

LEGISLATIVE COUNCIL BRIEF

Residential Care Homes (Persons with Disabilities) Ordinance
(12 of 2011)

RESIDENTIAL CARE HOMES (PERSONS WITH DISABILITIES) ORDINANCE (COMMENCEMENT) NOTICE 2011

RESIDENTIAL CARE HOMES (PERSONS WITH DISABILITIES) REGULATION

INTRODUCTION

To implement the licensing scheme for the residential care homes for persons with disabilities (“RCHDs”) under the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011) (“Ordinance”), the Secretary for Labour and Welfare (“SLW”) has made the following subsidiary legislation –

- (a) The Residential Care Homes (Persons with Disabilities) (Commencement) Notice 2011 (“Commencement Notice”) at **Annex A** pursuant to section 1(2) of the Ordinance to appoint 18 November 2011 as the day on which the Ordinance (except Part 2) comes into operation; and
- (b) The Residential Care Homes (Persons with Disabilities) Regulation (“Regulation”) at **Annex B**, in exercise of SLW’s power conferred under section 24 of the Ordinance.

BACKGROUND AND JUSTIFICATIONS

Legal Framework of the Ordinance

2. The Ordinance was enacted on 24 June 2011, providing for the control of RCHDs through a licensing scheme administered by the Director of Social Welfare (“DSW”). It comprises –

- (a) A statutory framework to regulate RCHDs (including application of and exception to the Ordinance, mechanism for application, issue, renewal, cancellation, suspension and refusal of licences, appeal mechanism, supervision and offences, etc.);
- (b) Section 24 which empowers SLW to make regulations. The Regulation which has been made by SLW aims to stipulate the requirements for the operation, management and supervision of RCHDs (including staffing and space requirements, health and safety requirements, penalties and fees, etc.); and
- (c) Section 23 which gives power to DSW to issue a Code of Practice (“CoP”) to specify detailed procedures, guidelines and standards for the operation, management and other control of RCHDs for compliance by the licensees, such as the requirements for building and fire safety, barrier-free access, general management and health care, etc..

3. While the above legal framework and powers have been established upon the enactment of the Ordinance, to bring the licensing scheme into operation, SLW needs to exercise his power to make regulations, setting out the statutory requirements in respect of the operation, management and supervision of RCHDs.

4. The requirements under the Regulation, if passed by the Legislative Council (“LegCo”), will also serve as the basis of the CoP to be issued by DSW, which will elaborate on the details of the service standards required under the licensing scheme.

The Commencement Notice

5. Pursuant to section 1(2) of the Ordinance, the Ordinance comes into operation on a day to be appointed by SLW by notice published in the Gazette. Having taken into account the views of the Bills Committee on Residential Care Homes (Persons with Disabilities) Bill (“Bills Committee”) in the course of examination of the Bill, we propose in the Commencement Notice to appoint 18 November 2011 (i.e. after the expiry of the full negative vetting period) as the date on which the Ordinance (except Part 2) comes into operation.

6. To allow time for individual RCHDs to put in place suitable

arrangements for application for a new licence/certificate of exemption (“CoE”) and for SWD to process all applications, there will be a grace period of 18 months starting from the commencement of the Ordinance. During the grace period, no sanction will be imposed on the operation of RCHD without a licence/CoE. SLW will issue another notice to the effect that Part 2 of the Ordinance which creates an offence for the operation without a licence/CoE will come into operation upon the expiry of the 18-month grace period.

The Regulation

Commencement of the Regulation

7. As part and parcel of the legal framework for the licensing scheme for RCHDs, we propose that the Regulation comes into operation on the day appointed for the commencement of section 24 of the Ordinance, i.e. the same date on which the Ordinance (except Part 2) comes into operation.

Reference to the Residential Care Homes (Elderly Persons) Regulation (Cap 459A)

8. The Ordinance adopts the principle of “one licence for one residential care home” under which any residential care home should be covered by one licence only, issued under either the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (“RCHE Ordinance”) or this Ordinance. In other words, if a residential care home fits the definition of a home under both RCHE Ordinance and this Ordinance, the home operator must hold a licence under one of these Ordinances but cannot be licensed under both. Based on such principle and the operational experience of the statutory licensing scheme for residential care homes for the elderly, we are modelling the RCHE Regulation (Cap. 459A) as far as practicable to ensure consistency between the two licensing systems while giving due consideration to the circumstances specific to RCHDs.

