

China's new public health constitution: a cause for hope?



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On Dec 28, 2019, the Standing Committee of the National People's Congress of China enacted the landmark Basic Healthcare and Health Promotion Law after 2 years of drafting. The law, set to be implemented on June 1, 2020, is in many ways a de facto constitutional charter for public health, guiding health policy and development in the next decade and beyond. It is not without grim irony that this new statute emerged simultaneously with the outbreak of the 2019 novel coronavirus disease (COVID-19) in Wuhan. The massive global attention to COVID-19 should not divert us from the potential consequences of this law as a major determinant of health, setting up legal rules and frameworks affecting the underlying socioeconomic causes of disease and injury.¹

One of the most important purposes of this law is to implement the Healthy China 2030 initiative, promulgated in October, 2016, by the Chinese Government, to push ahead China's ambition to hit key health indicators by the year 2030. The authorities' eagerness to legislate aspects of the initiative into a code of law reflects a general commitment, since the beginning of the reform era in 1978, to the proposition that law is among the most indispensable and effective instruments for managing China's demographically diverse, vastly complex society, and enforcing the policy preferences of the political centre against local public and private actors.²

The law contains 110 provisions over 10 chapters, and covers topics such as basic health-care services, medical and health institutions and their personnel, drug supply, health promotion, and financing. Article 4 broke new ground by recognising a "right to health", which is nowhere mentioned in the current Chinese Constitution, as a "citizen's right" to be upheld by both state and society; this recognition could pave the way for the incorporation of the right to health into the Constitution. This right, according to Article 5, is defined as the concrete entitlement of citizens to enjoy "basic healthcare services" offered by state and society in relation to disease prevention, diagnosis, treatment, nursing, and rehabilitation. Article 6 designates the health of populations as a priority consideration for every level of government. Article 15 mandates that "basic public health services" are to be provided by

the state free of charge, and—according to Article 16—to enhance the prevention and control of diseases. Article 19 obligates the state to establish a comprehensive public health emergency system and organise preparedness efforts. Article 20 mandates the creation of a system of infectious disease prevention and control that emphasises early prevention, which obligates individuals and groups to comply with isolation, treatment, and medical observation measures. According to Article 21, the state is to implement a policy of preventive vaccination, and submission to it by residents is framed as both a right and an obligation. Articles 22–28 cover the control and management of non-communicable diseases, consolidation of occupational health, protection of children and women, the health of the elderly and people with disability, delivery of first-aid services, and the development of public mental health.

For all its symbolic boldness, the law is unlikely to revolutionise public health in China overnight. The wording of many of its provisions is ambiguous, featuring abstract principles rather than concrete and practical rules. Many of the Articles cannot be operationalised without elaboration by regulatory agencies associated with the State Council and by the judicial interpretations of the Supreme People's Court, both of which are likely to encounter difficulties of implementation in face of potentially contradictory directives decreed by local authorities, pursuant to the exercise of legitimate rulemaking powers under Article 108. The courts as potential enforcers of the law received scant and at best implicit attention from the text. Interestingly, Article 97 calls on private citizens and organisations to undertake the "social supervision" or civic oversight of public health institutions by submitting complaints to the competent bureaucratic authorities. Freedom of speech is prerequisite for "social supervision" to be meaningful, but the credibility of this freedom has been challenged in many parts of the country, in particular after a Wuhan ophthalmologist died of COVID-19 on Feb 7, 2020—one of earliest whistle-blowers of the novel coronavirus who was silenced by the authorities. There is little hope for the law to take full effect without momentous modifications in the broader Chinese legal and political systems.

I declare no competing interests.

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Eric C Ip
ericcip@hku.hk

Faculty of Law, University of Hong Kong, Hong Kong Special Administrative Region, China

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