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**Subcommittee on Residential Care Homes (Persons with Disabilities)
Regulation and Residential Care Homes (Persons with Disabilities)
Ordinance (Commencement) Notice 2011**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarizes past discussions by the Bills Committee on the Residential Care Homes (Persons with Disabilities) Bill ("the Bills Committee") on the licensing standards and requirements for residential care homes for persons with disabilities ("RCHDs") and the commencement of the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011) ("the Ordinance").

Background

2. The Ordinance provides for the control of RCHDs through a licensing scheme administered by the Director of Social Welfare ("DSW").
3. Section 1(2) of the Ordinance provides that the Ordinance shall come into operation on a day to be appointed by the Secretary for Labour and Welfare ("SLW") by notice published in the Gazette.
4. Section 24 of the Ordinance empowers SLW to make regulations. A Regulation stipulating the requirements on the operation, management and supervision of RCHDs (including staffing and space requirements, health and safety requirements, penalties and fees, etc.) will be made after the passage of the Residential Care Homes (Persons with Disabilities) Bill.
5. Section 23 of the Ordinance empowers DSW to issue a Code of Practice ("CoP") to provide elaborated details on procedures, guidelines and standards for the operation, management and other control of RCHDs.

6. On 30 June 2011, the Administration published in the Gazette the Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011 ("the Commencement Notice") and Residential Care Homes (Persons with Disabilities) Regulation ("the Regulation"). The Commencement Notice specifies 18 November 2011 as the date on which the Ordinance (except Part 2) comes into operation.

Deliberations of the Bills Committee

7. In the course of deliberations on the Residential Care Homes (Persons with Disabilities) Bill, the Bills Committee had discussed, among other things, issues relating to the licensing requirements and standards stipulated in the draft Regulation and the draft CoP, and the commencement of the licensing system.

Spatial requirement

8. Members noted that the proposed minimum area of floor space required for each resident in a licensed RCHD would be 6.5 m² across the board for all RCHDs. In determining the area of floor space, the area of any open space, podium, garden or any other area in the RCHD which DSW considered unsuitable for the purpose of a RCHD would be disregarded.

9. Members were gravely concerned that the proposed spatial requirement was lower than that set out in the existing non-statutory CoP for RCHDs issued in 2002 ("2002 CoP"), under which the minimum area of floor space for each resident of homes for mildly to moderately disabled persons and severely disabled persons was 6.5m² and 8m² respectively. Members stressed the Government's responsibility to ensure the service quality of RCHDs. The service standards of RCHDs should not be compromised in order to facilitate substandard homes to continue operation. They considered that the floor area for the purpose of calculating spatial requirement should include personal living space and nursing care space for RCHD residents. Members also queried how RCHD residents could be provided with adequate personal living and nursing care space under the proposed minimum spatial requirement of 6.5m² per resident.

10. The Administration explained to members that the proposed licensing scheme aimed to set out the minimum requirements and standards on the operation of RCHDs. In tandem with the making of the Regulation by SLW, DSW would exercise his power to issue the CoP on the basis of the licensing requirements stipulated in the Regulation. For this purpose,

a Working Group comprising representatives from persons with disabilities ("PWDs"), parent groups, subvented RCHDs, private RCHDs, the academia and the Hong Kong Council of Social Service had been set up to review the 2002 CoP which was drawn up with reference to the standards for subvented RCHDs. The Working Group had convened meetings and organised eight consultation sessions to gauge the views of the rehabilitation sector and stakeholders. The Panel on Welfare Services and the Rehabilitation Advisory Committee had also discussed the draft CoP at several meetings. The Administration stressed that the licensing standards proposed in the latest draft CoP ("2008 CoP") had balanced the practical situations of RCHDs and the needs of PWDs.

11. Some members remained of the view that the Administration should critically consider lifting the minimum spatial requirement, especially for persons with severe disabilities. It was suggested that consideration should be given to including outdoor space (or a portion thereof) for the purpose of calculating the spatial requirement in order to encourage the operators to provide more spacious area for recreational activities for the RCHD residents.

12. The Administration advised that the number of residents to be accommodated in a RCHD was determined by its physical size and the space standard per capita, i.e. the net floor area for the exclusive use of the home. The inclusion of outdoor space, such as garden and podium might result in a reduction in the usable area for each resident. Diverse views had been received from the residents and the operators on the basis for calculating the floor space. Nevertheless, in the light of members' views, the Administration agreed to revisit the level of minimum area of floor space to be required for each resident in a RCHD and the criteria for determining the area in a RCHD for the purpose of the spatial requirement. The space standard per capita would be stipulated in the Regulation which would be tabled for negative vetting by the Legislative Council after the passage of the Bill.

