

立法會
Legislative Council

LC Paper No. CB (2)2226/13-14
(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 second meeting
held on Monday, 19 May 2014, at 8:30 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Charles Peter MOK (Chairman)
Hon Emily LAU Wai-hing, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
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
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon CHAN Han-pan
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan

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

Mr Peter Chan
Senior 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

Action

I. Meeting with the Administration

[File Ref.: FH CR 1/1/3781/10, LC Paper Nos. CB(2)1515/13-14(01), CB(2)1538/13-14(01), CB(2)1551/13-14(01) and CB(3)575/13-14]

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

Admin

2. The Bills Committee requested the Administration to -

- (a) provide details on the main enhancement features to be included in the Electronic Health Record Sharing System ("eHRSS"), as well as major studies to be conducted (such as the studies to explore whether a "Patient's Portal" should be developed for registered healthcare recipients ("HCRs") to access their electronic health record ("eHR") more conveniently, and whether separate storage of sensitive health records with additional access control viz a "safe deposit box" should be provided), in Stage Two of the Electronic Health Record Programme;
- (b) advise whether the Administration would consider amending the drafting of the definition of "sharable data" in clause 2 to provide for the possibility that a registered HCR might in future have the right to exclude prescribed healthcare provider(s) registered for eHRSS from access to certain part of his/her eHR (e.g. through the provision of a "safe deposit box" in eHRSS) and, if not, what future legislative amendments or administrative measures would be required to bring the regulation and protection of such a right into the regulatory framework if such a need arose in the future; and
- (c) provide explanation on the ownership of eHR of a registered HCR that was kept under eHRSS, and advise whether the Administration would consider adding a definition in relation to the ownership of eHR in clause 2, with a view to removing any ambiguity that might arise.

Action

II. Any other business

3. Members noted that the next meeting would be held on Monday, 26 May 2014 at 4:30 pm to receive views from deputations on the Bill.
4. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
22 August 2014

**Proceedings of the second meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Monday, 19 May 2014, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action Required
<i>Agenda item I: Meeting with the Administration</i>			
000501 - 000809	Chairman	Opening remarks	
000810 - 000837	Chairman	Commencement of clause-by-clause examination of the Bill	
000838 - 001036	Chairman Admin	<u>Examination of the long title and clause 1</u>	
001037 - 001350	Chairman Ir Dr LO Wai-kwok Admin	<p><u>Examination of clause 2</u></p> <p>Ir Dr LO Wai-kwok's question as to whether a definition for "guardian", in addition to the definition of "parent", should be provided in the Bill.</p> <p>The Administration's response that clause 3 had already specified that a person appointed or acting as a guardian of a healthcare recipient ("HCR") who was a minor (i.e. a person aged below 16 under the Bill) or mentally incapacitated would be an eligible person for being the "substitute decision maker" ("SDM") of that HCR.</p>	
001351 - 001827	Chairman Dr Elizabeth QUAT Admin	<p>Dr Elizabeth QUAT's remarks that many patient groups had requested for the provision of a "safe deposit box" feature that allowed the separate storage of certain health data with enhanced access control under the Electronic Health Record Sharing System ("eHRSS"); and her enquiry as to whether the Administration would consider amending the proposed definition of "sharable data" to provide for the possibility that a registered HCR might in future have the right to exclude a prescribed healthcare provider ("HCP") whom he/she had given a sharing consent to, from access to certain part of his/her electronic health record ("eHR").</p> <p>The Administration's response that divergent views on whether to provide a "safe deposit box" were received during the public consultation on "The Legal, Privacy and Security Framework for Electronic Health Record Sharing" in 2011, and that given that it had undertaken to conduct a study on the issue with reference to overseas experiences in Stage Two of the Electronic Health Record Programme ("the eHR Programme"), including an express reference that HCRs might have the right to exclude prescribed HCPs from access to certain part of their eHR in the Bill at this stage would pre-empt its study. The Bill, as currently drafted, did not</p>	

