

Approaches to Involuntary Admission of the Mentally Ill in the People's Republic of China: Changes in Legislation From 2002 to 2012

Yang Shao, MD, PhD, and Bin Xie, MD

A systematic analysis of laws on involuntary commitment of mentally ill individuals in China has never been undertaken. In this article, we explore the trajectory of the legislation and discuss the social and cultural factors underlying the changes in the laws. In this description and analysis of the differences and similarities in the current legal framework and procedures for involuntary commitment of the mentally ill across the mental health regulations of seven localities and the National Mental Health Law, one can see a gradual trend toward more stringent legislation during the past 10 years. The compromises, reversals, and circuitous course of the legislative process reflect the difficulties that the government faced in achieving a balance between benefits to society and the individual as it attempted to revamp the delivery of mental health services. The 2012 National Mental Health Law, despite some weaknesses, is an important step toward standardizing the diverse practices in involuntary admission of mentally ill persons in China. Further research on the influence of the National Law on mental health services is clearly needed.

J Am Acad Psychiatry Law 43:35–44, 2015

The involuntary admission of mentally ill persons is a controversial matter in mental health care in countries worldwide, and the People's Republic of China (PRC) is no exception. During the past decade, there have been reports of several events that have received much attention in society, such as serious and fatal attacks on adults and children by persons with mental illness or human rights violations against the mentally ill in psychiatric hospitals. The lack of a national mental health law, especially legislation on involuntary admission, has always been viewed as the root cause of these incidents.^{1–4}

Since the early 1980s, problems relevant to involuntary admission of the mentally ill have been addressed in some of China's legal statutes, such as Criminal Law (1980),⁵ Criminal Procedure Law (1980),⁶ and Regulations on Penalties for Administration of Public Security (1987).⁷ The scope of these

laws, however, was restricted to the detention of patients who engaged in illegal behavior.

It was not until 2002 that involuntary admission of the mentally ill was fully addressed in the Shanghai Municipality Regulations on Mental Health,⁸ the first local legislation on mental health in China. By defining the conditions that must be met for mentally ill patients to be admitted involuntarily, the regulations became an important measure in protecting human rights and preventing the abuse of mentally ill persons. Since that time, several other cities (Ningbo (2006), Wuxi (2007),⁹ Hangzhou (2007), Beijing (2007),¹⁰ Wuhan (2010), and Shenzhen (2012); an English translation is available only for the Wuxi regulation) have enacted regulations on mental health to address the legal concerns related to involuntary admission of the mentally ill. All of these local laws served as models for national mental health legislation.¹¹

In June 2011, after formulation and repeated revision by numerous psychiatrists, jurists, government administrators, and legislators (a process that took more than 25 years), a draft of the National

Dr. Shao is a psychiatrist and Dr. Xie is Medical Director, Shanghai Mental Health Center, Shanghai Jiao Tong University School of Medicine, Shanghai, China. Address correspondence to: Dr. Bin Xie, Shanghai Mental Health Center, 600 South Wan Ping Road, Shanghai 200030, China. E-mail: xiebin@smhc.org.cn.

Disclosures of financial or other potential conflicts of interest: None.

Mental Health Law was released by the Legislative Affairs Office of the State Council and the Standing Committee of the National People's Congress for public review and comment.¹² A revised draft was approved on October 26, 2012. In accordance with the Law, an entirely new approach to involuntary admission of the mentally ill went into effect on May 1, 2013. Although there is no official English version, a translated and annotated publication of China's National Mental Health Law (hereafter, the National Law) is available in print and online.¹³

In another article, we summarized the legislation on involuntary admission of the mentally ill in China before 2008.¹¹ As the first attempt to collect data on the subject, that study showed that, despite some defects, the local mental health regulations in five cities covered the basic principles needed to meet international standards of mental health legislation. However, although the legislative structures are similar in those cities, the application of the measures differed widely and showed a gradual change in the use of involuntary admission.

Until now, there have been few systematic reviews that have addressed the changes in legislation on involuntary admission of mentally ill patients. Indeed, reviews of the evolution of legislation from local regulations to the National Law are rare, and there have been no analyses of the social and cultural factors underlying these changes. In this article, we attempt to explore the trajectory of the legislation on involuntary admission of the mentally ill in China by describing and analyzing the differences and similarities in the current legal frameworks and procedures for involuntary admission across seven local mental health regulations, two drafts of the National Law (June and October 2011¹²), and the final version of the National Law, and thus to provide basic information that is essential to any discussion of the subject.

