

**Bills Committee on
Electronic Health Record Sharing System (eHRSS) Bill**

The Administration's Response to issues relating to the participation of mentally incapacitated healthcare recipients in the eHRSS arising from the discussion on 8 December 2014 and 2 February 2015

This paper sets out the Administration's response to the issues relating to the participation of mentally incapacitated healthcare recipients (HCRs) in the eHRSS arising from the discussion of the Bills Committee on 8 December 2014 and 2 February 2015.

Appointment of guardians by the Guardianship Board

2. At the meeting of the Bills Committee on 8 December 2014, a member requested that we seek clarification from the Labour and Welfare Bureau (LWB) on whether the Guardianship Board would accept application from a family member of a mentally incapacitated person (MIP) for appointment as the MIP's guardian to deal with matters relating to the eHRSS such as joining the eHRSS and giving sharing consent to particular healthcare providers. The response from the LWB on this matter is set out in paragraphs 3 and 4 below.

3. Under the Mental Health Ordinance (MHO) (Cap. 136), the Guardianship Board may appoint a private guardian or the public guardian, and grant specific powers¹ to the appointed guardian for handling matters for MIPs within those specific powers. Handling matters relating to participation of a HCR in the eHRSS does not fall

¹ The six powers as stipulated in Section 59R(3) of the MHO are:

- to require the person concerned to reside at a specific place;
- to bring the person concerned to a specific place and use reasonable force for the purpose;
- to require the person concerned to attend at a place and time for medical or dental treatment, special treatment, occupation, education or training;
- to consent to medical or dental treatment if the person concerned is incapable of understanding the general nature and effect of the treatment;
- to require access to the person concerned to be given to any doctor, approved social worker or other person specified in the guardianship order; and
- to hold, receive or pay a specified monthly sum for the maintenance or other benefit of the person concerned (currently maximum at HK\$13,000 per month).

within the scope of the exclusive powers that the Guardianship Board can specify for an appointed guardian.

4. The powers of an appointed guardian are specific and are related to significant decisions on personal affairs, financial matters or medical or dental treatments. Under Section 59O of the MHO, the Guardianship Board, in making the appointment, has to be satisfied that, among others, the particular needs of the person concerned may only be met or attended to by guardianship and that no other less restrictive or intrusive means are available in the circumstances, and that it is in the interests of his / her welfare or the protection of others that he / she should be received into guardianship. The Guardianship Board will assess the merits of individual cases according to the facts presented and whether it is in the interests of the concerned person to grant the Guardianship Order. Meanwhile, participation in the eHRSS, which is voluntary, is not a matter with very significant welfare implications and does not fall within the intended circumstances for the granting of a Guardianship Order under the MHO.

5. As provided under clause 3 of the eHRSS Bill, certain persons are eligible in a certain order of priority as a substitute decision maker (SDM) of a mentally incapacitated HCR. Such SDM arrangement is for the giving/revocation of joining/sharing consents in relation to the eHRSS on behalf of the concerned HCR. It is worth noting that an appointed guardian (including a guardian appointed by the Guardianship Board under the MHO) who accompanies the HCR at the relevant time is already among the eligible types of SDMs of a mentally incapacitated HCR. In the absence of those at a higher order of priority (including an appointed guardian who accompanies the concerned HCR at the relevant time), a family member who accompanies a mentally incapacitated HCR at the relevant time is eligible as an SDM.

Cases where family members of an MIP hold different views on matters relating to the MIP's participation of the eHRSS

6. At the meeting of the Bills Committee on 2 February 2015, a member made a suggestion of referring cases of disputes where family

members eligible as SDMs of an MIP hold different views on matters relating to the MIP's participation of the eHRSS to the Guardianship Board or the court for resolution. As advised by the LWB, for similar reasons as set out in paragraph 4 above, resolving disputes of this nature is not in line with the role of the Guardianship Board under the MHO. As regards the power of the court, under Part II of the MHO, the court may, on application by a person specified in Section 7(3) of the MHO, make an order regarding the management and administration of an MIP's property and affairs.

7. We also wish to point out that in case of family members' dispute, professional advice from healthcare professionals and mediation services by social workers may be of assistance to the concerned parties in reaching consensus based on the interests of the HCR. The concerned parties may also consider seeking assistance from the Social Welfare Department. Participation of eHRSS is voluntary in nature. There is no deadline for application to join eHRSS by HCRs or their SDMs.

**Food and Health Bureau
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