

Legal Alert

Nursing Station and Home Health Care

written by Michael Qu

Today, we will talk about a new legislation of nursing station promulgated by the Shanghai counterpart of National Health and Family Planning Commission (“NHFPC”). It is the first-of-its-kind legislation specific to the nursing station, which provides a lot of details and clarification of what the market currently urges for. What the most relevant to our topic today is that the legislation finally legitimates home visiting health care services provided by private operator by means of establishing nursing stations.

It has been so long since the first wave of foreign and private home care service providers started to explore viable models to deliver medical related services at the homes of elderly people but only to find the legislation has been the biggest barrier ever since. As a result, the early entrants found themselves in competition with hundreds of domestic companies and thousands of home maids (Baomu or Ayi in Chinese) in a local market, which is quite a dilemma for nursing care providers who highlight very much of their professional skills and experience.

There has been some experimental practices initiated by high-end hospital (e.g. the United Family), public grass-root hospital or nursing home provider to deliver home health care service at senior’s personal needs, but none of them develop home

health care as a core business in lack of a clear legislation. Now, with the Shanghai legislation being implemented, we believe that if many other cities and provinces follow suit, nursing station could be the most favorable, if not the best, solution for home care providers to be equipped with qualification that a traditional home care provider lacks.

What is Nursing Station?

According to the Notice of Encouraging Private Capital to Develop Nursing Station in the Municipality (“Notice 36”, <关于鼓励社会力量发展本市护理站的通知>) released on 18 August, 2016 and a further Administrative Measures of Nursing Station in Shanghai (“Notice 46” or the “Measures”, <上海市护理站管理办法>) released on September, a nursing station refers to a certain type of medical institution that formed by nurses and therapists which can provide basic and special care, clinical care, technical guide for disinfection and isolation, guide for nutrition and rehabilitation and other health care services within a certain range of areas. Pursuant to the Basic Standard of Medical Institution (Trial) <医疗机构基本标准（试行）>, nursing stations are subject to requirements in respect to areas, staff and professional qualification, equipment and operational procedures. Also

because it is a medical institution, establishment of a nursing station must be in compliance with local planning of health, which means the selection of location of nursing station is not a free choice but a government led or guided determination.

Nursing station is very similar to community clinic in that it is located around residential communities and serves the majority of local citizens in their general medicine need. However, the nursing station has lower entrance barrier as it does not require physician to be the founder or employee of a clinic—all the professionals needed for a nursing station is a minimum of three qualified nurses, one rehabilitation therapist and two caregivers. With a license issued by district department of NHFPC, a nursing station can provide home visiting, in-home health care and rehabilitation guidance services, etc. within the radius of the district.

Moreover, according to a prior implemented policy, spending of in-home medical services provided to high age seniors can be reimbursed if the following requirements are met: (a) services are enjoyed by Shanghai citizen whose care need has reached to a certain level in accordance with an unified appraisal; (b) home health care services are provided by primary medical institutions (including nursing station, community medical center, nursing home, clinic, etc.); and (c) service price and reimbursement percentage is in compliance with the primary medical insurance policy. As a result, for some seniors, the medical insurance will make up for a big portion of their expenditures in home health care

service, which in the past are all private paid.

Benefit to the Home Health Care Operators

First, we should understand the Shanghai's legislation of nursing station is just one of the steps towards the implementation of a Chinese version of "long term care", which is designed to include community, institutional and home care all together to serve seniors at different ages and meet their different needs. The main goal is to provide primary senior care support to the majority people at affordable prices, and a large or part of the expense is reimbursable if certain conditions are met. It is also important to know that the establishment and development of nursing station has a lot to do with the emergence of other community-based senior care service arms and the popularization of family doctors, both of which are not new things in the western context, but are less developed in the Chinese market—whether they can play the same and important role to meet the primary health care needs is uncertain.

Second, a lot of professional nursing care services that cannot be provided by home care operators (with only SAIC license) and senior care operators (with only MCA license) on the in-home basis now can be delivered by nurses deployed from a nursing station. Such breakthrough will address the biggest concern of legitimacy whether medical care can be provided at home. In an official explanation from local authority, home health care has been categorized into primary care, ordinary clinical care and relevant care guidance. Primary care can be provided either by nurses or caregivers, but

clinical care can only be rendered by nurses, the latter of which includes Urethral catheterization, nasal feeding, enema, oxygen, blood glucose monitoring, oral administration, blood specimen collection, intramuscular injection, hypodermic injection, etc.

Third, being positioned as grass-root senior and health care hospital, nursing station can seek collaboration with a lot of other resources and service providers, such as community medical centers, family doctors, senior care facilities or other rehabilitation hospitals. At the experimental period, the social network recourses will be integrated into the public community healthcare management platform, and nursing stations can receive service requests that are referral from other hospital, clinic, or direct engagement by family doctors. It is worth mentioning, however, nurses and caregivers in a nursing station cannot practice cross-district unless another licensure is acquired.