The following qualitative data on the legal framework for involuntary admission of mentally ill persons were gathered in our study: criteria for involuntary admission, procedures of initial assessment and decision-making, periods of detention, discharge procedures, and complaint procedures. These data were gathered by a group of psychiatrists who have been trained in evaluating mental health care systems. All of these psychiatrists were involved in our previous study, which was published in 2010.¹¹ Because procedures governing forensic psychiatry in

China are regulated by Criminal Law and Criminal Procedure Law (2012).¹⁴ and are not considered part of the mental health care system proper, involuntary admission of the mentally ill in this context did not include the admission of mentally ill offenders or any other aspect of forensic psychiatry. Compulsory admission of mentally ill offenders is under the jurisdiction of Criminal Procedure Law. According to that law, compulsory medical treatment can be ordered for a violent offender who endangers the public security or is a serious threat to the personal safety of citizens, who is deemed to be mentally ill and therefore not criminally responsible for his acts, and who a forensic examination shows may continue to endanger society (Ref. 14, Article 284). Compulsory admission is determined by a court and implemented by the police (Ref. 14, Article 285).

Diversity in Legislation on Involuntary Admission

In addition to compulsory admission of mentally ill offenders, there are two kinds of involuntary admission in China: A *medical protective admission* is executed by a family member of the mentally ill person who is unable to give informed consent, and an *emergency admission* is executed by the police or other government authorities for patients who engage in dangerous behavior, if the behavior does not constitute a criminal offense. The legal regulations on detaining the mentally ill in the seven jurisdictions are largely similar, but with some subtle differences in detail.

Criteria for Involuntary Admission

Although all of the local regulations stipulate a confirmed mental illness or disorder as the major criterion for detaining a person, the additional criteria are heterogeneous in the seven jurisdictions (Table 1). For a medical protective admission, Shanghai uses the criteria of total or partial loss of insight (self-knowledge) (Ref. 8, Article 17) and the expectation that hospitalization would be beneficial in the treatment and recovery of the person (Ref. 8, Article 29). Beijing and Wuxi use grave impairment, defined as a person's inability to comprehend fully his state of being or external reality or to control his behavior (Beijing Regulations, Ref. 10, Article 30.1, 54.3; Wuxi Regulations, Ref. 9, Article 49); Hangzhou, Ningbo, Wuhan, and Shenzhen use complete inability

Table 1 Criteria for Involuntary Admission

	Date of Publication	Diagnoses Legally Defined	Medical Protective Admission			Emergency Admission		
			Need to treat	Danger to self	Impairment of judgment	Risk to self	Risk to others	Risk to society/public order
Shanghai	2002	Mental illness	Yes	ND	Lack of insight	Yes	Yes	Yes
Ningbo*	2006	Mental illness	Yes	ND	Cannot comprehend or control behavior	–	–	–
Hangzhou*	2007	Mental illness	Yes	ND	Cannot comprehend or control behavior	–	–	–
Beijing	2007	Severe mental illness	ND	ND	Cannot comprehend mental health condition, perceive external reality, or control behavior	No	Yes	Yes
Wuxi	2007	Severe mental illness	ND	ND	Cannot comprehend mental health condition, perceive external reality, or control behavior	No	Yes	Yes
Wuhan*	2010	Mental illness	Yes	ND	Cannot comprehend or control behavior	–	–	–
Shenzhen	2012	Mental illness	Yes	ND	Cannot comprehend or control behavior	Yes	Yes	Yes
Draft 1	Jun 2011	Mental illness	No	Yes	Cannot comprehend or control behavior	No	Yes	Yes
Draft 2	Oct 2001	Severe mental illness	Yes	Yes	Cannot comprehend mental health condition, perceive external reality, or manage personal affairs	No	Yes	No
National Law	2012	Severe mental illness	No	Yes	Cannot comprehend mental health condition, perceive external reality, or manage personal affairs	No	Yes	No

ND, not defined.

* In Ningbo, Hangzhou, and Wuhan, there are no clear legal regulations for emergency admission. Mentally ill patients who are deemed a danger to others or society can only be detained if the dangerous behavior constitutes a criminal offense. In that situation, a compulsory admission is initiated by the police after a forensic psychiatric evaluation.

ity to perceive reality or to control one's behavior and the necessity of hospitalization. The mentally ill person who exhibits dangerous behavior toward others or society can be detained according to the emergency admission procedure in four cities. Shanghai and Shenzhen also allow a patient with behavior that is dangerous to self to be detained (Shanghai Regulations, Ref. 8, Article 31).

In the process of drafting the National Law, the need-for-treatment criterion was removed from the June 10, 2011, draft and added to the October 29 draft, with the statement that “failure to admit [would] interfere with the treatment of the patient.” In the enacted law, medical protective admission can be used only for a patient with a severe mental disorder who has engaged in “self-harm in the immediate past or [has a] current risk of self-harm” (Ref. 13, Article 30.2.1, p 309). Another change in the National Law is the abolishment of the danger-to-

society criterion, which has been used in the seven cities for many years. The National Law allows only a severely mentally disordered patient who is a danger to others to be detained in emergency situations. The danger-to-others criterion means not only past, but also the possibility of future, dangerous behavior. Thus, in the final law, dangerousness is defined as “behavior that harmed others or endangered the safety of others in the immediate past or [is a] current risk to the safety of others” (Ref. 13, Article 30.2.2, p 309).

