

**立法會**  
**Legislative Council**

LC Paper No. CB(2)839/15-16  
(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 twentieth meeting**  
**held on Monday, 18 May 2015, at 10:45 am**  
**in Conference Room 2B 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  
Dr Hon LEUNG Ka-lau  
Hon Alan LEONG Kah-kit, SC  
Dr Hon KWOK Ka-ki  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Elizabeth QUAT, JP  
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

**Members absent** : Hon CHEUNG Kwok-che  
Hon WU Chi-wai, MH  
Hon CHAN Han-pan, JP  
Hon Alice MAK Mei-kuen, JP  
Dr Hon Helena WONG Pik-wan

**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 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)1145/14-15(03), CB(2)1151/14-15(01), CB(2)1215/14-15(01) to (04), CB(2)1455/14-15(01), CB(2)1473/14-15(01), CB(2)1501/14-15(01) and CB(3)575/13-14]

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

Clause-by-clause examination of the Bill

2. The Bills Committee noted the following Committee stage amendments ("CSAs") to be proposed by the Administration -

- (a) to replace "registered healthcare provider" with "prescribed healthcare provider" in clause 50(1) in order to subject the Department of Health and Hospital Authority as well to the requirement of producing records or documents in certain circumstances;
- (b) in respect of clause 53,
  - (i) to add a new subclause (2A) such that only persons who, in the opinion of the Secretary for Food and Health, were having expertise or experience in healthcare, privacy protection, statistics, research, law or information technology; representing the interests of HCRs; or having other experience that would render the persons suitable for the appointment would be appointed as non-ex officio members of the Electronic Health Record Research Board ("the eHR Research Board"); and
  - (ii) to add new subclauses (3A), (5A) and (5B) to provide for the terms of appointment and re-appointment of non-ex officio members of the eHR Research Board, the circumstances under which these members might be removed from the office, and the notification in the Gazette of the appointment or termination made under the clause; and

Action

- (c) to delete clause 57(2) having taken into consideration the views raised by members and the Privacy Commissioner for Personal Data at previous meetings.

3. The Bills Committee noted that the Legal Adviser to the Bills Committee was making follow-up enquiry with the Administration on whether clause 57(1) should be amended to make it clear that the liability it sought to limit was restricted to civil liability only.

4. The Bills Committee completed clause-by-clause examination of the Bill.

Follow-up actions required of the Administration

Admin

5. The Bills Committee requested the Administration to -

- (a) consider stating expressly in clause 51 the admissibility of the code of practice issued by the Commissioner for the Electronic Health Record ("eHRC") as evidence in legal proceedings, as in section 63C of the Construction Workers Registration Ordinance (Cap. 583) and section 41 of the Buildings Energy Efficiency Ordinance (Cap. 610);
- (b) in respect of clause 55 which provided for an appeal against a decision of eHRC specified in the clause to be made to the Administrative Appeals Board, provide information on the Board's appeal handling procedures, performance pledge for processing an appeal (if any) and caseload; and
- (c) in respect of clause 58 which provided for protection of public officers etc. (including a person appointed by eHRC in writing) from civil liability where a person is performing a function or exercising a power under the Ordinance (if enacted) in good faith, provide information on other ordinances which accorded similar protection to public officers etc.

6. The Chairman invited members who intended to propose CSAs to the Bill and wished their CSAs to be considered by the Bills Committee to forward such proposed CSAs to the Secretariat as soon as practicable for the consideration of the Bills Committee at the next meeting.

