

**Bills Committee on
Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Bill 2005**

**Administration's Response to Issues Raised
at the Bills Committee Meeting Held on 9 February 2006 and
Views Expressed by the Pneumoconiosis Mutual Aid Association**

Introduction

This paper provides the Administration's response to issues raised by (i) Members of the Bills Committee on the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill") at the Bills Committee meeting held on 9 February 2006; and (ii) the Pneumoconiosis Mutual Aid Association in their submission to the Bills Committee after the said meeting.

Clause 16(7) and (8) of the Bill

2. At the meeting on 9 February 2006, a Member asked the Administration to review the need for the amendments proposed in clause 16(7) and (8) of the English version of the Bill. The relevant clauses of the Bill, which amend the Employees' Compensation Ordinance (Cap. 282) (ECO), are as follows:

Clause 16(7) Section 16(4) is amended by repealing "fails to submit himself for such examination" and substituting "fails to undergo a medical examination as required under this section".

Clause 16(8) Section 16(4) is amended by repealing "required to submit himself for" and substituting "required to undergo the".

3. In sum, the amendments proposed in the clauses seek to replace references to "submit" oneself for a medical examination by references to "undergo" such examination.

4. The reason for proposing the aforesaid amendments is to preserve consistency of references to the words “submit” and “undergo” in the ECO. In certain sections of the existing ECO, namely, section 10A(4), section 10AA(2)(d), section 16(6), (7) and (9), “submit” is used in such context as “submit” oneself for medical treatment. In section 33 of the Ordinance, “undergo” is used in the context of “to undergo a medical examination”. The amendments proposed in the Bill serve purely to align the expression “to submit ... for medical treatment” and “to undergo a medical examination” for the sake of consistency of expression within the same Ordinance. There will not be any change in terms of legal effect or policy intent by virtue of the amendments.

Medical expenses in respect of medical treatment given by registered medical practitioners or registered Chinese medicine practitioners outside Hong Kong

5. The proposed clause 23(4) of the Bill amends section 12(2) of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (PCO) to the effect that medical expenses for treatment given by registered medical practitioners (MPs) or registered Chinese medicine practitioners (CMPs) outside Hong Kong shall not be reimbursable by the Pneumoconiosis Compensation Fund Board¹ (PCFB). In examining the said clause, the Administration was asked to explain the existing arrangements for reimbursement of medical expenses by the PCFB for medical treatment received outside Hong Kong and to provide statistics on claims for such reimbursement.

6. We learnt from the PCFB that thus far it has not received any application for reimbursement of expenses for medical treatment given by registered MPs outside Hong Kong. As such, there is no designated arrangement for handling this type of application.

7. In examining clause 23(4), some Members also asked the Administration to consider revising the Bill to the effect that medical expenses for treatment given outside Hong Kong by registered MPs and

¹ The Pneumoconiosis Compensation Fund Board is a statutory body set up under the Pneumoconiosis (Compensation) Ordinance to administer the Ordinance.

registered CMPs shall be payable by the PCFB. In the meeting, the Administration explained to Members that the said amendments have the effect of ensuring that the medical treatment given is subject to regulation by the relevant regulatory body in Hong Kong. Such would help to safeguard the interests of pneumoconiotic persons and that of the PCFB.

8. We have carefully considered Members' views on the matter. Taking into account the chronic nature of pneumoconiosis, the likely older age of compensation recipients under the PCO, and the higher possibilities for these recipients to move to the Mainland, we find that there are some justifications in the request. In acceding to the request, we consider it important that the interests of pneumoconiotic persons and that of the PCFB have still to be safeguarded. Hence we propose that if the medical treatment given by the registered MP or registered CMP is medical treatment that might have been lawfully given in the course of his practice in Hong Kong, and that the treatment is also given lawfully under the law of the place where the treatment is given, expenses for such medical treatment would become recoverable under the PCO. Reimbursement of such expenses is still subject to other provisions of section 12 of the PCO.

