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WORLD LAW BULLETIN

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Highlights:

Constitution Amended	Lebanon	Issam Saliba
Divorce on the Rise	Iran	Gholam Vafai
Draft Criminal Sentencing Guidelines	U.K.	Clare Feikert
Health Care Funding	Canada	Stephen Clarke
Infectious Disease Law Amended	China	Wendy Zeldin
Law on Export Control	Uzbekistan	Peter Roudik
New Law on Organ Transplantation Reviewed	The Netherlands	Karel Wennink
Public Emergency Protection Law	Japan	Sayuri Umeda
Right to Die with Dignity	France	Nicole Atwill
Terrorism Law Amendments Planned	Indonesia	Constance A. Johnson

SPECIAL ATTACHMENT: [Germany – The Health Care Modernization Act](#)

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WORLD LAW BULLETIN

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WORLD LAW BULLETIN

Table of Contents

AFRICA

Botswana Tourism
Malawi ... Legal Education and the Practice of Law
South Africa .. Recognition of Traditional Medicine

AMERICAS

Canada Health Care Funding
Mexico PRD Bill To Create Universal Pension
Mexico Report on Violations of Migrant Rights
at Southern Border

ASIA

China Decision on Jury System
China Infectious Disease Law Amended
China Provisions on Civil Mediation
Indonesia Terrorism Law Amendments Planned
Japan Public Emergency Protection Law
Japan Two Executions
Taiwan Surrogate Motherhood Law Proposed
Tajikistan Government Supports Religious
Restrictions for Women
Uzbekistan Law on Export Control

EUROPE

Austria Labor Market
Denmark New Law Transfers Control to
Faroe Islands
Estonia Ballot Order
Finland Protection of Integrity in Workplace
France Right to Die with Dignity
Georgia Client Identification for Cash
Transactions
Germany Taxation of Pensions

Iceland Commission Report on Rights
of Homosexuals
Lithuania TV Political Advertising Postponed
The Netherlands New Law on Terrorist Crimes
The Netherlands Restriction of Dual Nationality
Russian Fed. Restrictions on Insider Trading
Sweden .. Law on Organ Transplantation Reviewed
Sweden Supreme Court to Review Lindh
Murder Case
U.K. Draft Criminal Sentencing Guidelines
U.K. Funding Criminal Trials That Collapse
U.K. Large Criminal Assets Recovery

NEAR EAST

Israel Constitutionality of Cut in Pensions
Iran Divorce on the Rise
Lebanon Constitution Amended

SOUTH PACIFIC

Australia Citizenship Law
New Zealand Medical Malpractice Reform

INTERNATIONAL LAW & ORGANIZATIONS

Australia/U.S. . Australian Citizens at Guantanamo
United Nations Food Security Guidelines

SPECIAL ATTACHMENT

GERMANY: Health Care Modernization Act

AFRICA

BOTSWANA – Tourism

On April 6, 2004, the Botswana Tourism Board Act, initially created in 2003, became operational (SUPP. TO THE BOTSWANA GOVT. GAZETTE, Apr. 23, 2004, A81-A90). The Board is responsible for promotion, marketing, and facilitating travel of local and foreign tourists in Botswana.

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

MALAWI – Legal Education and the Practice of Law

On January 14, 2004, the Legal Education and Legal Practitioners (Amendment) Act, No. 9 of 2004 (SUPP. TO THE MALAWI GOVT. GAZETTE, Jan. 21, 2004) substantially amended the Legal Education and Legal Practitioners Act (Ch. 3:04, THE LAWS OF MALAWI, 1968). The Amendment inserts new conditions for the recognition of foreign attorneys that practice in Malawi even for a limited period and in specific cases. The Amendment also insists that treatment similar to that prescribed under it be accorded to Malawian attorneys in foreign countries based on reciprocity.

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

SOUTH AFRICA – Recognition of Traditional Medicine

On September 9, 2004, the South African Parliament unanimously approved the Traditional Health Practitioners Bill. The new legislation creates a statutory council for traditional healers, as well as a registration mechanism for traditional healers, birth attendants, and surgeons. Only those registered with the council will be authorized to practice. Traditional healers will be barred from making diagnosis or treating terminal diseases such as HIV-AIDS and cancer. The bill will be referred to the National Council of Provinces for concurrent approval then will be signed into law by the President of South Africa (Nombini Matomela, *Recognition for Traditional Healers*, SOUTH AFRICA INFO, Sept. 10, 2004, available at <http://www.southafrica.info>; *South Africa: Traditional Medicine Gets Formal Recognition*, ALLAFRICA.COM, Sept. 10, 2004, at <http://allafrica.com>.)

(Ruth Levush, 7-9847, rlev@loc.gov)

AMERICAS

CANADA – Health Care Funding

When Canada's single-payer health insurance programs were created in the individual provinces during the 1960's, the Federal Government began paying approximately fifty percent of their costs. In order to qualify for these Federal reimbursements, the provincial programs had to adhere to standards established under the Canada Health Act. (R.S.C. ch. C-6 (1985), as amended). One of the key provisions of the Canada Health Act is that it requires the provincial plans to only compensate physicians for their services if they do not engage in what is termed "extra billing." Thus, for all practical purposes, Canadian physicians have been

precluded from charging their patients a co-payment or giving special or expedited services to patients who are willing to pay for them.

In recent years, the Federal contributions to the provincial health insurance programs have been cut to less than twenty-five percent. The provinces have found it increasingly difficult to maintain the level of health care they once offered; some provinces have considered reforming their plans in ways that might violate the Canada Health Act, and some extra-billing practices have crept into the system.

Following a Federal-provincial summit, the Government of Canada has agreed to a Can\$41 billion, ten-year medicare agreement. This arrangement will greatly increase Federal contributions to the provincial health insurance programs and will give Ottawa increased leverage in requiring adherence to the standards of the Canada Health Act. For their part, the provinces have agreed to set targets by 2006 for acceptable waiting times and to establish a common set of criteria to measure those times. One exception is that Quebec will establish its own goals. The Federal Government plans to enact legislation to require the provinces to adhere to the agreement in order to be eligible for Federal funds, but analysts will be looking to see whether this legislation might allow the provinces to meet certain statutory goals without significantly reducing waiting times for all types of medical services, particularly emergency services. (Alexander Panetta, *Paul Martin's Health Care Gamble Pays Off—for Now*, CANADIAN PRESS, Sept. 16, 2004, available at http://news.yahoo.com/news?tmpl=story&u=/cpress/20040916/ca_pr_on_na/first_ministers_43.)

(Stephen Clarke, 7-7121, scla@loc.gov)

MEXICO – PRD Bill To Create Universal Pension

The Party of the Democratic Revolution (PRD) announced that during the current legislative period they will submit a bill proposing the creation of a universal, guaranteed pension for all workers, including those who form the “informal economy,” such as ambulatory vendors. President Vicente Fox has already considered this proposal to be viable. Under the bill, all of the elderly would collect a minimum universal pension as a starting point. Each worker would then be allowed to build on that amount, based on personal savings and employer contributions. (Lilia Saúl y Nayeli Cortés, *Impulsa PRD Pensión Universal*, EL UNIVERSAL, Sept. 16, 2004, <http://www.eluniversal.com/>.)

