

**立法會**  
**Legislative Council**

LC Paper No. CB (2)2078/14-15  
(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 ninth meeting**  
**held on Monday, 8 December 2014, at 10:45 am**  
**in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon Charles Peter MOK, JP (Chairman)  
Hon Cyd HO Sau-lan, JP  
Dr Hon LEUNG Ka-lau  
Hon Alan LEONG Kah-kit, SC  
Hon Alice MAK Mei-kuen, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Elizabeth QUAT, JP  
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

**Members absent** : Hon Emily LAU Wai-hing, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN  
Hon CHEUNG Kwok-che  
Hon WU Chi-wai, MH  
Hon CHAN Han-pan, JP  
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 Antonio SEK  
Chief Manager (eHealth Record)  
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  
Acting Senior 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

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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)1551/13-14(01), CB(2)1873/13-14(03), CB(2)2308/13-14(02), CB(2)221/14-15(02), CB(2)404/14-15(01) to (02) 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) seek clarification from the Labour and Welfare Bureau on whether the Guardianship Board would accept application from a family member of a mentally incapacitated person ("MIP") for appointment as the MIP's guardian to deal with matters relating to the participation of the Electronic Health Record Sharing System ("eHRSS") such as the joining of eHRSS and giving of sharing consent to particular healthcare providers. The appointment of a guardian could minimize the dispute caused by different immediate family members of that MIP holding different views on whether to give such consents under eHRSS. Pursuant to clause 3(3) and (4) of the Bill, an immediate family member in the absence of a guardian could give a joining or sharing consent and request for withdrawal from eHRSS on behalf of the healthcare recipient concerned; and
- (b) subject to the progress of drafting, provide the draft code of practice to be issued by the Commissioner for the Electronic Health Record under clause 51 for reference of the Bills Committee when available.

**II. Any other business**

3. There being no other business, the meeting ended at 12:44 pm.

**Proceedings of the ninth meeting of  
the Bills Committee on Electronic Health Record Sharing System Bill  
held on Monday, 8 December 2014, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000446 - 000721	Chairman	Opening remarks	
000722 - 001211	Admin Chairman	Briefing by the Administration on its response to issues raised at the meeting on 16 June 2014 (LC Paper No. CB(2)1873/13-14(03))	
001212 - 001829	Admin	Powerpoint presentation by the Administration on the content of the code of practice ("the CoP") to be issued by the Commissioner for the Electronic Health Record ("eHRC") under clause 51 (LC Paper No. CB(2)425/14-15(01))	
001830 - 001848	Chairman	Arrangement of speaking time	
001849 - 002946	Dr Fernando CHEUNG Chairman Admin	<p>Dr Fernando CHEUNG's enquiry about -</p> <p>(a) whether a mildly mentally handicapped healthcare recipient ("HCR") or an HCR recovering from mental illness, who had the capacity to understand eHR sharing and provide an express consent, would be required to give his or her joining or sharing consent in relation to the Electronic Health Record Sharing System ("eHRSS") through the substitute decision maker ("SDM") arrangement as provided for under clause 3;</p> <p>(b) whether consideration could be given to amending the Mental Health Ordinance (Cap. 136) ("MHO") to include the participation of a mentally incapacitated HCR in eHRSS as a circumstance for the Guardianship Board to appoint a guardian; and</p> <p>(c) in the absence of the persons specified in clause 3(4)(a) to (e) of the Bill, whether an immediate family member of a mentally incapacitated HCR could revoke the earlier decision of another immediate family member to register the HCR concerned under eHRSS.</p> <p>The Administration's response that -</p> <p>(a) the Bill, as currently drafted, did not preclude any grown up HCRs, including those HCRs who were mildly mentally handicapped, from applying to be registered under eHRSS and giving sharing consents to</p>	

