

立法會
Legislative Council

LC Paper No. CB(2)732/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/16

Bills Committee on Private Healthcare Facilities Bill

**Minutes of the eleventh meeting
held on Monday, 11 June 2018, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon CHAN Han-pan, JP (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
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 Elizabeth QUAT, BBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon SHIU Ka-chun
Dr Hon Pierre CHAN

Members absent : Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SHIU Ka-fai

Public Officers attending : Mr FONG Ngai
Deputy Secretary for Food and Health (Health) 3
Food and Health Bureau

Mr Bill LI Chi-pang
Principal Assistant Secretary for Food and Health
(Health) 4
Food and Health Bureau

Mr Michael LI Chi-lung
Assistant Secretary for Food and Health (Health) 4B
Food and Health Bureau

Dr Amy CHIU Pui-yin, JP
Head, Office for Regulation of Private Healthcare
Facilities
Department of Health

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

Ms Rayne CHAI Chih-hui
Senior Assistant Law Draftsman
Department of Justice

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

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

**Staff in
attendance** : Ms Clara TAM
Assistant Legal Adviser 9

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1823/16-17(02), CB(2)454/17-18(03), CB(2)629/17-18(03), CB(2)1495/17-18(01) to (02), CB(2)1550/17-18(01) and CB(3)687/16-17]

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

Clause-by-clause examination of the Bill

2. The Bills Committee continued clause-by-clause examination of the Private Healthcare Facilities Bill ("the Bill") from clause 122 and examined up to clause 195.

Follow-up actions required of the Administration

Admin

3. The Bills Committee requested the Administration to:

- (a) in respect of clause 121(1)(b) which dealt with service of notice or other document (however described) under the Bill, advise the reason(s) why in the case of servicing the notice or other document on an individual, an electronic mail transmission to the individual's last known electronic mail address and a text message at the individual's last known telephone number were not included as the means of service, as was the arrangement provided for in the Electronic Health Record Sharing System Ordinance (Cap. 625) and the Private Columbaria Ordinance (Cap. 630);
- (b) in respect of a member's concern that there might be cases that some services (e.g. medical laboratory services) provided on the premises of a private hospital already registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) were managed by another entity but not the private hospital concerned, advise:
 - (i) whether and, if so, under what circumstances a private hospital could exclude certain part of its premises from the application for a hospital licence during the specified period under clause 125; and
 - (ii) the respective liability of the private hospital and the service provider for incidents occurred on that premises; and

Action

- (c) in respect of its advice that the regulatory standards for the provision of pathology services on the premises of private hospitals would be set out in a code of practice to be issued by the Director of Health under clause 102, provide the details of the proposed requirements, in particular those relating to staffing, quality control, as well as the collection and handling of pathology specimens.

II. Any other business

4. The Chairman invited members who intended to propose amendment to the Bill and wished their draft amendments to be considered by the Bills Committee to forward the amendments to the Secretariat by 19 June 2018, so as to facilitate the Administration to provide a written response to the draft amendments, if any, for the consideration of the Bills Committee at the next meeting scheduled for 26 June 2018.

5. Members noted that the Bills Committee would hold its next meeting on 26 June 2018 at 8:30 am. Members also agreed that subject to the progress of the work of the Bills Committee, the Bills Committee would hold another meeting on 10 July 2018 at 8:30 am.

6. There being no other business, the meeting ended at 12:56 pm.

**Proceedings of the eleventh meeting of
the Bills Committee on Private Healthcare Facilities Bill
held on Monday, 11 June 2018, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000927 - 001022	Chairman	<p>Opening remarks</p> <p>Members noted that the Administration had been requested to provide a written response to the requisite information set out in the letter dated 8 June 2018 from Dr Pierre CHAN [LC Paper No. CB(2)1564/17-18(01)].</p>	
001023 - 001432	Chairman Admin Mr YIU Si-wing ALA9	<p>Briefing by the Administration on its response to the follow-up actions arising from the discussion at the meeting on 14 May 2018 [LC Paper No. CB(2)1495/17-18(02)].</p> <p>In reply to Mr YIU Si-wing's enquiry in relation to clause 120, the Administration advised that the court would decide whether an act was done or omitted to be done by the public officer in good faith in performing or purportedly performing a function under the Bill.</p> <p>The Legal Adviser to the Bills Committee's request for the Administration to, in respect of clause 121(1)(b) which dealt with service of notice or other document (however described) under the Bill, advise in writing the reason(s) why in the case of servicing the notice or other document on an individual, an electronic mail transmission to the individual's last known electronic mail address and a text message at the individual's last known telephone number were not included as the means of service, as was the arrangement provided for in the Electronic Health Record Sharing System Ordinance (Cap. 625) and the Private Columbaria Ordinance (Cap. 630).</p>	Admin
001433 - 001824	Chairman Admin ALA9	<p>Continuation of clause-by-clause examination of the Bill</p> <p><u>Examination of clauses 122 and 123</u></p> <p>Given that there were certain similar aspects provided for under clauses 102 and 122, the Legal Adviser to the Bills Committee sought information about the regulatory standards to be provided in the codes of practice ("CoPs") to be issued by the Director of Health ("the Director") under clause 102 and the regulations to be made by the Secretary for Food and Health ("the Secretary") under clause 122.</p> <p>The Administration's advice that the regulatory standards of private hospitals, day procedure centres and clinics would be set out in CoPs. Clause 122 would also cater for the regulatory standards for those private healthcare facilities ("PHFs") to be regulated as health services establishments.</p>	

