

立法會
Legislative Council

LC Paper No. CB(2)1622/15-16(02)

Ref : CB2/HS/1/14

Subcommittee to Study Issues Relating to Mainland-HKSAR Families

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 7 June 2016**

**Policies and measures regarding the use of subsidized obstetric services by
Mainland-HKSAR families**

Purpose

1.

This paper provides background information and summarizes Members' discussions on the policies and measures adopted by the Administration regarding the use of subsidized obstetric services by Mainland-HKSAR families.

Background

2. At the meeting of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("the Subcommittee") on 23 November 2015, Members discussed with the Administration its progress report (LC Paper No. CB(2) 292/15-16(02)) on implementation of the recommendations of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families formed under the House Committee of the Fourth Legislative Council ("LegCo"). The Subcommittee held another meeting on 23 December 2015 to receive views from the public on the policies and measures adopted by the Administration in five subject areas relating to Mainland-HKSAR families which include, inter alia, the use of subsidized obstetric services by Mainland-HKSAR families. Another meeting has been scheduled to be held on 7 June 2016 to further discuss the subject matter.

Members' deliberations

Government policy on the use of obstetric services

3. The Administration advised that in the light of the recommendations of the Task Force on Population Policy concerning the eligibility for major benefits subsidized by public funds, it had adopted since 2003 the definition of eligible persons ("EPs")¹ to the effect that non-Hong Kong residents who were spouses or children of Hong Kong residents would be treated as non-eligible persons ("NEPs") and be charged at NEP rates when patronizing public obstetric services. All NEPs who wished to seek obstetric service in public hospitals would need to make prior booking and paid \$39,000 for a package of obstetric service². For non-booked cases, the minimum obstetric package charge was \$90,000³. Some Members were of the view that Mainland women whose husbands were Hong Kong resident should be entitled to use public obstetric services as they were members of Hong Kong families. The Administration should treat them on a par with local women.

4. According to the Administration, the eligibility criteria for public medical services was drawn up to ensure that the public healthcare services subsidized by public funds could meet public demand and sustain in the long-term within

¹ Persons falling into the following categories are eligible for rates of charges applicable to eligible persons ("EPs"):

- (a) holders of Hong Kong Identity Card issued under the Registration of Persons Ordinance (Cap. 177), except those who obtained their Hong Kong Identity Card by virtue of a previous permission to land or remain in Hong Kong granted to them and such permission has expired or ceased to be valid;
- (b) children who are Hong Kong residents and under 11 years old; or
- (c) other persons approved by the Chief Executive of the Hospital Authority ("HA").

Persons who are not EPs are classified as non-eligible persons ("NEPs").

² The obstetric service package charge covers one antenatal checkup, delivery/delivery care service and three days (two nights) stay in a public general ward for the delivery/delivery care service. According to the Administration, the fees of HA's private services, which are based on the costs of providing services to private patients, are adopted as the basis for setting the obstetric package charge for NEPs. In addition, reference has also been made to charges of private hospitals so that NEPs will not be attracted to public hospitals because of lower fees.

³ Non-booked cases refer to those patients who have not made a confirmed booking and/or have not undergone the antenatal checkup provided by HA during the pregnancy concerned. According to the Administration, if NEP mothers have not received any antenatal care before the deliveries, all tests have to be done on an urgent basis for treating the patients which will necessitate more staff and resources. Having regard to the higher costs involved and the charges of private hospitals, a higher fee is charged for non-booked cases.

limited financial resources. 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. Couples who engaged in cross-boundary marriages should make appropriate plans to meet their medical needs.

5. Some Members pointed out that the existing obstetric service arrangement for Mainland women whose spouses were Hong Kong residents ran contrary to the population policy of raising fertility. In addition, such arrangement was not conducive to family reunion and social integration since children fathered by Hong Kong residents but born on the Mainland had to apply for One Way Permit ("OWP")⁴ to settle in Hong Kong, whereas Chinese citizens born in Hong Kong had the right of abode in Hong Kong regardless of the status of their parents.

6. The Administration advised that the waiting time for Mainland spouses of Hong Kong residents under the OWP system had been shortened to around four years since 2009. Children born to Mainland-Hong Kong couples, irrespective of whether they were born in Hong Kong, and who resided on the Mainland for various reasons might come to Hong Kong together with their mothers when the latter had obtained approval for their OWP applications. These children could still start their education in Hong Kong at a young age and should not have insurmountable problem settling in Hong Kong.

