

立法會
Legislative Council

LC Paper No. CB(2)719/17-18

(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/16

Bills Committee on Private Healthcare Facilities Bill

Minutes of the first meeting
held on Tuesday, 11 July 2017, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** :
- Hon CHAN Han-pan, JP (Chairman)
 - Hon Tommy CHEUNG Yu-yan, GBS, JP
 - Hon WONG Ting-kwong, GBS, JP
 - Hon Starry LEE Wai-king, SBS, JP
 - Hon CHAN Kin-por, GBS, JP
 - Hon LEUNG Kwok-hung
 - Hon Steven HO Chun-yin, BBS
 - Hon YIU Si-wing, BBS
 - Hon CHAN Chi-chuen
 - Hon Alice MAK Mei-kuen, BBS, JP
 - Dr Hon KWOK Ka-ki
 - Dr Hon Helena WONG Pik-wan
 - Dr Hon CHIANG Lai-wan, JP
 - Hon Andrew WAN Siu-kin
 - Hon HO Kai-ming
 - Hon SHIU Ka-fai
 - Dr Hon Pierre CHAN
- Members absent** :
- Prof Hon Joseph LEE Kok-long, SBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon SHIU Ka-chun

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers : Mr Chris SUN Yuk-han, JP
attending Head, Healthcare Planning and Development Office
Food and Health Bureau

Mr Bill LI Chi-pang
Deputy Head, Healthcare Planning and Development
Office
Food and Health Bureau

Dr FUNG Ying
Principal Medical and Health Officer (Private Healthcare
Facilities) 2
Department of Health

Clerk in : Ms Maisie LAM
attendance Chief Council Secretary (2) 5

Staff in : Ms Clara TAM
attendance Assistant Legal Adviser 9

Miss Kay CHU
Senior Council Secretary (2) 5

Ms Priscilla LAU
Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Ms Louisa YU
Clerical Assistant (2) 5

Action

I. Election of Chairman

Mr CHAN Han-pan was elected Chairman of the Bills Committee.
Members agreed that election of a Deputy Chairman was not necessary.

II. Meeting with the Administration

[File Ref: FH CR 3/3231/16, LC Paper Nos. LS82/16-17,
CB(2)1823/16-17(02) to (03) and CB(3)687/16-17]

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

3. The Bills Committee requested the Administration to:

- (a) clarify what would constitute the provision of a medical service in a private healthcare facility ("PHF"), in particular whether the non-presence of a registered medical practitioner or registered dentist (as the case might be) in the premises concerned would render the relevant service not being regarded as a medical service;
- (b) advise whether, and if so, what nursing requirements would be imposed on PHFs regulated under the Private Healthcare Facilities Bill ("the Bill");
- (c) advise how the Committee on Complaints against Private Healthcare Facilities to be established under clause 71 would handle a facility complaint against a PHF which involved misconduct of its healthcare professional(s); and
- (d) in respect of Schedule 2 which set out different classes of specialized services and the corresponding medical procedures that could be carried out in a day procedure centre,
 - (i) address a member's concern that for item 5, the description in column 2 of the Schedule as presently drafted was far from clear in defining what would constitute a medical procedure corresponding to the class of haemodialysis services listed in column 1 of the Schedule; and
 - (ii) advise whether the Director of Health would, in a code of practice to be issued under clause 102, specify that certain medical procedures corresponding to the class of haemodialysis services could only be carried out in a hospital, and if so, which medical procedures would be so covered.

III. Any other business

4. Members agreed that the Bills Committee should receive public views on the Bill at its second meeting to be scheduled.

Action

(*Post-meeting note:* With the concurrence of the Chairman, the second meeting of the Bills Committee has been scheduled for 9 October 2017 at 9:00 am.)

5. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
16 January 2018

**Proceedings of the first meeting of
the Bills Committee on Private Healthcare Facilities Bill
held on Tuesday, 11 July 2017, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Election of Chairman</i>			
000443 - 000637	Mr Tommy CHEUNG Mr SHIU Ka-fai Mr WONG Ting-kwong	Election of Chairman	
<i>Agenda item II: Meeting with the Administration</i>			
000638 - 000717	Chairman	Opening remarks	
000718 - 001319	Chairman Admin	Briefing by the Administration on the Private Healthcare Facilities Bill ("the Bill").	
001320 - 001912	Chairman Ms Alice MAK Admin	<p>Ms Alice MAK's call for expediting the implementation of the new regulatory regime for private healthcare facilities ("PHFs").</p> <p>In reply to Ms Alice MAK's enquiry, the Administration elaborated on the transitional arrangements as set out in Part 9 of the Bill and paragraph 23 of the Legislative Council ("LegCo") Brief issued by the Food and Health Bureau on 14 June 2017 (File Ref.: FH CR 3/3231/16), in particular that the specified period within which application for exemption of scheduled nursing home and application for day procedure centre licence or clinic licence could be made would be specified by the Director of Health ("DoH") by notice published in the Gazette.</p> <p>In reply to Ms Alice MAK's question about whether a beauty centre which hired registered medical practitioner(s) to provide medical beauty services had to be operated with a licence under the Bill, the Administration advised that under the Bill, premises involving the practice of registered medical practitioners or registered dentists were proposed to be regulated. A beauty centre which fell within the meaning of "day procedure centre" or "clinic" under the Bill had to be operated with a day procedure centre licence or a clinic licence, as the case might be.</p>	
001913 - 002448	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen expressed support for the introduction of a new regulatory regime for PHFs.</p> <p>In reply to Mr CHAN Chi-chuen's question about whether a private hospital could refuse to provide medical services to patients under the existing and the new regulatory regime, the Administration advised that:</p> <p>(a) according to the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes currently in force, private hospitals were required to provide services which were of quality and appropriate to the needs of patients with due regard to the safety of patients. When a private hospital was not able to provide medical services for a patient meeting his or her medical needs or expectations, it should</p>	

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		<p>clearly explain to the patient concerned in this regard and advise him or her to approach other healthcare institution(s) for appropriate treatments where applicable. If referral or transfer of a patient to another institution was necessary, the private hospital concerned should provide services to meet the patient's imminent care needs; and</p> <p>(b) under the Bill, DoH might issue a code of practice ("CoP") about, among others, any matters for protecting the health and interests of individuals receiving healthcare services in PHFs. The Bill also provided for a two-tier complaints management system, under which PHFs (including private hospitals) were required to put in place at the first-tier a complaints handling procedure to deal with complaints received against the facility and any complaint unresolved would be looked into at the second-tier by an independent Committee on Complaints against Private Healthcare Facilities ("the Complaints Committee").</p>	
002449 - 003030	Chairman Dr Pierre CHAN Admin	<p>While welcoming the introduction of the Bill, Dr Pierre CHAN considered that the Bills Committee should receive views from interested parties on the Bill at a future meeting.</p> <p>On Dr Pierre CHAN's enquiry about the medical procedures corresponding to the class of endoscopic procedure and the class of chemotherapy respectively listed in item 2 and item 4 of Schedule 2 to the Bill which set out the medical procedures that were classified as scheduled medical procedures when carried out in an ambulatory setting, the Administration advised that:</p> <p>(a) gastroscopy and colonoscopy would fall under item 2(b) "endoscopic procedure involving invasion of sterile cavity or gastrointestinal tract", whereas chemotherapy in item 4 was referring to the administration of cytotoxic through parenteral routes regardless of therapeutic indication; and</p> <p>(b) Schedule 2 was drawn up based on the recommendations of the Working Group on Defining High-risk Medical Procedures/Practices Performed in Ambulatory Setting ("the Working Group") set up under the Steering Committee on Review of Regulation of Private Healthcare Facilities. The Working Group comprised members from the Steering Committee and co-opted members from the Hong Kong Academy of Medicine and its member Colleges, medical practitioners' associations and other related organizations.</p>	
003031 - 003605	Chairman Mr CHAN Kin-por Admin	<p>Referring to the long-standing problem of high-level charges of private hospital services and the above-inflation increase in these charges in recent years, Mr CHAN Kin-por was concerned about the measures to enhance price transparency of private hospitals under the Bill and whether the Administration had consulted The Hong Kong Federation of Insurers ("HKFI") to ensure the effectiveness of such measures.</p> <p>The Administration's response that under the Bill, the licensee of a private hospital had to put in place a budget estimate system to provide estimates of the fees and charges of the hospital for</p>	

