

立法會
Legislative Council

LC Paper No. CB(2)696/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/16

Bills Committee on Private Healthcare Facilities Bill

**Minutes of the eighth meeting
held on Monday, 9 April 2018, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon CHAN Han-pan, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, 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
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, BBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Hon HO Kai-ming
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN

Member absent : Dr Hon Junius HO Kwan-yiu, JP

Public Officers : Mr FONG Ngai
attending Deputy Secretary for Food and Health (Health) Special Tasks
Food and Health Bureau

Mr Bill LI Chi-pang
Principal Assistant Secretary for Food and Health
(Health) Special Tasks
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 : Ms Maisie LAM
attendance Chief Council Secretary (2) 5

Staff in : Ms Clara TAM
attendance Assistant Legal Adviser 9

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1823/16-17(02), CB(2)454/17-18(03), CB(2)629/17-18(03), CB(2)1135/17-18(01) to (02) and CB(3)687/16-17]

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

Continuation of clause-by-clause examination of the Bill

2. The Bills Committee continued clause-by-clause examination of the Private Healthcare Facilities Bill ("the Bill") from clause 64 and examined up to clause 67.

3. Mr Tommy CHEUNG indicated his intention to propose an amendment to the Bill to enhance price transparency in relation to the medical services provided by private hospitals.

Follow-up actions required of the Administration

Admin

4. The Bills Committee requested the Administration to:

- (a) in respect of clause 14(3) of the Bill which provided that the applicant for a licence to be issued for a private healthcare facility other than a hospital or a scheduled clinic could be an individual, a partnership, a company, a body corporate other than a company, or a society; and a member's concern over the safeguarding of patients' interests if the licensee of such facility, which/who was required to be wholly responsible for the operation of the facility, was a limited company,
 - (i) advise whether, and if so, how the licensee (i.e. the limited company) and the director(s) and/or officer(s) in the management of the limited company concerned would be held liable for negligence claim arising from medical or dental incidents occurred in the facility;
 - (ii) consider the suggestion that the Bill should require those private healthcare facilities the licensee of which was a limited company to take out a liability insurance to ensure that their patients would be provided with adequate compensation in case of a medical or dental incident; and

Action

- (iii) whether the absence of regulation under the Bill over the possible act of a private healthcare facility to require its patients to sign a consent form for receiving medical or dental care which contained exemption of liability clause(s) that purported to exclude or restrict the facility's liability in the case of a medical or dental incident caused by negligence of the facility would undermine protection of the interests of patients; and
- (b) advise, when available, the outcomes of its discussion with the relevant stakeholders, including private hospitals and patient groups, on the existing common practice of private hospitals to impose different level of service charges (such as that for medicines, injections, investigations and doctors' fees, etc.) according to different types of ward.

II. Any other business

- 5. Members agreed that the next two meetings of the Bills Committee would be held on 23 April 2018 at 10:45 am and 14 May 2018 at 4:30 pm respectively.
- 6. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 2
Legislative Council Secretariat
23 January 2019

**Proceedings of the eighth meeting of
the Bills Committee on Private Healthcare Facilities Bill
held on Monday, 9 April 2018, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000816 - 000913	Chairman	<p>Opening remarks</p> <p>Members noted the letter dated 6 April 2018 from Mr SHIU Ka-fai [LC Paper No. CB(2)1175/17-18(01)] which was tabled at the meeting.</p>	
000914 - 001447	Chairman Admin ALA9	<p>Referring to the Administration's response to item (b)(ii) in LC Paper No. CB(2)1135/17-18(01) as set out in paragraphs 3 to 5 of LC Paper No. CB(2)1135/17-18(02), the Legal Adviser to the Bills Committee enquired about:</p> <p>(a) whether the Director of Health ("the Director") would have power to consider additional information provided by an operator of an exempted clinic after the specified notice period in relation to the revocation of exemption; and</p> <p>(b) the reason(s) for not providing, similar to what was provided for under the Medical Clinics Ordinance (Cap. 343), an appeal mechanism for a person making the request or the operator of an exempted clinic who was aggrieved by the decision of the Director to refuse to issue a letter of exemption pursuant to clause 43(4) or revoke the exemption granted pursuant to clause 45.</p> <p>The Administration's advice that upon the passage of the Private Healthcare Facilities Bill ("the Bill"), those clinics exempted under section 8 of the Medical Clinics Ordinance would be a scheduled clinic under the Bill. The applicant or licensee of a private healthcare facility ("PHF"), including a scheduled clinic, who was aggrieved by the Director's decisions specified in clause 39 might appeal to the Administrative Appeals Board. Separately, a person that operated, or intended to operate, a small practice clinic might ask the Director for a letter of exemption for the clinic. In case the Director refused to issue a letter of exemption, the person concerned might apply for a licence to operate the clinic.</p>	
001448 - 002601	Chairman Mr SHIU Ka-fai Admin Dr KWOK Ka-ki	<p>Referring to his letter which was tabled at the meeting, Mr SHIU Ka-fai opined that the Administration should relax the requirement under clause 53(4) that a person must not serve at the same time as the chief medical executive of more than two day procedures centres or clinics (excepted in the situation referred to in clause 53(5)) in view of the current medical manpower constraint.</p> <p>Dr KWOK Ka-ki's view that in determining the number of day procedure centres or clinics a chief medical executive could</p>	

