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山西省世界银行贷款中国农村基本卫生服务项目/ 英国国际发展部赠款项目资助

# 乡镇卫生院改革的政策法律研究

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#### 乡镇卫生院改革的政策法律研究

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### 山西省世界银行贷款中国农村基本卫生服务项目/英国国际发展部赠款项目 农村卫生政策应用研究课题系列丛书

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# 作者简介

孙淑云,女,1966年12月出生于山西省永济市.1987年毕业于山西大学,获法学学士学位;1990年获西北政法学院刑法专业法学硕士学位;1990年至2001年在工商银行山西省分行任法律顾问;2002年至今供职于山西大学法学院,副教授,硕士生导师,主要研究方向为商法、经济法与卫生法,自1991年以来,在《法律科学》、《中国软科学》、《管理世界》、《山西大学学报》等国家和省级刊物发表学术论文30余篇;主编和参编《商法》(主编)、《银行业务适用法律指南》等7部著作;现正主持国家哲学社会科学基金项目和其他省级课题三项。

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# 总 前 言

"世界银行贷款加强中国农村贫困地区基本卫生服务项目",是我国政府与世界银行合作开展的第八个卫生贷款项目(以下简称"卫生八项目"),项目周期从1998年10月至2007年6月。覆盖我国中西部10个省、市、自治区的97个贫困县。项目致力于加强中国农村贫困地区卫生服务的提供能力,提高农村居民对卫生服务的利用水平,保证当地居民获得基本医疗卫生保健服务,从而实现健康改善及其可持续发展。项目内容包括:卫生资源规划、乡镇卫生院建设、管理信息系统、改善卫生服务、实施合作医疗、进行医疗救助等。1999年7月,英国国际发展部(DFID)作为该项目的重要合作伙伴,提供赠款设立了卫生八支持性项目。

山西省作为卫生八项目省,总投资 9754 万元,其中世行贷款 5983 万元,地方配套 2957 万元,英国赠款 814 万元。项目覆盖天镇、广灵、陵川、沁水、武乡、平顺、沁县、榆社、左权、和顺、娄烦等 11 个贫困县的 188 个乡镇,惠及 200 万农村人口。项目实施以来,完成了 103 个乡镇卫生院的业务用房建设,为乡镇卫生院装备医疗设备近三万台件,积极开展了县级卫生资源规划,有效地改善了农村卫生资源配置状况,进行了农村卫生管理体制和卫生机构运行机制的改革,有效推动了农村卫生服务质量的改进,开展了妇幼保健、结核病控制、白内障治疗以及碘缺乏病控等疾病干预活动,对农村合作医疗和特困人口医疗救助进行了积极的探索。

2002年10月,中共中央、国务院《关于进一步加强农村卫生工作的 决定》颁布后,给农村卫生工作带来了前所未有的发展机遇。但在农村卫 生改革的一些领域,理论和政策上仍存有争议,实践中也摇摆不定。为了 有效促进我省农村卫生的改革与发展,2004年5月,山西省卫生厅外资项 目办公室决定利用英国赠款资金,以"跳出卫生看卫生",从多种视角观

#### 乡镇卫生院改革的政策法律研究

察和研究农村卫生政策及其适用性为宗旨,面向山西省所有的省级卫生事业单位、高等院校和科研机构等,招标确立了7个应用性研究课题。分别是:"从山西省情出发加强农村卫生工作的政策创新问题研究"、"山西农村公共卫生建设现状、问题与对策"、"新型农村合作医疗的管理实施以及可持续发展"、"农村卫生投资政策及可持续发展"、"农村特困人口医疗救助的管理实施以及可持续发展研究"、"农村乡镇卫生院改革规范化及法律适用研究"、"结核病 DOTS 项目在实际操作中的盲区研究"等。这些课题从社会、政策、法律、经济、管理、财政、卫生等多视角,对农村卫生工作及其政策进行研究。

