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•Forum•

Operationalizing the involuntary treatment regulations of China's new mental health law

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1. Introduction

Mental health legislation aims to find the right balance between the interests of mentally ill patients and the interests of the public. Sociocultural differences between nations result in different approaches to defining this balance in mental health laws and changes within nations over time lead to changes in the regulations used to operationalize these laws. There is general agreement in mental health laws from different jurisdictions about the importance of maintaining patients' autonomy and their right to receive appropriate treatment. But there are substantial differences across jurisdictions in the mechanisms developed to operationalize these principles. This issue has recently been highlighted in China because regional administrations are now developing or revising local mental health regulations to conform with the principles outlined in the new national mental health law – the Mental Health Law of the People's Republic of China[1] (hereafter, 'Mental Health Law') – which came into effect on May 1st, 2013. Our work on revising the 2002 version of the 'Shanghai Mental Health Regulations' has highlighted several problems related to the implementation of the national Mental Health Law's treatment of the voluntary versus involuntary inpatient admission of mentally ill individuals.

2. Using a broad or narrow definition of 'dangerousness'

The Mental Health Law emphasizes the principal of voluntary inpatient treatment and limits involuntary inpatient treatment to situations in which the individual is at risk of harming themselves or others. [Article 30: "… the medical facility may impose inpatient treatment if the individual meets one of the following conditions: (1) self-harm in the immediate past or current risk of self-harm; (2) behavior that harmed others or endangered the safety of others in the immediate past or current risk to the safety of others."[1]]

There are considerable difficulties in operationalizing this rather vague definition of dangerousness. On the one hand, a narrow definition of dangerousness may lead to delayed treatment;[2,3] reports from other countries indicate that the duration of untreated mental disorders is extended and proper treatment delayed when applying obligatory dangerousness criterion for inpatient treatment.[4,5] On the other hand, expansion of the criteria used to determine dangerousness could intensify the public perception of individuals with mental disorders as 'dangerous' and, thus, exacerbate the stigma and discrimination of persons with mental disorders.[6] During the six months since formal implementation of the Mental Health Law, multiple media reports have highlighted a potential public safety crises related to individuals with mental disorders.

3. Payment for involuntary treatment

According to Articles 35 and 36 of the Mental Health Law, legally certified hospitals are empowered to decide whether or not to involuntarily admit individuals with mental disorders who are judged to be at risk of harming others. The legal guardian (usually a family member) must accept the hospital's decision (though both the individual and the guardian have legal recourse to subsequently challenge the decision). Police should help with the admission process if needed; this is usually limited to transporting the individual to the hospital if they harmed others or are at risk of harming others. And the individual's employer or neighborhood or village committee (i.e., grass roots administrative organizations at the individual's place of residence) can complete the admission process under certain circumstances; for example, when guardians are unavailable or unwilling to complete the admission process.

One gap in the law that needs to be clarified in local regulations is payment for this involuntary treatment. If inpatient treatment is needed but there is no legal guardian or the legal guardian is not available or, as can happen with severely disturbed individuals, the identity of the mentally ill individual is unknown, it is unclear who will pay the medical expenses. We recommend that relevant government departments (including health, welfare, public security, etc.) and community-level

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government organizations (including neighborhood committees, disabled persons service centers, etc.) coordinate their efforts to establish dedicated funds to cover these medical expenses. This would ensure timely treatment of these individuals in accordance with the principles outlined in the Mental Health Law.

4. Treatment during the emergency observation period of individuals with a suspected mental disorder

Article 29 of the Mental Health Law requires medical facilities to hold individuals with suspected mental disorders who are at risk of harming themselves or others in order to make a more detailed assessment of their situation. However, the law does not specify the length of the detention or whether or not these individuals should be treated during this period.

According to regulations in some other countries, the duration of detention is usually no more than 72 hours. The 2002 Shanghai local regulations also specifies 72 hours for the 'emergency observation' period, though this may be extended in special circumstances (e.g., individuals in whom it is not possible to quickly determine the diagnosis).[7] The Mental Health Law specifies that the use of psychiatric medications should be limited to individuals with a specific psychiatric diagnosis, so individuals under emergency observation who have not yet been assigned a formal diagnosis cannot be treated. This causes practical difficulties during the emergency observation period (i.e., prior to the legal assignment of the diagnosis) when diagnostic-specific treatment is urgently needed and when symptom-specific treatment is urgently needed (e.g., for intense anxiety). To address this issue we recommend that symptom-oriented treatment should be allowed during the 3-day emergency observation period if consent for such treatment can be obtained from the individual or his legal guardian.

