

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

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A BILL

To

Amend the Employment Ordinance and its subsidiary legislation, the Employees' Compensation Ordinance and the Pneumoconiosis (Compensation) Ordinance—

- (a) to provide for the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered Chinese medicine practitioner for the purposes of entitlement to certain employee benefits under those Ordinances;
- (b) to provide for similar recognition of certification given by, and medical examination and treatment conducted or given by, a registered dentist for the purposes of certain provisions of the Employees' Compensation Ordinance;
- (c) to prescribe the circumstances under which cost of medicines is payable as medical expenses, and to provide for the requirement for medical reports, for the purposes of the Employees' Compensation Ordinance and the Pneumoconiosis (Compensation) Ordinance;
- (d) to provide for the appointment of registered Chinese medicine practitioners to certain boards under the Employees' Compensation Ordinance;
- (e) to clarify that, for the purposes of the Pneumoconiosis (Compensation) Ordinance, an opinion or medical treatment given by a medical practitioner or registered Chinese medicine practitioner to or in respect of a person means an opinion or medical treatment given by a medical practitioner or registered Chinese medicine practitioner attending the person in Hong Kong;

- (f) to replace references to “medical practitioner” in the Employment Ordinance by references to “registered medical practitioner” for the sake of consistency within that Ordinance; and
- (g) to provide for matters ancillary to or connected with these purposes,
- and make related amendments to regulations made under the Mandatory Provident Fund Schemes Ordinance.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Certification for Employee Benefits (Chinese Medicine)(Miscellaneous Amendments) Ordinance 2005.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

PART 2

AMENDMENTS TO THE EMPLOYMENT ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Employment Ordinance

2. Interpretation

Section 2(1) of the Employment Ordinance (Cap. 57) is amended by adding—

““registered Chinese medicine practitioner” (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549);”.

3. Termination of contract without notice by employee

Section 10(*aa*)(ii) is amended by adding “or registered Chinese medicine practitioner” after “practitioner”.

4. Section substituted

Section 13 is repealed and the following substituted—

“13. Authority to issue medical certificates

(1) A medical certificate for the purposes of section 12(4) or (6) or 12AA shall be issued by—

- (a) a registered medical practitioner;
- (b) a registered Chinese medicine practitioner; or
- (c) notwithstanding section 16 of the Midwives Registration Ordinance (Cap. 162), a midwife registered under section 8, or deemed to be registered under section 25, of that Ordinance.

(2) A medical certificate for the purposes of section 12(7) or (7A) shall be issued by—

- (a) a registered medical practitioner; or
- (b) notwithstanding section 16 of the Midwives Registration Ordinance (Cap. 162), a midwife registered under section 8, or deemed to be registered under section 25, of that Ordinance.

(3) A medical certificate for the purposes of section 12(8) or 15AA shall be issued by—

- (a) a registered medical practitioner; or
- (b) a registered Chinese medicine practitioner.”.

5. Prohibition of assignment of heavy, hazardous or harmful work

Section 15AA(3) is repealed and the following substituted—

“(3) Where an employee has produced a medical certificate for the purposes of subsection (1), the employer may arrange for the employee to attend another medical examination, at the employer’s expense, to obtain a second opinion as to the employee’s fitness to undertake the work at issue.

(3A) A medical examination referred to in subsection (3) shall be conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer, regardless of whether the medical certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner.”.

6. General provisions as to employee’s right to long service payment

Section 31R(3) is repealed and the following substituted—

“(3) Where an employee has terminated his contract in the circumstances specified in section 10(*aa*) upon being certified as being permanently unfit for a particular type of work, the employer may require the employee to undergo a medical examination, at the employer’s expense, to obtain a second opinion as to whether or not the employee is permanently unfit for that type of work.

(3A) A medical examination referred to in subsection (3) shall be conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer, regardless of whether the certificate issued in respect of the employee for the purposes of section 10(*aa*)(ii) was issued by a registered medical practitioner or registered Chinese medicine practitioner.”.

7. Sickness allowance

(1) Section 33(5)(*a*) is amended by repealing “medical practitioner or registered dentist by whom the certificate is issued” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist who issued the certificate”.

(2) Section 33(5)(*b*) is amended by repealing “by the medical practitioner or registered dentist employed by the employer for the purposes of” and substituting “under”.

(3) Section 33(5)(*c*) is amended—

(*a*) by repealing “medical practitioner or registered dentist employed” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist engaged”;

(*b*) by repealing everything after “reasonable excuse,” and substituting—

“disregards—

(i) the advice of such medical practitioner, Chinese medicine practitioner or dentist; or

(ii) the advice of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist who is attending him in the hospital;”.

(4) Section 33 is amended by adding before subsection (5A)—

“(5AA) Where a medical certificate issued for the purposes of subsection (5)—

- (a) is issued by a registered medical practitioner, subsection (5)(b) applies only if the recognized scheme of medical treatment operated by the employer covers medical treatment given by a registered medical practitioner;
- (b) is issued by a registered Chinese medicine practitioner, subsection (5)(b) applies only if the recognized scheme of medical treatment operated by the employer covers medical treatment given by a registered Chinese medicine practitioner; or
- (c) is issued by a registered dentist, subsection (5)(b) applies only if the recognized scheme of medical treatment operated by the employer covers medical treatment given by a registered dentist.”.