经过两年的研究,课题取得了多项成果。有些成果经国内权威杂志刊登后,在学术界引起较大反响,对相关政策的制定也产生了积极的影响。为了使各项研究成果广泛地得到应用,我们将其中6个课题成果出版,形成系列丛书。希望它能成为各级农村卫生事业研究者与管理者的有益参考,在山西乃至全国的农村卫生改革实践中发挥积极作用。

在课题的整个研究过程中,卫生部国外贷款办公室刘运国副主任对课题的管理与实施提出了许多具体建议;课题专家组组长梁中堂教授和专家组其他成员,在课题评审和实施过程中,提供了大量的指导意见;各课题负责人及其研究小组成员,在两年的研究过程中付出了艰辛的劳动。在此一并致以诚挚的谢意。最后,要特别感谢英国国际发展部,为课题研究和著作出版提供了资助。

编 委 会 2006年12月

### **Foreword**

The Eighth Health Loan Project — Advancing the Essential Health Service in Poverty - stricken Rural Areas in China (Hereinafter referred to as "Health VIII Project") is jointly launched and developed by Chinese government and World Bank. The cycle of Health VIII Project is from October 1998 to June 2007. Health VIII Project has covered 97 poverty - stricken counties in 10 cities, provinces and autonomous regions in Central and West China. The targets of Health VIII Project are to strengthen and improve the health service in the poverty - stricken rural areas in China, to improve the rural residents' health service utilization level and to ensure that the local residents enjoy the essential medical and health care services so as to realize the health improvement and its sustainable development. The contents of Health VIII Project include: Health Resources Planning, Rural Clinic Construction, Information Management System, Improvement of Health Service, Implementation of Cooperative Medical Services, Medical Assistance and so on. In July 1999, Health VIII Supportive Project has been established by utilizing the grant of Department For International Development (DFID), the important cooperation partner of Health VIII Project.

The total investment of Health VIII Project in Shanxi Province is 97.54 million RMB Yuan, including World Bank Loan: 59.83 million RMB Yuan, local counterpart funding: 29.57 million RMB Yuan and British grant 8.14 million RMB Yuan. Health VIII Project Shanxi has covered 188 towns in 11 poverty – stricken counties, including Tianzhen, Guangling, Lingchuan, Qinshui, Wuxiang, Pingshun, Qin County, Yushe, Zuoquan, Heshun and Loufan County, and benefited 2 million rural populations. Since the

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implementation of Health VIII Project, the total of 103 rural clinics have been established, 30,000 sets of medical instruments have been purchased and distributed to the rural clinics, the county – level health resources planning has been actively launched, the allocation of the rural health resources has been efficiently improved, the rural health management system and health operation mechanism have been reformed, the rural health service quality has been efficiently promoted and improved, the related activities, including maternal and child health care, tuberculosis prevention and control, cataract treatment and iodine deficiency disease prevention and control intervention activities have been launched, the exploration for the rural cooperative medical service and medical assistance among poverty – stricken populations have been actively launched.

In October 2002, CPC Central Committee and State Council of the People's Republic of China have promulgated The Decision on Advancing Rural Health Service, which has brought about the unprecedented development opportunity for rural health service. However, the arguments on some theories and policies of rural health reform and development still exist. In May 2004, by utilizing Britain grant, guided by the principle of observing and researching the rural health policy and its application through different perspectives, and in order to efficiently promote the reform and development of rural health service in Shanxi Province, Foreign Loan Office, Shanxi Public Health Department has selected and established 7 research subjects through bidding among all the provincial - level health institutions, universities and scientific research institutes. These 7 research subjects are: "Policy Innovation Research on Advancing Rural Health Services in Accordance with Shanxi's Actual Conditions", "The Present Status, Problems and Countermeasures of Rural Public Health Construction in Shanxi Province", "Management, Implementation and Sustainable Development of New - type Rural Cooperative Medical Service", "Rural Health Investment Policy and Sustainable Development", "Management, Implementation and Medical Assistance Among Sustainable Development Research on

Poverty – stricken Rural Populations", "Reform and Applicable Law Research on Rural Clinics" and "Research on Neglected Aspects in Practical Operation of Tuberculosis DOTS Project". The above – mentioned 7 research subjects have made the researches on the rural health service and its policy from the perspectives of society, policy, laws, economy, management, finance and public health.

