

Analysis of the Government's Responsibility for Ensuring Epidemic Related Drugs

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Abstract

China is a national form of payment administration. When the COVID-19 or other public health emergencies occur, the government should assume the responsibility of epidemic-related drug protection, avoiding the negative consequences of such events to the greatest extent. Government is supposed to make full use of and give full play to the government-led, multi-party participation of the epidemic prevention and control model, to ensure that residents have enough medicine.

Keywords

Beneficial Administrative Act; Government Duties; Drug Ensuring.

1. Generation of Government Responsibilities

1.1. Modern Administrative View in China

Beneficial administrative act refers to the direct legal effect of the administrative act to promote the rights of the opposite party. And administrative payment is a typical beneficial administrative act. As a legal system, administrative payment is the product of a country's transition from regulatory administration to welfare administration. It is an administrative act in which the administrative subject decides to give certain property free of charge based on the application of the counterpart, according to national regulations, taking into account the specific conditions of the counterpart.[1]

In modern society, China has entered the state form of payment administration. Due to the development of industry, commerce, and market economy, if the state does not intervene in a pure market economy, it has been proven that there will be problems such as polarization between the rich and the poor, class conflicts, and so on. In order to avoid polarization between the rich and the poor and class conflicts, modern society emphasizes on helping the weak, so payment administration has become a state form. In a state that helps the weak, the government should help the weak through administrative payments. For the relief of public health emergencies such as the COVID-19, the government should ensure the drug use of the people, so the government's treatment of the people in public health emergencies is a specific administrative payment behavior in the form of payment administration, which is the modern administrative concept. The author believes that under the modern administrative view, the Chinese government should vigorously carry out administrative payment to ensure people's drug use in public health emergencies such as the COVID-19 epidemic.

1.2. Constitutional Order in China

1.2.1. Constitutional Obligations to Protect Citizens' Health

First of all, Article 33 of the Constitution stipulates that the state respects and protects human rights. And the right to life is the most basic human right. People should live and be healthy rather than dying of illness. Therefore, personal health is not just a matter of individuals. The state should protect the health of citizens. Therefore, Chinese in this COVID-19 are not "lying flat", but actively organizing anti epidemic activities, which is the requirement of the

Constitution. Secondly, more directly, Article 21 of the Constitution states that the country should develop medical and health undertakings, develop modern medicine and traditional Chinese medicine, encourage and support rural collective economic organizations, national enterprises, institutions, and street organizations to establish various medical and health facilities, carry out public health activities, and protect the health of the people. From the constitutional provisions, we can easily see that the relationship between our country and its citizens is not laissez faire and jungle law in terms of health. It is not the group immunity implemented in Britain when the COVID-19 epidemic just broke out. It is a constitutional commitment that the state has the responsibility to ensure the health of every citizen in terms of the constitution and the health of citizens.

1.2.2. Legal Obligation to Protect Citizens' Health

Our country has a law called the "Law on the Prevention and Control of Infectious Diseases". It refers to the formulation of this law in order to prevent, control, and eliminate the occurrence and prevalence of infectious diseases, and ensure human health. To sum up, in our country, whether under the Constitution or the law, the state has the obligation to ensure the physical health of everyone.

1.3. Avoiding Negative Consequences

In the case of public health emergencies such as the COVID-19, if China rely on the market and the people's initiative without the help of government responsibilities, it will lead to complete disorder. [2]In daily life, citizens often equate drugs with commodities, go to pharmacies or hospitals to buy drugs, and exchange money for drugs. However, the author believes that drugs are special commodities because they are related to a person's health and even life. If something can save lives, how much should it be worth in the market? Logically, if life is priceless, then the life-saving medicine should also be priceless. How can priceless things be priced in a market-oriented manner? Therefore, drugs cannot be completely market-oriented and must be guided by government intervention. There are many negative consequences of drug marketization. The Lu Yong case is a good example. When the country did not include drugs for treating leukemia in medical insurance, sick people had to risk buying fake Indian drugs with the same efficacy in order to fight death, even smuggling them. In combination with the current situation of the epidemic, the quantity of anti epidemic drugs such as ibuprofen is also relatively tight. Phenomena such as hoarding, cross-border drug grabbing, and scallop stir-frying occasionally occur. The Xiaohongshu APP has emerged with no bottom line strategy for drug grabbing, encourage adults to take children's anti fever drugs, China's purchasing of global drugs, the American supermarket Tylenol has been emptied, and even some people have issued strategies to teach people to grab drugs in remote mountainous areas... Without government control of drug supply, it is conceivable that there will be serious consequences of complete disorder. When there is a situation of drug robbery, there is bound to be a situation where someone grabs and someone doesn't, so how do you compare the lives of those who grab the medicine with those who don't? Teacher Luo Xiang wrote in "The Details of the Rule of Law" that "people are ends rather than means, and everyone's life is priceless.". The key issue is not the value comparison of life, but the need to practice moral norms that respect life. Moral rules require that the life of any innocent individual should not be deprived. Without the guidance of moral rules, if knowledge is used for utilitarian value comparison in the law, the entire moral order may collapse.