Key Provisions of the Regulation

9. The key provisions of the Regulation are set out below –

- (a) Section 2 defines the terms used in the Regulation;
- (b) Section 3 sets out the classification of RCHDs (i.e. high care level home, medium care level home and low care level home);
- (c) Sections 4 to 10 deal with the registration of health workers,

including the qualifications for registration as health workers, establishment and maintenance of a register for health workers and the related application and appeal procedures;

- (d) Sections 11 to 15 set out the duties of RCHD operators, including the employment of staff, maintenance of records of staff, provision of required information to DSW (such as a plan or diagram of the RCHD premises and fees or charges payable by residents) and information contained in advertisement;
- (e) Sections 16 to 19 set out the duties of an RCHD home manager, including the submission of a list of staff to DSW, maintenance of records, provision of information concerning the home to DSW and the need to report any scheduled infectious disease amongst the residents or staff of the home to DSW;
- (f) Sections 20 to 28 set out the requirements as to the location, height, design, floor space per resident, accessibility and physical environment of an RCHD;
- (g) Sections 29 to 34 deal with precautions against fire, health and other risks;
- (h) Section 35 deals with the medical examination of residents of an RCHD;
- (i) Section 36 sets out the need for advance notice for the discharge of residents by an RCHD operator;
- (j) Section 37 provides for the fee payable for registration as a health worker; and
- (k) The Schedule prescribes the staffing requirements for different categories of RCHDs.

The Code of Practice

10. In tandem with the making of the Regulation by SLW, DSW will exercise his power to issue the CoP on the basis of the licensing requirements stipulated in the Regulation. The CoP provides elaborated details on procedures, guidelines and standards for the operation, management and other control of RCHDs. As part of the licensing framework, DSW may refuse to issue a licence to any RCHD which fails to comply with the requirements

under the CoP pursuant to section 7 of the Ordinance.

LEGISLATIVE TIMETABLE

11. The legislative timetable of the Commencement Notice and the Regulation will be –

Publication in the Gazette	30 June 2011
Tabling at the LegCo	6 July 2011
Date of Commencement	18 November 2011

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has economic, financial and civil service implications as set out in **Annex C**. It has no significant environmental implications. Any conversion works of existing RCHDs, if needed, will be conducted in accordance with all applicable environmental legislation and standards. The proposal has no productivity or sustainability implications. The Regulation does not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

13. During the preparatory stage of the legislative proposals of the licensing scheme, SWD organised a total of eight consultation sessions in 2007 and 2008 to seek views and comments from the rehabilitation sector and other stakeholders in formulating the future licensing requirements and on the revised requirements in the CoP. The Rehabilitation Advisory Committee (“RAC”) was consulted in October 2008. We also consulted the LegCo Panel on Welfare Services (“Panel”) on the draft revised CoP and briefed the Panel Members on the progress of introducing a statutory licensing scheme for RCHDs at its meetings held in June 2007, May 2008, January 2009 and April 2010 respectively.

14. During the Bills Committee's scrutiny of the Bill from July 2010 to May 2011, the Bills Committee also examined in depth the licensing requirements and standards stipulated in the draft Regulation and the draft revised CoP. Comments from deputations were also invited at the Bills Committee meeting on 27 September 2010.

15. While urging the Administration to speed up the legislative process, LegCo Members and the rehabilitation sector also expressed concern that some private RCHDs might close down upon the implementation of the statutory licensing scheme, resulting in displacement of residents. They were concerned that some private RCHDs would increase fees to cover the additional costs for meeting the licensing requirements on building and fire safety or to compensate for the loss of income arising from the reduction in the number of beds. Some LegCo Members, political parties and parent groups asked for higher licensing requirements for space and staffing, on the ground that the proposed standards were lower than those in the 2002 CoP. Private RCHDs operators expressed grave concern over the financial viability of their homes should there be an increase in the spatial and staffing requirements above the agreed standards set out in the draft revised CoP. In the worst case scenario, this would cause closure of private homes, displacement of persons with disabilities and loss of jobs.

