

にいたらず 1993 年に解散した。その後、1997 年に保健大臣が委員会の提言とは直接の関係なくかなり大きな法改正を断行し、一部議会で変更された後 1999 年 11 月 15 日から発効している。

以下において、成年後見関連 4 法はお互い独立ではあるが共通の理念と有機的な関連をもっているので一括して同じ節で扱い、精神保健法については節を改めて述べることにする。

3) 成年後見関連 4 法

(1) 4 法に共通する基本的理念

成年後見に対する認識を変えた象徴的な事件としてカナダでは Clark 対 Clark 事件 (1982) が有名である。この事件は父親が身体障害の息子に関する後見を申立てたのに対し、裁判所は、自分に適したコミュニケーション手段を用いれば息子は法的能力を発揮できると認定した。この裁判は、身体疾患や精神疾患に罹患した人が自動的に法的無能力ではないことを宣言したという意味で画期的であった。共同作業委員会の報告書「How Can We Help?」では、この裁判以来定着してきた理念を整理し、以下の 5 つを法改正の指針とした。

- a) 自律と自己決定の尊重。
- b) 最も効果的で最も制約や侵襲が少ない支援を受ける権利。
- c) 法的能力の存在を前提とすること。情報提供に加え自己決定のための補助や支援を受ける権利を尊重すること。
- d) 代行決定者や後見人を選任するための裁判所の介入を最後の選択肢と考えること。
- e) 成年者支援に関する手続きを行う上で知的、心理的、身体的、文化的、経済的な阻害要因をなくすこと。

B.C.州では、裁判所の関与を最後の選択肢と位置づけ、通常人々が行っている家族

や友人の親身な支援について法手続きを整備すること優先させる道を選んだ。法律で言えば、「代理に関する合意法」や「ヘルスケア(同意)とケア施設(入所)法」が主としてこの目的を担うものである。一方、「成年後見法」や「公的後見人及び公的財産管理人法」は、家族や友人の支援が得られない場合や、権利の侵害や虐待などが発生している場合の安全ネットとして機能するべき法律である。

(2) 「代理に関する合意法」

「代理に関する合意法」は、判断能力が低下した場合に自分の代わって財産管理などを行う代理人を指名し、その代理権の内容を決めておくものである。いわゆる持続的代理権授与に関する法律である。高齢者に限らず、あらゆる成人が将来に備えて合意書を作成しておくことが奨励されている。

代理人になれるのは、a) 他の成年者、b) 公的後見人及び財産管理人、c) 信用組合や信託会社(ただし財産に関する事項のみ)である。必要なら臨時代理人、監督人などを指名することもできる。標準的な代理行為として、a) 個人的ケアに関すること、b) その成年者の家計についての通常管理(請求書の支払い、年金の受け取り、日常生活に必要な支出など)、c) 大小のヘルスケアに関する決定(生命維持に関するものを除く)、d) 裁判に関すること(離婚を除く)など。標準的な代理行為については、自らその行為を遂行できないだけでなく、契約能力がない可能性がある場合ですら、本人の希望があり、代理人と信頼関係が認められるなどの場合には合意書を交わしてもよいと考えられている。一方、生命維持に関することなど特別の事項の代理については B.C.法律家協会のメンバーの証明が必要となる。また精神保健法に基づく強制入院に関して代理人は治療を拒否する権限をもたない。

合意書は本来一定の場所に登録すべきであるが、その機構については、現在検討中とのことである。

(3) 「ヘルスケア(同意)とケア施設(入所)法」

この法律でいうヘルスケアとは、人の健康に関して行われる治療などの行為を指す。特に、本格的な外科手術、全身麻酔、侵襲的な診断のための検査などをメジャーヘルスケアと呼び、他のマイナーヘルスケアと区別する。ケア施設には、病院をはじめ、障害者のためのグループホームなど広範な福祉施設などが含まれている。

この法律には、医療や福祉サービスを受けたり、病院や施設に入所するに際しての、インフォームド・コンセントの手続きとそれが不可能な場合の代行決定者について規定されている。上述したようにこの法律の目的は、従来家族らが行ってきた代理決定を法的に有効とする手続きを整え、その結果裁判所の関与なしに医療や福祉のサービスが行われることにある。

インフォームド・コンセントの手続きについては一般的に知られている通りである。この原理は、治療拒否により死亡に至る場合でも判断能力がある人の自己決定を尊重するというほど徹底している。ここでは法規のうち、本人がインフォームド・コンセントを与える能力がないときの代理の手続きについて説明する。

本人がインフォームド・コンセントを与える能力がない場合、以下の順に従い代諾者が決定される。

- a) 代行決定者や後見人(成年後見法)か代理人(代理に関する合意法)がすでにいる場合には、これらの人が代行決定を行う。
- b) a)にあげた権限を有する人が決まっていない場合には、ヘルスケア供給者が本人の配偶者、子供、親、兄弟姉妹、その他の血縁者または養子縁組を結んでいる人、の

中からこの順で仮代行決定者を指名する。この際の条件として、i)19歳以上、ii)最近12ヶ月間に接触があった、iii)本人との間に争いが無い、iv)代行決定を行うことができる、v)本人の最善の利益を尊重することなどの法律に定める義務に従う意思を持っている、などがあげられている。c) a)、b)に相当する適当な人が得られない場合は、ヘルスケア供給者は権限を与えられた公的後見人及び財産管理人事務所の職員などを指名する。

ここで、仮代行決定者は、指名されてから21日間に限り、本人のヘルスケアに対して同意ないし拒否を行う代行決定権を有する。21日間に同意されたケアは22日目以降も有効とされる。代行決定者は可能な限り本人の希望を尊重することを要請され、本人の希望が明らかで、ヘルスケア供給者が医学的にみて同意できるときに限り生命維持のための治療を拒否することも可能である。しかし、仮代行決定者は精神外科や危険を伴う研究や実験的治療への参加の同意を与えることはできず、精神保健法で強制入院中の場合の治療拒否の権限もない。また、電気けいれん療法や妊娠中絶については主治医ともう一人の医師が診察の上の書面での適用を認めた場合に同意が有効となる。また、施設入所の際にも同様な代行決定手続きが提案されているが、目下のところ検討事項となっている。