Procedures of Initial Assessment and Decision-Making

With respect to the expertise necessary for applying the medical criteria for involuntary placement, all seven local jurisdictions require that initial psychiatric assessments be performed by trained psychiatrists (Table 2). In Shanghai and Shenzhen, the evaluator

Changes in Legislation on Involuntary Admission in China

Table 2 Procedure for Involuntary Admission

	Shanghai	Ningbo	Hangzhou	Beijing	Wuxi	Wuhan	Shenzhen	Draft 1	Draft 2	National Law
Medical protective admission	Attending psychiatrist	Psychiatrist	Psychiatrist	Psychiatrist (2 years' experience)	Psychiatrist	Psychiatrist	Attending psychiatrist	Psychiatrist	Psychiatrist	Psychiatrist
Initial assessment	Guardian	Guardian	Guardian	Guardians or next of kin	Guardian	Guardian	Guardian	Guardian or next of kin	Guardian or next of kin	Guardian
Deciding authority	Guardian	ND	ND	ND	ND	ND	ND	ND	ND	ND
Maximum length	Monthly	ND	ND	ND	ND	ND	ND	ND	ND	ND
Reassessment	Monthly	ND	ND	ND	ND	ND	ND	ND	ND	ND
Emergency admission	Two psychiatrists (1 attending psychiatrist)	–	–	Two attending psychiatrists	Two attending psychiatrists	–	Attending psychiatrists	Two psychiatrists	Two psychiatrists	Psychiatrist
Initial assessment	Two psychiatrists (1 attending psychiatrist)	–	–	Two attending psychiatrists	Two attending psychiatrists	–	Attending psychiatrists	Two psychiatrists	Two psychiatrists	Psychiatrist
Deciding authority	Yes	–	–	Yes	Yes	–	Yes	Yes	No	No
Police	Yes	–	–	Yes	Yes	–	Yes	Yes	No	No
Affiliated units	Yes	–	–	No	Yes	–	No	No	Yes	Yes
Neighborhood/villager committees	Yes	–	–	No	No	–	No	No	Yes	Yes
Maximum detention	72 h	–	–	ND	ND	–	ND	72 h	ND	ND
Review process	72 h	–	–	ND	ND	–	ND	72 h	ND	ND
Stage I	Yes	Yes	Yes	Yes	Yes	Yes	ND	ND	ND	ND
Confirm the diagnosis	Yes	Yes	Yes	Yes	Yes	Yes	ND	ND	ND	ND
Confirm the necessity for admission	ND	ND	ND	ND	ND	ND	Yes	Yes	Yes	Yes*
Confirmation of the diagnosis by another mental health institution	ND	ND	ND	ND	ND	ND	Yes	Yes	Yes*	Yes*
Maximum wait for review	6 mo	6 mo	1 mo	3 mo	3 mo	1 mo	5 d	5 d	5 d	ND
Stage II	Yes	ND	ND	ND	ND	ND	Yes	Yes	Yes	Yes*
Review by forensic psychiatrist	Yes	ND	ND	ND	ND	ND	Yes	Yes	Yes	Yes*
Reassessment	ND	ND	ND	ND	ND	ND	ND	ND	Yes	ND
Maximum wait for review	ND	ND	ND	ND	ND	ND	ND	7 d	5 d	ND

ND, not defined.

* For patients with risk to others.

should have the title of attending psychiatrist, which usually means more than five years of clinical experience, whereas in Beijing the psychiatrist must have two years of experience (Beijing Regulations, Ref. 10, Article 26.1). The National Law also requires that a registered psychiatrist perform the initial assessment (Ref. 13, Article 29.1, p 309). In most cities, the qualifications for experts and the number of experts needed to evaluate a patient for an emergency admission are much stricter than those for medical protective admission. Usually, two attending psychiatrists or psychiatrists with higher qualifications are needed (Shanghai requires two psychiatrists; at least one must be an attending; Ref. 8, Article 31.2). According to the National Law, a registered psychiatrist must perform the evaluation in both situations, but the number of experts needed is not specified.

