

# Draft of the Law on Social Assistance

## 中华人民共和国社会救助法 (征求意见稿)<sup>1</sup>

## Draft of the Law on Social Assistance<sup>2</sup>

### 第一章 总 则

### Chapter I: General Provisions

**第一条** 为了保障公民的基本生活, 促进社会公平与和谐, 根据宪法, 制定本法。

**Article 1** This law is formulated in accordance with the Constitution of People's Republic of China, for the purpose of guaranteeing the minimum livelihood of the citizens and advancing social fairness and harmony.

**第二条** 国家建立社会救助制度, 承担为公民提供社会救助的基本责任, 为开展社会救助提供必要的物质条件和组织保障。

**Article 2** The country shall establish the social assistance system, assume the basic responsibility to supply social assistance to citizens, and provide necessary material and organizational support to social assistance work.

**第三条** 本法所称社会救助, 是指国家和社会对依靠自身努力难以满足其生存基本需求的公民给予的物质帮助和服务。社会救助以居民最低生活保障为基本内容, 并根据实际情况实施专项救助、自然灾害救助、临时救助以及国家确定的其他救助。

**Article 3** Social assistance, within the scope of this law, is defined as the material assistance and service provided by the state and society to citizens who are not capable of meeting their basic need for survival and development on their own. The fundamental part of social assistance is the subsistence allowance scheme. Apart from that, special relief, natural disaster relief, temporary relief and other relief specified by the state will also be provided in accordance with the actual circumstances.

**第四条** 社会救助应当遵循下列基本原则:

**Article 4** The supply of social assistance service shall follow the principles listed below:

- (一) 与经济社会发展水平相适应;
- (二) 与其他社会保障制度相衔接;
- (三) 保障基本生活;
- (四) 鼓励劳动自救;
- (五) 公开、公平、公正、及时。

1. Match the level of social and economic development;
2. Coordinate with other social security systems;
3. Guarantee the minimum livelihood of receivers;
4. Encourage self-relief through work;
5. Be transparent, fair, impartial and prompt.

**第五条** 中华人民共和国公民依照本法享有申请和获得社会救助的权利。申请和获得社会救助的公民应当如实申报家庭收入和财产状况, 接受相关部门的核查。

**Article 5** In accordance with the provisions of this law, citizens of People's Republic of China have the right to apply for and receive social assistance service. Citizens applying for and receiving the service shall report their actual family income and financial situations to competent authorities for verification.

**第六条** 国务院民政部门主管全国的社会救助工作, 财政、教育、卫生、住房和城乡建设等部门在各自职责范围内管理相应的社会救助工作。县级以上地方各级人民政府有关部门在各自职责范围内管理本行政区域的社会救助工作。

**Article 6** The Ministry of Civil Affairs under the State Council leads the social assistance work throughout the country, while the Ministry of Finance, the Ministry of Education, the Ministry of Health and the Ministry of Housing and Urban-Rural Development administrates different aspect of social assistance work in accordance with their respective scopes of responsibility. Competent departments of local governments above county level shall manage the social assistance work of their own administrative regions in accordance with their scopes of responsibility.

<sup>1</sup> Source of the Chinese text: [http://news.xinhuanet.com/local/2008-08/16/content\\_9371443.htm](http://news.xinhuanet.com/local/2008-08/16/content_9371443.htm).

<sup>2</sup> The draft of the law on social assistance was subject of discussion at the Sino-German symposium on China's social assistance legislation, 18.11.2008, in Beijing. Conference report by *Claudius Eisenberg* in this issue, p. 106.

**第七条** 村（居）民委员会或者其他社会组织接受民政部门以及其他社会救助管理部门的委托，协助做好社会救助的申请、调查和审核工作；通过开展社区服务、邻里互助等活动，照料本社区分散供养的贫困孤残人员。

乡、镇人民政府和城市街道办事处对委托村（居）民委员会或者其他社会组织的工作，应当提供必要的经费和工作条件。

**第八条** 县级人民政府劳动行政等有关部门应当为享受最低生活保障和专项救助待遇家庭中有劳动能力的成员提供就业指导、技能培训等方面的服务，并通过职业介绍、扶持从事个体经营、安排公益性岗位、办理劳务输出等方式促进其就业。

**第九条** 社会救助所需资金，由地方各级人民政府列入财政预算，专项管理，专款专用；对财政困难的地区和遭受特大自然灾害的地区，中央财政按照规定给予适当补助。发生重大自然灾害时，各级人民政府民政部门可以开展救灾募捐并接受国内外的社会捐赠。受赠的财产应当按照国家有关公益事业捐赠的规定使用。

