



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

10 April 2015

Ms Maisie LAM
Clerk to the Bills Committee
on the Electronic Health Record Sharing System (eHRSS) Bill

Dear Ms LAM,

**Response to Hon Cheung Chiu-hung's enquiries concerning the
"Substitute decision maker" (SDM) arrangement of the eHRSS**

Thank you for your letter dated 12 March 2015. Our response to the issues raised in Hon Cheung Chiu-hung's letter dated 11 March 2015 to the Chairman of the Bills Committee is set out below.

2. Under Clause 3 of the eHRSS bill, certain persons are eligible to act as SDM of a healthcare recipient (HCR) who is mentally incapacitated / incapable of managing his or her own affairs / incapable of giving a joining consent / sharing consent at the relevant time. The arrangement is to specifically enable SDMs to make decisions regarding participation in the eHRSS (such as giving / revocation of joining / sharing consents).
3. Similar substitute decision-making arrangements can also be found in other ordinances and various administrative schemes in Hong Kong. In our specific context, participation in the eHRSS is voluntary in nature. It will unlikely bring about any direct personal benefit to those SDMs who are making decisions of participation on behalf of the HCRs. Notwithstanding, we will put in place safeguards in the design of future operational workflows of the eHRSS in order to respect and protect the interest of the HCRs. Our aim is to ensure that the arrangement would comply with the United Nations Convention on the Rights of Persons with Disabilities which has entered into force for the People's Republic of China, including the Hong Kong Special Administrative Region, since 31 August 2008.
4. An HCR will be assumed by default to be capable of making the

decisions on participation in the eHRSS unless there is clear evidence to the contrary. An HCR who is incapable of managing his / her other affairs but capable of giving consent may still make his / her own decision of whether to participate in the eHRSS, which will prevail over the decision (if any) of an eligible SDM. In practice, we will only accept an SDM making decisions on behalf of an HCR if the SDM is able to provide documentary proof of the HCR's incapacity of giving consent. Assistance will be provided to HCRs as necessary to facilitate them to express consents or otherwise. Such safeguards will be set out in the operational / administrative guidelines for the participating healthcare providers.

Yours sincerely,



P.P.

(Ms Ida LEE)

for Secretary for Food and Health

c.c. Department of Justice

(Attn.: Ms Rayne CHAI
Miss Queenie WU
Mr Patrick YEUNG)