The difference can also be seen in the authority that decides on the necessity of emergency admission. In most cities, if the guardian of a patient with dangerous behavior refuses to detain the patient, only the police can start the emergency admission process. In Shanghai, however, the process can be initiated by “affiliated units, neighborhood committees, or villagers’ committees where the patient resides” (Ref. 8, Article 31.2). Wuxi also allows the “affiliated unit” of the patient with dangerous behavior to make decisions regarding hospitalization (Ref. 9, Article 28). The decision power of the police was repealed in the National Law. In the draft that was finally adopted, only affiliated units (employer), neighborhood committees, or villagers’ committees where the patient resides can make decisions on admission of a patient who is a danger to others (Ref. 13, Article 36.2, p 310), and the role of the police is only to take measures to assist the medical institutions in the implementation of the patient’s admission if the guardian refuses permission (Ref. 13, Article 35.2, p 310).

Periods of Detention

Neither the National Law nor the seven local regulations have clear provisions on the maximum length of involuntary admission of the mentally ill. Only the Shanghai Regulations state that the institution should review the initial placement monthly for involuntarily admitted patients (Ref. 8, Article 32.1). The regulations also state that emergency admission should be accomplished within 72 hours (Ref. 8, Article 31.3). Thus, the patient who is deemed not to

have a mental disorder must be discharged within that period (Table 2).

Discharge Procedure

The discharge procedures are similar among the seven cities. Although patients hospitalized under a medical protective admission can be discharged at any time after a request from their guardians, those detained under an emergency admission can be discharged only after a recommendation from a psychiatrist and the authority that made the decision to admit.

The National Law uses the same protocol for discharge. For a patient who is a danger to self, the guardian “may request discharge at any time and the medical facility shall comply with such requests” (Ref. 13, Article 44.2, p 311). For a patient who is a danger to others, the hospital “shall promptly arrange for registered psychiatrists to conduct an evaluation. When the evaluation finds that the patient no longer requires inpatient treatment, the medical facility shall immediately inform the patient and the guardians” (Ref. 13, Article 44.5, p 311).

Complaint Procedures

A review system for involuntary admission of mentally ill persons is an important component in preventing improper detention. Although most local regulations stipulate that hospitals should reassess the diagnosis when the patient and guardian apply for review, only Shenzhen specifically states that the patient and guardian can request a review of the decision on involuntary admission (Table 2). All of these reviews are performed by the institution where the patient is admitted. Only Shenzhen enables patients and guardians to request another mental health hospital to review an involuntary admission. Shanghai (Ref. 8, Article 28) and Shenzhen allow independent forensic psychiatrists to examine the review’s conclusions. Other cities do not clearly specify how to establish independent oversight and review mechanisms for involuntary admission. Across the seven cities, the legally stipulated period of waiting time for a review varies widely, ranging from 5 days to 6 months.

In the June 2011 draft of the National Law, a two-stage review system for involuntary admission was introduced (Table 2). According to this system, under the medical protective admission procedure,

patients had the right to apply for a review by the original hospital. Under the emergency admission procedure, patients or their guardians could request that another psychiatric hospital perform an independent medical assessment. If the review conclusion arrived at in stage I was not satisfactory to the patient or guardians, they could proceed to stage II and request that an independent evaluation be arranged at a forensic psychiatric institution, to confirm or change the diagnosis at the admitting institution. This proposal was simplified in the final draft so that only in the case of a patient who is a danger to others can the patient and guardian apply for a medical assessment. The assessment can be performed by the hospital where the patient is admitted or another psychiatric hospital (Ref. 13, Article 32.2, p 309). If the patient and guardian are not satisfied with the results of the reassessment, they “may commission a legally accredited certification agency to conduct an independent, legally binding medical certification for mental disorders” (Ref. 13, Article 32.3, p 309).

Discussion

Involuntary admission of mentally ill persons involves restricting the liberty of certain individuals for their benefit and that of society. The procedure for involuntary admission must weigh the interests of the public and mentally ill persons and balance the right of patients to receive treatment with their right to autonomy. The different approaches to regulating involuntary admission are dependent on a variety of social values, cultural and legal traditions, and different concepts and structures of mental health care delivery worldwide.¹⁵ In China, these factors have led to increasingly stringent legislation on involuntary admission in the past 10 years.

Over the past 50 years, the lack of community-based services has been a key problem in mental health care in China. Mental health services may be available in the community to the wealthy, but not to the poor and deprived.¹⁶ To make matters worse, even the community mental health systems in large cities have been eliminated with the introduction of the market economy. For example, in Shanghai before 1990, there was at least one community rehabilitation facility in each district or town. By June 2004, the number of these facilities had decreased by 62 percent.¹⁷ Because of the lack of community services, hospitalization is the only viable option, despite the heavy financial burden it places on patients and their

families.¹⁸ Because there were no national guidelines on involuntary admission of the mentally ill, persons with suspected psychiatric disorders were usually committed to psychiatric hospitals with consent forms signed by relatives.³