(4) 成年後見法

この法律は、第1章用語の定義、第2章成年後見人の選任手続きや権限、任期や審査についての規定、第3章身体的精神的障害のために虐待、ネグレクト(放置)あるいはセルフ・ネグレクト(自己放置)の状態にある成年者を支援したり補助したりする規定に大別される。第2章は2000年2月現在未実施で、第3章のみがすでに施行されている。

第3章は新たに制度化された部分である。この法律にいう虐待は、自宅であれケア施設であれ、成年者に a) 身体的、精神的、情緒的な害を与えるか、b) 所有物の損害ないし喪失をもたらす、成年者に対する意図的な不当な扱いと定義される。ここに精神的な害は精神疾患の増悪、情緒的な害は精神疾患に罹患していない人における情緒的な苦痛、と区別されている。これらは自ら援助を求められない高齢者を念頭に置いており、一般的な「夫婦間虐待」などを対象とするものではない。ネグレクトは、身体的、精神的、情緒的な害や所有物の損害ないし喪失が近い将来生じるおそれがかかなり高いにも関わらず必要なケアが行われない状態を指す。本人自身の今現在の必要性という観点から支援の要否が検討される。セルフ・ネグレクトは、身体的、精神的な害や所有物の損害ないし喪失が近い将来生じるおそれがかかなり高いにも関わらず必要なケアを自身で行わない状態を指す。具体的には、a) 著しく不衛生な環境下での生活、b) 疾患や外傷の未治療放置、c) 身体的、精神的に重大な障害をもたらす栄養障害、d) 自己や周囲に身体的な害を及ぼしたり、所有物に損害ないし喪失をもたらす、e) 疾患や外傷のために所有物に損害ないし喪失をもたらす、などの場合が例示されている。

今回の改正では、本人の自立や自己決定の尊重の理念とは対立するもので現在も異論があるセルフ・ネグレクトも含めて、他に方法がない場合に必要な保護を行うための最終的な手段としてあえて手続きを制度化したということである。

その手続きは以下のようなものである。a) 虐待、ネグレクト、セルフ・ネグレクトが疑われる成年者について情報をもつものが公的後見人及び公的財産管理人が指定する指定機関に通報する。b) 指定機関では、成年後見人や代理人らからも情報を得た上で支援が

必要か否かを決定する。c) 支援が必要と考えるときは支援計画を本人に呈示し、本人が拒否し、かつ判断能力を欠くことが疑われる場合に能力評価を行う。d) 本人の判断能力がないと判定された場合に限り裁判所の命令で介入が行われる。

実際に情報提供の役を担うのは医療、福祉、金融などさまざまなコミュニティの機関(コミュニティ・レスポンス・ネットワークとして組織されている)である。通報はあえて義務とはされていない。また通報した者には一連の保護が保障される。また、通報を受けて調査、支援計画立案、などを行う指定機関としては、地域の精神保健医療機関などが想定されているようである。B.C.州では公的後見人及び財産管理人事務所が主導してコミュニティ・レスポンス・ネットワークの活性化や判断能力評価者の養成のためのワークショップなどが盛んに開催されているようだった。

成年後見人の選任手続きや権限、任期や審査について規定する第二章は、目下検討中であるので簡単に記すにとどめておく。成年後見人としては、決定補助者(associate decision maker)、代行決定者(substitute decision maker)と後見人(guardian)の三種類が予定されている。決定補助者は成年者が判断をするのを支援、補助する者、代行決定者は成年者のために申立の範囲の事柄について代行判断を行い、同時に必要に応じて別の特定の事柄について判断の支援、補助を行う者、後見人は代行決定者の権限に加え、世話や保護をも行う者である。保護の中には本人の意思に反する身体的拘束への同意なども含まれる。成年後見人の類型を三つ設ける点は日本の法定後見制度と類似している。B.C.州の成年後見法では、成年後見人が不在のときに代理する臨時代行決定者、臨時後見人を選任しておくことができ、また緊急を要するときに 21 日間

に限り成年者の財産保全を行う仮後見人の選任規定もある。

(5) 「公的後見人及び公的財産管理人法」

法改正の前は、公的後見人及び公的財産管理人は単に公的財産管理人と呼ばれ、成年後見だけではなく、未成年後見や遺産の分割なども行ってきた。呼称変更は、資産の管理だけでなく後見や代行決定などの任務も重視する姿勢を示す意図からであるという。公的後見人及び公的財産管理人の役割は上述した関連法でも明らかなように、適当な代理人、代行決定者、後見人などがいないときの最終手段としてその役割を担うこと、及び成年後見において虐待、ネグレクト、セルフ・ネグレクトを予防するようにコミュニティ・ネットワークを組織し、これらが発生した場合調査や介入に関わることなどである。

(5) 精神保健法

B.C.州の旧精神保健法については井上の解説がある³⁾。新しい法律の構成は、第1章定義、第2章施設管理、第3章入院と院内拘留、第4章法施行のための規則で旧法と同様である。しかし、その内容にはかなり大きな変更が加えられた。

B.C.州では、2名の医師の診察をもって強制入院を決定していた。今回の改正では、地域の医師を含む1名の医師の診断だけで、指定された精神科医療施設に48時間に限り入院できるようになった。その間に、第二の医師が診察を行い、入院の必要性を認めたらば1ヶ月までの入院加療が許可される。1ヶ月以降は3ヶ月、6ヶ月と更新される。

入院の必要性の基準は、a) 精神疾患に罹患しており、そのために環境に適切に反応し、人と関係する能力に重い障害が認められること、b) 指定施設における治療を要すること、c) 精神的身体的悪化を防ぎ、

自身または周囲の者を保護するために指定施設におけるケア、監督、管理が必要であること、d) 任意入院の患者となることが適切ではないこと、の全てが満たされることである。また、退院の基準は入院の基準と同じであるが、特に「再び強制入院患者となる可能性を最少にするよう、治療を継続する可能性を考慮して決定すること」とされた。すなわち、B.C.州では強制入院の基準として「危険性」でも「判断能力の欠如」でもなく治療の可能性、必要性に関する医師の基準が採用されたことになる。

