

立法會
Legislative Council

LC Paper No. CB (2)2269/13-14
(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 fourth meeting
held on Monday, 16 June 2014, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon Charles Peter MOK (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
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 Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
- Members absent** : Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
- Public Officers attending** : Item I
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 Louisa YU
Clerical 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), CB(2)1580/13-14(06) and (07), CB(2)1775/13-14(01) to (03) and CB(3)575/13-14]

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

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2. The Administration was requested to -

- (a) advise whether clause 3(4) which specified that prescribed healthcare provider ("HCP") was the last resort of substitute decision makers for a healthcare recipient ("HCR") who was a mentally incapacitated person or did not have the capability to provide an express joining or sharing consent was consistent with section 59ZF of the Mental Health Ordinance (Cap. 136) under which a registered medical practitioner or registered dentist could carry out a treatment without the consent of a mentally incapacitated person or that person's guardian if the treatment was in the best interest of that person, as well as the recommendations relating to substitute decision-making for persons who were comatose or in a vegetative state put forth by the Law Reform Commission in its report on "Substitute Decision-Making and Advance Directives in Relation to Medical Treatment";
- (b) explain how far the relevant provisions of the Personal Data (Privacy) Ordinance (Cap. 486) could enable an HCP to access the health data of an HCR without the consent of that HCR or a relevant person on his/her behalf when the circumstances warranted such access, and whether this access right had been reflected in the Bill;
- (c) clarify whether an immediate family member of an HCR who could give a joining or sharing consent on behalf of that HCR over the phone at the relevant time was eligible as the substitute decision maker of that HCR under clause 3(2)(d) or 3(4)(f);
- (d) provide the executive summary of the study conducted by The Chinese University of Hong Kong in 2013 on the Public Private

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Interface - Electronic Patient Record Sharing Pilot Project, and explain how far the current legislative proposals had made reference to the experience gained from the Project;

- (e) sum up the various issues of concern relating to the provision of a "safe deposit box" feature in the Electronic Health Record Sharing System, including, among other things, the views gathered during the public consultation on the "Legal, Privacy and Security Framework for Electronic Health Record Sharing" conducted from December 2011 to February 2012, the information technology architecture required for the provision of such feature, and a detailed account of the overseas experiences in handling the legal, technical and implementation issues arising from the provision of an access control over patients' electronic health records; and
- (f) advise whether the Commissioner for the Electronic Health Record would consult the Legislative Council in developing the code of practice to be issued by him/her under clause 51 and whether the Commissioner for the Electronic Health Record would, by notice published in the Gazette, identify the code so issued, and if not, the rationale for not doing so, as well as whether there would be any legal implications if the provisions of the code were not complied with.

II. Any other business

3. Members noted that the next meeting would be held on Tuesday, 24 June 2014 at 10:45 am to meet with the Office of the Privacy Commissioner for Personal Data and the Administration.

4. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
8 September 2014

**Proceedings of the fourth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Monday, 16 June 2014, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject	Action Required
000302 - 000556	Chairman	Opening remarks	
000557 - 004947	Chairman Admin	Video and powerpoint presentation by the Administration on the Electronic Health Record Sharing System ("eHRSS").	
004948 - 010617	Chairman Admin Dr LEUNG Ka-lau	<p>Referring to the substitute decision maker ("SDM") arrangement under clause 3, Dr LEUNG Ka-lau's enquiry about the substitute decision making arrangement for carrying out treatment for a healthcare recipient ("HCR") who was aged 16 or above and mentally incapacitated as defined in the Mental Health Ordinance (Cap. 136) ("MHO"), particularly in emergency situations where there were disputes among the immediate family members of that HCR.</p> <p>The Administration's advice that -</p> <p>(a) the SDM arrangement provided under clause 3 was entirely and specifically designed for the giving or revocation of the joining or sharing consent in relation to eHRSS. It was irrelevant to, and had no impact on, the existing decision-making arrangement for carrying out treatments for patients. It was anticipated that for most cases where an eligible SDM made a joining or sharing consent decision on behalf of an HCR, the circumstances involved would not be an emergency situation. In the event that there were disputes among the immediate family members of that HCR, they could take their time to discuss among themselves and resolve such disputes; and</p> <p>(b) for cases where emergency access to an HCR's electronic health record ("eHR") in eHRSS was necessary in tandem with the carrying out of emergency treatments on that HCR, the healthcare provider ("HCP") concerned could access such eHR without the consent of the data subject or his/her family members by virtue of an exemption under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO").</p> <p>Dr LEUNG Ka-lau's view that the SDM arrangement provided under clause 3(4) should follow the arrangements as set out in MHO and/or the Law Reform Commission's report on "Substitute Decision-Making and Advance Directives in Relation to Medical Treatment" ("the LRC Report"). Clause 3(4) specified that if none of other eligible persons is available, as a last resort, a prescribed HCP that provided, or was about to provide, healthcare to an HCR as described in</p>	

