

The effects of the health insurance fund merger on the benefit entitlements of ÖGK-insured persons

In the health insurance sector, the adoption of the Social Insurance Organisational Act (Sozialversicherungs-Organisationsgesetz – SV-OG) led in particular to a merger of the nine regional health insurance funds into the Austrian Social Health Insurance Fund (ÖGK), in which also the previous company health insurance funds Voest Alpine Bahnsysteme, Zeltweg, Kapfenberg and Mondi were incorporated.

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The following section will focus on the extent of the changes in the entitlement to benefits for eligible persons of the ÖGK due to bylaws, health code and contract partner law.

Changes in entitlement to benefits for insured persons and their dependents

Changes in the bylaws

The bylaws adopted by the General Meeting of the ÖGK on 28 January 2020 entered into force retroactively as of 1 January 2020 and replaced the former bylaws of the regional health funds.

Generally it can be said that the new bylaws of the ÖGK have considerably improved the level of benefits compared to the bylaws of the regional health insurance funds. Almost all harmonisations of the benefit amounts increased these to the highest amounts of the former regional health insurance funds. Other adjustments were based on the best existing conditions for the insured.

Below, some of the most important performance improvements are described in more detail.

Sickness benefit in the bylaws

With regard to the harmonisation of benefits, sickness benefits are particularly worth mentioning. In principle, the entitlement to sickness benefit is for one and the same insurance case is for a minimum period of up to 26 weeks according to § 139 para. 1 General Social Security Act (Allgemeines Sozialversicherungsgesetz – ASVG). If the person entitled to sickness benefit has been insured with the health insurance for at least six months within the last twelve months prior to the occurrence of the insured event, the entitlement pursuant to para. 1 last sentence is increased to a duration of up to 52 weeks.

Prior to the merger, there was the possibility according to § 139 para. 2 of the ASVG of extending the entitlement to 78 weeks by means of the bylaws. This framework was exclusively used by the Upper Austrian Regional Health Insurance Fund in § 29 of its bylaws.

According to the new bylaws of the ÖGK, the latter pays sickness benefits for all insured persons in one and the same insured event for up to 78 weeks beyond the duration of 52

weeks “if, on the basis of a medical assessment by the medical service, the insured person’s ability to work or his/her reintegration into the work process is expected to be achieved within this period. This medical assessment by the medical service takes place at the latest in the 40th to 44th week of sickness benefit receipt.”

The new bylaws of the ÖGK have thus adjusted the duration of sickness benefits to the highest level of the regional health insurance funds.

Upper limits for health aids and aids for the disabled in the bylaws

Another “upward” adjustment was made in the bylaws when determining upper limits for health aids according to § 137 ASVG and aids for the disabled according to § 154 ASVG. For both benefits, the costs to be borne by the insurance institution may not exceed a maximum amount to be determined by the bylaws (§§ 137 para. 5 and 154 para. 1 ASVG).

While the bylaws of the regional health insurance funds had a standardised maximum allowance

of EUR 537.00 to EUR 1,432.00, the bylaws of the ÖGK (§§ 28 and 43) raised this ceiling to EUR 1,432.00 for 2020 and to EUR 1,480.00 for 2021. This upper limit for allowances corresponds to eight times the maximum daily contribution basis, which amounts to EUR 185.00 for the year 2021 according to § 108 ASVG).

The highest possible allowances for health aids and aids for the disabled, to which the insured persons of the ÖGK have an enforceable legal claim, have thus been multiplied by the new bylaws for the insured persons in some federal provinces.

Cost allowances in the area of dental treatment and dentures in the bylaws
Pursuant to § 153 para. 1 ASVG, dental care has to be provided following the provisions in the bylaws. According to para. 2 leg. cit., essential dentures may be granted with the insured person sharing part of the costs, and an allowance towards the costs of dentures may also be paid instead of benefits in kind. The last sentence of para. 2 stipulates that the details are to be determined by the bylaws of the insurance institution.

Due to the new bylaws of the ÖGK, there are also numerous benefit improvements for the insured in this area.

For example, the cost allowance for initial periodontal therapy for the pre- or acute treatment of gum disease for up to five teeth was newly regulated in Annex 2, Part A, item 5, letter a, on the basis of § 32 (2) of the bylaws. This allowance is now granted nationwide in the amount of EUR 54.00, which was previously only provided for in the bylaws of the regional health insurance funds of Styria and Vorarlberg; in the other provinces there were no allowances for these services in the bylaws.

Furthermore, Annex 2, Part A, Line 4 of the bylaws stipulates a cost allowance of EUR 27.00 for digital volume tomography. For the insured persons of the former regional health

insurance fund of Salzburg, the amount is actually reduced, as this is the only regional health insurance fund that had provided an allowance of EUR 50.00 in its bylaws. However, as a result of the nationwide stipulation all other insured persons receive a completely new entitlement to benefits for this treatment, because their regional health insurance funds had not regulated such cost allowances in their bylaws.

