

Thiel warns of data protection violations through electronic patient records

The State Commissioner for Data Protection (LfD) Lower Saxony, Barbara Thiel, criticizes the insufficient data protection in the introductory phase of the electronic patient file. The statutory health insurance companies are obliged by the Patient Data Protection Act (PDSG) to offer their insured persons the file on request from January 1, 2021. Due to the technical requirements, however, they will probably not be able to do this in accordance with the requirements of the General Data Protection Regulation (GDPR), at least initially.

According to the PDSG, the insured should be able to decide for themselves which data is available in the electronic patient file and which doctor can access which data. For example, if the orthopedist should not see the latest dental findings, the patient can deny access to them. In the first year of the electronic patient file, however, this will not be technically possible. In 2021, the health insurance companies only have to provide a rough concept for access authorization. This means that those affected only have the option of releasing all data records for all practitioners or for none.

"As a result, data protection violations are foreseeable in the first implementation phase of the electronic patient file, because the elementary principles of necessity and purpose limitation are violated," warns Barbara Thiel. The AOK Lower Saxony with its more than 2.5 million insured falls within their area of responsibility. "We have already sought talks with the AOK and will continue to do so."

In any case, insured persons will only be able to use the electronic patient file if they have a suitable device, such as a smartphone or a computer. Originally, the PDSG stipulated that the health insurance companies must provide patient terminals in their branches for people who do not have their own device. In the final law, however, this obligation was deleted. "It must not be the case that an entire group of people is permanently excluded from use in this way. This restricts the sovereignty of the insured," said Thiel. However, the AOK Lower Saxony has already signaled to the LfD that it wants to offer its insured the option of managing electronic patient files in one of its branches.

"The health insurance companies are in a dilemma," said the state data protection officer. "Either they meet the requirements of the PDSG by offering the electronic patient file from the beginning of next year, or they comply with the requirements of the GDPR." Achieving both at the same time is unlikely to be possible, at least in 2021.

The Bundestag passed the PDSG on July 3rd of this year in the 2nd and 3rd reading as a law that does not require approval.

The Federal Council's data protection guidelines were only partially taken into account. On September 18, the law will be in the

state chamber again, but this can no longer make any changes. Barbara Thiel: "I therefore appeal to the state government of Lower Saxony to work towards an appeal to the mediation committee in order to achieve improvements in data protection law for the insured."

Press release as PDF.