

Original Paper

Research on the Prevention and Control of Farmers' Pension Risk from the Perspective of Law

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Abstract

With the aging of the population becoming more and more serious, the problem of old-age care has become a global problem. There are many aspects of pension risks, such as economic, health and social risks, which have caused great pressure on society. The law plays a very important role in the old-age security system. Perfecting the legal framework can effectively deal with the risk of old-age care. This paper first analyzes the meaning and types of pension risk, and then discusses how the pension risk is generated from the perspective of law. Combined with the actual situation of our country, this paper puts forward some suggestions to improve the legal mechanism of China's response to pension risk, hoping to provide some reference for the sustainable development of China's pension security system.

Keywords

law, pension, risk

1. Introduction

Population aging is the current social reality in the world, and the issue of old-age care has become a hot topic of social concern. The law to deal with the problem of old-age security under the background of population aging needs to follow the system concept. Promoting the development of old-age care and improving the old-age care service system as an important task of actively responding to the national strategy of population aging has always been highly concerned by the party and the country. The development of old-age care undertakings and industries, and the improvement and perfection of the old-age care service system are inseparable from the guidance, norms and guarantees of high-quality and high-level legislation.

At present, there is an obvious aging trend in China, and the problem of old-age care has attracted much attention, and the problem of old-age care for rural farmers is a difficult problem of social security. Analyzing the risks faced by rural old-age care and the causes of the risks, and putting forward relevant countermeasures and suggestions are of great significance for rural collective old-age care, improving the old-age security system and solving the problem of rural old-age care.

This paper analyzes the problems faced by China's old-age care by combining legal norms with risk management theory and dynamic risk prevention and control.

2. Pension Risk

2.1 Definition of Pension Risk

Pension risk refers to the unexpectedness and uncertainty that people may suffer from the risk of survival due to the lack of basic living security in old age, including the uncertainty of whether the risk occurs and the degree of danger. Pension risk is one of the social security risks. It is an objective existence. It is a risk that everyone must face. It is the deviation between the actual results and the predicted results caused by the uncertainty of people's decision-making and objective conditions for future pension behavior. It is a state of risk existence with uncertainty in the occurrence of losses.

Pension risk has the characteristics of objectivity and inevitability. Everyone will face life and death. In today's society, we should plan for old-age care early. Under different social systems and political systems, the structure and size of pension risks are different from the economic development.

2.2 Classification of Old-Age Groups

2.2.1 Age Classification

Young old people (55-70 years old) The old people in this age group are in relatively good physical condition, and have more energy and time to pursue a colorful old age life.

The middle-aged elderly (70-80 years old) at this stage began to face some health problems and needed more health management services. Their dependence on medical resources is gradually increasing, and they are also eager to enrich their lives through social activities and avoid loneliness.

The decline of physical function of the elderly (over 80 years old) is more obvious, and they often need professional medical care and life care. They have a high degree of dependence on old-age care institutions, especially for the disabled and demented elderly, professional nursing services are crucial. For example, some old-age care institutions will provide 24-hour care services for the elderly, including feeding, cleaning, and rehabilitation training.

2.2.2 Classification by Physical Condition

Self-care elderly

These elderly people are in good physical condition and can independently complete various activities in daily life, such as washing, dressing, cooking and so on. Their demand for old-age care is mainly focused on the spiritual and cultural level, hoping to maintain a positive attitude towards life in their later years and participate in various social activities and hobbies.

Semi-disabled elderly

The semi-disabled elderly have some difficulties in self-care and need some assistance. They may need to use assistive devices, or need the assistance of family members and caregivers to complete some more complex activities. For such elderly people, the focus of pension services is to provide appropriate care and rehabilitation training to help them maintain their self-care ability as much as possible.

Disabled elderly

Disabled elderly people cannot take care of themselves and need to rely entirely on others for care. They have higher requirements for the medical care level and life care ability of the pension institutions, and need professional medical staff and care workers to provide round-the-clock services.

Dementia elderly

Dementia elderly mainly face cognitive dysfunction, such as Alzheimer's disease. In addition to life care and medical care, they also need professional cognitive training and emotional comfort to delay the development of the disease and maintain a certain quality of life.

3. China's Pension Risks under the Background of Aging Population

In the context of aging, China's pension risks are mainly reflected in the following aspects.

3.1 Rural Pension Risk

China's pension risk mainly lies in rural pension. The problem of rural aging mainly focuses on the time arrangement of labor and employment of the young elderly and the time disembedding of the middle and high elderly.

