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Panel on Welfare Services and Panel on Health Services

Joint Subcommittee on Long-term Care Policy

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 23 June 2020**

**Amendments to the Residential Care Homes (Elderly Persons) Ordinance
(Cap. 459) and the Residential Care Homes (Persons with Disabilities)
Ordinance (Cap. 613)**

Purpose

This paper gives a brief account of past discussions of the Panel on Welfare Services regarding amendments to the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("the RCHE Ordinance") and the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) ("the RCHD Ordinance").

Background

Residential Care Homes (Elderly Persons) Ordinance

2. According to the Administration, the RCHE Ordinance, in full operation since 1 June 1996, provides for the regulation of residential care homes for the elderly ("RCHEs") through a licensing system administered by the Social Welfare Department ("SWD"). The purpose of the legislation is to ensure that residents in these homes receive services of acceptable standards that are beneficial to them physically, emotionally and socially.

3. Under the RCHE Ordinance, any person who on any occasion operates, keeps, manages or otherwise has control of an RCHE is required to possess a

licence which is subject to renewal. Conditions in relation to the operation, keeping, management or other control of the RCHE may be imposed upon the issue or renewal of a licence. The validity period of a licence may vary according to the degree of compliance of the RCHE with various statutory requirements as outlined in the RCHE Ordinance, its subsidiary legislation (namely the Residential Care Homes (Elderly Persons) Regulation) and the Code of Practice of Residential Care Homes (Elderly Persons) ("RCHE Code of Practice") on staffing, space, location, design, structure, safety precautions and quality of care to residents of RCHEs. As at end-December 2018, there were 735 RCHEs regulated under the RCHE Ordinance offering around 73 000 residential care places for the elderly.

Residential Care Homes (Persons with Disabilities) Ordinance

4. The RCHD Ordinance commenced operation on 18 November 2011 (except Part 2 on sanctions for operating a residential care home ("RCH") without a licence or certificate of exemption ("CoEs")) and was fully implemented on 10 June 2013. The Ordinance provides for the control of residential care homes for persons with disabilities ("RCHDs") through a licensing system administered by SWD. The Residential Care Homes (Persons with Disabilities) Regulation under the RCHD Ordinance stipulates the statutory requirements for the operation, management and supervision of RCHDs. Furthermore, by virtue of the powers conferred by the RCHD Ordinance, the Director of Social Welfare ("DSW") issued the Code of Practice for Residential Care Homes (Persons with Disabilities) ("RCHD Code of Practice"), setting out the principles, procedures, guidelines and standards for the operation, management and other control of RCHDs. An RCHD must fully comply with all the licensing requirements in respect of building safety, fire safety, health care and home management in order to obtain a licence. For RCHDs that existed immediately before the commencement date of the RCHD Ordinance (i.e. 18 November 2011) but are unable to comply fully with the licensing requirements, CoEs may be issued in order to allow reasonable time for them to carry out improvement works for meeting the licensing requirements and standards. Any person who operates, keeps, manages or in any other way has control of an RCHD without a valid licence or CoE commits an offence. As at end-December 2018, there were 315 RCHDs regulated under the RCHD Ordinance offering around 17 000 residential care places for persons with disabilities.

Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes

5. According to the Administration, SWD set up the Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes ("the

Working Group") in June 2017 to review the RCHE Ordinance, the RCHD Ordinance and relevant Codes of Practice. The Working Group chaired by DSW comprises Legislative Council ("LegCo") Members, members from non-governmental organizations and the private sector operating RCHEs and RCHDs, members from the Elderly Commission, members from the Rehabilitation Advisory Committee, academics, service users/carers, independent members as well as representatives from the Hong Kong Council of Social Service and the Labour and Welfare Bureau ("LWB"). The Working Group has made specific recommendations on various areas, such as the classification of RCHs, the statutory staffing requirements of RCHs, the statutory minimum area of floor space per resident and the accountability of licensees of RCHs. The Working Group has submitted its report to LWB for consideration in May 2019.¹

Deliberations by members since 2018-2019 session

Statutory staffing requirements of residential care homes

6. Some members opined that the statutory staffing requirements in respect of high care level homes should be substantially enhanced. They suggested that apart from nurses, there should be other professionals such as physiotherapists, occupational therapists, speech therapists and social workers on duty during specific periods in high care level homes.

