

An Analysis of the Need for a Legislative Initiative for Long-term Care in China

UNE ANALYSE SUR LA NÉCESSITÉ D'UNE INITIATIVE LÉGISLATIVE POUR LES SOINS DE LONGUE DURÉE EN CHINE

ZHUANG Han¹

Abstract: Presently, in China, the population is aging at an accelerating rate and the number of disabled people is increasing. In order to ensure that the disabled, old people and others live in dignity, a legislative initiative for long-term care is badly needed to regulate money-raising, long-term care institutions and nursing staff. The costs of long-term care should be included within the scope of social insurance in order to maintain social safety and share risk. As for care institutions and nursing staff, because they involve management functions such as construction, health, labor and human resources, education and etc. and most of them are technical, related competent authorities should be authorized to set administrative regulations to form the standards for institution-founding and personnel training and evaluation.

Key words: long-term care; the elderly; legislative need

Résumé: Actuellement en Chine, la population vieillit à un rythme accéléré et le nombre de personnes handicapées est en augmentation. Afin d'assurer que les handicapés, les personnes âgées et les autres peuvent vivre dans la dignité, une initiative législative pour les soins de longue durée est absolument nécessaire pour réglementer la collecte de fonds, les institutions de soins de longue durée et le personnel d'aide ménagère. Les coûts des soins de longue durée devraient être inclus dans l'assurance sociale, afin de maintenir la sécurité sociale et de partager le risque. Quant aux institutions de soins et le personnel d'aide ménagère, comme ils impliquent des fonctions de gestion tels que la construction, la santé, le travail et les ressources humaines, l'éducation etc et la plupart d'entre eux sont techniques, des autorités compétentes appropriées devraient être autorisées à établir des règlements administratifs pour former les normes sur l'établissement des institutions, la formation du personnel et l'évaluation.

¹ Lecture, doctor of law, Law School, Wuhan University, Wuhan, China.

* Received 15 November 2009; accepted 2 January 2010

The expression “long-term care” is originally from the English language. It is an unavoidable social problem for those countries in which the society is aging. The subjects of long-term care include not only the old, but also those people who need long-term care and professional nursing because of physical, psychiatric or psychological diseases or disabilities. According to the statistics of the Bureau of Chinese Civil Affairs there are presently 9.4 million disabled and elderly people within the whole nation, 1.94 million of which live in the city and 7.46 million of which live in the country-side. Besides, there are 18.94 million partially disabled and elderly people. Because of a lack of social care, the old and disabled affect negatively both sides of their families; therefore, there are dozens of millions of families troubled by the problem of caring for the old and disabled.² Traditionally, we are inclined to accept that our own family should take on these responsibilities. However, in recent years, because the population is aging at an accelerating rate, more families have only one child and family structures are changing, so problems of family financial pressure, care institutions and staff expert in long-term care gradually appear. Present laws and regulations are not enough to deal with those problems. Thus, in order to ensure the old and disabled and others live in dignity, we should enact a law to regulate long-term care as soon as possible, by using the power of government, to integrate different kinds of care resources, to protect the rights and benefits of the disabled, and to increase the health of our citizens.

1. THE PROBLEMS ARISING

The Bureau of Chinese Civil Affairs published a “Statistic Report of the Development of Civil Affairs in 2008” in May, 2009, which showed that by the end of 2008, in China, there were 109.56 million people over 65 years old, taking 8.3% of the whole population, a rise of 0.2 % over the previous year. There were 159.89 million people over 60 years old, taking 12% of the whole population, a rise of 0.4% over the previous year.³ The accelerating aging tendency will influence considerably the demand for medical and long-term care. According to the experience of those counties with rapidly aging populations, the old take use of more medical services; besides, they need the support of long-term care service. According to the statistics of the USA in 1985, its old people took 12% of the whole population, but they used 29% of the medical funds of the whole nation, among which 20% were used to pay for long-term care. Therefore, it is predicted that if we do not plan in advance to provide long-term care for the old, some serious social problems in long-term care must arise. Problems which are brought in by the demand and insufficient supply of long-term care manifest themselves in the following ways:

1.1 Aging in a One-child society increases the demand for long-term care rapidly

The number of the old is great; the old make up a large part of the whole population; empty nests are increasing rapidly; the function of family care for the old is weakening—these are serious realities which long-term care has to face in China today. “Aging population” has become a definite tendency in future. The population is becoming aged; average life expectancy is rising; most families have only one child because of the one-child policy; more and more women work outside of the family; people move from one place to another more frequently; the traditional family structure is changing—all these factors cause the demand for long-term care to increase, but the personnel in this field is not increasing. In such conditions, the government is required to take responsibility for the greater welfare, to provide all the disabled with assistance in public care, to promote the construction of community nursing rehabilitation centers, so as to ease the mental, physical and other pressing burdens of the family.

