

For Information

On 5 Feb 2018

Legislative Council Panel on Health Services

HIV and AIDS Response Measures Formulated in relation to the Recommended HIV/AIDS Strategies for Hong Kong (2017-2021)

PURPOSE

This paper provides information on the social welfare support and residential care services for HIV infected patients, provision of HIV and sex education in schools and the relationship between enforcement actions taken against illegal prostitution and HIV prevention for sex workers in Hong Kong.

BACKGROUND

2. A meeting was held by the Panel on Health Services (“the Panel”) on 4 January 2018 to discuss the HIV and AIDS response measures formulated in relation to the “Recommended HIV/AIDS Strategies for Hong Kong (2017-2021)” (“the Strategies”). At the meeting, the Administration briefed members regarding the current HIV situation, HIV and AIDS response measures, funding mechanism of AIDS Trust Fund (“ATF”) and manpower involved in providing HIV services. Upon members’ request, a special meeting is arranged on 5 February 2018 to discuss the subject further and hear public depositions as well as issues as set out in the first paragraph.

ISSUES FOR DISCUSSION

Social welfare support and residential care services

3. HIV infected patients may have difficulties in their daily lives, including aspects of finance, housing and employment. At present, medical social workers (“MSWs”) of the Social Welfare Department (“SWD”) stationed at three HIV treatment centres under the Department of Health (“DH”) and the Hospital Authority help HIV patients cope with and resolve personal and family problems arising from the disease, and facilitate their re-integration into the

community. The services provided include psychological intervention and assistance to HIV infected patients and their families, appropriate rehabilitation and social services through collaboration with other healthcare professionals, and referrals for Comprehensive Social Security Assistance for patients with financial difficulties. Apart from providing casework services, MSWs will also organise educational/support groups and support programmes to assist HIV infected patients in dealing with the disease and adopting positive coping strategies.

4. As regards elderly persons, SWD currently provides subsidised long-term care services for the needy, namely residential care services and community care services. After applications have been received from the elderly (including HIV infected elderly persons), accredited assessors will, in accordance with the Standardised Care Need Assessment Mechanism for Elderly Services, adopt an internationally recognised assessment tool, i.e. Minimum Data Set - Home Care (“MDS-HC”), to assess the care needs of the applicants and match them with appropriate long-term care services. Assessors will also carry out clinical assessments to assist in ascertaining whether the elderly persons are in need of other specialist assessments or services including psychological intervention, medical care and daily living arrangements. Eligible elderly applicants for residential care services will be registered on the Central Waiting List for service allocation. When there are vacancies, SWD will forward the application details of the elderly applicants and their MDS-HC assessment results to the operators of the residential care homes for the elderly (“RCHEs”) to help them formulate care plans. In the past five years, SWD has no record of any cases of elderly persons being refused subsidised residential care services due to HIV infection.

5. Separately, SWD promulgates guidelines on infection control through the Code of Practice for Residential Care Homes (Elderly Persons) to assist RCHEs in enhancing their capabilities in taking care of elderly residents who may be affected by different infectious diseases (including HIV). In addition, SWD has been collaborating closely with DH to provide training for RCHE staff in order to raise their awareness of infection control. SWD also reminds RCHE operators from time to time that, apart from complying with the Residential Care Homes (Elderly Persons) Ordinance and the Code of Practice for Residential Care Homes (Elderly Persons), they should pay attention to and observe other legislation or the legal responsibilities and requirements under the common law related to the operation of RCHEs, including the Disability Discrimination Ordinance.

HIV and sex education in schools

6. Sex education is an integral part of values education. It is not an independent subject, nor is it confined to education related to the topic of sex only. Values education is an essential component of school education while sex education is closely related to moral education, affective education, health education and life education. Ever since the 2001 curriculum reform, the Education Bureau (“EDB”) has placed emphasis on providing students with holistic learning experiences and urged schools to adopt a holistic approach in planning the school curriculum and other learning activities in a systematic manner for the implementation of values education (including sex education). Schools should focus on nurturing students’ positive values and attitudes, strengthening the connection among learning elements and activities of values education in various cross-curricular domains, with a view to providing students with holistic learning experiences to facilitate their whole-person development.

