

The German DiGA-Process - Update 2022

European Business Council Japan, 07.11.2022 Dr. Philipp Kircher



Former member of the hih





















02.11.--- 03.11.2021













Warm greetings from my former colleagues at hih and last year's speakers at EBC!



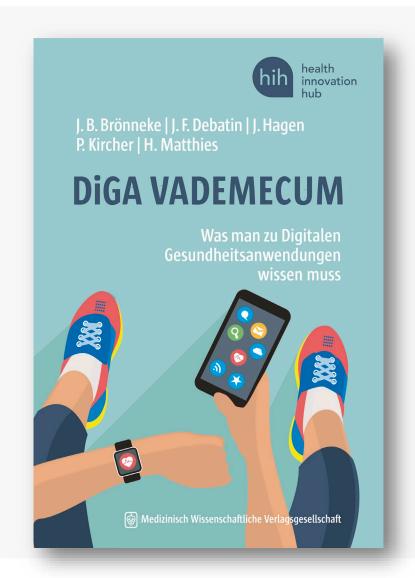


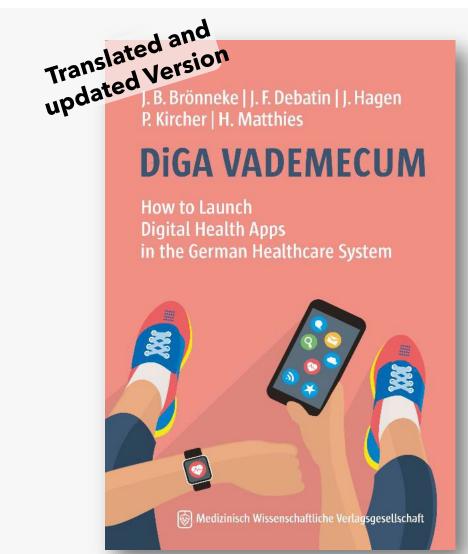


Jan Brönneke, LL.M.

Publications on DiGA



























GEIGER | NITZ | DAUNDERER

Rechtsanwälte PartG mbB



Germany
Law Firm of the Year
Pharmaceuticals & Healthcare

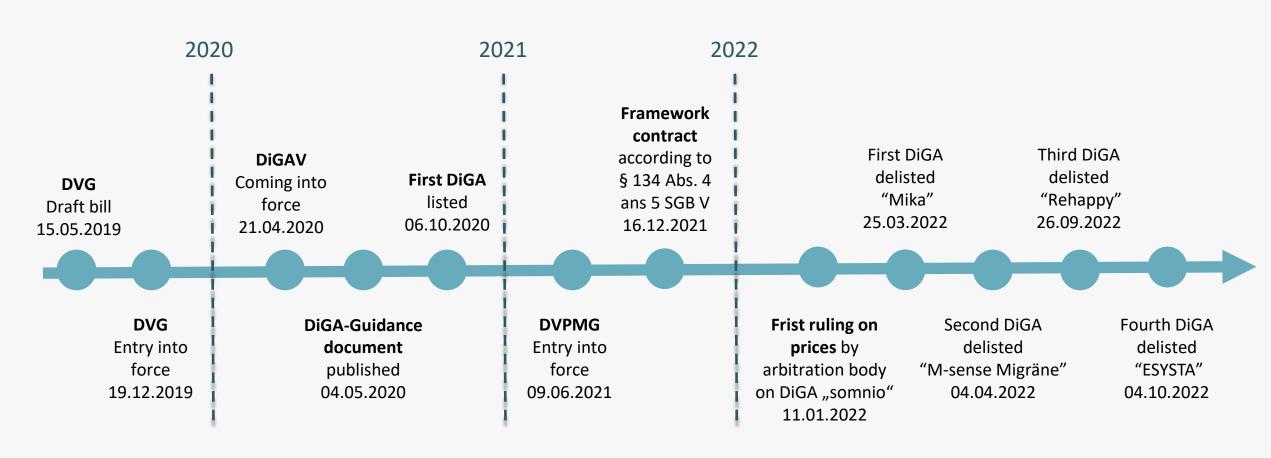


Germany

Law Firm of the Year Pharmaceuticals & Healthcare Short Recap on DiGA

The DiGA Fast Track





Definition: Digital Health Application (DiGA)



