German e-health law – a breakthrough for the digital health sector?

Digitisation has become a political buzzword in Germany, raising particular concerns with regard to the German healthcare system. German politics has long been lagging behind in creating an appropriate framework that balances health benefits versus data protection issues. Now a new e-health law is about to be passed, triggering a dynamic debate on digitisation, data and health.

At a recent convention of her Christian democratic party, German Chancellor Angela Merkel hinted for the first time that she was ready to reconsider her position as a staunch defender of Germany's strict data protection rules, expressing her concern that Germany may fall behind in the digitisation process because its data protection standards are too high. She continued to describe data as the 'resources of the future', a statement which was welcomed by the German business community, while infuriating consumer protectionists.

Caroline Ledosquet, senior director at our Public Affairs practice in Berlin, gives a snap shot view of how German lawmakers try to tackle e-health legislation.

In the area of e-health, which broadly encompasses health care practices supported by communication and information technologies, the enduring battle between innovative business ideas and traditionally strong German consumer protectionists has been particularly polarised. In Germany, there is by now a general agreement among health care practitioners that e-health is absolutely essential for dealing with the major future challenges of the German health sector: a shortage of doctors (especially in rural areas), the demographic change with an ever-aging population, and increased cost-pressure in the healthcare business.

But despite this consensus among experts, Germany is lagging behind in e-health matters, especially in comparison to Nordic countries like Denmark, Iceland and Norway. According to a study by the European Commission, a comprehensive data-exchange in Germany's health sector in most cases fails at the outset because of the lack of IT-infrastructure in hospitals and little interconnection to other regional and national health institutions. Despite this obvious problem, only 28% of German hospitals have a clear strategy on how to tackle the challenges and opportunities which the digital transformation poses to health care.

Why data protection is not always in patients' interests

But how come that e-health is so underdeveloped here? Already since 2003, efforts have been made to introduce an electronic health card, where patient data is saved on an electronic chip and thereby easily accessible across different health institutions. Primarily due to data protection concerns of the German Medical Association, it took eight years for the electronic health card to be introduced in 2011. Since according to the German Federal Data Protection Act medical data are a special form of personal data, they are subject to a particularly high degree of legal protection. However, medical practitioners have realised that excessive data security is ultimately working against patients' interests, since data and modern IT can support medical care in multiple ways and thereby increase the quality of treatment patients receive.

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> (Hermann Gröhe, Federal Minister of Health)

According to a study conducted by the business association of the IT industry, 'Bitkom', 69% of pharma businesses believe that digital technologies will prolong people's life expectancies in the near future. The results of a survey by McKinsey show that common negative perceptions on digitisation in the health sector - for example that 'people don't want to use digital services for healthcare' or that 'only young people want to use digital services' – reveal themselves as myths as soon as patients are actually questioned about these issues.

In the end, these messages have reached politics, and since December 1st, 2015, the electronic health card is the sole valid health ID in Germany. However, even now the full technological potential of the card is barely used, with little more than basic personal data and a photo being saved on it. The current minister of health, Hermann Gröhe, described it as 'a sports car waiting in a garage'. This is why he pushes for a new e-health law to still be passed in 2015. This new law aims to include emergency data and medication plans on the electronic health card as well as to ensure greater connectivity between different health practitioners via telemedicine. 'Gematik', a company established by leading organisations of the German health sector, is responsible for setting up the digital infrastructure for the electronic health card and ensuring the interoperability between its different components. By law, patient data is supposed to be saved anonymously and can only be decoded by patients themselves.

It is now up to the politicians

For now, the new e-health law is little more than an attempt to catch up with developments. Products of the 'second health market', such as web-based health portals, apps and digital measuring systems, have transformed the sector from the bottom up. One oft-cited example is 'goderma', an application whereby users (patients who experience skin problems) can take a picture and send it via the app to a general practitioner who will reply with basic medical advice within two days.

The worldwide market for mobile health (mhealth) products alone is expected to reach a sales volume of 26 billion dollars in 2017, and it is fair to say that e-health products developed by the private sector in Germany have been the main drivers for growth. Considering this, it is indeed time for policy makers to provide a macro-structure which encourages innovation by the private sector, a legal framework within which digitisation can grow. However, the current legal initiative, which does not even mention the opportunities which mhealth and personalised medicine provide, amounts to little more than a first step. The real elephant in the room is how data and solutions generated by private-sector products can be linked effectively with professional doctors and statutory health insurances, and how their communication systems can be integrated in a telematic infrastructure. And to date, it seems, no-one has discovered the elephant.

It's time to take a closer look. There's no denying that digitisation of the health sector has finally gained momentum in Germany, with strong support from the medical community – and a Chancellor ready to think twice.

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