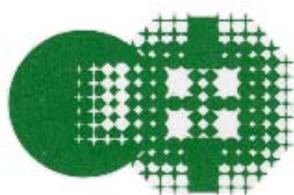


DIRECT INVESTIGATION REPORT

**CHECKING OF ELIGIBILITY
FOR SUBSIDISED MEDICAL SERVICES**

January 2010



**Office of The Ombudsman
Hong Kong**

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EXECUTIVE SUMMARY

Direct Investigation Checking of Eligibility for Subsidised Medical Services

Introduction

It has been established public policy to provide public hospital and health care services at subsidised rates for Hong Kong residents only. Non-residents have to pay the full cost. However, any person in emergency – whether resident or not – will always be treated first and charged later.

2. Some examples of the typical fees charged by the Hospital Authority (“HA”) and the Department of Health (“DH”) are given below:

Type of service	Charge for residents	Charge for non-residents
General Outpatient Clinic	\$45/attendance	\$215/attendance
Specialist Outpatient Clinic	\$100/attendance	\$700/attendance
Accident & Emergency Department	\$100/attendance	\$570/attendance
In-patient service	\$100/day	\$3,300/day

3. In implementing this policy, it has been the practice of HA and DH to accept “holders of Hong Kong Identity Card” (“HKIC”) as having resident status and hence eligibility for subsidised medical services. This does not distinguish HKIC-holders whose permission to remain in Hong Kong has lapsed, such as over-stayers and returning visitors. Thus, HA and DH have been providing subsidised medical services to non-residents **in contravention of policy**.

4. In May 2009, The Ombudsman initiated a direct investigation into this practice to draw to the attention of the organisations concerned the need for remedial action. **Our focus** is the inconsistency of practice with policy and an act of maladministration, to be rectified.

Link between resident status and the HKIC

5. While all Hong Kong residents are qualified to obtain HKIC, the mere production of HKIC is not sufficient proof of resident status, as there are two types of HKIC, as follows:

- A **permanent HKIC** is issued to permanent residents with the right of abode in Hong Kong; and is sufficient proof of resident status.
- A **non-permanent HKIC** is normally issued to persons who have been granted permission by the Director of Immigration to remain in Hong Kong for over 180 days for such purposes as education, investment, employment and residence and do not have the right of abode. Non-permanent HKIC-holders may become non-residents if their permission to remain in Hong Kong has lapsed. A non-permanent HKIC is, therefore, **not sufficient proof of resident status**.

6. A permanent HKIC can be distinguished from a non-permanent HKIC as follows:

- The former has the word “Permanent” in its title; the latter does not.
- The former carries the sentence “The holder of this card has the right of abode in Hong Kong” on the back of the card; the latter does not.
- The former carries the code A on its front to denote that the holder has the right of abode in Hong Kong; instead of Code A, the latter always carries one of the following three codes relating to resident status:
 - C: denoting that the holder’s stay in Hong Kong is limited by the Director of Immigration at the time of registration;
 - U: denoting the holder’s stay in Hong Kong is not limited by the Director of Immigration at the time of registration; or
 - R: denoting the holder has the right to land in Hong Kong at the time of registration.

Acceptable Checking arrangements

7. To establish the resident status of non-permanent HKIC-holders, the Immigration Department has advised that either of the following two options is considered acceptable:

- Option 1: To require holders of the **non-permanent HKIC** to present their travel documents to show their permitted limit of stay (“LOS”) has not expired.
- Option 2: To require holders of the **non-permanent HKIC with Code C** to present their travel documents to show their LOS has not expired. This arrangement is considered generally sufficient by Immigration Department, as the probability of a holder of the Code R or Code U HKIC being non-resident is very small.

8. Some relevant statistics are provided below:

	As at 1 April 2008	As at 1 July 2009
Permanent HKICs issued	N.A.	7,360,000
Non-permanent HKICs issued	about 800,000	930,000
Non-permanent HKICs bearing Code C	N.A.	895,000
HKIC-holders whose LOS had expired, e.g. those who discontinued their residence and left Hong Kong, those who over-stayed and those who returned as visitors	140,000	220,000

Checking arrangements of other service providers

9. It is the policy of many Government departments and other service providers to accord differential treatment to Hong Kong residents and non-residents or to charge them at different rates.

10. To establish resident status, it is the current practice of a number of organizations to adopt Option 1 (**para. 7**). These organisations include the Labour Department and the Housing Department.

11. As a matter of fact, this checking arrangement is required of all employers in Hong Kong under section 17J of Immigration Ordinance, Cap. 115 to ensure that they hire employable persons only and not non-residents.