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		<p>preclude the provision of such feature in future.</p> <p>In response to Dr Elizabeth QUAT's further enquiry on whether future legislative amendments would be required to bring the regulation and protection of such a right into the regulatory framework if such a need arose in the future, the Administration's advice that subject to the outcome of the study, it would accordingly review whether the inclusion of such feature in eHRSS would require the introduction of legislative amendments or it could be effected through administrative measures.</p>	
001828 - 001911	Chairman	Members' agreement to examine the Chinese and English texts of the Bill at the same time.	
001912 - 003531	Chairman Dr KWOK Ka-ki Admin ALA4	<p>Citing the case whereby Cathay Pacific Airways Limited had requested its employees to provide past medical records under the threat of a disciplinary process as an example, Dr KWOK Ka-ki's concern that the lack of an additional access control for the more sensitive health data in eHRSS would have the effect of enabling some HCPs, such as company doctors, to access more health data than necessary; and his view that in the event that the Bills Committee agreed that it was necessary to grant the registered HCRs the right to prevent some categories of eHR sharable data from being automatically viewable by prescribed HCPs even with their general consent, the Administration should introduce express provisions in the Bill to reflect this intent.</p> <p>The Administration's elaboration of the divergent views gauged during the public consultation exercise on "The legal, Privacy and Security Framework for Electronic Health Record Sharing" in 2011 concerning the provision of a "safe deposit box" in eHRSS, such as concerns over safety risks to healthcare professionals; and its reiteration that it would conduct an in-depth study on the issue during Stage Two of the eHR Programme. If a decision was made to include the "safe deposit box" function after the study, it would review the need for legislative amendments, if any.</p> <p>In response to Dr KWOK Ka-ki's enquiry, ALA's advice that the current drafting of the definition of "sharable data" had not catered for the future provision of additional access control for sensitive health data. Should there be a policy change in the future, the Administration could introduce legislative amendments on this.</p>	
003532 - 003844	Chairman Admin Dr KWOK Ka-ki	The Chairman's enquiry as to whether the various approaches for offering a "safe deposit box" function for eHRSS had made it not practicable for the Administration to decide at this stage whether such functional feature, if provided in the future, would be effected through legislative amendments or administrative measures.	

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		<p>The Administration's advice that a guiding principle of the legislative framework for eHR sharing was that it should be sufficiently versatile and technology neutral to cater for future advancement in health information technology. The current drafting of the proposed definition of "sharable data" had provided the flexibility for the Administration to incorporate new types of data for sharing (e.g. radiological images, other health-related information) and new functions (e.g. additional access control over sensitive data) in eHRSS, of which the implementation might be effected through administrative or operational means without the need to amend the legislation.</p>	
003845 - 005550	<p>Chairman Prof Joseph LEE Admin ALA4</p>	<p>Prof Joseph LEE's expression of agreement that there was no need to specify the scope of sharable data in the Bill in order to allow flexibility for inclusion or removal of any functions in eHRSS in the future; and his view that the Administration should however make it clear to HCRs on the scope of eHR sharable data, and whether they had any ownership rights over their eHR in eHRSS such that they had the right to restrict the prescribed HCPs from viewing certain categories of their health data.</p> <p>The Administration's clarification that -</p> <p>(a) sharable data in eHRSS might come from diverse sources, such as clinics, hospitals and medical laboratories. The requirement stipulated in the code of conduct published by the Hospital Authority ("HA"), the codes of practices under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) and the Medical Clinics Ordinance (Cap. 343) as well as the codes of conduct of various healthcare professionals that these entities or persons had to maintain medical records of their patients implied that these medical records were kept by the relevant HCPs, with HCRs being the data subjects of the relevant records. By joining eHRSS voluntarily, HCRs and HCPs (with relevant sharing consent from HCRs) agreed to the sharing of relevant health data of HCRs in eHRSS; and</p> <p>(b) an HCR as the data subject of the relevant personal data kept in eHRSS had the right to access his/her personal data under the Personal Data (Privacy) Ordinance (Cap. 486). In line with the existing practice of HA and some medical clinics, registered HCRs would be informed of the data collection purpose and the intended usage of the data, as well as their access right, via relevant documents such as a patient information notice.</p> <p>The Chairman's remarks that HCRs might also own some eHR in eHRSS in future if some form of patient portal was to be provided in Stage Two of the eHR Programme.</p>	

