



立法會
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29 April 2015

Mr Allan CHIANG, SBS
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data
12/F, Sunlight Tower
248 Queen's Road East
Wanchai
Hong Kong

Dear Mr CHIANG,

Electronic Health Record Sharing System Bill

At the meeting of the Bills Committee on Electronic Health Record Sharing System Bill on 28 April 2015, members of the Bills Committee have raised concerns on the implications of section 33 of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Ordinance") (not yet commenced) on the operation of the Bill. The Chairman of the Bills Committee has directed me to write to you and invite your comments on this matter.

It is proposed under the definition of "healthcare" in the Bill that the healthcare activity has to be performed "in Hong Kong" by a healthcare professional for the individual. During the scrutiny of the Bill, members have expressed the view that any access to the Electronic Health Record Sharing System for the data and information of a registered healthcare recipient ("HCR") for improvement of healthcare in places outside Hong Kong should be allowed to safeguard the interest of HCRs. The Administration has taken on board members' view and will move Committee Stage amendments to, among others, the definition of "healthcare" in clause 2(1) accordingly. The relevant extract of the Administration's response is attached for your reference. Members are concerned about the implications of section 33 of the Ordinance, which has not yet commenced, on the operation of the Bill. They note that the section prohibits the transfer of personal data to places outside Hong Kong except in specified circumstances.

I would appreciate it if you could let me have your reply in English and Chinese as early as practicable, preferably **by 13 May 2015**. Please note that in line with our usual practice, your reply will be distributed to the media and the public, and made available on the website of the Legislative Council, unless you advise otherwise.

Yours sincerely,



(Ms Maisie LAM)
Clerk to Bills Committee

Encl.

c.c. Hon Charles Peter MOK, Chairman of the Bills Committee

(Extract of the Administration's paper entitled "The Administration's response to the issues arising from the discussion at the meeting on 14 April 2015" for the meeting of the Bills Committee on the Electronic Health Record Sharing System Bill on 28 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).

**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.