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Report of the Bills Committee on Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022

Purpose

This paper reports on the deliberations of the Bills Committee on Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022 (“the Bills Committee”).

Background

2. Residential care homes for the elderly (“RCHEs”) and residential care homes for persons with disabilities (“RCHDs”) operating in Hong Kong are regulated by the licensing regimes prescribed under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A), the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), and the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613A) respectively. The two licensing regimes are largely the same. As at 31 March 2023, statistics of licensed RCHEs and RCHDs in Hong Kong are as follows:

	Number of homes	Number of places	Number of residents
RCHEs	810	around 75 400	around 56 700
RCHDs	339	around 18 400	around 17 200
Total	1 149	around 93 800	around 73 900

3. In response to the public call for enhancing regulation and quality of residential care homes (“RCHs”), the Social Welfare Department (“SWD”) set

up the Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (“Working Group”) in June 2017 to review the aforementioned legislation and relevant codes of practice. The Working Group completed the review in May 2019 and put forward 19 recommendations. SWD took forward two of the recommendations¹ by revising the relevant codes of practice which took effect on 1 January 2020. Three other recommendations confirmed that the prevailing requirements did not require any changes.² The remaining 14 recommendations, which related to staffing of RCHs; area of floor space per resident; accountability of operators; registration systems for home managers and health workers; provision of care services; and penalties, have to be implemented by amending Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A.

The Bill

4. The Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022 (“the Bill”) was gazetted on 13 May 2022 and received its First Reading at the Legislative Council (“LegCo”) meeting of 25 May 2022. The Bill seeks to amend Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A to:

- (a) enhance the accountability of operators of RCHEs and RCHDs;
- (b) abolish the certificate of exemption regime for RCHEs;
- (c) provide for the registration of home managers and the renewal of registration of health workers;
- (d) raise the minimum staffing requirements;
- (e) increase the minimum area of floor space per resident;
- (f) provide for the administration of medicine, the use of restraints and the protection of residents’ dignity and privacy;
- (g) increase the penalties for certain offences and set out the deadline for prosecuting offences;
- (h) provide for transitional and related matters; and
- (i) make miscellaneous and textual amendments.

¹ The two recommendations were (a) to tighten the ratio of residents of different care levels for classifying mixed residential care homes (“RCHs”) (applicable to residential care homes for the elderly (“RCHEs”) and residential care homes for persons with disabilities (“RCHDs”)); and (b) to strengthen the regulation on care for children (under 18 years old) with disabilities (applicable to RCHDs only).

² These include maintaining the prevailing classification of high-, medium- and low-care level RCHs, continuing to permit natural persons, partnerships and bodies corporate to make licence applications, and maintaining the prevailing stipulation of the age of residents in respect of RCHEs and RCHDs.

The Bills Committee

5. At its meeting on 27 May 2022, the House Committee agreed to form a Bills Committee to scrutinize the Bill. The membership of the Bills Committee is in **Appendix 1**. Under the chairmanship of Hon Tony TSE Wai-chuen, the Bills Committee has held nine meetings. The Bills Committee has also invited written views on the Bill and received a total of 41 submissions. The list of organizations/individuals which/who have provided written submissions to the Bills Committee is in **Appendix 2**. The Administration has provided consolidated responses to the submissions vide LC Paper Nos. CB(2)680/2022(01), CB(2)819/2022(03) and CB(2)1028/2022(01).

Deliberations of the Bills Committee

Enhancing the minimum staffing requirements

Supply of nurses and health workers

6. Under the proposed Schedules 1 to Cap. 459A and Cap. 613A (clauses 50, 51, 105 and 106 of the Bill), for high care level RCHs there must be at least one nurse on duty for every 60 residents or one health worker on duty for every 30 residents for at least 13 hours daily (“the 13-hour requirement”), and there must be at least one nurse and one health worker on duty at the same time for at least eight hours daily which is to be within the aforesaid 13 hours (“the eight-hour requirement”). According to the Administration, if the Bill is passed by LegCo, the staffing requirements will be implemented in phases at relevant commencement dates (clause 1 of the Bill), viz., all high care level RCHs must meet the 13-hour requirement starting from the first anniversary of the gazettal of the amendment ordinance (hereinafter referred to as the material date); high care level RCHs with more than 60 residents must meet the eight-hour requirement starting from the second anniversary of the material date; and high care level RCHs with 60 residents or fewer must meet the eight-hour requirement on a date to be appointed by the Secretary for Labour and Welfare (“SLW”) by notice published in the Gazette.

7. Members have noted that under the enhanced staffing requirements proposed under the Bill, based on the profile of RCHs as at 31 March 2023, 149 existing high care level RCHs with more than 60 places will require approximately 194 additional nurses (192 for RCHEs and two for RCHDs), including relief staff, from the second anniversary of the material date, while 214 existing high care level RCHs with 60 places or fewer will require 278 additional nurses (275 for RCHEs and three for RCHDs) from a date to be

appointed by SLW.³ Given the tight nursing manpower in the territory and the keen demand for nurses in the RCH sector, the Hospital Authority (“HA”) and private healthcare facilities, members have expressed grave concerns about the availability of sufficient nursing manpower to meet the enhanced staffing requirements by the proposed commencement dates.

8. The Administration has advised that to alleviate the shortage of nurses in the RCH sector and enhance the quality of care services, it will fully subsidize an additional 1 735 Enrolled Nurse (“EN”) (General) training places under SWD’s “EN Training Programme for the Welfare Sector” from 2023-2024 to 2027-2028 academic year, and require the trainees to work in social welfare services units continuously for at least three years after graduation.⁴ This apart, the Administration will enhance the training capacity of relevant institutes for EN(General) by inviting the Nursing Council of Hong Kong (“the Nursing Council”) to consider reducing the total number of clinical practicum hours required of trainees, in addition to the arrangement made by the Nursing Council in October 2022 to count practicum carried out in community settings, including RCHs, towards the required hours.

9. To address members’ concerns regarding the availability of health workers, the Administration has advised that based on SWD’s registration records, about 1 400 health workers are newly registered every year under Cap. 459A and/or Cap. 613A. As at 31 March 2023, the total number of registered health workers was 27 809, which far exceeded the 4 807 health workers (3 888 in RCHEs and 919 in RCHDs) employed in RCHs. Furthermore, the Bill proposes that for certain staffing requirements in respect of high care level RCHs, one nurse is considered equivalent to two health workers. Therefore, RCHs of different sizes may meet the additional staffing demand through different combinations of nurses and health workers.

10. Notwithstanding the Administration’s explanation, members have highlighted that some registered health workers, such as those involved in the

³ As at 31 March 2023, among the 580 existing high care level RCHs with a capacity of more than 60 places, 149 did not employ any nurse, and among the 380 existing high care level RCHs with a capacity of 60 places or fewer, 214 did not employ any nurse.

