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Paper for the House Committee

Report of the Subcommittee on Residential Care Homes (Persons with Disabilities) Regulation and Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011

Purpose

This paper reports on the deliberations of the Subcommittee on Residential Care Homes (Persons with Disabilities) Regulation and Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011.

Background

2. The Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011) ("the Ordinance") was passed by the Legislative Council on 16 June 2011 and the enacted Ordinance was published in the Gazette on 30 June 2011. The Ordinance provides for the control of residential care homes for persons with disabilities ("RCHDs") through a licensing scheme administered by the Director of Social Welfare ("DSW"). Section 1(2) of the Ordinance stipulates that the Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare ("SLW") by notice published in the Gazette. Section 24 of the Ordinance empowers SLW to make regulations to provide for the requirements on the operation, management and supervision of RCHDs (including staffing and space requirements, health and safety requirements, penalties and fees, etc.).

3. On 30 June 2011, the Administration published in the Gazette the Residential Care Homes (Persons with Disabilities) Regulation (L.N.111 of 2011) ("the Regulation") and the Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011 (L.N.112 of 2011) ("the Commencement Notice").

The Commencement Notice

4. The Commencement Notice appoints 18 November 2011 as the date on which the Ordinance (except Part 2) comes into operation.

The Regulation

5. The Regulation is made by SLW under section 24 of the Ordinance. It provides for, among other things –

- (a) classification of RCHDs into three categories, namely, high care level home, medium care level home and low care level home;
- (b) registration of health workers for the purpose of employment at RCHDs;
- (c) duties of RCHD operators, including the employment of staff, maintenance of staff records, provision of plans of RCHD premises to DSW and information required to be contained in advertisements for promoting RCHDs;
- (d) duties of RCHD home managers, including submission of a list of staff to DSW, maintenance of records, provision of information concerning RCHDs to DSW, the requirement to report to DSW a case of scheduled infectious disease as defined in section 2 of the Prevention and Control of Disease Ordinance (Cap. 599) if the home manager reasonably suspects or knows of such a case;
- (e) requirements on location, design, staffing, area of floor space per resident, accessibility, fire safety matters, medical examination of residents of RCHDs, etc.; and
- (f) offences and penalties for breach of the requirements provided under the Regulation.

According to the Administration, as part and parcel of the legal framework for the licensing scheme for RCHDs, it proposes that the Regulation comes into operation on the same date on which the Ordinance (except Part 2) comes into operation, i.e. 18 November 2011.

The Subcommittee

6. At the meeting of the House Committee on 8 July 2011, members agreed that a Subcommittee should be formed to study the Regulation and the Commencement Notice. The membership list of the Subcommittee is in **Appendix I**.

7. Under the chairmanship of Hon WONG Sing-chi, the Subcommittee held five meetings with the Administration, including two meetings with deputations. The list of organisations which have provided views to the Subcommittee is in **Appendix II**.

8. To allow more time for the Subcommittee to study the Regulation and the Commencement Notice, the scrutiny period of two pieces of subsidiary legislation has been extended from 19 October 2011 to 9 November 2011 by a resolution of the Council passed on 19 October 2011.

Deliberations of the Subcommittee

Impact of the licensing scheme on the RCHD operators

9. According to the Administration, of all RCHDs in Hong Kong, 75% are subvented homes, 5% are self-financing homes and the remaining some 20% are private homes. As at 30 June 2011, there are 74 private RCHDs known to the Social Welfare Department ("SWD") providing about 3 800 places with an average enrolment rate of 65%. Members note the grave concern of the private RCHD operators about the financial viability of private RCHDs after the implementation of the licensing scheme for RCHDs. Members are given to understand from the Hong Kong Private Hostel for Rehabilitation Association, which comprises 53 private RCHDs, that almost all private RCHDs have to undergo different types of improvement works in order to comply with the licensing requirements on fire and building safety. The additional costs so incurred range from \$250,000 to \$800,000. In view of the financial implications, the Association envisages that nearly one half of the private RCHDs will have to cease operation or close down after the implementation of the licensing scheme.