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001825 - 002255	Chairman Admin ALA9 Dr CHIANG Lai-wan	<p><u>Examination of clause 124</u></p> <p>Referring to the interpretation of scheduled nursing home which meant a nursing home listed in Schedule 9 to the Bill, for which a certificate of registration was valid as at 1 April 2017, the Legal Adviser to the Bills Committee asked the reason for adopting 1 April 2017 as the relevant date. The Administration advised that this was due to the schedule to gazette the Bill in June 2017.</p> <p>On Dr CHIANG Lai-wan's enquiry as to whether PHFs for which a day procedure centre licence or a clinic licence were in force could provide round-the-clock service, the Administration advised that as provided for in clause 68, the operator of a day procedure centre or a clinic could not provide to any person a medical procedure that might require the person's continuous confinement within the facility for more than 12 hours; and the period of a person's continuous confinement had to be within the same calendar day if the facility was a day procedure centre.</p>	
002256 - 004532	Chairman Admin ALA9 Dr Pierre CHAN Dr CHIANG Lai-wan Mr YIU Si-wing	<p><u>Examination of clauses 125 and 126</u></p> <p>In reply to the enquiries of the Legal Adviser to the Bills Committee and Dr CHIANG Lai-wan, the Administration advised that during the specified transitional arrangement period for premises covered by a certificate of registration under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165), the new hospital licence would cover certain associated premises, which included those clinics not physically attached or in close proximity to, or adjoining, the main hospital, that were covered by the certificate of registration so as to constitute one PHF.</p> <p>Dr Pierre CHAN's concern that there might be cases that some services (e.g. medical laboratory services) provided on the premises of a private hospital already registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance were managed by another entity but not the private hospital concerned; and his request for the Administration to advise in writing (a) whether and, if so, under what circumstances a private hospital could exclude certain part of its premises from the application for a hospital licence during the specified period under clause 125; and (b) the respective liability of the private hospital and the service provider for incidents occurred on that premises.</p> <p>Dr Pierre CHAN's request for the Administration to, in respect of its advice that the regulatory standards for the provision of pathology services on the premises of private hospitals would be set out in a CoP, provide in writing the details of the proposed requirements, in particular those relating to staffing, quality control, as well as the collection and handling of pathology specimens.</p>	<p>Admin</p> <p>Admin</p>

Time marker	Speaker	Subject(s)/Discussion	Action required
		On Mr YIU Si-wing's enquiry about whether a private hospital had to apply to the Director for varying the scope of services specified in the licence, the Administration replied in the affirmative.	
004533 - 005114	Chairman Admin ALA Mr YIU Si-wing	<p><u>Examination of clauses 127 to 133</u></p> <p>In reply to the Legal Adviser to the Bills Committee's enquiry concerning clause 130(a), the Administration advised that the grounds that would entitle the Director to refuse to grant the exemption were provided for in clause 127(4) and (5).</p> <p>In reply to the Legal Adviser to the Bills Committee's enquiry concerning clause 133, the Administration affirmed that the notice published in the Gazette for appointing the day Division 3 was to expire would be a piece of subsidiary legislation.</p>	
005115 - 010632	Chairman Admin Dr Pierre CHAN ALA	<p><u>Examination of clauses 134 to 137</u></p> <p>On Dr Pierre CHAN's questions regarding the timetable and the time required by the Administration for processing all the applications for a day procedure centre licence, the Administration advised that according to a survey conducted, it was estimated that there were around 500 day procedure centres in Hong Kong. On receiving during the specified period a licence application for a day procedure centre in operation on a date to be specified, the Director had to issue a provisional day procedure centre licence if certain conditions were satisfied.</p> <p>In reply to the Chairman and Dr Pierre CHAN's queries on the readiness of the day procedure centres already in operation to meet the licensing requirements, the Administration advised that a provisional licence issued under clauses 134(2) in relation to premises was valid until, among others, the issue of a licence under clause 17 to the licensee of the provisional licence. In case the day procedure centre concerned had to relocate to another premises in order to meet the licensing requirements, the operator had to make a new licence application.</p> <p>In reply to the Legal Adviser to the Bills Committee's enquiry concerning clause 137, the Administration affirmed that the notice published in the Gazette for appointing the day Division 4 was to expire would be a piece of subsidiary legislation.</p>	
010633 - 011512	Chairman Admin ALA	<p><u>Examination of clauses 138 to 149</u></p> <p>The Legal Adviser to the Bills Committee's enquiry on how the addition of the interpretations of "care staff", "enrolled nurse", "nurse-in-charge" and "registered nurse" to section 2 of the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A) as provided for under clause 143 was incidental to the purpose of the Bill.</p> <p>The Administration advised that the amendments were for the purpose of transferring nursing homes for elderly persons to be regulated under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459).</p>	

