

長期照顧服務訴訟之探討 —以民事判決為例

A Preliminary Analysis of Long-Term Care
Litigation - Focusing on Civil Judgments

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摘要

由於接受長期照顧服務的人口迅速增加，近來長期照顧訴訟案件也隨之增加。本文採回溯性分析，由法院法學資料檢索系統資料庫，收集2002年至2021年間的長期照顧糾紛訴訟案件共164件進行分析。統計方法應用描述性統計各變項發生件數與百分比，推論性分析採皮爾森卡方檢定比較兩個不同分類變項間是否相關。結果顯示：受照顧方勝訴率為33.54%，疏失案件數以住宿型機構最多，居家式與社區式照顧訴訟案例

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則自2017年起呈增加趨勢；被告對象以機構雇主最多（98.17%），其次是照服員、護理人員；且受照顧者之共病症數與請求權基礎，與訴訟勝敗訴機率具有統計上意義。本研究預期可協助長照機構管理者與長照人員更深入了解照顧糾紛實證狀況，以提升照顧服務過程的安全和品質。

The number of long-term care litigation cases has increased over the recent years due to an increasing number of people using long-term care services. This study adopted retrospective analysis and collected a total of 164 long-term care dispute litigation cases from 2002 to 2021, derived from the database of Judicial Yuan in Taiwan. Descriptive statistics was used to analysis data which includes numbers and percentage of each variable. Inferential analysis adopted Pearson's chi-squared test to compare whether two different classification variables are related. The results show that the ligation cases of home-based and community-based services have been increasing since 2017; the largest number of defendants are the employers of long-term care institution (98.17%), followed by long-term care personnel and nurses. The win rate of care recipients is 33.54%. Residential institutions are often accused of malpractice. The number of comorbidities and the basis of right of claims are statistically significant with the percentage of wins in lawsuit. This study would offer suggestions that the long-term care institutions and personnel would gain a deeper understanding of the empirical situation of care disputes, so as to improve the safety of the care service and the quality of care.

壹、前言

人口老化是全球人類共同面臨的問題，由於人口結構變化、生育率下降、預期壽命延長等因素，導致人口快速老化¹。隨著年齡漸長與身體機能逐漸老化，「疾病」成為身體健康風險的主要因素，根據2017年國民健康訪問調查顯示，各項慢性疾病與同時罹患多重疾病皆隨著年齡層較高而增加，65歲以上的國人有84.7%至少罹患一種慢性疾病，63.8%至少有兩種以上，而42.8%同時罹患三種或更多的慢性病，且失能百分比約占二至四成。老年人口隨年齡增加，行動受限制狀況急遽上升²，使得長期照顧需求人數逐年增加³。

按長期照顧服務法（下稱長照服務法）第9條規定，長照服務可區分為：居家式、社區式、機構住宿式、家庭照顧者支持服務及其他經中央主管機關公告之服務方式。另按長照服務法第3條解釋，長期照顧係指「身心失能持續已達或預期達6個月以上者，依其個人或其照顧者之需要，所提供之生活支持、協助、社會參與、照顧及相關之醫護服務」。長照的主要照顧人力通常係由照服員和護理人員，作為直接照顧提供者（direct care providers, DCPs），而照顧工作需要「親力親為」（hands-on），包括日常生活中協助被照顧者的身體照顧、日

1 Jasmine Yee, Marina Celly Martins Ribeiro Souza, Natália de Cássia Horta, & Constance Kartoz, *Person-Centered Care for Older Adults Living in Long-Term Care facilities: A Systematic Literature Review*, 5(2) J PUB HEALTH ISSUE PRACT. 184 (2021), <https://doi.org/10.33790/jphip1100184>.

2 衛生福利部國民健康署暨國家衛生研究院，2017年國民健康訪問調查結果報告，<https://www.hpa.gov.tw/Pages/Detail.aspx?nodeid=364&pid=13636>（瀏覽日期：2023年11月14日）。

3 衛生福利部暨國家衛生研究院，2021臺灣高齡健康與長照服務年報，<https://1966.gov.tw/LTC/cp-6487-73399-207.html>（瀏覽日期：2023年11月14日）；Cheryl Heiks & Nicole Sabine, *Long Term Care and Skilled Nursing Facilities*, 8(5) DELA J PUBLIC HEALTH 144-149 (2022), <https://djph.org/wp-content/uploads/2023/01/djph-85-032.pdf>.