



# HHS Public Access

Author manuscript

*Asian J Psychiatr.* Author manuscript; available in PMC 2016 February 01.

Published in final edited form as:

*Asian J Psychiatr.* 2015 February ; 13: 72–74. doi:10.1016/j.ajp.2014.11.002.

## The First Mental Health Law of China

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### Abstract

The first mental health law of China entered into effect on May 1, 2013. This is the biggest event in the mental health field in China. The present review introduced 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.

### Keywords

China; mental health law; mental health services

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In China, it has been estimated that 173 million populations 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 is poor in prevention and rehabilitation of mental disorders (Liu et al, 2013). During past decades, there are some concerns on the stigma of mental illness and human rights violations in psychiatric hospitals in China, particularly in reference to involuntary admission. Local mental health regulations have already been adopted and implemented for several years 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, China government had initiated drawing up the national law of mental health about 30 years ago.

## 1. Legislative Process of Mental Health Law

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

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Legislative Affairs Office of the State Council consulted with the relevant departments, local government, international organizations like World Health Organization and stakeholder for different social groups about the draft. In September 2011, in the State Council's 172<sup>nd</sup> 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 the comments from public in 2012, the Mental Health Law of China was passed in Oct 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 carry out their responsibilities. In order to address such outstanding problems as lack of human resource and mental health service institutes, this law strengthens the construction of capacity in prevention, treatment, and rehabilitation in the three aspects of personnel, fund, and resources to ensure and promote the development of mental health work.

### **2.2 On Promotion of Psychological Well-being and Prevention of Mental Disorders**

According to this law that, all levels of government and relevant departments should take measures to strengthen the work of promoting psychological well-being and preventing mental disorders for public; employers shall create a working environment conducive to the well-being of employees and be concerned about the psychological well-being of employees; all schools shall 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 that family members should 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 the daily needs, and assume responsibility of supervision and management. In addition, this law also regulates the responsibility of medical staff, prisons and similar institutions, communities, media, social organizations, 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 that diagnose and treat persons shall carry out relevant registration procedures according to the administrative regulations for medical facilities and meet some conditions, improves the diagnosis, treatment, admission, discharge and other

procedures on mental disorders, and specifies the responsibility of medical institutions and professionals. It empathize voluntary admission and treatment should be the priority 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 and the role of police is limited to assist provider rather than the decision maker. Further more, a dependent review mechanism is designed for involuntary admission.

#### **2.4 On Rehabilitation of Mental Disorders**

It is provided in this law 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; 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 legal rights and interests of persons with mental disorders to education, employment, medical services, and government and non-government welfare are 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 of the rights of persons with mental disorders. This law protects the right of persons with mental disorders to receive treatment and rehabilitation, to receive education and employment, to be informed 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**

Since the lack of national baseline researches 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. But some factors make us to be cautious about the outlook for the implementation of the law.

First, the lack of detailed procedures regarding the promotion of mental health system and psychological well-being, implementation of admission and treatment, and construction of community-based rehabilitation remains an important shortcoming. As a result, the articles of these legislation articles 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, 2012; Shao et al, 2010).

More importantly, the presence of mental health legislation, however, does not in itself guarantee respect and protection of patient's rights. One survey on psychiatrist showed that even the respondents from cities with local mental health legislation also showed quite a number of inappropriate attitudes (Shao et al, 2012). This implies that people who are deeply internalized those traditional practice customs in psychiatry services is 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 admission are still unclear. Some cautious people worried that such change changing from "need to treatment criterion" to "risk criterion" will make some mental disorder patients can not get treatment timely, as the tendency showed in some foreign countries (Xie, 2013). On the other hand, the review mechanism for involuntary can be only used of patient who is admitted because of "risk to others", and if someone was send to psychiatry hospital by the family with the reason "risk to self", he/she is unable to lodge a complaint. Thus someone worried that this law still give to much power to the family members, and can not prevent the problems like "being labeled psychosis".

After the law take into effect, the central and local government departments at all levels have launched a series of propaganda campaigns to helping mental health professionals, patients and the whole society to know the law. The Chinese Psychiatrist Association also provided many training courses on the law to psychiatrists over the country, in order to regulate the practice behavior of the psychiatrists. Another important step is local legislation under the framework of national mental health (Shao and Xie, 2013). An example is Shanghai, its local mental health regulation in 2002 served as models both for other cities and for the national government as well. In 2014, the revised Shanghai Municipal Mental Health Regulation is under review by local legislature. In this draft, more detailed operational guidelines for mental health care are made. The draft also authorizes the local government to take specific measures to promotion of mental health system and psychological well-being. By far as we know, Beijing also starts to modify its local mental health regulation. These efforts in local legislation maybe used as an implementation method to make up for the defect of national mental health law.

## Acknowledgments

This work was supported, in part, by a Ministry of Science and Technology grant (2012BAK16B04) to Bin Xie, by a National Natural Science Foundation of China (NSFC) funding (81361120403) to Jijun Wang and a NIH Fogarty International Center grant (5 D43 TW05809) to Byron J. Good.

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### Highlights

After 27 years of debate, the China's first mental health law had finally been adopted.

The law covers the treatment for mental disorder patients and protect the rights of them.

Some factors make us to be cautious about the outlook for the implementation of the law.

An important method to make up for the defect of national mental health law is local legislation.