

立法會
Legislative Council

LC Paper No. CB (2)2079/14-15
(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 tenth meeting
held on Tuesday, 13 January 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Charles Peter MOK, JP (Chairman)
Hon Emily LAU Wai-hing, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Cyd HO Sau-lan, JP
Dr Hon LEUNG Ka-lau
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
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 CHEUNG Kwok-che
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, 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 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
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

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)2308/13-14(02), CB(2)221/14-15(02), CB(2)404/14-15(02), CB(2)436/14-15(01), CB(2)579/14-15(01) and CB(3)575/13-14]

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

2. Members agreed that the Bills Committee should invite written views from those organizations and individuals which/who had presented or submitted their views to the Bills Committee on the major amendments to the Bill as proposed by members and/or the Privacy Commissioner for Personal Data ("PCPD") and the Administration's position on these proposals.

3. Members noted that the Administration would revert to the Bills Committee in due course on the outcome of its discussion with PCPD on the set of amendments proposed by PCPD to the Bill to state expressly the spirit of fostering registered healthcare recipients' choice over the scope of data sharing, and PCPD's suggestion to further improve the Administration's proposed Committee stage amendments to add a new clause 35A to prescribed healthcare providers' duty to restrict access to sharable data, details of which were set out in PCPD's letter dated 8 December 2014 to the Bills Committee (LC Paper No. CB(2)436/14-15(01)).

II. Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
9 September 2015

**Proceedings of the tenth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 13 January 2015, 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>			
000457 - 000711	Chairman	Opening remarks	
000712 - 001300	Chairman Dr LEUNG Ka-lau	Referring to the recent submissions from various organizations to the Bills Committee (LC Paper Nos. CB(2)519/14-15(01), CB(2)531/14-15(01) and (02), CB(2)559/14-15(01) and CB(2)613/14-15(01) to (03)), Dr LEUNG Ka-lau's expression of concern that to his understanding, the Administration had recently invited the relevant stakeholders to write to the Bills Committee urging for the early passage of the Bill.	
001301 - 001832	Dr LEUNG Ka-lau Chairman Prof Joseph LEE	<p>Pointing out that healthcare recipients ("HCR") could benefit from the existing Public Private Interface - Electronic Patient Record Sharing ("PPI-ePR") Pilot Project, Dr LEUNG Ka-lau's view that there was no urgency to pass the Bill for the early implementation of the Electronic Health Record Sharing System ("eHRSS") before the following concerns on privacy safeguards raised by the Hong Kong Medical Association ("HKMA") in its letter dated 8 January 2015 to the Administration and copied to the Bills Committee (LC Paper No. CB(2)613/14-15(02)) had been fully addressed -</p> <p>(a) the proposed arrangement for the sharing consent be given by a registered HCR to a prescribed healthcare provider ("HCP") which was an entity, but not to its individual healthcare professionals, could not ensure that the eventual access to the health data of the registered HCR would be on a need to know basis; and</p> <p>(b) it was proposed in the Consultation Document on Regulation of Private Healthcare Facilities that private hospitals should, in time, establish an information system connectable with eHRSS. In effect, health data within the sharable scope of the HCRs solely being taken care of by private hospitals would be accessed by the Department of Health ("DH") and the Hospital Authority ("HA") by the HCRs' giving the respective joining and sharing consents to the private hospitals concerned.</p> <p>Prof Joseph LEE's remarks that the Bills Committee had fully deliberated with the Privacy Commissioner for Personal Data ("PCPD") and the Administration on the first issue of concerns raised by HKMA, whereas the second issue might</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		warrant further consideration by the Administration and the Bills Committee.	
001833 - 002252	Chairman Prof Joseph LEE Dr Elizabeth QUAT	<p>Prof Joseph LEE's view that while some members and the Administration held different views towards the general merits and some principles of the Bill, the Bills Committee could commence clause-by-clause examination of the Bill and where necessary, revisit the issues of concern when examining the relevant clauses. Members might also move Committee stage amendments to the Bill if consensus could not be reached on the issues after further deliberation.</p> <p>Dr Elizabeth QUAT's remarks that it was incumbent upon members to carefully examine the general merits and principles of the Bill. The examination of the Bill so far was by no means a filibuster and the Administration should address the various concerns raised by members. She could not understand why the Administration had to invite the relevant stakeholders to write to the Bills Committee urging for the early passage of the Bill.</p>	
002253 - 002837	Chairman Admin Dr LEUNG Ka-lau	<p>The Administration's response that -</p> <p>(a) it had maintained communication with the relevant stakeholders since the commencement of the Electronic Health Record Programme ("eHR Programme") in 2009. Various organizations had from time to time written to the Administration expressing their views on the development of eHRSS. Many of them were aware that they could express their views to the relevant committees of the Legislative Council and the Administration at the same time for consideration as they deemed appropriate;</p> <p>(b) HKMA was represented in the Steering Committee on Electronic Health Record Sharing ("eHRSC") and it had all along supported the development of eHRSS and the current legislative proposal. On the specific concerns raised by HKMA, PCPD and the Bills Committee over the need-to-know principle, the Administration would move committee stage amendments ("CSAs") to add a new clause 35A to reflect the principle expressly, the draft of which was set out in the Annex to LC Paper No. CB(2)2308/13-14(02). As regards the concerns over the proposed arrangement that consent for DH and HA to provide and obtain the sharable data of a registered HCR through eHRSS would be taken to be given when a joining consent was given by the HCR, the Administration had provided in paragraphs 12 to 14 of LC Paper No. CB(2)2308/13-14(02) its response to an earlier suggestion made by Dr LEUNG Ka-lau that eHRSS should be modified to accommodate requests for the opting out from the above arrangement by the HCR concerned; and</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		(c) the proposal that private hospitals should establish an information system connectable with eHRSS was a separate proposal under the regulatory framework on private healthcare facilities which was currently under consultation.	
002838 - 004116	Chairman Admin	Briefing by the Administration on its responses to issues raised at the meetings on 29 July, 14 October and 11 November 2014 (LC Paper Nos. CB(2)2308/13-14(02), CB(2)221/14-15(02) and CB(2)404/14-15(02))	