Medical Device

Class I or IIa according to MDR and transitional periods (Class I and IIa MDD)

Purpose

Support insured persons or support the care provided by health care professional

SGB V

DIGA
§ 33a SGB V

Main function

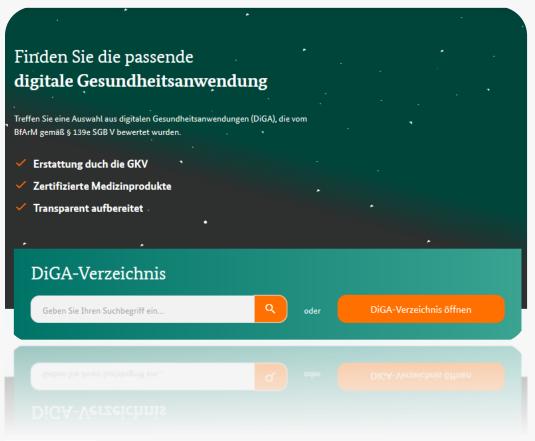
is essentially based on digital technologies

Functionalities

Detection, (monitoring), treatment, alleviation, (compensation) of diseases, injuries or disabilities

DiGA Directory by BfArM





- List of all DiGA
- Indication / Contraindication
- Evidence
- Provisional / permanent listing
- Information for service providers
- Information for patients
- Prices
- Filter options
- Open API / Interoperable Data



nttps://diga.bfarm.de/de

The Fast Track according to DVG (1/2)



BfArM

Consulting (remunerated)

Application of manufacturer

On registration in DiGA-registry according to §139e SGB V

General requirements

safety | quality | functionality | privacy | data security

Positive care effects

medical benefit | structural & procedural improvements

BfArM

Examines and decides within 3 months (net)



Preliminary listing & 12 months trial period

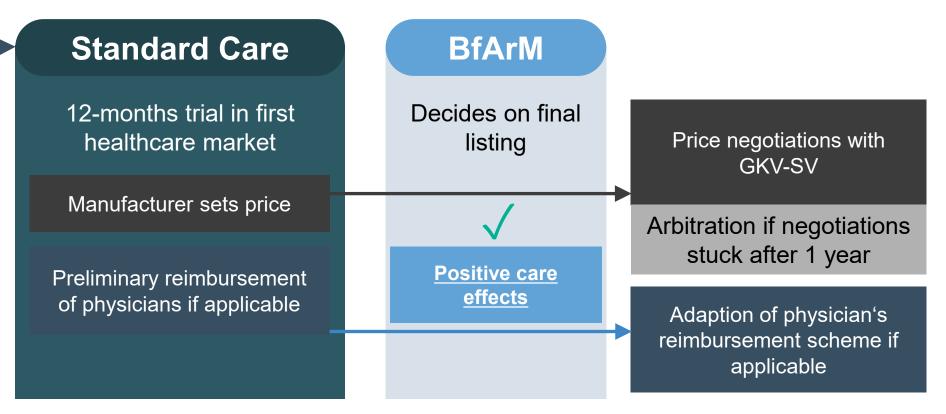
The Fast Track according to DVG (2/2)



DiGA

Preliminary listing & trial period of 12 months

- Plausible justification
- Evaluation concept by independent scientific institution
- Producer bears costs