A large number of studies have shown that the important supporting force of China's gradual urbanization is the rural elderly in China, who continue to accumulate capital for their children to receive good education and purchase houses at home. Farmers basically do not have income and living difficulties before the age of 70, and face the risk of income and physical decline after the age of 70. In the context of the urbanization of farmers, the middle-aged and high-aged people have become a group of passive or active sacrifice, and even in some areas, the elderly have contributed to their children for life. Self-marginalization and withdrawal from society to minimize self-needs are strategies for the elderly to cope with old-age care.

The rural old-age care model mainly includes four modes: family old-age care, social old-age care, market old-age care and mutual old-age care. In the context of the outflow of rural population and the imbalance of intergenerational responsibility, family pension has problems such as excessive burden, poor care, and weakening ethical responsibility. Most scholars believe that China's pension model should move from family pension to social pension model. However, the substitution effect of the current social pension on the traditional family pension is very limited, and the problem of rural old-age care cannot be solved only by raising the pension.

At present, mutual support for the aged is a form of voluntary service, low-paid service and “time bank” to resolve the old-age care of the elderly. Some scholars have pointed out that rural areas have the advantages of acquaintance society, land system and village collective organization. Local governments should give necessary financial subsidies and policy support to promote the establishment of village-led mutual pension model.

3.2 Economic Risk

In the traditional Chinese family concept, the child is the center of the family, and the only child is the only hope of the parents. Once the child encounters disease, the parents often do their best to treat the child and do not give up a glimmer of hope. For families with low incomes, high medical expenses may hollow out all the family’s savings. After the death of the child, the elderly who lost their only child also fell into a poor economic situation. In some families, parents enter old age and gradually lose their economic independence. For people with weak old-age security, adult children are the only source of income for parents. Economic risk is the first pension risk that the elderly who have lost their only child must face.

3.3 Mental Health Risks

The elderly are not necessarily lonely, but have to face the grief of losing their only child. The elderly generally face serious mental health risks. The grief and self-blame of losing their only child often make the elderly lose their enthusiasm for life for a long time. Lead to irregular diet, insomnia and other issues.

3.4 Pension Payment Risks

The pension income and expenditure gap is widening: With the acceleration of the aging process, the pressure on pension payments has increased significantly. According to the data, from 2010 to 2023, the number of retirees of the basic old-age insurance for urban workers increased from 63 million to 136 million, and the dependency ratio of insured workers and retirees decreased from 3.2 to 2.7, that is, an average of two workers support one retiree. The Chinese Academy of Social Sciences predicts that the situation of pension income exceeding expenditure may occur in 2028 and will exhaust the accumulated balance by 2035.

The sustainability of the pension system is facing challenges: the aging of the population leads to the continuous growth of pension expenditures, while the relative reduction of the contributory population has intensified the impact on the pension system. In the three-pillar pension system, the first pillar pension has a strong crowding-out effect on other pillars. The isolation between individual accounts of each pillar leads to the decentralization of pension assets, which makes it difficult to take advantage of large-scale investment and dynamic asset allocation.

3.5 Medical Security Risks

The pressure of medical expenses growth: With the increase of the elderly population, the demand for chronic disease management and rehabilitation nursing of the elderly is increasing, which stimulates the continuous increase of medical expenses. The prediction results show that 50 % of China’s medical

resources will be used for the elderly population in the future. The risk of basic medical insurance is increasing. It is estimated that under the current medical insurance system, by around 2025, China's medical insurance fund balance will have a gap for the first time. By about 2034, the cumulative balance of medical insurance will have a gap for the first time.

Pension services and medical resources do not match: At present, China's aging social environment construction lags behind, most of the urban and rural infrastructure planning and design and construction have not fully taken into account the living needs of the elderly, families, residential areas, communities, urban public places and other aging facilities are not perfect and inadequate, the elderly 'digital divide' problem is more prominent.

4. Case Analysis

4.1 On the Case of the Family Members of the Insured Persons in Luoyang City Defrauding the Pension Insurance Benefits of the Enterprise Employees

In December 2020, the investigation of Luoyang Social Security Center found that after the death of Peng, a retired employee of an enterprise, Peng's nephew Peng concealed it and asked his father-in-law Zhao to fake his uncle Peng's identity information to handle identity cards and social security cards in violation of regulations. From August 2011 to December 2020, Peng's enterprise employee pension insurance treatment was 296,300 yuan.

