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## **FULFILLMENT OF HEALTH RIGHTS FOR PATIENTS PATIENTS' SOCIAL SECURITY ADMINISTRATION AGENCY CANCER IN CHEMOTHERAPY SERVICES**

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### **ABSTRACT**

*Chemotherapy treatment for Health Social Security Administering Agency (BPJS) patients carried out by hospitals must follow the rules of the national formulary. Sometimes differences are found between the national formulary and the chemotherapy regimen issued by the Indonesian Association of Surgical Oncologists (PERABOI). Problem Formulation: 1) How do BPJS patients with cancer fulfill their rights to health in chemotherapy services? 2) What are the obstacles in fulfilling their health rights for BPJS patients with cancer in chemotherapy services? 3) What efforts have been made to overcome obstacles in fulfilling the right to health for BPJS patients with cancer in chemotherapy services? This research is sociological legal research, primary and secondary data sources, analyzed qualitatively. Data collection by interviews. Research results: 1) Fulfillment of health rights for BPJS patients with cancer in chemotherapy services must follow BPJS regulations which are based on the national formulary. 2) Obstacles in fulfilling the right to health for BPJS patients with cancer in chemotherapy services when there are restrictions or obstacles from BPJS regulations to obtain medicines that comply with certain disease drug protocols issued by the relevant association 3) efforts made to overcome obstacles in fulfilling the right to health for BPJS patients with cancer in chemotherapy services, if there are restrictions from BPJS, doctors and hospitals must comply with the rules for administering chemotherapy drugs from BPJS.*

**Keywords:** Cancer, Chemotherapy, BPJS, Patient, Right to Health

### **INTRODUCTION**

Health is a basic human need to live decently and productively; therefore, it is necessary to provide healthcare services that are cost-controlled and quality-controlled. Citizens have the right to receive health services, as stipulated in Article 28 H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that everyone has the right to live a prosperous life both physically and mentally, to have a place to live, and to obtain a good

and healthy living environment, as well as the right to receive health services. Therefore, every individual, family, and community has the right to protection for their health, and the state is responsible for ensuring that the right to a healthy life is fulfilled for its population, including for the poor and those who are unable.

The right to access health services is also mentioned in Article 4 Paragraph (1) of the Republic of Indonesia Law Number 17 of 2023 concerning Health, which states,

### **LLDIKTI Region X**

290

Lembaga Layanan Pendidikan Tinggi Wilayah X

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"Everyone has the right to receive safe, quality, and affordable health services in order to achieve the highest degree of health and to receive health care according to health service standards" (Ministry of Health, 2015):

Health is a fundamental right for every human being. The right to health care is one of the basic social rights of society. The state derives its legitimacy from the people solely because of the belief that it will realize the fundamental rights of its citizens. Therefore, Indonesia, as a country that upholds human rights, must demonstrate its concern for the health of its people (Setiawan, 2023).

Health is a human right, so every individual is entitled to receive healthcare services that are fair, equitable, and of high quality, reaching all of Indonesian society. Based on Article 1 Number 1 of the Government Regulation of the Republic of Indonesia Number 47 of 2016 concerning Health Service Facilities, it states: "Health Service Facilities are tools and/or places used to carry out health service efforts, whether promotive, preventive, curative, or rehabilitative, conducted by local governments and/or the community." (Setiawan, 2023).

The provision of healthcare services to cancer patients will be delivered by doctors with specific additional skills in the field of oncology, possessing the competence to treat cancer, including surgical, internal medicine, pediatric, obstetric/gynecological, pulmonary, and so on. Types of cancer treatment include surgery, chemotherapy, radiotherapy, hormonal therapy, targeted therapy, and immunotherapy. Chemotherapy can serve as the primary treatment for cancer or as an additional therapy before or after surgery. The purpose of administering chemotherapy is to stop the growth of cancer cells, prevent the spread of cancer cells, and to prevent the recurrence of the cancer suffered (Setiawan, 2023).

Cancer treatment requires medications that cannot yet be produced domestically and are expensive, while the Social Security Agency, with a large allocation of funds from the public in the form of independent participants and state-covered participants, mandates the government to provide the necessary treatments for the community. However, the government imposes limitations on treatments by altering established cancer treatment protocols, particularly through the policy of the Minister of Health of the Republic of Indonesia Number HK.01.07/Menkes/1970/2022. This creates a contradiction to the state's obligation to guarantee the right to health, which is a constitutional right of the community and the government's responsibility (Ministry of Health, 2022).

