

The Legal Structure of Personal Social Services in Regional Spaces

A Discussion in the Context of Japanese Community Care Policy

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I. ISSUES

In an aging society, a pressing issue in Japan today is comprehensive care for elderly populations in local communities. A key concern here is going beyond the mere receipt of personal social services on a one-to-one basis between provider and user, and instead considering how to build a community care system that functions as a service network for the region as a whole. Second, as the use of personal social services shifts from administrative measures to being provided on a contracted basis, and then expands to cover the region as a whole, the question becomes how to guarantee the right to use these personal social services. Therefore, regional “spaces” should not be thought of as “existing as-is”, but rather as being the result of integration of, participation in, and development of services in order to “create places” on a community-wide basis.

This paper examines the issue from the above viewpoint and analyzes the mechanisms and rights of personal social services in Japan's local communities. In particular, it focuses on the significance of social work for indi-

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vidual users and community support projects so as to enable residents to pursue a range of activities.

II. COMMUNITY CARE POLICY IN JAPAN

To begin, I will briefly summarize the key concepts behind Japan's community care policy over the years.

The 1950s and 1960s were a time of "community organization" (*chi'iki soshiki-ka*). Immediately following World War II, the occupation forces pursued the establishment of social welfare legislation based on the principle of separation of public and private enterprises. This legislation authorized the placement of the needy in welfare facilities by means of administrative measures. The flipside of this was the stipulation of social welfare councils (*shakai fukushi kyōgi-kai*) in order to support the voluntary social welfare activities by local residents.

The 1970s, 1980s, and 1990s brought the concept of domiciliary care (*zaitaku kea*). Until that time, legislation had only set forth admission to care facilities, but then local municipalities started to use their own budgets to offer day services, home help, respite care services, and other domiciliary care services. Around this time, there emerged the concept of participatory social services in which local residents voluntarily participate. In addition, with municipalities coordinating domiciliary care services, the authority was transferred to cities, towns, and villages and they started to formulate community care plans.

In the first two decades of the new millennium, a comprehensive community care system (*chi'iki hōkatsu kea shisutemu*) emerged. Following what is referred to as the "basic structural reform of the social welfare system", legislation like the Elderly Long-Term Care Insurance Act¹ and the Services and Support for Persons with Disabilities Act² was created. This led to the provision of services under a contract between provider and user, with private enterprise entering the space for domiciliary care services. In this context, a critical issue of concern is creating a network that enables the coexistence of a diverse range of personal social services. Key points include (1) the integration of health and personal care services, (2) mutual aid and support for preventative care and lifestyle assistance, and (3) creation of a local community.

The 2020s are being talked about as a coming era of a "local coexistence society (*chi'iki kyōsei shakai*).” While a comprehensive community care system implies elderly care only, a "local coexistence society" emphasizes the comprehensive coverage and cross-disciplinary support of different

1 *Kaigo hoken-hō*, Law No. 123/1997.

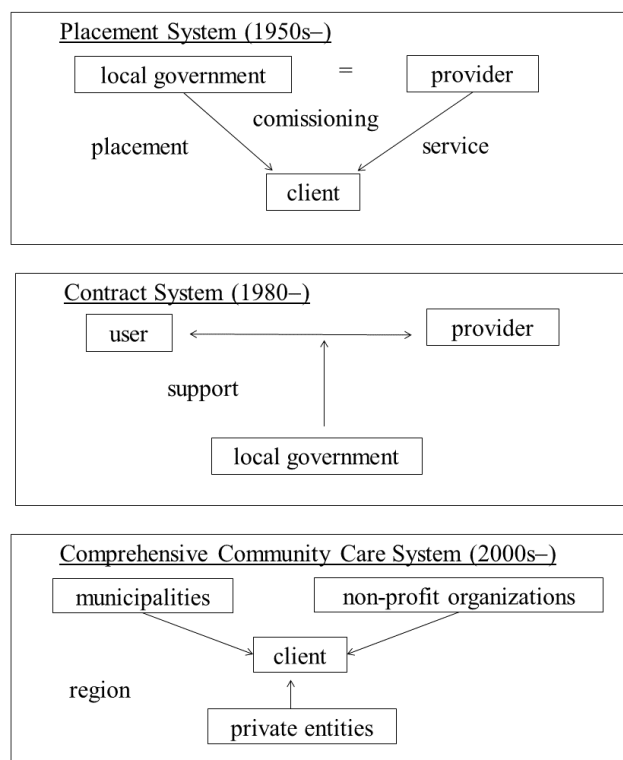
2 *Shōgai-sha jiritsu shi'en-hō*, Law No. 123/2005.

sectors and the participation of residents. The ultimate goal here is comprehensively working towards social work, participatory support, and community building that centers around both problem-solving and connections.

