

II. REPORT

The date of First Reading of the Bill is 30 April 2014. Members may refer to the LegCo Brief (File Ref.: FH CR 1/1/3781/10) issued by the Food and Health Bureau (FHB) on 16 April 2014 for further information.

Object of the Bill

2. The Bill seeks to establish the Electronic Health Record Sharing System (System), to provide for the sharing and using of data and information contained in the System, and the protection of the System, data and information, and to provide for incidental and related matters.

Background

3. The Government put forward a proposal to the Panel on Health Services in 2008 to develop a territory-wide patient-oriented electronic health record (eHR) sharing system.

4. If the Bill is enacted and the System comes into operation, an authorized private healthcare providers (HCP) in both the public and private sectors may upload and access an individual's health-related data (with his/her consent) for his/her healthcare purpose. The System seeks to provide an efficient infrastructure for the object stated in paragraph 2 above, thereby promoting collaboration between the public and private sectors, the continuity of care and the quality of the provision of healthcare.

5. At present, the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486) sets out the provisions for protection of personal data privacy in Hong Kong but there is no specific provision on health-related data. General offences against unlawful access to and use of computer and data are provided in the Telecommunications Ordinance (Cap. 106)¹ and the Crimes Ordinance (Cap. 200)².

6. In view of the unique arrangement of data sharing, the sensitive nature of health records and the need to provide additional safeguards to instill public confidence in the System, the Administration wishes to introduce a new legislation to cater for the new circumstances brought into place by the System.

Provisions of the Bill

7. The Bill is divided into seven parts. Its key provisions are set out below.

¹ Please see section 27A of the Telecommunications Ordinance (Cap. 106) on unauthorized access to computer by telecommunications.

² Please see section 161 of the Crimes Ordinance (Cap. 200) on access to computer with criminal or dishonest intent.

Establishment of the System

8. The Bill provides for the establishment of the System by the Commissioner for the Electronic Health Record (Commissioner). The System will keep a record of every healthcare recipient (HCR) registered with the Commissioner and the data required for the proper functioning of the System.

Commissioner³

9. The Secretary for Food and Health (SFH) will appoint a public officer to be the Commissioner to establish, operate, maintain and develop the System. The Commissioner will keep a register of prescribed HCPs and make it available for public inspection. He/she may require the HCPs to produce records or documents under specified circumstances for investigation purpose. He/she will also be authorized to publish Code of Practice and specify forms.

Registration of HCR

10. An HCR holding an identity card or an identification document as specified in the Bill may apply to the Commissioner to be registered as HCR. Upon such an application, the HCR must give the Commissioner a joining consent⁴ which would allow the Commissioner to obtain from or provide to a prescribed HCP to which the HCR has given a sharing consent⁵ any sharable data of the registered HCR.⁶ Sharing consent may be given for one year or an indefinite term until revocation.⁷ Prescribed HCP means the Department of Health, the Hospital Authority or a registered HCP.⁸

11. For a minor⁹ or a person who is aged 16 or above and is incapable of giving a joining consent, the application may be made by a substitute decision maker (SDM).¹⁰

12. Given the voluntary participation of the eHR, a registered HCR or his/her SDM may withdraw the joining/sharing consent at any time.¹¹ The Commissioner may suspend or cancel the registration concerned under the circumstances specified in the Bill.¹²

³ Clauses 47 to 52 of the Bill.

⁴ The meaning of the expression "joining consent" is provided in clause 7 of the Bill.

⁵ The meaning of the expression "sharing consent" is provided in clause 12 of the Bill.

⁶ The Hospital Authority and the Department of Health is not required to obtain a sharing consent from an HCR as the consent for them to view and upload the eHR of a registered HCR is made part and parcel of the HCR's joining consent (clause 16(1) of the Bill).

⁷ Clauses 13, 14 and 15 of the Bill.

⁸ As defined in clause 2(1) of the Bill.

⁹ The expression "minor" is defined in clause 2 of the Bill as a person below 16 years of age. Clause 37(2)(c) of the Bill provides for its interaction with the PDPO.

¹⁰ "Substitute decision maker" is defined in clause 3 of the Bill.

¹¹ Clause 15 of the Bill.

¹² Clauses 10 and 11 of the Bill.

