

立法會
Legislative Council

LC Paper No. CB(2)840/15-16
(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 twenty-first meeting
held on Tuesday, 26 May 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 Cyd HO Sau-lan, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon Alice MAK Mei-kuen, JP
Dr Hon Fernando CHEUNG Chiu-hung
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

[LC Paper Nos. CB(2)1515/13-14(01), CB(2)1551/13-14(01), CB(2)2308/13-14(02), 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)1501/14-15(01), CB(2)1521/14-15(01) to (03), CB(2)1543/14-15(01), CB(2)1552/14-15(01) and CB(3)575/13-14]

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

Issues relating to protection of public officers etc.

2. In respect of clause 58 which provided for, among others, protection of a person appointed by the Commissioner for the Electronic Health Record ("eHRC") under clause 48(3) from civil liability where a person was performing a function or exercising a power under the Ordinance (if enacted) in good faith, the Bills Committee requested the Administration to -

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- (a) advise whether it was a new policy to provide for such protection, and if so, the justification for the policy; and if not, what ordinances had provided for such protection; and
- (b) advise the criteria upon which eHRC would adopt in deciding whether a person should be appointed under clause 48(3) and subject to protection from civil liability under clause 58.

Committee stage amendments proposed by Dr Hon LEUNG Ka-lau

3. The Bills Committee noted the discussion draft of the Committee stage amendments ("CSAs") proposed by Dr LEUNG Ka-lau as set out in LC Paper No. CB(2)1543/14-15(01).

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4. The Bills Committee requested the Administration to consider amending the proposed new clause 16A to ensure that the clause would have effect notwithstanding clauses 12(6), 16 and any other provisions relating to sharing consent.

5. Dr LEUNG Ka-lau requested the Bills Committee to consider whether his proposed CSAs should be moved in the name of the Bills Committee. Members agreed to consider the matter at the next meeting together with the

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response to be provided by the Administration under paragraph 4 above. The Bills Committee also requested the Administration to provide a full set of the draft CSAs to be moved by the Administration for consideration at the next meeting.

II. Any other business

6. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 1 June 2015, at 2:00 pm.

7. The Administration informed the Bills Committee that subject to the discussion at the next meeting, it intended to resume the Second Reading debate on the Bill in the 2014-2015 legislative session to enable early commencement of operation of the Electronic Health Record Sharing System for the benefits of HCRs.

8. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 2
Legislative Council Secretariat
5 February 2016

**Proceedings of the twenty-first meeting of
the Bills Committee on Electronic Health Record Sharing System Bill
held on Tuesday, 26 May 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>			
000501 - 000610	Chairman	Opening remarks	
000611 - 000749	Chairman Admin	Members noted the reply from the Department of Justice ("DoJ") concerning the number of convicted cases involving charge(s) of obtaining access to a computer with criminal or dishonest intent under section 161 of the Crimes Ordinance (Cap. 200) (LC Paper No. CB(2)1521/14-15(03)).	
000750 - 001259	Chairman Admin	Briefing by the Administration on its response to issues raised at the meeting on 18 May 2015 (LC Paper No. CB(2)1521/14-15(02)).	
001300 - 001722	Chairman	<p>The Chairman's expression of dissatisfaction with DoJ's reply that the Bills Committee might contact the Security Bureau direct to ascertain if it might be able to provide breakdown of the number of convicted cases involving charge(s) under section 161 of the Crimes Ordinance by the relevant subsections, as he had been advised by the Security Bureau in the past to contact DoJ direct for similar information.</p> <p>The Chairman's remark that while clause 41(6)(b) was modeled on section 161(1) of the Crimes Ordinance, it was noted that the new proposed offences under clause 41(6) were specifically directed at data or information contained in the electronic health records ("eHR") kept in the Electronic Health Record Sharing System ("eHRSS"), as opposed to that kept in the "computer" generally under section 161 of the Crimes Ordinance. Hence, the scrutiny of clause 41(6) should not be held in abeyance despite of the lack of information from the Administration on the breakdown of the number of the convicted cases by the relevant subsections of section 161(1) of the Crimes Ordinance. Members raised no objection.</p>	
001723 - 003002	Chairman ALA4 Admin Ir Dr LO Wai-kwok	In respect of clause 58(3) which dealt with the protection of a person performing a function or exercising a power under the Bill in good faith, the Legal Adviser to the Bills Committee's enquiry as to whether the Administration intended to confer protection to persons who had contractual relationship with the Government independent contractors. She was particularly concerned about the possible difficulty in enforcing the proposed provisions on performance of the independent contractors under the relevant contracts. The proposal would also be a departure from the existing practice that such protection would only be conferred upon public officers and members of committees appointed by the Government without monetary consideration.	

