

**Far from Bismarckian Social Insurance?
—An Observation of Twenty Years of German
Healthcare Reforms with a Review of
the Relevant Decisions of the German Federal
Constitutional Court**

Nai-Yi Sun

National Chengchi University, College of Law
No. 64, Sec. 2, Zhinan Rd., Taipei 11605, Taiwan
E-mail: naiyisun@nccu.edu.tw

Abstract

German statutory health care insurance (*Die gesetzliche Krankenversicherung*) has undergone important changes over the last twenty years. Today its framework is fairly different from the traditional Bismarckian model, which is characterized by identity and solidarity among employees and management manifested in plural self-governmental bodies. The current health care system is constructed by the following means: legal instruments, including the obligation for all citizens to be insured by public or private insurers, with free choice of public insurers—the sickness funds (*Krankenkasse*) for insured persons which leads to more competition among sickness funds; centralization of the plural federal self-governmental and joint self-governmental bodies; introduction of a uniform contribution rate for all sickness funds connected with supplementary premiums for individual one.

This article will provide an overview of paradigmatic changes of the German health care reform over the last twenty years, and of the relevant legal issues, including the constitutionality of compulsory insurance accompanied by legal modifications of private health care insurance contracts, the consistency of competition mechanisms in the social insurance scheme with the constitutional principle of social

welfare state, and the democratic legitimacy deficit of the medicinal directives issued by the Federal Joint Committee (gemeinsamer Bundesausschuss). Finally this article will conduct a comparative analysis of the constitutional debates over Taiwan's National Health Insurance and its 2011 reforms in light of the different legal frameworks and the social, economic and political challenges of each system.

Key Words: German statutory health care insurance, health care reform, competition, supplementary premium, joint self-government