

Legal Aspects of Patient Care with Homecare Services Based on Pratama Clinical Practices

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Abstract

Health services are evolving at a breakneck pace in the globalization era, especially in the middle of the Covid-19 pandemic, which has created massive patient lines at health care institutions. Homecare services are a viable option in the middle of the COVID-19 epidemic, as some people are hesitant to visit a hospital for fear of contracting the virus. On the other hand, when someone is ill, they require competent medical treatment. Homecare services are continuous and comprehensive care provided to an individual or family in their home and are included in the medical services available at the Primary Clinic, as defined in the Minister of Health Regulation Number 9 of 2014 about Clinics. However, with the increasing availability of homecare services, the issue is that an increasing number of health workers are providing homecare services independently, without involving established health facilities. If a health worker provides homecare services independently and does not adhere to administrative rules, it is inevitable that the homecare service will breach medical service standards, ethics, discipline, or the law.

Keywords

homecare; health services;
legal aspects; pratama
clinical practices



I. Introduction

Health services are currently advancing at a breakneck pace. Along with advancements in technology and research in the fields of health and medicine, the community offers a variety of services. Beginning with medical devices, processes, and medications, and ending with doctors' and health workers' abilities to produce new ideas. Naturally, the expansion of medical services presents a challenge and provides additional points for hospitals or service providers. On the other hand, the public is unaware of the evolution of this medical service. Everything that society sees in their condition or when a member of their family becomes ill is a way for them to be cured.

In independent medical practices, seemingly typical clinics, nurse or midwife practices, and even traditional medical services, large patient lineups grow. Certain individuals who suffer from several illnesses are unable to visit medical facilities. Patients and their families frequently seek medical treatment at home due to highly vulnerable illnesses, device-dependent disorders, or even parenteral fluid consumption. People who are reluctant to travel for fear of catching COVID-19 prefer to stay at home rather than risk contracting the virus (Fuzy, 2018).

Home care services have the potential to be a critical component of the current pandemic's health solutions. Health is particularly valuable, and various medical institutions, such as hospitals, health centers, and clinics, can become overloaded with patient treatment, particularly during the present COVID-19 pandemic. Indeed, some people are scared to visit the hospital for fear of contracting COVID-19. On the other hand, when someone is ill, they require competent medical treatment. There are certain families

that can be cared for at home, but the steps done are not optimal due to poor medical understanding.

In today's world, homecare is a vital service that enables people to access health care. Nursing services provided to patients in their homes (homecare services) are included in the medical services provided by the Primary Clinic. However, as more homecare services become available, the issue is that an increasing number of health workers perform homecare services independently (individually) without involving established health facilities. This is problematic because a health care professional should possess a practice permit in every practices. Meanwhile, homecare services must be provided by health care facilities, and each health care facility must have an operational license and adhere to certain service requirements (Brown, 2017).

Based on the background that has been described, several formulations of the problems in this study can be identified, namely:

1. In Health Services of Medical Service Standards
2. Legal Regulations Governing Nurses' Roles in Performing Medical Acts in the Context of Homecare Services
3. Legal Responsibilities of Homecare Nurses Patient Advocacy
4. Legal Requirements Doctors Delegate Medical Action Authority to Nurses in Homecare Health Services

II. Research Methods

This research is a multidisciplinary research, which elaborates on the health sector with the main focus of discussion in the field of law. The type of research that will be used in this journal research is normative legal research. Normative legal research examines law from an internal perspective with the object of research being legal norms. The approach method used is descriptive-analytical-explanatory which uses a type of juridical-normative legal research with a Statute Approach which is aimed at studying the suitability and consistency between one law and another, or between laws. with the basic law, or between regulations and laws and regulations. Then the Case Approach, which is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force. The data used in this study is secondary data with legal materials used in this study consisting of primary legal materials covering all regulations and regulations in Indonesia, secondary legal materials in the form of books and journals, and tertiary legal materials in the form of dictionaries and encyclopedias. The technique of collecting data from all literature is in the form of library research, carried out by reviewing library materials in the form of statutory books and other written sources, which are related or related to this research. Overall data obtained from this study, secondary data processed and analyzed qualitatively for further description in order to provide understanding by describing, describing and explaining the results of this study. The method of thinking used in analyzing the collected data is to use the deductive method, which is a way of thinking that starts from general things and then draws specific conclusions (Efendi, 2018).

III. Results and Discussion

3.1. In Health Services of Medical Service Standards

The growing public demand for health services, the more developed the rules and the role of law in assisting in the improvement of health services, all serve as a motivating factor for the government and health service providers to implement the legal foundations and role of law in assisting in the improvement of health services that are oriented toward legal protection and certainty patient. The legal basis for providing health services is generally defined in Article 53 of the Health Law, as follows: Individual health services are directed toward curing disease and restoring individual and family health, while public health services are directed toward maintaining and improving group and societal health and disease prevention (Pipit, 2020).

