Preliminary remarks

For the first time in history, the German Bundestag has identified an epidemic situation of national significance. Numerous laws have been passed in summary proceedings, all aimed at mitigating the consequences of the corona crisis for people and the economy. The Federal Government and Parliament had to act exceptionally quickly in the face of the crisis. However, it has already become apparent in the current proceedings that additional taxes will be absolutely necessary to secure the existence of people and important infrastructure.

For the Health & Social Services sector, the three protection packages

- COVID-19-Hospital Relief Act
- Social Protection Package, here the Social Service Providers Deployment Act (SodEG)
- Civil Protection Act, here in particular changes in the Infection Protection Act

are presented and evaluated.

Law on the compensation of COVID-19-related financial burdens of hospitals and other health care facilities (COVID-19 Hospital Relief Act)

The law includes measures both for **hospitals** as well as for **contracted doctors** and the **care sector**. ver.di has criticised that the rehabilitation clinics were not included in the draft law. After appropriate pressure, compensatory measures were introduced for rehabilitation clinics that provide health insurance services.

Presentation and evaluation of the measures in detail:

Hospitals

- **Beds kept free:** Hospitals will receive a flat-rate compensation of 560 euros per day for beds that have been kept free since 16 March 2020 due to the cancellation or postponement of plannable operations. Payments are also made to psychiatric and psychosomatic hospitals, which have fewer days of occupancy due to the corona crisis. The scheme shall end on 30 September 2020. The lump sum is pre-financed from the liquidity reserve of the Health Fund and refinanced from the federal budget.

Assessment:
Although the 560 euro flat-rate fee for keeping beds free should be more or less suitable for small and medium-sized hospitals, this flat rate tends to be clearly too low for maximum care providers and university hospitals. A need for readjustment is becoming apparent here. It is right that the beds that have been kept free due to the pandemic should be refinanced from the federal budget. This must also apply to all other pandemic-related financing needs. After all, the measures to overcome the corona crisis are tasks for society as a whole that must not be passed on to the insured.

- **Additional intensive care beds:** For each additional intensive care bed with mechanical ventilation capacity procured by 30 September 2020, hospitals will receive 50,000 euros from the li-

quidity reserve of the Health Fund. In the short term, the federal states shall finance further necessary investment costs in accordance with their own approaches. The additional intensive care beds must be approved by the responsible state authorities.

Assessment:
It is doubtful that the 50,000 euros will be enough for additional intensive care beds. According to the hospitals, the costs are more likely to be 85,000 euros. Whether the balance is actually provided by the federal states is also open to question in view of their commitment to investment cost refinancing in recent decades. Here, it is important to keep up the pressure on the federal states. ver.di demands that the funds required for this purpose be refinanced from the liquidity reserve in the federal budget. Finally, it is true that overcoming the corona crisis is a task for society as a whole. Under no circumstances should the financing of pandemic-related capacity expansion be the sole responsibility of those with statutory health insurance. At least the private health insurance has to be involved here. The legislator has to make additional contributions to the financing.

- **Protective equipment:** For additional costs, especially for personal protective equipment, hospitals will receive a surcharge of 50 euros/patient from 1 April to 30 June, 2020. If necessary, the amount can be increased and the scheme can be extended (authorisation by decree).

Assessment:
It is already becoming apparent that the additional 50 euros/patient is far too little to reimburse additional material costs. We hear from the hospitals that the resulting revenues have already been spent. An additional requirement is calculated, which is 5-10 times the amount of funds granted so far. This is due to the significant increase in market prices, especially for FFP2/FFP3 respirators. In view of the lack of and profiteering related to urgently needed protective equipment, ver.di demands that the Federal Government requisition it and ensure its rapid distribution. All commercial companies that can contribute to this must now be obliged to convert their production and produce urgently needed protective suits, mouthguards and disinfectants to ensure the protection of workers and the population.

- **Healthcare expenses:** Hospitals will receive additional funds so that they can do everything they can to support and relieve the burden on healthcare staff when treating cases of infection. The previous healthcare fee will be increased by 38 euros to 185 euros from 1 April to 30 September, 2020. Should the actual costs be higher in individual cases, the full amount will be paid in addition via the healthcare budget. In contrast, there are no reclaims by the health insurance funds in the event of over-coverage of healthcare costs.

