

立法會
Legislative Council

LC Paper No. CB(2)2217/14-15
(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 thirteenth meeting
held on Thursday, 26 February 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Charles Peter MOK, JP (Chairman)
Hon Emily LAU Wai-hing, 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 Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
- Members absent** : Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Cyd HO Sau-lan, JP
Hon CHEUNG Kwok-che
Hon WU Chi-wai, MH
Hon CHAN Han-pan, 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)808/14-15(02), CB(2)837/14-15(01), CB(2)900/14-15(01), CB(2)911/14-15(01) and CB(3)575/13-14]

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

Continuation of clause-by-clause examination of the Bill

2. The Bills Committee continued clause-by-clause examination of the Bill from clause 12 and examined up to clause 18.

3. The Bills Committee considered the Committee stage amendments ("CSAs") proposed by the Administration to add new clauses 16A and 16B and make consequential amendments to clauses 2(1), 3(3) and 3(5) as set out in Annex B to LC Paper No. CB(2)808/14-15(02). Members noted that these provisions would take effect on a day to be appointed by the Secretary for Food and Health upon completion of the study to be conducted during the second stage of the Electronic Health Record Programme on the choice of registered healthcare recipients ("HCRs") over the scope of data sharing and after the relevant feature was technically ready for implementation.

4. Members noted that it was the Administration's intention to introduce CSAs to delete clause 17(5)(g) from the Bill in response to the concerns expressed by members and the Privacy Commissioner for Personal Data at previous meetings.

Admin

Follow-up actions required of the Administration

5. The Administration was requested to advise in writing the drafting and operational implications arising from a member's proposal to delete clause 16 from the Bill which provided that an HCR, or a substitute decision maker ("SDM") of an HCR, was taken to have given a sharing consent to the Department of Health and the Hospital Authority when the HCR or SDM concerned gave a joining consent.

Action

II. Any other business

6. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
9 October 2015

**Proceedings of the thirteenth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Thursday, 26 February 2015, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000628 - 000758	Chairman	Opening remarks	
000759 - 000817	Chairman	Continuation of clause-by-clause examination of the Bill	
000818 - 001550	Chairman Admin Dr KWOK Ka-ki	<u>Examination of clauses 12, 13 and 14</u> Dr KWOK Ka-ki's enquiry as to whether a registered healthcare recipient ("HCR") could revoke a sharing consent given to a particular prescribed healthcare provider ("HCP") at any time. The Administration's advice that under clauses 13(2)(c) and 14(8)(c), an indefinite sharing consent and a one-year sharing consent would expire if the consent was revoked by the registered HCR concerned, or a substitute decision maker ("SDM") of the HCR, at any time under clause 15.	
001551 - 001848	Chairman Admin Dr Elizabeth QUAT	Dr Elizabeth QUAT's enquiry about whether a registered HCR could access to the list of prescribed HCPs to which he or she had given a sharing consent through a patient portal in the Electronic Health Record Sharing System ("eHRSS"). The Administration's advice that it would conduct a study on the setting up of a patient portal during the second stage of the Electronic Health Record Programme ("eHR Programme") to facilitate the registered HCRs to more conveniently access their electronic health record ("eHR"). Before the availability of the patient portal, the registered HCRs could approach the future office of the Commissioner for the Electronic Health Record ("eHRC") for enquiry.	
001849 - 002259	Chairman Admin	In response to the Chairman's enquiry, the Administration's affirmation that a referral HCP had to be a prescribed HCP according to clause 12(9). Under clause 12(6)(a)(iii) and (b)(ii), the sharable data to be provided by a prescribed HCP to a referral HCP, as well as those to be obtained from eHRSS by a referral HCP had to be relevant to the healthcare referral. In case a registered HCR had died, eHRC would cancel that HCR's registration and the sharing consent(s) given by that HCR would no longer be valid.	
002300 - 002626	Chairman Admin	Briefing by the Administration on its response to issues raised at the meetings on 8 December 2014 and 2 February 2015 in relation to the participation of mentally incapacitated HCRs in	

