

立法會
Legislative Council

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Paper for the House Committee Meeting on 2 July 2010

**Legal Service Division Report on
Residential Care Homes (Persons with Disabilities) Bill**

I. SUMMARY

- 1. Objects of the Bill** To regulate residential care homes for persons with disabilities (RCHDs) by a statutory licensing system, and to make consequential and related amendments to other Ordinances.
- 2. Comments**

 - (a) The proposed licensing scheme is modelled on that applicable to residential care homes for elderly persons under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459).
 - (b) The statutory licensing scheme for RCHDs will be administered by the Director of Social Service (DSW).
 - (c) Under the Bill, operation of RCHDs without a licence is an offence.
 - (d) The Bill also provides for appeals against the decisions of DSW made in respect of licences for RCHDs and/or certificates of exemption for existing RCHDs to the Administrative Appeals Board.
 - (e) The Secretary for Labour and Welfare will be empowered to make regulations for RCHDs relating to their operation, management, supervision and inspection.
- 3. Public Consultation** The Administration has consulted the Rehabilitation Advisory Committee, the rehabilitation sector, persons with disabilities, operators of RCHDs and other stakeholders on the proposed licensing scheme. The consulted parties generally supported the proposal, while some expressed concerns on the costs implication for compliance with the scheme.
- 4. Consultation with LegCo Panel** The Administration briefed the Panel on Welfare Services (the Panel) on the proposed licensing scheme at the meetings on 11 June 2007, 8 May 2008, 12 January 2009 and 12 April 2010. The Panel also received views from deputations at the meeting on 24 April 2010. While the Panel was generally supportive of the Bill, some members raised concerns on various matters, including the implications of the scheme on the operation of existing RCHDs and the proposed licensing standards for RCHDs.
- 5. Conclusion** In view of the above concerns, members may wish to study the policy aspects of the Bill in detail.

II. REPORT

Objects of the Bill

To regulate residential care homes for persons with disabilities (PWDs) by a licensing system, and to make consequential and related amendments to other Ordinances.

LegCo Brief Reference

2. Members may refer to the LegCo Brief (File Ref: LWB 9/3939/97 (CR)) issued by the Labour and Welfare Bureau on 15 June 2010.

Date of First Reading

3. 30 June 2010.

Background

4. At present, while residential care homes for elderly persons are regulated by the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (RCHE Ordinance), there is no legislation to monitor and regulate the operation of residential care homes for PWDs (RCHDs).

5. According to paragraph 2 of the LegCo brief, as at end-2009, there were altogether 304 RCHDs which included 228 subvented and 2 Government-operated homes; 20 self-financing homes operated by non-government organizations; and 54 private homes. The demand for residential care services for PWDs is increasing. Currently, the regulation of these RCHDs is mainly administrative and voluntary in nature. In the case of subvented RCHDs, their service standards are monitored by the Social Welfare Department (SWD) under the Service Performance Monitoring System since 1999. A Code of Practice was issued by SWD in 2002 to provide a guide on the service standards for all RCHDs. However, the service standards in the Code of Practice are not mandatory, and any breach of the Code of Practice by the operators of RCHDs would not attract any legal sanction. Apart from the Code of Practice, SWD has since 2006 implemented a Voluntary Registration Scheme (VRS) for private RCHDs to encourage operators of private RCHDs to enhance their service quality. According to paragraph 5 of the LegCo Brief, as at April 2010, the response from private RCHDs has been unsatisfactory. In view of this, the Administration considers that it is unlikely for private RCHDs to improve their service quality on their own initiative and legislative means is the only option for the Administration to ensure that all RCHDs meet the basic service standards.

Comments

6. The Bill aims to provide for the control of RCHDs through a statutory licensing scheme administered by the Director of Social Welfare (DSW). The licensing scheme is modelled on that provided in the RCHE Ordinance. The key features of the proposed statutory licensing scheme for RCHDs are set out in the following paragraphs.

7. Under clause 4 of the Bill, it is an offence for a person to operate, keep, manage or otherwise have control of a RCHD without a licence. The maximum penalty for the offence is a fine at level 6 (\$100,000) and two years' imprisonment, and in the case of a continuing offence, a further fine of \$10,000 for each day during which the offence continues. Certain types of residential care homes are excepted from the application of clause 4. These include existing RCHDs with certificates of exemption issued under clause 11 of the Bill.

8. Under the Bill, DSW will be empowered to administer, consider and make decisions on the following aspects of the statutory licensing scheme for RCHDs -

- (a) application for and issue of licences (clause 7);
- (b) renewal of the licences (clause 8);
- (c) cancellation or suspension of the licences and variation or amendment of the conditions of licences (clause 9);
- (d) refusal to issue or renew licences (clause 10);
- (e) application for and issue or renewal of certificates of exemption in respect of existing RCHDs (clauses 11 and 12);
- (f) inspection of RCHDs by specified persons (inspectors) appointed by DSW (clauses 15 and 16);
- (g) empowering DSW to give directions to ensure the proper operation and management of RCHDs (clause 18);
- (h) making and issue of orders for cessation of use of premises as RCHDs under specified circumstances; and
- (i) issue of Codes of Practice to set out the principles, procedures, guidelines and standards for the operation of RCHDs for compliance by licensees (clause 23).

9. Clause 14 of the Bill provides for appeals against the decisions of DSW made in respect of licences for RCHDs or certificates of exemption for existing RCHDs to the Administrative Appeals Board.

10. Other provisions of the Bill relate to the power of the Secretary for Labour and Welfare (SLW) to make regulations for RCHDs relating to their operation, management, supervision and inspection, and consequential amendments to other related Ordinances, including amendments to the RCHE Ordinance.

11. The licensing scheme proposed in the Bill does not apply to certain types of establishments. These include establishments used or intended for use solely for the purpose of medical treatment and RCHDs excluded by DSW by order published in the Gazette.

12. If enacted, the Bill will come into operation on a day to be appointed by SLW by notice published in the Gazette.

Public Consultation

13. According to paragraphs 18 to 20 of the LegCo Brief, the Administration has consulted the Rehabilitation Advisory Committee, the rehabilitation sector, parent groups, PWD groups, Hong Kong Council of Social Service, operators of subvented, self-financing and private RCHDs and other stakeholders on the proposal to introduce a statutory licensing scheme to regulate the operation of all RCHDs in Hong Kong. The consulted parties generally supported the proposal and urged the Administration to speed up the legislative process, while the rehabilitation sector and private RCHDs operators expressed concerns that some private RCHDs might close down upon the implementation of the statutory licensing scheme or increase fees to cover the additional costs for compliance with the statutory licensing requirements.

Consultation with LegCo Panel

14. The Administration briefed the Panel on Welfare Services (the Panel) on the proposed statutory licensing scheme at the meetings on 11 June 2007, 8 May 2008, 12 January 2009 and 12 April 2010. The Panel also received views from deputations at the meeting on 24 April 2010. While the Panel was generally supportive of the Bill and urged for its early implementation, some members noted with concern that some private RCHDs would close down upon the implementation of the statutory licensing scheme for being unable to meet the licensing requirements, and thereby resulting in displacement of residents. These members urged the Administration to make necessary decanting arrangements for the affected residents. On the other hand, some members were concerned that the proposed licensing standards for space and staffing were lower than those set out in the existing non-statutory Code of Practice for all RCHDs issued in 2002.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns expressed by the members of the Panel and the relevant parties mentioned above, members may wish to study the policy aspects of the Bill in detail.

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