For these reasons, when Shanghai began to draft its local mental health legislation, one important aim was to make the mental health service, especially the inpatient service, more accessible. This goal led to the acceptance by legislators of the long-standing practice of family supervision of hospitalization of the mentally ill with help from the community, and they turned it into a clear legal framework. Thus, the Shanghai Regulations make it possible for patients who are unable to give informed consent because of lack of insight, but who would benefit from admission and treatment, to be detained at the request of the guardians or patients, even if the patient poses no risk to self or others. The Regulations also empower, not only the police, but also the affiliated units, neighborhood committees, and villagers' committees, to render decisions on detaining a patient who exhibits dangerous behavior.⁸

Such a combined model, in which either the dangerousness or the need-to-treat criterion for being detained is fulfilled, received support at the government public health policy level. With the publication of two official documents, the first National Mental Health Plan (2002–2010), in 2002, and the Proposal on Further Strengthening Mental Health Work, in 2004, the development of a mental health service model in China was initiated by psychiatric hospitals and supported by departments of psychiatry in general hospitals and in community-based health facilities and rehabilitation centers.¹⁷ The emphasis on the responsibility of the psychiatric hospital in mental health services at the policy level facilitated the adoption of the Shanghai model by other jurisdictions that began to develop legislation on involuntary admission. Of course, the procedures established in other jurisdictions were not exact copies of the Shanghai model. There were some adjustments, driven in part by the competing interests of the various stakeholders, including patients, family members of patients, community members, mental health care providers, human rights activists, governmental agencies, and legislators.¹⁹

Throughout the development of the mental health service in the PRC, critics have said that the human rights of individuals with mental illness are not

properly respected and that involuntary admission is abused.^{20–22} After the Shanghai regulations took effect, criticisms from judicial and legal professionals intensified²³ and were focused on the use of loss of insight as a criterion to determine whether mentally ill patients lack the capacity to give informed consent and therefore qualify for involuntary admission. In the opinion of these critics, the medical term insight replaced the legal term capacity for action. Thus, psychiatrists who have the right to determine depth of insight replaced the court judge in determining whether a person had the capacity for rational action. These critics also suggested that judging a person incapable merely on the basis of a psychiatric medical diagnosis is a dangerous practice, because too much power is given to the psychiatrist. In addition, the provision that hospitalization must be beneficial to the treatment and recovery of the person is too vague. Admission may be beneficial to the patient, but that does not mean that it is the best choice. Thus, the provision used in the Shanghai Regulations cannot effectively prevent the abuses of compulsory psychiatric treatment and unnecessary hospitalization.

At the same time, the importance of community mental health services has been emphasized increasingly by the government in the past 10 years. Policies that fund community mental health services, promote regular mental health training for community-based primary care providers, and reduce the financial burden on patients and their families began to be adopted by central and local governments.^{24,25} In 2006, the National Continuing Management and Intervention Program for Psychoses was implemented by the central government to provide an integrated hospital and community treatment model for psychoses.¹⁷

The shift in government mental health policy, combined with the opposition to the medical paternalism in involuntary admission legislation, promoted local regulations after 2006 that modified the involuntary admission procedure in several ways. First, the former criterion of personal insight has been replaced by two thresholds for involuntary admission. Two cities (Beijing and Wuxi) emphasize the severity of the disease and limit involuntary admission to those with severe psychoses or conditions of similar severity. In the other four cities (Hangzhou, Ningbo, Wuhan, and Shenzhen), hospitalization must be deemed necessary, which is more rigorous than the criterion that it must be beneficial to the

patient, as is stated in the Shanghai Regulations. Furthermore, in these cities, the determination of whether a patient is capable of giving informed consent is based on impairment of judgment, which is more similar to the legal criterion used in the civil circumstance. The criterion for emergency admission is limited to patients who pose a danger to others or society (except in Shenzhen) and, in the modified procedure, only the police can order such admissions (except in Wuxi and Shenzhen).

All of these modifications show the efforts of legislators to shift from a traditional model that governs only the management of mental illness to one that balances the interests of persons with mental illness with those of society. However, such a transformation cannot be accomplished with one stroke, because the traditional concepts that benefit society are valued more highly than the interests of the individual, and the protection of the patient's right to receive treatment is a higher priority than the protection of the right to autonomy. Thus, most of these local regulations lack effective oversight and review mechanisms for involuntary admission, clear time limitations for such admissions, and specific discharge procedures.¹¹ Because of the vast, multiethnic, and diverse population in China, social harmony and stability are well-recognized concerns of the Chinese government.¹⁷ Thus, the danger-to-society and disturbance-of-public-order criteria for emergency admission have been used in several cities.