Norma Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – Report On Violations of Migrant Rights at Southern Border

The Mexican Senate Committee on Human Rights presented in an ordinary session a report of its recent visit to the southern border of the country as part of its migrant protection program.

The report includes statements to the Committee by the consuls of El Salvador and Guatemala concerning discrimination, mistreatment, trafficking in persons, and other irregularities that Central American migrants often suffer at the hands of the Mexican authorities at the Mexican southern border. The consuls also reported that the police and immigration agents act with impunity in systematically extorting and stealing Central American immigrants' possessions.

In addition, non-governmental organizations have requested the intervention of the Committee before Mexican municipal, state, and federal authorities in order to stop the violation of the human rights of Guatemalan immigrants. (Lilia Saúl y Nayeli Cortés, *Se Violan Derechos de los Inmigrantes*, EL UNIVERSAL, Sept. 14, 2004, at <http://www.eluniversal.com>.)

(Norma Gutiérrez, 7-4314, ngut@loc.gov)

ASIA

CHINA – Decision on Jury System

The Standing Committee of China's National People's Congress issued a decision on August 28, 2004, that has an impact on the country's judicial system. It will become effective May 1, 2005. The Decision on "perfecting the people's juror system" collects in one instrument provisions on the jury system that had been scattered in three procedural laws, the Organic Law of the People's Court, and several Supreme People's Court judicial interpretations. The Decision systematizes the regulations on jury service and clarifies what qualifies and disqualifies an individual juror and the term, rights, and obligations of those serving as jurors. Jurors in China have the same rights as judges, except that they may not be presiding judges, under this Decision. The Supreme People's Court has required the completion of lists of potential jurors by all courts at various levels of jurisdiction by the time this Decision comes into force. There are plans to pass a law on the jury system in the future and to update related legislation. (19 ISINOLAW WEEKLY, Aug. 30-Sept. 5, 2004, from webmaster@isinolaw.com.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)

CHINA – Electronic Signatures Law

On August 28, 2004, the Standing Committee of the National People's Congress approved the Law on Electronic Signatures. The Law grants electronic signatures the same legal status as handwritten signatures in business transactions. An online signature must identify the signer and verify the contents of the transmitted electronic file in order to be deemed valid. Third-party firms, actively supervised by the government, will be responsible for confirming a signature's authenticity. The final version of the Law also legalizes electronic contracts with public utility companies, except for notices of service cancellation from the utilities to customers. In a draft version of the Law, such electronic utility contracts had been excluded. (*China Regulations: Electronic Signatures Legalised*, EIU VIEWSWIRE, Sept. 14, 2004, Lexis/Nexis, News Library, 90days File.)

(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Infectious Disease Law Amended

The Standing Committee of the National People's Congress passed amendments to the Law on the Prevention and Control of Infectious Diseases on August 28, 2004. In general, the revised Law stresses prevention and early warning in regard to and isolation of victims of contagious disease and places greater responsibility on medical institutions to monitor its spread and prevent infection in hospitals. Other highlights of the revised Law are as follows:

- The government must guarantee funds for infectious disease prevention. Central government aid is to be provided for major projects in areas unable to fund the projects on their own and to those afflicted with disease who cannot afford treatment.
- For the first time, the Law includes a separate clause specifically targeting AIDS, to the effect that governments at various levels should strengthen prevention and control of the disease and take measures to prevent its spread.
- Blood donation centers and companies that make biological products are required to strictly abide by state regulations, in order to guarantee the quality of the blood supply and of blood products.
- Discrimination against people infected with contagious diseases, carrying contagious disease pathogens, or suspected of having a contagious disease is prohibited.
- Sanctions are prescribed for responsible authorities who commit acts not in accordance with law such as concealing, making false statements about, or delaying reporting on the spread of a contagious disease.

(NPC Standing Committee Passes Revised Law on Contagious Diseases, XINHUA, Aug. 28, 2004, FBIS online subscription database; *China Regulations: Infectious Disease Law Strengthened*, EIU VIEWSWIRE, Sept. 14, 2004, Lexis/Nexis, News Library, 90days File; Ministry of Health of the PRC website, text of the revised law in Chinese, available at http://www.moh.gov.cn/news/sub_index.aspx?tp_class=B9.)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)

CHINA – Provisions on Civil Mediation

The Supreme People’s Court promulgated the “Provisions of the Supreme People’s Court on Certain Issues Concerning Civil Mediation of the People’s Courts” on September 16, 2004, effective as of November 1, 2004. They represent the first systematic treatment of the mediation process, even though various separate measures on mediation have long been in place.

The Provisions clearly stipulate that people’s courts may mediate civil cases in the first and second instances and on retrial after a plea has been made and before a judgment has been passed. They may also mediate civil cases upon the consent of both parties concerned before a plea is completed. They require that people’s courts mediate in those cases that may be solved through mediation. The Provisions contain several stipulations on reconciliation agreements, including, for example, one that specifies the format and content of such agreements and one that sets forth the circumstances under which the courts will not confirm the agreements. The Provisions also apply to mediation of incidental civil litigation cases arising from criminal cases. (*The Judicial Interpretation Makes Civil Mediation of the Courts Clear*, 21 ISINOLAW WEEKLY 1 (Sept. 13-19, 2004), from webmaster@isinolaw.com.)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)

INDONESIA – Terrorism Law Amendments Planned

Indonesia's Minister for Justice and Human Rights, Yusril Ihza Mahendra, stated on September 17, 2003, that the government has drafted amendments to the Law on the Elimination of Terrorism (Law No. 16, 2003). The proposed revision is designed to fill what the government views as gaps in the original legislation. However, the Minister predicted that the draft amendments would not be discussed before the end of the current legislative term.

Among the proposed changes is the addition of a penalty of twelve years in prison for those convicted of aiding the perpetrators of terrorist actions by not reporting planned activities of which they had knowledge to the authorities. If the known actions actually take place, the penalty would be increased to a maximum of fifteen years. Another change would permit the arrest of members of terrorist groups, even if they are not themselves involved in terrorist acts. A further area of revision would be the controversial article on the use of intelligence reports. The Minister argues they should not be used as evidence to initiate a criminal investigation, but rather as preliminary evidence for further intelligence work. Furthermore, he argued that intelligence officers should not be given the same powers of arrest and interrogation as the police, in order to avoid situations of abuse.