12. Other organisations, including the Social Welfare Department and public sector schools, adopt Option 2 (**para. 7**).

HA and DH practice

13. It is evident from **para. 5** above that the practice of HA and DH **to accept all HKIC-holders as eligible for the subsidised charges** without further check of their travel documents is not adequate and not consistent with policy intent. On the other hand, this practice does follow the letter of the Gazette Notices on the fees and charges of HA and DA services. These Notices define “Eligible Persons” for subsidised charges, not as Hong Kong residents, but *inter alia* as “a holder of Hong Kong Identity Card issued under the Registration of Persons Ordinance”.

14. Food and Health Bureau (“FHB”) has advised that this practice has been in place for as long as it can ascertain. Before 1987, this was not a problem as any person leaving Hong Kong for good was required to surrender the HKIC. In 1987, when Government introduced a new policy to permit permanent identity cards to be issued both in and outside Hong Kong, this requirement became inappropriate and was removed. With its removal, the non-permanent HKIC ceased to be sufficient proof of resident status and the checking practice of HA and DH has become inconsistent with the policy intent.

Remedial measures

15. FHB has been aware of the discrepancy between policy and practice since 2002. It has since been trying, without success, to find a solution to the problem.

16. In November 2008, FHB set up an inter-departmental working group (“WG”) comprising representatives of FHB, the Security Bureau, the Immigration Department, DH and HA to explore ways for checking by electronic means. FHB considered the manual checking arrangements adopted by other organisations not practicable for hospitals and clinics because of anticipated difficulties in training staff to read the different forms of visas, complication and lengthening of the registration process, possible disputes between patients and staff, and longer waiting time with inconvenience to all patients. In short, it should not be pursued.

17. Five electronic options are being studied by the WG. However, all involve difficulty in the following areas to varying degrees:

- inconsistency with Government policy on privacy and security;
- implementation and operational issues such as those involved in manual checking (**para. 16**);

- accuracy of checking method;
- technical feasibility; and
- high cost of implementation, ranging between \$16 and 81M in non-recurrent cost and between \$5 and 11M per annum in recurrent cost.

18. In the light of the complications identified, the WG decided in April 2009 to conduct a survey at public hospitals and clinics to ascertain the number of non-residents accessing subsidised medical services on the strength of their non-permanent HKIC. However, this survey itself involved legal complications, privacy concerns and technical feasibility issues. In November 2009, the WG was seeking legal advice on these issues and had not worked out a timetable for the survey.

Our observations

19. Our prime concern is with efficient and effective public administration and consistency between policy and practice. We commend Government and HA for the policy and practice always to attend to persons in emergency, regardless of resident status, and to charge them later. In normal circumstances, however, the declared policy is to subsidise public medical and health services for residents only. Yet, the practice has been at variance with this policy for years. Non-compliance of practice with policy is **an act of maladministration**. Knowingly to continue with such non-compliance compounds the situation. Apart from putting undue burden on the public purse, it affects standards of service in terms of congestion and waiting time for those eligible, putting more pressure on already stretched medical services.

20. If this mistake in practice is allowed to continue, the problem will only grow. Already the number of LOS-expired HKICs increased by 57% from 140,000 in April 2008 to 220,000 in July 2009. With globalisation, increasing ease of interaction with the Mainland and more visitors from other areas coming to Hong Kong for work or education, more people will be obtaining non-permanent HKICs and keeping them after expiry of their limit of stay. Such HKICs will be available for access to subsidised medical services.

21. FHB is taking a **step in the right direction** in setting up the WG to address the problem. However, the WG **needs to take a more positive and pragmatic** approach.

22. While the electronic options are being examined, the WG should earnestly reconsider manual checking, a common practice with others, for the reasons below:

- Manual checking is a proven procedure in use by other service providers and is, in fact, a legal requirement for all employers in Hong Kong (**para. 10 to 12**).
- Compared to the electronic options being examined by the WG, which involve high costs and are fraught with security and privacy problems (**para. 17**), manual checking is simpler, relatively low-cost and straightforward.
- FHB's anticipated operational difficulties and adverse impact on service delivery associated with manual checking are likely to apply also to the five electronic options to varying degrees (**para. 17**).

Latest development

23. On 19 December 2009, FHB advised us that Government had finally resolved the legal and privacy issues of the survey on the utilization of subsidised medical services by non-residents (**para. 18**), and would proceed with it in early 2010. Results are expected to be available in the first quarter of 2010.

