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The Chinese Primary Care System: Its Evolution, Challenges and Legal Aspects of Reform

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Abstract

There has been much interest in China and abroad in the Chinese health care system and its legal system. To date, however, there has not been adequate study tying legal reform and health care reform in China. This paper seeks to bridge those disciplines by studying, for many reasons, the most crucial aspect of the Chinese health care system: the primary care system. The author examines herein recent efforts at reform in primary care, and explores some major legal and policy issues relating to both the national and local governments' efforts at reform, and also citizens' efforts using the expanding power of the legal system. For this study, the author looked at other academic and government studies on the Chinese health care system and its legal system. He also attended and reviewed presentations and interviewed professors with direct knowledge of the situation in China. The research shows that the Chinese primary care system, and in fact its entire health care system, is undergoing tremendous change and faces similar problems as the United States. National-local government differences in responsibilities might hamper efforts at reform while changes in administrative law have empowered citizens to a degree, although they still depend on the government to take action. Overall, China would likely need to find a culturally acceptable and practically workable balance between national and local power, and between governmental and citizen responsibility, in achieving health care reform.

Keywords

primary care, China health reform, rule of law, administrative law, China health law, Social Sciences, Health and Societies, Arnold J. Rosoff, Rosoff, Arnold J.

Disciplines

Asian Studies | East Asian Languages and Societies | Health and Medical Administration | Health Law and Policy | Health Policy | International Law | International Public Health | Other Legal Studies | Public Policy

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Abstract

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I. Introduction

China is undergoing tremendous changes that permeate the entire society and its institutions. Its health care system is no exception. Currently, China faces similar problems as the United States in matters of controlling costs, increasing access and providing quality health care. As China adjusts to the 21st century and the increasingly market-oriented economy, its health care system similarly must respond and reform in order to maintain social order and provide for the health of 1.3 billion people. Likewise, China's legal system also has undergone reform after the introduction of the market-socialist economy in the early 1980s. As the Chinese government and people tackle the problems with health care, the law and the legal system will play an increasingly important role.

One aspect of the health care system in the process of reform is the primary care system. According to Barbara Starfield (1998), primary care “provides entry into the [health care] system for all new needs and problems, provides person-focused care over time and ... coordinates or integrates care provided elsewhere or by others” (Starfield, 1998, p. 8-9). Primary care usually consists of physicians and health care facilities that interact personally with patients and provide for the prevention and treatment of the most common diseases and illnesses. Unlike other forms of care, such as hospital or specialized care, primary care acts as the base of any health care system, for it emphasizes health in a holistic respect. Its importance in promoting health, especially that of the rural and the poor, cannot be underestimated, both on the level of the individual and that of the population (Starfield et al., 2005, p. 466-8). China, with 56.1% of its population rural as of 2006 and 41% living below the poverty level, still heavily relies on its primary care system (National Bureau of Statistics, 2008, section 4-4) (Huang, interview 2008).

With its primary care problems significant and complicated, China must reform its system according to its unique characteristics and challenges.

This paper will examine the Chinese primary care system and some relevant legal and policy issues relating to primary care reform (and health care reform in general)¹. An overview of the primary care system with its historical development and recent reforms will be presented. Afterwards, the paper will examine legal and policy issues facing reformers from both the side of the government – national and local – and that of the citizens. This paper will demonstrate that the evolution of the Chinese primary care system follows that of the economy, and the national government has directed its reform and will continue to do so. Furthermore, local-national tensions and the concept of the “rule of law” will affect national efforts at reform while changes in administrative law will likewise affect citizens’ efforts at reform, especially at the local level.