Assessment:
It must be clear that any excess amounts are used to relieve staff in other areas, and are not to be used for investment or even to enrich shareholders. It's good that there will be more money for care, but it's not enough. All professions and activities that are needed must be financed. For example, significantly more cleaning staff and physiotherapists are required.

- **Compensation for excess and shortfall in revenues:** Because of the corona crisis, it may be necessary for a hospital to treat considerably more patients than previously specified. In such rare exceptional cases, the hospital should be able to retain the resulting revenues. However, the epidemic may also lead to fewer patients being treated in a hospital. This applies, for example, to hospitals that are not or only to a limited extent involved in the treatment of corona cases due to their regional location, their care mandate or their infrastructure. These hospitals are to be protected from the negative consequences of an epidemic. The local contracting parties are therefore given the opportunity to agree on additional or reduced revenues in individual cases.
- **Fixed cost degression discount for 2020 suspended:** Due to the exceptional burden on hospitals in connection with the novel coronavirus SARS-CoV-2, it is not possible to foresee the ex-

tent to which hospitals will have to agree on additional services for 2020 compared to 2019. Hospitals should receive full remuneration for the additional services. The fixed cost degression discount is therefore suspended for 2020.

Assessment:
Compensating for the additional and reduced revenues and suspending the fixed cost degression discount appear to make sense in principle. Unfortunately, however, the health-related bureaucracy of the DRG system (as well as the psychiatry of the PEPP system) remains. Comprehensible and easily manageable blanket solutions such as those proposed by the German Hospital Federation would have been better. The DRG and PEPP systems should be suspended; they are far too complex for such a crisis situation. The effects on hospitals must be evaluated. In case of doubt, improvements must be made; the draft law provides for a revision clause. ver.di has long been calling for a reform of hospital financing, which would convert flat rates to a budget-financed system. The shortcomings of the DRG system are particularly obvious in the current crisis. After the crisis, the right conclusions must therefore be drawn for sustainable financing.

- **Reduction of the inspection rate from 12.5% to 5%:** In order to relieve hospitals of financial and administrative burdens, the maximum permissible quota of invoices that health insurance funds are allowed to check is reduced to 5% for 2020.

Assessment:
Given the exceptional crisis, hospitals must focus on managing the pandemic. Nevertheless, auditing from the perspective of the insured cannot be completely dispensed with. It therefore seems appropriate to reduce the inspection rate for a limited period of time for the year 2020.

- **Reduced payment period to five days:** Health insurance companies must pay hospital bills within five days. This shortened invoice deadline shall apply until 31 December 2020.

Assessment:
The shortened payment period will help hospitals to secure additional liquidity during the crisis.

- **Preventive medicine and rehabilitation facilities as acute hospitals:** It cannot be ruled out that, despite the postponement or suspension of plannable operations, the treatment capacities of the hospitals may not be sufficient to provide inpatient treatment to patients with a need for inpatient treatment in the event of a further dynamic increase in the number of patients infected with the coronavirus SARS-CoV-2. For this reason, the federal states will be able to identify preventive medicine and rehabilitation facilities that will be involved in the acute inpatient treatment of patients on a transitional basis. The rehabilitation clinics will then be treated like authorised hospitals and will be entitled to the same remuneration.
- **Preventive medicine and rehabilitation facilities - compensation for decline in occupancy days:** If the corona crisis leads to a reduction in the number of occupancy days, the facilities affected will receive 60% of the remuneration otherwise paid per day from the statutory health insurance (SHI).

