



中華人民共和國香港特別行政區政府總部醫務衛生局
Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

本函檔號 Our Ref: HHB CR 1/3261/24
來函檔號 Your Ref: LS/B/15/2025

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13 June 2025

Ms Macy NG
Clerk to Bills Committee on
Electronic Health Record Sharing System (Amendment) Bill 2025
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms NG,

Electronic Health Record Sharing System (Amendment) Bill 2025

Thank you for your letter dated 3 June 2025. The supplementary information requested by Members at the meeting of the Bills Committee on Electronic Health Record Sharing System (Amendment) Bill 2025 on 2 June 2025 is provided in the Annex for reference.

Yours sincerely,

(Erica LAM)
for Secretary for Health

Encl.

c.c. Department of Justice
(Attn: Mr Michael CHOI, Acting Senior Assistant Law Draftsman)
(By email: michaelchoi@doj.gov.hk)

Annex

Follow-up item (a): Regarding clause 29 of the Electronic Health Record Sharing System (Amendment) Bill 2025 (“the Bill”) –

(i) Examine the drafting of the Chinese text of paragraph (b) of the definition of “related person” in the proposed new section 26S(1) of the Electronic Health Record Sharing System Ordinance (Cap. 625) (“Cap. 625”) and consider amending it to read as “凡該接受者根據第26W(1)條授權的某人” or “根據第26W(1)條授權的某人” to enhance the clarity of the provision.

In respect of the aforesaid suggestion raised in paragraph (a)(i) in the list of follow-up actions, we will propose Committee Stage Amendments (“CSAs”) to refine the drafting of the relevant provision.

(ii) Explain, in relation to the proposed new sections 26S(2) and 26V of Cap. 625, the considerations for defining a minor as someone under the age of 16, and examine whether this age should be changed to under 18 to align with the definition of “minor” in other ordinances (e.g. Personal Data (Privacy) Ordinance (Cap. 486) (“Cap. 486”)) to avoid public confusion; and provide information on the age definition of a minor for purposes of decisions regarding do-not-attempt cardiopulmonary resuscitation and advance medical directives.

2. According to section 2 of Cap. 625, “minor” means a person below 16 years of age. If a healthcare recipient (HCR) is a minor, an eligible person (e.g. a parent) as specified under section 3 of Cap. 625 may register the minor for eHealth or manage the relevant sharing consents. Section 39 of Cap. 625 stipulates that a reference to “minor” in the Personal Data (Privacy) Ordinance (Cap. 486) should be construed as referring to a person below 16 years of age. If the Privacy Commissioner for Personal Data performs any function or exercises any power under Cap. 486 in relation to data or information contained in eHealth, it must be based on that definition of “minor”. Similarly, the proposed new section 26S(2) of Cap. 625 specifies that, for the purposes of the definition of “relevant person”, a reference to “minor” in Cap. 486 should likewise refer to a person below 16 years of age. The proposed new section 26V of Cap. 625, which concerns the authorisation to provide and obtain sharable data, should apply to registered HCRs aged 16 or above.

3. In determining the age definition of “minor”, the Government made reference to various local and overseas legislations¹ relating to the provision of healthcare services and the sharing of health records, and conducted extensive consultation with relevant stakeholders when establishing eHealth and formulating Cap. 625. It was generally considered that minors aged 16 or above should possess sufficient capability to consent to the sharing of their electronic health records. Therefore, the age of 16 was adopted for defining a minor. Since the launch of eHealth in 2016, such arrangement has been effective.

4. For decisions concerning do-not-attempt cardiopulmonary resuscitation orders and advance medical directives, the Advance Decision on Life-Sustaining Treatment Ordinance (Ordinance No. 30 of 2024) does not provide a definition of “minor”. Therefore, pursuant to the Interpretation and General Clauses Ordinance (Cap. 1), “minor” means a person under the age of 18 in such context.

(iii) Examine the proposed new sections 26W(3) and 26X(3) of Cap. 625 (relating to the authorisation of a person by a registered healthcare recipient and the revocation of such authorisation), and consider adding provisions that the Commissioner for Electronic Health Records (“eHRC”) shall notify the person to whom an authorisation has been given or revoked by a registered healthcare recipient of the authorisation or the revocation of the authorisation.

5. We will move CSAs to incorporate provisions requiring the eHRC to notify persons who have been authorised by, or whose authorisation has been revoked by, registered HCRs, of such authorisations or revocations.

Follow-up item (b): With reference to section 33(2) of Cap. 625 on the matters to be taken into account by the Electronic Health Record Research Board in considering applications for the use of identifiable particulars made to the Secretary for Health (“SH”) under section 32 of Cap. 625, examine whether amendments are necessary to section 36 of Cap. 625 (relating to matters that the Commissioner must take into account when considering an application for the use of non-identifiable data made to the Commissioner under Section 35 of Chapter 625) to state that the Commissioner must consider the public interest when processing such applications.