これに呼応して、以下に挙げるようないくつかの改正が行われた。まず入院治療の対象から知的障害者を除き、またその施設で十分な治療ができない場合には施設の長が入院を拒否できる規定を折り込み、対象者をその施設で治療可能な者と明確化した。次に、入院中の精神障害者の治療拒否を認めないこととし、入院の目的が治療であることを明確化した。主治医は患者に治療計画を説明し、同意が得られれば患者がサインして治療が行われ、同意が得られなければその施設の長(Director)が代行決定者としてサインして治療が行われる。強制入院中の精神障害者の治療については成年後見人などにも拒否の権限はない。さらに退院の基準との関連では、治療の継続という観点から強制入院患者仮退院制度(On leave)あるいは強制外来治療(outpatient commitment)が盛り込まれた。施設の長は再発が危ぶまれる患者に対して、治療を継続することを前提として地域の住居や認定されたケア施設などで過ごすことを許可するが、病状が悪化したり、治療中断が生じた場合には精神科医療施設に再収容できる。この制度にはB.C.周囲外でも激しい賛否の議論があるようである。

一方、人権擁護の手続きとしては、患者の権利を明確化し、読み聞かせや書面で必

要に応じて権利を繰り返し伝えることや、退院請求の権限をもつ関係者の範囲を家族の他友人まで拡大した。さらに患者が望む医師によるセカンドオピニオンを依頼できる規定が盛り込まれた。

自発入院 (Voluntary admission) については日本の任意入院とほぼ同様である。しかし、B.C.州ではなるべく精神保健法ではなく、一般医療に関する病院法で手続きをとることが奨励されている。Ganger 対 St. Paul's Hospital 事件で、自発入院の患者はたとえ自傷の恐れがあっても院内のカフェテリアに行くことを禁止してはならないとする判決がでていることから考えても、日本の任意入院よりは拘束性が弱いことがうかがわれる。

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D. 考察

1. 精神保健福祉法の翻訳について

翻訳の方針や技術的な問題については結果のところに記載した。法律の文章の翻訳においては、その表記をそれが含意するところも含め正確に翻訳しなければならず、細心の注意が必要である。今後、多くの関係者の意見を受けて、さらに内容を検討することとしたい。

2. B.C.州の新しい成年後見関連4法と精神保健法について

B.C.州では、成年後見制度において裁判所を最後の選択肢と位置づけ、そのため本人の自己決定、周囲の支援者のネットワーク、担当する医師の権威など、当事者の権限及び現在の慣行を尊重した代諾の手続きが整備された。その一方で、これらがうまく機能しないとき、あるいは虐待など成年者の人権侵害が疑われる場合に備え、裁判所や公的後見人及び公的財産管理人は速やかに問題解決が図れるような権限を与えられた。自己決定と保護、家族など近親者と社会的あるいは公的後見などのバランスをとる方法として B.C.州の制度には見るべきものがある。

精神保健法の強制入院あるいは強制外来治療の規定は、医師の治療裁量権を大幅に認めたものとなっており、異論もあるようである。しかし、ベストプラクティスという理念を掲げ、これまでのバンクーバー地区中心の地域精神保健サービスを州全体に普遍化していこうという昨今の精神保健政策の中で今回の法改正がどのような意義をもつのか、今しばらく経過を見守る必要がある。外来における強制治療の問題はカナダの他の州においても取り入れられてきており、B.C.州以外のカナダ、あるいは同様に最近法改正を行った他の国々における動向についても今後調査する必要がある。

日本への寄与については、いまだ十分整

理ができていないが、公的後見人制度、医療福祉の分野におけるインフォームド・コンセントのあり方に関して独立した法律が制定されたこと、しかも精神医療における強制入院を一般医療とは別に位置づけ、インフォームド・コンセントの対象外としたことなど、日本ではこれから現実的に検討すべき課題ではないかと思われる。改正の動向については、成年後見制度において裁判所の制度をもっと利用することを呼びかけている日本と、裁判所の介入を最後の手段と位置づけ、裁判所によらない制度の整備を進めているカナダでは、同じトラックを走っているのに一方が半周遅れているために、あたかも正反対の方向に走っているように見える。また一方で、移送制度や強制的外来など精神障害者の自己決定権を制約しても、精神障害者の治療に関する制度を創設するなどの動きには共通の方向性が示唆される。しかし、これらの異同については、単に法規に留まらず、両国の成年後見支援システムや精神医療のあり方の相違を踏まえて検討すべきと思われる。

E. 結論

本年度の成果は以下の通りである。1) 1999年に改正された精神保健福祉法の英文翻訳を作成した。今後さらに関係者の意見を聴取して定訳を完成させる作業を行う予定である。2) カナダ ブリティッシュ・コロンビア州の精神保健関連法制度について訪問調査を行った。ブリティッシュ・コロンビア州では、精神疾患治療を含む成年者の保護のあり方について、1960年代以来約40年ぶりの大きな改革が進行中であり、訪問調査によって精神保健法を含む関連諸制度の整備状況に関する概況を明らかにした。特に、今回の改正で行われた、強制入院制度の改正や強制外来治療の創設について調査した。

謝辞 今回のバンクーバー訪問に同行してくださった安藤恵里子、比嘉里恵、三橋良子、桃井道子の各氏、貴重なアドバイスをくださった野田文隆、金杉和夫、Stephan Salzberg の各先生、通訳の労を執ってくださった上村はるよ様をはじめお世話になったバンクーバーの皆様にご礼申し上げます。

F. 研究発表

1. 論文発表

白石弘巳：カナダ・ブリティッシュ・コロンビア州における制度改革：成年後見関連4法と精神保健法について、精神障害とリハビリテーション Vol.5(1)に掲載予定。

2. 学会発表

なし

G. 知的所有権の取得状況

1. 特許取得

なし

2. 実用新案取得

なし

3. その他

なし

(Translation)

**Law Related to Mental Health and
Welfare of the Person with Mental Disorder**
(Full Text as of Date of Enforcement in 2000)

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Supplementary Provisions

Chapter 1. General Provisions

(Purpose of the Law)

Article 1. The purpose of this Law is to provide person(s) with mental disorder with medical care and protection, to offer necessary assistance for promoting their social rehabilitation, self-support and participation in socio-economic activities, and to endeavor to prevent mental disorders, to thereby advance the general well-being of persons with mental disorder and to enhance mental health of the people in general.

