

立法會
Legislative Council

LC Paper No. CB(2)2220/14-15
(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 sixteenth meeting
held on Tuesday, 14 April 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 Alan LEONG Kah-kit, SC
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon Cyd HO Sau-lan, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WU Chi-wai, MH
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, 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

Miss Queenie WU
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)986/14-15(01), CB(2)1019/14-15(02), CB(2)1031/14-15(01), CB(2)1145/14-15(03), CB(2)1151/14-15(01), CB(2)1215/14-15(01) to (05) 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. Members noted the Committee stage amendments ("CSAs") proposed by the Administration to clauses 10 and 22 to provide for a time limit of the suspension period of the registration of a healthcare recipient ("HCR") or a registered healthcare provider ("HCP"), details of which were set out in the Annex to LC Paper No. CB(2)1215/14-15(02). Members also noted that the Legal Adviser to the Bills Committee would follow up with the Administration on the drafting aspects of the above CSAs after the meeting.

3. Members agreed to scrutinize clauses 33 and 34 together with the response to be provided by the Administration in respect of the procedures for applying for use of identifiable data of a registered HCR contained in an electronic health record ("eHR") for research or statistics purpose under clauses 30 to 32 (i.e. item (c) of LC Paper No. CB(2)1215/14-15(01)), as well as clauses 53 and 54 concerning the establishment and the function of the Electronic Health Record Research Board at a future meeting.

4. The Bills Committee examined clause 35 of the Bill.

Follow-up actions required of the Administration

Admin

5. The Bills Committee requested the Administration to -

- (a) in respect of the use of data and information contained in the eHR of a registered HCR for improvement of the healthcare provided, or to be provided, to the HCR concerned,
 - (i) address members' concern that the geographical restriction (i.e. the relevant healthcare activity was to be performed in Hong Kong by a healthcare professional for an individual as provided for in the definition of "healthcare" under clause

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- 2(1)) might prejudice the interests of HCRs when there was a need for the activity to be performed outside Hong Kong; and
- (ii) if it was considered necessary to impose a geographical restriction to the relevant healthcare activity to be performed under the Bill, consider the suggestion from a member that any reference to the geographical location should be made in relation to "healthcare professional" and "HCP" but not in relation to "healthcare" by reference to the relevant healthcare activity; and
- (b) in respect of clause 35 which required prescribed HCPs to take reasonable steps to ensure that their electronic medical record systems did not impair the security or compromise the integrity of the Electronic Health Record Sharing System ("eHRSS"),
- (i) provide for members' reference information on the relevant requirements of other jurisdictions; and
 - (ii) consider -
 - (A) deleting the clause if such requirement would be covered in the code of practice to be issued by the Commissioner for the Electronic Health Record ("eHRC") under clause 51, or
 - (B) amending the clause to -
 - (I) specify clearly as to what would constitute "impair the security or compromise the integrity of eHRSS" and the "reasonable steps" required of an HCP; and
 - (II) provide for the consequences of contravention of the clause, which, according to the Administration, included suspension or cancellation of the HCP's registration, and requiring the production of records or documents specified by eHRC as provided for under clauses 22(1)(e), 23(1)(e) and 50(2)(e) respectively.

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II. Any other business

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 28 April 2015 at 10:45 pm.
7. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 2
Legislative Council Secretariat
9 October 2015

