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Deutsche Sozialversicherung
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Coordination of Care – Arguments and Examples

The European Commission's draft COM(2016)815 amending Regulation (EC) No 883/2004 (coordination of social security systems) proposes to regulate care services provided across borders in a new, separate chapter 1a in Title III.

The prerequisite for an independent coordination of care benefits, independent of sickness benefits, would be the existence of, in particular, possibly mutually provided care benefits in kind in the Member States. This is currently not the case in ten Member States (cf. List of cash benefits and benefits in kind, August 2016).

It is good that policy makers could be convinced in the meantime to regulate care together with sickness benefits in the same Chapter 1. The compromise reached March this year should not be called into question in the resumed trialogue negotiations.

In the following, it is assumed that the responsible state is Germany and the state of residence is an EU/EEA state or Switzerland (deviations from this are explicitly named). The Coordination Regulation applies to these countries. The coordination of long-term care benefits within Regulation (EC) No 883/2004 is based on the following principles, which are based on the case law of the European Court of Justice (ECJ):

- German long-term care insurance benefits are generally considered to be sickness benefits.

- Care allowance (and the benefits to be counted as care allowance, such as preventive care) is transferred, i.e. the competent institution (e.g. long-term care insurance in Germany) pays the cash benefit to the beneficiary, even if the same resides in another EU/EEA country or in Switzerland.

- Care benefits in kind are not transferred to another Member State. They may be provided by the institution of the country of residence within the framework of benefit provision, provided that its legislation provides for benefits in kind. Any care benefits in kind claimed in the country of residence are offset against the care allowance.

- The above rules apply to persons who only receive a (e.g. German) pension and reside in another Member State.

- If persons in need of long-term care receive their pensions from both their country of origin and the Member State in which they reside (and, if applicable, other Member States), they may, under certain conditions, continue to be insured voluntarily in the long-term care insurance scheme of the former country of employment (e.g. Germany). In principle, the law of the state in which they reside applies, provided they also receive a pension from that state; otherwise, the law of the Member State in which the person concerned has the most periods of previous insurance applies.

Jurisdictional issues

1. Today, a Member State is always responsible for implementing insurance and bearing the costs of benefits in the event of illness and need for long-term care. Consider the case of a Portuguese who has worked in Portugal and Germany and receives both a Portuguese and a German pension. In old age, he or she moves back to Portugal and is in need of care. In accordance with EU rules, he or she is covered by social security under Portuguese law. Portugal has sickness benefits but no care benefits. If the coordination of care benefits was independent of sickness benefits, Germany would be responsible for care benefits in the example shown, while Portugal would continue to be responsible for the sickness benefits. This divergence of insurance law jurisdiction for the two benefit areas contradicts the EU principle of "one country, one contribution" and must be avoided at all costs. In many other cases, it would be completely unclear to the competent institutions in Germany who would be responsible and contactable for the coordination of care benefits in other Member States. Today, this is always coordinated by the competent institution for sickness benefits in the Member States.

Worse position of the persons concerned

2. If care benefits would be independent of the sickness benefits, for example, pensioners residing in other EU countries would have to be considered solely on the basis of whether they are entitled to care benefits in kind. There are cases where the country of residence does not provide care benefits in kind, but does provide cash benefits (e.g. Belgium). In the other, pension-paying Member State, there could be benefits in kind but no cash benefits (e.g. Netherlands). In this case, the pension recipient would have to pay contributions for the risk area of long-term care requirement, but would not be able to claim either cash or non-cash benefits in the event of need of long-term care in the country of residence.

3. If the risk areas of illness and long-term care are treated separately, the insurance periods completed in the respective insurance classes must also be taken into account separately. Since Luxembourg, the Netherlands and Flanders (Belgium) have independent long-term care insurance schemes besides Germany, only periods of insurance completed in these countries can be mutually taken into account in the long-term care insurance scheme. In many cases, insured persons would be denied access to care benefits due to missing periods of previous insurance. This constitutes a barrier to free movement.

Unequal cost distribution

4. The combination of the entitlement to benefits in kind in the event of need for long-term care, which has an indirect effect on the determination of responsibility for this risk area, and the transferable entitlement to cash benefits especially puts the 16 Member States at a disadvantage due to unilateral cost burdens, which know cash

benefits for long-term care insurance covered by Regulation (EC) No 883/2004; this includes Germany.

Bureaucracy/administrative burden

5. Today, a document (e.g. E 121 or PD S1) can be used to prove entitlement to sickness and care benefits to the institution in the country of residence and to settle the claim with the competent health or long-term care insurance. If sickness and care benefits were to be regulated in separate chapters in the future, separate responsibilities would also arise in the Member States in case of doubt, since long-term care is regulated very differently in Europe (health sector, social sector, welfare). In addition to additional bureaucratic work, this may also create legal uncertainties with regard to responsibilities in specific cases and be an obstacle to mobility for the person entitled to benefits. The bureaucratic burden of administrations also increases as a separate cost accounting group would have to be set up for care benefits with its own business processes, forms, etc.

Gaps that remain despite the reform

6. Italian social security legislation applies to paid or self-employment in another Member State, e.g. Italy. Sickness benefits are covered by the National Health Service in Italy. However, Italy does not recognise care benefits in kind or cash benefits. If the need for long-term care arises, neither care benefits in kind nor cash benefits can be claimed. There is only the possibility of voluntary continued insurance in the (German) long-term care insurance. However, this is a so-called private insurance for reinstatement of health care coverage after suspension, without entitlement to benefits, which only secures claims in the event of a return to Germany by accruing previous insurance periods. If the person returns to Germany, he or she is covered by statutory health and long-term care insurance, provided that sufficient periods of previous insurance can be shown. If a need for care arises after the return, care benefits in kind and cash benefits (provided the other benefit requirements are met) can be claimed.

7. In the case of a posting (e.g. to Italy), the person continues to be subject to the legislation of the sending state, provided that the posting does not exceed the period of 24 months (in exceptional cases, 5 years, if a derogation agreement is concluded). Thus, the German legal provisions apply. The assisting health insurance agency acts within the scope of the benefit provision. If the person becomes dependent on care, the prerequisites for the posting usually cease to apply. This ends. This means that German social law no longer applies, but Italian social law. This does not recognise either care benefits in kind or cash benefits.

What's good is ...

8. ... that in the course of the revision of Regulation (EC) No 883/2004, there should be a clear definition of what care benefits are. It is also good that the reformed coordination regulation provides for a detailed list broken down by benefits in kind and cash benefits in the event of a need for long-term care. The previous list only contains a yes/no indication of whether benefits in kind and/or cash benefits are available in a Member State in case of need for long-term care. In practice, therefore, problems have repeatedly arisen in deciding which benefits should be assigned to the category of benefits in kind or cash benefits in the various Member States. It is to be welcomed that the chapter on sickness benefits now also explicitly mentions care benefits, thus creating more legal certainty and transparency with regard to entitlements to care benefits in cross-border situations.