II. Overview of Primary Care in China

According to the Constitution of the People’s Republic of China, health is a right for all citizens for whom “the right to material assistance from the state and society” in the event of illness or disability is guaranteed (Constitution of the PRC, article 45). Guided by this principle and the pressing need to provide health services for the large population of rural poor, the government established a national primary health care system in 1949 (国家初级卫生保健系统). A multi-level network was constructed where each level (such as village, town and county) combined administrative leadership and technical guidance and supervision². The national government enacted legislation for provincial governments and local administrators while it still maintained the final say in all matters (WHO, 1983, p. 36). On principle and in practice, while the national government decided most of the health care policy, local level administrators could enact necessary regulations, or administrative rules, to suit local needs. To finance the system, a

system of Cooperative Medical Schemes (CMS) was introduced in the 1950s and well-promulgated by the 1970s (Peabody et al., 1999, p. 225). Under this arrangement, farmers, local governments and the national government contributed funds to cover primary care services. Barefoot doctors, groups of semi-trained village and local physicians, provided most of the primary care services (Cui, 2008). With the emphasis on prevention and self-sufficiency, the barefoot doctor-based system proved effective in improving overall health outcomes and earned praise from the international community.

The primary care system began to weaken in wake of the 1980s modernization efforts. The national government withdrew support for the rural cooperative medical programs and reduced overall health care investment, as it reasoned that the new market mechanisms would solve any problems (Brant et al., 2006, p. 4 & 7). Without government support, the CMS collapsed and the primary care system framework was essentially dismantled. Barefoot doctors, who by then lacked stable sources of funding, disbanded to look for other sources of income (Cui, 2008). The aftereffects included rising preventable hospitalizations – a direct result of inadequate primary care – a rise in overall health care costs and prices, and a lack of insurance, especially among the rural poor. In fact, around 2000, the once-viable rural CMS system barely existed and up to one-third of the rural population could not afford the costs of care and avoided seeing doctors at all (Brant et al., 2006, p. 5). In other cases, especially in urban areas, health care services, especially high-tech and hospital, were over-utilized and contributed to the rising health care costs in the 1980s and 1990s (Peabody et al., 1999, p. 277). The national government was culpable, for it had neglected investment in basic and preventive services while it did support new and expensive inpatient technologies (Lee, 2004, p. 334-5). Such a pattern characterized the government and its reform program. Its fiscal policies were strongly

decentralized and large institutional and geographic variations in planning were evident (Liu and Rao, 2006, p. 76 & 80). State-run institutions and those close to the coast were disproportionately favored. This contributed to the ever-pronounced disparities in health care, between rural and urban, coastal and inland and rich and poor. Concerns over equity, cost control and community-focused care were not considered important and thus ignored by the national government (Meng, 2007, p. 15).

In the late 1990s and early 2000s, the national government began to address the problems in the health care system, with an emphasis on primary care reform. For the access problem, affordability – the ability to pay – was correctly targeted as the main issue for most Chinese (Brant et al., 2006, p. 2). The government re-established a rural Cooperative Medical Scheme in 2003 which sought to replicate the old system and cover all of China's rural population. This new system differed from the previous system in that it aimed mostly to protect rural people from catastrophic losses and participation was voluntary, whereas the old system was mostly mandatory and covered preventive care (Yip and Hsiao, 2008, p. 464). Even though the government subsidies for the new co-op system were small compared with other expenditures, the CMS still proved a significant relief for uninsured farmers and many rural counties joined (Liu and Rao, 2006, p. 72). As of 2007, the system had expanded to cover around 80% of the rural population (Zhang, 2007, slide 5). In urban areas, where the primary care system remained largely intact, the government attempted to reorganize the system into community health centers for primary care and district hospitals for inpatient care (Meng, 2007, p. 3). Similar to a barefoot doctor, a family physician (全科) became the model provider of primary care in urban areas, and increasingly so, in semi-rural and town areas as well (Wang et al., 2007, p. 639). Such reforms underscored the government's focus on promoting quality health

care in urban as well as rural areas. In all, the national government has become more aware of the need for equity and efficiency, not just growth (Reddy, 2007, p. 65). It has begun to bridge the seemingly enormous gaps between rural and urban, coastal and interior. In 2006, prompted by the success and pace of reforms, the national government announced its intention to provide for universal health coverage for both rural and urban residents by 2020, with a focus on providing quality primary care (Meng, 2007, p. 16) (Yip and Hsiao, 2008, p. 464 & 467). While the major problems in the health care system – rising national expenditure, unaffordable prices for consumers, lack of coordination, inefficiencies, and disparities – will persist in the near future, China's commitment to reform and its emphasis on primary care suggest that the government and its citizens are giving attention to the health care challenges ahead.