Assessment:
The rehabilitation clinics also need security, regardless of whether they continue to offer rehabilitation or are to be used for acute care because the acute care hospitals can no longer cope. ver.di has therefore been working to secure the security of the rehabilitation clinics, which have suffered a decline in occupancy due to the corona crisis. In response to the pressure, compensation for the decline in occupancy was included. In principle, this is to be assessed positively, although the current worse position of rehabilitation clinics that are occupied by the SHI system compared to the SoeDG is not comprehensible. Furthermore, 60 percent of the remuneration otherwise paid by the SHI system is far too low to secure the existence of the rehabilitation clinics, which are financed by health insurance. In particular, the existence of those clinics that are not suitable for reassignment as acute

care hospitals and that may experience high occupancy losses over several months is threatened. The employees in the rehabilitation clinics are urgently needed to cope with the corona crisis. Here the rehabilitative care facilities must be systematically included. On the one hand, medical capacities can be used flexibly and, on the other hand, the overburdening of staff in acute care can be alleviated and ensured in the long term. For this reason, short-time work in the health care system must be avoided at all costs during the corona crisis. ver.di demands that short-time work compensation be increased to 90 percent if short-time work cannot be prevented in individual cases. This is particularly necessary for the rehabilitation sector, since without an increase to 90%, employees would not be able to survive the crisis because of the below-average remuneration, and because of the high demand for skilled workers in the rehabilitation sector at the present time, personnel would be permanently lost. For this reason, the continued existence of many clinics would be endangered despite subsidy regulations. ver.di urgently demands improvements and an adjustment of the compensation payments in accordance with the SoeDG.
The amount of the daily flat rate of 60 percent of the daily flat rates is justified by lower fixed costs due to short-time work compensation payments by the affected service providers and lower variable costs, such as the purchase of materials for patients who are absent. It is to be assumed that short-time working compensation must be offset against the compensation payments under this statutory regulation in the event of a decline in occupancy at rehabilitation clinics in order to avoid double financing. Although there is a lack of clarification on this point, the principle applies to social long-term care insurance benefits in this Act and other benefits based on the special guarantee mandate under the Social Service Providers Deployment Act (SodEG). At the virtual DRG forum, Federal Minister Spahn justified the 60 percent regulation with the fact that rehabilitation clinics and short-term care are directly related: Rehabilitation clinics can and should also offer acute care hospital beds, e.g. for patients from short-term care. The 60% is also justified by the fact that commitment must be worthwhile.

- **Psychiatric departments and clinics:** Due to initial uncertainties, the BMG (Federal Ministry of Health) has since confirmed on several occasions that psychiatric clinics and specialist departments are covered by the protective umbrella and thus receive EUR 560 per bed and per day.

Assessment:
Despite the verbal and written assertions from the BMG, there is a lack of a clarifying legal regulation to use the 560 euros/day not only to increase the bed capacity for the care of patients infected with the corona virus SARS-CoV-2, but also for occupancy slumps due to anxiety-related self-discharges, admission restrictions for "elective" patients to make room for corona wards for mentally ill patients or to achieve a reduction in the number of patients to reduce the risk of infection, but also due to empty day clinics because patients no longer appear or because an operation has been officially prohibited.

- **Review of the financial situation:** On 30 June 2020, an advisory board will review the financial impact of the crisis on the economic situation of hospitals.

Assessment:
Due to the unclear development of the pandemic and the need for improvement, a revision clause is urgently needed in order to take early action. The law must ensure that no clinic can fall into deficit or become insolvent as a result of the corona crisis. Additional measures are needed beyond the Advisory Board. Here the federal states are to be called to account. In North Rhine-Westphalia, the state government has promised to provide support at state level beyond the Hospital Relief Act.

Excursus Personnel requirements for acute care/psychiatry:

- **Nursing staff lower limits:** Independently of this law, the lower limits for nursing staff will be completely suspended by decree for six months. In addition, the Federal Joint Committee (G-BA) has decided on far-reaching **exemptions from quality assurance requirements** (e.g. Di-

rective on staffing in psychiatry and psychosomatics - PPP Directive and QA Directive for premature and mature infants).