4.2 Case Wang V. A Nursing Home Right of Life Dispute Case

Pan was admitted to a nursing home and enjoyed primary care. The room where Pan lives is located on the third floor. The chimney is installed on the right wall of the room window. It is the exhaust pipe of a gas-fired hot water boiler in a bathroom on the first floor. The chimney pipe is close to the window. There is a rental relationship between a nursing home and a bathroom.

In the early morning of a certain day, the caregiver found an abnormality when he visited Pan's room, so he sent the elderly to the emergency department of the hospital and informed his family. After diagnosis, Pan was diagnosed as carbon monoxide poisoning, and died after hospitalization. According to the investigation, the gas-fired hot water boiler produces carbon monoxide in the process of operation, which penetrates into the room of Pan through the exhaust pipe.

Wang, the successor of Pan, sued and asked Yuan, the investor of a nursing home and a bathroom, to jointly compensate for funeral expenses, death compensation, mental damage and so on.

As a professional old-age care institution, nursing homes have the obligation of safety protection for the elderly. For the facilities and equipment with potential safety hazards, we should actively take measures to prevent and prompt, and require rectification. We should not take a disregarding and laissez-faire attitude, otherwise we should bear the corresponding responsibility if the elderly suffer personal injury. Pension institutions and their operators should improve their awareness of safety protection and strengthen the rectification of safety hazards, which is not only the protection of the operators themselves, but also the embodiment of social responsibility.

In the social pension, the pension service of the pension institution is often accompanied by a series of problems. The service of the pension institution is not good and the cost is too high. Public-built private or private pension institutions are widespread in the county and have become an important supplement to public pension services. However, they are also facing the development trend of bottom protection and high-end development. The high cost of old-age care and the unwillingness of the elderly to leave the village for old-age care have led to a high vacancy rate of beds in pension institutions. At the same time, pension service disputes are also everywhere.

5. The Present Situation and Problems of the Law in the Old-Age Security

5.1 Current Situation

The legal system has been initially established: China has formed a relatively sound legal system for the protection of the rights and interests of the elderly, covering many laws such as the “Constitution” Law on the Protection of the Rights and Interests of the Elderly, the “Social Insurance Law” and the “Civil Code”. These laws provide the basis for the old-age security of the elderly from different angles. Policy support is increasing: the government has issued a series of policies to promote the development of old-age security, such as “opinions on comprehensively promoting the construction of urban communities” and “opinions on accelerating the development of home-based care services”. To a certain extent, these policies make up for the shortcomings of the law and promote the improvement of the old-age security system.

Local legislation actively explores: some places have formulated local regulations such as regulations on home care services according to their own actual conditions, such as Beijing and Suzhou. These local legislations provide a useful reference for national legislation and promote the improvement of the legal system of old-age security.

5.2 Existing Problems

1) Imperfect legal system

The system is scattered and fragmented: the laws related to old-age security are scattered in many laws and regulations, lacking systematicness and coordination. For example, the rural pension insurance system is fragmented, and the system varies greatly between different regions, and it is not well connected with other social security systems such as the basic pension insurance for urban workers.

Part of the law lags behind: some provisions of the “Social Insurance Law” have not adapted to the needs of the reform of the social insurance system. For example, rural endowment insurance and urban residents’ endowment insurance have long been merged, but the relevant concepts are still retained in the law.

There are many legal gaps: in the community pension service, there is a lack of national unified legislation, which leads to the lack of a unified legal framework for policy formulation. In addition, the pension service contract is not clearly stipulated in the “Contract Law”, and there is a legal gap in the protection of the rights and interests of the elderly.

2) Insufficient protection of the rights and interests of the elderly

The problem of property inheritance is prominent: property such as real estate is occupied, children refuse to support and so on. Although there are laws such as “inheritance law”, at the specific operational level, detailed regulations and safeguards for the inheritance of property of the elderly are still insufficient.

The performance of support obligations is not in place: some children do not fulfill their support obligations, and there are problems such as mental neglect, resulting in the lack of protection of the lives of the elderly.

Inadequate medical service guarantee: some medical institutions and medical staff use the lack of medical knowledge of the elderly to carry out false propaganda, excessive medical treatment and other behaviors, which damage the health and economic interests of the elderly.