7. The Administration stated that its policy was to accord priority to local pregnant women to use obstetric services. The Hospital Authority ("HA") would only accept bookings from NEPs when spare service capacity was

⁴ Mainland residents who wish to settle in Hong Kong for family reunion must apply for OWPs from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland at the places of their household registration. The OWP scheme allows Mainland residents to come to Hong Kong for family reunion in an orderly manner. The existing daily quota of OWP is 150. Of these 150 places, 60 are allocated to persons holding Certificates of Entitlement ("CoE"), and the rest for application by other Mainland residents for family reunion in Hong Kong. Mainland residents under one of the following situations may apply for OWP to settle in Hong Kong:

- (a) his/her spouse is settled in Hong Kong (may bring along children aged under 18); or
- (b) he/she is aged above 18 and under 60 and needs to come to Hong Kong to take care of his/her parents settled in Hong Kong both of whom are aged above 60 and have no children in Hong Kong; or
- (c) he/she is aged above 60 and has no children in the Mainland, and has to depend on his/her children aged above 18 settled in Hong Kong; or
- (d) he/she is aged under 18 and has to depend on his/her parents settled in Hong Kong; or
- (e) he/she is a child of a Hong Kong permanent resident and holds a CoE.

available. In the light of the forgoing, HA had, since 2013, reserved all beds for obstetric services in public hospitals for local pregnant women and urgent cases referred by private hospitals. No bookings from non-local pregnant women were accepted since then. However, the Administration had established a special arrangement with private hospitals to allow Mainland pregnant women, whose husbands were Hong Kong residents and who hoped to give birth in Hong Kong, to make delivery bookings at local private hospitals⁵ on the production of specified supporting documents⁶. The Administration was of the view that if NEPs whose spouses were Hong Kong residents were to be charged the EP rate for the obstetric services, 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.

8. While agreeing that sufficient places in public hospitals should be reserved for delivery by local women, some Members took the view that a higher priority should be accorded to non-local women whose spouses were Hong Kong residents in the allocation of spare service capacity. Some Members considered it incumbent upon the Administration to increase the provision of adequate obstetric services to cope with the demand of local women and Mainland women with Hong Kong spouses.

9. At the Subcommittee meeting on 23 December 2015, some Members urged the Administration to review its policy on the use of subsidized obstetric services by Mainland women whose spouses were Hong Kong residents. The Administration reiterated that as public healthcare services were heavily subsidized, it was necessary to ensure that its public healthcare services including obstetric services could meet local demand. There remained no spare capacity in public hospitals to provide obstetric services to non-local pregnant women. The Administration had no plan at this stage to alter the existing arrangement.

⁵ Since 2013, private hospitals in Hong Kong have stopped accepting bookings for obstetric services from non-local pregnant women whose husbands are non-Hong Kong residents.

⁶ Supporting documents include:

- (a) a Hong Kong certificate of marriage, or a certificate of marriage notarized by a notary public office on the Mainland;
- (b) the husband's Hong Kong permanent identity card, or the husband's Hong Kong identity card and OWP;
- (c) oaths taken by the husband and the wife separately on their marital and parent-child relationships; and
- (d) a consent form signed by the couple authorizing the authority to conduct checks with the relevant Hong Kong and Mainland departments and organizations on their marriage certificate, proof of their identity and other documents.

Fee waiver

10. In response to Members' concern about the need to review the fee waiver mechanism for medical fees and charges within HA in the light of the court judgement on two judicial review of the obstetric service package charge for NEPs⁷, the Administration advised that under the existing waiver mechanism, patients who had financial difficulty in paying for the medical fees and charges in HA might apply for waiver of the relevant fees and charges. To ensure rational use of limited public resources, normally there was no fee waiver of NEP patients for HA services, including obstetric services. Waiver of medical fees and charges for NEP patients would be granted under exceptional circumstances. The existing policy on waiver of fee would continue to apply to all HA services including obstetric services.

Relevant papers

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

Council Business Division 2
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31 May 2016

⁷ According to the Administration, the obstetric service package charge for NEPs in public hospitals has 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 the decision of HA to revise the obstetric service package charge 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.

**Relevant papers on
Policies and measures regarding the use of subsidized obstetric services by
Mainland-HKSAR families**

Committee	Date of meeting	Paper
House Committee	29.6.2012	Report of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families
Legislative Council	22.2.2012	Official Records of Proceedings Pages 9 to 21
Panel on Health Services	17.12.2012 (Item IV)	Agenda Minutes
House Committee	16.1.2015 (Item VIII)	Agenda Minutes
	23.1.2015 (Item VIII)	Agenda Minutes
Subcommittee to Study Issues Relating to Mainland-HKSAR Families	23.11.2015 (Item III)	Agenda Minutes
	23.12.2015 (Item I)	Agenda Minutes