

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2109/14-15  
(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 eleventh meeting  
held on Monday, 2 February 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  
Hon Cyd HO Sau-lan, JP  
Dr Hon LEUNG Ka-lau  
Hon Alan LEONG Kah-kit, SC  
Hon CHAN Han-pan, JP  
Hon Alice MAK Mei-kuen, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP
- Members absent** : Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN  
Hon CHEUNG Kwok-che  
Hon WU Chi-wai, MH  
Dr Hon KWOK Ka-ki  
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  
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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**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)436/14-15(01) and CB(3)575/13-14]

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

Clause-by-clause examination of the Bill

2. The Bills Committee continued clause-by-clause examination of the Bill from clause 3 and examined up to clause 5. Members noted that the Administration would move Committee stage amendments to replace "法庭" with "法院" in the Chinese text of clause 3(2)(b), (2)(c) and (4)(e), and delete clause 57(2).

Follow-up actions required of the Administration

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3. The Bills Committee requested the Administration to -

*Issues relating to the substitute decision maker arrangement*

- (a) in respect of members' concern about whether the interest of the elderly persons who were incapable of managing their own affairs or giving a joining or sharing consent at the relevant time would be undermined as the Bill imposed no obligation on eligible substitute decision makers ("SDM") to take action on their respective registrations, provide for reference of members statistics on the number of elderly persons participating in the Public Private Interface - Electronic Patient Record Sharing Pilot Project, with a breakdown by whether or not they were residents of residential care homes for the elderly;
- (b) for disputes caused by different family members of a mentally incapacitated person holding different views on matters relating to the latter's participation in the Electronic Health Record Sharing System ("eHRSS") (such as the joining of eHRSS and the giving of sharing consent to particular registered healthcare providers), seek response from the Labour and Welfare Bureau to a member's suggestion of referring such disputes to the

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Guardianship Board or the court for resolution; and

- (c) consider whether a cohabitee living with a healthcare recipient ("HCR") would be included as an eligible SDM of the HCR;

*Drafting issues*

- (d) consider aligning the expressions used in the Chinese and English texts of the definition of "healthcare recipient" in clause 2(1) to achieve consistency. The Chinese text was "指曾經...接受醫護服務的個人", whereas the English text was "means an individual for whom healthcare has been performed ...";
- (e) in respect of the expression "immediate family member" (which was defined under clause 2(1) as "in relation to a healthcare recipient, means an individual who is related to the recipient by blood, marriage, adoption or affinity"), the Chinese rendition of which was "家人", in clauses 2(1), 3(2)(d) and 3(4)(f), consider aligning the Chinese and English expressions to achieve consistency; and
- (f) in respect of members' concern that the expression "The Government or a public officer is not liable ..." in clause 57(1) did not make any specific reference to the Electronic Health Record Sharing System Ordinance, provide examples of provisions in other ordinances on limitation of Government and public officers' liability in similar circumstances.

**II. Any other business**

- 4. There being no other business, the meeting ended at 12:47 pm.

**Proceedings of the eleventh meeting of  
the Bills Committee on Electronic Health Record Sharing System Bill  
held on Monday, 2 February 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>			
001039 - 001151	Chairman	Opening remarks	
001152 - 001509	Chairman Dr Elizabeth QUAT Admin	Progress of discussion between the Administration and the Privacy Commissioner for Personal Data ("PCPD") on the amendments proposed by PCPD to the Bill as set out in his letter dated 8 December 2014 to the Bills Committee (LC Paper No. CB(2)436/14-15(01))	
001510 - 001618	Chairman	Continuation of clause-by-clause examination of the Bill	
001619 - 005332	Chairman Admin Dr Fernando CHEUNG	<p><u>Examination of clause 3</u></p> <p>Dr Fernando CHEUNG's view that the interest of those mildly mentally handicapped healthcare recipients ("HCR") and elderly HCRs who were incapable of managing their own affairs (in particular residents of private residential care homes and without guardian or family members) would be undermined as the Bill imposed no obligation on eligible substitute decision makers ("SDM") (which included licensed residential care homes) to take action on their respective registrations for the Electronic Health Record Sharing System ("eHRSS").</p> <p>The Chairman's enquiry about the participation of residents of residential care homes for the elderly ("RCHEs") in the existing Public Private Interface - Electronic Patient Record ("PPI-ePR") Pilot Project to shed light on the interest of RCHEs in assuming the role of SDM for their residents for eHRSS participation.</p> <p>The Administration's elaboration of the SDM arrangement under the Bill; and its advice that -</p> <p>(a) participation in eHRSS would be voluntary. As such, it would neither be appropriate, nor practicable, to stipulate in the legislation that a particular SDM would be obliged to make a decision for an HCR. According to clause 6(5) of the Bill, an SDM of the HCR had to have regard to the best interests of the HCR in the circumstances in making an application for registration;</p> <p>(b) upon the launch of eHRSS, the Administration would conduct intensive promotion targeting on elderly and residential care homes to encourage participation in</p>	

