



# The Reform of Licensing FOR Elderly Care Facility

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Signals A Different  
Regulatory Environment  
in China

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Obtaining a permission to operate a senior care institution is often found a tedious and laborious process. Some projects are forced to cease failing to obtain an establishment license just due to protests from the neighborhood of the project<sup>i</sup>. After more than half a year's preparation, the reform to switch the supervisory mechanism of senior care institutions from licensing to recordal has finally been validated through the national level legislation at the beginning of the new year.

On December 29, 2018, the Standing Committee of the National People's Congress made a revision to the Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly, which officially changed the licensing system for the establishment of senior care institutions into a recordal system. According to the amendment, public welfare senior care institutions shall handle the corresponding registration according to the law<sup>ii</sup> and for-profit senior care institutions shall register with the Market Supervision and Management Department before carrying out service activities, both of which shall file with the Civil Affairs Department of the government at or above the county level for recordal. A circular from the Ministry of Civil Affairs (MCA 2019 Circular No. 1) further provided that Civil Affairs Departments at all levels shall no longer apply the approval process in any manner. If a license for the establishment of a senior care institution has been obtained and is still valid during the validity period, the license shall not be renewed after the expiration of the validity period of it.

As such, the new process will be that following the for-profit or not-for-profit registration of senior care facilities, applicants can start with various pre-opening preparation; prior to the open of the facility, applicants shall provide information for recordal and fill in and sign

standard forms and commitment as required by the Civil Affairs Department. The recordal process is finalized after the issuance of a recordal receipt by the Civil Affairs departments, whereby the basic operating requirements of senior care institutions and list of supporting policies and measures will also be furnished to the applicants in writing.

The amendment also added a clause provides that “the local governments at all levels shall oversee the administrative works in their respective jurisdictions and establish a comprehensive supervisory system for senior care institutions; the Civil Affairs Departments of governments at or above the county level shall be responsible for the guidance, supervision and management of senior care institutions, whilst the other relevant departments are responsible for the supervisory works in accordance with their duties”. Thus, the supervisory duties of senior care institutions have been placed on the local government in an in-process and post-event supervisory manner.

Although this amendment involves only a few articles, it is of great significance. We foresee that the MCA will soon update the Licensing Measures and Administrative Measures for Senior Care Institutions, which have been implemented since 2013, and the localities will further adjust and promulgate various supporting regulatory measures. From the legislative and regulatory perspective, we have summarized the following aspects that may have an impact on the senior care industry:

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<sup>i</sup> According to the media, there have been several senior care projects failed to be approved by local authorities due to, or partially due to the protests from neighbors who believe such an elderly care institution will include hospice facility and mortuary that might have negative impact to the neighborhood and environment.

<sup>ii</sup> According to the Provisional Regulations on the Registration and Administration of Private Non-Enterprise Units, private-owned public welfare senior care institutions shall apply to the Civil Affairs Departments of the local people's governments at or above the county level for registration of social service institutions.

## Further Encourage Investment from Private Capital

Prior to this amendment, the MCA has publicly announced that transitional works shall be in preparation in the wake of the abolition of establishment license for senior care institutions. This is set to create a fair and competitive market environment, stimulate the vitality of entrepreneurial innovation, and is an important step in reforming the licensure and administrative rules and enhancing the implementation of the quality improvement for senior care institutions. A series of recent reforms in the business sector have also responded to this move. The draft Foreign Investment Law under discussion is expected to replace the three laws in the current legislation regime<sup>iii</sup> so to reform the existing foreign investment legislative and administrative system. The goal is to incorporate foreign investment into the management system of pre-entry national treatment plus negative list. As a result, foreign investors can enjoy the same treatment as domestic companies in most of the sectors, including the field of aged care services, whether in the form of non-profit or for-profit.

Whether a series of reform measures can encourage private capital, especially foreign investment, to be more active in the field of aged care services, remains to be further observed. In the field of senior and healthcare, the government has already changed the administrative rules from licensing to recordal in the establishment for, such as, internal clinic for senior care institutions and Chinese Medicine clinics, with the aim to streamline and decentralize the administrative authorities. These policies are set to ensure a more transparent and efficient business environment nevertheless not a more relax one. In fact, those standard forms and commitment to be filled with the Civil Affairs Department by applicants in the abovementioned recordal process specifically provide requirements to be complied with in respect of architectural design, fire protection, hygiene and catering, etc., which are not substantially different from those under the previous licensing regime.

