

Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022

Debate and voting arrangements

Object of the Bill: To amend the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (“RCH(EP)O”), the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A) (“RCH(EP)R”), the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) (“RCH(PD)O”), and the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613A) (“RCH(PD)R”) to:

- (a) enhance the accountability of operators of residential care homes for the elderly (“RCHEs”) and residential care homes for persons with disabilities (“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.

Joint debate : Clauses with no amendment, and clauses with – Clauses 1 to 118 amendments by the Secretary for Labour and Welfare (“SLW”)

Joint debate on the original clauses and the amendments.

SLW’s amendments

Commencement dates of the minimum staffing requirements

Clauses 1, 50, 51, 105 and 106

- To allow sufficient time for RCHEs and RCHDs to recruit staff so as to comply with the proposed new minimum staffing requirements, the amendments seek to **postpone the commencement dates of the following minimum staffing requirements:**

- (a) **in respect of health workers** — regarding the requirement that “**there must be one nurse on duty for every 60 residents or one health worker on duty for every 30 residents for at least 13 hours daily**” in respect of high care level residential care homes (“RCHs”): to postpone the relevant commencement date proposed in the Bill by two years, i.e. such RCHs must meet the said requirement **from the 2nd anniversary of the material date;**¹ and
- (b) **in respect of nurses** — regarding the requirement that “**there must be at least one nurse and one health worker on duty at the same time for at least eight hours daily**” in respect of high care level RCHs with more than 60 residents: to postpone the relevant commencement date proposed in the Bill by two years, i.e. such RCHs must meet the said requirement **from the 4th anniversary of the material date.**²

¹ According to clause 1 and the proposed definition added by clauses 3(4) and 55(5) of the Bill, the “material date” is the 1st anniversary of the date on which the Residential Care Homes Legislation (Miscellaneous Amendments) Ordinance 2022 is published in the Gazette. If the Ordinance is gazetted on 1 June 2023, the material date will be 1 June 2024, and the 2nd anniversary of the material date will be 1 June 2026.

² If the Ordinance is gazetted on 1 June 2023, the 4th anniversary of the material date will be 1 June 2028.

Requirements on reporting certain events to the Director of Social Welfare (“DSW”)

Clauses 14, 26, 35, 64, 77 and 86

- To amend the proposed new section 11J(3) of RCH(EP)O, sections 3W(1) and 10B(1) of RCH(EP)R, section 10J(3) of RCH(PD)O and sections 3W(1) and 10B(1) of RCH(PD)R to strike a better balance between **providing clear reporting requirements in respect of certain events for the RCH sector** and ensuring the timely acquisition of relevant information by the Social Welfare Department (“SWD”). In general, the amended provisions propose that, if:
 - (a) an operator or a responsible person of an RCH, a registered home manager/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
 - (b) a prosecution is started against the relevant person for an indictable offence in Hong Kong, or 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.

Arrangements for DSW to give written notice

Clauses 26, 33, 34, 77, 84 and 85

- The Bill proposes that, 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 amendments seek to **provide that DSW must also give the written notice to the responsible person of the RCH.**³

Determination of the appeal by SLW

Clauses 26, 34, 77 and 85

- To amend the proposed new sections 3K, 3V and 10 of RCH(EP)R and sections 3K, 3V and 10 of RCH(PD)R to provide that:
 - (a) **apart from confirming or reversing certain decisions of DSW regarding the registration of the person concerned, 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.**

³ According to the proposed new section 11D of RCH(EP)O and the proposed new section 10D of the RCH(PD)O, the duties of a “responsible person” of an RCH are to ensure adequate supervision of the operation, keeping, management and control of the RCH for protecting the interest and safety of its residents; and to ensure that the RCH is operated in compliance with relevant RCH legislation.

Enhancing the requirements on medicine management

Clauses 44 and 101

- To amend the proposed section 33 of RCH(EP)R and section 34 of RCH(PD)R to provide that **a medicine that is prescribed by a registered medical practitioner, a registered Chinese medicine practitioner (“CMP”) or a listed CMP for a resident in an RCHE/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.

Technical and drafting amendments

Clauses 24, 30, 50, 81, 85, 87 and 105

- To make technical and drafting amendments.

Voting order	:	1. Clauses with no amendment (i.e. clauses 2 to 13, 15 to 23, 25, 27 to 29, 31, 32, 36 to 43, 45 to 49, 52 to 63, 65 to 76, 78 to 80, 82, 83, 88 to 100, 102 to 104, and 107 to 118) standing part of the Bill
		2. SLW’s amendments (to amend clauses 1, 14, 24, 26, 30, 33 to 35, 44, 50, 51, 64, 77, 81, 84 to 87, 101, 105 and 106)
		3. Clauses 1, 14, 24, 26, 30, 33 to 35, 44, 50, 51, 64, 77, 81, 84 to 87, 101, 105 and 106 with or without amendments standing part of the Bill

SLW’s amendments

(set out in LC Paper No. CB(3)405/2023(01) issued on 24 May 2023)

Council Business Division 3
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