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		<p>eHRSS by the elderly. The code of practice to be issued by the Commissioner for the Electronic Health Record ("eHRC") under clause 51 of the Bill would also help the prescribed HCPs (including licensed residential care homes) to better understand, among others, the SDM arrangement under eHRSS; and</p> <p>(c) as at end of 2014, there were 439 residential care homes participating in the PPI-ePR Pilot Project and around half of the some 400 000 participating HCRs were at the age of 60 or above. While there was no SDM arrangement under the PPI-ePR Pilot Project, it was envisaged that many residential care homes would have keen interest in encouraging their residents to join eHRSS as electronic health record ("eHR") could help these prescribed HCPs better take care of their residents. The Administration would provide after the meeting statistics on the number of elderly participating in the PPI-ePR Pilot Project, with a breakdown of those who were residing in residential care homes for members' reference if available.</p> <p>On Dr Fernando CHEUNG's suggestion of referring cases where different immediate family members of a mentally incapacitated person, who were eligible SDMs, held different views on matters relating to that person's participation of eHRSS to the Guardianship Board or the court for resolution, the Administration undertook to relay the suggestion to the Labour and Welfare Bureau for consideration.</p>	<p><b>Admin</b></p> <p><b>Admin</b></p>
005333 - 005505	Chairman ALA4	The advice of the legal adviser to the Bills Committee that the Administration would move Committee stage amendments ("CSAs") to replace " 法庭 " with " 法院 " in the Chinese text of clause 3(2)(b), (2)(c) and (4)(e) to achieve consistency with other existing ordinances.	
005506 - 011158	Chairman ALA4 Admin Dr Helena WONG Ms Cyd HO	<p>The advice of the legal adviser to the Bills Committee that the meaning of "immediate" in "immediate family member" was not reflected in its Chinese rendition (i.e. 家人 ). According to the Administration's response as set out in paragraph 1 of Annex II to LC Paper No. CB(2)1551/13-14(01), the rationale for which was to follow the Chinese rendition of the term "immediate family member" in section 63C of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance").</p> <p>Ms Cyd HO's enquiry as to whether a relative of the HCR's spouse would be regarded as an immediate family member of that HCR under the Bill. In her view, if this was the case, the use of the term "family member" ("家人") would reflect more accurately the policy intent in this context.</p> <p>Replying in the positive to Ms Cyd HO's question, the Administration advised that apart from making reference to the Privacy Ordinance, the definition of "immediate family member" was the same as that provided for under the Family</p>	