After 2 years' research, the 7 research subjects have been made great achievements. Some research achievements have been published in the authorized magazines and have awakened the responses in academic circles, which have played a key role in formulating the related policies. In order to widely apply the research achievements, 6 of the research subjects have been published (series books). We hope that those books shall provide the valuable references to the rural health service researchers and management staffs and shall play an active role in the rural health reform in Shanxi Province and China.

We sincerely appreciate Mr. Liu Yunguo, Deputy Director of Foreign Loan Office, MOH, who has raised many valuable and concrete suggestions regarding the management and implementation of these research subjects during the whole research period, Professor Liang Zhongtang, the Chief of Subject Expert Group and the other members of Subject Expert Group, who have made a great number of guidance suggestions to the research subjects during the subject evaluation and implementation period, and the members of the research groups who have made great efforts during 2 – year research period. We would also like to sincerely appreciate DFID who has sponsored the research subjects and book publication.

Editorial Board December 2006

# 前 言

乡镇卫生院是计划经济时期"县或乡设立的一种卫生行政兼医疗预防工作的综合性机构,其任务是负责所在地区内医疗卫生工作,组织领导群众卫生运动,培训卫生技术人员,并对基层卫生医疗机构进行业务指导和会诊工作。"① 建国后经过五十多年的发展,我国农村逐渐形成了按行政村建村诊所、行政乡镇建乡镇卫生院和行政县建立县医院的"三级预防保健网络"。乡镇卫生院的功能定位,使得卫生院在农村"三级预防保健网"中居于中枢地位,与县级卫生机构和村卫生所上联下接、密切配合,组成有效的农村"三级预防保健网",并与合作医疗、赤脚医生被世界卫生组织并称为中国农村医疗卫生服务的"三大法宝";其经验为世界卫生组织1978年《阿拉木图宣言》"实现2000年人人享有卫生保健"的战略措施提供了有益的启示和影响。②乡镇卫生院作为农村"三级预防保健网络"的中枢,自产生以来,其职责担负的是十数亿农民的预防保健、基本医疗服务和乡村公共卫生管理。卫生院在控制传染病、提高农民卫生服务质量、保障农民健康等方面发挥了重要作用。

计划经济时期,乡镇卫生院主要靠县级财政与农村集体经济联合支撑。20世纪80年代后我国进入转型时期,特别是1992年卫生院"三权"(人事权、财权、管理权)下放到乡镇,由于集体经济支撑的缺失、传统合作医疗的式微、乡级财政困难与投入的不足,致使乡镇卫生院出现"三

① 王春然、石常吉主编:《卫生管理词典》,人民卫生出版社,1989年版,第87页。

② 卫生部医政司编:《中国农村初级卫生保健指导手册》,沈阳出版社,1992年版,第128页。

三制"局面<sup>①</sup>。随着市场经济体制改革的推进和示范效应,乡镇卫生院为了自救,也融入改革的洪流中,全国有许多卫生院都采取了承包、租赁或股份合作等"企业改革"的经营模式,在改革的进程中,乡镇卫生院的基本功能遭到了不同程度的削弱、倒退和异化:预防保健功能削弱、基本医疗服务追求市场效益、基本放弃对村卫生室(所)的管理职能;这样,乡镇卫生院几乎变成单纯提供医疗服务的竞争性机构,作为为农村社区居民提供综合的预防保健和基本医疗服务的公益性事业单位的乡镇卫生院,已被异化为营利性医疗机构。这样的"乡镇卫生院"自然是以营利为目的,走上了依靠市场、大力发展医疗服务的道路,与同样失去任何财政补偿渠道、基本为私人举办的村级卫生所,都成了站在同一起跑线上的竞争者。这样,农村"三级预防保健网"在"网底"和"中枢"的割裂、分散中倒退了。从而成为农民预防保健滑坡、"看病难、看病贵"的一个重要因素。

