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Panel on Health Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 11 April 2011**

Use of public obstetric services by Non-eligible Persons

Purpose

This paper gives an account of the past discussions by members on the use of public obstetric services by Non-eligible Persons ("NEPs").

Background

2. At present, public healthcare services in Hong Kong are available to Hong Kong residents at highly subsidized rates. To ensure rational use of the finite public resources, only Eligible Persons ("EPs") (i.e. holders of Hong Kong Identity Cards and children under 11 years of age who are Hong Kong residents) are eligible for the highly subsidized public healthcare services. NEPs (i.e. persons who are not holders of Hong Kong Identity Cards and children under 11 years of age who are not Hong Kong residents) who seek access to the public healthcare services will have to pay the specified NEP charges. The definition of EPs and NEPs, adopted in 2003 having regard to a recommendation made by the Task Force on Population Policy, applies to the respective charges for all public healthcare services, including the obstetric services.

3. To address the increasing use of obstetric services in Hong Kong by non-Hong Kong resident women including Mainland women, the Hospital Authority ("HA") introduced an obstetric package charge for NEPs at a rate of \$20,000 for a stay of three days and two nights in all public hospitals on 1 September 2005. The measure had the support of the Panel on Health Services.

4. Since 1 February 2007, HA has implemented revised arrangements for obstetric services for NEPs to ensure that local pregnant women are given proper

obstetric services and priority to use such services; limit the number of NEPs coming to Hong Kong to give births; and deter the NEPs' dangerous behaviour of seeking emergency hospital admissions through Accident and Emergency Departments shortly before labour. Under the revised arrangements, HA reserves sufficient places for Hong Kong residents to ensure that they have priority over NEPs in the use of obstetric services and will only accept booking from NEPs when extra places are available. The obstetric package charge for NEPs with a booking is \$39,000, which covers one antenatal check in a specialist outpatient clinic, the delivery and the first three days and two nights stay for the delivery. The fee has to be paid in full at the time of booking. For cases of delivery without prior booking and/or who have not attended any antenatal check-up at a HA specialist outpatient clinic, the charge will be \$48,000.

5. All private hospitals operating obstetric services have introduced similar booking systems, with a booking confirmation certificate issued to non-local pregnant women who have secured a booking and paid a deposit for the inpatient services.

Deliberations by members

6. The Panel on Health Services held four meetings between January 2007 and February 2008 to discuss the new obstetric service arrangements for NEPs and received the views of deputations at two meetings. The Panel on Security held one meeting in May 2007 to discuss the complementary immigration measures to tie in with the arrangements. The Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("the Subcommittee") held four meetings between June 2009 and July 2010 to discuss with the Administration and receive the views of deputations on the impact of the arrangements on Mainland women whose spouses were Hong Kong residents. The deliberations and concerns of members are summarized below.

Level of the new obstetric package charges

7. Question was raised about the basis for setting the obstetric package charges for booked cases and those cases that sought hospital admission without booking at \$39,000 and \$48,000 respectively.

8. The Administration advised that the fees of HA's private services, which were based on the costs of providing services to private patients, were adopted as the basis for setting the obstetric package charges for NEPs. In determining the obstetric package charges, references had been made to charges of private

hospitals, including those of the private doctors, so that NEPs would not be attracted to public hospitals because of lower fees.

9. As regards the reason for setting a higher charge for non-booked cases, the Administration advised that if NEP mothers had not received any antenatal care before the deliveries, all tests would have to be done on an urgent basis and results would need to be made available immediately for treating the patients. More staff and resources would be involved in such cases. Having regard to the higher costs involved and the charges of private hospitals, a higher level of rate was set for non-booked cases.

Refund of the obstetric package charges for NEPs

10. Members noted that the booking fees for public obstetric services were non-refundable so as to contain the number of non-local pregnant women using public obstetric services and to minimize the abuse of the obstetric booking system. There was a suggestion of refunding the fees paid if the delivery did not take place eventually due to valid reasons such as miscarriage.

