On the difficult implementation of § 25b SGB V

How exactly does a health insurance fund have to provide information?

'We have not utilised it.' This is the succinct conclusion drawn by the majority of health insurance funds in the current MVF survey on the implementation of Section 25b SGB V (1). The SBK has so far seen no reason to utilise the legal basis. Techniker Krankenkasse, one of the driving forces behind the Health Data Utilisation Act (GDNG), has also only come up with a single measure so far. The MVF survey has been running since February - i.e. even before the BfDI's circular of 1 April 2025 on the information obligations of health and long-term care insurance funds with regard to the right to object, which significantly tightened the requirements for the funds and speaks of a 'multitude of information measures' and 'conceivable building blocks'.

>> The BfDI letter of 1 April, which some dismissed as a bad April Fool's joke, is not. Quite the opposite. It is an effort to achieve clarity, as Philipp Oster from BfDI Division 13 'Health and long-term care insurance, fundamental issues SGB' explains in his rather detailed letter to 'Monitor Versorgungsforschung': 'In my circular, I explained that in my assessment, Section 25b (3) sentence 2 SGB V is to be understood as meaning that the health insurance funds can fulfil their duty to provide information by publicly informing the insured persons. The decisive factor - as the BMG also sees it - is the realistic possibility of taking note.'

So what is this 'realistic possibility' that the BfDI and BMG are supposed to agree on?

The BfDI circular (2) from 1 April states: 'In my current assessment, a number of information measures must be taken in order for public information to be suitable within the meaning of Section 25b (3) SGB V.' According to the BfDI, conceivable components of the overall measure could be

- a clearly visible notice on the health insurer's homepage
- Highly visible notices in all branches
- Prominent notice in member magazines that are sent out
- Information in dialogue mail already sent out, for example in the form of an enclosed leaflet
- Notices in advertising brochures already sent out (by post)
- Information by e-mail newsletter
- Individualised information for insured persons including electronic mailboxes (if available). With the nationwide introduction of ePA 3.0, the use of health insurance-specific digital service portals and the use of electronic mailboxes is likely to increase even further. In this respect, it is worth examining whether it will be possible to use this method to provide individualised information to insured persons in the future.
- In future, it should be possible to reach even more insured persons by integrating the TI messenger. This will provide even more data protection-friendly measures for informing insured persons.

What now: Do all measures have to be utilised in order to be able to fulfil the information obligation of the health insurance funds towards the insured persons , which is explicitly intended by the legislator?

In Section 25b (3), the legislator merely states that insured persons 'must be informedpublicly in an appropriate manner about the existence of the right to object'. However, it left open which generally accessible channels are suitable within the meaning of the standard.

The BfDI also remains vague at this point in its circular, but goes into a little more detail. It writes: 'The suitability of public information must be assessed on a case-by-case basis by means of an overall assessment. It will have to be taken into account that even insured persons who use digital services are likely to visit their health insurer's website extremely rarely at best. So-called 'offliners' and vulnerable groups will not be reached by this information measure at all. An information channel that cannot reach the sphere of the insured is not suitable.'

In individual cases, it should also be checked whether the information about the existing right to object is prominently displayed on the website or whether it can be easily overlooked due to the chosen placement. The BfDI continues: 'Information in membership magazines presents comparable challenges. Insured persons do not expect - and do not have to expect - that information relevant to the protection of their right to informational self-determination will be transmitted (possibly only once) within a magazine sent free of charge. These considerations lead to the conclusion that individual public measures are generally not suitable for fulfilling the information obligation under Section 25b para. 3 SGB V due to a lack of knowledge or the possibility of knowledge.'

In order to shed more light on this issue, 'Monitor Versorgungsforschung' contacted the BMG. Hanno Kautz, Head of Division L 7 at the BMG, wrote in an email to the editorial team that his office is 'very interested' in ensuring that the new opportunities that Section 25b SGB V opens up for health insurance funds are utilised extensively. The statutory transparency provisions, including public information in accordance with Section 25b (3) sentence 2 SGB V, were deliberately formulated by the legislator in this low-threshold form.

The BfDI circular requires that the information in accordance with Section 25b (3) sentence 2 should be provided 'in an appropriate manner'. According to Kautz, this concern 'is understandable in principle'. However, the ' low-threshold nature of the information intended by the legislator should not be cancelled out by an interpretation not intended by the legislator '.

