

立法會
Legislative Council

LC Paper No. CB (2)2225/13-14
(These minutes have been
seen by the Administration)

Ref : CB2/BC/6/13

Bills Committee on Electronic Health Record Sharing System Bill

Minutes of the first meeting
held on Tuesday, 13 May 2014, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon Charles Peter MOK (Chairman)
Hon Cyd HO Sau-lan
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon CHAN Han-pan
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
- Members absent** : Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
- Public Officers attending** : Item II
Mr Sidney CHAN, JP
Head (eHealth Record)
eHealth Record Office
Food and Health Bureau

Ms Ida LEE
Deputy Head (eHealth Record)
eHealth Record Office
Food and Health Bureau

Dr N T CHEUNG
Consultant (eHealth)
eHealth Record Office
Food and Health Bureau

Mrs Juliet CHENG
Chief Systems Manager (eHealth Record)
eHealth Record Office
Food and Health Bureau

Dr W N WONG
Senior Health Informatician (eHealth Record) Special Duties
eHealth Record Office
Food and Health Bureau

Ms Rayne CHAI
Acting Senior Assistant Law Draftsman
Department of Justice

Mr Patrick YEUNG
Senior Government Counsel
Department of Justice

Ms Carmen CHAN
Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Ms Janet SHUM
Senior Council Secretary (2) 5

Ms Michelle LEE
Legislative Assistant (2) 5

Ms Louisa YU
Clerical Assistant (2) 5

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I. Election of Chairman

Ms Cyd HO, member who had the highest precedence in the Council among members of the Bills Committee present, presided over the election of the Chairman.

2. Ms Cyd HO invited nominations for the chairmanship of the Bills Committee. Mr Charles Peter MOK was nominated by Mr Kenneth LEUNG and the nomination was seconded by Mr Alan LEONG and Mr WU Chi-wai. Mr Charles Peter MOK accepted the nomination. As there was no other nomination, Ms Cyd HO declared Mr Charles Peter MOK elected as the Chairman of the Bills Committee.

3. Members agreed that the election of Deputy Chairman was not necessary.

4. The Chairman referred to the application from Dr Fernando CHEUNG for late membership of the Bills Committee. The Bills Committee agreed that the application from Dr Fernando CHEUNG be accepted.

II. Meeting with the Administration

[File Ref.: FH CR 1/1/3781/10, LC Paper Nos. LS47/13-14, CB(2)1498/13-14(02), CB(2)1515/13-14(01) and CB(3)575/13-14]

5. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

6. The Bills Committee requested the Administration to -

(a) provide a written response to the issues raised in the letter dated 12 May 2014 from the Assistant Legal Adviser to the Administration; and

(b) provide in writing details of the roles and functions (including its interaction with relevant government bureaux/departments and

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other statutory bodies such as the Office of the Privacy Commissioner for Personal Data), organizational set-up (including directorate and non-directorate support) and financial implications of the proposed office of the Commissioner for the Electronic Health Record.

III. Any other business

Future meeting arrangements

7. Members agreed to receive public views on the Bill by posting a general notice on the Legislative Council website and issuing invitation letters to the 18 District Councils.
8. Members also agreed that the next two meetings be scheduled for Monday, 19 May 2014, at 8:30 am for meeting with the Administration, and Monday, 26 May 2014, at 4:30 pm for meeting with deputations and the Administration.
9. There being no other business, the meeting ended at 6:27 pm.

Council Business Division 2
Legislative Council Secretariat
22 August 2014

**Proceedings of the first meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 13 May 2014, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action Required
<i>Agenda item I: Election of Chairman</i>			
000106 - 000227	Ms Cyd HO Mr Kenneth LEUNG Mr Alan LEONG Mr WU Chi-wai Mr Charles Peter MOK	Election of Chairman	
000228 - 000259	Chairman	Acceptance of application for late membership from Dr Fernando CHEUNG	
<i>Agenda item II: Meeting with the Administration</i>			
000300 - 000514	Chairman	Opening remarks	
000515 - 001753	Chairman Admin	Briefing by the Administration on the Electronic Health Record Sharing System Bill ("the Bill")	
001754 - 001945	Chairman Admin	The Administration was requested to provide a written response to the issues raised in the letter dated 12 May 2014 from the Assistant Legal Adviser.	Admin
001946 - 003025	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki's view on the need to provide a "safe deposit box" in the Electronic Health Record Sharing System ("eHRSS") to allow separate storage of certain sensitive health data of the registered healthcare recipients ("HCRs"), such as their psychological disease records, with enhanced access control; and his enquiry on -</p> <p>(a) whether the Administration would put in place any mechanism to facilitate an HCR to decide not to share some of his/her health data in eHRSS;</p> <p>(b) how to ensure that a registered HCR, or a substitute decision maker ("SDM") of a registered HCR, could make an informed decision as to whether to give a sharing consent for an indefinite term or a one-year term; and</p> <p>(c) whether, and if so, what mechanism was in place to enable a registered HCR to suspend his/her registration within a very short period of time.</p> <p>The Administration's advice that -</p> <p>(a) a registered HCR could choose to give the sharing</p>	