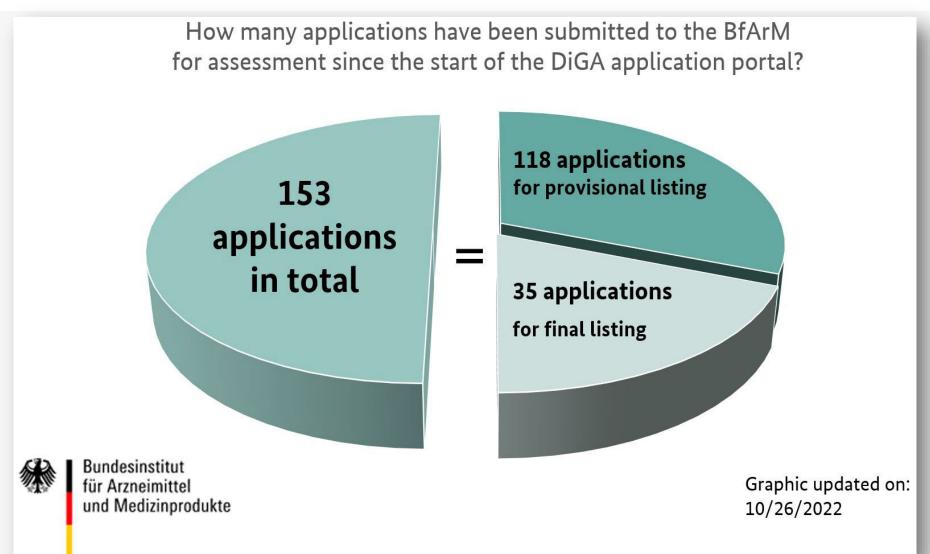
Prescription by **physicians** and **psychotherapists**

Permission by **health insurance fund** (with corresponding indication)

Experiences with the Fast Track

Number of applications at BfArM





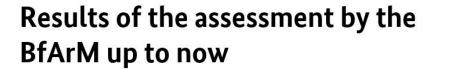


Results of assessment by BfArM

Applications submitted

by manufacturer







Positive decisions: 34



Negative

decisions: 14



Withdrawn: 84



BfArM



Currently being processed: 17



Deleted from Directory: 4*

Bundesinstitut für Arzneimittel und Medizinprodukte *of which 2 DiGA on application of the manufacturer

Graphic updated on: 10/26/2022



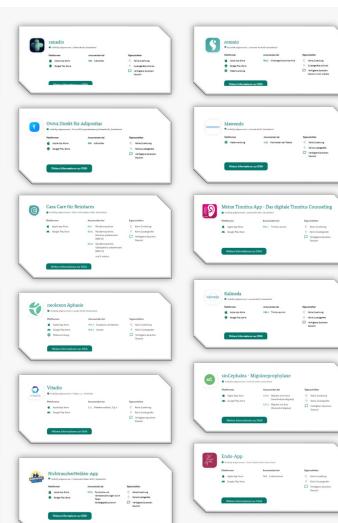
34 of 38 DiGA (28.10.2022)

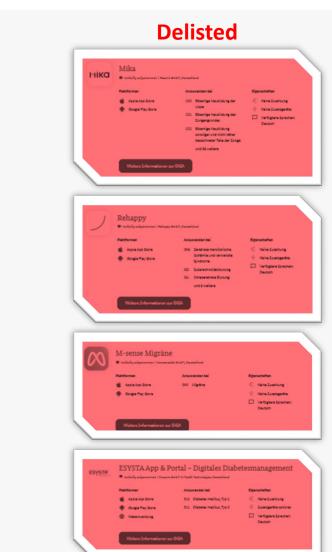














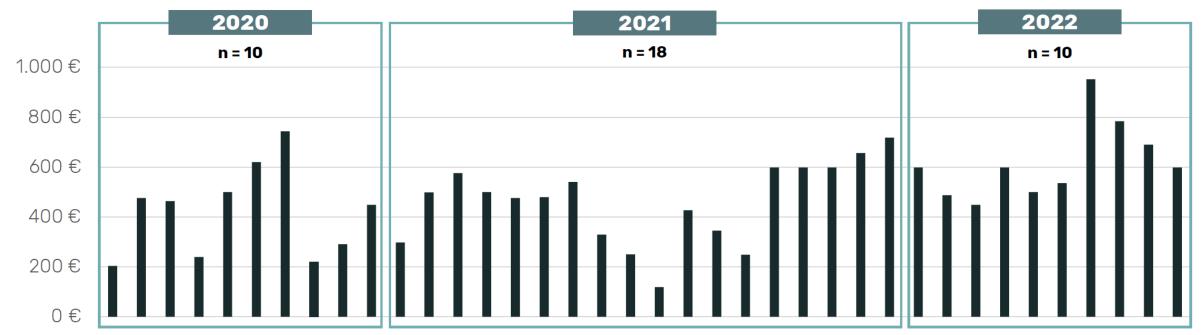
DiGA market after two years

How is the new market developing?



