

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

**The Administration's Response to the issues arising from the
discussion at the meeting on 14 April 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 14 April 2015.

(a) Use of data in the eHRSS for improving the healthcare performed outside Hong Kong

2. As explained in our letter dated 10 April 2015 to the Assistant Legal Advisor (vide LC Paper No. CB(2)1215/14-15(04)) and elaborated at the last meeting of the Bills Committee on 14 April 2015, none of the existing clauses of the bill precludes healthcare professionals working for healthcare providers (HCPs) from accessing the eHRSS outside Hong Kong. It is technically possible for them to access the eHRSS using mobile devices through the HCPs' electronic medical record (eMR) systems subject to compliance with security requirements set by the eHR Commissioner (eHRC). On the other hand, Clauses 17 and 26 of the bill as well as the definition of "healthcare" in Clause 2(1) have been drafted to the effect of imposing the following restrictions:

- (i) the **service location(s)** (at which healthcare is provided) for which an **HCP** registers for the eHRSS has(have) to be **in Hong Kong**, while overseas HCPs without any service locations in Hong Kong are ineligible for registration;
- (ii) any access to the eHRSS for the purpose of using the data of a healthcare recipient (HCR) for improving the healthcare provided (or to be provided) to the HCR, as well as the concerned use of the concerned data, have to be **by a healthcare professional registered under relevant ordinances in Hong Kong**; and
- (iii) the use mentioned in (ii) also has to be **for an activity performed in Hong Kong**.

As explained at the meeting, these restrictive arrangements would help safeguard the privacy of HCRs. Like other local legislations, the future eHRSS Ordinance cannot be enforced outside Hong Kong. It will be very difficult for eHRC to take effective action to follow up with overseas HCPs on non-compliances. We consider the bill as currently drafted could already cater for special cases where an HCR wishes to show his/her health records stored in the eHRSS to an overseas HCP, because he/she could approach us to make a data access request for copy of the records. The HCR himself/herself could then forward the copy of such records to the overseas HCP.

3. Nevertheless, some members raised at the last meeting the suggestion of relaxing the geographical restriction in respect of the location of the healthcare performed (i.e. restriction (iii)) while upholding the requirements for an HCP's registered service location(s) to be in Hong Kong (i.e. restriction (i)) and for its healthcare professional(s) to be statutorily registered in Hong Kong (i.e. restriction (ii)). The idea was to allow access to the eHRSS from overseas under certain special circumstances e.g. to facilitate a doctor (Hong Kong registered healthcare professional) providing urgent medical advice to his/her patient (HCR) while he/she is travelling abroad.

4. After looking into the suggestion, we have accordingly worked out a proposal which could take into account the interest of HCRs in such circumstances but without undermining our means to follow up non-compliance with security requirements. We are prepared to amend Clause 17 and the definition of "healthcare" in Clause 2(1) of the bill as well as to make some consequential amendments, as marked in revision mode at the draft at **Annex A**. They may be further refined subject to discussion with the Department of Justice (DoJ).

(b) Clause 35 of the bill

5. Clause 35 of the bill provides that "a prescribed HCP must take reasonable steps to ensure that the HCP's eMR system does not impair the security or compromise the integrity of the System [i.e. the eHRSS]".

6. At the last meeting, we explained that the use of the term

“reasonable steps” is common among existing ordinances in Hong Kong and gave examples of “reasonable steps” in the context of this clause (such as measures of physical control and installation of active anti-virus software). We have also recapped a variety of examples of what may constitute “impair the security or compromise the integrity of the [eHRSS]”¹. It is worth noting that some largely similar phrases such as “compromise the security or integrity of the PCEHR system” and “the security or integrity of the PCEHR system may be compromised” are also featured in provisions concerning suspension / cancellation of registration of participants in the Australian Personally Controlled Electronic Health Record (PCEHR) Act 2012.

7. The eHRSS bill is technology neutral and new factors or risks threatening the security or integrity of the eHRSS may emerge over time due to technological advancement. Members have therefore generally accepted that it is neither desirable nor feasible to exhaustively list out possible factors or “reasonable steps” in the bill. As regards the potential consequences of non-compliance with Clause 35, we have recapped to Members that under Clauses 22(1)(e) / 23(1)(e) of the bill, the eHRC may, under the circumstances specified, suspend / cancel the registration of an HCP if he/she reasonably suspects / is satisfied that the registration may “impair the security or compromise the integrity of the [eHRSS]”.