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		<p>clause 3(3), including a mentally incapacitated person or a person who was incapable of giving a joining or sharing consent, might act as his/her SDM. Section 59ZF of MHO provided that a registered medical practitioner or a registered dentist could carry out or supervise a treatment without the consent of a mentally incapacitated person or that person's guardian if the registered medical practitioner or dentist considered that as a matter of urgency that treatment was necessary and was in the best interest of the mentally incapacitated person. In the LRC Report, it was proposed, among others, that the definition of "mentally incapacitated persons" in MHO should be amended to make it clear that those parts of MHO which dealt with the giving of consent for medical treatment should apply to persons who were comatose or in a vegetative state. The Administration was requested to -</p> <p>(a) advise whether clause 3(4) was consistent with section 59ZF of MHO and the relevant recommendations on substitute decision-making for persons who were comatose or in a vegetative state as set out in the LRC Report; and</p> <p>(b) explain how far the relevant provisions of PDPO could enable an HCP to access the health data of an HCR without the consent of that HCR or a relevant person on his/her behalf when the circumstances warranted such access, and whether this access right had been reflected in the Bill.</p>	<p>Admin</p>
010618 - 010812	<p>Chairman Ir Dr LO Wai-kwok</p>	<p>At the request of Ir Dr LO Wai-kwok, the Administration's undertaking to provide after the meeting the executive summary of the study conducted by the Chinese University of Hong Kong in 2013 on the Public-Private Interface-Electronic Patient Record ("PPI-ePR") Sharing Pilot Project, and explain how far the current legislative proposals had made reference to the experience gained from the Project.</p>	<p>Admin</p>
010813 - 012552	<p>Chairman Mr CHAN Han-pan Admin</p>	<p>Mr CHAN Han-pan's view that it was necessary to provide separate storage of certain health data with enhanced access control (viz. a "safe deposit box") in eHRSS, and that the Administration should, in parallel with its study on whether such a feature should be provided, work on the basic technical infrastructure with a view to providing the feature in eHRSS in Stage 2 so as to increase the confidence of HCRs in the system.</p> <p>The Chairman's remarks that the "safe deposit box" feature was not included as an item within the scope of Stage One of the Electronic Health Record Programme ("the eHR Programme"); and the Administration's response that -</p> <p>(a) given that divergent views on whether to provide a "safe deposit box" feature in eHRSS were received during the public consultation on "The Legal, Privacy and Security Framework for Electronic Health Record Sharing" in 2011, the Administration undertook to the Panel on Health Services in 2012 to conduct a study on additional access</p>	