(5) Section 33(5A) is amended by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner”.

(6) Section 33(6)(b)(i) is repealed and the following substituted—

- “(i) where, on the day on which the certificate is issued, the employer is operating a recognized scheme of medical treatment—
- (A) a certificate issued by the registered medical practitioner, registered Chinese medicine practitioner or registered dentist engaged by the employer for the purposes of the scheme;
 - (B) (if the scheme does not cover medical treatment given by a registered medical practitioner) a certificate issued by a registered medical practitioner who is not engaged by the employer for the purposes of the scheme;
 - (C) (if the scheme does not cover medical treatment given by a registered Chinese medicine practitioner) a certificate issued by a registered Chinese medicine practitioner who is not engaged by the employer for the purposes of the scheme;
 - (D) (if the scheme does not cover medical treatment given by a registered dentist) a certificate issued by a registered dentist who is not engaged by the employer for the purposes of the scheme;
- or

(E) (if the employee refuses with reasonable excuse to submit himself for treatment under the scheme) a certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist not engaged by the employer for the purposes of the scheme;”.

(7) Section 33(6)(b)(ii) is amended—

(a) by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner”;

(b) by adding “or” at the end.

(8) Section 33(6)(b)(iii) is amended by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner”.

(9) Section 33(7) is amended by repealing “medical practitioner or registered dentist by whom it is issued” and substituting “issuer of the certificate”.

(10) Section 33(7) is amended by repealing “medical practitioner or registered dentist, the” and substituting “issuer of the certificate, the”.

(11) Section 33(7) is amended by repealing “prescribed by the medical practitioner or registered dentist” and substituting “prescribed by the issuer of the certificate”.

8. Recognized scheme of medical treatment

Section 34(1) is amended by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner”.

9. Section added

The following is added—

“75. Transitionals for Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005

(1) A reference in this Ordinance to a certificate or medical certificate issued by a registered Chinese medicine practitioner—

(a) does not include a certificate or medical certificate so issued before the commencement of the 2005 Ordinance; and

- (b) does not include a certificate or medical certificate so issued on or after the commencement of the 2005 Ordinance to the extent—
 - (i) that it relates to any period of days or hours which ends before that commencement; or
 - (ii) if it relates to any period of days or hours which occurs partly before that commencement, that it relates to such part of the period occurring before that commencement.
- (2) For the purposes of this section—
 - (a) “2005 Ordinance” (《2005年條例》) means Part 2 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005 (of 2005);
 - (b) a certificate or medical certificate relates to a period of days or hours if the certificate or medical certificate is produced for the purposes of—
 - (i) an employee taking that period of days as maternity leave under Part III or sickness days under Part VII; or
 - (ii) having that period of hours counted as hours in which an employee has worked by virtue of paragraph 3(2)(a) of the First Schedule.”.

10. Continuous employment

(1) The First Schedule is amended by repealing “[s. 3]” and substituting “[ss. 3 & 75]”.

(2) The First Schedule is amended, in paragraph 3(2)(a), by adding “, registered Chinese medicine practitioner” after “practitioner”.

Employment of Children Regulations

11. Requirements as to certificates, medical examination etc.

Regulation 8(c) of the Employment of Children Regulations (Cap. 57 sub. leg. B) is amended by repealing “medical practitioner” and substituting “registered medical practitioner or registered Chinese medicine practitioner”.

PART 3

AMENDMENTS TO THE EMPLOYEES' COMPENSATION ORDINANCE

12. Interpretation

(1) Section 3(1) of the Employees' Compensation Ordinance (Cap. 282) is amended, in the definition of "medical expenses", in paragraph (a)—

- (a) in subparagraph (i), by repealing "registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist" and substituting "registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist";
- (b) in subparagraph (v), by adding "subject to section 10AB," before "the".

(2) Section 3(1) is amended, in the definition of "medical treatment", in paragraph (a), by repealing "registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist" and substituting "registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist".

(3) Section 3(1) is amended by adding—

- ““registered Chinese medicine practitioner” (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549);
- “registered chiropractor” (註冊脊醫) has the meaning assigned to it by section 2 of the Chiropractors Registration Ordinance (Cap. 428);
- “registered occupational therapist” (註冊職業治療師) means a person who is an occupational therapist and is registered in respect of that profession under the Supplementary Medical Professions Ordinance (Cap. 359);
- “registered physiotherapist” (註冊物理治療師) means a person who is a physiotherapist and is registered in respect of that profession under the Supplementary Medical Professions Ordinance (Cap. 359);”.

13. Compensation in case of temporary incapacity

Section 10(2) is amended by adding “, a registered Chinese medicine practitioner” after “practitioner”.

14. Payment of medical expenses

(1) Section 10A(3) is amended by adding “, registered Chinese medicine practitioner” after “practitioner”.

(2) Section 10A(4)(b) is amended by repealing “undertaking” and substituting “undertaking given in accordance with subsection (5)”.

