# Social Security and Long-Term Care Dependency in Switzerland

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For more details, in particular on jurisprudence see: Bischberger/Landolt, Absicherung der Pflegebedürftigkeit in der Schweiz, Zeitschrift für ausländisches und internationals Sozialrecht (ZIAS) 2013, 105–168 (in German language).

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# 1 Introduction

Since the founding of the Swiss Federal State in 1848, a very complex coexistence of laws has been developed with refined legal foundations, procedures and allowances, providing social protection against the risks of old age, illness and accident. As a result, there is an increased need for coordination between legislations and the consistent use of terms and concepts.

Societal changes (such as heterogeneous familial structures, professional and social mobility or new employment patterns), the rise in chronic diseases, increasing life expectancy with considerably longer disability-free years including, however, also increasing frailty and, consequently, the need for help in old age,[1] as well as longevity *with* adverse health effects due to pharmaceutical, technical and surgical progress require support, including professional guidance and advice, and the coordination of services particularly in private households.

Swiss social security legislation makes a difference between *need of support* (of a person who requires assistance with regard to the activities of daily living such as personal hygiene or household maintenance), *need for attendance* (in case of a health condition which requires professional nursing care, particularly regarding

[1] Cf. Lieberherr et al. (2010).

guidance and advice with respect to the provision of nursing care[2]) and *long-term care dependency* as part of the entire system of dependence on support.[3]

In Switzerland, the number of persons requiring long-term care is estimated at 115,000–135,000.[4] By 2030 this number will have risen to 170,000 or 230,000, depending on the scenario.[5] Especially the need for help with household chores and the activities of daily living is growing exponentially in old age.[6]

In 2004 family caregivers provided about 34 million hours of support and long-term care to adults in private households. This does not include informal assistance from private persons to other households: 12% of women and 11% of men engage in this kind of assistance with about 100 million hours per year, unpaid.[7]

The relatively rare *special risk* of "long-term care dependency" involves high costs for the cantons, communities and the individual, including the opportunity costs incurred by family members.[8] According to the Swiss care provision principles, support and long-term care in the case of long-lasting functional restrictions are mainly provided by the private household of the person concerned and his/her relatives.[9]

*It is not guaranteed* that the staff offering the services for the care providers are qualified professionals. In 2009 only two thirds of the required professional care staff were trained so that there was a lack of 2400 qualified carers,[10] and, according to forecasts, approximately 25,000 additional qualified carers will be needed by 2020.[11]

Need of support, need for attendance and long-term care dependency and their costs and financing will therefore become *central social tasks* in the future.[12]

[2]See Art. 7 Para. 2 lit. a KLV.

[3]Cf. Wingenfeld et al. (2011) and Landolt (2001b, 2002a, b, 2003, 2009).

[4]Cf. Höpflinger and Hugentobler (2005), p. 48.

[5]Cf. Höpflinger et al. (2011), p. 10.

[6]Cf. Lieberherr et al. (2010), p. 23 ff.

[7]Cf. Schön-Bühlmann (2005). These numbers are based on the Swiss Labour Force Survey [*Schweizerische Arbeitskräfteerhebung, SAKE*] or, where applicable, taken from the "Unpaid Work" module. This report distinguishes between long-term care and assistance on the one hand, and informal care provision and services provision on the other.

[8]Cf. Perrig-Chiello and Höpflinger (2012), Bischofberger (2011).

[9]Cf. Höpflinger et al. (2011).

[10]Cf. Swiss Conference of the Cantonal Healthcare Directors [*Schweizerische Konferenz der kantonalen Gesundheitsdirektoren, GDK*] (2009).

[11]Cf. Swiss Observatory on Healthcare [*Schweizerisches Gesundheitsobservatorium, Obsan*] (2009).

[12]See on this also the 2020 health policy priorities (Prioritäten Gesundheit 2020) of the Swiss Federal Council (http://www.bag.admin.ch/gesundheit2020/ – last viewed on 23/07/2013).

