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Paper for the House Committee on 10 May 2013

**Report of the Subcommittee on Residential Care Homes
(Persons with Disabilities) Ordinance (Commencement) Notice 2013**

Purpose

This paper reports on the deliberations of the Subcommittee on Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2013.

Background

2. The Residential Care Homes (Persons with Disabilities) Bill was passed by the Legislative Council on 16 June 2011 and enacted as the Residential Care Homes (Persons with Disabilities) Ordinance ("the Ordinance"). The enacted Ordinance was published in the Gazette on 24 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"). The Ordinance, except Part 2 on sanctions for operating an RCHD without a licence/certificate of exemption ("CoE"), together with the Residential Care Homes (Persons with Disabilities) Regulation (L.N.111 of 2011) made by the Secretary for Labour and Welfare under section 24 of the Ordinance to stipulate the requirements for the operation, management and supervision of RCHDs, came into operation on 18 November 2011. Pursuant to section 23 of the Ordinance, DSW has also issued a Code of Practice for RCHDs ("CoP") to specify detailed procedures, guidelines and standards for the operation, keeping, management and other control of RCHDs for compliance by operators.

3. According to the Administration, to allow time for individual RCHDs to put in place suitable arrangements for application for a new licence/CoE and for the Social Welfare Department ("SWD") to process all applications, there is a grace period of 18 months starting from the commencement of the Ordinance.

The Commencement Notice

4. The Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2013 ("the Commencement Notice") appoints 10 June 2013 as the date on which Part 2 of the Ordinance comes into operation.

The Subcommittee

5. At the meeting of the House Committee on 19 April 2013, members agreed that a Subcommittee should be formed to study the Commencement Notice. The membership list of the Subcommittee is in **Appendix I**.

6. Under the chairmanship of Hon CHEUNG Kwok-che, the Subcommittee held two meetings with the Administration, including one meeting to receive views from 12 deputations. The list of organisations which have provided views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

Implementation of the licensing scheme

7. The Subcommittee notes that the licensing scheme will be fully implemented after Part 2 of the Ordinance is brought into operation by the Commencement Notice. Specifically, Part 2 makes it an offence for anyone to operate, keep, manage or control an RCHD without a licence or CoE. The maximum penalty is a fine at level 6 (i.e. \$100,000) and imprisonment for two years, and a further fine of \$10,000 per day in the case of a continuing offence. Members have expressed concern about the progress of the licensing scheme.

8. According to the Administration, there are 316 RCHDs in the territory, including 218 subvented RCHDs, 20 self-financing RCHDs and 78 private RCHDs. SWD has received applications from 310 RCHDs, including applications from two new RCHDs. As at 1 May 2013, 16 RCHDs (including five subvented RCHDs, three self-financing RCHDs and eight private RCHDs) have been issued with licences and 292 RCHDs (including 213 subvented RCHDs, 16 self-financing RCHDs and 63 private RCHDs) have been issued with CoEs. Of the remaining RCHDs, one will be reprovisioned to another location and five RCHDs have not submitted applications for licences or CoEs as these homes have indicated their intention to cease operation, which will affect 45 residents. As regards the displacement arrangements for the affected residents, the Administration has advised that SWD has contacted each of these 45 residents. To its knowledge, 37 of them have secured places in other

RCHDs. Of the remaining eight residents, their individual welfare needs, including alternative accommodation arrangements, will be taken care of by their family members or are being followed up by SWD.

Renewal of CoE

9. Members have noted with concern that the majority of RCHDs have been issued with CoEs only. Noting that the maximum validity period of a CoE is 36 months and is renewable for a period of not more than 36 months, members have expressed concern whether the RCHDs concerned will actively carry out improvement works to comply with the licensing requirements and standards having regard to the potentially long validity period of CoEs. Members have enquired about the circumstances under which SWD will renew a CoE.

10. The Administration has advised that its intention is to encourage an existing RCHD to strive to meet all the licensing requirements (including requirements for staffing and space, health care, building and fire safety) and obtain a licence as early as possible. The objective of CoE is to allow more time for RCHDs that existed immediately before the commencement of the Ordinance but are unable to comply fully with the licensing requirements to carry out improvement works for meeting the licensing requirements and standards. Hence, a CoE will only be issued or renewed where DSW considers that there are full justifications for allowing a reasonable time for completion of the improvement works. DSW may specify the conditions imposed in relation to the operation, keeping, management or other control of an RCHD when issuing a CoE. Generally speaking, RCHDs will need more time for carrying out improvement works relating to the building and fire safety requirements.

Compliance with the licensing requirements

11. Noting that only a small number of RCHDs have been issued with licences, members have expressed concern about the compliance of the RCHD sector with licensing requirements and standards. According to the organizations from the RCHD sector which have provided views to the Subcommittee, a considerable number of RCHDs have structural problems and may close down if costly rectification works are not carried out. Apart from the licensing requirements on building and fire safety, the applicants should meet the land lease and town planning requirements for setting up RCHDs. The processing time for RCHD licence applications will be prolonged in the event of local opposition from residents in the vicinity.

