

立法會
Legislative Council

LC Paper No. CB (2)1962/14-15
(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 fifth meeting
held on Tuesday, 24 June 2014, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Charles Peter MOK (Chairman)
Hon Emily LAU Wai-hing, JP
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 Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP

Members absent : Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

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

Attendance : Office of the Privacy Commissioner for Personal Data
by invitation

Mr Allan CHIANG
Privacy Commissioner for Personal Data

Ms Lavinia CHANG
Deputy Privacy Commissioner for Personal Data

Ms Sandra LIU
Senior Legal Counsel

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

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I. Meeting with the Office of the Privacy Commissioner for Personal Data and 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(03) and (07), CB(2)1775/13-14(02) and (03), CB(2)1873/13-14(01) to (03), CB(2)1884/13-14(01), CB(2)1897/13-14(01) and (02) and CB(3)575/13-14]

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

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2. The Bills Committee requested the Administration to -

- (a) advise the security and privacy safeguards that had incorporated into the system design and/or operation flow under the Public Private Interface-Electronic Patient Record Sharing Pilot Project, such as the principle(s) governing the access by specified personnel of a private healthcare provider to the patients' electronic health record in the Hospital Authority; and
- (b) provide a response in respect of the concerns raised by the Privacy Commissioner for Personal Data ("PCPD") at the meeting on privacy protection in the future Electronic Health Record Sharing System, including, inter alia, those related to the response provided by the Administration in LC Paper No. CB(2)1775/13-14(02).

3. Members agreed to invite PCPD to comment on the adequacy of the safeguards for protection of privacy under the Public Private

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Interface-Electronic Patient Record Sharing Pilot Project upon receipt of the information to be provided by the Administration under paragraph 2(a).

II. Any other business

4. Members agreed to invite PCPD to attend the next meeting of the Bills Committee to be scheduled to further exchange views with members on issues relating to privacy protection in eHRSS. The Chairman said that he would work out with the Clerk on the meeting arrangements and members would be informed of the details in due course.

(Post-meeting note: The sixth meeting of the Bills Committee has been scheduled for 29 July 2014 at 10:45 am.)

5. There being no other business, the meeting ended at 12:39 pm.

Council Business Division 2
Legislative Council Secretariat
24 July 2015

**Proceedings of the fifth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 24 June 2014, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Office of the Privacy Commissioner for Personal Data and the Administration</i>			
000444 - 000639	Chairman	Opening remarks	
000640 - 004230	Chairman Admin	<p>Powerpoint presentations by the Administration on -</p> <p>(a) its response to the issues of concerns raised by the Privacy Commissioner for Personal Data ("PCPD") (LC Paper No. CB(2)1897/13-14(01)); and</p> <p>(b) its response on the suggestion to provide additional choice for individual registered healthcare recipient ("HCR") over the sharing of the health data contained in his/her electronic health record ("eHR") kept in the Electronic Health Record Sharing System ("eHRSS") viz. a "safe deposit box" feature (LC Paper No. CB(2)1897/13-14(02)).</p>	
004231 - 004859	Chairman	Suspension of meeting	
004900 - 012138	Chairman PCPD Dr Elizabeth QUAT	<p>Remarks by PCPD on the Administration's response -</p> <p>(a) clauses 12 to 16 of the Bill, which provided for an HCR to give sharing consent to any individual prescribed healthcare provider ("HCP") (such as an entity operating hospital or medical clinic) but not to its individual healthcare personnels (such as the doctors, nurses or laboratory technicians) who might perform healthcare for the HCR concerned, could not ensure that the access to the health data of the HCR concerned would be on a "need-to-know" basis. In addition, there were no requirements to ensure that the access would be limited to those health data that would be relevant for performing healthcare for the HCR concerned;</p> <p>(b) since participation in eHR sharing was made on a voluntary basis, the health data contained in the HCRs' eHR could only serve as a reference information for healthcare delivery but not a substitute for obtaining information directly from the HCR concerned during consultation. There was no point in arguing that the introduction of a "safe deposit box" feature in eHRSS would undermine the completeness and integrity of eHR. HCRs should be provided with an additional choice over the sharing of their health data and the Bill should provide for the provision of such a feature in</p>	