**Proceedings of the sixteenth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 14 April 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>			
000616 - 000819	Chairman	Opening remarks	
000820 - 001223	Chairman Admin ALA4	<p>Briefing by the Administration on its response to issues raised at the meeting on 31 March 2015 (LC Paper No. CB(2)1215/14-15(02)).</p> <p>The Legal Adviser to the Bills Committee's remarks that she would follow up with the Administration on the drafting aspects of the Administration's proposed Committee stage amendments to clauses 10 and 22 after the meeting.</p>	
001224 - 001846	Chairman Admin	Briefing by the Administration on its reply letter to the Legal Adviser to the Bills Committee's letter dated 8 April 2015 (LC Paper No. CB(2)1215/14-15(04)).	
001847 - 002029	Chairman ALA4 Admin	<p>The Legal Adviser to the Bills Committee's concern that the policy intent that a healthcare activity had to be performed "in Hong Kong" by a healthcare professional was only reflected in the definition of "healthcare" but not in the substantive provisions of clause 2(1); and her enquiry about the legal consequences for the act of a statutorily registered healthcare professional who used the data and information contained in the Electronic Health Record Sharing System ("eHRSS") for an healthcare activity performed outside Hong Kong.</p> <p>The Administration's advice that the definition of "healthcare" in clause 2(1) made it clear that, in relation to an individual, "healthcare" meant an activity performed in Hong Kong and there was no need to repeat the same in the substantive provisions of the Bill.</p>	
002030 - 004744	Chairman Admin ALA4 Mr Alan LEONG	<p>The Administration's advice in response to the enquiries of the Chairman and Mr Alan LEONG that -</p> <p>(a) a registered healthcare recipient ("HCR") who wished to show his or her electronic health record ("eHR") kept in eHRSS to an overseas healthcare provider ("HCP") could make a data access request to the Commissioner for the Electronic Health Record ("eHRC") and then forward a copy of his or her eHR to the overseas HCP; and</p> <p>(b) the reason for imposing geographical restrictions under the Bill in not allowing HCPs without any service location in Hong Kong and healthcare professionals not statutorily registered in Hong Kong to access to eHRSS was to safeguard the interest of the registered HCRs as</p>	

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		<p>the ordinance (if enacted) could not be enforced outside Hong Kong. It followed that the use of the data and information contained in the eHR of a registered HCR should be for improvement of healthcare to be performed in Hong Kong. That said, it was not the Administration's policy intent to prejudice the interests of the registered HCRs when there was a need for the healthcare activity to be performed outside Hong Kong.</p> <p>View of the Chairman and Mr Alan LEONG that the proposed geographical restriction in respect of the location where the healthcare was performed should be relaxed, as it would suffice for the Bill to require an HCP's registered service location had to be in Hong Kong and its healthcare professional(s) had to be statutorily registered in Hong Kong in order to safeguard the privacy of registered HCRs. The Bill should be amended to allow a statutorily registered healthcare professional of a prescribed HCP to access to eHRSS for providing urgent medical advice to a registered HCR in Hong Kong while that healthcare professional (or vice versa, that HCR) was travelling abroad, or for seeking overseas medical advice for the healthcare to be performed by himself or herself in Hong Kong. In response, the Administration undertook to consider members' views and revert in writing.</p> <p>The Legal Adviser to the Bills Committee's remark that the issue could be discussed together with the Administration's response to be provided in respect of the legal liability in the use of data and information contained in eHRSS by eHRC and HCPs, particularly where the activity or service was performed outside Hong Kong by an healthcare professional for a registered HCR (i.e. item (e) in LC Paper No. CB(2)1215/14-15(01)).</p>	Admin
004745 - 005125	Chairman Admin	Briefing by the Administration on its response to the letter dated 11 March 2015 from Dr Fernando CHEUNG (LC Paper No. CB(2)1215/14-15(05)).	
005126 - 011723	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's enquiry about -</p> <p>(a) the criteria to be adopted by eHRC or a prescribed HCP in deciding whether a grown-up HCR, who was not mentally incapacitated as defined by section 2(1) of the Mental Health Ordinance (Cap. 136), was capable of managing his or her own affairs and giving a joining or sharing consent at the relevant time, and hence whether the substitute decision maker ("SDM") arrangement under clause 3 should come into play; and</p> <p>(b) the measures to be put in place by the Administration to ensure that vulnerable HCRs, in particular those residing in residential care homes, would be aware of the launch of eHRSS so as to give thought to whether to register for eHRSS.</p> <p>The Administration's advice that -</p>	