From October 2020 to date, a total of 38 DiGAs have been listed under the fast track process.

Actual prices of the 38 DiGAs in chronological order of their listing in the DiGA Directory.



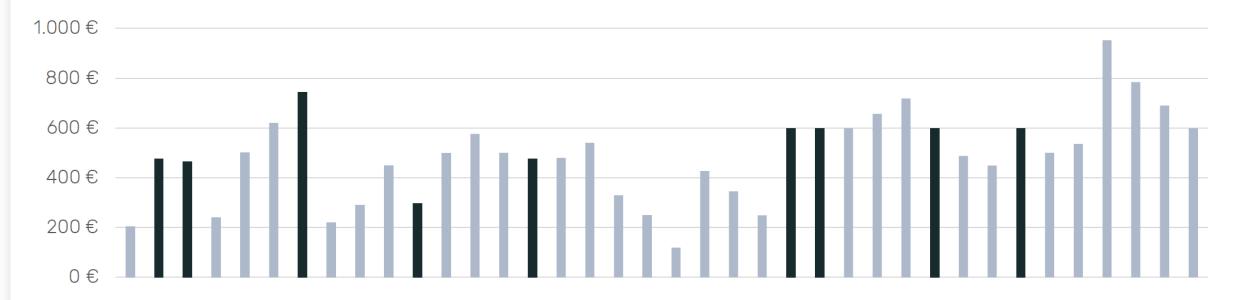


DiGA market after two yearsHow is the new market developing?



- The majority of DiGAs (>75%) make use of the trial rule (provisional listing).
- The period of one year is regularly not sufficient for proof of benefit.





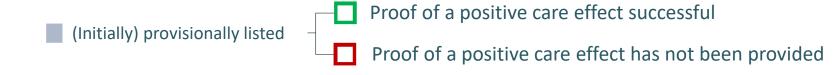


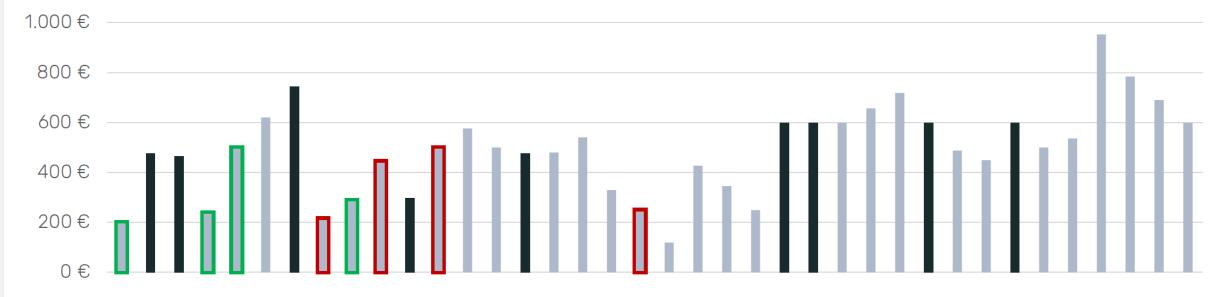
DiGA market after two years

How is the new market developing?

