

## **Bills Committee on Private Healthcare Facilities Bill**

### **Government's response to the follow-up issues raised at the Bills Committee meeting on 9 October 2017**

#### **Purpose**

This paper sets out the Government's response to the follow-up issues raised at the meeting of the Bills Committee on Private Healthcare Facilities Bill (the Bill) held on 9 October 2017 (the meeting).

#### **Exclusion for the Two Universities**

2. At the meeting, representatives from the Faculties of Medicine of The University of Hong Kong (HKU) and The Chinese University of Hong Kong (CUHK) expressed the views that facilities managed or controlled by the Faculties should not be regulated under the Bill so as not to stifle teaching and research activities. We are inclined to accept the suggestion, noting that there already exists robust governance mechanism of HKU and CUHK in respect of private healthcare facilities (PHFs) under their aegis. To this end, we propose to introduce an amendment to exclude any facility which is –

- (a) managed or controlled by HKU or CUHK;
- (b) a day procedure centre, clinic or health services establishment; and
- (c) primarily used for teaching or research relating to medicine or dentistry.

3. Based on information provided by HKU and CUHK, a list of existing facilities that would meet the proposed criteria and hence be excluded from the Bill is set out at **Annex**.

#### **Offence under Clause 12**

4. Under clause 12 of the Bill, a person who is not a healthcare professional must not in any premises (other than an excepted premises)

purportedly perform a medical treatment or medical procedure for another person who is or may be suffering from a disease, injury or disability of mind or body; and cause personal injury to the other person during the treatment or procedure.

5. In considering whether a person has committed an offence under clause 12, factors including the facts and other circumstantial evidences shall be taken into account on a case-by-case basis. The onus of proof would be on the prosecution for all elements of the offence, including (among others) that the person concerned has purportedly performed a medical treatment or medical procedure (including certain procedures mentioned at paragraph 6 below); that the treatment or procedure is performed for a person who is or may be suffering from a disease, injury or disability of mind or body; and that personal injury has been caused to that person during the treatment or procedure.

6. Certain procedures, irrespective of whether they are for cosmetic purposes, should only be performed by registered medical practitioners or registered dentists. These procedures include those involving injections, mechanical/chemical exfoliation of the skin below the epidermis, hyperbaric oxygen therapy and dental bleaching. Traditional body tattooing and piercing should nevertheless be exempted from being considered as a “medical procedure”, but special care should be taken for those performed on body parts which are of higher risk of complications (e.g. near the eyes or tongue). Depending on the facts and evidence of each case, enforcement action under the Medical Registration Ordinance (Cap. 161) or Dentists Registration Ordinance (Cap. 156) may be taken if procedures are carried out not in accordance with the above.<sup>1</sup>

## **The Committee on Complaints against Private Healthcare Facilities**

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<sup>1</sup> In 2012, the Food and Health Bureau established a Steering Committee on Review of Regulation of Private Healthcare Facilities which recommended, among others, that certain procedures should only be performed by registered medical practitioners or registered dentists. The recommendations relevant to this paragraph were discussed at the Legislative Council Panel on Health Services meeting in November 2013.

7. An independent Committee on Complaints against Private Healthcare Facilities (Complaints Committee) will be established to look into complaints unresolved by PHFs under the new regulatory regime. It is stipulated in clause 71(4) of the Bill that at least half of the members of the Complaints Committee must be persons who are neither registered medical practitioners or registered dentists.

8. In considering the composition of membership of the Complaints Committee, we strive to ensure a balanced participation by different stakeholders to increase the transparency, neutrality and credibility of the Committee. We consider that the composition set out in clause 71(4) of the Bill is in line with the above objective, and provides sufficient flexibility for the Secretary for Food and Health to appoint members of different backgrounds.

9. The Complaints Committee provides an efficient and impartial platform to handle complaints against PHFs which are unresolved at the service delivery level. Its functions include receiving and considering facility complaints, as well as making recommendations to the Director of Health (the Director) on matters relating to facility complaints, such as whether to take any regulatory action against the PHFs concerned. The decision on whether to take regulatory actions rests with the Director. Given that there already exists a two-tier complaint handling mechanism under the Bill and that the Director may take such regulatory actions as she deems appropriate, we do not see a need to put in place another layer of appeal procedures for decisions of the Complaints Committee which will prolong the complaint handling process.

### **Application Fees for Hospital Licences**

10. Under clause 25(2) of the Bill, an application under Part 3 of the Bill, including an application for a hospital licence, must be accompanied by the appropriate fee specified in Schedule 3. Clauses 125(6), 134(5) and 135(5) provide for the items of fees in Schedule 3 payable for certain applications under particular conditions. The fees apply to all facilities (including hospitals) established and operated by private sector and non-governmental organizations.

11. Considering the views from certain stakeholders, we anticipate that certain scheduled nursing homes may aspire to become a private hospital in due course providing palliative hospice services. In this regard, if the application for a hospital licence is made within the period to be specified and if the certificate of registration concerned (as issued under the Private Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165)) is valid at the time, clause 125(6) should apply so that the applicant is only required to pay a lower fee tantamount to licence renewals. We are considering if the wording of the Bill should be refined. It is the policy intention that clause 125(6) applies to existing private hospitals and scheduled nursing homes.

### **Consolidated Response to the Deputations' Views and Suggestions**

12. In addition to the above, our response to some of the views and suggestions raised at the meeting is set out in the ensuing paragraphs.

