

立法會
Legislative Council

LC Paper No. CB(2)395/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/16

Bills Committee on Private Healthcare Facilities Bill

**Minutes of the sixth meeting
held on Tuesday, 13 February 2018, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** :
- Hon CHAN Han-pan, JP (Chairman)
 - Prof Hon Joseph LEE Kok-long, SBS, JP
 - Hon WONG Ting-kwong, GBS, JP
 - Hon CHAN Kin-por, GBS, JP
 - Hon Steven HO Chun-yin, BBS
 - Hon YIU Si-wing, BBS
 - Hon CHAN Chi-chuen
 - Hon Alice MAK Mei-kuen, BBS, JP
 - Dr Hon KWOK Ka-ki
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon Andrew WAN Siu-kin
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon SHIU Ka-fai
 - Dr Hon Pierre CHAN
- Members absent** :
- Hon Tommy CHEUNG Yu-yan, GBS, JP
 - Hon Starry LEE Wai-king, SBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Dr Hon Helena WONG Pik-wan
 - Dr Hon Elizabeth QUAT, BBS, JP
 - Dr Hon CHIANG Lai-wan, JP
 - Hon HO Kai-ming
 - Hon SHIU Ka-chun
- Public Officers attending** :
- Mr FONG Ngai
 - Head, Healthcare Planning and Development Office
 - Food and Health Bureau

Mr Bill LI Chi-pang
Deputy Head, Healthcare Planning and Development
Office
Food and Health Bureau

Mr Michael LI Chi-lung
Assistant Secretary for Food and Health (Health) 6
Food and Health Bureau

Dr Amy CHIU Pui-yin, JP
Head, Office for Regulation of Private Healthcare
Facilities
Department of Health

Dr FUNG Ying
Principal Medical and Health Officer (Private Healthcare
Facilities) 2
Department of Health

Ms Rayne CHAI Chih-hui
Senior Assistant Law Draftsman
Department of Justice

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

**Clerk in
attendance** : Ms Maisie LAM
Chief Council Secretary (2) 5

**Staff in
attendance** : Ms Clara TAM
Assistant Legal Adviser 9

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

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I. Meeting with the Administration

[File Ref: FH CR 3/3231/16, LC Paper Nos. CB(3)687/16-17, LS82/16-17, CB(2)1823/16-17(02), CB(2)454/17-18(03), CB(2)629/17-18(03) and CB(2)834/17-18(01) to (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Clause-by-clause examination of the Bill

2. The Bills Committee commenced clause-by-clause examination of the Chinese text of the Private Healthcare Facilities Bill ("the Bill") up to clause 22.

3. Members noted that the Administration would move amendments to amend, among others, clauses 2, 3 and 12(3) of the Bill to give effect to its proposal to exclude from regulation under the Bill day procedure centres, clinics or health services establishments managed or controlled by The University of Hong Kong ("HKU") or The Chinese University of Hong Kong ("CUHK") that were primarily used for teaching or research relating to medicine or dentistry ("the exclusion proposal").

Follow-up actions required of the Administration

Admin

4. The Bills Committee requested the Administration to:

- (a) provide, when available, for reference of the Bills Committee the working drafts of the codes of practice to be issued by the Director of Health under clause 102 for compliance by day procedure centres and clinics in respect of the regulatory standards of the facilities concerned; and
- (b) in respect of its exclusion proposal, as well as its advice that the 14 facilities as set out in the Annex to LC Paper No. CB(2)196/17-18(02) ("the 14 facilities") would meet the proposed criteria for exclusion,
 - (i) advise the respective fee setting policy adopted by the 14 facilities for those services which required payment of fees and charges; and
 - (ii) advise with examples the general principles governing the composition of the committees or panels that might be formed under the respective complaints management

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systems and medical incidents reporting and handling systems currently put in place by HKU and CUHK to investigate complaints or medical incidents concerning the 14 facilities.