5. Discharge of involuntarily admitted patients when their legal guardians are unwilling to accept them back home

For patients who were admitted involuntarily, the Mental Health Law states that "when the medical facility considers discharge appropriate it shall immediately inform the patient and the guardians" (Article 44). There are several issues related to this article (such as the frequency and criteria for determining whether or not an involuntarily admitted individual is 'appropriate' for discharge), but the issue that is of most concern to service providers is the common situation in which the legal guardians are unwilling to accept the discharge of the patient. In China hospitals are not permitted to simply discharge involuntarily admitted patients on their own recognizance, they need to be discharged to the family member or organization that signed the admission procedures. So hospitals cannot discharge patients when guardians refuse to accept them. The law does not clarify what should be done in such circumstances.

In many cases legal guardians refuse to accept the discharge of the patient because they are unable or unwilling to care for the patient at home. For patients who are capable of caring for themselves, the simplest method for resolving this dilemma would be to allow them to discharge themselves once they no longer meet criteria for involuntary admission. This would require some re-definition of the legal responsibility for the care of mentally ill individuals (which is, according to the Mental Health Law, the responsibility of the legal guardian) but it should be possible to implement.

The more complicated issue is what to do about the care of individuals who are unable to care for themselves and whose guardians refuse to accept them back at home but who no longer meet criteria for involuntary inpatient admission. In this situation it will be necessary to identify individuals or organizations who can both accept the discharge of the patient and, more importantly, provide the care and services the individual needs to survive in the community. The most likely agencies for assuming these responsibilities would be employers, local offices of the department of civil affairs, or the neighborhood or village committees. Alternatively, the individual, the legal guardian or the hospital could authorize a third party (e.g., community social worker, lawyer, etc.) to accept the discharge and to take responsibility for protecting the rights of the patient. A version of this model of delegated responsibility is currently being implemented in Japan and Taiwan where designated 'protectors' or 'conservators' can legally take responsibility for assisting in the treatment, rehabilitation and daily care of mentally ill individuals.

6. Community-based involuntary treatment

The 1991 UN General Assembly Resolution *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* clearly stated that 'every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.'[8] Based on this principal, some countries and regions provide individuals with mental disorders involuntary outpatient or daycare services in the community.

In China, one of the main reasons many patients with mental disorders cannot be discharged from hospital after their acute symptoms resolve is that appropriate follow-up community care is not available. China's Mental Health Law stipulates the rapid expansion of community-based mental health services throughout the country, but it will take time to integrate mental health services into the current general medical services and to train the mental health manpower needed to provide these services. As this happens it should be possible to convert some of the involuntary inpatient admissions for mentally ill individuals to involuntary outpatient services and to shorten the duration of involuntary inpatient admissions. Shanghai,

which has one of the most developed networks of outpatient mental health services in the country, should be one of the first jurisdictions to experiment with this new form of involuntary treatment.

Conflict of interest

The authors report no conflict of interest related to this manuscript

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References

1. Chen HH, Phillips MR, Cheng H, Chen QQ, Chen XD, Fralick D, et al. Mental health law of the People's Republic of China (English translation with annotations). *Shanghai Archives of Psychiatry* 2012; **24**(6): 305-321. doi: 10.3969/j.issn.1002-0829.2012.06.001
2. Xie B. Detailed operational regulations are needed to implement the mental health law. *Shanghai Archives of Psychiatry* 2013; **25**(1): 60-62.
3. Xie B. Where is the path to recovery when psychiatric hospitalization becomes too difficult? *Shanghai Archives of Psychiatry* 2012; **24**(1): 38-40.
4. Large MM, Nielssen O, Ryan CJ, Hayes R. Mental health laws that require dangerousness for involuntary admission may delay the initial treatment of schizophrenia. *Soc Psychiatry Psychiatr Epidemiol* 2008; **43**: 251–256.
5. Dressing H, Salize HJ. Compulsory admission of mentally ill patients in European Union Member States. *Soc Psychiatry Psychiatr Epidemiol* 2004; **39**: 797–780.
6. Phelan C, Link BG. The growing belief that people with mental illness are violent: The role of the dangerousness criterion for civil commitment. *Soc Psychiatry Psychiatr Epidemiol* 1998; **33**: 7–12.
7. Shao Y, Xie B, Good MJ, Good B. Current legislation on admission of mentally ill patients in China. *Int J Law Psychiatry* 2010; **33**(1): 52-57.
8. United Nations [internet]. UN General Assembly Resolution. 1991 [cited 2013 Dec 6] *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* (MI principles). Available from: http://www.un.org/documents/ga/res/46/a46r119.htm.

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