<sup>iii</sup> i.e. the Law on Sino-foreign Equity Joint Ventures, the Law on Sino-foreign Contractual Joint Ventures and the Law on Wholly Foreign-Owned Enterprises.





## Focusing on In-and-post Event Supervision where Local Governments Will Have More Discretion

Another important clause in this amendment is the clarification of the enforcement authority of the Civil Affairs Department. The amended law stipulates that the Civil Affairs Departments of the governments at or above the county level shall perform their duties of supervision and inspection according to law. The law enforcement may take measures such as inquiry to senior care institutions and individuals; entry into the facility for on-site inspections in case of suspected breaking the law; reviewing or copying relevant contracts, bills, books and other relevant materials. The MCA's Circular further provided that If a senior care institution is found by the Civil Affairs Department that it may endanger the personal health or property safety, it shall be ordered to make corrections within a time limit; if it fails to make corrections within the time limit, it shall be ordered to suspend business for rectification. If such safety risks are relevant to construction, fire protection, food hygiene, medical services and special equipment, the order shall be promptly copied the relevant departments who shall actively cooperate with the relevant investigation and handling works. Under serious circumstances, the registration management organ shall be notified in a timely manner, who may impose administrative penalties or even revoke the registration certificate according to law.

The industry is embracing a comprehensive supervision environment. It is foreseeable that local governments will successively promulgate a series of rules and regulations to coordinate and unify the transition of the senior care institutions from the licensing system to the recordal system. The trend has been clearly reflected in a recent local regulation, namely, "Regulations on the Supervision of Beijing Aged Service Agencies (Trial)", jointly issued by various departments of Beijing in November 2018.

The Beijing's regulation defines the rule in a controversial area of pricing mechanism. It prohibits senior care institutions from charging membership fee unless the facility is operated with self-built or self-owned properties. It further requires the totality of membership fee should not exceed the mortgage value of the properties in principle and the membership fee cannot be invested in the risk industries. This regulation sets strict limits on the membership fee model on the one hand but allows for a viable business models to exist on the other hand. The "double-edged sword" function of governmental supervision is fairly manifested at this point. We have not seen similar regulations in other cities. Predictably, one of the major challenge operators may face in the future will be the different implementation and interpretation of these regulatory rules by different local authorities.

## An Industrial Credit System Will be Gradually Formed to Cooperate with the Comprehensive Supervision

The MCA's Circular also requires the local governments to actively explore the establishment and improvement of credit management systems in the industry such as credit evaluation, credit incentive and punishment for dishonesty. In those "13th Five-Year" Elderly Care Services Development Plans and Elderly Care Service Regulations issued by various local government in 2018, we can frequently find the government propose to build an information platform for the provision of elderly care services. For example, Beijing recently issued the "Guiding Opinions on Promoting the Construction of the Credit System for the Aged Care Service Industry" which aims to further improve the credit policy and institutional standards system for the aged care service industry by 2020. The goal of industry self-discipline will then heavily rely upon public credit information networking and data exchange and sharing across governmental departments. In the future, the market entities that are regarded as seriously untrustworthy in the credit system will be restraint from applying for financial funds or support, participating in related public resource trading activities, participating in infrastructure and public utility licenses in other projects, among other restrictions to be implemented.

It is worth noting that the Beijing's regulation has included circumstances such as "publish false advertisements and conduct false propaganda", "records of full responsibility due from legal disputes in the previous year", "fail to fulfil the emergency reporting system according to regulations", "fail to sign labor contracts or pay wages according to the contract" in the untrustworthy matters of the "Basic Untrustworthy Information List of Senior Care Institutions". Items contain in such list, by comparison to the list of special inspections for the service quality of the senior care institutions that are being implemented in the recent two years, are just enhancement to the special inspection, the latter of which is just a preface to kick off the comprehensive supervision. Following the promulgation of various industry standards, the strengthening of administrative punishment and the establishment of the credit evaluation system, a multi-layer supervisory atmosphere will become the core theme in the years to come.

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Having witnessed a rapid development in the past five years, as well as bearing growing pains, the senior care industry will embrace an "upgraded" regulatory environment in 2019. Opportunities emerge with challenges. Paying attention to further introduction of industry standards and keeping pace with local legislation and practice will be an essential step toward the success of a senior care project.

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