Article 52 paragraph (2) of the Health Law regulates plenary health service activities as defined in paragraph (1), namely:

- a) Promotive health services, an activity or set of health service activities that emphasize health promotion activities.
- b) Preventive health services, an action designed to avert or mitigate a health problem or disease.
- c) Curative health services, an activity or series of treatment activities aiming at curing disease, alleviating suffering caused by disease, controlling disease, and controlling disability in order to maintain the highest possible quality of life for sufferers.
- d) Rehabilitative health services, activities, and/or a sequence of activities designed to reintegrate former patients into the community and enable them to operate as productive members of society, to the extent practicable given their capacities.

It is the responsibility of the Health Law to ensure that development goals in the health sector achieve optimal results, specifically through the utilization of health workers, facilities, and infrastructure, both in quantity and quality, as well as through accreditation mechanisms and standard setting. Development goals in the health sector must be oriented toward legal provisions that protect patients, necessitating dynamic health legal instruments that can provide legal certainty and protection. Article 44 of Law No. 29 of 2004 states that doctors must adhere to medical service standards when practicing medicine. Similarly, article 55 states that doctors are required to perform medicine in compliance with professional norms and standard operating procedures, as well as the medical needs of patients.

Medical service standards and standard operating procedures serve a dual purpose: they serve as a guide for providing health care to patients and they serve as a constraint on the professional autonomy of health care employees who operate in health care facilities. This restriction is necessary to ensure that health personnel do not deviate from standard practices when providing health care. Professional standards, medical service standards, and other standards ensure that health workers receive legal protection and that patients receive health services in line with the law's rules, meaning receiving quality health care (Ikatan Dokter Anak Indonesia, 2009).

3.2. Legal Regulations Governing Nurses' Roles in Performing Medical Acts in the Context of Homecare Services

Doctors and nurses are complementary professions; therefore, nurses cannot work independently of doctors. While a collaborative relationship between doctors and nurses will be well established if conducted according to professional standards, this collaborative relationship does not preclude the possibility of a problem that could be detrimental to

doctors, nurses, and patients. There are two issues that frequently manifest themselves in the form of:

- 1) Collaborative relationship between doctors and nurses in which nurses frequently follow doctor's orders without regard for clear authority, namely the extent to which nurses may carry out doctor's orders. Nurses' actions carrying out doctor's orders are regulated by the nursing law, specifically in Article 29 and 32 of Law Number 38 of 2014 concerning the delegation of authority for medical actions that nurses may carry out.
- 2) Due to the nursing authority in giving direct care to patients under the Nursing Act, it is frequently the case that the boundaries of authority regarding which actions must be conducted by the doctor's delegation and which circumstances or events can be handled alone are violated. The primary focus in this case is on the extent to which nursing authority that can operate independently of a physician and nursing authority that must operate with a physician's delegation are included in the sphere of nursing competence (Manala, 2016).

Nurses are legally permitted to engage in self-employed nursing activities depending on their education and expertise. Without a medical program, nurses can examine patients for home care services; nevertheless, care must be administered under the direction of a doctor-signed written action plan. The nurse who provides care at home develops a treatment plan and then collaborates with the physician to develop a medical strategy. According to the Director General of Yanmed's Decree No. HK 00.06.5.1.311 of 2011, homecare nurses are authorized to perform the following 23 independent nursing actions: Vital sign (monitoring a patient's vital signs), Installing a nasogastric tube, Installing a hose, Installing a catheter, and Replacement of breathing tubes. Taking care of wounds caused by decubitus, Suction, Installing O2 equipment, Injecting (IV, IM, IC, SC), Infusions and medicines installation Preparation, administration of laxatives Hygiene, In the context of medical rehabilitation, exercise Clients undergoing transplantation are seen for examinations, diagnostics, health education, terminal case counseling, blood sampling, wound care, emergency evaluations, and electrocardiograms. However, the aforementioned medical services may be performed only upon a doctor's written request (Ns. Andi Parellangi, 2018).

In Indonesia, the nursing profession is undergoing a paradigm shift. Nursing employment that were initially classified as vocational have been converted to professional positions. Nurses, who were previously viewed as extensions or mere "assistants" to physicians, are now viewed as equal partners with physicians in affluent countries. The health and nursing service in question is a method of implementing nursing practice directed at patients, both individuals, families, and communities, with the goal of promoting health and welfare in order to maintain and recover from illness; in other words, nursing practice efforts are preventive, promotional, curative, and rehabilitation.