10. The Administration has drawn members' attention to the trend of steady increase both in the number and capacity of private RCHDs, notwithstanding the imminent introduction of the licensing scheme. As compared with the figures for the same period in 2009, the number and capacity of private RCHDs have increased by 24 and 1 250 places respectively in 2011. The Administration has advised that most of the existing 74 private RCHDs known

to SWD will need to carry out improvement works in respect of fire and building safety to meet the future licensing requirements, of which 11 have non-rectifiable structural/means of escape problems and may close down if alternative accommodation cannot be secured. It is envisaged that some 243 residents residing in these 11 private RCHDs may need to be decanted. Nonetheless, the private market has the capacity to absorb decanted residents, if any, resulting from closure of private RCHDs owing to different reasons given that the average enrolment rate of the private RCHDs is 65%. The Administration has also advised that where necessary, SWD will arrange relevant casework units to provide assistance and formulate welfare plan for individual affected residents, such as providing alternative placement or support services. SWD will continue to closely monitor the market situations, maintain contact with RCHD operators, and provide appropriate assistance where necessary to ensure the well-being of the residents.

11. The Administration has further advised that DSW is empowered to issue a Certificate of Exemption ("COE") to individual operators to allow the existing RCHDs to stay in operation and to rectify non-compliance with the licensing requirements. Moreover, there would be a grace period of 18 months starting from the commencement of the Ordinance to allow time for individual RCHDs to put in place suitable arrangements for application for a new licence/COE and for SWD to process all applications. During the grace period, no sanction would be imposed on the operation of RCHD without a licence/COE. SLW will publish another commencement notice to the effect that Part 2 of the Ordinance which creates an offence for the operation of a RCHD without a licence/COE will come into operation upon the expiry of the 18-month grace period. The Administration has undertaken to report progress on implementation of the licensing scheme for RCHDs during the 18-month grace period.

Complementary measures to assist the private RCHD sector

12. While recognising that private RCHDs are commercially operated, members have expressed concern that some private RCHDs may close down if they cannot afford the improvement costs for compliance with the licensing requirements.

13. The Administration has stressed that it will introduce suitable complementary measures to encourage private RCHDs to upgrade their service standards and help the market develop more service options for persons with disabilities. To this end, a pilot Bought Place Scheme ("BPS") for private RCHDs has been introduced prior to the implementation of the licensing scheme, under which participating private RCHDs are required to meet higher staffing and spatial requirements. SWD will purchase about 300 RCHD places

by phases during the 4-year pilot period. The respective purchased prices for a RCHD place in the urban area and the New Territories are \$7,840 and \$7,243 per month.

14. According to the private RCHD sector, the purchased price should be increased to \$9,000 to enable the homes to meet the higher spatial and staffing requirements under the pilot BPS for private RCHDs. Some deputations have pointed out to the Subcommittee that the BPS price is set across the board for private RCHDs located in the New Territories, irrespective of the differential rentals in various districts such as Tsuen Wan town area and remote areas in Yuen Long. They call on the Administration to review the purchased price. The Administration has undertaken to conduct a mid-term review to keep track of progress and refine the operational details as appropriate. An overall review of the pilot BPS will be conducted before its expiry to assess its long-term feasibility in terms of the contract price, home fees, amount of government subsidies, the number of places to be bought as well as the overall service quality and performance of the operators of the private RCHDs.

15. To alleviate the cost implication of the compliance works on the private RCHD operators, members note that the Administration will implement the Financial Assistance Scheme ("FAS") upon commencement of the Ordinance to provide subsidies for private RCHDs to carry out improvement works on building and fire safety. A maximum grant up to 60% of the recognised cost of the improvement works will be allocated to each eligible private RCHD. The estimated total expenditure of the proposed FAS will be around \$29 million, subject to adjustment nearer the time of implementation.

16. In view of the increasing operating costs and difficulties in operating private RCHDs, the private RCHD operators have called upon the Administration to provide a higher level of subsidies under FAS.

17. The Administration has explained that as private RCHDs are commercially operated, to ensure the proper use of public money, the maximum grant allocated to each private RCHD under FAS will be 60% of the recognised cost of the improvement works. The private RCHD operators are required to shoulder a certain portion of the cost to demonstrate their clear intention to continue with the operation of their private homes for a reasonable period.