Hospitals are also required to provide legal certainty to patients and the community. The main obligation of hospitals according to the provisions of Article 29 Paragraph (1) letter b of the Republic of Indonesia Law Number 44 of 2009 concerning Hospitals, hereinafter referred to as the Hospital Law, is that hospitals provide safe, quality, non-discriminatory, and effective health services, prioritizing the interests of patients in accordance with hospital service standards. Hospitals are required to provide accurate, clear, and honest information regarding the rights and obligations of patients, as well as to respect and protect patients' rights and to implement patient safety standards.

The Indonesian Cancer Foundation stated that out of a total population of 270 million in Indonesia, over 396,000 new cancer cases were found in 2020. Deaths due to cancer reached more than 234,000 cases. The prediction from WHO (World Health Organization) is that by the 2040s, cancer mortality will increase by about 32 percent. The proportion of cancer will be largely suffered by developing countries. Cancer will be prevalent in developing countries because

access to screening for early detection is not yet optimal. Access for patients to quality healthcare facilities with new treatments is still very limited in developing countries, including Indonesia (Prasetyadi, 2021).

Based on data from the Social Security Management Agency, hereinafter referred to as BPJS, there are 714 hospitals with chemotherapy facilities, 507 hospitals with oncology services, and 35 hospitals with radiotherapy facilities throughout Indonesia (BPS, 2023).

Article 1 of Law Number 24 of 2011 concerning the Social Security Organizing Agency, hereinafter referred to as the BPJS

Law, states that BPJS is a legal entity established to administer social security programs. Social Security is a form of social protection to ensure that all citizens can meet their basic needs for a decent life. The Social Security Fund is a trust fund owned by all participants, which consists of contributions along with their development results, managed by BPJS for the payment of benefits to participants and the operational financing of the Social Security program. Participants are everyone, including foreigners who have worked for at least 6 (six) months in Indonesia, who have paid their contributions.

BPJS Health covers cancer treatment costs for participants in the program. In a meeting with Commission IX of the Indonesian House of Representatives on January 25, 2022, Health Minister Budi Gunadi Sadikin mentioned that the four diseases that consume the most health funds are heart disease at IDR 10 trillion, cancer at IDR 3.5 trillion, stroke at IDR 2.5 trillion, and kidney failure at IDR 2.3 trillion. According to global data, it is estimated that there are 19.3 million new cancer cases worldwide, with more than 10 million deaths. Almost 70% of cancer deaths occur in developing countries, including Indonesia (Finance, 2023).

The administration of chemotherapy to patients with solid tumors in Indonesia will follow a treatment regimen that adheres to the standard guidelines established by the Indonesian Society of Surgical Oncology. (PERABOI). The medications prescribed by the surgical oncologist responsible for the patient will be administered in the hospital that provides cancer treatment services. The medications given always adhere to the guidelines of surgical oncology and clinical practice protocols that have been scientifically recognized at both national and international levels (Suyatno, 2023).

Cancer treatment in the era of BPJS Kesehatan, organized by hospitals in accordance with the national formulary guidelines, which can evolve over time due to changes in policies implemented by BPJS Kesehatan. In the treatment of solid cancers that have national standard guidelines by surgical oncologists, there are sometimes obstacles in providing comprehensive treatment to cancer patients due to these differences. Cancer patients who receive suboptimal treatment or treatment that does not adhere to the principles of oncological surgery will experience a decline in life expectancy or an increase in cancer mortality rates (Ombudsman, 2023).

One of the government-owned hospitals is Dr. M. Djamil General Hospital, located in Padang City, West Sumatra Province, Indonesia. Dr. M. Djamil Hospital is a type A hospital that has received full accreditation through the Hospital Accreditation Group. Dr. M. Djamil Hospital serves as a referral center for patients in Central Sumatra, including JKN-BPJS patients. The hospital is responsible for providing health services with a focus on healing and recovery for the people of West Sumatra in general and Padang City in particular. Dr. M. Djamil Hospital offers services in Inpatient Installation, Outpatient Installation, and Emergency Installation,

which includes a Chemotherapy unit. In a day, the Chemotherapy unit at Dr. M. Djamil Hospital can serve up to 30 chemotherapy patients (RSUP Dr. M.Djamil, 2023).

