

The German Health Care System - and Sleaze? Facts against Fiction

by

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DISCLAIMER

The speaker is a medical professional who can look back on more than four decades of medical expertise. Since the speaker is not a legal expert he reports in this presentation about the German situation strictly from a physician's point of view and used for this presentation only publicly available data/documents/evidence (“*public domain*”).

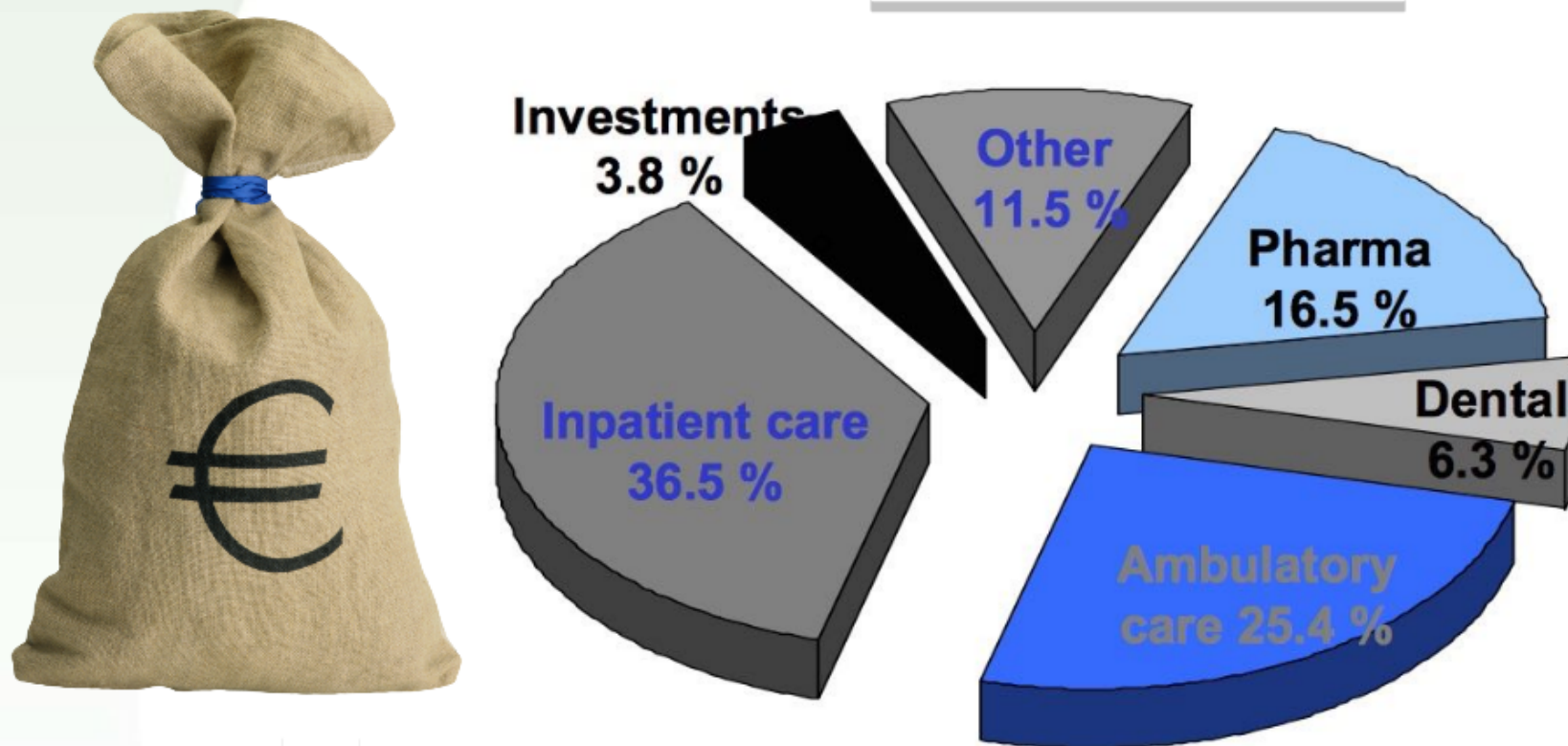
A. GERMANY - Data & Facts

Federal Republic of Germany



Health Care System - Economics

Total Healthcare Expenditures **2012: 300,4 Billion Euro**



Source: **2013** Statistisches Bundesamt

The German Health Care System

Social Health Insurance System

- Statutory Health Insurance
- Financed by deductions of salaries (15.5 %)
- Universal Coverage – 90 percent of population
- High earners can opt out to e. g. commercial health insurers
- Diversity of health care providers
- Comprehensive Agreements of doctors and hospitals with health insurers
- Hospitals: public, charity and private
- Patients always never see a bill

Organisation of German Physicians

1. Regulated by federal and state laws
2. State Physicians' Chambers
3. Federal Medical Association
4. Bodies 2 and 3 are self-governing institutions which
 - regulate responsibilities of medical profession,
 - define standards of medical care.

