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From Mental Health Law to Mental Health and Welfare Law

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Abstract In September 1987 in Japan, the Mental Hygiene Law was amended to the Mental Health Law. This Law emphasizes the protection of human rights of the mentally disabled as well as the promotion of their social rehabilitation. In 1993, Mental Health Law was partially revised in the following four areas: (i) social rehabilitation; (ii) special rules for large cities; (iii) definition of the mentally disabled; and (iv) hogogimusha seido. The Japanese Government amended the Mental Health Law to Mental Health and Welfare Law on 1 July 1995. This law is intended to promote the welfare of the mentally disabled.

Key words BasicLaw for the Disabled, Community Health Care Law, Mental Health and Welfare Law, Mental Health Law, Social Rehabilitation Facilities, United Nation's Principles, Welfare Certificates.

INTRODUCTION

Some time after Japan became modernized, after the Meiji Restoration in 1868, two mental health related laws were put into effect: the Confinement and Protection for Lunatics Law of 1900 and the Mental Hospital Law of 1919, both of which emphasized the safeguarding of the general public and allowed the mentally disabled to be confined at home.

After World War II, the Mental Hygiene Law was enacted in 1950. This was the first law to refer to 'providing both medical care and protection', but the law was applied in such a way that it did not shift the focus of practice away from providing custodial care.

Following the reports of some improper management of inpatients in Utunomiya Hospital in 1984, there were confrontations and discussions between psychiatrists and jurists in reference to the best way to assure patients' rights. The newly revised law, called the Mental Health Law, was legislated in 1987 and has been in operation since July 1988. The basic concepts of this law were the protection of the human rights of patients and the promotion of social rehabilitation for mentally disabled persons.

In regard to human rights, the main points of the 1987 amendment of the Mental Health Law providing for protection of patients' rights were the following:

1. In the event of admission to a mental hospital, the superintendent of the mental hospital shall endeavor to admit the mentally disordered person based on his or her consent (voluntary admission).
2. To guarantee to every involuntarily admitted inpatient the right to appeal to the prefectural governor for his or her discharge or the inappropriateness of treatment.
3. To establish a psychiatric review board to review the necessity of involuntary hospitalization and the propriety of treatment through notice on admission and by regular report.
4. To prohibit restrictions on actions, such as correspondence, telephone use, and interviews.
5. To give written notice of the patient's rights at admission.

The Japanese government has taken various measures to improve the nation's mental health services.

A new climate resulted in December 1993, after the 1993 World Congress of WFMH Japan when the Basic Law for the Disabled was put into effect. Although previous welfare-related legislation only covered those with physical disabilities and mental deficiencies, this Law for the first time included as its target population those with mental disabilities as well.

The Law brought Japan's mental health care into a new era where welfare measures are provided for those with mental disabilities. The only legislative measures for this group had long been health care under the Mental Health Law.

Then, in July 1994, the Community Health Care Law came into effect. This Law offered new perspectives to community level healthcare measures, for example, by postulating new function sharing among the national, prefectural, and municipal governments. In fact, the Community Health Care Law now allows more discretion to municipal governments in the implementing of mental health measures, a move designed to further enhance mental health measures in the community.

Given these developments, the Japanese government decided to partially amend the Mental Health Law.

The objectives of amendment were as follows: (i) this amendment was designed to incorporate welfare measures, given that the New Basic Law for the Disabled includes those with mental disabilities as beneficiaries of the Law; (ii) the Mental Health Law needed to reflect the provisions of the new Community Health Law; and (iii) the Mental Health Law needed to reflect various changes made since 1993 when the Law was last amended.

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The amendment was also designed to bring about the measures necessary to ensure that appropriate mental health care is delivered, and to have national health insurance, instead of public funds as under the previous arrangement, bear the majority of medical fees involved in government-subsidized mental health care.

CONCEPT OF WELFARE FOR THOSE WITH MENTAL DISABILITIES

Article 3 of the Mental Health Law as revised in 1993 reads, 'those with mental disorders under this Law refer to those persons with schizophrenia, psychosis due to intoxication, mental deficiency, psychopathy, and other mental disorders'. In short, using such phrases as 'those with mental disorders' and 'the mentally disordered', the current version of the Mental Health Law defines its target population medically and regards them as the beneficiaries of healthcare measures.