16. To address these concerns, we will introduce suitable complementary measures to encourage private RCHDs to upgrade their service standards and help the market develop more service options for persons with disabilities. To this end, we have introduced the 4-year pilot Bought Place Scheme (BPS) for private RCHDs in October 2010. The Scheme targets to purchase 300 places by two phases.

17. In addition, we will also implement a Financial Assistance Scheme (FAS) upon commencement of the Ordinance to provide subsidies for private RCHDs to carry out improvement works in compliance with the licensing requirements in building and fire safety. In this regard, SWD consulted the private RCHD sector, RAC and the Panel in March, May and June 2011 respectively on the proposed parameters and framework of FAS.

18. Besides, as mentioned in paragraph 6, there will be a grace period of 18 months starting from the commencement of the Ordinance. SWD will closely monitor the operation of the private market and put in place suitable arrangements, e.g. alternative placements for affected residents as necessary.

PUBLICITY

19. A press release will be issued today and a spokesman will be available to answer media and public enquiries.

ENQUIRIES

20. In case of enquiries about this brief, please contact Mr Stephen SUI, Commissioner for Rehabilitation, Labour and Welfare Bureau, at 2509 4899.

Labour and Welfare Bureau
28 June 2011

Residential Care Homes (Persons with Disabilities) Ordinance (Commencement)
Notice 2011

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**Residential Care Homes (Persons with Disabilities)
Ordinance (Commencement) Notice 2011**

Under section 1(2) of the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011), I appoint 18 November 2011 as the day on which the Ordinance (except Part 2) comes into operation.

A handwritten signature in black ink, consisting of a large, stylized 'Q' followed by a horizontal line and a small flourish.

Secretary for Labour and Welfare

23 June 2011

Residential Care Homes (Persons with Disabilities) Regulation

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Residential Care Homes (Persons with Disabilities) Regulation

(Made by the Secretary for Labour and Welfare under section 24 of the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day appointed for the commencement of section 24 of the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011).

2. Interpretation

In this Regulation—

ancillary worker (助理員) means any person, other than a care worker, health worker or nurse, employed by an operator whose duties include those of a cook, domestic servant, driver, gardener, watchman, welfare worker or clerk;

care worker (護理員) means any person, other than an ancillary worker, health worker or nurse, employed by an operator to render personal care to residents;

health worker (保健員) means any person whose name appears on the register maintained by the Director under section 5;

home manager (主管) means any person responsible for the management of a residential care home for PWDs;

nurse (護士) means any person whose name appears on—

- (a) the register of nurses maintained under section 5 of the Nurses Registration Ordinance (Cap. 164); or

- (b) the roll of enrolled nurses maintained under section 11 of that Ordinance;

operator (營辦人) means a person holding a licence in respect of a residential care home for PWDs or a certificate of exemption in respect of an existing home;

particulars of identity (身分詳情) means the particulars set out on an identity card issued under the Registration of Persons Ordinance (Cap. 177).

Part 2

Types of Residential Care Homes for PWDs

3. Types of residential care homes for PWDs

For the purposes of sections 7(4)(c) and 11(3)(c) of the Ordinance, a residential care home for PWDs may be classified as—

- (a) a “high care level home”, namely, an establishment providing residential care for PWDs who are generally weak in health and lack basic self-care skill to the extent that they require personal care, attention and assistance in the course of daily living activities but do not require a high degree of professional medical or nursing care;
 - (b) a “medium care level home”, namely, an establishment providing residential care for PWDs who are capable of basic self-care but have a degree of difficulty in daily living activities; or
 - (c) a “low care level home”, namely, an establishment providing residential care for PWDs who are capable of basic self-care and require only minimal assistance in daily living activities.
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Part 3**Registration of Health Workers****4. Qualifications for registration as health workers**

A person who meets either of the following requirements is qualified to be registered as a health worker for the purposes of employment at a residential care home for PWDs—

- (a) the person has completed a course of training approved by the Director in writing either generally or in any particular case;
- (b) by reason of the person's education, training, professional experience and skill in health work, the Director is satisfied that the person is a suitable person to be registered as a health worker.

