



The first mental health law of China



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ARTICLE INFO

Article history:

Received 2 September 2014

Accepted 5 November 2014

Keywords:

China
Mental health law
Mental health services

ABSTRACT

The first mental health law of China entered into effect on May 1, 2013. This was the biggest event in the mental health field in China. The present review introduces its legislative process, its main idea, and the principle and essence of formulating this mental health law. Current problems of the law and possible countermeasures are also discussed.

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It has been estimated that in China 173 million people are suffering from diagnosable psychiatric disorders (Phillips et al., 2009). Meanwhile, by the end of 2010, China had only 757 mental health facilities and approximately 20,480 psychiatrists, and as known to be lacking in prevention and rehabilitation of mental disorders (Liu et al., 2013). During past decades, there have been some concerns regarding the stigma of mental illness and human rights violations in psychiatric hospitals in China, particularly in reference to involuntary admission. For several years, local mental health regulations had already been adopted and implemented in some big Chinese cities, such as Beijing, Shanghai, Wuhan, etc. However, China is characterized by the great diversity across the country in terms of population density, culture, geographic features, language and socioeconomic development. Therefore, the Chinese government had composing a national law for mental health about 30 years ago.

1. Legislative process of mental health law

In 1985, the Ministry of Health commissioned the Sichuan and Hunan Provincial Health Departments to draft the first version of the Mental Health Law. During the next two decades, numerous legal scholars, medical experts, medical institutions, as well as related government departments and social organizations were involved in the legislative process. At the end of 2007, the Ministry of Health submitted a draft of this law to the State Council. Legislative Affairs Office of the State Council consulted

with the relevant departments, local government, international organizations like the World Health Organization and stakeholders from different social groups about the draft. In September 2011, in the State Council's 172nd executive meeting, the Mental Health Law (draft) was passed and submitted to the National People's Congress (NPC) Standing Committee for review. After further modification based on public comments in 2012, the Mental Health Law of China was passed in October 26 and entered into effect on May 1, 2013.

2. Main ideas of the mental health law

The Mental Health Law, composed of 7 chapters and 85 articles, mainly includes the following aspects (Chen et al., 2012).

2.1. On the principles and management mechanism of mental health work

It is regulated in this law that with prevention as its guiding principle, mental health work should adhere to the concept of integrating prevention, treatment and rehabilitation. The comprehensive management of mental health work involves the collective participation of all facets of society under the organization and leadership of the government, with each administrative department fulfilling its respective responsibilities and families and employers making every effort to meet their responsibilities. In order to address such outstanding problems as lack of human resources and mental health service facilities, this law strengthens the development of capabilities in prevention, treatment, and rehabilitation in the three aspects of personnel, fund, and resources to ensure and promote the development of mental health work.

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2.2. On promotion of psychological well-being and prevention of mental disorders

According to this law, all levels of government and relevant departments should take measures to strengthen the work of promoting psychological well-being and preventing mental disorders for the public, employers shall create a working environment conducive to the well-being of employees and be concerned about the psychological well-being of employees, and all schools will employ or engage external teachers or school counselors to provide guidance about psychological well-being. This law also specifies the responsibility of family members. It requires family members to create a healthy and harmonious family environment, and improve their awareness of the prevention of mental disorders; if it appears that a family member may have a mental disorder, other family members should help him/her obtain prompt treatment, provide him/her their daily needs, and assume responsibility for supervision and management. In addition, this law also regulates the responsibility of medical staff, prisons and similar institutions, communities, media, social organizations, and counseling personnel for promotion of psychological well-being and prevention of mental disorders.

2.3. On the diagnosis and treatment of mental disorders

This law provides that institutions which diagnose and treat persons with mental disorders carry out relevant registration procedures according to the administrative regulations for medical facilities and meet certain conditions, it improves the diagnosis, treatment, admission, discharge and other procedures for mental disorders, and it specifies the responsibility of the medical institutions and its professionals. It emphasizes that voluntary admission and treatment should be the first choice for mental disorder patients. For involuntary admission, “risk criterion” is used to replace the traditional “need to treatment criterion” in local mental health legislation; the role of the police is limited to assist the provider rather than be the decision maker. Furthermore, an independent review mechanism is designed for involuntary admission.