Restriction Remains for Private Investors

First of all, the barrier for foreign investors to establish nursing station still remains, largely because the restriction for foreign-invested hospital is still there. There was a short period of time when wholly foreign-owned (WFOE) hospital is permitted in certain cities and area; however, the recent policy voice has again been tightened. Except for very few examples of WFOE clinic or specialized hospital invested from Hong Kong or Taiwan, it is hard to find other non-JV hospitals being established in recent years. Therefore, as long as the nursing station is defined as a medical institution, it

is almost impossible for a foreign investor to hold 100% interests of a nursing station. In light of this, if not a joint venture, foreign operators have to look into ways to walk around and seek a management contract arrangement with a Chinese partner, or, in very rare cases, orchestrate an acquisition of a domestic nursing station through complicated share structuring.

Another uncertainty lies in the planning and site selection requirements. Unlike other types of senior care facility, a nursing station is defined as a primary health care institution, and therefore its establishment is subject to regional planning of health care infrastructure, which means private investors can not set up nursing station purely at their discretion, but have to be in concert with the government planning and public interest. Moreover, the government will employ a competitive mechanism to select private investors in transparent and fair ways. At present, local brands that have good reputation and sound track record seem to be more competitive than brands come outside of the city or abroad.

The pricing challenge might discourage private owners to invest in nursing station because (a) in order to obtain medical reimbursement for patients, service item and price has to comply with the insurance policy; (b) many of the nursing stations are expected to be registered as non-profitable institution, and as a result prices are under severe supervision from authority, even for private-paid services; and (c) without participation of commercial insurance, resistance for seniors to pay out-of-pocket expenses will remain for a long time.

Looking Forward

The new legislation will with no doubt have positive impact to the development of home health care services. Our best guess is that in addition to the professional home care providers, nursing station might also become an alternative for senior care facility operators. Nowadays, internal clinic is the common solution to enable senior care facilities to provide certain medical services within the facility; otherwise, their residents have to frequently visit hospitals nearby. Pursuant to the new Measures, operators now have an option to establish a nursing station outside of the facility or community, which enables the operator to not only provide ordinary medical services to its own residents but also extend such services to communities in the neighborhood. Further, in some new real estate projects, nursing station could take place of nursing home or rehab hospital if residents in the community are active adults or independent living seniors.

Another positive impact is expected on the Internet technology perspective. As we all know, a lot of investment has been seen in the Smartcare and telemedicine regime, and some property management companies have tried to upgrade traditional property management to comprehensive healthcare

management. One of their tools is information technology. Imaging if the remote monitoring system is placed and managed well at seniors' home, alongside hundreds of health care suppliers 24h standby, it could be a huge save of overall public expenditure in elderly care. For Internet platforms, more possibility could be explored for remote health care if they can obtain a less burdensome license of nursing station.

Once the Shanghai's practice is proved successful and many other cities follow suit, the home health care market will have a bigger chance to bloom. To that end, new entrants will have a lot to do ahead of business model for nursing station eventually taking shape.

This publication is for general guidance only and is not intended to be considered as legal advice in any specific case under any specific circumstance. We expressly disclaim all and any liability to any person for the consequences of action or non-action based on this publication. All rights reserved by Law View Partners Law Office.

For more information, please visit our website www.lawviewer.com

About the Author



Michael Qu

If you want to know more about this subject,
please contact:

Michael Qu

Managing Partner

+86 21 63770228*802

+86 13817878607

quqin@lawviewer.com

Michael Qu Qin is the managing partner of Law View Partners based in Shanghai, China, where his legal practices cover the areas of real estate, foreign investment and mergers and acquisitions. He has extensive experience as a lawyer for over 14 years. In his practice, Michael has successfully represented investors in the real estate, senior living, retail and hospitality sectors, asset management, in dealing with commercial transactions and disputes.

Michael has been practiced in the senior housing and healthcare industry for years. He has participated in many real estate, senior housing and medical healthcare conferences, and has authored several articles. He is also a lecturer of China's Legal Training Center, member of advisory board for a few international senior living associations, such as ICAIA and IAHS-CA, etc.

Being a legal professional that has involved in the development of senior living from early years, Michael has participated in many senior living and healthcare projects on legal matters such as project investment, joint venture, management contract, merger and acquisition and operational counseling, etc. Michael has worked with renowned operators, institutional investors, insurance companies and developers in this field from home and abroad. With his familiarity with and insights into the industry and precise master of client's needs, Michael can serve for varied investors in the field, providing sound service on the full spectrum of issues in project development which can arising during the site selecting, acquisition, feasibility studying, construction, financing, pre-opening preparation, post-opening operation and disposal of senior care or hospital facilities.

Prior to co-found Law View Partners, Michael has a wide variety of working experiences as in-house counsel in multinational group and private law practice in both domestic and international law offices.