III. Issues Relating to Government Efforts at Reform – National-Local Differences

In China, the national government assumes all sovereign power and decides national policy. National legislation and regulations are passed downwards for local governments to follow and implement (Rothstein et al., 2003, p. 63-5). Since the reform era of 1980s and the advent of the health care market, the national government has become mostly a regulator of the market (Fang, 2008, p. 952). It recognizes the need for regulation of an uncertain market and for local governments to help. Nonetheless, despite the involvement of the local governments in setting some regulations, they lack independent sovereign power and mostly carry out national policies by using their own resources, personnel and innovative ideas (Li, 2006, p. 172). Usually, solutions from the local level are undermined by the lack of administrative and managerial capacity in major matters, especially in finances³ (Brant et al., 2006, p. 10). Officials in local governments often do not get much support from the national government to compensate for these limitations. In fact, many local governments do not consider granting and administering

rural insurance programs a worthwhile venture. Despite their reservations, the local governments are required to help administer the new rural CMS system. Generally, strong national government support for rural and local insurance schemes is necessary as local communities differ in needs, lack much backing from non-governmental organizations and lack institutional authority (Liu, 2004, p. 162 & 164). Without national government backing and funds, the rural CMS system and many other health care initiatives would likely fail.

Such differences in authority and capability between the national government and local governments often give rise to significant tensions that may derail efforts at health care reform. Local protectionism is prevalent in China despite the efforts at upper hierarchical control: local regulatory institutions often have incentives to partner with local party officials and health providers to the chagrin of the national government (Fang, 2008, p. 954)⁴. While the Communist Party has widespread means of control down to the bottom level of administration, such efforts are often in vain due to local protectionism and corrupt regulatory agencies. Often, the national government needs to resort to financial incentives rather than formal sanctions to ensure compliance. Consequently, there are large variations in the extent of local governments administering national policies; for example, hospital studies show that exemptions and subsidies for the poor exist in principle (from national laws), but rarely in practice (local administration) (Reddy, 2007, p. 65). Currently, the central government and local governments still debate the proper role in not only providing health care but also levying taxes and promoting agricultural policies (Liu, 2005, p. 162). There is still uncertainty over ultimate decision-making in issues relating to local health needs and policies. Many local governments are in a transition between having *de facto* (actual or real) and *de jure* (empowered by law) autonomy, both of which entail complex relationships with the national government (Zheng, 2007, p. xv). After all, China has a

“long history of dispersed power over its enormous territory, with considerable provincial and county integrity, and local-government autonomy” (Walker and Buck, 2007, p. 62). Given the enormousness of the country and the tradition of local autonomy, debates over national and local control will likely persist into the future.

The introduction of the concept of the “rule of law” has had a significant effect on the Chinese government’s relationships to the local governments and its approach to regulation and reform. China does not have a strong legal tradition and only after the reforms in the 1980s did law and legal institutions assume any substantial importance (Rothstein et al., 2003, p. 61). Its system is based on French civil law and has since the 1980s borrowed much from international concepts on law. Even so, one of the main criticisms of Chinese law is its character of “instrumentalism”, i.e. that the law is used to promote market-based economic development and maintain the rule of the Communist Party, rather than to establish a society in which the government, institutions and people subscribe to the supremacy of the law, i.e. “rule of law” (DeLisle, p. 7-8). According to DeLisle and many experts, a rule of law legal system consists of key elements such as judicial review, an independent judiciary, legal accountability of public officials and mechanisms to keep officials under the auspices of the law. A marked shift has occurred in the recent years as evidenced by Hu Jintao championing the rule of law as one of the pillars of his model of a “harmonious society” (Hu, speech 2005). On a more practical level, the rule of law idea, especially the last two elements noted above, helps to legitimize administrative structures used to ensure that other actors and regulatory institutions comply with existing laws (Fang, 2008, p. 961). Such mechanisms have been employed to indicate that the national government does intend to regulate within the limits of the law. Nonetheless, potential problems with the approach include the limited infrastructures for the judicial and administrative systems,

