HEALTH JUDICIALIZATION IN A LARGE CITY

JUDICIALIZAÇÃO NA SAÚDE EM MUNICÍPIO DE GRANDE PORTE

JUDICIALIZACIÓN DE LA SALUD EN UN GRAN MUNICIPIO

ABSTRACT

Introduction: judicialization as a phenomenon of guaranteeing the right to health is a question with a growing discussion in Brazil, due to the constitutional definition of health in the country, which contemplates integrality. Objective: to characterize the processes of health judicialization in a large city. Method: descriptive, quantitative and documental study conducted in the 1st and 2nd Court of the Fazenda Pública da Comarca de Londrina – Paraná. The information was collected in the electronic process system of the Paraná Court. Results: 706 processes were identified, with the majority (51.2%) of the actions imposed by women, over 60 years old (47.5%), with their origin via public service (71.7%) and represented by private lawyers (55.3%). The most demanded object were medicines (88.1%), 80.1% of which not present in the Relação Nacional de Medicamentos Essenciais. During the data collection period, the majority (85.5%) of the processes was in course and, of these, 36.5% had more than 900 days. The outcome of the archived processes was judged well founded in 60.8% and improcedente in 17.6%. The total amount spent on judicialization during the study period was more than R$ 55,000,000.00. Conclusion: to reduce costs and the amount of lawsuits, public health policies should be reviewed in order to include the largest number of medicines in health services lists, facilitating the access of these products to users of Sistema Único de Saúde (SUS). New research is suggested to investigate the reason of medical prescription of non-standardized medicines.

Keywords: Health’s Judicialization; Judicial Decisions; Health; Right to Health.

RESUMO

Introdução: a judicialização como fenômeno de garantia do direito à saúde é uma questão com crescente discussão no Brasil, devido à definição constitucional de saúde no país, que contempla a integralidade. Objetivo: caracterizar os processos de judicialização na saúde em município de grande porte. Método: estudo descritivo, quantitativo e documental realizado na 1ª e 2ª Varas da Fazenda Pública da Comarca de Londrina - Paraná. As informações foram coletadas no sistema de processo eletrônico do Judiciário do Paraná. Resultados: foram identificados 706 processos, sendo que a maioria (51,2%) das ações foi impetrada por mulheres, acima de 60 anos (47,5%), com origem das prescrições via serviço público (71,7%) e representadas por advogados particulares (55,3%). O bem requerido de maior demanda foram os medicamentos (88,1%), sendo que 80,1% não estavam presentes na Relação Nacional de Medicamentos Essenciais. No período da coleta de dados, a maioria (85,5%) dos processos estava em curso e, destes, 36,5% tinham mais de 900 dias. O desfecho dos processos arquivados foi julgado procedente em 60,8% e improcedente em 17,6%. O valor total gasto com judicialização no período estudado foi acima de R$ 55,000,000,00. Conclusão: para reduzir os custos e a quantidade dos processos judiciais, as políticas públicas de saúde devem ser revistas com o intuito de incluir o maior número de medicamentos nas listas dos serviços de saúde, facilitando o acesso desses produtos aos usuários do Sistema Único de Saúde. Sugerem-se novas pesquisas para investigar a motivação da prescrição médica por medicamentos não padronizados.

Palavras-chave: Judicialização da Saúde; Decisões Judiciais; Saúde; Direito à Saúde.
Health judicialization in a large city

INTRODUCTION

In Brazil, health is a fundamental right of citizens, guaranteed by the Brazilian Federal Constitution (Constituição da República Federativa) institutionally of 1988, which created the Unified Health System (Sistema Único de Saúde-SUS), which is composed of a set of health actions and services. It is a regionalized and hierarchized network whose constitutional principles include universality, integrality of care and equality. The three spheres of Brazilian government (federal, state and municipal) share the responsibility of guaranteeing the right to health.

Health judicialization is the cost of medical procedures or medicines by judicial approach. This theme is of high relevance for public administration, since the number of lawsuits is determined to the public manager to grant the health treatment is high, resulting in expenditure for the public sector.

The growth of judicial actions, causes unpredictable expenditures on municipal, state and federal budgets, and enormous expenditures on the SUS. In different Brazilian states studies have been conducted with the objective of understanding the phenomenon of judicialization, identifying the profile of the processes, the interferences on the causes and characterizing the various aspects involved to identify alternatives that can solve the problems. The result of one of these studies demonstrated that the state of Ceará has 8,344 health lawsuits, being considered the 4th largest number of processes in the country.

