

## Study on improvement of legislation for elderly welfare

Jong-Ryeol Park\*, Sang-Ouk Noe\*\*

\*Professor, Dept. of Police & Law, KwangJu Women's University, Gwangju, Korea

\*\*Professor, Dept. of Police & Law, Joongbu University, Chungcheongnamdo, Korea

### [Abstract]

It is expected that Korea will be entering with super aged society with its rapid changing to aging society compare to other developed countries. Such phenomenon is recognized from a long time ago and government has enacted Elderly Long Term Convalescence Insurance Regulation back in 1999. However, different from its actual purpose, there are many problems and improvements to be made, leading to legislative revision for several times. Still, it is left with many issues. This is one example showing there has been a continuous problem with elderly long term convalescence insurance system. Even this system in Germany which have started 4 years before us is to continuously revising regulation by raising issues to make strong structure for elderly welfare and long term convalescence, aiming to enhance life of elderly people by providing detailed standard for convalescence. Elderly related legal systematization may not enhance their welfare service or daily life right away. However, if details in regulation and its theory is systematically arranged, this will greatly reduce administrative confusion as well as increasing understanding and use of this system for the nation.

▶ **Key words:** Super Aged Society, Elderly Welfare Regulation, Elderly Long Term Convalescence Insurance Regulation, Elderly Health Service, Elderly Convalescence

### [요 약]

우리나라의 고령화는 매우 빠르게 진행되어 곧 초고령화 사회에 진입할 것으로 예상하고 있어 노인장기요양보험제도와 관련한 노인장기요양보험법을 제정하였으나 많은 문제점이 있어 이를 해결하기 위한 수차례의 개정이 시도되었다. 장기요양보험법을 제정한 독일도 마찬가지로 노인복지 및 장기요양을 위하여 사회 제반의 인프라 구축 및 요양서비스의 질적 향상을 위하여 꾸준한 문제제기를 통하여 법을 개정하고 보다 구체화된 요양기준을 제시하고 최종적으로는 노년의 삶을 향상하려 노력하고 있다.

노인관련 법제의 체계화는 당장 노인복지 정책에 대한 변화가 생긴다거나 실생활에서 노인들이 체감하는 복지서비스가 훨씬 올라갈 것이라고는 기대하기 어려울 수 있다. 그러나 노인복지의 정책근간이 되는 법률이 규율내용의 맥락과 논리에 따라 체계적으로 정비되고 이를 바탕으로 일선 실무차원에서의 행정력이 투입된다면 보다 행정적인 혼선이 줄어들고 일반 국민들이 규범에 대해 가지는 이해도와 활용도가 높아질 것이다.

▶ **주제어:** 초고령 사회, 노인복지법, 노인장기요양보험법, 노인보건, 노인요양

- 
- First Author: Jong-Ryeol Park, Corresponding Author: Sang-Ouk Noe
  - \*Jong-Ryeol Park (park3822@kwu.ac.kr), Dept. of Police & Law, KwangJu Women's University.
  - \*\*Sang-Ouk Noe (nosang2424@daum.net), Dept. of Police & Law, Joongbu University.
  - Received: 2020. 02. 27, Revised: 2020. 03. 17, Accepted: 2020. 03. 24.

## I. Introduction

Along with a rapid decrease in birth rate in Korea, aging problem in the country has become a major issue in the present population structure. What is more, baby boomer generation will be entering into elderly group in a very near future. It is expected that the society will enter into super aged society in year 2026 and from year 2030, population will decrease [1]. Such aging phenomenon is making elderly group weaker and also number of disable people are increasing, making people to live dependent on each other. Furthermore, disease structure of elderly group is changing from acute disease to non-infectious chronic disease. This chronic disease cannot be cured and requires lot of time and cost for treatment, leading to the burden and possibility of disability [2]. In this research, based on UN categorization which is if elderly population over 65 years old is 7% the society is considered as aging society, and if over 14%, aged society, and if over 20% it is considered as super aged society [3], it looks into health and medical service related legislation for elderly people in Korea and discusses about problem and improvement.