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		<p>(a) an HCR who was not a minor would be assumed by default to be capable of making decisions on matters relating to his or her participation in eHRSS unless there was clear evidence to the contrary. The decision of an HCR who was incapable of managing his or her other affairs but capable of giving a joining or sharing consent would prevail over the decision of an eligible SDM. In practice, eHRC or a prescribed HCP would only accept an SDM making decisions on behalf of an HCR if that SDM accompanying the HCR concerned at the relevant time could provide documentary proof (e.g. court order or medical certificate) of that HCR's incapacity of giving consent. The above operational details would be set out in the code of practice ("the CoP") to be issued by eHRC under clause 51; and</p> <p>(b) upon the launch of eHRSS, registration counters would be set up at public healthcare facilities and outreaching teams of the office of eHRC would visit the residential care homes to facilitate HCRs to register for eHRSS. Frontline healthcare personnel of the Hospital Authority and the Department of Health would also be encouraged to actively seek the consents of HCRs for joining eHRSS during consultation. It should also be noted that those residential care homes which were eligible for registration as HCPs for eHRSS under clause 17(5)(d) and (e) could also register their residents for eHRSS if these HCRs were capable of giving joining consent.</p>	
011724 - 012440	Chairman Dr KWOK Ka-ki Admin	On Dr KWOK Ka-ki's view that the Bill should allow a statutorily registered healthcare professional's access to eHRSS for using a registered HCR's data and information contained therein for a healthcare activity performed outside Hong Kong, the Administration's reiteration of its position and undertaking in this regard.	
012441 - 012454	Chairman	Continuation of clause-by-clause examination of the Bill	
012455 - 012624	Chairman Admin	Members agreed to scrutinize clauses 33 and 34 together with the response to be provided by the Administration in respect of the procedures for use of identifiable data for research or statistics purpose (i.e. item (c) of LC Paper No. CB(2)1215/14-15(01)) and clauses 53 and 54.	
012625 - 015856	Chairman Dr KWOK Ka-ki Admin Mr Alan LEONG	<p><u>Examination of clause 35</u></p> <p>Dr KWOK Ka-ki's view that clear guidelines should be made available for reference of registered HCPs on what would constitute "reasonable steps" required of registered HCPs to ensure that their electronic medical record systems would not impair the security or compromise the integrity of eHRSS; and the enquiry of the Chairman and Mr Alan LEONG about the legal consequences of non-compliance with clause 35.</p>	

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		<p>The Administration's advice that -</p> <p>(a) examples of "reasonable steps" in the context of clause 35 included measures of physical control and installation of anti-virus software. A working group set up under the Steering Committee on Electronic Health Record Sharing had been working closely with the private HCPs on the security requirements in this regard. Guidelines would be provided to registered HCPs upon their registration; and</p> <p>(b) eHRC might suspend or cancel the registration of a registered HCP under clauses 22(1) and 23(1) if he or she reasonably suspected or was satisfied that the HCP concerned contravened a provision of the ordinance (if enacted), or the registration might impair the security or compromise the integrity of eHRSS. Under clause 50(2)(e), eHRC might in writing require a registered HCP to produce records or documents if it appeared that the registration might impair the security or compromise the integrity of eHRSS. It should, however, be noted that unless an action of non-compliance with clause 35 in itself constituted an offence under the Bill or other law in Hong Kong, non-compliance with the clause in itself would not directly impose on a prescribed HCP any civil or criminal liability.</p> <p>Concern of the Chairman, Mr Alan LEONG and Dr KWOK Ka-ki that the requirement of clause 35 was not clear. The Administration was requested to provide information on the requirements in other jurisdictions that are similar to that provided under clause 35; and consider deleting the clause if the relevant requirements would be covered in the CoP, or amending the clause to -</p> <p>(a) specify clearly as to what would constitute "impair the security or compromise the integrity of eHRSS" and "reasonable steps" required of an HCP; and</p> <p>(b) provide for the consequences of contravention of the clause, which, according to the Administration, included suspension or cancellation of the HCP's registration, and requiring the production of records or documents specified by eHRC as provided for under clauses 22(1)(e), 23(1)(e) and 50(2)(e) respectively.</p>	Admin
<i>Agenda item II: Any other business</i>			
015857 - 015937	Chairman	Closing remarks	