(3) Section 10A(5) is amended by repealing everything after “the course of his” and substituting—

“employment, he—

(a) shall give to the employee a written undertaking to—

(i) provide free medical treatment; or

(ii) pay the medical expenses for the medical treatment;

(b) shall specify in such undertaking the description of the medical treatment; and

(c) shall not recover any part of the cost of the medical expenses from the employee.”.

(4) Section 10A is amended by adding—

“(5A) Subsection (4) does not relieve an employer of the liability to pay medical expenses in respect of medical treatment of any description received by an employee unless the free medical treatment provided or agreed to be provided by the employer covers medical treatment of the same description.

(5B) In subsections (5) and (5A), a reference to a description of medical treatment is a reference to any of the following—

(a) medical treatment given by, or under the supervision of, a medical practitioner;

(b) medical treatment given by, or under the supervision of, a registered Chinese medicine practitioner;

(c) medical treatment given by, or under the supervision of, a registered dentist;

(d) physiotherapy given by, or under the supervision of, a registered physiotherapist or medical practitioner;

(e) occupational therapy given by, or under the supervision of, a registered occupational therapist or medical practitioner;

(f) medical treatment given by, or under the supervision of, a registered chiropractor.”.

15. Section added

The following is added—

“10AB. Cost of medicines

(1) This section applies where an employer is liable under section 10A to pay the medical expenses for the medical treatment given in Hong Kong in respect of an employee’s personal injury.

(2) Subject to the other provisions of this section, the medical expenses that an employer is liable to pay in respect of an employee’s personal injury—

(a) include the cost of medicines to the extent that the medicines are prescribed medicines for the direct treatment of the injury; but

(b) do not include the cost of any tonic or substance that is prescribed for the purpose of the maintenance of general health only.

(3) For the purposes of this section, a reference to prescribed medicines is a reference to—

(a) medicines prescribed by a medical practitioner or registered dentist; or

(b) Chinese herbal medicines or proprietary Chinese medicines prescribed by a registered Chinese medicine practitioner.

(4) An employer is not liable to pay any cost of medicines relating to any pharmaceutical product or substance that is required to be registered under the Pharmacy and Poisons Ordinance (Cap. 138) unless it is so registered.

(5) An employer is not liable to pay any cost of medicines relating to any proprietary Chinese medicine unless the proprietary Chinese medicine—

(a) is registered under section 121 of the Chinese Medicine Ordinance (Cap. 549);

(b) is deemed to have been registered under section 128 of that Ordinance;

(c) is exempted from registration by virtue of section 158(6) of that Ordinance; or

(d) is a substance or product that is registered under the Pharmacy and Poisons Ordinance (Cap. 138).

(6) An employer is not liable to pay any cost of medicines relating to any Chinese herbal medicine unless the Chinese herbal medicine—

(a) is sold to the employee concerned by a person who—

(i) is the holder of a retailer licence issued under section 114 of the Chinese Medicine Ordinance (Cap. 549); or

(ii) is deemed, under section 118(1) of that Ordinance, to have been granted such a licence; or

(b) is sold by a registered Chinese medicine practitioner for the purpose of administering, as described in section 158(2) of that Ordinance, to the employee concerned who is a patient under that Chinese medicine practitioner's direct care.

(7) An employer is not liable to pay any cost of medicines relating to medicines dispensed pursuant to the same prescription on a second or subsequent occasion unless—

(a) the prescription contains a direction that the medicines are to be dispensed for a stated number of times; and

(b) the medicines are dispensed in accordance with that direction.

(8) Where the medical expenses for the medical treatment of an employee include the cost of medicines, the employer or the Commissioner may request the employee to produce to him the prescription for the medicines and the receipt for the payment of that cost. The employer is not liable to pay the cost of medicines if the employee fails, without reasonable excuse, to comply with the request.

(9) A prescription given by a medical practitioner or registered dentist and produced for the purposes of subsection (8) must show—

(a) the name of the medical practitioner or dentist;

(b) the name of the patient to whom the prescription is given;

(c) the trade name or pharmacological name and dosage of each medicine prescribed; and

(d) the date on which the prescription is given.

(10) A prescription given by a registered Chinese medicine practitioner and produced for the purposes of subsection (8) must show—

(a) the name of the Chinese medicine practitioner;

(b) the name of the patient to whom the prescription is given;

(c) if any Chinese herbal medicine is prescribed, its name and quantity;

(d) if any proprietary Chinese medicine registered under section 121 of, or deemed to have been registered under section 128 of, the Chinese Medicine Ordinance (Cap. 549) is prescribed, its product name and dosage;

(e) if any proprietary Chinese medicine exempted from registration by virtue of section 158(6) of the Chinese Medicine Ordinance (Cap. 549) is prescribed, the name and quantity of each Chinese herbal medicine that is contained in the proprietary Chinese medicine; and

(f) the date on which the prescription is given.

(11) A receipt for the payment of the cost of medicines produced for the purposes of subsection (8) must show—

- (a) the name and address of the person by whom the prescribed medicines were sold;
- (b) the date of sale; and
- (c) the name, quantity and price of the prescribed medicines sold.

(12) For the purposes of this section—

“Chinese herbal medicine” (中藥材) means—

- (a) a Chinese herbal medicine specified in Schedule 1 or 2 to the Chinese Medicine Ordinance (Cap. 549); or
- (b) any other material of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose;

“proprietary Chinese medicine” (中成藥) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549).”.

