



A Study of Legal Issues in the Regulation of Senior Care Institutions in China

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Abstract. Population aging is an important challenge for China, and the model of institutional elderly care is an important measure for China to cope with population aging. However, there are some shortcomings in the legal regulation of senior care institutions in China, and there are shortcomings in the regulation of the entry threshold of senior care institutions and the qualification of senior care service personnel. Therefore, it is necessary to improve the restrictions on the entry conditions of senior care institutions and strengthen the examination of the qualifications of senior care service personnel. By improving the supervision of senior care institutions, the rights and interests of elderly people living in senior care institutions can be protected.

Keywords: elderly care institutions · regulatory mechanism · access conditions · qualification examination

1 Introduction

Population aging is a basic national condition in China, and China is currently facing serious challenges brought by the rapid aging of the population, which requires us to deal with it calmly. By the end of 2022, the number of China's elderly population has reached 280 million, and is about to enter a moderate aging society[1]. This has also drawn the attention of Chinese governments at all levels. In this context, local governments at all levels are actively promoting the development of the senior care industry. It is a big problem in front of us how to place such a large number of elderly people and how to properly deal with the current elderly care problems[2].

In order for such a large elderly population to enjoy their twilight years in peace, there must be corresponding senior care services to support them. The institutional model of elderly care is gaining prominence, as it has advantages over the traditional family model of elderly care in terms of complete infrastructure and personalized care. The Chinese government is also aware of the advantages of institutional care, it is clearly proposed that the development of institutional elderly care services should be supported on the basis of family elderly care.

However, the current legal regulation of institutional elderly care services is still not perfect, which makes the rights of the elderly vulnerable to infringement, and it is urgent to regulate the problems related to institutional elderly care. At present, the

government is the regulator of senior care institutions, but there is a certain degree of lack of relevant regulatory norms, and there is a need to regulate the entry threshold of senior care institutions and the qualification examination of corresponding practitioners.

2 Main Legal Issues in the Process of Regulation of Senior Care Institutions

Nowadays, the procedure of setting up and putting into the market of senior care institutions is relatively easy, and the supervision and audit are not high. The loose supervision mode can indeed stimulate the vitality of senior care institutions and related markets, but the lack of relevant norms and guidelines also tends to breed senior care conflicts, and in the long run, there is no way to supervise whether the obligations of senior care institutions are fulfilled, and the legitimate rights and interests of the elderly are not protected.

2.1 Lack of Reasonable Access Mechanism for Senior Care Institutions

At present, there is a defect that the access standard of Chinese senior care institutions is too low. The current access form of Chinese senior care institutions is mainly registration and filing. Before the amendment of the Law on the Protection of Rights and Interests of the Elderly, in practice, in order to set up a senior care institution, one must meet the five criteria for setting up a senior care institution as stipulated by law, and needs to submit the application for setting up a senior care institution to the civil affairs department in accordance with certain procedures, and after the examination and verification, the applicant should register in accordance with the law. In addition, the management of the provisional regulations also emphasize the private non-enterprise units in the establishment must also be reviewed and approved for registration in accordance with the corresponding procedures. The simultaneous fulfillment of the two standards of administrative licensing and review raises the difficulty and threshold for the establishment of private elderly institutions, controls the quality of elderly institutions at source with a higher access mechanism, reduces operational risks, and reduces problems that may arise during supervision.

In 2018, China no longer imposes restrictions on whether or not to apply for an administrative license to set up a private senior care institution, which means that a civil subject wishing to set up a non-profit senior care institution in accordance with the law only needs to apply and register with the designated department in accordance with the statutory procedures, and does not need to apply for an administrative license with the administrative authorities, lowering the access threshold for private senior care institutions. The removal of the license for the establishment of senior care institutions has greatly stimulated the initiative and enthusiasm of civil subjects to set up senior care institutions, and relaxed the criteria for reviewing the establishment of private senior care institutions. In order to avoid a series of problems after the relaxation of standards, it is necessary to strengthen the strictness of management. In the past, the establishment of private senior care institutions had to meet both administrative licensing and filing registration, and the establishment standards were extremely strict, but there were still a

series of problems caused by lack of management or oversight [3]. At this stage, China has not legislated to regulate the establishment of senior care institutions, nor has it formulated specific policies to regulate them. Even if the lowering of the entry threshold for senior care institutions is a natural consequence of the continuous development of society, it must be accompanied by a matching regulatory mechanism to ensure its stable development [4].

2.2 Lack of Qualification Review Mechanism for Senior Care Service Practitioners

In 2002, the release of the National Standard for Professional Qualifications of Elderly Caregivers kicked off the setting and development of the professional access system and professional standards for talents in Chinese elderly institutions, but due to a number of factors, the national professional qualification directory published in 2017 did not include elderly caregivers. This has triggered widespread concern and deep thinking among multiple social actors about whether the exclusion of elderly caregivers from the national occupational qualification directory will have an impact on the elderly service industry [5]. Although this practice can ease the contradiction of the shortage of personnel in the elderly service industry, but there are certain unreasonable.

