



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2537 7319)  
10 February 2015

Ms Ida LEE  
Deputy Head (eHealth Record)  
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Health Branch  
eHealth Record Office  
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2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms LEE,

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

Further to my letter dated 12 May 2014, I should be grateful if you could provide further clarification on the following matters.

#### Clauses 10, 11, 22 and 23 (Suspension/cancellation of healthcare recipient's/ healthcare provider's registration)

1. Before the Commissioner for the Electronic Health Record (the Commissioner) exercises his power of suspension or cancellation, would the healthcare recipient or healthcare provider be given an opportunity to make representations? If not, why? Please see section 6ZF(4) of the Betting Duty Ordinance (Cap. 108) and section 34Y(1), (3) and (4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for provisions giving an opportunity to make representations.
2. Under what circumstances would the registration of a healthcare recipient or healthcare provider impair the security or compromise the integrity of the Electronic Health Record Sharing System (System) under clauses 10(1)(d), 11(1)(d), 22(1)(e) and 23(1)(e)? Will the Administration consider setting out in the Bill the factors that the Commissioner would

consider in suspending or cancelling the registration on the ground that the registration would impair the security or compromise the integrity of the System?

Clause 48 (Functions and powers of Commissioner)

3. According to the Administration's reply of 16 May 2014 (LC Paper No. CB(2)1551/13-14(01)), the Commissioner will also "monitor" the security compliance of the electronic medical record systems by means of healthcare providers' security assessments during their first registration to the System and subsequent periodic assessment. It is noted that the Commissioner is empowered, among others, under clause 48(1)(c), to "supervise" the compliance with the Electronic Health Record Sharing System Ordinance (to be enacted) (eHealth Ordinance). Is it necessary to expressly provide for the Commissioner's power to "monitor" the compliance with the eHealth Ordinance under clause 48(1)(c), as in section 8(1)(a) of the Personal Data (Privacy) Ordinance (Cap. 486) (Privacy Ordinance)?
4. What actions will be taken by the Commissioner to ensure compliance with the eHealth Ordinance? Should provisions be made in the Bill to provide for this matter? For example, if the Commissioner needs the power to inspect an electronic medical record system to ensure compliance with the eHealth Ordinance, should this power be expressly provided for in the Bill? As you know, a similar power is provided in section 8(1)(e) of the Privacy Ordinance.
5. Under clause 48(1)(h), the Commissioner has to devise a mechanism for handling complaints relating to the operation of the System. Please explain the complaints handling mechanism that the Commissioner would put in place under that clause. Would this mechanism be provided in the Bill or by way of subsidiary legislation? If the latter, since there is currently no provision empowering the Commissioner to make subsidiary legislation under the Bill, should provisions be added to provide for such power?

Clause 50 (Commissioner to require production of records or documents in certain circumstances)

6. The Commissioner may in writing require a registered healthcare provider to produce the record or document in certain circumstances. As the term

"document" is not defined in the Bill, the definition of "document" under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) kicks in. "Document" is defined in Cap. 1 as "any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means". It seems that "document", as defined under Cap. 1, does not include electronic documents or information recorded by electronic means. In this connection, please see section 20(1) of the Companies Ordinance (Cap. 622) for the definition of "document" which includes a document in electronic form or any other form. If it is intended that "document" in clause 50 would cover electronic documents, should this be provided expressly in the clause?

Clause 51 (Commissioner to issue code of practice)

7. If there is a failure on the part of a person to observe any provision of a Code of Practice, is it the Administration's intention that this fact could be used in legal proceedings under the eHealth Ordinance? If so, please make express provisions to reflect this intention. Please see similar provisions in other Ordinances such as section 13 of the Privacy Ordinance and section 30 of the Unsolicited Electronic Messages Ordinance (Cap. 593).

Clause 53 (Establishment of Board)

8. In relation to the appointment of members to the Electronic Health Record Research Board (Board), please clarify –
  - (a) the term of appointment and re-appointment of members;
  - (b) how the public would be informed of the membership of the Board, and whether the notices of appointment would be published in the Gazette; and
  - (c) whether, and if so, in what circumstances, the members of the Board may be removed from the office.

Despite section 42 of the Interpretation and General Clauses Ordinance (Cap. 1), it is common to make express provisions for the above matters and those raised in paragraph 26 of my letter to the Administration of 12 May 2014 (LC Paper No. CB(2)1515/13-14(01)). You may wish to

refer to section 15 of the Buildings Energy Efficiency (Registered Energy Assessors) Regulation (Cap. 610B), section 3 of the Chiropractors Registration Ordinance (Cap. 428) and section 10 of The Hong Kong Polytechnic University Ordinance (Cap. 1075).

Clause 59 (Service of notice etc.)

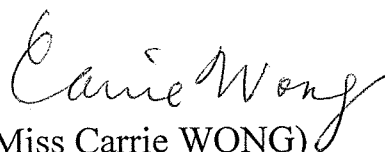
9. "Officer" of a company used in clause 59(b)(i) is not defined in the Bill. Please consider adding a definition of "officer" as in other Ordinances. Please see, for example, section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for the definition of "officer" in relation to a company and section 838(1) of the Companies Ordinance (Cap. 622) for the definition of "officer" in relation to a body corporate.

Drafting matters

10. Under clause 2 of the Bill, "index data" is defined to mean "the personal particulars of the recipient that identify the [healthcare] recipient for the operation of the System". While some examples of personal particulars are given in paragraph 6(b) of the Legislative Council Brief (File reference: FH CR 1/1/3781/10), no definition of "personal particulars" is provided in the Bill. For the sake of clarity, please consider adding a definition of "personal particulars" in the Bill. As you know, "personal particulars" is defined in existing legislation such as sections 21(3) and 29(6) of the Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K).

As there will be a Bills Committee meeting on 26 February 2015, could the Administration please provide a reply in English and Chinese by 23 February 2015.

Yours sincerely,



(Miss Carrie WONG)  
Assistant Legal Adviser