24. Pending this full-scale survey, HA and the Immigration Department conducted a simplified survey from 10 to 15 December 2009 on the registration records of some of HA's services (including general outpatient, specialist outpatient and inpatient services). This simplified survey showed that over the six-day period a total of 224,300 HKIC-holders made use of the three types of HA services at subsidised rates, 8,079 of whom held the Code C HKIC, with 113 (or 1.4% of the Code C HKIC-holders) being non-residents whose LOS had expired.

25. The size of the problem can only be assessed with greater certainty when the results of Government's full-scale survey are available in the first quarter of 2010.

26. FHB has reiterated its concern over the practical problems of manual checking of travel documents at public hospitals and clinics. However, FHB has indicated willingness to consider the feasibility of manual checking for non-resident patients when the result of the planned survey on the size of the problem is available.

27. Meanwhile, we note that the smart identity card system will be due for review and upgrade/replacement in a few years. This will provide an opportunity for many of the complications of additional checking to be overcome and for a long-term electronic solution to be pursued.

Our recommendations

28. We recommend that:

- the non-compliance of practice with policy should be rectified;
- reasonable and realistic steps should be taken both in the short term and the long term to rectify the situation. In this context, the option of manual checking of travel documents, already effectively used by other service providers, should be reconsidered; and
- before the current practice is rectified and additional checking arrangements, whether electronic or manual, are introduced, clear guidelines should be promulgated for staff reference and execution and extensive multi-media publicity should be mounted to alert and educate the public as well as prospective patients; and
- to introduce electronic checking, as the long-term solution, as soon as practicable.

Office of The Ombudsman

January 2010

1

INTRODUCTION

BACKGROUND

1.1 It has been established public policy to provide public hospital and health care services at subsidised rates for Hong Kong residents only. Non-residents have to pay the full cost. However, any person in emergency – whether resident or not – will always be treated first and charged later.

1.2 In implementing this policy, it has been the practice of the Hospital Authority (“HA”) and the Department of Health (“DH”) to accept “holders of Hong Kong Identity Card” (“HKIC”) as having resident status and hence eligibility for subsidised medical services.

1.3 In general, HKICs are issued to residents and not to non-residents. However, residents may be permanent or non-permanent such as overseas workers on contract in Hong Kong and students from elsewhere attending local universities; and HKIC-holders who are non-permanent residents may become non-residents if their permission to remain in Hong Kong has lapsed or become invalid.

1.4 By treating all HKIC-holders as being resident and thus eligible for service at subsidised fees, the checking practice of HA and DH fails to distinguish HKIC-holders whose permission to stay in Hong Kong has lapsed, such as over-stayers and returning visitors, and so, fortuitously, they continue to enjoy substantially subsidised medical services on account of their HKIC.

1.5 It is evident that this practice is not consistent with the policy intent. This discrepancy between policy and practice results in not only actual loss of public revenue, but also reduction in standard of service for *bona fide* residents and puts

undue pressure on our already over-stretched patient care resources.

1.6 In May 2009, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397, The Ombudsman initiated a direct investigation into this practice to draw to the attention of the organisations concerned the need for remedial action to redress the discrepancy between policy and practice.

METHODOLOGY

1.7 We have studied relevant papers and statistics of the Food and Health Bureau (“FHB”), HA and DH and obtained advice from the Immigration Department. Members of the public were invited to give comments and suggestions between 7 May 2009 and 8 June 2009.

REPORT

1.8 The draft investigation report was sent to FHB, HA, DH and the Immigration Department for comment on 19 November 2009. A meeting to discuss the draft report was held on 3 December 2009. This final report, incorporating their comments, was issued on 22 January 2010.

2

RESIDENT STATUS AND THE HKIC

2.1 In this chapter we examine three areas:

- the link between resident status and the HKIC;
- the adequacy of the mere holding of the HKIC as conclusive proof of resident status, or not; and
- the usual arrangements for checking resident status.

LINK BETWEEN RESIDENT STATUS AND THE HKIC

2.2 Although there is no complete or conclusive definition of “Hong Kong resident” in the legislation relating to immigration and the HKIC¹, Article 24 of the Basic Law provides a link between resident status and the HKIC.

Hong Kong Residents

2.3 Article 24 provides that “residents of the Hong Kong Special Administrative Region shall include permanent and non-permanent residents”.

¹ We examined the following *legislation*:

- *Article 24 of the Basic Law*;
- *Immigration Ordinance, Cap. 115*;
- *Registration of Persons Ordinance, Cap. 177*; and
- *Registration of Persons Regulations, Cap. 177A*.