II. Any other business

5. Members agreed that the next meeting of the Bills Committee would be held on 16 March 2018 at 8:30 am.

6. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
5 December 2018

**Proceedings of the sixth meeting of
the Bills Committee on Private Healthcare Facilities Bill
held on Tuesday, 13 February 2018, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000815 - 000901	Chairman	Opening remarks	
000902 - 001049	Chairman Admin	<p>Briefing by the Administration on its response to the follow-up actions arising from the discussion at the meeting on 12 January 2018 [LC Paper No. CB(2)834/17-18(02)].</p> <p>The Chairman's remarks that an informal meeting between the Administration and some members of the Bills Committee was held to discuss the concerns of the beauty sector on the Private Healthcare Facilities Bill ("the Bill").</p>	
001050 - 001444	Chairman Dr Pierre CHAN Admin	In response to Dr Pierre CHAN's question on the interpretation of "premises" in relation to a private healthcare facility ("PHF") as provided for under clause 8, the Administration advised that at present, a private hospital and its satellite clinic(s) might be operated under the same certificate of registration of a hospital. Under the new regulatory regime for PHFs, separate licences would be required for those facilities which were physically attached or in close proximity to, or adjoining, the hospital but did not form a distinct whole for the facility to function as a single entity, as well as satellite clinics that were not physically attached or in close proximity to, or adjoining, the hospital.	
001445 - 002607	Chairman Dr Fernando CHEUNG Admin Dr Pierre CHAN	<p>Dr Fernando CHEUNG considered that the Administration's proposal to exclude from regulation under the Bill day procedure centres, clinics or health services establishments managed or controlled by The University of Hong Kong ("HKU") or The Chinese University of Hong Kong ("CUHK") which were primarily used for teaching or research relating to medicine or dentistry ("the exclusion proposal") would undermine public health, which should be of the prime concern in formulating the new regulatory regime for PHFs. In addition, there might be cases that some other PHFs which would be subject to regulation under the Bill were also governed by robust mechanism on clinical risk management and standards of facilities.</p> <p>The Administration elaborated on the justifications for the exclusion proposal as detailed in paragraphs 2 to 5 in LC Paper No. CB(2)629/17-18(02), and paragraphs 2 to 4 in and Annexes A, B and C to LC Paper No. CB(2)834/17-18(02). It stressed that if it came to the knowledge of the Department of Health ("DH") that an excluded facility no longer met the proposed criteria for exclusion, DH would request the operator of the facility concerned to apply for a licence.</p>	

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		In response to Dr Pierre CHAN's enquiry, the Administration advised that it would move amendments to the Bill to amend, among others, clauses 2 and 3 of the Bill to give effect to the exclusion proposal.	
002608 - 003308	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai opined that in view of the current shortage of medical professionals in Hong Kong and the proposed requirement that a person could not serve at the same time as the chief medical executive of more than two day procedure centres or clinics operated by different licensees, those beauty parlours which would fall into the meanings of "day procedure centres" or "clinics" under the Bill might have difficulty to employ registered medical practitioners to be the chief medical executive of the facilities upon the passage of the Bill.</p> <p>The Administration advised that the proposed requirement had taken into account the relevant general modes of operation currently adopted by the facilities concerned. Nevertheless, it was exploring the feasibility of revising the proposed requirement to address the concerns of the stakeholders.</p> <p>At the request of Mr SHIU Ka-fai's, the Administration agreed to provide, when available, for reference of the Bills Committee the working drafts of the codes of practice to be issued by the Director of Health ("the Director") under clause 102 of the Bill for compliance with by day procedure centres and clinics in respect of the regulatory standards of the facilities concerned; and to consult relevant stakeholders, including those providing medical services in beauty centres, on the drafts of these codes of practice as and when appropriate.</p>	Admin
003309 - 003758	Chairman Dr Pierre CHAN Admin	At the request of Dr Pierre CHAN in respect of the exclusion proposal, the Administration agreed to advise in writing with examples the general principles governing the composition of the committees or panels that might be formed under the respective complaints management systems and medical incidents reporting and handling systems currently put in place by HKU and CUHK to investigate complaints or medical incidents concerning the 14 facilities under their aegis as set out in the Annex to LC Paper No. CB(2)196/17-18(02) ("the 14 facilities"), which would meet the proposed criteria for exclusion according to the information provided by HKU and CUHK.	Admin
003759 - 004635	Chairman Mr SHIU Ka-fai Admin	Mr SHIU Ka-fai reiterated his concern in relation to the impact of the new regulatory regime for PHFs, in particular the proposed requirement that a person could not serve at the same time as the chief medical executive of more than two day procedure centres or clinics operated by different licensees, on the development of the beauty sector; and his request for the Administration to consult the beauty sector on the drafts of the codes of practice for day procedure centres and clinics.	
004636 - 005048	Chairman Dr Pierre CHAN	In response to Dr Pierre CHAN's suggestion of subjecting medical laboratories, where no practice of registered medical	

