

**A Summary of Developments in Personal Information Protection
in China since August 2009**

This article updates our weblog posting of August 2009. Since the time of that posting, there have been the following developments in laws affecting personal information in China:

1. A new *Tort Liability Law* was enacted on December 26, 2009 and became effective on July 1st, 2010. The new *Tort Liability Law* contains provisions which establish a right of a private citizen to sue for damages or other remedies in tort (Articles 61, 62, 36, 2, 6, 3, 15), in cases where medical records are mishandled and in cases where the internet is used to harm the interests of the private citizen or, more generally, in cases where the private citizen's right of privacy, health, name, reputation, honor or portrait has been infringed upon and damages have occurred.
2. The *Guidelines for Payment and Clearing Organizations on Anti-money Laundering and Anti-terrorist Financing* were issued by the People's Bank of China on September 16, 2009 and became effective on January 1st, 2010. The *Guidelines* require payment and clearing organizations and their branches to establish internal control systems to prevent money laundering and terrorist financing, and to establish systems for the ascertainment of client identities, for the reporting of suspicious transactions, and for the preservation of client identity and transaction records. In the *Guidelines*, the "basic personal information" is defined in relation to an individual client to include the name, gender, nationality, occupation, address of dwelling or office, contact information, and type and number of valid identity certificate or other document evidencing identity.
3. The *Basic Norms for Electronic Medical Records* were issued by the Ministry of Health on February 22, 2010 and became effective on April 1st, 2010. The *Basic Norms* prohibit unauthorized review of patients' medical records by other institutions and persons besides the medical personnel that perform the medical activity and quality control personnel. They also permit the review of medical records, after obtaining consent of the medical institution, for the purpose of scientific research and education.
4. The *Norms for Electronic Medical Records of Traditional Chinese Medicine (for Trial Implementation)* were issued by the State Administration of Traditional Chinese Medicine on April 21, 2010 and became effective on May 1, 2010. The *Trial Rules* require medical organizations to set up information security schemes for electronic medical records and establish corresponding powers for doctors, nurses and other management staff in the hospital to read, copy, and type electronic medical records, and require hospitals to establish usage records for the electronic medical records, recording the staffs, times and contents of usage. They also prohibit any entity or individual from reading or copying electronic medical records without due authorization.
5. The *Social Insurance Law* was issued in October 28, 2010 and will become effective on July 1, 2011. The *Social Insurance Law* will prohibit governmental authorities and

other organizations, as well as their staff, from disclosing personal information which they may obtain in the course of their work. Violators will be subject to administrative punishment and civil compensation.

6. The *Provisions on the Management of Social Insurance Records (for Trial Implementation)* were issued by the Ministry of Human Resources and Social Insurance and State Archives Administration on July 23, 2009. The *Trial Provisions* require that social insurance records, including medical insurance records, comply with applicable requirements on storage, confidentiality, use, transfer, validation, and destruction of archives, that they be stored properly, and that damage to or destruction, loss, and disclosure of social insurance records be prevented.
7. A second version for solicitation of comments of Draft Amendments to the *Consumer Interests Protection Law* was published by the State Administration of Industry and Commerce in October 2009, and was submitted to the Standing Committee of the National People's Congress for deliberation. The *Second Draft Amendment* included a definition of personal data. In this draft, "personal data" includes name, gender, age, occupation, contact information, health status, family status, property status, consumption records, and information that is closely related to the consumer individual and his family. The Draft Amendments provide that once personal information has been collected by an enterprise, the enterprise has obligations of safe retention, reasonable use, retention for a limited period of time, and proper destruction. The *Second Draft Amendments*, however, have not yet become effective as law.
8. A Draft for solicitation of comments of the *Credit Collection Management Regulations* was issued by the Legal Office of the State Council on October 12, 2009. The *Draft Credit Reference Regulation* is intended to govern the credit reference business in China. It protects the rights of individual data subjects, such as placing restrictions on the data that can be collected and requiring consent from data subjects in relation to certain processing, and defines "credit information" to include basic information such as basic information of an individual, legal person, or other organization, credit transaction information, and other information that reflects the data subject's credit status. The *Draft Credit Reference Regulation* has, however, not yet come into effect as law.
9. Certain provinces have also enacted provincial-level rules to implement the national consumer protection law. In some instances, these rules impose restrictions or prohibitions on the collection, disclosure and use of the personal information of consumers.

In our weblog posting of August 2009, we noted that there was no unitary Chinese law that specifically addresses personal data or the protection of personal data, and that there was a prospect that personal information protection law may continue in a patchwork, piece-by-piece form. That remains the case today, and developments since August 2009 have in fact reinforced this pattern. Developments since August 2009 have positioned personal

information protection laws in China as a consumer protection law and regulations, a tort law, a medical records regulation, a social insurance law, a credit reference regulation, and even as an anti-money laundering banking regulation.

Provisions related to personal data are therefore now ever more scattered among various Chinese laws and regulations which primarily and originally were intended to address particular subject matter, and therefore only touch personal data as an aspect of addressing their original particular subject matter. As a result, there still is no clear, single definition of personal data under Chinese laws and regulations. Inquiries into the impact of Chinese laws on proposed business activities that involve personal information will, unless and until the trend changes, involve intensive inquiry into the applicability of each of these various and scattered provisions.

Some of the content of this weblog entry was originally published on the DataGuidance website (www.dataguidance.com).