Permanent residents

2.4 Under Article 24, “the permanent residents of the Hong Kong Special Administrative Region shall have the right of abode in the Hong Kong Special Administrative Region and shall be **qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode**”.

2.5 Hong Kong permanent resident is described under Article 24 as belonging to six categories of persons with various connections to Hong Kong, such as being “Chinese citizens born in Hong Kong” or having “ordinarily resided in Hong Kong for a continuous period of not less than seven years”. The full text of Article 24 is in **Annex I**.

Non-permanent residents

2.6 Article 24 provides that “non-permanent residents shall be persons who are **qualified to obtain HKICs** in accordance with the laws of the Region but have no right of abode”.

2.7 There is no definition or clear explanation of the terms “resident”, “non-permanent resident” or “persons qualified to obtain HKICs” in the relevant legislation. However, the Registration of Persons Ordinance, Cap. 177 (“ROP Ordinance”) and the Registration of Persons Regulations, Cap. 177A (“ROP Regulations”), when read together, provide that every person who has been granted permission to remain in Hong Kong for more than 180 days by the Director of Immigration is required to be registered and to apply for a HKIC unless he is an exempted person such as a *bona fide* traveller in transit through Hong Kong or an excluded person such as a Vietnamese refugee (section 3 of ROP Ordinance and regulations 3, 25 and 25A of the ROP Regulations). It is the established working practice of the Immigration Department to issue non-permanent HKICs only to persons who have been granted permission to remain in Hong Kong for more than 180 days, do not fall into the exempted or excluded categories and have no right of abode.

2.8 It can be noted from **paras. 2.4 and 2.6** above that both permanent and non-permanent residents are qualified to obtain HKICs under Article 24. It follows that it is reasonable to use the HKIC as a first-tier check in establishing resident status.

HKIC CONCLUSIVE PROOF OF RESIDENT STATUS?

2.9 The HKIC is defined under section 1A of the ROP Ordinance as “an identity card issued under this Ordinance and includes a permanent identity card”. In terms of resident status of the holder, there are two types of HKIC: permanent and non-permanent.

Permanent HKIC

2.10 A permanent HKIC is defined under section 1A of the ROP Ordinance as “an identity card which contains a statement that the holder has the right of abode in Hong Kong”.

2.11 The **permanent HKIC** carries three features which distinguish it from a non-permanent HKIC:

on the front of the card:

- the first line reads “HONG KONG PERMANENT IDENTITY CARD”;
- below the date of birth there is the Code “A” to denote that the holder has the right of abode in the Hong Kong Special Administrative Region; and

on the back of the card:

- there are the words “The holder of this card has the right of abode in Hong Kong”.

2.12 A **permanent HKIC is conclusive proof of resident status**. This is evident from section 2AA of the Immigration Ordinance, Cap. 115, which states that:

“A person’s status as a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(c) of Schedule 1 can only be established by his holding of -

- (a) a valid travel document issued to him and of a valid certificate of entitlement also issued to him and affixed to such travel document;
- (b) a valid HKSAR passport issued to him; or
- (c) a valid permanent identity card issued to him”.

Non-permanent HKICs

2.13 The non-permanent HKIC is issued to persons who have been granted permission by the Director of Immigration to remain in Hong Kong for a period of more than 180 days, do not fall into the exempted or excluded categories and have no right of abode in Hong Kong (**para. 2.7**). Holders of non-permanent HKICs become non-residents when their permission to remain in Hong Kong lapses or becomes invalid.

2.14 Unlike the permanent HKIC, a non-permanent HKIC:

- does not have the word “PERMANENT” in the first line, nor the Code “A” on its front, nor the words “The holder of this card has the right of abode in Hong Kong” on its back; and
- always carries one of the three following codes relating to resident status instead of Code A:
 - C: denoting that the holder’s stay in the HKSAR is limited by the Director of Immigration at the time of registration;
 - U: denoting the holder’s stay in the HKSAR is not limited by the Director of Immigration at the time of registration; or
 - R: denoting the holder has the right to land in the HKSAR at the time of registration.

2.15 The non-permanent HKIC, therefore, does not constitute conclusive proof of resident status (para. 2.13). To establish resident status, the Immigration Department has advised us that the limit of stay (“LOS”) in the travel documents of non-permanent HKIC-holders should be checked. However, the probability of Code R or Code U HKIC-holders being non-resident is small: thus, generally speaking, it is sufficient to check the travel documents of Code C non-permanent HKIC-holders.

