The three branches of Government and financing of the Brazilian Unified National Health System: 2015 in review

Os três poderes do Estado e o financiamento do SUS: o ano de 2015

Los tres poderes del Estado y el financiamiento del Sistema Único de Salud brasileño: el año de 2015

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The Brazilian Unified National Health System (SUS) is a prime *locus* for observing the branches of government in Brazil. Unresolved fissures between the Executive, Legislative, and Judiciary become more visible when observed from the angle of the health system's financing.

According to articles 6 and 19 of Brazil's 1988 *Federal Constitution* [1], health is a social right that the state should guarantee for everyone in the national territory through social and economic policies aimed at reducing the risk of diseases and other health problems, and universal and egalitarian access to actions and services for the promotion, protection, and recovery of health. Nearly 30 years after enactment of the 1988 Constitution, Brazil's public health system can still be best described as "developing".

Brazil's health policy includes action by the public sector (SUS) and the private sector (supplementary healthcare, or private health plans), plus action by the private sector within the public sector (complementary health) and by the public sector within the private sector (regulation, inspection, surveillance).

Decades of struggle for sufficient and sustainable financing of the SUS have not freed the health sector of submission to exponentially rising costs, due to the development of new technologies, population aging, and increasing reliance on the courts to guarantee the right to health. The SUS has absorbed rising levels of social violence, automobile accidents, pollution, chronic diseases, etc., all of which without sufficient and sustainable funding mechanisms.

According to Rawls [2], health is part of society's basic structure and has profound and lasting effects on citizens' cognitive, moral, and ethical capacity. He thus argues that health is central to the concept of distributive justice. This same concept is written into Brazil's 1988 *Federal Constitution*, which ensures universal access to the national health system. The Constitution's intent that distributive rationale should be the model for national development is expressed in the principle of universal access to the SUS and should form the basis for action by the three branches of government.

Health financing is anticyclical, since it not only guarantees the functioning of the SUS but is also capable of mitigating the effects of the economic crisis on employment [3]. It is anti-inflationary because it acts to reduce families' and employers' spending on private health services [3].

Beyond the usual debates, which generally avoid the issue of health system financing, 2015 witnessed some new facts: (i) Constitutional Amendment 86/2015; (ii) resumption of the review of class-action bill of law PLP 321/2013 ("Health + 10"); (iii) attempts to resurrect the Provisional Contribution on Financial Transactions (CPMF) and Social Security Contribution (CSS); (iv) the Bill of Constitutional Amendment (PEC) 01-A/2015; (v) Brazil's national economic crisis and the Annual Budget Bill (PLOA) for 2016.

Amendment 86/2015 altered the financing model proposed by Amendment 29/2000 by making the Congressional amendments binding and including them when computing health expenses. At first glance, Amendment 86/2015 might appear to increase financing for the health sector, but in nominal terms in 2016 the amounts earmarked for the Ministry of Health may actually mean a smaller share than in 2015. Amendment 86/2015 also presented minimal and progressive percentages for health financing by the Federal government – considering the binding amendments. The percentages presented in article 2 of Amendment 86/2015 clash with Class-Action Bill PLP-321/2013, which requires Federal investments in health on the order of 10% of current gross revenues. Even though PLP-321/2013 was backed by 1.9 million signatures, its content was basically ignored by Congress, and only parts of it were used in other bills.

Congress defended referring the amendments to their constituencies, which is generally done without any consistency with private health plans, which do not include the necessary investments or costs and thus reduce and undermine health administrators' organizational capacity. Interpretation of the law failed to consider that such amendments would act as a financial increment, thus leading to the reading that the legal stipulation of a floor (or minimum) would be enforced in practice as a ceiling (maximum) of financial resources earmarked for health.

The year 2015 also witnessed attempts to resurrect the Provisional Contribution on Financial Transactions (CPMF). Reserving a percentage of the CPMF for the states, Federal District, and municipalities contributes to their coffers but does not increase the financial resources for the health sector. If Amendment 86/2015 was capable of reducing funds for health since it includes the binding amendments (amendments with stipulated budget percentages for health) in the overall calculation, limiting health's share to 15% after five years of scale-up, the CPMF proposal neither adds nor replaces any financial resources for health.

