

Proposed Amendments to Ordinances for Residential Care Homes for the Elderly and Residential Care Homes for Persons with Disabilities

Purpose

This paper outlines the amendments to the ordinances on residential care homes for the elderly (RCHEs) and residential care homes for persons with disabilities (RCHDs) put forward by the Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (the Working Group) set up by the Social Welfare Department (SWD).

Background

2. As at end-December 2018, there were altogether 735 RCHEs in the territory (including 120 subvented homes, 31 contract homes, 36 self-financing homes and 548 private homes), providing a total of about 73 000 places. On the other hand, there were 315 RCHDs in total (including 233 subvented homes, 17 self-financing homes and 65 private homes), providing a total of about 17 000 places.

3. The Government attaches great importance to the service quality of RCHEs and RCHDs, and has adopted a multi-pronged approach to enhance it. The Chief Executive announced, in the 2016, 2017 and 2018 Policy Addresses, various measures to strengthen the monitoring of RCHEs and RCHDs and enhance their service quality. Having consolidated past experience and taken into account the views of various sectors, the SWD has formulated and has been implementing a series of enhancement measures on an on-going basis, mainly covering areas such as strengthening monitoring and law enforcement, increasing transparency, comprehensively strengthening training and promoting professionalism, strengthening care service directly for the residents, striving to upgrade the quality of residential care homes (RCHs), and providing other related measures to enhance service quality.

4. In order to further enhance the monitoring of RCHs, the SWD established the Working Group in June 2017 to review the existing ordinances and codes of practice on RCHEs and RCHDs, to identify areas for improvement and to explore feasible measures, and to make concrete amendment proposals. The Working Group, chaired by the Director of Social Welfare, comprises Legislative Council members, members from

non-governmental organisations (NGOs) and the private sector operating RCHEs and RCHDs, the Elderly Commission and the Rehabilitation Advisory Committee, academics, service users/carers, independent members and representatives from the Hong Kong Council of Social Service and the Labour and Welfare Bureau (LWB).

5. During the period from June 2017 to May 2019, the Working Group conducted 19 meetings (including 12 Working Group meetings and seven focus group discussions), and put forward 19 recommendations in eight aspects, including the classification of RCHs, statutory minimum staffing requirements of RCHs, statutory minimum floor space per resident of RCHs, requirements on operators of RCHs, registration systems for home managers and health workers of RCHs, age of residents, penalties, etc. The documents and records of the meetings, as well as the report of the Working Group, have been uploaded onto SWD's website –

https://www.swd.gov.hk/tc/index/site_pubsvc/page_lr/sub_working/

6. Some of the recommendations put forth by the Working Group confirm maintaining the existing requirements without any amendments involved, while some involve the Code of Practice for Residential Care Homes (Elderly Persons) and the Code of Practice for Residential Care Homes (Persons with Disabilities), which will be implemented by the SWD by amending the two codes of practice.

7. The remaining recommendations put forth by the Working Group involve the Residential Care Homes (Elderly Persons) Ordinance, the Residential Care Homes (Elderly Persons) Regulation, the Residential Care Homes (Persons with Disabilities) Ordinance, as well as the Residential Care Homes (Persons with Disabilities) Regulation which have to be implemented by way of legislative amendments. They can be categorised as follows –

- (a) enhancing the statutory minimum staffing requirements of RCHs;
- (b) increasing the statutory minimum floor space per resident of RCHs, and providing a transitional arrangement;
- (c) strengthening the requirements on operators of RCHs;
- (d) strengthening the requirements on home managers of RCHs and introducing a registration system;
- (e) introducing the requirements of renewal and continuous learning in the registration of health workers; and
- (f) raising penalties.