# 2 Foundations of the Swiss Long-Term Care Insurance System

## *2.1 Constitutional Foundations*

In Art. 41 (1) (b), the Federal Constitution (BV) obliges the federal authorities and the cantons to ensure, in addition to the individual's personal responsibility and private initiative, that *every person is provided the necessary care required for his/her health.*[13] This refers neither to a competence provision[14] nor to a fundamental social right, but is merely a social objective.[15] Also from Art. 12 BV (right to seeking help in situations of need) no right arises regarding domiciliary care.[16]

Federal mandates regarding social security matters[17] exist with respect to the social risks of old age and disability,[18] as well as illness and accident.[19] On the basis of Art. 3 BV, of a specific constitutional provision[20] or a responsibility delegated by the federal government,[21] the cantons may also adopt new social security standards.

The social security competence provisions do not refer to long-term care dependency as a separate issue. The term has, however, many features in common with other constitutionally recognised facts related to dependency.[22] As long-term care dependency is always a consequence of old age, illness or accident, the federal government primarily has to determine whether and in what way the costs for long-term care are to be covered by social security. In contrast, the cantons and communities are first of all held responsible for the provision of sufficient long-term care.

[13]Cf. Art. 41 Para. 1 lit. b BV.

[14]Cf. Art. 41 Para. 3 BV.

[15]Cf. Art. 41 Para. 4 BV.

[16]Cf. judgment BGer of 17.06.2005 (2P.73/2005) E. 5.

[17]See e.g. Art. 59 Para. 5 BV and Art. 112 ff. BV.

[18]Cf. Art. 112 f. BV.

[19]Cf. Art. 117 BV.

[20]Cf. Art. 114 Para. 4 BV and Art. 115 BV.

[21]Cf. e.g. Art. 111 Para. 3 BV.

[22]E.g. old age (Art. 8 Para. 2, 41 Para. 2 and 111 BV), disability or, respectively, disabled persons (Art. 8 Para. 2 and 108 Para. 4 BV), very old persons (Art. 108 Para. 4 and 112 Para. 4 BV), persons in need (Art. 108 Para. 4 and 115 BV), invalidity or, respectively, invalids (Art. 41 Para. 2, 111 and 112 Para. 6 BV), illness or, respectively, mental illness (Art. 41 Para. 2, 117, 118 Para. 2 lit. b, 119 Para. 2 lit. c and Art. 136 Para. 1 BV), accident (Art. 41 Para. 2, and 117 BV) as well as the need for subsistence support (Art. 112 Para. 2 lit. b BV and 10th transitory provision [*Übergangsbestimmung*] BV).

### 2.2 *Dual Financing System*

In the overcomplicated dual financing system relating to the costs of attendance and longterm care, the federal government and the cantons grant various allowances for care services to persons dependent on long-term care in terms of *subject financing* [*Subjektfinanzierung*], in particular helplessness allowances (including a supplement for intensive care and compensation for support in life skills), long-term care allowance, care support devices and reimbursement for services provided by third parties, as well as care vouchers.

In addition, the federal government and the cantons provide *object financing* [*Objektfinanzierung*] to facilities for people with disabilities, long-term care facilities[23] and aid groups.[24] Depending on whether the subsidies are associated with the individual level of attendance required by a person in need of long-term care or not, we speak of subject-oriented object financing (sometimes also called indirect or pseudo-subject-related financing [*indirekte oder unechte Subjektfinanzierung*], or of pure object financing [*reine Objektfinanzierung*]. In cases in which the nursing home[25] or long-term care expenses[26] are not covered by social insurance, the cantons may choose between object financing and (pseudo-)subject-related financing.

## 3 Subsidies Granted to Long-Term Care Facilities

### 3.1 *General*

State subsidies for both inpatient care facilities (*hospitals [Spitäler]*[27] pursuant to Art. 39 (1) KVG, *nursing homes [Pflegeheime]*[28] pursuant to Art. 39 (3) KVG and *other homes*, particularly *facilities for persons with disabilities*[29,30]) and outpatient

[23]Cf. Art. 25a KVG and infra margin No. 21 ff; Landolt (2010a).

[24]Cf. Art. 74 IVG and Art. 17 Para. 1 ELG.