## II. History of legislation on elderly welfare and main points on elderly health care and welfare

### 1. Legal foundation of elderly welfare

The legal foundation for elderly welfare in aging society can be found in Article 34, Clause 1 and 2. According to the Article 34, Clause 1 and 2, every nation in the society has the right to perform his obligation for social security and welfare. In Clause 4, it defines that 'the nation has the obligation to execute policy for improving welfare for elderly and teenager.'

To make basis for the correct policy and detailed solution for elderly welfare, Welfare of the Aged

Act is enacted in year 1981. With its overall revision in year 1989, welfare service for the nation including the aged people are diversified and systematized. What is more, new regulations such as base living security regulation and elderly long term care insurance are legislated. Along with new legislation on elderly welfare such as low birth and elderly society base regulation, base pension regulation, elderly long term care insurance, senior-friendly industry promotion act, and dementia management law, overall frame for elderly welfare system is formed.

Since its first legislation, so far about 16 times of revisions on elderly welfare legislation is made and major changes can be categorized into income security, welfare system, convalescence and residence security, and job security. Details on how legislative changes are made on elderly health service and convalescence security as follows.

### 2. Elderly Health Service

In accordance to revised elderly welfare regulation, welfare facilities are required to implement health diagnosis and education for elderly over 65-year-old. After that, in May 23, 1998 revision, the nation or local government are required to have research and profit business for elderly with dementia as well as rehabilitation and convalescence. Also, they are allowed to have specialized convalescence facility or elderly hospital for elderly with serious disease (dementia, stroke, etc) and chronic degenerative disease.

A new regulation enacted in February 8th, 1999 describing that for elderly specialized hospitals, related facilities and its operation belongs to convalescence hospital in accordance to medical law. After that in July 4th, 2007 revised regulation, for prevention of dementia and its fast treatment, city/county/district health care centers built dementia counseling center to implement counselling and pre-diagnosis for elderly dementia.

### 3. Elderly Convalescence

#### 3.1 Main Revision in Elderly Welfare Legislation

In the previous elderly welfare legislation, it is allowed to admit or consign elderly people over 65-year-old to elderly welfare facility if they are in a situation where it is impossible to have any healthcare service due to physical, psychological, environmental, and economical situation.

Along with revision in 1989, the description of elderly welfare facility has expanded to include actual expense convalescence facility, charged elderly convalescence facility, and elderly welfare residence. After its revision in year 1994, not only social welfare foundation but also private companies or individuals are allowed to install and operate charged elderly welfare facilities with license from the city. This elderly welfare service is categorized into the following groups: dispatching home care person, weekly care, and temporary care service.

In August 4th, 2008 revision, new legislation for visiting convalescence, safety check, and protection for elderly living alone is created. Also, in preparation for elderly long term convalescence insurance system, related facilities are divided into nursing house, welfare residence, convalescence and elderly hospital depending on their needs and care range instead of categorizing based on fee free/actual expense/charged. In addition, elderly community residence which provides residence and convenience to the elderly without any disease is added to the elderly welfare facility type.

Followed by this, another revision in May 21st, 2009 is made and this made foundation for cutting down 50/100 of individual charge for long term convalescence fee for those living in certain areas like rural areas. This helped reduce economical burden for those living in rural areas. From March 17th, 2010, the head of long term convalescence facility is given the right to make and manage

records on this long term convalescence fee and if these facilities close down, Ministry of Health and Insurance Service shall take over all the records. It should also develop a team which health with this fee separately from health insurance service.

#### 3.2 Legislation and Revision of Elderly Long Term Convalescence Insurance Regulation and its Main Points

It is also important to consider financial part for long term convalescence service in elderly welfare section. Especially in July 1, 2008, one way to obtain financial basis is to implement elderly long term convalescence insurance system which aims to help elderly and sick elderly people with their living, independence, and physical activities. The biggest issue in aged society is how, who, and where to manage those elderly people with disease or dementia, having to stay in the hospital. For this reason, each country is making regulation on elderly healthcare service and adopting long term healthcare system.