•

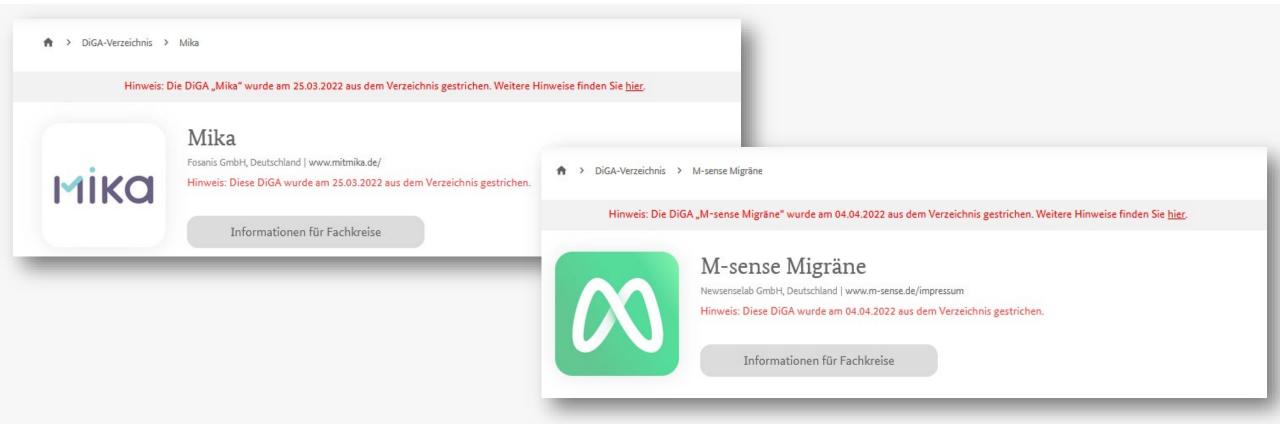
Success of the trial period can by no means be taken for granted \rightarrow 4 out of 8 DiGAs were not able to show a positive care effect within the trial period.





Delisting of "Mika" and "M-Sense Migräne"





"Evaluation decision of the BfArM

At the request of the manufacturer, the DiGA was deleted from the list pursuant to § 139e paragraph 6 sentence 9 of the Fifth Book of the Social Code (SGB V) in conjunction with § 19 of the Digital Health Applications Ordinance (DiGAV)."

Delisting of "Rehappy"



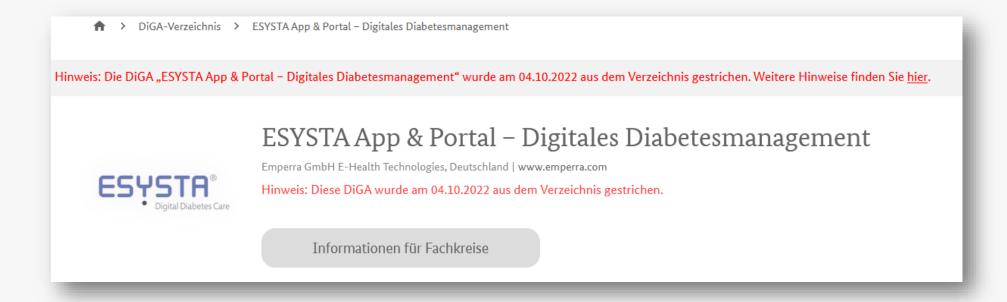


"Evaluation decision of the BfArM

The DiGA was deleted from the list pursuant to § 139e paragraph 4 sentence 8 of the Fifth Book of the Social Code (SGB V) after examination of the evidence of positive supply effects. No positive care effect could be demonstrated for digital health applications."

Delisting of "ESYSTA"





"Evaluation decision of the BfArM

The DiGA was deleted from the list on 04.10.2022 in accordance with § 139e paragraph 4 sentence 8 of the Fifth Book of the Social Code (SGB V). For the digital health application in question, no positive care effect could be demonstrated during the trial period."

More fundamental issues with the BfArM

Can Human Components be a Part of a DiGA?