The Bill of Constitutional Amendment PEC 01/2015, which aims to alter article 198 of the *Federal Constitution*, provides that the minimum amount to be invested yearly by the Federal government in public health actions and services should be 15%, 16%, 17%, 18%, and 18.7% of current net revenue, scaled up over the course of five fiscal years. If health is a motor force for economic and social development, the scale-up of earmarked budget resources should be faster, otherwise the SUS may die out by the fifth year.

Among the comings and goings of Congressional review, the report that suggests the bill's approval altered article 166, paragraph 9, of the 1988 Constitution to allow individual Congressional amendments focusing on university health services and hospitals and health services in the prison system, explicitly clashing with Complementary Law 141/2012, since university health services come under the Ministry of Education and prison health services under the Ministry of Justice.

What appears most alarming however is the Federal budget proposal for the health sector for the year 2016.

The Ministry of Health is among the main agencies in the Federal budget, with some 109 billion *reais* for public health services. The health actions and services included in primary and medium/high complexity care (outpatient care, hospital care, and preventive and therapeutic support) represent some three-fourths of the Federal health budget, of which two-thirds refers to regular and automatic transfers to the states, Federal District, and municipalities. The numbers that impact the Annual Budget Bill for 2016 reveal a budget deficit, which is more serious than the financial deficit.

The Ministry of Health increased the proportion earmarked for primary care as compared to medium and high-complexity care, but this is not reflected in the Annual Budget Bill for 2016, since according to the rules established by Amendment 86/2015, fewer resources were approved for this block of funding. In 2014, the medium and high-complexity block received 39 billion *reais* from the Federal government, which proved insufficient to meet the demand. In 2015 the same block received 43 billion *reais*, and in 2016, according to the Annual Budget Bill, it will receive 37 billion *reais* [4].

Comparing the financing model in Constitutional Amendment 29/2000 with that of Amendment 86/2015 (used as the basis for the Annual Budget Bill), there is a striking difference, since there is no legal provision to prevent the amounts invested in health from being applied retroactively – drawing on the "possible reserve" principle [5].

Although one would like to believe in administrative autonomy and its capacity to innovate and obtain results, such autonomy is not supported by sufficient and sustainable financing. The claim that the SUS administration is inefficient simply deserves no credit. Money has always been lacking, and now there's no budget!

The point is not to defend administrators that commit crimes against the Public Administration, but it is unfair to compare universal health

systems elsewhere in the world with Brazil's SUS, the funding of which represents less than 4% of the country's Gross Domestic Product (GDP).

The health financing agenda requires more refined and cautious thinking. Public health experts must consider numerous factors: market regulation of health services, regulation of the medical-industrial complex, justification for government subsidizing of private health plans, and equity in tax breaks, among many others.

Financing is not an issue that escapes the attention of the Judiciary Branch. In fact the Brazilian Supreme Court issued an emblematic ruling on the Suspension of Anticipated Tutorship (STA 175), stating the following: "*The Brazilian Unified National Health System is based on public financing and universal coverage of health services. Thus, in order for the state to guarantee the system's maintenance, it is necessary to address the stability of health expenditures and consequently the raising of funds for the system*" [5].

Still, although the branches of government are alert to the sustainability of the SUS, the debate must reach the community health councils, professional associations, trade unions, the Third Sector, and especially ordinary citizens. This social mobilization is the basis for decision-making by the three branches, since only such mobilization can guarantee the health system's legitimacy [6].

The above discussion interweaves the various proposed legal provisions on financing the SUS, the realistic recognition of dwindling financial resources for the Executive Branch to act, and the legal rulings – both in individual court cases and more widespread repercussions [7] – all of which have consequences for the national health system and denote the undeniable relationship between the three branches of government.

One would like to believe that the three branches intend to safeguard the system against social retrocession [8]. However, reckless or socially uncommitted action by any of the three could lead to the collapse of the SUS and further jeopardize the cohesion of Brazil's national fabric.

Contributors

All three authors wrote and revised the article.

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