Proposed legislative amendments

(a) Enhancing the statutory minimum staffing requirements of RCHs

8. At present, the operator of an RCH shall, according to the particular type of home (high care level, medium care level or low care level¹) as required under section 11 and schedule 1 of the Residential Care Homes (Elderly Persons) Regulation; and section 11 and schedule of the Residential Care Homes (Persons with Disabilities) Regulation, employ persons as home managers, ancillary workers, care workers, health workers and nurses, who shall be on duty at the specified periods based on the number of residents.

9. To enhance the statutory minimum staffing requirements of RCHs with different care levels, the Working Group suggests the following key considerations—

- ✧ the staffing requirements of RCHs should be determined according to the level of care and care needs of the residents;
- ✧ the existing requirements on the types and number of staff on duty in specified periods of all homes should be improved having regard to the various modes of daily operation and rest hours of residents in different homes (especially for various kinds of RCHDs), thereby optimising the use of manpower resources;
- ✧ there should be nurses on duty in high care level homes to ensure that residents therein, who are frail or in need of nursing care in their daily living, obtain appropriate nursing care; there is also a need to extend the duty hours of health workers or nurses, and raise the manning ratio of care workers to

¹ According to section 3 of the Residential Care Homes (Elderly Persons) Regulation, a “high care level home” is an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years and who are generally weak in health and are suffering from a functional disability to the extent that they require personal care and attention in the course of daily living activities but do not require a high degree of professional medical or nursing care; an “medium care level home” is an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years and who are capable of observing personal hygiene but have a degree of difficulty in performing household duties related to cleaning, cooking, laundering, shopping and other domestic tasks; a “low care level home” is an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years and who are capable of observing personal hygiene and performing household duties related to cleaning, cooking, laundering, shopping and other domestic tasks.

According to section 3 of the Residential Care Homes (Persons with Disabilities) Regulation, a “high care level home” is an establishment providing residential care for persons with disabilities (PWDs) who are generally weak in health and lack basic self-care skill to the extent that they require personal care, attention and assistance in the course of daily living activities but do not require a high degree of professional medical or nursing care; a “medium care level home” is an establishment providing residential care for PWDs who are capable of basic self-care but have a degree of difficulty in daily living activities; a “low care level home” is an establishment providing residential care for PWDs who are capable of basic self-care and require only minimal assistance in daily living activities.

residents; and

- ✧ it is necessary to give practical considerations on the impact of the enhanced statutory minimum staffing requirements and upward adjustment of manning ratio on RCHs amidst the current shortage of manpower.

10. Based on the above key considerations, the Working Group makes the following recommendations on enhancing the statutory minimum staffing requirements in respect of high care level, medium care level and low care level homes –

Recommendation 1

To allow high care level, medium care level and low care level homes to set their core service hours based on actual needs and rest hours of the residents with prior approval of the SWD to facilitate a more efficient use of manpower resources

Recommendation 2

To require at least one nurse on duty for eight hours during day time every day for high care level homes, and that at least one health worker on duty in the home concerned for the same period (the health worker may be substituted by another nurse on duty)

Recommendation 3

To upgrade the statutory minimum staffing requirements in respect of high care level and medium care level homes

High Care Level Homes

- ✧ the 1:20 manning ratio of care workers to residents should be extended from the existing eight hours to 10 hours during day time every day;
- ✧ the manning ratio of care workers to residents should be improved from 1:60 to 1:40 during night time and overnight duty period (14 hours every day); and
- ✧ the number of hours when there is a health worker or nurse on duty should be increased from 11 hours to 13 hours every day.

Medium Care Level Homes

- ✧ the manning ratio of care workers to residents should be improved from 1:40 to 1:30; and
- ✧ there must be at least one staff on duty and another staff stand by at RCHDs during night time and overnight period, irrespective of number of bed places.