7. Learning elements related to sex education, such as personal development, hygiene, puberty, making friends, dating, marriage, protecting the body and gender equality are included in the Key Learning Areas (“KLAs”), the Moral and Civic Education curriculum as well as relevant subjects of primary and secondary schools. Topics related to sexual orientations and prevention of discrimination are covered under KLAs/subjects. For example, “sexuality issues” are incorporated into the “Personal & Social Development” strand of the Personal, Social and Humanities Education KLA. The strand also includes core elements for learning such as similarities and differences between the two sexes, different types of relationships and behaviours appropriate for these relationships. Schools can explore topics related to sexual orientations and prevention of discrimination such as different notions and attitudes towards love, sex and marriage, heterosexual and homosexual relationships, ethical issues in the homosexuality debate through subjects such as Life and Society curriculum at the junior secondary level and Liberal Studies at the senior secondary level. As “sexuality issues” is a core element for learning, the school-based Integrated Humanities curriculum should cover related issues. Schools will make reference to the EDB’s latest curriculum guides and documents while taking into account their school mission and context as well as student needs in professionally planning for their school-based sex education curriculum and organising related learning activities such as school assembly, class-teacher lesson, extra-curricular activities, seminars, visits, exhibitions for the enhancement of students’ understanding of the relevant areas. In the case of HIV and sexually transmitted infections, the relevant knowledge is generally covered in the subject of Biology. Some schools also make use of the school assembly, class-teacher lesson to disseminate such knowledge to students.

8. The social atmosphere also influences values and sex education. We have therefore produced relevant learning and teaching resources and encouraged schools to make use of life events as the main learning contents to explore with students issues such as dating and love, AIDS and how to treat people infected with HIV, risks in using mobile apps to make friends, public display of affection so as to link up students' learning and their personal growth experiences in a meaningful way with a view to providing them with related knowledge and developing their positive values and attitudes. In addition, the seven priority values and attitudes embedded in the curricula include 'respect for others' and 'care for others', which emphasise that students should develop such attitudes as respecting and accommodating one another. EDB expects that sex education in schools will help students uphold positive values and attitudes when facing issues related to sex, build healthy interpersonal relationships as well as analyse issues rationally and objectively so as to make reasoned judgements and responsible decisions.

9. To support schools in implementing sex education, EDB provides professional support to schools. Apart from developing learning and teaching resources, EDB have also commissioned/invited tertiary institutions, related government departments and institution/organisations for example, the Family Planning Association of Hong Kong, DH, Equal Opportunities Commission etc. to co-organise courses/seminars/workshops. The themes include "How to Promote Sex Education Effectively in Primary/Secondary Schools", "Learning and Teaching of Sex Education: Preventing Sexually Transmitted Diseases and AIDS", "Mass Media, Gender Role and Gender Equality Education" and "Gender Equality Education and Prevention of Sexual Harassment and Dating Violence", etc.

10. In 2013, the Hong Kong Advisory Council on AIDS ("ACA") formed a Task Force to coordinate a territory-wide baseline survey with the participation of EDB and DH, which aimed to assess HIV education in lower secondary levels. Results showed that coverage of HIV education was high –

- (a) 91.7% of the responding schools had covered HIV education through KLAs/subject (i.e. traditional curriculum), with 80.8% using the life skills-based approach;
- (b) Around 70% included the message of "use condom to prevent HIV infection";
- (c) 67% had invited NGOs to conduct in-school HIV education; and 46% had invited DH; and
- (d) 66% had provided training to their teachers by EDB, NGOs or DH on HIV related knowledge.

11. Over the years, DH has also directly involved in sex education in primary and secondary schools. It provides educational information and organises promotional programmes on sex education to students through various means, including health talks about puberty at the Student Health Centres, interactive school-based programmes on sex education through its Adolescent Health Programme, life skills-based education on HIV and student-led HIV campaigns in secondary schools led by Special Preventive Programme (“SPP”), as well as online resources on sex education. Regular revision is conducted to update the content and teaching approach to address the needs of students. Since 2013, SPP has started to screen HIV-related films in eight tertiary institutions for educational purpose. In addition, training seminar on preventing sexually transmitted diseases and AIDS for teachers is held every year by the EDB. During the seminar, SPP would describe the local HIV situation, and the NGOs would share their experiences in supporting schools to implement sex education.

