

THE STATE COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

PRESS RELEASE

February 27, 2020

The draft of the Federal Ministry of Health for patient data Protection Act (PDSG) does not keep what its name promises

On January 30, 2020, the Federal Minister of Health, Jens Spahn, presented the Draft law on the protection of electronic patient data in telematics technical infrastructure: the so-called "Patient Data Protection Act" (PDSG). the draft law had become necessary because the

Ministry of Health (BMG) for the Digital Health Care Act (DGV) new regulations to revive the project of an electronic patient data file (ePA) in the Federal Ministry of Justice (BMJ) due to data protection deficiencies had encountered resistance. Spahn had therefore decided that corresponding regulations from the DVG and – revised – into one own data protection law. There are now more to come

Measures to promote digitization in the healthcare system are underway to be brought.

For a comment on the 141-page draft regulation, which is numerous changes alone, 87(!) paragraphs on data protection in addition to the Fifth book of the Social Security Code, continued the Federal Ministry of Health (BMG) gave the federal states a short deadline of February 25, 2020. Thankfully the state government obtained our expertise for its statement.

It became apparent that the haste shown by the Federal Ministry of Health is unum which is not conducive to patient privacy. The draft now presented does not do justice to the designation as "Patient Data Protection Act" and remains so fundamentally in need of revision:

The information on the collection of personal data according to Article 13 DS-GVO can be found on our homepage

(<https://www.baden-wuerttemberg.datenschutz.de/datenschutz/>).

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In particular, the data protection responsibility for the processing
processing of data in the telematics infrastructure is regulated in an unclear manner and
to the detriment of the patient in such a way that the effective
enforcement of the rights of the data subject is often made impossible. Thieves-
data subject-friendly solution of the conference of independent data protection
supervisory authorities of the federal and state governments (DSK) of September 12, 2019,
the data protection responsibility within the telematics
Infrastructure in overlapping areas as a shared responsibility
of several participants is not even mentioned in the reasons
of the draft under consideration. In addition, intended for the construction
the telematics infrastructure company responsible for telematics –
according to the assessment of the DSK - from any data protection
be free to answer.

□ The rights of data subjects from Articles 12 to 22 of the General Data Protection Regulation
are also committed to the provisions of the General Data Protection Regulation
the limited.

□ Health insurance companies should henceforth be entitled to “additional” data from your insurance
to process. That means nothing more than a free ticket
for health insurance companies, the coveted health data of their customers e.g

to process fitness trackers or wearables. This will make a for insured dangerous path taken.

□ Contrary to European guidelines, insured persons are asked to "release" related data as "data donation for research" without that the prerequisites for voluntary and informed consent are be created. Also, the insured can use their once released

Data not - as provided for by the General Data Protection Regulation - through revocation of their consent from the large pot of the so-called research retrieve data center. Although the data donation was expressly "for research research purposes" is to take place, the draft regulation enables use This data is also used for non-research purposes such as the perception of "Control tasks" or the support of political decision-making process in the field of statutory health insurance.

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□ In addition, the bill still has many technical errors, for example by using indefinite or inappropriate terms or new regulations be arranged unsystematically.

"It is to be welcomed that the health care system is improving through the expansion of tele-matic infrastructure is promoted. However, data protection, na- mentally the protection of highly sensitive health data, not to be left behind ben", explains the state representative for data protection, Dr. Stefan Brink. "That Last but not least, it harms the acceptance of digitization in the healthcare sector is of enormous importance." It is to be hoped that the February 27, 2020 announced departmental vote on the draft law on the necessary make revisions.

If you have any questions, you can reach us on the telephone number 0711/615541-716.

Further information on data protection can be found on the Internet at

www.baden-wuerttemberg.datenschutz.de or at www.datenschutz.de.

Related Links:

[https://www.bundesgesundheitsministerium.de/fileadmin/Aktien/3_Downloads/Gesetze_und_Regulationen/GuV/P/draft_patient data-Protection Act_PDSG.pdf](https://www.bundesgesundheitsministerium.de/fileadmin/Aktien/3_Downloads/Gesetze_und_Regulationen/GuV/P/draft_patient_data-Protection_Act_PDSG.pdf)

[https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/2019/4-quarterly/new regulations-health-and-care.html](https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/2019/4-quarterly/new-regulations-health-and-care.html)

[https://www.bfdi.bund.de/SharedDocs/Publikationen/Entschlussionssammlung/DSK](https://www.bfdi.bund.de/SharedDocs/Publikationen/Entschlussionssammlung/DSK-Entscheidungen-Positionen-Papier/Sep19-Beschluss-zur-gematik.html)

[Decisions position papers/Sep19_Beschluss_zur_gematik.html](https://www.bfdi.bund.de/SharedDocs/Publikationen/Entschlussionssammlung/DSK-Entscheidungen-Positionen-Papier/Sep19-Beschluss-zur-gematik.html)

<https://www.aok-bv.de/background/gesetze/index.html>