the possible exclusion of non-governmental actors with no statutory power from the government accountability process and the end use of the law to legitimize powers such as fee-collecting that do not protect rights or promote quality (Fang, 2008, p. 961). In many cases, auditing structures for the health care regulatory institutions fall victim to the very corruptive processes that they are intended to prevent. Despite the increased use of the rule of law in official dialogue and practice, China is far from a society governed by the rule of law and still often follows earlier, more instrumentalist notions of law, such as the use of the law to promote Communist Party policy and to prevent social disorder against the party (Liu, 2004, p. 162). While the current state of affairs may be beneficial for keeping the government in charge of reform, it prevents complete and transparent reforms that normally require a true rule of law society.

IV. Issues Relating to Citizen Efforts at Reform – Administrative Law

Increasingly, Chinese citizens of various backgrounds have made efforts to push for health care reform. In a departure from the Mao years, when the state was supreme and the party emphasized that people look to the state, the family is now emphasized as the first line of support for health matters (Liu, 2004, p. 162). Individuals have begun to look to themselves and their families in assessing matters of health. A more concrete change was the empowerment of the courts to hear complaints against administrative decisions starting in the early 1980s and the enactment of a comprehensive Administrative Litigation Law (ALL) in 1990 (Potter, 1994, p. 273). This new law empowered citizens and allowed for judicial review of administrative agencies in order to increase their accountability. With greater knowledge of health care, citizens have since then continually pressured the government to act in health care reform and many surveys show that health care, including equity, is close to the top of most people's concerns (Meng, 2005, p. 16) (Warren, email 2007). Many citizens have begun to see themselves involved

in affecting health care policy and issues, especially locally. Despite these improvements, civil society participation in many public decision-making processes is still low (Huang, interview 2008). The government discourages large and pervasive civic organizations and monitors those that are allowed to form. The absence of independent and powerful civic organizations will continue to limit the ability of citizens to push for reform despite available administrative litigation or informal processes⁵.

Many informal processes of petitioning and other means have long existed for citizens. Rural farmers have formed civil organizations to give themselves some political voice. Such efforts are somewhat effective but, because many farmers depend on the government for individual subsidies and leases, they are more beholden to the government than to other farmers (Liu and Rao, 2006, p. 77). Likewise, professional groups and organizations such as physicians' associations or independent auditors, which can help address problems and enforce some standards in facilities such as hospitals, also are limited by their lack of autonomy and status (Fang, 2008, p. 961). One successful effort that has spread across China is village elections legitimized by the Organic Law of 1998. Villagers use elections to elect some of their own non-party leaders and to dislodge corrupt officials and push for reforms (O'Brien and Li, 2000, p. 481-2). These elections hold promise for long-term democratic change starting from the local level. Finally, the People's Congress, the supreme legislature, has a supervisory role and often hears direct grievances from the people (Fang, 2008, p. 958). In the petitioning process, ordinary citizens can send petition letters or grievances to higher administrative bodies, including the People's Congress, to correct mistakes or unjust actions of lower bodies (China Labour Bulletin, 2003, p. 3). The legislature in turn can request reports and inspections to address grievances. In many cases, petitioning the legislature can be effective as a collective action, an informal action

taken by a group of citizens. Many rural people, either unaware of the formal legal system or dissatisfied with its results, resort to petitioning the legislature to claim rights on land and resolve disputes with each other and the national or local governments (Pils, 2005, p. 33-34). Although such methods may not succeed and may lead to social unrest, often they garner public media attention and result in changes in administrative procedure and local reforms.