⁴ The Social Welfare Department (“SWD”) has commissioned the Hong Kong Metropolitan University to provide 200 Enrolled Nurse (“EN”) (General) training places fully subsidized by the Government per cohort under the EN Training Programme for the Welfare Sector from 2017-2018 academic year. With the additional resources obtained, SWD has commissioned two more institutes, namely, the Caritas Institute of Higher Education and the Tung Wah College, to provide subsidized EN(General) training places, and the total number of subsidized EN(General) training places will increase from 200 at present to more than 400 per cohort from 2023-2024 to 2027-2028.

management of RCHs, may not be entering the profession to practice as health workers at RCHs. To retain staff and attract young people to join the sector, members have suggested creating promotable positions, such as senior/intermediate/junior health workers. This can provide a path for advancement through earning Qualifications Framework (“QF”)-recognized qualifications, based on experience and workplace skills. Health workers can then take on more health/rehabilitation duties with further training, which can help alleviate the burden on the public health system. In addition, members have proposed the establishment of an elderly care academy that would focus on grooming local healthcare talent specifically for the RCH sector. According to the Administration, it will conduct a holistic review of the skill and qualification requirements of RCH staff who provide health and rehabilitation services across different types of RCHs, in order to enhance the career progression path of RCH staff. SWD will commission a consultant in the first half of 2023.

Supply of care workers

11. Members have noted that the Administration has implemented measures to help address care workers shortages, such as administering the Supplementary Labour Scheme⁵ and introducing time-limited relaxation measures⁶ for the RCH sector to import care workers with greater flexibility during the fifth wave of the COVID-19 epidemic. A Special Scheme to Import Care Workers for RCHs will be launched in June 2023⁷ to alleviate the current shortage of care workers, to cope with the growth of the sector in the foreseeable future and to meet the demand for around 700 additional care workers in some 500 existing RCHs which are currently not in compliance with the proposed new manning ratio under the Bill⁸. Some members have shown support for the importation of care workers and suggested expanding the Special Scheme to include positions

⁵ Currently, private and self-financing RCHs may apply to import care workers through the Supplementary Labour Scheme (“SLS”) if they have genuine difficulties in recruiting suitable staff locally.

⁶ During the three-month period from 1 March to 31 May 2022, the Administration exempted the RCH sector from the prerequisite arrangement of undergoing four-week local recruitment under SLS, flexibly approved the number of care workers to be imported having regard to the needs of individual RCHs and suspended the circulation of each application to the Labour Advisory Board for views.

⁷ On the premise of safeguarding the employment priority for local workers, the Administration will launch a Special Scheme to allow all RCHs to apply for quota to import care workers on an appropriate scale, relax the ratio of local employees to imported care workers, and streamline the vetting procedures for applications.

⁸ For high care level RCHs, clauses 50 and 105 of the Bill propose to extend the 1:20 manning ratio of care workers to residents from the prevailing eight hours daily to 10 hours and the 1:40 manning ratio from the prevailing seven hours daily to 14 hours, which will take effect from the material date.

such as chefs and cleaning workers that are difficult for RCHs to fill locally. However, some other members have expressed concerns that the inflow of imported care workers may negatively impact employment opportunities for local workers. These members have called on the Administration to take proactive measures to address the supply-demand gap of care workers and reduce the need for importing non-local labour.

12. The Administration has explained that it has implemented various measures to increase the local labour supply, improve the work conditions and enhance the career prospects of care workers in RCH sector. To encourage the younger generation to join the elderly and rehabilitation care services sector, SWD launched and enhanced the Navigation Scheme for Young Persons in Care Services (“the Navigation Scheme”) in 2015-2016 and 2020-2021 respectively. The Navigation Scheme provides care worker placements and subsidized part-time diploma study opportunities for local young people. In the first five years, the Navigation Scheme recruited 1 158 trainees, with 603 completing the two-year part-time diploma program and the remaining leaving the Navigation Scheme for various reasons, such as pursuing further studies or changing to other jobs. Furthermore, the Employees Retraining Board has implemented the “Hire and Train” Scheme since 2015-2016, encouraging RCHs to offer job vacancies with more flexible working hours and leave arrangements to cater to the family commitments of trainees, who are mainly middle-aged women and homemakers. Despite these measures, there remains an unmet demand for care workers. The Administration has assured members that it will continue to explore measures to strengthen the supply and training of local workers in the sector.

Commencement dates of the enhanced staffing requirements

13. Members have expressed grave concerns about the unsatisfactory completion rate and graduate employment outcomes of the Navigation Scheme. Specifically, only 52% of trainees completed the two-year part-time diploma program, and just 242 out of 471 graduates became health workers.⁹ Coupled with the shortages of nurses estimated at around 3 200¹⁰ across various

⁹ The employment/study status of the graduates is based on the information provided by the trainees at the time of graduation. As at 31 December 2021, a total of 471 graduates provided the information. Among them, 242 worked as health workers. The remaining graduates have worked as personal care workers or enrolled nurses, joined other fields or pursued further studies. Only less than 5% of graduates were unemployed.

¹⁰ According to the Health Bureau, as at 30 September 2022, there were 50 430 registered nurses (“RNs”) and 15 474 ENs (13 819 ENs (General) and 1 655 ENs (Psychiatric)) in Hong Kong. Based on the healthcare manpower projection promulgated in March 2021, it is estimated that there would be a manpower shortfall of around 3 200 nurses in total across various specialities.

specialities and the high attrition rates¹¹ in the public healthcare sector, members have questioned the effectiveness of the Administration's efforts to help RCHs meet the enhanced staffing requirements by the designated commencement dates. Taking into account members' concerns, the Administration will propose the following amendments to clauses 1, 50, 51, 105 and 106 of the Bill to allow sufficient time for RCHs to prepare for compliance with the new staffing requirements in the Bill:

Staffing requirements in respect of the 13-hour requirement

- (a) High care level RCH must meet the requirement of "there must be at least one nurse on duty for every 60 residents or one health worker on duty for every 30 residents for at least 13 hours daily" from the **second anniversary of the material date** (i.e. deferring the commencement date of this requirement for two years).¹²

Staffing requirements in respect of the eight-hour requirement

- (b) High care level RCH with more than 60 residents must meet the requirement of "there must be at least one nurse and one health worker on duty at the same time for at least eight hours daily" from the **fourth anniversary of the material date** (i.e. deferring the commencement date of this requirement for two years).¹³

Working hours for staff of the residential care homes

14. Members are concerned that the enhanced staffing and duty hours requirements proposed in the Bill would adversely affect the physical and mental well-being of RCH staff. While some members have suggested progressively increasing the working hours to 13 hours to ease the burden on staff, some other members have pointed out the inconsistencies in work shifts in some RCHs. Specifically, local staff work 12-hour shifts while non-local staff work eight-hour

¹¹ According to the information provided by the Hospital Authority ("HA"), during the period from June 2021 to May 2022, the attrition rates of HA's full-time RNs and ENs are 10% and 12.5% respectively, involving 1 801 RNs and 314 ENs. SWD does not have the information on the wastage of nurses in the RCH sector.

¹² For the purpose of illustration, if the amendment ordinance is gazetted on 1 June 2023, the material date is 1 June 2024, while the second anniversary of the material date is 1 June 2026.

¹³ For the purpose of illustration, if the amendment ordinance is gazetted on 1 June 2023, the material date is 1 June 2024, while the fourth anniversary of the material date is 1 June 2028.

shifts. Members have called for the regulation of working hours in the RCH sector to ensure fair treatment of all care workers, regardless of whether they are local or non-local staff. Furthermore, members have suggested that a review of the remuneration packages for local staff be conducted to ensure that the compensation is commensurate with their workload and responsibilities.