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		eHRSS. (LC Paper No. CB(2)900/14-15(01))	
002627 - 010058	Chairman Admin Dr Fernando CHEUNG Dr LEUNG Ka-lau	<p>While understanding that it might not be appropriate to stipulate in the legislation that a particular SDM would be obliged to make a decision for an HCR who was incapable of making decisions on matters relating to the participation in eHRSS (particularly residents of residential care homes for the elderly) given its voluntary nature, Dr Fernando CHEUNG's view that the Administration should at the very least put in place an administrative mechanism to ensure that a healthcare or social welfare personnel in the public sector, say a medical social worker, would (a) ascertain if any of the eligible SDMs of that HCR had considered the matter and made a decision in this regard; and (b) provide assistance in case the family members of that HCR held different views on the matter.</p> <p>Dr LEUNG Ka-lau recapitulated his suggestion made at previous meetings of the Bills Committee that the SDM arrangement provided under clause 3(4) should follow the arrangement under the Mental Health Ordinance (Cap. 136) ("MHO") such that a registered medical practitioner could make a decision on matters in relation to a mentally incapacitated HCR's participation in eHRSS without the consent of that HCR or that HCR's family members if he or she considered that this was in the best interest of that HCR.</p> <p>The Administration's elaboration of the SDM arrangement under the Bill which had no impact on the existing decision-making arrangement for carrying out medical treatments for patients as set out in its response under item (a) in LC Paper No. CB(2)1873/13-14(03); and it's advice that -</p> <p>(a) participation in eHRSS was voluntary in nature. In addition, there was no deadline for application to join eHRSS by HCRs or their SDMs. Hence, it would not be possible for the Administration to ascertain whether the status of an HCR not joining eHRSS or giving a sharing consent to a particular HCP was the result of a thought through decision made by the eligible SDMs of that HCR or simply because the SDMs concerned had not yet considered the matter;</p> <p>(b) in the absence of those at a higher order of priority, a family member who accompanied an HCR who was at the age of 16 years or above and was incapable of giving a joining or sharing consent at the relevant time was eligible as an SDM. In case of family members' dispute, staff members of the office of eHRC would explain to the family members the implication of joining eHRSS and answer any enquiries, and would continue to follow up the case if a consensus could not be reached on the spot. If the dispute took place at the service location of a prescribed HCP, professional advice from healthcare professionals and mediation services by social workers might be of assistance to the parties concerned in</p>	

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		<p>reaching consensus based on the interests of the HCR in the circumstances. The code of practice to be issued by eHRC under clause 51 of the Bill would also set out the details of the SDM arrangement for reference of HCPs;</p> <p>(c) the Administration would conduct intensive promotion upon the launch of eHRSS targeting at elderly population and the residential care homes to encourage participation in eHRSS by the elderly. Making reference to the existing Public Private Interface - electronic Patient Record Pilot Project, it was envisaged that many residential care homes would be interested in participating in eHRSS and assuming the role of SDM for their residents; and</p> <p>(d) for cases where emergency access of the eHR of an 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 by virtue of section 63C of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance"). The SDM arrangement needed not come into play in such context.</p>	
010059 - 011501	Chairman ALA4 Dr LEUNG Ka-lau Admin	<p>The Legal Adviser to the Bills Committee's concern that as the exemption under section 63C of the Privacy Ordinance related to identifying an individual who was reasonably suspected to be, or was, involved in a life-threatening situation, and the carrying out of emergency rescue operations or provision of emergency relief services, it was doubtful whether the exemption was intended to cover emergency treatments on HCRs which were not necessarily related to a life-threatening situation or a rescue operation.</p> <p>Dr LEUNG Ka-lau's reiteration of his view that the SDM arrangement under the Bill should align with that relating to the carrying out of medical treatment by a registered medical practitioner without consent as provided for under MHO for the sake of consistency.</p> <p>The Administration's clarification that the SDM arrangement under the Bill was entirely and specifically designed for the giving or revocation of a joining or sharing consent in relation to eHRSS. It was irrelevant to the existing decision-making arrangement for carrying out medical "treatments" for patients.</p> <p>Members noted that the Legal Adviser to the Bills Committee would write to the Administration after the meeting to seek further clarifications on the matter.</p>	
011502 - 011506	Chairman	Continuation of clause-by-clause examination of the Bill	
011507 - 011552	Chairman Admin	<u>Examination of clause 15</u>	