11. Having considered the actual situation after implementation of the new obstetric service arrangements, HA had implemented a refund policy since 29 October 2007. Under the policy, a refund of the obstetric package charges for NEPs would be made under two special circumstances. In cases involving miscarriage, termination of pregnancy or still birth, a partial refund of not more than \$20,000 would be made subject to deduction of those charges for the hospital services which the patient had received for the concerned pregnancy. In cases involving a change in the patient's status from a NEP to EP after payment of the service charge but before the delivery, a full refund might be made subject to deduction of those charges for the hospital services which the patient had received for the concerned pregnancy. NEPs who had paid on or after 1 February 2007 and fulfilled the relevant criteria could also apply for a refund.

12. On the reason for providing a partial but not full refund for cases involving miscarriage, termination of pregnancy or still birth, the Administration advised that the refund amount was set at no more than \$20,000 as a disincentive for NEPs to use public obstetric services, as well as to cover the additional costs incurred by HA in the implementation of the new obstetric service arrangements, which included the cost of operating the booking system and additional manpower cost for providing the obstetric services.

13. Members were subsequently advised that HA had decided to revise the amount of refund for cases involving miscarriage, termination of pregnancy and still birth from the level of \$20,000 to \$39,000 in mid-July 2010 taking into

consideration that the loss of baby under these circumstances was a very sad and unfortunate event for the family concerned. As with the existing refund arrangement, the refund would be subject to deduction of those charges for the hospital services which the patient had received for the same pregnancy. HA would also consider refund applications for the obstetric services utilized from 1 February 2007.

Capacity for public obstetric services

14. Members were concerned that HA's capacity to respond to the increasing demand for the obstetric services was constrained by the tight manpower situation amongst midwives and neonatal intensive care nurses. Members noted that as neonatal intensive care was generally not available in the private sector, almost all cases of premature or high risk babies were referred to public hospitals. Members sought information on the measures to be put in place by HA to strengthen its manpower for the obstetric services in order to meet the service demand.

15. The Administration advised that to cope with the increasing demand for the obstetric services in public hospitals, additional full-time/part-time nurses and supporting staff were employed/deployed to further strengthen the manpower for the obstetric services. Additional midwife training courses were conducted in March 2007 for supplying 80 midwives by September 2008. Another training course was conducted in September 2007 to train more nurses for the neonatal intensive care unit. In addition, measures including granting of extra salary increment to practising midwives, promotion of deserved officers to the position of Advanced Practice Nurse, granting of overtime allowance and payment in lieu of leave, etc. had been implemented by HA with a view to boosting morale and improving retention of staff engaged in the obstetric services. Additional obstetric beds had also been opened to increase the overall capacity for the obstetric services to cope with the surge of demand in peak seasons. To ensure that local women would have adequate access to the necessary obstetric services in public hospitals, HA stood ready to adjusting the quota for booking by NEPs accordingly and, if necessary, opening new obstetric units in public hospitals to meet the increased demand from local pregnant women.

16. Members were subsequently advised that HA had been able to meet the service needs of local pregnant women under the new arrangements. By comparing the first five months of 2010 with the same period in 2006, the number of Hong Kong resident women giving birth in public hospitals had increased by 13% while the number of non-Hong Kong resident women giving birth in public hospitals had decreased by 16.5%. Separately, the number of deliveries by non-Hong Kong resident women in public hospitals through the Accident and

Emergency Departments had decreased significantly by 93.1%. As the majority of non-local pregnant women with booking had undergone antenatal examination before delivery, the risk of difficult labour, unrecognized congenital anomalies for the babies and infection for healthcare workers was reduced. This had not only provided better safeguards for the women and their babies, but had also eased the workload and pressure of frontline staff.

Complementary immigration measures

17. Members noted that to tie in with the new obstetric service arrangements for NEPs, the Immigration Department had stepped up arrival checking of all visitors who were at an advanced stage of pregnancy (i.e. having been pregnant for 28 weeks or above). Those visitors whose purpose of visit was believed to be to give birth in Hong Kong would be required to produce proof of booking arrangements with a local hospital. Any visitors who could not meet the immigration requirements concerned might be denied entry.

18. Question was raised as to whether the Administration would adopt measures to combat activities involving Mainland pregnant women entering Hong Kong for child delivery through the arrangement of intermediaries.