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**II. Any other business**

7. Members noted that the next meeting would be held on Tuesday, 26 May 2015, at 10:45 am.

8. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 2  
Legislative Council Secretariat  
5 February 2016

**Proceedings of the twentieth meeting of  
the Bills Committee on Electronic Health Record Sharing System Bill  
held on Monday, 18 May 2015, at 10:45 am  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
<i>Agenda item I: Meeting with the Administration</i>			
000634 - 000725	Chairman	Opening remarks	
000726 - 001510	Chairman Admin	Briefing by the Administration on its response to issues arising from the discussion at the meeting on 12 May 2015 (LC Paper No. CB(2)1501/14-15(01)).	
001511 - 003455	Chairman Admin ALA4 Ir Dr LO Wai-kwok Mr Alan LEONG	<p>Notwithstanding the Administration's explanation given in paragraphs 4 and 5 of LC Paper No. CB(2)1501/14-15(01), the Chairman, Ir Dr LO Wai KWOK and Mr Alan LEONG maintained the view that the Chinese rendition of the expressions "on the same occasion" and "on any future occasion" in clause 41(6)(b) did not tally with the English rendition (or vice versa).</p> <p>The Administration stressed that there was a need to maintain consistency in wording between clause 41(6)(b) of the Bill and section 161(1) of the Crimes Ordinance (Cap. 200) so as to maintain a consistent approach in prosecuting cases with similar elements.</p> <p>On the concern of Ir Dr LO Wai-kwok and Mr Alan LEONG about the need to separately feature the expression "不論是在該人導致上述取覽、更改或損害的同時...，或是在日後任何時間..." in brackets towards the end of each of subclauses (i) to (iv) of clause 41(6)(b) in the Chinese text, the Administration's elaboration of its response given in paragraph 7 of LC Paper No. CB(2)1501/14-15(01).</p> <p>The Administration was requested to review the drafting of clause 41(6)(b) having taken into account the views of members as appropriate.</p>	
003456 - 003630	Chairman ALA4	On the Administration's response given in paragraph 11 of LC Paper No. CB(2)1501/14-15(01), the Legal Adviser to the Bills Committee pointed out that section 52(1) of the Copyright Ordinance (Cap. 528) and section 20 of the Companies Ordinance (Cap. 622) had expressly stipulated that "document" included a document in electronic form. According to the Administration, only about 20 out of more than 450 local legislations had provided for a definition of "document".	
003631 - 004224	Chairman ALA4 Admin Ir Dr LO Wai-kwok	Referring to the Administration's proposed Committee stage amendments ("CSAs") to replace "registered healthcare provider" with "prescribed healthcare provider" in clause 50(1) in order to subject the Department of Health	

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		<p>("DH") and Hospital Authority ("HA") as well to the requirement of producing records or documents in certain circumstances, the Legal Adviser to the Bills Committee enquired whether the Administration would propose similar CSAs to clauses 21, 22 and 23 which dealt with the withdrawal, suspension and cancellation of registration of healthcare providers ("HCPs").</p> <p>Replying in the negative, the Administration advised that a policy objective of the Electronic Health Record Sharing System ("eHRSS") was to foster the two-way sharing of electronic health record ("eHR") between public and private HCPs. There was no reason why DH and HA would withdraw from, or the Commissioner for the Electronic Health Record ("eHRC") would suspend or cancel the participation of DH and HA in, eHRSS. Ir Dr LO Wai-kwok concurred with the Administration's view.</p>	
004225 - 004259	Chairman	Members noted the preliminary English working draft of the Code of Practice ("CoP") and the key principles and intended workflows of the draft framework for handling complaints relating to operation of eHRSS as set out in Annexes B and C of LC Paper No. CB(2)1501/14-15(01) respectively.	
004300 - 004318	Chairman	Continuation of clause-by-clause examination of the Bill	
004319 - 004711	Chairman Admin ALA4	<p><u>Examination of clause 51</u></p> <p>The Administration undertook to consider the suggestion of the Legal Adviser to the Bills Committee to state expressly in clause 51 the admissibility of the CoP issued by eHRC as evidence in legal proceedings, as in section 63C of the Construction Workers Registration Ordinance (Cap. 583) and section 41 of the Buildings Energy Efficiency Ordinance (Cap. 610).</p>	<b>Admin</b>
004712 - 004758	Chairman Admin	<u>Examination of clause 52</u>	
004759 - 005617	Chairman Admin	<p><u>Examination of clauses 30 to 34, 53 and 54</u></p> <p>Briefing by the Administration on -</p> <p>(a) its proposed CSAs to add a new subclause (2A) to clause 53 such that only persons who, in the opinion of SFH, were having expertise or experience in healthcare, privacy protection, statistics, research, law or information technology; representing the interests of HCRs; or having other experience that would render the persons suitable for the appointment would be appointed as non-ex officio members of the Electronic Health Record Research Board ("the eHR Research Board"), details of which were set out in the Annex to LC Paper No. CB(2)1151/14-15(01); and</p>	