16. Medical examination and treatment

(1) Section 16(1) is repealed and the following substituted—

“(1) Where an employee has given notice of an accident—

- (a) the employer may, within 7 days from the time at which the notice is given, require the employee to undergo a medical examination without expense to the employee; and
- (b) the employee shall undergo the examination.”.

(2) Section 16 is amended by adding—

“(1A) An employer may require an employee who is in receipt of a periodical payment under section 10 to undergo a medical examination from time to time, without expense to the employee, and the employee shall undergo the examination.

(1B) Where an employee is required under subsection (1) or (1A) to undergo a medical examination—

- (a) if the employee is attended—
 - (i) by a medical practitioner, the examination shall be conducted by a medical practitioner named by the employer;
 - (ii) by a registered Chinese medicine practitioner, the examination shall be conducted by a registered Chinese medicine practitioner named by the employer; or
 - (iii) by a registered dentist, the examination shall be conducted by a registered dentist named by the employer; or
- (b) in any other case, the examination shall be conducted by a medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer.”.

(3) Section 16(2) is amended by repealing “upon that medical practitioner” and substituting “upon the medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.

(4) Section 16(2) is amended by adding “, Chinese medicine practitioner or dentist (as the case may be)” after “or that medical practitioner”.

(5) Section 16(3) is repealed and the following substituted—

“(3) If the employee is, in the opinion of any medical practitioner, registered Chinese medicine practitioner or registered dentist, unable or not in a fit state to attend on the medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer—

(a) that fact shall be notified to the employer; and

(b) the medical practitioner, Chinese medicine practitioner or dentist so named shall—

(i) fix a reasonable time and place for a medical examination of the employee; and

(ii) notify the employee accordingly.”.

(6) Section 16 is amended by adding—

“(3A) As soon as reasonably practicable after an employee has undergone a medical examination required under this section, the medical practitioner, Chinese medicine practitioner or dentist who conducts the examination shall, at the employer’s expenses—

(a) prepare a report on the examination, setting out all findings reasonably related to the injury of the employee; and

(b) send the report to the employer.

(3B) The employee may in writing request the employer to send to him, free of charge, a copy of the report referred to in subsection (3A).

(3C) The employer commits an offence and is liable on conviction to a fine at level 3 if he fails, without reasonable excuse, to comply with a request under subsection (3B) before the later of the following—

(a) the expiry of 21 days after the employer receives the request; or

(b) the expiry of 14 days after the report concerned is received by the employer.”.

(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”.

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

(9) Section 16(5) is amended by adding “, registered Chinese medicine practitioner or registered dentist” after “practitioner”.

(10) Section 16(6) is amended by adding “, registered Chinese medicine practitioner or registered dentist” after “practitioner” where it twice appears.

(11) Section 16(7) is amended by repealing “by a medical practitioner when so required under the provisions of” and substituting “when so required under”.

(12) Section 16(7) is amended by repealing “of such medical practitioner” and substituting “of the medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.

(13) Section 16(7) is amended by repealing “treatment by, and duly carried out the instructions of, such medical practitioner” and substituting “such treatment, and had duly carried out the instructions of, such medical practitioner, Chinese medicine practitioner or dentist”.

(14) Section 16(9) is amended by repealing “submit himself to examination by a medical practitioner when so required under the provisions of this section, or failed to submit himself for treatment by a medical practitioner when so required under the provisions of” and substituting “undergo a medical examination or submit himself for treatment when so required under”.

(15) Section 16(9) is amended by repealing “such medical practitioner” and substituting “the medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.

17. Employees’ Compensation (Ordinary Assessment) Boards

Section 16D(2)(a) is amended by repealing “either a medical practitioner” and substituting “a medical practitioner, a registered Chinese medicine practitioner”.

18. Review

(1) Section 19(1) is amended, in the proviso, by adding “, registered Chinese medicine practitioner or registered dentist” after “practitioner”.

(2) Section 19(3) is amended by adding “, registered Chinese medicine practitioner or registered dentist” after “practitioner”.

19. Employer’s liability to pay for the cost of supplying and fitting prosthesis or surgical appliance

Section 36B(2)(a) is amended by adding “, a registered Chinese medicine practitioner” after “practitioner”.

20. Prostheses and Surgical Appliances Board

Section 36M(1)(a) is repealed and the following substituted—

“(a) 2 persons each of whom shall be a medical practitioner, a registered Chinese medicine practitioner or a registered dentist; and”.

21. Transitional

Section 55 is amended by adding—

“(10) Nothing in Part 3 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005 (of 2005) (“2005 Ordinance”) shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement of Part 3 of the 2005 Ordinance. The provisions of this Ordinance as were in force immediately before that commencement shall continue to apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before that commencement as if those provisions had not been amended by Part 3 of the 2005 Ordinance.”.

PART 4

AMENDMENTS TO THE PNEUMOCONIOSIS (COMPENSATION) ORDINANCE

22. Interpretation

(1) Section 2(1) of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended, in the definition of “medical expenses”—

(a) in paragraph (a), by adding “or registered Chinese medicine practitioner” after “practitioner”;

(b) in paragraph (e), by adding “subject to section 12AA,” before “the”.

