Long-Term Care Insurance in Germany: The Role of the Federal States

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1. Basic Characteristics of the German Long-Term Care Insurance Law

After almost twenty years of discussion over how the risk of "requiring long-term care" can be covered in socio-political terms, the long-term care insurance scheme was put into force in Germany in 1995, thus acting as the fifth "pillar" of the social security system.[1]

The SGB XI, that is, the *Gesetz zur sozialen Absicherung des Risikos der Pflegebedürftigkeit* [Law on Social Insurance Against the Risk of Requiring Long-Term Care] (abbreviated as *Pflegeversicherungsgesetz* or "Long-Term Care Insurance Law") is a federal law, in which basic guidelines and intentions are stipulated. The detailed structure of the long-term care insurance scheme is partly the responsibility of the German federal states, which have each passed state care laws. Therefore, in order to make the picture on the German long-term care insurance system complete, it might be appropriate to include these state laws in the analysis. In this article, an outline of the most relevant state law regulations, with special attention on the state care law of North Rhine-Westphalia, will be given. Before doing this, however, it might be useful to briefly consider the most basic characteristics of the new Long-Term Care Insurance Law:

First, it is important to keep in mind that the Long-Term Care Insurance Law is not designed to guarantee the person in need full care services if that need should arise. It serves only to supplement the assistance provided by relatives or neighbors with home care and, in the event of long-term institutional care, covers the costs of care services (depending on the level of need), but does not pay for board and lodging.[2] Basically, home care is given priority over institutionalized care (§3, clause 1 SGB XI). Further, the importance of prevention and rehabilitation is explicitly stressed (§5 SGB XI).

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[1] For more details see Bäcker *et al.* (2000: 93–107 and 332–399) and Gerhard Naegele's and Monika Reichert's article in this volume.

[2] For more details see Rückert (1999).

Second, for the first time within social legislation in Germany, the attempt has been made to set up free-market instruments in order to gain control of the costs of providing care, which have been rising consistently and will continue to rise, given the forecasts of a steady increase in the numbers of those in need of care. Thus, with §11, par. 2 SGB XI, on the one hand, priority is given to non-profit and private institutions over public institutions. On the other hand, with regard to financing, drastic changes are being forced on public institutions and on voluntary welfare organizations.

With the introduction of the principle of competition into the long-term care sector, the suppliers of services are obliged to provide their services in an economically efficient manner. In this context, it is very important for users to be ensured that there will be no deterioration in services as a result of this principle, but rather that quality standards in long-term care are maintained. Legislation provides this in the form of §80 SGB XI and sees to it that the principles and standards for quality of care, quality assurance, and quality control procedure are fixed at the federal level. They are binding on the long-term care insurance schemes, as well as on their associations and the authorized long-term care facilities. In this way, an attempt is being made to fix quality assurance as an instrument of consumer protection.

2. The Participants in the Process of Care

Those directly involved in long-term care are explicitly mentioned in the law, and the division of responsibilities among them is stipulated in it. As an important principle, long-term care is defined in §8 SGB XI as being a task for the whole society which is performed by "the federal states, local authorities, long-term care facilities, and long-term care insurance schemes [which are working] closely together, including the involvement of the medical service, in order to guarantee efficient, regionally divided, local, and well-coordinated long-term care for people at home and in nursing homes". The care facilities are obliged to take the generally acknowledged level of medical care as a performance standard when providing for those people they are looking after (§11 SGB XI).

A considerable degree of responsibility is attributed to the newly created long-term care insurance schemes, which, as the financial carriers of long-term care insurance, are affiliated to the health insurance schemes. In §12, par. 1 SGB XI, they are endowed with the task of providing care for those insured. They work to this end "[…] closely together with all those involved in nursing, health, or social care work and work

toward eliminating faults in the provision of nursing care". In order to attain this target, the long-term care insurance schemes must form regional and local associations.