B. Definitions

The German Definitions^{1,2} **[unedited translations]**

a) General Definitions relating to a business context¹:

§ 299 StGB

Corruptibility and Corruption in a business context

(Corruptibility)

"1. [to be prosecuted], who in a business context as an employee of or working on behalf of a company

a. requests, is to be promised or accepts a benefit for himself or a third person for the purpose that he favours the purchase of goods or services of a certain domestic or foreign competitor in an unfair/dishonest manner

or

b. requests, is to be promised or accepts a benefit for himself or a third person for the purpose that he - without the company's permit - for the purchase of goods or services omits or acts in such a way that he violates his duties vis-à-vis his company.

(Corruption)

2. [to be prosecuted, too], *who in a business context vis-à-vis an employee of or a person acting on behalf of a company*
- a. *offers, promises or forwards a benefit to that person or a third person for the purpose that he favours the purchase of goods or services from him or a certain domestic or foreign competitor in an unfair/dishonest manner*

or

- b. *offers, promises or forwards a benefit to that person or a third person for the purpose that he - without the company's permit - for the purchase of goods or services omits or acts in such a way that he violates his duties vis-à-vis his company.*

¹ § 299 of Crime Prosecution Law (*Strafgesetzbuch*, StGB)

b) NEW Definitions as ratified on 13-05-2016 specifically relating to the Health Care environment ²[unedited translations]:

§ 299a StGB

Corruptibility in the Health Care Business

Who as a member of a medical profession, for which an officially recognised formal qualification is the prerequisite for the execution or the professional title, in context with his job requests, is to be promised or accepts a benefit for himself or a third person for the purpose that he

- 1. for the prescription of medicaments, medical aids and appliances or medical products,*
- 2. for the purchase of medicaments, medical aids and appliances or medical products, to be applied by himself or one of his employees*
or
- 3. in case of transfer of patients or diagnostic specimens, favours a certain domestic or foreign competitor in an unfair/dishonest manner*
.....[is to be prosecuted].

§ 299b StGB

Corruption in the Health Care Business

Who in a business context vis-à-vis a member of a medical profession according to the definition of § 299a offers, promises or forwards a benefit to that person or a third person for the purpose that he

- 1. for the prescription of medicaments, medical aids and appliances or medical products,*
- 2. for the purchase of medicaments, medical aids and appliances or medical products, to be applied by himself or one of his employees*
or
- 3. in case of transfer of patients or diagnostic specimens favours him or a certain domestic or foreign competitor in an unfair/dishonest manner*
.....[is to be prosecuted].

² **new** § 299a and **new** § 299b of Crime Prosecution Law (*Strafgesetzbuch*, StGB), as amended on 13-05-2016 (BR-Doc 181/16)