18. To assist private RCHD operators to tide over the financial difficulties in meeting the additional compliance costs for improvement works, some members take the view that the Administration should make recommendations to the Small and Medium Enterprises ("SMEs") Loan Guarantee Scheme ("SGS") to accept loan applications from private RCHDs in this respect. The Administration has explained to members that SGS helps SMEs secure loans

from participating lending institutions for acquiring business installations and equipment or meeting working capital needs, with the Government acting as the guarantor. All SMEs registered under the Business Registration Ordinance (Cap. 310) and with substantive business operation in Hong Kong can apply. The Government acts as guarantor for up to 50% of the approved loans under SGS. The maximum amount of loan guarantee for each SME is \$6 million. Members are given to understand that operators of private RCHDs interested in SGS and meeting the eligibility criteria may lodge applications through the participating lending institutions.

19. Members note that SWD will organise briefing sessions for the private RCHD operators on licence applications and operational details of the licensing scheme. As the Government will provide only a partial subsidy level of 60% of the recognised cost under FAS, members call on SWD to invite representative of the Trade and Industry Department to join the briefing and explain to the RCHD sector the eligibility criteria for SGS at the briefing sessions such that the operators may consider applying for the loan to meet the compliance costs.

Impact on home fees and residents of private RCHDs

20. Members note with concern that private RCHDs will likely increase their home fees after the implementation of the licensing scheme. Some members are particularly concerned about the financial viability of private RCHDs, as this will affect residents who may be decanted in the event of closure of RCHDs. To better understand the financial implication of the licensing scheme on the private RCHD market, the Subcommittee has requested the Administration to make an estimate on the unit operating cost of a private RCHD place in the urban areas and New Territories on the basis of the licensing requirements after the implementation of the licensing scheme. According to the Administration, the private RCHDs are not obliged to disclose their financial position. In the absence of information on the actual operating cost of private RCHDs, the Administration has made an estimation with reference to the latest market information, i.e. the prevailing wage level collated by the Labour Department and the average market rental compiled by the Rating and Valuation Department. On the basis of the available information, the estimated unit operating costs of a RCHD place in urban areas and NT were \$4,394 and \$3,802 respectively as at August 2011.

21. However, members are given to understand from the Hong Kong Private Hostel for Rehabilitation Association that the unit operating cost of a private RCHD place will be in the region of \$5,220 to \$5,901 after the implementation of the licensing scheme. The Association has also highlighted to members the increasing difficulties in operating private RCHDs having regard to the rising

operating costs resulted from the implementation of statutory minimum wage, soaring rentals and inflation.

22. Members reckon that different methodology and assumptions are adopted by the Administration and the Hong Kong Private Hostel for Rehabilitation Association in computing the cost estimation, and the discrepancies in the cost estimation are understandable. To obtain first-hand information on the operation of the private RCHD sector, the Subcommittee has requested the Legislative Council Secretariat to invite individual private RCHDs to provide information on their respective unit operating cost. As only two private RCHDs have provided the requisite information, members consider it not viable for the Subcommittee to pursue the matter further.

23. Having regard to the fact that over 90% of the residents of private RCHDs are receiving Comprehensive Social Security Assistance ("CSSA") payments of some \$4,000 monthly, members are concerned whether the CSSA payments are adequate for the residents to meet an increase in home fees upon the implementation of the licensing scheme. Members note the call of deputations representing the private RCHD operators for the Administration to actively consider providing a monthly allowance of \$1,500 to private RCHD residents to enable them to meet the increased home fees after the implementation of the licensing scheme.

24. The Administration has advised that higher standard CSSA payment rates are payable to recipients with disabilities. Apart from the annual adjustment on 1 February 2011, there was also an upward adjustment to the standard rates for recipients with disabilities or in ill-health aged 60 or below with effect from 1 August 2011. RCHD residents receiving CSSA are also eligible for a monthly rent allowance (\$1,265), and depending on the circumstances of individual recipients, other supplements, e.g. transport supplement (\$215), under the CSSA Scheme. These adjustments and supplements may help relieve CSSA recipients' financial burden in meeting the home fees. While the rates of CSSA payment is beyond the scope of the legislative proposal under discussion, the Administration will continue to keep track of changes in the relevant price indexes and make adjustment to the CSSA payments in accordance with the existing mechanism.