To implement above insurance system, Korean government started to discuss long term elderly convalescence regulation from year 1999. For the purpose of providing appropriate level of health and welfare service to the nation in general and to decrease burden on each family for long term healthcare, new regulation is enacted in year 2006 and revised in year 2007. It has gone through about 16 times of revision so far.

For the financial background, first, elderly long term convalescence problem started to have its own system along with revision of elderly welfare regulation in year 1997. Second, it is done so to find solution for reducing financial burden for national health insurance and enhancing function of national pension. This is because among all national insurance cost, proportion of elderly people was 239.1 billion Korea Won (8.2%) but it rapidly increased to 24 trillion Korea Won (24.4%) and is expected to rise continuously in the future [4].

### 3.3 Relationship between Elderly Welfare

#### Regulation and Elderly Long Term Convalescence Insurance Regulation

The common point of these two regulations is that they both deal with physical and psychological disease of elderly people [5]. The difference is that elderly welfare system has prevention and pre-treatment service function but the latter one is more focused on post-service determined based on their physical and psychological status and managed by National Health Insurance Service. For the minimum welfare system, there are facility protection for elderly with no one to rely on, residence protection for approved elderly people and protection provided by medical system of those regulations.

In contrast, elderly welfare regulation allows placing those elderly people who have difficulties of residence protection to elderly healthcare service facilities and even for those less than 65-year-old but cannot get public assistance, they get priority for entering those facilities, making up complementary relationship to strengthen elderly welfare system [6].

#### 3.4 Problems of Elderly Welfare related Regulations

In terms of discussing legal problems related to elderly welfare in aged society, one must start with the current elderly welfare system. Along with its first legislation in year 1981, it has gone through many revisions but still, it was just revision made to deal with political issues and thus, lacking in proper system.

Looking at from the overall legal system, each section is limited to a certain field which does not go well with the title. For instance, general provision in Article 1 is rather more focused on research on elderly status, elderly day, promotion video, and right education. Also, Article 3 on health and health solutions in welfare healthcare regulation as well as Article 4 of installation and operation of elderly welfare system are the main

regulations there. However, it is difficult to clearly understand regulation pursued by elderly welfare legislation from these two sections. What is more, part of Article 2 which described about elderly pension is removed due to base elderly pension law in year 2007 and as of today, Article 9 to 22 is left empty for a long time.

### 4. Ambiguity of Elderly Welfare Position

As elderly welfare regulation has no clear description with other elderly related regulation it is hard to insist that is the base regulation or special regulation for elderly welfare. Different from this, for 'low birth rate and base regulation for aged society' it is stated in Article 6 that 'in case other low birth rate and aged society related regulation is enacted or revised it shall follow fundamental concept and purpose of this regulation' showing that this is the base law for aged society.

Although elderly welfare regulation does not indicate any clear regulation with other law, it is clear that it is deeply related with other elderly welfare related regulations. Especially in terms of elderly long term convalescence insurance, installation and operation of elderly community center, elderly welfare facilities, and elderly convalescence facility is based on elderly welfare regulation and also, also these facilities can be formally act as long term convalescence facilities through certain inspection in accordance to Article 31 of elderly long term convalescence regulation.

However, such complex structure may also cause some issues. Although cancellation on designation in accordance to Article 37 of elderly long term convalescence insurance regulation is made, it is different from legal validity in accordance to elderly welfare facility and hence, some people abuse this, leading to damage to recipients [7].

After all, elderly welfare regulation is in an ambiguous position, not acting as a base regulation

but also not as a special regulation. As this is the case, it may lead to complicated relationship between elderly related regulations and its application.

### 5. Necessity of Re-establishment of Standard for 'Elderly' in Regulation

Legal definition of elderly is after all, closely related to the age standard. As we have checked various elderly related regulations in defining elderly in previous sections, the only elderly related regulation which has definition on elderly by age standard is elderly long term convalescence insurance regulation Article 2 and Clause 1.