3.3. Legal Responsibilities of Homecare Nurses Patient Advocacy

Permenkes Number 2052/Menkes/Per/X/2011 concerning Practice Permits and the Implementation of Medical Practices, namely Article 23, says that medical actions must be performed by doctors or nurses with the doctor's written delegation. Nurses, on the other hand, are permitted to perform health services outside their authority without obtaining a delegation of authority from doctors; this is stated in Article 10 of Minister of Health Regulation Number HK.02.02/148/Menkes/2010 concerning Permits and Implementation of Nursing Practices (1) To save someone's life when there is no doctor on the scene, nurses can provide health services outside their authority if certain criteria are met, such as an emergency situation where there is no doctor on the scene, or in areas where there are

no doctors and the area has been designated by the government for Nurses to have special authority in performing certain medical actions. However, if the nurse takes medical action under normal circumstances, the nurse has breached the legislation or rule governing the powers of health workers.

However, it is frequently discovered in the field that nurses perform medical actions without a written delegation from a physician. For example, the author discovers a nurse who provides homecare services; the nurse examines patients, administers injection drugs, and writes prescriptions for medications. When questioned, the nurse stated that she practiced nursing alone, without involving health care facilities. When referring to Permenkes Number HK.02.02/148/Menkes/2010 relating to the Permit and Implementation of Nursing Practice, Article 2 states that nurses with a minimum education of Diploma III (D III) Nursing may practice in health service facilities, which includes health service facilities that are not self-contained and/or self-contained. The issue is that many nurses operate in a gray area. Nurses frequently exercise their authority outside of nursing care and perform tasks that is delegated to doctors. Nurses working in the gray area perform a variety of tasks, including disease diagnosis, drug prescription, treatment actions both inside and outside the health care facility, pregnancy checks, delivery assistance, invasion actions (such as infusions, catheter placement, and injection), cleaning duties, and administrative duties.

3.4. Legal Requirements Doctors Delegate Medical Action Authority to Nurses in Homecare Health Services

In Article 65 of the Law of the Republic of Indonesia No. 36 of 2014 on Health Workers, it is stated "In the course of providing health care, health workers may be delegated medical activities by other medical staff. The delegated medical action in question contains the following provisions: "The delegated actions include the recipient's abilities and skills, the implementation of the delegated actions remains under the delegated person's supervision, the giver of the delegation retains responsibility for the delegated actions as long as the actions are carried out in accordance with the delegation given, and the delegated action does not include decision-making as a basis for implementation. According to Permenkes Number 2502/Menkes/Per/X/2011, which relates to Practice Licenses and the Conduct of Medical Practices in compliance with Article 23:

- 1) A physician or dentist may delegate a medical or dental action to a nurse, midwife, or some other health worker in writing.
- 2) The aforementioned medical action may be taken only when the need for services exceeds the capacity of a doctor or dentist at the service facility.
- 3) The delegation of authority is carried out in the manner indicated by the following provisions:
 - a. the delegated action is included in the delegated recipient's abilities and capabilities.
 - b. the delegate retains oversight of the delegated action's execution
 - c. the delegate retains responsibility for the delegated action as long as the activity is carried out in line with the assignment given
 - d. the delegated action does not contain clinical decision-making as a foundation for carrying out the action
 - e. the delegated activity is not continuous.

The following points should be considered when delegating authority from doctors to nurses (Amir, 2021):

- The primary responsibility remains with the doctor who delegated authority
- Nurses have implementation responsibilities

- Delegation can occur only after the nurse has received sufficient education and competence to accept delegation
- Delegation can be given for an extended period of time or continuously to health nurses with specialized skills (specialist nurses) (standing orders).

Delegation of authority by physicians to nurses must be in writing and take the following into account:

- Is a powerful legal and evidential tool due to the fact that it is protected by applicable regulations
- Can serve as written evidence of the delegation of authority, such that if an act outside the delegation occurs, it is the recipient of the delegation's responsibility, not the delegation's. Delegation of authority in nursing is tailored to the professional ability and competence of nurses serving as recipients of authority.

According to Permenkes No. 26 of 2019 on the Implementation of Law No. 38 of 2014 on Nursing, it also controls how authority is delegated as specified in paragraphs 27 and 28.

