

**Bills Committee on  
Electronic Health Record Sharing System Bill**

**The Administration's Response to the issues arising from the  
discussion at the meeting on 13 March 2015**

This paper sets out the Administration's response to the issues arising from the discussion of the Bills Committee on the Electronic Health Record Sharing System (eHRSS) Bill on 13 March 2015.

**Representation by healthcare recipient (HCR) / healthcare provider (HCP) before suspension / cancellation of registration**

2. Clauses 10(1) / 11(1) of the bill provide that the Commissioner for the Electronic Health Record (eHRC) may, under the circumstances specified, suspend / cancel the registration of an HCR if he/she reasonably suspects that / is satisfied that certain events have occurred. Clauses 22(1) / 23(1) are similar provisions in respect of the registration of an HCP.

3. In our letter dated 23 February 2015 to the Assistant Legal Advisor (ALA) (vide LC Paper No. CB(2)911/14-15(01)) and at the last meeting of the Bills Committee on 13 March 2015, we have explained the rationale for not specifically providing for the "representations" by HCR / HCP against suspension / cancellation of their registration. We see the need to protect both the interests of the HCR / HCP and the system integrity and safety. We envisage that before the eHRC exercises the power of suspension or cancellation of registration, he/she will take administrative actions as appropriate to seek information / clarification from the concerned HCR / HCP. He/she has to reasonably suspect or be satisfied that the circumstances as stipulated in Clauses 10(1) / 11(1) / 22(1) / 23(1) have occurred. In other words, it will likely be a two-way interactive process during which the concerned HCR / HCP will be timely informed of the possible suspension or cancellation, and they can provide information or clarification to the eHRC before his/her final decision.

4. Under certain circumstances, prompt action to suspend / cancel

the registration of an HCR / HCP will be necessary. For example, when an HCR has provided wrong personal particulars that identify him/her as another HCR or when an HCP's local electronic medical record (eMR) system has found to be infected by computer virus which may potentially seriously damage the integrity of health records shared with the eHRSS. Notwithstanding, following the discussion at the last meeting, we note some Members' concern about how to better reflect the spirit of procedural justice. We come to the view that there are justifications for slightly different arrangements for "cancellation" vis-a-vis "suspension" cases. We are prepared to consider making express provisions in the Bill to provide that an HCR / HCP would be given an opportunity to make representation before the eHRC made a decision on **cancellation** of registration of the HCR / HCP. We intend to propose amendments to Clauses 11 and 23 of the bill, the draft of which are marked in revision mode at Annex for reference. They may be further refined subject to discussion with the Department of Justice.

**Suspension / cancellation of registration of HCR / HCP on the ground that the registration might impair the security or compromise the integrity of eHRSS**

5. Sub-clause (d) of Clauses 10(1) / 11(1) and sub-clause (e) of Clauses 22(1) / 23(1) of the eHRSS Bill are concerned with the handling of a registration which may impair the security or compromise the integrity of the eHRSS. The eHRC may, under the circumstances specified, suspend / cancel the registration of an HCR / HCP if he/she reasonably suspects / is satisfied that such event has occurred.

6. In our letter dated 23 February 2015 to the ALA (vide LC Paper No. CB(2)911/14-15(01)) and at the last meeting of the Bills Committee on 13 March 2015, we provided a variety of examples of such events<sup>1</sup>. We have also explained that the bill is technology neutral and new factors

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<sup>1</sup> For an HCR, it could be the HCR using fraudulent identity document for registration, using multiple identity documents to register at different points in time, or not informing the eHRC on changes of personal particulars, among others. For an HCP, it could be the HCP not following security best practices and controls for its local eMR system (such as physical control and installation of active anti-virus or anti-malware software with up-to-date definitions) or not suitably following up on a suspected security incident that affects the use of / connection with eHRSS, among others.

or risks threatening the security or integrity of the eHRSS may emerge over time due to technological advancement. The Committee has therefore noted that it is neither desirable nor feasible to exhaustively list out possible factors in the bill. As per our undertaking, we will instead suitably promulgate guidelines and conduct publicity to promote HCRs' and HCPs' understanding of relevant precautionary steps and security measures.