15. The Administration has advised that to meet the enhanced staffing requirements, RCH operators will be required to draw up staffing plans, including the working hours of their staff, based on the actual care needs and daily routine of their residents. As set out in the Code of Practice for Residential Care Homes (Elderly Persons) and the Code of Practice for Residential Care Homes (Persons with Disabilities) (“CoPs”), there should be a minimum of two shifts of staff in attendance, and that the number of working hours should be stated in the employment contracts signed between the employers and the employees. RCHs must also comply with other relevant statutory requirements such as those of the Employment Ordinance (Cap. 57). Provided that the said requirements in the relevant legislation and CoPs are met, RCH operators are free to formulate and adopt human resources policies, including pay, number of working hours and other conditions, as they see fit. To prevent RCHs from exploiting care workers with unduly long working hours, the Administration would step up inspection to detect any non-compliance.

16. Under the proposed new Schedule 1 to Cap. 613A (clause 105 of the Bill), medium and low care level RCHDs will be required to arrange one staff member on-site (whether or not on duty) from 6 p.m. on a day to 7 a.m. on the next day. Members have suggested that the Administration should establish a mechanism that clearly specifies the responsibilities and corresponding remuneration of the staff concerned during these hours.

17. The Administration has explained that “staff member on-site” refers to the staff member being present in the RCH and ready to be on duty to perform duties when necessary. RCH operators shall deploy manpower according to the staffing requirements proposed in the Bill and the actual care needs and the schedules of activities of residents. Both subvented RCHDs and RCHDs participating in Bought Place Scheme for Private Residential Care Homes for Persons with Disabilities (“BPS”) are provided with sufficient resources to meet the prevailing staffing requirements and the increase in manpower proposed in the Bill, including the overnight staffing requirement. Private and self-financing RCHDs have adopted different approaches based on their respective operation in order to comply with the abovementioned “staff member on-site” requirement. Operators of medium and low care level RCHDs may continue to formulate respective human resources plans as appropriate, including the responsibilities, remuneration, duty arrangements, working hours and other employment

conditions of staff, in order to comply with the requirements in relevant legislations (such as the Employees' Compensation Ordinance (Cap. 282) as well as the Employment Ordinance (Cap. 57)) and the relevant CoP.

Increasing the minimum area of floor space per resident

Improving the living space of residents

18. Members are concerned that the proposed increase in the area of floor space per resident (from 6.5 m² to 9.5 m² in high care level RCHs and from 6.5 m² to 8 m² in medium and low care levels RCHs) under proposed section 22 of Cap. 459A and proposed section 23 of Cap. 613A (clauses 41 and 97 of the Bill) may not adequately meet the rehabilitation needs of residents. Members have enquired whether the Administration would consider further increasing the minimum area of floor space per resident ("floor space requirements"), especially for high care level RCHs.

19. According to the Administration, the Working Group's recommendation of increasing the floor space requirements for high care level RCHs from the prevailing 6.5 m² to 9.5 m² has struck a balance between improving the living space of the residents and the practical circumstances of RCHs. The proposal has reflected the consensus of the members of the Working Group. In particular, the Working Group has suggested that RCHs may reduce their places gradually and carry out necessary modification works in order to meet the new requirement during an eight-year transitional period.

Financial assistance to residents and operators

20. Members have expressed concerns about the operational difficulties and financial sustainability of RCHs, particularly small RCHs in remote areas, in meeting the floor space requirements. Due to additional costs for facility upgrades and/or loss of income arising from the reduction in RCH places, RCHs may have to raise home fees. Members have called on the Administration to provide support to RCHs and increase the Comprehensive Social Security Assistance ("CSSA") payment rates so that elderly residents can afford the potential increase in home fees.

21. The Administration has explained that it will continue to adopt pragmatic measures, including the implementation of the Enhanced Bought Place Scheme for RCHs ("EBPS"), BPS and the Residential Care Service Voucher Scheme

for the Elderly (“RCSV Scheme”)¹⁴, through which private RCHs meeting the new statutory requirements may receive a more stable revenue. SWD has invited all EA2 homes under EBPS to join an upgrading program under which additional resources will be allocated to these homes for upgrading to EA1 standards.¹⁵ After the upgrading, these RCHEs will meet the staffing and floor space requirements proposed in the Bill in respect of high care level RCHEs. The Administration has also reserved additional recurrent expenditure for upgrading the three high care level RCHDs of BPS from category 2 level to category 1 level¹⁶. SWD has regularized the RCSV Scheme and increased the number of potential beneficiaries to 4 000. RCHEs joining the RCSV Scheme must meet the specified requirements in respect of staffing and area of floor space per resident of an EA1 home under EBPS. The Administration will continue to provide incentives to private RCHs to improve service quality through the abovementioned schemes.

22. To address the increasing demand for residential care services for the elderly and for persons with disabilities, the Administration has further advised that it will increase the overall supply of both subsidized and non-subsidized residential care places – around 10 000 more RCHE places and around 1 800 more RCHD places would be provided through over 60 development projects in the coming years. Regarding the suggestion of increasing CSSA payments to elderly RCH residents, the Administration has explained that a mechanism has been put in place to adjust CSSA payment rates on an annual basis in accordance with movement of the Social Security Assistance Index of Prices. The Administration has also advised that as compared with able-bodied adults, elderly CSSA recipients are provided with higher standard rates as well as various special grants and supplements to meet their basic and other special needs. Recipients can flexibly use the CSSA payments to meet different expenses.

¹⁴ The Residential Care Service Voucher Scheme for the Elderly, adopting the “money-following-the-user” principle, provides an additional choice for elderly persons in need of residential care services and waitlisted for care-and-attention places on the Central Waiting List. Elderly persons can choose and switch among participating RCHEs according to their needs.

¹⁵ There are two categories of RCHEs (EA1 and EA2) under the Enhanced Bought Place Scheme for RCHEs. With reference to homes with 40 residents each, the space standard/staffing requirement for EA1 and EA2 homes are 9.5 m²/21.5 staff and 8 m²/19 staff respectively.

¹⁶ There are three categories of RCHDs under the Bought Place Scheme for Private Residential Care Homes for Persons with Disabilities, namely BH1 (Category 1), BH2 (Category 2) and BM. Categories 1 and 2 are high care level homes. With reference to homes with 40 residents each, the space standard/staffing requirement for BH1 and BH2 homes are 9.5 m²/21 staff and 8m²/19 staff respectively, while that of BM homes is 8m²/16 staff.

23. With the above measures, the implementation of the requirements stipulated in the Bill should not result in any hefty increase in the operating cost of the RCH sector.

Proactive measures to assist the operators

24. Under the proposed section 22 of Cap. 459A and the proposed section 23 of Cap. 613A (clauses 41 and 97 of the Bill), high care level RCHs must meet the requirement of 8m² minimum area of floor space per resident starting from the fourth anniversary of the material date, and meet the new requirement of 9.5 m² minimum area of floor space per resident starting from the eighth anniversary of the material date. Medium and low care level RCHs must meet the new requirement of 8 m² minimum area of floor space per resident starting from the eighth anniversary of the material date. Members have raised concerns that some RCHs may not be able to meet the floor space requirements before the proposed commencement dates, and have sought information on the number of RCHs intending or undecided about upgrading their standards.