This means there are various regulations related to elderly such as elderly welfare, low birth rate and aged society base regulation, base pension, elderly long term convalescence regulation, elderly age anti-discrimination, employment promotion, support for residence, convenience enhancement for elderly, disability, and pregnant women, aging-friendly industry, and dementia management but none of them have clear definition or scope on elderly as well as age standard.

Of course, how to define based on what regulation can be changed depending on purpose and rationality but for those elderly related regulations in Korea, none of them have clear definition on their age [8].

In fact, standard age for national pension, residence pension and elderly job, dementia and cancer diagnosis, elderly welfare center, elderly class, or welfare residence define them as over 60 years old. In contrast, for base pension, agricultural pension, elderly job (multi), elderly long term convalescence insurance, artificial joint surgery support, total care service, and single residence care service define them as over 65 years old.

This implies that social consensus on age standard is not enough and is also not fixed. However, in terms of settling systematic elderly welfare system and fairness in administrative system, it is required to have clear standard on elderly age standard. If not, this will affect predictability caused by unclarity of planner, administrative personnel, and even the nation.

It is also a good way to set subject range in terms of fairness. If this range has to be expanded, one way could be to change age range, etc to bring social consensus. In a long term, setting age standard by law is the very first start point of improving elderly welfare related regulation.

Looking into other countries, for instance Japan, it does not have any definition on 「elderly」 by elderly welfare regulation but in terms of health care regulation, it clearly defines over 75 years or over 65 years with disability in elderly medical provision. This means their standard for elderly is over 75 years old. In case of America, they do not have national medical security system but those nation with over 65 years old, they are asked to join Medicare system to get complimentary medical service. In case of the UK, they have National Healthcare System where all the nation can have complimentary medical system. In case of France, over 65 years old with low income rate or over 60 years old people without any job can have welfare system based on social activities and family related regulation (Article L-113-Clause 2) [9].

### III. Comparison between Long Term Convalescence Insurance System in Korea and Germany

Each country has different legal system for elderly long term convalescence insurance system, in large, this is divided into social insurance

system and taxation method. Countries with social insurance system include Germany, USA, Hungary, Japan, Switzerland, Netherlands, and Luxemburg. Among those countries, Korea, Japan, and Switzerland also has taxation system along with this. Countries with taxation system include Australia, Austria, Canada, Island, New Zealand, Norway, Poland, Spain, Sweden, UK, and USA. Here in this research, it compares system in Korea and Germany to suggest improvements.

### 1. Long Term Convalescence Insurance System in Korea

Long term convalescence insurance system is operated separately from national insurance system but for operational efficacy, it belongs to National Health Insurance Service. Also, it is based on social insurance system where recipients include only elderly except less than 65 years old people with disability [10].

In Korea, those who join this system is residents in Korea in accordance to National Health Insurance Regulation Article 5 and Article 109 except those excluded by Article 5 Clause 1 (Elderly long term convalescence insurance regulation Article 7 Clause 2).

However, the insurer of this insurance is National Healthcare Insurance Service (NHIS) but is managed by Minister of Health and Welfare (same regulation Article 1 Clause 3). The role of NHIS includes the following; manage standard for people joining and recipients, insurance fee charging and collection, examination on applicant, provision of operation and standard operation plan, management and evaluation of long term convalescence fee, information provision and consulting for recipients, examination and payment for the fee, examination on payment of long term convalescence fee, examination and promotion of long term convalescence, prevention of elderly disease, development of standard in accordance to

the regulation, installation and operation of long term convalescence facilities, and other tasks designated by Minister of Health and Welfare.

However, foreign employees defined in accordance to 「Regulation on Foreign Employee」 and those applied under Presidential decree and designated by Ministry to Health and Welfare can be excluded from joining (Article 4 of the same regulation)

For other standards for joining long term convalescence insurance, it is defined in 「National Health Insurance Law」 Article 5, 6. and 8 to 11 and Article 69 Clause 1 to 3 and Article 76 to 86. For Article 110, it is about qualification and loss of joining and recipient as well as payment and collection of insurance fee.

