

立法會
Legislative Council

LC Paper No. CB(2)2218/14-15
(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 fourteenth meeting
held on Friday, 13 March 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Charles Peter MOK, JP (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Cyd HO Sau-lan, JP
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon Emily LAU Wai-hing, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Dr Hon Fernando CHEUNG Chiu-hung

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), CB(2)808/14-15(02), CB(2)837/14-15(01), CB(2)911/14-15(01), CB(2)956/14-15(01), CB(2)1019/14-15(01) to (02) 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 19 and examined up to clause 24.

3. The Bills Committee considered the Committee stage amendments proposed by the Administration to amend clause 20(1) to subject Government departments to similar criteria on the provision of healthcare as required of other healthcare providers ("HCP") for registration under the Electronic Health Record Sharing System ("eHRSS") under clause 17 as set out in the Annex to LC Paper No. CB(2)2308/13-14(02).

Follow-up actions required of the Administration

Admin

4. The Bills Committee requested the Administration to -

- (a) in respect of clauses 10 and 11 as well as clauses 22 and 23, which respectively provided for the suspension and cancellation of registration of a healthcare recipient ("HCR") and a registered HCP by the Commissioner for the Electronic Health Record ("eHRC") under the circumstances specified, in order to ensure procedural fairness, consider making express provisions in the Bill to provide that the HCR and HCP concerned would be given an opportunity to make representation before eHRC made a decision on whether or not to suspend or cancel their registration; and
- (b) in respect of clauses 10(1)(d), 11(1)(d), 22(1)(e) and 23(1)(e) which provided that eHRC might suspend or cancel the registration of an HCR or a registered HCP if eHRC was satisfied that the registration might impair the security or compromise the integrity of the eHRSS, consider making express provisions in the Bill to provide for the factors which eHRC would have to take

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into account in deciding whether a registration should be suspended or cancelled on the above grounds.

II. Any other business

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 31 March 2015, at 8:30 am.

6. There being no other business, the meeting ended at 10:33 am.

Council Business Division 2
Legislative Council Secretariat
9 October 2015

**Proceedings of the fourteenth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Friday, 13 March 2015, at 8:30 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>			
000707 - 000805	Chairman	Opening remarks	
000806 - 001306	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 26 February 2015 (LC Paper No. CB(2)1035/14-15(01)).	
001307 - 002451	Chairman Dr KWOK Ka-ki Admin Dr Elizabeth QUAT	<p>Dr Elizabeth QUAT's remarks that she did not support the proposal to delete clause 16 from the Bill having regard to the Administration's response.</p> <p>Dr KWOK-Ka Ki's remarks that while he had no particular views on the proposed arrangement under clause 16, he was concerned about whether the sharing consent to the Department of Health ("DH") and the Hospital Authority ("HA") was taken to have been given by a healthcare recipient ("HCR") when he or she gave a joining consent would cover a consent for a private healthcare provider ("HCP") participating in HA's public-private partnership ("PPP") programme to access the Electronic Health Record System ("eHRSS") to view the sharable data of that HCR.</p> <p>The Administration's advice that only those registered HCPs (including registered HCPs that had participated in HA's PPP programmes) that had been given an express sharing consent by a registered HCR could access eHRSS to obtain the sharable data of that HCR.</p> <p>The Administration's advice in response to Dr KWOK Ka-ki's enquiry that it would take a few days to process a registered HCR's request to revoke a sharing consent given to a registered HCP or withdraw from eHRSS; and Dr KWOK Ka-ki's view that the Administration should set out its performance pledge in this regard in the information notice for registered HCRs.</p>	
002452 - 003157	Chairman ALA4 Admin	The Legal Adviser to the Bills Committee's enquiry as reflected in her letter dated 3 March 2015 to the Administration (LC Paper No. CB(2)956/14-15(01)) that it was doubtful whether the exemption under section 63C of the Personal Data (Privacy) Ordinance (Cap. 486) was intended to cover emergency treatment on HCRs which were not necessarily related to a life-threatening situation on a rescue question, and whether it would be desirable to provide for an express exemption to cover that scenario; and the Administration's explanation as reflected in its reply to the letter (LC Paper No. CB(2)1019/14-15(02)).	