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	Admin	practitioners and registered dentists took place, to regulation under the Bill, the Administration advised that a task force had been set up to advise the Administration in formulating the regulatory framework for cell and tissue-based therapy and health products for advanced therapies.	
005049 - 005756	Chairman Mr SHIU Ka-fai Admin	<p>The Chairman and Mr SHIU Ka-fai's concern over the proposed requirement that an operator of a permitted facility (i.e. a PHF for which a licence was in force or an exemption under clause 43 was in force) had to ensure that the premises had a direct and separate entrance not shared with or involving passing through, any premises that served a purpose not reasonably incidental to the facility, in particular the impact of the requirement on the operation of beauty parlours which might fall into regulation under the Bill. In response, the Administration advised that it was exploring ways to address the concerns raised by stakeholders on the proposed requirement.</p> <p>On the Chairman and Mr SHIU Ka-fai's concern that depending on the circumstances, the administration of local anaesthetics, which were pharmaceutical products regulated under the Pharmacy and Poisons Ordinance (Cap. 138), to a person for the purpose of pain control before the carrying out of certain cosmetic procedures (e.g. eyebrow tattooing) would be regarded as an act of practising Western medicine, the Administration undertook to relay the concern about the restriction of supply of local anaesthetics to the Pharmacy and Poisons Board of Hong Kong for consideration.</p>	
005757 - 005854	Chairman ALA9	At the invitation of the Chairman, the Legal Adviser to the Bills Committee highlighted her observations over the meanings of various key terms in the Bill, such as "medical procedure", "medical service" and "medical treatment" as set out in her letter dated 1 December 2017 to the Administration [LC Paper No. CB(2)454/17-18(03)].	
005855 - 005902	Chairman Admin	Commencement of clause-by-clause examination of the Bill	
005903 - 011822	Chairman Admin ALA9 Mr SHIU Ka-fai Dr Pierre CHAN	<p><u>Examination of the long title, clauses 1 and 2</u></p> <p>The Legal Adviser to the Bills Committee's questions about whether the administration of local anaesthetics in cosmetic procedures would be regarded as a "medical procedure"; and whether the decision of the Steering Committee on Review of Regulation of PHFs to, on the recommendation of the Working Group on Differentiation between Medical Procedures and Beauty Services, exempt traditional body tattooing from being considered as a medical procedure should be reflected in the Bill.</p> <p>The Administration's advice that given the varying degree of complexity of medical practice and the advancement in medical technology, the board term "medical procedure" was not defined in the Bill. Depending on the circumstances, the administration</p>	

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		of local anaesthetics might be regarded as a "medical service" as defined in clause 2(1) of the Bill if the administration of local anaesthetics was performed by a registered medical practitioner or a registered dentist. Under the Bill, premises where practice of registered medical practitioner(s) or registered dentist(s) took place would be subject to regulation. The exemption of traditional body tattooing from being considered as a medical procedure had been widely disseminated to the public and stakeholders.	
011823 - 013839	Chairman Admin Dr KWOK Ka-ki Dr Fernando CHEUNG Dr Junius HO Dr Pierre CHAN	<p><u>Examination of clause 3</u></p> <p>Members noted that the Administration would move amendments to clauses 2 and 3 to give effect to the exclusion proposal.</p> <p>Dr KWOK Ka-ki's view that the exclusion proposal would create a loophole in the new regulatory regime, thereby undermining patients' interest; and his concern over the lack of tools and inspection to assess which PHFs managed or controlled by HKU and CUHK were primarily used for teaching or research relating to medicine or dentistry.</p> <p>Dr Fernando CHEUNG's question about why subjecting the facilities concerned would stifle teaching and research activities; and his view that the exclusion proposal was not justifiable; and Dr Pierre CHAN's concern that some of the 14 facilities were fee-charging.</p> <p>The Administration reiterated the rationale for the exclusion proposal, adding that similar exclusion was currently in place in the Medical Clinic Ordinance (Cap. 343), under which relevant premises maintained or controlled by HKU and CUHK were excluded from the definition of "clinic". At present, patients of the 14 facilities were requested to complete a consent form for the purpose of teaching or research and some services provided by these facilities required payment by patients. Upon passage of the Bill, DH would not proactively inspect the premises of the PHFs of HKU and CUHK having excluded from regulation of the Bill to assess if they still meet the criterion of being "primarily used for teaching or research relating to medicine or dentistry" but would do so upon receipt of complaints and intelligence.</p> <p>While raising no objection to the exclusion proposal, Dr Junius HO requested the Administration to advise in writing the respective fee setting policy adopted by the 14 facilities for those services which required payment of fees and charges.</p>	Admin
013840 - 014128	Chairman Admin	<u>Examination of clauses 4 to 7</u>	
014129 - 015031	Chairman Admin Dr Pierre CHAN	<u>Examination of clause 8</u>	