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		<p>Ir Dr LO Wai-kwok noted that as specified in clause 58(1)(a) and (b), the protection to be conferred on a person appointed by the Commissioner for the Electronic Health Record ("eHRC") under clause 48(3) was for an act done or omitted to be done in good faith in (purportedly) performing a function or exercising a power under the Ordinance (if enacted).</p> <p>The Administration's advice that clause 58(3) was drafted to confer protection upon persons who were appointed in writing by eHRC under clause 48(3) to assist eHRC in performing a function or exercising a power under the Ordinance (if enacted). These might include some persons contractually engaged by the Government. In particular, eHRC would need the expertise of the Hospital Authority ("HA") to assist him or her in performing or exercising the functions or powers relating to, among others, the development, operation and maintenance of eHRSS. Provisions of such nature were not uncommon in existing laws of Hong Kong.</p>	
003003 - 005634	Chairman Dr LEUNG Ka-lau Ir Dr LO Wai-kwok Admin	<p>On the Chairman's enquiry about whether a Government contract would constitute an appointment in writing under clause 48(3), the Administration's advice that only those persons who were appointed by eHRC in writing with specific reference to clause 48(3) would be accorded the protection under clause 58.</p> <p>On Ir Dr LO Wai-kwok's concern as to whether clause 58(1) could be used by a defendant, whose appointment was made by eHRC in writing but without specific reference to clause 48(3), as a defence in civil proceeding, the Administration's advice that it was specified under subclause (3) that the protection conferred under clause 58 only applied to a public officer and a person appointed by eHRC under clause 48(3).</p> <p>The Chairman's concern that no specifications were set out in clause 48(3) on the criteria upon which eHRC would adopt in deciding whether a person should be appointed under the clause and conferred protection under clause 58; and his view that the protection should only be conferred upon public officers and members of committees appointed by the Government without consideration. Dr LEUNG Ka-lau's view that the drafting of clauses 48(3) and 58(3)(b) was not specific as to which person(s) would be accorded protection from civil liability when exercising a power or performing a function under the Ordinance (if enacted) in good faith.</p> <p>The Administration's reiteration of the policy intent of clause 58; and its advice that as a reference, section 11A of the Personal Data (Privacy) Ordinance (Cap. 486) had provided for protection from civil liability for prescribed officers, including technical and professional persons engaged other than by way of employment by the Privacy Commissioner of Personal Data to assist him or her in the performance of functions and the exercise of powers under that Ordinance. At the request of the Chairman, the Administration undertook to advise in writing -</p>	Admin