By contrast, Article 2 of the Basic Law for the Disabled reads, 'those with disabilities under this Law refer to those having their daily or social living significantly restricted on a long-term basis due to their physical disabilities, mental deficiencies, or mental disabilities'. In other words, the Basic Law for the Disabled looks at mental 'disabilities' and identifies its target population from the viewpoint of their social 'handicaps' as opposed to their 'disorders'. Those with mental disabilities, defined in this way, are more likely to be the beneficiaries of welfare measures.

Thus, special attention should be given to the fact that this target population is addressed in two ways: they are the disabled, with the social aspects of their lives constrained, and they are at the same time patients afflicted with disorders.

Relationship among national, prefectural, and municipal governments

Until recently, Japan's mental health measures were implemented largely by 47 prefectural governments. Given, among others, the objectives of the Community Health Care Law, sophisticated services for large catchment areas, such as ensuring the delivery of appropriate mental health care and psychiatric emergency services, need to be maintained and even enhanced as the responsibilities of prefectural governments (and 12 other major cities delegated authority by Government Ordinance to conduct some of the functions of prefectural governments).

At the same time, as the range of measures expands to include welfare as well as health care, municipal governments need to be gradually accorded more responsibilities, such as public education, social rehabilitation measures, welfare measures, and other community-based services.

It is not appropriate, however, to draw a clear line between health care and welfare measures by allocating the former responsibilities to the public health sector and the latter responsibilities to the welfare sector. Given the advantage of providing health care and welfare measures in an integrated manner, it is realistic to have public health centers undertake welfare measures, in addition to the healthcare measures they have been undertaking, by working closely with welfare offices and other relevant agencies.

Legislation of welfare measures for those with mental disabilities

As stated above, welfare and healthcare measures are inseparable for those with mental disorders and disabilities. In fact, because the existing version of the Mental Health Law provides for de facto welfare measures, it was appropriate to add welfare measures to the Mental Health Law and make it the Mental Health and Welfare Law from 1 July 1995, instead of making separate welfare legislation.

KEY CHANGES IN THE AMENDMENT

Changes related to the improvement of health care and welfare measures for those with mental disabilities

Changes regarding the names of the Law and other related issues

To refer, as the purpose of the Law, to 'promoting the independence of those with mental disabilities and their participation in socio-economic activities' as the responsibility of the national, prefectural, and municipal governments, as the responsibility of the general public, and as the responsibility of the operators of hospitals and other relevant facilities.

Changes regarding healthcare and welfare certificates for those with mental disabilities

To allow those with mental disabilities to apply to receive healthcare and welfare certificates by submitting an application, together with documents provided for under the Ordinance of the Ministry of Health and Welfare, to the governors of the prefectures in which these persons reside and to require the governor to grant such certificates when and if the applicants are found to be in conditions of mental disabilities as provided for under the Government Ordinance.

Changes regarding dissemination of proper knowledge

To require prefectural and municipal governments to make efforts to deepen local community understanding regarding the social rehabilitation of those with mental disorders, their independence, and their participation in socio-economic activities through, among others, publicity designed to promote proper knowledge regarding mental disabilities.

Changes regarding counseling and guidance

To require prefectural governments and cities and special districts with public health centers to have Mental Health and Welfare Counselors, other staff, and physicians who have been designated to provide consultation and guidance, as needed, to those with mental disabilities, their family members, and others regarding mental health and the welfare of those with mental disabilities. To require prefectural governments and others to refer those with mental disabilities in need of medical care to medical facilities suitable for those persons based on the conditions of their mental disabilities.

Changes regarding social rehabilitation facilities

To refer specifically to 'welfare homes for those with mental disabilities' and 'welfare workshops for those with mental disabilities' as new types of social rehabilitation facilities.

Changes regarding social adjustment training services

To require prefectural government to assist social adjustment training services for those with mental disabilities to promote their social rehabilitation and their participation in socio-economic activities. To allow changes related to cost sharing of mental healthcare changes regarding the application of public funds to pay for psychiatric outpatient medical fees. To enable prefectural governments to choose, if so desired, to pay 95% of psychiatric outpatient medical fees provided however that the fees to be borne by prefectural governments are reduced to the extent that the patients involved are entitled to receive health care-related benefits under the Social Insurance Acts or the Elderly Health Care Law.

Compared with United Nation's principles, even the new Mental Health and Welfare Law in 1995 should be amended again in the near future.

I think it desirable to reconsider the functions and operation of psychiatric review board for the further legal protection of human rights of persons with mental illness. Also, I think the principle of Informed Consent to treatment should be considered. The principles dealing with involuntary admission, especially involuntary admission for medical care and protection, should be reconsidered.