

Forum: China's draft mental health law

Hope for China's national mental health law

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China's Mental Health Law is finally close to becoming legislation. The recent formal release of the draft and request for suggestions by the Legislative Affairs Office of the State Council (on 10 June 2011)^[1] will be followed by consideration and revision by the Standing Committee of the National People's Congress, formal adoption, promulgation, and implementation.

This has been a long and convoluted process. First drafted by a consortium of the Sichuan Provincial Health Department and the Hunan Provincial Health Department Health on the direction of the Ministry of Health in 1985, the proposed law went through 10 rounds of revision, seeking comments, and re-revision from 1985 to 1999. International and national experts discussed revisions to the proposed legislation at three collaborative conferences on mental health law coordinated by the WHO and the Ministry of Health in 1987, 1990 and 1999. After 1999 the Centers for Disease Control of the Ministry of Health took responsibility for developing the legislation and organized new groups of experts that again revised the draft law multiple times and submitted a draft to the Legislative Affairs Office of the State Council in 2006. After three years of evaluation and debate they then distributed an internal draft to national experts for recommendations in 2009. The version recently distributed on the web for public opinion is the result of this very long, very careful process.

The draft released for public opinion is significantly improved in comparison to previous drafts. The major areas of change are more detailed provisions for the prevention, treatment and rehabilitation of mental illnesses: stating that "hospitalization in psychiatric hospitals should be the voluntary decision of the patient"; clearly defining and restricting the situations that merit involuntary admission; and including several clauses about the protection of the legal rights of psychiatric patients and about preventing the abuse of psychiatry. When "the per-

son involved or their guardian does not agree with the decision to involuntarily hospitalize the patient" there are two methods of recourse specified in the regulations: the individual can select a medical institution to conduct an independent evaluation or request the court to arrange a formal evaluation by experts. This is similar to the formal review process of decisions to involuntarily treat patients employed in other countries; it is a reasonable process suitable for the situation in China that safeguards the individual's legal rights, prevents the abuse of psychiatry, and is acceptable to both sides of the dispute.

There are, however, some shortcomings in the current draft. 1) The early detection, diagnosis and treatments of mental disorders are important steps for preventing the chronic deterioration, disability and violent outbursts associated with mental illnesses; but these measures have not been given enough emphasis in the section of the law dealing with prevention. 2) The focus of the law is on services provided by institutions under the Ministry of Health; the legal status, responsibilities, service population and sources of operating expenses for the more than 200 psychiatric hospitals managed by the Ministry of Civil Affairs (the ministry responsible for all social welfare services) and the more than 20 forensic hospitals managed by the Ministry of Public Security are not specified. Originally limited to serving patients without any family support (civil affairs hospitals) or criminals with serious mental illnesses (public security hospitals), in many locations of the country these hospitals now also provide mental health services to all community members. These hospitals play an important part in the overall provision of mental health services in the country so the services they provide should be included under the umbrella of the national mental health law and should satisfy the regulations specified in the law. 3) The language of several of the provisions in the law still needs to be revised.

It is hoped that after such a long history this draft that has been released for public comment can be rapidly revised and submitted to the Standing Committee of the National People's Congress for deliberation. The community-based mental health service and rehabilitation centers discussed in the draft will require substantial funds to build, staff and manage; the funding to do this has not been fully specified in the legislation so once the act is issued and sufficient time has passed to gain experience in

the implementation of the law revisions and supplements will be needed to resolve this funding issue and other issues that arise.

References

1. Legal Office of the State Council. Draft version of Mental Health Law. <http://yijian.chinalaw.gov.cn/lisms/action/guestLoginAction.do> (accessed 21 August 2011)

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论坛:中国精神卫生法草案

中国的精神卫生法曙光初现

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中国的精神卫生法在 1985 年卫生部指定四川省卫生厅协同湖南省卫生厅起草精神卫生法草案以来,经历了 20 余年的漫长岁月终于快要走到立法的尽头,这一次的公开征求意见稿由国务院法制办公室修改后^[1],将送到人大常委会审议、再修改,然后通过,并颁布、实施。从 1985 年到 1999 年草案曾经过反复征求意见、讨论,共修改 10 稿。其中在 1987、1990 和 1999 年世界卫生组织与中国卫生部联合主办的三次精神卫生立法研讨会上征求意见和讨论过,每次都有世界卫生组织邀请的国际专家参加指导。1999 年以后由卫生部疾控司重新组织专家对草案反复再修改,于 2006 年送交国务院法制办公室。又经过多年的调查、论证,先是 2009 年内部发文征求有关专业人士的修改意见,这次在互联网上公开广泛征求社会意见,可谓慎之又慎。

这次的公开征求意见稿较以往历次修改稿,有明显提高。主要体现在对精神障碍的预防、治疗和康复做出了详细规定;特别是肯定了“精神障碍的住院治疗由患者自主决定”,对非自愿住院作出了清晰的界定和限制;制定了多项条款以保障精神障碍者的合法权益和防止精神病学被滥用。有关“当事人或者其监护人对非自愿住院医疗结论有异议的”条款,采取当事人自主选择医疗机构进行复诊和(向法院申请)司法鉴定的两种措施,替代国外的“复核委员会”复

核的方式,以维护当事人的权益,避免精神病学滥用,更能令争议双方信服,符合我国的国情,是合理的。

公开征求意见稿也还存在一些不足。例如,精神障碍的早期发现、早期诊断和早期治疗是防止疾病慢性化、减少精神残疾和预防患者突发暴力危害行为的重要措施,未能在预防部分加以强调;又如,草案中缺乏对民政部门所属精神病院、公安部门所属安康医院的法律地位、职责、运行经费和精神卫生服务人员的归属等规定。中国的民政部门在全国所属精神病院有 200 多家,公安部门在全国所属安全医院也有 20 多家,它们在精神卫生服务方面分担了十分重要的任务。由于一些原因,其中许多医院同时向社会开放,收治社区精神障碍患者。因此在精神卫生法中,应将它们的精神卫生服务纳入全国统一规划,明确做出规定。此外,草案中许多条款的文字也还有必要进行修改。希望此次公开征求意见稿在广泛听取社会反馈意见后,尽快修改,早日送交全国人大常委会审议。至于社区精神康复机构的建立,所需经费,包括设施、人员培训和管理的大量费用,草案中的规定并未能完全落实,留在法律颁布实施一段时间后,再修改、补充。

参考文献

(此处略,与英文版中的相同,见第 242 页)