For fixed dental prostheses in special medical cases based on § 35 par. 5 of the bylaws, the ÖGK now pays a uniform cost allowance according to Annex 2 part B lines 2 and 4; namely in the amount of EUR 300.00 for a “ceramic faceted crown in the visible area” and an allowance of EUR 450.00 for dental implants. An allowance in this amount was previously only provided by the regional health insurance fund of Vorarlberg, while all other regional health insurance funds provided an allowance of EUR 156.25, or EUR 159.88 in the case of the regional health insurance fund of Vienna, for ceramic-faceted crowns and EUR 156.25 for implants (regional health insurance fund of Salzburg: EUR 305.00).

Finally, for “small orthodontic appliances according to § 33 (3) of the bylaws”, almost a doubling of the cost allowances was stipulated in Annex 5, line 1. Whereas in the bylaws of all regional health insurance funds for these orthodontic

aids (inclined plane, space maintainer per jaw, oral vestibule plate, etc.) there was a standardised cost allowance of EUR 49.05, an allowance of EUR 97.02 is now paid by the ÖGK.

Reduction of the limits for the reimbursement of travel costs in the bylaws

There is another noticeable improvement in favour of the insured persons and their relatives in the case of travel costs, which, in accordance with § 46 para. 1 of the bylaws, incur e.g. in connection with the necessary use of contractual medical assistance (or services equivalent to medical assistance) according to § 135 para. 4 ASVG, with the use of dental treatment and dental prostheses according to § 153 para. 5 ASVG or also in connection with medical rehabilitation measures according to § 154a para. 2 ASVG and are now to be reimbursed by the ÖGK under the conditions defined in the bylaws.

This flat-rate travel reimbursement of EUR 6.00 (or EUR 9.00 with an accompanying person) was previously paid by each of the nine regional health insurance funds for journeys of 40 to 60 kilometres. In the case of travel distances of more than 60 kilometres, the reimbursement was based on the distance between home and the nearest suitable place of treatment at a rate per kilometre regulated in the bylaws. In the bylaws of the ÖGK, these limits were uniformly changed in such a way that the flat-

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rate reimbursement for travel costs already applies for a distance of 20 to 50 kilometres and the kilometre rate already applies from 50 kilometres. This results in higher reimbursements for insured persons and their relatives.

Changes in the health code (Krankenordnung)

The ÖGK health code was adopted by the general meeting on 25 June 2020 and entered into force on 1 July 2020. The merger will also result in improvements for insured persons and their relatives in the health code provisions.

Some examples of “upward” harmonisation are given below.

The validity of prescriptions for health aids and aids for the disabled was extended to 30 days from the day of issue – or from the day of a later authorisation – according to §§ 30 and 31 of the of the ÖGK health code. Previously, the period of validity was set at 14 days for most regional health insurance funds.¹ The new code gives the insured more time to redeem the prescription voucher.

Also to the benefit of the insured persons, the medical authorisation requirement for computer tomography and magnetic resonance imaging services is waived pursuant to § 66 para. 7 of the health code. In the provinces of Vienna, Upper Austria and Vorarlberg, such a waiver of the authorisation requirement facilitates the use of these services, because there was an authorisation requirement on the basis of the previous health codes. In other provinces there were various conditions under which the authorisation requirement was already suspended.

In § 32 (1) of the new health code of the ÖGK the minimum duration of use for the health aids and aids for the disabled specifically listed there is defined uniformly throughout the country. Here, too – as a comparison with the previous different health codes shows – the minimum duration

of use was reduced to the most favourable duration for the insured. The lower the minimum duration of use, the more favourable it is for the beneficiary: before the expiry of the duration of use stipulated in para. 1, the same health aid and aid for the disabled is only provided again according to para. 2 if this has become necessary for special reasons and without any fault on the part of the claimant.

Changes in benefit entitlements due to the contract partner system

Connection of the contract partner system with the benefit claims of the insured persons

The “principle of benefits in kind” inherent in the ASVG is fulfilled in particular by concluding contracts with the health service providers (such as freelance doctors and dentists, physiotherapists, occupational therapists, speech therapists, etc.).²

These contracts standardise which services the contracting parties have to provide to the insured and their relatives at the expense of the insurance institution to which they have a contractual relationship. According to “settled but incorrect case law”, medical services to which the insured person is legally entitled vis-à-vis his health insurance institution, but for which no fee item is provided in the contract, are also to be charged directly to the patient³ by a contracting doctor (so-called insurance-free space).⁴ The larger this insurance-free space is in a specific contract, the less favourable the situation is for insured persons, who have to pay privately for such benefits not regulated by the contract.

The fee schedules of contracts with health care providers also influence the entitlement of insured persons to benefits because, according to § 131 para. 1 of the ASVG, entitled persons who receive health care from non-contractual partners are entitled to reimbursement of 80 percent of the amount that would have had to be paid by the insurance institution if

the corresponding contractual partner had been used.