004117 - 005136	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's view that -</p> <p>(a) it was undesirable that in the absence of the persons specified in clause 3(4)(a) to (e) of the Bill, the Commissioner for the Electronic Health Record ("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 accompanying that HCR at the relevant time; and</p> <p>(b) the Administration should amend the Mental Health Ordinance (Cap. 136) to the effect that the Guardianship Board would accept application from a family member of a mentally incapacitated person ("MIP") for appointment as that MIP's guardian to deal with matters relating to eHRSS. This could minimize the dispute caused by different family members of that MIP holding different views on whether to give a joining or sharing consent, or make a data access request under eHRSS.</p> <p>The Administration's advice that the proposed substitute decision maker ("SDM") arrangement under clause 3 of the Bill was aimed at facilitating the registration of the registered HCRs who were minors or persons who were mentally incapacitated and might not have the capacity to provide express consents on matters relating to the participation of eHRSS. 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. Hence, the immediate family members of the HCR could take their time to discuss among themselves and resolve any disputes that might arise in making such decision. As undertaken at the meeting on 8 December 2014, views from the Labour and Welfare Bureau were being sought on Dr Fernando CHEUNG's concern on the power of the Guardianship Board.</p>	
005137 - 010118	Chairman Dr LEUNG Ka-lau Admin	Dr LEUNG Ka-lau's remarks that the Administration should address the new concerns raised by HKMA in the course of examining the Bill; and his views that -	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>(a) it should not be a matter of concern if it would take no less than 12 months to modify the design of eHRSS to accommodate HCRs' special requests for opting out from being taken as having given sharing consents to DH and HA when giving joining consents, as the development of eHRSS would be continued regardless of the timing of the commencement of the Bill; and</p> <p>(b) to enhance the privacy protection for the registered HCRs, DH and HA should be subject to the same requirement imposed on other prescribed HCPs that they had to obtain a separate sharing consent from the registered HCRs for accessing the sharable data of the registered HCRs through eHRSS. An alternative was to provide registered HCRs with additional access control over their sharable data contained in eHRSS as proposed by PCPD in his letter dated 8 December 2014 (LC Paper No. CB(2)436/14-15(01)). This would allow the registered HCRs to exclude certain prescribed HCPs, including DH and HA, from accessing to certain parts of their sharable data.</p> <p>The Administration's advice that -</p> <p>(a) the policy objective of eHRSS was to promote two-way sharing of electronic health records amongst public and private prescribed HCPs for the benefits of the registered HCRs. The current proposal on sharing consent as set out under clause 16 had been put to consultation in the public consultation exercise on the legal, privacy and security framework for eHRSS in December 2011 ("the public consultation exercise"); and</p> <p>(b) given that participation in eHRSS was voluntary, those HCRs who used only private healthcare services and did not wish DH or HA to obtain their health records could choose not to join eHRSS until the development and implementation of some form of new device or arrangement to enable additional choices for those HCRs over the disclosure of their eHR in the second stage eHR Programme. It should, however, be noted that further improvement to eHRSS in the second stage eHR Programme had to be based on, among others, the experience gained upon the launch of eHRSS after the passage of the Bill.</p>	
010119 - 010407	Dr LEUNG Ka-lau Admin Chairman	Noting that the system developed under the PPI-ePR Pilot Project would eventually be decommissioned after a transitional period upon the launch of eHRSS and participants of the PPI-ePR Pilot Project would be migrated to eHRSS, Dr LEUNG Ka-lau's view that the PPI-ePR system should be maintained until the the development and implementation of some form of new device or arrangement to enable additional choices for the HCRs over the disclosure of their health data under eHRSS. In so doing, those HCRs who did	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>not wish DH or HA to access their medical records kept at private HCPs could continue to enjoy the benefits brought about by the PPI-ePR Pilot Project which allowed these HCPs' access to the HCRs' medical records kept in HA.</p>	
010408 - 011442	<p>Chairman Ms Emily LAU Admin</p>	<p>Ms Emily LAU's views that the Administration should address the concerns raised by PCPD and the stakeholders (such as HKMA) on the Bill, albeit such concerns had not been raised during the public consultation exercise; and that Dr LEUNG Ka-lau's suggestions to allow the registered HCRs to decide whether or not DH and HA should be allowed access to their sharable data in eHRSS, and retain the system developed under the PPI-ePR Pilot Project for a certain period of time were reasonable.</p> <p>In response to Ms Emily LAU's enquiry about whether any concerns were raised during the public consultation exercise over the proposed arrangement that a sharing consent to DH and HA would be taken to have been given upon the giving of a joining consent by an HCR, the Administration's advice that -</p> <p>(a) no objections to the proposed arrangement had been received during the public consultation exercise. That said, diverse views were received on whether or not to provide the registered HCRs with additional access control over their sharable data. In view of the concerns expressed by members and PCPD on this issue, the Administration had undertaken to conduct a further study along a positive direction in this regard during the second stage eHR Programme;</p> <p>(b) PCPD had put forth in his letter dated 8 December 2014 a set of amendments to the Bill to state expressly the spirit of fostering the registered HCRs' choice over the scope of data sharing, as well as amendments to the Administration's proposed CSAs to add a new clause 35A for prescribing the prescribed HCP's duty to restrict access to sharable data. The Administration was in the course of discussion with PCPD as to how to take forward these proposed CSAs and would revert to the Bills Committee on the outcome of the discussion in due course; and</p> <p>(c) the PPI-ePR Pilot Project had proven to be popular among patients and doctors. Building on the successful experience of one-way sharing of eHR, the Administration would now take forward two-way sharing by implementing eHRSS, which would bring greater benefits to patients. PPI-ePR was a pilot project and would eventually be decommissioned. Nevertheless, there would be a considerable transitional period and stakeholders' feedbacks would be kept in view.</p>	<p>Admin</p>