C. Status Quo in Germany

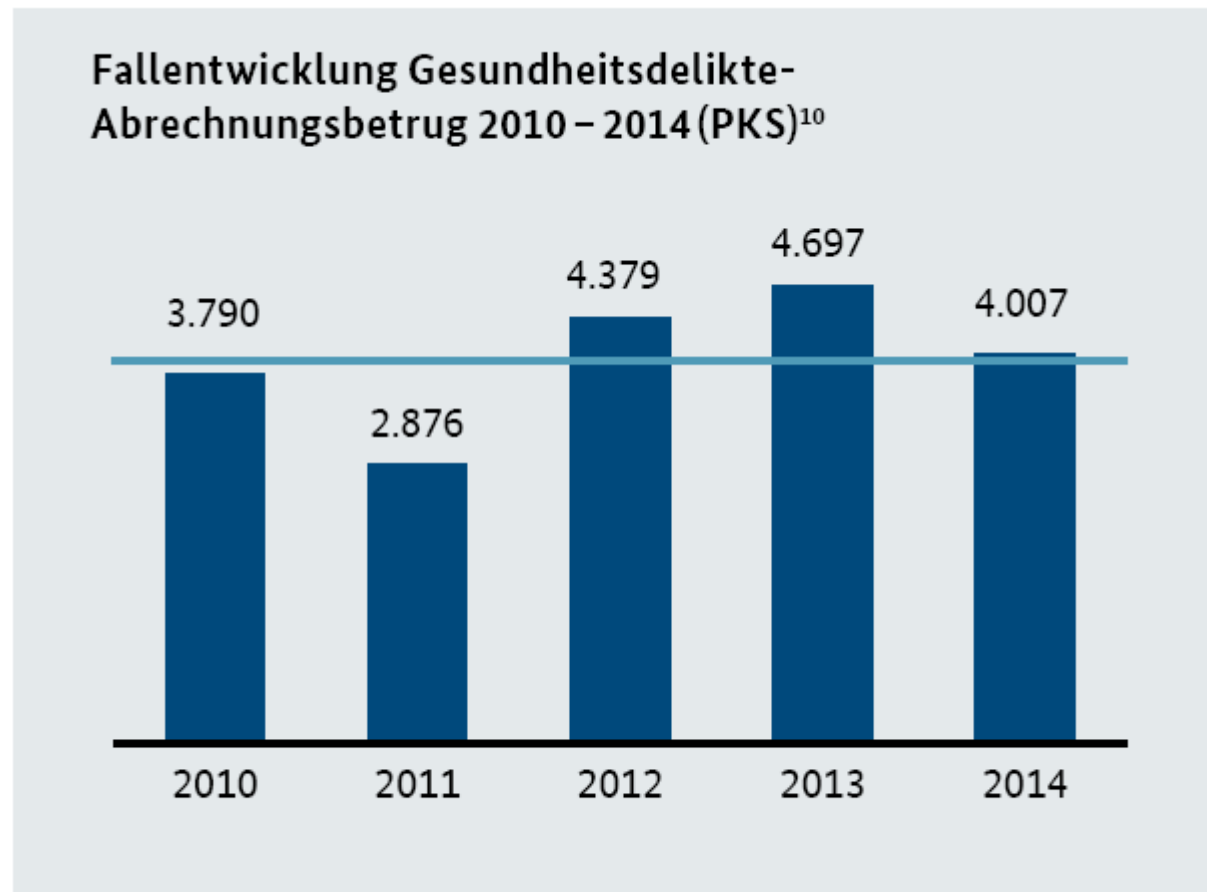
1. Report of the German Federal Criminal Police Office **(Bundeskriminalamt, BKA) for the year 2014³**

In this report are listed those cases of forged/faked quarterly/annual bills of physicians, hospitals and pharmacists to be paid by the German Health Insurance Companies. For the years 2013 and 2014 the number of cases^{3a}:

Phänomenbereich	Fallzahlen 2014 (2013)	Tendenz	Tatverdächtige 2014 (2013)	Tendenz	Schaden in Mio. € 2014 (2013)	Tendenz
Abrechnungsbetrug im Gesundheitswesen	4.007 (4.697)	↓	1.450 (1.560)	↘	41 (41)	→

The table shows a relative small number of criminal suspects who were primarily members of the medical and the pharmaceutical profession (no additional details). Both the number of cases and suspects is decreasing - most likely due to very sophisticated IT-based auditing tools currently applied by the health insurance companies.

The following table^{3b} illustrates the development over the years 2010 - 2014 which shows a slight variation of the 5-year-average of 3790 cases.



³ *Business Crime Report 2014* (Wirtschaftskriminalität - Bundeslagebild 2014) by German Federal Criminal Police Office (*Bundeskriminalamt*, BKA), Wiesbaden, 2015; (BKA - function of a Federal Crime Investigation Agency);

^{3a} *ibid.* p. 4;

^{3b} *ibid.* p. 9;

This illustrates that only a minute fraction of the large number of members in the medical and the pharmaceutical profession are/were involved in illegal practices:

a) Professionals	2015⁴
physicians (self-employed)	120.700
physicians (employed in industry, hospitals,etc)	250.600
SUB-total	<u>371,300</u>

b) Professionals	2014⁵
dentists (self-employed)	53.176
dentists (employed)	17.764
SUB-total	<u>70.740</u>

c) Professionals	2010⁶
other self-employed health professionals (midwives, physiotherap.,etc)	<u>188.796^{6a}</u>