Additional changes proposed include regulations governing the sale of explosive materials, with sanctions for vendors who do not follow requirements, and specifications on trial procedures using teleconferencing. (*Indonesia's Justice Minister Views Amendments to Terrorism Law*, Tempo website, Sept. 20, 2004, Lexis/Nexis, Asiapc Library, Curnws file.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

JAPAN – Public Emergency Protection Law

The Public Protection Law, which was promulgated on June 18, 2004, focuses on the protection of civilian lives and assets in the event of an emergency. The Law went into effect on September 17, 2004. On September 7, 2004, the government named 160 organizations, including commercial airlines and private broadcasters, as "designated public entities" from which it can demand cooperation during war-related emergencies. The government will also formulate a basic policy that will designate concrete civilian evacuation procedures and make plans for drills and the stockpiling of equipment and resources to prepare for emergencies. (*Firms Named for Wartime Cooperation*, JAPAN TIMES, Sept. 8, 2004, at <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040908a6.htm>.) (Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – Two Executions

Two convicts were hanged on September 14, 2004. One of them was Mamoru Takuma, who killed eight children and wounded thirteen other students and two teachers at an elementary school. The Osaka District Court sentenced Takuma to death in August 2003. This execution was very unusual because it took place less than a year after the death penalty was finalized. Most convicts spend years on death row; in recent years, the shortest time spent waiting for execution was four years. As is the usual practice, the Ministry disclosed the hangings but not the identity of the convicts. Executions are not announced until the day they take place, a practice that human rights groups have said is inhumane. (*Ministry To Continue*

Withholding Names of Those Hanged, JAPAN TIMES, Sept. 18, 2004, at <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040918b3.htm>.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

TAIWAN – Surrogate Motherhood Law Proposed

On September 18, 2004, at a civic meeting to debate the issue, Chen Chien-jen, the head of Taiwan's Department of Health (DOH), announced that the DOH plans to draft a law on surrogate motherhood in the next six months. The law is to be drafted in accordance with the consensus reached at the meeting that surrogacy would be allowed under certain conditions. The conditions are that only married couples with viable eggs and sperm will be allowed to seek surrogacy and that such couples will include those in which the wife was born without a uterus or whose uterus has lost the reproductive function due to disease and couples who have tried artificial insemination but failed. To qualify to become a surrogate mother, a woman will have to be over the age of twenty and have given birth to children, pass a physical and psychological evaluation, and, if married, obtain her husband's consent. The participants failed to reach consensus on whether surrogate mothers should be paid for their services and on whether the National Health Insurance should cover infertility treatment and surrogacy. (*CNA: Surrogate Motherhood To Be Permitted Conditionally*, Taipei CENTRAL NEWS AGENCY, Sept. 18, 2004, FBIS online subscription database.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAJKISTAN – Government Supports Religious Restrictions for Women

On September 9, 2004, the government Committee for Religious Affairs, an agency in charge of coordinating relations between state and religious organizations, issued a statement saying that it will not interfere in the conflict between a number of Tajik women's organizations and the national Council of Religious Scholars (Shuroi Ulamo), which disapproved of women saying prayers in mosques and prohibited women from attending Friday services. The Council, whose decisions are binding for Tajik clerics, ordered a restriction on access to mosques on Fridays to men only. Political parties and other non-government organizations attempted to challenge this decision in the court, because it is contrary to the country's Constitution and laws guaranteeing equal rights to all citizens. However, the Committee for Religious Affairs, which represents the administration that exercises total control over law enforcement and the judiciary, advised the courts not to accept these cases because, as it stated in the conclusion, "known Tajik clerics provided convincing theological proofs against participation of women in prayers in mosques." (INTELLINEWS TODAY, Sept. 13, 2004, at <http://site.securities.com>.)
(Peter Roudik, 7-9861, prou@loc.gov)

UZBEKISTAN – Law on Export Control

On September 17, 2004, the Law on Export Control entered in force. It is aimed at implementing international obligations undertaken by Uzbekistan on non-proliferation of weapons of mass destruction (WMD) and other weapons through control of export of goods, equipment, technology, works, services, and intellectual property that can be used in production of WMD or delivery systems from the territory of Uzbekistan. The Law charges the Cabinet of Ministers with the duty to prepare the list of objects subject to export control and to make decisions on export permits. The Agency for Foreign Economic Relations of

Uzbekistan is designated as the authorized body for export control. (RFE/RL NEWSLINE, Sept. 21, 2004, at [http://www.rferl.org/.](http://www.rferl.org/))
(Peter Roudik, 7-9861, prou@loc.gov)

EUROPE

AUSTRIA – Labor Market

A Labor Market Reform Act was enacted on July 14, 2004 (BUNDESGESETZBLATT I No. 77/2004). Some of the reforms became effective on August 1, 2004, while others will become effective on January 1, 2005. The Act aims at reducing unemployment by changing the conditions under which an unemployed individual must be willing to accept retraining or new employment, in order to remain eligible for unemployment insurance compensation. Under the Act, an unemployed worker who has not found suitable work for 100 days must be willing to undergo retraining and to accept work that pays twenty percent less than his previous wage; after 120 days of unemployment, the person must accept a wage of twenty-five percent less than the previous one. Each unemployed worker must be given extensive counseling and retraining opportunities, and employers must report planned layoffs to the labor offices as early as possible.

(Edith Palmer, 7-9860, epal@loc.gov)

DENMARK – New Law Transfers Control to Faeroe Islands

As of January 1, 2005, a new law will come into effect transferring control of certain administrative policy areas from the Danish Government to the Faeroe Islands. The new law will stipulate that the Faeroe Islands will take control of policy areas currently under Danish control, except those policies relating to sovereignty, which includes defense policy, foreign policy, and questions regarding citizenship. (*PM Promises Takeover Law to Faeroe Islands*, The Official Window, DENMARK.DK, available at http://www.denmark.dk/servlet/page?pageid=80&dad=portal30&schema=PORTAL30&fsiteid=175&fid=95424&page_id=6&feditor=0&folder.p_show_id=95424)

(Linda Forslund, 7-9856, lifo@loc.gov)

ESTONIA – Ballot Order

On September 20, 2004, the Estonian legislature, the Riigikogu, unanimously passed amendments to the Electoral Law that establish a lottery procedure to determine the order of placement of the various parties on the electoral ballot. The drawing will be organized by the National Election Commission in the presence of representatives of all parties registered to participate in elections, within one week after the end of the registration period. According to the earlier procedure, parties were listed at all polling stations according to the order in which they submitted registration papers. Because of this procedure, Tallinn police investigated a number of incidents of party representatives engaging in fistfights with each other or camping outside the Election Commission entrance. The amendment applies to all elections, including parliamentary, local, and European Parliament. (BALTIC NEWS SERVICE, Sept. 22, 2004, [http://www.securities.com/.](http://www.securities.com/))

(Peter Roudik, 7-9861, prou@loc.gov)

FINLAND – Protection of Integrity in Workplace

New rules have been added to the Law on the Protection of Integrity in the Workplace, effective in October 2004. Three areas of the law have been updated: the use of narcotics in the workplace, the use of camera surveillance in the workplace, and the treatment of information concerning employees' e-mails.

An individual seeking employment may be asked to produce a certificate from a drug test during the application process if he or she has been appointed to perform a task that requires carefulness, reliability, independent judgment, or good ability to react. The assignment must be of such a nature that, if performed under the influence, it would put people's lives and health in jeopardy. During his employment, an employee is obliged to produce a certificate from a drug test if there is reason to believe that he is under the influence or dependent on drugs.