In fulfilling the health rights for BPJS cancer patients to receive chemotherapy services, there are instances where the treatment provided does not align between the formulary from BPJS and the treatment guidelines issued by a certain association. As an example, a patient diagnosed with HER 2(+) breast cancer, according to the treatment guidelines from PERABOI, should receive targeted therapy for breast cancer for one year or a total of 12 cycles. However, the reality on the ground is that BPJS only covers 8 cycles for this targeted therapy, which is 4 cycles short of what is required. In addition, BPJS also requires that cancer treatment with this targeted therapy is only provided to patients whose cancer has already spread to distant organs. (metastatik). In fact, if it has already metastasized, it means the severity level is more advanced and it will be more difficult to treat compared to if this medication had been received from the beginning. The treatment given before metastasis occurs is certainly more effective and efficient in terms of the results obtained. This targeted treatment for breast cancer is only provided to HER2(+) patients whose lab results are positive at level 3. Meanwhile, those with HER2(+) positive at levels 2 or 1 cannot receive it. However, in reality, even if the results are only positive at levels 1 or 2, it remains effective when the targeted breast cancer therapy is administered (RSUP M. Djamil, 2023).

Patients sometimes receive types of medication that do not align with treatment guidelines, resulting in suboptimal services for BPJS patients. If hospitals continue to provide treatment based on guidelines from associations, meaning they do not comply with BPJS regulations, then BPJS will not be willing to cover the treatment claims from the

hospitals, which will lead to losses for the hospitals.

## RESEARCH METHODS

This research is socio-legal research. This socio-legal research focuses on the applicable legal aspects along with the realities of law in practice in the field, or by collecting data from legislation that is closely related to the study of applicable norms and linking them to the realities encountered in the field. The interview used in this research is semi-structured (Swardjana, 2015). The questionnaire technique will involve distributing it to patients selected through accidental sampling, which is a method of determining samples based on chance. This means that any patient who happens to meet the researcher and is willing to fill out the questionnaire can be used as a sample, provided that the person encountered is deemed suitable as a data source. The data from this research is analyzed using qualitative data analysis. Qualitative data analysis is an analysis that does not use numbers, but rather provides descriptive representations with words based on the findings (Salim, 2013).

## RESULTS AND DISCUSSION

### Fulfillment of Health Rights for Patients of the Social Security Organizing Body Suffering from Cancer in Chemotherapy Services

Dr. M. Djamil Hospital has legal regulations in place to protect its duties and functions. In accordance with Article 29 Paragraph (1) Letter r of Law Number 44 of 2009 concerning Hospitals, hospitals are provided with a legal framework that protects them legally in carrying out their functions related to treatment and healing.

Article 5 of Law Number 44 of 2009 concerning Hospitals states that hospitals have the function of providing medical treatment and health recovery services in



accordance with hospital service standards, improving and enhancing individual health, conducting education and training for human resources, and protecting hospitals from legal violations.

Dr. M. Djamil Hospital already has regulations based on the decision of the President Director of Dr. M. Djamil Hospital Padang Number: Ar. 01.01/XVI.I/526/2018 regarding Revision I of the Policy on Administrative Document Management, Classification Patterns, Archives, and the use of Management Unit Codes, so every policy created must be accompanied by guidelines, work programs, and Standard Operating Procedures (SOP).

The rule of law cannot benefit society according to its purpose, and standard operating procedures cannot be implemented because there are no SOPs, making it unclear who is responsible for carrying them out, for what purpose they are carried out, when they are carried out, why they are carried out, and how they are carried out. In addition, policies that do not refer to established regulations, such as policies, guidelines, work programs, and SOPs, are difficult to implement in the field, carry the potential for complications, and create many problems when applied. Therefore, before designing policies, it is necessary to understand the factors that influence policy implementation.

The hospital policy, in accordance with the organizational structure, has accommodated all related departments. The fulfillment of health rights for patients of the Social Security Administration suffering from cancer to receive chemotherapy services at Dr. M. Djamil Hospital in Padang is carried out in accordance with the Minister of Health of the Republic of Indonesia's Decree Number HK.01.07/Menkes/2197/2023 regarding the National Formulary (Kemenkes RI, 2023).