25. On the concern about the decanting arrangements for residents of private RCHDs upon closure, the Administration has assured members that it attaches great importance to the well-being of RCHD residents. SWD has maintained close contact with RCHD operators on the operation of RCHDs, and it conducts at least four visits to private RCHDs annually to keep in view of their operation. Under the established mechanism as stipulated in the Code of Practice for RCHDs, RCHD operators are required to inform SWD of its plan to discontinue

operation as early as practicable, together with the proposed arrangements for existing residents. SWD will provide suitable assistance to affected residents in need to safeguard their well being.

Processing time for application for RCHD licences

26. The Subcommittee has expressed concern about the processing time for application for RCHD licences. Members note that to obtain a RCHD licence, apart from the licensing requirements on fire and building safety, the applicant should meet the land lease and town planning requirements for setting up RCHDs. Some RCHD operators are worried that they may not be able to obtain a licence within the grace period. Members share the concern of the sector and envisage that there will be an influx of applications for RCHD licences and lease modifications shortly after the commencement of the licensing scheme.

27. The Administration has advised that the provision of RCHDs must conform with the requirements under land lease as well as the land use zoning specified in the statutory outline zoning plan ("OZP") for the site concerned. Upon receipt of an application for modification of lease conditions for the provision of RCHDs, the District Lands Office concerned will consult the relevant bureaux/departments. The processing time for application for a permanent change of lease conditions will normally be 22 weeks i.e. upon the receipt of a valid application to a reply of decision on the application. As for a temporary variation of the use of a building, the time for processing application for temporary waivers will be three to six months for straightforward cases. The applicant may submit more than one choice for modification of lease conditions, for example, residential care homes for the elderly ("RCHEs") or RCHDs. In case lease modifications for use other than the purpose stated in the application is subsequently required, the applicant must submit fresh application for lease modifications to the Lands Department ("LandsD") as the latter has to consult the relevant bureaux/departments including the District Office concerned which will advise and decide if local consultation will be necessary.

28. To facilitate RCHD licence application, members have called upon LandsD to expedite the processing of waiver applications for setting up RCHDs. In response to members' request, the Administration has agreed to consider the viability of shortening the processing time in respect of applications for RCHD licences and lease modifications. LandsD has subsequently advised that it is going to adopt a streamlined procedure in order to shorten the processing time in anticipation of an influx of applications for waivers permitting the use of premises for RCHD after the Ordinance comes into operation. This includes the circulation of the waiver application to the concerned departments including

District Offices which should provide their comments within 14 days. LandsD does not envisage any problems with the departments except for the local consultation in which the District Officer may at his discretion decide to carry out. Any local objection received will then be referred to DSW for assistance to resolve.

29. Members fully understand the difficulties of the operators in securing suitable sites for the provision of RCHDs, and in particular the local opposition from residents in the vicinity. Some members have suggested that consideration be given to allowing the setting up of RCHDs in industrial buildings. The Administration has explained that residential use would not be allowed in industrial zones mainly due to fire safety and environmental reasons. RCHDs, which provide residential services are therefore not allowed and there is no provision for such use in industrial zones in OZP. However, RCHDs are permitted as of right in many other land use zones such as "Commercial", "Residential (Group A)" and "Government, Institution or Community". If the developer plans to set up RCHDs in the "Comprehensive Development Area", "Residential (Group B)" and "Residential (Group C)" zone specified in OZP, approval in the form of a s.16 planning application is required from the Town Planning Board.

30. The Administration has assured members that a Licensing Office comprising staff from SWD, the Buildings Department and the Fire Services Department will be set up to provide one-stop services to licence applicants after the commencement of the Ordinance. Modelling on the Licensing Office of RCHEs, the processing time for a RCHD licence application will take eight weeks upon receipt of valid documents.