The federal states are given the responsibility in §9 SGB XI of "providing an efficient, numerically appropriate, and economically effective care system". As already mentioned, they have also been included, together with the other participants, in the duty of providing long-term care as part of the "task for the whole society" (§8 SGB XI). This very vague description of their responsibilities leads to there being different structural options for the states, as stipulated in their relevant laws, and makes it necessary to coordinate the work of those involved in providing care services. The state long-term care committee is a statutory coordination and advisory body which is stipulated at the state level in accordance with §92 SGB XI: "A state long-term care committee is formed by those involved for each state or for parts of the state in accordance with par. 2 and serves to advise on questions concerning the financing and operation of long-term care facilities"; and "the state long-term care committee comprises an equal number of representatives from the long-term care facilities and long-term care insurance schemes, including a representative of the medical service of the health insurance scheme as well as a representative of the responsible state authority. The committee also consists of a representative from each of the supra-local social security institutions, the registered association of private health insurance, and the local health organizations in the state" (§92, par. 2 SGB XI). The state governments are authorized through by-laws to regulate other matters relating to the composition of the state long-term care committee.

Some critics, however, argue that the significance of the state long-term care committee is limited in two ways. First, the committees are not in a position to control the structure of care even to a small extent, a fact which is particularly applicable to the larger federal states, and second, the committees, in accordance with §92, par. 1, clause 3 SGB XI, only give recommendations which are not binding to any significant degree. Accordingly, the importance of the state long-term care committees depends on the relevant state regulations. In 11 of the 16 federal states, the state long-term care committee is mentioned in the state law on long-term care, in each case in connection with the drawing up of state plans. The degree of participation ranges from those which just have a "listening-in" function, through those which participate, to those who commit themselves to an advisory function (see Eifert and Rothgang 1997).

At the local level, other possible coordinating bodies are represented by working groups or so-called long-term care conferences, which will be described in greater detail below. These are in a better position than

the state long-term care committees to look at the special needs that arise at the local level, and to exercise a small degree of control in respect of the care infrastructure. However, the local authorities are only mentioned explicitly in §8 SGB XI. While other areas of responsibility have been created for other participants elsewhere in the law, the local authorities still have no standard responsibilities of their own. The fact that they at least – albeit very late – found their way into the text of the law, might ensure the traditionally high importance of local authorities in the long-term care sector and should also lend them more weight with regard to future long-term care policies. The SGB XI has led to a reduction in the responsibility of local long-term care policies, which was unavoidable as a result of the appearance of new participants in the long-term care process. Nevertheless, local authorities still play a significant part in long-term care policies: under Article 28 of the *Grundgesetz* [Federal Constitution], they are given the responsibility for providing public services to local communities, whose fundamental responsibilities – including care-related issues – are delegated to the respective local administrative bodies.

With §9 SGB XI, the states were given decision-making powers as to what level of responsibility should be passed on to the local authorities, and the states did indeed use these powers to set up quite different regulations. The state of North Rhine-Westphalia, for example, endows its local authorities with comparatively wide-ranging responsibilities, in order that they can continue working from the basis of existing and proven structures (see Borosch and Naegele 1997). In §2 of this state's Long-Term Care Law (PfG NW; see Ministerium für Arbeit, Gesundheit und Soziales des Landes Nordrhein-Westfalen 1996), the local authorities are handed over the responsibility of safeguarding long-term care: "The districts and urban municipalities are obliged to ensure a range of care services in accordance with this law, which meet local requirements, and take the wide range of financial carriers into account".

3. Long-Term Care Conferences

In order to put the unclear responsibilities of the local authorities into concrete terms in the SGB XI, proposals were made at the "Federal Conference on Quality Assurance for those Requiring Long-term Care" to organize conferences on the subject of long-term care at the local level. Possible tasks for these long-term care conferences were found in the following fields (see Rosendahl and Zängl 1997):

– regular exchange of information and extensive communication on the implementation of the SGB XI,
– planning and further development of care services and linking them up with the other benefits given to retired and disabled people,
– stipulation of quality standards and development of quality assurance instruments,
– influence over the drafting of contracts and the contents of long-term care agreements, and
– advice and training of facilities and long-term care staff or individuals providing long-term care.