5. Register of health workers

- (1) The Director must establish and maintain a register and cause to be kept in the register particulars of the names and addresses of all persons registered as health workers and any other matters that the Director thinks fit.
- (2) The register must be available for inspection by the public free of charge at any offices of the Government that the Director directs, during the hours when those offices are open to the public.
- (3) The Director must enter in the register any amendment that the Director considers necessary for the purposes of preserving the accuracy of the register in respect of the address or any other particulars relating to a person whose name appears in it.
- (4) Subject to subsection (5), the Director must remove from the register the name of a person—

- (a) who dies;
 - (b) who requests in writing that the person's name be removed;
 - (c) whose registration is cancelled under section 8; or
 - (d) who is also registered as a health worker under the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) and whose name has been removed under section 5(4) of that Regulation.
- (5) The Director must not remove from the register the name of a person under subsection (4)(c)—
- (a) until the period specified in section 10(1) expires without an appeal having been made; or
 - (b) if an appeal has been made, until after the final determination of the appeal or, in case the appeal is withdrawn, until after the withdrawal.

6. Application for and registration as health workers

- (1) An application by a person for registration as a health worker must be made in the form and manner and be accompanied by the particulars that the Director determines.
- (2) Subject to subsection (3) and on payment of the fee prescribed in section 37, the Director may register a person as a health worker, and may impose any conditions in relation to the registration that the Director thinks fit.
- (3) The Director must not register an applicant as a health worker unless the Director is satisfied that the applicant is a person who is qualified, competent, and fit and proper to be registered as a health worker.

7. Director to give notice of decision on applicant

- (1) If the Director registers or refuses to register a person as a health worker under section 6, the Director must immediately give a notice in writing of the decision to the person.

- (2) If the Director refuses to register a person as a health worker, the notice mentioned in subsection (1) must include—
- (a) an adequate statement of the reasons for the refusal; and
 - (b) an endorsement setting out the relevant provisions of section 10.

8. Cancellation of registration

The Director may cancel the registration of a person registered as a health worker if—

- (a) the Director is of the opinion that the registration was obtained by fraudulent means; or
- (b) the Director ceases to be satisfied of any matter in respect of which the Director is required to be satisfied under section 6(3).

9. Notice of cancellation of registration

- (1) If the Director cancels any registration under section 8, the Director must immediately give a notice in writing of the decision to—
- (a) the person whose registration is cancelled; and
 - (b) the operator of the residential care home for PWDs where the person is employed.
- (2) A notice mentioned in subsection (1) must include—
- (a) an adequate statement of the reasons for cancelling the registration; and
 - (b) an endorsement setting out the relevant provisions of section 10.

10. Appeals to Secretary for Labour and Welfare

- (1) A person—
- (a) whom the Director refuses to register as a health worker under section 6; or

- (b) whose registration as a health worker is cancelled under section 8,
may, by notice in writing that states the grounds of appeal and is delivered to the Director within 21 days after being notified by the Director of the decision, appeal to the Secretary for Labour and Welfare against the decision of the Director.
- (2) A decision that is appealed against under subsection (1) is not to have effect pending the determination of the appeal by the Secretary for Labour and Welfare.
- (3) The Secretary for Labour and Welfare when considering any appeal against a decision of the Director—
- (a) must give the person who appeals against the decision an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (4) On the confirmation or reversal of a decision under subsection (3)(b), the Director must immediately give a notice in writing relating to it to—
- (a) the person who appeals against the decision; and
 - (b) the operator of the residential care home for PWDs where the person is employed.
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Part 4**Duties of Operators****11. Employment of staff by operators**

- (1) An operator of a residential care home for PWDs must, according to the particular type of the residential care home, employ persons in the manner indicated in the Schedule to occupy the following posts in the residential care home—
 - (a) home manager;
 - (b) ancillary worker;
 - (c) care worker;
 - (d) health worker;
 - (e) nurse.
- (2) An operator of a residential care home for PWDs must not employ any person as—
 - (a) a home manager for any purpose other than employment as a home manager;
 - (b) an ancillary worker for any purpose other than employment as an ancillary worker;
 - (c) a care worker for any purpose other than employment as a care worker;
 - (d) a health worker—
 - (i) unless the person falls within the definition of *health worker* in section 2; and
 - (ii) for any purpose other than employment as a health worker; or
 - (e) a nurse—
 - (i) unless the person falls within the definition of *nurse* in section 2; and

(ii) for any purpose other than employment as a nurse.