¹ For example, under section 14(2) of the Parent and Child Ordinance (Cap. 429), a minor aged 16 or above who consents to the taking of a bodily sample from themselves shall have the same legal effect as if the consent were given by an adult; where a minor’s consent under such provision is valid, no further consent is required from any other person. In the United Kingdom, section 8 of the Family Law Reform Act 1969 provides that a minor aged 16 or above who gives valid consent to treatment does not require consent from a parent or guardian. Besides, in Ontario, Canada, section 23 of the Personal Health Information Protection Act 2004 stipulates that parents of minors under the age of 16 may consent to the collection, use, or disclosure of their personal health information.

Follow-up item (c): Examine section 46 of Cap. 625 concerning offences relating to contravening conditions for research or statistics purpose, and consider whether an offence relating to contravention of a condition imposed by the Commissioner under section 36(2)(a) of Cap. 625 should be added, in addition to the existing offence relating to contravention of a condition imposed by the Commissioner under section 34(1)(a) of Cap. 625.

6. eHealth will integrate medical records from both the public and private healthcare sectors in Hong Kong to establish a comprehensive central health data bank, which could support medical research, clinical trials and innovations etc., thereby facilitating the development of Hong Kong as a medical innovation hub. Cap. 625 has already covered provisions specifying that data and information contained in eHealth may, subject to the statutory regulatory mechanism, be used for research or statistical purposes relevant to public health or public safety. The proposed amendments to section 29 of Cap. 625 seek to clearly specify that such uses include the development of medicine, medical treatments or medical devices.

7. Divisions 2 and 3 of Part 3 of Cap. 625 set out the application procedures for the use of identifiable data and non-identifiable data respectively. Any such applications require submission of a written proposal setting out the nature and purpose of the research, the expected public or scientific benefits, and any other information as may be specified by the eHRC. Applications for the use of identifiable data will be considered by SH based on the advice of the Electronic Health Record Research Board, which is tendered having regard to a number of prescribed factors, including weighing of the public interest in carrying out the research or preparing the statistics and the public interest in protecting the privacy of HCRs concerned. SH may approve the applications and impose conditions. To ensure the proper use of identifiable data by the applicants and protect the privacy of HCRs, section 46 of Cap. 625 expressly provides that contravention of any approval conditions imposed by SH constitutes an offence. Meanwhile, applications for the use of non-identifiable data will be considered by the eHRC, who will assess whether it is ethical to carry out the proposed research or statistical compilation, and the resource implication in providing the non-identifiable data. The eHRC may approve the applications and impose conditions. It is important to note that according to section 29(2) of Cap. 625, the results of the research or the resulting statistics must not be made available in a form that would enable a HCR to be identified. The aforesaid arrangements are intended to strike a balance between the public interest in conducting research and the protection of the privacy of registered HCRs. Given that identifiable data are more sensitive in nature, the application procedures are correspondingly more stringent.

Follow-up item (d): Regarding clause 37 of the Bill, examine the proposed new section 37A of Cap. 625 and consider adding relevant provisions such as the Commissioner's power to impose any conditions when making an authorisation.

8. We will move CSAs to amend the proposed new section 37A of Cap. 625 to empower the eHRC to impose such conditions as the eHRC considers necessary when making an authorisation.

Follow-up item (e): Regarding clause 40 of the Bill, examine whether the proposed new section 41A of Cap. 625 (offence relating to purporting to be or holding out as eHealth System) needs amending to clearly state that the prosecution has to prove mens rea of the defendant; and consider increasing the penalties for the offences under the proposed new sections 41A and 41B of Cap. 625 (offence relating to use of title of Electronic Health System etc. to mislead others) to reflect their seriousness.

9. We will move CSAs to amend the proposed new section 41A of Cap. 625 to clearly state that the prosecution has to prove mens rea of the defendant.

10. Besides, having considered Members' views and reviewed the nature and severity of the relevant offences, including the fact that eHealth, as a territory-wide integrated health information infrastructure that contains a substantial volume of sensitive health data of Hong Kong citizens, we propose to adopt the maximum penalty applicable to offences of similar nature², and to set the penalty for the relevant offences at a level 6 fine (\$100,000). We will move CSAs to amend the proposed new sections 41A and 41B of Cap. 625 accordingly.

Follow-up item (f): Regarding clause 42 of the Bill, examine the drafting of the English text of the proposed amended section 47(8)(b)(iv) of Cap. 625 and consider adding "that is" after "a healthcare facility" to enhance the clarity of the provision.

11. The legislative intent of the proposed amended section 47(8)(iv) of Cap. 625 is to cover a healthcare facility managed or controlled by an institution listed in sub-subparagraph (A), (B) or (C) of that section. We consider that the English text of the proposed amended section 47(8)(iv) accurately reflects this policy intent in a concise manner and thus no amendments are required.

² For example, section 21(2) of The Education University of Hong Kong Ordinance (Cap. 444) and section 22(2) of Lingnan University Ordinance (Cap. 1165).

Follow-up item (g): Regarding clause 43 of the Bill, examine the drafting of the proposed new section 47B(4) of Cap. 625 to clearly specify that the 21-day period for disputing liability for the relevant offence is calculated on a calendar day basis to avoid doubt.

