

Physicians are Granted More Rights in Germany

New Law Deregulates Medical Care

Competitive structures as already known for a long time in other markets are now also emerging in outpatient medical care. At the start of this year a law pushing the deregulation has come into force.

MUNICH, 2 January 2007. At the start of this year, the law amending the panel doctor law (VÄndG) has come into force. This law continues with the deregulation of the sector of outpatient medical care which was already initiated in 2004 through the law on modernization of the statutory health insurance fund (GMG). In this context the entire sector of outpatient medical care in Germany was already deregulated substantially and fixed long-established prohibitive structures were eliminated with a stroke of the pen. This elimination was realized by the introduction of the new form of care by medical care units (MVZ). These units are not subject – except for some narrow exceptions – to the basic prohibition of participation by external investors as shareholders and the formation of companies operating on a regional and national scale.

The new law now abolishes most of the above-mentioned prohibitions also for physicians practicing in (group) practices. From now on they are allowed to establish companies operating on a regional and national scale, to employ physicians and to opt for flexible working times. The only element which remains unlawful is the participation by external investors as owners of medical practices or as shareholders of group practices. Since 2004, however, external investors may take an interest in outpatient medical care providers as shareholders of medical care unit holding companies. The only requirement they must meet is having a valid license as a provider of medical care from the statutory health insurance system. Medically unqualified financial investors who do not hold any hospitals in their portfolio may become shareholders of an outpatient medical care provider by making use of the special opportunity to establish a company for home healthcare supplies which is licensed as a supplier of therapeutic appliance.

Another essential change effected by the VÄndG is the option for a physician to provide both an outpatient and an inpatient service. Previously, this combined service was only permitted for laboratory physicians and pathologists, while other hospital physicians were prohibited from being licensed as a panel doctor, i.e. providing outpatient care for members of the statutory health insurance fund. The reason for this prohibition was the consistent practice of the social courts according to which the provision of both an outpatient service and an inpatient service by the same physician – for instance both on a half-day basis – was not compatible with each other.

The strict separation in the German health care system between outpatient and inpatient care is considered to be a cause of inefficiency by most German health economists. Therefore, the legislator of the GMG attempted to eliminate this strict separation by permitting hospital-based medical care units. It was intended to enable hospitals to apply their resources including their employed physicians also in outpatient care. To some extent, medical care units where hospital physicians work were also admitted. In many admission committees, however, the view prevailed that the incompatibility of the outpatient and inpatient service did apply to medical care units as well. For this reason, many applications for the admission of such units were refused.

The VÄndG now contains a provision stipulating the compatibility of the outpatient and inpatient service provided by one physician. This way, on the one hand, hospitals are enabled to deploy their physicians also in their own medical care units. On the other hand, the physicians employed in a hospital may pre-empt the hospital's plans of formation by setting up their own practice or being employed in a medical care unit in addition to their inpatient job. In particular, well-known hospital physicians will choose this option, while they will probably provide most outpatient services by employed physicians.

So far practicing physicians have been afraid of hospitals entering the sector of outpatient care, arguing that in case of hospitals promoted by public funds there was the danger of promotion funds being used (for purposes other than intended, i.e.) for the development of the outpatient care units. Now practicing physicians are also threatened with an additional competition by hospital physicians.

In many cases, physicians with own practices established for many years and hospital physicians will probably join as associates to establish group practices and medical care units in order to combine the many years' experience in outpatient care of one physician with, for instance, the reputation in science of another physician. In any case, larger and even supra-regional care units will emerge acting under a common name. In this process, successful small units will certainly not fail, while one thing is for sure: Market and competitive structures as already known for a long time in other markets now are also emerging in outpatient medical care.

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