[25]Cf. Art. 13 Para. 2 ELG.

[26]Cf. Art. 25a Para. 5 KVG.

[27]Art. 39 Para. 1 KVG.

[28]Art. 39 Para. 2 KVG.

[29]According to Art. 3 IFEG, the following are considered as institutions supporting the inclusion of persons with disability:

- facilities which employ on-site or at decentrally located workplaces invalids who could, under normal circumstances, not exercise any gainful activity,
- residential homes and other assisted forms of collective living for persons with disability,
- daycare centres where persons with disabilities spend their time in a community and can participate in leisure and gainful activity programmes.

[30]Art. 25a ELV does not distinguish between the terms 'long-term care home' and 'facility for persons with disabilities'. A care home is considered to be any facility which is recognised by a

care services (Spitex organisations[31] or freelance professional nursing staff[32]) are regulated in various cantonal decrees.[33]

## 3.2 *Facilities for Persons with Disabilities*

The IFEG and subsidiary cantonal law have obliged the cantons since 1 January 2011 to implement a subsidy and supply system for the nursing homes and the facilities for persons with disabilities located in their own territory.[34]

Art. 7 IFEG[35] requires *cost sharing by the canton of residence* of a disabled person who is accommodated in a recognised care institution either within or outside of the canton of domicile.[36] Co-payments must cover the costs in a way so that "no disabled person will become dependent on social assistance because of such accommodation".[37]

The IFEG does not stipulate *insurance payments or subsidies* to be granted by the cantons; there must be a *legal entitlement to subsidies,* however, if cantonal law provides for co-payments to be made in terms of subsidies to recognised institutions

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canton as a home or which has obtained cantonal approval for operation. If—in connection with the granting of helplessness allowance—the IV authority grades an insured person as a care home resident within the meaning of Art. 42ter Para 2 IVG, this grading is also valid for claims to supplementary services as are deliverable to care home residents.

[31]Cf. Art. 51 KVV.

[32]Cf. Art. 49 KVV.

[33]E.g. in the canton of Zurich: Long-Term Care Act [*Pflegegesetz*] of 27/09/2010 (855.1) and the Regulation on Long-Term Care Provision [*Verordnung über die Pflegeversorgung*] of 22/11/2010 (855.11), as well as the Act regarding Facilities for Adult Invalids [*Gesetz über Invalideneinrichtungen für erwachsene Personen (IEG)*] of 01/10/2007 (855.2) and the Regulation on Facilities for Adult Invalids [*Verordnung über Invalideneinrichtungen für erwachsene Personen (IEV)*] of 12/12/2007 (855.21).

[34]Cf. Art. 10 Federal Act of 6 October regarding Institutions Supporting the Inclusion of Invalids [*Bundesgesetz vom 6. Oktober 2006 über die Institutionen zur Förderung der Eingliederung von invaliden Personen (IFEG)*].

[35]Art. 7 I.E. reads (translated):

1. The cantons bear part of the expenses incurred for a stay in an approved facility to the extent that no invalid needs to claim social assistance due to such a stay.
2. If an invalid cannot find placement in a facility approved by the canton of residence that adequately meets the needs of the invalid, the latter is—in line with Para. 1—entitled to claim contributions from the canton to costs incurred for placement in a different institution which meets the conditions according to Art. 5 Para. 1.

[36]The Intercantonal Agreement on Social Institutions [*Interkantonale Vereinbarung für soziale Einrichtungen (IVSE)*] of 13 December 2002 http://www.sodk.ch/ueber-die-sodk/ivse.html has the purpose of facilitating without impediments the intercantonal placement of persons with special requirements regarding assistance and support in appropriate institutions outside their canton of residence.