III. HOW PERSONAL SOCIAL SERVICES ARE RECEIVED

Next, moving on from policy, we turn to the legislative system to examine how personal social services are received. I identify the main schemes for use of such services in each era and highlight aspects of present community care services (Table 1).

Table 1: Transition from receiving method of personal care services in Japan



Starting in the 1950s, the welfare system largely revolved around administrative measures. This involved admission to facilities through placement measures, and only low-income earners were eligible. Service providers

could only be social welfare corporations (*shakai fukushi hōjin*), with the use of these services representing a reflective and factual benefit to the operators, and with the passive recipients having no rights regarding use or selection of the service.

In the 1980s, the system shifted to a contract basis, with this becoming the main method of service-use by the 2000s. Under the contract system, services are used pursuant to a one-to-one transaction between provider and user. Since the service is provided under contract, the user's right to receive and select the service is protected. In addition, income limits were abandoned, the service became universal, and co-payments for service-use were introduced. The private enterprises emerged as operators of domiciliary care services.

In the 2000s, comprehensive community care has gone beyond the notion of simple one-to-one transactions between user and provider, and it has shifted towards a diverse range of forms that include private enterprises, residents' mutual aid associations, and numerous other services being provided through the network.

The current issues are as follows. First, how to create services in a way that fosters a system for the integration of, participation in, and development of community care services. Second, clarifying the relationship of rights as concerns personal social services in regional spaces. In other words, with numerous actors taking part in diverse services and creating a complex network, we must clarify who has what rights, and against or towards whom. This paper focuses in particular on rights in the concept of non-care social work and community building.

IV. LEGAL STRUCTURE OF REGIONAL CARE

In this section, I focus on the legal structure and mechanisms of community care and the rights arising there. Thus far, social security jurisprudence has almost exclusively hinged on the analysis of the legal rights relationship in the area of personal social services. Going forward, the various rights implicated in a complex local network that involves public and private resources must be clarified. This in turn requires focusing on the three discrete types of services: (1) social work, which involves local integration; (2) the use of services, which involves participation; and 3) the creation of services, which involves development of services.

First is the question of social work. Social work theory postulates the process of providing personal social services, including intake, provision of information, needs assessment, formulation and implementation of care plans, and monitoring. Social work is the underlying prerequisite for the provision of services, but it is more than a mere procedure. There are aspects unique to social work that differ from the simple provision of services as a

method of problem-solving. These include the notions of accompaniment or working in tandem, watching over those under care, and an emphasis on connections. Social work is performed through the involvement of experts, administrative entities, and local residents, with stakeholders communicating with each other regarding the issues on an ongoing basis in a user-centered approach.

Second is the use of services. The use of services largely revolves around transactions under contract between provider and user, with the user taking part in society through use of that service. These services are provided in a given community within a network that variously provides a wide range of other services. So rather than focusing on the provision of a single service, it is essential to consider micro-level aspects like integration and coordination through care management before and after use of services, and enabling individuals to use services through better provision of information and advocates. The services include reciprocal and voluntary activities by local residents; a key component here is the participation of residents. Use of the services is a result of continuous, user-centric communication among stakeholders. Where the matter cannot be handled by contract, there is still the option for placement measures by administrative officials under the law.

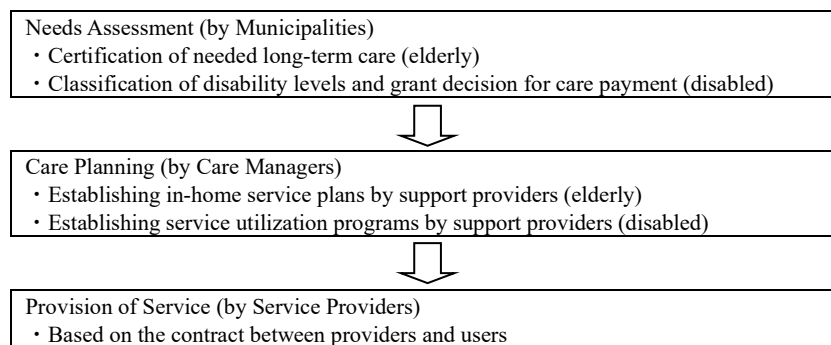
Third is the creation of these services. Ensuring that sufficient local resources are secured depends on the creation of a basic infrastructure for the development and integration of services. In other words, this implies the integration with and development of local resources, these including public bodies, private enterprises, and mutual aid organizations. This process is performed as part of local community-building through administratively-led community support projects and through the creation of community care plans. These systems are created through ongoing dialogue that is done in a democratic fashion.