In drafting the National Mental Health Law, the legislators faced multiple pressures from the community. Whereas the public and government wanted to ensure the safety of the community from the potential risks of having mentally ill individuals living among them, some legal experts expressed their dissatisfaction with the local regulations. Their criticisms were that the legislative processes in these jurisdictions were led by local health administrators and that most expert participants were government staff and psychiatrists.²³ Some further argued that the need-for-treatment criterion for involuntary admission creates the possibility that persons can be put in institutions against their will by local authorities and psychiatrists, can be diagnosed with mental disorders that they do not have, and can be given drugs and electroshock treatments that they do not need. In their opinion, the government should invite more lawyers, sociologists, and other stakeholders to get involved in the national legislative process, because

involuntary admission is not purely a medical matter but is a legal one, as well. Thus, the government suggested that risk be the sole criterion and that all involuntary admissions be reviewed by a third party, such as the civil courts. These adverse opinions from legal advocates reflect the difference in their concerns and those of mental health practitioners. Both communities have the common objective of preventing individuals with mental illness from harming themselves or others; however, communities have divergent opinions about how to achieve those aims.²⁶ Although the primary concern of mental health practitioners is the need to treat patients and to prevent harm, the priority of legislators is the protection of personal freedom and the right of mentally ill individuals and the general public to autonomy.

In the beginning, the opinions of the legal community did not arouse much response from the public. The situation has undergone significant change since 2010 after a series of cases about people who were misdiagnosed as mentally ill and were inappropriately placed in psychiatric hospitals were reported by the media.^{1,2,23} Although these misdiagnosed cases are not a pervasive phenomenon³ and some of them were based only on the testimony of one side of the interested parties, these reports attracted the attention of the public and aroused fervent arguments about the legal aspects and ethics of involuntary admission. In the opinion of some critics, psychiatrists exhibit a lack of intention to protect the interests of the mentally ill, and the guardian is endowed with unlimited power in the current involuntary admission system.²³ These arguments created opposition among the different groups in mental health services, such as mental health professionals, patients, family members, and the general public, who share a common interest in protecting the rights of mentally ill patients. In this round of the debate, the means of protecting the interests of patients and at the same time promoting mental health services was the topic that received the least amount of attention.

The change in values and attitudes in the community finally influenced the drafting of the National Mental Health Law. Thus, the national legislation on involuntary admission has turned the focus of the limited hospital-based mental health services to patients with dangerous behavior and emphasizes the autonomy of patients. When the draft was published on June 10, 2011, it aroused a still-ongoing debate about the National Law's potential negative effects

on mental health services in China. One topic that received harsh attacks was the criteria covering danger to society and disturbance of public order. With the gradual shift in general societal values toward individual freedom, more and more people have expressed fear that the clause regarding disturbing the public order can be easily abused, because it is broad and ambiguous. These critics have called on the government to redirect the emphasis on protecting society from the potential dangerousness of persons with mental illness to the protection of the rights and responsibilities of patients.²⁷

Some mental health professionals have expressed their concern about the omission of the need-for-treatment criterion.¹⁸ They fear that the National Law raises the threshold for involuntary admission too high and may lead to undesirable consequences, because experience in some Western countries does not suggest a strong influence of commitment criteria on compulsory admission rates.¹⁵ In contrast, mental health laws that require patients to be assessed as dangerous before they can receive involuntary treatment are associated with a significantly longer duration of untreated psychoses and may foster a strong public perception of mentally ill persons as being generally uncontrollable or dangerous, thus contributing to the stigma of mental illness.^{15,28} The two-stage review system in an earlier draft of the National Law was also thought to be too complex and a hindrance to the timely treatment of patients.

The final text of the Law seems to be the result of a compromise between the civil liberties approach that highlights the importance of individual freedom and autonomy and the medical model that emphasizes the need for treatment as a sufficient prerequisite for involuntary admission. The final law shifted to the dangerousness criterion as the standard for involuntary admission, and the danger-to-society and disturbance-of-public-order criteria that had been widely challenged were abolished. Such a human rights-oriented approach includes legal restrictions on the clinical practice of psychiatry that exceed those in some high-income countries and is considered by some to be an important step in providing appropriate protection of patients' human rights during the process of involuntary admission.²⁵ The Law takes into account the central role of the family in Chinese culture by restricting the use of an independent supervisory mechanism solely to patients who are admitted on the basis of risk to others. Thus,

the family members continue to have an important role in making decisions on admission and treatment of those at risk to self. In addition, the Law makes concessions to the unequal regional growth and the imbalance between the urban and rural economies in China. Because there are only about 20,000 psychiatrists in China, most of whom work in specialized psychiatric hospitals in urban areas,²⁹ the qualifications of psychiatrists who are eligible to perform admission evaluations under the National Law are lower than the requirements of most local regulations.