各级人民政府财政部门、审计机关对社会救助款物的使用情况依法实施监督。

**第十条** 国家提倡和鼓励社会组织和个人支持、发展社会救助事业，为社会救助事业捐赠资金、物资和提供服务，支持以社会救助为目的的公益性社会组织的发展。

国家鼓励社会工作者、志愿者等参与社会救助工作。国家对在社会救助工作中做出显著成绩的单位和个人，给予表彰和奖励。

## 第二章 居民最低生活保障

**第十一条** 对共同生活的家庭成员人均收入低于当地居民最低生活保障标准且家庭财产状况符合所在省、自治区、直辖市人民政府有关规定的家庭，由县级人民政府民政部门给予最低生活保障。

**Article 7** Residents' Committees, Villagers' Committees and other social organizations are commissioned by the department of civil affairs as well as other administrative bodies of social assistance to assist in the application, investigation and verification of social assistance service, and take care of the poverty-stricken, disabled or helpless residents in their own communities by providing community service and introducing mutual assistance in the neighborhood.

Township authorities as well as sub-district offices shall provide necessary fund and working conditions to Residents' Committees, Villagers' Committees and other social organizations to facilitate their work.

**Article 8** Labor administrative institutions of county-level government shall provide employment guidance, vocational training and other service to members of families receiving subsistence allowance and special relief services, as long as they have the labor capacity. The labor administrative institutions shall also promote the employment of those people by supplying occupational information, supporting family-run business, providing occupations for public interests, and facilitating labor export.

**Article 9** Funds needed for social assistance service shall be earmarked in the budget of local government under special arrangement and shall only be used for social assistance purposes. Poor regions or those stricken by major natural disasters will receive appropriate subsidies from the budget of the central government. In cases of major natural disasters, departments of civil affairs at all levels may conduct disaster relief solicitation and receive domestic and foreign donations. The use of donations shall follow the country's regulations on the donations to public interest undertakings.

The departments of finance as well as audit offices at all levels shall supervise the use of social donations according to the law.

**Article 10** The state advocates the support to social assistance efforts from social organizations and individuals. The state also encourages social organizations and individuals to donate money and materials, and provide service to social assistance undertakings. Meanwhile, the state supports the development of social organizations aiming at this cause.

The state encourages social workers, volunteers and other individuals to participate in social assistance efforts, and awards the organizations and individuals that have made outstanding achievements in providing social assistance service.

## Chapter II: Subsistence Allowance

**Article 11** Families whose per capita income is lower than the local minimum livelihood standard, and whose financial situations fit the standard set by the province, autonomous region, or municipality they reside in, shall have their subsistence guaranteed by the department of civil affairs of their own counties.

**第十二条** 居民最低生活保障标准，由直辖市或者设区的市级人民政府参考上年度当地居民人均食品消费指标，并适当考虑必需的衣物、水电燃煤（燃气）等因素制定，在本行政区域内公布执行。居民最低生活保障标准由设区的市级人民政府制定的，在公布执行前应当报所在的省、自治区人民政府备案。居民最低生活保障标准应当根据经济社会发展水平定期调整。

**第十三条** 申请居民最低生活保障待遇，由户主向户籍所在地的乡、镇人民政府或者城市街道办事处提出，经审核后报县级人民政府民政部门批准。县级人民政府民政部门可以通过入户调查、邻里访问以及信函索证等方式对申请人的家庭收入、财产状况和实际生活水平进行调查核实。必要时，可以查询申请人在银行或者其他金融机构存款或者持有有价证券等情况，申请人以及有关单位、组织或者个人应当配合调查，如实提供相关情况。