SUB-total a)-c)	<u>630.836</u>
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d) Professionals	2013⁶
nursing staff in hospitals & handicapped-/elderly-care facilities	685.447 ^{6a}
nursing staff in ambulant health & handicapped-/elderly-care	320.077 ^{6b}
SUB-total	<u>1.005.524</u>
 SUB-total a)-d)	 <u>1.636.360</u>
 e) Professionals	 2014⁷ / 2015⁸
pharmacists (self-employed & employed)	61.973 ⁷
commercial pharmacy stores	20.249 ⁸
 TOTAL Professionals a)-e)	 <u>1.698.333</u>

⁴Ärztestatistik per 31-12-2015 (pdf-file), Federal Chamber of Physicians (*Bundesärztekammer, BÄK*), 2016-04, p. 1;

⁵Daten und Fakten 2015 (pdf-file), Federal Chamber of Dentists (*Bundeszahnärztekammer, BZK*), 2016-01, p. 5;

⁶Statistical Yearbook 2015, Federal Statistics Office (*Statistisches Bundesamt, DESTATIS*), Wiesbaden, 2015/2016;

^{6a}ibid., p. 269;

^{6b}ibid., p. 139;

^{6c}ibid., p. 140;

⁷Die Apotheke - Zahlen-Daten-Fakten 2015 (brochure), German Federation of Pharmacists' Associations (*Bundesvereinigung Deutscher Apothekerverbände, ABDA*), Berlin, 2015, p. 12;

⁸Apotheken-Wirtschaftsbericht 2015 (presentation), Claudia Korf (DAV) for German Federation of Pharmacists' Associations (*Bundesvereinigung Deutscher Apothekerverbände, ABDA*), Berlin, 27-04-2016, p. 11;

2. Study of EU DG Home on *Corruption in the Healthcare Sector* (2013)⁹

This study gives a comprehensive overview of the various types of corruption in the EU Member States. This presentation only refers to the German aspects mentioned.

Table 3.4 Bribery in medical service delivery

Typology 1	Bribery in medical service delivery
Actors	Healthcare providers (individual and institutions) versus patients
Prevalence	Mostly widespread and systemic in Central and Eastern European countries and some Southern European countries such as Greece and Italy. Cases that have been identified in some other European countries, such as Austria and Germany, are often more individual and isolated, or related to scarcity in specific types of healthcare (for example organ transplantation). See also: misuse of dual practices.

This description^{9a} of isolated cases in the German situation is in line with the information forwarded to the speaker who - as an elected Delegate of the (Official) *North-Rhine Chamber of Physicians* - is an official member of the *German Federal Council of Physicians* and had to notice some instances of improper conduct in the medical profession:

- forged/faked quarterly/annual bills,
- overpricing (of e.g. dentures),
- irregularities in the assignments of organ transplants^{9b,c},
- bonus fees for prescribing specific medicaments^{9d}.

In all these cases remedial action has been implemented in the meantime which has been summarised in part in the detailed specific chapter on Germany of this study^{9e}.

Misuse of dual practices is not relevant in Germany.

⁹ Study on Corruption in the Healthcare Sector (*HOME/2011/ISEC/PR/047-A2*), EU DG Home, Luxembourg, 2013

^{9a} *ibid.*, p. 54;

^{9b} *ibid.*, p. 56;

^{9c} *ibid.*, p. 61;

^{9d} *ibid.*, p. 75;

^{9e} *ibid.*, pp. 239-241;

3. Transparency International (German Section)

A major player in Germany in the fight for transparent procedures and against unethical conduct in all sectors of the German society is the German Section of *Transparency International*.

With regard to the German Health Care System TI predominantly criticised¹⁰:

- ◆ forged/faked bills/reimbursements by physicians, pharmacists, patients and pharmaceutical industry^{10a};
- ◆ lack of transparency in purchasing and prescription procedures in the health care system and presumed bribery^{10b,c}.

Many procedural amendments at all levels of the German health care system reduced the opportunities for undetected “non-compliance” in the meantime.

In October 2015 a new TI working group focussing on *handicapped-/elderly-care* and its diverse ramifications has been established¹¹.