Overall, the National Law is intended to protect Chinese citizens from possible abuses of involuntary admission, promote transformation of the mental health service system,³⁰ and improve services for individuals who are mentally ill.³¹ Optimistic experts believe that there will be a rapid shift from hospital-based to community-based psychiatric care now that the Law has been enacted and that individuals with mental health problems who are not willing to be hospitalized will be able to receive appropriate care in the community, because the Law actively promotes the goal of increasing community-based services.^{25,30}

Some weaknesses in the Law may be obstacles to the realization of these goals. First, there is no clear definition of current risk in the criterion for involuntary admission, which may open a loophole for abuse of this clause (Ref. 13, Article 30.1, p 309). Psychiatrists, family members, and lawyers representing the patient may have a different understanding of the coverage of such clauses and practices or may litigate on the basis of what they believe to be the *status quo*.³²

Second, similar to most local regulations, the Law does not have a specific duration for involuntary admission. The intention of the legislation is to allow the various jurisdictions to develop specific rules according to their own situations. Without a national guideline, however, the implementation of the Law will be diverse throughout the country and will allow the most troublesome problem in China currently—that patients (and their family members) will be unwilling to leave inpatient wards, even though their condition meets the criteria for discharge—to remain unresolved.

Finally, the Law does not mention whether the patient who is deemed a danger to others can apply for discharge. Because the Law presumes that the hospital will be responsible for treating the patient's

illness and predicting potential dangerousness, the problem of detainment of some patients in psychiatric hospitals for years has no solution as yet.

Even though the national legislation on involuntary admission is far from perfect, it is still exciting news for persons with mental disorders, their caregivers, and mental health professionals.³³ The experience in Shanghai shows that standardizing the diverse practices in involuntary admission through legislation can be successful in reducing medical disputes and in achieving a balanced response to the needs of patients, families, and the public.¹⁸

Mental health legislation in China is still in its infancy, and much work remains. For example, more comprehensive and practical guidelines should be developed for psychiatrists to strengthen the protection of mentally ill patients' rights *vis-à-vis* the processes of admission, discharge, and treatment.¹⁹ An educational series and promotional program for the National Law should be implemented. Furthermore, for those jurisdictions that already have legislation on involuntary admission, revision of the local regulations is necessary.

Conclusion

The gradual trend toward more stringent legislation for involuntary admission of the mentally ill in the past 10 years in China, along with the compromises, reversals, and circuitous course of the legislative process, reflects the difficulty faced by the government in balancing the benefits to society and the individual and in transforming the delivery of mental health services. The articles in the enacted National Law, in combining the different perspectives of the community, mirror the fierce collision between traditional cultural values that emphasize the community and family and the modern concept of the pursuit of personal freedom and autonomy in contemporary China. Because the impact of the legislation is still unclear, continued research on the influence of the Law on both the consumer and provider of mental health services may contribute to legal amendments in the future.

Acknowledgments

This work was supported, in part, by Ministry of Science and Technology Grant 2012BAK16B04 to Dr. Bin Xie and National Institutes of Health Fogarty International Center Grant 5 D43 TW05809 to Dr. Byron J. Good (Department of Global Health and Social Medicine, Harvard Medical School, Boston, MA).

