World Health Organization

UHC Law in Practice

Legal access rights to health care

COUNTRY PROFILE

GERMANY

Legal access rights to health care country profile: Germany

(UHC law in practice)

ISBN 978-92-4-000014-8

Suggested citation. Legal access rights to health care country profile: Germany. Geneva: World Health Organization; 2019 (UHC law in practice). Licence: CC BY-NC-SA 3.0 IGO.

Cataloguing-in-Publication (CIP) data. CIP data are available at http://apps.who.int/iris.

Sales, rights and licensing. To purchase WHO publications, see http://apps.who.int/bookorders.
To submit requests for commercial use and queries on rights and licensing, see http://www.who.int/about/licensing.

Printed in Switzerland

World Health Organization

UHC Law in Practice

Legal access rights to health care

GERMANY

Acknowledgements

The country profile was written by Simone Bosch, independent health policy consultant and lawyer based in London (UK) under the technical supervision of David Clarke, Team Leader UHC and Health Systems Law, Department of Health Systems Governance and Financing, World Health Organization, Geneva, with valuable inputs on the German health care system by Nora Gottlieb, Technical University of Berlin and Dr Wilm Quentin, Technical University of Berlin.

Legal recognition of access rights to essential health services, medicines and vaccines

Citizens and residents

Health insurance

It is mandatory for citizens and long-term residents to enrol in a health insurance scheme. Two systems exist: a statutory system, governed by Book V of the Social Security Code (SGB V), and substitutive private insurance. The statutory system consists of over 100 sickness funds which are non-governmental, not-for-profit health insurances that compete amongst each other. Free choice exists as to which sickness fund to join. Around 86% of the population are covered by statutory sickness funds (Gesetzliche Krankenkassen – GKV) and around 11% by private health insurances (Private Krankenkassen – PKV). The remaining population is covered through special programmes for military members, police and other public-sector employees. [1, 2]

It is mandatory for citizens and long-term residents to enrol in a health insurance scheme. Two systems exist.

Civil servants, students, self-employed persons and freelancer[1] can choose whether they enrol in a statutory or private health insurance scheme (75% remain in the statutory health schemes). [1-3] All others (e.g. employees or pensioners) must belong to a statutory health insurance scheme unless they earn a yearly salary exceeding EUR 60,750 (2019), in which case they can choose to join a private health insurance scheme instead of a statutory one. The salary threshold allowing opting-out of statutory insurance is subject to yearly reviews and has been steadily increased in the last years. Non-earning dependents are covered by the statutory insurance schemes [3, 4]. Everybody, irrespective of their yearly salary, can complement statutory insurance with private insurance.

Contributions to the statutory health insurance schemes depend on income with caps on maximum copayments to prevent financial burden. Contributions to private insurance schemes are based on health status, age and gender. Private insurance companies are required to offer a basic rate commensurate with entitlements under the statutory health insurance scheme. [3]

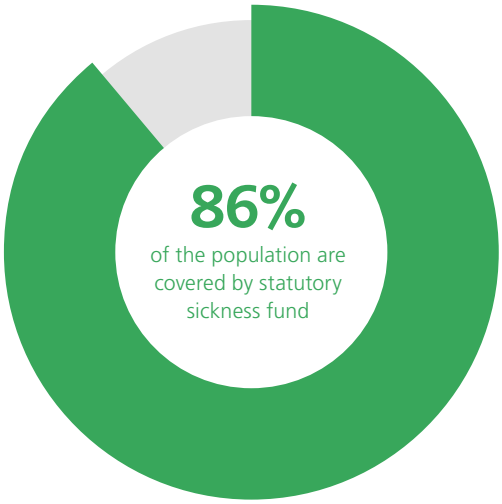
During the first five years of their stay, EU citizens who have not worked in Germany and whose country of origin has not signed the European Convention on Social and Medical Assistance have no right to welfare benefits. A 2016 law (Leistungsausschlussgesetz) defines, instead, basic health entitlements (e.g. urgent medical and dental care and pain management) and facilitate repatriation of the person. EU citizens who work in Germany can participate in the statutory or the private health insurance schemes under the same rules as described above. [5]

Long-term care insurance

Based on Book XI of the Social Security Code (SGB XI), all members of statutory sickness funds are automatically enrolled for long-term care insurance; privately insured persons are required to enrol in private long-term care insurance. Unlike benefits of the statutory health insurance, benefits of the statutory long-term care insurance are only available upon application and approval by the Medical Review Board, a joint operation by sickness funds and long-term care funds. Beneficiaries in need of care of more than 6-month duration are placed in one of five tiers depending on need; shorter care is provided through the statutory health insurance scheme. Beneficiaries can choose between cash benefits to purchase their own care (Pflegegeld) or a range of benefits in kind (Pflegesachleistungen) such as general care (Grundpflege), domestic help, support of carers and care equipment provided at home or in nursing homes. The Federal Ministry of Health is responsible for long-term care and it is funded through equal contributions of employers and employees. A public holiday was converted to a working day to offset employers' additional costs for long-term care insurance. [6, 7]