(2) Section 2(1) is amended, in the definition of “medical treatment”, by adding “or registered Chinese medicine practitioner” after “practitioner”.

(3) Section 2(1) is amended by adding—

““registered Chinese medicine practitioner” (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549);”.

23. Payment of medical expenses

(1) Section 12(1) is amended by repealing “expenses” and substituting “medical expenses in respect”.

(2) Section 12(2) is amended by repealing “Expenses for medical treatment” and substituting “Medical expenses”.

(3) Section 12(2)(c) is amended by repealing the full stop and substituting “and the person fails, without reasonable excuse, to submit himself for such treatment;”.

(4) Section 12(2) is amended by adding—

“(d) shall not be payable in respect of medical treatment received outside Hong Kong.”.

(5) Section 12 is amended by adding—

“(3) Medical expenses shall not cease under subsection (2)(c) to be payable—

(a) in respect of medical treatment given to a person by, or under the supervision of, a medical practitioner unless the medical treatment provided free of charge to him by the person’s employer covers medical treatment given by, or under the supervision of, a medical practitioner; or

(b) in respect of medical treatment given to a person by, or under the supervision of, a registered Chinese medicine practitioner unless the medical treatment provided free of charge to him by the person’s employer covers medical treatment given by, or under the supervision of, a registered Chinese medicine practitioner.”.

24. Section added

The following is added immediately after section 12—

“12AA. Cost of medicines

(1) Subject to the other provisions of this section, the medical expenses that a person who suffers from pneumoconiosis and to whom compensation is payable under section 4 is entitled to—

(a) include the cost of medicines to the extent that the medicines are prescribed medicines for such medical treatment as is reasonably necessary in connection with his pneumoconiosis; but

(b) do not include the cost of any tonic or substance that is prescribed for the purpose of the maintenance of general health only.

(2) For the purposes of this section, a reference to prescribed medicines is a reference to—

- (a) medicines prescribed by a medical practitioner; or
- (b) Chinese herbal medicines or proprietary Chinese medicines prescribed by a registered Chinese medicine practitioner.

(3) A person referred to in subsection (1) is not entitled to any cost of medicines relating to any pharmaceutical product or substance that is required to be registered under the Pharmacy and Poisons Ordinance (Cap. 138) unless it is so registered.

(4) A person referred to in subsection (1) is not entitled to any cost of medicines relating to any proprietary Chinese medicine unless the proprietary Chinese medicine—

- (a) is registered under section 121 of the Chinese Medicine Ordinance (Cap. 549);
- (b) is deemed to have been registered under section 128 of that Ordinance;
- (c) is exempted from registration by virtue of section 158(6) of that Ordinance; or
- (d) is a substance or product that is registered under the Pharmacy and Poisons Ordinance (Cap. 138).

(5) A person referred to in subsection (1) is not entitled to any cost of medicines relating to any Chinese herbal medicine unless the Chinese herbal medicine—

- (a) is sold to the person concerned by a person who—
 - (i) is the holder of a retailer licence issued under section 114 of the Chinese Medicine Ordinance (Cap. 549); or
 - (ii) is deemed, under section 118(1) of that Ordinance, to have been granted such a licence; or
- (b) is sold by a registered Chinese medicine practitioner for the purpose of administering, as described in section 158(2) of that Ordinance, to the person concerned who is a patient under that Chinese medicine practitioner's direct care.

(6) A person referred to in subsection (1) is not entitled to any cost of medicines relating to medicines dispensed pursuant to the same prescription on a second or subsequent occasion unless—

- (a) the prescription contains a direction that the medicines are to be dispensed for a stated number of times; and
- (b) the medicines are dispensed in accordance with that direction.

(7) Where the medical expenses for the medical treatment of a person referred to in subsection (1) include the cost of medicines, the Board may request the person to produce to it the prescription for the medicines and the receipt for the payment of that cost. The person is not entitled to the cost of medicines if the person fails, without reasonable excuse, to comply with the request.

(8) A prescription given by a medical practitioner and produced for the purposes of subsection (7) must show—

- (a) the name of the medical practitioner;
- (b) the name of the patient to whom the prescription is given;
- (c) the trade name or pharmacological name and dosage of each medicine prescribed; and
- (d) the date on which the prescription is given.

(9) A prescription given by a registered Chinese medicine practitioner and produced for the purposes of subsection (7) must show—

- (a) the name of the Chinese medicine practitioner;
- (b) the name of the patient to whom the prescription is given;
- (c) if any Chinese herbal medicine is prescribed, its name and quantity;
- (d) if any proprietary Chinese medicine registered under section 121 of, or deemed to have been registered under section 128 of, the Chinese Medicine Ordinance (Cap. 549) is prescribed, its product name and dosage;
- (e) if any proprietary Chinese medicine exempted from registration by virtue of section 158(6) of the Chinese Medicine Ordinance (Cap. 549) is prescribed, the name and quantity of each Chinese herbal medicine that is contained in the proprietary Chinese medicine; and
- (f) the date on which the prescription is given.

(10) A receipt for the payment of the cost of medicines produced for the purpose of subsection (7) must show—

- (a) the name and address of the person by whom the prescribed medicines were sold;
- (b) the date of sale; and
- (c) the name, quantity and price of the prescribed medicines sold.