2002 年 10 月 19 日,中共中央、国务院《关于进一步加强农村卫生工作的决定》(以下简称《决定》)为我国未来十年农村卫生服务体系建设与改革明确了方向。《决定》指出,乡镇卫生院以提供公共卫生服务为主,综合提供预防、保健和基本医疗等服务,受县级卫生行政部门委托承担公共卫生管理职能;乡镇卫生院由政府举办;其人员、业务、经费等划归县级卫生行政部门按职责管理。至此,以政府为"主导"的乡镇卫生院的改革拉开了波澜壮阔的"大幕"。但是,政府在卫生院改革中如何发挥主导作用?政府举办卫生院的方式和途径怎样?由于相关基础理论研究不够,导致理论界对"政府如何发挥主导作用的问题"众说纷纭。理论的存疑,导致改革实践的摇摆不定,改革政策的执行出现了"弹性",特别是有不少县级财政对卫生院的投入仍继续沿用计划经济时期的管理体制,导致县级卫生行政部门对乡镇卫生院的管理存在三种"尴尬"状态:拖而未收、

① 改革开放以来,乡镇卫生院逐步失去集体经济的支撑,同时由于县乡财政困难,对其减少甚至断绝财政拨款支持,致使乡镇卫生院"以集体经济之力"勉强支撑农村公共卫生,出现运营难局,三分之一卫生院倒闭;三分之一卫生院亏损;另有三分之一变"集体经济办的卫生院"为"卫生院集体办",走向市场,自谋生路。转引自王红漫著:《大国卫生之难》北京大学出版社、2004年版、第17页。

收而未管、管而不当。<sup>①</sup> 当然,卫生院的改革同样是对社会资源、经济利益的重新分配,必然要影响到既有的利益群体;同时,由于各种错综复杂的背景、瞬息万变的情势,卫生院改革的效果也是不确定的。在这种情况下,囿于风险、囿于利益损失,许多地区乡镇卫生院的改革采取了观望、拖延的态度,一些地方卫生院的改革被停滞在美好的方案中无法实施。因而,如何推动乡镇卫生院改革的顺利进行,呼唤我们从理论上进行深入的探讨。正是受这一时代背景和形势需要的鼓舞,笔者有幸获得世界银行卫生八项目\英国赠款项目山西省农村卫生政策应用研究(DFID - OR - SX - 06)项目的资助、对乡镇卫生院改革的政策与法律展开深人研究。

实际上,乡镇卫生院改革是近几年来国内学界研究的热门话题,但相关研究多从社会、历史、政治、经济、管理、实务操作细节等方面对卫生院改革进行了多角度、方法多元化、地方性、区域性、片段性、微观性的研究和考察。而对之进行多维的,从宏观、中观与微观相结合进行体制的综合研究,并进行新体制的制度规则的建设研究则是极少的、初步的,鲜有系统性、综述性研究。

本著认为,乡镇卫生院的改革工作涉及到的利益群体非常广泛,而且 又集中在农村的特定范围内,随着市场经济的深化,农村原有集体经济模 式的解体,财政体制的改革,乡镇合并政策的实施,农民的医疗问题、预 防保健问题等等,诸多重要复杂的社会问题均需要以卫生院的改革作为切 人口予以解决。这种"转型"时期的大背景,无疑增加了乡镇卫生院改革 的难度。笔者认为,乡镇卫生院的改革,实质上是对乡镇卫生院传统体制 的改革。体制是由政策与法规组成的一个系统,乡镇卫生院无法自主选 择。因而,卫生院的改革是个涉及面非常广的复杂问题,对之进行研究, 就必须"跳出卫生看卫生",从政策与法律等规则体系的宏观建设视角出 发,应用卫生经济学、卫生管理学、公共财政学、法学等多学科理论,对 乡镇卫生院改革展开立体式的综合研究。

