

立法會
Legislative Council

LC Paper No. CB(2)2216/14-15
(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 twelfth meeting
held on Monday, 9 February 2015, at 4:30 pm
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
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP

Members absent : Hon CHEUNG Kwok-che
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, JP
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

Mr Michael FUNG
Chief Systems Manager (eHealth Record)
Hospital Authority

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)436/14-15(01), CB(2)789/14-15(01), CB(2)808/14-15(01) to (02) and CB(3)575/13-14]

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

2. The Bills Committee continued clause-by-clause examination of the Bill from clause 6 and examined up to clause 11.

3. Members noted that it was the Administration's intention to introduce the following Committee stage amendments ("CSAs") to the Bill -

- (a) to replace "曾經、正在或相當可能會接受醫護服務的個人" with "屬已經、正在或相當可能會進行的醫護服務的對象的個人" in the Chinese text of the definition of "healthcare recipient (醫護接受者)" in clause 2;
- (b) to amend the English text of the term "immediate family member (家人)" to "family member" in clause 2 and make consequential amendments to the English text of clause 3(2)(d) and 3(4)(f); and
- (c) to add "a person residing with the healthcare recipient who accompanies the healthcare recipient at the relevant time" in clause 3(4) as a person eligible as a substitute decision maker of the healthcare recipient ("HCR") defined in the clause.

4. Members also noted that the Administration intended to move CSAs in relation to HCRs' choice over the scope of data sharing and the "need-to-know" principle by adding a new Division 3A under Part 2 of the Bill and a new clause 35A respectively, details of which were set out in LC Paper No. CB(2)808/14-15(02). Members agreed to discuss these CSAs during the examination of the relevant clauses.

II. Any other business

5. Members noted that the next meeting would be held on Thursday, 26 February 2015, at 4:30 pm.

Action

6. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 2
Legislative Council Secretariat
9 October 2015

**Proceedings of the twelfth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Monday, 9 February 2015, at 4:30 pm
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>			
000640 - 000811	Chairman	Opening remarks	
000812 - 001414	Chairman Admin	Briefing by the Administration on the paper in response to issues raised at the meeting on 2 February 2015 (LC Paper No. CB(2)808/14-15(01)).	
001415 - 002047	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's concern about whether healthcare recipients ("HCRs") who were incapable of managing their own affairs, in particular the mentally incapacitated elderly residing in residential care homes, could benefit from the Electronic Health Record Sharing System ("eHRSS"), as only 439 out of the some 750 residential care homes or centres had participated in the existing Public Private Interface-electronic Patient Record ("PPI-ePR") Pilot Project.</p> <p>The Administration's response that given that participation in the PPI-ePR Pilot Project was voluntary, the current participation rate of residential care homes was considered satisfactory. The Administration envisaged that many residential care homes would have keen interest in participating in, and assuming the role of substitute decision maker ("SDM") to register their elderly residents for the eHRSS which enabled a two-way sharing of health data between public and private HCPs and hence, would facilitate the taking care of their residents. Upon the launch of eHRSS, the Administration would conduct intensive promotion, targeting at elderly and residential care homes, to encourage participation of eHRSS by the elderly.</p>	
002048 - 003402	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki's concern about, in case a residential care home would be the SDM of an HCR, the Bill did not specify who should be responsible for making the decisions on the giving of a joining or sharing consent on behalf of that HCR.</p> <p>The Administration's advice that the holder of a certificate of exemption or a licence in respect of one residential care home for the elderly or one residential care home for persons with disabilities which engaged a healthcare professional to perform healthcare at that home could apply to the Commissioner for the Electronic Health Record ("eHRC") to be registered as a healthcare provider ("HCP") for eHRSS. A registered HCP was an eligible SDM under clause 3. It should, however, be noted that it was not appropriate, nor practicable, to stipulate in the legislation that a particular</p>	

