

Electronic patient file - data protection violations are inevitable

Things are getting serious with the electronic patient file. According to current law, the statutory health insurance companies are already obliged to offer them to the insured as of January 1, 2021. In an expedited procedure, the federal legislature this year introduced the Patient Data Protection Act in order to technically implement the project. However, the technical requirements provided for by the law only insufficiently take data protection into account, especially in the first implementation phase. This means that the rights of the insured are curtailed unnecessarily and in violation of European data protection law.

Dagmar Hartge:

The electronic patient record can only be successful if patients can rely on comprehensive data protection. This will not be the case in the coming year. The statutory health insurance companies in Brandenburg are responsible for introducing the electronic patient file only when the technical requirements take sufficient account of data protection. In case of doubt, I recommend that insured persons wait a year before using the electronic patient file.

Above all, the regulation on access to the contents of the (voluntary) electronic patient file is subject to criticism. One aim of the project is for the insured to be able to specify for each document which doctors, psychotherapists or pharmacies can see which data. For example, if you do not want the dentist to know the dermatologist's diagnoses, you simply do not release the data for this purpose. However, in the first stage of expansion from January 1, 2021 to December 31, 2021 it will not yet be possible to assign access rights according to documents. Insured persons who are willing to use a smartphone for this purpose can only do so after January 1, 2022. Patients who are unwilling or unable to use a smartphone will largely be denied this opportunity even after January 1, 2022. In addition, the originally planned obligation for health insurance companies to offer patient terminals for managing electronic patient files has been removed from the draft law.

In addition to using the electronic health card, another alternative procedure is required by law for registering patients in the electronic patient file. However, the alternative currently offered (authentication method al.vi) does not correspond to the required state of the art and can therefore not be used in accordance with data protection. However, when it comes to health data, the insured must be able to register in a way that offers a high level of protection against data misuse by unauthorized persons.

Even before it is introduced, it can be seen that the electronic patient file will initially fail to achieve its own goal of improving

patient sovereignty.

The so-called telematics infrastructure, which is the primary concern of the Patient Data Protection Act, is operated by gematik GmbH. Among other things, the company provides the information technology basis for granting access rights to the electronic patient file, which we have criticized, as well as the interface for the authentication process. However, the statutory health insurance companies remain responsible to the insured for compliance with data protection.

However, the health insurers are not to be envied: During the introductory phase of the electronic patient file, the legislator is forcing them to decide whether they will comply with their obligation to offer the electronic patient file or whether they will observe the data protection regulations. It is foreseeable that both will not be possible at the same time. Against this background, it is the task of the state representatives to work towards a data protection-compliant approach by the statutory health insurance companies in Brandenburg. It will first seek dialogue with you and, if necessary, warn you of any intended violations of data protection law. If the electronic patient file is not offered in accordance with data protection regulations after January 1, 2021, it will make use of further supervisory powers.

The German Bundestag passed the Patient Data Protection Act on July 3, 2020 without fully implementing the recommendations of the Bundesrat for improvements in data protection law. On September 18, 2020, the Federal Council will discuss the law again. Ms. Hartge calls on the state government of Brandenburg to ensure that the state chamber exhausts its other rights of participation in the legislative process - in the interest of all parties involved.

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