[37]Cf. Art. 7 Para. 1 IFEG.

or disabled persons.[38] To guarantee that the persons concerned are accommodated in appropriate institutions, federal legislation obliges the cantons to establish a requirement and disability concept, and it obliges the canton of domicile to make co-payments within and outside the canton.[39]

If persons in need of long-term care are *accommodated in an institution for disabled persons outside their canton of residence*, there is an obligation on their part, according to Art. 28 (2) IVSE and the provisions of the canton of residence, to participate in the costs: partially or entirely, by using their income and part of their assets.[40]

## *3.3 Nursing Homes*

According to Art. 39 (3) KVG, "nursing homes" are considered to be homes and facilities and their departments serving *long-term and medical care*[41] *as well as the rehabilitation of long-term patients.*[42] Homes which primarily focus on non-medical care, such as homes for the elderly that have no long-term care unit or residential homes for needy persons are excluded, as are hospices serving medical and palliative care of the seriously ill and dying persons who are covered by social insurance.[43]

Nursing homes must be recognised under health insurance law (Art. 39 (1) KVG), dispose of sufficient medical care capacities,[44] the necessary qualified personnel[45] and adequate medical facilities.[46] They must comply with the cantonal and intercantonal assessment of needs, have received a service mandate or be cited on the cantonal nursing homes list.[47]

According to the Swiss Sickness Insurance Act/Swiss Health Care Benefits Ordinance (KVG/KLV) and subsidiary cantonal law, the pension costs are borne by the person in need of care and the local canton. As to the long-term care costs, the health insurance funds solely contribute to the nursing and Spitex care costs,[48]

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[38]Cf. Art. 8 IFEG.

[39]Cf. Art. 2 and 7 IFEG.

[40]Cf. Art. 28 Para. 3 IVSE.

[41]Nursing and medical care not only include care treatment but also the general and socio-psychiatric basic nursing care (cf. Art. 7 Para. 2 KLV).

[42]Cf. Art. 39 Para. 3 KVG.

[43]Cf. judgment EVG of 19/12/2001 (K 77/00) E. 3b.

[44]Cf. RSKV (1979), p. 277.

[45]Cf. 107 V 54 E. 2a and RSKV (1979), p. 277.

[46]See on this BGE 115 V 38 E. 9b/aa and 107 V 54 E. 1 and 2.

[47]Cf. Art. 39 Para. 3 KVG.

[48]Cf. Art. 25a Para. 1 KVG. The care home tariff, valid as of 1 January 2011, provides for 12 needs levels or, respectively, a monthly allowance of CHF 270.– (tariff level 1: daily long-term care needs of up to 20 min) through to CHF 3240.– (tariff level 12: daily long-term care needs of more than 220 min) (cf. Art. 7a Para. 3 KLV).

while the person in need of care pays up to 20% of the maximum long-term care contribution and the remaining amount of the costs is borne by the canton.[49] It is up to the cantons to decide whether the maximum co-payment is required from the person in need of care. In the light of the principle that "outpatient care has precedence over inpatient care", some cantons, such as Zurich, take over half of a patient's co-payment in the case of long-term care being rendered in the private household.[50]

The costs of hospital care, as well as of intensive and transitional care if necessary after a hospital stay and if medically ordered by the hospital, will, however, be reimbursed by mandatory health insurance and by the canton of residence of the insured person for a maximum period of 2 weeks according to the rules governing hospital financing.[51] Care costs are co-financed on a 55:45 basis, with 55% borne by the canton of residence and 45% by the insurance company.[52]

# 4 Care Benefits

## *4.1 Historical Development*

The governmental duty of care for helpless persons ["*Hülflose*"] was first recognised under the "Pension Law" of 7 August 1852. The Federal Act on Health and Accident Insurance with the inclusion of military insurance of 5 October 1899[53] stipulated that sickness benefits were to be increased by 100% in the case of complete helplessness.[54] Later the "supplementary pension for helpless people" was transferred into the Federal Health and Accident Insurance Act of 13 June 1911,[55] Art. 77 of which stipulated that pensions be increased from 70 to 100% of the annual insured income if the insured person was „helpless in such a way that he or she is in need of special maintenance and care". Art. 26 of the Federal Military Insurance Act of 23 December 1914[56] provided for a similar regulation with regard to sickness benefits. Art. 42 of the Federal Military Insurance Act of 20 September 1949[57] provided for an increase in daily sickness allowances and invalidity

[49]Cf. Art. 25a Para. 5 KVG.