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		<p>serve at the same time, there was a need to give due consideration to factors including the risks of the medical procedures being carried out and the medical services being provided by these facilities in order to safeguard patient safety.</p> <p>The Administration's advice that its initial thought was that the requirement should not be relaxed if the person concerned served at day procedure centres. However, it was examining the feasibility of allowing a person who served only at clinics, to serve at the same time as the chief medical executive of not more than three clinics. On Dr KWOK Ka-ki's enquiry about the updating of column 2 of Schedule 2 to the Bill which set out the medical procedures that could only be carried out in day procedure centres and hospitals (excluding those set out in column 3 of Schedule 2 to the Bill) upon the passage of the Bill, the Administration advised that it would keep in view the medical development and update the Schedule as and when appropriate.</p>	
002602 - 004142	<p>Chairman Admin Dr CHIANG Lai-wan Dr Helena WONG</p>	<p>Continuation of clause-by-clause examination of the Bill</p> <p><u>Examination of clause 64</u></p> <p>The Chairman's enquiry on how the patients would be informed of the channels for making a complaint against a PHF; and Dr CHIANG Lai-wan's concern about the complaints handling procedure of a PHF and how patients' interest would be safeguarded in case of medical or dental incidents if the licensee of the PHF concerned was a limited company.</p> <p>The Administration's advice that, by making reference to the existing Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes, the relevant codes of practice ("CoPs") to be issued under clause 102 of the Bill would require that information on the channels for making a complaint against a PHF should be made readily available by the PHFs concerned to patients such as through posting a notice in the facility. One of the grounds for the taking of regulatory actions by the Director in relation to licence was that the licensee or chief medical executive of the facility concerned contravened or had contravened a CoP.</p> <p>In response to Dr Helena WONG's enquiries, the Administration advised that on request of the Director, the chief medical executive of a PHF had to provide to the Director a summary of the complaints against the facility received by the facility, the findings of the investigations and the actions taken. In the event that a facility complaint case constituted a significant public health risk, the details of which would be made public. In addition, a Committee on Complaints against Private Healthcare Facilities ("the Complaints Committee") was proposed to be established under clause 71 of the Bill to, among others, receive and consider facility complaints at the second-tier.</p>	

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004143 - 005002	Chairman Mr Tommy CHEUNG Admin	On Mr Tommy CHEUNG's concern that the requirements on price transparency in the Bill could not address the common pricing practice of private hospitals to impose different level of service charges according to the class of ward a patient stayed, the Administration elaborated on the existing measures rolled out under the pilot programme for enhancing price transparency for private hospitals and undertook to relay to the private hospitals some members' concern on the private hospitals' common practice of linking the levels of service charges to the types of ward, and would encourage them to explain to their patients clearly the various levels of service charges according to the types of ward.	Admin
005003 - 005741	Chairman Dr CHIANG Lai-wan Admin	Dr CHIANG Lai-wan's concern that a PHF the licensee of which was a limited company would not be required to take out a liability insurance under the Bill, and that a PHF might require its patients to sign a consent form for receiving medical or dental care which contained exemption of liability clause(s) that purported to exclude or restrict the facility's liability in the case of a medical or dental incident caused by negligence of the facility.	
005742 - 010207	Chairman Mr Andrew WAN Admin	<p>In response to Mr Andrew WAN's enquiry, the Administration reiterated the complaints handling procedure that the licensee of a PHF had to put in place for receiving, managing and responding to complaints that were received against the facility.</p> <p>Mr Andrew WAN's view that the chief medical executive of a PHF should be required to provide to the Director the full report, instead of a summary as currently required under clause 64(4), of the complaints against the facility received by the facility; the findings of the investigations of the complaints; and the actions taken in response to the complaints.</p> <p>The Administration's advice that in case a complaint against the facility concerning the same matter was made to the Complaints Committee, the PHF concerned was required to fully cooperate with the Complaints Committee in providing any information or documents requested and giving any assistance necessary for concluding the case.</p>	
010208 - 012313	Chairman Dr Helena WONG Mr Tommy CHEUNG Dr CHIANG Lai-wan Admin	<p>Dr Helena WONG's remarks that if the Administration did not propose amendments to the Bill to address squarely the common practice of private hospitals to impose different level of service charges according to different types of ward, the Democratic Party might propose amendments to the Bill in this regard; and Mr Tommy CHEUNG's remarks that he would propose a set of amendments to the Bill to address the above problem.</p> <p>Mr Tommy CHEUNG's further view that private hospitals should make public the in-house and non-in-house doctors' fees, rather than just providing patients with budget estimates before admission as they currently did under the pilot programme for enhancing price transparency for private hospitals.</p>	