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		<p>prescribed healthcare providers ("HCPs");</p> <p>(b) clause 3(4) of the Bill specified the persons who were eligible for being SDMs of those HCRs who were mentally incapacitated as defined by section 2(1) of MHO, incapable of managing his or her own affairs, or incapable of giving a joining or sharing consent at the relevant time. An appointed guardian, including a guardian appointed by the Guardianship Board under MHO who accompanied the HCR at the relevant time, was already among the eligible types of SDMs of a mentally incapacitated HCR;</p> <p>(c) the SDM arrangement proposed under the Bill was specifically designed for the giving or revocation of a joining or sharing consent in relation to eHRSS. Issues relating to the guardianship system for mentally incapacitated persons fell within the ambit of the Labour and Welfare Bureau; and</p> <p>(d) in the absence of the persons specified in clause 3(4)(a) to (e) of the Bill, eHRC would register a mentally incapacitated HCR under eHRSS or grant the request for withdrawing the registration of the HCR concerned whenever receiving the relevant application or request made by any of the immediate family members of that HCR as defined in the Bill who accompanied him or her at the relevant time.</p>	
002947 - 004032	Chairman Dr KWOK Ka-ki Admin	<p>In response to Dr KWOK Ka-ki's enquiries, the Administration's assurance that -</p> <p>(a) provisions of the CoP to be published by the eHRC would enable HCPs to better follow the requirements for proper use of eHRSS. It would not replace or include provisions that would contravene the codes of professional conduct issued by the regulatory bodies of healthcare professionals;</p> <p>(b) it would suitably promulgate guidelines and conduct briefing sessions to promote HCPs' understanding of the operation of eHRSS and the security requirements for its local electronic medical record ("eMR") system having the capability to interconnect with eHRSS;</p> <p>(c) readers of Hong Kong Identity Cards used by prescribed HCPs would be provided by the Government, and they could only gain access to the card face data (i.e. the full name of the person in English and Chinese, date of birth, Hong Kong Identity Card number and date of issue) of the Hong Kong Identity Card of an HCR after the HCR concerned had given an express and informed joining or sharing consent. There would also be guidelines setting out the procedures for registering those HCRs who did not</p>	

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		<p>hold Hong Kong Identity Cards but held the other valid identification documents as specified by eHRC; and</p> <p>(d) the principle that health data in eHRSS would not be used by or accessible to those without the need to know had been adopted in the design of eHRSS and its operational workflows.</p>	
004033 - 004843	<p>Chairman Ir Dr LO Wai-kwok Admin Dr Elizabeth QUAT</p>	<p>Ir Dr LO Wai-kwok's enquiry about the latest position of the Administration in taking forward members' repeated request for providing a "safe deposit box" feature, which allowed enhanced access control for certain health data, under eHRSS.</p> <p>The Administration's advice that further study on additional access control for sensitive data would be conducted in the first year during the second stage of the Electronic Health Record Programme ("eHR Programme"). It would be after passage of the Bill, the coming into operation of the eHRSS developed under the first stage eHR Programme, and the funding approval of the Finance Committee of the Legislative Council ("LegCo"). The study would be conducted along a positive direction, with a view to developing and implementing some form of new device or arrangement enabling additional choices for registered HCRs over the disclosure of their health data. While the Bill was technology-neutral, the Administration noted that the Bills Committee had invited the Privacy Commissioner for Personal Data ("PCPD") to put forward a set of amendments to the Bill to state expressly the spirit in this regard for the consideration of the Bills Committee.</p> <p>Dr Elizabeth QUAT's view that while the Bill should be technology-neutral, the Administration should proactively consider how the Bill could be amended to stipulate the spirit of fostering patient choice over data sharing in parallel with the efforts made by PCPD in this regard.</p>	
004844 - 010442	<p>Chairman Dr Elizabeth QUAT Admin</p>	<p>Dr Elizabeth QUAT's view that public consultation exercise should be conducted prior to the issuance of or revision to the CoP. The CoP should be gazetted and the non-compliance of the CoP should carry legal effect. The Chairman's enquiry as to when a code of practice or guidelines would be gazetted as subsidiary legislation.</p> <p>The Administration's advice that -</p> <p>(a) given that the CoP was an administrative instrument largely concerned with operational best practices and security requirements, and participation in eHRSS was on a voluntary basis, no public consultation would be conducted. It should, however, be noted that the relevant stakeholders, including, among others, professional bodies of the 13 healthcare professions which were subject to statutory registration, the Hospital Authority, the Department of Health, the</p>	