(b) Increasing the statutory minimum floor space per resident of RCHs, and providing a transitional arrangement

11. Currently, as stipulated in section 22 and Schedule 2 of the Residential Care Homes (Elderly Persons) Regulation; and section 23 of the Residential Care Homes (Persons with Disabilities) Regulation, the minimum floor space per resident of RCHEs and RCHDs is 6.5 m². In determining the floor space per resident, open space, podium, garden, and any other areas of the RCHs which the Director of Social Welfare is satisfied as unsuitable for the purpose of an RCH shall be disregarded.

12. The Working Group agrees that statutory minimum floor space per resident of RCHs should be increased, and suggests the following principles and key considerations—

- ✧ in determining the level of increase, the basic needs of residents (especially those who are frail and in need of high level of care) should be the key consideration, including that hospital/nursing beds with adjustable height and bedside lockers/wardrobes should be provided; distance between beds should not be less than one metre; and there should be space on both sides of beds for the convenience of taking care of frail residents. Besides, sufficient space is also required for maneuvering wheelchairs if residents in the room are wheelchair users;
- ✧ it is suggested that there should be flexibility for RCHs (including subvented and private homes) on how to use the overall space taking into account any constraints in the layout of individual premises;
- ✧ RCHs ought to implement other feasible measures to strengthen infection control if they are not able to meet the requirement of maintaining a distance of one metre between beds owing to layout constraints;
- ✧ apart from bedrooms, the basic facilities of an RCH should include living/dining area, toilet/bathroom/shower area, kitchen, laundry, office and isolation room/facilities. The functional facilities of RCHs may vary according to the needs of different clientele, while some facilities may serve multiple purposes; and
- ✧ considerations should be given to the conditions of RCH's actual operation, as well as the impact brought by the upward adjustment of statutory minimum floor space per resident on the industry, as well as existing residents of the homes.

13. Based on the above key considerations and pursuant to in-depth discussions at various meetings, the Working Group makes the following recommendations in regard to increasing the statutory minimum floor space per resident in high care level, medium care level and low care level homes –

Recommendation 4

To adjust upward the statutory minimum floor space per resident of high care level homes (including RCHEs and RCHDs) from the existing 6.5 m² to 9.5 m²

Recommendation 5

To adjust upward the statutory minimum floor space per resident of medium care level and low care level homes (including RCHEs and RCHDs) from the existing 6.5 m² to 8 m²

Recommendation 6

To provide for a transitional arrangement for implementing the higher statutory minimum floor space per resident in phases

High Care Level Homes

- ✧ to determine a commencement date for implementing the new space requirement – RCHEs and RCHDs for which licence applications made on or after this date shall comply with the new statutory minimum floor space per resident, i.e. 9.5 m²; and
- ✧ to allow existing homes (i.e. RCHs that exist prior to the commencement of the new space requirement) to comply with the new statutory minimum floor space per resident (i.e. 9.5 m²) by reducing bed places in phases within an eight-year grace period (with effect from the commencement of the new space requirement); and they should reach a minimum of not less than 8 m² floor space per resident within the first four years of the grace period, thereby improving the living space of existing residents sooner.

Medium and Low Care Level Homes

- ✧ to determine a commencement date for implementing the new area requirement – RCHEs and RCHDs for which licence applications made on or after this date shall comply with the new statutory minimum floor space per resident, i.e. 8 m²; and

- ✧ **to allow existing homes (i.e. RCHs that exist prior to the commencement of the new space requirement) to comply with the new statutory minimum floor space per resident (i.e. 8 m²) by reducing bed places in phases within an eight-year grace period (with effect from the commencement of the new space requirement).**

14. The Government will closely monitor the progress of implementing the new statutory floor space per resident, and undertake that, on completion of the eight-year grace period, will explore the possibility of whether the floor space per resident for medium care level and low care level homes can be further adjusted upward. The review may be conducted earlier if the target floor space per resident, i.e. 8 m², is met in less than eight years.