GEIGER | NITZ | DAUNDERER - MOMMSENSTR, 45 - 10629 BERLIN

Spitzenverband Digitale Gesundheitsversorgung e.V. Karl-Liebknecht-Straße 1 10178 Berlin

> Berlin, den 18.07.2022 Unser Zeichen: 000177-22/PK/PK E-Mail: kircher@gnd-law.de

SVDGV Spitzenverband Digitale Gesundheitsversorgung e.V. Rechtsgutachten menschliche Leistungsanteile bei DiGA

Sehr geehrte Damen und Herren,

Sie baten um eine erweiterte rechtliche Aufarbeitung zum Themenkomplex zulässiger menschlicher Leistungsanteile bei digitalen Gesundheitsanwendungen nach § 33a SGB V (DiGA), im Kontext der Aufnahme von DiGA in das Verzeichnis digitaler Gesundheitsanwendungen nach § 139e SGB V als auch hinsichtlich a file Projebildungsmechanismen nach § 134 SGB V.

GND GEIGER | NITZ | DAUNDERER

Tel: 030 52 67 369-0

Büro München

Fachanwalt für Medizinrecht Wirtschaftsmediator

Fachanwalt für Strafrech.

Fachanwalt für Medizinrecht Fachanwalt für Strafrecht

80337 München

- How can a DiGA be distinguished from a personal **service** provision?
- How can a DiGA be distinguished from telemedicine and video consultations?
- BfArM has strict requirements to prevent the billing rules for medical treatment from being infiltrated via DiGA
- Expert opinion on human components by GND
- Originally for a specific DiGA manufacturer
- -> association wanted update to be generally usable.
 - Distributed to all member companies
 - Discussed in BMG
 - Discussed in BfArM
 - Publication requested and planned

Evidence Assessment – Subgroup Analyses in Retrospect



- The BfArM increasingly asks for **subsequent subgroup analyses**, although the subgroups were **not prespecified** for this purpose.
- Frequently, the results of the subgroup analysis are then not statistically significant. The BfArM subsequently restricts the patient population accordingly.
- Subgroups formed by BfArM seem independent of the DiGAs medical claim and do not always seem plausible:
 - Differentiation according to ICD-10 **four-digit** and more (without regard to collection function).
 - Differentiation according to **symptom status/duration** not mapped in ICD-10 (e.g. acute, subacute, recurrent, chronic)
 - Differentiation according to previous experience with therapies, therapy aptitude, concomitant medication, concomitant manual or personal therapy
 - Differentiation according to the use of support services of a DiGA
 - Differentiation according to e-mail information of the users about the existence of a support conversation, which itself is permissible in the opinion of the BfArM.

What's new?



Latest Update of the DiGA-Guide



- New section on Interoperability
- New Section on the criteria for "plausible justification" of a possible positive care effect
- New supplementary notes on systematic data evaluation

Caution! English version of the DiGA-Guide is <u>not</u> up to date!





Plausible justification of a possible positive care effect (trial period)



Section 139e (4) Sentence 3 SGB V:

"(...) the manufacturer must include with the application a <u>plausible justification</u> of the contribution of the digital health application to improving care (...)."

Section 14 DiGAV:

"(…) the manufacturer must submit at **least the results of a systematic data evaluation** on the use of the digital health application as plausible justification that a positive health care effect can be demonstrated in the course of a trial."

Reasoning in the draft bill for the DiGAV:

"The systematic evaluation of data obtained in the course of using the digital health application, which is called for here, serves to provide initial hints for this statement."

DiGA Guide

"Sufficient plausibility and robustness of the results according to the current state of science is expected." (page 99)



"The **systematic evaluation of data** required here serves to provide **initial plausible evidence** for the improvement in care. The submitted data evaluation must **plausibly** show that it is **highly probable** that a positive effect can be demonstrated within the framework of the trial study." (page 153)

Plausible justification of a possible positive care effect (trial period)



Quote from BfArMs decision (declining provisional listing):

"In the present case, the change from baseline to three months is statistically borderline significant (p = 0.04), but the patient relevance of the result appears questionable."

"(...) so that no clear, sufficiently robust improvement is presented."

Even if a manufacturer presents data to show plausible justification in the application for a trial period, and the data is already statistically significant, this does not guarantee a provisional listing.

