



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : FH CR 3/3231/16
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By Fax (2840 0467)

1 December 2017

Mr LI Chi Lung, Michael
AS for Food & Health (Health)6
Food and Health Bureau
19/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Mr LI,

Private Healthcare Facilities Bill

We are scrutinizing the legal and drafting aspects of the captioned Bill and have the following matters for your clarification:

Meaning of "medical procedure"

Under the Bill, four types of private healthcare facilities ("PHFs") are proposed to be regulated (namely, hospitals, daily procedure centres, clinics and health services establishments) and they are mainly distinguished from each other in terms of "medical services" or "medical procedures" to be provided at the relevant premises. It is noted that the term "medical procedure" appears in the definitions of "hospital", "scheduled medical procedure", "minor medical procedure", "outreach medical services" and "patient" as well as in other provisions of the Bill. However, the term "medical procedure" is not defined in the Bill. In the absence of a defined scope of "medical procedure" under the Bill, we have the following observations:

- (a) it is not clear whether "medical procedure" would comprise "scheduled medical procedure" and "minor medical procedure" which are defined in clause 2 of the Bill. Please specify the intended scope of "medical procedure" under the Bill.

- (b) the term "medical service" is defined in clause 2 of the Bill to mean "in relation to a patient, a medical diagnosis, treatment (other than first aid treatment) or care for the patient given by a registered medical practitioner; or a registered dentist". Under clause 4 of the Bill, a hospital is defined to mean any premises that are used, or intended to be used for, among others, providing medical services to patients, with lodging (clause 4(a)); or carrying out medical procedures on patients, with lodging (clause 4(b)). Under clause 9, an "outreach medical service" is defined to mean a medical service that is given in certain settings and that does not involve a medical procedure or scheduled procedure. It seems that the terms "medical service" and "medical procedure" under clause 4 would be mutually exclusive while a "medical service" could include a "medical procedure" under clause 9. Please clarify.

- (c) under clause 6 of the Bill, a clinic is defined to mean any premises that are used or intended to be used, for, among others, carrying out minor medical procedures on patients, without lodging. The term "minor medical procedure" is defined to mean a medical procedure (a) that is not a scheduled medical procedure; and (b) that is carried out in an ambulatory setting. The term "scheduled medical procedure" is defined to mean a medical procedure (a) that is described in column 2 of Schedule 2; (b) that is not a medical procedure described in column 3 of Schedule 2; and (c) that is carried out in an ambulatory setting. It is not clear, apart from the medical procedures which are described in column 3 of Schedule 2 and are carried out in an ambulatory setting, whether there are other types of medical procedures which would be included as "minor medical procedures" under the Bill and if this is the case, what these medical procedures are.

- (d) under clause 29 of the Bill, the Director of Health may by order suspend a facility service in a PHF for a period as he or she considers appropriate. The term "facility service" is defined in clause 2(1) to mean, in relation to a PHF, among others, the provision of a diagnostic or therapeutic procedure (which is not defined in the Bill). Under clause 38(1)(c), it is a ground for suspending a facility service if the Director is satisfied that a medical procedure belonging to a class of specialized service other than that specified in the licence is or has been provided in the PHF. It seems that the term "medical procedure" would be wide enough to include a "diagnostic or therapeutic procedure". Please let us

know the reasons for using "diagnostic or therapeutic procedure" instead of "medical procedure" in the definition of "facility service".

Offence under clause 12

Under clause 12 of the Bill, it is an offence for a person who is not a healthcare professional in any premises (other than an excepted premise, i.e. PHFs) purportedly performs a medical treatment or medical procedure for another person who is or may be suffering a disease, injury or disability of mind or body; and cause personal injury to the other person during the treatment or procedure.

- (a) While "medical treatment" is defined in clause 12 to mean, in relation to an individual, a treatment (including any diagnosis and prescription for giving the treatment) of any description performed on the individual for treating of disease, injury or disability of mind and body other than certain specified treatments (e.g. dispensation of medicine), the scope of "medical procedure" is not defined. Please let us know the differences in meaning between the terms "medical treatment" and "medical procedure" under clause 12.
- (b) Please let us know the reasons for restricting the scope of this offence to medical treatments or medical procedures performed on a person "who is, or may be, suffering from a disease, injury or disability of mind or body" as this formulation would exclude certain patients (defined in the Bill), i.e. a pregnant woman ready for childbirth or a person who receives the medical procedure in question only for assessing, maintaining or improving his/her health.
- (c) It is noted that this offence seeks to target at a person who is not a healthcare professional but performs medical treatment or medical procedure on persons. Please let us know the reasons for making "causing personal injury to the other person during the treatment or procedure" one of the necessary elements for the proposed offence and whether a medical procedure which involves a surgical operation on a patient would be considered as "causing personal injury to the other person during the treatment or procedure".

Health services establishments

According to paragraph 9 of the LegCo Brief for the Bill (File Ref.: FH CR3/3231/16), "health services establishment" is "meant to encompass new

modes of operation or delivery of medical services that entail a significant level of risk". The Secretary for Food and Health ("SFH") would be empowered to specify, by notice in the Gazette, new categories of "health services facilities" in Schedule 8 to the Bill in future (clause 101). It seems that the services to be provided by "health services establishment" in relation to "assessing, maintain or improving the health of patients; or diagnosing or treating illnesses or disabilities, or suspected illness or disabilities, of patients" as set out in clause 7 of the Bill could overlap with certain medical services to be provided by other types of PHFs. Please let us know:

- (a) the distinguishing factor that differentiates health services establishments from the other three types of PHFs;
- (b) the criteria to be adopted by SFH in adding to Schedule 8 new categories of "health services establishment"; and
- (c) examples of health services establishment that fall into the description of "premises of an education or scientific (or both) research institution in which medical services with lodging are provided to patients for the purpose of conducting clinical trials" as set out under column 2 in Schedule 8.

I would be grateful if you would let me have your response in bilingual form at your earliest convenience, preferably before 12 December 2017.

Yours sincerely,



(Clara TAM)
Assistant Legal Adviser

cc. DoJ (Attn: Ms Rayne CHAI, SALD & Miss Elaine NG, SGC (By Fax: 3918 4613))
Clerk to Bills Committee