

Law Application and Risk Prevention of the Elderly Nursing Service Contract

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ABSTRACT

With the aging problem becoming more and more serious in China, the elderly nursing service demand gradually increases. However, the legal provisions on elderly nursing services are scattered, and the existing legal framework fails to fully cover the specific legal issues faced by elderly nursing service contracts. Therefore, this paper discusses the law application and risk prevention of the elderly nursing service contract, aiming to provide reference for improving the legal effect of the elderly nursing service contract and protecting the legitimate rights and interests of the elderly, and promote the healthy development of the elderly nursing service industry.

KEYWORDS

Elderly nursing services; The rights and interests of the elderly; Law application; Contract risk; Legal prevention

1 Provisions of the existing law on elderly nursing service contracts

Under the current legal framework in China, “Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly” and “Measures for the Administration of Elderly Care Institutions” put forward specific requirements on the management of the elderly nursing service contract. Among them, “Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly” clearly stipulates that the state guarantees the basic living and medical needs of the elderly through the basic pension insurance and the medical insurance system. The law also encourages family members to live together with and care for the elderly, as well as encourages grass-roots organizations and governments to take measures to support family security. “Measures for the Administration of Elderly Care Institutions” detail the specific responsibilities of elderly care institutions in terms of service provision, safety management, costs and contract management. Elderly care institutions shall sign employment contracts with employees in accordance with the law, publicize standards of service charges, configure necessary fire fighting facilities and carry out regular inspection and maintenance. At the same time, they should establish elderly information files, and protect the personal information and privacy of the elderly. In addition, the Ministry of Civil Affairs and the State Administration for Industry and Commerce recently jointly formulate and issue the “Service Contract for Elderly Care Facilities” (Model text), and make specific and standardized provisions on the content of service contracts for elderly care institutions according to the requirements of the “Contract Law of the People’s Republic of China”, the “Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly” and the “Measures for the Administration of Elderly Care Institutions”. The purpose is to ensure that the service contract of elderly care institutions can fully and accurately reflect the whole process of services, so as to better express the wishes and needs of the parties. This model text not only reflects the state’s great attention to the welfare of the elderly and the strengthening of the supervision of the elderly care service market, but also is a concrete embodiment of promoting the healthy development of the socialist market economy.

2 Legal risks in elderly nursing service contracts

2.1 Legal risks of contract terms

Under the legal framework of China, the elderly nursing service contract has its specific legal nature, which is mainly manifested as the service contract, and the legal risks of this contract mainly come from the ambiguity of the contract terms and the complexity of the implementation process. The ambiguity of contract terms refers to the vague expressions of service content, fee payment and responsibility assignment in the contract terms, therefore it is difficult for the elderly and their families to accurately understand the actual terms of the contract, and they sign the contract without fully understanding the contract content, which directly increases the risk of disputes in the execution of the contract in the future^[1]. The cognitive ability of the elderly declines with age, which makes it difficult for the elderly to fully understand all the details when facing complex legal documents. The nursing service contract needs to specify the specific responsibilities and obligations of the service provider when the health status of the elderly changes. If the contract does not clearly specify this point, once the health status of the elderly changes, the two sides will be prone to dispute on this issue, resulting in legal disputes. Such risks not only make it difficult for the elderly to access necessary services in a timely

manner, but also take an economic toll on the elderly. In addition, legal risks are also reflected in the modification and termination clauses of the contract. In the process of providing nursing services for the elderly, the service provider will adjust the contract clauses due to the changes in the health status of the elderly and the increase or decrease in service demand. If the conditions and procedures for modification and termination are not clearly specified in the contract clauses, the elderly and their families will not be able to effectively safeguard their rights and interests when it is necessary to adjust services in practices.

2.2 Legal liability of the service provider

In the contract of nursing service for the elderly in China, the risk of legal liability of the service provider comes from the unclear responsibility and the inadequate execution by the service provider in the performance of the contract. In practice, some contracts do not specify specific measures to be taken by service providers in the event of a dramatic change in the health status of the elderly, which results in an inadequate response from service providers to medical emergencies and failure to provide timely or appropriate medical assistance in practice. At the same time, there is a gap between the promised level of care and the actual service provided by some service providers, which will not only lead to the breach of contract, but also infringe on the rights and interests of the elderly. The legal responsibility of the service provider is also reflected in the insufficient supervision of the contract implementation process. The service provider needs to continuously monitor and record the living environment and physical health status of the elderly to ensure the continuity and effect of the service. However, some service providers lack the professional competence and manpower to provide a safe living environment and timely medical intervention for the elderly. Such problems are not only related to the safety and quality of life of the elderly, but also reflect the inadequacy of service providers in fulfilling their contractual liabilities, thus increasing legal risks.