8. We have subsequently also looked into one Member’s question on whether Clause 35 of the bill could be deleted. Our assessment is that the deletion of the clause would not affect the operation of Clauses 22(1)(e) / 23(1)(e). The requirement for HCP to observe could still be covered by the Code of Practice (CoP) to be issued by the eHRC under Clause 51. Under Clauses 22(1)(a)(ii) / 23(1)(a)(ii), the eHRC may, under the circumstances specified, suspend / cancel the registration of an HCP if he/she reasonably suspects / is satisfied that the HCP contravenes a provision of the CoP. In view of the concern about clarity and conciseness, we are prepared to propose amendments to delete Clause 35

¹ It could be an 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.

of the bill and also amend the title of Division 4 of Part 3 of the bill (which will feature solely the new Clause 35A). The draft amendments are marked in revision mode at **Annex B** for reference. They may be further refined subject to discussion with DoJ.

Food and Health Bureau
April 2015

**Proposed draft amendments
in relation to healthcare performed outside Hong Kong**

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

2. Interpretation

(1) In this Ordinance—

...

healthcare (醫護服務), in relation to an individual, means an activity performed ~~in Hong Kong~~ by a healthcare professional for the individual for—

- (a) assessing, recording, maintaining or improving the individual's health;
- (b) diagnosing the individual's illness or disability; or
- (c) treating the individual's illness or disability, or suspected illness or disability;

...

healthcare recipient (醫護接受者) means an individual for whom healthcare has been performed, is performed, or is likely to be performed in Hong Kong;

...

17. Application by healthcare providers for registration

- (1) A healthcare provider that provides healthcare at one service location in Hong Kong may apply to the Commissioner to be registered as a healthcare provider for the System for that location.
- (2) A healthcare provider that provides healthcare at more than one service location in Hong Kong may apply to the Commissioner to be registered as a healthcare provider for the System for those locations as provided in subsection (3).
- (3) For the purposes of subsection (2), a healthcare provider may apply for—
 - (a) a single registration for all of the locations; or
 - (b) a separate registration for each location that the healthcare provider chooses to register.

...

19. Amendment of registration

- (1) Subject to subsection (2), a healthcare provider registered under section 18(1) may request a registration be amended for—
 - (a) a change in the particulars of a service location; and
 - (b) a change of the service locations for which the healthcare provider is registered.
- (2) A healthcare provider must not request the registration be amended for a change of the service locations unless the healthcare provider would, after the change, still be registered for all of the service locations at which the healthcare provider provides healthcare in Hong Kong.
- (3) A request must be made to the Commissioner in the form and manner specified by the Commissioner.
- (4) After granting a request, the Commissioner must notify the requestor in writing of the date on which the request is granted. The amendment takes effect on that date.

**Proposed draft amendments
in relation to Clause 35 and Title of Division 4 of Part 3**

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

**Division 4—Safeguards of Access to Electronic Health Record
~~—Sharing System~~**

~~35. Prescribed healthcare provider’s duties on electronic medical record system~~

~~A prescribed healthcare provider must take reasonable steps to ensure that the healthcare provider’s electronic medical record system does not impair the security or compromise the integrity of the System.~~

35A. Prescribed healthcare provider’s duties to restrict access to health data

(Note: The new Clause 35A was a proposed draft amendment put forward by the Administration vide LC Paper No. CB(2)808/14-15(02).)

- (1) This section applies if a prescribed healthcare provider is given a sharing consent by a registered healthcare recipient or a substitute decision maker of a registered healthcare recipient.
- (2) The healthcare provider must take reasonable steps to ensure that —
 - (a) access to any health data of the healthcare recipient is restricted to its healthcare professional who may perform healthcare for the recipient; and
 - (b) the access is restricted to the health data that may be relevant for performing healthcare for the recipient.
- (3) However, for complying with a data access request or data correction request under Part 5 of the Privacy Ordinance, the healthcare provider is not to be treated as contravening the requirement under subsection (2) even if access to the health data is granted to a person other than the healthcare professional.