Time marker	Speaker	Subject(s)/Discussion	Action required
011443 - 012644	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki's view that the Administration should, instead of inviting the relevant stakeholders to exert pressure on the Bills Committee to complete the scrutiny of the Bill as early as possible, address the concerns raised by PCPD and members in the course of scrutiny of the Bill regardless of whether or not these concerns had been raised earlier during the public consultation exercise; and it should be stated expressly in the Bill that the registered HCRs would be provided with additional access control over their sharable data so that they could exclude DH and HA from accessing to certain parts of their sharable data.</p> <p>The Administration's response that along the principle that any proposed CSAs to the Bill should not deviate from the agreed objectives and infrastructure design of the eHRSS developed under the first stage eHR Programme, it had agreed to move CSAs to the Bill to effect the various proposals put forth by PCPD (except those relating to criminalizing the unauthorized access to eHRSS by non-computer means and misuse of eHR data in general, which the Administration had provided explanations) and members of the Bills Committee. It was expected that the study on providing the registered HCRs with additional access control over the scope of data sharing to be conducted during the second stage eHR Programme could address members' concern that some registered HCRs might not wish DH and HA to view all of their eHR kept in eHRSS.</p>	
012645 - 013042	Dr KWOK Ka-ki Chairman Admin	Members' agreement to Dr KWOK Ka-ki's suggestion that the Bills Committee should invite written views from those organizations and individuals which/who had presented or submitted their views to the Bills Committee on the major amendments to the Bill as proposed by members and/or PCPD and the Administration's position on these proposals.	
013043 - 014129	Chairman Dr Elizabeth QUAT Admin	<p>Dr Elizabeth QUAT's remarks that judging from HKMA's support for the upholding of the need-to-know principle and enhancing the safeguards for the registered HCRs' personal data privacy, there was no cause for the concerns raised by some healthcare professionals during the public consultation exercise that the withholding of certain health data of the registered HCRs would undermine the completeness and integrity of the eHRs and affect the quality of healthcare delivery; and her enquiry about -</p> <p>(a) in the light of the latest development, whether the Administration would move CSAs to the Bill to state expressly the spirit of fostering the registered HCRs' choice over the scope of data sharing; and</p> <p>(b) whether eHRC would be accountable to eHRSC, and whether consideration could be given to setting up an eHealth development committee comprising representatives from the health-related professional bodies, patient groups and the private information technology sector to steer the policy formulation in</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>respect of the long-term development of eHealth with reference to overseas experience.</p> <p>The Administration's advice that -</p> <p>(a) according to the July 2014 newsletter of HKMA, the outcome of the voting of its Council was that the majority of the Council members was against the provision of a "safe deposit box" feature in eHRSS. Given that there were diverse views over this issue, the Administration had undertaken to conduct a further study on additional access control for sensitive health data along a positive direction during the second stage eHR Programme. It would, however, be difficult to state expressly in the Bill the future design of this technical feature before completion of the study; and</p> <p>(b) eHRC would be a public officer appointed by the Secretary for Food and Health, whereas eHRSC was responsible to provide advice to the Food and Health Bureau on the strategies and work programmes of the development of eHRSS. Representatives of key stakeholders in the public and private sectors, such as patient groups, healthcare related professional bodies and the IT sector, had been serving on eHRSC and/or its four specialized working groups as members. The Administration intended to retain essentially the same advisory structure for the second stage eHR Programme upon commencement of operation of the eHRSS, and eHRC would consider eHRSC's advice.</p>	
014130 - 014231	Chairman Ms Emily LAU	Ms Emily LAU's expression of concurrence with Dr KWOK Ka-ki's suggestion to invite written views from the relevant organizations or individuals on the major proposed CSAs to the Bill under deliberation of the Bills Committee.	
014232 - 015953	Chairman Dr LEUNG Ka-lau Admin	<p>Referring to the Annex to LC Paper No. CB(2)404/14-15(02), Dr LEUNG Ka-lau's enquiry as to whether there was a need to introduce the new offences as set out in clauses 41, 42 and 43 of the Bill as the acts concerned could not be prosecuted under the Telecommunications Ordinance (Cap. 106), the Crimes Ordinance (Cap. 200) and the Personal Data (Privacy) Ordinance (Cap. 486).</p> <p>The Administration's clarification that the new offences proposed under the Bill were specific to the operation of the eHR sharing. While some existing offences might also be applicable to the acts to be criminalized under the Bill, the applicability of any offence would be subject to the facts and circumstances of each individual case.</p> <p>Members' agreement to discuss during the clause-by-clause examination of the Bill the concerns raised by the Chairman about the factors to be considered by the law enforcement agents in determining which legal provisions should be</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		invoked when pressing charges, and the ambiguity of the use of the word "dishonest" in clause 41(6)(b).	
<i>Agenda item II: Any other business</i>			
015954 - 020127	Chairman Dr Elizabeth QUAT Ms Emily LAU	Dates of future meetings	

Council Business Division 2
Legislative Council Secretariat
9 September 2015