



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Our Ref.: PCPD(O)115/156/45

8 December 2014

By Fax (2185 7845) & By Post

Ms Maisie LAM
Clerk to Bills Committee on Electronic Health Record Sharing System Bill
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms Lam,

Electronic Health Record Sharing System Bill (the “Bill”)

We refer to the 8th meeting of the Bills Committee held on 11 November 2014, during which the Privacy Commissioner had agreed to the Bills Committee’s request to make suggestion on the amendments to the Bill to incorporate the “*safe deposit box*” so as to enhance patient’s control over his health data maintained in the Electronic Health Record Sharing System (under LC Paper No. CB(2)1580/13-14(03) and LC Paper No. CB(2)2045/13-14(01)).

Our Office is pleased to submit the proposed amendments to the Bill (as annexed) for consideration.

We also take this opportunity to make suggestion to improve the draft Committee Stage amendments proposed by the Administration in the form of proposed clause 35A to address our concern that access to patients’ health data must be made by healthcare professionals on a *need-to-know* basis (see LC Paper No. CB(2)2317/13-14 (01)).

“Need-to-know” principle

Section 35A as proposed by the Administration in LC Paper No. CB(2)2308/13-14(02) is amended so that access granted by healthcare provider to its healthcare professional shall be restricted to such health data that is relevant to the healthcare being performed by the healthcare professional. We believe that the proposed amendment will reflect the *need-to-know* principle more specifically.

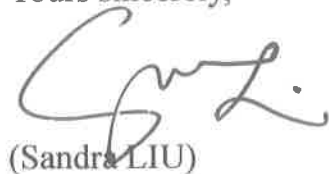
“Safe deposit box”

A new section 12(7A) is added to allow a registered healthcare recipient to exercise control over the consent given by him to share his data.

Section 2 is also amended to define the meaning of “*sharing control*” which allows the Secretary for Food and Health (SFH) to determine or specify the appropriate form of control by way of gazette. Hence, the SFH will be given the discretion to determine the form of control after the Administration’s study to develop and implement some form of new device/arrangement enabling additional choice or restriction over the disclosure of patient’s data (see LC Paper No. CB(2)404/14-15(02)). We expect, of course, that the SFH will consult the public and the LegCo before making the determination.

Should you have any queries regarding the proposed amendments, please feel free to contact the undersigned at 2877-7139.

Yours sincerely,



(Sandra LIU)

for Privacy Commissioner for Personal Data

c.c. Secretary for Food and Health
(Attn: Mr Sidney CHAN Shuen-yiu, JP)

Electronic Health Record Sharing System Bill

Proposed Amendments by the Privacy Commissioner for Personal Data

(Note: Proposed Amendments are marked in red and underlined)

2. Interpretation

sharing control means any form of control exercised by a registered healthcare recipient to limit the scope of a sharing consent under section 12(7A); and the Secretary may, by notice published in the Gazette, specify the form as referred to above.

For the avoidance of doubt, any form of control other than specified by the Secretary as mentioned above shall not constitute a sharing control under section 12(7A).

12. Giving of sharing consent

(7A) A sharing consent is subject to any sharing control exercised by a registered healthcare recipient, or a substitute decision maker of a registered healthcare recipient as provided under this Ordinance.

35A. Prescribed healthcare provider's duty to restrict access to sharable data

- (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 access to any health data of the healthcare recipient may only be granted to its healthcare professional who performs healthcare for the recipient, and that such access is restricted to the health data relevant to the healthcare being performed by that healthcare professional.
- (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.