**第十四条** 享受居民最低生活保障待遇的家庭，由乡、镇人民政府或者城市街道办事处每月按标准发给最低生活保障金或者实物券，也可以给付实物。

**第十五条** 享受居民最低生活保障待遇的家庭收入和财产状况发生变化的，户主应当及时告知当地民政部门。民政部门应当对取得居民最低生活保障待遇的家庭的收入和财产状况进行核查，及时办理增发、减发或者停发居民最低生活保障待遇的手续。

### 第三章 专项救助

**第十六条** 对共同生活的家庭成员人均收入低于当地居民最低生活保障标准 2 倍且家庭财产状况符合所在省、自治区、直辖市人民政府有关规定的家庭，由县级以上地方人民政府有关主管部门根据需要给予教育、医疗、住房等专项救助。

**第十七条** 申请专项救助，应当向乡、镇人民政府或者城市街道办事处提交医疗、教育、住房等相关情况的证明材料，经审核后上报县级人民政府相关专项救助管理部门审批。

县级人民政府相关专项救助管理部门可以参照本法第十三条第二款的规定，对申请人的收入和财产状况进行核查。

**Article 12** The minimum livelihood standard of an administrative region is set by the local authorities of municipalities or cities with districts in reference to the local residents' average food consumption index of the previous year, while taking into consideration the necessary consumption of clothing, water, electricity and coal (gas). If the standard is set by cities with districts, it should be reported to the relevant provincial or autonomous region's government before being put into effect. The standard shall be adjusted at a regular interval in accordance with the local economic and social development.

**Article 13** The application of subsistence allowance shall be made by the householder to the township authority, or municipal sub-district office of the registered residence of the family, and be reported to and approved by local county authority after verification. The county authority may investigate and verify the family income information, financial situation and real livelihood of the applicant through on-site interviews, neighborhood interviews and letters to ask for proof. If necessary, the authority may check the amount of deposit of the applicant in banks and other financial institutions or the amount of securities owned by the applicant. The applicant, relevant organizations, enterprises or individuals shall provide convenience to the investigation, and supply information in accordance with reality.

**Article 14** Families receiving subsistence allowance shall be given allowance in cash, voucher or materials by the local township authority or municipal sub-district office every month in accordance with the standard set.

**Article 15** Householders whose families are receiving subsistence allowance shall notify the local civil affairs offices in time of the change in the families' income and financial situation. Local civil affairs offices shall re-verify the income and financial situations of families receiving subsistence allowance, and decide on the increase, reduction or suspension of guarantee allowance in time.

### Chapter III: Special Relief

**Article 16** Families whose members' per capita income is lower than 50% of the standard set by the local authorities, and whose financial situations fit the standard set by the province, autonomous region, or municipality they reside in, shall be given necessary special relief in education, medical service and housing by local governments above county level.

**Article 17** Applicants of special relief shall provide proof of their medical, education and housing situations to the local township authority, or municipal sub-district office, which will be reported to special relief office of local county authority for approval after verification.

Special relief offices of county authorities can refer to Paragraph Two of Article 13 of this law to verify the income and financial situations of applicants.

享受专项救助的家庭的收入和财产状况发生变化的,应当及时告知相关专项救助管理部门,办理专项救助增发、减发或者停发的手续。

**第十八条** 符合专项救助标准的家庭子女,在义务教育阶段,县级以上地方人民政府应当免费提供教科书,补助寄宿生生活费;在中等、高等教育阶段,按照国家有关规定提供助学金等救助,有关教育机构可以酌情减免学费。学校及其他教育机构应当配合政府做好教育救助工作。

**第十九条** 符合专项救助标准的家庭成员参加城镇居民基本医疗保险或者新型农村合作医疗支付参保费用有困难的,统筹地区人民政府应当给予帮助,对经城镇职工基本医疗保险、城镇居民基本医疗保险、新型农村合作医疗报销后个人负担医疗费用数额较大的,可以给予适当补助。

**第二十条** 符合专项救助标准的家庭住房困难的,县级人民政府应当按照规定通过提供廉租住房、住房租赁补贴、经济适用住房等方式予以保障,在寒冷地区还应当给予冬季取暖补助。

**第二十一条** 对符合专项救助标准的家庭的法律援助和司法救助,按照国家有关规定执行。

#### 第四章 自然灾害救助

**第二十二条** 各级人民政府对基本生活因自然灾害受到影响的人员提供资金、物资、服务等方面的救助,保障其吃、穿、住、医等基本需求。其他突发公共事件需要采取救助措施的,适用本章的有关规定。

**第二十三条** 县级以上地方人民政府应当在自然灾害预警和自然灾害发生后,紧急疏散、转移、抢救和安置受灾人员,并为其提供食品、饮水、医疗、衣被、临时住所、日常生活用具、心理抚慰等应急救助。

**第二十四条** 自然灾害的危害消除后,受灾地区的各级人民政府应当帮助受灾人员恢复重建因自然灾害倒损的居民住房。恢复重建应当做到因地制宜,科学规划设计,保证建设质量,达到防灾要求。

Families receiving special relief service shall notify the special relief office of the change in the families' income and financial situations in time for the increase, reduction or suspension of special relief.

