

立法會
Legislative Council

LC Paper No. CB(2)707/15-16
(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 eighteenth meeting
held on Tuesday, 5 May 2015, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Charles Peter MOK, JP (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
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

Members absent : Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon CHEUNG Kwok-che
Hon WU Chi-wai, MH
Hon CHAN Han-pan, 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

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

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)911/14-15(01), CB(2)956/14-15(01), CB(2)986/14-15(01), CB(2)1019/14-15(02), CB(2)1145/14-15(03), CB(2)1151/14-15(01), CB(2)1215/14-15(02) to (04), CB(2)1355/14-15(01) to (02), CB(2)1398/14-15(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. Members noted the Committee stage amendments ("CSAs") proposed by the Administration to delete clauses 37(2)(a) and 38 to remove the prohibition on a person authorized in writing by the healthcare recipient ("HCR") from making a data access request or a data correction request to data of the HCR contained in the Electronic Health Record Sharing System.

3. The Bills Committee continued clause-by-clause examination of the Bill from clause 38 and examined up to clause 49.

Follow-up actions required of the Administration

Admin

4. The Bills Committee requested the Administration to -

- (a) in respect of the element of dishonesty under clauses 41(6)(b)(ii), (iii) and (iv), provide information about the offences in other ordinances which included dishonesty as an essential ingredient of the offence;
- (b) in respect of the expression "with a dishonest intent to deceive" in clause 41(6)(b)(ii), the drafting of which was modeled on section 161(1)(b) of the Crimes Ordinance (Cap. 200),
 - (i) consider revising the drafting of the clause, having regard to a member's view that reference to "dishonest" was redundant and should be deleted; and
 - (ii) advise whether there were any convicted cases whereby the defendant was charged with obtaining access to a computer with a dishonest intent to deceive, contrary to

Action

section 161(1)(b) of the Crimes Ordinance; and

- (c) clarify what would be regarded as causing "serious harm" under clause 46(8)(c), which exempted the application of clause 46(1) to (6) to the use or provision of data and information contained in an electronic health record (or a copy of the data and information) of another person, not for gain, for the purpose of offering, or advertising the availability, of social and healthcare services that, if not provided, would be likely to cause serious harm to the physical or mental health of the individual to whom the services were intended to be provided or any other individual.

II. Any other business

- 5. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
19 January 2016

**Proceedings of the eighteenth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 5 May 2015, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000703 - 000924	Chairman	Opening remarks The Chairman's remark that if the Bills Committee could complete scrutiny of the Bill in early June 2015, it was expected that the Second Reading debate on the Bill would be resumed in the 2015-2016 legislative session.	
000925 - 001450	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 28 April 2015 (LC Paper No. CB(2)1398/14-15(01)).	
001451 - 002858	Chairman Dr KWOK Ka-ki Admin ALA4	Dr KWOK Ka-ki's enquiry as to whether it was allowed under the Bill for (a) access to the Electronic Health Record Sharing System ("eHRSS") outside Hong Kong by a statutorily registered healthcare professional of a prescribed healthcare provider ("HCP") for improving the healthcare for a registered healthcare recipient ("HCR"); and (b) a prescribed HCP to provide the data and information contained in the electronic health record ("eHR") of a registered HCR kept in eHRSS to an overseas HCP for healthcare purpose. The Administration replied in the positive to (a) and elaborated its response given in LC Paper No. CB(2)1321/14-15(03) on the use of data in eHRSS for improving the healthcare performed outside Hong Kong. As regards (b), the arrangement under eHRSS would follow the existing practice that an HCP might disclose the health records of an HCR under his or her care to another HCP when the HCR concerned had given a written consent for the disclosure, or the disclosure was exempted from the requirement for obtaining consent under Data Protection Principle 3 of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance") under emergency situations. In response to Dr KWOK Ka-ki's enquiry, the Administration's advice that an HCP should exercise due care in considering a request from another HCP for obtaining a copy of the health record of the HCR under his or her care.	
002859 - 002916	Chairman	Continuation of clause-by-clause examination of the Bill	
002917 - 002938	Chairman Admin	<u>Examination of clause 38</u> Members noted that the Administration would move Committee stage amendments ("CSAs") to delete clauses 37(2)(a) and 38 in response to the concern raised by members and the Privacy	

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		Commissioner for Personal Data ("PCPD") at previous meetings of the Bills Committee.	
002939 - 003429	Chairman Admin	<u>Examination of clauses 39 to 40</u>	
003430 - 004624	Chairman Admin Dr Helena WONG	<p><u>Examination of clause 41</u></p> <p>In response to Dr Helena WONG's enquiry about whether a prescribed HCP could modify the eHR of a registered HCR kept in eHRSS; and what would constitute an act of "knowingly damage data or information contained in an eHR" under clause 41(4), the Administration's advice that -</p> <p>(a) the design of eHRSS was that the original data would not be overwritten when a change was made. Any changes made would be appended to the original record and highlighted for reference of other HCPs who subsequently accessed the eHR; and</p> <p>(b) hacking of eHRSS which caused damage to the data and information contained in eHR without lawful excuse would constitute an offence under clause 41(4). The servers of eHRSS would conduct daily back-up in order to protect the data and information contained in eHR.</p>	
004438 - 005310	Chairman Admin	<p>In response to the Chairman's enquiry as to whether the act of providing false and misleading information in an eHR of a registered HCR would constitute an offence under clause 41, the Administration's advice that a person knowingly caused modification of, or impairment to the reliability of, the data or information contained in an eHR with an intent specified under clause 41(6)(b) would be liable on conviction on indictment to imprisonment for five years.</p> <p>The Chairman's request for the Administration to provide a written response to explain the legal interpretation of the element "dishonest" in clause 41(6)(b)(ii), (iii) and (iv) and provide information about the offences in other ordinances which included dishonesty as an essential ingredient of the offence.</p>	Admin
005311 - 005807	Chairman Mr Alan LEONG Admin	<p>Mr Alan LEONG queried the need to draft clause 41(6)(b)(i) to (iv) with essentially the same wordings as that of section 161(1)(a) to (d) of the Crimes Ordinance (Cap. 200). In respect of the expression "with a dishonest intent to deceive" in clause 41(6)(b)(ii), the Administration was requested to -</p> <p>(a) consider revising the drafting of the clause, having regard to Mr Alan LEONG's view that reference to "dishonest" was redundant and should be deleted; and</p> <p>(b) advise on the number of convicted cases whereby defendants were charged with obtaining access to a computer with a dishonest intent to deceive, contrary to section 161(1)(b) of the Crimes Ordinance.</p>	Admin

