

立法會
Legislative Council

LC Paper No. CB(2)708/15-16
(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 nineteenth meeting
held on Tuesday, 12 May 2015, at 10:45 am
in Conference Room 3 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
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan

Members absent : Dr Hon LEUNG Ka-lau
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, 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

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
Acting Senior Assistant Law Officer (Civil Law)
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 Louisa YU
Clerical 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(01) to (04), CB(2)1321/14-15(04), CB(2)1355/14-15(02), CB(2)1425/14-15(01) to (02), CB(2)1455/14-15(01) to (02) and CB(3)575/13-14]

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

Follow-up to issues arising from previous meetings

2. Members agreed to discuss the Administration's written response to issues relating to the use of identifiable electronic health record for research and statistics (LC Paper No. CB(2)1455/14-15(01)) during the examination of clauses 53 and 54 concerning the establishment and function of the Electronic Health Record Research Board.

Clerk 3. Members agreed that the Bills Committee should write to the Secretary for Justice to request for the statistics concerning the breakdown of the 114 cases convicted, between 2011 and 2013, under section 161 of the Crimes Ordinance (Cap. 200) by the subsections of section 161(1) of the Ordinance.

Continuation of clause-by-clause examination of the Bill

4. The Bills Committee examined clause 50 of the Bill.

Follow-up actions required of the Administration

Admin 5. The Bills Committee requested the Administration to -

- (a) in respect of the drafting of clause 41(6)(b),
 - (i) review whether it was more appropriate to use "at the time" and "at a future time" instead of "on the same occasion" and "on any future occasion" in the English text; and if not, consider -
 - (A) replacing the word "any" in the phrase "on any future occasion" with "a"; and

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- (B) amending the Chinese renditions "同時" and "在日後任何時間" to more accurately reflect the meaning of the English text; and
- (ii) review the drafting of the Chinese text with a view to making the clause more comprehensible and readable;
- (b) in respect of clause 48(1)(h) which provided that the Commissioner for the Electronic Health Record ("eHRC") had the function to devise a mechanism for handling complaints relating to the operation of the Electronic Health Record Sharing System ("eHRSS"),
 - (i) consider to stipulate in the Bill the manner and form in which complaints were to be made and handled; and
 - (ii) advise the proposed procedures for handling complaints relating to the operation of eHRSS;
- (c) in respect of clause 50 which empowered eHRC to require a registered healthcare provider to produce records or documents in certain circumstances,
 - (i) given that the term "document" was not defined in the Bill, review whether it was sufficient for the Bill to rely on the definition of "document" in the Interpretation and General Clauses Ordinance (Cap. 1) for requiring the healthcare providers concerned to produce, on request, documents in electronic or any other forms;
 - (ii) consider replacing "registered healthcare provider" with "prescribed healthcare provider" in subclause (1) in order to subject the Department of Health and the Hospital Authority to the requirement;
 - (iii) advise the policy intent for using the expression "in the healthcare provider's possession" but not "in the possession or under the control of the healthcare provider" in subclause (1)(b); and
- (d) provide the draft code of practice to be issued by eHRC under clause 51 for reference of the Bill Committee.

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II. Any other business

6. Members noted that the next meeting would be held on Monday, 18 May 2015, at 10:45 am.

7. There being no other business, the meeting ended at 12:58 pm.

Council Business Division 2
Legislative Council Secretariat
19 January 2016

**Proceedings of the seventeenth meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 28 April 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000226 - 000417	Chairman	Opening remarks	
000418 - 000624	Chairman Admin	Briefing by the Administration on its further response to issues raised at the meeting on 31 March 2015 (LC Paper No. CB(2)1321/14-15(01)).	
000625 - 000846	Chairman Ms Emily LAU Admin	In respect of clauses 30, 31 and 32, Ms Emily LAU's request for the Administration to invite views from patient groups for rare diseases on the use of identifiable data of a healthcare recipient ("HCR") contained in the electronic health record ("eHR") for carrying out research, or preparing statistics, that were relevant to public health or public safety.	Admin
000847 - 002109	Chairman Admin	<p>Referring to Professor John Bacon-Shone's concern about the re-identification risk of the non-identifiable data of an HCR contained in an eHR being used for research or statistics purpose as detailed in his submission dated 18 March 2015 (Appendix VII to LC Paper No. CB(2)1145/14-15(03)), the Chairman's enquiry about the criteria for determining which types of data should be removed in order to lower the risk of re-identification.</p> <p>The Administration's advice that applications for use of non-identifiable data would be considered by the Commissioner for the Electronic Health Record ("eHRC"), while those for use of identifiable data would be considered by the Secretary for Food and Health based on the recommendations of the Electronic Health Record Research Board ("the eHR Research Board"). Careful review of the eHRs concerned would be conducted to remove any data that would pose the risk of re-identification as far as possible. Conditions of approval for individual studies might also include special requirements on safeguarding privacy. As undertaken at the meeting on 31 March 2015, the Administration would provide in due course guidelines of the Hospital Authority etc. relating to the review considerations for similar research applications.</p> <p>Members agreed that the issue could be further discussed when scrutinizing clauses 53 and 54 on the establishment and the function of the eHR Research Board.</p>	
002110 - 002529	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 14 April 2015 (LC Paper No. CB(2)1321/14-15(03)).	