[50]Cf. e.g. § 9 Para. 2 Long-Term Care Act [*Pflegegesetz*] of 27/09/2010 (Canton of Zurich).

[51]Cf. Art. 25a Para. 2 KVG.

[52]Cf. Art. 49a Para. 2 KVG.

[53]See BBl 1899 IV 61.

[54]Similarly, Art. 24 Para. 9 and Art. 29 Para. 2 Federal Act regarding the Insurance of Military Persons against Illness and Accidents [*Bundesgesetz betreffend Versicherung der Militärpersonen gegen Krankheit und Unfall*] of 28 June 1901 = BBl 1901 III 65.

[55]Cf. BBl 1911 III 523.

[56]See BBl 1915 I 45.

[57]Cf. BBl 1949 II 509.

pensions and stipulated, in addition, an "appropriate allowance" if "helplessness requires extraordinary expenditures".

With the entering into force of the IVG, Swiss Parliament decided to create a legal entitlement to helplessness allowances: "Helpless persons are those who, because of their disability, permanently require help from a third person or personal surveillance to carry out activities of daily living."[58] In 1968 an entitlement to helplessness allowance was also introduced in the AHV.[59] The restrictive criterion for severe helplessness were eased in the years following 1968. However, it is only since the entering into force of the new care-financing arrangement on 1 January 2011 that also moderate helplessness is considered with a view to an entitlement to helplessness allowance, however only for those old-age pensioners who are not accommodated in nursing homes.[60] In accident insurance, the terms on helplessness allowance were only laid down in 1981.

## *4.2 Helplessness Allowance*

### 4.2.1 General

The helplessness allowance granted by AHV/IV is exclusively financed by the federal government[61] and is only granted to insured persons[62] who have their residence[63] and habitual abode[64] in Switzerland. Contrary to the premium-financed helplessness allowance granted by accident insurance, this allowance is a special non-contributory benefit that is not subject to the principle of the exportation of benefits.[65]

Helplessness allowance is granted, at the earliest, from the day of birth.[66] Insured persons who have not yet completed the first year of age are entitled to helplessness benefits as soon as it has been ascertained that they are likely to suffer from helplessness for more that 12 months.[67]

[58]Art. 42 Para. 2 aIVG (1967).

[59]Amendment to the Federal Act regarding Pension and Survivors' Insurance [*Änderung des Bundesgesetzes über die Alters- und Hinterlassenenversicherung*] of 4 October 1968.

[60]Cf. Art. 43bis Para. 2 AHVG.

[61]Cf. Art. 77 Para. 2 IVG.

[62]Cf. Art. 43bis Para. 1 AHVG and Art. 42 Para. 1 IVG.

[63]Cf. Art. 13 Para. 1 ATSG.

[64]Cf. Art. 13 Para. 2 ATSG.

[65]Cf. on this BGE 132 V 423.

[66]Cf. Art. 42 Para. 4 IVG.

[67]Cf. Art. 42bis Para. 3 IVG.

### 4.2.2 Helplessness

#### 4.2.2.1 General

Helpless persons are those who—due to impaired health—permanently require assistance from third persons or personal surveillance to carry out activities of daily living.[68]

#### 4.2.2.2 Assistance with Carrying Out Activities of Daily Living

The activities of daily living cover six areas[69]:

- dressing/undressing
- getting up, sitting/lying down
- eating
- personal hygiene
- using the toilet
- mobility.

The requirements are fulfilled if a person in need of help regularly depends to a considerable degree on assistance through another person with respect to one of the above activities.[70] In the legal practice, a distinction is made between *direct and indirect*[71] *third party help.*

#### 4.2.2.3 Need for Surveillance

Severe helplessness[72,73] means that the insured person regularly depends to a considerable degree on the help of a third party with respect to all activities of daily living and, furthermore, that he or she is permanently in need of long-term care or personal surveillance.[74] Moderate helplessness, in contrast, requires permanent personal surveillance or particularly intensive long-term care.[75]

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[68]Cf. Art. 9 ATSG and e.g. Art. 37 IVV and Art. 38 UVV.

[69]With further references BGE 121 V 88 E. 3a.

