

Right to Health and Access to Health Services

13th Session of the UN Open-ended Working Group on Ageing

Submission February 2023

Answers of the German Institute for Human Rights to the guiding questions for the focus areas of the 13th session of the Open-ended Working Group on Ageing:

Right to Health and Access to Health Services

National legal and policy framework

1. What are the legal provisions and policy frameworks in your country that guarantee the right of older persons to the enjoyment of the highest attainable standard of physical and mental health, including access to promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services?

As a contracting party to the ICESCR, Germany is obliged to fulfill Article 12 which guarantees every person the right to the enjoyment of the highest attainable standard of physical and mental health. Germany is also a party to the (revised) European Social Charter (Art. 11) and the Charter of Fundamental Rights of the European Union (Art. 35, Right to Healthcare).

German Basic law (*Grundgesetz*, GG) does not explicitly include a right to health. However, the 'right to life and physical integrity' (Art. 2 GG, basic law) is sometimes interpreted to encompass a right to health and health care when it is linked to the principle of the welfare state (Art. 20 GG).¹

Citizens and long-term residents are required to enroll in either statutory health insurance (SGB V) or substitutive private insurance.

In 2012, the goal of "healthy aging" was adopted as the seventh national health goal. It was later included in the Prevention Act (*Präventionsgesetz*) adopted in July 2015. Germany is also implementing the Madrid International Plan of Action (MIPAA) and submitted a country report in 2022, which includes a chapter on "Healthy and Active Ageing in a Sustainable World".²

¹ https://www.jura.fu-berlin.de/fachbereich/einrichtungen/oeffentliches-recht/emeriti/pestalozzac/materialien/staatshaftung/Pestalozza_Bundesgesundheitsbl_2007.pdf, p. 1115.

² <https://unece.org/sites/default/files/2022-01/mipaa20-report-germany%20%281%29.pdf>.

2. What steps have been taken to ensure that every older person has access to affordable and good quality health care and services in older age without discrimination?

The Prevention Act provides for prevention measures for persons in need of long-term care. The long-term care insurance funds have been mandated to provide health promotion services in partial and full inpatient care facilities.

The Intensive Care and Rehabilitation Enhancement Act (*Intensivpflege- und Rehabilitationsgesetz, IPReG*) of October 29, 2020 has facilitated the access to geriatric rehabilitation.³

3. What data and research are available regarding older persons' right to health and access to health care and services? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor the full realization of the right to health of older persons.

The German Ageing Survey is a nationwide representative cross-sectional and longitudinal survey of the German population aged over 40. It portrays the percentage of older persons who perceived age discrimination in different areas by age, level of education and sex. The survey from 2014 shows that the older people are more likely to experience age discrimination in medical care.⁴

4. What steps have been taken to provide appropriate training for legislators, policymakers, health and care personnel on the right to health of older persons?

Geriatric care has been expanded over the years but is still insufficient. While geriatrics as a subject is now taught at more universities than in the past, a further expansion of university representation and research is indispensable.⁵

Progressive realization and the use of maximum available resources

5. What steps have been taken to align macroeconomic policies and measures with international human rights law, to use maximum available resources for the realization of older persons' right to health, such as through expanding fiscal space, adopting targeted measures and international cooperation?

In 2020, the government has adopted its new strategy on global health aimed at contributing to the coordination and cooperation of all actors. The health of vulnerable population groups shall be promoted, older persons are however not explicitly mentioned.

SDG 3 of the German Sustainable Strategy aims at ensuring a healthy life for people of all ages and promoting their well-being and is aligned with the Agenda 2030 of the UN.⁶ It also includes indicators, for example on premature mortality, but not explicitly on older persons.

Equality and non-discrimination

³ <https://www.bundesgesundheitsministerium.de/praevention-aeltere-menschen.html#collapse-control-100>.

⁴ https://link.springer.com/content/pdf/10.1007/978-3-658-12502-8_22.pdf?pdf=inline%20link, p. 338.