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		<p>the treatments and procedures specified by DoH. In October 2016, the Administration and the Hong Kong Private Hospitals Association had jointly rolled out a voluntary pilot programme to try out, among others, the provision of budget estimates for specified common and non-emergency treatments or procedures ("the pilot programme"). Efforts had been and would continuously be made by the Administration to gauge the feedback of the stakeholders, including HKFI, in this regard.</p>	
003606 - 004342	<p>Chairman Dr CHIANG Lai-wan Admin</p>	<p>Dr CHIANG Lai-wan welcomed the introduction of a new regulatory regime for PHFs. On Dr CHIANG's enquiry about whether private veterinary clinics would be subject to regulation under the Bill, the Administration replied in the negative.</p> <p>Dr CHIANG Lai-wan's enquiry about reasons why there was a difference in the proposed requirement concerning the years of registration in Hong Kong for chief medical executive of a solo practice clinic or two clinics and that of a group of clinics.</p> <p>The Administration's advice that under clause 53(4) of the Bill, a person must not serve at the same time as the chief medical executive of more than two day procedure centres or clinics, except in the situation referred to in clause 53(5) where a person was appointed under clause 50 to serve as a chief medical executive of three or more clinics operated at the same time by the same licensee. Given the difference in the modus operandi for the case of three or more clinics operated at the same time by the same licensee, it was proposed that a person might serve as a single chief medical executive of which if the person, among others, was a registered medical practitioner or a registered dentist who had been registered for not less than 10 years in Hong Kong. In such case, the licensee had to establish a Medical Advisory Committee for the clinics and appoint for each of the clinics a registered medical practitioner, or a registered dentist, who was serving the clinic to assist the chief medical executive in carrying out the day to day administration of the clinic.</p> <p>In reply to Dr CHIANG Lai-wan's question about the composition and functions of the proposed Medical Advisory Committee, the Administration's advice that at least half of the members of a Medical Advisory Committee had to be registered medical practitioners or registered dentists, including at least one registered medical practitioner who was not employed by, or practising in, the group of clinics concerned. The function of the Medical Advisory Committee was, among others, to advise the licensee on the qualifications of healthcare professionals for providing services in the clinics and delineation of their clinical responsibilities.</p>	
004343 - 004952	<p>Chairman Mr Tommy CHEUNG Admin</p>	<p>Expressing concern that the charges of private hospitals for the same medical consumable would depend on the class of wards a patient stayed, Mr Tommy CHEUNG urged the Administration to regulate such practice or the transparency of private hospitals in setting the charges of medical consumables.</p> <p>The Administration's response that it was not the intention to regulate the level of charges and pricing practice of private</p>	

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		<p>hospitals. However, the Bill had put in place regulatory measures to enhance price transparency of private hospitals. This apart, the Administration would continue to encourage private hospitals to provide more services at packaged charges to provide patients with a reasonable level of confidence on the total cost of hospital services they could expect.</p>	
004953 - 010654	<p>Chairman Ms Alice MAK Admin Mr LEUNG Kwok-hung</p>	<p>Ms Alice MAK's view that the Bills Committee should receive views from interested parties on the Bill at a future meeting.</p> <p>Ms Alice MAK's question as to whether a beauty centre had to be operated with a licence under the Bill if a registered medical practitioner not employed by the centre would provide medical services in the premises of the centre as and when necessary; and Mr LEUNG Kwok-hung's enquiry as to whether a beauty centre hiring a registered medical practitioner to give verbal health advice to its clients would be subject to regulation.</p> <p>The Administration's reply as follows:</p> <p>(a) "medical service", in relation to a patient, was defined in the Bill as "a medical diagnosis, treatment (other than first aid treatment) or care for the patient given by a registered medical practitioner or a registered dentist". Subject to the conditions set out in clause 9 of the Bill, a medical consultation for health promotion delivered by a registered medical practitioner in a temporary setting might be regarded as an outreach medical service under the Bill; and</p> <p>(b) the answer to Ms Alice MAK's question was in the positive. In addition, the operator of the beauty centre concerned had to ensure that the premises used for providing medical services was physically separated from, and had a direct and separate entrance not shared with or involving passing through, any premises that served a purpose not reasonably incidental to the facility.</p> <p>On Ms Alice MAK's suggestion that the Administration should develop a webpage to provide fee schedules of each private hospital for the common operations or procedures to enable patients to have convenient access to such information for comparison, the Administration advised that the licensee of a private hospital was required under the Bill to publish historical statistics on the fees and charges for treatments and procedures specified by DoH. Private hospitals had already been encouraged to do so under the pilot programme for specified common treatments or procedures recommended by the Department of Health.</p> <p>In response to Mr LEUNG Kwok-hung's view that it was undesirable that the treatments and procedures requiring of publication of historical statistics on the fees and charges were not provided for in the Bill but would be specified by DoH after the passage of the Bill without being scrutinized by LegCo, the Administration advised that the proposed arrangement would facilitate amendments more efficiently in future given the rapidly evolving scope of medical practice. That said, it would</p>	