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002531 - 002600	Chairman	Members noted the Administration's proposed Committee stage amendments ("CSAs") to amend the definition of "healthcare" in clause 2(1) and clause 17, and make relevant consequential amendments, in order to relax the geographical restriction in respect of the location of the healthcare performed.	
002601 - 003436	Chairman ALA4	<p>The Legal Adviser to the Bills Committee's remark that -</p> <ul style="list-style-type: none"> (a) there was no provisions in the Bill to provide that a healthcare professional could only access the Electronic Health Record Sharing System ("eHRSS") in Hong Kong. The Bill did not contain any extraterritorial provision. She was concerned that if a healthcare professional accessed eHRSS inappropriately at a place outside Hong Kong, whether eHRC was empowered to regulate such access under the Bill. She also enquired would there be any issue that the healthcare professional was practising medicine outside Hong Kong; (b) the main targets of the eHRSS developed under the first stage Electronic Health Record Programme as set out in paragraph 3 of the Legislative Council Brief (File Ref.: FH CR 1/1/3781/10) did not seem to cover the use of the data and information contained in eHRSS for healthcare purpose by healthcare professionals in places outside Hong Kong; (c) while the sharing consent given by a registered HCR under clause 12 was for a prescribed healthcare provider ("HCP") with a service location (at which healthcare was provided) in Hong Kong to provide to and obtain from eHRSS any sharable data of the HCR concerned, it could well be technically possible for the statutorily registered healthcare professionals working for the prescribed HCPs to access eHRSS for the data and information of a registered HCR outside Hong Kong for improvement of healthcare given that the Bill could not be enforced outside Hong Kong, she was concerned about how could such access be regulated; and (d) section 33 of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance") (which had not yet come into operation) prohibited the transfer of personal data to places outside Hong Kong except in specified circumstances. Those circumstances included, among others, the data subject had consented in writing to the transfer, and the transfer fell within the exemptions under Part VIII of the Privacy Ordinance (such as that for emergency situations). 	
003437 - 003950	Chairman Dr LEUNG Ka-lau	The Chairman's concern as to whether access to eHRSS outside Hong Kong by a statutorily registered healthcare professional of a prescribed HCP would constitute transfer of personal data to places outside Hong Kong under section 33 of the Privacy Ordinance.	

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		<p>Dr LEUNG Ka-lau's view that it should be permissible for healthcare professionals of prescribed HCPs to access eHRSS outside Hong Kong for improvement of healthcare given that many Hong Kong residents were residing on the Mainland; and his enquiry about the rationale for only allowing those healthcare professionals who had registered under the relevant ordinances in Hong Kong to access eHRSS for the purpose of improving healthcare provided to the registered HCRs.</p>	
003951 - 005430	Admin Chairman Dr LEUNG Ka-lau	<p>The Administration's elaboration of its reply 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 and the CSAs to be proposed by the Administration in this regard. The Administration's further advice that the Bill as currently drafted had reflected the policy intent of promoting two-way sharing of eHR of HCRs amongst the public and private HCPs for the benefit of HCRs. The Bill did not have specific clauses to preclude statutorily registered healthcare professionals of prescribed HCPs from accessing eHRSS outside Hong Kong. However, it did not provide for a healthcare professional not statutorily registered in Hong Kong to access eHRSS as it would be difficult to follow up on cases of non-compliance. In the view of the Administration, the provisions of the Bill would not contravene section 33 of the Privacy Ordinance when the latter came into operation.</p> <p>In response to Dr LEUNG Ka-lau's enquiry, the Administration's advice that it would move CSAs to add a new clause 35A as set out in Annex A to LC Paper No. CB(2)808/14-15(02) such that it was the duties of a prescribed HCP to take reasonable steps to ensure that access to any health data of a registered HCR was restricted to a healthcare professional of the HCP concerned who might perform healthcare for the HCR, and the access was restricted to the health data that might be relevant for performing healthcare for the HCR, in order to reflect expressly the "need-to-know" principle.</p>	
005431 - 010803	Ms Emily LAU Chairman Admin	<p>Ms Emily LAU's view that a proper balance should be struck between protecting the privacy of the data and information of the registered HCRs contained in eHRSS and allowing healthcare professionals' access to such data and information for improvement of healthcare in places outside Hong Kong so as to safeguard the interest of HCRs. The Bills Committee could write to the Privacy Commissioner for Personal Data ("PCPD") to invite his comments on the implications of section 33 of the Privacy Ordinance on the operation of the Bill.</p> <p>On Ms Emily LAU's enquiry about the mechanism for an overseas HCP to obtain without consent the eHR and/or other medical records of an HCR for the purpose of performing emergency treatment for the HCR concerned outside Hong Kong, the Administration's advice that for cases where emergency access of the eHR of an HCR in eHRSS by a statutorily registered healthcare professional was necessary in tandem with the carrying out of emergency treatments on that</p>	

