSW") to issue a Code of Practice setting out the principles, procedures, guidelines and standards for the management of RCHEs in the areas of health and care services, nutrition and diet, cleanliness and sanitation, social care, etc. Observance of the Code of Practice is a licensing requirement.

5. The Licensing Office of Residential Care Homes for the Elderly ("LORCHE") was set up by the Social Welfare Department ("SWD") in 1995 to enforce the legislative requirements in terms of staffing, space design, structure, safety precautions and quality of care as specified in the Ordinance and its subsidiary Regulations. To monitor the service quality of RCHEs –

- (a) surprise visits are conducted by inspectors of LORCHE to ensure compliance of licensing requirements;
- (b) a telephone hotline is set up at LORCHE to receive public inquiries and complaints relating to services of residential care homes; and
- (c) caseworkers and families of elderly persons are encouraged to report any irregularity or malpractice in the operation of RCHEs.

Deliberations by members

6. The Panel had all along been concerned about the quality of RCHEs. Members took the view that the quality of RCHEs directly affected the quality of life of elders staying in RCHEs. The Administration advised that it was mindful that the quality of care in RCHEs, in particular private RCHEs, was a cause of concern to the public. It was committed to enhancing the quality of RCHEs. A three-pronged approach was adopted to enhance the quality of RCHEs, namely licensing control, capacity building, and monitoring and enforcement.

7. Members were advised that the Ordinance and its subsidiary legislation, which came into full operation in June 1996, provided for the regulation of RCHEs through a licensing system administered by DSW.

All RCHEs had to obtain a licence. In addition to licensing control, subvented RCHEs and contract homes were required to meet various output and service quality requirements as set out in the respective agreements with SWD. Private homes participating in EBPS were required to meet staffing and spacing requirements which were higher than licensing standards as set out in the respective agreements with SWD.

8. On capacity building, SWD set out a list of requirements in the Code of Practice for Residential Care Homes (Elderly Persons) and guidelines on topical issues for RCHEs to follow. The guidelines covered key aspects relating to the quality of care for elderly residing in RCHEs, including drug storage and management, infection control, food quality, meal arrangements, good practices in handling food brought to elderly residents from outside RCHEs, feeding techniques for elders with swallowing problems, bathing skills and arrangements, manpower requirements, and nursing and personal care. SWD would add on new requirements and update the Code from time to time as appropriate.

9. As regards the monitoring and enforcement aspect, the Administration stressed that SWD's LORCHE would make regular inspections to each RCHE no less than seven times annually; it would also conduct unannounced inspections on RCHEs to ensure compliance of the licensing requirements. Advisory or warning letters will be issued and prosecution actions will be taken as appropriate. Monitoring of RCHEs had been stepped up through conducting more surprise visits to the private homes, following up closely on the complaints against RCHEs, publicizing information about the homes breaching the licensing requirements, and increasing the penalties for repeated non-compliance with licensing requirements.

10. Given that many elders were currently living in private RCHEs, members took the view that actions should be taken to upgrade the service quality of private RCHEs. To this end, the Administration should increase the number of EBPS places as the service quality standards developed and implemented in subvented RCHEs would apply to the entire private homes once they participated in EBPS. Some deputations, however, pointed out that it would be difficult for private RCHEs to upgrade the entire home to meet fully the EBPS requirements if only a small portion of places were bought from them.

11. The Administration advised it would endeavour to enhance the quality of private RCHEs. It agreed that purchasing places from private RCHEs would help enhance the quality of private RCHEs as EBPS places had to

meet higher licensing requirements in terms of the bed spacing and manpower provisions. When SWD purchased a certain percentage of residential care places in a private RCHE, the RCHE had to apply the EBPS requirements to all the remaining non-EBPS places. A specified number of places would be bought from each private home in order to ensure that more private homes could participate in EBPS.

12. In a bid to promote quality assurance and further enhance the monitoring of RCHEs, some members took the view that the Administration should adopt an independent accreditation scheme for all RCHEs. Consideration could be given to providing incentives for RCHEs to participate in the voluntary accreditation scheme developed by the Hong Kong Association of Gerontology since 2005. For instance, the Administration should give more weight to the accredited RCHEs when considering bids for contract homes or EBPS. Some depositions echoed the need to enhance the participation of RCHEs in the accreditation system with a view to encouraging RCHEs to raise their service quality above the licensing requirements.

13. The Administration pointed out that the present arrangement for RCHEs to participate in the accreditation scheme on a voluntary basis was supported by the Panel when the subject was discussed in 2004. According to the Administration, some 30 RCHEs were participating in the accreditation scheme developed by the Hong Kong Association of Gerontology. The Association would publicise on its website information about accredited RCHEs.

14. Members considered that the approach adopted by the Administration to monitor the quality of RCHEs was too lax given that enforcement actions would normally be taken only upon receipt of complaints. Even if problems or irregularities were detected, SWD would only issue advisory or warning letters to require the RCHEs concerned to make rectifications. Members strongly urged the Administration to step up monitoring of RCHEs and increase the penalties for non-compliance with the licensing requirements. Some members considered that since the Ordinance had been in force for more than a decade, a review of the operation of the licensing scheme should be undertaken to ensure that the requirements were compatible with the present needs.

Relevant papers

15. Members are invited to access the Legislative Council website at <http://www.legco.gov.hk/> to view the Administration's papers for and the relevant minutes of meetings of the Subcommittee on Elderly Services on 6 May 2008, and the Panel on 11 January, 6 February and 8 March 2010.

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