### 2. Long Term Convalescence Insurance System in Germany

Long term convalescence insurance system is closely related to the medical insurance system in Germany. Hence, insured person by formal medical insurance automatically becomes insured person for long term convalescence insurance as well. This person is required to join this system and their families also become insured people for the two insurance system. Therefore, if young child requires long term care due to disease or injury, one can claim for the insurance payment.

For long term convalescence regulation in Germany, its financial is obtained and regulation for flexible claim is settled along with long term convalescence insurance re-issue regulation enacted in January 1st 2013 and revision of long term convalescence insurance strengthening regulation in January 1st, 2015. Furthermore, second long term convalescence insurance strengthening regulation is legislated in year 2015 which details are included in revision made in both January 1st 2016 and January 1st 2017.

The insurer for formal long term convalescence insurance is Krankenkasse (disease) and Pflegekasse (long term convalescence) which are insurer of formal medical insurance. Each state has independent third party medical evaluation center co-operated by these two organizations to carry out Begutachtung (counselling and evaluation) for the two systems. For long term convalescence insurance, medical service center is designated with the operation and evaluated whether the applicant person is qualified for long term convalescence service or not. Depending on this evaluation, one is determined whether such service is needed or not with the grade.

With revision in January 1st 2017, those with disabled physical function should join more than one insurance system but they are not required to automatically join more than two long term convalescence system.

With this revision in year 2017, requirement for long term convalescence has changed whereas those requiring such service including dementia patients are enabled to join. From this point, it is referred to as transition of long term convalescence insurance regulation paradigm in the country.

### **3. Comparison between Long Term Convalescence System in Germany and Korea and Study on Improvements**

The common point between the two countries is that they both adopt medical insurance application system where people receive insurance from medical insurance system as well as long term convalescence insurance by insurer for the two system.

#### **3.1 Difference between insurer of formal medical insurance and long term convalescence insurance**

As Germany operates Krankenkasse which is insurer of formal medical insurance system becoming insurer for Pflegekasse (in a separate

corporate form), they have two reputation as Krankenkasse and Pflegekasse. This helps reduce cost for operation.

In contrast, only NHIS is set as the insurer for long term convalescence insurance. The problem here is that it may manage medical insurance fund and long term convalescence fund combined together. Under the current regulation, these funds are collected together but should be managed separately (in accordance to Elderly Long Term Convalescence Insurance Regulation Article 8). The main reason for designating them as the main manager is for responsibility and efficacy of operation but it looks more reasonable to have a separate organization like Germany for managing this fund.

#### **3.2 Difference in Concept of People requiring Long Term Convalescence Insurance**

Long term convalescence insurance in Germany has clear definition on who requires this service, those whom requiring minimum 6 months continuous need of support. Also to become qualified, at least over 90 minutes of support per day is required and for base convalescence time, it should exceed home caring time. The necessity level was set to 3 but increased to 5 levels along with legal revision in year 2017. As a result, those people who failed to get the service with under level 1 could receive the service as well. The definition for people requiring this long term convalescence insurance service is similar to that of Germany.

However, Germany defines minimum 6 months continuously requiring service but in case of Korea, it says difficult to continue daily life over 6 months which brings up concern on 'continuity.' Of course, if this continuity is not defined, more range of people can receive the service. However, for practical service it seems it is necessary to set 'continuity' condition. Furthermore, as Germany has included this term in year 2017 revision, it

seems more reasonable to include the term still. Also for evaluating qualification of the recipients, instead of judging based on the time, like Germany, it makes more sense to evaluate based on their ability of independence.

### 3.3 Difference in Insured Person and Payment Subjects

Both countries have the same regulation where insured person for medical insurance become insured person for long term convalescence insurance. For subject of payment range, Germany sets no age limit and if necessary, young or old people can receive the service. However, in case of Korea, it is set to over 65 years old. Exception is those less than 65 years old but suffering from disease set by Presidential decree such as dementia or cerebrovascular disease (Elderly Long Term Convalescence Insurance Regulation Article 1, 2: Execution Article 2). This means children are excluded. Also, there is ambiguity in defining what people under 65 years old is covered by this. Therefore, we should consider clarifying subjects of people covered by this regulation.