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		<p>consult the relevant LegCo Panel(s) as appropriate before making any major amendments relating to issues of public concern.</p> <p>On Ms Alice MAK's concern about whether the proposed membership size of the Complaints Committee (i.e. not less than 24 and not more than 48 members) was adequate to handle the facility complaints within a reasonable time, the Administration advised that it was difficult to estimate at this stage the number of facility complaints the Complaints Committee would receive.</p>	
010655 - 011908	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki's expression of support for the direction of strengthening regulation of PHFs; and his enquiry about whether five or more registered medical practitioners who were co-tenants sharing the use of a premises but had no involvement in the practice of each other could be exempted from regulation.</p> <p>The Administration's reply in the negative, as in the case of a small practice clinic, all registered medical practitioners concerned had to be responsible for the management of the clinic. Under the Bill, it was proposed that the licensee concerned had to appoint a chief medical executive to take charge of the day-to-day administration of the facility. However, the Administration would welcome members' views on the number of registered medical practitioners or registered dentists involved that would constitute a small practice clinic and could request for a letter of exemption for the clinic under the Bill.</p> <p>On Dr KWOK Ka-ki's concern about the lack of a licensing regime for beauty centres, the Administration reiterated that a beauty centre which fell within the meaning of "day procedure centre" or "clinic" under the Bill had to be operated with a day procedure centre licence or a clinic licence, as the case might be.</p> <p>In reply to Dr KWOK Ka-ki's concern about the lack of public participation in governance boards of private hospitals and Dr CHIANG Lai-wan's question about the requirements for an applicant for a licence of a PHF, the Administration advised that it was proposed under the Bill that licensees of private hospitals had to be a company, or other body corporate, operated by a board of directors which had to include a person who was neither a registered medical practitioner nor a registered dentist and who was not an employee of the hospital concerned. For PHFs other than a hospital or a scheduled clinic, the applicant could be either a legal person or a natural person who was not necessarily a registered medical practitioner or a registered dentist.</p>	
011909 - 012457	Chairman Dr CHIANG Lai-wan Admin	<p>Dr CHIANG Lai-wan's view that for those PHFs the licensee of which was a limited company with a small amount of share capital, they might not be able to compensate the patients concerned in case of medical incidents. Hence, licensees of PHFs other than a hospital should better be individuals rather than companies or other body corporates to deter serious non-compliance under the new regulatory regime as they would be personally held liable.</p> <p>The Administration's advice that if the licensee of a PHF was a limited company, its director(s) or relevant person(s) concerned in the management could be held liable for any non-compliance by</p>	