The state of North Rhine-Westphalia has taken up these proposals in §5 of its state Long-Term Care Law: In order to fulfill the responsibility of society in accordance with §8 SGB XI and to carry out the tasks stipulated in the PfG NW and in §§8 and 9 of SGB XI, the districts and urban municipalities are obliged to set up conferences on nursing care as coordinating bodies and to take over their management (§5 PfG NW). The tasks of the long-term care conferences include cooperation in ensuring the structure of the care services – including the relevant complementary benefits – and in improving their quality.

These tasks are fixed in concrete terms in the respective rules of procedure of the long-term care conferences at the local level. Four partial goals were set at the meetings of the model project "The Implementation of Long-term Care Insurance Services at the Local Level in North Rhine-Westphalia", which was established in scientific cooperation with the Research Institute for Gerontology: (1) information and transparency, (2) networking, (3) infrastructure planning of long-term care services, and (4) quality assurance.

In accordance with §5, par. 3 of PfG NW, long-term care conferences, in addition to members sent from the district or urban municipality, are made up of representatives of the long-term care facilities, long-term care insurance schemes and the medical service of the health insurance scheme, the local old-age pensioners' representative groups, and the association of local self-help groups for disabled or chronically ill people. There is also the possibility for other institutions connected with long-term care to be included.

The decisions of the long-term care conferences take the form of recommendations. The original idea of using the conference to set up a body whose decisions were binding on all participants could not be put into practice and was therefore modified. The recommendatory character has the advantage of maintaining the autonomy of the participants and easing the problem of proportional representation of the participants (see

Rosendahl and Zängl 1997). The status of the long-term care conferences is reflected – among other things – by the fact that, in accordance with §6 PfG NW, the districts and urban municipalities participate in drawing up the so-called long-term care requirement plans.

Beside the state law on long-term care in North Rhine-Westphalia, provisions have been made in the regulatory statutes of three other federal states for committees in the form of conferences or working groups that coordinate care issues at the local level in order to set up necessary structures for offering a range of services. In the city-state of Hamburg, a long-term care conference can be set up with the aim of ensuring and further promoting the quality of long-term care services. The state of Lower Saxony, too, allows the organization of one or more conferences on long-term care under the provisions of a regulatory statute. However, both state laws do not put the local authorities under any obligation to do so.

By contrast, in the state of Rhineland-Palatinate – as in North Rhine-Westphalia – the setting up of conferences on long-term care at a local level is compulsory. Here, they are called "working groups" that are formed by the district councils and local authorities and are aimed at securing and improving the infrastructure. In addition to North Rhine-Westphalia, Lower Saxony, Hamburg, and Rhineland-Palatinate, three other federal states (Hesse, Saarland, and Saxony-Anhalt) refer in their respective state laws explicitly to coordination at the local level (see Eifert and Rothgang 1997).

4. Requirement Planning

All states make provisions in their laws for more or less detailed assessment and planning of requirements. Moreover, almost all states limit their financial support to those facilities which are recognized as suitable to the needs of the market. The planning of requirements always covers care in nursing homes, in most cases part-time care in such homes and often outpatient care, at least to some extent (see Eifert and Rothgang 1998). Following the establishment of conferences, the planning of requirements is another task the local authorities are assigned to. The purpose is to contribute toward upholding the structure of the care services and thus meeting the requirements stipulated in §9 SGB XI. In the state of North Rhine-Westphalia, the responsibility of drawing up the local requirement plans is passed on to the local authorities (§6 PfG NW).

At the same time, it appears to be a problem that the Long-Term Care Insurance Law emphasizes both market orientation and the need to plan

the structure of long-term care services in order to secure a minimum quality standard. The local authorities' means of control are limited from the outset by this contradiction. They are supposed to intervene in the care sector in order to regulate it, but access to the long-term care market is tied in §72 SGB XI to long-term care agreements, which are concluded between the investors of long-term care facilities and the long-term care insurance schemes. Basically, facilities have a right to be approved for a long-term care agreement, provided they fulfill the legal requirements.

In §2, par. 1 of the regulation governing long-term care requirement plans by local authorities, the "districts and urban municipalities […] shall take into account the planning aids published by the Ministry for Labor, Health and Social Affairs […] when assessing the requirements", in accordance with the state long-term care laws. The planning guidelines are to replace the margins of interpretation which hitherto existed in order to facilitate (1) a region-specific assessment of demand, (2) an assessment of demand appropriate for groups specifically targeted, and (3) a uniform calculation procedure (see Frerichs 1996).