(c) Strengthening the requirements on operators of RCHs

15. At the moment, the requirements concerning application for, and issue, renewal and cancellation of licence in respect of RCHEs and RCHDs are stipulated in sections 8 to 10 of the Residential Care Homes (Elderly Persons) Ordinance, and sections 7 to 9 of the Residential Care Homes (Persons with Disabilities) Ordinance.

16. Under the current statutory framework, the SWD issues licences or certificates of exemption (CoEs) to operators of RCHEs and RCHDs in different modes of operation (including body corporate, sole proprietorship or partnership). As at end-December 2018, approximately 90% of RCHE operators in the territory are body corporates, as are approximately 97% of RCHD operators; while the remaining operators are either partners or sole proprietors.

17. The Working Group recognizes the need to strengthen the accountability of RCH operators, while at the same time taking into account the feasibility of law enforcement as well as the impact on governance of the sector (including most of the NGOs operating RCHs). On how to ensure home operators are accountable for the operation and management of RCHs and how to ascertain they possess the ability to take up the necessary responsibility for operating RCHs, the Working Group agrees to the following key considerations –

- ✧ to accept a licence application from a “natural person”, “partnership” or “body corporate”;
- ✧ it is necessary to set out in future legislation specific conditions on whether the licence applicant is a “fit and proper person” to operate an RCH, regardless of whether the applicant is a “natural person”, “partnership” or

“body corporate”;

- ✧ in considering whether the licence applicant is a “fit and proper person”, it is required that he or she employ a “fit and proper person” to take up the post of home manager;
- ✧ in determining whether the home manager is a “fit and proper person”, it is necessary to consider his/her professional qualifications, or experience and abilities in operating an RCH; and
- ✧ in determining the statutory requirements of an operator and a home manager, a clause should be included to confer the Director of Social Welfare with powers to exercise discretion on individual applications having regard to special circumstances thereof.

18. Based on the above key considerations and having taken into account the existing circumstances in operating RCHs, the Working Group suggests to continue accepting a licence application from a “natural person”, “partnership” or “body corporate”, and makes the following recommendations to strengthen the accountability of RCH operators–

Recommendation 7

The licence applicant of an RCH should be a “fit and proper person” to operate the RCH

(The specific conditions for a licence applicant of an RCH to be a “fit and proper person” include –

- **whether the applicant has been convicted for contravening the relevant Ordinances in regard to RCHs;**
- **whether the applicant has seriously contravened any conditions under home licences;**
- **whether the applicant has been convicted of offences involving fraud or dishonesty, or convicted of indictable offences;**
- **whether the applicant’s application for new or renewal of licence has been refused under the concerned Ordinance in regard to RCHs; and**
- **whether the applicant is an individual of an undischarged bankruptcy, or a director of a body corporate in liquidation or a director of a body corporate that is the subject of a winding-up order.)**

Recommendation 8

If the licence applicant of an RCH is a partnership or body corporate, it is required to authorise one of the partners, directors or an officer of the organisation/company who is a “fit and proper person” to be the “designated responsible person” to be accountable for the duties of the operator

(The specific conditions for the “designated responsible person” to be a “fit and proper person” include –

- whether the person has been convicted for contravening the concerned Ordinance in regard to RCHs;**
- whether the person has seriously contravened any conditions under home licences;**
- whether the person has been convicted of offences involving fraud or dishonesty, or convicted of indictable offences;**
- whether the person whose application for the issue or renewal of a licence has been refused under the concerned Ordinance in regard to RCHs; and**
- whether the person is an individual of an undischarged bankruptcy, or a director of a body corporate in liquidation, or a director of a body corporate that is the subject of a winding-up order.)**

In addition, the Working Group proposes to add legislative provisions to stipulate that if a partnership or body corporate commits an offence under the ordinances in regard to RCHs, and it is proved that the offence was committed with the consent or connivance of any partner in the partnership or any member of the body corporate, such member would also commit an offence. However, the Working Group also agrees that if such member has taken reasonable measures or had reasonable excuses, he/she may use them as a defense. The above principle also applies to home managers and designated responsible persons.