Based on the interview conducted with Ns. Espasari S.Kep, Head of the

Chemotherapy Room at Dr. M Djamil Hospital in Padang, she explained that the registration process must be followed by every chemotherapy patient. The nurse in the chemotherapy room only follows the instructions according to the existing protocols. The patient was provided with an information and consent form for medical procedures before chemotherapy.

Supported by an interview with Fatimah, one of the patients receiving chemotherapy at Dr. M Djamil Hospital in Padang, she mentioned that before undergoing chemotherapy, she had already consulted with a doctor, undergone laboratory tests, checked her heart condition, and was also given informed consent.

The information and consent form for medical procedures is essentially an agreement between the patient and the hospital in the effort to heal the patient's illness. It is a therapeutic agreement, not an agreement on outcomes, but rather an agreement based on maximum effort. (inspanning verbintennis). One of the valid requirements for an agreement is that there must be a party making a promise, namely the healthcare provider at Dr. M. Djamil Hospital with the patient or the patient's family representing them, who promises that the person is not under legal incapacity and understands the object of the agreement.

Patient rights must be fulfilled, including the health rights of BPJS patients suffering from cancer to receive chemotherapy treatment at Dr. M. Djamil Hospital in Padang, including the medication provided to the patients. This is in accordance with the theory of legal protection, which states that chemotherapy patients must comply with the law. There are commands and prohibitions that must be adhered to in community life.

BPJS patients have received their rights according to the regulations. The services provided by the hospital encompass

promotional, preventive, curative, and rehabilitative services, including the provision of medication as needed. Cancer patients receiving treatment from doctors will go through several stages to determine the type of cancer they are experiencing. The types of cancer diagnosis are primary, secondary, complications, and pathology. The primary diagnosis begins with a clinical diagnosis and is followed by a diagnosis through supporting examinations. The National Formulary was created to ensure the availability of effective, quality, safe, and affordable medications within the National Health Insurance system. However, with the advancement of health sciences and the varying treatment needs of patients, the National Formulary is unable to meet these requirements.

In line with legal theory, Satjipto Raharjo states that legal protection is about safeguarding every human right that has been violated by others. The purpose of legal protection for society is to ensure that individuals can obtain and enjoy their fundamental rights as granted by the law. Legal protection is all efforts to fulfill rights and provide assistance to ensure the safety of patients. Legal protection for patients, as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

With that provision, the Medical Information and Consent Form should not have any parties denying the rights of patients and the release of patient disease information, as this is regulated by legal rules aimed at protecting the public from diseases and/or public health risk factors that could potentially lead to health emergencies, thus providing benefits and justice for society.

Based on the interview conducted with Dr. Daan Khambri, SpB.Subsp.Onk. (K). MKes, as the Head of Cancer Support at Dr. M Djamil Hospital in Padang, discusses the

fulfillment of health rights for BPJS patients suffering from cancer to receive chemotherapy services at Dr. M Djamil Hospital in Padang, explaining the health rights for cancer patients undergoing chemotherapy. Cancer patients who use BPJS must adhere to the regulations set by BPJS as outlined in the national formulary. Sometimes the formulary aligns with the therapy protocols issued by the association. But there are also things that don't match.

Next, an interview was conducted with Dr. Ari Oktavenra SpB.Subsp.Onk (K), a Consultant in Surgical Oncology at Dr. M Djamil Padang Hospital, one of the responsible doctors for patients, as well as a chemotherapy provider for patients regarding the fulfillment of health rights for BPJS cancer patients to receive chemotherapy services at Dr. M. Djamil Hospital Padang. He explained that the administration of chemotherapy is in accordance with regulations, and there are restrictions or rules that must be followed. If these are not adhered to, the medication cannot be dispensed, even if the patient needs it. Consequently, we must adhere to those rules, even though sometimes they do not align with the protocols issued by the relevant associations, whether national or international. The protocol issued by the assembly is not without basis; it has undergone research and level 3 testing. In accordance with the legal system theory which states that the legal system within society undergoes changes as a result of influences caused by the applicable regulations. As a response to legal regulations, it is a function of the applicable laws along with their sanctions and all the forces within the strategic environment that influence them. How decision-makers take action based on the functions of the applicable laws, including sanctions and the influence of strategic forces on them, as well



as feedback from stakeholders and the implementers of the regulations.