Non-resident EU citizens

EU citizens moving to Germany in order to seek employment are not entitled to be covered by statutory health insurance. They can purchase private health insurance. [3] Based on EU law, EU citizens loose residency rights and are treated like third-country undocumented immigrants after three months of residency in Germany if they (or their families) are unable to support themselves and have no insurance coverage (e.g. if they are incapable to work or are not able to secure a job). Urgent medical care is covered (Book XII of the Social Security Code). Pregnancy-related care is not considered emergency care and uninsured pregnant EU citizens are advised to return to their home countries. The Ministry of Labour and Social Affairs can cover travel costs. [3, 8] In some regions, there are special programs for uninsured pregnant women (e.g. Geburtenfond in Berlin) in which EU citizens can enroll free of charge for ante, peri and postnatal care. EU citizens who are temporarily in Germany (who did not come to Germany in order to seek medical care) are still covered under their national insurance schemes and have access to the same services as German residents with costs covered by their home country.



Documented non-EU migrants: Asylum seekers

Entitlements to medical care of asylum seekers, refugees, holders of a residence permit for humanitarian reasons, persons with a "temporary tolerated stay" and those obliged to leave – named "asylum seekers" in this document - are regulated by the Asylum Seekers' Benefits Act. They do not have the same entitlements as citizens and residents. During the first 18 months of their stay in Germany, they ought to receive, by law, basic health care services covering:

- treatment for acute illness and painful conditions, and everything necessary for curing, improving or relieving the illnesses and their consequences, including dental care;
- antenatal and postnatal care;
- vaccinations;
- preventive medical tests and anonymous counselling and screening for infectious and sexually transmitted diseases. [9, 10]

What constitutes "necessary" treatment is not conclusively defined in law. It has been interpreted as meaning that not only emergency care, but also treatment for chronic diseases should be included which can equally cause pain. This view has been upheld by courts and medical associations, but local authorities sometimes refuse expensive diagnostic procedures and treatments with the argument that only basic medical care is legally required. [11, 12] The Asylum Seeker Benefits Act includes a flexibility clause saying that further health services - beyond the ones described above - can be granted based on a case-by-case review. This flexibility and discretion is used differently by different persons and localities.

Emergency care is provided directly via emergency departments. Non-urgent care requires a health voucher (Krankenschein) or health insurance certificate in many States and municipalities. They are issued by the competent social services department, allow access to health care and are valid three months within the respective administrative district. Referral to a specialist requires another health voucher. Other States have entered into agreement with statutory health insurance schemes to provide insurance cards to asylum-seekers and to assume responsibility for accounting procedures. Entitlements are the same, but asylum seekers do not have to apply for a voucher each time they need medical treatment [13], and municipalities and states remain the payers.

After 18 months of residency in Germany, asylum seekers are subject to the same conditions as German citizens when accessing the German health care system, but under a separate legal and administrative system (Analogleistungen) as they do not become members of sickness funds. However, the 18-month limitation of benefits can be extended for an unlimited duration for asylum seekers deemed to not have sufficiently cooperated with the asylum determination procedure. [3]

Female asylum seekers are entitled to the same benefit package for pregnancy-related care as citizens and residents are under the statutory health care scheme. [10]

Children of asylum seekers are subject to the same entitlements and system as adults. §6 of the Asylum Seekers Benefits Act stipulates that additional medical services can be granted if they are necessary for the "special needs of children". However, the Act does not define what such services encompass. [10]

Seriously ill foreigners can be granted a "temporary tolerated stay" based on Section 60a.2 of the Residence Act based, amongst other reasons, on medical grounds or on humanitarian grounds (in the case of illnesses that cannot be treated in their home countries). During the duration of the tolerated stay, foreigners cannot be expelled if their medical condition makes expulsion impossible. Foreigners suffering from chronic diseases can be granted a residence permit if a physician certifies travel is not possible and treatment must be continued in Germany; the residence permit terminates once the person is able to travel (Section 25.5 Residents Act). [14]

Undocumented non-EU migrants

Undocumented non-EU migrants and their children have the same entitlements to health care and must follow the same procedures as asylum seekers during their first 18 months of residency in Germany according to the Asylum Seekers' Benefits Act. However, state servants must report undocumented migrants to immigration authorities, thus preventing undocumented migrants to seek care (see below for access barriers). [3, 10]

Undocumented pregnant migrants are afforded a "temporary tolerated stay" six weeks before and eight weeks after delivery during which they cannot be expelled. During this time, they can access care without fearing repercussions. [3]

Benefit package

Legal mechanism to define the benefit package

The Joint Federal Committee (Gemeinsamer Bundesausschuss, G-BA) is the supreme decision-making body of the joint self-administration of doctors, dentists, psychotherapists, hospitals and health insurances in Germany. Its members are the associations representing statutory health insurance physicians, statutory health insurance dentists, hospitals and sickness funds. Representatives of accredited patient organisations participate in the G-BA with consultation and suggestion rights. [15, 16]

The Joint Federal Committee is the supreme decision-making body.