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003158 - 003640	Chairman Admin ALA4 Ir Dr LO Wai-kwok	Ir Dr LO Wai-kwok's expression of concurrence with the Administration's view that since exemptions under sections 59 and 63C of Cap. 486 were sufficient for the purpose of allowing access to an electronic health record ("eHR") of a registered HCR by an HCP under emergency situations, there was no need to provide an express exemption in the Bill.	
003641 - 003714	Chairman	The Administration was requested to provide a written response to the concerns raised in the letter dated 11 March 2015 from Dr Fernando CHEUNG (LC Paper No. CB(2)1031/14-15(01)).	Admin
003715 - 004044	Chairman Admin Dr Elizabeth QUAT	In response to Dr Elizabeth's QUAT's enquiry about when and how the Administration would effect the proposed new provisions relating to sharing restrictions, the Administration's advice that subject to the progress of the study on registered HCRs' choice over the scope of data sharing and the technical readiness of the relevant feature, the provisions would take effect from a date to be appointed by the Secretary for Food and Health and published in the Gazette.	
004045 - 004048	Chairman	Continuation of clause-by-clause examination of the Bill	
004049 - 004228	Chairman Admin	<u>Examination of clause 19</u>	
004229 - 004533	Admin Chairman Dr Helena WONG	<u>Examination of clause 20 and the relevant Committee stage amendments proposed by the Administration</u> The Administration's advice that on the suggestion of the Bills Committee and the Privacy Commissioner for Personal Data, it would move Committee stage amendments to amend clause 20(1) to subject Government departments to similar criteria on the provision of healthcare as required of other HCPs for registration under eHRSS under clause 17 as set out in the Annex to LC Paper No. CB(2)2308/13-14(02).	
004534 - 010447	Admin Chairman Dr Elizabeth QUAT Prof Joseph LEE	<u>Examination of clauses 21 to 24</u> The Chairman and Dr Elizabeth QUAT's enquiry about whether the registration of a registered HCP would be suspended or cancelled if the name of a registered healthcare professional engaged by that HCP to deliver healthcare had been removed from the relevant statutory register. The Administration's advice that - (a) members of the 13 statutory healthcare professionals would be identified and authenticated by a central healthcare professional registry when accessing eHRSS. The registry would be updated by the office of the Commissioner for the Electronic Health Record ("eHRC") on a monthly basis and when being notified by DH of the removal of the name of a healthcare professional from the relevant statutory register. This apart, registered HCPs would be required to timely inform the office of eHRC of	

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		<p>any update in the information they provided for registration under eHRSS, which included, among others, the healthcare professionals they engaged to perform healthcare at the relevant service location; and</p> <p>(b) for those registered HCPs that were medical clinics operated by individual registered medical practitioner and engaged no other statutory healthcare professionals to provide healthcare, they could no longer provide healthcare at the service location to which the registration related if the name of the registered medical practitioner concerned had been removed from the statutory register. Under clauses 22(1)(b) and 23(1)(b), eHRC might suspend or cancel the registration of these HCPs. As regards those registered HCPs that were medical clinics operated jointly by several registered medical practitioners, the removal of the name of one of these registered medical practitioners from the statutory register would not affect the access to eHRSS by the other registered medical practitioners.</p>	
010448 - 014614	<p>Chairman ALA4 Admin Ir Dr LO Wai-kwok Prof Joseph LEE Ms Cyd HO</p>	<p>Referring to her letter dated 10 February 2015 to the Administration (LC Paper No. CB(2)837/14-15(01)), the Legal Adviser to the Bills Committee's advice that in order to ensure procedural fairness, express provisions should be made under clauses 10 and 11 as well as clauses 22 and 23 to provide that the HCR and the registered HCP concerned be given an opportunity to make representations before eHRC made a decision on whether or not to suspend or cancel their registration. In the absence of such provisions, the HCR and the registered HCP concerned might challenge the decision of eHRC by way of judicial review.</p> <p>Pointing out that the District Cooling Services Bill had provided for a mechanism for appealing to a District Cooling Services Appeal Board against certain decisions made under the District Cooling Services Bill, Ir Dr LO Wai-kwok's view that a similar appeal mechanism should be provided for in the Bill.</p> <p>The Administration's elaboration of its rationale for not specifically providing for the representations by an HCR or registered HCP against the suspension or cancellation of registration, in particular that prompt action to suspend (not cancel) a registration was necessary under certain circumstances, as set out in LC Paper No. CB(2)911/14-15(01); and its advice that -</p> <p>(a) under clause 50, eHRC was empowered to require a registered HCP to produce records or documents in circumstances suggesting the happening of an event specified in subclause (2). These events were the same as those specified in clauses 22(1) and 23(1). Hence, the decision-making process of eHRC on whether or not to suspend or cancel the registration of a registered HCP would likely be a two-way interactive process during which the HCP concerned would be given the opportunity</p>	