12. The legislative intent of the proposed new section 47B(4) of Cap. 625 is not to exclude certain days from the computation of the 21-day period under that provision unlike in the case of the proposed new section 9(6) of Schedule 4 to Cap. 625 where an express provision concerning the exclusion of certain days from the computation of time is required.

13. We consider that the wording of the proposed new section 47B(4) is sufficiently clear to reflect the legislative intent and thus no amendment is necessary.

Follow-up item (g): Prepare a list or flowchart of the existing offences under Part 5 of Cap. 625, and of the proposed new offences under Cap. 625 introduced by the Bill, along with their respective penalties and enforcement mechanisms, to facilitate the Bills Committee's scrutiny of the relevant provisions.

14. A list of the existing offences under Part 5 of Cap. 625 and the offences proposed to be added by the Bill, along with their respective penalties, is set out in **Appendix 1**. A flowchart illustrating the enforcement mechanism following the issuance of an enforcement notice by the eHRC under the proposed new section 26R of Cap. 625 is set out in **Appendix 2**.

Appendix 1

Existing and Proposed New Offences of Cap. 625

	Existing/Proposed New Offences	Section	Offences	Penalties
1.	Proposed New Offence	41A	Without the written consent of the Commissioner, establishes or maintains an information infrastructure that purports or holds itself out— (a) to be the eHealth System or any part of it; or (b) to be in any way associated with the eHealth System ³	Liable on summary conviction to a fine at level 3 (\$10,000) ⁴
2.	Proposed New Offence	41B	Establishes or maintains an information infrastructure that uses any of the titles specified below— (a) “Electronic Health System”; (b) “eHealth System”; (c) “eHealth”; (d) “電子健康系統”; (e) “醫健通系統”; (f) “醫健通”; and (g) a title in any language that closely resembles any of the titles; And does so with intent to mislead any person into believing, or being reckless as to whether any person would be misled into believing, that the information infrastructure is—	Liable on summary conviction to a fine at level 3 (\$10,000) ⁴

³ As mentioned in paragraph 9 of the Annex above, we will move CSAs to clearly state that the prosecution has to prove mens rea of the defendant in the relevant offence.

⁴ As mentioned in paragraph 10 of the Annex above, we will move CSAs to set the penalty for the relevant offences at a level 6 fine (\$100,000).

	Existing/Proposed New Offences	Section	Offences	Penalties
			(a) the eHealth System or any part of it; or (b) in any way associated with the eHealth System	
3.	Existing Offence	42(1)	Knowingly causes a computer to perform a function so as to obtain unauthorised access to data or information contained in an electronic health record	Liable on summary conviction to a fine at level 6 (\$100,000)
4.	Existing Offence	42(4)	Without lawful excuse, knowingly damages data or information contained in an electronic health record	Liable on summary conviction to imprisonment for 2 years
5.	Existing Offence	42(6)	Knowingly— (a) causes access to data or information contained in an electronic health record; (b) causes modification of data or information contained in an electronic health record; or (c) causes impairment to the accessibility, reliability, security or processing of data or information contained in an electronic health record; And causes the access, modification or impairment— (a) with intent to commit an offence; (b) with a dishonest intent to deceive; (c) with a view to dishonest gain for the person or for another; or (d) with a dishonest intent to cause loss to another, whether on the same occasion as the person causes the access, modification or impairment or on any future occasion	Liable on conviction on indictment to imprisonment for 5 years

	Existing/Proposed New Offences	Section	Offences	Penalties
6.	Existing Offence	43	Knowingly impairs the operation of the System	Liable on conviction on indictment to imprisonment for 10 years
7.	Existing Offence	44	Alters, falsifies, conceals or destroys the data or information; or directs another person to do anything, with intent to evade a data access request or data correction request in relation to any data or information contained in an electronic health record	Liable on summary conviction to a fine at level 6 (\$100,000)
8.	Existing Offence	45	Knowingly makes an untrue statement to enable the person to give a joining consent or sharing consent	Liable on summary conviction to a fine at level 6 (\$100,000)
9.	Existing Offence (Not yet in operation)	46	Knowingly contravenes a condition imposed under section 34(1)(a)	Liable on summary conviction to a fine at level 6 (\$100,000)
10.	Existing Offence	47(1)	Uses another person's data or information contained in an electronic health record, or a copy (in whatever format) of the data or information, for direct marketing	Liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years
11.	Existing Offence	47(3)	Provides to others another person's data or information contained in an electronic health record, or a copy (in whatever format) of the data or information, for direct marketing for gain	Liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years
12.	Existing Offence	47(5)	Provides to others another person's data or information contained in an electronic health record, or a copy (in whatever format) of the data or information, for direct marketing not for gain	Liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years

	Existing/Proposed New Offences	Section	Offences	Penalties
13.	Proposed New Offence	47A	Does not comply with an enforcement notice	Liable on summary conviction to a fine at level 5 (\$50,000); and if the offence continues after the conviction, to a further fine of \$1,000 for every day during which the offence continues after the conviction