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		<p>consent only to the prescribed healthcare providers ("HCPs") he/she preferred such that those HCPs could view his/her health records from eHRSS. A sharing consent might be given for an indefinite term or a one-year term. The HCR concerned, or the SDM of that HCR, as the case might be, could withdraw the registration from eHRSS or revoke the sharing consent anytime. The sharing consent would be in effect during its term until and unless the registration from eHRSS was withdrawn or cancelled, or the sharing consent was revoked; and</p> <p>(b) as regards the provision of a "safe deposit box" feature to facilitate enhanced access control to certain part of an HCR's health record in eHRSS, divergent views were received during the public consultation on "The Legal, Privacy and Security Framework for Electronic Health Record Sharing". Those in support of the feature considered that patients should have the right to choose, while those against the feature were concerned with completeness of data for healthcare delivery and safety risk to healthcare professionals. The Administration had undertaken to conduct a study on the feature with reference to overseas experiences. This study would be a priority task in Stage Two of the Electronic Health Record Programme ("the eHR Programme"). A decision on whether to provide the feature would be made in Stage Two of the eHR Programme. Subject to funding approval by the Finance Committee, the Administration planned to commence Stage Two of the eHR Programme in 2015 for completion in 2019.</p>	
003026 - 003755	Chairman Mr CHAN Han-pan Admin	<p>Mr CHAN Han-pan 's enquiry on -</p> <p>(a) whether an HCP was allowed to access the electronic health record ("eHR") of an HCR in eHRSS without his/her consent under emergency situations, and if so, what conditions would constitute a case of emergency situation;</p> <p>(b) whether an HCR would be notified of the access of his/her eHR by an HCP, say, through Short Message Service ("SMS");</p> <p>(c) the mechanism for handling complaints relating to eHRSS; and</p> <p>(d) whether it would be a criminal offence for an HCP to provide a copy of the print-out of the data and information contained in eHRSS to a third party, such as an insurer.</p>	

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		<p>The Administration's advice that -</p> <ul style="list-style-type: none"> (a) for cases where emergency access to an HCR's eHR in eHRSS was necessary in tandem with the carrying out of emergency treatments on that HCR, the HCP concerned could make a request for such access on a temporary basis without the data subject's consent by virtue of an exemption under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). When making such an access request, the HCP concerned would need to provide justifications for the access on the spot, which would be logged in eHRSS and subject to audit; (b) the access of an HCR's eHR would trigger the issuance of a system notification, such as SMS, to the relevant HCR; (c) if there was doubt about access to their eHR in eHRSS, HCRs could lodge complaints with the office of the Commissioner for the Electronic Health Record ("eHRC"). Other complaint avenues included the Office of the Privacy Commissioner for Personal Data and the management of the HCP concerned (such as a private hospital); and (d) only the index data and the health data relating to the allergy of the registered HCRs could be downloaded from eHRSS. It was proposed under clause 46 of the Bill that it would be an offence for a person to use or provide another person's data or information contained in an eHR, or a copy (in whatever format) of the data or information, for direct marketing. 	
003756 - 004358	Chairman Dr Elizabeth QUAT Admin	<p>Dr Elizabeth QUAT's enquiry about the liability for the use, without the data subject's consent, of another person's data or information contained in an eHR for own research purpose, or make them available, not for gain, to other persons through the internet.</p> <p>The Administration's advice that eHR data would include "personal data" within the meaning of PDPO. The provisions of PDPO, including those relating to the need to obtain the data subject's consent before the use of his/her personal data, should remain applicable to eHR kept in eHRSS.</p> <p>At the request of Dr Elizabeth QUAT, the Administration's undertaking to provide in writing details of the organizational set-up and financial implication of the proposed office of eHRC.</p>	Admin
004359 - 005859	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG's enquiry on -</p> <ul style="list-style-type: none"> (a) the measures to incentivize HCPs in the community 	

