Legal marathon in the healthcare system...and still:

Will Lauterbach's revolution be cancelled?

The ongoing legal challenges in Germany's healthcare system reflect doubts about whether Minister of Health Karl Lauterbach's proposed reforms will materialise. Time is pressing for Lauterbach, notably for his hospital reform, which he considers the centrepiece of his agenda and ambitiously labels a "revolution". However, federal-state constitutional dynamics might stifle these changes before they start, as states have ultimate control over hospital planning. The consensus among expert observers is that Lauterbach has less than two months to draft a bill that will convince all sides and turn a hyperactive Minister into a reformer.

It is almost impossible to keep track of the many laws announced and partially implemented by Lauterbach and to understand their systemic impact and significance unless you work with the subject on a daily basis, especially as the Minister labels almost all proposals, laws and regulations with his favourite word "reform".

The following is therefore a brief summary of the legislative oeuvre of the Federal Ministry of Health to date and the reform agenda planned for 2024—which, however, is quite a legislative challenge.

2022—the first shock wave

The number of new laws in 2022 was still manageable, including updates related to the COVID-19 pandemic, measles protection legislation, and an increase in the minimum wage in the care sector. The first shock wave was the Statutory Health Insurance (SHI) Financial Stabilisation Act, which aims to cover an expected €17 billion funding gap for 2023 and 2024. Healthcare professionals, especially dentists, were significantly affected, as the Minister imposed a "strict" budget limit for 2023 and 2024, based on the 2022 annual budget. Almost as an aside, commitments to fund the increased costs of the newly introduced preventive perio course were withdrawn. The detrimental impact on the dental sector, particularly in relation to perio treatment, is well known.

2023—Lauterbach's reforms take off

7 – 20 – 30 – 94 – 468 – 93 ... what reads like the winning numbers in a lottery are in fact the published "performance data" of the Federal Ministry of Health for the year 2023. There is no denying the diligence of the staff of the Federal Ministry of Health: seven laws, 20 ordinances (ministerial decrees that do not require a parliamentary vote), 30 reports and 655 answers to short, written and oral questions in the Bundestag have been compiled. These seven laws are now in force:

- Digital Act
- Health Data Use Act
- Nursing Care Support and Relief Act
- Nursing Education Strengthening Act
- Drug Shortage Control and Supply Improvement Act
- Hospital Transparency Act
- Act on the Establishment of a Foundation for Independent Patient Counselling in Germany

As a result, the Ministry of Health's employees have already earned the title "hard-working". At the same time, however, the Ministry's staff have to manage the drafting and political "preparation" of a further 13 legislative projects already announced for 2024. Under these circumstances, I would like to know whether and how Lauterbach keeps his staff motivated and in good spirits...

2024—grand finale or fiasco

The success of Lauterbach's reform agenda—and the success of his 20 years of healthcare policy efforts—depends on crucially whether the hospital reform that he has identified as the core of his agenda is actually passed into law this year—and on time. It should also be borne in mind that the hospital reform, if implemented as proposed, will have considerable structural consequences for outpatient care due to the introduction of level 1i and 1n "hospitals".

In view of the Herculean task of financially restructuring the inpatient sector and putting it on a stable footing for the future, the length of Federal Ministry of Health's to-do list is more than remarkable. As of the beginning of March 2024, thirteen legislative proposals targeting various aspects of health care were in the planning stage in Germany, as follows:

- Cannabis Act
- Hospital reform
- Emergency care reform
- Emergency services reform
- Health Care I—SHI Strengthening Act (GVSG)
- Health Care II
- Digital agency
- Federal Institute for Prevention and Education in Medicine
- Medical research
- Pharmacy reform
- Bill on patients' rights
- Nursing competence
- Bill on bureaucracy reduction[1]

All of this not only looks like a lot of extra work for the 1,078 employees of the Federal Ministry of Health (Statista 2023) but also holds considerable potential for getting bogged down. Quite apart from the fact that political decision-making processes can rarely be tamed by a strict timetable.

Three legislative proposals stand out

Three legislative proposals stand out among the tasks on the agenda: hospital reform, emergency care reform, and, to some extent, the SHI Strengthening Act (GVSG) due to their complexity and significant alterations to the current healthcare system. The still-debated Cannabis Act was passed by the Bundestag on 23 February, yet it remains on the agenda as it must clear the final hurdle in the Bundesrat, where the state governments are represented, on 22 March. Its approval by the Bundesrat is highly uncertain.