A research conducted in São João da Boa Vista-SP analyzed judicial actions for access to medicines, identifying that the average expenditure per lawsuit was R$ 5,994.95 in 2010 and R$ 25,577.80 in 2012. These actions have important budgetary consequences, resulting in high and unscheduled expenditures to health managers.

There is a significant increase in drug expenditures in Brazil, which rose from R$ 14.3 billion in 2010 to almost R$ 20 billion in 2015 (40% growth).

The motivation to accomplish this research was based on the exponential increase in expenditures on health judicialization in recent years in the city studied. According to a report presented at a meeting of the Municipal Health Council (Conselho Municipal de Saúde) of Londrina, there was an expense of 1.879 billion with judicialization in four years (2013-2016), with an increase of 38% of expenditure between 2013 and 2016.

The aim of this study is to characterize the processes of health judicialization in a large city.

METHODS

This is a descriptive research of quantitative approach of documentary type, held in the 1st and 2nd Courts of the Fazenda Pública da Comarca of Londrina-PR.

In the city studied there are 10 civil Courts and two poles of Public Treasury. The civil authorities have the competence to prosecute and judge bankruptcies and causes relating to the judicial or extrajudicial recovery of entrepreneur or business companies. The courts of the public treasury process and judge the causes in which the state, municipality, autarchies, mixed economy societies, public companies or foundations interested in the conditions of authors, defendants or assistants. Thus, for data collection, the research was carried out in the 1st and 2nd Court of the Fazenda Pública da Comarca of Londrina - Paraná, where can be found judicial actions against the municipalities, state, union and local authorities.

All cases included filed between 2011 and 2017 were included, inserted in the electronic process system of the Judiciary of Paraná (PROJUDI), a computerized system that records the entire judicial procedure in electronic media, replacing the paper file registration. Labor and veterinary actions were excluded.

For data collection, the judges of the 1st and 2nd Courts of the Public Treasury of Londrina received a request of the Coordination of the Nursing Graduate Program at Universidade Estadual de Londrina, to obtain authorization of access to health judicialization processes in the city studied. After the
judges’ authorization, the secretaries of both Courts carried out a search in the register referring to the lawsuits in health, to generate a list with the processes numbers.

The participation of an attorney was requested to access the website of the electronic process of the judiciary of Paraná (PROJUDI), to obtain the research data in the processes released. This lawyer, through his own password, accessed the PROJUDI website to obtain the search data.

The variables of analysis were: gender (male and female); age group (under 20 years old, from 21 to 40 years old, from 41 to 50 years old, from 51 to 60 years old and more than 60 years old); origin of the prescription (public and private); legal representation (public prosecutor and private lawyer); required goods (medicine, material and input, surgical procedure, medical consultation, examinations, among others); registration at the Agência Nacional de Vigilância Sanitária (ANVISA) and in the Relação Nacional de Medicamentos Essenciais (RENAME); process identification (in process and filed); processing time (100 to 300 days, 301 to 500 days, 501 to 700 days, 701 to 900 days and above 900 days); outcome of the filed processes (founded, unfounded, withdrawal or death of the author); reason for the unfounded judgment (judicial incompetence, not proving the need for the requested product, prescription by a physician not linked to SUS, multiplicity of actions and decay of the process); and value spent on judicialization.

The medicines were classified by the Anatomical Therapeutic Chemical (ATC), which, from 1996, was recognized by the World Health Organization as an international standard for drug use studies. Active substances are classified into a five-level hierarchy.10 In this study, the medicines were classified by therapeutic group.

The data were stored in a Google Docs spreadsheet and analyzed by descriptive statistics, using the Statistical Package for Social Sciences 22.0 (SPSS 22.0) program.

The study was approved by the Ethics and Research Committee of the Universidade Estadual de Londrina-PR, under the number CAAE: 75955417.1.0000.5231.

RESULTS

We identified 945 processes, of which we excluded 155 because they were duplicated. In addition, 83 were labor actions and a veterinary action, totaling 706 actions of health judicialization eligible for the study.