BfArM demands a "clear, sufficiently robust improvement" to be presented.

m nachfolgend aufgeführten Fragenbogen ist durch den Hersteller die Erfüllung der Anforderungen nach § 4 zu rklären. Der Hersteller bestätigt die Erfüllung der Anforderungen durch Kennzeichnung in der Spalte "zutreffend". Die Vorschriften des Datenschutzes und die Anforderungen an die Datensicherheit – Basisanforderungen sind von llen digitalen Gesundheitsanwendungen zu erfüllen. Die Anforderungen Datensicherheit – Zusatzanforderungen xei digitalen Gesundheitsanwendungen mit sehr hohem Schutzbedarf sind von digitalen Gesundheitsanwendungen zer digitalen Gesundheitsahwendungen mit sehr nohem Schutzbedarf sind von digitalen Gesundheitsahwendungen mit sehr nohem Schutzbedarf festgestellt jen zu erfüllen, für die im Rahmen der geforderten Schutzbedarfsanalyse ein sehr hoher Schutzbedarf festgestellt

zu er	alen rfülk	Gesundheits en, für die im	Rahmen d	er geforderten Schulze	$\overline{}$	zutreffend	nicht zutreffend	zulässige Be für "nicht z	egründung autreffend"
rde.				Anforderung	-1	2000	200 011		
Nr.	T	hemenfeld							
ate	ns	chutz		rbeitung personenbezogener	Daten				
2.	Gri nu we Re	tenschutz- undverord- ng als anzu- endendes echt inwilligung	wird volument of the second of	rbeitung personenbezogener die digitale Gesundheitsanwing Hersteller unterfällt der Veral6/679 sowie ggf. weiteren gelungen. Ir der Verarbeitung von person und -beziehbaren Daten eine finden und informierte Einwilligenen Person zu den in § 4 sten Zwecken der Verarbeitungengeholt?	Daten-			willigunda der Verarbe einer re Verpflie Herste	keine Ein- g eingeholt, Zweck der eitung aus echtlichen chtung des illers der digi- Gesundheits- ndung resul-
	3.	Einwilligung	Erfok Erklä gäng eind	gt die Abgabe von Einwillig rungen der betroffenen Per gig ausdrücklich, d. h. durch eutige Handlung der betroffer	jungen son du eine ak nen Pers	und rch- ttive, son?		willig da d Vera eine Very Her	ird keine Ein- jung eingeholt, ier Zweck der arbeitung aus er rechtlichen oflichtung des stellers der digi- en Gesundheits- wendung resul- rt.
		4. Einwillig	J	ann die betroffene Person e ungen einfach, barrierefrei, uf einem einfach verständlic /irkung für die Zukunft widern	CINCIL .	Enwilli- it und leg mit		w d V e	s wird keine Ein- illigung eingehol a der Zweck der erarbeitung aus iner rechtlichen /erpflichtung der Herstellers der d talen Gesundhei anwendung resi tiert.
				und die hetroffene Person	vor Ab	gabe der			Es wird keine E willigung einge da der Zweck

Until now



Self-disclosure on over 120 aspect

- Data protection (40 questions)
- Data security (48 questions)
- Interoperability (6 questions)
- Robustness (4 questions)
- Consumer protection (8 questions)
- Ease of use and accessibility (3 questions)
- Support for service providers (3 questions)
- Quality of medical content (10 questions)
- Patient Safety (6 questions)