Enforcement actions against illegal prostitutions

12. Sex workers have all along been included as one of the high risk groups in the Strategies. Over the past two decades, the ATF has been supporting HIV prevention and education projects that target sex workers. From 2014 to 2017, a total of \$3 million has been accorded to projects targeting sex workers. With the concerted effort of relevant parties, the HIV prevalence of female sex workers has remained low at 0.0% to 0.19%, according to surveys conducted in 2006, 2009 and 2013. Their condom use rate remained high at over 90% (HIV and AIDS Response Indicator Survey 2013-2016).

13. From time to time, non-governmental organisations (“NGOs”) working with male and female sex workers have expressed concerns about the current regulations on sex work. Although prostitution itself is not illegal in Hong Kong, there are a number of provisions in the current legislation that may be invoked against the crimes of controlling of prostitution and to lessen the possible nuisance to members of the public, such as the following provisions under Crimes Ordinance (Cap. 200) –

- (a) Section 131 : Causing prostitution;
- (b) Section 139 : Keeping a vice establishment;
- (c) Section 147 : Soliciting for an immoral purpose; and
- (d) Section 147A : Prohibition of signs advertising prostitution.

14. NGOs opined that criminalisation of sex work-related activities can intimidate sex workers, which in turn may lower their willingness to access HIV related services, or make it difficult for health workers and NGOs to reach them.

Moreover, they notice that the Police would seize condoms during law enforcement and produce such seized items in certain cases as evidence for prosecution of sex work – related offences. Consequently sex workers might be reluctant to store or use condoms for fear of prosecution. In view of that, the community of sex workers requested: (a) decriminalisation of sex work; and (b) requesting the Police not to seize condoms during law enforcement and not to use condoms as evidence of prosecution for sex work-related offences.

15. During formulation of the Strategies, the ACA conducted literature search on the positive impact of decriminalisation of sex work on HIV transmission. However, after study, ACA finally concluded that there was insufficient scientific evidence to show that decriminalisation of sex work will further reduce the already low HIV transmission among sex workers in Hong Kong. (*Details can be found from “A supplement on the process of formulating the Recommended HIV/AIDS Strategies for Hong Kong (2017-2021)”* <http://www.aca.gov.hk/english/strategies/pdf/supp17-21.pdf>)

16. Knowing that condom seizure is being practised by the Police during law enforcement, from 2009 to 2013, ACA has written to the Police several times, by quoting the situation in New York, San Francisco, and Los Angeles as example, and asked them not to seize condoms during law enforcement nor use it as evidence of prosecution. In general, the enforcement taken by the Police targeted at organized prostitution activities that exploit sex workers and prostitution involving underage persons and visitors. During enforcement, only items with absolute evidential value would be seized on the merits of individual cases.

17. In July 2017, ACA met with the Department of Justice (“DoJ”) to express concern of the sex worker community about condoms seizure and questioned the necessity of the use of seized condoms in the prosecution of prostitution-related offences such as keeping a vice establishment under section 139 of Cap.200. Moreover, ACA suggested to explore the possibility of prosecution, in appropriate cases where there is already ample evidence to prove the case, exercising discretion to proceed without the seized condoms being presented as part of the prosecution.

18. From DoJ’s point of view, investigation of a criminal offence is the responsibility of the law enforcement agencies and it would be impracticable to instruct the on-site front-line officers not to seize the condoms from the vice establishments as these items might be relevant evidence. Therefore, it is reasonable and appropriate for the investigation officers to seize relevant exhibits according to the established guidelines.

19. With regard to the use of the seizure as evidence in a criminal trial, it is also the duty of the prosecutor to present all relevant and admissible evidence to the court fully and fairly for its consideration. The use of the police's seizure of condoms as evidence is common in prosecution of an offence under s.139. However, it is generally not the only or principal evidence of a case. As the evidence of each case will be different, whether the seized condoms should be used in the prosecution would depend on individual cases. That said, consideration can be given, as suggested by ACA, on a case-by-case basis on whether the seized condoms should necessarily be produced or dispensed with in a particular case, in accordance with the law and the Prosecution Code.

ADVICE SOUGHT

20. Members are invited to note the content of this paper.

Food and Health Bureau
Labour and Welfare Bureau
Education Bureau
Security Bureau
Department of Health
Social Welfare Department
Department of Justice

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