

The challenge of improving communication and transparency

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Although the judicialization study profile in the area of nutritional formulas is little known, it is very similar to the profile of legal demands to the provision of medication and other health products. The article “Profile of legal demands for the provision of nutritional formulas forwarded to the Ministry of Health in Brazil” clearly depicts this issue.

Besides the high financial and logistic expenses for legal actions to the Brazilian Unified Health System (SUS), system inconsistencies and omissions occur in the legal processes for the provision of assets for Health Care, which generate great uncertainty in terms of the correction and establishment of recommended treatment.

The aspect of lack of documentation of clinical case and its approval through tests, in action, make health managers, when meeting legal orders, insecure with relation to the reliability of each case, and to the reasoning and properness of such provision..

Prescription for the brand of the product instead of its generic designation, as established by the good practices of prescription, in addition to complicating purchase logistics and

reaching of better prices, it can also rise doubts on the existence of agreements between prescribers and manufacturers, and that public agents, while not aware of the facts, would be manipulated to collaborate with specific benefits.

As legal actions on the provision of asstes for Health Care are based in a single prescription and not in a treatment plan, the control of the case is hindered for the menagers, who are also impaired to anticipate costs and logistics. In practice, provision starts with an urgent order motivated by an alleged threat to life, and remains indefinite, many times, even after the patient has passed away or has abandoned treatment, or moves to a different state. Studies developed in some Brazilian states have given evidence to this fact.

Another aspect that is omitted in legal actions, however paramount to our awareness, is that legal processes never explicitly expose which results are expected with the use of the product in demand, which benefits is expected for the patient, and how long will they take to reach such benefits; and also, how these results will be monitored and which criteria will be used for dispatch or end of treatment. If this information was mandatory in legal processes, it would be easier to judge the relevance or irrelevance of such demand; there would be less doubt; and reliability would be reestablished.

Through experiences in legal actions for SUS, the meetings with legal agents both when they are providing information on specific processes, and when they are giving courses and lectures, it is clear that we are facing a tough public health problem: the creation of an alternative mean of assistance for demand that is not subjected to the rules of science and technology assessment in health care, as required by the law of SUS; a mean that prioritizes the provision of technology, regardless of basic aspects of care, which consist of the basic needs for public health.

The 1988 constitution has established that health is a right that every citizen must have, and an obligation of the government, but it has conditioned such right to the existence of public policies. Thus, the creation of SUS has been established, as a unified public health system with universal coverage, which bases are posted in the Decree N. 8.080.¹

However, an important gap remained in the law of SUS: the chapter on technologies, filled after the publication of Decree N. 12.401, from April 28, 2011. Such Decree has supported and served as criteria to the incorporation of new technologies for SUS, and created the National Commission of Technology for SUS (CONITEC), to aid the Ministry of Health on matters related to the employment, exclusion or changes in the use of technologies in the health system.^{2,3}

Among other aspects, such as deadlines for assessment and provision of technology, transparency in the assessment process and public participation through public consultations, the law also provides that a technology, to enter SUS, must be registered in the country and demonstrate advantageous efficiency, safety, effectiveness and cost-effectiveness when compared to technologies already available in the system.

The performance of CONITEC, on the past two years, has rendered analysis of about 300 technologies within the time prescribed by law. Ninety-five technologies have been adopted and have already been implemented or are under the implementation phase in SUS. This work has led to the launching of new programs, such as the policy of assistance to people with disabilities and the policy of care for people with rare diseases; development of new clinical protocols and the updating of existing ones, demonstrating the potential of technology assessment as an essential tool for the leverage of SUS based on the precepts of value, economy and sustainability.

The legal means, as we have seen, disregards the analysis of evidence, lacks comparative studies, responds to a single prescription and thus creates an alternative path in which there is much waste of energy and resources, from the Health and Judiciary departments, with no proof of benefits to patients and even with possible harm, as a result of the irrational use of these technologies, failures in care, procrastination of procedures, among others.

The performance of Health assistance over the past two decades has shown to be up to the challenge of public and universal access. The eradication of certain transmissible diseases through systematic vaccination, the drastic reduction of child mortality, AIDS control, all these achievements are unquestionable indicators that proof the advancement of health care in Brazil. This includes one of the lowest expenditures *per capita* in the world. The judiciary, which is only called into action in the small proportion of cases in which the system fails, turns out to have a distorted view of SUS, disregarding the advances achieved.

The various actors involved in this scenario, legal agents and health administrators, live in different worlds, there are lots of miscommunication and mistrust among them. Thus, much effort is required to start a new phase of open communication and transparency between the areas of Health and Law, to be able to face the great challenge, which is to leverage SUS, the health care system for all Brazilians, the largest public health system of universal coverage in the world.

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