The Administrative Litigation Law has increased the usage of courts and litigation to resolve disputes with physicians and government agencies. There has been a traditional distrust between doctors and patients stemming from the low status of the doctor in traditional Chinese society and its lack of professional status. With the increased prominence and effectiveness of the legal system, more people are using the legal system to sue physicians, especially after the standardization of the malpractice law in 2002 (Harris and Wu, 2007, p. 456)⁶. Nonetheless, China has a legal system that not everyone trusts to be fair and transparent (ibid., p. 460). The process is still new and relatively time-consuming and expensive, which discourages many citizens. Citizens are still limited in the extent to which they may use the legal system. For example, a citizen can challenge a state action – a concrete act by a state agency such as a local health department not reimbursing for care in a particular instance – but not administrative regulations – an abstract and more general rule set by a state agency such as a local health department’s stipulation that it would not reimburse (Rothstein et al., 2003, p. 462). In rural China, most villagers are distrustful of using administrative litigation against the state and have found themselves at distinct disadvantage when they do litigate. Even so, they persist in their efforts and often achieve some success when they employ collective mass action and also employ other informal means (O’Brien, 2004, p. 76-77). Such cases of collective mass litigation are becoming increasingly prominent in rural and urban China. While the objectives and results

are often local and limited, such as rooting out a corrupt official or revoking an inequitable seizure of land, some larger suits can and have brought about substantial reforms including those in local health policy and health equity.

V. Conclusion

In conclusion, China faces some major legal challenges in its attempts at reform, notably in the health care system. Its primary care system, still an essential part, will continue to undergo its long evolution with plans for universal health coverage on the horizon. The national government will continue to be the main agent for and regulator of reform but it needs to navigate its relationships with local governments and continue to uphold and promulgate the rule of law. China's citizens will play an increasingly important role in holding the government accountable and pushing for reforms on the local level. China will find a way to reform its health care system with its legal system providing a crucial aspect.

Further research and study are needed to assess China's future primary care and health care reforms. The government's implementation of its promise for universal health care will be interesting to note. While "health care" and "primary care" are similar systems and used interchangeably in this paper, primary care is a distinct element within the health care system as a whole and one should focus on observing it as a separate entity. This paper focuses on two major legal and policy aspects of reform – national and local tensions from the governmental side and administrative law from the citizens' side – but other legal and policy issues deserve attention too. It will also be worth observing how the notions of rule of law and litigation versus petitioning play out in China's political and legal culture. A study of China and its health care system is and ought to be of interest not only to policymakers, academics and the citizens of China, but also to their counterparts all across the world.

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Additional Notes

¹ Primary care reform and health care reform, and even later, reforms in general, are used liberally throughout this paper, especially in the later sections. While the three domains not interchangeable, for the purposes of this paper, the first two are very similar and the latter often involves or includes the first two.

² China is divided administratively into provinces, then counties, towns and villages. Such divisions are based on population and geography. These divisions also correspond to the health care system, both in the past and the present.

³ Additionally, many local governments face budget shortfalls and lack solutions for those. Regional budget planning from the central government is often slow and ineffective.

⁴ Such incentives are often financial, such as an arrangement in which local government inspectors overlook a hospital's faults in quality and standards in exchange for monetary arrangements or promotion of the local government among the (hospital) community.

⁵ In this section, general legal issues relating to administrative law will be discussed. There is sparse literature on the effect of administrative law on citizens' reforms at health care specifically. Nonetheless, administrative law does apply to citizens' efforts at all kinds of reforms, which include and are applicable to health care.

⁶ This change may result in the invidious effect of ruining fragile provider-patient relationships more as more citizens resort to litigation to address individual grievances against physicians.