In what ways are users' rights protected in these mechanisms? In the case of social work, there is the right of the user to benefit from social work in the form of preliminary procedures like care management undertaken before receiving care services. As regards the use of services, there is the right of the user to that service. On the other hand, in terms of "social work" in the strict sense (which is not subject to benefit procedures) and the creation of services, while the administration bears an obligation, there are no particular rights that accrue to the user. I will proceed to analyze this in detail.

V. USER'S RIGHTS IN THE ELDERLY LONG-TERM CARE INSURANCE ACT AND IN THE SERVICES AND SUPPORT FOR PERSONS WITH DISABILITIES ACT

Given the constraints of space, this paper's analysis focuses on personal social services provided to adults (elderly and disabled) – that is, those covered under the mechanisms of the Elderly Long-Term Care Insurance Act and the Support for Persons with Disabilities Act. I will first briefly describe how these personal social services are used via the legislation above. The process is as follows: first there is a needs assessment encompassing “certification of needed long-term care” or a “benefits decision” made by the municipality. Next, a care plan is created by a care manager. Lastly, personal social services are provided through contract with a service provider (Table 2). In terms of this process, I will proceed to analyze what rights accrue from social work, service-use, and the creation of these services.

Table 2: Procedure of service-use (elderly care and disabled care)



First is the relationship of rights in the context of social work. Assessments such as “certification of needed long-term care” correspond to rights under administrative law, while the creation of care plans corresponds to the users' rights under contract with the service provider. When an assessment and care plan are not performed, the rights to seek these are respectively covered under the right to file a claim with the responsible administrative authorities and the rule prohibiting service providers from refusing to enter into a contract.

At the same time, for social work that does not form a part of benefit procedures, rights for the user are nevertheless implied where the work is legislatively treated as benefits, such as community consultation support (*chi'iki sōdan shi'en*).³ But the content of other cases remain vague, and consequently they appear to be treated solely as a general obligation of the

³ Art. 51-5 Services and Support for Persons with Disabilities Act.

administrative authorities. Therefore, improving the rights that accrue to users would require either spinning off social work as an explicit benefit analogous to community consultation support or, at a minimum, clarifying it as some form of project, like the social work provided by comprehensive community support centers (*chi'iki hōkatsu shi'en sentā*).⁴

Second are rights relationships with respect to the use of services. Vis-à-vis providers, rights users retain those rights governed by a contract. Providers are prohibited from refusing to conclude a contract, so the right of users to seek a contract is protected as well.

Beyond assessment of benefits, such as “certification of needed long-term care”, users’ rights towards the administration are limited to the right to seek payment of service costs. While some placement measures by the administration cover the use of the service itself, the legislation states that measures for domiciliary care services “can be taken,” so this not totally binding.

The use of services cannot be guaranteed in the absence of rights supporting this, such as through provision of information and the protection of rights (for example, adult guardianship, contract regulations, complaint handling, et cetera). In many cases, such activities do not constitute legal rights as such, and they are limited to support in the form of factual acts. In terms of going forward, this requires regarding the process leading up to benefits as a series of steps and explicitly abstracting each stage; then rights are clarified through contract or public duties.

Services performed through mutual aid by local residents are offered on a voluntarily basis and are not obligatory. Therefore, no rights accrue in connection with these services unless they involve some sort of contract, like a usage agreement with a residents’ group or a commission from the administration. Insofar as it erodes the rights of users to receive services, it is not desirable to transform what should be public benefits into resident services.

Third are rights relationships pursuant to the creation of infrastructure for services. While there may be rights to use these services from a micro perspective, in the absence of macro-level resources being available for use, these rights are essentially meaningless. To compensate for this, there are mechanisms for shoring up resources through community planning and for securing those resources through community support projects.

Taking a macro view, if there is a lack of local services, do users have the right to seek that administrative authorities provide them? This leads one to conclude that the shoring up of these services is not codified as a right of the user as such, but that it is treated as the responsibility of the administrative authorities. However, this could be interpreted as a right if a specific amount of benefit were decided upon and a discrete, material service were rendered.