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011513 - 020059	Chairman Admin ALA9 Dr Pierre CHAN Dr Helena WONG	<p><u>Examination of clauses 150 to 194</u></p> <p>In response to the Chairman's question concerning the addition of Colbazam, Clorazepate and Pinazepam to paragraph 1 of the Sixth Schedule to the Dangerous Drugs Ordinance (Cap. 134) as provided for under clause 155, the Administration advised that the amendment was for the purpose of specifying those drugs that medical practitioners with limited registration who practised medicine in a scheduled clinic could supply and possess in and procure for that clinic.</p> <p>In reply to the Chairman's enquiry, the Administration advised that the amendments to the Undesirable Medical Advertisements Ordinance (Cap. 231) as provided for under clause 161 sought to provide a defence for licensees of PHFs to establish that the advertisements relating to certain diseases they had published were publication of price information or historical statistics on fees and charges as provided for under the Bill.</p> <p>The Legal Adviser to the Bills Committee's enquiry and the Administration's response on the reason for expanding the coverage of Regulation 92(6)(b)(i) of the Dangerous Goods (General) Regulations (Cap. 295B) to all licensed PHFs as provided for under clause 167.</p> <p>In response to Dr Pierre CHAN's concern on the publicity of various related amendments made under Part 13 of the Bill upon passage of the Bill, the Administration undertook that it would, upon passage of the Bill, roll out a series of publicity activities (such as organization of briefing sessions and publication of relevant guidelines) to enhance the awareness of relevant parties of the new regulatory regime and the related amendments.</p> <p>In response to the enquiry of the Legal Adviser to the Bills Committee on the reasons why hospitals were not covered under the amendments to item 3 of Schedule 4 to the Occupational Therapists (Registration and Disciplinary Procedure) Regulations (Cap. 359B) as provided for under clause 176, the Administration explained that this was because the new regulatory regime required that licensees of private hospitals had to be a company, or other body corporate, operated by a board of directors.</p>	
020100 - 021448	Chairman Admin Dr Helena WONG	<p><u>Examination of clause 195</u></p> <p>At 12:42 pm, the Chairman extended the meeting time for 15 minutes beyond the appointed ending time at 12:45 pm.</p> <p>Dr Helena WONG's strong view that all PHFs, or at the very least private hospitals, should be required, as a condition of a licence to be imposed by the Director under clause 17(3) for the issuance of a licence for a PHF, to register as a healthcare provider for the Electronic Health Record Sharing System. While the 12 private hospitals in operation were all registered healthcare providers, she had doubts as to whether private hospitals set up in the future would register as a healthcare provider for the System as the Bill imposed no obligation on</p>	

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		<p>them in this regard.</p> <p>The Administration advised that participation of healthcare providers in the System was voluntary. It was envisaged that the new private hospitals, if any, would register as a healthcare provider in order to enjoy the benefits brought about by joining the System. It would encourage new private hospitals to register as a healthcare provider for the System. In case the promotion was proven to be ineffective, it would prescribe in the relevant CoP the best practice in this regard. In response, Dr Helena WONG said that she might propose amendments to the Bill in this regard.</p>	
<i>Agenda item II: Any other business</i>			
021449 - 021520	Chairman	<p>Submission for consideration of the Bills Committee draft amendments to the Bill</p> <p>Date of the thirteenth meeting of the Bills Committee</p>	

Council Business Division 2
Legislative Council Secretariat
29 January 2019