(11) For the purposes of this section—
“Chinese herbal medicine” (中藥材) means—

- (a) a Chinese herbal medicine specified in Schedule 1 or 2 to the Chinese Medicine Ordinance (Cap. 549); or
- (b) any other material of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose;

“proprietary Chinese medicine” (中成藥) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549).”.

25. Claims for medical expenses and expenses for medical appliances

(1) Section 12B(1) is repealed and the following substituted—

“(1) A person claiming medical expenses under section 12 or claiming expenses for medical appliances under section 12A shall serve on the Board a request in writing for the payment of such expenses together with a receipt for the payment for the treatment or appliances concerned.”.

(2) Section 12B(2) is amended—

(a) in paragraph (a), by repealing “expenses for medical treatment” and substituting “medical expenses”;

(b) in paragraph (b), by repealing “如屬醫療裝置費用時” and substituting “醫療裝置費用的個案中”.

(3) Section 12B(3) and (4) is repealed and the following substituted—

“(3) For the purposes of determining a person’s claim under subsection (2), the Board—

(a) may require the person to submit to the Board, within a reasonable period of time as specified by the Board, a medical report that meets the requirements in subsection (4);

(b) may seek from the Pneumoconiosis Medical Board or a medical practitioner an opinion as to—

(i) whether any medical treatment received by the person from a medical practitioner was reasonably necessary in connection with his pneumoconiosis; and

(ii) whether the use by or supply to the person of any medical appliance was reasonably necessary in connection with incapacity arising as a result of pneumoconiosis; and

(c) may seek from a registered Chinese medicine practitioner an opinion as to whether any medical treatment received by the person from a registered Chinese medicine practitioner was reasonably necessary in connection with his pneumoconiosis.

(4) The medical report referred to in subsection (3)(a) shall be prepared—

- (a) in the case of a claim for medical expenses, by the medical practitioner or registered Chinese medicine practitioner who attends the person; or
- (b) in the case of a claim for expenses for medical appliances, by the medical practitioner who attends the person,

and shall set out the diagnosis, particulars of the medical treatment or medical appliances concerned, and such other particulars as the Board may reasonably require.

(5) Where under subsection (3)(b) or (c) the Board seeks an opinion from the Pneumoconiosis Medical Board, a medical practitioner or a registered Chinese medicine practitioner in respect of a person's claim, the Board—

- (a) may furnish the medical report submitted by the person under subsection (3)(a) to the Pneumoconiosis Medical Board, medical practitioner or Chinese medicine practitioner; and
- (b) may require the person to appear before the Pneumoconiosis Medical Board, medical practitioner or Chinese medicine practitioner for the purposes of answering queries reasonably related to the medical expenses or expenses for medical appliances claimed.

(6) The period that begins on the day a requirement is imposed under subsection (3)(a) or (5)(b) and ends on the day the requirement is complied with shall not count towards the period of 21 days referred to in subsection (2).

(7) Where a person, without reasonable excuse, fails to comply with a requirement imposed under subsection (3)(a) or (5)(b), the Board may determine that the person is not eligible for the medical expenses or expenses for medical appliances claimed.

(8) A person who submits a medical report as required under subsection (3)(a)—

- (a) may claim from the Board the expenses paid by him as the fees charged by his medical practitioner or registered Chinese medicine practitioner for preparing the report; and
- (b) shall support the claim by producing the receipt for payment of those expenses.

The Board shall pay to the person those expenses to the extent that they are reasonably incurred.”.

26. Further medical examination

Section 23A(3)(a) is repealed and the following substituted—

“(a) a request under this section is supported by—

- (i) an opinion given by a medical practitioner attending the person in Hong Kong to the effect that the person's health has deteriorated such that total incapacity or death is likely to occur before the period of 21 months referred to in subsection (2) has elapsed; or
- (ii) an opinion given by a registered Chinese medicine practitioner attending the person in Hong Kong to the effect that the person's health has deteriorated such that death is likely to occur before the period of 21 months referred to in subsection (2) has elapsed; and”.

27. Payments by the Board from the Fund

(1) Section 28 is amended by adding—

- “(aa) fees charged by the Pneumoconiosis Medical Board, a medical practitioner or a registered Chinese medicine practitioner for, or in connection with, giving an opinion for the purposes of section 12B;
- (ab) expenses paid as the fees charged by a medical practitioner or registered Chinese medicine practitioner for preparing a medical report for the purposes of section 12B;”.

(2) Section 28(d) is amended by repealing “expenses for medical treatment and” and substituting “medical expenses and expenses for”.

28. Survival of entitlement to compensation and payment under the Ordinance

Section 40D(2) is amended by repealing “expenses for medical treatment or” and substituting “medical expenses or expenses for”.

29. Section added

The following is added—

“50. Transitionals for Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005

(1) A reference in this Ordinance to medical treatment given by or under the supervision of a registered Chinese medicine practitioner or to an opinion given by him does not include any treatment or opinion so given before the commencement of the 2005 Ordinance.

(2) Section 12AA does not affect the entitlement to any cost of medicines if the medicines were prescribed before the commencement of the 2005 Ordinance.