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		<p>SDM would be obliged to make a decision for an HCR.</p> <p>On Dr KWOK Ka-ki's enquiry about whether a prescribed HCP that had been given a sharing consent would need a patient's password for accessing to the electronic health record ("eHR") of that HCR kept in eHRSS, the Administration replied in the negative.</p>	
003403 - 003815	Chairman Dr KWOK Ka-ki Admin	<p>The Chairman and Dr KWOK Ka-ki's enquiry as to whether non-public officers, such as employees of prescribed HCPs in the private sector and the Hospital Authority ("HA"), would be exempted from liability arising from the use of eHRSS by virtue of clause 57.</p> <p>The Administration's clarification that -</p> <p>(a) clause 57 sought to limit the civil liability of the Government and public officers, whereas clause 58 provided that public officers and persons appointed in writing by eHRC under clause 48(3) should not be liable for an act done in performing a function or exercising a power under the Bill in good faith. The reason why the protection under clause 58(1) would be conferred on persons appointed in writing by eHRC under clause 48(3) was due to the fact that many of the functions or powers relating to the development and operation of eHRSS required the professional expertise of particular employees of HA which served as the technical agency for the Food and Health Bureau in this regard; and</p> <p>(b) the protection under clause 58(1) would not cover those acts of public officers and persons appointed in writing by eHRC under clause 48(3) which were not related to the performance of a function or exercising a power under the Bill (e.g. using the data and information contained in the eHR of an HCR for improvement of healthcare). By the same token, employees of those prescribed HCPs in the private sector would not be exempted from liability arising from the use of data and information kept in eHRSS.</p>	
003816 - 003839	Chairman Dr Helena WONG	<p>Dr Helena WONG welcomed the Administration's proposed Committee stage amendments ("CSAs") to replace the English text of the term "immediate family member" to "family member" in clause 2 in order to align with the Chinese text of the term, and amend clause 3 to add a person residing with an HCR who accompanied the HCR at the relevant time as an eligible SDM.</p>	
003840 - 004914	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG referred to paragraphs 5.26 to 5.28 of the Consultation Document on Regulation of Private Healthcare Facilities ("the Consultation Document") which set out that the development of an electronic health information system would incur significant amount of administrative and compliance costs which might become a burden to non-</p>	

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		<p>hospital private healthcare facilities that operated in limited scales. Hence, it was proposed that only private hospitals would be required to develop an electronic medical/patient record or an electronic patient ("ePR") system that could meet the technical requirements to be connectable with eHRSS.</p> <p>Dr Helena WONG's enquiry about the capital investment required of private HCPs for developing or procuring the necessary hardware and software for connecting eHRSS, and whether the target participants of eHRSS were limited to private hospitals; and the Chairman's remarks that the information technology infrastructure required of private HCPs for participating in eHRSS which enabled a two-way sharing of eHR between public and private HCPs would be of a higher threshold than that required under the PPI-ePR Pilot Project.</p> <p>The Administration's advice that -</p> <p>(a) the resources required of HCPs for the development or procurement of the necessary hardware and software for connecting to eHRSS would depend on the existing information technology infrastructure of the individual HCPs in this regard; and</p> <p>(b) participation of private HCPs in eHRSS was on a voluntary basis. Under clause 17, HCPs providing healthcare which included entities operating hospitals, medical clinics, dental business, residential care homes, or specified entities that engaged members of the 13 statutorily registered healthcare professionals to deliver healthcare might apply to eHRC for registration of eHRSS.</p>	
004915 - 010437	Chairman Dr Helena WONG Ms Emily LAU Admin	<p>Dr Helena WONG's view that the Administration should provide technical assistance to private hospitals to facilitate them to develop an eMR/ePR system that could meet the technical requirements to be connectable with eHRSS in order to enable more HCRs under the care of private hospitals to benefit from eHRSS; and the Chairman's view that incentive should be provided to encourage registered medical practitioners in solo practice to use eMR/ePR systems.</p> <p>Noting the expression of support from the private hospital sector for the early implementation of eHRSS as set out in the submissions concerned (LC Paper Nos. CB(2)531/14-15(01) and CB(2)762/14-15(01)), Ms Emily LAU's view that more should be done to facilitate private HCPs to participate in eHR sharing.</p> <p>The Administration's advice that it had developed Clinical Management System ("CMS") Adaptation modules and a CMS On-ramp software as low-cost investment options for private hospitals and medical clinics to connect to and interface with eHRSS. It had already started the pilot runs of the CMS Adaptation modules in nine out of the 11 private</p>	