¹⁰Transparenzmängel, Korruption und Betrug im deutschen Gesundheitswesen - Kontrolle und Prävention als gesellschaftliche Aufgabe, Transparency Deutschland, Berlin, 2008 (5th Ed.)

^{10a} ibid., p. 13-15;

^{10b} ibid., p. 21;

^{10c} ibid., p. 23-24;

¹¹Neue Arbeitsgruppe „Pflege und Betreuung“ gegründet, *Scheinwerfer No 70*, p. 8, Transparency Deutschland, Berlin, 2016-02;

D. Problem Areas in Germany

New problem areas in Germany are e. g.:

- ◆ Smaller companies, especially those with personnel born in the former USSR/ CIS, active in ambulant handicapped-/elderly-care were shown to have (over-) charged the insurance companies via forged/faked bills/reimbursements^{12,13}.
- ◆ “*Online Doctor*”-Websites are not only contacted for a *Second Opinion* but also as a surrogate for a visit at the physician’s office so that it has to be made clear ⇒ prescription medicaments may not be prescribed by “online doctors” to the patient¹⁴.

Furthermore it must be clarified that personal and/or insurance data should not be forwarded to the *Online Doctor* by the patient in order to *ab initio* exclude any abuse or other unethical purposes with these data vis-à-vis the insurance company or other “interest group(s)”.

¹²BERLINER MORGENPOST, *Hunderte Betrugsverfahren: Kasse will Spezialstaatsanwälte*, 21-04-2016;

¹³TAGESSPIEGEL, *Hunderte Betrugsverfahren: Kasse will Spezialstaatsanwälte*, 24-04-2016;

¹⁴Bundesärztekammer, *Online-Praxen sind kein Ersatz für direkten Patienten-Arzt-Kontakt*, Pressenotiz, 11-03-2016;

- ◆ Overpricing of pharmaceutical agents¹⁵.
- ◆ Illegal trade in counterfeit or faked prescription drugs and anabolics e. g. via on-line shops (and darknet)^{16,17,18} now is a permanently increasing business with enormous profits over the last years. Usually, patients do not disclose their use of these illegally acquired substances. This can have the consequence that such an intake interferes/counteracts with the therapy outlined by the physician who will then be scolded for not having worked towards an efficient therapy for the patient and, thereby, having wasted health costs.

¹⁵Bundesärztekammer, *Wir müssen über ethische Preisbildung bei Medikamenten reden*, Pressenotiz, 04-01-2016;

¹⁶ZEIT-ONLINE, *Üble Fracht*, 06-10-2014;

¹⁷SPIEGEL, *Muskelspiele*, No 31 pp. 88-94, 25-07-2015;

¹⁸SPIEGEL-ONLINE, *Gefälschte Medikamente: Zoll beschlagnahmte 3,9 Millionen Tabletten*, 11-04-2016;

E. Issues to be resolved

1. Pharmacovigilance

This is a reasonable tool as required by EU legislation (Dir 2001/83/EC and Reg (EC) No 726/2004 and their subsequent amendments) in order to get valuable insight into conceivable effects such as

- side effects,
- compatibility with other pharmaceutical agents,
- ethnic specifics.

Practically speaking, this is a tedious exercise for the physician since he has to e. g. :

- fill in comprehensive questionnaires per patient and per substance,
- anonymise data (because of German personal data protection requirements),
- transfer these data to a separate database per substance in his IT-system,
- submit data to the pharmaceutical manufacturer of the specific substance.

This extra-work can only be done carefully in the evening hours and over the weekends.

Why is it considered unethical or even as a bribe when a physician is being reimbursed for the amount of time he has to spend for doing this work?

Why shall it be normal that for this the physician shall work free of charge?

2. Purchasing

The revised German situation (cf. chapter B) gives rise to more questions than answers since it can affect the physician's freedom of decision in purchasing. This can be illustrated by the following scenario:

When a family doctor or a group of family doctors or a hospital spontaneously accepts an offer from a supplier who promises a discount because of not charging transportation costs - is this in line with the new German legal situation since other conceivable suppliers were not considered in this purchasing process?

3. Referral of patients to specialists and hospitals

In the past the physician (e. g. the family doctor) could recommend specialists and hospitals to the patient in context with a referral because of his previous good personal experiences with these.

Is this still in line with the new German legal situation?

Thank you for your attention



Solingen Castle: „Schloss Burg“