RELEVANT STATISTICS

2.16 We have obtained the statistics below from the Immigration Department.

	As at 1 April 2008	As at 1 July 2009
Permanent HKICs issued	N.A.	7,360,000
Non-permanent HKICs issued	about 800,000	930,000
Non-permanent HKICs bearing Code C	N.A.	895,000
HKIC-holders whose LOS had expired, e.g. those who discontinued their residence and left Hong Kong, those who over-stayed and those who returned as visitors.	140,000	220,000

CHECKING ARRANGEMENTS

2.17 It is the policy of many Government departments and other service providers to accord differential treatment to Hong Kong residents and non-residents or to charge them at different rates.

2.18 To establish resident status, it is the current practice of a number of organisations to accept the permanent HKIC and to ask holders of the non-permanent HKIC to produce travel documents to show, among other things, that their LOS has not expired. These organisations include the Labour Department and the Housing Department. A copy of a notice of the Labour Department at its Job Centres is at **Annex II**.

2.19 As a matter of fact, this checking arrangement is required of all employers in Hong Kong to ensure that they hire employable persons only and not non-residents. Section 17J of Immigration Ordinance, Cap. 115, provides that:

“No person shall in Hong Kong enter into a contract of employment to employ any other person unless he first inspects-

- (a) the identity card held by such other person and **where the identity card held by such other person is not a permanent identity card as defined in the Registration of Persons Ordinance, Cap. 177, a valid travel document held by him....”**

2.20 Other organisations, including the Social Welfare Department and public sector schools, accept the HKIC without Code C as proof of resident status and ask holders of Code C HKICs to produce travel documents to show that their LOS has not expired. This arrangement involves less work than asking all non-permanent HKIC-holders to produce travel documents and is considered generally sufficient by the Immigration Department (**para. 2.15**).

3

POLICY AND PRACTICE OF HA AND DH

POLICY

3.1 In Hong Kong, public medical and healthcare services are provided to the general public at highly subsidised fees and charges. It is established policy that **any person in emergency**, whether resident or not, will always be treated first and charged later. However, for the rational use of public resources, the highly subsidised charges for public medical services are for **residents only** while non-residents are charged at full cost. Some examples of the typical fees charged by HA and DH are given below:

Type of service	Charge for residents	Charge for non-residents
General Outpatient Clinic	\$45/attendance	\$215/attendance
Specialist Outpatient Clinic	\$100/attendance	\$700/attendance
Accident & Emergency Department	\$100/attendance	\$570/attendance
In-patient service	\$100/day	\$3,300/day

PRACTICE

3.2 In practice, HA and DH accept **all HKIC-holders** as eligible for the subsidised charges **without further check of travel documents**. As noted in **para.**

2.15, some HKIC-holders may, in fact, no longer be residents following the expiry of their LOS.

3.3 This HA and DH practice accords with the letter of Gazette Notices on the fees and charges of HA and DH services. These define “Eligible Persons” for subsidised charge, not as Hong Kong residents, but *inter alia* as “a holder of Hong Kong Identity Card issued under the Registration of Persons Ordinance²”.

3.4 Food and Health Bureau (“FHB”) has advised that this arrangement has been in place for as long as it can ascertain. Before 1987, this was not a problem as any person leaving Hong Kong for good was required to surrender the HKIC. In 1987, when Government introduced a new policy to permit permanent identity cards to be issued to persons in and outside Hong Kong, this requirement became inappropriate and was removed. With its removal, the non-permanent HKIC ceased to be conclusive proof of resident status and the checking practice of HA and DH has become inconsistent with the policy intent.

EFFORTS TO REDRESS INCONSISTENCY

2002 to 2008

3.5 FHB has been aware of the discrepancy between policy and practice since 2002, when Government reviewed the eligibility for the highly subsidised public medical services in Hong Kong. In the course of the review, FHB indicated that in order “to guard against misuse of our scarce resources by persons who should not be entitled to subsidised public medical services, it would in consultation with Security Bureau work out how best to verify the limit of stay of temporary residents who were holders of HKID Card”.

