

Reference Guide on the Issue of Certificates of Terminal Illness by Registered Chinese Medicine Practitioners to Mandatory Provident Fund Scheme Members for Applications for Early Withdrawal of Accrued Benefits

Introduction

The Mandatory Provident Fund ("MPF") System was incepted in December 2000 with the aim of assisting the working population to accumulate retirement savings. Under the Mandatory Provident Fund Schemes Ordinance, Cap. 485, Laws of Hong Kong ("the Ordinance"), an MPF scheme member who has reached the age of 65 can withdraw MPF accrued benefits derived from mandatory contributions in a lump sum immediately or at a later date. Under the Ordinance, claims may be lodged for early withdrawal of accrued benefits before the age of 65 on grounds of early retirement, permanent departure from Hong Kong, death, total incapacity or small balance account.

Mandatory Provident Fund Schemes (Amendment) Ordinance 2015

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 ("the Amendment Ordinance") was passed in the Legislative Council on 21 January 2015. Amendments which concern the practice of Chinese medicine include allowing a terminally-ill MPF scheme member to apply for early withdrawal of his MPF benefits if he is certified by a registered Chinese medicine practitioner ("CMP") or a medical practitioner ("MP") as having a remaining life expectancy of 12 months or less.

Under the Amendment Ordinance, "terminal illness" means an illness that is likely to reduce the life expectancy of the MPF scheme member to 12 months or less as certified by a registered CMP or a MP. There is no provision in the Amendment

Ordinance stipulating that the certifying registered CMP or MP will incur liability if the actual life span of the scheme member turns out to be longer than the expected 12 months.

After the commencement of the Amendment Ordinance, certificates of terminal illness issued by registered CMPs to MPF scheme members will be recognized for applications to the MPF approved trustees for early withdrawal of their accrued benefits under the MPF schemes.

Relevant legal provisions

The relevant amended provisions are reproduced at the **Appendix**.

Reference guide on the issue of certificates by registered CMPs

Section 2 of the Chinese Medicine Ordinance (Cap. 549) stipulates that registered CMPs shall practise on the basis of traditional Chinese medicine theories. It follows that the diagnostic methods adopted by registered CMPs should also be based on traditional Chinese medicine theories. When practicing Chinese medicine, registered CMPs should not use the methods of other medical and healthcare professions which are regulated by other legislations.

From a medical diagnosis perspective, the longer the remaining life expectancy certified of a terminally-ill patient, the lower the accuracy of such certification, and more clinical justification is needed to support such diagnosis. From the practical experience of CMPs, it is common for patients with terminal illness, in particular diseases of different kinds of tumours, to be first diagnosed by MPs using sophisticated medical technologies, before integrated treatments are

carried out including excision, chemotherapy or radiotherapy according to their medical conditions. As regards the treatments provided by CMPs, most of them are of relieving nature while the illness remains.

From the angle of Chinese medicine, a patient may be diagnosed as having a terminal illness under the Amendment Ordinance if -

- the patient suffers from the following medical conditions:
 - (i) failure of the five viscera, i.e. liver, heart, spleen, lungs and kidneys;
 - (ii) different kinds of late-stage cancers;
 - (iii) serious impairment of physical mobility;
 - (iv) genuine and continuous amnesia/dementia; or
 - (v) manic-depression;(the above conditions are not exhaustive)

resulting in serious impairment of his vital functions and thus reducing his life expectancy to 12 months or less.

Specific operational arrangements

According to the Mandatory Provident Fund Schemes Authority (“MPFA”), it is difficult to enumerate all terminal illnesses in the legislation. Notwithstanding the fact that registered CMPs are empowered by the Amendment Ordinance to issue certificates certifying that a patient has a terminal illness which reduces his life expectancy to only 12 months or less, in the absence of relevant clinical indicators based on Chinese medicine theories as support, CMPs should exercise their

professional judgment in considering whether to perform the medical function of issuing such certificates.

Given the format of the certificate, as prescribed by MPFA, a registered CMP is only required to fill in the patient's name and identity card number, the CMP's own name, telephone number and address, and for the CMP to sign on the certificate. Although MPFA does not require the provision of information such as the patient's illness, symptoms and diagnosis on the prescribed certificate, a CMP should establish a complete medical record for the patient in order to safeguard the CMP's own interests, even if all the CMP does is to certify the patient's terminal illness. Such record should include the patient's name, gender, contact details, date of consultation, symptoms, diagnosis and treatment methods (if any) and serves as the basis for issuing the certificate. To sum up, in certifying that a patient has a terminal illness, a CMP should comply with the prevailing practicing requirements of the code of conduct for CMPs, namely establishing complete medical records and being professionally responsible to his patients.