Purwadi (2019) Duties as an executor of delegations of authority are carried out in accordance with the following:

- 1) A doctor's delegation of authority to execute medical actions may take the form of delegated authority or mandate.
- 2) Authority to take medical action must be delegated in writing.
- 3) Medical personnel delegate authority to nurses to execute a medical procedure under the supervision of medical personnel who delegate authority.
- 4) Medical personnel delegate permission to execute a medical action to nurses in conjunction with delegating responsibilities.
- 5) Delegation of authority may be granted only to professional nurses or vocationally trained nurses.
- 6) Delegation of authority to execute medical procedures is carried out within their scope of expertise.
- 7) Medical actions that fall under the delegation of authority by mandate include the following:
 - a. administering parenteral treatment; suturing
 - b. other medical interventions as determined by the Nurse's competence.
- 8) Medical actions that fall under the authorized delegation of authority include the following:
 - a. administer infusions
 - b. inject
 - c. routine immunizations
 - d. other medical procedures carried out within the Nurse's scope of practice.
- 9) Other types of medical action in the delegation of authority by mandate or delegation are determined by the following:
 - a. hospital leadership for the delegation of authority from medical staff in the hospital on the advice of the medical and nursing committees.
 - b. the head of the district/city government health office for delegating authority to medical employees at community health centers and/or clinics upon the recommendation of the head of the public health center or clinic.
- 10) In the absence of a medical or nursing committee in the hospital, the hospital leadership determines other types of medical activities on the recommendation of the official in charge of nursing and the official in charge of medical services at the hospital.

In nursing, delegation of authority to execute medical activities contains an engagement that results in an engagement that establishes a legal relationship between the recipient and the delegated authority giver. The transfer of authority by nurses, whether by delegation or mandate, is a result of an agreement between nurses as recipients of authority and physicians as givers of authority. This is based on Article 1234 of the Criminal Code, which states that “each engagement is to give something, to do something, or not to do something,” and that this delegation of authority constitutes an agreement that must meet the legal requirements set forth in Article 1320 of the Criminal Code, namely “agreement, skills, a particular thing, and a lawful cause.” Delegation of authority via delegation or mandate is accomplished in writing via a delegation of authority letter. This demonstrates that an engagement results in a legal relationship that confers rights and obligations on nurses and physicians. The exercise of this authority must not cause harm to third parties, and if there is a breakdown in the delegation of authority via a mandate, the doctor is liable for the breakdown or negligence of the nurse authorized by him. This is because the primary responsibility for the prescribed activity stays with the doctor who issues the order, while the nurse is solely accountable for carrying it out. In contrast to delegation of authority, the nurse who receives delegation is responsible for damages and losses incurred as a result of granting delegation (Sutarih, 2018).

Lastini (2020) state that in this situation, the delegation of medical authority to health workers refers to the health workers’ ability to carry out certain legal activities in the sphere of health services in the public sector, whether in hospitals, health centers, or clinics, which are separated into two categories:

1. Delegation of authority through delegation

Delegation of authority to accomplish something Medical personnel delegate medical action to nurses with the accompanying delegation of responsibility and accountability.

2. Delegation of authority pursuant to a mandate

Medical personnel provide power to nurses to perform a medical action under supervision, while the donor of the mandate retains responsibility and accountability.

The mandate giver is ultimately responsible for medical action taken pursuant to the delegation of mandate authority. This creates an ethical dilemma for the nursing profession, because it is actually burdensome for nurses to provide nursing services, because if a lawsuit arises as a result of the nurse’s negligence as a result of an act of error that results in injury to the patient, who should be held accountable? Are the limitations on delegation of medical authority clear in accordance with Minister of Health Regulation 2502/Menkes/Per/X/2011 concerning Practice Licenses and the Implementation of Medical Practices, which is derived from the Republic of Indonesia’s Law No. 29 of 2004 concerning Medical Practice? Is the authority-competency bearer’s appropriate? Additionally, there could be overdelegation here, as well as a considerable variation in competence as a result of power delegation to health workers, particularly nurses, who are divided into professional and vocational nurses. In this case, neither the Nursing Law No. 38 of 2014 nor the Minister of Health Regulation No. 26 of 2019 (a derivative of the Nursing Law’s implementing regulations) make it clear; even if it is stated that vocational health workers are trained to the required level of competence, the parameter indicators are not included. Which competencies are deemed appropriate have not been defined explicitly in the policy. This is a very important consequence when it comes to responsibility and accountability, as it has an effect on the quality of health services and patient safety, which are all patients’ rights.

IV. Conclusion

Until date, there have been no formal arrangements for homecare services, either in the legislation or the medical code of ethics. Minister of Health Regulation No. 9 of 2014 concerning Clinics only states that clinics may provide homecare services, whereas Law No. 38 of 2014 concerning Health Workers, Law No. 29 of 2004 concerning Medical Practice, and Law No. 38 of 2014 concerning Nursing have thus far only defined who is permitted to practice homecare, and every health worker who practices health, both independently and in collaboration with others, is required to have a Registration Certificate. As a result, it is past time for homecare services to be regulated separately in national legislation, providing legal certainty for both health practitioners and homecare service customers.

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