In other federal states like Bavaria, there are no uniform planning guidelines. As a result, the local authorities are forced to draw up their own criteria for the planning of requirements (see Eifert and Rothgang 1998).

5. Advisory Services and Other Functions of the Local Authorities

The Long-Term Care Insurance Law provides advisory services for people requiring long-term care, for those who are at risk of requiring care, and for their relatives. According to §7 SGB XI, "the long-term care insurance schemes […] must support the self-reliance of those insured by providing information and advice on how to lead a healthy life, prevent the need for long-term care in old age, and by encouraging the participation in measures to promote health" as well as "informing and advising the insured parties and their relatives regarding issues connected with the need for long-term care, particularly the services of the long-term care insurance schemes as well as services and benefits from other financial carriers".

The confusion surrounding the long-term care market makes it almost impossible for those concerned to get complete information in order to find out the best combination of services and how best to use them. For the purpose of providing information on services available on the long-term care market, the state of North Rhine-Westphalia demands that "those requiring care, those at risk of requiring care, and their relatives

are advised independently of the supporting authority and informed of the necessary assistance in connection with home care, part-time or full-time institutionalized care, and other complementary benefits […]. The advice is to be given in cooperation with the local authorities, long-term care insurance schemes, and others involved in providing care. Within the scope of the conferences on long-term care, these parties advise each other on a suitable procedure as well as on the form of assistance when selecting a suitable offer of assistance" (§4 PfG NW).

In order to fulfill the contract for advisory service, it is not necessary for the local authorities to set up new advisory services. It is sufficient to point to the various providers at the local long-term care conferences. In this way, those requiring care, those at risk of requiring care, and their relatives can be advised by the local authorities, and existing services can be extended or the advisory services performed in cooperation with welfare organizations. These services can also be delegated to a consumer's advice center, something which is already being practiced. As far as the financial support of these advice centers is concerned, there is some criticism that the financial carriers of the advice centers are sometimes also providers of services. Thus, it is not always ensured that the advice provided is independent of the investors' interests.

In addition to the above-mentioned areas, the local authorities have two other functions with regard to the long-term care insurance scheme: First, the local authorities are affected by the introduction of long-term care insurance as providers of care services. As has already been pointed out, the introduction of long-term care insurance led to a series of changes for the providers of services. The aim now is to generate an economic approach in the way the facilities are run. One way of achieving this goal is to move away from the principle of full cost coverage and toward performance-related, previously agreed remuneration. The other way is to introduce the mechanisms of a free-market economy. Second, the local authorities are affected in their capacity as social security institutions. As such, they are relieved in part of the costs of care, but remain responsible for providing assistance with care and supplementary social security benefits (see Igl 1995).

6. Conclusion

In sum, it can be said that the implementation of the Long-Term Care Insurance Law has brought about a fundamental change in long-term care in Germany. With the orientation toward market structures and the reduction in responsibilities that state authorities hitherto held, both the

general situation of long-term care and the division of responsibilities among those involved in care were fundamentally reorganized.

Those requiring care are now entitled to receive assistance from the social long-term care insurance scheme, allowing them to live in their home environment for as long as possible. The range of responsibilities of the local authorities, on the other hand, which up to now was quite substantial, has been determined by the respective federal state long-term care laws and is therefore not uniform throughout Germany. In the state of North Rhine-Westphalia, local authorities are responsible for an extensive range of tasks in social planning. By saving on welfare costs, some of the load is now taken off the local authorities, which, due to their commitments to financing long-term care in accordance with the Federal Social Assistance Law, see their ability to act increasingly threatened.

To conclude, it can be said that both from the point of view of those concerned and of the changed financing structure, a positive approach has been made by ensuring against the risk of "requiring long-term care" within the scope of a social security scheme. However, it must be emphasized that with the change in the organizational structure of the long-term care sector, transitional problems have arisen and, even more important, enormous adjustments have had to be made on the part of all those concerned. Furthermore, questions still remain unanswered in important areas (e.g., problems in the quality of care and in social care in hospitals and nursing homes).

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