确定了研究思路后,著者带领课题组成员"走向田野与社会",对乡

① 徐杰:《农村卫生管理体制改革》,2005年3月13日武汉卫生VIII项目贫困地区农村卫生管理体制改革研讨会主题发言提纲。

镇卫生院结构、管理与运营展开"解剖麻雀调查"、对比调查;对县级卫生行政部门管理乡镇卫生院方式的改革的问卷调查、座谈调查;对卫生院改革政策制定参与者的访谈调查等。行程及至山西省、山东省、江西省三省十个县 25 个不同的乡镇卫生院、10 个村卫生所,为笔者深入的理论分析奠定了基础。

本著以我国社会主义新农村建设为出发点,在国内外已有的研究基础 上,对我国乡镇卫生院改革的政策与法律进行了系统剖析与研究。主要研 究内容与研究结果如下:第一章,乡镇卫生院改革的政策与卫生院的体制 沿革。考察了我国乡镇卫生院体制的沿革与政策的演变、明确了现行乡镇 卫生院改革的政策规定。第二章、乡镇卫生院体制改革中政策与法律的关 系。对乡镇卫生院改革的政策所形成的"软法"运行现状进行了分析,对 乡镇卫生院改革中政策与法律的全方位调整设计了制度框架。第三章、乡 镇卫生院改革与政府责任定位。乡镇卫生院的功能是认识乡镇卫生院改革 的起点问题, 在对乡镇卫生院功能的历史回顾与现实对比基础上, 深刻论 述了政府主导乡镇卫生院改革的客观必然性、进而对政府举办乡镇卫生院 的管理机制做了战略构想。第四章, 法律视野下的卫生院法人机制重构。 我们将乡镇卫生院的法律性质定位为公益性、非营利性的财团法人,以此 为基点,对卫生院作为独立法人的内、外部治理机构进行了法律理论分析 和构建。第五章,乡镇卫生院改革的法律适用。对卫生院相关的基本法律 关系及其改制中的调整进行了分析,简述了卫生院资源重组或改制、卫生 院上收县级卫生行政部门管理所适用的政策、法规、设计了卫生院改制的 法律适用与操作程序。第六章, 对乡镇卫生院改革政策再完善的论证。乡 镇卫生院属于"政事合一"单位,我们在对乡镇卫生院所提供的预防保 健、基本医疗服务与受委托进行卫生行政管理的三大功能的经济学分析的 基础上,结合乡镇卫生院"医防一体"改革的矛盾与症结分析,从政府购 买预防保健模式的构建和宏观调控角度,对现行卫生院改革的政策与法规 提出了完善建议。第七章,乡镇卫生院改革与新型农村合作医疗。通过对 卫生院在传统合作医疗和新型农村合作医疗制度中的定位进行分析,试图 对试点中的新型农村合作医疗的法律性质予以探讨和定位;并对农民在新 型农村合作医疗制度中监管参与权、医患双方法律关系性质、新型农村合作医疗管理机构的法律规制等进行创新研究。