### **The challenges faced in fulfilling health rights for patients under the Social Security Organizing Body suffering from cancer in chemotherapy services.**

Based on the interview conducted with Dr. Daan Khambri, SpB, Subspecialist in Oncology. (K). MKes, as the Head of Cancer Care at Dr. M Djamil Hospital in Padang, discusses the challenges faced by BPJS patients in fulfilling their health rights to receive chemotherapy services at Dr. M Djamil Hospital. He explains the difficulties that arise when there are restrictions or obstacles from BPJS regulations in obtaining medications that align with the treatment protocols for specific diseases issued by the Oncology Surgery Association. Although sometimes the quantity of medication is insufficient or the frequency of administration is lacking, or sometimes certain types of medication cannot be dispensed, we have no choice but to go along with it. If the patients are able or willing, they can purchase the medication for that deficiency. But usually doctors or hospitals are reluctant to facilitate, because they fear there might be issues in the future. Why do BPJS patients still have to pay for medication?

Strengthened by an interview with Dr. Ari Oktavenra SpB.Subsp.Onk (K), a Consultant in Surgical Oncology at RS Dr. M Djamil Padang, one of the main doctors in charge, as well as a chemotherapy provider to patients, it explains that cancer treatment in the era of the Health Social Security Agency is organized by hospitals following the national formulary guidelines, which can change over time due to shifts in policies implemented by the Health Social Security Agency. In cancer treatment, which has a standardized national guideline provided by surgical oncologists, there are obstacles in

delivering comprehensive treatment to cancer patients.

Cancer treatment requires medications that cannot yet be produced domestically and are expensive, while the Social Security Administration, with a large allocation of funds from the public in the form of independent participants and those covered by the state, obliges the government to provide the necessary treatments for the community. However, the government imposes limitations on treatment by altering the established protocols for cancer treatment, particularly through the policy of the Minister of Health of the Republic of Indonesia Number HK.01.07/Menkes/1970/2022. This creates a contradiction to the state's obligation to guarantee the right to health, which is a constitutional right of the community and a responsibility of the government.

With advancements in science, doctors and hospitals providing care to cancer patients will face challenges in applying medical knowledge and practice guidelines while adhering to the treatment limitations set by the National Formulary established by the Minister of Health of the Republic of Indonesia. This will result in unmet expectations from the community or cancer patients to receive the best treatment for their recovery from the disease.

The healthcare provided to cancer patients by doctors will follow the regulations and scientifically recognized treatment protocols established by the government. The decision of the Minister of Health of the Republic of Indonesia Number 01.07/Menkes/1970/2022 regarding the National Formulary regulates the availability of effective, quality, safe, and affordable medicines within the National Health Insurance system. The treatment provided in this case is regulated by the regulations. Doctors should not prescribe medication outside of the established guidelines.

With the enactment of the Minister of Health of the Republic of Indonesia Decision Number 01.07/Menkes/1970/2022 regarding the National Formulary related to the implementation of treatment provided by doctors, the following issue arises:

- a. According to the Minister of Health of the Republic of Indonesia regarding the National Formulary, the National Guidelines for Medical Services for Breast Cancer Management, and the PERABOI Cancer Management Guidelines of 2023, there is a discrepancy in the treatment of cancer patients.
- b. The National Formulary was created to ensure the availability of effective, quality, safe, and affordable medications within the National Health Insurance system. However, with the advancement of health sciences and the varying treatment needs of patients, the National Formulary is unable to meet these requirements.

Based on the interview conducted with Ns. Espasari S.Kep, Head of the Chemotherapy Room at Dr. M Djamil Hospital in Padang, regarding the challenges faced by BPJS patients in fulfilling their health rights to receive chemotherapy services at Dr. M Djamil Hospital, it was explained that there are no issues from the nurses' side, as they do not question whether the medication given to patients is appropriate or not. When a patient arrives, they usually assess the patient's eligibility for chemotherapy from a medical standpoint, rather than based on the protocols accepted by the patient. From a medical perspective, for instance, if the patient's hemoglobin is low or their leukocyte count is low, or there are other issues related to the patient's condition, such as fever, high blood pressure, or a generally poor state of health, these factors are considered by the nurse before admitting the patient to the chemotherapy

treatment room. However, the decision on whether the patient will undergo chemotherapy at that time is ultimately not made by the nurse. The nurse only reports the patient's condition to the attending physician, and the final decision remains in the hands of the attending physician.