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>(a) whether it was a new policy to provide for the protection under clause 58, and if so, the justification for the policy; and if not, what other ordinances had provided for such protection; and</p> <p>(b) the criteria upon which eHRC would adopt in deciding whether a person should be appointed under clause 48(3) and subject to protection from civil liability under clause 58.</p>	
005635 – 010318	Chairman Dr LEUNG Ka-lau	Briefing by Dr Hon LEUNG Ka-lau on the discussion draft of his proposed Committee stage amendments ("CSAs") for safeguarding the privacy of the registered healthcare recipients ("HCRs") (LC Paper No. CB(2)1543/14-15(01)).	
010319 - 011238	Chairman Admin	Briefing by the Administration on its response to the discussion draft of Dr LEUNG Ka-lau's proposed CSAs to the Bill (LC Paper No. CB(2)1552/14-15(01)).	
011239 - 012912	Chairman Dr Elizabeth QUAT Ir Dr LO Wai-kwok Dr KWOK Ka-ki Admin	<p>Dr Elizabeth QUAT and Ir Dr LO Wai-kwok concurred with the Administration's view that the CSAs to be moved by the Administration to add new clauses 16A and 16B to provide that a registered HCR might, in relation to his or her health data, make a request to restrict the scope of data sharing had provided flexible room to allow different methods of restrictions to be implemented in future. The form of new device or arrangement for enabling additional choices for registered HCRs over the scope of data sharing could be studied during the second stage Electronic Health Record Programme ("eHR Programme") after the passage of the Bill.</p> <p>Dr KWOK Ka-ki's view that any proposal to enable the registered HCRs to have greater control over the scope of data sharing would instil confidence in eHRSS. In addition, the need to modify or re-design eHRSS in order to fulfill the new requirements as proposed in Dr LEUNG Ka-lau's CSAs should not be a reason for objecting the CSAs.</p> <p>The Administration's reiteration that the proposed new clauses 16A and 16B could address the concern raised by Dr LEUNG Ka-lau and the arrangement as proposed in Dr LEUNG Ka-lau's CSAs would require substantial modification of the design of eHRSS which would take considerable time to complete.</p>	
012913 - 013843	Chairman Dr Elizabeth QUAT Admin	In response to Dr Elizabeth QUAT's enquiry about the timetable for the coming into operation of the proposed new clauses 16A and 16B, the Administration's elaboration of its response given in paragraph 11 of LC Paper No. CB(2)1552/14-15(01). In gist, the proposed new provisions would take effect upon completion of the relevant study (including consultation with the relevant stakeholders on the proposed new feature) during the second stage eHR Programme, and after the relevant feature was technically ready for implementation.	

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		<p>Noting that the sharing consent to be given by a registered HCR under clause 12 was for a prescribed healthcare provider ("HCP") that provided healthcare to the HCR concerned but not its individual departments, Dr Elizabeth QUAT enquired whether the Bill as currently drafted would result in a registered HCR not being able to restrict, under the proposed new clauses 16A and 16B, an individual department of a prescribed HCP from obtaining certain sharable data through eHRSS.</p> <p>Replying in the negative, the Administration reiterated that the proposed new clauses 16A and 16B could provide flexibility to allow different methods of restrictions and different potential scenarios.</p>	
013844 - 015744	Chairman Dr LEUNG Ka-lau Admin	<p>Dr LEUNG Ka-lau did not subscribe to the view of the Administration as set out in paragraphs 6 and 7 of LC Paper No. CB(2)1552/14-15(01) that his proposed CSAs would undermine the policy objective of eHRSS which was to foster the two-way sharing of eHR between public and private HCPs. Under his proposed CSAs which sought to enhance protection to data privacy of registered HCRs, the joining consent given by a registered HCR would allow eHRC to obtain from all prescribed HCPs in both the public and private sectors the sharable data so specified by the HCR, whereas the sharing consent given by a registered HCR to a prescribed HCP would only allow the HCP to obtain from eHRSS any of his or her sharable data. He drew members' attention that even without his CSAs, the types of sharable data to be provided by the prescribed HCPs would depend on the technical feature of the local electronic medical record systems of the HCPs concerned.</p> <p>Dr LEUNG Ka-lau's view that the proposed new clause 16A should be amended to ensure that the clause would have effect notwithstanding clause 12(6) and any other provisions relating to sharing consent. According to clause 12(6), the sharing consent allowed the prescribed HCP to provide to, and to obtain from, eHRSS any sharable data of the registered HCR. The Administration was requested to consider amending the proposed new clause 16A having taken into account the above view of Dr LEUNG Ka-lau and provide a written response to the Bills Committee in this regard.</p> <p>Dr LEUNG Ka-lau's request for the Bills Committee to consider whether his proposed CSAs should be moved in the name of the Bills Committee. Members agreed to consider the matter at the next meeting together with the above response to be provided by the Administration.</p> <p>The Administration was requested to provide a full set of the draft CSAs to be moved by the Administration for consideration at the next meeting.</p>	<p>Admin</p> <p>Admin</p>

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item II: Any other business</i>			
015745 - 020038	Chairman Ms Emily LAU Admin	Date of next meeting The Administration informed the Bills Committee that subject to the discussion at the next meeting, it intended to resume the Second Reading debate on the Bill in the 2014-2015 legislative session to enable early commencement of operation of eHRSS.	

Council Business Division 2
Legislative Council Secretariat
5 February 2016