25. The Administration has advised that SWD has reviewed the conditions of the existing RCHs and found that all of them should be able to meet the floor space requirements proposed in the Bill, provided that they gradually reduce the number of places (including vacant ones). Having regard to the latest position of RCHs, SWD estimates that 438 RCHs (389 RCHEs and 49 RCHDs respectively) need to reduce places in order to meet the new requirements. Starting from November 2022, SWD has proactively approached the operators of these RCHs to learn about their plans for meeting the new requirements proposed in the Bill. Among these 438 RCHs, 300 have plans to reduce existing places and carry out modification works to meet the new requirements; 113 (102 RCHEs and 11 RCHDs, involving 5 870 RCHE places and 499 RCHD places) have no plan for the time being; and 25 RCHs (24 RCHEs and one RCHD, involving 983 RCHE places and 58 RCHD places) will consider ceasing operation. SWD will keep in contact with the operators of the said RCHs, review their plans and intention regularly, and consider rendering appropriate support to the operators concerned. The Administration has further advised that there are around 10 900 vacant places in 677 existing RCHs which have already complied with the floor space requirements proposed in the Bill.

26. Members have called on the Administration to ensure a seamless transition for RCHs for meeting the new floor space requirements by providing technical support to RCH operators during renovations, assessing the feasibility of cross-district relocation for RCHs that may be temporarily closed due to the upgrades, and making appropriate decanting arrangements for the affected residents. The Administration has advised that should individual RCH

operators encounter difficulties, e.g. potential fire and building safety issues due to planned modification works while reducing places for meeting the new requirements, inspectors of the licensing offices will, subject to actual needs, provide professional advice through interviews, on-site inspections, etc. If RCHs encounter insurmountable difficulties when carrying out the said modification works (e.g. those due to structural problem of the premises), SWD will review on a case-by-case basis, and relax individual requirements where feasible (e.g. the ones on providing accessible toilets which could not be met in full because of the layout constraints of the RCHs). The Administration has assured members that in addition to implementing various measures for upgrading service standards of RCHs, social workers in SWD will provide assistance and residential care arrangements for residents affected by the closure of RCHs, if any.

27. Members have also raised concerns about the licensing requirements for RCH operators who modify their facilities' layouts to comply with the new floor space requirements. Members consider that the Administration should clarify the licensing criteria and provide guidance to RCH operators on layout changes, and have suggested that guidelines be developed for RCH operators for reference. The Administration has clarified that only areas under modification are subject to the latest licensing requirements and that the licensing offices will not require areas not involved in the modification works to meet the latest licensing requirements.

28. Members have suggested that the Administration should enhance the textual clarity of certain phrases in the Chinese text of the provisions relating to licensing requirements viz., “沒有牌照就該安老院而有效”, “發出的牌照或豁免證明書就該安老院而有效”, “發出的牌照就該院舍而有效”, “表明有牌照就該安老院而有效”. The Administration has advised that the phrases “沒有牌照就該安老院而有效” and “有牌照就該安老院而有效” and other similar phrases used in clauses 5(2), 5(4), 5(5), 6, 9(10), 38, 56(1), 56(2) and 59(5) of the Bill accurately reflect the meaning of the provisions concerned and the policy intent, and are the same as the relevant phrases used in other provisions of prevailing legislation.¹⁷ The meaning of these Chinese phrases is also consistent with that of the English text. For textual consistency of the relevant provisions, the Administration considers it not necessary to amend the relevant phrases.

¹⁷ These include sections 6(4), 6A, 8(4A), 10(4) and 23(1)(ra) of the prevailing Cap. 459, sections 4(2), 5, 6, 7(5), 9(3) and 24(1)(r) of Cap. 613, and section 15(1) of Cap. 613A.

Waiting time of residential care homes for persons with disabilities

29. Members have expressed concerns that the proposed new floor space requirements may reduce the number of available RCHD places, resulting in longer waits for care places. The Administration has explained that nine subsidized RCHDs (with 55 vacant places as at 31 March 2022) will need to reduce 74 service places to meet the proposed new floor space requirements. A multi-pronged approach will be adopted to continue to increase the number of subsidized RCHD service places. Specifically, SWD is taking forward 14 development projects (with about 1 800 RCHD service places) and planning to purchase around 160 additional service places under BPS.

Strengthening operational accountability

Responsible person

30. The proposed new section 11F(5) of Cap. 459 and the proposed new section 10F(5) of Cap. 613 (clauses 14 and 64 of the Bill) stipulate that the outgoing responsible person¹⁸ (“RP”) of an RCH will cease to be the RP on the date of the notice given by the Director of Social Welfare (“DSW”). Members have expressed concern about ensuring continuity of RCH operations and management during change of RP transitions, while still upholding the RP’s duties of ensuring adequate supervision of the operation, keeping, management, and control of the RCH for the protection of residents’ safety and interest, and ensuring the RCH’s compliance with statutory requirements. Members have asked whether the Administration will establish a mechanism in the Bill to designate a person to assume the duties and legal responsibilities of the RP before a new RP is appointed.

31. The Administration has pointed out that RCH operators must, in respect of the operation, keeping, management or other control of RCHs, comply, respectively, with Cap. 459, Cap. 613 and their subsidiary legislation (hereafter referred to as “the relevant legislation”). In general, as the person holding the licence in respect of an RCH, the operator should bear the primary responsibility of all matters in respect of the RCH concerned. Apart from the operator bearing the legal responsibility under the prevailing provisions of the relevant legislation,

¹⁸ According to the proposed new section 11D of Cap. 459 (clause 14 of the Bill) and the proposed new section 10D of Cap. 613 (clause 64 of the Bill), the duties of a responsible person of an RCH are (a) to ensure adequate supervision of the operation, keeping, management and control of the RCH for protecting the interest and safety of its residents; and (b) to ensure that the RCH is operated in compliance with Cap. 459 or Cap. 613.

the Bill proposes to strengthen the accountability of other persons relevant to the operation of the RCH.¹⁹ Under the proposed new sections 11A and 11B of Cap. 459 (clause 14 of the Bill) and the proposed new sections 10A and 10B of Cap. 613 (clause 64 of the Bill), for an application for a licence or for an application for the renewal of a licence, the applicant or the operator must propose a management officer to be the RP of the RCH. The objective of the aforesaid proposal is to further strengthen the accountability of management officers of RCHs. However, this does not change the responsibility that should be borne by the operator for matters in respect of the RCH.

32. The Administration has further advised that in circumstances where a change of RP is anticipated, e.g. when the RP is approaching retirement, the operator should plan ahead of such circumstances and find a replacement as early as possible. Except in circumstances where a change of RP cannot be anticipated, i.e. a change of RP as required by DSW or because of death, incapacity, etc., of the RP, the operator must give a notice to DSW at least 14 days before the date on which the current RP of the RCH will leave and cease to be such an RP and propose another management officer of the operator to be the RP of the RCH.²⁰ In the abovementioned circumstances where a change of RP cannot be anticipated, the operator must propose another management officer of the operator (“proposed RP”) to be the RP of the RCH within seven days after the date of the written notice given by DSW to direct that the outgoing RP ceases to be such an RP of the RCH, or within seven days after the date on which the operator becomes aware of the death, incapacity, etc., or within a longer period that DSW permits.²¹ In other words, in the abovementioned circumstances where a change of RP cannot be anticipated, unless DSW permits, the operator must propose another management officer of the operator to be the RP of the RCH within seven days. SWD is committed to expediting the vetting procedures of the proposed RP, with a view to avoiding the temporary vacancy of the RP as far as possible.