13. Similarly, the participation of private HCPs in eHR sharing is voluntary. An HCR can authorize a particular HCP to access and upload his/her eHR. A list of statutorily registered healthcare professionals that may be registered as HCP is set out in the Schedule to the Bill. A registered HCP may withdraw from the System at any time, and the Commissioner may suspend or cancel the relevant registration under the circumstances specified in the Bill.¹³

Use of eHR

14. The data and information contained in an eHR may not be used except for improvement of healthcare, for research and statistics, for disease control and surveillance and other uses currently permitted by or under any other law.¹⁴

System security and integrity

15. Prescribed HCPs are required to take reasonable steps to ensure their electronic medical record systems connecting to the sharing platform would not impair the security or compromise the integrity of the System.¹⁵

Interaction with PDPO¹⁶

16. The Bill is to be read in conjunction with the PDPO. The application of Part 5 of the PDPO will be modified to the effect that "a person authorized in writing" will not be allowed to make a data access/correction request on behalf of a data subject for his/her eHR. If the HCP contributing a piece of eHR data is unable to comply with a data correction request, the Commissioner will make a note of the matters in respect of which the data is considered by the requestor to be inaccurate. The note may be annexed to the data correction requested or elsewhere. Also, a contravention of a requirement under the PDPO as proposed to have effect subject to Part 4 of the Bill is to be regarded as a contravention of a requirement under the PDPO.

Offences

17. New offences¹⁷ specific to the operation of eHR sharing are to be introduced in respect of a person –

- (a) knowingly causing a computer to perform any function so as to obtain unauthorized access to an eHR;
- (b) knowingly damaging an eHR;

¹³ Clauses 21, 22 and 23 of the Bill.

¹⁴ Clauses 26 to 29 of the Bill.

¹⁵ Clause 35 of the Bill.

¹⁶ Clauses 36 to 40 of the Bill.

¹⁷ Clauses 41 to 46 of the Bill.

- (c) causing access to, modification of or impairment of an eHR, with the intent to commit an offence, deceive, make dishonest, gain or cause loss to another;
- (d) knowingly impairing the operation of the System;
- (e) altering, falsifying, concealing or destroying any data in an eHR with the intent to evade a data access/correction request;
- (f) knowingly making an untrue statement to enable to person to give a joining/sharing consent;
- (g) knowingly contravening a research condition; and
- (h) using or providing eHR of another person for direct marketing.

Appeals

18. Any HCP/HCR who is aggrieved by the Commissioner's decision on registration may appeal to the Administrative Appeals Board.¹⁸

Ombudsman's investigations

19. Since the Commissioner's office is part of the FHB, the Commissioner's actions will be subject to investigations by the Ombudsman under the Ombudsman Ordinance (Cap. 397).

Liability of Government and public officers

20. The Bill, if enacted, would apply to the Government.¹⁹ It is proposed that the Government and public officers would not be exempted from criminal liability arising from the Bill, and public officers would not be civilly liable for an act done or omitted to be done in exercising a power or performing a function under the Bill in good faith.²⁰ As the operation of the System may involve non-public officers, it is proposed that persons appointed in writing by the Commissioner to perform particular functions involved in the operation of the System would also be protected against civil liability.²¹

Commencement

21. The Bill, if enacted, would come into operation on a day to be appointed by the SFH by notice published in the Gazette.

¹⁸ Clause 55(1) of the Bill.

¹⁹ Clause 4 of the Bill.

²⁰ Clause 58 of the Bill.

²¹ Clause 58(3)(b) of the Bill.

Public Consultation

22. The Administration completed a two-month public consultation on the proposals on the legal, privacy and security framework (Framework) for the System.²² According to the Administration, it has since September 2013 conducted around 50 engagement meetings with stakeholders²³ during which the Framework was explained to them, and the responses were generally positive.

Consultation with LegCo Panel

23. According to the Clerk to the Panel on Health Services, the Panel was consulted on the legal, privacy and security framework for the System on 12 December 2011. The framework was put forward for public consultation on the same day. The Administration briefed the Panel on the outcome of the public consultation and major elements of the proposed legislation on 11 June 2012 and 18 March 2013 respectively. Members of the Panel also observed a demonstration of the operation of the System on 28 February 2014. They generally supported the proposed legislation for establishing the System and governing the sharing and use of data and information contained therein. Members had enquired the measures to safeguard privacy and protect the personal data contained in the System, the patients' right of access to their electronic health data, the uploading of and access to the eHR of those patients who resided outside Hong Kong, the scope of health data for sharing through the System, the liability of participating healthcare providers in the event of failure to input complete and accurate health data of their patients into the System, and the governance of the operation of the System.

Conclusion

24. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the unique arrangement of health-related data sharing, the sensitive nature of the data, and the concerns expressed by members of the Panel on Health Services on the legislative proposals, Members may wish to set up a Bills Committee to study the Bill in detail.

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²² Please see the Report on Public Consultation on the Legal, Privacy and Security Framework for Electronic Health Record Sharing (LC Paper No. CB(2)2279/11-12(05)) for the consultation results.

²³ The stakeholders include healthcare professional bodies, private hospitals, major group practices, non-government organizations providing healthcare services, the Hospital Authority, the Department of Health, patient groups and academic bodies.