

07.12.2020

Preserve the sovereignty of the insured with the electronic patient file and consistently protect health data -

Kugelmann appeals to health insurance companies and legislators Digitization in healthcare is progressing faster and faster.

However, there are some data protection concerns. The federal government is pushing ahead with the process of digital transformation of the German healthcare system, which has been slow for years, with numerous legislative projects. After the Patient Data Protection Act (PDSG) only came into force in October 2020, the Federal Ministry of Health presented the next draft in mid-November, this time for a law on the digital modernization of care and nursing, DVPMG for short. From the perspective of data protection, the digital restructuring of the healthcare system in Germany is to be welcomed, provided that the sovereignty of the insured person with regard to the processing of their data is preserved in digital care and their protection is consistently ensured. But there is always a problem, as the two current examples show:

With the electronic patient file established with the Patient Data Protection Act at the beginning of 2021, it is unreasonably difficult for insured persons who do not have a suitable device to exercise the rights to which they are entitled. In 2021 there will be no way of looking at the contents of your own file and controlling access rights to it without your own PC, mobile phone or tablet. From 2022, a representative can be named through whom this should then be possible. A direct exercise of rights is not intended at any time. "Insured persons are thus deprived of the elementary data protection rights to which they are directly entitled. This could and should have been avoided by setting up their own terminals at the health insurance companies or other suitable measures," states Professor Dieter Kugelmann, Data Protection Officer for Rhineland-Palatinate. "The statutory provisions grossly disregard the exercise of their fundamental rights to which the insured are entitled. If those affected contact me and claim deficits in the exercise of their rights, I will demand from the health insurance companies under my supervision that the insured persons can exercise their data protection rights directly."

The state data protection officer also sees a need for improvement with regard to the latest draft law from the Federal Ministry of Health. With the draft of the DVPMG, digitization in the health care system is deepened and extended to the area of long-term care insurance. But there are clear deficits: Digital health and care applications, among other things, should still be reimbursable until 2023 if their suitability for data protection and security is declared solely by the manufacturers themselves. Only then is it necessary to present certificates with regard to the security of the applications; with regard to data protection,

this is not provided for afterwards either. Kugelmann says: "The protection of health data that is processed in digital applications in both patient care and nursing must be given the highest priority. Simply trusting the manufacturer's own declarations must not be sufficient proof of compliance with data protection and data security requirements. The approval of the first digital health applications has already shown this impressively." Kugelmann emphasizes further: "I therefore appeal to the legislator to only ensure the use of secure and data protection-compliant applications and to use the certification options available in data protection law in the particularly sensitive health care system And not only in 2023, but immediately. Data protection and IT security must not be put on the back burner."

In his statement to the state government on the draft law, Professor Dieter Kugelmann also calls for the provisions of data protection for the use of e-mail and messaging services to be observed when setting up a central communication service for the healthcare system, as provided for in the law, and in particular the use prohibiting the use of private end devices for communication in a professional context. He welcomed the establishment of a confidentiality obligation for manufacturers of digital health and care applications, whereby this should extend to all people involved in production and operation. The Federal Government has given the federal states the opportunity to comment on the new draft law by December 7th.

return