² Statistics show that the number of the disabled in China reaches over 9.4 million. (Oct.28th, 2009).
<http://news.sina.com.cn/c/sd/2009-10-26/234218912411.shtml>.

³ http://news.xinhuanet.com/video/2009-05/24/content_11427622.htm.

1.2 The demand for long-term care financially burden individuals and families

At present, the cost of long-term care is mostly paid for by the old or their families. Only a few low-income members of the population get limited social help. Because long-term care takes time, the cost of care usually becomes a financial danger for the disabled and their families, and it usually makes the disabled and their families get into financial straits. For example, in Dalian, a mother over 70 years old has taken care of a schizophrenic son and daughter for over 40 years. They live an extremely hard life.⁴ An ordinary family needs children to resign in turn to take care of the old who are paralyzed in bed because of chronic diseases. This will no doubt increase the financial burden on families.

1.3 Not founding a long-term care system results in the demand for long-term care falling on emergency medical resources

Long-term care provides services primarily in daily life care, and secondarily in immediate medical care. It stresses comprehensive and continuous service. Without sufficient regulations providing for long-term care, emergency hospitals, which are expensive and labor-intensive, provide long-term care for chronic diseases. This is obviously a huge waste of medical resources. It is reported that, in Beijing Elderly Hospital, there is only one entrance to the Department of Senile Dementia and no one gets out. The average stay for a patient is 25 days. The old entering the hospital probably live there one or two years (Hao Yi, 2008). It is seen that the insufficiency of long-term care causes inappropriate resource allocation. It cannot provide good care service; on the contrary, it makes the limited medical resources more intensive.

1.4 There are serious shortages in formal and professional long-term care service

Presently, there are serious shortages in professional care institutions and nursing staff. As for professional care institutions, according to the statistics, until 2005, there are merely 1.08 million beds in all the elderly welfare institutions. Comparing with the large number of the old, it is an utterly inadequate amount. There is also a considerable shortage in professional nursing staff. In addition, there is not a clear definition of nursing service. Nursing staff are taken as equally as janitorial staff. Both their social status and wage are low; therefore, it is hard to attract more professional nursing staff. Most local people in big and middle-sized cities are unwilling to engage in it; people from other places do not go for it and their quality is quite low and the working group is unstable, because of differences in language and living habits. Recently, it happened the so-called “Nursing Event of Sang Lan”, which is to a large extent because of insufficient professional training of those long-term nursing staff, and which also reflects the problem in legal guarantee for nursing staff. It is seen that presently the conflict between demand and supply in long-term care service for the old is glaring.

To sum up, long-term care in our country lacks definite legal regulations in raising funds, founding institutions, training and managing staff. There are merely some principle rules in the published “National Law on Protecting the Rights of the Elderly”. It lacks details in founding concrete regulations. Therefore, regulating long-term care facilities and quality, raising funds, training nursing staff, evaluating their aptitude and taking some supportive measures such as tax-free or special discount—they all need enacting a new law to regulate. To be specific, in order to found a complete law system of long-term care, we should do it from three aspects: raising care funds, care institutions, and nursing staff. As for the care funds, the person and his family should take more responsibility; however, the government should at least take the “care demand” as a target object of standard, to solve the financial risk for the person who is cared through enacting a care insurance law. Of course, the government should not interfere too much in the market demand and supply in self-governing territories. As for care institutions and nursing staff, because they involve the management functions such as construction,

⁴ “Born with amentia, in Dalian, a loving mother take care of her children for more than 40 years”.
<http://www.nen.com.cn/77972966595362816/20040509/1398480.shtml>, Oct.26th, 2009.

health, labor and human resources, education and etc. and most of them are technical, related competent authorities should be authorized to set administrative regulations to form the standards for institution-founding and personnel training and evaluation.

2. THE DEMAND FOR LEGISLATIVE INITIATIVE FOR LONG-TERM CARE INSURANCE

Long-term care brings heavy financial burden f to related families, causes the increasing of poor families and populations, and then they have to turn to rely on social helping system. However, in China, the social helping system can only provide limited help for long-term care. At present, only households enjoying the “five guarantees” in the countryside, the disabled who are indeed difficult in living, and families with low income can get some nursing allowance. Such social helping system has difficulties in researching and checking, and it probably causes a sudden expansion of social helping expense. Thus, how can share the poverty risk caused by long-term care? This is the question we must first consider when founding long-term care system in this area, we can borrow ideas from the long-term care insurance system of German.