In the Future



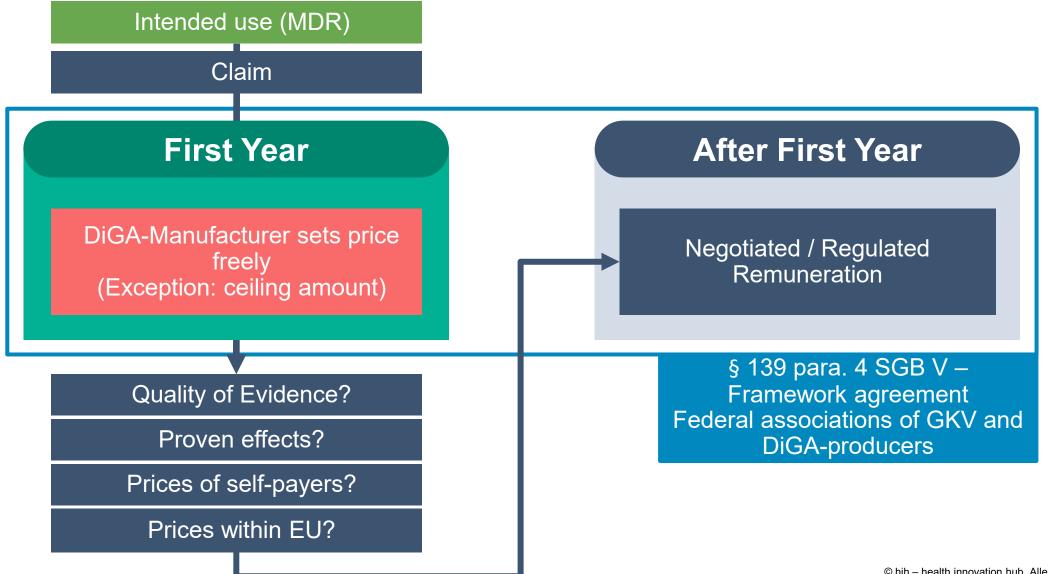
New data protection test criteria as a basis for certificates

- Agreement with BfDI and BSI?
- Pseudonymization as a new principle
- No revealing of identity by e-mail or telephone!
- Verifiability of consent for minors?
- Review of billing?
- Post-Market-Surveillance?
- In-app purchases?
- Continuation of treatment?
- Data exchange with ePA and Co.?

Pricing

Pricing – what is the 'right' price for a digital product?



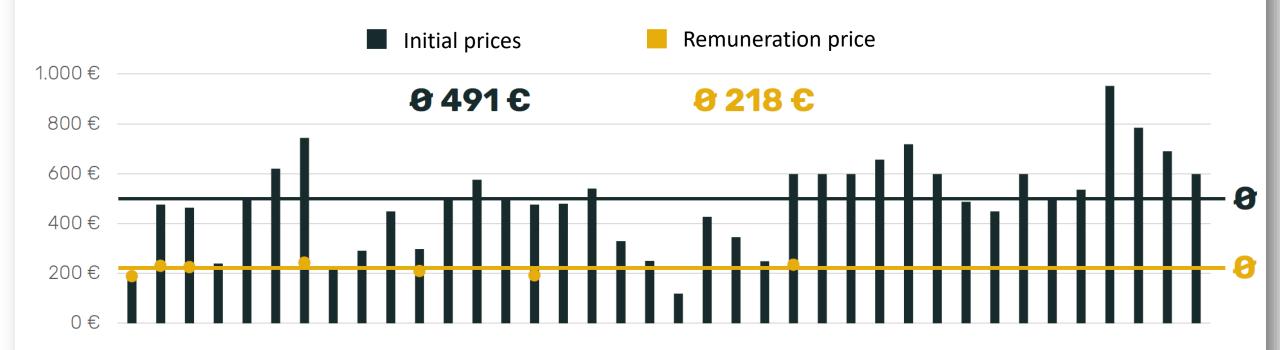




DiGA market after two years

How is the new market developing?

- Average (freely set) manufacturer price since start of supply is around 491 €.
- Permanent remuneration amounts show a significant reduction of the price level.
- Average relative price change after price negotiation/arbitration is -47%.







Thank you for your attention.



Munich Office Thalkirchner Strasse 56 80337 Munich

PHONE: +49 (0)89 51 61 890 - 0 FAX: +49 (0)89 51 61 890 - 19

muenchen@gnd-law.de



Office Berlin
Mommsenstrasse 45
10629 Berlin, Germany

PHONE: +49 (0)30 52 67 369 - 0 FAX: +49 (0)30 52 67 369 - 9

berlin@gnd-law.de

Title | Name | Place/Date (edit by "Insert > Header and Footer")

Questions?





Title | Name | Place/Date (edit by "Insert > Header and Footer")