According to § 23 para. 1 item 2 of the ÖGK bylaws, the calculation of the reimbursement of costs is based on the “existing (regional) contractual provisions”, “as long as they continue to apply according to § 718 para. 6 ASVG”. The applicable contractual provisions are in principle “based on the place of employment of the insured person or, in the absence of such, on the place of residence or place of stay of the person entitled to benefits. The applicable (overall) contractual provisions according to item 2 are published on the website of the ÖGK.”

Below, some examples are given of how specific changes in the contract lead to an improvement for the beneficiaries of the ÖGK.

Contractual changes in the area of freelance doctors

At the time of this analysis, the ÖGK had not yet concluded a nationwide framework contract with the Austrian Medical Association (Österreichische Ärztekammer – ÖÄK). Instead, the ÖGK continued to develop the regional framework contracts for physicians that had been transferred to it, not only with regard to tariffs and staffing plans, but also with regard to other aspects (e.g. new benefit types). The regional framework contracts thus remain different, but every further development (tariff increase, expansion of staffing plans, inclusion of new benefit types, etc.) has a positive influence on the benefit claims of the insured.

On the other hand, a certain standardisation in the area of freelance doctors has already taken place in telemedicine. Here, the ÖGK has concluded framework agreements with several local medical associations concerning the “remuneration of telemedical services for general practitioners and specialists”. These regional framework contracts according to § 1 regulate the perfor-

mance and remuneration of services by physicians under contract using information and communication technologies.⁵ According to § 3, the remuneration for telemedicine services is the same as if the service had been provided in person. The entitled persons in the provinces where such comprehensive telemedicine contracts have been concluded with the regional medical associations (e.g. in Vienna, Upper Austria, Salzburg and Vorarlberg) can thus be sure that their doctor under contract offers telemedicine services charging ÖGK directly.

Contractual changes in the area of freelance occupational therapists

There is a significant change and improvement for ÖGK claimants in the area of freelance occupational therapists. In this area, the ÖGK and the Federal Association of Occupational Therapists agreed on a nationwide, uniform framework agreement from 1 April 2021. This framework agreement does not only result in uniform rights and obligations for all freelance occupational therapists but also brings significant advantages for the beneficiaries. On the one hand, a staffing plan was agreed upon, which leads to a considerable increase in the number of posts compared to the regional health insurance funds, and, on the other hand, the hourly rate was set at EUR 60.00 nationwide, which leads to an increase in rates compared to all previous rates in the provinces. As a result of this standardisation of tariffs, there is also a uniform, higher reimbursement of costs of EUR 48.00 per hour⁶ in all provinces throughout Austria.

Contractual changes in the area of freelance physiotherapists

A nationwide framework agreement for freelance physiotherapists, the content of which is almost identical to that of occupational therapists, was concluded by the ÖGK with the Federal Association of Physiotherapists in Austria on 14 September

2021. The framework agreement enters into force on 1 January 2022.

In this area, too, the new framework agreement will lead to a considerable increase in the number of posts and thus to an improvement in the provision of benefits in kind throughout Austria for those entitled to them. On the other hand, the nationwide uniform tariffs, which are based on an hourly rate of EUR 60.00, result in higher cost reimbursements in all provinces compared to the regionally different cost reimbursements before the new framework agreement came into force, which were still based on the contractual provisions of the regional health insurance funds.⁷

Contractual changes in the area of freelance speech therapists

The ÖGK also concluded a nationwide framework agreement with “logopaediaustria”, the professional association of Austrian speech therapists, and published it on the internet. Its content corresponds to the framework agreements with freelance occupational therapists and physiotherapists. The framework agreement comes into force on 1 January 2022 and basically brings about the same improvements for beneficiaries as the other two framework agreements: on the one hand, an improvement in the provision of benefits in kind through more posts, and, on the other hand, higher cost reimbursements on the basis of the increased hourly rate of EUR 60.00.

Conclusion

The above explanations show that the merger of the regional health insurance funds to form the ÖGK has led to an overall improvement in the level of services for insured persons and their relatives. “Upward” harmonisation can be found in particular in the new bylaws, in the health code, but also in changes that have so far been implemented in the area of contractual partners. ■

¹ This was found in the health codes of the Viennese, the Lower Austrian, the Upper Austrian, the Styrian, the Carinthian and the Tyrolean regional health insurance funds.

² Cf. Mosler in Mosler/Grillberger, *Ärztliches Vertragspartnerrecht* (2012) 15f.

³ And thus not to the health insurance institution.

⁴ Cf. Grillberger in Mosler/Grillberger, *Ärztliches Vertragspartnerrecht* (2012) 238f.

⁵ Such as the telephone or video consultation.

⁶ 80 percent of the contractual rate.

⁷ Cf. <https://www.physioaustria.at/news/rahmenvereinbarung-physiotherapie-zwischen-oegk-und-physio-austria> (accessed on 20 November 2021).