German formally passed its long-term care insurance law in the May of 1994, and gradually put it into practice step by step until 1996. Finally, it became the “fifth brace” of Germany social insurance, which simultaneously contains other four parts: disease insurance, pension insurance, industrial accident insurance, and unemployment insurance. Why did German have the conceivability of long-term care system? It was because there was not sufficient guarantee for long-term care risk. Those people who need long-term care usually have to pay for it by themselves at the very beginning. Once they cannot afford it, they have to rely on social helping system, which causes that social helping system has to pay much money before the long-term care system is founded(Chen Junshan, 1997) . At present, long-term care insurance law has been put into practice in Israel, Holland, Austria and German. In the recent years, Japan and the South Korean also have carried out this law. The Taiwan area in our country is in embryo to push out such insurance. It is seen that raising funds through social insurance to share risk and reach social safety and social mutual help has become the prevailing model for founding long-term care system.

The Bureau of Chinese Civil Affairs is planning to found a moderate generalized preferences care allowance system for the disabled old. At present, some cities such as Shanghai, Wuhan and Hangzhou has begun the experiment to pay care allowance for the disabled old.⁵ It shows that our government faces the serious reality of care for the old and is taking the related welfare responsibility. However, what worries us is that the allowance measure can merely be taken is quite rich cities. If the system is put into practice within the whole country, the financial department at all level cannot bear the heavy load of huge care allowance expense. Therefore, how to raising funds appropriately and continuously is the most important part to found an effective and continual long-term care system. As for this question, it is considerable to learn lessons for German to put long-term care cost into social insurance. At present, “Social Security Act (Draft)” of our country is soliciting public opinion. In my opinion, it is necessary to add long-term care insurance. Stressing long-term care is the responsibility of the whole society. Care demand is the content of the insurance. Care insurance and medical insurance are connected. That is to say, persons involved in legal medical insurance are in duty to participate in care insurance, and then fatherly the entire guarantee for those who need care is integrated. In addition, at the beginning of pushing out long-term care insurance, considering the limit of economical level and financial ability, the payment of long-term care insurance can be low, but we must guarantee its justice and generalized preference.

If we raise care funds though the way of social insurance, enacting a new law is needed to define the

⁵ “China is founding an allowance system for the elderly”.

<http://www.chinanews.com.cn/cj/cj-gncj/news/2009/10-26/1929746.shtml>, Oct.28th, 2009.

scope of insurants, subject-matter insured, legal nexus of care insurance, insurance institutions and finance, the concepts of insurance risk and care demand, regulations of buying insurance and paying and other detailed problems like this.

3. THE DEMAND FOR LEGISLATIVE INITIATIVE FOR LONG-TERM CARE INSTITUTIONS

At present, although the demand for long-term care exists, formal long-term care is in great shortage, no matter institutional or community or household. The relation between supply and demand in long-term care is in serious imbalance, which makes the disabled who need long-term care have three choices: first, those who enjoy public health services utilize the emergent beds to live in hospital for a long time. The result is that hospital cannot provide appropriate services for them and at the same time it is a great waste of social medical resources. Second, they live in gerontal rehabilitation centers. That is why gerontal rehabilitation centers continuously increase in the recent years. Third and the choice of the most disabled, their family members or relatives or friends take care of them at home informally. Even some in serious conditions such as need intubations stay at home and their families take care of them day and night which causes heavy burden to their spouses and children and even causes conflicts to their normal work.

- Institutional gerontal rehabilitation centers spring up at places in recent years. Comparing with large care demand, there still exists a big gap. Compared with institutional care, community and household care is in greater shortage. The aim of community and household care is to make the old live in familiar communities, which makes the old maintain the same living environment after they become disabled and enjoy family love, and meanwhile they are taken care appropriately. The concept of care to the old is inclined to shouting distance, succession and integration in the present world, to make long-term care community-oriented and household-oriented. In such case, long-term care in our country should give attention to both our traditional culture and “family-like” service of filial ethics characteristics. That is “major in household care, minor in institutional care”. Meanwhile, government at all levels should take the related welfare responsibility, research on the local disabled old, build professional retirement homes whose basic service is long-term care, solve the nursing problem of the disabled old, provide technical and professional assistance for the disabled old, provide largest choice for the old, provide acceptable service quality, and carry out necessary cost control to prevent their exceeding market orientation and profit orientation.
- As for the long-term care institutions, the “Convalescent Home Law” of German can be the reference frame. The second rule of this law reads, the aim of this law is to guarantee the personal dignity and rights of those living in the home, to promote the independence and self-responsible attitude of those citizens living in the home. In addition, the law regulates the obligations of the owners of those homes, especially to ensure that their professional knowledge and service quality can reach commonly acceptable standard in the society. At present, we do not have any law to follow when founding long-term care institutions for the old. The service quality of those institutions is not the same, some good and some bad. The institutions are inclined to exceeding market orientation and profit orientation.