² *Fees and charges of HA and DH are set out in G.N. (S.) 44 of 2003 and G.N. (E.) of 2003 respectively. In these gazette notices, Eligible Persons for subsidised charged are defined as persons falling into the following categories:*

- “(i) a holder of Hong Kong Identity Card issued under the Registration of Persons Ordinance;*
- (ii) children who are Hong Kong residents and under 11 years of age;*
- (iii) other persons approved by the Director of Health/Chief Executive of the Hospital Authority.”*

3.6 Two options for redressing the situation were explored by FHB:

- Asking hospital/clinic staff to check the travel documents of non-permanent HKIC-holders: This was considered not practicable because of difficulties in training staff to read different forms of visas, complication and lengthening of the registration process, possible disputes between patients and staff, and longer waiting time with inconvenience to all patients. An extra concern was that the number of patients handled at the hospital counters was enormous, the clients of HA/DH were people suffering from illness and the staff dealing with time-critical issues were already under considerable pressure.
- Allowing hospital/clinic staff to access the information on LOS stored in the Immigration Core Compartment of the HKIC³: This was considered not viable due to concern over privacy and the LOS information stored not being always up-to-date.

Working Group set up in 2008

3.7 The situation continued until November 2008, when FHB set up an inter-departmental working group (“WG”) comprising representatives of FHB, the Security Bureau, the Immigration Department, DH and HA to explore ways for checking by electronic means. FHB decided not to pursue manual checking, albeit a common practice with others, due to the operational difficulties anticipated in **para. 3.6** above.

3.8 Information on LOS of non-permanent HKIC-holders is available in electronic form from two sources:

³ *The information chip in the Smart HKIC comprises two compartments:*

- *Immigration Core Compartment, which stores immigration data for the use of ImmD; and*
- *Card Face Compartment, which is being used by the Leisure and Cultural Services Department for library card application.*

There is spare capacity in the chip for the development of other applications.

- the Immigration Core Compartment of the HKIC; and
- the Immigration Department internal database.

3.9 The WG is studying five options for electronic checking:

Using HKIC

- A To allow HA/DH staff to access LOS information stored in the Immigration Core Compartment of the HKIC;
- B To add LOS information to the Card Face Compartment of the HKIC currently used by the Leisure and Cultural Services Department (“LCSD”) for its library card application and allow HA/DH staff to access the information;
- C To create a new Card Face Compartment in the HKIC to store LOS information for access by HA/DH staff;

Using the Immigration Department internal database

HA/DH staff to obtain LOS information from the Immigration Department database --

- D at the time of registration of the non-permanent HKIC-holder;
or
- E by batch after registration.

3.10 In assessing the feasibility of the five options, the WG is examining the issues below.

Privacy and security policy issues

3.11 The WG is concerned that Options A, B and C will involve the following issues:

- When developing the Smart HKIC in 2000, Government gave an undertaking to the Legislative Council (“LegCo”) that individual departments will maintain their own database and there will be no sharing of database among departments (WG considers this applicable to Options A, B and C).
- Amendment to the ROP Ordinance may be necessary for the implementation of a new application on the HKIC (applicable to Options A, B and C).
- Option A is inconsistent with the policy of Smart Identity Card System (“SMARTICS”) under which only immigration authorities will be given access to the Immigration Core Compartment of the HKIC.
- Options B and C may not meet Government’s criteria for the addition of data onto the HKIC in that the purpose of the LOS information “is to cater for a relatively small population in the community and the information to be stored is subject to changes and updating”.
- The Commerce and Economic Development Bureau (“CEDB”) is committed to consulting LegCo on using the Card Face Compartment of the HKIC for any purpose not associated with the library card (applicable to Option B).

3.12 Security and privacy policy issues related to options D and E are being assessed.

Implementation and operational issues

3.13 The WG is concerned that:

- Under all five options, frontline staff will have to seek the consent of the non-permanent HKIC-holder before accessing his LOS information. They will also need appropriate instructions on what to do if consent is refused and the non-permanent HKIC-holder produces his travel document instead.

- All five options will complicate and lengthen the registration process to varying degrees, causing delay and inconvenience to all patients.
- Under Options B and C, consent of non-permanent HKIC-holders will have to be obtained for the addition of data onto their HKIC.
- For option E, under which eligibility for subsidised rates can be established only after registration, there is the additional burden of cumbersome administrative arrangements for either refund or collection in arrears.

Accuracy of checking method

3.14 The WG is concerned that the LOS information obtained may be outdated:

- The HKIC-holder has no legal obligation to update the LOS information in the HKIC, used in options A, B and C.
- Even under options D and E, it normally takes about two weeks to update the Immigration Department internal database for persons whose employment contracts are prematurely terminated.
- For option E, an additional concern is that resident status of the HKIC-holder may be different at the time of registration and checking by batch.

Technical feasibility

3.15 The options will require installation of front end applications at hospitals and clinics, enhancement of either the backend systems at the Immigration Department or the backend systems in SMARTICS; additionally for option B, modification to the applications at LCSD.