9. However, we also anticipate that in allowing medical claims originating from places beyond Hong Kong's jurisdiction, there is a need to give additional power to the PCFB for ascertaining the validity of such claims so as to ensure the proper use of the PCFB's resources. Therefore, we would also propose to empower the PCFB to seek confirmation from the attending registered MP or registered CMP, and verification from any person competent for the purpose, as to whether the medical treatment given in any place outside Hong Kong in respect of which medical expenses are claimed, satisfies the conditions set out in paragraph 8 above.

10. In conjunction with the issues relating to medical treatment given outside Hong Kong, Members also requested the Administration to examine Clause 26 of the Bill as to whether there is a need to retain the requirement that the registered MP or registered CMP who gives an opinion under section 23A(3)(a) of the PCO has to be attending that person in Hong Kong. Consequent upon the revision proposed in paragraph 8 above, we also consider it appropriate to remove the aforesaid requirement from the section. For details of the proposed Committee Stage

Amendments please refer to Clauses 23, 25(a) and (d) and 26(b) of the Annex².

Submission from the Pneumoconiosis Mutual Aid Association

11. In their written submission, the Pneumoconiosis Mutual Aid Association (“the Association”) supported the recognition of medical treatment given by registered CMPs for the purpose of claiming reimbursement of medical expenses under the PCO. The Association also expressed other concerns in connection with the Bill. Our response is provided in paragraphs 12 to 16 below.

(i) List of registered CMPs

12. The Association considered that there should be a list of registered CMPs to facilitate the public in identifying whether a person is a registered CMP or not. At present, a list of all persons who are registered CMPs is published in the Gazette. The list is also uploaded to the homepage of the Chinese Medicine Council (CMC) at <http://www.cmchk.org.hk> for public consumption.

13. Under the Chinese Medicine Ordinance, only registered CMPs are entitled to be known as “registered Chinese medicine practitioner of the Chinese Medicine Council of Hong Kong” or the abbreviation “registered Chinese medicine practitioner” in English and as “香港中醫藥管理委員會註冊中醫” or “香港中醫藥管理委員會註冊中醫師” or the abbreviation “註冊中醫” or “註冊中醫師” in Chinese. Members of the public who have doubts on whether a person is a registered CMP can also direct their enquiry to the CMC.

(ii) The daily maximum rate of reimbursable medical expenses

14. The Association further requested that the daily maximum amount of reimbursable medical expenses be raised to \$250. Under the PCO, a pneumoconiotic person who has received medical treatment as is

² The proposed Committee Stage Amendments also include the amendments covered in the Administration’s paper of reference LC Paper No. CB(2)1034/05-06(01) for the Bills Committee meeting on 9 February 2006.

reasonably necessary in connection with pneumoconiosis may claim reimbursement of the actual amount of medical expenses incurred, subject to a daily maximum. At present, the daily maximum rate of medical expenses payable under the PCO is \$200 for in-patient or out-patient treatment, and \$280 for both in-patient and out-patient treatment on the same day.

15. The aforesaid maximum rates were last revised on 4 April 2003. The revision has served to align the rates of medical expenses with the revision of the fee structure of public health care services in 2003 so that pneumoconiotic persons seeking treatment from public health care services can recover the medical expenses incurred. Since then, the charges in public clinics and hospitals for the relevant treatment have remained unchanged. Therefore the Administration is of the view that the daily maximum rates of reimbursable medical expenses under the PCO should be maintained at their existing levels. We will closely monitor the level of fees in the public health service and will review the maximum rate of reimbursable medical expenses under the PCO where circumstances warrant.

(iii) Medical treatment rendered by hospitals in the Mainland

16. The Association also urged for an expansion of the scope of reimburseable expenses for medical treatment given outside Hong Kong such that it covers medical treatment rendered by hospitals in the Mainland. The purpose of the Bill is to recognize the medical treatment, examination and certification given by registered CMPs for the purpose of entitlement to employee benefits under three labour ordinances. To extend the recognition of medical treatment to health professionals not registered in Hong Kong is beyond the scope of the Bill and would also have far-reaching policy implications. As such, the Administration cannot accede to this request.