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		(b) its response to issues relating to the use of identifiable eHR for research and statistics purpose arising from the discussion at the meeting on 31 March 2015 (LC Paper No. CB(2)1455/14-15(01)).	
005618 - 010249	Chairman ALA4 Admin	<p>The Legal Adviser to the Bills Committee's remark that it was unclear whether the 10 non-ex officio members of the eHR Research Board to be appointed under the proposed new clause 53(2A) would include public officers, and the ratio of these 10 members against the three categories as specified in subclause (a) to (c).</p> <p>The Administration's advice that the drafting of the proposed new clause 53(2A) did not preclude the appointment of public officers, such as healthcare professionals of DH and HA, as non-ex officio members of the eHR Research Board. The proposed CSAs had not stipulated the ratio of the 10 non-ex officio members against the three categories as specified in subclause (a) to (c) in order to provide flexibility.</p> <p>In response to the enquiry of the Chairman and the Legal Adviser to the Bills Committee, the Administration's advice that it was proposed under the new clause 53(3A) that a non-ex officio member was eligible for re-appointment on the expiry of a five-year appointment term. There was no ceiling on the total terms of office of an non-ex officio member.</p>	
010250 - 012318	Chairman Admin Dr KWOK Ka-ki ALA4 Ir Dr LO Wai-kwok	<p><u>Examination of clauses 55, 61 and 62</u></p> <p>Dr KWOK Ka-ki's enquiry on whether there would be a performance pledge for the Administrative Appeals Board ("AAB") to process an appeal against the decision of eHRC to refuse to register, or suspend or cancel the registration of, a healthcare recipient ("HCR") or an HCP; and whether a decision of eHRC would be suspended when the HCR or HCP concerned had lodged an appeal with AAB.</p> <p>Making reference to the relevant provisions of the District Cooling Services Bill, Ir Dr LO Wai-kwok's view that a person's appeal to AAB should not suspend the decision of eHRC specified in clause 55 in order to safeguard the security and integrity of eHRSS.</p> <p>The Administration's advice that -</p> <p>(a) the time required of AAB, which was established under the Administrative Appeals Board Ordinance (Cap. 442), for processing an appeal would depend on an array of factors, such as the number of applications received at around the same period and the time required due to additional requests or procedures made or caused by parties to the appeal. The Administration could provide after the meeting information on AAB's appeal handling procedures, performance pledge for processing an appeal (if any) and caseload for reference of the Bills Committee; and</p>	Admin