(d) Strengthening the requirements on home managers of RCHs and introducing a registration system

19. At present, the operator of an RCH shall, according to the types of RCH it belongs to and the requirements under section 11 of the Residential Care Homes (Elderly Persons) Regulation and the Residential Care Homes (Persons with Disabilities) Regulation and relevant schedules, employ persons to be home managers, ancillary workers, care workers, health workers and nurses.

20. There is no requirement under the existing regulations pertaining to entry qualifications or training in respect of home managers who are responsible for the daily management and operation of an RCH, and there is no registration system. The Working Group recommends that in future, “home managers” should have successfully completed the Training Course for Home Managers at Level 4 under the Qualification Framework.

21. The Working Group makes the following recommendations to strengthen the accountability of the “home manager” –

Recommendation 9

To require the operator of an RCH to employ a “fit and proper person” to take up the post of “home manager”

(The specific conditions for the “home manager” to be a “fit and proper person” include –

- a registered home manager or a person holding a valid “Permitted Home Manager Certificate”;**
- without any criminal conviction record of sexual offences;**
- without conviction record of committing any offences involving fraud or dishonesty, or indictable offences;**
- without being convicted for contravening the concerned Ordinance in regard to RCHs; and**
- a person, if he/she possesses professional or designated qualifications by means of registration, whose professional or designated qualifications have not been cancelled for breaching the concerned requirements.)**

Recommendation 10

To introduce “home manager” registration system, renewal mechanism and the requirement for continuous learning to enhance the accountability of “home managers”

Recommendation 11

To provide transitional arrangement to allow existing home managers who are working in RCHEs and RCHDs to continue working as home managers in their capacity as “permitted home managers” when the new requirement takes effect, but they shall have their training and registration completed within the specified timeframe

(e) Introducing the requirements of renewal and continuous learning in the registration of health workers

22. Section 4 of the Residential Care Homes (Elderly Persons) Regulation and the Residential Care Homes (Persons with Disabilities) Regulation stipulate the registration of health workers², but do not impose the requirements on renewal and continuous learning.

23. In order to meet evolving service needs and enhance service quality of RCHs, the Working Group considers that the SWD should formulate a mechanism to require health workers to undergo renewal procedures prior to expiration of their registration. If a registered health worker has not been working in RCHs for a long period of time, he/she must enrol in training courses and submit relevant documents when making an application for renewal so as to ensure that registered health workers continue to comply with the concerned requirements. For this, the Working Group makes the following recommendation –

Recommendation 12

To introduce requirements on renewal and continuous learning in the registration of health workers

(f) Raising penalties

24. The Residential Care Homes (Elderly Persons) Ordinance and Residential Care Homes (Persons with Disabilities) Ordinance stipulate that any person operating an RCHE or RCHD must obtain a valid licence or CoE, and must operate, keep, manage or otherwise control the RCH in compliance with the concerned statutory requirements. A person commits an offence if these Ordinances or Regulations are contravened. Having examined the concerned legislation, the Working Group considers that the prevailing levels of penalties are not particularly lenient, but the sentences against non-compliances lacked deterrent effects.

² Under section 4 of the Residential Care Homes (Elderly Persons) Regulation, a person who (a) has completed a course of training approved by the Director of Social Welfare (DSW) in writing either generally or in any particular case; or (b) by reason of the person's education, training, professional experience and skill in health work, DSW is satisfied that the person is a suitable person to be registered as a health worker, shall be qualified to be registered as a health worker for the purposes of employment at an RCHE; under section 4 of the Residential Care Homes (Persons with Disabilities) Regulation, a person who meets either of the following requirements is qualified to be registered as a health worker for the purposes of employment at an RCHD – (a) the person has completed a course of training approved by DSW in writing either generally or in any particular case; or (b) by reason of the person's education, training, professional experience and skill in health work, DSW is satisfied that the person is a suitable person to be registered as a health worker.