4 Art. 115-46 Elderly Long-Term Care Insurance Act.

Recently, we have seen the more widespread use of what are legalistically defined as “community support projects (*chi'iki shi'en jigyo*)”.⁵ These are carried out with subsidies from the municipality to service providers and used to shore up the service infrastructure in a given community. They include social work in comprehensive community support centers and home-help service for the frail and elderly.

How should we interpret the rights of users under these systems? Traditionally, services were performed as individual service benefits provided to users. But, for example, home-help services for the frail and elderly have since shifted to becoming a part of community support projects, though substantively speaking they are still construed as individual services. Yet while these are substantively individual services, they are legally defined as part of the creation of an infrastructure of services, so we can conclude that no rights are codified for the user as such. In this way, defining or positioning what are substantively individual services as a part of community support projects makes the rights that accrue to users unclear; this is ultimately undesirable.

VI. CONCLUSION AND CONSIDERATIONS

Lastly, I wish to conclude by discussing the significance of this legal analysis of personal social services in regional communities. In my interpretation, regional “spaces” are not merely ones where services are provided; they are instead “places” that result from the creation of a service network among local stakeholders.

In the coming age of a local coexistence society, community care should not be seen solely through the single aspect of standalone use of services, but rather in the context of multifaceted and continuous use within the network.

When doing so, we must focus not only on the provision of services but on all aspects, including integration, participation, and the development of services. To the extent possible, stages other than the provision of services must be extracted in order to clarify the rights of users and public responsibilities. In particular, it is important to enable both the provision of social work for users and the securing of sufficient local resources.

SUMMARY

In an aging society, a pressing issue in Japan today is ensuring comprehensive care for elderly populations in local communities. A key concern here is going beyond the mere receipt of personal social services on a one-to-one basis be-

5 Art. 115-45 Elderly Long-Term Care Insurance Act.

tween provider and user and considering instead how to build a community care system that functions as a service network for the region as a whole. Second, as the use of personal social services shifts from administrative measures to their being provided on a contract basis, and then expanding to cover the region as a whole, the question becomes how to guarantee the right to use these personal social services.

This paper examines the issue from the above viewpoint and analyzes the mechanisms and rights of personal social services in Japan's local communities. First, the key concepts behind Japan's community care policy over the years are summarized and the main schemes for use of such services in each chronological era are identified. Subsequently the three discrete types of services are focused on: (1) social work, which involves local integration; (2) the use of services, which involves participation; and (3) the creation of services, which involves development. Lastly the paper analyzes the ways that users' rights are protected in these mechanisms.

ZUSAMMENFASSUNG

Die Gewährleistung einer umfassenden Fürsorge für die ältere Bevölkerung in örtlichen Gemeinschaften ist für Japan angesichts seiner alternden Gesellschaft eine drängende Herausforderung geworden. Eine wichtige Aufgabe ist dabei, über die bilateral von einem Serviceanbieter gegenüber einem Servicenutzer erbrachten sozialen Dienstleistungen hinaus ein gemeinschaftsbasiertes Dienstleistungssystem aufzubauen, das als Servicenetzwerk für eine gesamte Region funktioniert. Zum zweiten geht es um die Sicherung des Rechtes auf Nutzung derartiger sozialer Dienstleistungen, wenn diese nicht länger als staatliche Leistungen, sondern auf privater vertraglicher Grundlage erbracht werden.

Der Beitrag untersucht das Thema aus diesen beiden Perspektiven und analysiert die Organisation persönlicher sozialer Dienstleistungen und die Rechte an selbigen in den örtlichen Gemeinschaften Japans. Als erstes werden die grundlegenden Konzepte in historischer Perspektive vorgestellt, auf denen die Politik der sozialen Dienstleistungen basiert. Sodann werden die dafür in den jeweiligen Zeitabschnitten eingesetzten Mittel beleuchtet. Anschließend liegt der Focus auf drei spezifischen Arten von Dienstleistungen: (1) Sozialarbeit, welche auch eine lokale Integration umfasst; (2) die Nutzung von Dienstleistungen, welche eine Teilhabe ermöglichen; und (3) die Schaffung von Leistungen, die eine Weiterentwicklung zum Gegenstand haben. Abschließend untersucht der Beitrag, auf welche Weise die Rechte der Nutzer von diesen Leistungen im Einzelnen gesichert werden.

(Die Redaktion)