

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

**The Administration's Response to the issues arising from the
discussion at the meeting on 31 March 2015**

This paper sets out the Administration's response to some of the issues arising from the discussion of the Bills Committee on the Electronic Health Record Sharing System (eHRSS) Bill on 31 March 2015.

(a) Suspension / cancellation of registration of healthcare recipient (HCR) / healthcare provider (HCP)

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. We have explained in previous written and verbal responses to the Bills Committee the rationale for not specifically providing for the "representations" by HCR / HCP against suspension / cancellation of their registration.¹ Notwithstanding, following the discussion of the Bills Committee on 13 March 2015, we put forward to the Bills Committee (vide LC Paper No. CB(2)1145/14-15(02)) draft proposed amendments to Clauses 11 and 23 of the bill to provide that an HCR / HCP would be given an opportunity to make representation before the

¹ We see the need to protect both the interests of the HCR / HCP and the system integrity and safety. We envisage that before the eHR Commissioner (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. 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 system has found to be infected by computer virus which may potentially seriously damage the integrity of health records shared with the eHRSS.

eHRC made a decision on **cancellation** of registration of the HCR / HCP.

4. As for **suspension** of registration of HCR / HCP, some members expressed further concern on 31 March 2015 that the suspension period should not be indefinite and the eHRC should decide whether to proceed with cancellation or not within a certain time-frame. We have accordingly explained at the meeting that under Clauses 10 and 22 of the bill as currently drafted, the eHRC would not unduly prolong the suspension period given the requirement under Section 70 of the Interpretation and General Clauses Ordinance (Cap. 1) which stipulates that “where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises”. Notwithstanding, for the sake of clarity, we are prepared to propose amendments to Clauses 10 and 22 of the bill to provide for a time limit of the suspension period. Having regard to the technical complexity of the eHRSS and to allow sufficient time for resolving the circumstances that trigger the suspension, or to assess whether further action of cancellation is warranted, we propose that the eHRC could suspend the relevant registration initially for a period of not more than 28 days. The suspension can be extended once only for not more than 28 days if the eHRC considers appropriate. The draft amendments are marked in revision mode at **Annex** for reference. They may be further refined subject to discussion with the Department of Justice.

(b) Uses of electronic health record permitted by or under any other law

5. Clause 29 of the bill provides that the data and information of HCRs contained in the eHRSS may be used “as permitted by, or under, any other law”. At the last meeting of the Bills Committee, some members enquired about the need for Clause 29 and the uses that it would cover.

6. Pursuant to Section 3 of Cap. 1, “law” means “any law for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong”. Therefore the phrase “as permitted by or

under any other law” in Clause 29 would be construed accordingly. As we have further explained at the last meeting of the Bills Committee, given the general prohibition imposed by Clause 25 on use of the data and information except as provided in Clauses 26-29, Clause 29 serves to preserve the status quo of the prevailing uses of data and information pursuant to our legal regime at any point in time (in other words, it serves to avoid undermining these uses). The clause is therefore necessary.

7. Illustrative examples of the “any other law” covered by Clause 29 include Sections 41 and 42 of the High Court Ordinance (Cap. 4) (which provide that the court has power to order a person to disclose and produce documents in his custody, possession or power), Section 12 of the Coroners Ordinance (Cap. 504) (which provides that a coroner has power to require a person to produce any thing (including any document) which, in the opinion of the coroner, is likely to be material evidence at a death inquest) and the Personal Data (Privacy) Ordinance (Cap. 486) (Privacy Ordinance) (which provides that personal data may be used without the data subject’s consent under emergency situations, for crime investigation, etc.).

8. As the law of Hong Kong is evolving over time to cope with the changing circumstances, the scope (the purposes) under which the use of data and information in the eHRSS is required or permitted by law is (are) variable. It is therefore not practicable to specify all relevant ordinances in the bill. In drafting the bill, it would be more appropriate to set out the general rule that the data and information of HCRs contained in the eHRSS may be used as permitted by, or under, “any other law”. Moreover, all uses pursuant to Clause 29 will be governed, and safeguarded against abuse, by the relevant laws. It is also worth noting that there are similar provisions in Section 60B of the Privacy Ordinance and in some overseas legislations concerning use of personal data (such as Australia, Canada and the UK).

Food and Health Bureau
April 2015

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

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

10. Suspension of healthcare recipient's registration

- (1) The Commissioner may suspend the registration of a healthcare recipient for a period of, subject to subsection (1A), not more than 28 days if the Commissioner reasonably suspects 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.
- (1A) The Commissioner may, if considered appropriate, extend the period of suspension under subsection (1) for a further period of not more than 28 days by notice in writing to the specified person.
- (2) After suspending the registration, the Commissioner must notify the specified person in writing of –
 - (a) the suspension;
 - (b) the date on which the suspension takes effect; and
 - (c) the reasons for the suspension.
- (3) When the registration of a healthcare recipient is suspended –
 - (a) new data or information of the recipient may still be provided by a prescribed healthcare provider to the System; but

- (b) the electronic health record of the recipient is not to be made available to a prescribed healthcare provider through the System.
- (4) After the Commissioner is satisfied that there are no longer any grounds for suspending the registration of the healthcare recipient's registration, the Commissioner must notify the specified person in writing of–
 - (a) the Commissioner's decision; and
 - (b) the date on which the suspension ceases to take effect.
- (5) In this section–

specified person (指明人士) 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.

22. Suspension of healthcare provider's registration

- (1) The Commissioner may suspend a registration of a registered healthcare provider for a period of, subject to subsection (1A), not more than 28 days if the Commissioner reasonably suspects 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.

(1A) The Commissioner may, if considered appropriate, extend the period of suspension under subsection (1) for a further period of not more than 28 days by notice in writing to the healthcare provider.

- (2) After suspending a registration, the Commissioner must notify the healthcare provider in writing of –
 - (a) the suspension;
 - (b) the date on which the suspension takes effect; and
 - (c) the reasons for the suspension.
- (3) When the registration of a healthcare provider (including a Government bureau or department) is suspended –
 - (a) new data or information of a registered healthcare recipient may still be provided by the healthcare provider to the System; but
 - (b) the electronic health record of a registered healthcare recipient must not be made available to the healthcare provider through the System.
- (4) After the Commissioner is satisfied that there are no longer any grounds for suspending the person’s registration, the Commissioner must notify the person in writing of –
 - (a) the Commissioner’s decision; and
 - (b) the date on which the suspension ceases to take effect.