Crisis summit, GVSG and etiquette

The year 2024 began with notable activity in professional politics, particularly for physicians. In the second week of January, they convened with Minister of Health Lauterbach for a crisis summit focusing on outpatient care, primarily concerning the de-budgeting of general practitioners. Subsequently, Lauterbach publicly declared the cessation of SHI reimbursement for homeopathy, citing "no medical benefit".

Both initiatives are encompassed in the second draft of the GVSG. However, according to *ÄrzteZeitung*, this draft allegedly dates back to December, leading to questions regarding the necessity of a crisis summit to declare the positive news about the planned de-budgeting of general practitioner services. This brings us to the orchestration of a crisis summit, to which, notably, dentists were not invited; nor were dental issues discussed, but this approach seems to lack propriety.

Lauterbach plans genuine de-budgeting

In the second draft, the de-budgeting of general practitioner care is further defined under the new term "general practitioner service demand". However—and this marks a fundamental change—any increase in service volume must be compensated through additional SHI payments at EBM (Uniform Evaluation Standard) rates. This would end the freedom of SHI to allocate payments to providers based on the overall health and morbidity (disease prevalence) of the insured population. This change also ensures that specialist care does not suffer from unfair disadvantages. This is positive news, but there is still no explanation on how SHI is supposed to manage this budget uncertainty.

The end of homeopathy is not enough

The cessation of homeopathy at the expense of SHI, widely proclaimed by Lauterbach across the country, and the

associated insurance marketing, will not compensate for expected additional costs. In view of the parsimony of the Minister of Finance, who, in the face of a dramatically increasing burden on the contributors, is not even afraid of leaving non-insurance services unpaid to the tune of almost €7 billion, the question arises as to where savings are to be made in the system. Unless, of course, Lauterbach finds money in the outpatient system. The dual specialist track has been a thorn in his side for more than twenty years. But that would require the success of the hospital reform, which we will discuss later.

So much for the updates from the second draft of the GVSG. Now, briefly, the main initiatives of the first draft of the GVSG in the summer of 2023: the creation of health kiosks (74.5 % funded by SHI, 5.5 % by private health insurance [PHI] and 20 % by the municipalities); the development of health regions to improve local healthcare provision (creation of networks of regional providers such as surgeries, medical networks, clinics, nursing services, etc.); simplifying the establishment of medical care centres (MCCs) in the form of limited liability companies; representation of the federal states on medical licensing committees; changes to the structural fund to promote the establishment of medical centres (funds to be made available even if there is no technical proof of any undersupply of medical services); and other regulations, in particular those relating the Federal Joint Committee on Social Security Policy (G-BA).

So far, there has been considerable activity on the part of physicians, but virtually none on the part of dentists. But who knows what else will come out of the Ministry. After all, the GVSG is planned as an omnibus bill, and further amendments have already been announced.

Lauterbach's revolution

Among the many reforms announced by the Federal Minister of Health for this legislative period, one stands out: Lauterbach's great revolution, namely the hospital reform. In addition to the necessary financial consolidation of the inpatient sector, this reform is central to a new organisational structure of the healthcare system. Intricately linked to this is the emergency care reform, which, without the hospital reform, would require considerable additional structural efforts.

However, the emergency reform is not Karl Lauterbach's invention. Hermann Gröhe, Federal Minister of Health in Germany's centre-left/centre-right coalition from 2013 to 2017, aimed to implement an emergency care reform through the Hospital Structure Act, which was designed to interlink outpatient and inpatient care. During this period, so-called portal practices were introduced. At the time, the G-BA decided to classify hospitals according to their emergency care capabilities. However, 600 of the 1,800 clinics examined at the time did not even meet the basic criteria. This classification was included in the statements of the Government Commission on Modern and Needs-Oriented Hospital Care. Now, two legislative periods later, we are back at hospital reform, which, because of Germany's federal structure, is like trying to square the circle.

In other words: the federal government, represented by Minister of Health Karl Lauterbach, cannot implement any hospital reform, no matter how sensible, without the approval of the federal states, who ultimately control hospital planning. This fact is well known—except to Lauterbach, whose top-down approach has met with resistance from the State Ministers of Health. As a result, the Federal Ministry of Health's website still states: "The commission provided for in the coalition agreement was set up in May 2022 to deal with the necessary reforms in the hospital sector. It is expected to make recommendations and formulate goals for hospital planning based on performance groups and levels of care, guided by criteria such as accessibility and demographic development".[2]

Unfit as a revolutionary

This is where the Hospital Transparency Act comes in, further alienating the State Ministers of Health. According to the Federal Ministry of Health, "the federal government supports the planned hospital reform with this law. It forms the basis for the planned publication of structural and performance data on hospitals in Germany. Patients should be able to identify which hospital in their area offers which services and how these hospitals rank in terms of quality and medical and nursing staffing".[3]

This essentially amounts to the backdoor introduction of the service levels 1i to 3 for hospitals proposed in the hospital reform. This manoeuvre has already cost Lauterbach half a year– time he sorely now needs to implement his revolution. And the law has still not been passed, as it still has to go through the Bundesrat's mediation committee on 22 March.