The G-BA determines in detail within the framework of Book V of the Social Security Code (SGB V) which medical and care services, medicines and vaccines are to be covered by the statutory health insurance. Based on SGB V, the G-BA can only include benefits which are "sufficient, appropriate and economic" within the categories of entitlements included in the statutory health insurance. [2, 15]

The G-BA is overseen by the Federal Ministry of Health and its legal basis of work is the SGB V which sets out the G-BA's tasks, competences, mode of operation and financing. In addition, the G-BA's is governed by its rules of procedure (Geschäftsordnung) and code of procedure (Verfahrensordnung) which are both subject to approval by the Federal Ministry of Health. Directives issued by G-BA are legally binding for all actors of the statutory health insurance system (§ 92 SGB V). [15]

Entitlements under the benefit package

Statutory health insurance (GKV) covers preventive services, inpatient and outpatient hospital care; physician services; mental health care; dental care; optometry; physiotherapy; prescription drugs; medical aids; rehabilitation; and hospice and palliative care. In addition to health care benefits, insured persons are entitled to receive sick pay from their sickness fund at 70% of their last gross salary (maximum of 90% of their net salary) from weeks 7 to 78; employers pay 100% of their salary during the first six weeks of illness (§§ 44-51 SGB V). Payment of sick pay by employers is regulated in the Act on Salary Payments during Public Holidays and Illness. [17]

Medical aids and prostheses are included in the benefit package based on directives of the G-BA if their use ascertains the treatment success, prevents a potential health damage or reduces the risk for long-term care. In addition, they must be included in the Catalogue of Medical Aids (Hilfsmittelverzeichnis) of the Federal Association of Sickness Fund (§139 SGB V) which is also responsible to set quality requirements. Manufacturers can apply for inclusion in the Catalogue of Medical Aids, demonstrating fulfilment of quality requirements; if applicable, they must also demonstrate the medical aid's benefit. [15]

Non-prescription medicines considered standard in treating severe diseases are included in the benefit package based on a G-BA directive (§ 34 SGB V). [15]

Health Service going beyond what is defined by law as "sufficient, appropriate and economic" patient care, e.g. medical cosmetic procedures and acupuncture, are excluded from the benefit package (§92 SGB V). These "individual health services" (Individuelle Gesundheitsleistungen - IGel) have to be fully payed by patients and are usually not reimbursed. Certain health care services are not automatically included in the benefit package but can be accessed with prior authorization (e.g. short-term nursing care at home, rehabilitative services). [2, 6, 18]

Occupational accidents and diseases are covered by a statutory scheme governed by Book VII of the Social Security Code (SGB VII). [19]

Legal mechanism to enforce access rights to health care

A system of social courts exists for social insurance disputes, including those related to Germany's statutory health insurance scheme. Sixty-nine (69) social courts exist at lower level and 14 at State level; the last instance is the Federal Social Court. Differential user fees are applicable depending on who the claimant is (insured person, provider, social insurance institution or private-sector actor). Social courts resolve disputes on corporatist decisions (e.g. decisions of sickness funds and long-term care funds), laws and regulations and can be used by patients to sue their statutory sickness fund for benefits they are entitled to. G-BA directives can also be subject of a social court complaint by statutory health insurance actors. [6]

Access barriers

Municipal social service departments issue health vouchers to asylum seekers. Due to their lack of medical expertise, their application of the Asylum Seekers' Benefits Act can be inconsistent and seen as problematic. They can consult with the health office or MDK as needed.

Municipal social service departments issue health vouchers to documented migrants.

Hospitals providing emergency care to undocumented migrants are bound by professional confidentiality as are the social service departments to which they need to report to receive reimbursement. The social service departments must verify, as part of the reimbursement process, that patients are in need, which requires them to contact the immigration authorities. Thus, undocumented migrants rarely seek emergency care for fear of being reported and expelled. [3]

Those not able to access health care through statutory health insurance face economic access barriers, which is a common reason for undocumented migrants for not receiving the required health care in Germany. [20]

Access to counselling, testing and outpatient care for sexually transmitted diseases (STIs) and tuberculosis is open to anyone; however, in practice, only persons with at least a temporary residence permit have access. Additionally, the duty to report some diseases including the patient's name provides another access barrier. [3]