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		Status Discrimination Ordinance (Cap. 527). Nevertheless, it would consider aligning the Chinese and English texts of the term to achieve consistency.	<b>Admin</b>
011159 - 011739	Chairman Dr Helena WONG Ms Cyd HO Dr Fernando CHEUNG	Dr Helena WONG, Ms Cyd HO and Dr Fernando CHEUNG's view that a cohabitee living with an HCR should be included as an eligible SDM of the HCR. The Administration undertook to consider the suggestion and provide a written response in this regard.	<b>Admin</b>
011740 - 011929	Chairman Dr Fernando CHEUNG	In response to Dr Fernando CHEUNG's enquiry, the Administration's affirmation that for both cases of those HCRs who were minors and those who were aged 16 or above and were incapable of providing consent as defined under clause 3(3), a prescribed HCP would serve as a last resort in giving a joining or sharing consent on behalf of that HCR in the absence of other eligible SDMs under clause 3(3)(d).	
011930 - 013305	Chairman ALA4 Admin Ms Cyd HO	Discussion on the drafting of the Chinese and English texts of the definition of "healthcare recipient" in clause 2(1), details of the concern raised by the legal adviser to the Bills Committee and the response made by the Administration in this regard were respectively set out in paragraph 4 of LC Paper No. CB(2)1515/13-14(01) and paragraph 4 of Annex I to LC Paper No. CB(2)1551/13-14(01).  The Administration was requested to consider aligning the expressions used in the Chinese and English texts of the above definition to achieve consistency.	<b>Admin</b>
013306 - 014726	Chairman Ms Cyd HO ALA4 Admin Dr Elizabeth QUAT	<u>Examination of clause 4</u>  The advice of the legal adviser to the Bills Committee that clause 4 should be read together with clauses 57 and 58; and her concern about whether as drafted, the limitation of liability of Government and public officers under clause 57(1) was concerned with civil liability and/or criminal liability, and whether persons appointed in writing by eHRC under clause 48(3) should be accorded protection that was provided for under clause 58.  In response to the Chairman's enquiry, the Administration's advice that clause 58(3)(b) was drafted to confer protection from civil liability under clause 58 upon a person appointed by eHRC under clause 48(3) to assist him or her in performing a function or exercise a power if that person was acting in good faith. This included employees of the Hospital Authority ("HA") appointed by eHRC under clause 48(3) but not employees of contractors appointed by HA to perform work not relating to the functions or powers of eHRC.  The Chairman expressed concern about whether persons who had contractual relationship with the Government to assist eHRC in performing a function or exercising a power	

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		<p>would fall within the meaning of clause 48(3).</p> <p>Dr Elizabeth QUAT's expression of agreement with the drafting of clause 58(1); and the Administration's advice in response to Dr Elizabeth QUAT's enquiry that it would move CSAs to delete clause 57(2) on the suggestion of PCPD.</p>	
014727 - 015150	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry about whether the limitation of liability of Government and public officers under clause 57(1) was concerned with civil liability and/or criminal liability; and her concern that the expression "The Government or a public officer is not liable ..." in clause 57(1) did not make any specific reference to the Electronic Health Record Sharing System Ordinance.</p> <p>The Administration was requested to provide in writing examples of provisions in other ordinances on limitation of Government and public officers' liability in similar circumstances.</p>	<b>Admin</b>
015151 - 015824	Chairman Admin Dr Elizabeth QUAT	<p><u>Examination of clause 5</u></p> <p>In response to Dr Elizabeth QUAT's enquiry, the Administration's advice that "any other data or information" of a registered HCR to be kept in eHRSS pursuant to clause 5(2)(c) would be confined to those necessary for the proper functioning of eHRSS, such as the contact information of the registered HCRs. The refusal of a registered HCR to provide the requisite data or information might result in the suspension or cancellation of his or her registration under the respective clauses 10(1) and 11(1).</p>	
015825 - 020254	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's enquiry as to the reason why some types of healthcare professionals, such as psychologists and speech therapists, were not listed in the Schedule to the Bill.</p> <p>The Administration's explanation that the Schedule set out a list of healthcare professionals for clause 2, which covered the 13 healthcare professions which were subject to statutory registration. Under clause 17, HCPs providing healthcare which included entities operating hospitals, medical clinics, dental business, and residential care homes or specified entities that engaged members of the 13 statutorily registered healthcare professionals to perform healthcare at one premises might apply to eHRC to be registered as a HCP for eHRSS for that service location.</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
<i>Agenda item II: Any other business</i>			
020255 - 020302	Chairman	Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
15 September 2015