



Investor-owned medical care centres (MCCs)

“Regulation is legally possible and urgently needed”

The problem is a European one. This issue includes a report (see Europe Ticker) on the situation in Spain, where several investor-owned dental chains have failed their patients. The powerful German Federal Dental Association has issued a statement calling for state regulation of medical care centres (MCCs).

Speaking at the spring meeting of the Federation of European Dental Competent Authorities and Regulators (FEDCAR) in early May, Óscar Castro Reino, president of the Spanish Dental Association, renewed calls for the effective application of a long-standing law that requires any company providing dental services to be in the hands of dentists and subject to the ethical principles of professional law.

The German Medical Association has now issued a statement on a legal opinion commissioned by the Federal Association of Operators of Medical Care Centres (BBMV). Martin Burgi, Professor of Public and European law at the University of Munich, concludes that there are “insurmountable limits under constitu-

tional and European law” to further restrictions on MCC groups. In the case of further encroachments on the constitutionally protected freedom of occupation of MCC operators, he explains, weighty public interest concerns must be taken into account and the principle of proportionality must be observed.

Incompatible with European law?

Of the ten proposals put forward by the German Medical Association and the German Länder, Prof. Burgi considers four to be constitutionally unobjectionable, such as the ban on advertising for medical concepts or the ban on participation in medical care

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governed by state health insurance (SHI) if the freedom of physicians to decide on treatment is not ensured. Similarly, regulatory reviews of SHI contracts or transparency requirements regarding the ownership structures of MCCs do not violate the German constitution or European law.

The situation is different, according to Prof. Burgi, when it comes to limiting investor-owned MCC chains to a radius of 50 km. Nor is the prohibition of MCCs comprising members of the same medical specialty—representatives of one specialty or general practitioners joining forces—justified by sufficiently weighty public interests.

Statement by the German Medical Association

“Government regulation of investor-owned medical care centres (MCCs) is not only legally possible but also urgently needed from a public health perspective. Such regulation would help to protect MCCs as a sensible healthcare option from the negative consequences of patient care geared to profitability,” said Dr Klaus Reinhardt, President of the German Medical Association, commenting on the results of the expert opinion on the legality of stricter regulation of investor-owned medical care centres.

Reinhardt was referring to the regulatory proposals for investor-owned MCC that were presented by the German Medical Association in January 2023. These proposals are designed to ensure that patient welfare always takes precedence over commercial interests. The German Länder Bavaria, Schleswig-Holstein and Rhineland-Palatinate recently submitted a motion to the Bun-

desrat with the same objective. “The proposals contained in the German Medical Association’s paper and in the Bundesrat motion serve the common good and are constitutionally justified,” said Reinhardt.

In the view of the German Medical Association, medical care centres should be subject to the same rules as SHI contract physicians and for pharmacies. According to the case law of the Federal Social Court, it is necessary for the activity of SHI contract physicians that they are fully and directly responsible to their patients for the treatment itself and its factual and legal framework.

No external influence

According to the German Medical Association, this requires that SHI contract physicians themselves determine the content and scope of their medical activities and the use of the material and human resources allocated to the practice, independent of any significant external influence. The Pharmacy Act prohibits shareholdings in a pharmacy in the form of a silent partnership and agreements in which compensation for loans made or assets provided to a pharmacist is based on the pharmacy’s turnover or profits. According to the German Medical Association, the same principle should apply to MCCs. The law on SHI contract physicians stipulates that the regulations applicable to these physicians also apply to MCCs.

Reinhardt therefore calls for the following legal clarifications: “The existing restrictions on the group of persons or entities from which the founders for MCCs originate must not be undermined by hospitals that are operated for the sole purpose of establishing a chain of MCCs without actually being interested in providing inpatient care.”

The regulatory framework should ensure high quality and dedicated patient care in MCCs. If maximising return on investment becomes the main objective, preventive measures are needed. Reinhardt: “The provision of healthcare for the population and its financing within the framework of our solidarity-based system is considered by the Federal Constitutional Court to be of paramount importance for the common good. The regulatory proposals of the German Medical Association take this into account. They allow the framework conditions to be aligned in such a way that MCCs continue to provide patients with medically sound care and that their treatments are not dictated primarily by return-on-investment considerations.”

Source: German Medical Association, 25 May 2023

Download the original position paper of the German Medical Association (in German).