An employer may use camera surveillance in work areas to secure the safety of the employees and others, to protect property, and to monitor the work process. The surveillance must be as open as possible and cannot be of a specific individual, nor can it be used in bathrooms, locker rooms, or employee lounges.

The objective of the new rules on protection of employees' e-mails is to secure the confidentiality of such e-mails. If needed, an employer can open an employee's e-mail message if the e-mail belongs to the employer and the employee is prevented from opening it himself. Alternatives have to have been made available to the employee, such as automatic delivery to another employee while on vacation or leave. Only if the employer has tried to obtain permission to open the e-mail from the employee and failed can he open such a message. (Finnish Ministry of Labour Home Page, *Nya spelregler för narkotikatest för arbetstagare, kamerabevakning och skydd av e-post*, Press Release 11.8.2004, Aug. 11, 2004, available at <http://www.mol.fi/svenska/aktuellt/press1108200401.html>.)

(Linda Forslund, 7-9856, lifo@loc.gov)

FRANCE – Right To Die with Dignity

A parliamentary committee has recommended that terminally ill patients should be given the right to refuse treatment in certain circumstances. The Committee also stated that, active euthanasia, when a doctor or any other person acts deliberately to cause a patient death, should not be legalized. This parliamentary committee was set up after the death of Vincent Humbert, a 21-year-old fireman who was paralyzed after a car crash and wrote a book, *I Ask for the Right to Die* (see 11 W.L.B. 2003).

A draft bill on the subject will be discussed by Parliament before the end of the year. If passed, the bill will allow patients with incurable conditions to ask doctors to be left to die and be given only palliative treatment. The draft bill would modify only the medical ethics code. The Penal Code would not be changed and active euthanasia would still be punished. The draft bill contains many safeguards: patients must be conscious and make a written request to suspend treatment and a second doctor's opinion must be obtained to ensure that the patient's decision is really made on their own free will and is "thought through." In the cases of unconscious patients who have not left instructions in their wills, members of their families would have the right to make requests on their behalf. However, only a college of doctors

would then have the right to make the decision to suspend treatment. (*Parliamentary Commission Report On Accompanying the End of Life*, no. 1708, National Assembly website, at <http://www.assemblee-nationale.fr/12/rap-info/i1708-t1.asp>.)
(Nicole Atwill, 7-2832, natw@loc.gov)

GEORGIA – Client Identification for Cash Transactions

On September 1, 2004, amendments to the Law on Currency Control and Currency Regulations entered into force. They require submission of a passport by all customers at currency exchanges, casinos and other cash-based businesses. Names of all individuals who exchange money in Georgia must be recorded and reported to the oversight authorities. The amendment is designed to combat money laundering and decrease the informal economy in the country. The authority of the Financial Monitoring Service of the Georgian National Bank was substantially expanded and will extend to control of financial operations conducted by currency exchanges, gambling operators, notaries, banks, and other credit organizations. Violation of financial operations rules will be prosecuted by police, who now have the right to fine violators and jail them in the case of repeat violations. All transactions exceeding an amount equal to US\$15,000 must be reported to the National Bank. (THE MESSENGER, Aug. 28, 2004, <http://dlib.eastview.com/sources/article.jsp?id=6637995>.)
(Peter Roudik, 7-9861, prou@loc.gov)

GERMANY – Taxation of Pensions

The Act Reforming the Taxation of Pension Contributions and Pension Income was enacted on July 5, 2004 (BUNDESGESETZBLATT I at 1427). It will become effective on January 1, 2005. The Act creates initial changes in the taxation of pension contributions and receipts that will continue to be phased in until 2040. By that time, a total shift will have been made from taxing the income from which retirement contributions are made while exempting from taxation the attributable pension receipts, to exempting earned contributory income from taxation and taxing merely the pension receipts. Reform became necessary after a decision of the Federal Constitutional Court (Mar. 6, 2002, docket number 2 BvL 17/990) found the different tax treatment of social security pensions and government pensions unconstitutional.

The Act affects the taxation of social insurance pensions, private enterprise pensions, life insurance, and pension funds. The most significant immediate change is an increase in the taxation of the old age and disability pensions that are received under the social insurance system (*Besondere Steuerlast für Berufsunfähige*, FRANKFURTER ALLGEMEINE ZEITUNG, Sept. 6, 2004, at 13.)
(Edith Palmer, 7-9860, epal@loc.gov).

ICELAND – Commission Report on Rights of Homosexuals

In 2003 the Icelandic Prime Minister set up a commission to investigate the rights of homosexuals in Iceland. The commission recently released its report, which states that the rights of homosexuals in Iceland must be strengthened. The commission recommends that same-sex couples who live together be given the same rights as heterosexual couples who live together. To this end, the commission recommends that same-sex couples, who at present can only adopt stepchildren, be allowed to adopt children. The commission also requests that the National Church of Iceland change its policy and allow same-sex couples to be married in the

Church. (*Gay Rights*, ICELANDREVIEW – ONLINE, available at <http://www.icelandreview.com/default.aspx?nodeID=60536>)

(Linda Forslund, 7-9856, lifo@loc.gov)

LITHUANIA – TV Political Advertising Postponed

On August 26, 2004, members of the Seimas (Lithuania's parliament) decided to postpone the introduction of previously adopted amendments to the Law on Political Advertising until after the upcoming parliamentary elections in October and the drafting of amendments to laws regulating television broadcasting. The Members decided that a pre-election ban would be impracticable because most of the political parties had already concluded advertisement agreements with the TV stations. The amendments provide for the organization by the Central Election Committee of special programs to cover political campaigns and for compensation of TV advertising expenditures from the national budget. (THE BALTIC TIMES, Aug. 27, 2004, available at EastView Universal Database, <http://dlib.eastview.com>.) (Peter Roudik, 7-9861, prou@loc.gov)

THE NETHERLANDS – New Law on Terrorist Crimes

On August 10, 2004, the Law on Terrorist Crimes came into effect, amending the Criminal Code and various other laws. Recruitment of fighters for Islamic armed struggle or jihad and conspiracy to commit a serious act of terrorism will each be a separate punishable criminal offense under the Law. The maximum prison sentences for crimes such as homicide, gross maltreatment, hijacking, or kidnapping will be higher if they have been committed with a "terrorist purpose." In most cases, this will involve a fifty percent increase in the maximum sentence, but when a crime already carries a prison sentence of at least fifteen years, such as homicide, the maximum sentence will be raised to life imprisonment or twenty years.

