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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 11 February 2019**

**Quality and monitoring of private residential care homes for the elderly
and for persons with disabilities**

Purpose

This paper gives a brief account of past discussions of the Council and its committees regarding the quality and monitoring of private residential care homes for the elderly ("RCHEs") and for persons with disabilities ("RCHDs").

Background

Regulation of residential care homes for the elderly

2. According to the Administration, the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("the RCHE Ordinance"), in full operation since 1 June 1996, provides for the regulation of RCHEs through a licensing system¹ administered by the Social Welfare Department ("SWD"). The purpose of the legislation is to ensure that residents in these homes receive services of acceptable standards that are beneficial to them physically, emotionally and

¹ Under the Residential Care Homes (Elderly Persons) Ordinance, residential care homes for the elderly ("RCHEs") are regulated either by licence or certificate of exemption ("CoE"). Nevertheless, the policy of the Social Welfare Department is that CoEs are to be granted to RCHEs which are already in operation before 1 April 1995 but unable to comply fully with the legislative requirements. All the pre-existing RCHEs have fully met licensing requirements in July 2002 and no more CoE has been renewed afterwards. It is unlikely that in future the Director of Social Welfare will issue a CoE for any RCHE unless there are exceptional grounds which warrant a departure from the policy.

socially.

3. Under the RCHE Ordinance, any person who on any occasion operates, keeps, manages or otherwise has control of an RCHE is required to possess a licence which is subject to renewal. Conditions in relation to the operation, keeping, management or other control of the RCHE may be imposed upon the issue or renewal of a licence. The validity period of a licence may vary according to the degree of compliance of the RCHE with various statutory requirements as outlined in the RCHE Ordinance, its subsidiary legislation (namely the Residential Care Homes (Elderly Persons) Regulation) and the Code of Practice of Residential Care Homes (Elderly Persons) ("RCHE Code of Practice") on staffing, space, location, design, structure, safety precautions and quality of care to residents of RCHEs. As at end-September 2016, there were 732 RCHEs regulated under the RCHE Ordinance offering around 72 000 residential care places for the elderly.

Regulation of residential care homes for persons with disabilities

4. The Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) ("the RCHD Ordinance") commenced operation on 18 November 2011 (except Part 2 on sanctions for operating a residential care home ("RCH") without a licence or certificate of exemption ("CoEs"))² and was fully implemented on 10 June 2013. The Ordinance provides for the control of RCHDs through a licensing system administered by SWD. The Residential Care Homes (Persons with Disabilities) Regulation under the RCHD Ordinance stipulates the statutory requirements for the operation, management and supervision of RCHDs. Furthermore, by virtue of the powers conferred by the RCHD Ordinance, the Director of Social Welfare ("DSW") issued the Code of Practice for Residential Care Homes (Persons with Disabilities) ("RCHD Code of Practice"), setting out the principles, procedures, guidelines and standards for the operation, management and other control of RCHDs. An RCHD must fully comply with all the licensing requirements in respect of building safety, fire safety, health care and home management in order to obtain a licence. For RCHDs that existed immediately before the commencement date of the RCHD Ordinance (i.e. 18 November 2011) but are unable to comply fully with the licensing requirements, CoEs may be issued in order to allow reasonable time for them to carry out improvement works for meeting the licensing requirements and standards. Any person who operates, keeps, manages or in any other way has control of an RCHD without a valid licence or CoE commits an offence. As at end-September 2016, there were 310 RCHDs regulated

² According to the Administration, the validity period of CoEs is, in general, between nine and 18 months, depending on the service performance and the progress of improvements for individual residential care homes for persons with disabilities.

under the RCHD Ordinance offering around 17 000 residential care places for persons with disabilities.

5. According to the Administration, as a complementary measure, a four-year pilot Bought Place Scheme ("BPS") for private RCHDs had been launched since October 2010 to, inter alia, encourage private RCHDs to upgrade the service standard and help the market develop more service options. The pilot BPS has become a regular service since October 2014.

Deliberations by Members

Monitoring mechanism

6. Noting from the sporadic media reports about abuse cases in private RCHs and the incident at Tai Po Cambridge Nursing Home in 2015,³ some Members urged the Administration to step up the regulation of RCHs so as to raise their quality of service and prevent abuse of residents of RCHs. Casting doubt on the effectiveness of the inspection and licensing system for monitoring RCHs, some Members took the view that the Administration should conduct a comprehensive review of the inspection system for and step up the monitoring of RCHs by putting in place a round-the-clock inspection mechanism or conducting inspections at night.

7. The Administration advised that the Chief Executive had announced, in the 2016 Policy Address, that the Government would comprehensively strengthen the monitoring of RCHs, with measures including enhancing inspection and supervision, improving the regulatory mechanism and promoting staff training, etc. Under the enhanced mechanism, the inspectorate teams of the Licensing Office of Residential Care Homes for the Elderly ("LORCHE") and of the Licensing Office of Residential Care Homes for Persons with Disabilities ("LORCHD") of SWD would conduct surprise inspections in a small team approach or by a multi-disciplinary inspectorate team. The scope of inspections covered building safety, fire safety, home management, drug management, personal care services, infection control, handling of accidents, environmental hygiene, meals and staffing, etc.