Economic Development and Labour Bureau
March 2006

CERTIFICATION FOR EMPLOYEE BENEFITS (CHINESE MEDICINE)
(MISCELLANEOUS AMENDMENTS) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for Economic
Development and Labour

Clause

Amendment Proposed

7(6)

In the proposed section 33(6)(b)(i) –

- (a) in sub-subparagraph (B), by deleting “a registered medical practitioner who is not engaged by the employer for the purposes of the scheme” and substituting “any registered medical practitioner”;
- (b) in sub-subparagraph (C), by deleting “a registered Chinese medicine practitioner who is not engaged by the employer for the purposes of the scheme” and substituting “any registered Chinese medicine practitioner”;
- (c) in sub-subparagraph (D), by deleting “a registered dentist who is not engaged by the employer for the purposes of the scheme” and substituting “any registered dentist”;
- (d) in sub-subparagraph (E), by deleting “a registered medical practitioner, registered Chinese medicine practitioner or registered dentist not engaged by the employer for the purposes of the scheme” and substituting “any registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.

- (a) By deleting subclause (1)(a) and substituting –
- “(a) by repealing subparagraph (i) and substituting –
- “(i) the fees of a registered medical practitioner, registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist;”.
- (b) By adding –
- “(1A) Section 3(1) is amended by repealing the definition of “medical practitioner”.”.
- (c) In subclause (2), by deleting everything after “paragraph (a),” and substituting –
- “by repealing “medical practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist” and substituting “registered medical practitioner, registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist”.”.
- (d) In subclause (3), by adding immediately after the proposed definition of “registered chiropractor” –

““registered medical practitioner” (註冊醫生) means a medical practitioner who –

- (a) is registered under the Medical Registration Ordinance (Cap. 161); or
- (b) is deemed to be a registered medical practitioner by virtue of section 29(a) of that Ordinance;”.

By deleting everything after “amended” and substituting –

“by repealing “medical practitioner” and substituting “registered medical practitioner, a registered Chinese medicine practitioner”.”.

- 14
- (a) In subclause (1), by deleting everything after “amended” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner”.”.
 - (b) In subclause (4), in the proposed section 10A(5B)(a), (d) and (e), by adding “registered” before “medical practitioner”.
- 15
- In the proposed section 10AB –
- (a) in subsection (3)(a), by adding “registered” before “medical practitioner”;
 - (b) in subsection (5) –
 - (i) in paragraph (c), by deleting “or”;
 - (ii) by adding –
“(ca) is exempted from registration by virtue of section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F); or”;
 - (c) in subsection (9), by adding “registered” before “medical practitioner” where it first appears.
- 16
- (a) In subclause (2), in the proposed section 16(1B)(a)(i) and (b), by adding “registered” before “medical practitioner” wherever it appears.
 - (b) In subclause (3), by deleting everything after “amended” and substituting –
“by repealing “upon that medical practitioner” and substituting “upon the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.”.
 - (c) In subclause (5), in the proposed section 16(3), by adding “registered” before “medical practitioner” where it first and secondly appears.

- (d) In subclause (9), by deleting everything after “amended” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.
- (e) In subclause (10), by deleting everything after “amended” and substituting –
“by repealing “medical practitioner” where it twice appears and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.
- (f) In subclause (12), by deleting everything after “amended” and substituting –
“by repealing “of such medical practitioner” and substituting “of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.”.
- (g) In subclause (15), by deleting everything after “amended” and substituting –
“by repealing “such medical practitioner” and substituting “the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.”.

17

By deleting everything after “amended” and substituting –
“by repealing “either a medical practitioner” and substituting “a registered medical practitioner, a registered Chinese medicine practitioner”.”.

