v. 2, n. 38, 2022

International Journal of Health Science

CHALLENGES IN STRUCTURING THE JUDICIALIZATION OF MEDICINES AT THE MUNICIPAL LEVEL

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Abstract: Quantifying and dimensioning the numbers of active lawsuits in the municipality of Suzano characterized this article, enabling qualified mapping of costs and a study of financial progression for the coming years. Technical guidelines for citizens were evaluated, ensuring access to pharmacotherapeutic and/or technical content on Clinical Protocols and Therapeutic Guidelines, avoiding unnecessary lawsuits. Although subsidized by the full range of information for easier access to medication, judicial activism has trampled on any directive or normative, putting patient safety at risk, unbalancing planning and public budget, directly favoring the industry to the detriment of service and dispensing in pharmacies. public. Considering that judicialization must pay attention to untying the bureaucratic knots of the plastering of the public machine, what has been experienced is the extinction of collective care in the coming years, due to decision-making compulsion and freezing of resources, directing finances to the minimum portion of the population, infringing the principles basics of S.U.S. (Unified Health System)
Keywords: Judicialization of Health. Financial planning. Pharmaceutical Management. Public budget.

INTRODUCTION

Access to essential medicines is recognized by the United Nations as one of the five indicators related to advances in guaranteeing the right to health (HOGERZEIL et. al, 2011) and its claim is based on constitutional provisions that guarantee everyone the right to health (BRASIL CRFB, 1988; BRASIL LF, 1990).

Considering that part of the drugs claimed are not foreseen in the clinical protocols or in the lists incorporated by the SUS, are they being judged with some caution and technically supported? Under penalty of violating the principles of isonomy and selectivity, and to the detriment of other citizens, will there be a need for budget reallocation in other areas of health in the measure for the acquisition of medicines not included in the SUS lists? In effect, will there be benefits only for certain people, to the detriment of dozens or hundreds of other citizens who need the municipal network to supply standardized medicines and hospital medical supplies?

In short, it demonstrates a crucial factor in the planning and programming of pharmaceutical care, all the technical considerations in making decisions of a judicial nature.

INJUNCTION, A TOOL THAT OPENS DOORS BUT DOES NOT DISARM ALARMS

Considering the constitutional provisions that guarantee the right to health for all (BRASIL CRFB, 1988; BRASIL LF, 1990), which regulates the Unified Health System (SUS), has been the basis for all claims of current court orders. No matter how fair and noble these requests are, the absence of an established and orderly flow between the judiciary and the public power, with regard to pharmacotherapy, has led to the exponential growth of injunctions, and these are often unnecessary, since SUS have this technology in the various spheres of care.

The World Health Organization (W.H.O.), in addition to recognizing access to pharmacotherapy as one of five indicators in the advancement of guaranteeing the right to health, requires each country to draw up its own list of essential medicines, which best serves its population according to epidemiological factors.

In order to achieve this objective, Pharmaceutical Assistance (AF) has as its steps the selection, programming, acquisition,

storage, distribution and dispensing, and in a cyclical way it is updated whenever necessary, provided for by the National Medicines Policy (PNM) (BRASIL MS, 1998), the concept of essentiality generates a shared reflection on guaranteeing access to essential medicines. Because the drugs included in the standardization lists need to go through a rigorous process of evaluation of effectiveness and efficiency, after all, in addition to the cost-benefit ratio, resources and user safety must be considered when using it.

To know that the financial contribution is finite, it is necessary to avoid the duplication of drugs for the same clinical indication, between the municipal relationship or in the complementary standards in other spheres of government, thus allowing a better characterization of local clinical care, expanding the therapeutic range. available according to authorizing protocols. Therefore, the supply of medicines is the responsibility of the municipalities, states or the Union and the management of the PA has a fundamental role to facilitate qualified access to the medicine, allowing the necessary technical guidance for that. However, the claimed drug is often not on the SUS lists (BRASIL MS, 2018), which are equivalent to those available or not registered by the National Health Surveillance Agency (ANVISA). According to the challenge presented, we can generate new questions and reflections on three major fronts; the first one that raises doubts about the effectiveness of standardized lists of SUS medicines, regardless of the sphere of care, are there obsolete medicines, which must be replaced or just new ones incorporated? How are the activities of the Pharmacy and Therapeutics Commissions, are they evaluating new technologies and analyzing currently available treatments? We must look for flaws to make social gain possible. The second reflection falls on the commercial pressure of the pharmaceutical industry; Is there an induction for the incorporation of these new drugs? Is it cost-effective? Is there the possibility of manufacturing for SUS service or storage stability in the four parts of the country? For before the mere renovation, there is a need to contain and focus on efficiency and even if these are pioneering, but resolute, and of course feasible at a budget level. Finally, reflection permeates all areas of the Public Power, communication; do prescribers know the Health Care Network and its medication standardization? Are AF normalizations ignored? The integration between the medical and pharmaceutical areas is essential, reducing distances between information so that the SUS is not assigned merely the function of delivering medicines, but of building effective Public Policies.