12. 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 for the site concerned. The

Licensing Office comprising staff from SWD, Buildings Department and Fire Services Department will provide one-stop services to the licence applicants. The District Officers concerned have been enhancing public education on social integration, and any local objection received will be referred to SWD for assistance to resolve. The Administration also notes that some RCHDs located at premises with structural problems have moved to other premises to continue their business.

13. The Subcommittee also notes that the RCHD sector has encountered difficulties in meeting the staffing and spatial requirements under the licensing scheme. Specifically, an RCHD operator is required to employ various types of staff in an RCHD in different periods of a day according to the levels of care required by the residents. Members are, however, given to understand from the RCHD operators that they face great difficulties in staff retention and recruitment, in particular enrolled nurses and health workers.

14. According to the Administration, RCHDs are broadly classified into three categories in accordance with the levels of care and assistance required by their residents, viz. high care level homes, medium care level homes and low care level homes. Noting that RCHDs in practice may concurrently admit residents requiring different levels of care service, the Administration has explained that in cases where a mixture of residents requiring high, medium and low levels of care are served in an RCHD, the number of residents requiring low care level will be disregarded and the home will be classified as either a high care level or medium care level home according to the number of residents requiring high care level or medium care level, whichever is the higher. The Administration has assured members that SWD will conduct regular inspections to ensure that the appropriate levels of care are being provided to the residents of RCHDs. The Administration has stressed that the floor space of 6.5 square metres required for each resident in RCHDs is the minimum standard for the purpose of the licensing scheme.

15. On the concern about manpower support for the RCHD sector, the Administration has advised that in tandem with the implementation of the licensing scheme, SWD has given approval for 17 training institutes to organise 58 health worker training courses in different modes that are applicable to RCHDs in accordance with relevant requirements. At present, more than 700 graduates who have completed the health worker training courses have been registered as health workers for the purpose of the licensing scheme and they are working in RCHDs. To alleviate the shortage of enrolled nurses in the welfare sector, SWD, in collaboration with the Hospital Authority, has implemented the Enrolled Nurse Training Programme for the Welfare Sector ("the Training Programme") since 2006. The training fee is fully sponsored by SWD and all trainees have to sign an undertaking to work for the welfare sector

for at least two years after satisfactory completion of the training. To date, 12 classes under the Training Programme have been launched, providing a total of about 1 500 training places. An additional 10 classes offering 1 240 training places will be organised for the welfare sector from 2013-2014 to 2017-2018. As regards the recruitment and retention difficulties of paramedical staff, members are advised that SWD has sought an additional provision of about \$344 million from the Lotteries Fund for three years from 2012-2013 to 2014-2015 to enable the residential care services sector to offer more competitive salaries for recruitment and retention of paramedical staff or hire of such services. In tandem, apart from significantly increasing the first degree places for paramedical professions for the triennium from 2012-2013, SWD has also sponsored a blister master programme for physiotherapy and occupational therapy for the welfare sector.

Impact of the licensing scheme on the private RCHD sector

16. Members have noted that there are 78 private RCHDs providing about 4 000 places. The private RCHD sector has pointed out to members that private RCHDs are facing increasing difficulties to operate because of the rising operating costs resulting from the implementation of statutory minimum wage, soaring rental and inflation. Members are given to understand that the unit operating cost of a private RCHD place is in the region of \$5,300 to \$5,500. However, as most of the residents of private RCHDs are receiving Comprehensive Social Security Assistance ("CSSA") of less than \$5,000 per month, they are unable to meet an increase in home fees. In the circumstances, it is envisaged that about one-third of the private RCHDs will have to close down eventually. Members have expressed grave concern about the displacement arrangements for residents of private RCHDs upon closure.

17. 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 conducts regular inspections to private RCHDs to keep in view their operation. Under the established mechanism as stipulated in CoP, if an RCHD operator intends to cease operation of an RCHD, the person in charge of the RCHD is required to submit a removal plan for the residents, and give a notice in writing to the residents, their family members, relatives, guarantors, guardians or contact persons at least 30 days prior to the closure of the RCHD. Members note that the 30-day notice requirement seeks to strike a balance between safeguarding the welfare of affected residents and facilitating the smooth operation of RCHDs. SWD will arrange relevant casework units to provide assistance and formulate welfare plans for individual affected residents, such as providing alternative placement or support services.

Complementary measures to assist the private RCHD sector

18. Members have expressed concern that some private RCHDs may close down if they cannot afford the improvement costs for compliance with the licensing requirements. While recognising that private RCHDs are commercially operated, members have enquired about the complementary measures in place to assist the RCHD sector in recognition of their important role to fill the service gap arising from an inadequate supply of subvented RCHDs.