[70]Cf. BGE 117 V 146 E. 2. The need for assistance is regarded as considerable, for instance, if the insured person cannot cut his/her meals into small pieces or if he/she cannot hold the eating utensils him−/herself, cf. BGE 106 V 158 E. 2b; Landolt (1995).

[71]Cf. e.g. BGE 133 V 472 E. 5.1, 121 V 88 E. 3c as well as 107 V 145 E. 1c and 136 E. 1b; Landolt (2004).

[72]Cf. Art. 37 Para. 1 IVV and Art. 38 Para. 2 UVV.

[73]Cf. Art. 37 Para. 3 lit. b IVV and Art. 38 Para. 4 lit. b UVV.

[74]Cf. Art. 37 Para. 1 IVV.

[75]Cf. Art. 37 Para. 3 IVV and Art. 38 Para. 4 UVV.

*A permanent personal need for surveillance* corresponds to a need for support with respect to two of the six activities of daily living and is deemed to be moderate helplessness.[76] Moderately severe helplessness is assumed if there is a need for support with respect to two of the four above-mentioned activities of daily living, and, in addition, permanent personal surveillance.[77]

A permanent personal need for surveillance[78] involves a *need for qualified surveillance*[79] and goes beyond the mere *need for minor surveillance*.[80] Permanent personal surveillance is hence a kind of medical or nursing care service which is needed due to the insured person's physical, mental or psychological state of health.[81] This service is required if a third person must be present to help the dependent person get up during the night.

As a rule, permanent need for long-term care is a criterion met by tetraplegics,[82] who will require help with taking *medicines*[83] and the daily opening of drug packages.[84]

#### 4.2.2.4 Long-Term Care Dependency

##### *4.2.2.4.1 Permanent or Particularly Intensive Long-Term Care*

Severe helplessness only applies if an insured person regularly depends to a considerable degree on the help of a third party with respect to all activities of daily living and is permanently in need of long-term care or personal surveillance.[85] Moderate helplessness, in contrast, requires permanent personal surveillance or particularly intensive long-term care.[86]

"Permanent surveillance" means that a certain medical or nursing care service is required due to the insured person's physical, mental or psychological state of

[76]Cf. Art. 37 Para. 3 IVV and Para. 38 Para. 4 UVV.

[77]Cf. Art. 38 Para. 3 UVV.

[78]Art. 37 Para. 2 lit. b IVV bzw. Art. 38 Para. 3 lit. b UVV.

[79]Cf. BGE 107 V 145 E. 1d.

[80]Art. 37 Para. 1 IVV and Art. 38 Para. 2 UVV.

[81]Cf. judgment BGer of 05/03/2009 (8C_912/2008) E. 3.2.3 and furthermore BGE 107 V 136 E. 1b and ZAK 1990, 44 E. 2c. The need for permanent care services does not mean that the cargiver is tied exclusively to the person dependent on help, and it neither means 24-hour-care, but is rather to be understood in terms of care services that are not of a temporary nature.

[82]Cf. judgment BGer of 19/06/2007 (U 595/06) E. 3.2.2.

[83]Cf. judgment EVG of 03/09/2003 (I 214/03) E. 4., also qualifies in terms of the need for supervision, cf. judgment BGer of 23/09/2003 (I 360/03) E. 4.1.

[84]Cf. judgment EVG of 03/09/2003 (I 214/03) E. 4, not, however, in the case of a roughly 15-minute long supervision of the taking of daily medication, cf. judgment EVG of 21/11/2006 (H 4/06) E. 4.2.

[85]Cf. Art. 37 Para. 1 IVV.