Some processes presented collective actions (n=21), that is, several individuals in a single action, totaling 775 people who demanded some kind of judicial action. In relation to the characterization of the applicants, female gender (51.2%) and age group over 60 years old (47.5%) predominated. The origin of the most frequent medical prescription was public network (71.7%) and legal representation by private lawyers (55.3%) (Table 1).

| Table 1 - Characterization of lawsuits applicants. Londrina/PR, 2011 to 2017 |
|-----------------|--------|-----|
| Variable        | n      | %   |
| Sex (n= 775)    |        |     |
| Female          | 397    | 51.2|
| Male            | 378    | 48.8|
| Age group (years old, n= 775) |        |     |
| < 20 years old  | 12     | 1.5 |
| 21 - 40 years old | 133    | 17.2|
| 41 - 50 years old | 109    | 14.1|
| 51 - 60 years old | 148    | 19.1|
| More than 60 years old | 368    | 47.5|
| Not informed    | 5      | 0.6 |
| Origin of prescription (n= 775) |        |     |
| Public network  | 556    | 71.7|
| Private network | 149    | 19.3|
| Not informed    | 70     | 9.0 |
| Legal representation (n= 706) |        |     |
| Public Prosecution | 316    | 44.7|
| Private attorney | 390    | 55.3|

In the required demand, we observe in Table 2 that the highest number of lawsuits was for medicines (88.1%). The length of processing of these processes was mostly over 900 days (30.0%) and 14.3% were filed.

| Table 2 - Required demand type. Londrina/PR, 2011 to 2017 |
|-----------------|--------|-----|
| B Required good | n      | %   |
| Medicines       | 622    | 88.1|
| Materials and inputs | 21    | 3.0 |
| Surgical procedure | 16    | 2.2 |
| Medical consultation | 12    | 1.7 |
| Exams           | 12     | 1.7 |
| Others          | 23     | 3.3 |
| Total           | 706    | 100 |

As for the medicines required, the results showed that 99.2% were registered with the Agência Nacional de Vigilância Sanitária (ANVISA) and 80.1% were not in the Essential Medicines Association National (Relação Nacional de Medicamentos Essenciais - RENAME), current at the time the processes were analyzed (2017).

Moreover, according to the ATC classification, it was found that the most frequent therapeutic group was “antineoplastic agents”, with 41.0%, followed by “endocrine therapy” with 8.4% (Table 3).
Among the most requested antineoplastic agents, the most demanding was bevacizumab, with 23.0% (not present in RENAME), followed by rituximab with 14.2% (present in RENAME), trastuzumab (9.6%) and cetuximab (7.5%) (both not present in RENAME).

Regarding the time of process demand, it was observed that most of the processes were in course during the data collection period (2017) (85.6%), and 220 (36.5%) had more than 900 days of processing time.

Some of the reasons for unfounded judgment were judicial incompetence, six (33.4%); four (22.2%) have not proven the need for the medicine requested; in one (5.5%) the perpetrator had a private health insurance and the judge understood that he should appeal to them (Table 4).

The expenses with health judicialization in legal actions for medicines (R $52,413,180.03) and treatment with hyperbaric oxygen therapy (R $1,046,472.34), are shown in Table 5. It is noteworthy that the values registered in the processes often did not correspond to the real value of the action, because when registering the value of each action the lawyer entered only the amount spent on the procedural costs.

The results of the research showed several types of health-related legal actions, in which the greater request was medicines judicialization, followed by materials and inputs, surgical procedures and others. In a study on health judicialization in the state of Mato Grosso between the years 2011 and 2012, the most frequent request were for surgeries or procedures and beds, followed by medicines. It is noteworthy that the state of Mato Grosso is outside the ideal number of hospital beds recommended by the World Health Organization for every
thousand inhabitants, which generates the various lawsuits requiring beds, as a consequence of the lack of investment to increase their amount in the state.11

The results of this study corroborate others that demonstrated that most of the medicines requested had ANVISA register.14 This information is relevant, as the Conselho Nacional de Justiça (CNJ) recommend the Courts to adopt measures that better subsidize the magistrates and ensure greater efficiency in the solution of judicial demands related to health care, such as the requirement to approve the inputs requested by the ANVISA. This measures would avoid that products with unproven results or that can be harmful are provided to the users.14

We observed that about 80% of the medicines requested were not present in the RENAME. On the contrary, a study conducted in 2005 on legal actions related to medicines access in São Paulo-SP, found that 62% of the medicines required were part of the SUS drug lists, indicating that the prescriber or the applicant may not know whether these medicines were available or not, considering that most of the prescriptions were from SUS services.15

Regarding the types of medicines requested, antineoplastic agents were more frequently found, among them the rituximab, present in the RENAME. In a research conducted in the state of Paraíba with the objective of describing the medical-scientific and sanitary aspects of judicial orders for medicines supply, antineoplastic rituximab was the most requested.16 The fact that some of the medicines requested belong to the lists of medicines provided by SUS may indicate the lack of these medicines in drugstores due to failures in pharmaceutical care management and prescribers’ little knowledge about the supply rules of these items by SUS.