7. According to the Administration, it was stipulated in the ordinances for RCHs that an RCH operator should employ persons as home managers, ancillary workers, care workers, health workers and nurses according to the care level of the RCH. In addition, SWD had launched pilot schemes by setting up district-based professional teams which comprised professionals including social workers, physiotherapists, occupational therapists, etc. The pilot schemes were territory-wide projects under which the professional teams provided outreach services to support the social and rehabilitation needs of residents of private RCHs. The Administration would review these pilot schemes in due course.

Statutory minimum area of floor space per resident of residential care homes

8. Some members took the view that the statutory minimum area of floor space per resident in RCHs to be established on new premises should be

¹ For details, please refer to the report of the Working Group (Chinese version only) at: https://www.swd.gov.hk/storage/asset/section/2970/en/Report_of_the_Ordinances_and_COP_for_Residential_Care_Homes.pdf.

gradually increased from the existing 6.5m² to 16m². Some other members enquired about the reasons why an interim grace period for improving the living space of residents was not set for medium and low care level homes as in the case of high care level homes.

9. According to the Administration, the existing statutory minimum area of floor space per resident in all RCHs was 6.5m². The Working Group recommended increasing the statutory minimum area of floor space per resident to 9.5m² in high care level homes and to 8m² in medium and low care level homes in phases. Given that the resident turnover rate in medium and low care level homes was relatively low and the difference between the existing and the proposed statutory minimum area of floor space per resident in these types of homes was not as great as that in the high care level homes, the Working Group considered it unnecessary to set an interim grace period for these homes.

Requirements for licensees of residential care homes

10. Members considered that if the licence applicant who was a body corporate was allowed to authorize an officer of the organization/company to be a "designated responsible person", the "designated responsible person" could be made a scapegoat and the licensee could still evade legal responsibilities. They suggested that the "designated responsible person" must be one of the directors of the organization/company. The Administration advised that given that the officer who was authorized to be a "designated responsible person" was a management staff of the organization/company, he/she would be held accountable for the operation of the RCH concerned.

Home manager registration system

11. Members noted that the Working Group had recommended that the home manager of an RCH should not have any criminal conviction record of sexual offences. Given that such a condition did not apply to other RCH staff, they were concerned that there might be inadequate protection for RCH residents against possible sexual assaults. They also expressed concern that the recommendation could not prevent persons who had no criminal conviction record of sexual offences but were suspects of such offences from being employed as home managers.

12. The Administration advised that subject to compliance with the Guidance on CCTV Surveillance and Use of Drones issued by the Office of Privacy Commissioner for Personal Data, RCHs were required to install closed circuit television systems in public areas designated for residents' daily activities, interview rooms, etc. to step up supervision of the daily operation of RCHs. Furthermore, RCH operators should enhance their awareness of sexual offences

and consider conducting sexual conviction record check before making job offers to selected applicants.

Age of residents for residential care homes for persons with disabilities

13. Members enquired about the reasons why the Working Group had recommended that no change should be made to the current stipulation of the age of residents (i.e. six years old or above) in respect of RCHDs. The Administration advised that while the Working Group considered it not desirable for RCHDs to admit children with disabilities, it had recommended that the current stipulation of the age of residents with respect to RCHDs should be maintained so as to cater for the needs of some children with disabilities (e.g. victims of domestic violence) for residential care services. Nevertheless, the Working Group considered that the regulatory control over RCHDs in taking care of children with disabilities should be strengthened. To this end, the RCHD Codes of Practice would be amended to require RCHD operators to provide special support to meet the needs of residents who were children with disabilities.

Relevant papers

14. A list of the relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
17 June 2020

Appendix

Relevant papers on amendments to the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) and the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)

Meeting	Date of meeting	Papers
Legislative Council	11 January 2017	Question raised by Prof Hon Joseph LEE on "Improving the service quality of private residential care homes for the elderly and for persons with disabilities"
Panel on Welfare Services	15 April 2019 (Item IV)	Agenda Minutes

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