Although the attempts and dedication of the AF segment to obtain better treatment possibilities for its citizens are clear, approaching the Rational Use of Medicines (RMU) as a vision, we are faced with the oldest challenge of all; understanding the human mind, and through empathy being able to see into the realities, limitations and different points of view, this way it is easy to identify four actors involved; user, prescriber, judiciary and the SUS itself, represented by its managers.

Considering all those who need drug treatment, citizens understand that justice is the most logical, quick and guaranteed way to obtain what is claimed. Through the organization of groups, associations and others, pressure has been growing in the conquest of constitutional rights in the scope of integral health, although there are also roles of citizenship and popular participation, each year the share of users and citizens determined to participate is being lost. of the construction of Public Policies and their consequent health education, with that there

is still this distance of understanding. When analyzing individually, one is faced with the challenge of avoiding the interest and convenience of some, and supplanting the needs of the collective. Therefore, the need for education in Public Health and popular participation is realized to jointly think about the allocation of resources, overcoming budget limitations, leaving personal desires as secondary to the detriment of collective rights. It is up to the State to clearly and adequately promote all inquiries received, clarifying flows, therapeutic availabilities and forms of access.

As an important figure within the system, we have the prescribers (doctors, dentists, pharmacists, nutritionists, etc.), they have been harassed from numerous sides, as much as the relationship of professional quality being measured by revenue generation, or achieved with the regularization of drug advertisements, the pharmaceutical industry has been looking for new ways to achieve its objectives, which are not limited to the dissemination of knowledge, but strongly in the commercial sphere, through the media, suggestive congresses and visits of representatives, a fact that triggers a great influence on prescriptions outside the standard, also culminated in the lack of knowledge about the National Medicines Policy (PNM), so efficient communication within the public machine needs to be evidenced and effective, to avoid social burden or difficulty in accessing therapy due to the escape from the conventional available. Updating knowledge is essential to evaluate conduct and new technologies for the SUS, seeking scientific evidence and meaningful answers is the challenge of this category, able to discern commercial interests, from the technical possibilities in the reality of public health. Through the evaluation of municipal cases, it is possible to perceive the pressure that prescribers suffer outside the SUS to suggest treatments that differ from the standardized ones, which charge for the services provided, not indicating monitoring in the public system, but encouraging the population to seek rights in treatment. divergences, not seeking in the prescription the due professional evaluations to guarantee common and quick access to treatment, thus leading a race of patients with chronic diseases to seek the judiciary, individualizing their causes, disregarding the collective, in the same way as the class prescriber disregards social, economic and environmental factors, focusing only on the right to health, although they are regulated by the Clinical Protocols and Therapeutic Guidelines (PCDT) are rendered useless by the convenience.

As a third actor we find the Judiciary, this piece focused on the claim of rights and duties, which is positioned unilaterally, not for construction, only for the victory of the action, with this understanding it is easy to perceive the existing conflict in the sphere of public power, because it is not there are sides, only one claimant in conflict of collective law. Justice is prepared and supported to deal with bilateral conflicts, through commutative justice, however, when analyzing the right to health, public health is excessively more complex, as we evaluate the distributive good, that is, the budget reallocation from one to another. detriment of the other users, and the same shallow means must not be used in decisions to the goods provided by the spheres of government, therefore technical considerations must be taken. With regard to the provision of drug therapies, to be more specific, the judicial decision of one can or already means in some municipalities the injury of others, both in efficiency or collective investments for the sector. Health is a good for all, so it needs to be treated as such,

collectively and not as compensation between two parties, after all, they are finite.

In the expressive majority of the evaluators and judges who have the power to decide on the claim, we verified almost all of the granting of the request, due to the right to life and health, without at least having a technical and safe evaluation of the patient, and this way they are attended for a long time even if questioned, as the complexity of analyzing such a conflict is known, however, discussions not only of rights, but also of duties and clearly access to egalitarian health, through Public Policies, are fundamental, perhaps not there are other ways to guarantee the right to health for all, otherwise we may be reversing the logic; privileging those who opt for care outside the SUS, because the SUS cannot be understood merely as a sector of medication supply, but as an integral system, from the care to its evaluation.