¹⁹ For example, the proposed new section 21B(2) of Cap. 459 (clause 19 of the Bill) and the proposed new section 22B(2) of Cap. 613 (clause 71 of the Bill) provide that, if an operator is a body corporate and commits an offence under Cap. 459 or Cap. 613; and it is proved that the offence was committed with the consent or connivance of a director of the body corporate, or of a person concerned in the management of the body corporate, the director or the person, as the case it requires, also commits the offence.

²⁰ According to the proposed new sections 11H(2) and (3) of Cap. 459 (clause 14 of the Bill) and the proposed new sections 10H(2) and (3) of Cap. 613 (clause 64 of the Bill).

²¹ According to the proposed new section 11F(4) or 11G(3) of Cap. 459 (clause 14 of the Bill) and the proposed new section 10F(4) or 10G(3) of Cap. 613 (clause 64 of the Bill).

33. The Administration has also advised that as it is necessary to ensure that the proposed RP is a fit and proper person, DSW needs time to consider all relevant matters in considering whether a person is a fit and proper person to perform the duties of an RP (e.g. record of conviction and bankruptcy of the proposed RP).²² A temporary vacancy of the RP of the RCH may therefore be possible. If there is any non-compliance during the period which the RP of an RCH is vacant, the operator and the relevant persons involved in the operation of the RCH must still bear responsibility for matters of the RCH. The absence of the RP of the RCH does not result in a circumstance that renders no one being responsible.

34. In view of the above, the Administration considers that the recommendation to strengthen the accountability of the operator and other persons related to the operation to RCH has duly taken into account the feasibility of enforcement and the implications on governance of the sector. Therefore, a mechanism for another person to assume automatically the duties of the RP in respect of an RCH when there is a temporary vacancy of an RP, is unnecessary.

Definition of management officer

35. Members have sought clarification on the meaning and examples of the phrase “is concerned in the management of the sole proprietorship/the body corporate/the partnership” used in the proposed definitions of “management officer” in section 2(1) of Cap. 459 and section 2(1) of Cap. 613 (clauses 3(4) and 55(5) of the Bill), and the proposed new section 21B of Cap. 459 and the proposed new section 22B of Cap. 613 (clauses 19 and 71 of the Bill). Members have expressed concerns that the current wording may be too vague and open to interpretation, potentially leading to confusion or inconsistency in the application of the provisions.

36. According to the Administration, the phrase “a person concerned in the management of the sole proprietorship/body corporate/ partnership” in the Bill is drafted with reference to various pieces of prevailing legislation.²³ These pieces

²² According to the proposed new section 11E of Cap. 459 and the proposed new Schedule 2 to Cap. 459 (clauses 14 and 22 of the Bill) and the proposed new section 10E of Cap. 613 and the proposed new Schedule 2 to Cap. 613 (clauses 64 and 74 of the Bill).

²³ For example, section 141 (provisions concerning offences committed by bodies corporate and partners) of the Lifts and Escalators Ordinance (Cap. 618), section 100 (provisions concerning liability of directors, partners, etc. for offences) of the Private Columnaria Ordinance (Cap. 630), section 94 (provisions concerning offences by bodies corporate or members of unincorporated bodies) of the Private Healthcare Facilities Ordinance (Cap. 633), and section 46 (provisions concerning offences by body corporate and partnership) of the Fire Safety (Industrial Buildings) Ordinance (Cap. 636).

of legislation do not define “a person concerned in the management”. In the absence of any definition stipulated in the legislation, the ordinary meaning of “a person concerned in the management of the sole proprietorship/body corporate/partnership” applies. Whether any person is “a person concerned in the management of the sole proprietorship/body corporate/partnership” shall be considered based on and according to the facts of the case. Relevant facts include but are not limited to the authority and responsibility of the person in the management of the sole proprietorship/the body corporate/the partnership in a specific circumstance, e.g. his/her participation in decision-making of the sole proprietorship/the body corporate/the partnership in that specific circumstance.

37. In respect of the liability of the persons concerned in the management of the sole proprietorship/the body corporate/the partnership under the proposed new section 21B of Cap. 459 (clause 19 of the Bill) and the proposed new section 22B of Cap. 613 (clause 71 of the Bill), the Legal Adviser to the Bills Committee has enquired whether the Administration would make reference to other pieces of prevailing legislation²⁴ and provide a statutory defence for the employee who is concerned in the management for the acts which are done in the course of the employee’s employment and under the instructions given by the employer in the course of that employment, and the employee is not in a position to make or influence a decision regarding that act. The Administration has explained that a person concerned in the management of the relevant entity is only liable to prosecution by virtue of the proposed new section 21B of Cap. 459 or the proposed new section 22B of Cap. 613 if there is sufficient evidence to prove, *inter alia*, that the offence of the operator is committed with the *consent* or *connivance* of that person. The policy intent is to strengthen the governance of RCHs and the compliance with the relevant statutory requirements and regulations. If a statutory defence is provided to exclude the liability of a management personnel who has in fact consented or connived to the commission of the offence, the policy intent may be defeated. It is therefore not necessary to provide such a statutory defence.

The home manager

38. Members have raised concerns about the potential disruption to RCH’s operation if there is a vacancy in the position of home manager. To ensure operational and management continuity, members have enquired whether the Administration would require RCH operators to provide a recruitment timeline and regular updates to DSW on the recruitment process. The Administration

²⁴ For example, section 53 of the Food Safety Ordinance (Cap. 612), section 32 of the Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635) and section 95 of the Private Healthcare Facilities Ordinance (Cap. 633).

has advised that the existing and proposed sections 11(1) of Cap. 459A and Cap. 613A (clauses 36 and 87 of the Bill) stipulate that an operator of an RCH must employ a home manager for the RCH. In circumstances where a change of home manager is anticipated, e.g. upon reaching retirement age, the operator should plan ahead and find a replacement in a timely manner. Nonetheless, some RCH operators may have to replace their home managers under unforeseeable circumstances (e.g. sudden resignation, untoward incidents, serious illness or death). Currently, under sections 11(3) and (4) of Cap. 459A and section 11(3) of Cap. 613A, an RCH operator must also inform DSW of any change in the employment of a home manager within 14 days of the change. Therefore, it is unnecessary to stipulate a time limit within which a home manager vacancy must be filled. SWD will closely keep in view the situation of replacing home manager to ensure that such changes will not affect the residents of the RCHs.

Introducing a registration system for home managers

39. The Bill seeks, amongst others, to introduce a registration system for home manager. The proposed new sections 3B of Cap. 459A and Cap. 613A (clauses 26 and 77 of the Bill), stipulate, among other requirements, that for registration as a home manager, the person has to complete a training course specified by DSW. Members have asked whether the required training course for home managers will be readily available and made known to the public. The Administration has explained that before the Bill was introduced to LegCo, it has shared with the participants examples of the required training courses during the engagement sessions with the RCH sector and relevant stakeholders. The list of required training courses will be uploaded to SWD's website and updated as and when DSW approves new courses.