2. Fulfillment of Government Responsibilities

2.1. Prevention and Control Arrangements and Government Roles in the Law on the Prevention and Control of Infectious Diseases

China implements the rule of law. And all measures in the prevention and control of epidemic diseases, whether they were previously isolated, nucleic acid testing, or the current protection of medication for the general public, should be carried out on the legal track.[3] The law on epidemic prevention and control in our country is the "Law on the Prevention and Control of Infectious Diseases". According to it, China's epidemic prevention and control is a government led, multi party participation model. It is easy to understand that in the past few years, the epidemic prevention and control measures we have personally experienced are those that schools and communities have informed and arranged for us to carry out nucleic acid testing, centralized isolation and other measures, rather than that the government directly sends police to carry out. This is the government led multi party participation model, in which the government should play a leading role and encourage all parties to actively participate. As for the drug guarantee mentioned in this article, the government not only bears the direct responsibility of "drug protection", but also should actively use its power to encourage all parties to participate in the drug protection cause, that is, fully exert the role of administrative power, mobilize all resources, and overcome difficulties together. For example, the government should ensure that we eat ibuprofen, which is a direct responsibility. At the same time, the government should actively use its administrative power to encourage various entities such as pharmacies, enterprises, and communities to participate in drug protection.

2.2. The Government Guarantees That Residents have Medicines under the Legal Framework

Firstly, the government has a coordinating obligation. According to Article 49 of the Law on the Prevention and Control of Infectious Diseases, when an infectious disease breaks out or becomes prevalent, the production and supply units of drugs and medical devices shall promptly produce and supply drugs and medical devices for the prevention and control of infectious diseases. When drugs in the COVID-19 epidemic are in short supply, local governments coordinate with local drug manufacturers to increase production, and then coordinate transportation units to give priority to the delivery of these drugs. This is the embodiment of the government's coordination obligation and the law's expectation of the government.

Secondly, the government has a reserve obligation. Article 63 of the Law on the Prevention and Control of Infectious Diseases stipulates that people's governments at or above the county level are responsible for storing drugs, medical devices, and other materials for the prevention and control of infectious diseases for use. For example, if ibuprofen can reduce fever and is an important drug for epidemic prevention and control, in theory, the government should store a large amount of ibuprofen in advance, which can be used when there is a large demand.

Thirdly, the government has an incentive obligation. Article 9 of the Law on the Prevention and Control of Infectious Diseases stipulates that the state should support and encourage units and individuals to participate in the prevention and control of infectious diseases; Article 11 stipulates that units and individuals who have made significant achievements and contributions in the prevention and control of infectious diseases shall be commended and rewarded. During the outbreak of COVID-19 in Wuhan in 2020, many places introduced policies. The children of medical staff who came to COVID-19 to participate in the fight against COVID-19 epidemic can enjoy the policy of extra points for the middle school entrance examination. These are the three major obligations of the government clearly stipulated by law.

2.3. Active Efforts From Every Parties to Ensure That Residents have Access to Medication

As mentioned above, the pattern of epidemic prevention and control in China is multi participation led by the government, which includes the government, enterprises, communities, families, and individuals.

2.3.1. Government and Drug Security

The first is the free distribution of anti epidemic drugs by the government. Recently, netizens in Nanjing, Jiangsu, Changzhou, Wuhan, Hubei, and other places have basked in the health care package distributed by the local government to key groups such as "one old and one young" and disadvantaged people, which is the free distribution of drugs by the government. The second is that the government invests drugs into the market for residents to purchase. For example, in order to alleviate the problem of not being able to buy medicines, Nanjing has continuously put two million antipyretic tablets on the market every day. It is also noteworthy that Suzhou Gusu District, Jiangsu Province, has transformed some nucleic acid sampling points that are no longer used into "fever diagnosis and treatment stations", providing one-stop medical services, from diagnosis and treatment, prescription to completion of dispensing. The entire process can be completed in ten minutes and citizens can also use medical insurance settlement. These are some of the efforts made by the government to combat the epidemic.

2.3.2. Enterprise and Drug Security

One side lacks medicine and the other side has medicine. Tencent Travel Service and Tencent Map Team have developed the "COVID-19 Protective Medicine Public Welfare Mutual Aid Small Program" within a few days by taking advantage of technical advantages. If someone infected COVID-19, they can enter this small program, which will be announced on the platform according to your needs, and then they will contact the demand side and the supplier side at the same time, and send the medicine to you through relevant operations. The platform similar to Tencent can also develop small programs or apps for mutual assistance in the same city, connecting people who have medication and are willing to provide it to those who lack it. In some regions, pharmacies should also open services similar to free limited quantity dispensing with ID cards to meet the drug needs of local residents as much as possible.

2.3.3. Social and Drug Security

The social dimension includes communities, families, and individuals. The community can encourage drug mutual assistance activities within its own community, or distribute drugs to residents within the community in a timely and limited amount. Residents should also help each other to achieve win-win results and jointly overcome the epidemic.

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