(Obligations of the National Government and Local Public Entities)

Article 2. The national government and local public entities shall endeavor to enable persons with mental disorder to socially rehabilitate themselves, to support themselves and to participate in socio-economic activities by comprehensively implementing the measures related to medical care, custody, health and welfare of persons with mental disorder by expanding and improving the facilities for medical care, social rehabilitation, welfare and education as well as the community life support services, and shall take the measures necessary for prevention of mental disorders and improvement of mental health of the people by promoting investigation and researches, disseminating knowledge on mental health, etc.

(Obligations of the People)

Article 3. The people shall endeavor to maintain and improve mental health, to deepen understanding of persons with mental disorder and to cooperate with persons with mental disorder in their effort to overcome their disorder, socially rehabilitate the self, achieve self-support and participate in socio-economic activities.

(Consideration for Social Rehabilitation, Self-support and Participation in Social Activities of Person with Mental Disorders)

Article 4. The party founding a facility for medical care or social rehabilitation or the party conducting service for community life support or training in social adaptation shall, in management of said facility or service, endeavor to contrive and device measures suited to the community and to win understanding and cooperation of the community people, etc. in order to promote social rehabilitation, self-support and participation in socio-economic activities of persons with mental disorder.

2. The national government, the local public entities, the founders of medical care or social rehabilitation facilities, and those conducting services for community life support or social adaptation training shall cooperate with each other to promote social rehabilitation, self-support and participation in socio-economic activities of the persons with mental disorder.

(Definition)

Article 5. The term "the Person with Mental Disorder" as used in this Law refers to a person or persons suffering from schizophrenia, acute poisoning of or dependence on psychotropic substance, mental retardation, psychopathy or other mental illnesses.

Chapter 2. Mental Health and Welfare Center

Mental Health and Welfare Center

Article 6. A prefectural government may establish a mental health and welfare center in order to enhance mental health and improve welfare of the Person with Mental Disorder.

2. The mental health and welfare center shall be a facility to disseminate knowledge, to conduct investigations and researches, and to offer complex or difficult counseling and guidance services that are related to mental health and welfare of the Person with Mental Disorder

(Subsidy of the National Government)

Article 7. The national government shall subsidize, as prescribed by a cabinet order, one half of the expenses needed by the prefectural government to establish the facility under the preceding

Article and one third of the expenses necessary for operating such facility.

(Delegation to Cabinet Order)

Article 8. In addition to prescribed by this Law, the matters related to the mental health and welfare center shall be determined by the cabinet orders .

**Chapter 3. Local Council on Mental Health and Welfare and
Psychiatric Review Board**

(Local Council on Mental Health and Welfare)

Article 9. A prefectural government shall establish a council on mental health and welfare and other panels to investigate and deliberate the matters related to mental health and welfare of the Person with Mental Disorder (hereinafter referred to as "the Local Council on Mental Health and Welfare".)

2. The Local Council on Mental Health and Welfare may respond on the matters consulted by the prefectural governor and submit opinions related to mental health and welfare of the Person with Mental Disorder.

3. In addition to those prescribed in the preceding two Paragraphs, the Local Council on Mental Health and Welfare may deliberate the matters related to an application under Para. 3 of Art. 32 and Para. 1 of Art. 45 in response to the consultation of the prefectural governor.

(Members of Standing and Ad Hoc Committees)

Article 10. The number of the standing committee members of the Local Council on Mental Health and Welfare shall not exceed twenty (20).

2. If necessary for investigation and deliberation of a specific matter, there will be appointed an ad hoc committee of the Council.

3. The standing and the ad hoc committees of the Council shall be selected for appointment by the prefectural governor from among those having expertise in mental health or welfare of the Person with Mental Disorder, those engaged in medical care services for the Person with Mental Disorder, and those engaged in the services related to promotion of social rehabilitation or self-support and participation in socio-economic activities of the Person with Mental Disorder.

4. The term of office of a committee member shall be for three (3) years.

(Delegation to Ordinances)

Article 11. The matters necessary for management of the Local Council on Mental Health and Welfare shall be provided by ordinances.

(Psychiatric Review Board)

Article 12. The prefectural government shall establish a psychiatry review board in the prefecture to conduct reviews under Para. 2 of Art. 38-3 and Para. 2 of Art. 38-5.

(Board Members)

Article 13. The members of the psychiatry review board shall be selected for appointment by the prefectural governor from among those having expertise in medical care of the Person with Mental Disorder (limited to the designated mental health physicians as prescribed in Para. 1 of Art. 18), those having expertise in jurisprudence and those having expertise in other disciplines.

2. The term of office of a board member shall be for two (2) years.

(Handling of Cases Under Review)

Article 14. The psychiatry review board shall be a panel consisting of three (3) members selected for appointment from among those having expertise in medical care of the Person with Mental Disorder, one (1) having expertise in jurisprudence, and one (1) having expertise in other disciplines, and shall handle cases under review.

2. The members of the panel shall be selected for appointment by the psychiatry review board.

(Delegation to Cabinet Orders)

Article 15. In addition to those prescribed in this Law, the matters related to the psychiatry review board shall be determined by cabinet orders.

Articles 16 and 17. (Deleted)

Chapter 4. Designated Mental Health Physician and Mental Hospital

Section 1: Designated Mental Health Physician

(Designated Mental Health Physician)

Article 18. The Minister of Health and Welfare shall designate upon application those physicians falling subject to the following and recognized as having knowledge and skills necessary for conducting the duties as provided in Art. 19-4 as the designated mental health physician (hereinafter referred to as "the Designated Physician"):

I. A person with experience of being engaged for five (5) years or more in medical diagnosis or treatment;

II. A person with experience of being engaged for three (3) years or more in diagnosis or treatment of mental disorder(s);

III. A person with experience of being engaged in diagnosis or treatment of the degree prescribed by the Minister of Health and Welfare of mental disorders prescribed by the Minister of Health and Welfare;

IV. A person who has completed the training course (limited to that conducted within a year prior to application) given by the Minister of Health and Welfare or the party designated thereby under the Health and Welfare Ministerial Ordinance.

2. Notwithstanding the preceding Paragraph, the Minister of Health and Welfare may not designate a physician under the preceding Paragraph whose designation as the Designated Physician was cancelled within five (5) years previously under Para. 1 or 2 of Art. 19-2 or a physician who is deemed exceedingly unsuitable as the Designated Physician.