Assessment:
The blanket abolition of personnel requirements is not appropriate - both in the area of care for the elderly and in the lower limits for nursing staff in some hospital areas. During the pandemic, institutions need more qualified staff, not less. For example, to be able to meticulously observe hygiene rules. Only if a hospital or nursing home suffers short-term staff shortfalls due to illness or quarantine, or if the number of patients increases sharply, must there be an option to deviate from the specifications in this specific situation. To suspend them across the board sends the wrong signal.
The abolition of the documentation requirements in connection with the PPR Directive is also rejected, as far-reaching exceptions have been agreed upon anyway and sanctions will not take effect this year. ver.di demands that the personnel requirements of the PPR Directive be calculated on the basis of the patient numbers for 2019; the year 2020 cannot be a benchmark.

Contracted medical care

- **Compensation payments for statutory health insurance:** Practices shall receive compensation payments if their total fee is more than 10% lower than in the same quarter of the previous year due to a reduction in the number of cases caused by the pandemic.
- **Additional costs for extraordinary measures:** The sickness funds reimburse the Associations of Statutory Health Insurance Physicians for the additional costs of extraordinary measures necessary to ensure the provision of statutory health care during the existence of an epidemic situation of national importance.

Assessment:
The compensation payments for established medical practices due to a reduction in the number of cases caused by the pandemic are logical. However, therapeutic practices (occupational therapy, dietary assistance, speech therapy, physiotherapy, podiatry), which also suffer from enormous economic losses, are not taken into account. Financial reserves have been virtually non-existent in recent years due to the low level of reimbursement by the cost units. Patients cancel appointments due to fear of infection, new patients cancel due to decreasing medical prescriptions as a result of the corona pandemic. Special regulations between service providers and cost bearers, as well as the "Corona emergency aid for micro-enterprises and the self-employed" or the measures of the "protective shield for Germany" do not sufficiently cushion the losses. If no measures are taken by the Federal Government, there will be an unsustainable number of closures of therapeutic practices. It will no longer be possible to ensure the provision of therapeutic treatment in line with demand, which is already difficult to meet due to the high demand for specialists. The law must ensure that all health care institutions are adequately supported by compensation payments in the event of a reduction in the number of cases due to a pandemic.

Nursing homes:

- **Temporary suspension of quality audits** according to § 114 SGB XI until 30/9/2020 and extension of the introductory phase for the collection of indicator-based quality data according to § 114b SGB XI until 31/12/2020 to reduce bureaucracy (§ 151 SGB XI)
- **Modified procedure for determining the need for long-term care according to § 18 SGB XI:** In order to protect vulnerable groups of persons from additional infection risks, expert opinions will be prepared up to and including 30/9/2020 on the basis of records and structured interviews
- **Suspension of repeat assessments** until 30/9/2020

Assessment:
The measures taken serve to protect against additional infections of home residents and nursing staff, and to relieve the nursing operation of bureaucratic tasks that would place an additional burden on nursing staff in the event of an aggravation of the pandemic. Examinations are not affected by this regulation. Therefore ver.di considers these measures to be reasonable. Nevertheless, it must be ensured that, after the end of the pandemic, assessments are carried out or reviewed quickly, if necessary, in order to be able to make corrections where required.

- **Reimbursement of pandemic-related additional expenditures or reduced revenues** (cost reimbursement regulation in § 150 SGB XI): Care institutions affected by the pandemic triggered by the novel coronavirus SARS-CoV-2 will be entitled to reimbursement from the care insurance for their extraordinary expenses and reduced income arising from the provision of services, including room and board. This does not include items that are financed by other means (e.g. through short-time work compensation, compensation through the Infection Protection Act). Double financing must be excluded. This entitlement exists regardless of whether the approved nursing facility has concluded a remuneration agreement with the nursing insurance funds or has waived this entitlement.
  In addition to hygiene materials, extraordinary expenses also include costs for sickness-related additional personnel expenses for replacement personnel or overtime hours.
- **Suspension of the procedure for reducing remuneration if the agreed staffing level is not reached** (§ 115 (3), first sentence)

Assessment:
It is correct that the reimbursement of pandemic measures is not charged to those in need of care. However, the fact that these costs are to be borne exclusively by the nursing care insurance funds is questionable. This may lead to an increase in contributions to long-term care insurance. As in the area of SGB V, the measures to overcome the corona crisis in the area of SGB XI are tasks for society as a whole that are to be financed by the federal budget. At the very least, it must be ensured that private health insurance makes an appropriate contribution to the financing.
The blanket elimination of personnel specifications is not appropriate. During the pandemic, institutions need more qualified staff, not less. For example, to be able to meticulously observe hygiene rules. Only if there is a short-term absence of staff due to illness or quarantine or a sharp increase in the number of patients must there be an option to deviate from the guidelines in this specific situation. To suspend them across the board sends the wrong signal.