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		<p>setting, in particular medical practitioners in solo practice, to participate in eHRSS;</p> <p>(b) the availability of a mechanism for uploading to eHRSS of the health data of those registered HCRs who received treatments outside Hong Kong; and</p> <p>(c) the availability of a means, such as patient portal or through internet, for data subjects or their authorized family members to access and/or download their data kept in eHRSS.</p> <p>The Administration's advice that -</p> <p>(a) the statistics of participation in the Public Private Interface - Electronic Patient Record ("PPI-ePR") Sharing Pilot Project, which was rolled out by the Hospital Authority ("HA") in 2006 to enable participating private HCPs to view the patients' records in HA, reflected the growing acceptance of eHR sharing among doctors. At present, around 2 000 out of the 3 000-odd private healthcare professionals participating in the Project were private doctors. In addition, private doctors participating in various public-private partnership projects had been accustomed to using the eHealth System, which was a web-based system on which voucher-based and subsidy schemes operated. The Administration had also been working closely with the Hong Kong Medical Association and the Hong Kong Dental Association to discuss connectivity of their clinic management systems ("CMS") to eHRSS;</p> <p>(b) local legislations and system requirements of eHRSS could not be enforced outside Hong Kong. For security and privacy reasons, it was proposed under the Bill that only those HCPs providing healthcare at service locations in Hong Kong could register as HCPs for eHRSS. It should be noted that healthcare professionals had the responsibility to maintain accurate and up-to-date medical records of their patients. In the event that a registered HCR requested a prescribed HCP to upload certain health information provided by other HCPs, the healthcare professional concerned should make a professional judgment on whether the request of that HCR should be acceded to. When a healthcare professional started inputting an HCR's information into his/her own electronic medical record ("eMR") system, and with the HCR's sharing consent, those data within the sharable scope would be uploaded to eHRSS; and</p> <p>(c) it had undertaken to conduct a study on whether, and</p>	

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		<p>if so, how to provide for a patient portal in Stage Two of the eHR Programme to facilitate registered HCRs to more conveniently access or upload their data. Before the availability of the patient portal, HCRs as the data subjects of the relevant personal data held under eHRSS, could put forward data access requests ("DARs") under PDPO.</p> <p>Dr Helena WONG's view that patient portal should be put in place as soon as possible to facilitate registered HCRs' easy access to their own health data.</p>	
005900 - 010049	Chairman Admin	<p>In response to the Chairman's enquiry as to whether eHRSS would obviate the need for a registered HCR to apply to each of his/her HCPs for access to his/her medical records, the Administration's clarification that while registered HCRs could make a DAR to obtain from the office of eHRC a copy of their health records in eHRSS, it should be noted that these records contained only those health data within the sharable scope, and hence were not a direct substitute for the full medical records kept by each HCP, which might include other data that fell outside the sharable scope of eHRSS.</p>	
010050 - 010707	Chairman Mr CHEUNG Kwok-che Admin	<p>Mr CHEUNG Kwok-che's enquiry on -</p> <p>(a) whether the design and the development of eHRSS had taken into account the experiences gained from the PPI-ePR Sharing Pilot Project; and</p> <p>(b) the actions that could be taken by an HCR if his/her eHR in eHRSS revealed that a prescribed HCP had failed to input a complete medical record for uploading to eHRSS, or a medical practitioner questioned the treatment provided by another medical practitioner as shown in the eHR of the relevant HCR.</p> <p>The Administration's advice that -</p> <p>(a) allowing registration of an HCR using his/her Hong Kong Identity Card, introduction of the SDM arrangements, and issuance of a system notification for access of an HCR's eHR were some examples of the features of eHRSS that had made reference to the experiences gained from the PPI-ePR Sharing Pilot Project;</p> <p>(b) an HCR could put forward enquiries or complaints to eHRC if he/she suspected that an HCP which had registered for eHRSS and to whom he/she had given sharing consent had failed to upload to eHRSS his/her health data within the sharable scope. It was proposed under the Bill that eHRC had the power to require a registered HCP to produce records or</p>	