19. The Administration advised that there was so far no indication of any syndicated illegal activities seeking to arrange illegal immigrants or overstayers to give birth in Hong Kong. The Immigration Department had been closely monitoring such activities and would take proactive combating measures where necessary.

NEPs whose spouses are Hong Kong residents

20. Some members were of the view that the implementation of the obstetric service arrangements ran contrary to the population policy of encouraging births. The arrangements were also detrimental to family unity and social integration, as many Mainlanders whose spouses were Hong Kong residents were forced to return to the Mainland to give birth due to the lack of means. Unlike children who could immediately settle in Hong Kong if they were born in Hong Kong regardless of whether one of their parents was Hong Kong resident, children born in the Mainland to Mainlanders whose spouses were Hong Kong residents had to wait for their turn for One-way Permit ("OWP") to settle in Hong Kong.

21. The Administration advised that the prevalence of marriages between residents of Hong Kong and the Mainland did not constitute any reason to go against the well-established policy that heavily subsidized healthcare services should only be made available to local residents but not their non-local spouses. There were established procedures for those children of Hong Kong residents

who were born in the Mainland to apply to the relevant Mainland authorities for permission to move to Hong Kong permanently for family reunion in an orderly fashion under the OWP System. For children born to Mainland-Hong Kong couples, the waiting time to come to Hong Kong was about four years. This applied to all such children irrespective of whether they were born in Hong Kong but due to child care arrangements had to return to the Mainland and come back to Hong Kong together with their mothers when the latter obtained approval under the OWP system; or born in the Mainland and hence had to apply under the OWP system to settle in Hong Kong.

22. On the suggestion that NEPs whose spouses were Hong Kong residents should be charged the old rate of \$20,000 which was set on a cost-recovery basis, the Administration advised that the old rate of \$20,000 was much lower than the charges of most private hospitals for similar services at the relevant time. It was necessary for HA to revise its obstetric service charges for NEPs to make public hospitals less attractive to the non-local pregnant women.

23. The Panel on Health Services passed a motion at its meeting on 16 April 2007 urging the Government to exempt those Hong Kong families of which the father was a Hong Kong resident and the mother was a Two-way Permit holder from the revised obstetric package charges.

24. In response to the motion, the Administration advised that all NEPs (including those whose spouses were Hong Kong residents) should continue to be subject to the same NEP rates for relevant services in the public healthcare system. The suggestion to exempt the Mainland women whose spouses were Hong Kong residents from the NEP obstetric charges would re-open the avenue for NEPs to come to Hong Kong to seek access to the obstetric services in public hospitals, thereby competing with Hong Kong resident women for the obstetric services. Taking into account the policy objectives of the obstetric service charge arrangements; the read-across implications on other heavily subsidized public services; and the need to ensure rational use of the finite public resources, the Administration considered the existing obstetric service charge arrangements for NEPs appropriate.

25. Some members remained of the view that NEPs whose spouses were Hong Kong residents should not be treated on an equal footing with those NEPs with no marital ties in Hong Kong. At its meeting on 28 July 2009, the Subcommittee passed a motion requesting the Government to assess the impact on the capacity of public medical services and the population policy if Mainland spouses of Hong Kong residents were given equal treatment with local women in using public obstetric services.

26. In response to the motion, the Administration advised that the annual delivery capacity in HA had been fully utilized in 2008 and 2009. The service capacity had been stretched to its limit during peak seasons and the booking for public obstetric services for NEPs had been suspended from September to December in 2008 and from October to December in 2009 to ensure the provision of adequate obstetric services for local women. If NEPs whose spouses were Hong Kong residents were to be charged the EP rate for the obstetric services, the Administration expected that there would be a substantial increase in the number of these NEPs seeking to deliver in public hospitals, causing enormous pressure on the service capacity of HA.