- (3) An operator of a residential care home for PWDs must inform the Director in writing within 14 days after any change in the employment of a home manager of the residential care home under subsection (1)(a) has occurred.
- (4) An operator who contravenes subsection (1), (2) or (3) commits an offence and is liable to a fine at level 4.

12. Maintenance of records by operators

- (1) An operator of a residential care home for PWDs must maintain a record of the name, address and particulars of identity of every person employed in the residential care home.
- (2) An operator who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

13. Operators to provide plans etc.

- (1) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, require the operator to provide to the Director a plan or diagram, with dimensions of the premises of the residential care home, before the expiry of the time, being not less than 14 days, indicated in the notice.
- (2) An operator to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the plan or diagram required by the Director.
- (3) An operator who contravenes subsection (2) commits an offence and is liable to a fine at level 4.

14. Operators to provide details of fees

- (1) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, require the operator to provide to the Director details of any fees or charges payable by the residents of the residential care home, before the expiry

of the time, being not less than 14 days, indicated in the notice.

- (2) An operator to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the details of the fees and charges required by the Director.
- (3) An operator must inform the Director in writing within 14 days after any change in the fees and charges payable by the residents.
- (4) An operator who contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 4.

15. Operators to ensure advertisement contains certain information

- (1) An operator of a residential care home for PWDs must ensure that an advertisement for promoting the residential care home contains information to the effect that a licence or a certificate of exemption is for the time being in force in respect of the residential care home.
- (2) For the purposes of subsection (1), an advertisement may be constituted by any words, whether written or spoken, or any picture, drawing, visual image, figure or article—
 - (a) appearing in any publication; or
 - (b) brought to the notice of the general public or any section of the general public in any other way.
- (3) An operator who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

Part 5

Duties of Home Managers

16. Submission of staff list by home managers

- (1) A home manager must, in relation to a residential care home for PWDs and if required by the Director in writing, submit to the Director a list of staff employed by the operator of the residential care home under section 11, within 14 days of being required to do so.
- (2) A home manager must, in relation to a residential care home for PWDs, at least once every 3 months inform the Director in writing of any change in the list of staff employed by the operator of the residential care home under section 11.
- (3) A home manager who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 3.

17. Maintenance of records by home managers

- (1) A home manager of a residential care home for PWDs must maintain a record of—
 - (a) the name, address and particulars of identity of every resident;
 - (b) the name, address and particulars of identity of at least one relative or one contact person of every resident;
 - (c) where or how the relative or contact person may be contacted in an emergency;
 - (d) the date of admission and discharge of every resident;
 - (e) any accident or illness suffered by a resident and of any remedial action taken in relation to that accident or illness;
 - (f) any death of a resident;

- (g) any action taken, including the use of force or mechanical restraint, to prevent or restrain a resident from self injury or injuring others, or damaging property, or creating a disturbance;
 - (h) possessions or property stored or held on behalf of every resident; and
 - (i) any complaint made by a resident or any other person relating to the management or operation of the residential care home and of any remedial action taken in relation to that complaint.
- (2) A home manager who contravenes subsection (1) commits an offence and is liable to a fine at level 3.

18. Information to be provided by home managers

- (1) The Director may, by a notice in writing given to a home manager of a residential care home for PWDs, require the home manager to provide any information concerning the residential care home that the Director may require, before the expiry of the time, being not less than 14 days, indicated in the notice.
- (2) A home manager to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the information required by the Director.
- (3) A home manager who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

19. Home managers to report scheduled infectious disease

- (1) If a home manager of a residential care home for PWDs reasonably suspects or knows of a case of a scheduled infectious disease amongst the residents or staff of the residential care home or reasonably suspects or knows that a resident or staff member has been in contact with a case of a scheduled infectious disease, the home manager must immediately so report to the Director.