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		<p>eHRSS in the future;</p> <p>(c) clause 57(2) which provided that the Commissioner for Electronic Health Record ("eHRC") was not obliged to inspect, or commit to inspect, the local electronic medical record ("eMR") systems of HCPs called in question how eHRC could exercise the supervisory and oversight role effectively. It also reduced PCPD's enforcement power that might be invoked against eHRC to ensure the latter's compliance with the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance"). It should also be noted that taking all reasonably practicable steps to ensure the integrity of eHR in eHRSS was the obligation of eHRC as a data user under the Privacy Ordinance;</p> <p>(d) given that the Administration was open to views as to whether clauses 17(5)(g) and 38, which respectively allowed the registration as an HCP by a specified entity that (in the opinion of eHRC) directly or indirectly provided healthcare to any HCR and prohibited a person authorized in writing by the data subject to make a data access or correction request under eHRSS on behalf of the data subject, should be deleted, he saw no point in retaining these clauses;</p> <p>(e) clause 20 should be deleted with the definition of "specified entity" under clause 17(6) be expanded to subject Government bureaux or departments to similar criteria on the provision of healthcare as required of other HCPs for registration for eHRSS under clause 17(5)(f); and</p> <p>(f) during the public consultation for the review of the Privacy Ordinance in 2010, a more stringent regulatory regime for sensitive personal data was proposed. A reason that the proposal was not taken forward by the Administration was that there were no mainstream views in the community on the coverage of sensitive personal data. There should, however, be little argument that health data was sensitive in nature. Hence, unauthorized access by means other than the use of a computer, as well as misuse of data or information contained in an eHR for purposes unrelated to the healthcare of an HCR should be made an offence. If the Administration considered that criminal sanction was too harsh, consideration could be given to introducing other penalties.</p>	
012139 - 012928	Chairman Dr LEUNG Ka-lau Admin	<p>Dr LEUNG Ka-lau's views that -</p> <p>(a) there was no need to rush through the enactment of the Bill as the current Public-Private Interface-Electronic Patient Record ("PPI-ePR") Sharing Pilot Project had enabled certain degree of sharing of health data of patients between the public and private sectors; and</p> <p>(b) there was no reason why, as provided for under clause</p>	

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		<p>16, a registered HCR or a substitute decision maker ("SDM") of a registered HCR had to be taken to have given a sharing consent to the Hospital Authority ("HA") and the Department of Health ("DH") when the HCR or SDM concerned gave a joining consent, as this would create a privacy loophole whereby a large number of staff members of HA and DH could access the health data of all registered HCRs kept in eHRSS.</p> <p>The Administration's response that -</p> <p>(a) different from PPI-ePR Sharing Pilot Project which was mainly a one-way sharing pilot that enabled participating HCPs in the private sector to access a defined scope of patients' data extracted from HA's electronic patient records, the eHRSS developed during Stage One of the Electronic Health Record Sharing Programme provided a sharing platform for connecting the participating public and private HCPs to enable health data sharing both between public and private HCPs and among private HCPs;</p> <p>(b) while most provisions of the Privacy Ordinance would remain applicable to eHR kept in eHRSS, there was a need to provide, through a new piece of legislation, additional safeguards to instill public confidence in eHRSS in view of the sensitive nature of health records and the unique arrangement of data sharing. In addition, there was a need to create new offences relating specifically to the operation of eHRSS; and</p> <p>(c) HA and DH, being HCPs in the public sector serving the largest number of patients, had a vast amount of health data. These data would be the essential building blocks of HCRs' life-long eHR. No objection was received to the proposal put forward in the Public Consultation Document on the Legal, Privacy and Security Framework for Electronic Health Record Sharing published in December 2011 that HCRs' consent to HA and DH should be part and parcel of their registration for eHRSS.</p>	
012929 - 014540	Chairman Mr CHAN Han-pan PCPD	<p>Mr CHAN Han-pan's concern that -</p> <p>(a) PCPD's proposal of making unauthorized access by means other than the use of a computer, such as a non-healthcare personnel of an HCP's viewing of the health data of a registered HCR when a healthcare professional of an HCP omitted to log out eHRSS after viewing the data of that HCR, an offence appeared to be too harsh; and</p> <p>(b) individual HCPs participating in eHRSS, who were data users of their eMR system under the Privacy Ordinance, had to ensure that the use of their eMR complied with the Privacy Ordinance. The powers of PCPD over these HCPs were unaffected by the Bill. Hence, PCPD's proposal that eHRC should be obliged to inspect, or</p>	