Social Service Providers Deployment Act (SoDEG)

Due to the measures taken nationwide under the Infection Protection Act, many social service providers and institutions are currently unable to perform their work: The entire spectrum of social work is affected: e.g. language courses and school support are cancelled, kindergartens, youth clubs, workshops for disabled people or advice centres remain closed, as well as day care centres for senior citizens or mentally ill people, care and rehabilitation facilities have declining occupancy rates and measures in employment promotion facilities are cancelled. A legal umbrella for social service providers is essential to ensure that the facilities survive the corona crisis and that the social infrastructure is fully maintained after the pandemic. To this end, the following legal provisions were made in Article 10 of the Social Protection Act:

- The SodEG regulates:

  1. the use of social service providers for crisis management and
  2. a guarantee mandate from the service providers for social service providers.

Social service providers and institutions should then make use of all possible, reasonable and legally admissible options available to them under the circumstances to contribute to coping with the effects of the pandemic, be it by providing operating resources, premises or personnel.

At the same time, they are to be protected so that their existence is not permanently endangered due to the coronavirus crisis and so that important infrastructures are maintained. This applies in particular to workshops for disabled people, inclusion companies, service providers of integration assistance, services for children and young people, women, families, senior citizens, rehabilitation services and facilities as well as providers of labour market policy services and of integration and language courses. A temporary and subsidiary service guarantee of the respective service providers for the social service providers and institutions that provide services according to the Social Code and other laws is to be regulated. The service guarantee covers all social service providers and facilities that have a service relationship with the service providers at the relevant time when measures under the Infection Protection Act come into force, but no later than 30 September 2020 (with an extension option until 31 December 2020). It does not distinguish between the sponsorship of the service providers.

The service guarantee is to be provided in the form of monthly grants from the service providers to the social institutions and services. This is based on an amount which, in principle, does not exceed 75 percent of the average amount of the previous annual period on a monthly basis. In order to avoid double financing, other payments are given priority. This includes funds

- from legal relationships with the service providers, insofar as these are still possible despite measures in accordance with the Infection Protection Act,
- Compensation in accordance with the Infection Protection Act,
- Benefits under the regulations on short-time work compensation and
- Grants from the federal and state governments to social service providers on the basis of statutory regulations

The federal states and other service providers may set different subsidy levels if they consider this necessary.

Assessment:
The protective umbrella for social service providers is generally welcomed by ver.di. After some pressure it has been included in the social protection package. It is indispensable to ensure the existence of the social infrastructure during the crisis and to secure its continued existence beyond the crisis.

In order to actually guarantee the continued existence financially, the basic limitation of payments under the service guarantee to 75 percent is not sufficient. The legislator urgently needs to make adjustments here.

ver.di urges the federal states and other service providers to increase the subsidy in accordance with § 5 SodEG in order to fully secure the existence of the service providers. Health and social care workers are urgently needed to deal with the corona crisis. It is therefore right that the law should create the possibility of deploying the necessary personnel beyond the previous area of application within the framework of the labour law provisions. Every effort must be made to rule out short-time work in the social and health care systems. Should short-time work be unavoidable in individual cases, the amount of the subsidy must be urgently increased via the federal states and other service providers. ver.di is calling for the short-time work allowance to be increased to 90 percent so that employees affected by short-time work can survive the corona crisis. Employers must be expected to keep employees in the companies in order to provide immediate support during the crisis if necessary.

In addition, caution should be exercised when using social service providers for crisis management. Social work has an important role to play, especially in the crisis, in absorbing and mitigating the social consequences of the crisis. Children and young people, families and people in need of assistance are still present and need help and support, especially in times of crisis. Innovative approaches, such as during the corona crisis, which can allow pedagogical and psychological work to continue, are already being tested. This must be taken into account so that social work does not become a pawn in crisis management.