- (2) A home manager who contravenes subsection (1) commits an offence and is liable to a fine at level 3.
 - (3) In this section—
scheduled infectious disease (表列傳染病) has the meaning given by section 2 of the Prevention and Control of Disease Ordinance (Cap. 599).
-

Part 6**Location and Design of Residential Care Homes for PWDs****20. Location**

A residential care home for PWDs must not be situated in any part of—

- (a) an industrial building; or
- (b) any premises the floor of which is immediately over the ceiling or immediately below the floor slab of any premises in which any trade that, in the opinion of the Director, may pose a risk to the life or safety of the residents is carried on.

21. Height

- (1) Subject to subsection (2), a residential care home for PWDs, including any part of it, must not be situated at a height more than 24 m above the street level, measuring vertically from the street level to the floor of the premises in which the residential care home is or is to be situated.
- (2) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, authorize that any part of the residential care home may be situated at a height more than 24 m above the street level as may be indicated in the notice.

22. Design

A residential care home for PWDs must, to the satisfaction of the Director, be designed to suit the particular needs of the residents as follows—

- (a) every passage and doorway must be wide enough to accommodate residents using walking aids or wheelchairs;
- (b) non-slip tiles must be fitted in every place where the safety of residents is in jeopardy by reason of a risk of slippage;
- (c) the ceiling of every room must, unless otherwise permitted by the Director, be situated at a height not less than 2.5 m measuring vertically from the floor or not less than 2.3 m measuring vertically from the floor to the underside of any beam;
- (d) any other requirements that may be set out in the Code of Practice issued by the Director under section 23 of the Ordinance.

23. Area of floor space per resident

- (1) The minimum area of floor space required for each resident in a residential care home for PWDs is 6.5 m².
- (2) In determining the area of floor space for the purposes of this section, the area of any open space, podium, garden or any other area in the residential care home which the Director is satisfied is unsuitable for the purposes of a residential care home for PWDs is to be disregarded.

24. Accessibility

A residential care home for PWDs must, to the satisfaction of the Director, be accessible by emergency services.

25. Heating, lighting and ventilation

A residential care home for PWDs must, to the satisfaction of the Director, be adequately heated, lighted and ventilated.

26. Toilet facilities

- (1) A residential care home for PWDs must be provided with toilet facilities and sanitary arrangements of a type approved by the Director.
- (2) A room used for toilet facilities must—
 - (a) to the satisfaction of the Director, be provided with fittings appropriate to the use of the toilet facilities by the residents;
 - (b) at all times be kept in a clean and sanitary condition; and
 - (c) not be used for any other purpose.

27. Water supply and ablutions

A residential care home for PWDs must, to the satisfaction of the Director, be provided with—

- (a) an adequate and wholesome supply of water;
- (b) adequate washing and laundering facilities; and
- (c) adequate bathing facilities.

28. Repair

A residential care home for PWDs must, to the satisfaction of the Director, be kept in a state of good repair.

Part 7**Precautions against Fire and Other Risks****29. Precautions for health and safety**

In a residential care home for PWDs, the design, the construction (including the fire resistance of the elements of construction) and the properties of the materials must be such that the health and safety of the residents, and in particular their safe escape in the event of fire, are, to the satisfaction of the Director, reasonably assured.

30. Fire prevention equipment

A residential care home for PWDs must, to the satisfaction of the Director of Fire Services, be provided with adequate apparatus and equipment to safeguard the residential care home against fire.

31. Fire exits

The fire exits and exit routes of a residential care home for PWDs must, to the satisfaction of the Director, be—

- (a) kept free from obstruction; and
- (b) adequately illuminated.