#### **(i) Two-year Restriction on Facility Complaints**

13. Under clause 84(2) of the Bill, the Complaints Committee may refuse to appoint a case panel to consider a facility complaint if the event to which the complaint relates occurred more than two years before the day on which the complaint is made. At the meeting, several deputations considered that the two-year restriction was too stringent. They suggested relaxing, or even removing, this requirement.

14. The two-tier complaints management system under the Bill, including the two-year restriction mentioned above, was proposed with reference to the complaints management system in the Hospital Authority. We consider the current proposal appropriate.

#### **(ii) Emergency Situations under Clause 68**

15. Clause 68(2) of the Bill states that operators of certain types of PHFs must not provide to any person a medical procedure that may require the person's continuous confinement within the facility for more than 12 hours. Furthermore, clause 68(3) states that for a day procedure centre,

the period of continuous confinement referred to in clause 68(2) must be within the same calendar day.

16. In response to clause 68, a deputation suggested at the meeting that flexibility should be provided for unexpected and emergency situations where patients had to stay in the facility for a period longer than expected. We consider that under unexpected and emergency situations arising from a procedure or operation, the operator will not be considered as violating clause 68 if a patient has to stay in the facility to undergo urgent treatment.

### **(iii) Small Practice Clinics**

17. There were views that the scope of small practice clinics should be broadened. On the other hand, there were also calls for further tightening the definition of small practice clinic to avoid possible loopholes. We need to strike a balance in setting the exemption threshold in respect of small practice clinics. While a relaxed scope of exemption may result in deviation from our original intention (i.e. to focus on clinics under the management of incorporated bodies, and to exempt those involving only solo or small group practice), over-regulation may undermine the availability of medical services for the public. We had sought the views of stakeholders on this front in the course of ironing out details of the new regime, and consider that stakeholders' views have been duly reflected in the current definition of small practice clinic under the Bill.

### **(iv) Transitional Arrangements**

18. Several deputations at the meeting opined that ample transitional period should be available for stakeholders to get ready for the new regime. To ensure that operators and the medical and dental professions will be fully prepared before implementation of the revamped regime, we have provided for transitional arrangements in the Bill. For example, when the new legislation is enacted and takes effect, the Director will, if satisfied that certain conditions are met, issue a provisional licence to the operator of an existing day procedure centre or clinic after receiving the operator's applications for a full licence. The provisional licence allows the day procedure centre or clinic concerned to continue to operate before it is qualified for the full licence. We will also commence the regulatory regime in phases, with the regulatory regime of riskier types of PHFs put in

force earlier. The relevant prohibition and offence provisions will be effective when we consider that both the public and stakeholders are ready for full-scale regulation, in respect of the type of PHFs concerned. Exemption is also available for scheduled nursing homes satisfying certain conditions as stipulated in the Bill.

19. The Government's responses in paragraphs 2 and 11 may require amendments to the Bill. Subject to Members' views and further deliberations throughout the scrutiny of the Bill, we will proceed to prepare draft Committee Stage Amendments to give effect to the amendments.

**Food and Health Bureau**  
**Department of Health**  
**November 2017**

**List of Existing Facilities Meeting  
the Proposed Criteria for Exclusion**

	<b>Name of facility</b>	<b>Address</b>	<b>Organization operating the service</b>
1.	HKU PET/CT Clinic	Ground Floor, New Wing D, Main Block, Queen Mary Hospital	HKU
2.	MRI & Ultrasound Units	LG3, The Hong Kong Jockey Club Building for Interdisciplinary Research, 5 Sassoon Road	HKU
3.	Lady Helen Woo Women's Diagnostic and Treatment Centre	2/F, East Wing, Tsan Yuk Hospital	HKU
4.	Centre of Assisted Reproduction and Embryology	Room 528, 5 <sup>th</sup> Floor, Block K, Queen Mary Hospital	HKU
5.	HKU Phase 1 Clinical Trials Centre	2/F, Block K, Queen Mary Hospital	HKU
6.	Institute for Advanced Dentistry – Multi-Specialty Clinic	Block A 6 <sup>th</sup> Floor, The Prince Philip Dental Hospital	HKU
7.	Centre of Research and Promotion of Women's Health	Room 421-425, 4/F, Lek Yuen Health Centre, 9 Lek Yuen Street, Shatin	CUHK
8.	CUHK Ophthalmic Research Centre	Room 350-353, 382-383, 385-389, 3/F, Hong Kong Eye Hospital	CUHK
9.	CUHK Jockey Club Centre for Osteoporosis Care and Control	Room 325, The Jockey Club School of Public Health and Primary Care, Prince of Wales Hospital	CUHK

	<b>Name of facility</b>	<b>Address</b>	<b>Organization operating the service</b>
10.	Hong Kong Institute of Integrative Medicine	4L, 4/F, Day Treatment Block, Prince of Wales Hospital	CUHK
11.	Hong Kong Mood Disorders Centre	Room 1511-1512, Phase 1, Grand Central Plaza, 138 Shatin Rural Committee Road, N.T.	CUHK
12.	Phase 1 Clinical Trial Centre	11EF, Special Block (Wing E,F), Prince of Wales Hospital	CUHK
13.	S H Ho Centre for Digestive Health	4M, 4/F, Day Treatment Block, Prince of Wales Hospital	CUHK
14.	The Chen Wai Wai Vivien Foundation Therapeutic Physical Mental Exercise Centre	Room L, 19/F, Phase 1, Kings Wing Plaza, On Kwan Street, Shek Mun, Shatin, N.T.	CUHK

Note: Subject to further deliberation between the two universities and stakeholders, as well as development of the universities' scale and scope of services, there could be updates to the list.