3. When evaluating the degree of experience of a physician who has been engaged in diagnosis or treatment of mental disorders under Section 3 of Para. 1, when appointing a physician as the Designated Physician under said Paragraph or when not appointing a physician as the Designated Physician under the preceding Paragraph, the Minister of Health and Welfare shall ask the opinion of the Council on Public Health in advance.

(Training After Designation)

Article 19: The Designated Physician shall undergo training given by the Minister of Health and

Welfare or the party designated thereby under the Health and Welfare Ministerial Ordinance in the year designated by the Minister of Health and Welfare once every five (5) years (the year starting on April 1 and ending on March 31 of the following year; the same shall apply in this Article).

2. Designation under Para. 1 of the preceding Article shall become void on the last day of the year when the training was to have been received if a physician thus designated fails to undergo the training under the preceding Paragraph. Provided, however, this provision shall not apply to the case where the Minister of Health and Welfare recognizes that there was an unavoidable reason as provided by the Health and Welfare Ministerial Ordinance for failure to undergo said training.

(Cancellation, etc. of Designation)

Article 19-2: If a Designated Physician is cancelled of his/her physician's license or is ordered suspension of medical practice for a predetermined term, the Minister of Health and Welfare shall cancel his/her designation.

2. If a Designated Physician violates this Law or an order under this Law, commits an exceedingly improper act regarding his/her duties, or is deemed exceedingly unsuitable as a Designated Physician, the Minister of Health and Welfare may cancel his/her designation or order suspension of his/her duties by predetermining a term.

3. When taking the measure under the preceding Paragraph, the Minister of Health and Welfare shall ask the opinion of the Council on Public Health in advance.

4. A prefectural governor may notify the Minister of Health and Welfare if he/she considers that a Designated Physician falls subject to Para. 2 above.

(Fee)

Article 19-3: Those who wish to receive the training under Item 4, Para. 1 of Art. 18 or Para. 1 of Art. 19 (limited to those given by the Minister of Health and Welfare) shall pay the fee determined by a cabinet order by considering the actual cost.

(Duties)

Article 19-4: The Designated Physician shall judge whether or not continued hospitalization under Para. 3 of Art. 22-4 and Art. 29-5 is necessary; whether or not hospitalization under Para. 1 of Art. 33 and Item 1 of Art. 33-4 is necessary and whether or not hospitalization under Art. 22-3 is possible; whether or not restraints prescribed in Para. 3 of Art. 36 are necessary; and shall examine the person hospitalized because of the reported matter under Para. 1 of Art. 38-2 (including the case where the provision is applied mutatis mutandis under Para. 2 of said Article) and shall judge whether or not it is adequate to temporarily discharge the person from the hospital for observation under Art. 40.

2. In addition to the duties prescribed in the preceding Paragraph, the Designated Physician shall perform the following duties as a public official :

I. Judging whether or not hospitalization under Para. 1 of Art. 29 and Para. 1 of Art. 29-2 is necessary;

II. Judging whether or not restraints under Para. 3 of Art. 29-2-2 are necessary (including the

- case where the provision is applied mutatis mutandis under Para. 4 of Art. 34) ;
- III. Judging whether or not continued hospitalization under Para. 2 of Art. 29-4 is necessary;
- IV. Judging whether or not transfer under Para. 1 and 3 of Art. 34 is necessary;
- V. Medical examination under Para. 3 of Art. 38-3 and Para. 4 of Art. 38-5;
- VI. Inspection by entry, questioning and medical examination under Para. 1 of Art. 38-6;
- VII. Judging whether or not continued hospitalization is necessary under Para. 2 of Art. 38-7;
- VIII. Medical examination under Para. 4 of Art. 45-2.

(Obligation to Keep Medical Record)

Article 19-4-2: The Designated Physician shall promptly describe his/her name and other matters prescribed by the Health and Welfare Ministerial Order in the medical record when he/she has performed the duties under Para. 1 of the preceding Article.

(Obligation to Retain Designated Physician)

Article 19-5: The administrator of a mental health hospital serving the Person with Mental Disorder under Para. 1 of Art. 29, Para. 1 of Art. 29-2, Para. 1 or 2 of Art. 33, or Para. 1 of Art. 33-4 (including hospitals with a psychiatric ward other than a mental hospital. The same applies hereinafter except in Art. 19-10.) shall retain full-time Designated Physician(s) at said mental hospital (except those whose duties are suspended under Para. 2 of Art. 19-2; the same applies hereinafter except in Para. 1 of Art. 53).

(Delegation to Cabinet and Ministerial Orders)

Article 19-6: In addition to those provided in this Law, the matters necessary for application for appointment of the Designated Physician are prescribed by the cabinet order and the matters related to training under Item 4, Para. 1 of Art. 18 and Para. 1 of Art. 19 are prescribed by the Health and Welfare Ministerial Order.

Section 2: Mental Hospital

(Prefectural Mental Hospital)

Article 19-7: The prefectural government shall establish mental hospital(s). Provided, however, such establishment may be postponed if there is designated hospital(s) under the following Article.

(Designated Hospital)

Article 19-8: The prefectural governor may designate all or part of mental hospital(s) established by a party other than the national or the prefectural government which meets the standard prescribed by the Minister of Health and Welfare as the facility in place of the mental hospital established by the prefectural government (hereinafter referred to as the Designated Hospital) with the consent of the founder.

(Cancellation of Designation)

Article 19-9: The prefectural governor may cancel appointment of the Designated Hospital if said hospital ceases to meet the standard under the preceding Article or its way of management is recognized inadequate for achieving the purpose thereof.

2. The prefectural governor shall ask the opinion of the Local Council on Mental Health and Welfare in advance if he/she intends to cancel the designation under the preceding Paragraph.

3. The Minister of Health and Welfare may instruct the prefectural governor to conduct his/her work under the jurisdiction of the prefectural governor as prescribed in Para. 1, if there is recognized an urgent need to secure treatment of a person being hospitalized in the Designated Hospital.

(Subsidy of the National Government)

Article 19-10. The national government shall subsidize under a cabinet order one half of the expense required for establishing and managing a mental hospital established by the prefecture or a psychiatric ward created in a hospital other than the mental hospital (excluding the expense to be borne by the prefectural government under Para. 1 of Art. 30; the same applies to the following Paragraph).