The recruitment of fighters for jihad has been made a punishable criminal offense by amending the Criminal Code. Recruitment of fighters for the armed struggle will be punishable even if it is unclear whether the persons recruited want to contribute to the armed struggle in any organized way. The maximum sentence will be increased from one year to four years' imprisonment. In addition, conspiracy to commit serious acts of terrorism will be made a separate punishable criminal offense. The aim is to make criminal prosecution possible against terrorist networks and movements that operate together in a loose and fluctuating manner. (Law of June 24, 2004, STAATSBLAD VAN HET KONINKRIJK DER NEDERLANDEN (official law gazette of the Kingdom of the Netherlands) 290.) (Karel Wennink, 7-9864, kwen@loc.gov)

THE NETHERLANDS – Restriction of Dual Nationality

The Council of Ministers of the Kingdom of the Netherlands has agreed to the proposal of the Minister of Alien Affairs and Integration to restrict dual nationality wherever possible within the scope of the international law obligations of the Netherlands. The amendment of the Law on Aliens will particularly concern a foreign man or woman married to a Dutch national who requests Dutch nationality. The alien will have to renounce his or her original nationality in order to acquire the Dutch nationality. This will increasingly lead to a situation where a family will have one nationality, as a result of which the children will only

have the Dutch nationality. The measure is meant to promote the integration of immigrant families into Dutch society.

Another proposed amendment to the Law would aid in the fight against terrorism. The amendment will enable the authorities to withdraw the Dutch nationality of a person inflicting serious harm on essential State interests, with particular reference to terrorist activity. The Council of Ministers agreed to send the bills to the Council of State for advice. The text of the bills and the Council of State's advice are made public upon submission to the Second Chamber of Parliament. (Council of Ministers, *Press Release*, Aug. 27, 2004, at <http://www.regering.nl/>.)

(Karel Wennink, 7-9864, kwen@loc.gov)

RUSSIAN FEDERATION – Restrictions on Insider Trading

On September 21, 2004, the Ministry of Finance issued a regulation barring the release of important corporate news until after the daily close of the stock exchange. The purpose of this act is two-fold – to stabilize the market and protect it from the influence of crises and to restrict insider trading, which is not a criminal offense in Russia. Even though a bill regulating insider trading was introduced to the Duma (legislature) in October 2000, no further action on it has been undertaken. At present, insider trading is regulated by non-binding corporate requirements. Comprehensive legislation on exchanges and exchange activity has also not yet been passed. (SKRIN-NEWS, Sept. 23, <http://www.securities.com/>.)

(Peter Roudik, 7-9861, prou@loc.gov)

SWEDEN – Law on Organ Transplantation Reviewed

The Swedish Government proposes in Bill 2003/04:179 that the law on transplantations be amended. Three main areas can be identified in the bill. First, the Government proposes the establishment of a National Board for organ and tissue donations. The Board will inform the public about organ donations, influence public opinion, and serve as a knowledge pool for questions relating to organ and tissue donations. Second, the hospitals where organ and tissue transplantations are performed will have access to a medical doctor responsible for donations and also to a nurse responsible for contacts with relatives. Lastly, the agreement between Apoteket AB (the Swedish pharmacy) and the Swedish Government will be regularly updated. The agreement also will, according to the Government, expressly state that the pharmacies are to inform the public about organ and tissue donations. (Government Bill 2003/04:179, Proposition 2003/04:179, *Transplantationer räddar liv, available at <http://www.regeringen.se/content/1/c6/02/91/59/2e6dc29c.pdf>*.)

(Linda Forslund, 7-9856, lifo@loc.gov)

SWEDEN – Supreme Court To Review Lindh Murder Case

On September 11, 2003, the Swedish Foreign Minister Anna Lindh passed away following a knife attack one day earlier. On September 24, 2003, Mijailo Mijailovic was arrested for the murder. The district court found Mijailovic guilty of murder and sentenced him to life in prison. Mijailovic appealed the decision to the Court of Appeals, and on July 8, 2004, the Court found Mijailovic guilty of murder but sentenced him to psychiatric care. The decision was based on an evaluation made by the Committee for Forensic Psychiatry, Social and Medical Legal Questions, which found that Mijailovic was suffering from a mental disorder

at the time of the murder. Both the prosecution and Mijailovic have appealed the Court's decision to the Supreme Court. The prosecution wants Mijailovic's sentence to be changed to life in prison. Mijailovic wants to be acquitted on the basis that the murder was not premeditated and to be sentenced for manslaughter instead of murder. On September 13, 2004, the Supreme Court decided to review the case but did not reveal the motivation behind its decision. (Tidningarnas Telegrambyrå, *Tredje rättegång om Lindh*, SVENSKA DAGBLADET, Sept. 13, 2004, available at http://www.svd.se/dynamiskt/inrikes/did_8125940.asp.) (Linda Forslund, 7-9856, lifo@loc.gov)

UNITED KINGDOM – Draft Criminal Sentencing Guidelines

New draft criminal sentencing guidelines that aim to improve consistency in sentencing offenders across the country have been published by the Sentencing Guidelines Council. The most controversial of the guidelines is that of a substantial reduction in sentence for those who plead guilty to an offense at the first reasonable opportunity. It is designed to encourage offenders to plead guilty as soon as possible to save the time and expense of a trial and to spare the victims the emotional upset that is caused by a trial.

It has been stated that to ensure the safety of the public, early release would not be made available to dangerous offenders who pose a risk to society and that in cases where there was overwhelming evidence indicating the defendant's guilt, there would not be a large reduction in sentence. On a sentence of fifteen years for murder, the guidance given had stated a guilty plea at first reasonable opportunity could result in a reduction of five years. (Sentencing Guidelines Panel, *Reduction in Sentence for a Guilty Plea*, June 2004, available at http://www.sentencing-guidelines.gov.uk/c_and_a/advice/guilty_pleas/guiltypleas.pdf (visited Sept. 24, 2004); Department for Constitutional Affairs, *New Draft Sentencing Guidelines*, Sept. 20, 2004, available at <http://www.dca.gov.uk/judicial/judges/sentencing.htm> (visited Sept. 24, 2004); Robert Verkaik, *Criminals Offered Shorter Sentences in Return for Guilty Plea*, Sept. 21, 2004, available at <http://news.independent.co.uk/uk/legal/story/story.jsp?story=564000> (visited Sept. 24, 2004).) (Clare Feikert, 7-5262, cfei@loc.gov)

UNITED KINGDOM – Funding Criminal Trials That Collapse

A new law has recently come into force that can require any person who causes the collapse of a criminal trial through serious misconduct, for example prejudicial reporting, juror misconduct, or juror intimidation, to pay any costs for both sides that were incurred and wasted during the trial. This law stems from a series of criminal trials that collapsed allegedly as a result of prejudicial media coverage and cost the taxpayers tens of millions of dollars. Under the new law, magistrates, the Crown Court, and the Court of Appeal can make cost awards to third parties. (The Costs in Criminal Cases (General) (Amendment) Regulations 2004, SI 2004/2408, available at <http://www.legislation.hmso.gov.uk/si/si2004/20042408.htm> (visited Sept. 24, 2004); Department for Constitutional Affairs, *New Law Aims to Prevent Criminal Proceedings from Collapsing*, Sept. 15, 2004, available at <http://www.gmn.gov.uk/environment/detail.asp?ReleaseID=129666&NewsAreaID=2&NavigatedFromDepartment=Tr ue> (visited Sept. 24, 2004).) (Clare Feikert, 7-5262, cfei@loc.gov)