32. Inspection of premises by members of Fire Services Department

- (1) Any member of the Fire Services Department may, without warrant and on production if so required, of proof of the person's membership and particulars of identity, at all reasonable times enter and inspect—
 - (a) a residential care home for PWDs;

- (b) a building where a residential care home for PWDs is situated, if it appears to the member that a risk of fire to the residential care home may arise in the building; or
 - (c) a building, place or premises adjacent or near to a residential care home for PWDs, if it appears to the member that a risk of fire to the residential care home may arise in the building, place or premises.
- (2) A person must not obstruct a member of the Fire Services Department in the exercise of the powers of the member under subsection (1).
 - (3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

33. Report from Fire Services Department

Any member of the Fire Services Department may, in relation to any residential care home for PWDs, report to the Director any matter arising from an inspection under section 32 or relating to the protection of life or property under the Fire Services Ordinance (Cap. 95) and may make recommendations to the Director as to anything necessary to preclude danger from fire.

34. Storage of medicine

All medicine and drugs in a residential care home for PWDs must, to the satisfaction of the Director, be kept in a secure place.

35. Examination of residents

- (1) An operator of a residential care home for PWDs must ensure that every resident of the residential care home who has attained the age of 60 years is medically examined at least once in every 12 months.
- (2) The examination must be conducted by a registered medical practitioner, who must report in writing to the operator on the health of every resident mentioned in subsection (1).

- (3) A copy of the report must be kept by the operator and made available at all reasonable times for inspection by the Director or any inspector.

36. Discharge of residents by operators

An operator of a residential care home for PWDs may, by a notice in writing given to any resident of the residential care home and to a relative or contact person of the resident, discharge the resident and require the resident to quit the residential care home, before the expiry of the time, being not less than 30 days, indicated in the notice.

Part 8**Fees****37. Fee for registration as health workers**

A fee of \$164 is payable for registration as a health worker under section 6(2).

Schedule

[s. 11]

Employment of Staff

Item	Type of Staff	Type of residential care home for PWDs		
		High care level home	Medium care level home	Low care level home
1.	Home manager	1 home manager	1 home manager	1 home manager
2.	Ancillary worker	1 ancillary worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.
3.	Care worker	(a) 1 care worker for every 20 residents or part of 20 residents, between 7 a.m. and 3 p.m.; (b) 1 care worker for every 40 residents or part of 40 residents, between 3 p.m. and 10 p.m.;	1 ancillary worker or 1 care worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.

Item	Type of Staff	Type of residential care home for PWDs		
		High care level home	Medium care level home	Low care level home
		(c) 1 care worker for every 60 residents or part of 60 residents, between 10 p.m. and 7 a.m.		
4.	Health worker	1 health worker for every 30 residents or part of 30 residents, or 1 nurse for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.	1 health worker for every 60 residents or part of 60 residents, or 1 nurse	No health worker or nurse required
5.	Nurse			

Notes:

- In these Notes—
designated person (指定人士) means a home manager, an ancillary worker, a care worker, a health worker or a nurse.
- As an additional requirement for a high care level home, at least 2 designated persons must be on duty between 6 p.m. and 7 a.m.
- As an additional requirement for a medium care level home with a

capacity of—

- more than 60 residents, at least 1 designated person must be on duty and 1 other designated person must be on site (whether or not on duty) between 6 p.m. and 7 a.m.;
 - not more than 60 residents, at least 1 designated person must be on site (whether or not on duty) and 1 other designated person must be on call (whether or not on site) between 6 p.m. and 7 a.m.
4. As an additional requirement for a low care level home, at least 1 designated person must be on site (whether or not on duty) and 1 other designated person must be on call (whether or not on site) between 6 p.m. and 7 a.m.



Secretary for Labour and Welfare

23 June 2011

Explanatory Note

This Regulation provides for the operation, management and staffing of residential care homes for persons with disabilities (*PWDs*) and miscellaneous matters. The Regulation contains 8 Parts and 1 Schedule.

Part 1

2. Part 1 (sections 1 and 2) provides for preliminary matters and contains a definition section that includes, among other things, definitions of various types of staff that an operator of a residential care home for PWDs is required to employ in the residential care home.

Part 2

3. Part 2 (section 3) sets out different types of residential care homes for PWDs. Depending on the level of care required, the classifications are “high care level home”, “medium care level home” and “low care level home”.