## IV. Conclusion

It is expected that Korea will be entering with super aged society with its rapid changing to aging society compare to other developed countries. Such phenomenon is recognized from a long time ago and government has enacted Elderly Long Term Convalescence Insurance Regulation back in 1999. However, different from its actual purpose, there are many problems and improvements to be made, leading to legislative revision for several times. Still, it is left with many issues. Minister of Health and Welfare made an announcement on 'Plan on national responsibility for dementia' to make dementia safety society in dementia national responsibility report competition held in Coex in September 18th 2017. This is one example showing

there has been a continuous problem with elderly long term convalescence insurance system.

Even this system in Germany which have started 4 years before us is to continuously revising regulation by raising issues to make strong structure for elderly welfare and long term convalescence, aiming to enhance life of elderly people by providing detailed standard for convalescence.

Elderly related legal systematization may not enhance their welfare service or daily life right away. However, if details in regulation and its theory is systematically arranged, this will greatly reduce administrative confusion as well as increasing understanding and use of this system for the nation.

## REFERENCES

- [1] Gicheon Jang, "Eocnomical influence and solution for low birth rate and aging society," Weekly KDB Report, KDB, p1~2, 2016.
- [2] Junki Go, "Problem and improvement for elderly long term convalescence insurance" Donga Law Volume 57 Donga Law School Research Center p289~290, 2012.12.3.
- [3] UN, World Population Ageing 1950-2050 Department of Economic and Social Affairs Population Division.
- [4] Heeseon Jeong, "History of revision of elderly long term convalescence insurance regulation, Seoul National University Social Security Act Research Center, 2012 6.
- [5] Bongseok Jang, "Study on the role of elderly welfare regulation after implementation of elderly long term convalescence insurance system." Legal Study Volume 32, Jeonbuk University Legal Research Center, P406, 2011.5.
- [6] Yooseong Kim, Theory of Korea Society Security Regulation, Volume 5, Beomunsa, P432, 2002.
- [7] Civil Rights Commission 2012.8.17. Agenda No. 2112-116, Title "Review on reasonability of operation of elderly long term convalescence facilities" System improvement-related organization: Ministry of Health and Welfare, NHIS.
- [8] Jeongsoon Kim, Jongjoon Park, Research on improvement of elderly welfare related regulation, Korea Legal Research Center, 2015.

- [9] Jaecheol No, Comparative review and implication on elderly healthcare service security in major countries, Inha University Law Research Center Volume 16 No. 2, P413~454, 2013.7.31.
- [10] Overall review on national health insurance and elderly long term convalescence insurance system, 2018.

## Authors



Jong-Ryeol Park received the Ph.D. degree in Laws and Civil Law from Chosun University, Korea, in 2001, 2006 respectively. Dr. Park joined National Communication Ombudsman District

Prosecutors' Office in Gwangju in 2009 and was a member of Metropolitan Police Agency Administrative Disposition of a Driver's Licence Review Committee in Gwangju in 2010. Also he was Policy Advisers in Gwangju. Jeonnam Regional Military Manpower Administration. He is currently a professor in the Dept. of Police & Law at Kwangju Women's University. He is interested in Civil Special Act and Registration of Real Estate Act.



Sang-Ouk Noe received the Ph.D. degree in Police Studies from Wonkwang University, Korea, in 2015. Voluntarily resigned from human resources department of Posco Gwangyang steel mill in 2008 and worked

as professor for industry-academy cooperation in Gangneung Wonju National University and Cheonnam National University, trying to promote employment and field practices. Since 2015, I have been working as an assistant professor in Police Law Department of Joongbu University. Furthermore, I was designated as a professional member of Korea Industry Commercialization Association in 2014.