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		<p>documents in certain circumstances; and</p> <p>(c) following the existing arrangements, HCRs could lodge complaints with the relevant registration boards and councils of the healthcare professionals, such as the Medical Council of Hong Kong, on matters relating to professional conduct of a healthcare professional.</p>	
010708 - 011905	Chairman Dr Fernando CHEUNG Dr Elizabeth QUAT Admin	<p>Dr Fernando CHEUNG's enquiry on whether the introduction of eHRSS would facilitate the use of the health data contained therein for promotion of primary care and prevention of diseases as well as research; and Dr Elizabeth QUAT's enquiry about whether eHRSS would facilitate the surveillance of communicable diseases.</p> <p>The Administration's advice that -</p> <p>(a) the development of comprehensive and lifelong eHR of HCRs in eHRSS would help promote the family doctor concept and facilitate the provision of continuous primary care;</p> <p>(b) the Bill had provided for the use of identifiable or non-identifiable eHR data or information for research and statistics related to public health or public safety, and prevention or control of diseases and enhancement of disease surveillance. A code of practice ("COP") would be devised to provide, among others, guidance on the use of eHR for research purpose; and</p> <p>(c) there was an existing statutory notification system under which a medical practitioner had to notify the Director of Health if he/she had reason to suspect the existence of a case of any of the infectious diseases specified in Schedule 1 of the Prevention and Control of Diseases Ordinance (Cap. 599).</p> <p>Dr Fernando CHEUNG's enquiry about whether eHRSS would facilitate the tracing of hereditary or rare diseases that occurred in the family; and the Chairman's concern about whether a registered HCR's health data relating to hereditary diseases would be linked to the eHR of his/her family members so that prescribed HCPs could be aware of the HCRs' family disease history when providing diagnosis.</p> <p>The Administration's response that Stage One of eHRSS would not specifically track hereditary or rare diseases. Any types of linkage of a registered HCR's health data relating to hereditary diseases to the eHR of his/her family members had to take into account the privacy of those family members. The Administration would study whether family disease history should be included in the</p>	

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		future sharable scope of eHR during Stage Two of the eHR programme.	
011906 - 012045	Chairman Dr Elizabeth QUAT Admin	<p>In response to Dr Elizabeth QUAT, the Administration's advice that -</p> <p>(a) data protection principle 3 of PDPO stipulated that prescribed consent of a data subject was required for using any personal data of the data subject for a new purpose. For cases of contravention, PCPD might serve on the relevant data user an enforcement notice to direct the data user to remedy the contravention. A data user who contravened the enforcement notice committed an offence and was liable on a first conviction to a fine at level 5 and to imprisonment for two years. This was concerned with disclosure of data, regardless of whether it was for gain; and</p> <p>(b) it was proposed under clauses 41(6) and 41(7) of the Bill that a person would commit an offence and be liable on conviction on indictment to imprisonment for five years in the circumstances set out in those clauses.</p>	
012046 - 012907	Chairman Dr Elizabeth QUAT Admin	<p>Dr Elizabeth QUAT's concern about the liability of a healthcare professional if he/she inadvertently inputted wrong data of an HCR for uploading to eHRSS or caused an impairment to HCRs' eHR due to virus infection by his/her eMR system; and the Administration's advice that -</p> <p>(a) conviction in respect of many of the six offences under Part 5 of the Bill would require the proof that the act concerned was clearly intentional. An inadvertent act might point to contravention of a provision of the COP to be issued under clause 51 of the Bill. Non-compliance with COP would not lead to legal liability directly but might result in suspension of the registration of the HCP concerned by eHRC; and</p> <p>(b) in addition to the infrastructural tools such as firewalls, all individual eMR systems connecting to eHRSS through the CMS Adaptation modules developed for private hospitals and CMS On-ramp applications developed for clinics were required to comply with the relevant security guidelines published by eHRC for protection of the eMR systems. A virus infection by the HCP's computer normally would not affect the core system of eHRSS and the data contained therein.</p> <p>On Dr Elizabeth QUAT's concern that the healthcare provided by a healthcare professional might be subject to</p>	

