

立法會
Legislative Council

LC Paper No. LS82/16-17

**Paper for the House Committee Meeting
on 23 June 2017**

**Legal Service Division Report on
Private Healthcare Facilities Bill**

I. SUMMARY

1. The Bill

The Bill seeks to provide for a new regulatory regime, replacing the existing regulatory frameworks under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) and the Medical Clinics Ordinance (Cap. 343), for four types of private healthcare facilities ("PHFs"), namely, hospitals, day procedure centres, clinics and health services establishments; and to provide for incidental and related matters.

2. Public Consultation

According to the LegCo Brief, the public and stakeholders including medical professional councils and associations have been engaged in seeking feedbacks on the legislative proposal at various stages since December 2014. The respondents expressed broad support for the proposal during the public consultation.

**3. Consultation with
LegCo Panel**

The Panel on Health Services was briefed on the legislative proposal on 28 February 2017. Panel members generally supported the proposal but expressed certain concerns.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory regime for the private healthcare sector, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 21 June 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: FH CR 3/3231/16) issued by the Food and Health Bureau and dated 14 June 2017 for further details.

Object of the Bill

2. The Bill seeks to:
 - (a) provide for the regulation of private healthcare facilities ("PHFs");
 - (b) repeal the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) and provide for the transfer of nursing homes for elderly persons to be regulated under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);
 - (c) repeal the Medical Clinics Ordinance (Cap. 343) and its subsidiary legislation; and
 - (d) provide for incidental and related matters.

Background

3. In Hong Kong, private healthcare services are provided by a wide range of PHFs such as hospitals, clinics and day procedure centres (i.e. ambulatory facilities providing high-risk medical procedures). At present, the scope of regulation of PHFs is limited to private hospitals and non-profit-sharing medical clinics respectively under Cap. 165 and Cap. 343 to which no substantive amendments have been introduced since they were enacted in 1960s.

4. According to paragraph 24 of the LegCo Brief, given the existing outdated regulatory framework and the medical incidents over the past few years, there has been public expectation for the Government to strengthen regulatory regime for PHFs.

Provisions of the Bill

5. The Bill mainly seeks to introduce a new regulatory framework for PHFs to replace Cap. 165 and Cap. 343. The Bill consists of 13 Parts and nine Schedules. The main features of the proposed regulatory regime are summarized in the ensuing paragraphs.

Licensing of PHFs

6. The Bill proposes to regulate four types of PHFs, namely, (a) hospitals; (b) day procedure centres, (c) clinics; and (d) health services establishments. These four types of PHFs are defined in Part 1 of the Bill. Part 2 sets out the prohibition and display requirement, and related offences. Part 3 sets out the licensing scheme including the application for, renewal, suspension and cancellation of a licence, appeal arrangements, and related offences. Part 4 provides for the exemption of small practice clinics which are operated by not more than five registered medical practitioners or registered dentists under specified conditions, and the procedures for seeking exemption from the Director of Health ("DH") and related offences.

Regulatory requirements

7. Part 5 of the Bill sets out the regulatory requirements in relation to different types of PHFs, which include:

- (a) general responsibilities and duties of the licensee and its duty to appoint a chief medical executive in charge of the day to day administration of a PHF, and related offences;
- (b) requirement of price transparency such that a PHF must make available to the public the prices of chargeable items and services provided in the PHF as specified by DH and, in particular, private hospitals must provide budget estimate and historical statistics on fees and charges in respect of certain treatments and procedures specified by DH;
- (c) requirement to establish a Medical Advisory Committee for certain PHFs (i.e. hospitals and specified clinics) to advise the licensee on matters relating to the quality of services provided by the facility, and related offence; and
- (d) requirement that the licensee of a PHF must put in place a complaints handling procedure for receiving, managing and responding to complaints against the facility.

Establishment of an independent Committee on Complaints against PHFs ("Complaints Committee")

8. Part 6 of the Bill seeks to provide for the establishment of an independent Complaints Committee to deal with the complaints unresolved by the PHFs concerned and sets out its functions and investigation powers. The Complaints Committee would consist of a chairperson, a deputy chairperson, and 24 to 48 other members (at least half of them being neither registered

medical practitioner nor registered dentists) as appointed by the Secretary For Food and Health ("SFH").

Other offences and related matters

9. Apart from providing for certain miscellaneous offences, Part 7 of the Bill contains provisions relating to matters such as the commission of the proposed offences by bodies corporate and the time limit for prosecution under the Bill.

Regulatory powers

10. Part 8 of the Bill proposes to confer on DH certain powers for administration of the regulatory regime. These include the power to appoint advisory committees (clause 99), issue codes of practice (clause 102), specify certain medical procedures in codes of practices that may only be carried out in hospitals (clause 103). DH would also have powers to obtain information and documents (clause 112), enter a PHF for investigation under different circumstances (clauses 113 to 115). SFH would be empowered to make regulations for the better carrying out of the Bill (clause 122).

Transfer of nursing homes for elderly persons to the ambit of Cap. 459 and transitional arrangements

11. Part 9 of the Bill sets out the transitional arrangements as well as the proposed amendments to enable the nursing homes for elderly persons (previously regulated under Cap. 165) to be regulated by Cap. 459. According to paragraph 21 of the LegCo Brief, these nursing homes for elderly persons are basically not medical facilities and should not be regulated under the new regime.

Related and consequential amendments

12. Parts 10 to 13 of the Bill set out the related and consequential amendments to other legislation including the repeal of Cap. 165 and Cap. 343.

The Schedules

13. There are nine Schedules which essentially set out matters relating to the detailed operation of PHFs.

Commencement

14. The Bill, if passed, would come into operation on a day to be appointed by SFH by notice published in the Gazette.

Public Consultation

15. According to paragraphs 3 and 28 of the LegCo Brief, the Government established a Steering Committee in October 2012 to conduct a review on the regulation of PHFs and rolled out a three-month public consultation in December 2014 on the proposal to revamp the existing regulatory regime based on the recommendations of the Steering Committee. After the public consultation, various stakeholders including medical professional councils and associations (e.g. the Medical Council of Hong Kong, the Dental Council of Hong Kong, and the Hong Kong Private Hospitals Association), universities, existing licensees under Cap. 165 and Cap. 343 were engaged in seeking feedbacks on the legislative proposal at various stages. The respondents expressed broad support for the proposal during the public consultation.

Consultation with LegCo Panel

16. The Clerk to the Panel on Health Services has advised that the Administration briefed the Panel on 28 February 2017 on the proposed new regulatory regime for PHFs. Members generally supported the legislative proposal, but raised concerns on certain issues, including the types of day procedure centres and clinics to be subject to regulation, the functions of the Complaints Committee, the setting of the regulatory standards for different types of PHFs; and the power of LegCo to scrutinize any changes in respect of the proposed schedule on scheduled medical procedures to be made under the Bill.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory regime for the private healthcare sector, Members may wish to form a Bills Committee to study the Bill in detail.

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21 June 2017