Due to the high socio-political significance of this issue, retraining support for nursing professionals must be comprehensively ensured.

In addition to the political evaluation, a large number of labour law questions arise that arise from the use of social service providers for crisis management (questions and answers on this will be added to the FAQs on the FB3 website from 1 April 2020).

Law on the protection of the population in the event of an epidemic situation of national importance (Civil Protection Law)

The "Act on the protection of the population in the event of an epidemic situation of national significance" authorises the Federal Ministry of Health, as soon as the Bundestag identifies such a situation, to take far-reaching measures "by order or statutory order without the consent of the Bundesrat" to ensure the basic supply of pharmaceuticals, remedies and aids, medical devices and laboratory diagnostics, and to strengthen human resources in the health care system. The authorisations are limited in time until 31 March, 2021, and the German Bundestag must immediately revoke the determination of an epidemic situation of national significance if the conditions for its determination no longer exist.

The draft bill still contained two extremely critical passages which were removed before the bill was passed by the Federal Cabinet: The possibility still provided for in the original draft to oblige physicians, health professionals and medical students to "cooperate in the fight against communicable diseases" was deleted, as was the permission for the competent authorities to "identify contact persons of persons who are ill by evaluating location data of the mobile phone, thereby tracking the movement of persons and contacting them in case of suspicion". Conversely, this also eliminates the obligation for providers to provide the authorities with the relevant data.

The following changes are of particular relevance to employees in the health and social services:

- A new § 5a is inserted into the Infection Protection Act via Article 1 clause 5, in which the **transfer of curative activities** in the event of an epidemic situation of national significance to

  1. Geriatric nurses,
  2. Health and paediatric nurses,
  3. Nurses and healthcare professionals,
  4. Emergency paramedics and
  5. Nurses and nursing staff

  is regulated. Authorisation to practise curative activities shall be granted on a temporary basis for the duration of the epidemic situation and within the limits of the competences acquired during the professional training.

Assessment:
ver.di believes it is right to allow medical professions other than physicians to practice medicine within the scope of their profession-specific competencies. This should in principle be regulated in the law governing the professions and ensured by appropriate requirements for training.

In addition to the appropriate permit for the exercise of medical activities, these activities must also be covered by liability law. To this end, hospitals, nursing homes and emergency services, as employers of the employees concerned, must be legally obliged to do so. In particular, it must be ensured that the employees are comprehensively protected by the employer's liability insurance.

The group of persons must be conclusively defined by law and not be expanded by decree by the Federal Ministry of Health.

- to provide **by statutory order, without the consent of the Bundesrat**, for **measures to maintain nursing care in** outpatient and inpatient nursing facilities in deviation from existing statutory requirements and, in particular, a) to suspend or amend federal statutory or contractual requirements for nursing facilities, b) to adapt, supplement or suspend substatutory guidelines, regulations, agreements and resolutions of the self-governing partners in accordance with Book Eleven of the Social Code and laws referred to in Book Eleven of the Social Code, c) to suspend or restrict tasks which, in addition to the implementation of body-related nursing measures, nursing care measures and assistance with housekeeping for persons in need of care, are to be regularly performed by nursing facilities, nursing insurance funds and medical services, d) to allow the involvement of nursing staff and other suitable persons with medical, nursing or therapeutic training and to oblige suitable organisations and institutions to second such staff in order to reorganise and strengthen human resources, and to make arrangements for appropriate compensation.

Assessment:
Nursing institutions, nursing care funds and the medical services regularly and necessarily fulfil a variety of tasks that go beyond the immediate care and support of persons in need of long-term care (e.g. in the areas of documentation, counselling and advisory visits, additional care, quality management, preparation and implementation of quality tests, home assessment, etc.). As long as such tasks are restricted or suspended to allow concentration on the tasks of physical care, nursing care and help with housekeeping, and thus to ensure the provision of nursing care, this seems sensible. Personal assistance in disability assistance should also continue to be guaranteed.