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		<p>the PHF concerned, and subject to penalty of a fine and/or imprisonment if they had been convicted of an offence under the new regime, such as failure to comply with the suspension order made by DoH. Separately, the registered medical practitioners or registered dentists, being employees of PHFs, were subject to the relevant professional codes of conduct and should be covered by professional indemnity insurance. In case of medical incidents involving professional misconduct of these professionals, the patients concerned could lodge complaints with the relevant professional bodies.</p>	
012458 - 013242	<p>Chairman Mr CHAN Chi-chuen Admin</p>	<p>On the regulation of health services establishment, Mr CHAN Chi-chuen's concern that only a single category (i.e. premises of an education or scientific (or both) research institution in which medical services with lodging were provided to patients for the purpose of conducting clinical trials) was specified in Schedule 8 to the Bill, and SFH was empowered to specify, by notice published in the Gazette, new categories of health services establishments in Schedule 8 in future; and his enquiry as to whether premises conducting experiments in human cloning would become a category of health services establishments in future.</p> <p>The Administration's advice that to its understanding, there were two facilities, i.e. The Chinese University of Hong Kong's Phase 1 Clinical Trial Centre and The University of Hong Kong Phase 1 Clinical Trials Centre, that would fall within the category currently specified in Schedule 8. Subject to the development, a possible category to be specified in Schedule 8 could be facilities providing palliative hospice services. Given the complicated issues involved in the premises referred to by Mr CHAN Chi-chuen, if emerged in the future, the regulation of which might require a separate regime.</p> <p>In reply to Mr CHAN Chi-chuen's enquiry, the Administration elaborated on the circumstances under which the enforcement agencies would enter a premises without warrant, with warrant, and in an emergency as set out in clauses 113, 114 and 115 of the Bill respectively.</p>	
013243 - 014032	<p>Chairman Dr Pierre CHAN Admin</p>	<p>In response to Dr Pierre CHAN's concerns, the Administration undertook to provide the following information in writing:</p> <p>(a) clarify what would constitute the provision of a medical service in PHF, in particular whether the non-presence of a registered medical practitioner or registered dentist (as the case might be) in the premises concerned would render the relevant service not being regarded as a medical service;</p> <p>(b) advise whether, and if so, what nursing requirements would be imposed on PHFs regulated under the Bill;</p> <p>(c) address his concern that the description in column 2 of item 5 of Schedule 2 as presently drafted was far from clear in defining what would constitute a medical procedure corresponding to the class of haemodialysis services listed in column 1 of the Schedule; and</p>	<p>Admin</p>

Time marker	Speaker	Subject(s)/Discussion	Action required
		(d) advise whether DoH would, in a CoP to be issued under clause 102, specify that certain medical procedures corresponding to the class of haemodialysis services could only be carried out in a hospital, and if so, which medical procedures would be so covered.	
014033 - 014659	Chairman Dr KWOK Ka-ki Admin	Dr KWOK Ka-ki considered that the Bills Committee should receive views from interested parties on the Bill at a future meeting; and he reiterated that consideration should be given to (a) exempting registered medical practitioners who were co-tenants sharing the use of a premises but had no involvement in the practice of each other from regulation; and (b) enhancing public participation in the governance of private hospitals, such as requiring private hospitals to include in the membership of its governance boards the District Council member(s) concerned.	
014700 - 020017	Chairman Dr CHIANG Lai-wan Admin	<p>Dr CHIANG Lai-wan reiterated that licensees of PHFs under the new regulatory regime should be individuals.</p> <p>Dr CHIANG Lai-wan's expression of support for requiring at least half of the members of the Complaints Committee be persons who were neither registered medical practitioners nor registered dentists. In reply to her question as to whether a person could lodge with the Complaints Committee a complaint against a PHF if the latter did not manage the facility complaint concerned within a certain period of time, the Administration advised that the Complaints Committee would consider any facility complaint unresolved at the first-tier. If the subject matter of the complaint had not been handled by the PHF concerned before the complaint was made, the preliminary processing panel appointed by the Complaints Committee might, by notice in writing, require the PHF to, within a specified period conduct an investigation of the complaint. At Dr CHIANG Lai-wan's request, the Administration agreed to advise in writing about how the Complaints Committee would handle a complaint against a PHF which involved misconduct of its healthcare professional(s).</p> <p>In reply to Dr CHIANG Lai-wan's enquiries, the Administration elaborated on its consultation work as set out in paragraph 28 of the LegCo Brief and the major concern of the registered medical practitioners on the Bill in relation to the regulatory standards, to be promulgated in the form of CoP, for different types of PHFs. It further advised that according to the latest data available, there were around 500 day procedure centres and 5 000 medical and/or dental clinics in Hong Kong. It was estimated that around 70% of the latter were small practice clinics being eligible for exemption.</p>	Admin
<i>Agenda item III: Any other business</i>			
020018 - 020142	Chairman	Date of the next meeting for receiving public views on the Bill	