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		<p>Office of the Government Chief Information Officer, patient groups and PCPD's Office, had been briefed on the content of the CoP;</p> <p>(b) in general some information for the public which were not subsidiary legislation subject to amendment by LegCo could be published in the Gazette as General Notices. According to clause 51(2), eHRC had to publish the CoP in a manner appropriate to bringing it to the notice of persons affected by it, and had to make copies of the CoP available to the public (in hard copy or electronic form). It did not preclude the use of gazette notice as one of the channels to publish the CoP; and</p> <p>(c) breach of CoP in itself would not directly impose on a person any criminal liability as alternative approaches or means to fulfill the underlying requirements on the level of care and standard of practice were acceptable. eHRC might suspend or cancel the registration of a registered HCP if he or she was satisfied that the registration might impair the security or compromise the integrity of the eHRSS.</p>	
010443 - 012349	Chairman Dr LEUNG Ka-lau Admin	<p>Referring to paragraph 7 of the Administration's response to issues raised at the meeting on 11 November 2014 (LC Paper No. CB(2)404/14-15(02)), Dr LEUNG Ka-lau's grave concern that while the Bill should be technology-neutral, clause 12(6) as drafted would enable the prescribed HCP that had obtained registered HCR's sharing consent to provide to eHRSS any sharable data of that HCR. In practice, the registered HCR's sharable data that had been entered into the prescribed HCP's local eMR system having the capability to interconnect with eHRSS would be uploaded to eHRSS. Hence, clause 12(6) might render it not viable for registered HCR, who had requested a prescribed HCP to withhold certain parts of his or her health data within the sharable scope, to claim against that HCP if those data had been uploaded to eHRSS for various reasons. In addition, these data would be retained in eHRSS even if the HCR concerned had withdrawn his or her registration.</p> <p>The Administration's advice that -</p> <p>(a) most prescribed HCPs would continue to maintain their own medical record systems after the launch of the eHRSS. The design of the eHRSS developed under the stage one eHR Programme was to capture only the nine types of data within the pre-defined scope for sharing as set out under item (b) in LC Paper No. CB(2)221/14-15(02) but not other data. Whether registered HCR's request for withholding particular sharable data from uploading to eHRSS would or could be acceded to had to depend on the professional clinical judgment of the healthcare professionals concerned and the particular clinical workflow of that HCP, as well as whether that</p>	

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		<p>HCP's local eMR system was technical capable of doing so;</p> <p>(b) registered HCRs could choose to give sharing consent to particular HCPs that they considered appropriate. They might also revoke any sharing consent given to a particular HCP or withdraw their joining consent at any time. In the latter case, the eHR of that HCR would be retained in eHRSS for a specified period but no prescribed HCPs could access such eHR. Under the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance"), eHRC, as a data user, had to take all practicable steps to ensure that the personal data was not kept longer than was necessary for the fulfillment of the purpose (including any directly related purpose) for which the data was or was to be used/collected. The issue of withholding otherwise sharable data to eHRSS would also be addressed in the study to be conducted during the stage two eHR Programme with a view to developing and implementing some form of new device or arrangement enabling additional choice for registered HCRs over disclosure of their data; and</p> <p>(c) the personal data privacy protection under the Privacy Ordinance and the responsibility of the healthcare professionals to keep the medical records of those HCRs under their care confidential pursuant to their respective professional codes of conduct would not be undermined as a result of the giving of sharing consent under clause 12 of the Bill. An registered HCR could lodge complaint to the relevant board or council of healthcare professionals if the healthcare professional concerned had already in prior promised but eventually, for various reasons, uploaded to eHRSS those sharable data which that HCR had specifically requested to withhold from uploading onto eHRSS.</p>	
012350 - 013800	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's view that HCRs and SDMs of HCRs should be briefed orally about the joining of, and the giving of, sharing consent under eHRSS; and his concerns that -</p> <p>(a) given that the immediate family members of an HCR might hold different views on the joining of eHRSS, it was not desirable that in the absence of the persons specified in clauses 3(2)(a) to (c) and 3(4)(a) to (e), eHRC would register an HCR under eHRSS or grant the request for withdrawing the registration of that HCR whenever receiving the relevant application or request made by any of the immediate family members of that HCR who accompanied him or her at the relevant time. It was considered that the participation of a mentally incapacitated HCR in eHRSS should be included as a circumstance for the Guardianship Board to appoint a guardian; and</p>	