Staffing requirement

13. Members reckoned the need to set out the minimum staffing requirements for each type of RCHDs in different periods of a day according to the levels of care required by the residents. The respective minimum staffing requirements for different types of RCHDs, and the duties and responsibilities of different types of staff would be set out in the Regulation and CoP.

14. Noting that the proposed minimum staffing requirements set out in the 2008 CoP were lower than those in the 2002 CoP, members expressed concern that the proposed minimum staffing requirements were too low to ensure the service quality of RCHDs. For instance, the respective minimum staffing provision for ancillary workers in a high-level-care home was one for every 30 residents in the 2002 CoP and one for every 40 residents as proposed in the 2008 CoP. Members highlighted the need for the Administration to assist the private RCHD sector to upgrade and enhance the service quality, instead of lowering the staffing requirement to facilitate the continued operation of private RCHDs after the implementation of the licensing scheme.

15. Some members were particularly concerned about the service quality and workload of staff of high-level-care homes having regard to their slim workforce under the proposed minimum staffing requirement. For instance, the manning ratio for care workers was one to 20 residents between 7 am and 3 pm, whereas the manning ratio was reduced to one to 60 residents between 10 pm and 7 am. The manning ratio for health workers was one to 30 residents between 7 am and 6 pm. Members also queried why nurses and health workers were not required for the night shift.

16. The Administration reiterated that the minimum staffing requirements had balanced the different views of the rehabilitation sector and stakeholders upon consultation and deliberations of the Working Group to review the 2002 CoP. Under the existing arrangement, the RCHD residents would seek emergency ambulance service for receiving medical treatment at public hospitals if such needs arose at the night time. The Administration advised members that none of the existing private RCHDs complied with the requirements under the non-statutory 2002 CoP, and a majority of them did not comply with the proposed requirements under the 2008 CoP. Hence, by adopting the 2008 CoP, the private RCHDs would achieve a material improvement in service standards after the introduction of the licensing system.

17. Another issue of concern to members was the impact of the statutory minimum wage on the manpower requirement of RCHDs. Members noted the Administration's advice that the draft CoP had been drawn up prior to the coming into force of the statutory minimum wage legislation. Hence, the element of statutory minimum wage had not been reflected in the CoP. Notwithstanding this, the Administration would take into account the impact of the statutory minimum wage on staff costs and an eight-hour work per shift in drawing up the staffing requirement for the Bought Place Scheme homes, although the actual number of working hours

per shift was usually agreed upon in the contract of employment between the employer and the employee. The Administration pointed out that since the implementation of statutory minimum wage, the RCHD operators had been advised to observe the requirements under the Minimum Wage Ordinance (Cap. 608) in arranging duty hours for their staff. To address members' concern about possible misunderstanding, the Administration agreed to spell out explicitly the arrangements in the CoP.

Commencement of the licensing system

18. Members noted the Administration's plan to introduce the licensing system before the end of the 2010-2011 legislative session. Members appreciated the need to gazette the Regulation as early as practicable so that the RCHD sector would be aware of the statutory requirements on the operation, management and supervision of RCHDs, and make rectification works within the 18-month grace period as appropriate. Nevertheless, members stressed the importance of following due process for the scrutiny of subsidiary legislation. After taking into account members' views, the Administration agreed to gazette the Commencement Notice and the Regulation on 30 June 2011 and appoint 11 November 2011 (i.e. after the expiration of the full negative vetting period on the assumption that the first Legislative Council ("LegCo") meeting in the 2011-2012 session would be held on 12 October 2011) as the date on which both the Ordinance (except Part 2 on sanctions) and the Regulation would come into operation.

19. The Administration proposes in the Commencement Notice to appoint 18 November 2011 as the date on which the Ordinance (except Part 2) and the Regulation come into operation.

Relevant papers

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

Appendix

Relevant papers

Committee	Date of meeting	Paper
Panel on Welfare Services	11 June 2007 (Item IV)	Agenda Minutes
Panel on Welfare Services	8 May 2008 (Item I)	Agenda Minutes CB(2)2490/07-08(01) CB(2)2490/07-08(02)
Panel on Welfare Services	12 January 2009 (Item V)	Agenda Minutes
Panel on Welfare Services	12 April 2010 (Item IV)	Agenda Minutes
Panel on Welfare Services	24 April 2010 (Item I)	Agenda Minutes
Legislative Council	15 June 2011 (Item I(4))	Report of the Bills Committee on Residential Care Homes (Persons with Disabilities) Bill

Council Business Division 2
Legislative Council Secretariat
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