8. The Administration also advised that in 2015-2016, LORCHE and LORCHD conducted 5 260 and 2 387 surprise inspections to RCHes and RCHDs respectively. If irregularities were detected during the inspections, depending on the severity of the irregularities, advisory or warning letters would

³ According to a news report in May 2015, the Tai Po Cambridge Nursing Home made some of its elderly residents wait naked on an open podium before showers.

be issued to the non-compliant RCHs. In addition, under the RCHE Ordinance and the RCHD Ordinance, SWD might issue directions to RCHEs and RCHDs respectively to direct remedial measures. SWD might take prosecution actions if the RCH concerned failed to comply with the requirements specified in a direction. In 2015-2016, LORCHE had issued 2 674 advisory letters and 361 warning letters to RCHEs. The number of advisory letters and warning letters issued to RCHDs by LORCHD during the same period were 481 and five respectively.

Implementation of licensing scheme for residential care homes for persons with disabilities

9. Regarding the implementation of the statutory licensing scheme for RCHDs, the Administration advised that as at 1 October 2016, all RCHDs (including, inter alia, 69 private RCHDs) in the territory had been issued with licences or CoEs. Of the 69 private RCHDs, 21 were issued with licences and the other 48 with CoEs. RCHDs issued with CoEs must still meet the standards with respect to service and management quality which were also applicable to licensed RCHDs.

10. Expressing grave concern about the slow progress of implementing the licensing scheme, some Members took the view that the Administration should, instead of issuing or renewing CoEs, enforce the RCHD Ordinance stringently and set a time limit within which all RCHDs were required to operate under a licence. Some other Members called on the Administration to take measures to help RCHDs operating with CoEs meet the licensing requirements. The Administration advised that it would adopt a prudent approach in considering applications for CoEs. CoEs would only be issued or renewed where there were full justifications for allowing reasonable time for completion of improvement works. SWD had been discussing with all RCHDs issued with CoEs the options to expedite their improvement works and following up on their progress regularly. In addition to introducing simplified application procedures for CoEs, the subsidy under the Financial Assistance Scheme which provided financial assistance for private RCHDs had been increased to assist RCHDs in carrying out their improvement works as soon as possible. The aim was for all RCHDs to meet the licensing requirements by end-2019.

Review of the Residential Care Homes (Elderly Persons) Ordinance, the Residential Care Homes (Persons with Disabilities) Ordinance and relevant Codes of Practice

11. Given that no major amendments had been made to the RCHE Ordinance since its enactment in 1996, the Panel on Welfare Services ("the Panel") took the view that some of its provisions (e.g. staffing ratio, average per capita space,

service needs based on impairment levels of elderly persons, methods for regulating inspections and penalties) were outdated. At its meeting on 8 June 2015, the Panel passed a motion urging the Government to immediately review the relevant specific requirements, and strictly enforce the RCHE Ordinance and the RCHE Code of Practice to ensure that the service quality of both private and subvented RCHEs could reach a reasonable level. At its meeting on 23 July 2015, the Panel passed another motion urging the Administration to, inter alia, immediately amend the RCHD Ordinance and the RCHD Code of Practice, which could not keep abreast of the times, so as to enhance the service quality of RCHDs.

12. Arising from the incident in which the former head of the Bridge of Rehabilitation Company was accused of sexually assaulting some female residents with mental disabilities, the Panel held a special meeting on 1 November 2016 to discuss with the Administration the quality problem of private RCHDs and receive views from 54 deputations/individuals. At that special meeting, the Panel passed a motion urging the Government to, inter alia, set up an inter-departmental committee which comprised users of RCHs, so as to comprehensively revamp the entire system of RCHs, and within three years, amend the relevant ordinances, improve the quality and enhance the monitoring of private RCHs.

13. At its meeting on 12 December 2016, the Panel was briefed on the Administration's proposal to create an Assistant Director post to head a new Licensing and Regulation Branch of SWD for strengthening the inspection and monitoring of RCHs. While raising no objection to the Administration's staffing proposal, some members called on the Administration to adopt a multi-pronged approach to strengthen the monitoring of RCHs in tandem with the creation of the post. At that meeting, the Panel passed a motion requesting SWD to, inter alia, enhance its inspection and implement measures including setting up a committee to reform relevant legislation and implement legislative amendments so as to enhance service quality of RCHs within three years, and setting up inspection teams in the community to assist in the monitoring of RCHs.

14. The Administration advised that SWD had set up the Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes in June 2017 to review the RCHE Ordinance, the RCHD Ordinance and relevant Codes of Practice. The Working Group, chaired by DSW, comprised Legislative Council ("LegCo") Members, members of the Elderly Commission, members of the Rehabilitation Advisory Committee, the private sector, academics, service users, carers of service users, independent members and representatives from the Hong Kong Council of Social Service and the Labour and Welfare Bureau ("LWB"). The topics discussed by the Working Group

included requirements of licensees of RCHs, training for RCH staff and the minimum area of floor space per resident in RCHs. The Working Group aimed to complete the discussion and submit its recommendations for consideration by LWB in end-May 2019.