Registration of health workers

Qualifications for registration

31. Under section 4 of the Regulation, a person is qualified to be registered as a health worker for the purpose of employment at a RCHD after he/she has completed a course of training approved by DSW. Some members are concerned that serving health workers in RCHDs are unable to meet the qualifications for registration as health workers if they cannot complete the prerequisite training courses prior to the commencement of the Regulation. To tie in with the implementation of the licensing scheme, members have called upon the Administration to ensure that the approved training courses should be launched timely. They also consider that relevant working experience in RCHDs should be recognised as attending specified hours of training for the purpose of meeting qualifications for registration as health workers.

32. The Administration has explained that DSW may exercise his power under section 4 of the Regulation to approve the training courses for health workers only after the commencement of the Ordinance. Nevertheless, SWD has set up a working group comprising the stakeholders and users of RCHDs to make preparation for the related matters, including registration of health workers and the launch of related training courses. This apart, SWD has been discussing with organisers for the training courses for health workers, including the Employees' Retraining Board about the content of and the timing for launching the courses. Any persons who wish to be qualified for registration as health workers for the purpose of employment in RCHDs have to attend a 248-hour training course. As for some 400 health workers in RCHDs who are registered under the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A) ("the RCHE Regulation") and wish to be registered under the Regulation, they are only required to attend a bridging course consisting of 12-hour lecture and 4-hour visit to RCHDs. The Administration has stressed that health workers are required to obtain the prerequisite qualifications for registration as a health worker within the 18-month grace period.

Register of health workers

33. Upon the commencement of the Regulation, health workers of RCHEs and RCHDs will be required to register under the RCHE Regulation and the Regulation respectively. For those who would like to be qualified as both types of health workers, they have to register under both Regulations. The legal adviser to the Subcommittee has pointed out that by virtue of section 5(4)(d) of the Regulation, if a health worker, who is registered under both the RCHE Regulation and the Regulation, intends to only remove his name from the register under the RCHE Regulation by making such request under section 5(4)(b) of the RCHE Regulation, his name in the register for RCHDs must also be removed automatically even though he wishes to retain his registration under the Regulation and he is a fit and proper person as a health worker for RCHDs.

34. The Administration has explained that it is stipulated in both the RCHE Regulation and the Regulation that the registration of a health worker may be cancelled if 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 was 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 Regulation will also be cancelled pursuant to section 5(4)(d) of the Regulation. Section 5(4)(d) of the 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, it is considered necessary to cancel the health worker's registration under the RCHD Regulation in order to protect the well being of RCHD residents. Under normal circumstances, it is unlikely that a health worker will initiate cancellation of registration in only one of the registers. It has therefore originally proposed to apply section 5(4)(b) of the RCHE Regulation to section 5(4)(d) of the Regulation. In the light of the comment from the legal adviser, the Administration will amend section 5(4)(d) of the Regulation to allow a person who initiates a cancellation of registration under the RCHE Regulation to have a choice to retain his or her registration as a RCHD health worker.

Cancellation of registration of health workers

35. Some members note with concern that under section 8(b) of the Regulation, DSW may cancel the registration of a person registered as a health worker if DSW ceases to be satisfied that the person is qualified, competent, and fit and proper to be registered as a health worker. These members are of the view that the Administration should set out the specific factors taken into account by DSW in making a decision to cancel the registration.

36. The Administration has explained that any person aggrieved by DSW's decision made under section 6 or section 8 may appeal to SLW. A decision that is appealed against is not to have effect pending the determination of the appeal by SLW. The Administration considers it not feasible to draw up an exhaustive list of relevant factors to be taken into account by DSW in determining the cancellation of registration of health workers. To alleviate members' concern, the Administration will consider elaborating these factors for the RCHD sector's reference in the Code of Practice for RCHDs to be issued after the enactment of the Regulation.

Licensing requirements and standards

Staffing requirement

37. Members note that a RCHD operator is required to employ, in the manner stipulated in section 11 of and the Schedule to the Regulation, various types of staff in a RCHD in different periods of a day according to the level of care required by the residents. The Administration has stressed that the staffing requirements for each type of RCHDs are the minimum standards for the purpose of the licensing scheme.