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		<p>(b) according to clause 55(4), an aggrieved person's appeal to AAB would not suspend the decision of eHRC unless eHRC decided otherwise.</p> <p>The Legal Adviser to the Bills Committee's remark that an applicant aggrieved by the refusal of the Secretary for Food and Health ("SFH") or eHRC to his or her application made under clause 30 or 33 for using identifiable or non-identifiable data of a registered HCR contained in an eHR for research or statistics purpose could not appeal to AAB.</p> <p>The Administration's elaboration of its response as set out in paragraph 14 of LC Paper No. CB(2)1551/13-14(01) that the eHR Research Board was in the best position to determine the merits and public interest of the above applications on a case-by-case basis. Applicants of any unsuccessful applications could, taking into account the reasons of the refusal, resubmit their applications for consideration.</p>	
012319 - 013117	Chairman Admin	<p><u>Examination of clause 56</u></p> <p>The Chairman's concern as to whether access to the card face data of the Hong Kong Identity Cards ("HKIC") for various purposes required legal backing, and the card face data of an HCR that eHRC or a prescribed HCP could gain access to.</p> <p>The Administration's advice that it was provided under regulation 12(1A) of the Registration of Persons Regulations (Cap. 177A) that any person who, without lawful authority or reasonable excuse gained access to any data stored in a chip of an HKIC, would be guilty of an offence. Under the Bill, the card face data that eHRC or a prescribed HCP could gain access to would include the full personal name of the applicant in English or in English and Chinese, the date of birth of the applicant, a number for identification purposes and the date of issue of the card.</p> <p>In response to the Chairman's enquiry as to whether data or information contained in an eHR would be stored in the chip embodied in the new smart HKIC to be introduced in 2018, the Administration's reply in the negative.</p>	
013118 - 013558	Chairman Admin ALA4	<p><u>Examination of clause 57</u></p> <p>The Legal Adviser to the Bills Committee's remark that she was making further enquires with the Administration on whether clause 57(1) should be amended to make it clear that the liability it sought to limit was restricted to civil liability only.</p> <p>Members noted that the Administration would propose CSAs to delete clause 57(2) in response to the concerns raised by members and the Privacy Commissioner for Personal Data at previous meetings.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
013559 - 014542	Chairman Admin Dr Fernando CHEUNG ALA4	<p><u>Examination of clause 58</u></p> <p>In response to the Chairman's enquiry, the Administration's advice that the protection accorded to public officers etc. under clause 58 did not cover the non-ex officio members of the eHR Research Board which were to be appointed by SFH.</p> <p>Dr Fernando CHEUNG's concern that the clause would render those persons who suffered from pecuniary loss or mental harm as a result of human or system errors arising from the operation of eHRSS unable to initiate civil proceedings against the relevant public officers etc. He asked whether similar provision was commonly provided for in existing laws.</p> <p>The Legal Adviser to the Bills Committee's remark that a working group established under the Panel on Administration of Justice and Legal Services in 2002 had studied issues relating to imposition of criminal liability on the Government or public officers.</p> <p>The Administration's advice that while public officers etc. would not be civilly liable for an act done or omitted to be done in exercising a power or performing a function under the Ordinance (if enacted) in good faith, it was provided for under clause 58(2) that such protection did not affect the liability of the Government for the act or omission. The Administration undertook to provide after the meeting information on other ordinances which accorded similar protection to public officers etc. under clause 58.</p>	<b>Admin</b>
014543 - 015318	Chairman Admin Ir Dr LO Wai-kwok	<p><u>Examination of clause 59</u></p> <p>In response to the Chairman's concern that a person might have more than one address, electronic mail address or telephone number, the Administration's advice that it was provided under section 7 of the Interpretation and General Clauses Ordinance (Cap. 1) that words and expressions in the singular included the plural. While it was suffice under the Bill for the relevant notice or document be sent to an individual by any one of the means specified in clause 59(a)(i) to (iv), it could not be ruled out that in actual operation, the relevant notice or document would be sent by more than one means.</p> <p>On Ir Dr LO Wai-kwok's enquiry on the reason why electronic mail address and telephone number were not included under clause 59(b) as means for servicing notice and document on a company, the Administration's advice that the proposed arrangements were in line with the arrangements provided for in existing laws.</p>	
015319 - 015403	Chairman ALA4	Circulation of the report of the working group to study issues relating to imposition of criminal liability on the Government or public officers (LC Paper No. CB(2)2917/03-04(01)) for members' reference.	<b>Clerk</b>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)/Discussion</b>	<b>Action required</b>
015404 - 015649	Chairman Admin	<u>Examination of clause 60 and the Schedule</u>	
015650 - 015730	Chairman Admin	The Chairman invited members who intended to propose CSAs to the Bill and wished their CSAs to be considered by the Bills Committee to forward such proposed CSAs to the Secretariat as soon as practicable for the consideration of the Bills Committee at the next meeting.	
<i>Agenda item II: Any other business</i>			
015731 - 015901	Chairman	Arrangement for the next meeting	

Council Business Division 2  
Legislative Council Secretariat  
5 February 2016