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		<p>HCR, the healthcare professional concerned could access the eHR without consent under section 63C of the Privacy Ordinance. The disclosure of the eHR and/or other medical records of an HCR by an HCP for another HCP outside Hong Kong for healthcare purpose would be subject to the professional judgment of, and the relevant codes of conduct for, the healthcare professionals concerned, as well as the relevant provisions in the Privacy Ordinance.</p> <p>Ms Emily LAU's request for the Administration to provide for members' reference information on the number of cases handled by the HA in the past regarding provision of health data of its patients to another HCP outside Hong Kong for healthcare purpose, if available.</p>	Admin
010804 - 012442	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's enquiry about whether a prescribed HCP could transfer the eHR of a registered HCR, without the latter's consent, to a place outside Hong Kong where the personal data so transferred could not be afforded a level of protection comparable to that under the Privacy Ordinance.</p> <p>The Administration's advice that a data user, including a prescribed HCP, was required to comply with any one of the exceptions as specified under section 33(2) of the Privacy Ordinance in order to remove the cross-border transfer restrictions when the section came into operation. An exception was that the place was specified by PCPD by notice in the Gazette that he or she had reasonable grounds for believing that there was in force any law which was substantially similar to, or served the same purposes as, the Privacy Ordinance. Another exception was that the data subject had consented in writing to the transfer.</p> <p>In response to Dr Fernando CHEUNG's enquiries about whether healthcare professionals of an HCP located at a place outside Hong Kong could access to eHRSS and enforcement actions provided for under the Bill against any access to eHRSS not on a "need-to-know" basis as required of under the newly added clause 35A, the Administration's reiteration of the requirements for an HCP's registered service location(s) to be in Hong Kong and for its healthcare professional(s) to be statutorily registered in Hong Kong. The Administration further advised that under clauses 22(1) and 23(1) of the Bill, eHRC might suspend or cancel the registration of a registered HCP if he or she suspected or was satisfied that the HCP contravened a provision of the future Ordinance. Whether an access not on a "need-to-know" basis would impose on a person any criminal liability would depend on whether the access itself constituted an offence under clauses 41 to 46 of the Bill or any other laws in Hong Kong. Health professionals concerned might also be subject to disciplinary action by their boards and councils.</p>	
012443 - 014753	Chairman Mr Alan LEONG Admin	Mr Alan LEONG's view that the privacy of the data and information of a registered HCR in eHRSS was adequately safeguarded under the Bill as only that HCR (through the	