**Article 18** While receiving compulsory education, children of families that fit the standard for special relief shall be provided text books for free and allowance for boarding fees by governments above county level. While receiving high school education and higher education, they may be provided stipend in accordance with relevant regulations set by the government. Educational institutions may also reduce or exempt their tuition fees. Schools and other educational institutions shall work with the government to provide special relief.

**Article 19** If members of families that fit the standard for special relief cannot afford the premium of the Basic Medical Insurance Scheme for Urban Residents or the New Rural Cooperative Medical Scheme, they shall be provided help by the local government. Despite the reimbursement from the Basic Medical Insurance Scheme for Urban Employees, the Basic Medical Insurance Scheme for Urban Residents or the New Rural Cooperative Medical Scheme, the above-mentioned individuals can still be given financial support if they have to pay a large amount of money for their medical service.

**Article 20** If families that fit the standard for special relief have difficulties in housing, they shall be helped by the local county authorities through Low-Rent Housing Scheme, Allowance Scheme for Housing Rent and Affordable Housing Scheme. They should also be provided warming allowance in winter in cold regions.

**Article 21** The legal and judicial assistance to families that fit the standard for special relief shall be carried out in accordance with relevant regulations set by the government.

#### Chapter IV: Natural Disaster Relief

**Article 22** Governments at all levels may provide money, material and service to people affected by natural disasters to meet their basic demand for food, clothing, housing and medical service. The provisions of this chapter also apply to the relief efforts on other public emergencies.

**Article 23** Governments above county level shall evacuate, relocate, rescue and resettle local residents on the warning or in the aftermath of natural disasters. The victims shall also be provided food, drinking water, medical service, clothing, temporary housing, daily necessities and psychological interference.

**Article 24** After natural disasters, local government shall help its people to restore damaged houses. The restoration shall be conducted in accordance with the local situations, relying on scientific planning, so as to ensure the quality and disaster-resistance capability of the constructions.

**第二十五条** 在自然灾害发生后的当年冬季、第二年春季以及其他困难时期，受灾地区的各级人民政府应当保障受灾人员的基本生活，提供食品、饮水、取暖、衣被、住所和医疗等临时生活困难救助。

## 第五章 临时救助

**第二十六条** 对因交通事故等意外事件或者其他特殊原因，导致基本生活暂时出现较大困难的家庭，由县级以上地方人民政府民政部门给予资金、物资、服务等临时救助。临时救助的标准和内容由省、自治区、直辖市人民政府确定。

**第二十七条** 申请临时救助，应当向乡、镇人民政府或者城市街道办事处提交相关证明材料，经审核后上报县级人民政府民政部门批准。

**第二十八条** 对生活无着的流浪乞讨人员实行临时救助，依照《城市生活无着的流浪乞讨人员救助管理办法》的有关规定办理。

## 第六章 法律责任

**第二十九条** 负责社会救助工作的相关部门和机构及其工作人员有下列行为之一的，由上级机关、主管机关或者所在单位责令改正，依法给予处分；构成犯罪的，依法追究刑事责任：

- (一) 对符合法定条件的救助申请不予受理，或者未依法说明不予受理的理由的；
- (二) 对符合救助条件的拒不签署同意意见，或者对不符合救助条件的故意签署同意意见的；
- (三) 玩忽职守，徇私舞弊，贪污、挪用、扣压、拖欠、虚报社会救助款物，擅自提高或者降低社会救助水平的。

**第三十条** 申请人和救助对象有下列行为之一的，由社会救助管理部门给予批评教育，直至停止救助，必要时责令退回救助款物；情节严重的，处以冒领款项金额或者冒领物资价值 1 倍以上 3 倍以下的罚款：

**Article 25** In the winter, the coming spring and other difficult periods after natural disasters, local government should ensure the basic livelihood of the people affected by disasters, providing food, drink water, warming facilities, clothing, housing and medical service.

