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A new mental health law to protect patients' autonomy could lead to drastic changes in the delivery of mental health services: is the risk too high to take?

Albert YEUNG

In the 11th National People's Congress (NPC) held in October 2011, China's top legislature reviewed the draft of a new mental health law, which will institute strict conditions and procedures with regard to compulsory mental treatment^[1]. The law was designed to protect Chinese citizens from possible abuses of compulsory psychiatric treatment and unnecessary hospitalization. The draft law stipulates that mental health examinations and treatments must be done on a voluntary basis, with the approval of the patient or his/her guardian or caregiver. Only when a patient poses a danger to himself or others can close relatives, an employer, or the local police send him to a hospital for immediate containment and diagnostic evaluation.

The draft law states that a diagnosis of mental illness must be made by two qualified psychiatrists. Patients who are diagnosed with a severe mental illness and have the potential to harm themselves or others should be sent for compulsory inpatient treatment. If the patients or their relatives do not agree with the diagnosis, they may seek a second opinion and request the advice of legal experts, if they are still not satisfied with the conclusion they can seek a third opinion after which the compulsory treatment is enforced if the original decision about the need for compulsory treatment is upheld.

The possibility of passing this new mental health law has stirred much debate. There are significant worries among mental health professionals in China that the pendulum will swing too far and make psychiatric hospitalization too difficult. This could result in a drastic decrease in the number of admissions to existing psychiatric hospitals, thereby increasing the burden on family members who have neither the training nor the resources to care for acutely ill psychiatric patients at home. Some argue that the community mental health system in China is not equipped to handle the surge in outpatients that would occur if severely mentally ill patients refuse to be treated in hospitals. While these concerns are well grounded, I would like to present

a different point of view, to suggest that the new law could be a rare opportunity for China to join Western countries in modernizing its psychiatric services.

If the draft law is passed, it is anticipated that there will be a rapid shift from hospital-based psychiatric care to community-based psychiatric care. A similar trend emerged in the United States and Western Europe more than five decades ago. It may be informative to review the outcomes of this transition in Western countries.

The shift from institutional care to community-based care in Western countries took place between 1955 and 1975^[2]. In the 1950s, social psychiatrists pointed out that patients who stay in hospitals for prolonged periods develop "institutionalism," characterized by lack of initiative, apathy, withdrawal, submissiveness to authority, and excessive dependence on the institution^[3]. It was argued that impersonal treatment in institutions can strip away a patient's dignity and individuality and foster regression^[4]. At that time, there were numerous institutions in Western countries for persons with severe mental illnesses that were officially treatment facilities but actually functioned to provide "inexpensive custody, control, and segregation of persons who were disruptive of social order or burdensome to their families", and served as a "dumping ground" for cases deemed inappropriate or unacceptable by other health and welfare organizations and community practitioners". Pessimism prevailed in many of these institutions as they served more of a custodial than therapeutic function^[5].

The shift of psychiatric care to a community-based outpatient setting in the United States and Western Europe led to a cascade of changes in the national psychiatric health care delivery systems, with both intended and unintended consequences. The change led to a rapid expansion of psychiatric services, new methods of psychiatric care and new policies for governing mental health delivery. Novel treatment approaches have been developed: psychiatric units in

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general medical hospitals, acute inpatient treatment and custody for long-stay patients, halfway houses, quarter-way houses, day hospitals, crisis care, occupational and vocational rehabilitation services, shelters, family care, case management, professional outreach teams to provide in-home care, and so forth. Thus, in response to the increased autonomy of outpatients compared to inpatients mental health professionals developed more individualized treatment plans that could meet the varied needs of their patients.

The stigma associated with treatment at psychiatric hospitals had previously limited care-seeking for mental health problems but the increased availability of outpatient services resulted in an increased willingness of community members in these countries to seek mental health care for emotional distress or other psychological problems. This increased demand for services led to a rapid expansion in the number of psychiatrists and related professionals—clinical psychologists, psychiatric social workers, and psychiatric nurse practitioners. And the creation of a critical mass of mental health professionals promoted the formation of psychiatric sub-specialties (e.g., child and adolescent psychiatry, geriatric psychiatry, forensic psychiatry, addiction psychiatry, etc.) and disorder-specific or treatment-specific professional associations (e.g., schizophrenia, bipolar disorders, psychosomatics, different schools of psychotherapy, etc.)^[6].

Sub-specialization in psychiatry has contributed to the development of new and effective treatments, including pharmacological and psychological interventions. Many people who suffer from mild to moderate mental disorders are now able to continue to function at their workplaces with the help of outpatient psychiatric services. Psychiatric care is no longer limited to the chronically ill and disabled. It is now a service accessible to the general population. Stigma associated with using mental health services has gradually faded as more people become consumers. Mental health professionals enjoy higher social status and, consequently, high-quality graduates from medical schools, nursing schools and colleges are more likely to enter the field.

Many of these changes were not anticipated or intended when the focus of psychiatric treatment shifted from specialized hospitals to the community. China's new mental health law could very well provide the impetus for similar positive changes in China.

Some would argue that there is such a dearth of mental health resources in the community—the virtual absence of well-trained psychiatric social workers is just one example—that it is premature for China to take such a big step. This is a legitimate concern. Without adequate resources and mental health providers in the community patients with mental illnesses and their families will likely bear the burden when patients

exercise their right to refuse inpatient treatment. In the United States many patients with severe psychotic disorders who refuse treatment end up living in the streets or incarcerated in jails for minor offenses^[7]. On the other hand, passage of the mental health law in China could provide the administrative support and resources needed to build up the mental health work force in the community. When mental health services are primarily provided in specialized institutions located in urban areas, there is little incentive to create such a work force in the community.

In the United States patients can be involuntarily committed to a psychiatric hospital if they are actively suicidal, homicidal, or if they are unable to care for themselves independently in the community. There are also other laws that can be invoked to commit patients to outpatient treatment if they have serious mental disorders but are not committable to an inpatient setting. The refinement of mental health laws and the addition of subsidiary laws can help balance the need to provide mentally ill patients the care they need and to protect their basic human rights. When China considers revising the draft mental health law, it is important that mental health professionals are actively involved in the discussions and that the law builds upon the clinical knowledge and experience of Western countries with mental health laws over the past decades. Mental health providers should play an important role in the planning and implementation of new mental health laws and they need to monitor and direct the changes that follow the passage of the new laws to make sure that the intended good-quality clinical care is delivered.

In conclusion. The new draft mental health law in China proposes more stringent conditions for involuntary hospitalization. It seems to be consistent with the developmental trajectory of contemporary psychiatric care in many Western countries. Mental health professionals should be consulted in the drafting, planning and implementation of the law to ensure that the clinical needs of mentally ill individuals are met. Adequate time and resources must be allocated during the transitional period as the new law is implemented, to ensure that the treatment and rehabilitation of mentally ill patients will not be jeopardized.

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