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		<p>control for sensitive data with reference to overseas experiences for Stage Two of the eHR Programme. The latest plan was to commence the study in the first year of Stage Two of the Programme; and</p> <p>(b) pending an in-depth study, the Administration's preliminary research on overseas experience showed that there were various approaches for offering some sort of "safe deposit box" functions, with different relative emphasis between patients' privacy and patients' safety as well as different implications on system design and clinical workflow. It was difficult for the Administration to work on the technical infrastructure for a "safe deposit box" feature at this stage without first coming up with a workable model for Hong Kong.</p> <p>On Mr CHAN Han-pan's enquiry about whether there were any successful overseas experiences in offering a "safe deposit box" feature in eHR sharing, the Administration's advice that none of the overseas experiences was particularly successful to date.</p> <p>To facilitate discussion at the next meeting, the Administration was requested to sum up the various issues of concern relating to the provision of a "safe deposit box" feature in eHRSS, including, among other things, the views gathered during the public consultation, the information technology architecture required for the provision of such feature, and a detailed account of the overseas experiences in handling the legal, technical and implementation issues arising from the provision of an access control over patients' eHR.</p>	<p>Admin</p>
012553 - 013439	Chairman Prof Joseph LEE	<p>Prof Joseph LEE's views that -</p> <p>(a) the electronic medical record ("eMR") systems of prescribed HCPs in the private sector currently did not provide a "safe deposit box" feature. In addition, participation of HCRs in eHRSS was voluntary. Hence, there was no need to provide a "safe deposit box" feature in eHRSS which only served as a platform for sharing the health data within the sharable scope contained in the eMR systems of prescribed HCPs. Members who held a different view that the Bill should be amended to cater for the probability of future provision of such a feature in eHRSS could move Committee Stage amendments ("CSAs") to that effect; and</p> <p>(b) given that the Bill was drafted based on the Administration's earlier decision in the light of the result of the public consultation on "The Legal, Privacy and Security Framework for Electronic Health Record Sharing" that it would not include the provision of a "safe deposit box" feature in eHRSS during Stage One of the eHR Programme but would conduct further study on the issue during Stage Two of the eHR Programme, he did not see any need to further discuss the issue at meetings of the</p>	

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		Bills Committee unless the Administration would move CSAs to the Bill to address some members' concerns on the issue.	
013440 - 013950	Chairman Dr Elizabeth QUAT Admin	<p>In response to Dr Elizabeth QUAT's enquiry, the Administration's advice that the code of practice to be issued by the Commissioner for the Electronic Health Record ("eHRC") under clause 51 would be largely concerned with operational best practices and system technical requirements; and its advice that subject to the progress of discussion, it would present further information on the subject at a meeting of the Bills Committee after the one scheduled for 24 June 2014.</p> <p>On Dr Elizabeth QUAT and the Chairman's respective enquiries on whether eHRC was required to gazette the code of practice and the consequences of failing to comply with the code, the Administration's undertaking to include in its presentation the issue of whether eHRC would consult the Legislative Council and relevant stakeholders in developing the code and whether eHRC would, by notice published in the Gazette, identify the code so issued, and if not, the rationale for not doing so, as well as whether there would be any legal implications if the provisions of the code were not complied with.</p>	Admin
013951 - 014052	Chairman Dr LEUNG Ka-lau	The Administration was requested to provide a written response to clarify whether an immediate family member of an HCR who could give a joining or sharing consent on behalf of that HCR over the phone at the relevant time was eligible as an SDM of that HCR under clause 3(2)(d) or 3(4)(f).	Admin
014053 - 015929	Chairman Dr LEUNG Ka-lau Admin	<p>Dr LEUNG Ka-lau's views that when compared with eHRSS, the web-based system for the PPI-ePR Sharing Pilot Project provided greater flexibility to participating HCPs, and efforts should be made to ensure that eHRSS could accommodate access through various types of operating systems; and his enquiry on -</p> <p>(a) whether the prescribed HCPs were required to access eHRSS only from the workstation at the service locations they registered for eHRSS under clause 17; and</p> <p>(b) if so, whether the prescribed HCPs were allowed to, where necessary, access the workstation at their service locations remotely from other computers or mobile devices (through the use of remote desktop software or applications) for accessing the data or information contained in eHR kept in eHRSS.</p> <p>The Administration's advice that -</p> <p>(a) clause 17 provided that an HCP that provided healthcare at one or more than one service location could apply to eHRC for registration as an HCP for eHRSS for all or just a single service location(s). The service location for which an HCP was registered would be set out in the register of prescribed HCPs established and maintained by</p>	

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		<p>eHRC under clause 49, which would be made available for public inspection; and</p> <p>(b) The "service location" in clause 17 was concerned with the registration of HCPs. Meanwhile, the Bill had not specified any requirements on the location and technical methods for accessing eHRSS. To protect the security and privacy of eHR data, prescribed HCPs could only connect to eHRSS through identifiable sources, i.e. a fixed internet protocol address or a computer having installed the eHR Encapsulated Linkage Security Application.</p>	
015930 - 015957	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
8 September 2014