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		<p>criticism of another healthcare professional who used that piece of health data of an HCR in eHRSS for delivery of healthcare to the HCR concerned, the Administration's reiteration that the professional conduct of the registered healthcare professionals was subject to the regulation of the respective registration boards and councils.</p> <p>In response to Dr Elizabeth QUAT, the Administration's reiteration of the efforts made to encourage the private HCPs to participate in eHRSS.</p>	
012908 - 013203	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's enquiry about the eligibility of those non-governmental organizations which provided healthcare to elderly persons or persons with disabilities in the community setting for participation in eHRSS.</p> <p>The Administration's response that HCPs providing healthcare at one or more than one service locations could apply to eHRC for registration as an HCP for eHRSS. These HCPs might include, among others, hospitals, clinics, residential care homes, or specified entities that engaged members of the 13 statutorily registered healthcare professionals to deliver healthcare. The list of the statutorily registered healthcare professionals was set out in the Schedule of the Bill.</p>	
013204 - 013544	Chairman Admin Dr Fernando CHEUNG	<p>In response to the Chairman and Dr Fernando CHEUNG, the Administration's advice that whether a pharmacy employing a registered pharmacist could be registered as an HCP depended on whether the pharmacist would perform at the premises activities that fell under the definition of "healthcare" in the Bill.</p> <p>The Chairman's enquiry on whether the access rights of different healthcare professionals to eHR in eHRSS would be differentiated in accordance with the clinical needs and functions of different healthcare professionals; and the Administration's advice that the Bill would not provide for the detailed access arrangement of different healthcare professional, HCPs would be required to set out the parts of eHR each type of their healthcare professionals (e.g. doctors, nurses, optometrists and medical laboratory technologists) would have access to, subject to the scrutiny of eHRC.</p>	
013545 - 013934	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's enquiry on the timetable for Chinese medicine practitioners ("CMPs") to participate in eHRSS; and the Administration's response that CMPs had already been included in the 13 statutorily registered healthcare professionals specified in the schedule to the Bill. To facilitate CMPs to later take part in the sharing process, the Administration had been and would continue to work with the CMP sector on the standardization of Chinese medicine terminologies and improving the technical readiness of the eMR systems of CMPs.</p>	

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013935 - 014743	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry on whether registered HCRs could access their own eHRs in eHRSS and use the data or information contained for lodging complaints against the HCPs concerned; and the Administration's reply that an HCR could put forward a DAR under PDPO to access the relevant data and decide on the use of such data, such as to lodge complaints against the HCPs concerned.</p> <p>Ms HO's concern about the need to appoint an eHRC and her request for the Administration to provide in writing information on the rank, functions and powers of eHRC, as well as the interaction of eHRC with other government bureaux/departments and statutory bodies (such as the Office of Privacy Commissioner for Personal Data) in performing his/her roles and functions.</p>	Admin
014744 - 015406	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai's enquiry on whether there would be a difference in the scope of data contained in, and the time required for obtaining a copy of, the health record from an HCP and under eHRSS; and the Administration's response that -</p> <p>(a) the health record a registered HCR obtained from the office of eHRC via a DAR would contain those sharable data uploaded to eHRSS by all prescribed HCPs to whom he/she had given the sharing consent, whereas the record provided by individual HCP would only cover those health data maintained by that HCP but might include other data that fell outside the sharable scope of eHRSS; and</p> <p>(b) given that the data and information contained in eHRSS was in electronic form, it was expected that the time required by the office of eHRC to process a DAR would be less when compared to the requirement under PDPO (i.e. a data user had to comply with a DAR within 40 days after receiving the request).</p> <p>In response to Mr WU Chi-wai's enquiry as to whether a prescribed HCP could download data and information from eHRSS for incorporation into his/her own eMR system, the Administration's reiteration that only index data and health data relating to allergy of the registered HCRs could be downloaded from eHRSS.</p>	
015407 - 015725	Chairman Dr Elizabeth QUAT Admin	<p>On Dr Elizabeth QUAT's enquiry on efforts made by the Administration to facilitate CMPs to later take part in the sharing process, the Administration's advice that funding had been provided for HA to carry out a Chinese Medicine Data Standardization Project, which was expected to be completed in a year's time, during Stage One of the eHR Programme. As a next step, funding would be allocated to HA for developing an all-in-one Chinese medicine clinical management system suitable</p>	

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		for adoption by CMPs in the private sector. In response to Dr Elizabeth QUAT, the Administration's advice that the design of eHRSS under Stage One of the eHR Programme had not catered for possible interface with the proposed Health Protection Scheme.	
<i>Agenda item III: Any other business</i>			
015726 - 020034	Chairman Ms Cyd HO Dr LEUNG Ka-lau	Invitation of public views on the Bill Scheduling of subsequent meetings	

Council Business Division 2
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22 August 2014