Regarding therapy that sometimes does not align due to restrictions from BPJS, that is beyond the nurse's authority, because before going to the chemotherapy room, patients first go to the pharmacy room. It is in the pharmacy room that patients will be screened to determine whether the medication complies with BPJS restrictions or not. If it does, the patient proceeds to the chemotherapy room; if not, the patient will be referred back to the responsible physician to adjust the medication protocol. It means that a patient who has arrived in the chemotherapy room has already passed through that restriction.

The challenges faced in fulfilling the health rights of patients under the Social Security Organizing Body suffering from cancer in chemotherapy services also stem from the patients themselves. Patients who refuse chemotherapy due to fear. There is also no authority for healthcare workers to force it, as they have already provided education about this chemotherapy.

In accordance with the legal system theory which states that the legal system within society undergoes changes as a result of influences caused by the applicable regulations. The administration of medication to chemotherapy patients is regulated according to the Decree of the Minister of Health of the Republic of Indonesia Number 01.07/Menkes/1970/2022 regarding the National Formulary, which governs the treatment provided by doctors. As a response to legal regulations, it is a function of the applicable laws along with their sanctions and all the forces within the strategic environment that influence them.



How decision-makers take action based on the functions of the applicable laws, including sanctions and the influence of strategic forces on them, as well as feedback from stakeholders, implementers, and the application of regulations.

**Efforts made by M. Djamil Hospital in Padang to address the challenges faced in fulfilling the health rights of patients under the Social Security Administration for cancer patients in chemotherapy services.**

Based on the interview conducted with Dr. Daan Khambri, SpB.Subsp.Onk. (K). MKes, as the Head of Cancer Care at Dr. M Djamil Hospital in Padang, explained the efforts made by M. Djamil Hospital in Padang to address the challenges in fulfilling the health rights of BPJS patients suffering from cancer at Dr. M. Djamil Hospital in Padang, detailing the obstacles faced. If there are restrictions from BPJS, doctors and hospitals can't do anything else, because that's already a national regulation. If not followed, the claim could be rejected, which means it might not be paid by BPJS, leading to losses for the hospital.

The doctor's efforts usually align with the regulations set by BPJS, both in terms of medication and the quantity prescribed, so that the medication can still be prescribed for the patient. Sometimes, there is also a substitution of medication with one that has a similar function but is still recognized by BPJS. Due to the increasing number of BPJS Kesehatan participants, BPJS Kesehatan collaborators, and healthcare facilities such as hospitals, continuous improvements are being made in the implementation of this health program. The cost of healthcare for the public has been significantly reduced by the national health insurance program overseen by BPJS. As a result, more and more patients are taking advantage of the services provided by BPJS Health at various healthcare

facilities, such as Community Health Centers (Puskesmas), Primary Clinics, family doctors, and hospitals.

**CONCLUSION**

1. The fulfillment of health rights for patients under the Social Security Organizing Body suffering from cancer in chemotherapy services must adhere to the regulations set by BPJS as outlined in the national formulary.
2. The challenges encountered in fulfilling health rights for patients under the Social Security Administration for cancer patients in chemotherapy services are when there are restrictions from BPJS regulations to obtain medications that align with the specific disease treatment protocols issued by the relevant associations.
3. The efforts made by hospitals to fulfill the health rights of patients under the Social Security Administration for cancer patients in chemotherapy services are limited by restrictions from BPJS; doctors and hospitals cannot act otherwise, as it is already a national regulation. If not followed, the bill may be rejected, resulting in non-payment which will cause losses for the hospital. The doctor's efforts usually align with the regulations set by BPJS, both in terms of medication and the quantity of drugs, so that the prescriptions can still be issued for patients. Sometimes, there is also a substitution of medication with a drug that has a similar function but is still recognized by BPJS.

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