

## GERMAN DRAFT BILL PROPOSES RESTRICTIONS FOR MEDICAL CARE CENTRES (MVZ)

The current draft bill<sup>1</sup>, adopted by the German government on 26 September 2018, proposes changes to the regulation of medical care centres (*Medizinische Versorgungszentren*, "MVZ") that might have considerable implications for investments in MVZ structures by private equity investors and healthcare companies in Germany.

### LIMITATIONS FOR DIALYSIS SERVICE PROVIDERS

The primary objective of the draft bill is to ensure earlier doctor's appointments for patients and to improve patient care in rural areas. Beyond these popular objectives, the draft bill also seeks to implement changes in various other healthcare-related areas, including the regulation of MVZs.

The potentially most critical impact of the proposed law for investors into the German healthcare market would be the proposed limitations on who is permitted to set up and operate an MVZ. Currently, like any person or entity entitled under the existing legal framework to operate MVZs, providers of certain dialysis services are allowed to set up and operate MVZs in any area of medical specialisation. Such providers currently serve as legal platforms for building service chains of MVZs in other specialisations, e.g. ophthalmology. The draft bill restricts this by allowing the providers of dialysis services only to set up and operate MVZs specialising in the same area of medical specialisation (*fachbezogene MVZs*).

For investors in MVZ platforms based on a provider of certain dialysis services, this means that if and when the proposed law comes into force, their ability to further expand their platform could be restricted. MVZs existing and authorised at the time of entry into force of the new law enjoy grandfathering. Thus, the authorisation of the existing MVZ will remain in force and the MVZ may continue its operations, even if in a different area of specialisation. However, providers of dialysis services will not be able to set up new MVZs unrelated to its own area of specialisation.

Thus, possible acquisitions of an existing MVZ platform set up by a provider of certain dialysis services would not be (legally) impaired as the structure of the platform itself and, in particular, the existing MVZs would not be affected by

#### Key issues

- The current draft bill proposes several changes to the regulation of medical care centres in Germany
- For private equity investors and healthcare companies, the suggested limitation of certain dialysis services to only set up and operate medical care centres in the same area of specialisation is likely to have the greatest impact
- The ability of other entitled entities, e.g. authorised hospitals, to set up and operate MVZs in any area of specialisation, however, is not affected
- MVZs set up and authorised by providers of dialysis services prior to the entry into force of the new law will enjoy certain safeguards under general grandfathering principles
- Further expansion and potentially exit expectations might be adversely affected
- As the bill is likely to be modified during the legislative process, definite clarity on concrete implications of the new law will only be achieved in the next months during the various steps in the process.

<sup>1</sup> So-called "Law for Earlier Doctor's Appointments and Better Medical Care" (*Gesetz für schnellere Termine und bessere Versorgung*)

the transaction. Nonetheless, the very limited growth potential for such existing MVZ platforms is likely to have an economic impact on potential sale and exit opportunities.

Looking forward, the remaining option for investments in MVZ structures by private equity investors and healthcare companies – without relying on authorised physicians and their practices – are MVZ platforms based on authorised hospitals. This will probably lead to an increased demand in the already limited hospital market, making it even more challenging for PE and healthcare companies to identify suitable targets for investments in MVZ structures.

Some stakeholders, including associations of dentists and physicians, are urging politicians to go even further by implementing constraints not only for providers of dialysis services, but also for hospitals. Although these proposals have not been reflected in the current draft recently adopted by the German government, the discussions that aim to limit the influence of financial investors are most likely to continue and further amendments to the draft bill during the legislative process are possible.

## **REPLACEMENT OF EMPLOYED PHYSICIANS**

Moreover, the draft bill provides for further changes, some of which are likely to make the operation of MVZs more difficult, such as the replacement of employed physicians. According to the draft bill, any replacement would require a permission by the admissions committee of the regional association of statutory health insurance physicians and such permission may be rejected if, with regard to the supply of medical care, the requested replacement is not necessary. This could provide for considerable uncertainty when employed physicians at MVZs need to be replaced going forward.

## **NEXT STEPS IN LEGISLATIVE PROCESS**

Following its recent adoption by the German government as a cabinet draft, the draft will now be subject to the first consultation of the Federal Council (*Bundesrat*). Thereafter, further steps of the legislative process will follow, including several readings and discussions in the German parliament (*Bundestag*). Most likely, even if this legislative proposal were to be pursued as a priority, the final approval by the German Parliament and the Federal Council and entry into force of the bill would not be expected before spring or early summer 2019.

Until then, the legislative process might lead to modifications in the draft bill, depending on the discussions and comments of the concerned legislative bodies. Thus, the exact scope and extent of the changes in the regulation of MVZs are not yet clear. The fogs will lift over the next months and investors in this space would be wise to follow the discussion closely.

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