3) Law enforcement and supervision mechanism is not perfect

Enforcement is difficult: In rural areas, law enforcement faces many difficulties. Rural legal resources are scarce, lack of lawyers, legal aid agencies, etc., farmers’ legal literacy is low, and their ability to understand and use the law is limited. In addition, the rural areas are sparsely populated, the law enforcement means are relatively single, and there is a lack of advanced scientific and technological equipment and information technology support.

The supervision mechanism is not perfect: the democratic supervision mechanism in rural areas is not perfect, the main body of supervision is not clear, the supervision power is weak, the supervision mode relies more on the inspection and guidance of higher authorities, and lacks diversified supervision channels and means. In the field of community pension services, the supervision of pension service institutions mainly depends on administrative rules and regulations, and lacks effective legal supervision.

5.3 Analysis of the Current Legal System

China’s current pension legal system is mainly composed of the “Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly”, the “Social Insurance Law of the People’s Republic of China” and related administrative regulations and policy documents, forming a multi-level and multi-dimensional legal framework for old-age security.

1) “Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly”

Main contents: The law consists of 9 chapters and 85 articles, covering family support and support, social security, social services, social benefits, livable environment and other aspects.

Family support and support: clarify the financial support, life care and spiritual comfort obligations of the supporter to the elderly, and stipulate that the freedom of marriage of the elderly is protected by law.

Social security: the provisions of the state to establish an old-age insurance system to protect the basic life of the elderly, pensions and other benefits should be paid in full and on time.

Social services: The government is required to take measures to develop urban and rural community care services and encourage social forces to provide a variety of services for the elderly at home.

Social preferential treatment: governments at all levels should formulate preferential treatment for the elderly according to the economic and social development, and gradually improve the level of preferential treatment.

Livable environment: The state promotes the construction of livable environment and provides a safe, convenient and comfortable environment for the elderly.

The law provides a comprehensive legal basis for the protection of the rights and interests of the elderly, clarifies the responsibilities of the family, society and government in the old-age security, and promotes the construction of the old-age service system.

2) “Social Insurance Law of the People’s Republic of China”

Main content: As the basic law in the field of social insurance, the second chapter “basic pension insurance” is specially set up to make principled provisions on the system mode, insured objects, fund raising and treatment determination of pension insurance.

Institutional model: the establishment of a legal basic pension insurance system for enterprise employees, staff of government agencies and institutions, and urban and rural residents.

Insured objects: clarify the insurance requirements of various groups of people, and promote the universal coverage of the pension insurance system.

Fund raising and treatment determination: It stipulates the raising method of pension insurance fund and the determination mechanism of pension treatment.

Role: It provides a basic legal basis for the operation of the pension insurance system, clarifies the rights and obligations of citizens, employers and governments in the pension insurance, and promotes the standardization and legalization of the pension insurance system.

3) Administrative regulations and policy documents

Administrative regulations: such as the “Interim Regulations on the Collection and Payment of Social Insurance Premiums” and the “National Social Security Fund Regulations” provide operational norms for the specific implementation of the pension insurance system.

Policy documents: The State Council and relevant departments have issued a series of policy documents, such as “Decision on improving the basic old-age insurance system for enterprise employees”, “Opinions on establishing a unified basic old-age insurance system for urban and rural residents”, etc. These documents play an important role in the operation of the old-age insurance system.

5.4 Existing Problems

1) Imperfect legal system

Pension insurance lacks special legislation and higher-level administrative regulations, and some provisions in the current law lag behind the practice of social insurance reform.

2) Law enforcement and supervision mechanism is not perfect

Pension insurance cases lack an independent judicial system, judicial trials rely more on policy documents, and the implementation and supervision of laws need to be strengthened.

3) Inadequate implementation of family support and support responsibilities

Although the law clarifies the obligation of maintenance, in practice, some children do not fulfill the obligation of maintenance.

China's current pension legal system has played an important role in protecting the rights and interests of the elderly and promoting the development of pension security. However, it also faces problems such as imperfect legal system and imperfect implementation and supervision mechanism, which need to be further improved and developed.

6. Strengthen the Legal Regulation of the Protection of the Rights and Interests of the Elderly

The legal regulation of strengthening the protection of the rights and interests of the elderly can start from the following aspects.

6.1 Improving Legislative Work

Refinement of laws and regulations: At present, laws and regulations such as the "Law on the Protection of the Rights and Interests of the Elderly" have problems of general provisions and insufficient operability. The legal provisions should be further refined to clarify the rights and interests of the elderly, such as medical care, pension, housing, etc., to ensure that the law is more targeted and enforceable.