Cost implications

3.16 The WG estimates the costs of implementing the options to be as follows:

Option	Non-recurrent cost	Recurrent cost p.a.	Lead time	Remarks
A	Not available	Not available	Not available	WG has dropped this option as being inconsistent with SMARTICS policy
B	\$80.8M	\$7.5M	12 months	Costs to LCSD not yet included
C	\$80.8M	\$7.5M	12 months	Costs to CEDB not yet included
D	\$15.7 to 17.7M	\$4.5 to 10.5M	9 to 18 months	
E	\$15.7 to 17.7M	\$4.5 to 10.5M	9 to 18 months	

Survey on size of problem

3.17 In the light of the complications identified in its study, the WG decided in April 2009 that HA and the Immigration Department should conduct a survey at public hospitals and clinics to ascertain the number of cases of non-residents accessing subsidised medical services on the strength of their non-permanent HKICs. However, before the survey can be conducted, such issues as legal complications, privacy concerns, technical feasibility and the possible impact on the Immigration Department's computer systems have to be resolved first.

4

OBSERVATIONS AND OPINIONS

ACT OF MALADMINISTRATION

4.1 Our prime concern is with efficient and effective public administration and consistency in practice. We commend Government and HA for the policy and practice always to attend to persons in emergency, regardless of status, and to charge them later. In normal circumstances, however, the declared policy is to subsidise public medical and health services for residents only. Yet the practice has been at variance with this policy for years.

4.2 Non-compliance of practice with policy is an act of maladministration. Knowingly to continue with such non-compliance compounds the situation.

4.3 This practice not only incurs actual loss in public revenue but also lowers the standard of medical service delivered to residents in need. The impact on service may take the form of longer waiting time and greater congestion at public clinics, more make-shift beds in the corridors of public hospitals, and for patients in the queue for specialist treatment such as cataracts surgery, even longer queuing time. As for revenue loss, this cannot be ascertained until Government has completed its survey on the utilisation of subsidised medical services by non-residents (**para.3.17**). Suffice it to say that given the increasing strain on medical services, any additional resources should be welcome.

4.4 If this mistake in practice persists, the problem will grow. With globalisation, greater ease of interaction with the Mainland and increase of

non-permanent residents for work or education in Hong Kong, greater numbers will be getting non-permanent HKICs **and** keeping them after expiry of their LOS. Such HKICs will then be available for access to subsidised medical and health services.

4.5 Immigration Department statistics show an increase of 57% in the number of LOS-expired HKICs in only 15 months, from 140,000 in April 2008 to 220,000 in July 2009. Given Government's plans for Hong Kong to be a centre for quality education and other services, even steeper increases of such HKICs are highly likely.

REASONABLE REMEDY NECESSARY

4.6 FHB is taking a step in the right direction in setting up the WG to address the problem. However, the WG needs to take a more positive and pragmatic approach.

4.7 While the electronic options are being examined, the WG should earnestly reconsider manual checking of HKICs and travel documents, for the following reasons:

- Manual checking is a proven procedure in use by other service providers and is, in fact, a legal requirement for all employers in Hong Kong (**para. 2.18 to 2.20**).
- Compared to the electronic options which involve high costs and are fraught with security and privacy problems (**para. 3.11 to 3.16**), manual checking is simpler, relatively low-cost and straightforward.
- FHB's anticipated operational difficulties and adverse impact on service delivery associated with manual checking are likely to apply also to the five electronic options to varying degrees (**para. 3.13**).

4.8 We appreciate that frontline staff in HA/DH may face a more difficult situation than other service providers when carrying out additional checking. Before introducing any extra checking arrangements, electronic or manual, clear guidelines should be prepared for staff reference and execution. Extensive publicity should be

mounted and public notices visibly displayed on site, at hospitals and clinics, and on the internet to alert prospective patients. Given clear and adequate prior alert, the difficulties in manual checking should be much minimised and non-residents duly forewarned.

4.9 We do not expect HA and DH staff to become experts or an authority on determining resident status. Nor do we expect HA or DH to develop perfect or foolproof arrangements for establishing resident status. That would be unreasonable and unrealistic. The concept of resident status is complicated: there is no complete or conclusive definition for it and contentious cases can be settled only in a court of law. We only suggest that HA and DH take practical and relatively simple steps to stop the non-compliance with policy. In **Chapter 2**, we have explained the link between resident status and the HKIC and checking arrangements of other departments and service providers. They offer useful reference for reasonable checking arrangements. Those arrangements may not be perfect or foolproof, but practicable and considered by the Immigration Department to be sufficient.