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		<p>hospitals. Technical support and training had also been provided to help the private hospitals to prepare for the participation in eHRSS. In response to Ms Emily LAU's enquiry about the percentage of private doctors using computers at their clinics, the Administration's advice that a survey conducted by the Hong Kong Medical Association in 2013 showed that around 60% of the some 1 800 respondents were using computers at their clinics.</p>	
010438 - 010857	Chairman Ms Emily LAU Admin	<p>Ms Emily LAU's concern about whether residential care homes would be interested in assuming the role of SDM for the elderly HCRs as well as participating in eHRSS; and the Administration's elaboration of its response as set out in paragraphs 3 to 5 of LC Paper No. CB(2)808/14-15(01).</p>	
010858 - 012331	Chairman Admin	<p>On the Chairman's enquiry about whether it should be stated expressly in clause 57(1) that the liability the clause sought to limit was only civil liability, the Administration's advice that the current drafting of clause 57(1) was in line with that of similar provisions in other ordinances.</p> <p>Dr LEUNG Ka-lau asked whether the Government or public officers would be liable for any damages arising from the use of data and information contained in an eHR which was inaccurate due to programming errors of eHRSS.</p> <p>The Administration's clarification that the purpose of clause 57(1) was to provide that the Government or a public officer would not incur any civil liability because of the acts described in subclause (1)(a) to (c). According to clause 58, while public officers, among others, would not be civilly liable for an act done or omitted to be done by them in good faith in performing a function or exercising a power under the Bill, this did not affect the liability of the Government for the act or admission. Depending on the facts and circumstances of the case, the Government might be civilly liable for the damages cited by Dr LEUNG Ka-lau.</p>	
012332 - 012344	Chairman	Continuation of clause-by-clause examination of the Bill	
012345 - 012718	Chairman Ms Emily LAU Admin	<p>Members' agreement to discuss the draft CSAs proposed by the Administration in relation to the need-to-know principle and HCRs' choice over the scope of data sharing as set out in LC Paper No. CB(2)808/14-15(02) when examining the relevant clauses of the Bill.</p>	
012719 - 013205	Chairman Admin	<u>Examination of clauses 6 and 7</u>	
013206 - 013348	Chairman Ms Emily LAU Admin	<p><u>Examination of clause 8</u></p> <p>The Administration's advice in response to Ms Emily LAU's enquiry that eHRC would register an HCR as a registered HCR if he or she was satisfied that, on the face of it, the application made by an HCR, or an SDM of an HCR, complied with clause 6(6).</p>	

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013349 - 013702	Chairman Admin Ms Emily LAU	<p>Ms Emily LAU's view that the Administration should ensure that the conditions to be imposed by eHRC for registering an HCR under clause 8(2) should not diminish the interest of an HCR to register for eHRSS; and the Chairman's enquiry about the consequences of an HCR's failure to comply with the conditions for registration.</p> <p>The Administration's advice that upon registration, HCRs would be provided with an information notice setting out, among others, the conditions for the registration. These conditions might include the requirement to notify eHRC for any changes of his or her personal particulars such as name, address and contact number in order to identify the HCR. According to the respective clauses 10(1)(c)(ii) and 11(1)(c)(ii), eHRC might suspend or cancel the registration of an HCR if he or she contravened a condition for the registration.</p>	
013703 - 013916	Ms Emily LAU Admin	<p>The Administration's advice in response to Ms Emily LAU's enquiry that any HCR who held an identity card as defined in the Registration of Persons Ordinance (Cap. 177) or any valid identification document as specified in clause 6(7)(b) might apply to be registered under eHRSS. Reasons for refusal of an application for registration might include the application of a minor was not made by an eligible SDM.</p>	
013917 - 014047	Chairman Admin	<p><u>Examination of clause 9</u></p>	
014048 - 014605	Chairman Admin	<p><u>Examination of clause 10</u></p> <p>In response to the Chairman's enquiry, the Administration's advice that the circumstances under which an HCR's registration might be suspended under clause 10(1) might include the failure of a registered HCR to produce proof of his or her address within the specified period for identification purpose, or the HCR had provided wrong personal particulars that identify him or her as another HCR. During the suspension period, the HCR concerned who could prove his or her identity could still make a data access request for his or her eHR kept in eHRSS in accordance with the Personal Data (Privacy) Ordinance (Cap. 486).</p>	
014606 - 015524	Chairman Admin	<p>Given that new data or information of an HCR whose registration had been suspended might still be provided by a prescribed HCP to eHRSS, the Chairman's enquiry about the actions to be taken and the liability of public officers etc. and HCPs if it was subsequently found out that the HCR in question had been wrongly identified as another HCR.</p> <p>The Administration's advice that the HCPs which provided the new data or information of the HCR concerned to eHRSS would be responsible for correcting the relevant data or information. Any correction made would be logged in eHRSS to ensure that all such activities could be properly ascribed to the originating HCPs. It was envisaged that it</p>	

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		would likely be a two-way interactive process during which eHRC (or the person(s) specified by eHRC) and the HCPs concerned would maintain communication on issues relating to the suspension of an HCR's registration.	
015525 - 015651	Admin Ms Emily LAU Chairman	<u>Examination of clause 11</u>	
<i>Agenda item II: Any other business</i>			
015652 - 015745	Chairman Admin Ms Emily LAU	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
9 October 2015