

Healthcare & Life Sciences - Germany

Yet another health reform and seizure of retiring doctors' practices

Contributed by **McDermott Will & Emery**

February 19 2014

The new German government intends to increase competition in the healthcare sector by varying insurance premiums. It plans to overcome deficits in the system of determination of need by regulating physicians' access to the outpatient medical sector, seizing the offices of retiring doctors and ensuring that kickbacks are a punishable offence.

Three months after general elections, a new government took power, again led by Christian Democrat Chancellor Angela Merkel. Its former coalition partner the Liberal Democrats has been replaced by the Social Democrats.

The new government has published concrete plans for yet another health reform, affecting, in particular, the health market for services to the publicly insured (approximately 90% of the population).

The last Christian Democrat/Social Democrat government (between 2005 and 2009) enacted a law whereby all public health coverage funds received an identical percentage of the salaries of the publicly insured, amounting to approximately 15% of the salary up to a cap of approximately €6,500 per insured annually (including coverage for family members not drawing a salary). Public health funds in need of additional financial means were entitled to charge limited additional premiums (up to a low two digit euro sum maximum per month) directly to their insured. The new government wants to abolish the possibility of additional direct premium charges but to re-grant to the more than 130 different public health funds the power to determine for themselves the salary percentage that they charge as insurance premiums to the insured and their employers (up to a certain fixed salary threshold), whereby premiums are deducted directly from the salary and paid by the employer to the public health funds. Both measures (ie, the introduction of a common salary percentage for all payments to public health funds plus possible additional direct premium and the reintroduction among different public health funds of varying salary percentages without the possibility of additional limited direct premiums) are intended to increase competition in the sector.

Increasing competition for insured individuals has been on the agenda of all German governments for more than 15 years. However, no government has achieved much – except for the soon-to-be abolished introduction of identical salary percentages, with the consequence that public health funds in need of additional financial means were entitled to request further contributions from their insured members. Even the lowest additional payment requests by certain public health funds caused millions of their insured members to seek coverage elsewhere. In order to avoid the publicly insured moving from one fund to another for monetary reasons, a system of variable salary percentages will be reintroduced. Differing public health fund insurance premiums will be deducted directly from salaries and will be less obvious to insured individuals than the much lower additional payments paid by the insured directly to the public health fund. However, should the publicly insured become aware of the different amounts to be deducted from salary – depending on which public health fund they are insured with – competition among different funds could be reinforced.

All outpatient and inpatient sector services and their reimbursement by public health funds are determined by health regulatory authorities with universal application. However, public health funds will be reinforced because they can offer further managed care, integrated care and managed care to their insured members. Public health funds have this ability under existing law and it has been continually and gradually reinforced by each of the last four governments; however, public health funds have exercised this ability to a limited extent only. New incentives will be created to ensure that public health funds increasingly offer such additional services and thereby reinforce competition.

A peculiarity of the German health sector is the uniquely strict separation between the inpatient and outpatient sectors. Each sector requires completely different licensing and reimbursement rules, leading to a lack of communication between the sectors to the detriment of patients.

The government has announced – like all preceding governments in the past 15 years – its intention to overcome the artificial separation between the inpatient and outpatient sectors. Hospitals shall be increasingly entitled to render services in the outpatient sector.

Generally, it is assumed that there is an oversupply of physician services in the outpatient sector, as determined by a system of determination of need whereby a physician obtains a licence to render outpatient services only if a need for such services is assumed by the respective regulatory authority – something which occurs infrequently. Most geographical areas of the country are assumed to have an oversupply of outpatient physician services. In these areas, under existing law, doctors can obtain a licence to render outpatient services to the publicly insured only if they have acquired a practice from a retiring doctor. In order to reduce oversupply of doctors' services, doctors who retire in an area where oversupply is assumed to exist shall, according to government plans, no longer be entitled to sell their practice. Rather, regulatory authorities shall seize most retiring doctors' practices in return for a monetary payment. Related legal acts are set to be adopted during 2014. Should this plan be enacted, young doctors in most areas of the country would be excluded from the possibility of working in their own office in the outpatient sector for a long time. They would instead be restricted to working as the employees of other doctors or hospitals.

Whether such enforced seizure of retiring doctors' practices and barring of young doctors' access to the outpatient sector would be in accordance with the Constitutional Rights of Free Exercise of Profession and Protection of Property is doubtful, but this would undoubtedly be discussed in detail after the actual enactment of such plans.

Even though the government assumes an oversupply of physician services in the outpatient sector, it is also assumed that patients in many of these areas wait too long for appointments with specialist physicians. Regulatory authorities shall therefore monitor patients' quick access to specialist outpatient physicians or refer them to a hospital and allow the hospital to render the required specialised services.

Kickbacks for doctors referring patients to hospitals, clinical labs, pharmacies, other health service providers or for prescription of drugs have been illegal for decades and related contractual obligations are void. However, in most instances such kickbacks have not constituted a criminal offence. Amendments to the Criminal Code will stipulate that any kickbacks in the health sector will constitute a criminal offence, as stipulated by various Sunshine Acts globally.

For further information on this topic please contact Stephan Rau at McDermott Will & Emery by telephone (+49 89 12712 0), fax (+49 89 12712 111) or email (srau@mwe.com). The McDermott Will & Emery website can be accessed at www.mwe.com.

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Stephan Rau



© Copyright 1997-2014 Globe Business Publishing Ltd

Online Media Partners    