References

1. Lafraniere S, Levin D: Assertive Chinese held in mental wards. *New York Times*. November 11, 2010. Available at http://www.nytimes.com/2010/11/12/world/asia/12psych.html?_page=1. Accessed March 19, 2013
2. Psychiatric institutions in China. *Lancet* 376:2, 2010
3. Xiang YT, Yu X, Chiu HF: Compulsory admission to psychiatric hospitals in China. *Lancet* 376:1145–6, 2010
4. Xiang Y, Yu X, Ungvari GS, *et al*: China's National Mental Health Law: a 26-year work in progress. *Lancet* 379:781–3, 2012
5. Criminal Law of the People's Republic of China. (Adopted by the Second Meeting of the Fifth Session of the National People's Congress, July 1, 1979; effective January 1, 1980). *J Crim Law and Criminol* 73:138–70, 1982. Available at <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6292&context=jclcl>. Accessed November 8, 2014
6. Criminal Procedure Law of the People's Republic of China. (Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979; effective January 1, 1980). Available at <http://www.china.org.cn/english/government/207334.htm/>. Accessed November 8, 2014
7. Regulations of the People's Republic of China on Administrative Penalties for Public Security. (Adopted at the 17th Meeting of the Standing Committee of the Sixth National People's Congress on September 5, 1986; effective January 1, 1987). Available at <http://www.china.org.cn/english/government/207301.htm/>. Accessed November 8, 2014
8. Regulations of Shanghai Municipality on Mental Hygiene. (Adopted on December 28, 2001, at the 35th Session of the Standing Committee of the 11th Shanghai Municipal People's Congress on December 28, 2001; effective April 7, 2002). Available at <http://www.asianlii.org/cn/legis/sh/laws/rosmomh500/>. Accessed November 8, 2014
9. Government of Wuxi: Wuxi Mental Health Regulation. Formulated by the 31st Session of the 13th Wuxi Municipal People's Congress Standing Committee on June 29, 2007 and approved by the 31st Session of the 10th Jiangsu Provincial People's Congress Standing Committee on July 26, 2007. Available at <http://en.wuxi.gov.cn/sitePages/subPages/1300350001356409.html/>. Accessed November 8, 2014
10. Regulations of Beijing Municipality on Mental Health. (Adopted at the 33rd Meeting of the Standing Committee of the 12th People's Congress of Beijing Municipality on December 8, 2006). Available at <http://www.lawinfochina.com/display.aspx?lib=law&cid=11709&CGid=>. Accessed February 6, 2015
11. Shao Y, Xie B, Good MJ, *et al*: Current legislation on admission of mentally ill patients in China. *Int J Law Psychiatry* 33:52–7, 2010
12. Standing Committee of the National People's Congress. Draft version of Mental Health Law and its instruction. October 29, 2011 (in Chinese). Available at http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2011-10/29/content_1678355.htm/. Accessed January 30, 2012
13. Translated and annotated version of China's new Mental Health Law *Shanghai Arch Psychiatry* 24:305–21, 2012. Available at http://www.saponline.org/upload/20121220/special_article.pdf/. Accessed March 19, 2013
14. Criminal Procedure Law of the Peoples Republic of China (2012). English translation by ChinaLawTranslate posted on April 8, 2013. Available at <http://chinalawtranslate.com/en/criminal-procedure-law/>. Accessed November 8, 2014
15. Dressing H, Salize HJ: Compulsory admission of mentally ill patients in European Union Member States. *Soc Psychiatry Psychiatr Epidemiol* 39:797–80, 2004
16. Yip KS: Community mental health in the People's Republic of China: a critical analysis. *Community Ment Health J* 42:41–51, 2006
17. Liu J, Ma H, He YL, *et al*: Mental health system in China: history, recent service reform and future challenges. *World Psychiatry* 10: 210–6, 2011
18. Xie B: Where is the path to recovery when psychiatric hospitalization becomes too difficult? *Shanghai Arch Psychiatry* 24:38–40, 2012
19. Xie B: Detailed operational regulations are needed to implement the mental health law. *Shanghai Arch Psychiatry* 25:60–2, 2013
20. Yip KS: An historical review of the mental health services in the People's Republic of China. *Int J Soc Psychiatry* 51:106–18, 2005
21. Pearson V: Law, rights, and psychiatry in the People's Republic of China. *Int J Law Psychiatry* 15:409–23, 1992
22. Chang DF, Kleinman A: Growing pains: mental health care in a developing China. *Yale-China Health J* 1:85–98, 2002
23. Huang XT, Liu XH, Liu JJ: The involuntary commitment system of China: a critical analysis. *Psychiatry and Society Watch Equity and Justice Initiative*. 2010. Available at <http://www.doc88.com/p-0189089892727.html>. Accessed February 6, 2015
24. Xiang YT, Yu X, Sartorius N, *et al*: Mental health in China: challenges and progress. *Lancet* 380:1715–16, 2012
25. Xiang YT, Li LJ, Ungvari GS, *et al*: The proposed national mental health law in China: a landmark document for the protection of psychiatric patients' civil rights. *Shanghai Arch Psychiatry* 24: 46–7, 2012
26. Nesossi E, Trevaske S: The 2012 Mental Health Law: an interview with Guo Zhiyuan. *Australian Centre on China in the World*, January 23, 2013. Available at <http://www.thechinastory.org/2013/01/the-2012-mental-health-law-%E7%B2%BE%E7%A5%9E%E5%8D%AB%E7%94%9F%E6%B3%95-an-interview-with-guo-zhiyuan-%E9%83%AD%E5%BF%97%E5%AA%9B/>. Accessed February 6, 2015
27. Kleinman A: Global mental health: a failure of humanity. *Lancet* 374:604, 2009
28. Large MM, Nielsens O, Ryan CJ, *et al*: Mental health laws that require dangerousness for involuntary admission may delay the initial treatment of schizophrenia. *Soc Psychiatry Psychiatr Epidemiol* 43:251–6, 2008
29. Cyranoski D: China tackles surge in mental illness. *Nature* 468: 145, 2010
30. Yeung A: 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? *Shanghai Arch Psychiatry* 24:38–40, 2012
31. Mellsop G, Diesfeld K: Service availability, compulsion, and compulsory hospitalisation. *Shanghai Arch Psychiatry* 24:44–5, 2012
32. Shao Y, Xie B, Wu Z: Psychiatrists' attitudes towards the procedure of involuntary admission to mental hospitals in China. *Int J Soc Psychiatry* 58:440–7, 2012
33. Liu XH: A long overdue pleasure. *Shanghai Arch Psychiatry* 24: 359, 2012