[86]Cf. Art. 37 Para. 3 IVV and Art. 38 Para. 4 UVV.

health. The term "nursing care" implies, for example, that there is a need to administer medication or apply bandages on a daily basis. "Permanent" in this context does not mean "around the clock" but stands in opposition to "temporary".[87]

Long-term care is "particularly intensive" if it is very time-consuming, causes high expenses or has to be provided under aggravated circumstances, e.g. in cases where it proves to be especially strenuous or has to be delivered at an unusual time.[88] A daily need for care of 2–2.5 h must certainly be classified as especially intensive when aggravating qualitative factors come into play.[89]

#### *4.2.2.4.2 Intensive Long-Term Care Dependency*

Invalidity insurance grants insured persons under age 18 a supplement for intensive long-term care.[90] The text of the law acknowledges "intensive long-term care" as a service covered by this insurance.[91] Also the "increased demand for treatment and basic care compared to that required by non-disabled minors of the same age" is allowable,[92] but not the amount of time required for medically prescribed treatment or pedagogical therapeutic care.[93]

Intensive care refers to an allowable increase in long-term care of a daily average of at least 4 h. Additionally required permanent surveillance is allowable in terms of 2 h of care, and particularly intensive surveillance due to a disability in terms of 4 h.[94]

The monthly supplement for intensive long-term care due to disability amounts to the following percentage of the maximum pension level[95]:

- 60% (CHF 46.80) in the event of at least 8 h of attendance a day
- 40% (CHF 31.20) in the event of at least 6 h of attendance a day
- 20% (CHF 15.60) in the event of at least 4 h of attendance a day

des Höchstbetrages der Altersrente.

[87]Cf. BGE 116 V 48 E. 6b.

[88]Cf. margin No. 8057 KSIH.

[89]Cf. judgments BGer of 31.05.2005 (I 565/04) E. 4.2.1 and of 07/11/2001 (I 633/00) E. 1.

[90]Cf. Art. 42ter Para. 3 IVG and Art. 39 IVV.

[91]Cf. Art. 42ter Para. 3 IVG.

[92]Cf. Art. 39 Para. 2 IVV.

[93]Cf. Art. 39 Para. 2 IVV.

[94]Cf. Art. 39 Para. 3 IVV.

[95]Cf. Art. 42ter Para. 3 IVG.

#### 4.2.2.5 Life Skills Assistance

A person who lives in his/her home environment and is permanently dependent on life skills assistance due to impaired health is also referred to as a helpless person. An allowance for life skills assistance represents an "additional and autonomous provision of support"[96] for psychologically, physically and mentally disabled persons.[97] If only the psychological health is impaired, the person involved must at least be entitled to a quarter pension for helplessness to be assumed. The mere requirement of permanent life skills assistance always refers to moderate helplessness.[98]

There is need for life skills assistance if an adult insured person does not live in a nursing home,[99] is covered by invalidity insurance (IVG)[100] and is no longer able to *live independently* without the help of another person because of an impairment of his/her health, if he or she depends on other persons with regard to the *activities of daily living or contacts outside the house* or if there is a high risk of this person *permanently isolating him–/herself from the outside world.*[101] Only such life skills assistance is to be taken into account which is required on a regular basis and within the context of the abovementioned situations.

It is of no importance whether the "assistance" is provided directly or indirectly. The aide can therefore also carry out the required activities him/herself if the insured person is not able to do so in spite of detailed instructions or surveillance/control in consequence of health problems.[102] Furthermore, it is also of no relevance whether the assistance services are free of charge or not.[103]

Life skills assistance does, however, not cover direct or indirect help from another person with respect to the six activities of daily living, nor does it cover the provision of long-term care or surveillance to the person insured. It is rather a complementary, autonomous provision of support.[104] If the focus is on active attendance with regard to the three aforementioned spheres of life, primarily with a view to facilitating independent living, a need for surveillance is not to be assumed.

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[96]BGE 133 V 450 E. 9.

[97]Cf. judgments BGer of 23/10/2007 (I 317/06) E. 4.3.2, of 23/07/2007 (I 211/05) E. 2.2.3 and of 17/10/2005 (I 528/05) E. 1.

[98]Cf. Art. 42 Para. 3 IVG.

[99]Cf. Art. 42bis Para. 5 IVG and Art. 38 Para. 1 IVV.

[100]In accident insurance and for *old-age pensioners* (cf. BGE 133 V 569 E. 5.3 and 5.5) no allowance is paid for life skills assistance. If the helplessness status is only partly due to an accident, the insuree may claim from AHV or from invalidity insurance (IV) the amount incurred for helplessness allowance which these insurances would pay out to the insuree if he had not had an accident (cf. Art. 38 Para. 5 UVV).

