

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

### **Government's response to the follow-up issues raised at the Bills Committee meeting on 9 April 2018**

#### **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 April 2018.

#### **Licensee Being a Limited Company**

2. Under clause 14 of the Bill, for private healthcare facilities (PHFs) other than a hospital or a scheduled clinic, the applicant for a licence to operate the relevant PHF could be an individual, a partnership, a company, a body corporate other than a company or a society. We note that currently in the market, such PHFs are being operated by individuals, partnerships or body corporates, etc. Given that the scale and scope of services provided in such PHFs may vary, there should be flexibility for the applicant concerned to be either a legal person or a natural person. On the other hand, in the case of private hospitals, the applicant concerned must be a legal person.

3. The question of liabilities in negligence claim arising from medical or dental incidents occurred in a PHF will depend on individual circumstances. Usually, the attending doctor or dentist owes a duty of care to his or her patients and a claim may be brought against him or her if such duty is breached and damages are caused. Moreover, under clause 47 of the Bill, the licensee of a PHF is wholly responsible for the operation of the facility. Depending on the circumstances, a civil action may also be brought against the licensee if the medical or dental incident occurred in a PHF was caused due to a negligence in the operation of the facility. If the licensee is a limited company, generally speaking, its director or officers will not be held liable for the negligence of the company which is a separate legal person. This position in common law is not changed by the Bill.

4. The Bill enhances the corporate governance of PHFs and ensures the service quality, efficiency and safety of them. With the introduction of a licensing system, the licensees have the incentive and responsibility to ensure that their PHFs are properly operated. We do not consider it necessary or justified to impose a further statutory obligation on the part of licensees to take out a liability insurance, which may lead to extra costs on the PHFs and in turn higher medical fees for the consumers.

5. If a PHF requires its patients to sign a consent form for receiving medical or dental care which contains exemption of liability clauses(s) that purport(s) to exclude or restrict the PHF's liability in the case of a medical or dental incident caused by the PHF's negligence, such clause will be of no effect in so far as liability for death or personal injury is concerned as such liability resulting from negligence cannot be excluded or restricted according to section 7 of the Control of Exemption Clauses Ordinance (Cap. 71).

### **Pricing Practice of Private Hospitals**

6. The primary objective of enhancing regulation of PHFs is to enhance the quality and safety of private medical services. On the other hand, as we pointed out at paragraphs 8.1 and 8.2 of the Consultation Document for regulation of PHFs<sup>1</sup>, private medical service, by its very nature, should be no different from other business transactions between consenting parties where prices are determined by market force. Allowing the market to determine prices on its own encourages competition in terms of service quality and efficiency among healthcare services providers. A number of price transparency measures have been incorporated under the Bill, so that service users will be able to estimate the charges that may be incurred, whilst the service providers can decide the level and structure of the fees and charges of their own services.

7. Government intervention on the pricing of services and products of private businesses entails far-reaching, read-across implications, and it calls for strong justification and adequate consultation of stakeholders. We note that there are views against the existing practice of some private hospitals to

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<sup>1</sup> Available at [http://www.hpdo.gov.hk/doc/Regulation\\_of\\_PHFs\\_con\\_doc\\_e.pdf](http://www.hpdo.gov.hk/doc/Regulation_of_PHFs_con_doc_e.pdf).

impose different level of service charges according to different types of ward. We will discuss this issue with relevant stakeholders (such as private hospitals and patient groups) and will report on the discussion outcome to the Bills Committee in a timely manner.

**Food and Health Bureau**  
**Department of Health**  
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