UNITED KINGDOM – Large Criminal Assets Recovery

The Assets Recovery Agency, a body established under the Proceeds of Crime Act 2002 to investigate and recover proceeds from unlawful activities, has been granted a civil recovery order in the Belfast High Court for criminal assets in excess of £1.2 million (approximately US\$21,648,000). The civil recovery order allows the Assets Recovery Agency to recover property that was obtained through unlawful conduct through civil proceedings in which the guilt of the party is not an issue, only whether the property originated from unlawful conduct. The property in this case was obtained from an individual involved in Loyalist paramilitary activity and drug dealing. There was considerable and effective inter-agency cooperation between the Assets Recovery Agency and the Police Service of Northern Ireland. The recovered assets will go into the recovered assets incentivization fund and be used to tackle crime and for community purposes. (Assets Recovery Agency, *Over £1.2 Million in Criminal Assets Recovered*, Sept. 20, 2004, available at http://www.assetsrecovery.gov.uk/downloads/press_release200904.pdf (visited Sept. 24, 2004); Home Office, *Government Welcomes £1.25 million Asset Recovery*, Sept. 20, 2004, available at http://www.homeoffice.gov.uk/n_story.asp?item_id=1080 (visited Sept. 24, 2004).) (Clare Feikert, 7-5262, cfei@loc.gov)

NEAR EAST

ISRAEL – Constitutionality of Cut in Pensions

On September 9, 2004, the Supreme Court entertained a petition against the legality of a four percent cut in the economic plan for the year 2002. According to the petitioners, the cut and its extension to the end of 2006, as part of the economic plan for the year of 2003, harms the rights of those entitled to an old-age pension to dignity, social security, and property.

The majority opinion rejected the petition and held that the right to a minimal existence is an integral part of the constitutional right to dignity. Nevertheless, the opinion states that the cut does not harm the right to a minimal existence, because it is not applicable to the population of the elderly that is entitled to a special pension for assurance of income. Rather, it applies to all elderly people entitled to a regular old-age pension. (H.C. 5578/02 Manor v. Minister of the Treasury, Nevo legal database by subscription, available at <http://www.nevo.il/>.) (Ruth Levush, 7-9847, rlev@loc.gov)

IRAN – Divorce on the Rise

Unemployment, poverty, and addiction, prevalent among the younger generation, have taken a toll by disrupting more families and causing more divorces. A report on the marriage and divorce statistics of the last year, published by the Social Injuries Office, indicates that the divorce rate has accelerated alarmingly. According to the statistics, around 70,000 cases of divorce were reported last year. The number of divorce cases was high in comparison with the 400,000 marriages that took place in the same period, a divorce rate of almost 13.5%. (*Hamshari*, Sept. 11, 2004, at <http://www.hamshahri.org/hamnews/1383/830621/news/ejtem.htm>.) (Gholam Vafai, 7-9845, gvaf@loc.gov)

LEBANON - Constitution Amended

On September 3, 2004, the Lebanese Parliament convened in Beirut and amended article 49 of the constitution for the sole purpose of extending the term of the president, Emile Lahoud, for a three-year period. (*Lebanese MPs Give Lahoud Three More Years*, ASIANEWS.IT, Sept. 24, 2004, at <http://www.asianews.it/view.php?l=en&art=1415>.) (Issam Saliba, 7-9840, isal@loc.gov)

SOUTH PACIFIC**AUSTRALIA - Citizenship Law**

On September 9, 2004, Australia's High Court upheld the constitutionality of the Migration Act 1958 and Parliament's power to determine who is an alien and who is a citizen. The case involved a child born in Australia in 1998 to parents who were illegal immigrants from India and were being held in detention. Australia's citizenship law was amended in 1986 to provide that children born in Australia were citizens only if one parent was a citizen or permanent resident. Lawyers for the child argued that her birth in Australia meant that she could not be considered an alien. The Court ruled five to two that Parliament had the power to define such concepts as "alien" and that the child could be deported along with the rest of her family. An expert on constitutional law was quoted as saying that the decision marked "the death of implied rights" and observed that the present High Court is "very literalist in their approach." (*Singh v Commonwealth of Australia* [2004] HCA 43 (Sept. 9, 2004); *The Age* (Melbourne), Sept. 10, 2004, at <http://theage.com.au>.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

NEW ZEALAND - Medical Malpractice Reform

New Zealand has virtually abolished tort actions in favor of a national accident compensation scheme. Under this scheme, persons who are injured at or away from work while using a product, receiving a service, or in almost any type of accident may apply for government benefits in a manner that is very similar to the workers' compensation programs that cover only work-related injuries in other countries. New Zealand's accident compensation scheme applies to medical misadventures, but not to illness. Thus, a person who is unable to return to work following treatment is eligible for compensation if his disability is the result of the treatment, but not if the disability is caused by the illness that was treated. The government recently reviewed the medical mishap criteria and found that they were arbitrary and dependent upon a finding of fault, which is at odds with a no-fault system. Therefore, a bill has been introduced to reform this system. Under the bill to create an Injury Prevention, Rehabilitation, and Compensation Amendment (No. 3) Act, (47th Parl., 1st Sess. No. 165-1), which received a first reading on August 5, 2004, the current medical error and medical mishap definitions would be replaced. The Accident Compensation Commission would look instead to see if a claimant suffered a treatment injury. Injuries that are anticipated will not be covered. Abnormal reactions will generally be covered, as well as such errors as the misreading of tests. New Zealand does not provide coverage for what are considered to be the results of resource allocation decisions made by physicians. (Stephen F. Clarke, 7-7121, scl@loc.gov)

INTERNATIONAL LAW AND ORGANIZATIONS

AUSTRALIA/UNITED STATES – Australian Citizens at Guantanamo

On September 5, 2004, Australia's Minister for Foreign Affairs and the Attorney-General announced that, following the recent appearance of David Hicks, one of two Australian citizens in U.S. custody, before the U.S. Military Commission at the Guantanamo Bay camp for suspected terrorists, the Australian government would discuss improvements to the conduct of the Military Commission with the United States. Australian officials observed Mr. Hicks' preliminary hearing on August 25, 2004, and identified a number of concerns, including such matters as the presumption of innocence, the right to silence, the right to defense counsel (including an Australian legal consultant), and a guarantee that those indicted would not face the death penalty. They also noted the lack of agreed rules of procedure, which could lead to uncertainty for both the prosecution and the defense. Foreign Minister Downer had instructed the Australian Ambassador in Washington to discuss these issues.