2. The national government may subsidize not more than one half of the expense necessary for establishing and managing a mental hospital and a psychiatric ward in a hospital other than the mental hospital established by a non-profit entity (entities).

Chapter 5. Medical Care and Protection

Section 1: Person Responsible for Protection

(Person Responsible for Protection)

Article 20: The guardian or curator, the spouse, the person exercising parental power or the person responsible for support shall become the person responsible for protection of the Person with Mental Disorder. Provided, however, those falling under any of the following items shall not be appointed as a person responsible for protection of the Person with Mental Disorder:

- I. A person whose whereabouts is not known;
- II. A person who has or had brought litigation against said Person with Mental Disorder, his/her spouse and lineal relative(s).
- III. The legal representative, the curator or the assistant who has been dismissed by the Family Court;
- IV. A person who has been declared bankrupt;
- V. A person who is of legal age but for whom a custodian or a curator is appointed;
- VI. A person who is a minor.

2. When there is more than one persons responsible for custody, their order of assuming responsibilities shall be as follows. Provided, however, if there is recognized a special need for custody of the person in question, the Family Court may change the order upon application by an interested party in respect of a person other than the custodian or curator:

- I. The guardian or curator;
- II. The spouse;
- III. The person exercising the parental power;
- IV. The person appointed by the Family Court from among those responsible for support except those described in the preceding two items.

3. Change of the order under the proviso of the preceding Paragraph and appointment under Item 4 of said Paragraph shall be deemed as the matters described in Class A, Para. 1 of Art. 9 of the

Law for Adjustment of Domestic Relations (the Law No. 152 of 1947) as far as application of said Law is concerned.

Article 21: If there is no person responsible for protection under the items of Para. 2 of the preceding Article or such person is unable to perform his/her duties, the mayor of a municipality having jurisdiction over the place of residence of the Person with Mental Disorder concerned (including the head of a special ward; the same applies hereinafter) or the place where the Person with Mental Disorder is currently in if he/she has no place of residence or his/her place of residence is not known.

Article 22: The person responsible for protection shall cause the Person with Mental Disorder (excluding those being voluntarily hospitalized under Para. 2 of Art. 22-4 or those receiving continuous medical care for mental disorder at a hospital or a clinic without hospitalization; the same applies to this Paragraph and Para. 3) to receive treatment and shall protect his/her proprietary interests.

2. The person responsible for protection shall cooperate with the physician in order to cause the Person with Mental Disorder to be correctly diagnosed.

3. The person responsible for protection shall comply with the physician's instructions when causing the Person with Mental Disorder to receive medical care.

Article 22-2: In performing obligations under Art. 41 (limited to those related to taking over the person being released from the hospital under Art. 29-3 or Para. 1 of Art. 29-4), the person responsible for protection may consult with and seek necessary assistance for promotion of social rehabilitation of said Person with Mental Disorder from the administrator of said mental hospital or a Designated Hospital or the head of a social rehabilitation facility for the Person with Mental Disorder associated with said mental hospital or the Designated Hospital.

Section 2: Voluntary Hospitalization

(Voluntary Hospitalization)

Article 22-3: The administrator of a mental hospital shall endeavor to hospitalize a Person with Mental Disorder based on his/her consent.

Article 22-4: When a Person with Mental Disorder voluntarily hospitalizes himself/herself, the administrator of the mental hospital shall inform in writing to said Person with Mental Disorder at the time of his/her admission the matters related to the request for release, etc. under Art. 38-4 and other matters prescribed by the Health and Welfare Ministerial Order, and shall receive a document stating that he/she is entering the hospital voluntarily.

2. The administrator of a mental hospital shall release the Person with Mental Disorder who has voluntarily entered the hospital (hereinafter referred to as the Voluntary Patient in this Article), if he/she so requests.

3. In the event prescribed in the preceding Paragraph, the administrator of a mental hospital may choose not to release said Voluntary Patient for seventy two (72) hours at maximum if the result of examination by the Designated Physician reveals the need to continue hospitalization for medical care and protection of said Voluntary Patient irrespective of the provisions of said Paragraph.

4. When taking the measure under the preceding Paragraph, the administrator of the mental hospital shall inform in writing to said Voluntary Patient that said measure is being taken and the matters related to the demand for release, etc. under Art. 38-4 and other matters prescribed by the Health and Welfare Ministerial Orders.

Section 3: Examination by Designated Physician and Involuntary Hospitalization
(Application for Examination and Custody)

Article 23: Any party who learns of a Person with Mental Disorder or a person suspected of mental disorder may apply to the prefectural governor for examination by the Designated Physician and necessary custody for such a person.

2. For filing an application under the preceding Paragraph, a written application describing the following matters should be filed to the prefectural governor via the director of the nearest Health Center:

- I. The address, name and birth date of the applicant;
- II. The current whereabouts, place of residence, name, sex and birth date of the person in question;
- III. Outline of conditions of the person in question;
- IV. The address and name of a person, if any, who is actually exercising custody for him/her.

(Notification by Police)

Article 24: When the police, in executing their duties, find a person who is deemed likely to hurt himself/herself or others because of mental disorder judging from abnormal behavior and other circumstances, the police shall immediately notify the same to the prefectural governor via the director of the nearest Health Center.

(Notification by Public Prosecutor)

Article 25: When a public prosecutor decides not to prosecute a suspect or a defendant who is mentally disordered or is suspected of mental disorder, if the judgment of a court is irrevocably established (excluding those of imprisonment with or without forced labor, or penal detention, without suspension of execution of the sentence), or if it is deemed particularly necessary, he/she shall immediately notify the same to the prefectural governor.

(Report by Head of Probation Office)

Article 25-2: When the head of a probation office learns that the person under probationary supervision is mentally disordered or is suspected of mental disorder, he/she shall promptly notify the same to the prefectural governor .

(Notification by Head of Correctional Institution)

Article 26: When the head of a correctional institution (which means a detention house, a prison, a juvenile prison, a juvenile training school, a juvenile classification home and a women's guidance home; the same shall apply hereinafter) intends to release an institutionalized person who is mentally disordered or is suspected of mental disorder, he/she shall report in advance the following matters to the prefectural governor having jurisdiction over the place to which the person in question returns (or the place where said correctional institution is located if he/she has no place to return):

- I. The place to which he/she returns, his/her name, sex and birth date;
- II. Outline of his/her conditions;
- III. The date of release or discharge;
- IV. The address and name of a person who takes over the person in question.