Part 3

4. Part 3 (sections 4 to 10) deals with the registration of health workers, being one type of staff that an operator of a residential care home for PWDs is required to employ in the residential care home.
5. Section 4 sets out the qualifications for registration as a health worker.
6. Section 5 provides that the Director of Social Welfare (*the Director*) must establish and maintain a register of all health workers.
7. Sections 6 to 9 deal with the application for, and cancellation of, the registration of a health worker.

8. Section 10 provides for appeals against the decisions of the Director to the Secretary for Labour and Welfare.

Part 4

9. Part 4 (sections 11 to 15) deals with the duties of an operator of a residential care home for PWDs.
10. Section 11 requires an operator to employ, in the manner indicated in the Schedule, various types of staff in a residential care home for PWDs, namely, home manager, ancillary worker, care worker, health worker and nurse.
11. Sections 12 to 15 require an operator to—
 - (a) maintain a record of every member of the staff employed in the residential care home for PWDs (section 12);
 - (b) provide a plan or diagram of the residential care home to the Director (section 13);
 - (c) provide details of fees or charges payable by the residents of the residential care home to the Director (section 14); and
 - (d) ensure that certain information is contained in an advertisement for promoting the residential care home (section 15).

Part 5

12. Part 5 (sections 16 to 19) sets out the duties of a home manager of a residential care home for PWDs.
13. Section 16 requires a home manager of a residential care home for PWDs to submit a list of staff employed by the operator of the residential care home to the Director.
14. Sections 17 to 19 require a home manager to—
 - (a) maintain a record relating to the particulars of the residents of a residential care home for PWDs, and of at

least one relative or one contact person of every resident (section 17);

- (b) provide information concerning the residential care home to the Director (section 18); and
- (c) report any scheduled infectious disease under the Prevention and Control of Disease Ordinance (Cap. 599) to the Director (section 19).

Part 6

- 15. Part 6 (sections 20 to 28) sets out the requirements as to location, design and other matters relating to the safety of a residential care home for PWDs.

Part 7

- 16. Part 7 (sections 29 to 36) deals with precautions against fire and other risks.
- 17. Sections 29 to 34 provide for precautions for health and safety matters.
- 18. Section 35 deals with the medical examination of residents of a residential care home for PWDs.
- 19. Section 36 provides for the discharge of residents of a residential care home for PWDs.

Part 8

- 20. Part 8 (section 37) provides for the fee payable for registration as a health worker.

Schedule

- 21. The Schedule prescribes the requirement for the type and number of staff by reference to the different types of residential care homes for PWDs.

ECONOMIC, FINANCIAL AND CIVIL SERVICE IMPLICATIONS

ECONOMIC IMPLICATIONS

The legislative proposal would increase the compliance costs of some private RCHDs which currently fall short of the proposed statutory standards. Nevertheless, the proposed complementary measures would assist these private RCHDs to upgrade their services to meet the statutory standards. In the longer term, the proposal would ensure the service quality of RCHDs and help the market develop residential care homes of different types and operational modes, thereby enhancing competition among licensees and providing more service options. It should have a positive impact on the development of the private RCHDs market.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

Pilot Bought Place Scheme (BPS) for Private RCHDs

2. SWD will purchase 300 BPS places in two phases over the 4-year pilot period. Having regard to the response of service users, the number of new homes coming on stream, the quality of places to be provided by private RCHDs and their response, SWD will consider suitable adjustment to the number of places to be purchased. Funding approval under the Lotteries Fund has been sought.

Financial Assistance Scheme

3. In line with the established mechanism, the expenditure for carrying out improvement works in subvented and self-financing homes for meeting the licensing requirements, if required, will be covered under the Lotteries Fund. In this regard, a subsidy will be provided to private homes to meet part of their costs in carrying out improvement works for meeting the licensing requirements in building and fire safety. Funding approval under the Lotteries Fund will be sought.

Strengthening Staffing of the Registration Office of SWD

4. The Registration Office of SWD currently has a staffing set-up of 12 civil service posts. We anticipate that additional civil service posts will be required to strengthen the staffing of the Registration Office upon implementation of the licensing scheme. Additional annual recurrent expenditure and staffing resources, if required, will be sought in accordance with the established procedures.