The only non-governmental Australian observer, a Melbourne criminal law barrister who was sent by the Law Council of Australia, released a report on September 15, 2004, saying that a fair trial was "virtually impossible." Mr. Rex Lasry, QC, described the members of the Military Commission as lacking independence from the U.S. government and lacking impartiality. He stated that four of the five lacked any legal qualifications; normal rules of evidence were "all but absent," with coerced confessions admissible; and there was no genuine appeals process. The Australian government rejected Mr. Lasry's findings, with the Attorney-General commenting that the report "adds very little to what we already knew." (Australian Government, Attorney-General's Department, Joint Media Release 164/2004, *Government To Discuss Improvements to Guantanamo Bay Military Commission Process*, Sept. 5, 2004, at <http://152.91.15.12/agd/WWW/MinisterRuddockHome.nsf/>; *Sydney Morning Herald*, Sept. 16, 2004, at <http://www.smh.com.au.>)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

UNITED NATIONS – Food Security Guidelines

The United Nations Food and Agriculture Organization (FAO) Committee on World Food Security, at a meeting in Rome, adopted a document upholding the right to food. The FAO guidelines, which are voluntary in nature, are the result of two years of negotiations. They are designed to aid the global effort to cut the hunger rate around the world in half by 2015, a goal set at the World Food Summit in 1996. The guidelines contain suggested actions nations could take to ensure there is enough food for their citizens. Giuliano Pucci, Legal Counsel to the FAO, described the guidelines as the first time an intergovernmental body has agreed on "what the right to food really means." In a report issued last year covering the period from 1999 to 2001, the FAO stated that more than 840 million people around the world were under-nourished. (*UN Committee Adopts Right-To-Food Guidelines After Lengthy Negotiations*, Sept. 24, 2004, UN News Service, UNNews@UN.org.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

W.L.B. SPECIAL ATTACHMENT

GERMANY: THE HEALTH CARE MODERNIZATION ACT¹

In November 2003, Germany enacted a Health Care Modernization Act² to reform the social health insurance system. Most of the measures took effect on January 1, 2004, but some are scheduled to be implemented by January 2006. The main goal of the reform is to keep the social health insurers solvent until the year 2010 through various cost-cutting measures, while an intensive debate on more far-reaching solutions to the problems confronting the entire social security system is being carried out.³ Yet the Health Modernization Act also includes some innovations that aim at improving the efficiency and quality of health care.

Fundamentals of the Health Care System

The Health Care Modernization Act does not touch on the fundamental principles of the German social health insurance system that are embodied in Title 5 of the Social Code.⁴ Now, as before the reform, statutory health insurance, which is the legal term for the social health insurance scheme, is mandatory for wage earners up to a certain income threshold, and compulsory coverage is also extended to the unemployed, university students, farmers, artists, and the retired. As a result, ninety percent of the German population is covered by the statutory health insurance scheme, while the remaining ten percent is either privately insured or covered under separate programs such as the one for civil servants.⁵ The system is financed primarily through premiums paid equally by employers and employees, but federal funding is provided to pay for the individuals that are covered but do not contribute to the system.⁶

The benefit level is prescribed by law and further implemented by various agreements and guidelines. Medical treatment, coverage for drugs and other medicinal products, preventive care, and rehabilitation are provided. The insured receive equal benefits, irrespective of their level of contribution, and family coverage is automatic and does not cost extra. There is no rationing of benefits for the elderly, who receive whatever benefits are medically indicated, including expensive surgery such as hip replacements.

¹ Prepared by Edith Palmer, Senior Legal Specialist, JD, Univ. of Vienna, MCL, George Washington University, Member, DC Bar.

² Gesetz zur Modernisierung der gesetzlichen Krankenversicherung [GMG], Nov. 14, 2003, BUNDESGESETZBLATT [BGBl, official law gazette of the Federal Republic of Germany] I at 2190.

³ T. Hiddemann & S. Muckel, *Das Gesetz zur Modernisierung der gesetzlichen Krankenversicherung*, 57 NEUE JURISTISCHE WOCHENSCHRIFT 7 (2004).

⁴ Sozialgesetzbuch Fünftes Buch, Gesetzliche Krankenversicherung [SGB V], Dec. 20, 1998, BGI I at 2477, as amended.

⁵ H. Nadolski, Budgeting and Rationing in the German Health Care System, 18 J. CONTEMP. HEALTH L. & POL'Y 697 (2002); K. Friedman, Solidarity and Self-Governance: What Americans Still Could Learn from Germany's National Health Insurance Program, 13 WIS. INT'L L. J. 245 (1994).

⁶ STATISTISCHES JAHRBUCH 2002 FÜR DIE BUNDESREPUBLIK DEUTSCHLAND 454 (Wiesbaden, 2002).

The system is administered by over 300 nonprofit health insurers that are known as sickness funds;⁷ they serve either the population of a region, or the workers of an enterprise, or certain occupational groups. However, five years ago it became possible for the insured to change sickness funds, and this has introduced some level of competition among them, because each sickness fund determines the premium rate for its insured and also has some decision-making power on the benefits to be granted. The latter, however, are heavily prescribed by law and by various consensual and regulatory schemes.⁸

The sickness funds, through their associations, make agreements with the associations of physicians, hospitals, and other providers and suppliers. These agreements, in conjunction with various governmental rules, determine the compensation for physicians, the services and drugs that are covered by the system, as well as some aspects of drug pricing.⁹

Scope of the Reforms

Cost-containment measures are the backbone of the reform, and among these are increased co-payments, drug pricing rules, and exclusion of heretofore granted benefits. In addition, various structural changes have been enacted, some of which deviate from some of the traditional concepts of German health care. Among these are incentive programs, a cautious introduction of managed care, and the transformation of the German health card into a portable patient's record. The quality of care is addressed through some of these structural measures, as well as by other newly introduced requirements.

Co-Payments

A significant change has been the introduction of a ten-Euro fee for consulting a physician. The fee is payable for the first visit to a physician or ambulatory care unit within each three-month period, thus amounting to forty Euros per year at a maximum. For dental treatments, however, a separate ten-Euro fee is levied per quarter year. The purpose of this co-payment is to reduce the number of consultations for minor ailments and the consulting of multiple physicians for the same condition. For this reason, the co-payment does not apply to recommended preventive examinations.¹⁰

The surcharges for prescribed drugs have been changed from a fixed rate per package size to a charge of ten percent of the price of the item, with a minimum of five Euros (US\$6), a maximum of ten Euros (US\$12), and no coverage for items costing less than five Euros. The daily co-payment for stationary care has been raised from nine to ten Euros.¹¹

⁷ The number of sickness funds has been decreasing steadily in recent years, *id.*

⁸ SGB V § 194.

⁹ A. Hänlein, *Rechtsquellen im Sozialversicherungsrecht* 258 (Berlin, 2001).

¹⁰ Bundesministerium für Gesundheit und soziale Sicherung, *Die Gesundheitsreform* at <http://www.diegesundheitsreform.de>.

¹¹ SGB V § 61.

Exclusion of Benefits

A significant change is the categorical exclusion of over-the-counter drugs from the benefits catalog. To some extent this exclusion will be overridden by a list of specific drugs that will be contained in a consensually prepared guideline.¹² Prior to the reform, over-the-counter drugs were covered unless they were specifically excluded by the so-called negative list. Now a “positive list” names only the items that are covered. The new guidelines must take into consideration the opinions of the practitioners of certain categories of alternative medicine, among them herbalists and naturopaths, as was also required under previous law. Nevertheless, it appears that the change in the law will reduce coverage of over-the-counter drugs and herbal medications.