2.4. On rehabilitation of mental disorders

The law provides that community-based rehabilitation facilities shall allocate the space and resources to provide rehabilitation training in life skills, social skills, and other skills to persons with mental disorders who need rehabilitation and that medical facilities shall provide community-based rehabilitation facilities with technical assistance and support related to rehabilitation of mental disorders. It also specifies the responsibility of urban community health centers, rural village committees, rural neighborhood committees, employers and guardians for the rehabilitation of persons with mental disorders.

2.5. On safeguarding the legal interests of persons with mental disorders

It is stated in the overview of this law that the human dignity, personal safety, and safety of the possessions of persons with mental disorders should not be violated; the interests and legal rights of persons with mental disorders to education, employment, medical services, and government and non-government welfare shall be protected by law; relevant institutions and individuals shall keep confidential the name, pictures, medical information or other information of persons with mental disorders; individuals and organizations must not stigmatize,

humiliate, abuse, or legally restrict the personal freedom of persons with mental disorders. Meanwhile, this law also makes some specific provisions on the protection regarding the rights of persons with mental disorders. This law protects the rights of persons with mental disorders to receive treatment and rehabilitation, to receive education and employment, and to be informed about and agree to apply for relief. In order to protect the right of persons with mental disorders to judicial relief, it is also clearly specified that if persons with mental disorders or their guardians or close relatives believe that the relevant agencies and individuals have infringed on the legal rights and interests of persons with mental disorders, they may legally initiate a lawsuit.

3. Current problems and countermeasures

Due to the lack of a national baseline measure on mental health services in China, it is difficult to tell the exact changes that the law brings to the mental health service system in the past year. However, some factors cause us to be guarded about the outlook for the implementation of the law.

First, the lack of detailed procedures regarding the promotion of a mental health system and of psychological well-being, implementation of admission and treatment, and construction of community-based rehabilitation facilities remains a significant shortcoming. As a result, the articles of these legislative decrees read more like general statements of goals or principles than procedures to be operationalized or mandates which can be enforced. Previous studies on local mental health legislation already showed that the lack of specificity in these articles will allow the aim of protecting patients’ rights to remain more at the level of theory than practice (Shao et al., 2010, 2012).

More importantly, the presence of mental health legislation does not in itself guarantee respect and protection of patient’s rights. One survey of psychiatrists revealed that even the respondents from cities with local mental health legislation also demonstrated quite a number of inappropriate attitudes (Shao et al., 2012). This implies that people who deeply internalized traditional practice customs in psychiatry find it difficult to immediately change their attitudes and behaviors according to the reforms in law. Thus, change caused by law reforms usually comes in stages.

Last but not least, the consequences of the new legislation in involuntary admissions are still unclear. Some cautious people worried that changing from “need to treatment criterion” to “risk criterion” will mean that some mental disorder patients will not receive timely treatment, as was shown in some foreign countries (Xie, 2013). On the other hand, the review mechanism for involuntary admission can only be used for a patient who is admitted because of “risk to others”, so if someone was sent to a psychiatry hospital by the family with the reason being “risk to self”, he/she is unable to lodge a complaint. Thus, some worried that this law still gave too much power to family members, and could not prevent the problems like “being labeled psychotic”.

After the law went into effect, all levels of the central and local government departments launched a series of promotional campaigns to assist mental health professionals, patients and society as a whole understand the law. The Chinese Psychiatrist Association also provided many training courses about the law to psychiatrists throughout the country, in order to regulate the psychiatric practice. Another important step is local legislation under the framework of national mental health (Shao and Xie, 2013). Shanghai is an example with its local mental health regulation in 2002 serving as a model for both other cities and for the national government. In 2014, the

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