Nevertheless, Lauterbach remains optimistic and aims to have a draft bill for the hospital reform bill before the Cabinet by 24 April at the latest. But getting there is one thing—getting the approval of the State Ministers of Health is another. Why is this so crucial? This date is considered the last chance to publish a law in the Federal Law Gazette that requires the approval of the states in this legislative period. So, despite Lauterbach's confidence, time is of the essence. The danger is that, by the end of the legislative period, Lauterbach's efforts will prove to be neither revolutionary nor reformative for the healthcare system.

What does any of this have to do with dentistry?

It does not seem to be related to dental care. What does dentistry have to do with hospital reform? On the surface, it appears to be unaffected, but the question remains: what position does the policy envisage for dentistry?

Although the reorganisation of health care has not yet been fully defined—particularly in relation to specialist outpatient care—the future levels are already clearly visible. The restructuring of the inpatient sector plays a central role, based largely on the proposals of the Government Commission on Modern and Needs-Oriented

Hospital Care from December 2022.[4] These proposals form the basis of the hospital reform policy paper agreed upon by the federal and state governments in the summer of 2023.[5] A key feature is the classification of hospitals into so-called levels 1n, 1i, 2 and 3.

According to the legislative proposals, care could be structured into six or seven levels, depending on the future role of specialist outpatient care:

- Basic/occasional care—health kiosks, community health nurses, etc.
- Primary care—similar to general practitioner-centred care provided by law
- Hybrid care between sectors (level 1i clinics, outpatient care/hybrid diagnostic-related groups, outpatient surgery and other procedures)
- Basic emergency medical care (hybrid between outpatient and inpatient sectors in integrated emergency centres, level 1n hospitals)
- Basic and specialist inpatient care (level 2 hospitals)
- Specialised, maximum and university medical care[6]

The electronic patient record is intended to act as a link between these levels. However, key legislation to implement the above scenario is still lacking, in particular the Hospital Transparency Act.

Time is pressing, not only because of the need to get this legislation through the Bundestag and Bundesrat during this legislative period, but also because of the increasingly precarious financial situation of clinics—a key term is "decommercialisation".

It remains to be seen whether dentistry will have to fit into this scenario or whether it will remain in its own orbit due to its unique aspects (primary care provider; no clinical back-up comparable to general medicine; no division into general and specialist dentists except for orthodontists; strong prevention orientation; highly technologised practices; different billing systems). Given the unresolved issues in Lauterbach's agenda, it is unlikely that this issue will be raised in this legislative period. Ultimately, this is good news, because the development of viable and sensible alternative scenarios takes time and will not happen overnight.

However, the year 2025 and the end of budgeting under the SHI Financial Stabilisation Act are not as far away politically as a glance at the calendar might suggest. By the end of the year, the Minister must have clearly defined the budget for dental care for SHI patients in 2025. However, in the current reform context, this is low on the Minister's to-do list. And therein lies the danger because many of his legislative measures will mean significant additional expenditure. Given the current economic situation, it is unlikely that SHI revenues will continue to grow. Moreover, the health budget for 2025 is now the second smallest in the federal budget. If the Minister does manage to push through his hospital reform at the last minute, this will result in billions in additional costs from the transformation fund—Lauterbach mentioned €50 billion—of which €25 billion will go to the SHI system and, after the end of the budgeting period, will probably further limit the dentists' room for manoeuvre under the SHI Financial Stabilisation Act.

However, this is no cause for panic, but rather an opportunity to reshape our own playing field.

Sources:

[1] *observer-mis.de/data/exchange/Monitor_Chro/BMG/Bilanz 2023_V4.pdf*

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[4] *https://www.bundesgesundheitsministerium.de/themen/krankenhaus/regierungskommission-krankenhausversorgung*

[5] *https://www.bundesgesundheitsministerium.de/themen/krankenhaus/krankenhausreform.html*

[6] *nach Dr. Albrecht Kloepfer, ix-media vom 29. Januar 2024, Seite 3*

[7] *https://www.bundesgesundheitsministerium.de/service/gesetze-und-verordnungen/detail/krankenhaustransparenzgesetz.html*

Science—always, but only if the results fit

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