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		Prof Joseph LEE's view that the Administration should include a definition in relation to the ownership of eHR in eHRSS in the Bill to avoid ambiguity and disputes.	
005551 - 005715	Chairman ALA4 Prof Joseph LEE	ALA's remarks that the in light of the current drafting of the definition of "health data", as a type of "sharable data" and the Administration's comment that X-rays might be added to the scope of sharable data later, the Bill, as currently drafted, did not preclude the Administration from, after enactment of the Bill, introducing changes in the scope of sharable data through administrative measures, which would not be subject to scrutiny by the Legislative Council ("LegCo").	
005716 - 010602	Chairman Dr Elizabeth QUAT ALA4 Admin	<p>Dr Elizabeth QUAT's view that taking into account that eHRSS should be patient-oriented as originally proposed by the Administration, registered HCRs should have the right to choose the parts of their health data to be shared in eHRSS.</p> <p>In response to Dr Elizabeth QUAT, ALA's advice that it would be up to the Administration to decide whether future change in the scope of sharable data would be effected through administrative measures, which would not be subject to scrutiny by LegCo; and the Administration's advice that it would report to the Panel on Health Services ("the Panel") on the outcome of the study on the issue of whether any "safe deposit box" feature should be provided in eHRSS, and if so, whether legislative amendments would be required to effect the change.</p>	
010603 - 011422	Chairman Ir Dr LO Wai-kwok Admin	<p>Ir Dr LO Wai-kwok's view that the voluntary nature of eHRSS had already provided flexibility for HCRs to join and choose to give sharing consent only to those HCPs that they trusted. Introducing an additional feature to enable the withholding of certain health data of HCRs for sharing would hamper the completeness and integrity of eHRSS, and thereby undermine the fundamental merit of eHR sharing in enhancing the quality of healthcare delivery.</p> <p>Ir Dr LO Wai-kwok's enquiry and the Administration's affirmative response that according to clause 5(2), the types of data or information required for the proper functioning of eHRSS would be determined by the Commissioner for the Electronic Health Record ("eHRC").</p> <p>The Chairman's remarks that the issue at stake was not on whether a "safe deposit box" feature should be provided in eHRSS but how to ensure that, after the enactment of the Bill, future changes to be introduced on the scope of sharable data in eHRSS would be subject to the scrutiny of LegCo; and the Administration's response that it would consult the Panel, as well as internal working groups and steering committee, on the proposed changes to the features of eHRSS.</p>	

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011423 - 011922	Chairman Prof Joseph LEE Admin	The Administration was requested to provide written explanation on the ownership of eHR of a registered HCR that was kept under eHRSS, and advise whether it would consider adding a definition in relation to the ownership of eHR in clause 2, with a view to removing any ambiguity that might arise.	Admin
011923 - 013107	Chairman Ms Emily LAU Admin	<p>In response to Ms Emily LAU, the Administration's advice that the objective of eHRSS was to provide an infrastructure for HCPs to timely access the health data of the registered HCRs, with a view to improving continuity of care and minimizing duplicate tests.</p> <p>Ms Emily LAU's concern about the impact of providing HCRs the right to block prescribed HCPs' access to certain parts of their eHR on the quality of healthcare delivery; and the Chairman's concern that the provision of additional access control over sensitive data to HCRs might give rise to the issue of legal liability when the treatment provided by a prescribed HCP, which was based on an incomplete eHR of a registered HCR, had resulted in a medical incident.</p> <p>On Ms Emily LAU's enquiry on the overseas experiences in this regard, the Administration's response that none of the overseas experiences was particularly successful to date. A case in point was the Australian Personally Controlled Electronic Health Record System.</p>	
013108 - 013227	Chairman Prof Joseph LEE	Prof Joseph LEE's view that there should be no question of HCRs should have a right to withhold certain parts of their eHR for automatic viewing by HCPs (with relevant sharing consent from HCRs) if the ownership of such eHR was made clear under clause 2.	
013228 - 013903	Chairman Admin Prof Joseph LEE	<p><u>Examination of clause 3</u></p> <p>Prof Joseph LEE's concern that a SDM of a mentally incapacitated person might wish to exclude the part of the health data concerning the mental illness of that HCR from sharing if an ambiguity existed regarding the ownership of eHR kept in eHRSS.</p>	
013904 - 014423	Chairman Dr Elizabeth QUAT Admin	Dr Elizabeth QUAT's enquiry and the Administration's affirmative response that a registered HCR, who was no longer a minor or a mentally incapacitated person, may consider taking civil actions against the previous decisions made by his/her SDM. It should, however, be noted that it was stipulated in various clauses of the Bill that in making a decision on behalf of and in the name of an HCR, a SDM had to have regard to the best interests of the recipients in the circumstances. Hence, an SDM acting in good faith should not be held liable for any act done on behalf of the HCR.	