Finally, as the last actor in this scenario, we have the SUS itself, which has, through ethical and legal responsibility, the implementation of policies that ensure and are capable of promoting integrated health actions. When mobilizing and planning according to epidemiological issues and the rights of users who feel deprived of the obligation of the State, managers analyze and evaluate causes of demands and their studies of financial impacts in order to reduce legal demands (ANDRADE et al, 2008). This way, it is necessary to develop indicators and mechanisms of temporal evaluation in your region, considering its particularities. When planning health, the complex challenge is the rational use of its due resources, and this way manage actions and improvement projects. To guide the PA sector, we have Clinical Protocols, Epidemiological Summaries, Technical Regulations of the numerous areas that make up the health technical body, and of course actions of the Pharmacy and Therapeutics Commission (CFT), which receive the repressed demands requested in the units and all requests for standardization, substitution or inclusion of new drugs. With the judicialization, we harm the planning actions, the universality, equity and integrality that advocate the SUS guidelines, and end up maximizing differences, welcoming situations in which citizens who do not belong to the most vulnerable population, thus having clarifications and economic power to pay for an intervention of a professional lawyer (MACHADO et. al, 2011).

Considering ensuring access to effective and safe medicines, the lists of drug standardization must be constantly updated according to the aforementioned actions, actions that would also technically be the most appropriate to reduce unnecessary judicialization, with this serenity must be understood in organizational actions of public administration and the maturation of society within the scope of health policies.

According to some authors Medeiros, Diniz and Schwartz (2013), who address the issue of the relationship of medicines in the SUS, there are three main reasons why a medicine is not part of the standardization of the SUS. The first refers to the limitations and difficulties in the administration of these drugs as well as storage problems. The second reason comes from a scientific scope, because the therapeutic efficacy is not recognized or despite the recognition and evidence base, they have not yet completed the authorization stages with the Health Surveillance System. As a third and last reason, and most common, is the cost-benefit function, analyzing available therapeutic equivalents and substitutes, also known as the thesis of rationality in health (MEDEIROS et. al, 2013).

The standardization of essential medicines in the SUS (BRASIL MS, 2018), includes low,

medium and high cost medicines, unlinked to monetary values. And demonstrating that regardless of the costs, SUS tries to expand the therapeutic range shared between the spheres of government, when it is necessary to use medicines absent from the standardized lists, the judiciary for entering as an ally in the plastered deployment of the municipal procurement bureaucracy, however, they must all the scientific evidence that justifies its use must be considered, and only this way provide it if there are no drug or therapeutic alternatives available.

By working for years in a Health Care network, it is possible to recognize some weaknesses of the Public System, which allowed for inquiries at the PA management level about how the relationships between the actors involved are carried out, but initially an axis was given. situational.

Through an analytical descriptive study, in the judicial database of the Pharmaceutical Assistance Network (RAF), comparing the Municipal List of Medicines (REMUME), the List of Medicines of the Specialized Component of the State, qualifying and quantifying the processes sentenced in different instances, from the beginning of 2015 to the end of 2018, and with the development of a comparative spreadsheet between responses, judicial requests and injunctions, the degree of resolution of the information provided by the RAF and possible demands for new technologies to evaluate the CFT Finally, through the above table, analyze the effective financial cost of lawsuits in recent years, and future progression in municipal programming.

DISCUSSION/ANALYSIS OF RESULTS

After analysis, there was a growth of 182.16% in the cost of lawsuits in just three years, with an increase of 76.78% in new cases in this period. There was a growth in the last year (2018) of a significant 52.83% in financial cost compared to the previous year (2017).

The effective cost of special purchases to meet legal demands in 2018 represented 29.74% of the budget estimated for the purchase of medicines by the district of Suzano, a cost directed to serve a smaller portion than 0.034% of the population of the municipality.

FINAL CONSIDERATIONS

Through a simple situational balance, it is clear the facilitated projection in which the judicial decision took, the disregard of the Therapeutic Clinical Protocols and/or tax liability laws, the individual favoring to the detriment of collective care.

Effectiveness in therapy and adequate access is also not considered by the legal class, disregarding available, more appropriate alternatives, established clinical protocols, based on amenities and not needs.

In a country with a freeze on public transfers, and considering the average growth progression of lawsuits in recent years, we will have the closure of drug dispensing activities in Primary Health Care in the next 4 years, in our region, since municipal programming of medicines will only be aimed at meeting injunctions for the minimum portion of the population.

The study showed that, regardless of the degree of guidance provided to citizens, technical resources based on evidence against judicial decisions and a wide list of standardization of available drugs, injunctions have been the most comfortable path for the applicant and prescribers, due to the ease of obtaining, due to technical disregards. essential, such as drug registration with the National Health Surveillance Agency (ANVISA), a minimum requirement for user safety.

It takes the commitment of all to guarantee basic rights such as providing for the constitution, considering public resources that are finite, through updated clinical therapeutic protocols, an effective list of essential medicines, patient safety and judicial deferrals with technical support. For this, the implementation of an impartial board for technical evaluation or effectiveness of communication between the municipal pharmacy and therapy committees with the Judiciary is a fundamental part of the Judiciary, thus enabling structured and increasingly broad communication between the areas of health management. and judiciary, creating formal spaces for dialogue, which enable the elaboration and implementation of efficient public policies, reducing judicial activism and guaranteeing a better network of pharmaceutical assistance (RAF).

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