Improving the registration system for health workers

40. The proposed new sections 7A of Cap. 459A and Cap. 613A (clauses 31 and 82 of the Bill) empower DSW to impose conditions on renewed registration of health workers, including conditions relating to continuous learning. Members have sought clarification on the details of the continuous learning requirement, and whether in-service health workers would be exempted from this requirement. The Administration has explained that during periodic inspections of RCHs, the inspectorate team will monitor the service quality of RCHs and identify any staff performance issues or problems in daily operations. Continuous learning, counselling, and coaching will be arranged for health workers on a case-by-case basis if needed. Furthermore, SWD has launched a five-year scheme in phases since March 2019 to provide full subsidies for home managers, health workers, and care workers of all RCHs in the territory to enrol

in QF-based training courses. Training allowance will be provided to RCHs to ensure proper manpower arrangements can be made to maintain operation while health workers and care workers take the courses. In response to members' concerns about the Administration's capacity to handle a large number of renewal applications to be submitted by existing health workers concurrently, the Administration has advised that to efficiently handle the renewal applications, it will put in place arrangements for existing health workers to submit applications in batches.

41. Members have enquired whether individuals whose registration as registered health workers has been cancelled, either voluntarily or by DSW, are eligible for re-application of registration, and if so, whether time limits should be imposed on such re-applications. The Administration has advised that there is no prevailing provision in Cap. 459A and Cap. 613A and no clause in the Bill that prohibits a registered health worker whose registration is cancelled under the proposed section 8 of Cap. 459A (clause 32 of the Bill) or the proposed section 8 Cap. 613A (clause 83 of the Bill) from re-applying for registration as a health worker. This means that a person who intends to work as a health worker again in an RCH can submit an application for registration as a registered health worker to DSW at any time. Regarding the time limit for re-application, the Administration has advised that as the reasons for cancellation of the registration of a registered health worker may vary, it will be more flexible not to specify a time limit in the Bill. Regardless of whether it is a first-time application or re-application, DSW will consider the application in accordance with the criteria stipulated in the proposed section 6(2) of Cap. 459A (clause 29 of the Bill) or the proposed section 6(2) of Cap. 613A (clause 80 of the Bill). For re-application, the Administration has clarified that DSW will also consider the reason of the registration being cancelled.

Appeal mechanism

42. Members have noted that the Administration would formulate administrative and operational procedures for appeals against DSW's decisions to refuse or cancel a person's registration as a registered home manager/home manager (provisional) or a registered health worker (as the case may be) and incorporate these procedures into the guidelines for registration ("the Guidelines"). To ensure a fair and effective appeal process, members have proposed that the Guidelines should include (a) procedures for appellants to make oral submissions; and (b) mechanisms to address complaints regarding the appeal procedures. The Administration has advised that it will take the appeal mechanism proposed in respect of the registration system for home managers in

Cap. 459A as an illustration²⁵ and incorporate procedures for written and oral submissions into the Guidelines.

43. Under the proposed section 7(3) of Cap. 459A and the proposed section 7(3) of Cap. 613A (clauses 30 and 81 of the Bill), if an application for registration as a registered health worker has been refused, DSW must give a written notice of the decision to the applicant stating the reason for the refusal and the applicant's right to appeal against the decision. Members have noted that the Administration proposes to replace the phrase "an adequate statement of the reasons for his refusal" by "the reason for the refusal" in the English text and replace the phrase "一份充分列出拒絕註冊所據理由的說明" by "拒絕的理由" in the Chinese text of the Bill. Members consider that the existing phrase "一份充分列出拒絕註冊所據理由的說明" provides a clearer and more comprehensive statement of the reasons for the decision, and have called on the Administration to reconsider the proposed change in wording to ensure transparency and accountability in the registration process.

44. According to the Administration, under the common law, reasons given by a decision maker for his/her decision should illustrate the rationale for making the decision, be intelligible, address the substance of the issues involved, and set out the matters the decision maker has considered and the evidence upon which he/she has based his/her decision. In light of this, whilst the proposed section 7(3)(a) of Cap. 459A and the proposed section 7(3)(a) of Cap. 613A (clauses 30 and 81 of the Bill) uses "the reason for the refusal" only, in relation to the requirement under those provisions, the reason for the refusal stated in the notice concerned should meet the abovementioned conditions under the common law. Since the common law provides more specific and detailed requirements on the giving of reasons and the common law requirements may be updated from time to time, it may be impracticable and unnecessary to set out in the legislation all of the common law requirements. It may also not be ideal for the legislation to only set out some of the common law requirements. The Administration therefore considers it more desirable to set out the general requirement to give "the reason for the refusal" in the legislation, and to understand, and comply with, the requirement in accordance with the common law when applying it in practice.

Enhancing the regulation of medicine management and use of restraints

Definition of medicine

45. Members have emphasized the need to include a definition of "medicine" in the proposed section 33 of Cap. 459A and section 34 of Cap. 613A (clauses 44

²⁵ Please refer to Annex to LC Paper No. CB(2)258/2023(01) for details.

and 101 of the Bill) to provide clarity for RCH staff in determining what constitutes medicine that falls under the regulations and to help prevent medication errors. Having considered members' views, the Administration has advised that it will propose amendments to clauses 44 and 101 of the Bill to stipulate that a medicine that is prescribed by a registered medical practitioner, a registered Chinese medicine practitioner or a listed Chinese medicine practitioner for a resident in an RCHE or an RCHD may only be administered to the resident in accordance with the prescription, so as to provide clear requirements on the administration of medicine prescribed for residents in RCHEs and RCHDs.

Enhancing medication management

46. To enable a coordinated and effective long-term approach to medicine management for RCHEs, members have suggested establishing a pharmacy within RCHEs with over 60 residents; or centralizing dispensing services for RCHEs in the community. The Administration has agreed to explore the feasibility of RCH-based pharmacies for mega-sized RCHEs. It has further explained that SWD collaborated with the Department of Health and HA to review the Operational Manual on Drug Management in RCHEs, and published the revised Guidelines on Drug Management in RCHs in 2018, setting out clear guidelines on the basic principles, procedures and quality assurance mechanism for drug management in RCHs. This apart, the prevailing CoPs set out detailed and clear guidelines on drug management. In addition, registered health workers would have received training in medicine management as part of their pre-registration training, while courses have been arranged for in-service health workers to enhance their awareness of proper medicine management.

Penalty for non-compliant cases

47. Members have raised concerns that, apart from DSW's power to issue remedial notices to RCHs under section 19 of Cap. 459 and section 18 of Cap. 613, there are no direct criminal liabilities or consequences under the Bill for non-compliance with the requirements related to (a) the storage and administration of medicine under the proposed new section 33 of Cap. 459A and section 34 of Cap. 613A (clauses 44 and 101 of the Bill); and (b) the use of restraints under the proposed new section 33A of Cap. 459A and section 34A of Cap. 613A (clauses 45 and 102 of the Bill). Members consider it necessary to specify in the Bill the penalties for RCHs' non-compliance with the proposed requirements under these sections.

