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• Forum •

Mental health legislation needs to point to the future

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The forum article by Professor Xie[1] raises the broad issue of whether mental health legislation in China needs to respond to the existing realities of the community mental health services system. Given the lack of community mental health resources in China, the burden of caring for persons with mental illnesses has traditionally been borne by families and by psychiatric hospitals. As China introduces its first national mental health legislation the concern is that it is premature to introduce legislative changes that the current community mental health service system is ill-prepared to implement. Professor Xie suggests that the extent and direction of the change to current practices proposed in the mental health legislation could have a negative impact on access to much needed services because it raises the threshold for involuntary treatment too high and increases the opportunities for challenging the decision to admit and treat. In our view there are two issues which need to be considered separately – the criteria for involuntary admission and treatment, and who is authorized to decide whether or not the criteria are met.

The need for specific legislation to enable compulsory treatment for mental illness continues to be hotly debated[2-4]. Many countries have legislation that defines situations in which mental illness requires a specific response. Such legislation recognises that at times severe mental illnesses such as schizophrenia disrupt an individual's ability to provide informed consent to necessary treatment and that while unwell these individuals may act in ways that incur a significant risk of harm to themselves or to others. The need for specific legislation also reflects the historical abuse and neglect that occurred within mental health systems in the absence of appropriate regulation of involuntary commitment. Of particular note, current legislation in other countries requires regulatory oversight of the involuntary admission process because it is believed that neither patients, nor families or clinicians can be trusted to make admission and treatment decisions without some degree of independent oversight[5].

There is no doubt that there are many challenges in developing a legislative framework that will enable those who are very unwell but unable or willing to seek assistance to be provided with necessary treatment. The law must facilitate treatment access for those with severe mental illness but it must also set clear requirements that protect against unwarranted involuntary admission, detention and treatment in the absence of a diagnosed and treatable clinical condition. The framework must be workable; it must be understood by those who have to put it into practice and written in a manner that can be clearly articulated to patients, their family members and care givers, and to the community. It must balance the right to personal autonomy and integrity with the right to effective treatment and care. It must have checks and balances in place so that there is external scrutiny and accountability. It must be clear about who is empowered to make certain decisions, about the criteria to be employed in making the decisions, and about the circumstances in which the decisions apply. It must be sufficiently flexible to work in times of crisis when much is unknown or unclear, enabling treatment to be properly instituted and maintained in the best interests of the individual and of the community. Consistent with current policy regarding civil liberty and care in the least restrictive manner, it must ensure that the provisions governing treatment, detention and care do so in a way that minimises any limitations on the rights of those with mental illness[3,6]. Given the central role of the family in Chinese culture, we also believe that the legislation should take into account the needs and rights of families.

One of the main concerns of mental health laws is regulating the right of the State to detain and treat individuals without consent who are deemed to meet criteria that are based on estimated risk to self or others. Specifying who is empowered to make these decisions provides a level of protection that decisions will not be made arbitrarily. In Victoria (Australia) the decision rests with a psychiatrist who can be held professionally and legally accountable. The decision has to be based on a personal examination and the documentation must provide details about the grounds

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on which the person was found to meet the criteria for admission. The decision must be reviewed by an independent external Mental Health Review Board (MHRB) within a set period. Information provided by families is sought by the admitting clinical staff and taken into consideration by the MHRB. Victoria is currently reviewing its mental health legislation; there is strong support for recommendations to give the external body (MHRB) greater powers, especially in relation to longer periods of detention[7,8]. While acknowledging the right of persons with mental illness to exercise their legal capacity and to make informed treatment choices, Professor Xie expresses the view that the proposed legislation in China has gone too far in protecting autonomy at the expense of access to treatment. However, our experience to date in Victoria has been that the MHRB reverses the decision of the treating psychiatrist in a very small percentage of cases – generally less than 5%[9].

The criteria for involuntary admission in most mental health legislative frameworks include the presence of mental illness, imminent or serious risk of harm to self or others, impaired capacity, a need for treatment, and no less restrictive means of providing needed treatment. While the wording of the criteria is important, there will always be a degree of interpretation that will influence where the threshold for admission lies. We agree that risk of harm to self or others should be a required criterion before considering restriction on a person's liberty. The legislation in Victoria expands the traditional definition of 'risk of harm to self or others' criteria to include risk of physical or mental deterioration. This recognises that risk of harm to self or others may be as a result of passive neglect or untreated illness as well as active dangerous behaviour. Reframing the 'harm to self or others' in this way could, perhaps, partially address the concerns raised about the high threshold for admission in the draft Chinese legislation.

Professor Xie points out that a lack of community mental health facilities increases the use of inpatient services. There is a close relationship between community services and bed-based facilities for psychiatric treatment – better community-based facilities and a capacity for community-based involuntary treatment does reduce the need for inpatient facilities. Further there is little doubt that treatment in the least restrictive setting promotes participation and integration within the community. This is another area where balance is required. The development of progressive mental health legislation is an important part of overall mental health reforms, but effective implementation of such legislation and achievement of the goal of improved access to high-quality services will require sustained investment in community mental health services.

Mental health laws provide the legal framework for protecting people with mental illness from discrimination and for upholding their rights to humane and adequate treatment. But legislation should also support the development of mental health services that promote the goals of the legislation: treatment access, rehabilitation and integration in the community. Mental health legislation should work in synchrony with the development of mental health policy; appropriate legislation can help ensure that minimum standards for the care and treatment of people with mental illnesses are achieved. Thus national mental health legislation in China should do much more than reflect the current environment of mental health care. It should point to the future. It should provide the impetus for provincial governments to invest in community mental health resources and to improve mental health services at primary, secondary and tertiary levels.

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