(3) The amendments made by the 2005 Ordinance to sections 12B and 28 do not apply to medical expenses and expenses for medical appliances incurred before the commencement of that Ordinance. Those sections as were in force immediately before that commencement shall continue to apply to those expenses as if those sections had not been amended by that Ordinance.

(4) In this section, “2005 Ordinance” (《2005年條例》) means Part 4 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005 (of 2005).”.

30. Expenses for medical treatment and medical appliances

(1) The Second Schedule is amended by repealing the heading and substituting “MEDICAL EXPENSES AND EXPENSES FOR MEDICAL APPLIANCES”.

(2) The Second Schedule is amended, in Part I—

(a) by repealing the heading and substituting “MEDICAL EXPENSES UNDER SECTION 12”;

(b) in paragraphs 1(a) and 2(a), by repealing “expenses incurred in respect of the medical treatment” and substituting “medical expenses”.

PART 5

RELATED AMENDMENTS

Mandatory Provident Fund Schemes (General) Regulation

31. Claim for payment on ground of total incapacity

(1) Section 164(2)(a), (4)(a), (5)(a) and (6)(a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding “or registered Chinese medicine practitioner” after “practitioner”.

(2) Section 164 is amended by adding—

“(7) A reference in this section to a medical certificate issued by a registered Chinese medicine practitioner does not include a medical certificate so issued before the commencement of section 31 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005 (of 2005).

(8) For the purposes of this section, “registered Chinese medicine practitioner” (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549).”.

Mandatory Provident Fund Schemes (Exemption) Regulation

32. Mandatory conditions

(1) Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended, in section 6(9)(a), by adding “or registered Chinese medicine practitioner” after “practitioner”.

(2) Schedule 2 is amended, in section 6, by adding—

“(13) For the purposes of subsection (9)(a)—

(a) “registered Chinese medicine practitioner” (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549); and

(b) a reference to a certificate signed by a registered Chinese medicine practitioner does not include a certificate so signed before the commencement of section 32 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2005 (of 2005).”.

Explanatory Memorandum

This Bill contains miscellaneous amendments, primarily, to provide for recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered Chinese medicine practitioner for the purposes of entitlement to certain employees’ benefits under the Employment Ordinance (Cap. 57), the Employees’ Compensation Ordinance (Cap. 282) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360).

2. Part 2 of the Bill contains amendments to the Employment Ordinance (Cap. 57) and its subsidiary legislation, and the recognition of certification and medical examination and treatment relates to—

- (a) an employee being permanently unfit for his current work which entitles the employee to terminate his contract of employment without notice or payment in lieu (clause 3);
- (b) the taking of maternity leave and the unfitness of a pregnant employee for certain heavy, hazardous or harmful work (clauses 4 and 5);
- (c) an employee being permanently unfit for his current work for the purposes of a claim for long service payment (clause 6);
- (d) a period of unfitness for work for the purposes of a claim for sickness allowance (clause 7);
- (e) a scheme of medical treatment operated by an employer (clause 8);
- (f) an employee being incapable of work in consequence of sickness or injury for the purposes of the concept of “continuous contract” (clause 10); and
- (g) the fitness of a child to be employed (clause 11).

3. Part 3 of the Bill contains amendments to the Employees’ Compensation Ordinance (Cap. 282), and the recognition of certification and medical examination and treatment relates to—

- (a) a period of absence from duty being necessary for the purposes of a claim for compensation in the case of temporary incapacity resulting from an accident (clause 13);
- (b) a period during which the employee receives medical treatment for the purposes of a claim for medical expenses (clause 14(1));
- (c) the employer requiring the employee to submit to medical examination or treatment (clause 16);
- (d) an application for review of periodical payment (clause 18); and
- (e) the medical treatment that an employee must submit to before he is entitled to the cost of supplying and fitting a prosthesis or surgical appliance (clause 19).

Incidentally, in relation to the matters referred to in subparagraphs (c) and (d), similar recognition is also extended to medical examination and treatment and certification by a registered dentist.

4. Part 4 of the Bill contains amendments to the Pneumoconiosis (Compensation) Ordinance (Cap. 360), and the recognition of medical treatment, opinion or medical report relates to—

- (a) the entitlement of a person suffering from pneumoconiosis to the payment of medical expenses in respect of medical treatment received (clause 22);

- (b) whether the medical treatment received by a person suffering from pneumoconiosis is reasonably necessary in connection with his pneumoconiosis (clause 25(3)); and
- (c) the imminence of the death of a person suffering from pneumoconiosis for the purposes of a request for further medical examination (clause 26).

5. Under the Bill, fees of a registered Chinese medicine practitioner will be included in “medical expenses” under the Employees’ Compensation Ordinance (Cap. 282) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360). Recovery of medical expenses that are cost of medicines will be subject to certain conditions. The cost will be payable only if the medicines are prescribed medicines for the direct treatment of the work injury (in the case of the Employees’ Compensation Ordinance) or prescribed medicines for such medical treatment as is reasonably necessary in connection with pneumoconiosis (in the case of the Pneumoconiosis (Compensation) Ordinance). However, the cost will not be payable if it relates to medicines that are not registered as required under the relevant legislation or to medicines in respect of which the employee or claimant fails, without reasonable excuse, to produce on request the relevant prescription and receipt that contain the prescribed particulars. Chinese herbal medicines and proprietary Chinese medicines prescribed by a registered Chinese medicine practitioner are covered for the first time. Correspondingly, recovery of cost of medicines prescribed by a medical practitioner or registered dentist will also be subject to conditions. Further, the cost of Chinese herbal medicines is not payable if the medicines are sold otherwise than by the holder of a retailer licence or a registered Chinese medicine practitioner for administering to his patient (clauses 12(1) and (2), 15, 22 and 24).