48. The Administration has advised that, after thoroughly reviewing the recommendations of the Working Group, it considers that a balance should be

struck between enhancing regulatory deterrence and enabling the practical operation of RCHs. The Administration has also advised that SWD will seriously handle non-compliances by RCHs in respect of storage and administration of medicine, use of restraints and protection of residents' dignity and privacy, and will follow up appropriately depending on the seriousness of the case. If a staff contravened the proposed requirements relating to the storage and administration of medicine and the use of restraints, SWD will, according to the circumstances of the suspected malpractices, refer the case to relevant professional registration bodies for follow-up. If the staff concerned is a registered health worker, SWD will give advice, warning or even cancel his/her registration. If the staff concerned is a nurse, SWD will refer the case to the Nursing Council for follow-up. As for RCHs, apart from issuing remedial directions in respect of non-compliance by RCHs to the relevant operators and management officers under section 19(1) of Cap. 459 or section 18(1) of Cap. 613, DSW may cancel or suspend the licences in respect of the RCHs, or amend/vary any condition of the licences in accordance with section 10(1) of Cap. 459 or section 9(1) of Cap. 613. If a non-compliance involves criminal element beyond the scope of Cap. 459, Cap. 613 or their subsidiary legislation, SWD will also follow up the case in collaboration with the police.

Raising penalties for certain offences

49. Members have expressed concerns that the proposed increase in the maximum fine from \$100,000 to \$1 million for operating an RCH without a licence under the proposed section 6(1) of Cap. 459 and the proposed section 4(3) of Cap. 613 (clauses 5 and 56 of the Bill) has a deterrent effect on the RCH operator, but not the RP if he/she is an employee of the RCH concerned and the fine will be borne by his/her employer. To enhance deterrence, members have enquired whether the Administration will consider raising the maximum sentence of imprisonment from two years to five years for committing offences in relation to licences of RCHs or certificates of exemptions of RCHDs under Cap. 459 or Cap. 613. The Administration has explained that the proposed new statutory duties of the RP²⁶ have been stipulated in the Bill. Under the proposed new section 21A of Cap. 459 and the proposed new section 22A of Cap. 613 (clauses 19 and 71 of the Bill), if an RCH operator commits an offence under Cap. 459, Cap. 459A, Cap. 613 or Cap. 613A, and it is proved that the offence is attributable to any neglect on the part of the RP in performing his/her statutory duties, the RP also commits the offence. Furthermore, the Working Group did not recommend any changes to the existing length of imprisonment stipulated in Cap. 459 and Cap. 613.

²⁶ Please see footnote 18 on the proposed new statutory duties of RP.

Other issues

Provision of residential care places for the elderly

50. Members have raised concerns about the growing elderly population and the insufficient supply of RCH places to meet the increasing demand, particularly in districts with a higher proportion of elderly people but relatively fewer available RCH places.²⁷ Given that the current projections, which estimate a shortfall of approximately 5 000 to 10 000 services places, were based on service statistics of SWD and the waitlisting situation of subsidized long-term care services from 2012 to 2015, members have requested for a 10-year projection of demand for RCH places and different types of community care services, taking into account the assessment results of the updated Standardised Care Need Assessment Mechanism for Elderly Services (“SCNAMES”).

51. The Administration has advised that the fifth wave of the COVID-19 epidemic came shortly after the implementation of the updated SCNAMES in August 2021 and has significant impact on the elderly persons’ application and preference for different types of long-term care services. Hence, there has not yet been sufficient data to analyse the trend of the demand for residential care services and community care services under the new mechanism. The Administration plans to update the demand projection for subsidized long-term care service based on the latest population projection and other relevant factors after the new mechanism has run for at least three years as by then the impact of the epidemic on service choices should have more or less been eliminated.

Height restriction of residential care homes for the elderly

52. Some members have queried about the justifications for the current requirement of imposing a 24-meter height restriction on RCHEs under section 20 of Cap. 459A, as this has unduly limited the capacity of RCHEs. They have called for an amendment of the regulation to relax the height restriction imposed on RCHEs. Some members have pointed out that relaxing the height restriction would allow for the construction of dormitories atop RCHEs. The provision of dormitories would enable RCH staff to render emergency night-time

²⁷ As at 31 March 2023, there were 819 RCHEs and scheduled nursing homes in Hong Kong providing about 77 100 residential care places for the elderly (among which around 35 500 are subsidized service places), with around 58 500 residents. More than half of the residents are recipients of subsidized residential care services, with an average of over 90% of their accommodation and care expenses subsidized by the Government, while the remaining residents are non-subsidized residents. On the other hand, there are about 16 800 elderly persons waitlisted for subsidized residential care services.

support and incentivize non-local workers to work in Hong Kong. The Administration has advised that the height restriction for RCHEs is in place for fire safety and emergency rescue considerations, particularly for frail and elderly residents, many of whom are wheelchair-bound or bedridden. Under section 20(2) of Cap. 459A that DSW may lift the height restriction of any part of an RCHE on a case-by-case basis. The Administration has noted members' views and has updated the Code of Practice on RCHEs to clearly spell out that for parts of an RCH where the residents do not normally have access (e.g. staff resting room, offices, laundry room), DSW, in consultation with the Fire Services Department, will favourably consider lifting the height restriction; for dormitories of residents, the RCH needs to meet additional requirements on management and building design taking into consideration the advice of the Director of Fire Services. The Administration is currently undertaking a pilot development project which will include resident dormitories to be situated above the 24-meter height restriction by fulfilling all the additional requirements.

Enhancing service quality of residential care homes

53. In response to members' enquiry regarding the provision of visiting medical practitioner services for RCHs with the aim of providing ongoing medical care and support to the residents, the Administration has explained that this service has been provided to residents of private and self-financing RCHs to promote proactive management of seasonal influenza and other episodic illnesses. Moreover, SWD has engaged non-governmental organizations to operate multi-disciplinary outreach support teams, comprising social workers and allied health professionals, to provide outreach support services for residents of private RCHEs to address their social and rehabilitation needs. These outreach/visiting services have already been provided for residents in subvented/contract RCHs by the RCH operators as required under the Funding and Services Agreement/service contracts.

Service monitoring

54. To protect service users from all forms of abuse in RCHs, members have proposed various measures, including the installation of closed-circuit television ("CCTV") systems in public areas of RCHs to enhance supervision and investigations; and the introduction of a mandatory reporting system through legislation to improve the accountability of RCH staff in respect of suspected abuse cases involving elderly RCH residents. According to the Administration, SWD has an inspection mechanism in place under which inspectors of the licensing offices have strategically conducted surprise inspections at irregular intervals to identify non-compliant RCHs and ensure timely rectification of irregularities. Advice or written warnings, as appropriate, will be issued to non-compliant RCHs.

Legal and drafting issues relating to the Bill

55. The Bills Committee has noted the enquiries raised by the Legal Adviser to the Bills Committee (LC Paper No. CB(2)453/2022(01)) and the Administration's written response on certain legal and drafting issues relating to the Bill (LC Paper No. CB(2)487/2022(01)).

Proposed amendments to the Bill

Amendments to be proposed by the Administration

56. Apart from the amendments mentioned in paragraphs 13(a), 13(b) and 45 above, the Administration has advised that, having considered members' views, it will also make some other amendments to the Bill as summarized in paragraphs 57 to 62 below.