18

- (a) In subclause (1), by deleting everything after “proviso,” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.
- (b) In subclause (2), by deleting everything after “amended” and

substituting –

“by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.

New

By adding –

“18A. Medical examination before employment

Section 33(1) is amended by adding “registered” before “medical practitioner”.”.

19

By deleting everything after “amended” and substituting –

“by repealing “medical practitioner” and substituting “registered medical practitioner, a registered Chinese medicine practitioner”.”.

20

In the proposed section 36M(1)(a), by adding “registered” before “medical practitioner”.

22

(a) In subclause (1)(a), by deleting everything after “paragraph (a),” and substituting –

“by repealing “medical practitioner” and substituting “registered medical practitioner or registered Chinese medicine practitioner”.”.

(b) In subclause (2), by deleting everything after ““medical treatment”,” and substituting –

“by repealing “medical practitioner” and substituting “registered medical practitioner or registered Chinese medicine practitioner”.”.

23

(a) In the Chinese text, in subclause (2), by deleting everything after “修訂 , ” and substituting –

“廢除“訂的醫治費用”而代以“指的醫療費”。”。

- (b) In subclause (3), by deleting “treatment;” and substituting “treatment.”.
- (c) By deleting subclause (4).
- (d) In subclause (5), in the proposed section 12(3)(a), by adding “registered” before “medical practitioner” where it twice appears.
- (e) By adding –

“(6) Section 12 is amended by adding –

“(4) Medical expenses under this section shall not be payable in respect of medical treatment given in a place outside Hong Kong unless –

- (a) the medical treatment was given by, or under the supervision of, a registered medical practitioner or registered Chinese medicine practitioner in that place lawfully under the law of that place; and
- (b) the medical treatment was medical treatment that might have been lawfully given by him or under his supervision (as the case may be) in the course of his practice in Hong Kong.”.

24

In the proposed section 12AA –

- (a) in subsection (2)(a), by adding “registered” before “medical practitioner”;
- (b) in subsection (4) –
 - (i) in paragraph (c), by deleting “or”;
 - (ii) by adding –
 - “(ca) is exempted from registration by virtue of

section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F); or”;

(c) in subsection (8), by adding “registered” before “medical practitioner” where it first appears.

25(3)

(a) In the proposed section 12B(3), by adding before paragraph (a) –

“(aa) may require the person to inform the Board in writing, within a reasonable period of time as specified by the Board, whether any medical treatment was given in Hong Kong or outside Hong Kong;

(ab) may require the registered medical practitioner or registered Chinese medicine practitioner whom the person claims to be the one that gave the person medical treatment to inform the Board in writing, within a reasonable period of time as specified by the Board, whether he did give the medical treatment to the person, whether the medical treatment was given in Hong Kong or outside Hong Kong, and whether the medical treatment was medical treatment that met the requirements in section 12(4);

(ac) may seek verification, from such persons as in the opinion of the Board may be competent for the purposes, as to whether any medical treatment was medical treatment that met the requirements in section 12(4);”.

(b) In the proposed section 12B(3)(b) and (4)(a) and (b), by adding “registered” before “medical practitioner” wherever it appears.

(c) In the proposed section 12B(5), by adding “registered” before “medical practitioner” where it first appears.

(d) In the proposed section 12B(6), by deleting “(3)(a)” and substituting “(3)(aa), (ab) or (a)”.

(e) In the proposed section 12B(8)(a), by adding “registered”

before “medical practitioner”.

New

By adding –

**“25A. Appointment of Pneumoconiosis
Medical Board**

Section 22(a) is amended by adding “registered” before “medical practitioners”.

26

In the proposed section 23A(3)(a) –

(a) in subparagraph (i) –

(i) by adding “registered” before “medical practitioner”;

(ii) by deleting “in Hong Kong”;

(b) in subparagraph (ii), by deleting “in Hong Kong”.

27(1)

In the proposed section 28(aa) and (ab), by adding “registered” before “medical practitioner”.