27. At the request of the Subcommittee, the Administration sought the views of the Family Council and the Steering Committee on Population Policy on the obstetric service arrangements for Mainland women whose spouses were Hong Kong residents from the family and the population policy angles. Taking into account the need to balance consideration of a multitude of factors, the Family Council concluded that the arrangements were effective and no review was considered necessary at this stage. Having regard to the policy objectives of the obstetric service arrangements and read-across implications on other heavily subsidized healthcare services if there was a change to the definition of EP for public healthcare services, the Steering Committee considered that the existing obstetric service charge arrangements for NEPs should be maintained.

28. On the question as to whether applying the same obstetric service package charges for NEPs whose spouses were Hong Kong residents and those with no marital ties in Hong Kong constituted an unfair treatment to the former, the Equal Opportunities Commission advised, among others, that based on the available information, the distinction between NEPs whose spouses were Hong Kong residents and NEPs whose spouses were not Hong Kong residents did not involve the anti-discrimination ordinances.

Judicial review concerning obstetric services provided by public hospitals

29. According to the Administration, the obstetric service package charges for NEPs in public hospitals had been challenged in two applications for judicial review. In the first application, the applicants challenged, among others, the Government's policy to exclude non-Hong Kong resident spouses of Hong Kong residents from the definition of EPs and decision of HA to revise the obstetric service package charges for NEPs since 1 February 2007. The application was dismissed by the Court of First Instance in the judgment handed down in December 2008. The applicants lodged an appeal and the hearing before the Court of Appeal took place in March 2010. On 10 May 2010, the Court of Appeal

rejected the challenges in the application for judicial review. The second application involved a similar challenge to the exclusion of the applicant from subsidized obstetric services. The Court dismissed the application before the hearing.

Recent developments

30. According to the statistics collated by the Census and Statistic Department and the Immigration Department, the provisional number of registered live births in Hong Kong in 2010 was 88 200. Among them, 47 552 (or 53.9%) were given by local women or non-local resident women other than Mainland women, and 68% of these births were born in public hospitals. Among the remaining 40 648 births in 2010 who were given by Mainland women, of whom 32 653 (or 80.3%) were fathered by non-residents, 26% were born in public hospitals.

31. According to the Administration's replies to Members' written questions during the examination of Estimates of Expenditure 2011-2012, the respective number of live births in public hospitals in the past three years (i.e. from 2008-2009 to 2010-2011 (up to 31 December 2010)) was 41 781, 41 044 and 33 426. The respective number of deliveries by NEPs in public hospitals for the same period was 10 612, 9 803 and 8 427. The percentage of these cases where both parents were non-Hong Kong residents remained in the range of 64% to 67%. As regards the manpower for obstetric services provided by public hospitals, the Obstetrics and Gynaecology speciality had recorded the highest turnover rate of doctors in 2010 (i.e. 10.3%). The breakdown of the turnover rate by the ranks of Consultant, Senior Medical Officer/Associate Consultant and Medical Officer/Resident was 16.6%, 22.2% and 3.4% respectively.

Relevant papers

32. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on use of obstetric services by Non-eligible Persons

Committee	Date of meeting	Paper
Panel on Health Services	8 January 2007 (Item V)	Agenda Minutes CB(2)833/06-07(01) CB(2)1601/06-07(01)
Panel on Health Services	16 April 2007 (Item I)	Agenda Minutes
Panel on Health Services	30 April 2007 (Item I)	Agenda Minutes CB(2)533/07-08(01) CB(2)205/09-10(01)
Panel on Security	8 May 2007 (Item IV)	Agenda Minutes
Panel on Health Services	18 February 2008 (Item IV)	Agenda Minutes CB(2)2315/07-08(01)
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	29 June 2009 (Item I)	Agenda Minutes CB(2)2258/08-09(02) CB(2)2258/08-09(03)
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	28 July 2009 (Item I)	Agenda Minutes CB(2)2521/08-09(01)
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	19 January 2010 (Item I)	Agenda Minutes CB(2)2070/09-10(01)

Committee	Date of meeting	Paper
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	13 July 2010 (Item I)	Agenda Minutes
Finance Committee	25.3.2011	Administration's replies to Members' written questions in examining the Estimates of Expenditure 2011-2012 (Reply Serial Nos. FHB(H)063, FHB(H)071, FHB(H)075, FHB(H)098, FHB(H)118 and FHB(H)270)

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