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		<p>to provide information or clarification to eHRC before the latter made a decision in this regard; and</p> <p>(b) clause 55 had provided for an appeal against a decision of eHRC specified in the clause (including decision to suspend or cancel the registration of an HCR or a registered HCP) to be made to the Administrative Appeals Board ("AAB").</p> <p>Ir Dr LO Wai-kwok's suggestion that even if the Administration maintained the view that it was suffice for HCRs and HCPs who were aggrieved by the decision of eHRC to suspend or cancel their registration to appeal to AAB, it was necessary to make a cross reference to clause 55 in clauses 10, 11, 22 and 23.</p> <p>Prof Joseph LEE and Ms Cyd HO's view that while it was envisaged that eHRC would take administrative actions as appropriate to seek information or clarification from the HCR or registered HCP concerned before making the final decision to suspend or cancel a registration and prompt action to suspend a registration was necessary under certain circumstances, there was a need to make express provisions in the Bill to provide that an HCR or a registered HCP would be given an opportunity to make representation before eHRC made a decision on suspension or cancellation of the registration in order to ensure procedural fairness.</p> <p>The Administration was requested to revert in writing on whether it would propose any amendments to the relevant provisions to address members' concerns.</p> <p>On the Chairman's concern that there was no reference to the time limit on how long the suspension of an HCR and a registered HCP by eHRC could last in the relevant provisions, the Administration's advice that the duration of the suspension period would depend on individual circumstances in each case.</p> <p>In response to Ms Cyd HO's enquiry, the Administration's explanation that the suspension of a registration of a registered HCP would in effect make the eHR of a registered HCR not be made available to that HCP through eHRSS. The suspension would cease to have effect after eHRC was satisfied that there were no longer grounds for suspending the registration.</p>	Admin
014615 - 020352	Chairman ALA4 Admin Dr Helena WONG Prof Joseph LEE	<p>The Chairman's decision to extend the meeting to allow completion of the discussion of the issue.</p> <p>In response to the Legal Adviser to the Bills Committee's enquiry about the circumstances under which the registration of an HCR or an HCP might impair the security or compromise the integrity of eHRSS which might render eHRC to suspend or cancel the registration under clauses 10(1)(d), 11(1)(d), 22(1)(e) and 23(1)(e), the Administration's advice that examples included an HCR had provided wrong personal particulars that identified him or her as another HCR and an HCP's local electronic medical record ("eMR") systems had been infected</p>	

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		<p>by computer virus. It should, however, be noted that there were a variety of events that the registration concerned might impair the security or compromise the integrity of eHRSS and new factors or risks relating to security or integrity of eHRSS would emerge over time due to technological advancement.</p> <p>The Legal Adviser to the Bills Committee's suggestion that express provisions should be made in the Bill to provide for the factors which eHRC would have to take into account in deciding whether a registration should be suspended or cancelled on the above grounds.</p> <p>The Chairman's expression of understanding of the difficulty to list out the circumstances or factors exhaustively in the Bill; and Prof Joseph LEE's view that alternatively, the security best practices and controls to ensure physical and system security of the local eMR systems of HCPs could be stipulated in the code of practice to be issued by eHRC under clause 51.</p> <p>The Administration's advice that it would promulgate guidelines and conduct publicity to promote HCRs' and HCPs' understanding of the precautionary steps and security measures to ensure the security and integrity of eHRSS.</p> <p>The Administration was requested to provide a written response to the suggestion of the Legal Adviser to the Bills Committee.</p> <p>On Dr Helena WONG's enquiry as to whether the registered HCPs would be liable if their local eMR systems had been hacked or infected by computer virus and hence, had impaired the operation of eHRSS, the Administration's advice that clause 42 provided that a person committed an offence if the person (e.g. a hacker) knowingly impaired the operation of eHRSS. The question of whether the HCP concerned would be liable depended on, among others, whether that HCP had followed security best practices and controls for its local eMR system.</p> <p>The Chairman's remarks that the above issue could be further discussed during the examination of clause 42.</p>	Admin
<i>Agenda item II: Any other business</i>			
020353 - 020416	Chairman	Closing remarks	