乡镇卫生院的改革,是农村卫生服务体系改革的重中之重,是建设社会主义新农村的基本内容之一。党和国家对之投入了极大热情,《中共中央、国务院关于推进社会主义新农村建设的意见》要求各级政府增加投入,加强以乡镇卫生院为重点的农村卫生基础设施建设;温家宝总理在十届全国人大四次会议的政府工作报告中提出,"十一五"期间国家财政投入 200 多亿元对乡镇卫生院为主的农村卫生服务体系基础设施进行改造。因而,乡镇卫生院已是国家新的农村卫生政策惠及农民的重要载体。可以说,当下的乡镇卫生院改革事关农村卫生改革的全局。改革总是多维的,需社会学家、政治学家、经济学家、法学家联手解决问题。本著试图在乡镇卫生院改革领域,纵横法学、公共经济学、财政学、卫生经济学、管理学等多学科视角,综合评析乡镇卫生院改革的政策与法律关系。当然,著者无法以匹夫之力完成卫生院改革政策与法律的全部完善与制度的蓝图构想,只是抛砖引玉,以拙笔引领学界同仁的经典华章,共商之。

在本书行将付梓之际, 略缀以上说明, 是为前言。

孙淑云 2006 年 11 月谨识于山西大学

### **Preface**

Township hospital is a comprehensive body set up with the function of administration of public health and medical prevention work in the county or township during the planned economy time. Its duty is to take responsibility for the medical and health service in the area, lead the populace health movement, train health technical personnel, instruct the medical work at the grass-roots level and consult about cases. 10 More than 50 years' development since the founding of the Peoples' Republic of China, it has gradually formed "three levels of prevention and health care network" according to the standard that village clinics are founded in administrative village, township hospitals in administrative township and county hospitals in administrative county. The localization of township hospitals' function make the township hospitals become the main centre of the "three level of prevention and health care network", meet and coordinate the medical and health work in the county and village. Township hospitals, the cooperatives medical system and barefoot doctors are called "three big magic weapons" of the medical service in rural China by the World Health Organization (WHO). Its experience provided beneficial enlightenment and influence for WHO's strategic measure that "ensure that everybody enjoy the medical care service in 2000" in 1978 Alma-Ata Manifesto. <sup>2</sup> Township hospitals, as the main centre of "three levels of prevention and health care network", has taken its

① Wang Chunran, Shi Changji ed., Hygienic Management Dictionary, People's Medical Publishing House, 1989, P87.

② Medical politics department ed., Chinese Countryside Primary Medical care Instruction Handbook, Shenyang Publishing house, 1992, P128.

responsibility for the prevention and health care, basic medical service and public health management in village concerning over 100 million farmers. It also played an important role in controlling infectious disease, improving the medical service for farmers and safeguarding farmers' health, and so on.

Township hospitals were supported by both county finance and collective economy in countryside during the planned economy time. Since the reforming time in 1980s, especially in 1992, "three power" (human governance, property control, administrative power) of township hospitals was transferred to the township. The three trends of township hospitals appeared owing to the shortage of support from the collective economy, the disappearance of traditional cooperative medical treatment and insufficiency of investment from township's embarrassed finance. <sup>1</sup> Motivated by the mechanism reform of the market economy, affected by the reform demonstration, reform in township hospitals started to save themselves. Many of township hospitals adopted the pattern of enterprise reform, such as that of contract, renting or shareholding-cooperation, etc. As the basic function of township hospitals was weakened with the dissimilation during reform time, along with the appearance that the prevention health care function weakened, the basic medical service pursued market benefit, township hospitals abandoned the management function towards clinics, township hospitals which used to and were supposed to be an institution for public welfare, nearly became the competitive and profitable medical organizations providing with medical service merely, and then, seeking to make profit, relying on the market and developing medical service vigorously, township hospitals competed with

① Since the reform and open policy, township hospitals have gradually lost support from the collective economy, which decreased and even disappeared as a result of the county township pecuniary embarrassment, leading to the difficulty in operation of the township hospitals and the appearance that 1/3 of township hospitals went out of business, 1/3 made a loss and another 1/3 moved towards the market, sought its way out by the transformation from hospitals "supported by the collective economy" to those "managed by the collective economy". See Wang Hongman, Health Difficulty of Great nation, Beijing University Publishing house, 2004, P17.