In particular, according to Kautz, the health insurance funds cannot be required to provide information to individual policyholders. The legislator 'precisely wanted to

prescribe public information and not individual information for each insured person'. This is clearly and repeatedly expressed in the explanatory memorandum to Section 25b (3) sentence 2 SGB V. The health insurance funds would therefore not be obliged to inform their policyholders individually in accordance with Section 25b (3) sentence 2 SGB V. Kautz: 'In our understanding, the 'majority of information measures' required by the BfDI already exists if health insurance funds take two measures to provide information.' In order to implement the obligation in an unbureaucratic manner, information on the health insurance company's website in conjunction with notices in the office would suffice. The latter would also enable people without Internet access to take note.

Does this turn 7 measures into just 2? What does the BfDI think?

Philipp Oster from BfDI Division 13 'Health and long-term care insurance, fundamental issues SGB' explains this in his detailed letter to MVF (4). He understands a 'realistic possibility of knowledge' to mean the following; he explains this using the example of the information channels 'member magazine' and 'homepage notice': 'The group of people affected by an evaluation will in most cases be made up of a larger group of people. Some of these people will have Internet access, others will not. Some will receive their fund's membership magazine, others will not. The larger and more heterogeneous the group, the greater the likelihood that some will neither have Internet access nor receive a member magazine. So if the information is only distributed via one or two channels, the probability of not being able to reach individual people increases with the size of the group. For this reason, I explained in my circular that providing information solely on the fund's website or in the members' magazine does not appear to be a suitable individual measure.' However: 'If the fund can ensure that all persons affected by an evaluation are informed via only one or two information via only one or two channels also have a realistic opportunity to take note via at least one of these channels, then Section 25b SGB V would be fulfilled.' In the circular dated 1 April 2025, he stated the following: 'The decisive factor is that there is at least a realistic possibility for each person affected to actually be reached by one component of the information measure.'

Two become one measure again? But the compulsory one by post?

In response to MVF's question, 'What do you mean by the phrase 'must ... fall back on individualised information for insured persons at the second stage'? Is it compulsory to address them by letter or also by other information channels (e-mail, social media, etc.)?' Oster replied: 'Information about an objection that is specific to an insured person is information via a channel of individual communication (e.g. by letter post or message in the electronic mailbox). Individualised communication only has to take place if the health insurance fund determines in the course of its review that no suitable public information measures are available to reach all those affected by the evaluation.'

This is in contrast to what Christoph Wagenblast, legal advisor in Department 511 'Fundamental Issues of New Technologies and Data Use' of the Federal Ministry of Health, said in the accompanying chat at the WISO vaccination congress on 2 April this year: 'The information must at least be provided by letter. Other information channels are also possible under the law.' He thus follows the wording of the 4th paragraph of the legal text (3), which states: 'The information according to sentence 1 shall be provided in writing and may, if necessary, also be provided in another suitable form.'

by:
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Citation

Stegmaier, P.: „Wie genau muss eine Krankenkasse nun informieren?", in „Monitor Versorgungsforschung" (03/25), S. 20–21. http://doi.org/10.24945/MVF.03.25.1866-0533.2714

Short interview with Gertrud Demmler (SBK)



>> Mrs Demmler, your health insurance fund, SBK Siemens-Betriebskrankenkasse, which you manage as a board member, has not yet carried out a single § 25b activity. Why is that?

Our approach is deliberately different. We have not reacted just because there is a new legal option - instead, we act when we see real added value for our policyholders. We are currently working on several data-based projects with anonymised information. As soon as we have reached the point where a personalised approach makes sense and is in the interests of our policyholders, we will examine the appropriate legal basis. Section 25b may well then be the right framework.

What were the main obstacles?

There were no obstacles - we simply didn't decide against anything. So far, no occasion has arisen where Section 25b would have been the appropriate instrument for us. If this occasion arises, we will act accordingly.

Are you planning any activities of this kind for 2025?

That depends entirely on how our projects develop. As soon as we see that we can create a tangible benefit for our policyholders with a data-based impulse, Section 25b is definitely an option for us.

MVF online congress 'Vaccination status 2025' on 18 June 2025

>> However, there are other problematic cases when a health insurance fund wants to utilise Section 25b SGB V. 'If the thresholds of specific risk or vaccination indication are not met from the point of view of medicine and healthcare research, information for insured persons is neither required nor permitted.' This is explained by Dr Thomas Ruppel (lawyer and owner of a law firm in Lübeck specialising in advising healthcare providers) and Dr Laura Mertens (judge at the Schwerin Administrative Court) in a joint scientific article in this issue of MVF. Ruppel will also expand on his findings in his presentation at the 8th online congress 'Impfstatus 2025' on 18 June..

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