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		On Dr Helena WONG's suggestion that the Bills Committee should invite relevant stakeholders, including private hospitals and patient groups, to give views on the requirements on price transparency of private hospitals, the Chairman requested the Administration to revert to the Bills Committee the outcomes of its discussion with the relevant stakeholders on the subject.	Admin
012314 - 014223	Chairman Dr CHIANG Lai-wan Mr Tommy CHEUNG Admin	<p>Dr CHIANG Lai-wan and the Chairman's request for the Administration to provide written response on:</p> <p>(a) whether, and if so, how the licensee of a PHF other than a hospital or a scheduled clinic which was a limited company, and the director(s) and/or officer(s) in the management of the limited company concerned would be held liable for negligence claim arising from medical or dental incidents occurred in the facility;</p> <p>(b) her suggestion that the Bill should require those PHFs the licensee of which was a limited company to take out liability insurance to ensure that their patients would be provided with adequate compensation in case of a medical or dental incident; and</p> <p>(c) whether the absence of regulation under the Bill over the possible act of a PHF to require its patients to sign a consent form for receiving medical or dental care which contained exemption of liability clause(s) that purported to exclude or restrict the facility's liability in the case of a medical or dental incident caused by negligence of the facility would undermine protection of the interests of patients.</p> <p>Mr Tommy CHEUNG's concern on item (a) above; and his reiteration of his concern over the existing common practice of private hospitals to impose different level of service charges according to different types of ward.</p>	Admin
014224 - 014805	Chairman ALA9 Admin Mr Tommy CHEUNG	<p>The Legal Adviser to the Bills Committee drew the attention of members that clause 64 did not provide for the timeframes a PHF had to handle and complete the investigation of a complaint against the facility, and to provide to the Director a summary of the complaints against the facility received by the facility and the relevant investigation findings and actions taken.</p> <p>The Administration's advice that private hospitals were currently required under the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes to set a timeframe, say, 10 working days, for providing an initial response to complaints the hospitals received, and to submit a complaint digest to the Director on a monthly basis. Similar requirements would be specified in the relevant CoP to be issued by the Director under the Bill.</p>	
014806 - 015805	Chairman Admin ALA9 Dr CHIANG Lai-wan	<p><u>Examination of clause 65</u></p> <p>On the Chairman's enquiry as to whether a complainant could reach settlement with the PHF concerned after making a</p>	

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		<p>complaint to the Complaints Committee against a PHF, the Administration replied in the positive and added that if a settlement was effected between the complainant and the PHF concerned before the case was concluded by the Complaints Committee, the complainant might, in writing, notify the Complaints Committee of the settlement and withdraw the complaint.</p> <p>In response to the Legal Adviser to the Bills Committee's enquiry about the consequence(s) of contravening clause 65, the Administration advised that contravening the ordinance (if enacted) by the licensee or chief medical executive of a PHF was one of the grounds for the Director to take regulatory actions in relation to licence.</p> <p>Dr CHIANG Lai-wan's reiteration of her concern over the liability of a PHF's licensee which was a limited company in the case of medical or dental incident caused by negligence of the facility.</p>	
015806 - 015954	Chairman Admin	<p><u>Examination of clauses 66 and 67</u></p> <p>Members noted that the Administration was examining the feasibility of providing a transitional arrangement to facilitate permitted facilities (particularly clinics) to comply with the requirement under clause 67 in relation to having a direct and separate entrance not shared with, or involving passing through, any premises serving a purpose not reasonably incidental to the facility upon the full implementation of the new regulatory regime.</p>	
<i>Agenda item II: Any other business</i>			
015955 - 020018	Chairman	<p>Closing remarks</p> <p>Arrangements for the next two meetings</p>	