(Report by Administrator of Psychiatric Hospital)

Article 26-2: When the administrator of a psychiatric hospital recognizes that a Person with Mental Disorder hospitalized in his/her hospital who meets the provisions of Art. 29-1 applies for release from the hospital he/she shall immediately report the same to the prefectural governor via the director of the nearest Health Center .

(Medical Examination, etc. by Designated Physician Based on Application, etc.)

Article 27: The prefectural governor shall designate and cause the Designated Physician to examine the person for whom an application, a notification or a report was made under Art. 23 through 26 and who is recognized as needing the examination upon investigation.

2. The prefectural governor may designate and cause the Designated Physician to examine the person who is evidently likely to hurt himself/herself or others because of mental disorder unless hospitalized even if no application, notification or report has been made under Art. 23 through 26-2.
3. The prefectural governor shall cause the staff to be present at the time of medical examination under the preceding two Paragraphs.
4. The Designated Physician and said staff mentioned in the preceding Paragraph may enter the place where the person in question resides within the limit necessary for carrying out their duties under the preceding three Paragraphs.
5. When entering the place of residence of said person under the preceding Paragraph, the Designated Physician and said staff shall carry identification documents and present the same when requested by person (s) concerned.
6. Authorization to enter under Para. 4 shall not be interpreted as being granted for crime investigation.

(Notice of Medical Examination)

Article 28: The prefectural governor shall notify in advance the time and place of medical examination to a person, if any, who is actually exercising custody of the person in question under Para. 1 of the preceding Article.

2. The guardian or curator, the person exercising the parental power, the spouse or the person who is actually protecting the person in question may be present at the medical examination under Para. 1 of the preceding Article.

(Criteria for Judgment)

Article 28-2: The Designated Physician conducting medical examination under Para. 1 or 2 of Art. 27 shall judge according to the criteria established by the Minister of Health and Welfare and determine whether or not the person examined is mentally disordered and whether or not said person is likely to hurt himself/herself or others because of mental disorder unless hospitalized for medical care and protection.

2. The Minister of Health and Welfare shall ask the opinion of the Council on Public Health in advance when establishing the criteria under the preceding Paragraph.

(Involuntary Hospitalization Ordered by Prefectural Governor)

Article 29: If a prefectural governor recognizes that the person thus examined is mentally disordered and is likely to hurt himself/herself or others because of mental disorder unless hospitalized for medical care and protection based on the result of examination under Art. 27, the governor may cause said person to enter a mental hospital established by the national or prefectural government or a Designated Hospital.

2. The prefectural governor shall cause said person to enter the hospital under the preceding Paragraph only when said person has been examined by at least two Designated Physicians and the results of examination by each physician concur in that said person is mentally disordered and that he/she is likely to hurt himself/herself or others because of mental disorder unless admitted to a hospital for medical care and protection.

3. When taking the measure under Para. 1, the prefectural governor shall notify in writing to said Person with Mental Disorder that said measure of hospitalization is being taken and the matters related to request for release, etc. under Art. 38-4 and other matters prescribed by the Health and Welfare Ministerial Order.

4. The administrator of a mental hospital established by the national or a prefectural government or of a Designated Hospital shall admit the Person with Mental Disorder mentioned in Para. 1 unless no bed is available because there are already persons hospitalized under Para. 1 or Para. 1 of the following Article (beds designated in the hospital where a ward is designated under Art. 19-8).

Article 29-2: The prefectural governor may admit the Person with Mental Disorder or the person suspected of mental disorder who deemed to fall subject to the provisions of Para. 1 of the preceding Article to a mental hospital or a Designated Hospital provided in Para. 1 of the preceding Article in an urgent case where it is not possible to take the measure under Art. 27 and 28 and the preceding Article, the person in question being recognized as likely to clearly hurt himself/herself or others because of his/her mental disorder unless admitted to a hospital immediately after causing the Designated Physician to examine said person.

2. When taking the measure under the preceding Paragraph, the prefectural governor shall decide promptly whether the measure for hospitalization for said person shall be taken under Para. 1 of the preceding Article.

3. The term of hospitalization under Para. 1 shall not exceed seventy two (72) hours.

4. The provisions of Para. 4 through 6 of Art. 27 and of Art. 28-2 shall be applied mutatis mutandis to the medical examination under Para. 1, that of Para. 3 of the preceding Article to the measure under Para. 1, and that of Para. 4 of said Article to hospitalization of the person being hospitalized under Para. 1.

Article 29-2-2: The prefectural governor shall transfer the Person with Mental Disorder for whom he/she is about to take the measure under Para. 1 of Art. 29 or Para. 1 of the preceding Article to a hospital for said admission.

2. When the transfer under the preceding Paragraph is to be carried out, the prefectural governor shall notify in writing about said transfer and other matters prescribed by the Health and Welfare Ministerial Order to said Person with Mental Disorder.

3. When the transfer under Para. 1 is to be carried out, the prefectural governor may impose restraints as prescribed by the Minister of Health and Welfare if the Designated Physician who examined said Person with Mental Disorder recognized it necessary within the limit that is essential for medical care or custody of said person.

Article 29-3: The administrator of a mental hospital or a Designated Hospital as provided in Para. 1 of Art. 29 shall immediately release the person hospitalized under Para. 1, Art. 29-2 if a notice to the effect that no hospitalization measure under Para. 1, Art. 29 is to be taken is received from the prefectural governor or if a notice of hospitalization measure under Para. 1 of Art. 29 is not received within the term provided in Para. 3 of Art. 29-2.

(Dissolution of Measure for Involuntary Hospitalization)

Article 29-4: The prefectural governor shall immediately release the person hospitalized under Para. 1 of Art. 29 (hereinafter referred to as "Involuntary Patient") when said person is deemed not likely to hurt himself/herself or others because of his/her mental disorder even if hospitalization is discontinued. In this case, the prefectural governor shall ask in advance the opinion of the administrator of the mental hospital or the Designated Hospital where said person is being hospitalized.

2. The prefectural governor releasing said person under the preceding Paragraph shall base his/her judgment that said person is no longer likely to hurt himself/herself or others because of mental disorder even if hospitalization is discontinued only on the result of examination by the Designated Physician appointed by him/her or the result of medical examination under the following Article.