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		<p>making of a data access request) and the prescribed HCPs which had obtained sharing consent from the HCR concerned could access such data and information and forward the copy of such data and information to an overseas HCP for the performance of emergency treatment outside Hong Kong.</p> <p>On Mr Alan LEONG's enquiry about the rationale for the Administration's proposed CSA to add "in Hong Kong" in the definition of "healthcare recipient" under clause 2(1), the Administration's advice that this was among the consequent amendments following the CSA to remove "in Hong Kong" in the definition of "healthcare" in clause 2(1), and was meant to make it clear that only those individuals for whom healthcare had been performed, was performed, or was likely to be performed in Hong Kong could register as a registered HCR under eHRSS.</p>	
013909 - 014844	Chairman Mr Alan LEONG Admin ALA4	<p>On the concern of the Chairman and Mr Alan LEONG about the implication of section 33 of the Privacy Ordinance on the operation of the Bill, the Legal Adviser to the Bills Committee's remark that section 33 of the Privacy Ordinance might come into play when a statutorily registered healthcare professional of a prescribed HCP accessed eHRSS at a place outside Hong Kong for improvement of healthcare of a registered HCR, and when a statutorily registered healthcare professional of a prescribed HCP disclosed the health record of a registered HCR in eHRSS to an overseas HCP for healthcare purpose.</p> <p>The view of Mr Alan LEONG and Ms Emily LAU that the coming into operation of section 33 of the Privacy Ordinance in the future should not render the healthcare professionals concerned unable to access eHRSS at a place outside Hong Kong or disclose the health record of a registered HCR in eHRSS to an overseas HCP for healthcare purpose in order to safeguard the interests of the registered HCRs.</p> <p>The Administration's reiteration that the provisions of the Bill as currently drafted did not contravene section 33 of the Privacy Ordinance. In addition, it would propose CSAs to amend the definition of "healthcare" in clause 2(1) and clause 17 in order to relax the geographical restriction in respect of the location of the healthcare performed.</p> <p>Members' agreement for the Bills Committee to write to PCPD to invite his comments on the implication of section 33 of the Privacy Ordinance on the operation of the Bill.</p>	Clerk
014845 - 014903	Chairman	Continuation of clause-by-clause examination of the Bill	
014904 - 015019	Chairman Admin	<u>Examination of the CSAs proposed by the Administration to delete clause 35</u> (Annex B to LC Paper No. CB(2)1321/14-15(03))	

Time marker	Speaker	Subject(s)/Discussion	Action required
015020 - 015917	Chairman Admin ALA4	<p><u>Examination of the CSAs proposed by the Administration to add a new clause 35A; and clauses 36 and 37</u></p> <p>The Administration undertook to consider the Legal Adviser to the Bills Committee's concern about whether the new clause 35A(3) should be amended to enable a person other than the healthcare professional in the employ of an HCP to have access to the health data of an HCR for the purpose of erasing personal data no longer required or keeping a log book under sections 26 and 27 of the Privacy Ordinance respectively and provide a written response as appropriate.</p>	Admin
015918 - 015928	Chairman	The Chairman's decision to extend the meeting for 15 minutes beyond its appointed time.	
015929 - 020610	Chairman Dr LEUNG Ka-lau Admin	<p>Dr LEUNG Ka-lau's enquiry about whether a registered HCR should make a data access request to eHRC or the prescribed HCP to whom he or she had given a sharing consent, and whether a prescribed HCP could correct or erase the health data of an HCR contained in eHRSS.</p> <p>The Administration's advice that -</p> <p>(a) while it was expected that most data access requests ("DAR") would be made by the registered HCRs to eHRC, some registered HCRs might make DAR to the prescribed HCPs for accessing to their personal data and the relevant parts of their health data kept in eHRSS. The prescribed HCPs from which the health data in eHRSS originated also had to handle the relevant data correction requests ("DCR") made by registered HCRs;</p> <p>(b) given that administrative staff of prescribed HCPs might need to access the personal data of registered HCRs kept in eHRSS in dealing with DAR or DCR made by the HCRs concerned, the new clause 35A(3) was added in response to the suggestion of PCPD to provide for such possible access; and</p> <p>(c) it was the responsibility of eHRC, instead of HCPs, to erase the health data in eHRSS and keep a log book as far as eHRSS was concerned. Given that the Bill had provided for the powers and functions of eHRC, there was no need to provide for access to personal data in eHRSS for the above purposes under the new clause 35A.</p>	
020611 - 021031	Chairman Dr Fernando CHEUNG Admin	In response to Dr Fernando CHEUNG's enquiry about the handling of a DCR by a prescribed HCP, the Administration's advice that the HCP concerned might correct the data, or refuse to do so if it was not satisfied that the data to which the request related was inaccurate. The HCP concerned should make a note of the matter in eHRSS according to the Privacy Ordinance.	

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021032 - 021252	Chairman Dr LEUNG Ka-lau ALA4 Admin	In response to Dr LEUNG Ka-lau's enquiry as to whether prescribed HCPs were data users of eHR kept in eHRSS, the Administration's advice that both eHRC and prescribed HCPs were data users of eHRSS.	
<i>Agenda item II: Any other business</i>			
021253 - 021326	Chairman Admin	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
19 January 2016