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		<p>committed to inspect, the local eMR systems of HCPs might give rise to an overlapping of statutory powers between PCPD and eHRC and would cause confusion to the data subjects as to whom they should turn to for complaining about the handling of the data contained in their eHR.</p> <p>PCPD's response that -</p> <p>(a) if criminal sanctions against unauthorized access by means other than the use of a computer was considered too harsh, the practice in Australia where misuse of eHR could be subject to civil penalty might serve as a reference for introducing other penalties under the Bill; and</p> <p>(b) while he would not shirk his responsibility to monitor compliance with the Privacy Ordinance by individual HCPs, in the interest of fairness in deploying his limited resources among all data users in Hong Kong, he would be unable to focus on HCPs. It should be noted that eHRC not only was in a much better position to exercise oversight over HCPs, he/she, as a data user, was obliged to take all reasonably practicable steps to ensure the integrity of eHR in eHRSS under the Privacy Ordinance. Abdication of this responsibility on the part of eHRC was counter-productive to promote compliance with the Privacy Ordinance by HCPs.</p> <p>The Administration's response that -</p> <p>(a) local eHR systems of HCPs, which were systems used by individual HCP for their own operational and clinical needs and might contain a lot of other sensitive information not relevant to eHR sharing, were not part of eHRSS and were thus outside the ambit of eHRC. Granting eHRC with the power to inspect these systems was disproportionate to the need to do so; and</p> <p>(b) eHRC would take practical steps to ensure safe connection of local eMR systems of HCPs with eHRSS and the validity of data such as usage of standardized codes and correct matching of person master index data with the health data. The Bill also required HCPs to ensure security of their local eMR systems. That said, it was the responsibility of individual HCPs to ensure the content accuracy of data entered into their local eMR systems for uploading to eHRSS. eHRC had no expertise and historical knowledge to check the content accuracy of such data.</p> <p>The Chairman and Mr CHAN Han-pan's views that, given the divergent views expressed by PCPD and the Administration, issues relating to clause 57(2) of the Bill should be further discussed at future meetings of the Bills Committee.</p>	

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014541 - 015339	Chairman Ms Emily LAU PCPD Admin	<p>Ms Emily LAU's concern about whether the "need-to-know" principle was adopted in the PPI-ePR Sharing Pilot Project to provide adequate safeguards for protection of privacy of the 300 000-odd participating patients; and the Administration's explanation of the security measures to control access to PPI-ePR which included, among others, the requirements that a participating healthcare professionals had to provide his/her user ID, password and a security token (issued by the Administration upon his/her successful enrolment) generated password in order to log on to the PPI-ePR website and the generation of an SMS to the patient's registered mobile number to notify the patient concerned of every access by the healthcare professional.</p> <p>PCPD's remarks that the issue at stake was that all healthcare professionals of an HCP, who provided different nature of healthcare to an HCR registered for eHRSS, could gain access to the same set of sharable data relating to that HCR; and the Administration's response that it was considered infeasible that an HCR's sharing consent be given to each of the individual healthcare professionals of an HCP involved in the healthcare provision. An HCP, as an eHR data user, had to ensure that only the relevant individuals could access the data and information contained in the eHR of that HCR for the purpose of improving the efficiency, quality, continuity or integration of the healthcare.</p> <p>The Administration was requested to provide in writing information on the security and privacy safeguards that had incorporated into the system design and/or operation flow under the PPI-ePR Sharing Pilot Project, such as the principle(s) governing the access by specified personnel of a private HCP to the patients' eHR in HA, for further comment of PCPD.</p> <p>The Chairman's remarks that issues relating to the "need to know" principle would need to be further discussed at future meetings of the Bills Committee.</p>	Admin
015340 - 015435	Chairman Dr Elizabeth QUAT	At the request of Dr Elizabeth QUAT, the Administration undertook to provide a written response in respect of the concerns raised by PCPD at the meeting on privacy protection in eHRSS, including, inter alia, those related to the response provided by the Administration in LC Paper No. CB(2)1775/13-14(02).	Admin
<i>Agenda item II: Any other business</i>			
015436 - 015506	Chairman	Closing remarks Arrangements for the next meeting	