The reform also excludes from coverage drugs in support of sexual potency, hair growth, weight reduction, or smoking cessation.¹³ Reductions have also been made in dental benefits, in particular by excluding dental prosthesis from coverage.¹⁴

Drug Pricing

The statutory encouragements for the dispensing of generic substitutes and cheaper parallel imports have been strengthened. However, they may still be overridden by the prescribing physician’s insistence on a brand-name drug. Reference pricing continues to be in effect, and the law now extends the possibility of its use to patented drugs.¹⁵ Moreover, patients now have an incentive to ask for cheaper generic drugs to reduce their co-payment. Now, as before the reform, rebates are imposed on pharmacies and manufacturers, and for 2004, the manufacturer’s rebate has been set at sixteen percent of the drug price.¹⁶ In addition to the drug pricing regimes within the statutory health insurance scheme, the Health Care Modernization Act has also reformed various drug pricing regimes that apply generally to pharmacists and manufacturers.¹⁷

Premium Rebates and Similar Incentive Programs for the Insured

An interesting innovation is the introduction of monetary incentives for insured persons who agree to participate in health-improvement programs. This is the first time in German social health insurance that insurance principles are used to differentiate the contribution rate of the insured within a fund. The incentives may take the form of waiving the physician consultation fee or granting tangible rewards such as paid spa weekends. Premium rebates are only possible for those who are insured on a voluntary basis. This group of the insured may also opt for an insurance policy that allows for deductibles.¹⁸

¹² SGB V § 34.

¹³ *Id.*

¹⁴ SGB §§ 55-59.

¹⁵ SGB V § 129.

¹⁶ SGB V, §§ 130 and 130 (a).

¹⁷ GMG, arts. 20-26.

¹⁸ SGB, § 53, 54, and 65 (a).

Incentives can be granted for those who take physical examinations at recommended intervals, for those who agree to consult a specialist only upon referral by their primary care physician, for those who have chronic illnesses and who agree to entrust their care to special programs for the chronically ill, and for those who enroll in various managed care programs.

Health Cards

Most sickness funds have already distributed health cards to the insured, but until now these have served strictly administrative purposes.¹⁹ The Modernization Act provides for an expansion of the health card, to be used as an electronic patient record. The new card is to be instituted by 2006, and in keeping with German principles of data protection the use of the data will be limited to health care providers involved in the treatment of the patient. The patient has the right to view his health record.²⁰

Structural Changes

Perhaps the most significant structural change in the health insurance system is the introduction of managed care, which the sickness funds now can offer under various conditions. This is a novelty in German practice because it breaks with two time-honored traditions. One of these is the right of the insured to freely choose their physicians.²¹ The other is the separation between ambulatory and stationary care that exists within the social health insurance scheme.²² The principle of free choice of one's physician is reconciled with managed care by making the latter optional while encouraging it through rebates.

The separation between ambulatory and stationary care generally has the effect that patients cannot be cared for by their physician while undergoing stationary care and that the follow-up care of a patient who has been operated on in a hospital is not carried out by the surgeon but by the referring physician. Within the framework of a managed care plan, it now has become possible to deviate from this strict separation between the roles of hospitals and self-employed physicians by giving hospitals more opportunities to provide ambulatory care.²³

Other structural changes include a new compensation scheme for physicians, to be implemented by 2007; caps on the administrative expenditures of the sickness funds, thereby increasing governmental supervision over them; rules on the staffing of the provider associations, to contain costs; and a new consensual apparatus to make various regulatory decisions.²⁴

¹⁹ R. Libera, *The European Healthcard: The Time To Legislate Is Now*, 24 B. C. INT'L & COMP. L. REV. 186 (2000).

²⁰ SGB V § 291 a.

²¹ SGB V § 76.

²² J. Krude & A. Hänlein, *Gesetzliche Krankenversicherung* 428 (Baden-Baden, 2003).

²³ SGB V, §§ 140-140 (d); Hiddemann & Muckel, *supra* note 3.

²⁴ Hiddemann & Muckel, *id.*

Quality of Care

An improvement in the health of the insured may be expected from the incentive programs that stress preventive care and physical fitness. The care of the disabled has been enhanced by a statutory requirement to accommodate the special needs of the disabled and the chronically ill,²⁵ and physicians are now obligated by statute to take continuing education courses.²⁶ In addition, various institutions have been set up to monitor quality of care issues.

Results of the Reform

During the first six months of 2004, the sickness funds have registered a surplus, after incurring deficits throughout the preceding decade. The main reason for the surplus was the introduction of co-payments for consulting a physician and the increases in patient surcharges for drugs. The positive financial results have caused the sickness funds to lower the average level of contributions from 14.4% of wage income at the beginning of the year to 14.2% by mid-year.²⁷

The reform has caused much consternation in the pharmaceutical industry, reflected in their reactions ranging from fear of lower profits to threats of relocation. In view of the overall financial success of the reform, German authorities are contemplating easing up on planned or already existing strictures in reference pricing. It appears possible that fixed prices for medications for pain, hypertension, and stomach ulcers may not be instituted at the beginning of 2005, and a reduction of the drug manufacturers' rebate to the sickness funds from 16% to 6% is also being discussed.²⁸

Future Reforms

Although the 2004 health care reform has achieved what was intended, the long-term prognosis for the system remains uncertain, and there is consensus that more far-reaching reforms of a more fundamental nature will be needed to provide health care in the twenty-first century. There is disagreement, however, on how to salvage the system. Whereas the currently governing coalition of political parties favors solutions that would strengthen the social component of the system by raising the income threshold for mandatory participation in the system and are even considering levying a tax on unearned income, the opposition parties favor solutions based on actuarial principles that would be funded by premiums based on expenditures projected for the individual person insured.²⁹

²⁵ SGBV, § 2 (a).

²⁶ SGB V, § 95 (d).

²⁷ *Stattlicher Überschuss in den gesetzlichen Krankenkassen*, FRANKFURTER ALLGEMEINE ZEITUNG (FAZ) 1 (Aug. 21, 2004).

²⁸ S. King, *German Government Still Undecided over Reference Pricing System*, WORLD MARKETS ANALYSIS, July 8, 2004, Lexis/Nexis, News Library, Curnws File.

²⁹ C. von Weizsäcker, *Einkommensteuer II oder Einwohnerversicherung*, FAZ 13 (May 29, 2004).

Conclusion

The Health Modernization Act has managed to reduce the cost of social health care and promises to reduce the deficits of the social health insurers. In addition to employing the proven cost containment measures of co-payments and benefit reduction, the Act also pioneers new concepts that allow for more flexibility for the insured, the insurance funds, and the health care providers. The experiences gained in implementing the ongoing reform may prove helpful in forging new concepts that will allow for a more thorough innovation in social health care that should address the problems caused by rising health care costs and the demographic pressures of an aging population.