5

LATEST DEVELOPMENT

5.1 Following the issue of this report in draft to FHB, a meeting was held with representatives of FHB, Security Bureau, HA, DH and the Immigration Department on 3 December 2009.

5.2 At this meeting, it was noted that the smart identity card system would be due for review and upgrade/replacement in a few years. This would provide an opportunity for many of the complications of additional checking to be overcome and for a long-term electronic solution to be pursued.

5.3 At the meeting FHB reiterated its concern over the practical problems of manual checking of travel documents at public hospitals and clinics. It maintained that the situation of HA/DH staff was not comparable to other departments in that the number of clients would be much greater and the services provided much more time-critical. Nevertheless, FHB indicated willingness to consider the feasibility of manual checking for non-resident patients and further deliberate on an appropriate strategy when the results of the survey on the size of the problem were available.

5.4 On 19 December 2009, FHB advised us that HA and the Immigration Department had finally resolved the legal and privacy issues of the survey on the utilization of subsidised medical services by non-residents, and would proceed with it in early 2010. Results are expected to be available in the first quarter of 2010.

5.5 Pending this full-scale survey, HA and the Immigration Department conducted a simplified survey from 10 to 15 December 2009 on the registration records of some of HA's services (including general outpatient, specialist outpatient

and inpatient services). This simplified survey showed that over the six-day period a total of 224,300 HKIC-holders made use of the three types of HA services at subsidised rates, 8,079 of whom held the Code C HKIC, with 113 (or 1.4% of the Code C HKIC-holders) being non-residents whose LOS had expired.

5.6 The size of the problem will only be assessed with greater certainty when the results of Government's full-scale survey are available in the first quarter of 2010 (**para. 5.4**).

6

CONCLUSION AND RECOMMENDATIONS

6.1 It is established policy to provide subsidised medical and health services to residents only and always to attend to persons in emergency, regardless of status, with payment later. However, over the years the practice of HA and DH is to accept all HKIC-holders, including non-resident HKIC-holders, as eligible for subsidised services.

6.2 This inconsistency with policy is an act of maladministration and should be rectified to accord with the policy intent, optimise medical and health resources and protect public revenue. The discrepancy between policy and practice since 1987 should stop. It is incumbent upon a responsible government to resolve the problem with determination and due promptitude.

6.3 Against this background, we conclude that:

- the non-compliance of practice with policy is an act of maladministration; and
- too much time has been taken on the search for a solution .

6.4 We recommend that:

- the non-compliance of practice with policy should be rectified;

- reasonable and realistic steps should be taken both in the short term and the long term to rectify the situation. In this context, the option of manual checking of travel documents, already effectively used by other service providers, should be reconsidered; and
- before the current practice is rectified and additional checking arrangements, whether electronic or manual, are introduced, clear guidelines should be promulgated for staff reference and execution and extensive multi-media publicity should be mounted to alert and educate the public as well as prospective patients; and
- to introduce electronic checking, as the long-term solution, as soon as practicable.

Office of The Ombudsman

Ref. OMB/DI/170

January 2010

ANNEXES

Article 24 of the Basic Law

Article 24

Residents of the Hong Kong Special Administrative Region (“Hong Kong residents”) shall include permanent residents and non-permanent residents.

The permanent residents of the Hong Kong Special Administrative Region shall be:

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons not of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode.

The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode.

Notice of the Labour Department at Job Centres

Non-permanent identity card holders please produce your Passport / Document of Identity / Single Journey Certificate

持有非永久性居民身份證人士 請出示護照 / 簽證身份書 / 單程證

The Immigration Ordinance forbids non-permanent identity card holders with the following conditions of stay (stated in travel documents) to take / change employment in Hong Kong:

- (1) Student
- (2) Visitor
- (3) Employment for a specific employer

Our officers will check the passport / Document of Identity / Single Journey Certificate of non-permanent identity card holders to ensure that they are lawfully employable in Hong Kong each time they require employment service as the conditions of stay may vary from time to time by the Immigration Department.

Thank you for your attention.

《入境條例》禁止受以下逗留條件(列於旅遊證件之內)規限的非永久性居民在本港接受 / 轉換僱傭工作：

- (1) 學生
- (2) 訪客
- (3) 為指定僱主工作的人士

由於入境事務處可能會不時更改非永久性居民的逗留條件，本處職員須於每次提供就業服務時查閱有關人士的護照 / 簽證身份書 / 單程證，以確保他們可以合法在港工作。

敬請留意。