⁵ https://www.springermedizin.de/emedpedia/dgim-innere-medicin/struktur-der-geriatrischen-versorgung?epediaDoi=10.1007%2F978-3-642-54676-1_444.

⁶ <https://www.bundesregierung.de/resource/blob/974430/1940716/4bfd89ceea3b1e4367918384b8839a37/2021-07-26-gsds-en-data.pdf?download=1>, p. 149ff.

6. What are the challenges faced by older persons in their enjoyment of the right to health, including the impact of intersectional discrimination and inequality based on age, gender, disability and other grounds?

Studies have indicated differences in diagnosis and treatment modality depending on age, that older people have more difficult access to (geriatric) rehabilitation facilities, and that institutional and structural discrimination risks due to older age persist. However, there is still a lack of evidence on the extent of withholding of medical services due to older age, its impact on the quality of health care for older patients and empirically based studies that explicitly address the forms and effects of institutional discrimination against older persons.⁷

Many older persons, especially older women and older persons with disabilities, lack adequate access to health services or important information because they do not use digital technologies at all or only to a limited extent.⁸

The risk of age discrimination in connection with a triage situation caused by a pandemic, as seen during the Covid-19 pandemic, has still not been entirely ruled out.⁹

Older persons with disabilities, older migrants, and older LGBTI persons encounter barriers such as a lack of specially trained nursing and assistance staff and language barriers.¹⁰

7. What measures have been taken to eliminate ageism and discrimination based on age, including discriminatory laws, policies, practices, social norms and stereotypes that perpetuate health inequalities among older persons and prevent older persons from enjoying their right to health?

The sub-constitutional General Equal Treatment Act prohibits age discrimination and unequal treatment regarding healthcare.¹¹

8. What measures have been taken to ensure that older persons are able to exercise their legal capacity on an equal basis with others, including making an informed consent, decisions and choices about their treatment and care?

Any person can draw up an advance directive (*Patientenverfügung*) with which the medical care or treatment to be given, or not to be given, can be stipulated for the event that a person is unable to make decisions.¹²

Accountability

9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for the denial of their right to health?

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https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/diskrimrisiken_diskrimschutz_gesundheit_swesen.pdf?__blob=publicationFile&v=5, p. 52-55

⁸ <https://www.institut-fuer-menschenrechte.de/aktuelles/detail/gesundheitsversorgung-aelterer-menschen-verbessern>.

⁹ https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Menschenrechtsbericht/Executive_Summary_Annual_Report_Development_Human_Rights_Situation_Germany_2022.pdf, p. 8.

¹⁰ <https://www.bmfsfj.de/resource/blob/120144/2a5de459ec4984cb2f83739785c908d6/7-altenbericht-bundestagsdrucksache-data.pdf>, p. 70-71

¹¹ General Equal Treatment Act (AGG), §§ 1-2.

¹² <https://www.bundesgesundheitsministerium.de/patientenverfuegung.html>.

Patients can challenge decisions by sickness funds to withhold reimbursement of treatment excluded from public funding because of insufficient evidence of effectiveness in cases of life-threatening illness for which there is no publicly funded treatment available.¹³

Patients can seek advice from the Independent Patient Counseling Service (UPD) and the statutory health insurance funds. Hospitals are required to have a patient-oriented complaint management system with complaint facilities (Patient Rights Act, 2013). In some federal states hospital patient advocates are required by law. In the event of a violation of the duties specified in the professional regulations, patients can file a complaint with the Chamber of Physicians.¹⁴

10. What mechanisms are in place to ensure the effective and meaningful participation of older persons living in different geographic areas of the country in the planning, design, implementation and evaluation of health laws, policies, programmes and services that affect them.

Apart from single local projects no information available.

¹³ <https://www.cambridge.org/core/journals/health-economics-policy-and-law/article/abs/access-to-treatment-and-the-constitutional-right-to-health-in-germany-a-triumph-of-hope-over-evidence/E76514C6007B48BF8F0DBC79C6C07309>, p. 38.

¹⁴ https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/diskrimrisiken_diskrimschutz_gesundheit_swesen.pdf?__blob=publicationFile&v=5, p. 14-15.