**Food and Health Bureau**  
**March 2015**

**Proposed draft amendments  
in relation to cancellation of registration  
of healthcare recipients and healthcare providers**

(Note: Draft amendments are marked in *red* on the following extract of the draft bill.)

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**11. Cancellation of registration**

- (1) The Commissioner may cancel the registration of a healthcare recipient if the Commissioner is satisfied that—
    - (a) the application for registration did not comply with section 6(6);
    - (b) the healthcare recipient holds none of the documents specified in section 6(7);
    - (c) the healthcare recipient contravenes —
      - (i) a provision of this Ordinance; or
      - (ii) a condition for the registration; or
    - (d) the registration may impair the security or compromise the integrity of the System; or
    - (e) the healthcare recipient has died.
  - (2) ~~After cancelling a registration under subsection (1)(a), (b), (c) or (e)~~Except for a cancellation under subsection (1)(e), the Commissioner must notify the specified person in writing of —
    - ~~(a) the cancellation;~~
    - (ba) the date on which the cancellation ~~takes~~ is to take effect; and
    - (eb) the reasons for the cancellation.
- (2A) The specified person may, within 14 days after the date of the notice (or such longer period as the Commissioner may allow), make representations to the Commissioner in the manner specified in the notice.
- (2B) The Commissioner must not cancel the registration unless—
- (a) the specified person has not made any representations before the expiry of the period mentioned in subsection (2A); or
  - (b) the Commissioner has considered the representations and informed the specified person of the decision of cancellation.
- (3) A cancellation under subsection (1)(e) takes effect on the date on which the Commissioner is satisfied that the healthcare recipient has died.

(4) In this section–

*specified person* ( ) means –

- (a) if the healthcare recipient is a minor and the application for the healthcare recipient’s registration was made by a substitute decision maker, that substitute decision maker;
- (b) if the healthcare recipient is aged 16 or above and is, in the Commissioner’s opinion, incapable of giving a joining consent and the application for the healthcare recipient’s registration was made by a substitute decision maker, that substitute decision maker; or
- (c) in any other case–
  - (i) the healthcare recipient; or
  - (ii) the substitute decision maker of the healthcare recipient who made the application for the healthcare recipient’s registration.

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**23. Cancellation of healthcare provider’s registration**

- (1) The Commissioner may cancel a registration of a registered healthcare provider if the Commissioner is satisfied that –
  - (a) the healthcare provider contravenes –
    - (i) a provision of this Ordinance;
    - (ii) a provision of the code of practice issued under section 51; or
    - (iii) a condition for the registration;
  - (b) the healthcare provider no longer provides healthcare at the service location to which the registration relates;
  - (c) the healthcare provider no longer complies with –
    - (i) the requirements specified by the Commissioner for connecting the healthcare provider to the System; or
    - (ii) the system requirements on data sharing specified by the Commissioner;
  - (d) the service or business nature of the healthcare provider is no longer consistent with the purpose of the use of data and information specified in section 26; or
  - (e) the registration may impair the security or compromise the integrity of the System.
- (2) ~~After cancelling a registration under subsection (1),~~ The Commissioner must notify the healthcare provider in writing of –
  - ~~(a) the cancellation;~~
  - ~~(b)~~ the date on which the cancellation ~~takes is to take~~ effect; and
  - ~~(c)~~ the reasons for the cancellation.
- ~~(2A) The healthcare provider may, within 14 days after the date of the notice (or such longer period as the Commissioner may allow), make representations to the Commissioner in the manner specified in the notice.~~
- ~~(2B) The Commissioner must not cancel the registration unless—~~
  - ~~(a) the healthcare provider has not made any representations before the expiry of the period mentioned in subsection (2A); or~~
  - ~~(b) the Commissioner has considered the representations and informed the healthcare provider of the decision of cancellation.~~
- (3) If a sharing consent is given to the healthcare provider, the sharing consent ceases to have effect once the cancellation takes effect.

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