Time marker	Speaker	Subject(s)/Discussion	Action required
	ALA9	<p>Dr Pierre CHAN's question as to whether a clinic, the premises of which included units on different floors of a building, would be regarded as a single entity and fall into the meaning of "small practice clinic" under the Bill if the conditions on the operator(s) of the clinic as set out in clause 41 of the Bill were satisfied.</p> <p>The Administration's advice that in relation to a PHF, its premises comprised those places that were, among others, in close proximity to one another and that formed a distinct whole for the facility to function as a single entity. It would be up to the operator of the PHF concerned to decide whether the premises should be operated with one or more than one licence. Separately, an operator of a clinic which fell within the meaning of "small practice clinic" in clause 41 of the Bill could ask the Director for a letter of exemption from licensing.</p> <p>In response to the Legal Adviser to the Bills Committee's enquiry, the Administration advised that clauses 125 and 126 of the Bill had provided special treatment for an application for a hospital licence during the specified period for premises covered by a valid certificate of registration of a hospital under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) such that the new hospital licence would, for the period specified under clause 126 of the Bill, cover certain associated premises that were covered by the certificate so as to constitute one PHF under the Bill.</p>	
015032 - 015156	Chairman Admin	<u>Examination of clauses 9 to 11</u>	
015157 - 015504	Admin Chairman ALA9	<p><u>Examination of clause 12</u></p> <p>Members noted that the Administration would move amendments to clause 12(3) to give effect to the exclusion proposal.</p> <p>The Legal Adviser to the Bills Committee enquired whether a person, not being a healthcare professional specified in Schedule 6 to the Bill, who performed a cosmetic procedure on any premises (other than an excepted premises) for another person who was not suffering from a disease, injury or disability of mind or body and caused personal injury to that person would be caught by the proposed offence set out in clause 12 of the Bill. In response, the Administration replied in the negative.</p> <p>In response to the Chairman's queries in respect of clause 12(3) of the Bill, the Administration affirmed that any premises that were temporarily used for emergency or rescue purposes would constitute "excepted premises", and the meaning of "medical treatment", in relation to an individual, did not include treatment given by way of first aid.</p>	
015505 - 015837	Chairman Admin	<u>Examination of clause 13</u>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		In response to the Chairman's question, the Administration advised that the Bill had provided for transitional arrangements for scheduled nursing homes, under which the registered persons in relation to these homes might choose to apply for, in relation to all, or a part, of the registered premises, a licence under the new regulatory regime; a licence under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459); or a licence under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613).	
015838 - 020025	Chairman Admin	<u>Examination of clauses 14 to 18</u>	
020026 - 020302	Chairman Admin	<u>Examination of clause 19</u> The Chairman's enquiries concerning the validity period of a licence for a clinic that was a scheduled clinic and the fees payable in relation to issue or renewal of licence for a scheduled clinic. The Administration advised that certain medical practitioners with limited registration had been practising in medical clinics registered under the Medical Clinics Ordinance, which were subject to annual re-registration. These clinics were listed in Schedule 5 to the Bill. Under clause 19(4) of the Bill, a licence for a clinic that was a scheduled clinic was valid for a period of not more than one year as specified in the licence. The fees payable in relation to issue or renewal of licence for a scheduled clinic, as set out in Schedule 3 to the Bill, was \$125.	
020303 - 020344	Chairman Admin	<u>Examination of clauses 20 to 22</u>	
<i>Agenda item II: Any other business</i>			
020345 - 020431	Chairman	Closing remarks Date and time of next meeting	