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		<p>(b) while the prescribed HCP that provided, or was about to provide, healthcare to the HCR at the relevant time would serve as a last resort for giving a joining consent on behalf of the HCR in the absence of other eligible persons under the SDM arrangement, some private residential care homes for the elderly ("RCHEs") (which were eligible to be registered as HCPs for eHRSS if they engaged a healthcare professional to perform healthcare at that home and hence, were eligible SDMs of the HCRs residing therein) might not wish to register their residents under eHRSS for various reasons.</p> <p>The Administration's advice that -</p> <p>(a) when compared to the decision-making arrangement for carrying out medical treatments for the HCRs, it would be rare that the immediate family members of an HCR under the SDM arrangement would have disputes over the giving of a joining or sharing consent in relation to eHRSS. If such situation did arise, the immediate family members could take their time to discuss among themselves and resolve such disputes. That said, the Administration would seek clarification from the Labour and Welfare Bureau on whether the Guardianship Board would accept application from a family member of a mentally incapacitated person for appointment as that person's guardian to deal with matters relating to the participation of eHRSS such as the joining of eHRSS and the giving of sharing consent to particular HCPs; and</p> <p>(b) it was envisaged that many residential care homes would have keen interest in joining eHRSS and encouraging the HCRs under their care to join eHRSS, as eHR could help them better take care of their residents. This apart, the Administration would conduct intensive promotion, targeting at RCHEs, to encourage the elderly HCRs residing at RCHEs to participate in eHRSS.</p>	<b>Admin</b>
013801 - 015502	Chairman Dr LEUNG Ka-lau Admin Dr Elizabeth QUAT	Dr LEUNG Ka-lau's view that the SDM arrangement under the Bill (i.e. prescribed HCP would serve as a last resort for giving a joining consent on behalf of the HCR concerned in the absence of other eligible persons) should be revised to align with the arrangement for carrying out medical treatment without consent under section 59ZF of MHO (i.e. a registered medical practitioner might carry out a treatment without the consent of a mentally incapacitated person's guardian if he or she considers that the treatment was necessary and in the best interests of that person); and his enquiry about the handling of disputes among the immediate family members regarding the giving of a joining or sharing consent in relation to eHRSS who accompanied the HCR concerned at the same time.	

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		<p>The Chairman's remarks that given that participation in eHRSS was voluntary, an earlier decision of an immediate family member of a mentally incapacitated HCR of not registering that HCR under eHRSS would have the same effect as no decision had been made by the immediate family member of that HCR in this regard.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) the SDM arrangement was specifically designed for the giving or revocation of joining or sharing consent in relation to eHRSS. It was not a medical treatment and was irrelevant to, and had no impact on, the existing decision-making arrangement for carrying out medical treatments for the HCRs. It should also be noted that it was anticipated that for most cases when an eligible SDM made a joining or sharing consent decision on behalf of an HCR, the circumstances would not be an emergency situation;</li> <li>(b) for cases where emergency access of the eHR of registered HCR in eHRSS was necessary in tandem with the carrying out of emergency treatments on that HCR, the HCP concerned could access the eHR without consent under section 63C of the Privacy Ordinance. The SDM arrangement needed not even come into play in such context; and</li> <li>(c) in the case that there were disputes among the immediate family members regarding the giving of a joining or sharing consent in relation to eHRSS who accompanied the HCR concerned at the same time, the immediate family members could take their time to discuss among themselves and resolve such disputes.</li> </ul> <p>Dr LEUNG Ka-lau did not subscribe to the Administration's explanation. In his view, the giving of a joining or sharing consent in relation to eHRSS was a medical decision and medical practitioners providing healthcare to those HCRs who did not have the capacity to understand eHR sharing or provide an express consent should be ranked first on the list of eligible persons under the SDM arrangement.</p>	
015503 - 015934	Chairman Admin	<p>The Chairman's view that it should be stated clearly in the CoP that in case of any contravention of the requirements of the CoP, eHRC would issue notices similar to PCPD's "enforcement notices" on the HCPs concerned as appropriate, recommending them to take steps to remedy the contraventions; and the Administration's response that it could consider serving notices on HCPs that set out recommended remedies and the possible consequence of suspension or cancellation of registration otherwise, but such notices would not be an instruction or order in nature.</p> <p>Noting that the drafting of the CoP was still in progress and would only be finalized upon the passage of the Bill and</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
		before the launch of eHRSS, the Chairman's request for the Administration to provide the draft CoP for reference of the Bills Committee when available.	<b>Admin</b>
<i>Agenda item II: Any other business</i>			
015935 - 020048	Chairman Admin	Arrangement for the next meeting	

Council Business Division 2  
Legislative Council Secretariat  
9 September 2015