As the statutory regulatory body, the Chinese Medicine Practitioners Board ("the Practitioners Board") will continue to perform its functions as prescribed under the Chinese Medicine Ordinance and the code of conduct for CMPs and enforce the provisions therein with a view to ensuring high standards of professional practice and conduct of CMPs. If the Practitioners Board receives a complaint that a registered CMP has issued a certificate for a patient's terminal illness without the support of relevant clinical indicators based on Chinese medicine theories or appropriate professional judgment, it will deal with the complaint in accordance with the disciplinary procedures laid down in the Chinese Medicine Practitioners (Discipline) Regulation. If the registered CMP concerned is proved to have breached the code of conduct for CMPs or conducted himself in a way which has fallen short of the

reasonable standards expected of CMPs, the Practitioners Board will, after inquiry proving the complaint, take disciplinary actions such as removal of name from the Register, reprimand or issue of warning.

The above guide only serves as reference for registered CMPs in issuing certificates of terminal illness and has no legal effect. Registered CMPs should comply with the requirements of the Chinese Medicine Ordinance on the practice of Chinese medicine, and read and understand the functions conferred upon registered CMPs by the Amendment Ordinance as well as the requirements of the Code of Professional Conduct for registered CMPs. They should also exercise their professional judgment and take into account the individual circumstances of patients when considering whether to issue such a certificate.

Enquires

For enquiries relating to the format of the certificate as prescribed by MPFA as well as other relevant requirements, please contact MPFA directly (Tel: 2918 0102; Email: mpfa@mpfa.org.hk) or visit MPFA's website (www.mpfa.org.hk).

For other enquires relating to the practice of Chinese medicine, please call the Secretariat of the Chinese Medicine Council of Hong Kong (Tel: 2121 1888).

Chinese Medicine Practitioners Board
Chinese Medicine Council of Hong Kong

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Mandatory Provident Fund Schemes Ordinance (Cap. 485, HK Laws)

Section 15 Withdrawal of accrued benefits

- (3) The regulations referred to in subsection (2) may specify the circumstances in which a scheme member's entitlement under that subsection may be exercised. Those circumstances include (but are not limited to) –
- (c) the scheme member's terminal illness.

Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A, HK Laws)

Section 158(1) Definition

“registered Chinese medicine practitioner (註冊中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).”

Section 158(3)

- (3) A member who has an illness that is likely to reduce the life expectancy of the member to 12 months or less has a terminal illness for the purposes of this Part.

Section 162 Additional classes of persons entitled to be paid accrued benefits

- (1) For the purposes of section 15(3) of the Ordinance, a member of a registered scheme who has not reached the retirement age is, subject to this Part, entitled to be paid by the approved trustee of the scheme, as a lump sum, the whole of the member's accrued benefits in the scheme if the member –
- (b) is totally incapacitated; or
- (ba) has a terminal illness; or

Section 164A Claim for payment on ground of terminal illness

- (1) A member of a registered scheme who, before reaching the retirement age, wishes to be paid the member's accrued benefits on the ground of terminal illness must lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits in accordance with this section.
- (2) The claim must be in a form specified or approved by the Authority.
- (3) If a claim is made by a scheme member of a registered scheme who has a terminal illness, the approved trustee of the scheme may only pay the member's accrued benefits to that member if the member can provide a medical certificate, in a form specified or approved by the Authority, that –
 - (a) is issued by a registered medical practitioner or registered Chinese medicine practitioner;
 - (b) states that, in a practitioner's opinion, the member falls within section 158(3); and
 - (c) is dated not earlier than 12 months before the date on which the claim is lodged.

Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B, HK Laws)

Section 6(12G) of Schedule 2

A new member who has an illness that is likely to reduce the life expectancy of the member to 12 months or less has a terminal illness for the purposes of this section.

Section 6(9A) of Schedule 2

A new member of a relevant scheme is eligible to withdraw the member's minimum MPF benefits on the ground of terminal illness if the member lodges with the trustee of the scheme -

- (a) a claim in a form provided or approved by the Authority; and
- (b) a certificate that is -
 - (i) signed by a registered medical practitioner or registered Chinese medicine practitioner certifying that, in the practitioner's opinion, the member falls within subsection (12G); and
 - (ii) dated not earlier than 12 months before the date on which the claim is lodged.