If there is any conflict, it is hard to solve by any law. Therefore, we should put first things first. That is the government should provide money or formulate policies to encourage non-government institutions to invest to build long-term institutions for the old. The government should guarantee their public welfare, regulate them by enacting a law, gradually found a registering permission system for long-term care institutions, create the lowest standard of the operating ability and service quality for the care institutions and retirement homes, regulate the evaluating measures of care institutions, and define the legal nexus between the disabled old and care institutions by the contract. The relation of basic rights and obligations between the disabled old and the institutions should be defined through the fundamental long-term care law. As for the lowest acceptable standard in the society the care institutions should reach

when they provide services, such as the standard of lighting, deslick, washing facilities, treating room, calling facilities and communion places, because they involve construction, medicines, health and transportation and etc. which need professional knowledge, related authorities should be authorized to form regulations to operate those.

4. THE DEMAND FOR LEGISLATIVE INITIATIVE FOR LONG-TERM CARE NURSING STAFF IN CHINA

We have not founded the educational training system and license evaluating method for nursing staff. In addition, nursing the old is an intensive and responsible job, but the salary is small. This occupation is usually discriminated in the society. Therefore, the present basic condition is that household servants replace nursing staff. There is a great shortage in nursing staff and their professional quality makes people worried. Take Yunnan province as an example. There are about 5 million citizens over 60 years old in Yunnan province. There are about 3 thousand employees engaging in provide services for the old. There are fewer who get the professional license. The supply never satisfies the demand. Behind the nursing staff of no-training and in low quality, there is a huge gap of lacking 300 thousand workers(Du Tuo, 2009). The recent “Nursing Event of Sang Lan” which has caused hot discussions in media shows the present condition that there is insufficient professional nursing staff and related laws and regulations have not followed up. Thus, it is extremely urgent to enact a new law related to professional nursing staff.

In German, care insurance law provides that nursing behaviors must be supplied by “professional nursing staff”, no matter through nursing service center (mainly responsible on sending professional staff) or nursing home (professional care institution and retirement home or nursing department attached to a hospital). They mainly contain disease nursing staff and nursing staff for the old. The main law and regulations for professional nursing staff in German are “Act of Health and Disease Nursing Staff” and “Act of Nursing Staff for the Elderly”. As for the training of nursing staff, they provide that the nursing staff for the old should be trained for 3 years, including theoretical and practical courses and practical training, and major in practical training. In addition, they have founded a national test system for nursing staff for the old. They can do the job only under the condition that they pass the test. The experience of German suggests that the training and test system for professional nursing staff are especially important for promoting the service quality of long-term care. It is worth learning by our country.

At present, the population is aging at an accelerating rate and the number of disabled people is large. We badly need the legalization of nursing staff for the old to provide professional, trained nursing staff. New law is needed to regulate the training, working license and guarantee of rights for long-term care staff. It is especially needed to found a national education and test standard. The contents of training should be major in the need of medical care for the old and professional social and psychological knowledge. Long-term care staff should be given a clear occupational definition and got more salary, so as to promote more kind-hearted people to take this occupation, to provide continuous professional human resources for the care and support to the old.

REFERENCES

- Born with amentia, in Dalian, a loving mother take care of her children for more than 40 years.
<http://www.nen.com.cn/77972966595362816/20040509/1398480.shtml>, Oct.26th, 2009.
- Hao Yi. (Oct.23th, 2008). Hospital encounter elderly patients occupying beds for a long time, the longest 4 years without a move. *Beijing Youth Daily*.
- The Nursing Event of Sang Lan: How household Service More Professional. (Oct.28th, 2009).

<http://news.sohu.com/20090915/n266730157.shtml>.

Chen Junshan. (1997). Research on German Care Insurance System”, *Community Development* (Quarterly), (78):107.

China is founding an allowance system for the elderly.(Oct.28th, 2009)

<http://www.chinanews.com.cn/cj/cj-gncj/news/2009/10-26/1929746.shtml>.

Du Tuo. (Oct.19th, 2009). Five million elderly people aged over 60 in Yunnan, a huge gap of nursing staff”. *Kunming Daily News*.

Zhong Bingzheng. (2008). *Legalization of Social Welfare*[M]. Taipei: Yuan Zhao Publishing Company, 209.