Spatial requirement

38. Section 23 of the Regulation stipulates that the minimum area of floor space required for each resident in a RCHD is 6.5m². The Subcommittee has noted from the private RCHD sector that the proposed spatial requirement is the maximum floor area that a private RCHD can comply with having regard to the soaring rentals and the difficulties in securing suitable premises for RCHDs. To encourage the operators to provide more spacious area for recreational activities for the RCHD residents, some members have suggested that consideration should be given to including outdoor space (or a portion thereof) for the purpose of calculating the spatial requirement.

39. The Administration has advised that the number of residents to be accommodated in a RCHD is determined by its physical size and the space standard per capita, i.e. the net floor area for the exclusive use of the home. The inclusion of outdoor space, such as garden and podium, may result in a reduction in the usable area for each resident. The spatial requirement has been drawn up after balancing the different views of the rehabilitation sector and the stakeholders, having regard to the practical situation of RCHDs and the needs of persons with disabilities.

Code of Practice for RCHDs

40. The Subcommittee has noted that the licensing requirements and standards under the Regulation will serve as the basis of the Code of Practice to be issued by DSW, which will elaborate on the details of the service standards required under the licensing scheme.

Review of the implementation of the licensing scheme

41. Notwithstanding the provision of a grace period of 18 months for the private RCHD operators to put in place suitable arrangements for application for a RCHD licence, members remain concerned about the possible impact of the licensing scheme on the private RCHD sector and the residents. Members have strongly urged the Administration to closely monitor the implementation of the licensing scheme and fine tune the operational details as appropriate. To allay members' concern, the Administration has undertaken to report to the Panel on Welfare Services on the progress in implementation of the licensing scheme and the related complementary measures, including the pilot BPS for RCHDs and FAS in about six months after the commencement of the licensing scheme.

Follow-up action

42. The Subcommittee has agreed to refer to the Panel on Welfare Services for follow up issues relating to the review of the implementation of the licensing scheme (paragraph 41 above).

Recommendation

43. The Subcommittee supports the Regulation and the Commencement Notice as well as the proposed amendment to the Regulation to be moved by the Administration (paragraph 34 above). The Subcommittee does not propose any amendment to the subsidiary legislation.

Advice sought

44. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
28 October 2011

**Subcommittee on Residential Care Homes (Persons with Disabilities)
Regulation and Residential Care Homes (Persons with Disabilities)
Ordinance (Commencement) Notice 2011**

Membership List

Chairman	Hon WONG Sing-chi
Members	Hon LEE Cheuk-yan (since 22 July 2011)
	Hon LEUNG Yiu-chung
	Hon LI Fung-ying, SBS, JP
	Hon Ronny TONG Ka-wah, SC
	Prof Hon Patrick LAU Sau-shing, SBS, JP
	Hon Cyd HO Sau-lan
	Hon CHEUNG Kwok-che
	Dr Hon PAN Pey-chyou
	Hon Alan LEONG Kah-kit, SC
	(Total : 10 Members)
Clerk	Miss Betty MA
Legal adviser	Mr YICK Wing-kin
Date	22 July 2011

**Subcommittee on Residential Care Homes (Persons with Disabilities)
Regulation and Residential Care Homes (Persons with Disabilities)
Ordinance (Commencement) Notice 2011**

List of organisations which have provided views to the Subcommittee

1. HK Private Hostel for Rehabilitation Association
2. The Hong Kong Joint Council of Parents of the Mentally Handicapped
3. 香港區私營院舍聯會
4. 私人院舍社會工作者同盟
5. 新界東私營復康院舍聯會
6. 西九龍復康院舍聯會
7. 私營院舍社工聯合小組
8. 新界西聯會
9. 爭取私營院舍權益大聯盟

Written submissions only

1. Mr YEUNG Wai-sing, Eastern District Council member
2. 明恩富灝軒
3. 培澤弱智協進會
4. 博愛之家(屯門區)
5. 慈欣之家有限公司
6. 慈欣之家(粉嶺)