Requirements on reporting certain events to the Director of Social Welfare

57. In order to strike a better balance between providing clear reporting requirements in respect of certain events for the sector and ensuring the timely acquisition of relevant information by SWD, the Administration will propose amendments to clauses 14, 26, 35, 64, 77 and 86 of the Bill (in relation to the proposed new sections 11J(3) of Cap. 459, sections 3W(1) and 10B(1) of Cap. 459A, section 10J(3) of Cap. 613 and sections 3W(1) and 10B(1) of Cap. 613A). In general, the amended provisions will stipulate that, if an operator or an RP of an RCHE, an operator or an RP of an RCHD, a registered home manager/a registered home manager (provisional) and a registered health worker ("the relevant person") is convicted of an indictable offence in Hong Kong, (being an individual) is sentenced to imprisonment in a place outside Hong Kong, (being a body corporate) is convicted of an offence punishable with imprisonment in a place outside Hong Kong; or if a prosecution is started against the relevant person for an indictable offence in Hong Kong, or if a prosecution is started against the relevant person for an offence punishable with imprisonment in a place outside Hong Kong, the RCH operator, the registered home manager/the registered home manager (provisional) and the registered health worker must report to DSW.

58. Members have enquired on the reasons why the directors/shareholders of an RCH operated by a body corporate, if being convicted of an indictable offence in Hong Kong, are not required to report the offence to DSW. The

Administration has explained that the proposed amendments seek to require persons who are directly involved in the management and day-to-day operation of an RCH to report certain events to DSW. As a director/shareholder of a body corporate is generally not directly involved in the management and day-to-day operation of an RCH, it is recommended that the proposed reporting requirements should be imposed on the body corporate itself instead of its directors or shareholders.

Arrangements for the Director of Social Welfare to give written notice on the decision in relation to the registration of a registered home manager/a registered home manager (provisional) or a registered health worker

59. Under the proposed new sections 3J(1), 3K(5), 3U(1), 3V(5), 9(1), 10(5) of Cap. 459A and the proposed new sections 3J(1), 3K(5), 3U(1), 3V(5), 9(1), 10(5) of Cap. 613A (clauses 26, 33, 34, 77, 84 and 85 of the Bill), if DSW decides to cancel the registration of a registered home manager/a registered home manager (provisional) or a registered health worker (“the person concerned”), or on the determination by SLW of the appeal against the aforementioned decision of DSW, DSW must give a written notice of the decision or the determination to the person concerned and the operator of the RCH in which the person concerned is employed when the decision or the determination is made. The Administration will propose amendments to the aforementioned provisions to stipulate that DSW must also give the written notice to the RP of the RCH.

Determination of the appeal by the Secretary for Labour and Welfare

60. The Administration will propose amendments to clauses 26, 34, 77 and 85 of the Bill (in relation to the proposed new sections 3K, 3V, 10 of Cap. 459A and sections 3K, 3V, 10 of Cap. 613A) to stipulate that:

- (a) apart from confirming or reversing certain decisions of DSW, SLW may also vary such decisions. Furthermore, when reversing a decision of DSW, SLW may substitute for DSW’s decision a decision that SLW considers appropriate;
- (b) if SLW varies, or substitutes another decision for, DSW’s decision, the decision as varied or the substituted decision must be one that DSW had power to make; and
- (c) the written notice of the determination must state the reason for the determination.

61. Members have sought an elaboration on the meaning of “varying DSW’s decision” and enquired whether SLW may impose conditions on the registration when varying DSW’s decision.

62. The Administration has advised that the ordinary meaning of “varying DSW’s decision” is “making changes to DSW’s decision”. If SLW varies DSW’s decision, the decision as varied must be one that DSW has power to make. DSW may impose on the registration of a person condition(s) that DSW considers appropriate under the relevant provisions of Cap. 459A or Cap. 613A. Depending on the actual circumstances of the case concerned, where appropriate, when SLW varies DSW’s decision, SLW may also impose on the registration concerned any condition that SLW considers appropriate.

63. The above apart, the Administration has also proposed certain textual, technical or consequential amendments to the Bill. The Bills Committee agrees to the draft amendments to the Bill proposed by the Administration. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate

64. The Bills Committee has completed scrutiny of the Bill. Subject to the Administration moving the proposed amendments to the Bill as elaborated in paragraphs 56 to 63, the Bills Committee supports the resumption of the Second Reading debate on the Bill. The Administration has indicated intention to resume the Second Reading debate on the Bill at the Council meeting of 7 June 2023.

Consultation with the House Committee

65. The Bills Committee reported its deliberation to the House Committee on 19 May 2023.

Council Business Division 2
Legislative Council Secretariat
29 May 2023

**Bills Committee on Residential Care Homes Legislation
(Miscellaneous Amendments) Bill 2022**

Membership list*

Chairman	Hon Tony TSE Wai-chuen, BBS, JP
Deputy Chairman	Hon LAM So-wai
Members	Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP Hon CHAN Han-pan, BBS, JP Hon Elizabeth QUAT, BBS, JP Hon LUK Chung-hung, JP Hon Doreen KONG Yuk-foon Hon Stanley LI Sai-wing, MH Hon CHAU Siu-chung Dr Hon David LAM Tzit-yuen Hon Judy CHAN Kapui, MH Hon Lillian KWOK Ling-lai Revd Canon Hon Peter Douglas KOON Ho-ming, BBS, JP Hon LAI Tung-kwok, GBS, IDSM, JP (Total : 14 members)
Clerk	Ms Joyce KAN
Legal adviser	Ms Clara WONG

*Changes in membership are shown in Annex to Appendix 1.

Annex to Appendix 1

Bills Committee on Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022

Changes in Membership

Member	Relevant date
Prof Hon Nelson LAM Chi-yuen, JP	Up to 18 June 2022

For **changes in LegCo Membership**, please refer to the link below:
(<https://www.legco.gov.hk/en/members/legco-members/changes-in-legco-membership.html>)

**Bills Committee on Residential Care Homes Legislation
(Miscellaneous Amendments) Bill 2022**

Organizations and individuals which/who have provided written views to the
Bills Committee

1. Hong Kong Care Homes Association
2. Long Life Nursing Home
3. Grand Smile Home For The Aged
4. The Elegant Elderly Services Co. Ltd.
5. Man Fook Aged Home
6. Healthy Life Elderly Home
7. Lai To Home For The Aged
8. Kindness Old Aged Home
9. Po Kin Home For The Aged
10. Hong Nga Residential Care Home
11. 安老服務倡導聯盟
12. Bedford Nursing Centre
13. World Care Elderly Centre Ltd.
14. Kin Pak (Mong Kok) Elderly Home
15. Residents of Hong Kong Care Homes Association
16. 17 residential care homes for the elderly (joint submission)
17. Residents of Kin Pak Home for Elderly
18. Residents of Chung Wah Home of Aged
19. Residents of Harmony Nursing Home for Aged
20. Residents of Hong Fook Sanatorium for the Aged Home
21. Residents of King's Fort Home for the Elderly
22. A family member of a resident of Hong Fook Sanatorium for the Aged Home
23. WONG Wing-hung
24. LAU Kin-pong
25. 羅瑞英
26. 曾玉
27. 黃美蓮
28. 盧偉強
29. 高銊華
30. CHOW Chi-chung
31. Five members of the public