2.3 Legal risks of the protection of the rights and interests of the elderly

The legal risks of the protection of the rights and interests of the elderly mainly manifests in two aspects, which are the opacity of contract implementation and the discrepancy between services and the actual needs of the elderly. In the process of signing and executing the elderly nursing service contract, affected by information asymmetry, the elderly and their families have difficulty in fully understanding all the details of the service content, and especially those complicated clauses involving cost calculation, service level adjustment and service termination conditions^[2]. Service providers sometimes deliberately withhold critical information, which makes it difficult for the elderly to understand their true intentions and consequences, and leads them to unknowingly give up certain legal rights. In the terms of the discrepancy between services and the actual needs of the elderly, the elderly need personalized nursing services due to their unique physical and psychological conditions, but some elderly care service institutions ignore the specific health and emotional needs of the elderly due to the consideration of cost control. Moreover, when the health status of the elderly changes, there is no provision in the service contract to adjust the content of the service flexibly, resulting in the elderly unable to obtain the necessary care support. The existence of these risks indicates that the fairness and adaptability of contracts in the field of elderly nursing services in China still need to be further strengthened to ensure that the basic rights and interests of the elderly can be effectively protected by law.

3 Risk prevention measures of elderly nursing service contracts

3.1 Improve contract clauses and legal protection

The improvement of elderly nursing service contract clauses should start with improving transparency and ensuring information symmetry. Specifically, all service details, fee structures, responsibility attribution and exit mechanisms and other key information must be written in clear and understandable language. At the same time, considering that some older people have cognitive impairment, the contract should include provisions that are reviewed by third-party law or aged care experts, so that the elderly and their families can fully understand the contract content. Before formal signing, the service provider can invite legal and medical experts to explain the contract clauses in detail to the elderly and their families, so that the care recipients and their families have the opportunity to ask questions and get immediate answers. On this basis, a more targeted protection mechanism for contract execution is designed combining the unique physiological and psychological characteristics of the elderly. A "contract dynamic adjustment mechanism" can be established to allow automatic adjustment of services and fees based on the assessment of medical experts in the event of significant changes in the health status of the elderly. This mechanism not only protects the rights and interests of the elderly, but also ensures that service providers adjust their service responsibilities within a reasonable range. A "third-party monitoring system", composed of independent legal and aged care experts, can also be introduced to regularly

review the quality of services and ensure that the rights and interests of the elderly are not ignored or infringed during the implementation of contracts. The implementation of these strategies can not only effectively reduce contract disputes, but also improve service quality and satisfaction.

3.2 Improve the legal supervision mechanism and dispute resolution channels

In order to effectively deal with the legal liability risks of the service provider in the elderly nursing service contract, it is necessary to optimize the legal liability of the service provider and establish the supervision system of the implementation of the elderly nursing service contract. Each service provider is required to register in the system and regularly update the data of service quality, contract performance status, and health and satisfaction of the elderly. By analyzing these data, the supervision center can find problems and irregular behaviors in the service in time, and then take corresponding regulatory measures. In terms of dispute resolution, a specialized dispute mediation institution for elderly nursing service contracts can be set up, which is composed of experts in the fields of law, medicine, psychology, elderly care, etc., to ensure the professionalism and comprehensiveness of dispute resolution^[3]. In addition, big data and artificial intelligence technology can be used to provide 24-hour online consultation and preliminary dispute judgment services for the elderly and their families. Intelligent algorithms can be used to analyze the dispute situation and provide feasible solutions for both parties. If the online solution fails, it can be transferred to the manual mediation stage. This model can greatly shorten the dispute processing time and reduce the waiting and psychological pressure of the elderly.

3.3 Raise legal consciousness of the elderly and their families

Raising the legal awareness of the elderly and their families is an important measure to realize the risk prevention of the elderly nursing service contract, which needs to be achieved from the aspects of legal aid and technical application. In terms of legal aid, a volunteer group for the protection of the rights and interests of the elderly composed of community members, retired legal personnel and social workers should be established to provide services such as contract review, rights interpretation and dispute resolution^[4]. To ensure the wide coverage and effectiveness of services, legal aid also needs to establish partnerships with law firms to expand the scope of legal services, so that more older people and their families can benefit. In terms of technical application, an integrated legal support platform for the elderly can be established, which can not only provide basic legal advice, but also integrate artificial intelligence technology to provide preliminary legal advice and contract risk analysis through natural language processing and machine learning technology. Taking into account the adoption of new technologies by the elderly, the interface design of this platform should be intuitive and easy to use, and it should provide voice recognition to help the elderly with poor vision and unfamiliar with text input.

4 Conclusion

To sum up, the legal risks of elderly nursing service contracts include unclear contract clauses, unclear legal responsibilities of service providers and insufficient protection of the rights and interests of the elderly. In view of these deficiencies, special regulations on elderly nursing service contracts should be formulated, a sound supervision mechanism should be established and legal consciousness of the elderly and their families should be enhanced to protect the legitimate rights and interests of the elderly. In the future, with the continuous deepening of the aging problem in China, the law application and risk prevention of the elderly nursing service contract will be more widely concerned by the society. It is necessary for laws, policies and all walks of life to work together to provide a safer, more reliable and more humanized nursing service environment for the elderly.

About the Author

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