Article 29-5. If the administrator of the mental hospital or the Designated Hospital where the Involuntary Patient is being hospitalized deems that said patient is no longer likely to hurt himself/herself or others even if hospitalization is discontinued as a result of medical examination by the Designated Physician, he/she shall immediately report to that effect and the conditions of said person to the prefectural governor via the director of the nearest Health Center.

(Treatment Policy and Amount of Medical Expenses for Involuntary Hospitalization)

Article 29-6: The treatment policy of the mental hospital established by the national or the prefectural government or the Designated Hospital for medical care of the person hospitalized under Para. 1 of Art. 29 and Para. 1 of Art. 29-2 and the method of calculation of medical expenses shall be based on the treatment policy of the Health Insurance System and the method of calculation of the expense for care.

2. If it is impossible or inappropriate to base the treatment policy and or the calculation of the expense for medical care on the exemplified method, the treatment policy and the calculation of expenses for medical care shall be determined by the Minister of Health and Welfare based on the opinion of the Council on Public Health.

(Consignment of Office Works to the Social Insurance Medical Fee Payment Fund)

Article 29-7: The prefectural government may consign the work related to the review of whether or not medical care given by the mental hospital established by the national or prefectural government or the Designated Hospital to the person hospitalized under Para. 1 of Art. 29 and Para. 1, Art. 29-2 meets the treatment policy provided under the preceding Article and the work related to calculation of the amount and payment of the medical service fees to the national government or the founder of Designated Hospitals to the Social Insurance Medical Fee Payment Fund.

(Sharing of Expenses)

Article 30: The expense of the Person with Mental Disorder hospitalized by the prefectural governor under Para. 1 of Art. 29 and Para. 1 of Art. 29-2 shall be paid by the prefectural government.

2. The national government shall pay three fourths of the expense paid by the prefectural government under the preceding Paragraph as stipulated by the cabinet order.

(Adjustment with Medical Care Benefits Under Other Laws)

Article 30-2: When the Person with Mental Disorder to be paid the expense under Para. 1 of the preceding Article is a person entitled to medical care benefits under the Health Insurance Law (Law No. 70 of 1922), the National Health Insurance Law (Law No. 192 of 1958), the Mariners' Insurance Law (Law No. 73 of 1939), the Laborers' Accident Compensation Insurance Law (Law No. 50 of 1947), the National Public Servants Mutual Aid Association Law (Law No. 128 of 1958; the same applies mutatis mutandis to other laws or where the law is cited as an example), the Local Public Servants Mutual Aid Association Law (Law No. 152 of 1962), the Law of Health & Medical Service for the Aged (Law No. 80 of 1982) or the Law of Care Service Insurance (Law No. 123 of 1997), the prefectural government is not required to pay the expense under said Paragraph within the limits specified.

(Charging of Expense)

Article 31: The prefectural governor may charge all or a part of the expense incurred for the Person with Mental Disorder hospitalized under Para. 1 of Art. 29 and Para. 1 of Art. 29-1 if said person or the person responsible for his/her support is deemed to be in a position to pay such expenses.

Section 4: Medical Care at Outpatient Clinic

(Medical Care at Outpatient Clinic)

Article 32: In order to promote adequate medical care for mental disorder, the prefectural government may pay 95% of the expense required for the Person with Mental Disorder receiving medical care without hospitalization for his/her mental disorder at a hospital, a clinic or a pharmacy listed in each Item of Para. 3 of Art. 43 of the Health Insurance Law or a hospital, a clinic (including those similar thereto) or a pharmacy prescribed by a cabinet order (excluding those for which the founder has proposed to the prefectural governor that he/she will not comply with the method stipulated in the following Article regarding the claim and payment of the medical service fees; hereinafter referred to as "the medical institution, etc." in the following Article").

2. The expense for medical care under the preceding Paragraph shall be calculated similarly to the expense for care under the Health Insurance System.
3. Payment of the expense under Para. 1 shall be made based on an application of said Person with Mental Disorder or the person responsible for his/her custody, and the application shall be made to the prefectural governor via the director of a Health Center having jurisdiction over the place of residence of the Person with Mental Disorder.
4. The application under the preceding Paragraph shall be attached with a medical certificate of a physician as prescribed by the Health and Welfare Ministerial Order. Provided, however, this provision does not apply to the Person with Mental Disorder making such an application if he/she has received the Certificate for Health and Welfare of the Person with Mental Disorder.
5. The prefectural governor shall base his/her decision about the application under Para. 3 on the opinion of the Local Council on Mental Health and Welfare. Provided, however, this provision shall not apply to the Person with Mental Disorder to whom said application is related if he/she has received the Certificate for Health and Welfare for the Person with Mental Disorder.
6. After two (2) years from the application under Para. 3, the payment based on said application shall cease.
7. Para. 1 shall not apply to the person eligible to receive medical care under the Special Assistance Law for the Wounded in the War (Law No. 168 of 1963).
8. In addition to those stipulated in each of the preceding Paragraphs, the matters necessary for medical care under Para. 1 shall be prescribed by cabinet orders.

(Claims, Examination and Payments of Costs)

Article 32-2: The medical institution, etc. mentioned in Para. 1 of the preceding Article shall request the prefectural government to pay the expense to be borne by the prefectural government under said Paragraph.

2. The prefectural government shall pay the expense under the preceding Paragraph to said medical institution, etc.
3. The prefectural government may consign his/her work related to the request under Para. 1 and the expense payment under the preceding Paragraph to the Social Insurance Medical Fee Payment Fund or other party prescribed by a cabinet order.

(Defrayment and Payment of Fees)

Article 32-3: The national government shall subsidize one half of the expense to be borne by the prefectural government under Para. 1 of Art. 32 under the cabinet order.

Article 32-4: Art. 30-2 shall be applied mutatis mutandis to the cost bearing of the prefectural government under Para. 1 of Art. 32-1.

Section 5: Hospitalization, etc. for Medical Care and Protection

(Hospitalization for Medical Care and Protection)

Article 33: The administrator of a mental hospital may cause the following person to be hospitalized without his/her consent so long as the person responsible for his/her custody consents to such hospitalization:

- I. The person who is judged to be mentally disordered based on the examination by the