## Chapter V: Temporary Relief

**Article 26** In cases of traffic accidents or other special situations, local government above county level shall provide money, materials and service to the victim families who have encountered temporary difficulties in sustaining their basic livelihood. The standard for temporary relief shall be set by provinces, autonomous regions or municipalities.

**Article 27** The applicants of temporary relief shall provide proof of their situations to the local township authority, or municipal sub-district office, which will be reported to the civil affairs office of local county authority for approval after verification.

**Article 28** Temporary relief to vagrants and beggars without living sources shall follow the “Measures for the Administration of Relief for Vagrants and Beggars without Living Sources in Urban Areas”<sup>3</sup>.

## Chapter VI: Legal Liabilities

**Article 29** Social assistance departments, institutions and their staff shall be ordered to correct their behavior or given disciplinary warning by higher level authorities, leading departments or their own organizations according to the law, if they commit the following activities; if their behavior has violated the criminal law, they shall be investigated for criminal liability:

1. Refuse to accept applications for relief that fit the required conditions, or fail to explain the reasons for refusal according to the law;
2. Refuse to approve applications that fit the required conditions, or intentionally approve applications that do not fit the required conditions;
3. Commit negligence, embezzlement, corruption, withholding relief fund and materials, delaying the distribution of relief fund and materials, and falsely reporting on relief fund and materials, or raising or lowering relief standards without authorization;

**Article 30** Applicants and recipients of social assistance, if commit the following behaviors, shall be criticized and warned by relief offices, or suspended of their relief, or even ordered to return the relief they have received when necessary; in cases of severe violations, shall be fined 100% to 300% of the money the value of the materials they have received:

<sup>3</sup> Promulgated on June 20, 2006; State Council Gazette [ 中华人民共和国国务院公报 ] 2003, Issue Nr. 21, p. 10.

(一) 采取虚报、隐瞒、伪造等手段，骗取社会救助款物和服务的；

(二) 救助对象家庭收入和财产状况好转，不按照规定告知社会救助管理部门或者相关机构，继续享受社会救助待遇的。

**第三十一条** 国家机关、企业、事业单位、社会团体、村（居）民委员会以及其他社会组织，应当向民政部门或者相关部门如实提供申请人和救助对象的相关情况。出具虚假证明的，由民政部门或者相关部门提请其上级主管机关或者有关部门给予行政处罚。

**第三十二条** 申请人或者救助对象对于社会救助管理部门或者相关机构做出的不予救助或者调整、停止救助的决定或者行政处罚不服的，可以依法申请行政复议；对复议结果不服的，可以依法提起行政诉讼。

## 第七章 附 则

**第三十三条** 对无劳动能力、无生活来源又无法定赡养、扶养、抚养义务人或者其法定赡养、抚养、扶养义务人无赡养、抚养、扶养能力的公民实施的供养救助，由国务院规定。

**第三十四条** 本法自 年 月 日起施行。

1. Obtain relief fund, materials and services through cheating or faking, hiding and forging information;

2. Fail to notify relief offices or other competent institutions of improvements in family income and financial situations, while receiving social assistance.

**Article 31** Government departments, enterprises, public institutions, social organizations, villagers' committees, residents' committees and other organizations shall provide genuine information to competent departments on applicants and recipients of social assistance. If the above-mentioned organizations have given false information on applicants and recipients of social assistance, they shall be imposed administrative punishment by their leading authorities or competent institutions at the requirement of civil affairs offices or competent departments.

**Article 32** Applicants or recipients of social assistance may ask for administrative reconsideration if they do not accept the decisions of refusing to offer relief, adjusting or suspending relief, or administrative punishments; they may also file the cases for administrative litigation if they do not accept the result of administrative reconsideration.

## Chapter VII: Supplementary

**Article 33** Relief service provided to citizens who have no labor capacity, financial sources, or legal supporters, or whose legal supporters have no capability of feeding them, shall follow the regulations made by the State Council.

**Article 34** This law is in effect as of .

Übersetzung von *Claudius Eisenberg*.