[101]Cf. Art. 38 Para. 1 IVV.

[102]Cf. BGE 133 V 450 E. 10.2.

[103]Cf. BGE 133 V 472 E. 5.3.2.

[104]Cf. BGE 133 V 450 E. 9.

## *4.3 Degrees of Helplessness*

In the old-age and dependants' insurance (AHV), invalidity and accident insurance, the assessment of helplessness allowance follows the same criteria,[105] but differs in the amount.

In the case of severe helplessness, the insured person is completely helpless, i.e. he or she regularly depends to a considerable degree on the help of another persons with respect *to all activities of daily living* and is furthermore *permanently in need of long-term care* or *personal surveillance*.[106]

In the case of moderately severe helplessness, the insured person regularly depends to a considerable extent on other persons' assistance despite the provision of therapeutic appliances; this kind of assistance refers to

- *most activities of daily living*
- at least *two activities of daily living* and, in addition, *permanent personal surveillance*
- at least *two activities of daily living* and, in addition, permanent *life skills assistance*.[107]

Moderate helplessness means that an insured person, despite being provided therapeutic appliance,

- regularly depends to a considerable extent on the assistance of other persons with respect to at least *two activities of daily living*
- requires permanent personal surveillance
- requires permanent and *especially intensive long-term care* due to infirmity
- is only able to *have social contacts due to substantial services regularly provided by other persons* as a result of severe sensory impairments or severe physical infirmity, or
- permanently depends on life skills assistance.[108]

Regarding the assessment, a medical professional will specify the extent to which the insured person has limited physical or mental abilities as a result of impairments. If the physical, psychological or cognitive impairments and/or their impacts on the activities of daily living cannot be clearly determined, the medical professional can, and even must, be contacted again for further clarification. Indications provided by the persons offering support, normally the parents, must also be taken into account, and diverging opinions of the persons involved must be mentioned in the report. The final text of the report must contain plausible, detailed and substantiated information regarding the individual activities of daily living and

[105]Cf. BGE 127 V 115 E. 1d.
[106]Cf. Art. 37 Para. 1 IVV.
[107]Cf. Art. 37 Para. 2 IVV.
[108]Cf. Art. 37 Para. 3 IVV.

**Table 1** Amount of helplessness allowance

| Degree of helplessness | Percentage of the maximum old-age pension level[a] | Invalidity insurance | AHV |
|---|---|---|---|
| Severe | 80 | CHF 1'872.– | CHF 936.– |
| Moderately severe | 50 | CHF 1'170.– | CHF 585.– |
| Moderate | 20 | CHF 468.– | CHF 234.– |

[a]Cf. Art. 42ter Para. 1 IVG; Art. 43bis Para. 3 AHVG

must meet the requirements of permanent personal surveillance and long-term care.[109]

A careful diagnosis of helplessness is of particular significance with respect to progressive diseases such as dementia.

The monthly amount of helplessness allowance paid to insured persons who live in their home environment is shown in Table 1 as follows:

### 4.3.1 Long-Term Care Allowance

#### 4.3.1.1 General

Regarding the entitlement to curative treatment, the different social insurance branches assume *different obligations to compensate for care services* in terms of both the acknowleged forms of long-term care (hospital, institutional and Spitex care, as well as care provided by family carers) and the scope of acknowledged care (medical and non-medical care).

Curative treatment is exclusively taken over[110] by one single social insurance within the statutory limits, and financed,[111] in the following order, by military insurance,[112] accident insurance, invalidity insurance, health insurance.

[109]See, inter alia, judgment SozVersGer of the Canton of Zurich of 29/06/2009 (AB.2009.00020) E. 3.1 (regarding an insuree born in 1942 who has been suffering from advanced Parkinson's disease in combination with dementia and hallucinations for over 20 years, and who has been living in an elderly home since July 2007).

[110]Cf. Art. 64 Para. 1 ATSG.

[111]Cf. Art. 64 Para. 2 ATSG.

[112]Long-term care compensation under military law is not referred to in the following.