Strengthen the unity of law application: different regions and departments have differences in the implementation of the law on the protection of the rights and interests of the elderly, resulting in inconsistent application of the law. It is necessary to unify the standards of law application through legislative interpretation and judicial interpretation to ensure the standardization of the protection of the rights and interests of the elderly nationwide.

Promote legislative amendments: With the development of social economy, the protection of the rights and interests of the elderly is facing new challenges, such as pension fraud, network infringement and so on. We should amend the Law on the Protection of the Rights and Interests of the Elderly in a timely manner, increase the regulation of new infringements, and improve the legal liability provisions.

6.2 Intensify Law Enforcement

Improve the law enforcement mechanism: At present, when law enforcement departments deal with cases of protection of the rights and interests of the elderly, there are problems such as insufficient law enforcement authority and poor coordination between departments. Relevant departments should be given the necessary law enforcement authority, and a cross-departmental law enforcement coordination mechanism should be established to ensure that cases can be handled quickly and effectively.

Strengthen the construction of law enforcement team: improve the professional quality of law enforcement personnel, regularly carry out legal training for the protection of the rights and interests of

the elderly, and improve the level of law enforcement. At the same time, encourage law enforcement personnel to go deep into the community to understand the actual needs and difficulties faced by the elderly.

Severely crack down on infringement: the infringement of the rights and interests of the elderly, such as fraud, abuse, abandonment, etc., should be punished. Through joint special operations, such as special operations against pension fraud, a high-pressure situation is formed to deter criminals.

6.3 Improve Social Participation

Strengthen the legal awareness of the elderly: In view of the lack of legal knowledge of the elderly, targeted legal publicity and education activities should be carried out. Through community lectures, media publicity and other means, popularize the legal knowledge of the protection of the rights and interests of the elderly, and improve the self-protection awareness of the elderly. Encourage social forces to participate: support social organizations, volunteer groups, etc. to participate in the protection of the rights and interests of the elderly. For example, a hotline for the protection of the rights and interests of the elderly is set up to provide legal advice and assistance services for the elderly.

Strengthen social care: advocate the whole society to respect and care for the elderly, and encourage the elderly to actively participate in social activities. Provide life and spiritual support for the elderly through community mutual assistance, volunteer service and other forms.

6.4 Innovation Protection Mechanism

Establish a diversified dispute resolution mechanism: set up a special protection agency for the rights and interests of the elderly, responsible for accepting and mediating disputes over the rights and interests of the elderly. At the same time, it encourages the settlement of disputes through arbitration, mediation and other ways to reduce judicial pressure.

Play the role of social resources: encourage enterprises and social organizations to participate in the protection of the rights and interests of the elderly. For example, enterprises can provide preferential products and services for the elderly, and social organizations can carry out public welfare projects to protect the rights and interests of the elderly.

Strengthen the application of science and technology: use big data, artificial intelligence and other technologies to establish an information platform for the protection of the rights and interests of the elderly. Through the platform, we can discover and deal with the infringement of the rights and interests of the elderly in time and improve the efficiency of protection.

7. Conclusion

China's current pension legal system has played an important role in dealing with the aging of the population, but in the face of the dynamics and complexity of pension risks, there are still some deficiencies. The dynamic nature of pension risks is reflected in the accelerated development of population aging, changes in the health status of the elderly, and rapid changes in the socio-economic environment. The complexity is reflected in the pension service system involving multiple departments,

a variety of service models and different levels of security needs. The current legal system has played an important role in protecting the rights and interests of the elderly and promoting the development of old-age security, but it also faces problems such as imperfect legal system and imperfect implementation and supervision mechanism. The Social Construction Committee of the National People's Congress has entrusted the China Social Security Institute to complete the "Expert Recommendation Draft of the Pension Service Law of the People's Republic of China" and its instructions. The Ministry of Civil Affairs has also drafted the first draft of the Pension Service Law. It is suggested that the "pension service law" should be included in the priority project of the legislative plan of the 14th National People's Congress, and the law should be formulated and implemented before 2026. This will provide a clearer legal basis for pension services, standardize the pension service market, and protect the legitimate rights and interests of the elderly.

In the future, we should strengthen the empirical research on the implementation of the old-age care law in rural areas, and deeply understand the current situation, problems and needs of rural old-age care services. At the same time, deepen the study of transnational pension legal conflicts, learn from international advanced experience, and promote the improvement of China's pension legal system.

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