

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council on 11 February 2000**

**Legal Service Division Report on
Mental Health (Amendment) Bill 2000**

Object of the Bill

To add an explicit provision that removal of an organ from an adult mentally incapacitated person for transplanting is not medical treatment.

LegCo Brief Reference

2. HW CR 36/3939/99 issued by the Health and Welfare Bureau.

Date of First Reading

3. 26 January 2000.

Comments

4. Under the common law, consent from an adult patient who is mentally and physically capable of exercising a choice must be obtained before medical treatment is carried out on him. For a consent to be valid, the patient must have the capacity to understand in broad terms the nature and effect of the treatment. Minors are incapable to give consent and it should be given by his parent or guardian.

5. For mentally incapacitated persons (“MIP”) who have attained the age of 18, the legal requirements for consent for medical treatment are specified in Part IVC

of the Mental Health Ordinance (Cap. 136) (“the Ordinance”). In the Ordinance, mental incapacity means mental disorder or mental handicap. Part IVC provides that medical treatment of MIP may be carried out in the following circumstances -

- (a) where there is consent by the guardian appointed under the Ordinance;
- (b) where there is consent by the Court of First Instance, if it is satisfied that the treatment is in the best interests of the MIP; or
- (c) without consent if -
 - (i) the registered medical practitioner intending to carry out or supervise the treatment considers that the treatment is urgent, necessary and is in the best interests of the MIP; or
 - (ii) the registered medical practitioner intending to carry out or supervise the treatment considers that the treatment is necessary and in the best interests of the MIP, and no guardian was appointed or the appointed guardian has not been conferred with the power to consent.

6. In the Ordinance, medical treatment includes any medical or surgical procedure, operation or examination carried out by, or under the supervision of, a registered medical practitioner. There is concern that medical treatment could include removing an organ from the MIP for transplant into another person. By this Bill the Administration seeks to state explicitly that such removal is not medical treatment.

7. The other proposed amendments are textual in nature and involve no change in policy.

Public Consultation

8. According to the LegCo Brief, the Administration has consulted various bodies. Apparently the overwhelming majority supports the proposed amendment while a minority suggested that the matter should be left to the court to decide according to individual merits of the case.

Consultation with the LegCo Panel

9. The Administration briefed the Panel on Welfare Services on this Bill on 6 December 1999. At the meeting, Members generally supported the Bill. A Member observed that the proposed amendment would prevent a MIP from donating an organ to his parent.

Conclusion

10. We consider that it would be hard to argue that removal of an organ from a MIP for the purpose of transplant is medical treatment in view of the requirements in Part IVC, and the requirement for consent before organ removal under section 5(6) of the Human Organ Transplant Ordinance (Cap. 465). However, it is desirable to avoid any doubts in legislation, and we recommend Members to support the Bill.

Prepared by

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