Also about antineoplastic agents, the most requested in this study was bevacizumab, not present in RENAME. In a research conducted in Minas Gerais with the objective of analyzing the possible interference of the pharmaceutical industry in medicines prescriptions, it was found that the pharmaceutical industry used strategies to convince physicians and/or patients for the use of medicines that are not standardized in the SUS yet.17 Prescriptions not supported by diagnosis and therapeutic indications established in clinical protocols and therapeutic guidelines, concentrations and non-standardized pharmaceutical forms, contribute to increase legal demands for non-standardized technologies.

It is assumed that the predominance of legal actions for antineoplastic agents demonstrates the need to discuss public policies that meet the therapeutic needs of the population, based on the changes generated with population growth and increase in chronic-degenerative diseases.

This study found a predominance in medical prescriptions from the public network, as also observed in the state of Ceará.4 On the contrary, researches carried out in Minas Gerais and São João da Boa Vista-SP found that most of the prescriptions came from physicians of the private sector, which may indicate a “partnership” between these professionals and the laboratory manufacturer of the drug aiming at its standardization.6,18

Even evidencing in this research that most of the origin of prescriptions comes from consultations in SUS, there is a hegemony in the legal representation by private lawyers, cases also observed in other states of the country.15,18-20 These results may indicate that, even using the public health system, people who appeal to the judiciary have better financial conditions and can assume procedural expenses.

Most of the processes analyzed during the data collection period of this study were in course for more than 900 days. This long time may indicate more costs for the public health system and be harmful to the user in the waiting time. There is a need to conduct studies that address the length of the processes and the costs involved during the waiting time for the judicial decision, so that they can reduce the costs of the health judicialization and provide a nimbler response to the user.

In this study and in other researches, the value spent with medicine legal actions draws attention. In 2006, R$ 21 million were spent with the fulfillment of judicial decisions for drugs demand in the state of Santa Catarina.11 In another study carried out in that same state, in 13 municipalities with low population density, the expenses were a little more than R$1 million of expenses with judicial lawsuits.1 A study carried out in Distrito Federal, analyzed the expenses with non-standardized and judicialized medicines in the SUS, resulting in a total spending of about R$ 43 million.5

The high costs of medicines judicialization may be due to the non-standardization of medicines in the SUS, having significant budgetary implications for the system, since the judicial determinations for drug distribution causes high expenditures that are not programmed by health managers.

This study was the lack of enough data to trace the socioeconomic profile of the applicants, since legal actions did not usually have data on school level, place of birth, profession and income. Another limitation was about the values found in each action, because in many processes the actual values of the cost of the action were not recorded, making it impossible to know the total value spent in the period studied.

CONCLUSION

The results showed that most of the actions were started by women over 60 years old, with the origin of prescriptions via public service and represented by private lawyers. The most required demand were for medicines, most of which are registered in ANVISA and were not present in the RENAME. The most frequent group was “antineoplastic agents”.

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During the data collection period, most of the processes were in course for more than 900 days. The outcome of the processes was founded in 60.8% and unfounded in 17.6%. The total amount spent on judicialization during the study period was above R$ 55,000,000.00.

Although the analysis of the expenses with the judicialization did not allow to find the real value of each legal action, the data allowed to identify high cost with the processes of the period studied. The results showed that health judicialization can indicate that investments in the health sector have been insufficient to meet the demands of the population.

We suggest the reformulation of the national drug policy to be enlarged, allowing the SUS acquisition of non-standardized drugs. We also recommended to carry out further research to be enlarged, allowing the SUS acquisition of non-standardized drugs. We also proposed the insertion of a multidisciplinary team capable to advise the judges in the verification of scientific evidence of the treatments requested in the lawsuits, avoiding the prescription of medicines or procedures without proven evidence, in order to reduce the amount of legal actions and high health expenditures.

REFERENCES


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