In the current situation, most care workers in senior care institutions have learned only basic senior care skills and services, making it difficult to provide the high-quality services required by the senior care industry itself. The team organization responsible for carrying out senior care work today has low practical experience and the level of work safety, management and practice is hardly sufficient to meet the needs of high quality senior care services. In reality, most caregivers do not have professional qualifications. The reasons for this phenomenon are from the following three perspectives: first, caregivers are not well paid, and most of the highly qualified people with professional nursing qualifications work in other industries; second, the work is stressful, and there are many tasks to be performed. Third, when recruiting caregivers, most senior care institutions do not choose to sign contracts with them, which makes the rights and benefits of caregivers uncertain. This has resulted in a steady increase in the total number of older adults admitted to senior care facilities, without a corresponding increase in the number of caregivers. The mobility of caregivers is exacerbated by low pay, a large workforce, and stressful workloads, and seniors in institutions not only have to endure frequent changes in medical staff, but also the risk to their lives from unprofessional care practices. Therefore, in order to improve the quality of elderly care institutions, it is necessary to set corresponding standards to strengthen the training and review of elderly care service workers.

3 Suggestions for Countermeasures to Improve the Supervision of Senior Care Institutions in China

The regulations on the access settings of senior care institutions and senior care service staff in China are not perfect at this stage, and the services of senior care institutions cannot be quality assured in practice, while the senior care services provided by senior

care institutions are closely related to the life and health of the elderly and other legitimate rights and interests. Therefore, it is necessary to regulate the establishment and access conditions of senior care institutions and senior care service personnel, and increase the strict examination, so as to enhance the quality of senior care services provided by senior care institutions, thereby eliminating and preventing the safety hazards faced by the elderly during their stay in the institutions, and also to prevent certain practitioners who do not have the ability to provide senior care services from entering the senior care service industry, thus ensuring that the elderly can receive professional service personnel's This also helps to prevent the entry of people who are not competent to provide elderly care services, thus ensuring that the elderly are cared for by professionals. This will also help to protect the legitimate rights and interests of the elderly in the institutions, resolve disputes and conflicts, and promote the harmonious and stable development of society.

3.1 Clarify the Admission Conditions of Senior Care Institutions

Although China amended the Law on the Protection of the Rights and Interests of the Elderly in 2018, the establishment of elderly institutions has since been changed from the original approval system to a filing system, showing the trend of relaxing the entry threshold for elderly institutions in China. However, this does not mean that the government can relax the supervision and management of the conditions for the establishment of elderly institutions, otherwise the rights and interests of elderly people living in the institutions will not be protected. Therefore, the government should pay more attention to its supervisory role after the changes in the law have made it less difficult to register senior care institutions. Even though the previous cumbersome admission procedures have been simplified, the conditions still need to be met. All aspects of licensing are clarified in the Measures for the Establishment of Senior Care Institutions, but the lag in the law itself makes it impossible to meet the needs of the current stage of development, and civil affairs departments should change with the times.

Meeting the legal entry requirements is a prerequisite for the establishment and operation of senior care institutions in society, and is the first line of defense for the legal protection of the rights and interests of the elderly. Firstly, the founder of a senior care institution must have full civil capacity, but the government should also relax the qualification of the founder to stimulate the initiative and enthusiasm of other entities to set up senior care institutions. Secondly, from the perspective of capital, there is an obvious positive correlation between the quality of senior care services provided by senior care institutions and the amount of capital. Therefore, the founders of senior care institutions must meet the legal minimum funding standards when setting up senior care service institutions. In addition, in terms of size, it should meet all aspects such as living area, proportion of elderly people, and bed setting as stipulated by law [6].

3.2 Specify the Qualification of Service Personnel of the Elderly Institutions

The special nature of institutional elderly services requires service personnel to have professional competence and quality, so a constant supply of composite professionals is needed to carry out elderly services. When recruiting various senior care service personnel in strict accordance with the talent selection criteria, it is necessary to first consider

whether the recruited employees possess legally recognized professional qualification certificates.

In terms of the current legal and other aspects of China's senior care services, there is a significant contradiction between the low total number of service personnel and the rising demand for senior care services. Therefore, China should vigorously pursue the construction of institutionalized elderly care from all angles. In order to improve the quality of care and nursing care, the previous standards for access to nursing care personnel can be adjusted appropriately, not only to restrict nursing care personnel in terms of qualifications, but also to establish a strict system of access and nursing care qualification levels according to the actual situation. The following aspects should be stipulated: First, the relevant departments should regularly review the qualifications of service providers and crack down on any abuses. Second, the training and examination of nursing staff should be organized nationwide, and legal documents should be formulated to ensure the implementation of the examination and qualification system.

4 Conclusion

Institutional elderly care will play an irreplaceable key role in coping with the aging process of China's population, and under the existing national conditions, it is necessary to vigorously guide the elderly care institutions to take the path of marketization and socialization. In the context of the booming elderly care industry, improving the legal regulation of the elderly care institutions can not only promote the healthy development of institutionalized elderly care quickly and well, but also ensure that the rights and interests of the elderly people staying in the nursing homes are not infringed upon, so as to achieve a sense of security and enjoyment for the elderly.

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