Time marker	Speaker	Subject	Action Required
014424 - 015309	Chairman Dr LEUNG Ka-lau Admin	<p>Dr LEUNG Ka-lau's enquiry on the authority to be vested with the power and responsibilities on issues relating to the technical requirements of eHRSS, and whether a mechanism was in place for the prescribed HCPs to provide feedback on the operation of eHRSS.</p> <p>The Administration's response that -</p> <p>(a) in view of continuous technological advancement, the Bill was designed as technology neutral and did not set out technical specifications of eHRSS. It was set out in clause 18(2) that eHRC would specify the requirements for connecting an HCP to eHRSS and the system requirements on data sharing. The office of eHRC would accordingly issue notices or guidelines to the prescribed HCPs in this regard; and</p> <p>(b) it had consulted the relevant committees and working groups, which comprised representatives from HCPs in the private sector, on issues such as features and technical requirements of eHRSS.</p>	
015310 - 015851	Chairman Ms Emily LAU Admin	<p>Ms Emily LAU's question about the willingness and technical readiness of medical practitioners in private solo or group practice to participate in eHRSS; and the Chairman's enquiry about the technical readiness of private hospitals.</p> <p>The Administration's advice that level of computerization varied among HCPs. At present, around 2 000 private medical practitioners, who accounted for about 40% of the some 5 000 medical practitioners in solo or group practice, had joined the Public Private Interface-electronic Patient Record Pilot Sharing Project. The Administration had been working closely with the Hong Kong Medical Association on the connectivity of their clinic management systems ("CMS") to eHRSS. A CMS On-ramp Application had also been developed for use free of charge by medical clinics to enable them to connect to eHRSS for sharing of data. It had also started the pilot runs of the CMS Adaptation modules with sharing capability in eight of the 11 private hospitals.</p>	
015852 - 015950	Chairman Ms Cyd HO Dr Elizabeth QUAT	Extension of the meeting for 15 minutes	
015951 - 020619	Chairman Dr Elizabeth QUAT Ms Cyd HO	<p>The Administration was requested to -</p> <p>(a) provide details on the main enhancement features to be included in eHRSS, as well as major studies to be conducted (such as the studies to explore whether a "Patient's Portal" should be developed for registered HCRs to access their eHR more conveniently, and whether separate storage of sensitive health records with additional access control viz a "safe deposit box"</p>	Admin

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		<p>should be provided), in Stage Two of the eHR Programme; and</p> <p>(b) advise whether the Administration would consider amending the drafting of the definition of "sharable data" in clause 2 to provide for the possibility that a registered HCR might in future have the right to exclude prescribed HCPs registered for eHRSS from access to certain part of his/her eHR (e.g. through the provision of a "safe deposit box" in eHRSS) and, if not, what future legislative amendments or administrative measures would be required to bring the regulation and protection of such a right into the regulatory framework when such a need arose in the future.</p>	
020620 - 020623	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
22 August 2014