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005808 - 010944	Chairman Mr Alan LEONG Admin	<p>Mr Alan LEONG's concern about the need for the Bill to provide for the provisions in Part 4 (under which the Administration would move CSAs to delete clauses 37(2)(a) and 38 at the suggestion of members and PCPD) to specify the application to data or information that was personal data under the Privacy Ordinance; and his view that the present drafting of clause 40 was difficult to comprehend.</p> <p>The Administration's response that the provisions are required in order to make it clear that a reference to a minor in the Privacy Ordinance was a reference to a person below 16 years of age (as defined in clause 2(1) of the Bill); the further duty of the Commissioner for the Electronic Health Record ("eHRC") in certain circumstances; and that a contravention of a requirement under a provision of the Privacy Ordinance that had effect subject to Part 4 of the Bill was to be regarded as a contravention of a requirement under that Ordinance.</p>	
010945 - 011115	Chairman	<p>The Chairman drew members' attention that the Bills Committee had discussed at previous meetings PCPD's suggestions that unauthorized access by means other than the use of a computer, and uses of data or information contained in eHR for purposes other than that for which the data and information was collected should be made offences under the Bill and taken note of the Administration's position that it had no intention to move any CSAs in this regard.</p>	
011116 - 011448	Chairman Admin	<p><u>Examination of clauses 42 to 45</u></p>	
011449 - 013922	Chairman Admin Dr KWOK Ka-ki	<p><u>Examination of clause 46</u></p> <p>Dr KWOK Ka-ki's concern that clause 46 might render the act of private HCPs which used the data and information contained in eHR of the registered HCRs to promote the availability of public-private partnership programmes (such as the vaccination schemes) at their service locations an offence under clause 46; and the enquiry of the Chairman and Dr KWOK Ka-ki about what would be regarded as causing "serious harm" to the physical or mental health of the individual to whom the services were intended to be provided or any other individual under clause 46(8)(c).</p> <p>The Administration's advice that -</p> <p>(a) the drafting of clause 46(8)(c) was modeled on section 35I(1)(c) of the Privacy Ordinance, which provided for offences relating to direct marketing using personal data in general. Where necessary, private HCPs could use the personal data of HCRs contained in their own records (such as those kept in their own electronic medical record systems), rather than that obtained from eHRSS, to promote their services through direct marketing means in compliance with the relevant requirements of the Privacy Ordinance; and</p>	

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		(b) it would provide a written response to clarify what would be regarded as causing "serious harm" under clause 46(8)(c), which exempted the application of clauses 46(1) to (6) to the use or provision of data and information contained in an electronic health record (or a copy of the data and information) of another person, not for gain, for the purpose of offering, or advertising the availability, of social and healthcare services that, if not provided, would be likely to cause serious harm to the physical or mental health of the individual to whom the services were intended to be provided or any other individual.	Admin
013923 - 015446	Chairman ALA4 Admin Dr KWOK Ka-ki	<p>Citing a court case as an example concerning a doctor of a public hospital who used the personal data of HCRs kept in the clinical management system of the Hospital Authority for marketing his to-be-opened-soon private practice where the doctor was charged with both section 161(1)(c) of the Crimes Ordinance (Cap. 200) and the offence of Misconduct in public office contrary to Common Law but was only convicted in respect of the latter charge, the Legal Adviser to the Bills Committee expressed concern about the effectiveness of the provisions concerning offences under the Bill, in particular clause 41(6) which was modeled on section 161 of the Crimes Ordinance, to safeguard the data privacy of the registered HCRs.</p> <p>On the concern of the Chairman and Dr KWOK Ka-ki about whether clause 41(6) or section 161 of the Crimes Ordinance would be invoked for handling cases involving illegal access specific to the data or information contained in eHR of registered HCRs, the Administration's advice that in determining which legal provisions should be invoked when pressing charges, the law enforcement agent would give due regard to the individual circumstances of each case. In general, the more specific provisions would be invoked.</p> <p>In response to Dr KWOK Ka-ki's enquiry, the Administration's elaboration of the respective penalties of the offences relating to accessing, damaging or modifying data or information and direct marketing in the context of eHRSS as set out in clauses 41 and 46.</p>	
015447 - 015548	Chairman Admin	<u>Examination of clause 47</u>	
015549 - 020003	Admin Chairman	<u>Examination of clause 48</u> In response to the Chairman's concern about whether there was any limitation to the scope of the functions and powers whereby eHRC could delegate to a person whom eHRC appointed in writing by virtue of clause 48(3), the Administration's advice that the appointment so made should be for assisting eHRC to perform a function and exercise a power. There were similar provisions in other ordinances.	

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020004 - 020133	Chairman Admin	<u>Examination of clause 49</u>	
<i>Agenda item II: Any other business</i>			
020134 - 020146	Chairman	Closing remarks	

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