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011553 - 013817	Admin Chairman Dr LEUNG Ka-lau Ir Dr LO Wai-kwok	<p><u>Examination of clause 16</u></p> <p>Dr LEUNG Ka-lau's enquiry about the drafting implications if Committee stage amendments ("CSAs") would be proposed to delete clause 16, which provided that an HCR was taken to have given a sharing consent to the Department of Health ("DH") and to the Hospital Authority ("HA") when giving a joining consent, from the Bill, and whether the stakeholders, such as the Hong Kong Medical Association ("HKMA"), had been consulted on the above consent arrangement.</p> <p>The Administration's advice that -</p> <p>(a) the above consent arrangement had been discussed by the Steering Committee on Electronic Health Record Sharing and its working groups, the membership of which comprised, among others, representative from HKMA. The proposal had also been put to consultation in the public consultation exercise on the legal, privacy and security framework for eHRSS conducted between December 2011 and February 2012. Clauses 12 and 16 as currently drafted would have the effect that the giving of a joining consent by an HCR would enable DH and HA to obtain from, and also to provide to, eHRSS any sharable data of that HCR;</p> <p>(b) while there was no specific textual cross-referencing to clause 16 in other clauses of the Bill, it should be noted that clause 16, together with other clauses, were drafted as an integrated whole to give effect to the presently developed eHRSS which had incorporated the consent arrangement as a core component. The Bill as amended by the CSAs proposed by Dr LEUNG Ka-lau would render the eHRSS already developed under the stage one eHR Programme not operable; and</p> <p>(c) those HCRs who used only private healthcare services and did not wish DH and HA to obtain their eHR could choose not to join eHRSS until the development and implementation of some form of new device or arrangement to enable additional choices for registered HCRs over the disclosure of their health data in the second stage eHR Programme.</p> <p>Dr LEUNG Ka-lau's view that it was not desirable that the indication of agreement to the prescribed HCPs' contribution to, and obtaining from, eHRSS any sharable data of a registered HCR was combined under a single consent given by the HCR concerned; and his remarks that the issue could be further discussed at future meetings when the Bills Committee considered the CSAs proposed by individual members.</p> <p>Ir Dr LO Wai-kwok's view that the consent arrangement was in line with the objective of eHRSS which was to foster public-private collaboration in healthcare delivery through the</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>two-way sharing of eHR between public and private HCPs.</p> <p>The Administration was requested to provide a written response to advise the drafting and operational implications arising from Dr LEUNG Ka-lau's proposal to delete clause 16 from the Bill.</p>	<p>Admin</p>
013818 - 015102	<p>Chairman Dr Elizabeth QUAT Admin ALA4</p>	<p><u>Examination of the CSAs proposed by the Administration to add new clauses 16A and 16B and make consequential amendments to clauses 2(1), 3(3) and 3(5)</u></p> <p>Referring to the CSAs to be proposed by the Administration as set out in Annex B to LC Paper No. CB(2)808/14-15(02), Dr Elizabeth QUAT's enquiry about what would constitute "scope of data sharing" and "types of restrictions" under clauses 16A(1) and 16B(1) and (2) respectively.</p> <p>The Administration's advice that the "scope of data sharing" in the eHRSS developed under the stage one eHR Programme included nine types of health data as set out in paragraph 5 of LC Paper No. CB(2)221/14-15(02), whereas the "types of restrictions" meant the methods of restrictions to be specified by eHRC for a registered HCR to choose in making a request to restrict the scope of data sharing in relation to his or her health data. This might include, among others, arrangements to address Dr LEUNG Ka-lau's concern over the consent arrangement as provided for under clause 16.</p>	
015103 - 015504	<p>Chairman Admin ALA4</p>	<p>In response to the enquiry of the Legal Adviser to the Bills Committee, the Administration advised that the proposed new provisions would take effect on a day to be appointed by the Secretary for Food and Health upon completion of the study to be conducted during the second stage eHR Programme on registered HCRs' choice over the scope of data sharing and after the relevant feature was technically ready for implementation.</p>	
015505 - 015856	<p>Chairman Admin</p>	<p><u>Examination of clause 17</u></p> <p>The Administration's advice that it would move CSAs to delete subclause (5)(g) in response to the concerns expressed by members and the Privacy Commissioner for Personal Data at previous meetings.</p>	
015857 - 020157	<p>Chairman Admin</p>	<p><u>Examination of clause 18</u></p>	
<i>Agenda item II: Any other business</i>			
020158 - 020208	<p>Chairman</p>	<p>Closing remarks</p>	