19. The Administration has advised that it has been adopting the following three-pronged approach in accordance with the 2007 Rehabilitation Programme Plan to encourage participation from different sectors in providing residential care services for persons with disabilities -

- (a) continuing to steadily increase the number of subsidized residential care home places;
- (b) regulating RCHDs through a statutory licensing scheme, so as to ensure their service quality on the one hand and help the market develop residential care homes of different types and operational modes on the other; and
- (c) supporting non-governmental organizations to develop self-financing homes.

To tie in with the Government's policy to encourage private RCHDs to upgrade their service standards and help the market develop more service options for persons with disabilities, SWD has introduced various measures complementary to the licensing scheme. To this end, a four-year pilot Bought Place Scheme ("BPS") for private RCHDs has been introduced since the commencement of the Ordinance, under which participating private RCHDs are required to meet higher staffing and spatial requirements. SWD plans to purchase about 300 RCHD places by phases during the four-year pilot period, and 245 places have so far been purchased in six RCHDs, which have been licensed, with an enrolment rate of 95%. Some members have suggested that the Administration should consider procuring over 60% of places from each RCHD so as to enhance the overall quality of services in individual RCHDs. The Administration has further advised that a mid-term review has been conducted to keep track of the 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.

20. To alleviate the cost implication of the compliance works on the private RCHD operators, members note that the Administration has implemented 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.

21. On the concern about the need for private RCHD operators to produce a two-year tenancy agreement when submitting applications for FAS, the Administration has explained that as private RCHDs are commercially operated, to ensure the proper use of public money, the private RCHD operators are required to demonstrate their clear intention to continue with the operation of their private homes for a reasonable period.

22. The Administration has further advised that SWD has organised a series of briefing and sharing sessions for the private RCHD operators on licence applications and operational details of the licensing scheme, and another briefing session will be held in June 2013 to assist operators of RCHDs and to follow up the application logistics in meeting the relevant requirements.

23. Having regard to the fact that nearly 90% of the residents of private RCHDs are receiving CSSA and relying on the monthly payments to meet their home fees, some members have suggested that the Administration should actively consider providing the private RCHD operators with a monthly carer allowance, say, \$500 per resident, to help meet partly the increasing operating costs after the implementation of the licensing scheme.

24. The Administration has advised that higher standard rates for CSSA are payable to recipients with disabilities. RCHD residents on CSSA are also eligible for a number of supplements and special grants, e.g. Residential Care Supplement (\$275 per month), Transport Supplement (\$235 per month), Rent Allowance (\$1,440 per month), etc. Apart from annual adjustments, the CSSA standard rates for recipients with disabilities aged below 60 were raised in August 2011 to bring it in line with the CSSA standard rates for those aged 60 or above in the same physical condition. The monthly subsidies (including rent allowance and applicable supplements) payable to CSSA recipients with disabilities now range from \$4,650 to \$6,950, representing an average increase of 30% as compared with those two years ago. These adjustments and supplements may help relieve CSSA recipients' financial burden in meeting the home fees.

Review of the implementation of the licensing scheme

25. In the light of members' concern about the progress of the licensing scheme and the impact of the licensing scheme on the private RCHD sector and the residents, the Administration has advised that it will closely monitor the implementation of the licensing scheme and the complementary measures, and fine-tune the operational details as necessary. The Subcommittee is of the view that the Administration should report to the Panel on Welfare Services and/or the Joint Subcommittee on Long-Term Care Policy on the progress in implementation of the licensing scheme and the related complementary measures at suitable juncture.

Recommendation

26. The Subcommittee raises no objection and does not propose any amendment to the Commencement Notice.

Advice sought

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

**Subcommittee on Residential Care Homes
(Persons with Disabilities) Ordinance (Commencement) Notice 2013**

Membership list

Chairman	Hon CHEUNG Kwok-che
Members	Hon LEUNG Yiu-chung Hon TAM Yiu-chung, GBS, JP Hon Alan LEONG Kah-kit, SC Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Helena WONG Pik-wan Hon POON Siu-ping, BBS, MH Hon TANG Ka-piu Ir Dr Hon LO Wai-kwok, BBS, MH, JP (Total : 9 members)
Clerk	Miss Betty MA
Legal Adviser	Mr Bonny LOO
Date	29 April 2013

**Subcommittee on Residential Care Homes
(Persons with Disabilities) Ordinance (Commencement) Notice 2013**

Organizations which have given oral representations to the Subcommittee

1. Association of Hong Kong Nursing Staff
2. Hong Kong Private Hostel for Rehabilitation Association
3. The Association of Parents of The Severely Mentally Handicapped
4. The Forthright Caucus
5. The Hong Kong Council of Social Service
6. Tung Hoi Association For The Gifted Child Limited
7. 扶康之家
8. 沐恩之家
9. 香港區私營院舍聯會
10. 益豐護理中心
11. 培澤弱智協進會
12. 樂悠居復康中心