6. In addition, under the 3 Ordinances, an employee may be denied certain benefits if he fails, without reasonable excuse, to submit to free medical treatment provided by the employer. Apart from providing for the recognition of medical treatment by a registered Chinese medicine practitioner, the Bill also contains amendments under which an employee will not be denied the benefits if the employer does not provide to the employee medical treatment that is of the same description as the medical treatment that the employee receives elsewhere (clauses 7(2), (4), (6), (7) and (8), 14(3) and (4) and 23(3) and (5)).

7. Section 16 of the Employees’ Compensation Ordinance (Cap. 282) provides for an employer requiring his injured employee to be examined. The section is amended so that the examination is to be conducted by a medical practitioner, registered Chinese medicine practitioner or registered dentist, depending on whether the employee is attended by a medical practitioner,

registered Chinese medicine practitioner or registered dentist. New provisions are made for a report on the examination to be sent to the employer and for the employee's right to make a written request for the employer to send a copy of the report to him, and an employer's failure to comply with the request without reasonable excuse is made an offence (clause 16).

8. On the other hand, under section 15AA or 31R of the Employment Ordinance (Cap. 57), an employer may require an employee who has produced a medical certificate or certificate as to the employee's unfitness for certain work to submit to a medical examination for obtaining a second opinion. These provisions are amended so that the examination is to be conducted either by a registered medical practitioner or registered Chinese medicine practitioner, regardless of whether the medical certificate or certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner (clauses 5 and 6).

9. Currently, under the Pneumoconiosis (Compensation) Ordinance (Cap. 360), the Pneumoconiosis Compensation Fund Board may, in relation to a person's claim for medical expenses or expenses for medical appliances, seek an opinion on whether the medical treatment or appliances concerned are reasonably necessary in connection with the person's pneumoconiosis or any incapacity arising from it. New provisions are made to empower the Pneumoconiosis Compensation Fund Board to require the person claiming expenses to submit a medical report to the Board and to appear before the Pneumoconiosis Medical Board, a medical practitioner or a registered Chinese medicine practitioner from whom an opinion is sought for the purposes of answering queries. This applies where the medical treatment is provided by a medical practitioner or registered Chinese medicine practitioner. Expenses incurred for having a medical report prepared and fees charged for, or in connection with, giving an opinion are to be paid from the Pneumoconiosis Compensation Fund (clauses 25(3) and 27(1)).

10. Under clause 17, the Commissioner for Labour is empowered to appoint a registered Chinese medicine practitioner to an Employees' Compensation (Ordinary Assessment) Board. Under clause 20, the Director of Health is empowered to appoint a registered Chinese medicine practitioner to the Prostheses and Surgical Appliances Board.

11. An amendment is made to the Pneumoconiosis (Compensation) Ordinance (Cap. 360) to make it clear that medical expenses for medical treatment given outside Hong Kong are not recoverable and an opinion given by a medical practitioner or registered Chinese medicine practitioner attending a person outside Hong Kong is not recognized (clauses 23(4) and 26).

12. As transitional arrangements, the Bill excludes from recognition under the Employment Ordinance (Cap. 57) a certificate or medical certificate issued by a registered Chinese medicine practitioner before the commencement of the relevant amendments and a certificate or medical certificate issued by him on or after the commencement of the relevant amendments to the extent that the certificate relates to sickness days, period of maternity leave or period of incapability for work that occurs before the commencement of the relevant amendments. Further, amendments to the Employees' Compensation Ordinance (Cap. 282) do not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement of Part 3 of the Bill. In addition, the Bill excludes from recognition under the Pneumoconiosis (Compensation) Ordinance (Cap. 360) medical treatment and opinion given by a registered Chinese medicine practitioner before the commencement of the relevant amendments. Conditions on recovery of cost of medicines will not apply to medicines that have been prescribed before that commencement. The Pneumoconiosis Compensation Fund Board's power to require a person claiming expenses to submit a medical report and to appear before the Pneumoconiosis Medical Board, a medical practitioner or a registered Chinese medicine practitioner will not apply to expenses incurred before that commencement (clauses 9, 21 and 29).

13. The Bill replaces references in the Employment Ordinance (Cap. 57) to "medical practitioner" by references to "registered medical practitioner" for the sake of consistency within that Ordinance (clauses 7, 8 and 11). The Bill also makes certain minor drafting amendments (clauses 12(3), 23(1) and (2), 25(1) and (2), 27(2), 28 and 30).

14. Part 5 of the Bill contains related amendments to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) and the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) for the recognition of a medical certificate or certificate issued by a registered Chinese medicine practitioner (clauses 31 and 32).