Enhancing quality of residential care homes

15. Noting that the Administration had set up a Service Quality Group ("SQG") comprising community members and residents' parents to conduct unannounced visits to RCHs and offer feedback on their service, some Members called on the Administration to appoint representatives from concern groups to SQG. In addition, these Members considered that RCHs should be required to sign the "Quality Service Charter". The Administration advised that starting from April 2016, the SQG Scheme had been extended to the whole territory to cover all types of RCHEs and all the licensed RCHDs. Family members of RCH residents were welcomed to join the SQG Scheme to monitor these homes. The Administration would try to engage more local leaders, service users and their family members in the SQG Scheme.

16. The Administration further advised that to enhance the monitoring and upgrade the service quality of RCHDs, SWD had established a notification mechanism with the Department of Health ("DH") and the Hospital Authority ("HA") for early identification of and follow-up on problem areas of RCHDs, organizing or promoting various training programmes for RCHD staff, issuing guidelines to RCHDs as necessary for assisting them in improving their management of operation and services, and handling complaints with guidance and advice being rendered to RCHDs as and when required.

17. Some Members took the view that notwithstanding the long waiting time for residential care services, some elderly persons preferred waiting for subvented RCHE places to admission to private RCHEs because of the substandard quality of some private RCHEs. These Members considered that in addition to purchasing more private RCHE places, the Administration should help upgrade the living environment and service quality of private RCHEs. The Administration advised that RCHEs were required under the RCHE Code of Practice to have the necessary resources to attend to the care needs of their residents and provide them with a safe and hygienic living environment. Various measures were also implemented to encourage RCHEs to enhance their service quality. For instance, SWD had introduced the Pilot Scheme on Visiting Pharmacist Services for RCHEs since 2010 to enhance the drug management capabilities of RCHEs and their staff. Training was provided for RCHE staff on a regular basis to enhance their knowledge and skills in elderly care. SWD had also worked closely with DH and HA in devising service guidelines and making case referral. To provide high quality places at private

RCHEs, the Administration would buy more EA1 places (i.e. places with higher standard of staffing and space provision) under the Enhanced Bought Place Scheme ("EBPS"). As at end December 2017, there were 140 private RCHEs participating in EBPS, providing a total of 8 044 subsidized places which included 5 580 EA1 places.

18. Some Members called on the Administration to consider establishing an official accreditation system for the service quality of RCHEs and introducing a demerit points system for RCHEs. The Administration advised that it had all along been encouraging RCHEs to actively join independent service quality accreditation schemes. At present, the Residential Aged Care Accreditation Scheme launched by the Hong Kong Association of Gerontology, the Quality Elderly Service Scheme launched by the Hong Kong Health Care Federation with the support of the Hong Kong Productivity Council, and the Service Quality Management Certification Scheme – Elderly Service launched by the Hong Kong Quality Assurance Agency provided accreditation services for voluntary participation of RCHEs. In selecting private RCHEs for participation in EBPS, SWD had accorded higher scores for those homes which had participated and been accredited under the relevant service quality accreditation schemes for management and service quality enhancement. The Administration also advised that it had taken note of suggestions from various sectors on how to strengthen the monitoring of RCHEs, such as a demerit point system, and adopted an open mind in examining various options.

Relevant papers

19. A list of relevant papers on the LegCo website is in the **Appendix**.

Appendix

Relevant papers on quality and monitoring of private residential care homes for elderly persons and for persons with disabilities

Committee	Date of meeting	Papers
Panel on Welfare Services	14 January 2013 (Item IV)	Agenda Minutes
	16 April 2013 (Item V)	Agenda Minutes
Joint Subcommittee on Long-term Care Policy	2 July 2013 (Item I)	Agenda Minutes
Finance Committee	3 April 2014	Administration's replies to members' written questions in examining the Estimates of Expenditure 2014-2015 (Pages 53-54)
Panel on Welfare Services	14 April 2014 (Item III)	Agenda Minutes
	12 May 2014 (Item V)	Agenda Minutes
Joint Subcommittee on Long-term Care Policy	26 May 2014 (Item I)	Agenda Minutes
Panel on Welfare Services	8 June 2015 (Item VI)	Agenda Minutes
Legislative Council	17 June 2015	Written question (No. 19) on "Residential care services for the elderly"
Panel on Welfare Services	23 July 2015 (Item III)	Agenda Minutes
Legislative Council	17 February 2016	Official Record of Proceedings (Pages 45-50)

Committee	Date of meeting	Papers
Panel on Welfare Services	9 May 2016 (Item III)	Agenda Minutes
Establishment Subcommittee	4 July 2016 (EC(2016-17)16)	Agenda Minutes
Panel on Welfare Services	1 November 2016 (Item I)	Agenda Minutes
	12 December 2016 (Item IV)	Agenda Minutes
Finance Committee	20 April 2018	Administration's replies to members' written questions in examining the Estimates of Expenditure 2018-2019 (Pages 613-615)

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