25. In the light of the proposed amendments to the statutory requirements on the operators of RCHs and home managers, the Working Group makes the following recommendations with a view to enhancing their accountability –

Recommendation 13

To raise penalties to strengthen the deterrent effect –

	Current penalty	Proposed amendments to the penalty
Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)		
6(1) Restriction on operating RCHs unless exempted or licensed	<ul style="list-style-type: none"> ➤ a fine at level 6 and imprisonment for 2 years ➤ a fine of \$10,000 for each day during which the offence continues 	<ul style="list-style-type: none"> ➤ a fine of \$1,000,000 and imprisonment for 2 years ➤ a fine of \$10,000 for each day during which the offence continues
23(1), (4) Regulation	<ul style="list-style-type: none"> ➤ a fine not exceeding level 6 and a term of imprisonment not exceeding 2 years ➤ a fine not exceeding \$10,000 for each day during which the offence continues 	<ul style="list-style-type: none"> ➤ a fine at level 6 and imprisonment for 2 years ➤ a fine of \$10,000 for each day during which the offence continues
Residential Care Homes (Elderly Persons) Regulation (Cap. 459A)		
36(1) Offences by operators	a fine at level 4	a fine at level 5
36(2) Offences by home managers	a fine at level 3	a fine at level 5
37 Offence of obstruction	a fine at level 3	a fine at level 5
Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)		
4, 5 Offence of operating RCHDs without licence	<ul style="list-style-type: none"> ➤ a fine at level 6 and imprisonment for 2 years ➤ a further fine of \$10,000 for each day during which the offence continues 	<ul style="list-style-type: none"> ➤ a fine of \$1,000,000 and imprisonment for 2 years ➤ a fine of \$10,000 for each day during which the offence continues
24(1), (4) Regulation	<ul style="list-style-type: none"> ➤ a fine not exceeding level 6 and a term of imprisonment not exceeding 2 years ➤ a fine not exceeding \$10,000 	<ul style="list-style-type: none"> ➤ a fine at level 6 and imprisonment for 2 years ➤ a further fine of \$10,000 for each day during which the offence

	Current penalty	Proposed amendments to the penalty
	for each day during which the offence continues	continues
Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613A)		
11, 12, 13, 14, 15 Certain acts of the operators constituting offences	a fine at level 4	a fine at level 5
16, 17, 18, 19 Certain acts of the home managers constituting offences	a fine at level 3	a fine at level 5
32 Inspection of premises by members of Fire Services Department	a fine at level 3	a fine at level 5

Note: The levels of fines for offences under the Criminal Procedure Ordinance (Cap. 221) are Level 1: \$2,000; Level 2: \$5,000; Level 3: \$10,000; Level 4: \$25,000; Level 5: \$50,000; Level 6: \$100,000.

26. In addition, to enhance the protection of frail elders or persons with disabilities residing in RCHs who may not be able to protect themselves, the Working Group makes the following recommendations –

Recommendation 14

To include provisions relating to care service (including drug management, use of restraints and protection of privacy) so that RCHs shall –

- **properly manage drugs and strictly follow doctors’ prescription in assisting residents to use drugs;**
- **obtain the consent of doctors and family members in using restraints, and conduct assessments periodically and comply with the relevant procedures to ensure the safe use of minimum restraints; and**
- **take appropriate measures to protect the privacy of residents.**

Way Forward

27. The Government has conducted preliminary consultation on the Working Group's recommendations with the Legislative Council Panel on Welfare Services, the Elderly Commission, the Social Welfare Advisory Committee and the Rehabilitation Advisory Committee. In regard to the above proposed legislative amendments, the Government will conduct engagement sessions with stakeholders starting from January 2020, and prepare the amendment bill for the scrutiny of the Legislative Council in due course.

**Labour and Welfare Bureau
December 2019**